

# **NEW RULES AND AMENDMENTS TO THE RULES AND REGULATIONS OF THE COMMISSION**

## **PREAMBLE**

### **A. NEW RULES**

1. Rules on Return of Unclaimed Dividends to Paying Companies.
2. Inclusion of Independent National Electoral Commission (INEC) voter's registration card as a valid means of identification of individual clients in the Capital Market.
3. Three-tiered Know-Your-Customer (KYC) Framework for Capital Market Operators.
4. Fund/Portfolio Management Operations Rules

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**D.** Creation of New Form SEC 2D for Fit and Proper Persons (Sponsored Individuals, Directors/Partners) for Registration in the Capital Market.

### **E. DELETION**

1. Rule 312 (4)- Undersubscription
2. Rule 340 (2) (h) – Conditions for Approval of Offer

The details of the new rules and amendments are as follows:

### **A. NEW RULES**

#### **(1) Rules On return of Unclaimed Dividends to Paying Companies**

##### **Title "Return of Dividends Unclaimed"**

(1) **At least 90% of all** unclaimed dividends in the custody of the Registrars shall be returned to the paying company **not later than fifteen (15)** months after the date of approval of dividends at a general meeting (for final dividends) or a board meeting (for interim dividends) and evidence of remittance forwarded to the Commission **(SEC) by the close of the next business day. The Registrars shall hold the balance of 10% as an agent of the company.**

(2) Where **unclaimed** dividends are returned to the company, the company may invest the unclaimed dividend for its own benefit in **an income** investment outside the company and no interest shall accrue on the dividends against the company.

(3) **Unclaimed dividend shall not be used by the company for its own business except in accordance with the provisions of CAMA.**

(4) All accrued interests from the failure of Registrars to remit the unclaimed dividends within the time limit prescribed in these Rules and Regulations shall be remitted along with the unclaimed dividend to the paying company, and the accrued interest shall be calculated at a rate not below **MPR rate.**

(5) The responsibility of paying dividends to a shareholder after the dividends have been returned to the company shall lie with the Registrar.

(6) Failure by the paying companies to comply with the above provisions shall attract a penalty of N1 million and an **additional sum of N10, 000** for every day such contravention persists.

(7) Failure by the Registrars to comply with the above provision will attract a penalty of **N1** million and **an additional sum of N20, 000** for every day such contravention persists.

**(2) Rule 44 (4)- Inclusion of Independent National Electoral Commission (INEC) Voter's Registration Card as a Valid Means of Identification of Individual Clients in the Capital Market**

"Suitable documentary evidence for Nigerian resident private individuals are-

- a) personal identity documents –
  - i) current International Passport,
  - ii) Residence Permit issued by the Immigration authorities,
  - iii) current Driver's License issued by the Federal Road Safety Commission (FRSC),
  - iv) Inland Revenue Tax Clearance Certificate,
  - v) birth Certificate or Sworn Declaration of Age,
  - vi) National Identity Card, and
  - vii) **Permanent Voter's Registration card issued by the Independent National Electoral Commission (INEC)**"

**(3) Three-tiered Know-Your-Customer (KYC) Framework for Capital Market Operators**

**A- General Requirements**

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 a 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 **the** 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.
5. **“Financially excluded clients” means underserved persons or groups including low income, rural sectors and undocumented persons or groups in Nigeria.**

#### **B. 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 **with any** 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 is required.

### **C. 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 ~~N~~40,000.00 and a maximum cumulative balance of ~~N~~400,000.00 at any point in time;
- ii. This account is limited to a maximum daily redemption limit of ~~N~~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 (in addition to the definition/categorisation in the AML/CFT Rules, 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.

#### **D. 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.
  - ii. Customer identification obtained is to be verified against similar information contained in relevant data base.

### **(4) RULES ON FUND/PORTFOLIO MANAGEMENT OPERATIONS**

#### **1. Definitions:**

Within the context of this part of the Rules the following terms shall have the following meaning:

- a) **Discretionary Fund/Portfolio Management** means the exercise of any degree of discretion and independence in investment and management of securities, portfolio of securities, pooled funds on behalf of a client; or a group of clients by a Fund/Portfolio Manager in accordance with investment objectives expressed in an agreement.

- b) **Non Discretionary Fund/Portfolio Management** means the investment in and the management of securities, portfolio of securities on behalf of a client or a group of clients in accordance with the direction of the client or group of clients without any exercise of discretion by the Fund/Portfolio Manager under an expressed agreement.
- c) **Retail Investor** means an individual not otherwise classified as 'High Net worth Investor (HNI) or as 'Qualified Institutional Investor (QII) who invests with a registered Capital Market Operator and:
- i. has on aggregate (inclusive of tangible and intangible assets) a net worth not exceeding 100 million *Naira*;
  - ii. does not possess the requisite knowledge, expertise/skill experience and sophistication for investment management;
  - iii. has low to moderate risk tolerance threshold;
  - iv. undertakes the investment for his or her own beneficial account; or on behalf of a minor as parent or guardian.
- d) **High Net worth Investor** means an individual whose aggregate net worth of investment assets exceeds 100 million *Naira*, in addition to:
- i. possession of evident capacity, expertise and sophistication to undertake high risk investment activities; or

## 2 General Business Ethics And Conduct

In addition to compliance with the Code of Conduct for Capital Market Operators, the Fund/Portfolio Manager shall:

- i. ensure that the execution of client's transaction orders are effected **within twenty four (24)** hours at the best available terms at every point in time in any given market situation.
- ii. put in place, written Board approved guidelines in its operations manual outlining all identifiable areas of conflict of interest and stipulating actions to be taken to prevent occurrence thereof arising when allocating and executing transactions in the same securities for clients' portfolio on one hand, and firm's proprietary trade, beneficial transactions for firm's directors, employees or related persons on the other hand
- iii. not undertake a short sale of any securities in a client's portfolio or unauthorized **use** of securities from clients' portfolios.



### **3. (1) (a) Contents of formal written Client Service Agreement**

The Fund/Portfolio Manager (**FPM**) shall ensure the existence of a formal written Client Service Agreement (CSA) with each client or group of clients before the provision of any services in management of Client's assets, or portfolio of securities clearly setting out the following:

- i. Management terms and conditions, fees, charges payable by the Client; and scope of services to be provided by the Fund / Portfolio Manager with regards to the investment management service;
- ii. investment policy from which the management **terms and conditions are** derived and which identifies clearly:
  - a. Investment objective of the Client(s);
  - b. Performance benchmark derived from the Client(s) investment objective as provided in (a)
  - c. risk profile of client(s);
  - d. limitations, restrictions, etc with regards to class of assets, sector, industry within permissible assets listed in **3.2**
  - e. implementation on the basis of (a), (b) and (c); with a section of the agreement signed by the Client(s) that he/she understands the risk(s) associated with the investments and consents to it(them);
- iii. Description of product(s) developed and managed by the Fund/Portfolio manager and offered to the Clients.
- iv. Basis and method for valuation of portfolio in reports or account statements distributed to client(s).
- v. **Liability clause in respect of default by the Fund / Portfolio Manager.**

**"To the fullest extent permitted by the law, and notwithstanding any other provision of this Agreement, the Fund/Portfolio Manager is prohibited from disclaiming responsibility for losses of investments due to breach of the terms of this agreement, fraud, bad faith, gross negligence or willful default arising from its acts or omission or those of its agents appointed by it in the course of performing its services to the Client.**



**The Client shall indemnify and save harmless the Fund/Portfolio Manager from and against any and all claims, liabilities, damages, losses, costs and expenses, that are incurred by the Fund/Portfolio Manager in the course of carrying out its responsibilities hereunder, provided that it shall be entitled to indemnification hereunder only if it acted in good faith and in a manner reasonably believed to be in the best interests of the Client.”**

**b) Provision of Investment Performance Report:**

The Fund/Portfolio Manager shall provide to the client(s) periodic (monthly, quarterly or bi annual) report (as agreed with the client) on the performance of **its** investment portfolio which shall state:

- i. the nominal and inflation adjusted rate of return.
- ii. the measuring and reporting of performance based on established and mutually agreed benchmark reflecting investment objective of the client.
- iii. **The expenses and costs incurred.**

**c) Contents of Marketing Materials /Client prospecting document**

The marketing materials /Client prospecting document shall state among other information, the following:

- i. Asset class and types of securities comprised in the portfolio.
- ii. Risks associated with investment of the assets, securities of the portfolio and management by the firm of such risks;
- iii. Class of investors for which investment product is targeted categorized on a basis determined by the Fund/Portfolio Manager such as age, risk tolerance, investment objective etc.

**3.2 Investment of Retail Investors Funds**

Funds received from Retail Investors/Clients and managed under a discretionary Fund/Portfolio management mandate – whether on individual portfolio basis or as a pooled Fund - shall only be invested in any or combination of the under listed permissible assets and securities:

- i. Quoted equity stocks listed on a registered Stock Exchange in Nigeria;

- ii. Registered stock index issued by a registered Exchange in Nigeria which is actively traded;
- iii. Unquoted equity stocks admitted and actively traded Over the Counter;
- iv. Government Securities: Treasury bills, (national, supra-national and sub-national) bonds
- v. Marketable Debt Instruments: Corporate Debts assigned investment grade rating by SEC registered rating agency and **actively traded for thirty (30)** days on a SEC registered secondary market;
- vi. Units of registered Collective Investment Schemes;
- vii. Fixed/Term deposit investment;
- viii. Non interest/Shariah compliant instruments or securities as provided for under the Rules and Regulations of the Commission.**
- ix. Any other class of assets or securities as approved by the Commission from time to time.

### 3.3 Investment of High Net Worth/Qualified Institutional Investor Funds (**HNI/QII**)

Investment of **HNI/QII** Clients funds under discretionary Fund/Portfolio management mandate shall be in assets and securities determined by the exercise of discretion of the FPM in line with the clients stated investment objective and defined risk tolerance level, evidenced by a mutually agreed/signed mandate from the client transmitted to the FPM physically or electronically.

## 4 **Non Discretionary Management Service**

The following will apply under a Non-discretionary Management Service;

1. The Client Service Agreement (CSA) shall clearly define the following:
  - i. the terms of service and relationship between both parties;
  - ii. roles and responsibilities of each party during the tenure of the agreement;
  - iii. fees, charges and commissions payable by the investor
  - iv. the time lines for execution of transaction orders
  - v. Requirement for best execution.

## **B. MAJOR AMENDMENTS**

### **1. NATIONAL INVESTOR PROTECTION FUND RULES**

**PART 1-** ESTABLISHMENT OF THE NATIONAL INVESTOR PROTECTION FUND

**PART 2 Rule 2 (d)-** ESTABLISHMENT

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

**PART 3-** APPLICABILITY

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

**b) These Rules do not apply to transactions not regulated by the Commission.**

**PART 4 Rule 4 (iii)-** BOARD

The Board shall consist of:-

**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.**

**PART 5 -** MANAGEMENT OF THE FUND

**(9) The Fund shall be managed by the Board or Fund Manager as may be appointed by the Board.”**

**(13) The Board shall be responsible for the general management of the Fund.**

**PART 6 Rule 13-** FUNDING

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

#### **PART 7 Rule 15- ELIGIBILITY**

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

#### **PART 7 Rule 16: ELIGIBILITY**

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

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

**“Provided, 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”.**

#### **PART 7 Rule 17- ELIGIBILITY**

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

#### **PART 7 Rule 18- ELIGIBILITY**

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.

#### **PART 9 Rule 22 (i)- COMPENSATION**

**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.**

**PART 9 Rule 22 (ii)- COMPENSATION**

Be brought in writing to the Fund or Commission **as prescribed under these Rules.**

**PART 9 Rule 22 (v)- COMPENSATION**

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

**PART 11 Rule 30 (b)- ADJUSTED PAYMENTS**

~~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.”~~

**PART 11 Rule 30 (c): ADJUSTED PAYMENTS**

~~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.”~~

**PART 13 Rule 34- ANNUAL REPORT**

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.

**PART 13 Rule 35- ANNUAL REPORT**

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

**PART 13 Rule 36- QUARTERLY REPORT**

**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.**

**PART 13 Rule 37: QUARTERLY REPORT**

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

## 2. REAL ESTATE INVESTMENT SCHEMES

### 508. Definitions of Real Estate & Real Estate Related Assets

**Borrowing:** means consolidated third party borrowings of a REIS as may be permitted by the SEC.

**Development:** Includes all land and real estate assets under construction or development, renovation or enhancement provided such assets are not currently income generating.

**Distributions:** means a sum of money paid regularly (typically, annually) by the REIS or REIS SPV to holders, out of its profits (or relevant reserves) as dividends on equity capital and interest on shareholders' loans.

**Dividend Income:** means income derived from owning interests in real estate assets or REIS SPV and distributed to holders as return on equity capital.

**Property Manager:** A property manager is a person registered with the SEC and operates a real estate property for a fee often on behalf of the owner (or landlord). The property manager will commonly assist with services which include: meeting an owner's investment objectives, maintaining detailed tenancy records, ensuring lease terms are complied with, including rent and operating expenses collection, service charges annual rendering, tenant liaison on a day-to-day basis, meeting statutory obligations, maintaining a proper building condition and operating property on a sustainable basis'.

**A Property Manager handles the day to day maintenance and operations of the properties in the REIS. The Real Estate Property Manager shall be appointed by and report to the Fund Manager.**

**Real Estate:** in these rules real estate means income generating property consisting of land, buildings. It also includes special purpose vehicle (SPV) holding such income generating lands and buildings.

**Real Estate Assets:** means developed, operational and income generating properties owned by the REIS, in Nigeria, whether directly or through a REIS SPV.

**Real Estate Investment Scheme (REIS):** means a company, a trust or other such corporate structures that may be approved and regulated by

**the Commission, which is primarily engaged in, and invests in income generating real estate assets or real estate related assets. A Real Estate Investment Scheme may be listed on a recognized securities exchange.**

**Real Estate Related Assets: Includes development, real estate assets held outside Nigeria, but within Africa, and other real estate investments owned by a REIS (including legal interests of a REIS Holdco in any REIS SPV, which falls below 75%).**

Also includes but is not limited to shares of real estate companies and higher rated real estate investment schemes.

**REIS Holding Company ("REIS Holdco"): is an entity set up either as a company or a trust that holds income generating real estate assets directly or legal interest in a REIS SPV**

**REIS Special Purpose Vehicle ("REIS SPV"): is one primarily engaged in operating, holding or developing real estate assets where the REIS Holdco owns a minimum of 75% legal interest and exercises effective control over the affairs of the REIS SPV. Not less than 90% of the REIS SPV's assets must be held directly in real estate (including real estate assets and development) and the REIS SPV must not invest in other special purpose vehicles. Such REIS SPV can be constituted as a company (i.e. a REICO) or trust (i.e. a REIT).**

**Rental Income: means income derived from the lease of the properties owned by the REIS or REIS SPV.**

**Shareholders' loan: is a loan or debt-like form of financing provided by REIS shareholders/unit holders, which is usually the most junior debt in the entity / REIS' debt portfolio, and different from third party debt. Where shareholder loans exist in the capital structure of the REIS, then the ownership of the shareholder loan will be on a pro-rata basis with the ownership of the ordinary equity of the REIS for all shareholders/unit holders.**

**Valuation: means an opinion or estimate regarding the value of a particular property, as of a specific date, given by a SEC registered valuer.**



**Valuation Standards:** means the best property valuation standards, as set and determined by the recognized Valuation Standards Council / Association / Organization

### **Rule 510- Constitution and Distribution For Real Estate Investment Schemes**

1. A Real Estate Investment Scheme (REIS) **is one which meets all the requirements and** may be constituted as a:-

- a) company ("REICO"); or
- b) trust. ("REIT")

**or Such other corporate structures as may be approved and regulated by the Commission**

2. **Revenue: A minimum of 90% of a REIS' revenue (excluding capital gains) shall be derived from rental income or dividend income;**

#### **3. Distribution:**

a) **An authorized Real Estate Investment Scheme shall effect the annual distribution of not less than 75% of its rental income or dividend income.**

b) **A REIS must make a distribution, at least, annually otherwise, it shall cease to be registered as a REIS by the Commission.**

### **Rule 515- Contents of a Prospectus**

Every prospectus shall contain the information required by the Act and shall, in addition, state the following information:

1. The front cover shall state the name and RC number of the issuer/promoter, registration number, amount of units being offered, the price and amount payable in full on application; provided that the initial public offer shall not be less than ₱1 billion and subsequent offers not less than ₱500 million;
2. **The following statements shall appear in bold character on the cover page;**

**You are advised to read and understand the contents of the prospectus. Before subscribing, please consult your Stockbroker, Solicitor, Banker or an Independent Investment Adviser registered by the Securities and Exchange Commission;**

3. a reasonably detailed table of contents in the forepart of the prospectus showing the

subject matter of the various sections or subsections of the prospectus and page number on which each such section or subsection begins;

4. application forms
5. preliminary charges.
6. The following statement shall be written boldly in the summary page:

"Investors are advised to seek information on the fees and charges before investing in the Scheme";
7. the prospectus shall contain a key data section with the following cautionary statements stated in bold characters:-
  - a) that the rental yield on real estate held by the Scheme is not equivalent to the yield of the units; and
  - b) that the value of the real estate may fluctuate;
8. names and addresses of the directors;
9. **names and profile of the investment committee members specifying the independent members;**
10. corporate directory (i.e. address, contact numbers, email and website address) of Issuer, Valuer(s), Issuing House, Registrar, Solicitor to the Offer, Reporting Accountant, Property Manager, Insurance Company, Rating Agency, Auditors and Underwriter (where applicable) and other professional parties to the Offer;
11. the offer, stating the requirements of rule 514, the times of opening and closing the offer;
12. offer price;
13. The prospectus shall include a section on the REICO to provide prospective unit holders with detailed information on the scheme for the purpose of making an informed assessment of the scheme. The following information about the scheme shall be disclosed:-
  - a) history and prospects of the scheme;
  - b) objective of the scheme, strategy for achieving the stated objective (inclusive of but not limited to the acquisition plan, disposal plan, sector focus, geographical focus, segment composition structure, value-add strategy) and a statement that material changes to the investment objective would require unit holders approval;
  - c) investment policy and constraints of the scheme;
  - d) dividends, distribution or reinvestment options;
  - e) redemption policies;
  - f) tax and legal considerations;

- g) the schemes' specific peculiar risks. The strategy for managing those risks shall also be disclosed;
- h) full details of and description of the real estate held by the company and/or type of real estate to be acquired. The description of an existing property shall spell out the type (residential/commercial/ industrial) location, age, existing use and, gross built-up area (GBA), net lettable area (NLA), rental yield, cash flow forecast;
- i) **where an asset is held under an SPV, a detailed profile of the SPV, i.e. history, ownership structure, debt profile and 3-5 years historical and projected financial statements of the SPV should be disclosed in the Prospectus where applicable;**
- j) **brief particulars of the current tenancies and full rental roll indicating major tenants ( occupying 10% and more of the lettable space), tenancy period, area occupied, rental rates, escalations etc.**
- k) **for the property, property history, current and historical occupancy rates, average current and historical rental rates, average current and historical escalation rates, outgoings, net income and assessment of future income and major capital expenditure likely to be incurred in the immediate future (i.e. capital forecast, revenue forecast); leverage levels,**
- l) information about the **company management team** and property manager, experience in real estate development, asset management, property management, total assets under management, number of years in the real estate value chain and staff strength;
- m) the inclusion of a photograph of any property in the prospectus will be permitted on the condition that the photograph is not more than six (6) months old as at the date of the prospectus and the depicted real estate is wholly-owned and confirmed by the Commission to be wholly acquired;
- n) the inclusion of three(3) dimensional pictures will be permitted for proposed developments where such building plans have been approved by the relevant authorities;
- o) details on the valuation of real estate(s) held by the company shall be disclosed, indicating date of last valuation, value of the estates and the basis of valuation, revaluation surplus/deficit, net book value and any other relevant information;
- p) statement as to consents of professionals to the offer;
- q) duration of the scheme and conditions relating to its termination and modification
- r) information concerning the relationship between the management company and/or any of its associated/related companies with the vendors of real estate purchased or to be purchased and any conflict of interest arising thereof shall

be disclosed;

### **Rule 520- Minimum Level of Subscription**

- (1) The public issue of a REICO shall be cleared for allotment by the Commission only if it is subscribed by at least 50% apart from the percentage underwritten, **subject to the assets and portfolio composition remaining consistent with the approved REIS requirement in these Rules.**

### **Rule 521-Asset allocation**

- (1) For close-ended Real Estate Investment Company, the following requirements shall apply:
  - d. the level of new development activity by the fund manager shall not exceed 20% of the fund's gross asset value and such assets shall constitute real estate related assets; **Provided that where a REICO is solely targeted at qualified investors, the level of new development activity shall not exceed 30% of the REICO's gross asset value;**
- (3) **The assets of real estate investment company, whether close-ended or open-ended may be invested outside Nigeria, as follows -**
  - a) **A maximum of 25% of the total assets of a real estate investment company may be invested outside Nigeria, but within Africa, and shall be classified as real estate related assets;**
  - b) **Such investments outside Nigeria must be in a country with an investment grade credit rating assigned by an international rating agency;**
  - c) **The characteristics of the real estate assets or investment in real estate SPVs outside Nigeria must be consistent with the definition of similar assets in Nigeria**
- (4) **No single asset should constitute more than 25%, by value, of the gross asset value of the Fund.**
- (5) **The REICO shall own a minimum of 75% legal interest in any real estate or REIS SPV within its portfolio and exercise effective control over these assets;**

## **Rule 522- Valuation**

- i. **The Valuation report for a new application shall be valid for nine months from the date of the valuation**
- ii. A valuation report of the REICO's real estate shall be filed with the Commission **annually** by a real estate valuer registered with the Commission in line with a recognised Valuation Standard.

## **Rule 523- Quarterly Report**

A quarterly report on the performance of the scheme shall be filed by the company with the Commission.

**The report should contain the following information in addition to the income statement, balance sheet and cash flow statements:**

- a) **Rental yield, occupancy levels, and property status (i.e. any changes in the portfolio composition of the REICO)**
- b) **Commentary on the analysis of financial performance over the quarter viz a viz the quarter in the previous year for a year-on-year analysis and expected year performance**
- c) **Managements view on the valuation of the assets of the REICO**

## **Rule 524- Insurance**

The REICO's real estate assets shall have a comprehensive insurance and evidence of the insurance shall be filed with the Commission within ninety (90) days of commencement of the scheme and within thirty (30) days of any subsequent acquisition. Evidence of renewal of insurance shall also be filed with the Commission within thirty (30) days of the due date.

## **Rule 525- Borrowing**

A Real Estate Investment Company, notwithstanding anything contained in its articles of association, shall not in the exercise of its powers in relation to real estate investment, **including SPVs borrow from 3<sup>rd</sup> parties more than 40% of its gross asset value.**

## **Rule 530- Contents of a Prospectus**

- a) the front cover shall state the name and the **Company Registration Number** (RC) of the issuer/promoter, the Fund manager, **Property manager**, the Trustee, Custodian, the type of units offered, amount of units being offered, the

price and amount payable in full on application. Provided that initial public offer shall not be less than ₦1 billion and subsequent offer shall not be less than ₦500 million;

- b) application forms;
- c) preliminary charges.
- d) The following statement shall be written boldly in the summary page:  
**“Investors are advised to seek information on the fees and charges before investing in the Scheme”;**
- e) the prospectus shall contain a key data section with the following cautionary statements stated in bold characters:-
  - i. that the rental yield on real estate held by the Scheme is not equivalent to the yield of the units; and
  - ii. that the value of the real estate may fluctuate;
- f) corporate directory (i.e. address, contact numbers, email and website address) of Fund Manager, Valuer(s), Issuing House, Registrar, Solicitor to the Offer, Reporting Accountant, Trustee, Rating Agency, Property Manager, Insurance Company, Auditors and Underwriter (where applicable);
- g) names and profile of the investment committee members specifying the independent members;**
- h) the offer stating the requirements of rule 533, the times of opening and closing of the offer;
- i) offer price;
- j) the prospectus shall include a section on the REIT to provide prospective unit holders with detailed information on the scheme for the purpose of making an informed assessment of the scheme. The following information about the scheme shall be disclosed:-
  - i. history and prospects of the scheme;
  - ii. objective of the REIT, strategy, segment focus, geographical focus, segment composition structure for achieving the stated objective (inclusive of but not limited to the acquisition plan, disposal plan, sector focus, value-add strategy) and a statement that material changes to the investment objective would require unit holders approval;
  - iii. management and advisory services;
  - iv. investment policy and constraints of the scheme;
  - v. dividends, distribution and reinvestment options;

- vi. redemption policies (in case of open-ended trust);
- vii. tax and legal considerations;
- viii. the schemes' specific peculiar risks. The strategy for managing those risks shall also be disclosed;
- ix. full details of and description of the real estate held by the scheme and/or type of real estate to be acquired. The description of an existing property shall spell out the type (residential/commercial/industrial) , property history, location, age, existing use, gross built-up area (GBA) and net lettable area (NLA), rental yield, cashflow forecast;
- x. **where the assets are held under an SPV, a detailed profile of the SPV, i.e. history, ownership structure, debt profile and 3-5 years historical and projected financial statements of the SPV should be disclosed in the Prospectus where applicable;**
- xi. brief particulars of current tenancies indicating major tenants (controlling 10% or more of the lettable space), tenancy period, current and historical average occupancy rates, current and historical average current rentals, current and historical escalation rates, outgoings, net income and assessment of future income and major capital expenditures likely to be incurred in the immediate future (i.e. capital forecast, revenue forecast);
- xii. information about the Fund Manager including its management team, experience and track record, three to five years financial summary or statement of affairs (if the company is newly incorporated)
- xiii. information about the Property Manager including its management team, experience in real estate/property management, total property under management, number of years in property management and staff strength;
- xiv. the inclusion of the photograph of any property in the prospectus will be permitted on the condition that the photograph is not more than six (6) months old as at the date of the prospectus and the depicted real estate is wholly owned or confirmed by the Commission to be wholly acquired;
- xv. the inclusion of three(3) dimensional pictures will be permitted for proposed developments where such building plans have been approved by the relevant authorities;
- xvi. the details on the valuation of real estate(s) held by the scheme shall be disclosed, including date of last valuation, value of the estates and the basis of valuation, revaluation surplus/deficit, net book value and any other relevant information;
- xvii. statement as to consents of professionals to the offer;
- xviii. duration of the scheme and conditions relating to its termination, and modification of its trust deed;



- xix. a breakdown of the fees stating clearly that the management fee would be based on the net asset value of the scheme, except where part of the asset is applied to development, in which case it will earn fee on generating assets only . It shall also state that the initial expense shall be borne by unit holders and netted off the offer proceeds;
- xx. information concerning the relationship between the management company and/or any of its associated/related companies with the vendors of real estate purchased or to be purchased and any conflict of interest arising thereof shall be disclosed;
- k. the prospectus shall include a section on the real estate investment trust to provide prospective unit holders with detailed information on the scheme for the purpose of making an informed assessment of the scheme The following information about the scheme shall be disclosed:-
- i. the schemes' specific peculiar risks. The strategy for managing those risks shall also be disclosed;
  - ii. the management company's policy on gearing and minimum liquid asset (in percentage terms) requirement of the scheme; provided that the trustees may on the advice of the manager borrow on behalf of unit holders up to 15% of the scheme's gross assets.

#### **Rule 538- Minimum level of Subscription**

- d. the receiving banker shall forward return monies to the registrar or such other responsible party, within two (2) working days, after the Commissions' directive that the issue be aborted

#### **Rule 539- Asset allocation**

- (1) For close-ended real estate investment trust, the following requirements shall apply:-
- d. the level of new development activity by the fund Manager shall not exceed 20% of the fund's gross asset value and such assets shall constitute real estate related assets; **Provided that where a REIT is solely targeted at qualified investors, the level of new development activity shall not exceed 30% of the REICO's gross asset value;**
- (3) **The assets of real estate investment trust, whether close-ended or open-ended may be invested outside Nigeria as follows –**

- a) A maximum of 25% of the total assets of a real estate investment trust may be invested outside Nigeria, but within Africa and shall be classified as real estate related assets;
- b) The country(ies) must have an investment grade credit rating assigned by an international rating agency;
- c) The characteristics of the real estate assets or investment in real estate SPVs in other jurisdictions must be consistent with the definition of similar assets in Nigeria

**(4) No single asset should constitute more than 20%, by value, of the gross asset value of a REIT.**

**(5) The REIT shall own a minimum of 75% legal interest in any real estate or REIS SPV within its portfolio and exercise effective control over these assets;**

#### **Rule 540- Rating and Valuation Reports**

- (1) A rating report by a registered rating agency shall be filed with the Commission every two (2) years.
- (2) The Valuation report for a new application shall be valid for nine months from the date of the valuation.**
- (3) A valuation report of the REIT shall be filed with the Commission annually by a real estate valuer registered with the Commission in line with a recognised Valuation Standard.

#### **Rule 541- Quarterly Reports**

- (1) A quarterly report on the performance of the scheme shall be filed with the Commission by the fund manager.

The report should contain the following information in addition to the income statement, balance sheet and cash flow statements:

- a) Rental yield, occupancy levels, and property status (i.e. any changes in the portfolio composition of the REIT)
  - b) Commentary on the analysis of financial performance over the quarter viz a viz the previous quarter
  - c) Managements view on the valuation of the assets of the REIT
- (2) A half yearly report shall be filed with the Commission by the trustee in line with the above requirements for quarterly reports.**

### 3 RULES ON INFRASTRUCTURE FUNDS

#### 1. DEFINITION

For the purposes of this **part of the Rule**, unless the context otherwise requires-

**“Hurdle Rate”** means the minimum rate of return on investment necessary to cover all costs associated with the Fund;

**“Infrastructure”** is as defined under Section 36 of the Infrastructure Concession Regulatory Commission (Establishment) Act of 2005;

**“Infrastructure Capital Company”** means a company or companies whether private or public that provides capital/funding primarily for infrastructure development;

**“Infrastructure Company”** means a company or companies whether private or public that has technical experience and expertise in infrastructure development and engages primarily in infrastructure development. This does not include any company that engages in infrastructure development as part of its corporate social responsibility;

**“Infrastructure Fund”** means a specialized Fund or Scheme that invests primarily (minimum 90% of scheme’s net assets) in the securities, **loans** or securitized debt instrument of:-

- a) infrastructure companies; or
- b) infrastructure capital companies; or
- c) infrastructure projects; or
- d) special purpose vehicles which are created for the purpose of facilitating or promoting investment in infrastructure, and
- e) other permissible assets including revenue generating projects of infrastructure companies or projects or special purpose vehicles.

**“Interval Period”** means the period/interval of one month within which an Infrastructure Fund is open for purposes of redemptions and new subscriptions. An interval period may occur more than once in the life of an interval scheme;

**“Interval Scheme”** means a collective investment scheme that is close-ended but is made open-ended for an interval period within which redemptions may be made and new subscriptions received;

**"Permissible Assets"** means securities, **loans** and/or securitized debt instruments of infrastructure capital companies, infrastructure companies, infrastructure projects, and infrastructure-related special purpose vehicles; it also includes completed and income generating infrastructure projects, infrastructure company projects and infrastructure special purpose vehicle;

**"Other Permissible Assets"** means money market instruments, fixed income securities and equities, convertibles including mezzanine financing instruments of companies engaged in infrastructure, infrastructure development projects, whether or not listed on a securities exchange.

**"Special Purpose Vehicle"** means an entity set up for the purpose of development, ownership and operation of infrastructure projects/assets and any activity incidental to same, whether or not it is set up as a public private partnership.

## 2. **Applicability**

- (1) The provisions of these rules shall apply to Infrastructure Funds constituted as collective investment schemes.
- (2) All other provisions of these rules and regulations unless the context otherwise requires, shall apply to Infrastructure Schemes, trustees (as the case maybe) and Fund Management Companies.

Provided that all other relevant provisions of the Rules and Regulations particularly rules relating to Collective Investment Schemes shall apply to Infrastructure Funds and in the event of any conflict, the provisions of this part shall prevail.

## 3. **Eligibility criteria for Infrastructure Fund**

- (1) An infrastructure fund may be registered with the Commission where the Fund Manager has a minimum of two (2) key personnel having relevant experience in the infrastructure sector.
- (2) An approval of registration may be granted under these Rules to an applicant proposing to establish an Infrastructure Fund where the sponsor or the parent company of the sponsor:
  - (a) has been carrying on activities or business in infrastructure financing sector for a period of not less than five years; and
  - (b) fulfils eligibility criteria for registration as a fund manager as provided under these Rules.

## 4. **Conditions for Establishing Infrastructure Fund**

- (1) An infrastructure fund may be an open or close-ended scheme with a minimum tenor of seven (7) years or an interval scheme with lock-in of five years and interval period not longer than one month as may be specified in the scheme information document.
- (2) Units of an infrastructure fund may be listed on **an** exchange, provided that such units shall be listed only after being fully paid up and meet the minimum disclosure requirements of the securities exchange. Provided also that this shall not apply to infrastructure funds that are established as private equity funds.
- (3) Where an Infrastructure Fund is to be publicly offered it shall state an approximate time of listing and be allowed to buy back units of the scheme from the market up to 20% of the initial unit during the life of the fund.
- (4) An Infrastructure Fund shall disclose the indicative portfolio of the Fund to its potential investors stating the type of assets the Fund would invest in.
- (5) An Infrastructure Fund shall disclose the minimum number of units an investor can subscribe for.
- (6) The Fund manager of the infrastructure fund shall subscribe to a minimum of 3% of the units of the infrastructure fund. These units will be held by the fund manager for a minimum period of three (3) years from the date of subscription. **Where** the infrastructure fund has an investor that is either a sovereign wealth fund established by the government of Nigeria or any of the multilateral development finance organizations of which Nigeria is a member, the minimum subscription requirement for the fund manager will be 1%.

## **5. Issuance of Units**

An Infrastructure Fund may issue units to the investors, subject to the following conditions:

- (a) The Fund Manager shall call for the unpaid portions depending upon the deployment opportunities;
- (b) The offer document of the scheme shall disclose the interest or penalty which may be deducted in case of non-payment of call money by the investors within the stipulated time; and
- (c) The amount of interest or penalty shall be retained in the scheme.

## **6. Permissible investments**

- (1) An Infrastructure Fund shall invest at least 90% of its assets in the securities, loans or securitized debt instruments of infrastructure companies or projects or special purpose vehicles which are created for the purpose of facilitating or promoting investment in infrastructure in respect of revenue generating projects of infrastructure companies or special purpose vehicle.

(2) Subject to sub (1), an Infrastructure Fund may invest in equities, convertibles including mezzanine financing instruments of companies engaged in infrastructure, infrastructure development projects, whether or not listed on a recognized stock exchange in Nigeria; or money market instruments, structured loans and bank deposits for liquidity purposes to cover costs and/or other expenses associated with the Fund operations.

(3) The investment restrictions shall be applicable throughout the life-cycle of the Infrastructure Fund and shall be reckoned with reference to the total amount raised by the Fund.

(4) An Infrastructure Fund may invest up to 70% of its net assets in the securities or assets of any single infrastructure company or project or special purpose vehicle which is created for the purpose of facilitating or promoting investment in infrastructure in respect of revenue generating projects of any single infrastructure company or project or special purpose vehicle.

(5) An Infrastructure Fund shall not invest more than 30% of its net assets in debt instruments of any single infrastructure company or project or special purpose vehicles which is created for the purpose of facilitating or promoting investment in infrastructure in respect of completed and revenue generating projects of any single infrastructure company or project or special purpose vehicle, which is rated below investment grade or unrated;

Provided that such investment limit may with good cause, be extended up to 50% of the net assets of the scheme, with the prior approval of the Trustees, the Fund's Investment Committee and the board of the Fund Manager as applicable.

Provided, that the provisions of sub 4 and 5 shall not apply where a fund was established for a specific project, company or purpose.

(6) An Infrastructure Fund shall invest not less than 60% of its net assets in infrastructure companies, infrastructure capital companies and infrastructure projects of special purpose vehicles in Nigeria.

(7) No Infrastructure Fund shall invest in:

(i) Any unlisted security of the sponsor, Fund Manager or its associate or group company;

(ii) Any listed security issued by way of private placement by the sponsor, Fund Manager or its associate or group company;

(iii) Any listed security of the sponsor, Fund Manager or its associate or group company in respect of completed and revenue generating projects of infrastructure companies or special purpose vehicles of the sponsor or its associate or group companies, in excess of 25% of the net assets of the

scheme, subject to approval of the Trustees and full disclosures to investors for investments made within the aforesaid limits.

## **7. Valuation of assets and declaration of net asset value**

- (1) The assets held by an Infrastructure Fund shall be valued "in good faith" by the Fund Manager on the basis of appropriate valuation methods based on principles approved by the Trustees.
- (2) The valuation shall be documented and the supporting data in respect of each security so valued shall be preserved at least for a period of seven (7) years after the expiry of the scheme.
- (3) The methods used to arrive at values 'in good faith' shall be periodically reviewed by the Trustees or Fund Manager, and annually by the statutory auditor of the Fund.
- (4) The valuation policy approved by the board of the Fund Manager shall be disclosed in the Fund information document.
- (5) The net asset value of every Infrastructure Fund shall be calculated and declared semi-annually.
- (6) The valuation parameters such as interest rate, inflation, GDP growth, forex rate, etc shall be disclosed to the investors annually;
- (7) The fund shall engage a SEC registered consultant to value the assets annually.

The consultant shall be replaced every three years as a matter of good corporate governance practices.

## **8. Fees and Expenses**

- a. Management fees: shall not exceed 2% per annum of the assets under management.
- b. Performance fee/carried interest/incentive fee: may only be charged once the fund has delivered the hurdle or base rate of return disclosed. This shall not exceed 20% of the profit generated by the Fund in excess of the hurdle rate.

## **9. Governance**

- a. Custody of assets: All underlying assets of the Infrastructure Fund, including cash, shall be domiciled with a SEC registered Custodian;
- b. Advisory Board: Every infrastructure Fund **shall** constitute an advisory Board, with independent representatives of institutional investors being in majority. The Advisory Board shall have the oversight for the audit function of the Fund as well as conduct a periodic review of compliance with the investment objectives of the Fund;



- c. Experience of Fund Manager: The Chief Executive Officer or Chief Investment Officer of the Infrastructure Fund should have a minimum of 10 years' relevant experience in financing and investing, including in developing markets **(5 of which shall be in infrastructure financing)**.

## **10. Duties of the Fund Manager**

The duties of the fund manager of an Infrastructure fund shall be as prescribed by these Rules and in addition include the following:

- (1) Laying down an adequate system of internal controls and risk management.
- (2) Exercising due diligence in ensuring the maintenance of the assets of an Infrastructure Fund and shall ensure that there is no avoidable deterioration in its value.
- (3) Recording the details of its decision making process in buying or selling infrastructure companies' assets together with the justifications for such decisions and forwarding same quarterly to the Trustees.
- (4) Ensuring that investment of funds of the Infrastructure Fund is not made contrary to provisions of these Rules and the trust Deed (or other constituent document of the Fund).
- (5) Obtaining, wherever required under these Rules and Regulations, prior in-principle approval from the recognized exchange(s) where units are proposed to be listed.
- (6) Instituting such mechanisms as to ensure that proper care is taken for collection, monitoring and supervision of the assets by appointing a service provider having extensive experience thereof, if required.

### **d. Disclosures in offer document and other disclosures**

- (1) The Offer document of an Infrastructure Fund shall contain the requisite disclosure information for a Prospectus of a Unit Trust Fund or Private Equity Fund as the case may be. In addition it shall also contain other relevant disclosures, specific to the project, which are adequate for investors to make informed investment decisions and such further disclosures as may be specified by the Commission from time to time.
- (2) The hurdle rate or minimum rate of return shall be disclosed in percentage terms.
- (3) The portfolio disclosures and financial reports shall contain such further disclosures as may be specified by the Commission from time to time.
- (4) The exit strategies of the Fund shall be disclosed.

### **e. Transactions by employees etc.**

- (1) The persons covered in sub (2) shall obtain the views of the Trustees (if any) before entering into the transaction in the investee companies, by making a suitable request to the Trustees. In the case of a proposed transaction by the Trustees such request shall be made to the Fund Manager.
- (2) All transactions done by the Trustees or the employees or directors of the Trustees or Fund Manager in the investee companies shall be disclosed by the relevant party to the compliance officer within one month of the transaction.
- (3) The compliance officer shall make a report thereon from the view point of possible conflict of interest and shall submit it to the Trustees (in the case of a Trust) or board of the Fund Manager with his recommendations, if any.

### **13. Reporting**

- (1) The manager of an Infrastructure Fund shall submit quarterly returns of the Funds activities to the Trustees and the Commission in the required format.
- (2) An Infrastructure Fund shall be audited annually and such reports filed with the Commission within three (3) months of the Fund's year end.
- (3) Fund's annual report or abridged summary thereof shall be sent to investors in electronic form on their registered e-mail addresses immediately upon approval by the Commission.
- (4) The fund manager shall display the link to the Fund's full annual reports prominently on its website **once the units have been listed.**

### **C) SUNDRY AMENDMENTS**

#### **1. Rule 19 (8)– Sponsored Individuals/Compliance Officers**

**Where a company has less than the required minimum number of sponsored individuals for a registered function (s) after the resignation of the sponsored individual/compliance officer and notification filed with the Commission, the concerned operator shall take steps to:**

- a) replace the compliance officer or sponsored individual(s) within ninety (90) days.**
- b) appoint on a temporary basis another sponsored individual registered with the Commission to act in the place of the compliance officer within the ninety (90) days window.**

#### **2. Rule 22 (4) Minimum Paid-up Capital**

The cash/asset mix ratio for core operators in the market shall be a **minimum of 60% in liquid assets and the cash/asset mix ratio for non-core operators shall be a minimum of 30% in liquid assets.**

### 3. **Rule 22(5)- Definitions**

#### (i) **Core-Operators:**

Core operators are **capital market** operators who receive funds from investors or who are responsible for keeping investors funds.

#### (ii) **Non-core Operators:**

Non-core operators are **capital market** operators who do not receive funds from investors and are not responsible for keeping investors funds.

#### **Rule 22 (5) -Minimum paid up capital**

**Where the minimum paid up capital or shareholders' funds of a capital market operator falls below the minimum threshold, such operator shall shore up its minimum paid up capital or shareholders' funds within three (3) months, failing which, the operator would be suspended from the capital market operations until compliance.**

### 4. **Rule 42(1) & (2) - Half Yearly Returns**

(1) Public companies shall file **annual** returns **on corporate governance** in the prescribed manner. **The returns** shall contain the following:-

- (a) General information;
- (b) Corporate Governance issues;
- (c) **material disclosures;**
- (d) Audit Committee;
- (e) **Certification** by the company secretary, chief internal auditor, financial controller, managing director, board chairman and chairman of audit committee **confirming** the reliability of the information provided.

**Companies shall notify the Commission in writing immediately the following events occur:**

- (a) **Changes in controlling shareholding;**
- (b) **Resignation of directors or senior management;**
- (c) **Election/appointment of directors;**
- (d) **Appointment of senior management;**
- (e) **Amendments of 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 cost 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 events considered to be of importance to shareholders.**

(2) The completed form shall be returned to the Commission **on or before** January 31<sup>st</sup> following the year under review, hard or electronic copy.

**5. Rule 182 (5) – Regulation of Securities Exchanges and Transactions on Exchanges, Capital Trade Point and Other Self-Regulatory Organizations**

The Commission shall **only** consider **applications of fit and proper companies and** subsidiaries or promoted by any of the following categories, namely:-

- a. Federal, state and local government or their agencies
- b. Self-Regulatory organization (SRO), Registered or Recognized by a statutory financial regulator either in Nigeria or in other jurisdictions
- c. A company Registered or Recognized by a statutory financial market regulator either in Nigeria or in other jurisdictions,
- d. **An association** of reputable individuals who **are either** registered/recognized by a statutory financial market regulator in Nigeria **or other jurisdictions.**

**6. Rule 279(2)(d)(viii)-Registration Requirements for Registrable Securities**

viii) The latest audited accounts shall not be more than nine months old for corporate bodies or twelve months old for States, Local and Federal Government Agencies and Supranational bodies. **Provided that the latest audited account shall remain valid throughout the offer period.**

ix) **This rule shall apply to both Equities and Debt Issues.**

**7. Rule 279(2) (p) -Registration Requirements**

(p) State government official gazette or local government by-law containing the instrument authorizing the issue of the bond (applicable to State and Local Government bonds) and **the relevant appropriation law for the projects the bond proceeds will be used for.**

#### **8. Rule 279(2)(r) - Registration Requirements**

(r) rating report by a registered rating agency (applicable to a debt instrument) **the rating of the Issue and the Issuer shall be of Investment grade and shall be annually reviewed throughout the life of the bond.**

#### **9. Rule 279(3)(3)(i) – Eligibility for Use of Shelf registration**

i) Unless otherwise indicated by the Commission, all entities qualified under the law for purposes of issuance of Municipal bond, Supranational institutions, SPVs, Public Companies (which have been listed on a securities exchange for a minimum period of twelve months) and **such other entities other than Public unlisted Company** covered under the Act are eligible to issue, offer for subscription or purchase, or issue an invitation to the public or a select few subscribers to purchase securities in accordance with a shelf registration.

#### **10. Rule 288(3) –Contents of a Prospectus**

**“The prospectus should include detailed provision of risk factors without stating the mitigating factors.”**

#### **11. Rule 300 – Pre-Offer Waiting Period/Fixed Price Offers**

1) There shall be at least one week pre-offer period before the opening of the offer. For the purpose of this rule, it shall be the period from the date of the execution of offer documents to the date an offer opens provided that where price is discovered through book building, this rule shall not apply.

2) The Commission may however at the instance of the issuer allow the offer to open even if the one week waiting period was not observed, **especially where the issuer’s latest audited account is about to become stale.**

#### **12. Rule 305 (2)- Proceeds of Issue**

**(a)** The next working day after clearance of allotment, the receiving banker shall issue a certified cheque representing the value of the securities allotted including interest earned in the name of the issuer.

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

### **13. Rule 312 (6)(i) – Undersubscription**

Where an issue not underwritten is less than 50% subscribed, the issue shall be aborted by the Issuer within six (6) weeks of the closing date of the offer, **'subject to the Commission's approval'**.

### **14. Rule 314 – Cost of Issue**

The total cost of issue shall not exceed 3.17% for equity transactions and 3.9375% for bonds of the gross total proceeds, indemnity fee, advertisement, printing and take on fees for registrars, from the issue or such percentage as the Commission may prescribe from time to time.

### **15. Rule 315 (4) – Underwriting of Public Issues**

(4) **In a Firm or standby** underwriting of an issue the following shall apply:

### **16. Rule 315 (4) (d) – Underwriting of Public Issues**

Underwriters shall submit quarterly returns to the Commission in respect of the **undisposed** securities until same is fully disposed.

### **17. Rule 315 (7) – Underwriting of Public Issues**

The underwriting agreement shall contain a statement that the terms and conditions of the agreement are in conformity with the provisions of the **Investments and Securities Act, 2007** and the Commission's rules and regulations made thereunder.

### **18. Rule 316 (1) – Amount to be underwritten**

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

**19. Rule 323(22) –Conditions for Approval of Offer**

**For the purposes of this rule, where the issuer opts for underwriting, the subscribed portion shall be wholly taken up by the underwriter(s).**

**20. Rule 340 (2) (e) - Conditions for Approval of Offer**

“The aggregate number of shares to be offered through private placement by a public quoted company **‘shall not exceed’** 30% of its existing issued and paid-up capital prior to the offer”.

**21. Rule 420 (1) – (Depository Receipts by Nigerian Entities)**

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

i) copies of resolution at annual general meeting (A.G.M.) or Extraordinary General Meeting (E.G.M.).

**For non-capital raising GDR, a resolution of shareholders shall not be required. However, the company shall notify the Commission.**

**22. Rule 421 – Definition of Acquisition (Mergers)**

Acquisition means the takeover by one company of sufficient shares **or assets** in another company to give the acquiring company control over that other company.

**23. Rule 566 –Conditions to be satisfied by the issuer**

Terms and conditions of bonds

“1. Any revision made to the principal terms and conditions of an issue or offer of bond which has been approved by the Commission and has already been issued or implemented shall require prior clearance from the Commission.

2. Any other revision made to an issue/offer of bond which has been approved by the Commission but not yet issued shall require the Commission’s prior approval.

3. Condition for revision of terms:

(a) Evidence of resolution of the bondholders and consent of trustees (where applicable).



(b) Evidence that due process has been observed in obtaining bondholders' approval for the proposed revision.

(c) All material information pertinent to the revision, including the effect of such revision, the impact on credit rating has been communicated and disclosed to bondholders.

4. Provided that any such revision to the principal terms and conditions will not result in non-compliance with the provisions of the ISA, SEC Rules, any other relevant laws and regulations and any other regulatory requirement.

**24. Rule 567(f) – Registration Requirement for Corporate Bonds**

(f) A signed copy of the Issuers latest audited accounts for the preceding 3 years, with the latest account not more than 9 months old at the time of filing with the Commission. **Provided that the Account shall remain valid throughout the offer period.**

**25. Schedule 1 Part D(3) – SEC fees on Market Deals**

Fees for inspection, copying and certifying records kept by SEC:

a) Inspection of any document	<del>N500.00</del>	<u>N1,000</u>
b) Certification of any document;		
(i) First page	<del>N100.00</del>	<u>N1,000</u>
(ii) Every subsequent page	<del>N25.00</del>	<u>N100</u>
c) Photocopying (each page)	<del>N10.00</del>	<u>N100</u>

**D. Creation of New Form SEC 2D for Fit and Proper Persons (Sponsored Individuals, Directors/Partners) for Registration in the Capital Market.**



**FORM SEC 2D**  
(To be completed in duplicate)

# **SECURITIES & EXCHANGE COMMISSION (SEC) NIGERIA**

**FORM FOR FIT AND PROPER PERSONS (SPONSORED INDIVIDUALS,  
DIRECTORS/PARTNERS) FOR REGISTRATION IN THE CAPITAL  
MARKET UNDER THE INVESTMENTS AND SECURITIES ACT 2007**

**Affix Passport  
Photo**

**NOTES:**

- a.) This Form should be completed in duplicate by every individual seeking registration from the Securities and Exchange Commission as an Officer, Individual Investment Adviser, Dealing Clerk, Capital Market Consultant, Director/Partners and Principal Officer of an Exchange, other Self Regulatory Organizations and All Capital Market Operators
- b.) Any reference to the “Act” in this form relates to the **Investments** and Securities Act No. 29 of 2007 and the Rules and Regulations made there under.
- c.) Two recent passport size photographs with full face, bearing at the back, the **name and** signature of the applicant.

**SECTION A**

Name in Full -----  
Surname First name Middle name  
Sponsoring Company -----  
-  
Current Residential Address -----  
-----  
-----  
Permanent Home Address (not P.O.Box) -----  
-----  
-----  
Mailing Address -----  
-----  
-----  
Official E-mail ----- Personal E-mail -----  
GSM Numbers -----  
Land Line Numbers -----  
-----  
Date of Birth ----- Place of Birth -----  
State of Origin ----- Nationality -----  
Sex (M/F) ----- Marital Status -----  
-----  
Name of Next of Kin (s) -----  
---  
Next of Kin (s) Permanent Home Address -----  
-----  
-----  
Next of Kin (s) Telephone Numbers -----  
---  
Relationship – Son/Daughter, Wife, Father/Mother -----  
Others – Specify -----  
-----

**SECTION B**

TICK THE APPROPRIATE BOX IN THE FOLLOWING QUESTIONS

1	Have you been refused the right <b>to</b> or restricted from carrying on any trade, business or profession for which a specific license, registration or other authorization is required by law in any jurisdiction? If Yes provide details ----- ----- ----- <b>(ADD 2 OR MORE LINES)</b>	YES <input type="checkbox"/>	NO <input type="checkbox"/>
2	Have you been disciplined, suspended, <b>or</b> sanctioned under the <b>ISA or</b> Rules and Regulations of the Commission, or any other regulatory authority or Professional body or government agency, whether in Nigeria or elsewhere? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>

	----- -----		
<b>3</b>	Have you been subject of any complaint relating to activities that are regulated by the Commission, or under any law in any jurisdiction? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>4</b>	Have you been subjected to any proceedings of a disciplinary or civil/criminal nature or been notified of any potential proceedings or of any investigation which might lead to proceedings, under any law in any jurisdiction? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>5</b>	Have you been convicted of any offence, or currently being subjected to any pending <b>criminal</b> proceedings under any law in any jurisdiction? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>6</b>	Have you ever been convicted <b>of any offence</b> relating to fraud, misrepresentation or dishonesty in any civil or criminal proceeding in any jurisdiction? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>7</b>	State clearly if there is any pending proceeding relating to fraud, dishonesty and misrepresentation in any court of law in any jurisdiction? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>8</b>	Have you had any civil/criminal penalty, enforcement action taken against you by the Commission or any other regulatory authority under any law in any jurisdiction? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>9</b>	Have you ever contravened or abetted in <b>contravening or</b> breach of any laws or regulations, business rules or codes of conduct, whether in Nigeria or elsewhere? If yes provide details --- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>

10	Have you been subject of any investigation or disciplinary proceedings or been issued a warning or reprimand by the Commission or any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in Nigeria or elsewhere? If yes provide details ----- ----- ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
11	Have you been refused a fidelity or surety bond, whether in Nigeria or elsewhere? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
12	Have you demonstrated unwillingness to comply with any regulatory requirement or to uphold any professional and ethical standards, whether in Nigeria or elsewhere? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
13	Have you been untruthful or provided false or misleading information to the Commission, investors, and general public or been uncooperative in any dealings with the Commission, investors, general public or any other regulatory authority in any jurisdiction? If yes provide details ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>
14	Have you been a director, partner, shareholder, staff or concerned in the management of business that has been censured, disciplined, prosecuted or convicted of a civil/criminal offence, or been the subject of any disciplinary or civil/criminal investigation or proceeding, in Nigeria or elsewhere, in relation to any matter that took place while you were a director, partner, shareholder, staff or concerned in the management of the Business? If yes provide details ----- ----- ----- -----	YES <input type="checkbox"/>	NO <input type="checkbox"/>
15	Have you been a director, partner, shareholder, staff or concerned in the management of business that has been suspended or refused membership or registration by the Commission or any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency? If yes provide details ----- ----- ----- -----	Yes <input type="checkbox"/>	No <input type="checkbox"/>

16	<p>Have you been a director, partner, shareholder, staff or concerned in the management of a business that has gone into insolvency, liquidation, administration or receivership, whether in Nigeria or <b>elsewhere</b>? If yes provide details ----- ----- -----</p>	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>
17	<p>Have you been dismissed or asked to resign from — (i) an office; (ii) employment; (iii) a position of trust; or; (iv) A fiduciary appointment or similar position, whether in Nigeria or elsewhere? If yes provide details ----- ----- -----</p> <p><b>(ADD A TIME FRAME e.g within the last 10 years)</b></p>	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>
18	<p>Have you been subjected to disciplinary proceedings by current or former employer(s), whether in Nigeria or elsewhere? If yes provide details ----- ----- -----</p> <p><b>(REDRAFT AS TOO VAGUE AND TOO WIDE)</b></p>	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>
19	<p>Have you been disqualified from acting as a director or in any managerial capacity, whether in Nigeria or elsewhere? If yes provide details ----- ----- -----</p> <p><b>(REDRAFT AS TOO VAGUE AND TOO WIDE)</b></p>	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>
20	<p>Have you been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, you, whether in Nigeria or elsewhere? If yes provide details ---- ----- -----</p>	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>

**Sworn Declaration**  
(AFFIDAVIT)

I -----  
(Name in Full)  
Of -----  
-----  
(Address)

Hereby make an oath and state as follows:

- (1) That I ----- the applicant  
(Name in Full)  
herein **seek** registration with the Securities and Exchange Commission, **Nigeria**.
- (2) That I have read and understood the questions in this form as well as the answers I have given and that to the best of my knowledge and belief the **statements** made herein and the attachments are true
- (3) That I swear to this affidavit in good faith.

-----  
DEPONENT

Sworn to at the ----- court registry this -----  
Day of ----- Year -----

BEFORE ME

-----  
COMMISSIONER FOR OATH

## **E. DELETIONS**

### **a) Rule 312 (4) – Undersubscription**

~~Details of the warehousing agreement for unlisted securities shall be filed with Commission for clearance. Detailed information in respect of the sales shall be filed with the Commission as in (2) and (3) above.~~

~~This Rule shall not apply where an issue is not underwritten.~~

### **b) Rule 340 (2) (h) – Conditions for approval of offer**

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



**MADE AT ABUJA THIS ..... DAY OF ..... 2017**

.....  
**Mounir Gwarzo**  
**Director General**

.....  
**Reginald Karawusa**  
**Secretary to the Commission**

