

PROPOSED NEW RULE AND SUNDRY AMENDMENTS TO THE RULES AND REGULATIONS OF THE COMMISSION

1. New Rule

Proposed Rule for the Three-Tiered Know-Your-Customer (KYC) Framework for Capital Market Operators

2. Sundry Amendments

- (a) Proposed amendment to Rule 39(2) -Proposed New Rule on Fast Track Filing of Annual Reports
- (b) Proposed amendment to Rule 305 -Proceeds of Issue
- (c) Proposed amendment to the National Investor Protection Fund Rules

A. NEW RULE

1.0 THREE-TIERED KNOW-YOUR-CUSTOMER (KYC) FRAMEWORK FOR CAPITAL MARKET OPERATORS

- 1 The three-tiered Know-Your-Customer (KYC) Framework is to be adopted by all Capital Market Operators for the purposes of financial inclusion. A Capital Market Operator shall:
 - a. Apply simplified Know-Your- Customer (KYC) requirements as provided in this framework.
 - b. Record the reasons for doing so along with the account opening documents and render returns to the Securities & Exchange Commission on quarterly basis.
 - c. Maintain records of all domestic and cross border transactions including occasional transactions.
 - d. Put in place additional monitoring for accounts opened under the three-tiered Know-Your-Customer (KYC) Framework to ensure that such accounts are not misused.
 - e. Report all Suspicious Transactions (STRs) relating to these categories of clients to the Nigerian Financial Intelligence Unit/Centre (NFIU/NFIC) as required by Money Laundering and Terrorism Financing Laws and Regulations.
2. Capital Market Operators may use agents or third parties in opening account(s) for financially excluded clients. However, all requirements relating to reliance on

intermediaries and the use of third parties as stated in Regulation 18 of SEC AML/CFT Regulations, 2013, shall apply.

3. The thresholds contained in these Rules may be reviewed from time to time.
4. The Market Operator shall migrate accounts to the next level once they exceed the stated maximum cumulative balance for each level.

1.1 THE THREE TIERED KNOW-YOUR-CUSTOMER (KYC) REQUIREMENTS LEVELS

A. Level 1 - Low-Risk Account

- 1) The features of Low-Risk Accounts include the following:
 - i. The account is subject to close monitoring by financial institutions;
 - ii. Can be opened through agents;
 - iii. No minimum investment amount required for the opening of these accounts;
 - iv. May be linked to a mobile phone;
 - v. Investments can be made by account holder and third parties while redemption payments are restricted to account holder only.
 - vi. Should apply to Nigerian citizens or residents;
 - vii. Only one account per person for each Capital Market Operator.
 - viii. No transfer of funds to other accounts; and
 - ix. No foreign remittance can be credited to these accounts.
- 2) Limitation/threshold –
The account shall be:
 - i. Limited to a maximum single deposit amount of ₦20,000.00 and maximum cumulative balance of ₦200,000.00 at any point in time; and
 - ii. Limited to a maximum daily redemption limit of ₦30,000.00.
- 3) Customer Identification Requirements :
 - i. Basic customer information required to be provided include – name, passport-sized photograph, place of birth, nationality, gender, home location/address and telephone number.

- ii. These requirements may be sent electronically or submitted onsite to the Capital Market Operator, its branches or agent's office.
- iii. No documentary evidence of identity required.

B. Level 2 - Medium-Risk Accounts

1) The features of Medium-Risk Accounts include the following:

- i. The account may be opened face to face at the Capital Market Operator's office or any of its representative's or agent's offices;
- ii. Basic customer identification information is subject to verification and monitoring by the capital market operator.
- iii. These accounts may be operated by phone or at the Capital Market Operator's customer web site/portal;
- iv. Accounts may be linked to a mobile phone; and
- v. No minimum investment amount is required for opening these accounts.

2) Limitation/threshold –

- i. Limited to a maximum single deposit of ₦40,000.00 and a maximum cumulative balance of ₦400,000.00 at any point in time;
- ii. This account is limited to a maximum daily redemption limit of ₦50,000.00.
- iii. Where verification of client's identification documents is not complete the client shall not be allowed to operate the account.

3) Customer Identification Requirements :

- i. Basic customer information required to be provided include – passport-sized photograph, name, place and date of birth, nationality, gender, home address, telephone number, reference by suitable referees (including village Heads, Trade Groups, Supervisors, Employers and additionally as defined in the SEC AML/CFT Regulations).

- ii. These requirements may be sent electronically or submitted onsite in the Capital Market Operator's office, its branch or agent's office.

C. Level 3 - High-Risk Accounts

- 1) The features of High-Risk Accounts include the following:
 - i. Capital Market Operators are required to obtain, verify and maintain copies of all the required documents for opening of accounts.
 - ii. High-Risk Accounts are to be opened at the Capital Market Operator's office or branch of its agent's office face to face by the prospective customer.
 - iii. A minimum investment amount may be required for the opening of High-Risk Accounts.
- 2) Limitation/threshold –

There is no maximum limit on single deposits and cumulative balance.
- 3) Customer Identification Requirements:
 - i. Customers are required to comply with the Know-Your-Customer (KYC) requirements contained in the Securities and Exchange Commission (Anti-Money Laundering and Combating the Financing of Terrorism) Regulations, 2013.
 - ii. Customer identification obtained are to be verified against similar information contained in relevant data bases.

B. SUNDRY AMENDMENTS

2.0 AMENDMENT TO RULE 39(2) -PROPOSED NEW RULE ON FAST TRACK FILING OF ANNUAL REPORTS

2.1 Existing Rule 39 (2):

The annual reports shall be filed with the Commission, not later than ninety (90) days after the financial year end in line with the provisions of CAMA.

2.2 **Proposed New Sub-Rule 39 (3):**

- (a) Without prejudice to the provision of Rule 39(2) of these Rules and Regulations, a company may decide to shorten the period prescribed by the Rules by fast-tracking the filing of its annual report.
- (b) Where a company opts to take advantage of the fast track option, it shall notify the Commission and the relevant Securities Exchange where its shares are listed of its intention within ten (10) days from the end of its financial year and shall proceed to file its annual report within fifty (50) days thereafter.
- (c) If a company is unable to or fails to file its annual report before the expiration of the period provided in (b) above, it shall be required to:
 - (i) immediately file the fourth quarter report as provided in Rule 41(1);
 - (ii) disclose this violation in its financial report and make an announcement on its official website;
 - (iii) pay a fine of N10 million in the first instance and N50,000 per day for every day the default persists

2.3 **Existing Rule 41(1) on Quarterly Reports**

Public companies shall not later than thirty (30) days from the end of each quarter file with the Commission and simultaneously with the relevant Securities Exchange and the investing public a quarterly report prepared in accordance with the International Financial Reporting Standard (IFRS).

2.4 **Proposed New Rule 41 (1):**

Notwithstanding the provision of Sub-Rule (1) of this Rule, filing of an annual report within the shortened time provided in Sub-Rule (b) of Rule 39(3) shall automatically exempt a company from filing its report for the fourth quarter of the year in respect of which the fast track annual report was filed.

2.5 **Proposed New Rule 43 (3)**

Public Companies whose shares are traded on a recognised Exchange are required to file with the Commission, within 24 hours of its occurrence, any material event(s) that may have an impact on the performance of the company. These events include:

- a. Changes in controlling shareholding;
- b. Resignation of Directors or senior management;

- c. Election/Appointment of Directors;
- d. Appointment of Senior Management;
- e. Amendment to Articles of Incorporation or Bylaws;
- f. Change of financial year;
- g. Amendment to Code of Ethics or Corporate Governance Charter;
- h. Completion of acquisition or disposal of major assets and costs associated with the transaction;
- i. Material impairments;
- j. Entry into and termination of a Material Definitive Agreement;
- k. Bankruptcy or receivership;
- l. Changes/Resignation in listed company's Independent External Auditors.
- m. Other materially important information regarding key financial or operations of the company.

3.0 AMENDMENT TO RULE 305 -PROCEEDS OF ISSUE

3.1 Existing Rule:

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

(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.

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

(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.

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

3.2 **Proposed New Rule 305 (e):**

Issuers of securities shall open a dedicated interest yielding account after allotment clearance for the purpose of maintaining issue proceeds until fully utilized.

4.0 **PROPOSED AMENDMENT TO THE NATIONAL INVESTOR PROTECTION FUND RULES**

4.1 PRELIMINARY - "Citation and Commencement" (Part 1)

Existing Rule:

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

Proposed Amendment

The citation should be expunged.

4.2 "ESTABLISHMENT" - Rule 2 (d) (Part 2)

Existing Rule:

"Have a Board which shall consist of the Board of Directors of the Fund and shall be responsible for the Administration of the Fund;"

Proposed Amendment:

'Have a Board of Directors which shall be responsible for the administration of the Fund'.

4.2 "APPLICABILITY"- (Part 3)

Existing Rule:

Part 3: "These rules shall apply only to defalcations by Capital Market Operators not dealing members of Securities Exchanges or Capital Trade Points."

Proposed Amendment:

"These Rules shall not apply to Market operators who are dealing members of Securities Exchanges, Capital Trade Points and trading facilities."

4.3 "BOARD"- Rule 4 (iii) (Part 4)

Existing Rule:

The Board shall consist of:-

iii) *three other members who shall be appointed by the Commission*

Proposed amendment:

Three other members who shall be representatives of Capital Market Trade Groups/Associations to be appointed by the Commission from time to time, provided that no representative of a Trade Group/Association shall be on the Board for more than four years.

4.4 "APPLICABILITY" - Rule 18 (Part 4)

Existing Rule:

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

Proposed Amendment:

The text should be moved under Part 4 MANAGEMENT OF THE FUND.

4.5 "MANAGEMENT OF THE FUND" - Rule 9 (Part 5)

Existing Rule:

Rule 9 – "The Fund shall be managed by the Board of Directors or such Fund Managers as may be appointed by the Board."

Proposed amendment:

"The Fund shall be managed by a duly-registered or recognised Fund Manager as may be appointed by the Board."

4.6 "FUNDING" - Rule 13(iii) (Part 5)

Existing Rule:

"Assets, properties or cash that shall be realized from liquidated operators to the tune of the amount of compensation expended by the Fund."

Proposed Amendment:

"Assets, properties or cash realized from liquidated operators to the tune of the amount paid out of the Fund to investors as compensation."

4.7 "ELIGIBILITY" - Rule 15 (Part 7)

Existing Rule:

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

Proposed Amendment:

The Board shall establish a framework for determining beneficiaries of the Fund'.

4.8 "ELIGIBILITY" Rule 16 (Part 7)

Existing Rule:

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

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

Proposed Amendment: Inclusion of a proviso to above Rule 16

"Provided, however that subject to the approval of the Board, an investor who is charged, indicted or otherwise suspected of having conspired or participated in the wrongful act of the Capital Market Operator shall not immediately benefit from the Fund until the determination as to culpability is made by a competent court or tribunal".

4.9 "ELIGIBILITY" – Rule 16 (a) (Part 7)

Existing Rule:

Rule 16 (a) – "Beneficiaries of the Fund shall be investors who suffer pecuniary loss arising from:-

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

Proposed Amendment:

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

(a) the insolvency and bankruptcy of a Capital Market Operator; and”

4.10 “ELIGIBILITY”- Rule 17 (Part 7)

Existing Rule:

‘These Rules do not apply to transactions not regulated by the Commission’.

Proposed Amendment

“These Rules do not apply to transactions not regulated by the Commission and parties to such transactions shall not benefit from the Fund”.

4.11 “ELIGIBILITY” Rule 17 (Part 7)

Existing Rule:

“These Rules do not apply to transactions not regulated by the Commission.”

Proposed Amendment:

The text should be moved to Part 2 APPLICABILITY OF THESE RULES as Sub rule (b).

4.12 “ELIGIBILITY” – Rule 18 (Part 7)

Existing Rule:

Rule 18 – “Persons who bring claims as beneficiaries to the Fund shall be required to tender to a designated officer of the Fund, evidence of claims against the Capital Market Operator. Such claims shall be confirmed by the Fund.”

Proposed Amendment:

“Persons who bring claims as beneficiaries to the Fund shall be required to tender to a designated officer of the Fund, evidence of claims against the Capital Market Operator. Such claims shall be verified by the Fund.”

4.13 “ELIGIBILITY”- Rule 18 (Part 7)

Existing Rule:

“Rule 18 – “Persons who bring claims as beneficiaries to the Fund shall be required to tender to a designated officer of the Fund, evidence of claims against the Capital Market Operator. Such claims shall be confirmed by the Fund.”

Proposed Amendment:

“Persons who bring claims as beneficiaries to the Fund shall tender to a designated officer of the Fund, evidence of claims against the Capital Market Operator. Such claims shall be confirmed by the Fund.”

4.14 “COMPENSATION” – Rule 22(i) (Part 9)

Existing Rule:

Rule 22(i) – “An application shall:- Be brought within twelve (12) months after the investor became aware or ought reasonably to have become aware of the status of the investments;”

Proposed Amendment:

“An application shall:- Be brought within twelve (12) months after the announcement by the Fund or the Regulator of the insolvency or bankruptcy of the Operator”.

4.15 “COMPENSATION” – Rule 22(ii) (Part 9)

Existing Rule:

Rule 22(ii) – “Be brought “in the form to be prescribed by the Board”

Proposed Amendment:

“Be brought in writing to the Fund or Commission.

4.16 "COMPENSATION" – Rule 22(v) (Part 9)

Existing Rule:

Rule (iii) "Be accompanied by evidence of investments with the Capital Market Operator"

Rule 22 (v) – "Contain accurate materials and facts to prove the claims of the Applicant"

Proposed Amendment:

Rule 22(v) should be merged with Rule 22(iii) and amended as follows:

"Be accompanied by evidence of investments with the Capital Market Operator, and contain relevant materials and facts to prove the claims of the applicant".

4.17 "COMPENSATION" Rule 22(ii) (Part 9)

Existing Rule:

An application shall:

Rule 22(ii): "Be brought in the form to be prescribed by the Board".

Proposed Amendment

This rule should be expunged.

4.18 "ADJUSTED PAYMENTS" – Rule 30(b) (Part 11)

Full Text of Existing Rule:

~~Rule 30(b) – "The Board may determine to reduce the compensation which would otherwise be payable to an investor in circumstances where it is satisfied that the investor is partly to blame for the loss which he has suffered."~~

Proposed Amendment:

This Rule should be expunged.

4.19 "ADJUSTED PAYMENTS" Rule 30(b) (Part 11)

Existing Rule:

Rule 30 (b): 'The Board may determine to reduce the compensation which would otherwise be payable to an investor in circumstances where it is satisfied that the investor is partly to blame for the loss which he has suffered'.

Proposed Amendment

"Where the Board is satisfied that the investor is partly to blame for the loss which he has suffered".

4.20 "ADJUSTED PAYMENTS" – Rule 30(c) (Part 11)

Existing Rule:

~~Rule 30 (c) – "The Board may also determine to make a payment on account or to pay a lesser sum where the investor has any prospect of recovery in respect of the claim from any third party or through an application for compensation to any other person or authority."~~

Proposed Amendment:

Rule 30 (c) should be expunged.

4.21 "ANNUAL REPORT" – Rule 34 (Part 13)

Existing Rule:

Rule 34 – "The Board shall not later than three (3) months after the end of its financial year submit an Annual Report to the Commission covering each successive financial year."

Proposed Amendment:

"The Board shall not later than ninety (90) days after the end of its financial year, submit an Annual report to the Board of the Commission covering each successive financial year."

4.22 "ANNUAL REPORT"- Rule 35 (d) (Part 13)

Proposed Rule 35 (d):

Rule 35 should be expanded with a sub rule (d)

Proposed Addition: Inclusion of new subrule

(d) The Auditors of the Fund shall be appointed by the Board of the Fund.

4.23 "QUARTERLY REPORT" – Rule 36 (Part 13)

Existing Rule:

Rule 36 – "The Board shall also make quarterly reports to the Commission giving details of the exercise of its powers and functions."

Proposed Amendment:

"The Board shall also make quarterly reports to the Board of the Commission 30 days after the end of each quarter, giving details of the exercise of its powers and functions."

4.24 "QUARTERLY REPORT" – Rule 37 (Part 13)

Existing Rule:

Rule 37 – "The Board shall notify the Commission in writing of significant events occurring in the process of administering the Fund."

Proposed Amendment:

"The Board shall notify the Board of the Commission in writing of significant events occurring in the process of administering the Fund."