

SECURITIES AND EXCHANGE COMMISSION



**REPORT OF THE COMMITTEE TO REVIEW OF THE INVESTMENTS & SECURITIES
ACT (ISA), No. 29 OF 2007**

RECOMMENDED GENERAL AMENDMENTS

The recommended general amendments span the entire document and are as follows;

1. The Office of the Director-General and Chairman have been merged. Therefore, anywhere Director-General was mentioned, the term “Executive Chairman” has replaced it.
2. The term “Capital Trade Point” has been deleted throughout the Bill as a result of the categorization of securities exchanges into “composite” and “non-composite” exchanges.
3. Penalties have been increased throughout the Bill in view of the current realities in the value of the naira.

SPECIFIC AMENDMENTS

Current Provision	Proposed Amendment	Justification
<p>PART I: ESTABLISHMENT AND MANAGEMENT OF THE SECURITIES AND EXCHANGE COMMISSION</p>	<p><u>PART I: ESTABLISHMENT, OBJECTIVES AND FUNCTIONS OF THE SECURITIES AND EXCHANGE COMMISSION</u></p>	<p>To align the provisions of the Act by grouping similar provisions together. A rearrangement of the sections has been proposed to specify the objectives, functions and powers of the Commission after its establishment.</p>
<p><u>Current Section 1 Proposed New Section 1 - Establishment of the Securities and Exchange Commission</u></p> <p>(1) There is established a body to be known as the Securities and Exchange Commission (in this Act referred to as "the Commission").</p> <p>(2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.</p> <p>(3) The Commission shall have power to acquire, hold or dispose of any property, movable or immovable for the</p>	<p><u>Proposed New Section 1 - Establishment of the Securities and Exchange Commission</u></p>	<p>Unlike other Acts operating and governing MDAs in the country, the ISA had no definitive statement regarding its independence. Making definitive statements regarding the independence of an establishment is the current practice in more recent legislation, especially where specialized knowledge is required.</p> <p>The AMCON Act 2010 and the Nigerian Sovereign Wealth Authority Act, 2011 both have such provisions.</p>

<p>purpose of carrying out any of its functions under this Act.</p>	<p><u>(4) Except as otherwise provided in this Bill, the Commission shall be independent in the discharge of its functions and objectives under this Bill.</u></p>	
<p><u>Current Section 2 Proposed New Section 2 - Head office of the Commission.</u> The Commission shall have its head office in a location which is by law designated as the Capital of the Federal Republic of Nigeria and may establish zonal offices in any part of Nigeria in accordance with the decision of the Board of the Commission.</p>	<p><u>Proposed New Section 2 - Head office of the Commission.</u> Retained</p>	
<p><u>Current Section 13 Proposed Section 3 - Functions of the Commission</u> The Commission shall be the apex regulatory organisation for the Nigerian capital market and shall carry out the functions and exercise all the powers prescribed in this Act and, in particular, shall-</p> <p>(a) regulate investments and securities business in Nigeria as defined in this Act;</p>	<p><u>Proposed Section 3- Objectives, Functions and Powers of the Commission</u> The Commission shall be the apex regulatory organisation for the Nigerian capital market and shall carry out the functions and exercise all the powers prescribed in this <u>Bill</u>.</p> <p>(1) The Objectives of the Commission shall be to:</p> <p>(a) act in the public interest having regard to the protection of investors and the maintenance of fair, efficient and transparent markets;</p>	<p>Section 3 on Composition of the Board has been relocated to Part II which now covers the Establishment of the Board and its membership.</p> <p>The new Section 3 now contains the previous Section 13 with delineations into objectives, functions and powers.</p> <p>In recent legislation it appears to be common practice to place the objectives at the beginning of the Bill.</p>

<p>(b) register and regulate securities exchanges, capital trade points , futures, options and derivatives exchanges, commodity exchanges and any other recognised investment exchange;</p> <p>(c) regulate all offers of securities by public companies and entities;</p> <p>(d) register securities of public companies;</p> <p>(e) render assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges and capital trade points;</p> <p>(f) prepare adequate guidelines and organise training programmes and disseminate information necessary for the establishment of securities exchanges and capital trade points;</p> <p>(g) register and regulate corporate and individual capital market operators as defined in this Act;</p>	<p>(b) protect the integrity of the securities market against all forms of abuse including insider dealing;</p> <p>(c) prevent fraudulent and unfair trade practices relating to the securities industry;</p> <p>(d) reduce systemic risk</p> <p>(e) such other objects as may be related to the above stated objectives.</p> <p>(2) The Commission shall perform the following functions-</p> <p>(a) regulate investments and securities business in Nigeria as defined in this Bill;</p> <p>(b) register and regulate securities exchanges, , futures, options and derivatives exchanges, commodity exchanges and any other recognized investment exchange;</p> <p>(c) regulate all securities to be traded on facilities registered and regulated by the Commission</p> <p>(d) register securities of public companies;</p> <p>(e) render assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges;</p> <p>(f) register, regulate and supervise</p>	<p>To broaden the scope of securities that shall be regulated by the Commission including securities issued by way of crowd funding.</p>
--	---	--

<p>(h) register and regulate the workings of venture capital funds and collective investments schemes in whatever form;</p> <p>(i) facilitate the establishment of a nationwide system for securities trading in the Nigerian capital market in order to protect investors and maintain fair and orderly markets;</p> <p>(j) facilitate the linking of all markets in securities with information and communication technology facilities;</p> <p>(k) act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by securities exchanges and capital trade points;</p> <p>(l) keep and maintain a register of foreign portfolio investments;</p>	<p>corporate and individual capital market operators as defined in this <u>Bill</u>;</p> <p>(g) register and regulate the workings of collective investment schemes in whatever form;</p> <p>(h) register and regulate securities depository companies, clearing and settlement companies, custodians of assets and securities, credit rating agencies and such other agencies and intermediaries;</p> <p>(i) register and regulate self regulatory organisations including securities exchanges and capital market trade associations to which it may delegate its powers;</p> <p>(j) review, approve and regulate mergers, acquisitions, takeovers and all forms of business combinations and affected transactions of all companies as defined in this <u>Bill</u>;</p> <p>(k) authorise and regulate cross-border securities transactions;</p> <p>(l) perform such other functions not inconsistent with this Act as are necessary or expedient for giving full effect to the provisions of this <u>Bill</u>.</p>	<p>Changed from Promote and Register to read register and regulate as the Nigerian capital market has developed to a level where promotion of self regulatory organizations by the Commission is not required.</p>
--	---	--

<p>(m) register and regulate securities depository companies, clearing and settlement companies, custodians of assets and securities, credit rating agencies and such other agencies and intermediaries;</p> <p>(n) protect the integrity of the securities market against all forms of abuses including insider dealing;</p> <p>(o) promote and register self regulatory organisations including securities exchanges, capital trade points and capital market trade associations to which it may delegate its powers;</p> <p>(p) review, approve and regulate mergers, acquisitions, takeovers and all forms business combinations and affected transactions of all companies as defined in this Act;</p> <p>(q) authorise and regulate cross-border securities transactions;</p> <p>(r) call for information from and</p>	<p>(3) In discharging its functions under this <u>Bill</u>, the Commission shall have the powers to, among other things;</p> <p>(a) intervene in the management and control of capital market operators which it considers has failed, is failing or in crisis including entering into the premises and doing whatsoever the Commission deems necessary for the protection of investors;</p> <p>(b) call for information from and inspect, conduct inquiries and audit of securities exchanges, capital market operators, collective investment schemes and all other regulated entities <u>and associated persons</u>;</p> <p>c) <u>call for the production of records and documents of public companies</u>;</p> <p>(d) call for, or furnish to any person, such information as may be considered necessary by it for the efficient discharge of its functions;</p> <p><u>(e) investigate any person in connection with the violation or suspected violation of this Bill or other Securities laws</u>;</p> <p>(f) <u>obtain subscriber records held or maintained by internet service providers, telephone service providers and other electronic communication providers located within Nigeria which identify subscribers, payment</u></p>	<p>It is recommended that the words “associated persons” be included in the provision to enable the Commission call for information from companies related to capital market operators for effective regulation of the capital market activities.</p> <p>The proposed inclusion of subsections (e) to (j) to the powers of the Commission is in accordance with the IOSCO Enhanced Memorandum of Understanding which sets new standards for enforcement and cooperation to address the demands posed by modern markets. These powers are necessary for member regulators to ensure continued effectiveness in deterring cross-border misconduct and fraud in securities markets.</p>
--	---	--

<p>inspect, conduct inquiries and audit of securities exchanges, capital market operators, collective investment schemes and all other regulated entities;</p> <p>(s) promote investors' education and the training of all categories of intermediaries in the securities industry;</p> <p>(t) call for, or furnish to any person, such information as may be considered necessary by it for the efficient discharge of its functions;</p> <p>(u) levy fees, penalties and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of this Act;</p> <p>(v) intervene in the management and control of capital market operators which it considers has failed, is failing or in crisis including entering into the premises and doing whatsoever the Commission</p>	<p><u>details and other relevant details excluding content of communication;</u></p> <p>(g) <u>impose administrative caution, lien or to freeze the assets (including stocks and bank accounts) of any person/ firm who is being investigated for capital market infractions pending the outcome of investigation;</u></p> <p>(h) <u>advise and provide information and assistance on request to other regulators on relevant funds or assets located within Nigeria and how to freeze or sequester such funds or assets;</u></p> <p>(i) enter, <u>seize property</u>, seal up the premises and <u>redistribute recovered proceeds</u> of persons illegally carrying on capital market operations <u>and investment schemes;</u></p> <p>(j) <u>obtain audit work papers, communications and other information relating to the audit or review of financial statements;</u></p> <p>(k) disqualify any person or persons considered unfit from being employed <u>or participating or continuing to participate as operators in the capital market.</u></p> <p>(l) facilitate the linking of all markets in securities with information and communication technology facilities;</p> <p>(m) <u>Subject to any legislation governing the</u></p>	<p>The existing Section 13 (w) is amended to empower the Commission to seize property when it seals up a premises as well as make provision for redistributing proceeds of illegal capital market operations or investments schemes such as ponzi schemes to affected members of the public.</p> <p>The proposed amendment expands the scope of the provision to provide clarity as to who the Commission may disqualify from participating in the market.</p> <p>This has been relocated from the current section 299 of the Act.</p>
---	--	--

<p>deems necessary for the protection of investors;</p> <p>(w) enter and seal up the premises of persons illegally carrying on capital market operations;</p> <p>(x) in furtherance of its role of protecting the integrity of the securities market, seek judicial order to freeze the assets (including bank accounts) of any person whose assets were derived from the violation of this Act, or any securities law or regulation in Nigeria or other jurisdictions;</p> <p>(y) relate effectively with domestic and foreign regulators and supervisors of other financial institutions including entering into co-operative agreement on matters of common interest;</p> <p>(z) conduct research into all or any aspect of the securities industry;</p> <p>(aa) prevent fraudulent and unfair trade practices relating to the securities industry;</p>	<p><u>administration of oaths, administer oath on any person;</u></p> <p><u>(n) compel attendance for statement or testimony under oath in accordance with the rights and privileges afforded by the laws of the Federal Republic of Nigeria;</u></p> <p><u>(o) establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by securities exchanges .</u></p> <p><u>(p) take whatever step or carry out any act necessary for the protection of investors, in the public interest and for the maintenance of fair and orderly markets.</u></p> <p>(q) keep and maintain a register of foreign portfolio investments;</p> <p>(r) promote investors' education and the training of all categories of intermediaries in the securities industry;</p> <p>(s) levy fees, penalties and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of this <u>Bill</u>;</p> <p>(t) conduct, cause to be conducted, and disseminate research into all or any</p>	<p>In line with the IOSCO Enhanced Memorandum of Understanding as explained above</p> <p>It is recommended that the current section 13 (k) be divided into two items (o) and (p) for clarity and to confer on the Commission wider powers for the protection of investors.</p>
--	---	--

<p>(bb) disqualify persons considered unfit from being employed in any arm of the securities industry;</p> <p>(cc) advise the Minister on all matters relating to the securities industry; and</p> <p>(dd) perform such other functions and exercise such other powers not inconsistent with this Act as are necessary or expedient for giving full effect to the provisions of this Act.</p>	<p>aspect of the securities industry;</p> <p>(u) relate effectively with domestic and foreign regulators and supervisors of other financial institutions including entering into co-operative agreement on matters of common interest;</p> <p>(v) prepare adequate guidelines and organise training programmes and disseminate information necessary for the establishment of securities exchanges;</p> <p>(w) exercise such other powers not inconsistent with this Act as are necessary or expedient for giving full effect to the provisions of this <u>Bill</u>.</p>	
<p><u>Current Section 14 – Proposed new Section 4 – Power to Establish Departments</u></p> <p>The Commission may establish specialised departments for the purpose of regulating and developing the Nigerian capital market.</p>	<p><u>Proposed new Section 4 – Power to Establish Departments</u></p> <p>The Commission may establish departments for the purpose of achieving its objectives and the efficient discharge of its functions under this <u>Bill</u>.</p>	<p>Section 4 on Duties of the Board has been relocated to Part II which now covers the Establishment of the Board and its membership.</p> <p>The new Section 4 now contains the previous Section 14 with slight modifications tied to achievements of the objectives of the Commission.</p>
<p>PART II: FUNCTIONS AND POWERS OF THE COMMISSION</p>	<p><u>PART II:ESTABLISHMENT OF THE BOARD OF THE COMMISSION AND ITS MEMBERSHIP</u></p>	<p>The Former Part I has become Part II and amended as set out below</p>

<p><u>Current Section 3 Proposed new Section 5 - Composition of the board of the Commission</u></p> <p>1) There shall be for the Commission a Board which shall consist of-</p> <p>(a) a part-time Chairman;</p> <p>(b) the Director General and Chief executive as Accounting officer;</p> <p>(c) three full time Commissioners;</p> <p>(d) a representative of the Federal Ministry of Finance;</p> <p>(e) a representative of the Central Bank of Nigeria; and</p> <p>(f) two part-time Commissioners one of whom shall be a legal practitioner qualified to practice in Nigeria with ten years post call experience.</p>	<p><u>Proposed new Section 5 - Composition of the board of the Commission</u></p> <p>(1) There shall be for the Commission a Board <u>which shall be responsible for the policy and general administration of the affairs of the Commission.</u></p> <p><u>(2) The Board shall consist of –</u></p> <p>(a) <u>an Executive Chairman who shall be the Chief Accounting officer;</u></p> <p>(b) three full time Commissioners;</p> <p>(c) a representative of the Federal Ministry of Finance;</p> <p>(d) a representative of the Central Bank of Nigeria; and</p> <p>(e) <u>three</u> part-time Commissioners <u>with proven integrity and knowledge of capital market matters</u>, one of whom shall be a legal practitioner qualified to practice in Nigeria with</p>	<p>The import of the suggested amendment would be that the position of the Director General would cease to exist while the powers of the Chairman would be enhanced. The Executive Chairman would therefore be the head of the Board, the Chief executive in charge of the day to day management of the Commission and the Chief Accounting officer of the Commission.</p> <p>The US, SEC, countries in the Middle East and South America such as Saudi Arabia, Malaysia and Brazil have combined the position of Chairman and CEO.</p> <p>An executive chairman would enhance the effectiveness of the Commission by providing for a single focused leader capable of driving regulatory reform. It is also suggested that decisions would be made within a shorter time frame as a result of the knowledge advantage the Executive Chairman would have of matters presented to the Board.</p> <p>It is suggest that an increase in the number of part time Commissioners, after merging the positions of the Director General and</p>
---	---	---

<p>(2) A person shall not be qualified for appointment to the Board of the Commission unless he is a fit and proper person and-</p> <p>(a) in the case of the Chairman or Director-General of the Commission, he is a holder of a university degree or its equivalent with not less than 15 years cognate experience in capital market operations;</p> <p>(b) in the case of any other member other than an ex-officio member, he is a holder of a university degree or its equivalent with not less than 12 years cognate experience in capital market operations or legal practice as the case may be; and</p> <p>(c) in the case of an ex-officio member, he is not below the rank of a director in the Ministry or Central Bank of Nigeria, as the case may be.</p>	<p>ten years post call experience;</p> <p>(3) A person shall not be qualified for appointment to the Board of the Commission unless he is a fit and proper person and-</p> <p>(a) in the case of the Chairman or Director-General of the Commission, he is a holder of a university degree or its equivalent with not less than 15 years cognate experience in capital market operations;</p> <p>(b) in the case of any other member other than an ex-officio member, he is a holder of a university degree or its equivalent with not less than 12 years cognate experience in capital market operations or legal practice as the case may be; and</p> <p>(c) in the case of an ex-officio member, he is not below the rank of a director in the Ministry or Central Bank of Nigeria, as the case may be.</p>	<p>Chairman, would ensure a balance in the membership of the board.</p>
---	--	---

Current Section 5 Proposed new Section 6 – Appointment and Term of Office of Members of the Board

(1) The ~~Director-General~~ and the three full time Commissioners shall be appointed by the President upon the recommendation of the Minister and confirmation by the Senate.

(2) The ~~Director-General~~ shall hold office for a period of 5 years in the first instance and may be reappointed for a further period of five years and no more.

(3) The three full time Commissioners shall hold office in the first instance for a period of four years and may be re-appointed for a further term of four years and no more.

(4) The ~~Chairman~~ and part-time Commissioners (other than the *ex-officio* Commissioners) shall each hold office for a term of four years and no more.

(5) Notwithstanding the provisions of subsections (1) and (2) of this

Proposed new Section 6 - Appointment and Term of Office of Members of the Board

(1) The Executive Chairman, and the three full time Commissioners shall be appointed by the President upon confirmation by the Senate.

(2)The Executive Chairman shall hold office for a period of 5 years in the first instance and may be reappointed for a further period of five years and no more.

(3) The three full time Commissioners shall hold office in the first instance for a period of four years and may be re-appointed for a further term of four years and no more.

(4) The part-time Commissioners (other than the *ex-officio* Commissioners) shall each hold office for a term of four years and no more.

(5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section,

General amendments with respect to the change in nomenclature as proposed and a re-arrangement to group provisions on appointment and tenure as well as qualification together for ease of reference. The qualification of the Director-General has also been revised to match the technicality of the Commission.

section, the President may extend the tenure of office of the ~~Director-General~~ and any of the Commissioners whose term of office has expired until a successor to such ~~Director-General~~ or Commissioner is appointed.

the President may extend the tenure of office of the Executive Chairman and any of the Commissioners whose term of office has expired until a successor to such Executive Chairman or Commissioner is appointed.

Provided that such extension shall not exceed a period of three months.

(6) A person shall not be qualified for appointment to the Board of the Commission unless he is a fit and proper person and-

(a) in the case of the Executive Chairman of the Commission, he is a holder of a post-graduate university degree or its equivalent with not less than 15 years cognate experience in capital market operations;

(b) in the case of any other member other than an ex-officio member, he is a holder of a university degree or its equivalent with not less than 12 years cognate experience in capital market operations or legal practice as the case may be; and

(c) in the case of an ex-officio member, he is not below the rank of a director in the Ministry or Central Bank of Nigeria, as the case may be.

<p><u>Current Section 4 Proposed new section 7- Duties of the board.</u></p> <p>(1) The Board shall be responsible for the general administration of the Commission and, in particular, shall-</p> <p>(a) formulate general policies for the regulation and development of the capital market and the achievement and exercise of the functions of the Commission;</p> <p>(b) approve the audited and management accounts of the Commission;</p> <p>(c) appoint Auditors for the Commission;</p> <p>(d) consider and approve the annual budget of the Commission as may be presented to it by the management;</p> <p>(e) establish zonal offices of the Commission; and</p>	<p><u>Proposed new section 7- Duties of the board.</u></p> <p>(1) The Board <u>of the Commission</u> shall –</p> <p>(a) formulate general policies for the regulation and development of the capital market and the achievement and exercise of the functions of the Commission;</p> <p>(b) approve the audited and management accounts of the Commission;</p> <p>(c) appoint Auditors for the Commission;</p> <p>(d) consider and approve the annual budget of the Commission as may be presented to it by the management;</p> <p>(e) <u>approve the establishment of</u> zonal offices of the Commission; and</p>	<p>It is proposed that the language conferring responsibility for the general administration of the Commission on the board be deleted as boards are not usually assigned with the day to day management of an establishment which is what the term “general administration” usually connote.</p> <p>It is suggested that the duties of the board be limited to setting policies and such ancillary duties as may be prescribed in this Bill.</p> <p>A change in the language used is suggested as being more appropriate.</p>
--	--	--

<p>(f) carry out such other activities as are necessary and expedient for the purposes of achieving the objectives of the Commission.</p> <p>(2) The Board shall, on the recommendation of the Director-General, approve the duties of the full time Commissioners.</p> <p>(3) The Board shall also approve the reassignment of the full time Commissioners by the Director-General.</p>	<p>(f) carry out such other activities as are necessary and expedient for the purposes of achieving the objectives of the Commission</p> <p><u>(g) review any decision taken by it where it deems necessary</u></p> <p>(2) The Board <u>shall consider and approve the duties of the full time Commissioners</u> on the recommendation of the <u>Executive Chairman</u>.</p> <p>(3) The Board <u>may</u> also approve the reassignment of the full time Commissioners by the <u>Executive Chairman</u>.</p>	<p>The proposed amendment seeks to correct the impression that the board cannot exercise its discretion to make changes to or reject a recommendation of the Director General relating to the duties of the full time commissioners.</p> <p>Comment the same as above.</p>
<p><u>Current Section 6 Proposed new section 8 - Director - General and full time Commissioners to be fully devoted to the service of the Commission.</u></p> <p>The Director-General and the full time Commissioners shall devote their full time to the service of the Commission and while holding office shall not hold any other office or employment except where</p>	<p><u>Proposed new section 8 - Director - General and full time Commissioners to be fully devoted to the service of the Commission.</u></p> <p>The <u>Executive Chairman</u> and the full time Commissioners shall devote their full time to the service of the Commission and while holding office shall not hold any other office or employment except where appointed by virtue of their office in the Commission into the membership of the Board of any agency of the</p>	

<p>appointed by virtue of their office in the Commission into the membership of the Board of any agency of the government in Nigeria or any international organization to which the Commission is a member or an affiliate.</p>	<p>government in Nigeria or any international organization to which the Commission is a member or an affiliate.</p>	
<p><u>Current Section 7 Proposed New Section 9- Management of the Commission.</u> The Director-General or, in his absence, one of the Commissioners nominated by the Director-General shall be responsible for the day to day management and administration of the Commission and shall be answerable to the Board of the Commission.</p>	<p><u>Proposed New Section 9- Management of the Commission.</u> The <u>Executive Chairman</u> or, in his absence, one of the Commissioners <u>designated</u> by the <u>Executive Chairman</u> shall be responsible for the day to day management and administration of the Commission and shall be answerable to the Board of the Commission.</p>	<p>The use of the word ‘designated’ is more appropriate as the word ‘nomination’ denotes an additional approval process.</p>
<p><u>Current Section 8 Proposed New Section 10 - Disqualification and cessation of appointment.</u> (1) A member of the Board shall cease to hold office if he- (a) becomes of unsound mind (b) becomes bankrupt or makes a</p>	<p><u>Proposed New Section 10 - Disqualification and cessation of appointment</u> (1) A member of the Board shall cease to hold office if he- (a) becomes of unsound mind <u>or owing to ill health is incapable of carrying out his duties;</u> (b) <u>is adjudged</u> bankrupt or makes a compromise with creditors;</p>	<p>The proposed amendments provide clarity as to when a member may be removed from the Board or cease to hold office.</p>

<p>compromise with creditors;</p> <p>(c) is convicted of a felony or any offence involving dishonesty; (e) is a person who has a professional qualification, and is disqualified or suspended (other than at his own request) from practicing his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.</p> <p>(2) The President may at any time and upon the recommendation of the Minister remove a person to whom subsection (1) of this section applies:</p> <p>Provided no full time member of the Board of the Commission shall be removed from office without the approval of the Senate.</p>	<p>(c) is convicted of a felony or any offence involving <u>fraud or dishonesty by a court of competent jurisdiction;</u></p> <p>(e) is a person who has a professional qualification, and is disqualified or suspended (other than at his own request) from practicing his profession in any part of Nigeria <u>or any other country</u> by the order of any competent authority made in respect of him personally.</p> <p>(2) The President may at any time remove a person to whom subsection (1) of this section applies, provided <u>that</u> no full time member of the Board of the Commission shall be removed from office without the approval of the Senate.</p> <p><u>Resignation by members of the Board</u></p> <p><u>(3)Any member of the Board, including the Executive Chairman, may at any time resign his appointment by giving at least three months prior notice in writing to the President of his intention to do so.</u></p> <p><u>(4) If the Executive Chairman, or any Commissioner dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, there shall be appointed a fit and proper person to take his</u></p>	<p>Removal of members is provided for under section 8 however no provision is made for resignation of Board members.</p>
---	---	--

	<p><u>place on the Board for the unexpired period of the term of appointment in the first instance in the manner prescribed by Section (6) of this Bill</u></p>	
<p><u>Current Section 9 Proposed New Section 11- Remuneration and allowances of members of the board.</u></p> <p>(1) The Director-General and the three full time Commissioners shall be paid such remuneration and allowances as may be determined by the Board of the Commission.</p>	<p><u>Proposed New Section 11- Remuneration and allowances of members of the board.</u></p> <p>(1) The <u>Executive Chairman</u> and the three full time Commissioners shall be paid such remuneration and allowances as may be determined by the Board of the Commission.</p>	
<p><u>Current Section 10 Proposed New Section 12- Meetings of the Board of the Commission</u></p> <p>(1) Meetings of the Board of the Commission shall take place as often as may be required but not less than four times in any financial year of the Commission.</p> <p>(2) The Chairman shall preside at every meeting of the Commission and in his absence, the members present at such meeting shall appoint one of their members to preside.</p> <p>(3) Five members of the Board shall</p>	<p><u>Proposed New Section 12- Meetings of the Board of the Commission</u></p> <p>(1) Meetings of the Board shall take place as often as may be required but not less than four times in any financial year of the Commission.</p> <p>(2) The <u>Executive</u> Chairman shall preside at every meeting of the <u>Board</u> and in his absence, the members present at such meeting shall appoint one of their members to preside.</p> <p>(3) retained</p>	<p>The Chairman does not preside over every meeting of the Commission. The proposed amendment therefore provides the necessary clarity that the Board is part of the Commission and not the Commission.</p>

<p>form a quorum at any meeting, two of whom shall be non-executive members.</p> <p>(4) Unless as otherwise provided in this Aet, decisions shall be by a simple majority of the vote of the members present but, in case of equality of vote, the presiding chairman shall have a casting vote.</p> <p>(5) The supplementary provisions set out in the first schedule to this Aet shall have effect with respect to the proceedings of the Board of the Commission and the other matters contained therein.</p>	<p>(4) Unless as otherwise provided in this Bill, decisions shall be by a simple majority of the vote of the members present but, in case of equality of vote, the presiding chairman shall have a casting vote.</p> <p>(5) The supplementary provisions set out in the first schedule to this Bill shall have effect with respect to the proceedings of the Board and the other matters contained therein.</p>	
<p><u>Current Section 11 Proposed New Section 13- Disclosure of Interest</u></p> <p>(1) A member of the Board of the Commission who is directly or indirectly interested in-</p> <p>(a) the affairs of any company or enterprise being deliberated upon by the Board of the Commission; or</p> <p>(b) any contract made or proposed to be made by the Board of the</p>	<p><u>Proposed New Section 13- Disclosure by Board Members</u></p> <p>(1) Retained</p> <p>a) retained;</p> <p>(b) any contract made or proposed to be made by the Board shall, as soon as possible after relevant facts have come to his knowledge,</p>	<p>The proposed amendment makes the provision clearer.</p>

<p>Commission shall, as soon as possible after relevant facts have come to his knowledge, disclose the nature of his interest to the Commission at the meeting of the Board of the Commission.</p> <p>(2) A disclosure made under subsection (1) of this section shall be recorded in the minutes of the meeting of the Board of the Commission and the member after the disclosure shall-</p> <p>(a) not participate or continue to participate in any deliberation or decision of the Board of the Commission with regard to the subject-matter in respect of which his interest is so disclosed; and</p> <p>(b) be excluded for the purpose of constituting a quorum of the Board of the Commission from any deliberation or decision on the subject</p>	<p>disclose the nature of his interest to the <u>other members of the Board</u> at the meeting of the Board.</p> <p>(2) A disclosure made under subsection (1) of this section shall be recorded in the minutes of the meeting of the Board and the member after the disclosure shall-</p> <p><u>(a)</u> not participate or continue to participate in any deliberation or decision of the Board with regard to the subject-matter in respect of which his interest is so disclosed;</p> <p><u>(b) not influence or seek to influence a decision to be made in relation to the matter;</u> and</p> <p><u>(c)</u> be excluded for the purpose of constituting a quorum of the Board from any deliberation or decision on</p>	
--	---	--

<p>matter.</p>	<p>the subject matter.</p>	
<p><u>Current Section 12 – Code of ethics for members of the board</u> The members of the Board of the Commission shall subscribe to, and be bound by a code of ethics to be approved by the Minister.</p>	<p><u>Current Section 12 – Code of ethics for members of the board</u> Recommended for deletion</p>	
<p><u>PART III –STAFF OF THE COMMISSION</u></p>	<p><u>PART III –STAFF OF THE COMMISSION</u></p>	
<p><u>Current Section 15 Proposed New Section 14- Appointment of the Secretary and other staff of the Commission.</u> (1) There shall be for the Commission a Secretary who shall be appointed by the Commission. (2) The Secretary shall be a legal practitioner of not less than 10 years post call experience. (3) The Secretary shall act as Secretary to the Board of the Commission and its committees and carry out other functions as may be</p>	<p><u>Proposed New Section 14- Appointment of the Secretary and other staff of the Commission.</u> (1) The Commission shall appoint a Secretary who shall be appointed by the Board on the recommendation of the <u>Executive Chairman.</u> (2) Retained. (3) Retained.</p>	

<p>prescribed by the Board.</p> <p>(4) There shall also be appointed by the Commission other staff as the Commission may deem necessary for the efficient performance of its functions under this Act.</p>	<p>(4) There shall also be appointed by the Commission other staff as the Commission may deem necessary for the efficient performance of its functions under this <u>Bill</u>.</p>	
<p><u>Current Section 16 – Proposed New Section 15 - Remuneration of the Secretary and other staff of the Commission.</u></p> <p>The remuneration (including allowances) and the terms and conditions of service of the Secretary and other staff of the Commission shall be determined by the Board of the Commission.</p>	<p><u>Proposed New Section 15 - Remuneration of the Secretary and other staff of the Commission.</u></p> <p>Retained</p>	
<p><u>Current Section 17 Proposed New Section 16– Duties of the Secretary</u></p> <p>1) The Secretary shall-</p> <p>(a) attend the meetings of the Board of the Commission, and its committees and render all necessary secretarial services in respect of the meetings and advise on compliance</p>	<p><u>Proposed New Section 16– Duties of the Secretary</u></p> <p>(1) The Secretary shall-</p> <p>(a) retained;</p>	

<p>by the meetings with applicable laws and regulations;</p> <p>(b) keep and maintain records of the Board of the Commission; and</p> <p>(c) carry out such administrative and other secretarial duties as may be required by the Board of the Commission or the Director-General;</p> <p>(2) The Secretary shall exercise the powers of the Board only with the authority of the commission.</p>	<p>(b) retained</p> <p>(c) carry out such administrative and other secretarial duties as may be required by the Board or the <u>Executive Chairman</u>;</p> <p>(2) The Secretary shall exercise the powers of the Board only with the authority of the <u>Board</u>.</p>	
<p><u>Current Section 18 Proposed New Section 17– Service in the Commission to be pensionable.</u></p> <p>(1) Every staff of the Commission shall be entitled to pension and other retirement benefits as prescribed by law.</p> <p>(2) Nothing in this section shall prevent the appointment of a person to any office on such terms and conditions, which preclude the grant of pension and other retirement</p>	<p><u>Proposed New Section 17– Service in the Commission to be pensionable.</u></p> <p>Retained</p>	

benefits.		
<u>PART IV – FINANCIAL PROVISIONS</u>	<u>PART IV –FINANCIAL PROVISIONS</u>	
<p><u>Current Section 19 – Proposed New Section 18 - Funds of the Commission.</u></p> <p>(1) The Commission shall establish and maintain a fund (in this Act referred to as "the Fund") into which shall be paid the following-</p> <p>(a) funds provided to the Commission by the Federal Government;</p> <p>(b) penalties, fees, charges and administrative cost of proceedings; and</p> <p>(c) monetary gifts, contributions and other funds that may be received by the Commission.</p> <p>(2) The Commission shall maintain and operate bank accounts for funds as approved by the Board of the</p>	<p><u>Proposed New Section 18 - Funds of the Commission.</u></p> <p>(1) The Commission shall establish and maintain a fund (in this Bill referred to as "the Fund") into which shall be paid the following-</p> <p>(a) retained;</p> <p>(b) retained;</p> <p>(c) retained</p> <p>(2) Retained</p>	

<p>Commission.</p>		
<p><u>Current Section 20 – Proposed New Section 19 – Application of the Funds of the Commission.</u></p> <p>The Commission may apply the proceeds of the Fund established under section 19 of this Act to-</p> <p>(a) meet the cost of administration of the Commission;</p> <p>(b) reimburse members of the Commission or any committee set up by the Commission for expenses authorised or approved by the Commission;</p> <p>(c) pay the salaries, fees or other remuneration or allowances, pensions and gratuities payable to the employees of the Commission;</p> <p>(d) maintain any property acquired by or vested in the Commission;</p> <p>(e) implement all or any of the functions of the Commission under this Act or any matter connected with those functions; and</p>	<p><u>Proposed New Section 19 – Application of the Funds of the Commission.</u></p> <p>The Commission may apply the proceeds of the Fund established under section <u>18</u> of this <u>Bill</u> to-</p> <p>(a) to (d) retained</p> <p>(e) implement all or any of the functions of the Commission under this <u>Bill</u> or any matter connected with those functions; and</p>	<p>More appropriate</p>

<p>(f) meet any capital expenditure approved by the Board of the Commission.</p>	<p>(f) retained</p>	
<p><u>Current Section 21 – Proposed New Section 20 – Reserve Account</u></p> <p>(1) The Commission shall establish a reserve account into which all surpluses from the Fund shall be paid.</p> <p>(2) Disbursement from the reserve account shall be approved by the Board of the Commission.</p> <p>(3) The Commission may invest funds in the reserve account in securities prescribed by the Trustee Investments Act and such other modifying or substituting legislation or in such other securities as may be approved by the Board of the Commission.</p>	<p><u>Proposed New Section 20 – Reserve Account</u></p> <p>(1) Retained.</p> <p>(2) Retained.</p> <p>(3) The Commission may invest funds in the reserve account in securities prescribed by the Trustee Investments Bill and such other modifying or substituting legislation or in such other securities as may be approved by the Board.</p>	
<p><u>Current Section 22 – Proposed New Section 21 – Power to accept gifts. Penalties, fees, etc.</u></p> <p>(1) The Commission may accept gifts of land, money or other</p>	<p><u>Proposed New Section 21 – Power to accept gifts. Penalties, fees, etc.</u></p> <p>Retained</p>	

<p>testamentary dispositions, endowments and contributions on such terms and conditions, if any, as may be specified by the donor of the gift.</p> <p>(2) The Commission shall not accept any gift if the conditions attached by the donor are inconsistent with the functions and objectives of the Commission.</p>		
<p><u>Current Section 23 Proposed New Section 22– Penalties, fees, etc. to be retained and utilized by the Commission.</u></p> <p>The Commission is entitled to charge, retain and utilise for its purposes-</p> <p>(a) penalties imposed for violation of this Act and the rules and regulations made thereunder; and</p> <p>(b) fees collected for the services rendered by the Commission under this Act, including recovery of costs of administrative proceedings.</p>	<p><u>Proposed New Section 22– Penalties, fees, etc. to be retained and utilized by the Commission.</u></p> <p>The Commission is entitled to charge, retain and utilise for its purposes-</p> <p>(a) penalties imposed for violation of this Bill and the rules and regulations made thereunder; and</p> <p>(b) fees collected for the services rendered by the Commission under this Bill, including recovery of costs of administrative proceedings.</p>	
<p><u>Current Section 24 Proposed New Section 23– Borrowing by</u></p>	<p><u>Proposed New Section 23– Borrowing by the Commission.</u></p>	

<p><u>the Commission.</u> The Commission may, subject to the approval of the Board, borrow by way of loan a specified amount of money as it may require for meeting its obligations and discharging its functions under this Act.</p>	<p>The Commission may, subject to the approval of the Board, borrow by way of loan a specified amount of money as it may require for meeting its obligations and discharging its functions under this <u>Bill</u>.</p>	
<p><u>Current Section 25 Proposed New Section 24– Investment by the Commission.</u> The Commission may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds as may be approved by the Board.</p>	<p><u>Proposed New Section 24– Investment by the Commission.</u> The Commission may, subject to the provisions of this <u>Bill</u> and the conditions of any trust created in respect of any property, invest all or any of its funds as may be approved by the Board.</p>	
<p><u>Current Section 26 Proposed New Section 25– Annual estimates, account and audit</u> (1) The Board of the Commission shall cause to be prepared, not later than the thirtieth day of September in each year, an estimate of the income and expenditure of the Commission during the next</p>	<p><u>Proposed New Section 25– Annual estimates, account and audit</u> (1) The Board shall cause to be prepared, not later than the thirtieth day of September in each year, an estimate of the income and expenditure of the Commission during the next succeeding year and when prepared, they shall be submitted to the Minister and the National Assembly.</p>	

<p>succeeding year and when prepared, they shall be submitted to the Minister and the National Assembly.</p> <p>(2) The Commission shall cause to be kept, proper books of records and accounts which shall be audited by auditors appointed by the Board of the Commission</p>	<p>(2) The Commission shall cause to be kept, proper books of records and accounts which shall be audited by auditors appointed by the Board</p>	
<p><u>Current Section 27</u> <u>Proposed New Section 26– Annual report</u></p> <p>The Commission, shall not later than three months after the end of each year, submit to the Minister and the National Assembly, a report on the activities and administration of the Commission during the immediately preceding year and, shall include in such reports, audited accounts of the Commission and the report of the Auditor on the accounts.</p>	<p><u>Proposed New Section 26– Annual report</u></p> <p>Retained</p>	
<p><u>PART V – REGISTRATION AND REGULATION OF SECURITIES EXCHANGES, CAPITAL TRADE POINTS AND OTHER SELF REGULATORY ORGANIZATIONS</u></p>	<p><u>PART V – REGISTRATION AND REGULATION OF SECURITIES EXCHANGES, AND OTHER SELF REGULATORY ORGANIZATIONS</u></p>	
<p><u>Proposed new Section 27</u></p>	<p><u>Section 27- Definition of Securities Exchange</u></p>	

	<p><u>(1) A Securities Exchange may be registered by the Commission as—</u></p> <p><u>i) a composite securities exchange; or</u></p> <p><u>ii) a non-composite securities exchange.</u></p> <p><u>2) A composite securities exchange shall permit the listing and trading of all types of securities and financial contracts on its platform and shall carry out such functions as may be prescribed by the Commission from time to time.</u></p> <p><u>3) A non-composite securities exchange may be registered by the Commission as:</u></p> <p><u>a) a mono securities exchange which specializes in the listing and trading of a particular financial contract or securities or</u></p> <p><u>b) an Alternative Trading System which provides trading systems that bring together orders from buyers and sellers and could be set in either a physical location, or be made available for trading activities on-the-internet.</u></p>	<p>It is recommended that securities exchanges be categorized as ‘composite’ and ‘non-composite’ exchanges, to distinguish conventional exchanges that permit the listing of all types of securities and contracts from the ‘non-composite’ exchanges that include mono line securities exchanges, trading platforms and all kinds of alternative trading platforms to accommodate relatively new initiatives such as crowd funding.</p>
<p><u>Current Section 28 retained as new Section 28 – Registration of securities exchanges and capital trade points</u></p> <p>(1) No securities exchange or capital trade point as defined in section 315 of this Act shall</p>	<p><u>Retained as new Section 28-Registration of Securities Exchanges</u></p> <p>(1) No <u>person shall carry on business</u> as a securities exchange as defined in section <u>326</u> of this <u>Bill</u> unless it is registered with the</p>	

commence operation unless it is registered with the Commission in accordance with the provisions of this Act and the rules and regulations made thereunder.

~~(2) An application for registration as a securities exchange or capital trade point shall be made to the Commission in the prescribed form and in the manner specified by the Commission.~~

Commission in accordance with the provisions of this Bill and the rules and regulations made thereunder.

Current (2) recommended for deletion

2) Where any person who is not registered by the Commission pursuant to subsection (1) above carries on business, purports to be, or behave in a manner or use a name or description which suggests, signifies or implies that there is some connection between that person and a securities exchange where in fact no such connection exists, such person commits an offence and is liable on conviction to a fine of N10, 000, 000 or to imprisonment for 3 year or both fine and imprisonment. In the case of a company, each of the directors, promoters or any person who can reasonably be regarded as being in control of the control shall be equally liable on conviction to a fine of N10, 000, 000 or to imprisonment for 3 year or both fine and imprisonment

<p><u>Current Section 29 Proposed new Section 29 – Conditions for registration</u></p> <p>(1) Every securities exchange or capital trade point shall be a body corporate incorporated under the Companies and Allied Matters Act.</p> <p>(2) The Commission may register a body corporate as a securities exchange or capital trade point if it is satisfied that the rules of the body corporate make satisfactory provisions-</p> <p>(a) for the exclusion from its membership persons who are not of good character and who do not possess a high degree of business integrity;</p> <p>(b) for the expulsion, suspension or discipline of members for conduct inconsistent with just and equitable principles in the transaction of securities business or for contravention of or failure to comply with the rules of the securities exchange or capital trade point or the</p>	<p><u>Proposed new Section 29 – Conditions for registration</u></p> <p>(1) Every securities exchange shall be a body corporate incorporated under the Companies and Allied Matters Act.</p> <p>(2) The Commission may register a body corporate as a securities exchange if it is satisfied that the rules of the body corporate make satisfactory provisions-</p> <p>(a) for the exclusion from its membership <u>or trading</u> persons who are not of good character and who do not possess a high degree of business integrity;</p> <p>(b) for the expulsion, suspension or discipline of members <u>or participants</u> for conduct inconsistent with just and equitable principles in the transaction of securities business or for contravention of or failure to comply with the rules of the securities exchange or capital trade point or the provisions of this <u>Bill</u>;</p>	
---	--	--

<p>provisions of this Act;</p> <p>(c) with respect to the conditions under which securities may be listed for trading on that particular securities exchange or capital trade point;</p> <p>(d) with respect to the conditions governing dealings in securities by the members;</p> <p>(e) with respect to the class or classes of securities which may be dealt in by members; and</p> <p>(f) with respect to a fair representation of persons in the selection of members of the Board of the securities exchange or capital trade point and the administration of its affairs and provided that listed companies and investors shall each be represented by one or more members on its board.</p> <p>(3) The Commission, in granting approval to register a securities exchange or capital trade point under this section, shall ensure that the interest of the public will be</p>	<p>(c) with respect to the conditions under which securities may be listed for trading on that particular securities exchange;</p> <p>(d) with respect to the conditions governing dealings in securities by the members <u>or participants</u>;</p> <p>(e) with respect to the class or classes of securities which may be dealt in by members <u>or participants</u>; and</p> <p>(f) with respect to a fair representation of persons in the selection of members of the Board <u>or Participants</u> of the securities exchange and the administration of its affairs and provided that <u>in securities exchanges with listed companies, at least one or more representatives of listed companies</u> and investors shall each be represented by one or more members <u>or participants</u> on its board.</p> <p>(3) The Commission, in granting approval to register a securities exchange under this section, shall ensure that the interest of the public will be served by the grant of the approval.</p>	
---	---	--

<p>served by the grant of the approval.</p> <p>(4) The Commission shall issue a certificate of registration to a body corporate registered pursuant to this section.</p>	<p>(4) Retained</p>	
<p><u>Proposed New Section 30</u></p>	<p><u>Proposed new Section 30- Appointment of Chief Executive and Principal Officers of Registered Securities Exchanges requires approval of Commission</u></p> <p><u>No appointment of a person as chief executive or principal officer of a registered securities exchange shall have effect unless the</u></p>	

	<p><u>appointment has the approval in writing of the Commission.</u></p>	
<p><u>Current section 32 Proposed New Section 31- Role of Securities Exchange, capital trade point and other self regulatory organisations</u></p> <p>(1) Subject to the powers of the Commission under this Act, a securities exchange, capital trade point or any other self regulatory organisation shall, as part of its primary responsibility, call for information from, inspect and conduct inquiries and audit of its members</p>	<p><u>Proposed New 31- Duties of a Securities Exchange</u></p> <p>(1) <u>A securities exchange shall conduct its business in a fair and transparent manner with due regard to the rights of members or participants and their clients;</u></p> <p>(2) <u>A securities exchange-</u></p> <p>(a) <u>shall ensure compliance with this Bill by its members or participants and issuers of securities listed or admitted on that exchange, report any non-compliance to the Commission and assist the Commission in enforcing this Bill;</u></p> <p>(b) <u>shall develop and enforce the exchange rules, listing requirements and exchange directives;</u></p> <p>(c) <u>shall, as soon as it becomes aware thereof, inform the Commission of any matter that may pose systemic risk to the financial markets;</u></p> <p>(d) <u>shall notify the Commission as soon as it commences an insolvency proceeding or an insolvency proceeding is commenced against it, or when it has received a notification regarding insolvency proceedings against members or participants;</u></p> <p>(e) <u>may do all other things that are necessary</u></p>	

<p>(2) A securities exchange, capital trade point or self-regulatory</p>	<p><u>for, incidental or conducive to the proper operation of an exchange and that are not inconsistent with this Bill.</u></p> <p><u>- Provided that in the case of an exchange registered as an alternative trading system, subsections 2(b) shall not apply.</u></p> <p><u>(3) (a) The Commission may assume responsibility of one or more of the regulatory or supervisory functions referred to in subsection (2) if the Commission considers it necessary in order to achieve the objects of this Bill;</u></p> <p><u>(b) The Commission shall, before assuming responsibility of a function as contemplated in paragraph (a) of this sub-section-</u></p> <p><u>(i) inform the exchange of the Commission's intention to assume such responsibility;</u></p> <p><u>(ii) give the exchange the reasons for the intended assumption; and</u></p> <p><u>(iii) call upon the exchange to show cause within a period specified by the Commission why responsibility should not be assumed by the Commission.</u></p> <p><u>(4) A securities exchange, shall at the end of every quarter file a detailed report on its surveillance and enforcement activities with the</u></p>	
---	--	--

<p>organisation, shall at the end of every quarter file a detailed report on its surveillance and enforcement activities with Commission.</p> <p>3) Nothing in this section shall preclude the Commission from carrying out inspections, or conducting enquiries or audit of any member of a securities exchange, capital trade point or other self regulatory organisation.</p>	<p>Commission.</p> <p>(5) Nothing in this section shall preclude the Commission from carrying out inspections, or conducting enquiries or audit of any member of a securities exchange.</p>	
<p><u>Current Section 37 Proposed New Section 32 – Securities exchange to maintain proper books of account</u></p> <p>A securities exchange, capital trade point or any other self regulatory organisation shall maintain proper books of account and records relating to its operations which shall be made available for inspection by the Commission.</p>	<p><u>Proposed New Section 32 – Securities exchange to maintain proper books of account</u></p> <p>A securities exchange, shall maintain proper books of account and records relating to its operations which shall be made available for inspection by the Commission.</p>	
<p><u>Current Section 31 Proposed New Section 33 – Approval of amendments to listing rules</u></p> <p>(1) Where an amendment is made to the rules or the listing requirements of a securities exchange, capital trade point or other self regulatory</p>	<p><u>Proposed New Section 33 – Approval of amendments to listing rules</u></p> <p>(1) No amendment shall be made to the rules or the listing requirements of a securities exchange,, whether by way of recision, amendment, alteration, deletion, substitution or addition, <u>unless</u> the Board of the securities exchange, <u>has forwarded</u> a written notice of the amendment to</p>	

~~organisation~~, whether by way of recision, amendment, alteration, deletion, substitution or addition, the Board of the securities exchange, ~~capital trade point or other self regulatory organisation~~ shall forward a written notice of the amendment to the Commission for approval.

(2) ~~The~~ the Commission shall notify the securities exchange, ~~capital trade point or other self regulatory organisation~~ as to whether or not the Commission approves the whole or any specified part of the amendment in question, and until such notification is received, the amendment shall be of no effect.

the Commission for approval.

(2) (a) Within twenty working days after receipt of a notice of amendment, the Commission shall notify the securities exchange of,

i) the approval of the whole or a part of the proposed amendment;

ii) the approval of the proposed amendments subject to conditions;

iii) the prohibition of the implementation of the proposed amendment; until such notification is received, the amendment shall be of no effect.

(b) Where, upon the expiration of the twenty working days period provided for in paragraph (a), the Commission fails to notify the

<p>(3) Nothing in this section shall preclude the Commission, after consultation with the board of a securities exchange, capital trade point or other self regulatory organisation from amending the rules or the listing requirements of the securities exchange, capital trade point or other self regulatory organisation by a notice in writing specifying the amendment and the date the amendment shall come into effect.</p> <p>(4) Any notice under this section may be served personally or by registered post.</p>	<p><u>exchange of its decision, the amendment shall be deemed as having been approved subject to subsection (3)</u></p> <p>(3) Retained</p>	
<p><u>Current Section 33 Proposed New Section 34 – Securities exchange, capital trade point or self regulatory organization to give notice of disciplinary actions, etc</u></p> <p>Where a securities exchange capital trade point or other self</p>	<p><u>Proposed New Section 34– Securities exchange to give notice of disciplinary actions etc</u></p> <p>Where a securities exchange reprimands, fines,</p>	<p>The word ‘participants’ was inserted to accommodate recognized exchanges that do not have members.</p>

<p>regulatory organisation reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the securities exchange, capital trade point or other self regulatory organisation, the securities exchange, capital trade point or self regulatory organisation shall, within 7 days notify the Commission in writing of the name and other particulars of the member, the nature of and reason for the action taken by the securities exchange, capital trade point or other self regulatory organisation against the affected member.</p>	<p>suspends, expels or otherwise takes disciplinary action against a member <u>or participant</u> of the securities exchange, the securities exchange shall, within 7 days notify the Commission in writing of the name and other particulars of the member <u>or participant</u>, the nature of and reason for the action taken by the securities exchange, against the affected member <u>or participant</u>.</p>	
<p><u>Current Section 34 Proposed New Section 35 – Review of disciplinary actions taken by securities exchange, capital trade point or self regulatory organization</u> (1) The Commission may review any disciplinary action taken by a securities exchange, capital trade point or other self regulatory organisation against its members and may affirm or set aside such decision after giving the member and the securities exchange, capital trade point or self regulatory organisation an opportunity of being</p>	<p><u>Proposed New Section 35 – Review of disciplinary actions taken by securities exchange</u> (1) The Commission may review any disciplinary action taken by a securities exchange, against its members <u>or participants</u> and may affirm or set aside such decision after giving the member or <u>participant</u> and the securities exchange an opportunity of being heard.</p>	

<p>heard.</p> <p>(2) Nothing in this section shall preclude the Commission from suspending, expelling or otherwise imposing or causing disciplinary action to be taken against a member of a securities exchange, capital trade point or other self-regulatory organisation where a securities exchange, capital trade point or other self-regulatory organisation fails to act against a member:</p> <p>Provided that, before exercising the power conferred upon it by this subsection, the Commission shall give the affected member and the securities exchange, capital trade point Or self-regulatory organisation an opportunity of being heard.</p>	<p>(2) Nothing in this section shall preclude the Commission from suspending, expelling or otherwise imposing or causing disciplinary action to be taken against a member or participant of a securities exchange where a securities exchange fails to act against a member <u>or participant</u>:</p> <p>Provided that, before exercising the power conferred upon it by this subsection, the Commission shall give the affected member or participant and the securities exchange an opportunity of being heard.</p>	
<p><u>Current Section 35 Proposed New Section 36 – Power to issue directives to a securities exchange, capital trade point or self-regulatory organization etc</u></p> <p>(1) The Commission may, where it deems appropriate, issue directives to a securities exchange, capital</p>	<p><u>Proposed New Section 36– Power to issue directives to a securities exchange</u></p> <p>(1) The Commission may, where it deems appropriate, issue directives to a securities exchange with respect to-</p>	<p>Reference to Capital trade points and self regulatory have been deleted as capital trade points are no longer relevant. Self regulatory bodies have been dealt with in another part.</p>

<p>trade point or any other self regulatory organisation with respect to-</p> <p>(a) trading on or through the facilities of that securities exchange, capital trade point or self regulatory organisation or pertaining to any securities listed on the securities exchange, capital trade point or self regulatory organisation;</p> <p>(b) the manner in which a securities exchange, capital trade point or self regulatory organisation carries on its business including the manner of reporting off-market purchases; or</p> <p>(c) any other matter which the Commission considers necessary for the effective administration of this Act, and the securities exchange, capital trade point or self regulatory organisation shall comply with the directives.</p> <p>(2) No action shall be competent before any court of law or tribunal with regard to any directive by the</p>	<p>(a) trading on or through the facilities of that securities exchange or pertaining to any securities listed on the securities exchange;</p> <p>(b) the manner in which a securities exchange carries on its business including the manner of reporting off-market purchases; or</p> <p>(c) any other matter which the Commission considers necessary for the effective administration of this <u>Bill</u>, and the securities exchange shall comply with the directives.</p> <p>(2) Retained</p>	
---	---	--

<p>Commission under subsection (1) of this section without the joinder of the Commission as a party.</p> <p>(3) A securities exchange, capital trade point or any other self regulatory organization which, without reasonable excuse, fails or refuses to comply with a directive given under subsection (1) of this section shall be liable to a penalty of ₦1,000,000 and a further penalty of not less than ₦50,000 for every day during which the non-compliance continues.</p> <p>(4) Where the Commission, after giving an executive officer of a securities exchange, capital trade point or any other self regulatory organisation an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with the provisions of this Act or any regulations made thereunder or the rules of the securities exchange, capital trade point or self regulatory organisation, the Commission may</p>	<p>(3) A securities exchange, which, without reasonable excuse, fails or refuses to comply with a directive given under subsection (1) of this section shall be liable to a penalty of not less than ₦10,000,000 and a further penalty of not less than ₦500,000 for every day during which the non-compliance continues.</p> <p>(4) Where the Commission, after giving an executive officer of a securities exchange, an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with the provisions of this Bill or any regulations made thereunder or the rules of the securities exchange, , the Commission may suspend or remove the executive officer from office.</p>	<p>Fines have been made more stringent to deter offenders.</p>
--	--	--

<p>suspend or remove the executive officer from office.</p> <p>(5) The Commission may, in the public interest or for the protection of investors, and after giving the executive officer an opportunity of being heard, direct the securities exchange or capital trade point or any other self regulatory organisation in writing to remove the executive officer and where the securities exchange or capital trade point or self regulatory organisation fails to comply with the directive of the Commission under subsection (4) of this section, the Commission may suspend or remove the executive officer from office.</p>	<p>(5) The Commission may, in the public interest or for the protection of investors, and after giving the executive officer an opportunity of being heard, direct the securities exchange in writing to remove the executive officer and where the securities exchange fails to comply with the directive of the Commission under subsection (4) of this section, the Commission may suspend or remove the executive officer from office.</p>	
--	--	--

Current Section 36 Proposed New Section 37 – Power of the Commission to prohibit trading in particular securities

(1) Where the Commission deems it necessary for the protection of persons buying or selling particular securities made available by a body corporate on a securities exchange, ~~capital trade point or any other self-regulatory organisation~~, it may suspend or prohibit further trading in the securities and give notice in writing to the securities exchange, ~~capital trade point or self-regulatory organisation~~.

(2) If, after receiving the notice given under subsection (1) of this section, the securities exchange ~~or capital trade point or self-regulatory organisation~~ fails to take action to prevent trading in the securities to which the notice relates, the Commission may, by notice in writing, to the securities exchange, ~~capital trade point or other self-regulatory organisation~~ prohibit trading in the securities of

Proposed New Section 37 – Power of the Commission to prohibit trading in particular securities

(1) Where the Commission deems it necessary for the protection of persons transacting in particular securities on a securities exchange, it may suspend or prohibit further trading in the securities and give notice in writing to the securities exchange.

(2) If, after receiving the notice given under subsection (1) of this section, the securities exchange fails to take action to prevent trading in the securities to which the notice relates, the Commission may, by notice in writing, to the securities exchange, prohibit trading in the securities during such period, not exceeding 14 days; provided that the Commission shall have the power by notice in writing to increase the period for a further period not exceeding 30 days at a time.

the body corporate during such period, not exceeding 14 days; provided that the Commission shall have the power by notice in writing to increase the period for a further period not exceeding 30 days at a time.

(3) A securities exchange, ~~capital trade point or any other self regulatory organisation~~, which permits trading in securities in contravention of a notice under subsection (2) of this section is liable to a penalty of ₦1,000,000 and a further sum of ₦50,000 for every day during which the contravention continues.

(4) Where, after the expiration of the second period of suspension of trading in the securities ~~of a body corporate~~, ~~the body corporate~~, securities exchange, ~~capital trade point or self regulatory organisation~~, still refuses to comply with the directives of the Commission given pursuant to the provisions of this section, the

(3) A securities exchange which permits trading in securities in contravention of a notice under subsection (2) of this section is liable to a penalty of not less than ₦1,000,000 and a further sum of ₦50,000 for every day during which the contravention continues.

(4) Where, after the expiration of the second period of suspension of trading in the securities, the securities exchange still refuses to comply with the directives of the Commission given pursuant to the provisions of this section, the Commission may-

<p>Commission may-</p> <p>(a) revoke the registration of either or both the body corporate and securities exchange, capital trade point or self regulatory organisation;</p> <p>(b) refuse to consider or process any further request or application for approval, registration or consent made or to be made to the Commission by the body corporate or securities exchange, capital trade point or self regulatory organisation;</p> <p>(c) apply to the Court under the Companies and Allied Matters Act for-</p> <p>(i) the winding up of the body corporate or securities exchange, capital trade point or self regulatory organisation;</p> <p>(ii) an official receiver to take over management under supervision of the court in respect of the registered</p>	<p>(a) revoke the registration of the securities exchange</p> <p>(b) refuse to consider or process any further request or application for approval, registration or consent made or to be made to the Commission by the securities exchange;</p> <p>(c) apply to the Court under the Companies and Allied Matters Act for-</p> <p>(i) the winding up of the securities exchange;</p> <p>(ii) an official receiver to take over management under supervision of the court in respect of the securities exchange as if the Commission were a</p>	
---	--	--

<p>company or securities exchange, capital trade point or self regulatory organization as if the Commission were a creditor thereof</p> <p>(d) after giving a hearing to serving officers, appoint competent person(s) nominated by the Commission in place of the serving chief executive officer and executive management and board of the registered company or securities exchange, capital trade point or self regulatory organisation;</p> <p>(e) apply to the Tribunal for an enforcement order in respect of its directive to suspend trading on the specified securities:</p> <p>Provided that the Commission may take any of the forgoing actions where it considers that the interest of investors or of members of the public or the integrity of the market so requires.</p>	<p>creditor thereof</p> <p>(d) after giving a hearing to serving officers, appoint competent person(s) nominated by the Commission in place of the serving chief executive officer and executive management and board of the securities exchange;</p> <p>Retained</p>	
<p><u>Current Section 30 Proposed New Section 38 – Revocation of certificate of a securities exchange</u></p>	<p><u>Proposed New Section 38– Revocation of certificate of a securities exchange</u></p>	

<p><u>or capital trade point</u></p> <p>(1) The Commission may by order revoke the certificate of registration granted under section 29 of this Act, if-</p> <p>(a) the body corporate ceases to operate as a securities exchange or capital trade point within the meaning of this Act;</p> <p>(b) the body corporate is wound up; or</p> <p>(c) the body corporate is operating in a manner detrimental to the interests of investors and the public.</p> <p>(2) No order of revocation under this section shall be made unless the body corporate has been given the opportunity of being heard.</p>	<p>(1) The Commission may revoke the certificate of registration granted under section 30 of this Bill, if-</p> <p>(a) the body corporate ceases to operate as a securities exchange within the meaning of this Bill;</p> <p>(b) and (c) are retained</p> <p>(2) No revocation under this section shall be made unless the body corporate has been given the opportunity of being heard.</p> <p><u>(3) In revoking the certificate of registration, the Commission shall state the reasons for revoking such registration.</u></p> <p><u>(4) The revocation made pursuant to subsection (3) shall contain such transitional provisions as the Commission may deem fit.</u></p> <p><u>(5) The Commission shall cause a notice of the revocation to be published on its website or such other medium it deems fit.</u></p>	
<p><u>Proposed new Section 39</u></p>	<p><u>Proposed new Section 39 - Listing of a securities exchange or an exchange holding company on a securities exchange</u></p>	

	<p><u>(1) Where the securities of a securities exchange or an exchange holding company are to be listed on a relevant securities exchange, the Commission shall issue appropriate directives or guidelines for dealing with:</u></p> <p><u>(a) possible conflicts of interests that may arise;</u></p> <p><u>(b) corporate governance and administration matters;</u></p> <p><u>(c) listing process and trading requirements;</u></p> <p><u>(d) and any other matter deemed necessary by the Commission</u></p> <p><u>(2) the Commission may, by notice in writing, exempt a securities exchange or an exchange holding company from complying with any listing requirement of the relevant securities exchange.</u></p>	
<p><u>Proposed new Section 40</u></p>	<p><u>Proposed new Section 40- Duties of exchange holding company</u></p> <p><u>. (1) An exchange holding company shall ensure—</u></p> <p><u>(a) an orderly and fair market in relation to securities that are traded on the market through the facilities of the securities exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a securities exchange, as the case may be;</u></p> <p><u>(b)the prudent risk management of its business and operations; and</u></p> <p><u>(c) that the securities exchange complies with any lawful requirements placed on it under this</u></p>	

Bill or Rules made thereunder and any other laws applicable to it.

(2) In performing its duty under subsection (1) the exchange holding company shall–

(a)act in the public interest, having particular regard to the need for the protection of investors; and

(b)ensure that where its own interest conflicts with the interest referred to in paragraph (a), the latter shall prevail.

(3)An exchange holding company shall immediately notify the Commission if it becomes aware of–

(a)any matter which adversely affects or is likely to adversely affect–

(i)the ability of the exchange holding company to meet its obligations in respect of its business as an exchange holding company or a securities exchange, including its ability to comply with any requirement as may be specified by the Commission, if applicable; or

(ii)the ability of any subsidiary of the exchange holding company to meet its obligations in respect of its business as a securities exchange, as the case may be, including the ability of any such subsidiary to comply with any requirement as may be specified by the Commission, if applicable; or

(b)any irregularity, breach of any provision of this Bill or Rules made thereunder, the rules of

	<p><u>a securities exchange or any other matter which, in the opinion of the exchange holding company, indicates or may indicate, that the financial standing or financial integrity of any of its subsidiaries or the chief executive or directors of such subsidiary, as the case may be, is in question or may reasonably be affected.</u></p> <p><u>(4) Where an exchange holding company, which itself has been approved as a securities exchange undertakes any function of a subsidiary that is approved as a securities exchange, such exchange holding company shall enter into such arrangements with the Commission as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under this Bill or Rules made thereunder are satisfied</u></p>	
<p><u>Proposed new Section 41</u></p>	<p><u>Proposed new Section 41- Disposal and acquisition of assets, etc</u></p> <p><u>(1) Where– an exchange holding company; a securities exchange; or any other relevant body intends to enter into an agreement or arrangement, to dispose of or acquire such assets or classes of assets of such value as may have been specified by the Commission, it shall give the Commission prior written notification of such intention.</u></p> <p><u>(2) Where the Commission makes a</u></p>	

	<p><u>specification under subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of the exchange holding company, securities exchange, or any other relevant body corporate, as the case may be, or significant in affecting the business directive of such persons</u></p>	
<p><u>Proposed new Section 42</u></p>	<p><u>Proposed new Section 42 - Application for Registration of an Alternative Trading System</u></p> <p><u>(1) An application for the registration of an Alternative Trading System shall be accompanied by such information and particulars as may be required by the Commission regarding-</u></p> <ul style="list-style-type: none"> <u>(a) the services and facilities which the applicant will hold itself out as being able to provide if the application is allowed;</u> <u>(b) the business which the applicant proposes to carry on and to which the application relates;</u> <u>(c) its directors and substantial shareholders and, if any of its substantial shareholders is a company, the directors and substantial shareholders of that company; and</u> <u>(d) such other information as the Commission may require.</u> <p><u>(2) In considering an application, the Commission may have regard to any information in its possession whether provided by the applicant or not.</u></p>	

<p><u>Proposed new Section 43</u></p>	<p><u>Proposed new Section 43 - Withdrawal of Registration of an Alternative Trading System</u></p> <p><u>(1) Where the Commission is satisfied that it is appropriate in the interest of investors or the public or for the maintenance of an orderly and fair market, to so do, it may, by notice in writing, withdraw the registration of an Alternative Trading System;</u></p> <p><u>(2)The notice referred to in subsection (1) shall state the reasons for the withdrawal, the effective date and such instructions as will ensure a smooth termination process with minimal disruption to investors and the public.</u></p> <p><u>(3)The Commission may by the notice in writing under subsection (1) permit the Alternative Trading System to continue, on or after the date on which the withdrawal is to take effect, to carry on such activities affected by the withdrawal as the Commission may specify in the notice for the purpose of-</u></p> <p><u>(a)ceasing to provide the Alternative Trading System to which the withdrawal relates; or</u></p> <p><u>(b)protecting the interest of the investors or the public.</u></p> <p><u>(4)Where the Commission has granted permission to a person under subsection (3), the Alternative Trading System shall not, by reason of its carrying on the activities in accordance</u></p>	
--	---	--

	<p><u>with the permission, be regarded as having contravened this Bill and regulations made thereunder.</u></p> <p><u>(5)The Commission shall not exercise its power under subsection (1) in relation to an Alternative Trading System that has been registered under this Bill and ules made thereunder unless it has given the Alternative Trading System referred to in this section a reasonable opportunity of being heard.</u></p> <p><u>(6)Any withdrawal of registration made under this section shall not operate so as to—</u></p> <p><u>(a)avoid or affect any agreement, transaction or arrangement entered into on the Alternative Trading System whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or</u></p> <p><u>(b)affect any right, obligation or liability arising under such agreement, transaction or arrangement.</u></p>	
<u>NEW</u>	<p><u>B – GENERAL PROVISIONS RELATING TO CUSTODY AND DEPOSITORY, CLEARING AND SETTLEMENT, CENTRAL COUNTERPARTY OR TRADE REPOSITORY ENTITIES</u></p>	
<u>Proposed new Section 44</u>	<p><u>Proposed new section 44 - establishing or operating a Custody and Depository, Clearing and Settlement, Central</u></p>	

	<p><u>Counterparty or Trade Repository Entities</u></p> <p><u>(1) No person shall establish or operate a Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity as defined in this part of the Bill- unless the person has been registered by the Commission under this Act and regulations made thereunder</u></p> <p><u>(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not less than N10, 000, 000 or to imprisonment for a term not less three years or to both such fine and imprisonment.</u></p> <p><u>(3) The Commission may, in lieu of a prosecution under subsection (2) of this section, impose a penalty of N10, 000, 000 and a further sum of N100, 000 for every day the violation continues.</u></p>	
<p><u>Proposed new Section 45</u></p>	<p><u>Proposed new Section 45- Power of Commission to approve entities under this part</u></p> <p><u>(1) An application for approval to establish or operate any entity as Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository shall be made in such manner as the Commission may direct and shall be accompanied by such other information as the Commission may require for the purpose of determining the application;</u></p> <p><u>(2) The registration shall specify the registered office of the Custody and Depository, Clearing and Settlement, Central</u></p>	

	<p><u>Counterparty or Trade Repository Entity in Nigeria and the places where the entity may be operated, and that the entity may not be operated at any other place without the prior written approval of the Commission;</u></p> <p><u>(3) A Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity may at any time apply to the Commission for an amendment of the terms of its registration and the conditions subject to which its registration was granted.</u></p>	
<p><u>Proposed new Section 46</u></p>	<p><u>Proposed new Section 46 – Withdrawal of registration</u></p> <p><u>(1) The Commission may, in the public interest or for the protection of any investor or counterparty, by notice in writing–</u></p> <ul style="list-style-type: none"> a) <u>withdraw its approval granted to a Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity with effect from the date specified in the notice; or</u> b) <u>direct the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity to cease to operate or provide such services with effect from the date specified in the notice.</u> <p><u>(2) The Commission shall not withdraw its approval or issue a directive under subsection (1) unless the Commission is satisfied that it is appropriate to do so for the protection of investors, counterparties or</u></p>	

in the public interest or for the proper regulation of the clearing, settlement, custody or depository of transactions in securities or derivatives, where any of the following circumstances occur:

- (i) the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity ceases to provide its registered facilities;
- (ii) the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity is being wound up or otherwise dissolved;
- (iii) the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity has contravened any term or condition of its approval or is charged with any offence under this Bill, any Rules made thereunder or any other applicable legislation
- (iv) the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity has failed to comply with a condition, requirement or directive given by the Commission;
- (v) any information provided was false or misleading in a material particular;
- (vi) a judgment debt against the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity has not been satisfied in whole or in part;

- (vii) a receiver, a manager, or an equivalent person has been appointed, whether within or outside Nigeria, in relation to or in respect of any property of the Custody and Depository Entity;
- (viii) the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity has, whether within or outside Nigeria, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or
- (ix) the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity has on its own accord applied to the Commission to withdraw the approval granted to it and the Commission deems it fit to do so.
- 2) For the purposes of paragraph (2) (a), the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity shall be deemed to have ceased to provide its Custody and Depository facilities if it has ceased to provide such facilities for a period of one month unless it has obtained the prior approval of the Commission to do so.
- 3) Notwithstanding the withdrawal of an approval or the issuance of a directive under subsection (1), the Commission may permit the person registered to provide Custody and Depository facilities to carry on such activities affected by the withdrawal or

	<p><u>directive as the Commission may specify in the notice published under that subsection for the purpose of–</u></p> <p>(i) <u>closing down the operations of the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity or ceasing to provide the services specified in the notice; or</u></p> <p>(ii) <u>protecting the investors or the public.</u></p> <p><u>4) The Commission shall not take any action specified under subsection (1) without giving the entity concerned an opportunity to be heard.</u></p>	
<p><u>Proposed new Section 47</u></p>	<p><u>Proposed new Section 47 - Effect of withdrawal of approval or directive issued</u> <u>Any withdrawal of approval or directive issued by the Commission shall not operate so as to–</u></p> <p>a) <u>avoid or affect any agreement, transaction or arrangement entered into through the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity whether the agreement, transaction or arrangement was entered into before or, after the withdrawal of the approval or issuance of the directive; or</u></p> <p>b) <u>affect any right, obligation or liability arising under such agreement, transaction or arrangement</u></p>	
<p><u>Proposed new Section 48</u></p>	<p><u>Proposed new Section 48- A Custody and Depository, Clearing and Settlement, Central</u></p>	

Counterparty or Trade Repository Entity rules

(1) A Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity shall make rules which shall be consistent with this Bill and any Rules made thereunder. The rules shall-

- a) provide for equitable criteria for authorization and exclusion of participants and, in particular, that no person may be admitted as a participant or allowed to continue such person's business as a participant unless the person-
 - i) is of good character and high business integrity or, in the case of a corporate body, is managed by persons who are of good character and high business integrity; and
 - ii) complies or, in the case of a corporate body, is managed by persons or employs persons who comply with the standards of training, experience and other qualifications required by the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity rules;
- b) provide for an orderly process by which a participant ceases to be a participant;
- c) if applicable, provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;
- d) provide for requirements in respect of a participant's financial soundness and valid

financial cover that the participant shall hold in respect of-

i) the participant's actual and potential liabilities;

ii) conditional and contingent liabilities to the Custody and Depository Entity; and

iii) liabilities which existed before or accrue after a person has ceased to be a participant;

e) provide for requirements in respect of corporate actions, including, but not limited to, that-

i) dividends paid and other payments made by issuers in respect of securities are paid by issuers to the Custody and Depository Entity, participants, or clients and, if applicable, by the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity to participants, and by participants to clients;

ii) notices regarding rights and other benefits accruing to the owners of securities deposited with the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity are conveyed to the Custody and Depository Entity, participants or clients; and if applicable, that

effect is given to the lawful instructions of clients with regard to voting rights and other matters, and

- iii) the rights of participants or clients are not, in any way, diminished by the fact that securities held by them or on their behalf are held collectively in a central securities account or other securities account as the case may be;
- f) require a participant, on written request from a client, to withdraw securities or an interest in securities held in a securities account or central securities account or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities account or central securities account, as long as the client has a sufficient unencumbered credit balance of those securities with the participant concerned;
- g) provide for requirements in respect of same day debit balances and prohibit debit balances at the end of a day in a securities account or a central securities account;
- h) may provide that Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity may refuse to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of an exchange for transactions in those

securities;

- i) provide for-
 - i) the duty of persons for whom securities accounts or central securities accounts are kept to disclose to a participant or Custody and Depository Entity, as the case may be, and the duty of a participant to disclose to a Custody and Depository Entity, information about a beneficial, limited or other interest in securities deposited with the participant or Custody and Depository Entity, as the case may be; and
 - ii) the manner, form and frequency of such disclosure;
 - iii) shall provide for the manner in which a Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity or a participant shall keep records of clients, or owners or beneficial owners of securities and limited or other interests in securities;
- j) provide for the manner in which participants shall give instructions to a Custody and Depository Entity
- k) provide for the purposes for which, and the process by which, a Custody and Depository, Clearing and Settlement,

Central Counterparty or Trade Repository Entity may issue depository directives;

- l) provide for the manner in which a participant shall hold and commission securities;
- m) provide for the approval by the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity of a nominee of a participant;
- n) provide that no participant may open a securities account or a central securities account for a person whom the participant believes or suspects requires approval as a nominee without having taken reasonable measures to ascertain that such person has the necessary approval;
- o) provide for supervisory measures that enable the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity to comply with the provisions of this Bill and Rules made thereunder;
- p) provide for the manner in which complaints against a participant or officer or employee of a participant shall be addressed;
- q) provide for a process whereby complaints by participants against the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity in respect of the exercise of functions by the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity

- may be made, considered and responded to;
- r) provide for the authority of, and the manner in and circumstances under which a Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity or participant may terminate transactions on the commencement of insolvency proceedings;
 - s) provide for-
 - i) arrangements in relation to the administration of securities held for own account or on behalf of a client by a participant.
 - ii) arrangements in relation to the administration of dividends and other payments made by issuers for the benefit of participants or clients; and
 - iii) the manner in which a shortfall in securities in the securities account or central securities account shall be apportioned amongst the persons whose securities are held in such account; under insolvency proceedings in respect of that participant;
 - t) provide for the manner in which a participant is required to conduct the securities services for which it is authorised;
 - u) provide for the manner in which the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity monitors compliance by

	<p><u>its participants with this Bill and any Rules made thereunder, the Custody and Depository, Clearing and Settlement, Central Counterparty or Trade Repository Entity rules and the depository directives.</u></p>	
<p><u>C – Custody and Depository Entities</u></p>		
<p><u>Proposed new Section 49</u></p>	<p><u>Proposed new Section 49- Effect of instructions against third parties</u> <u>Any issuance, deposit, withdrawal, transfer, attachment, pledge, or other instruction in respect of securities or an interest in securities that has become effective against third parties, is effective against the insolvency administrator and creditors in any insolvency proceeding.</u></p>	
<p><u>Proposed new Section 50</u></p>	<p><u>Proposed new Section 50 - Nominee</u> (1) (a) <u>A nominee of an authorized user shall be registered as a nominee by a securities exchange in terms of the securities exchange rules and comply with the requirements set out in the rules.</u> (b) <u>A nominee of a participant shall be registered as a nominee by the Custody and Depository Entity in terms of Custody and Depository Entity rules and comply with the requirements set out in the rules.</u> (2) <u>The criteria for the approval of a nominee of an authorised user or a participant shall be equivalent to that applied by the Commission when approving a nominee under subsection (3)</u> (3) a) <u>The Commission may prescribe</u></p>	

	<p><u>requirements for-</u></p> <ul style="list-style-type: none"> i) <u>the approval of a nominee that is not registered as a nominee in terms of subsection (1); and</u> ii) <u>registered nominees.</u> <p>b) <u>The Commission shall maintain a list of all nominees registered under this section.</u></p>	
<p><u>Proposed new Section 51</u></p>	<p><u>Proposed new Section 51 -</u></p> <p>(1) <u>No order shall be made pursuant to any Bankruptcy Act -or the Companies and Allied Matters Act in relation to any matter under subsection (2).</u></p> <p>(2) <u>The matters to which subsection (1) apply are–</u></p> <ul style="list-style-type: none"> a) <u>a market contract;</u> b) <u>a disposition of property pursuant to a market contract;</u> c) <u>the provision of market collateral;</u> d) <u>a contract effected by a registered Custody and Depository Entity for purposes of realising property provided as market collateral;</u> e) <u>a disposition of property in accordance with the rules of an registered clearing house as to the application of property provided as market collateral;</u> f) <u>a market charge; and</u> g) <u>any default proceedings</u> 	
<p><u>Proposed new Section 52</u></p>	<p><u>Proposed new Section 52</u></p> <p>(1) <u>If a participant (“the first participant”) sells</u></p>	

securities at an overvalue to, or purchases securities at an undervalue from, another participant (“the second participant”) in circumstances as described in subsection (3), and thereafter an official receiver or liquidator acts for–

- a) the second participant;
 - b) the principal of the second participant in the sale or purchase; or
 - c) the estate of the second participant or of the person referred to in paragraph (b), then, unless a court otherwise orders, the official receiver or liquidator may recover, from the first participant, or the principal of the first participant, an amount equal to the identified gain obtained under the sale or purchase by the first participant, or the principal of the first participant.
- 2) The amount equal to the identified gain is recoverable even if the sale or purchase may have been discharged according to the rules of an registered clearing house and replaced by a market contract.
- 3) The circumstances referred to in subsection (1) for a sale or purchase shall be when–
- a) an identified event has occurred in relation to the second participant or the principal of the second participant; and
 - b) either–
 - i) the first participant knew, or ought reasonably to have known that an identified event was likely to occur

in relation to the second participant or the principal of the second participant; or

ii) the principal of the first participant knew, or ought reasonably to have known that an identified event was likely to occur to the second participant or the principal of the second participant and the identified event occurs within the period of six months immediately after the date on which the sale or purchase was entered into.

4) In this section—

a) “identified event”, in relation to a second participant or a person who is or was, in respect of a sale or purchase referred to in subsection (1), the principal of the second participant, means—

i) an act of bankruptcy committed by the second participant or the principal of the second participant, as the case may be;

ii) a meeting of creditors summoned in relation to the second participant or the principal of the second participant, as the case may be, pursuant to section 472 of the Companies and Allied Matters Act, 1990; or

iii) the presentation of a petition for the winding up of the second participant

	<p><u>or the principal of the second participant, as the case may be, by a court;</u></p> <p>b) <u>“identified gain”, in relation to a sale or purchase referred to in subsection (1), means the difference between the market value of the securities which is the subject of the sale or purchase and the value of the consideration for the sale or purchase as at the time the sale or purchase was entered into.</u></p>	
<p><u>Proposed new Section 53</u></p>	<p><u>Proposed new Section 53</u></p> <p>(1) <u>A court shall not, pursuant to any enactment or rule of law, recognize or give effect to—</u></p> <p>a) <u>any order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Nigeria; or</u></p> <p>b) <u>any act of a person appointed in such a place to perform any function under the law of insolvency in such place, insofar as the making of the order or the doing of the act would be prohibited in the case of a court within Nigeria or an official receiver or liquidator by provisions made by or under this Act.</u></p> <p>2) <u>In this section, “law of insolvency”, in relation to a place outside Nigeria, means any law of such place which is similar to, or serves the same purposes as, all or any part of the law of insolvency in Nigeria.</u></p>	

Proposed new Section 54

Proposed new Section 54

(1) Where-

- a) a participant in his capacity as such enters into any transaction (including a market contract) with a registered Custody and Depository Entity house; and
- b) but for this subsection, the participant would be a party to that transaction as agent, then, notwithstanding any provision under any law, as between, but only as between, the registered clearing house and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any civil action, claim or demand)-
 - i) be deemed not to be a party to that transaction as agent; and
 - ii) be deemed to be a party to that transaction as principal.

2) Where-

- a) two or more participants in their capacities as such enter into any transaction; and
- b) but for this subsection, any such participant would be a party to that transaction as agent,
then, notwithstanding any provision under any law, any such participant to whom paragraph(b) applies shall for all purposes (including any civil action, claim or

	<p>demand), <u>except as between, but only as between, him and the person who is his principal in respect of the transaction–</u></p> <ul style="list-style-type: none"> i) <u>be deemed not to be a party to that transaction as agent; and</u> ii) <u>be deemed to be a party to that transaction as principal.</u> 	
--	---	--

D-Self Regulatory Organisations

<p><u>Proposed new Section 55</u></p>	<p><u>Proposed new Section 55</u></p> <p><u>(1) The Commission shall have power to recognize any entity, trade group or association in the Nigerian capital market as a self-regulatory organization, and may register an entity, trade group or association if it is satisfied that the entity, trade group or association –</u></p> <ul style="list-style-type: none"> <u>(a) has sufficient technical, human, financial and other resources to carry out its function</u> <u>(b) has rules which set standards of conducts amongst members</u> <u>(c) has a curriculum for training, development and certification of its members, where applicable</u> <u>(d) has a framework for the resolution of disputes between its members and between its members and their clients</u> <u>(e) is able to take appropriate action against its erring members</u> 	
--	---	--

	<p>(f) <u>satisfies such other conditions or requirements as may be stipulated by the Commission.</u></p>	
<p><u>Proposed new Section 56</u></p>	<p><u>Proposed new Section 56</u> <u>A self-regulatory organization shall:</u></p> <p>(a) <u>at all times act with a view to ensuring the integrity of the market, the protection of investors and in the public interest</u></p> <p>(b) <u>supervise the conduct of its members with a view to ensuring fair, orderly and efficient market.</u></p> <p>(c) <u>immediately notify the Commission if it becomes aware of any matter which adversely affects or is likely to adversely affect the interests of the market or the investing public; and any contravention by its members of this Bill or rules made thereunder</u></p> <p>(d) <u>not make a decision under its rules that adversely affects the rights of an entity unless it has given the affected entity an opportunity to make representations to it about the matter.</u></p>	
<p><u>Proposed new Section 57</u></p>	<p><u>Proposed new Section 57</u> <u>(1)The rules of a Self Regulatory Organization shall make satisfactory provisions to:</u></p> <p>i) <u>promote investor protection;</u></p>	

- | | | |
|--|--|--|
| | <ul style="list-style-type: none">ii) <u>promote fair treatment of its members and any entity who applies for membership;</u>iii) <u>exclude an entity who is not fit and proper from being its member or being appointed as its chief executive, director or officer;</u>iv) <u>promote proper regulation and supervision of its members;</u>v) <u>promote appropriate standards of conduct of its members;</u>vi) <u>ensure that there is a fair representation of members in its governing body;</u>vii) <u>ensure that its members and officers duly comply with this Bill, regulations and guidelines issued by the Commission</u>viii) <u>expel, suspend, discipline or sanction a member in the event a member contravenes the provisions of this Bill, rules made thereunder and guidelines issued by the Commission and where relevant, the rules of the securities exchange approved clearing house or central depository; and</u> | |
|--|--|--|

	<p>ix) <u>allow an aggrieved member to appeal against any decision of the registered self-regulatory organization.</u></p> <p><u>(2) When a registered self-regulatory organization expels, or suspends any member, or otherwise disciplines any of its members, it shall, within seven days, give to the Commission in writing the following particulars:</u></p> <p><u>(a) the name of the member;</u></p> <p><u>(b) the reason for and the nature of the action taken;</u></p> <p><u>(c) the amount of the fic;</u></p> <p><u>(d) the period of suspension, if any; and</u></p> <p><u>(e) any other disciplinary action taken</u></p>	
<p><u>Proposed new Section 58</u></p>	<p><u>Proposed new Section 58 – Conflict of interest</u></p> <p><u>(1) Where the Commission is satisfied that–</u></p> <p><u>(a) a conflict exists or may come into existence between the interest of a registered self-regulatory organization or its members and the interest of the proper performance of the functions or duties conferred by this Bill, its rules or any guidelines issued by the</u></p>	

	<p><u>Commission</u></p> <p><u>(b) such a conflict of interest has occurred or has existed in circumstances that make it likely that the conflict of interest will continue or be repeated; or</u></p> <p><u>(c) the self-regulatory organization has failed to carry out its functions or discharge its duties under this Bills or rules issued thereunder by the Commission;</u></p> <p><u>the Commission may serve a written notice on the self-regulatory organization stating the reasons in support of the ground for the notice and direct the self-regulatory organization to forthwith take such steps as are specified in the notice, including steps in relation to any of its affairs, business or property for the purposes of managing the conflict of interest or the matters occasioning the conflict of interest and the satisfactory carrying out of its functions and satisfactory discharge of its duties.</u></p> <p><u>(2) A notice served under subsection (1) shall take effect immediately.</u></p>	
<p><u>PART VI – REGISTRATION AND REGULATION OF CAPITAL MARKET OPERATORS</u></p>	<p><u>PART VI – REGISTRATION AND REGULATION OF CAPITAL MARKET OPERATORS</u></p>	

<p><u>Current Section 38 Proposed New Section 59 – Registration of Capital Market Operators</u></p> <p>(1). No persons shall-</p> <p>(a) operate in the Nigerian capital market as an expert or professional or in any other capacity as may be determined by the Commission; or</p> <p>(b) carry on investments and securities business unless the person is registered in accordance with this Act and the rules and regulations made thereunder.</p> <p>(2) The Commission shall prescribe the conditions for registration including the level of knowledge and skill required to operate in the capital market</p> <p>(3) An application for registration under this part of this Act shall be in the manner and upon payment of the fees prescribed by the Commission.</p>	<p><u>Proposed New Section 59 – Registration of Capital Market Operators</u></p> <p>(1). No person shall-</p> <p>(a) operate in the Nigerian capital market as an expert or professional or in any other capacity as may be determined by the Commission; or</p> <p>(b) carry on investments and securities business;</p> <p>(c) <u>provide financial advisory services in the Nigerian capital market;</u></p> <p>unless the person is registered in accordance with this Bill and the rules and regulations made thereunder;</p> <p>(2) The Commission shall prescribe the conditions for registration including the level of knowledge and skill required to operate in the <u>Nigerian</u> capital market</p> <p>(3) An application for registration under this part of this <u>Bill</u> shall be in the manner and upon payment of the fees prescribed by the Commission.</p> <p><u>(4) No capital market operator shall aid, sponsor, or conceal the operation of an unregistered person as a professional or expert in the Nigerian capital market.</u></p>	
--	---	--

<p>(4) The Commission may by order suspend or cancel a certificate of registration in the manner prescribed but no order under this subsection shall be made unless the person concerned has been given a reasonable opportunity of being heard.</p> <p>(5) Where the Commission, after giving an officer of a capital market operator, an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with the provisions of this Act or any regulations made there under, the Commission may suspend or remove</p>	<p><u>(5) Any person who violates the provisions of subsection (1) and (4) commits an offence and is liable on conviction to a fine of not less than N5,000,000 or to a term of imprisonment not less than three years or to both such fine and imprisonment;</u></p> <p><u>(6) The Commission may, in lieu of a prosecution under subsection (5) of this section, impose a penalty of not less than N5,000,000 and a further sum of N100,000 for every day the violation continues.</u></p> <p>(4) to (6) recommended for deletion</p>	
--	---	--

<p>that officer from office.</p> <p>(6) Where the Commission, after giving an officer of a capital market operator an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with any provision of this Act or any regulations made thereunder, the Commission may in the public interest or for the protection of investors, direct the capital market operator to suspend or remove the officer from office and where the capital market operator fails to comply with the directive of the Commission, the Commission may suspend or remove the officer from office.</p>		
<p><u>Current Section 49 Proposed New Section 60 – Money in trust account not available for payment of debt</u></p> <p>(1) A capital market operator shall not except as otherwise provided in this part of this Act pay his debts with any money held in a trust account.</p>	<p><u>Section 60 – Money in trust account not available for purposes other than purpose of the trust</u></p> <p>(1) A capital market operator shall not except as otherwise provided in this part of this <u>Bill utilize</u> any money held in a trust account <u>for purposes other than the purpose of the trust.</u></p>	

<p>(2) Monies held in a trust account shall be liable to be paid or taken in execution of an order of a court or tribunal.</p>		
<p><u>Current Section 39 Proposed New Section 61– Accounts to be kept by capital market operator.</u></p> <p>(1) A capital market operator shall keep or cause to be kept such accounting and other records-</p> <p>(a) as shall sufficiently show and explain the transactions and financial position of his business and enable true and fair profit and loss accounts and balance sheets to be prepared, regularly; and</p> <p>(b) in a manner that will enable them to be conveniently and properly audited.</p> <p>(2) A capital market operator shall be deemed not to have complied with subsection (1) of this section in relation to records unless the accounting and other records of the capital market operator –</p>	<p><u>Proposed New Section 61– Accounts to be kept by capital market operator.</u></p> <p>(1) to (3) retained</p>	

(a) are kept in sufficient detail to show particulars of-

(i) all monies received or paid by the capital market operator, including monies paid to or disbursed from a trust account,

(ii) all purchases and sales of securities made by the capital market operator, the charges and credits arising from them, and the names of the buyers and sellers, respectively of each of those securities,

(iii) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid by the capital market operator,

(iv) all the assets and liabilities (including contingent liabilities) of the capital market operator,

(v) all securities which are the property of the capital market operator showing by whom the securities or the documents of title to the securities are held and, where they are held by some other person, whether or not they are

held as securities against loans or advances,

(vi) all securities that are not the property of the capital market operator and for which the dealer or any nominee controlled by the security dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as securities for loans or advances made to the capital market operator,

(vii) all purchases and sales of options made by the capital market operator and all fees (being options monies) arising from them,

(viii) all arbitrage transactions entered into by the capital market operator; and

(ix) all underwriting transactions entered into by the capital market operator.

(b) are kept in sufficient detail to show particulars of every transaction by the capital market operator;

(c) specify the day on which or the period during which each transaction by the capital market operator took place; and

(d) contain copies of acknowledgements of the receipt of securities or of documents of title to securities received by the capital market operator from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

(3) Without prejudice to subsection (2) of this section, a capital market operator shall keep records in sufficient detail to show particulars of all transactions by the capital market operator with or for the account of-

(a) clients of the capital market operator;

(b) the capital market operator himself; and

(c) employees of the capital market operator.

(4) A capital market operator who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine of not less than ₦500,000 or to a term of imprisonment of not less than one year or to both such fine and imprisonment.

(5) The Commission may, in lieu of prosecution for the offence prescribed in subsection (4) of this section, sanction a capital market operator who violates the provisions of this section by imposing a penalty of not less than ₦500,000 and a further sum of not less than ₦5,000 for every day in which the violation continues.

(4). A capital market operator shall preserve the records and information required by this section for 7 years.

(5). A capital market operator who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine of not less than **₦2,000,000** or to a term of imprisonment of not less than one year or to both such fine and imprisonment.

(6) The Commission may, in lieu of prosecution for the offence prescribed in subsection (4) of this section, sanction a capital market operator who violates the provisions of this section by imposing a penalty of not less than **₦2,000,000** and a further sum of not less than ₦5,000 for every day in which the violation continues.

<p><u>Current Section 40 Proposed New Section 62 – Maintenance of separate accounts and payment into certain trust accounts.</u></p> <p>(1) A capital market operator shall maintain separate accounts for transactions carried out on behalf of different clients.</p> <p>(2) No capital market operator shall mix the proceeds of the account of a client with other accounts whether belonging to the capital market operator or his clients.</p> <p>(3) A capital market operator shall establish and keep in a bank or banks one or more trust accounts to be designated or evidenced as trust accounts, into which the capital market operator shall pay-</p> <p>(a) all amounts (less any brokerage and other proper charges) received from or on account of any person (other than a capital market operator) for the purchase of securities which</p>	<p><u>Proposed New Section 62 – Maintenance of separate accounts and payment into certain trust accounts.</u></p> <p>Retained</p> <p><u>(2) Except as may be otherwise provided in the rules and regulations made pursuant to this Bill, no</u> capital market operator shall mix the proceeds of the account of a client with other accounts whether belonging to the capital market operator or his clients.</p> <p>(3) and (4) retained</p>	
---	---	--

are not attributable to securities delivered to capital market operator; and

(b) all amounts (less any brokerage and other proper charges) received for or on account of any person (other than a capital market operator) from the sale of securities which are not paid to that person or as that person directs not later than the next banking business day following the day on which they were received by the capital market operator.

(4) The payment of amounts required by subsection (3) of this section to be made by a capital market operator shall be made by the capital market operator not later than the next banking business day following the day on which the amounts were received by the capital market operator.

(5) A capital market operator who contravenes or fails to comply with any of the provisions of this section is liable to a penalty of ₦100,000

(5) A capital market operator who contravenes or fails to comply with any of the provisions of this section is liable to a penalty of ₦2,000,000 and a further sum of

<p>and a further sum of ₪5,000 for every day the violation continues.</p>	<p>₪5,000 for every day the violation continues.</p>	
<p><u>Current Section 41 Proposed New Section 63 – Penalty for withdrawing money from trust account without authority.</u></p> <p>(1) A capital market operator who withdraws money from a trust account without the requisite authority commits an offence and is liable on conviction to a fine of not less than ₪500,000 or to a term of imprisonment not less than one year or to both such fine and imprisonment.</p> <p>(2) For the purpose of subsection (1) of this section, a withdrawal from a trust account shall be deemed to be without requisite authority where the withdrawal is made for a purpose other than-</p> <p>(a) to pay the person entitled to the payment;</p> <p>(b) to defray brokerage and other proper charges; or</p> <p>(c) as may otherwise be authorised by</p>	<p><u>Proposed New Section 63 – Penalty for withdrawing money from trust account without authority</u></p> <p>(1) A capital market operator who withdraws money from a trust account without the requisite authority commits an offence and is liable on conviction to a fine of not less than ₪5,000,000 or to a term of imprisonment not less than 3 years or to both such fine and imprisonment.</p> <p>(2) retained</p>	

<p>law.</p> <p>(3)The Commission may, in lieu of prosecution for the offence prescribed under subsection (1) of this section, sanction a capital market operator who violates the provisions of this section by imposing a penalty of not less than ₦500,000.</p> <p>(4) In addition to the penalty prescribed under subsection (3) of this section, the Commission shall direct the capital market operator to refund the monies received together with the interest thereon at a rate to be determined by the Commission.</p> <p>(5) A capital market operator who, withdraws money from a trust account with intent to defraud, commits an offence and is liable on conviction to a fine of not less than ₦500,000 or to imprisonment for a term of not less than one year or to both such fine and imprisonment.</p>	<p>(3) The Commission may, in lieu of prosecution for the offence prescribed under subsection (1) of this section, sanction a capital market operator who violates the provisions of this section by imposing a penalty of not less than ₦5,000,000.</p> <p>(4) retained</p> <p>(5) A capital market operator who, withdraws money from a trust account with intent to defraud, commits an offence and is liable on conviction to a fine of not less than ₦5,000,000 or to imprisonment for a term of not less than 3 years or to both such fine and imprisonment.</p>	
--	--	--

=

<p><u>Current Section 43 Proposed New Section 64 – Claims and lien not affected.</u></p> <p>Nothing in this section shall be construed as taking away or affecting any lawful claim or lien which a person may have against or upon any monies held in a trust account or against or upon any monies received for the purchase of securities or from the sale of securities before such monies are paid into a trust account.</p>	<p><u>Proposed New Section 64 – Claims and lien not affected.</u></p> <p>Provision retained</p>	
<p><u>Current Section 44 Proposed New Section 65 – Right to copies of book entries of transactions and to inspect contract notes.</u></p> <p>(1) A capital market operator or depository shall supply on demand to his client copies of all entries in his books relating to any transaction carried out on behalf of that client,</p>	<p><u>Proposed New Section 65 – Right to copies of book entries of transactions and to inspect contract notes.</u></p> <p>Provision retained</p>	

<p>and he shall be entitled to levy a reasonable charge thereof.</p> <p>(2) A client or any person authorised by the client shall be entitled at any time, free of charge either personally or by his agent, to inspect any contract notes and vouchers relating to the said transaction.</p>		
<p><u>Current Section 56 Proposed New Section 66 – Register of securities.</u></p> <p>(1) A capital market operator shall keep a register, in the prescribed form, of the securities in which he has an interest.</p> <p>(2) Particulars of the securities in which a capital market operator has an interest shall be entered in the register within 7 days of the acquisition of the interest.</p> <p>(3) Where a change in securities (not being a prescribed change) occurs in the interest of a person to whom this part of this Act applies, he shall, within 7 days after the change, enter in the register full particulars of the change, including</p>	<p><u>Proposed New Section 66 – Register of securities</u></p> <p>(1) and (2) retained</p> <p>(3) Where a change in securities (not being a prescribed change) occurs in the interest of a person to whom this part of this Bill applies, he shall, within 7 days after the change, enter in the register full particulars of the change, including the date of the change and the reason</p>	

<p>the date of the change and the reason for the change.</p> <p>(4) For the purposes of this subsection, an acquisition or disposal of securities, shall be deemed to be a change in the interest of any person.</p> <p>(5) The Commission may by order extend the provisions of subsection (1) of this section to include any other person whose activities are connected with securities transactions.</p>	<p>for the change.</p> <p>Retained</p> <p>(5) The Commission may extend the provisions of subsection (1) of this section to include any other person whose activities are connected with securities transactions.</p>	
<p><u>Current Section 57 Proposed New Section 67– Particulars of register.</u></p> <p>(1) A capital market operator to whom this part of this Act applies shall, in the prescribed form, give notice to the Commission of such particulars relating to the register of securities as may be prescribed including the location of the register.</p> <p>(2) The notice required to be given under subsection (1) of this section shall be given</p> <p>(a) in the case of a person who is required by this Act to hold a Commission's registration</p>	<p><u>New Section 67</u></p> <p>(1) A capital market operator to whom this part of this Bill applies shall, in the prescribed form, give notice to the Commission of such particulars relating to the register of securities as may be prescribed including the location of the register.</p> <p>(2) The notice required to be given under subsection (1) of this section shall be given</p> <p>(a) in the case of a person who is required by this Bill to hold a Commission's registration Certificate, on his application for the</p>	

<p>Certificate, on his application for the Certificate; and</p> <p>(b) in any other case, within 14 days after becoming a person to whom this part of this Act applies.</p> <p>(3) A person to whom this part of this Act applies shall, within 14 days of his ceasing to be such a person give to the Commission the notice required under subsection (1) of this section and the notice of the cessation.</p> <p>(4) A person who fails or neglects to give the notice required under this section commits an offence and is liable on conviction to a fine not less than ₹100,000 or to a term of imprisonment not less than six months or to such fine and imprisonment.</p> <p>(5) The Commission may, in lieu of a prosecution under subsection (4) of this section, impose a penalty of not less than ₹100,000 and a further sum of not less than ₹5,000 for every day violation continues</p>	<p>Certificate; and</p> <p>(b) in any other case, within 14 days after becoming a person to whom this part of this <u>Bill</u> applies.</p> <p>(3) A person to whom this part of this <u>Bill</u> applies shall, within 14 days of his ceasing to be such a person give to the Commission the notice required under subsection (1) of this section and the notice of the cessation.</p> <p>(4) A person who fails or neglects to give the notice required under this section commits an offence and is liable on conviction to a fine not less than <u>₹1,000,000</u> or to a term of imprisonment not less than six months or to such fine and imprisonment.</p> <p>(5) The Commission may, in lieu of a prosecution under subsection (4) of this section, impose a penalty of not less than <u>₹1,000,000</u> and a further sum of not less than ₹5,000 for</p>	
--	---	--

	every day violation continues.	
<p><u>Current Section 58 Proposed New Section 68 – Particulars of securities.</u></p> <p>(1) The Commission or any person authorised by it in that behalf may require any person to whom this part of this Act applies to produce for inspection, the register required to be kept pursuant to section 56 of this Act and the Commission or any person so authorised may take extracts there from.</p> <p>(2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) of this section to make a copy of or take extracts from the register commits an offence and is liable on conviction to a fine of not less than ₦50,000 or for a term of imprisonment of not less than six months or to both fine or imprisonment.</p> <p>(3) The Commission may, in lieu of a prosecution under subsection (2) of</p>	<p><u>Proposed New Section 68 – Particulars of securities.</u></p> <p>(1) The Commission or any person authorised by it may require any person to whom this part of this Bill applies to produce for inspection, the register required to be kept pursuant to section 66 of this Bill and the Commission or any person so authorised may take extracts there from.</p> <p>(2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) of this section to make a copy of or take extracts from the register commits an offence and is liable on conviction to a fine of not less than ₦500,000 or for a term of imprisonment of not less than six months or to both fine or imprisonment.</p> <p>(3) The Commission may, in lieu of a prosecution under subsection (2) of this section, impose a</p>	

<p>this section, impose a penalty of not less than ₦100,000 and a further sum of ₦5,000 for every day during which the violation continues.</p>	<p>penalty of not less than <u>₦500,000</u> and a further sum of ₦5,000 for every day during which the violation continues.</p>	
<p><u>Current Section 59 Proposed New Section 69 – Extracts of register.</u></p> <p>The Commission may supply a copy of the extract of a register obtained under subsection (1) of section 58 of this Act to any person who, in the opinion of the Commission, should in the public interest be informed of the dealings in securities disclosed in the register.</p>	<p><u>Proposed New Section 69 – Extracts of register</u></p> <p>The Commission may supply a copy of the extract of a register obtained under subsection (1) of section <u>68</u> of this <u>Bill</u> to any person who, in the opinion of the Commission, should in the public interest be informed of the dealings in securities disclosed in the register.</p>	
<p><u>PART VII – INSPECTIONS AND INVESTIGATIONS</u></p>	<p><u>PART VII – INSPECTIONS AND INVESTIGATIONS</u></p>	
<p><u>Current Section 45 Proposed New Section 70 – Designation of officers of the Commission for supervision of certain capital market operators.</u></p> <p>(1)The Commission shall conduct routine and special inspection and investigation of capital market operators.</p> <p>(2)There shall be an officer of the Commission who shall be assigned responsibility for the inspection and</p>	<p><u>Proposed New Section 70 – Designation of staff of the Commission for supervision of capital market operators.</u></p> <p>(1) The Commission shall conduct routine and special inspection and investigation of capital market operators.</p> <p>(2) <u>The Commission shall have designated staff</u> who shall be assigned responsibility for the inspection and investigation of capital market</p>	<p>The use of the word ‘<i>officers</i>’ has been changed to ‘<i>staff</i>’ for consistency with other parts of this Act, where employees of the Commission are referred to as ‘<i>staff</i>’.</p>

<p>investigation of capital market operators to which this part applies.</p> <p>(3)The officer shall carry on supervisory duties in respect of affected capital market operators and for that purpose shall-</p> <p>(a) under conditions of confidentiality, examine periodically the books and affairs of each capital market operators;</p> <p>(b) have a right of access at all times to the books, accounts and vouchers of capital market operators;and</p> <p>(c) require from directors, managers and officers of capital market operators such information and explanation as he may deem necessary to the performance of his duties under this Act.</p> <p>(4)The Commission shall where necessary, appoint other officers of the Commission to assist the officer designated under subsection (2) of this section.</p>	<p>operators.</p> <p>(3) The <u>designated staff</u> shall carry on supervisory duties in respect of capital market operators and for that purpose shall-</p> <p>(a) under conditions of confidentiality, examine periodically the books and affairs of each capital market operator;</p> <p>(b) have a right of access at all times to the books, accounts and vouchers of capital market operators; and</p> <p>(c) require from directors, managers and <u>staff</u> of capital market operators such information and explanation as he may deem necessary to the performance of his duties under this <u>Bill</u>.</p> <p>Recommended for deletion</p>	<p>It is recommended that the word ‘affected’ be deleted as all capital market operators are subject to supervision and inspection by the Commission.</p>
---	---	---

<p>(5)The officers may be designated examiners or have other titles as the Commission may specify.</p> <p>(6)For the purpose of this part, references to examiners are references to the officers referred to in subsections (2) and (4) of this section.</p> <p>(7) In examining the affairs of any capital market operator under this Act, an examiner shall at all times avoid unreasonable hindrance to the daily business of the capital market operator.</p> <p>(8) Every capital market operator shall produce to the examiners at such times as the examiners may specify, all books, accounts, documents and information which they may require.</p> <p>(9) This part of this Act applies to any capital market operator who is involved in the administration, management or custody of funds for or on behalf of clients including the</p>	<p>(4) The <u>staff</u> may be designated examiners or have other titles as the Commission may specify <u>for the purpose of such inspections and investigations of capital market operators.</u></p> <p><u>(5)</u> For the purpose of this part, references to examiners are references to the <u>staff</u> referred to in subsection (2) of this section.</p> <p><u>(6)</u> In examining the affairs of any capital market operator under this <u>Bill</u>, an examiner shall at all times avoid unreasonable hindrance to the daily business of the capital market operator.</p> <p>Retained as (7)</p> <p><u>(8)</u> This part <u>shall also apply to an associated person as defined in this Bill.</u></p>	
---	---	--

<p>management and operation of a collective investment scheme or the soliciting of investment in a collective investment scheme.</p>		
<p><u>Current Section 46 Proposed New Section 71 – Routine examination and report</u> The Commission shall, in the case of routine examination, forward a copy of the report arising from the examination together with the recommendations of the Commission, to the capital market operator concerned with instruction that it be placed before the meeting of the board of directors of the capital market operator specially convened for the purpose of considering the report and the recommendations thereon.</p>	<p><u>Proposed New Section 71 – Routine examination and report</u> The Commission shall, in the case of routine examinations, forward a copy of the report arising from the examination together with the recommendations of the Commission, to the capital market operator concerned with instruction that it be placed before the meeting of the board of directors of the capital market operator specially convened for the purpose of considering the report and the recommendations thereon.</p>	

<p><u>Current Section 47 Proposed New Section 72 – Special examination</u></p> <p>(1) The Commission shall order a special examination or investigation of the books and affairs of a capital market operator where it is satisfied that-</p> <p>(a) it is in the public interest to do so;</p> <p>(b) the capital market operator has been carrying on its business in a manner detrimental to the interest of its clients, beneficiaries and creditors;</p> <p>(c) the capital market operator has “insufficient” assets to cover its liabilities to the clients, beneficiaries and creditors;</p> <p>(d) the capital market operator has been contravening the provisions of this Act; or</p> <p>(e) an application is made therefore by-</p> <p>(i) a director or shareholder of the capital market operator;</p> <p>(ii) a client, beneficiary or creditor of the capital market operator;</p> <p>Provided that in the case of paragraph (e) of this subsection, the Commission may not order a special</p>	<p><u>New Section 72 – Special examination</u></p> <p>(1) Retained</p> <p>(d) the capital market operator has been contravening the provisions of this Bill; or</p> <p>(e) retained</p>	
--	--	--

<p>examination or investigation of the books and affairs of a capital market operator if the Commission is satisfied that it is not necessary to do so.</p> <p>(2) For the purpose of subsection (1) of this section, the Commission shall appoint one or more qualified persons other than the officers of the Commission to conduct special examination or investigation, under conditions of confidentiality, of the books and affairs of the capital market operator.</p> <p>(3) Nothing in this section or in any other section of this Act shall be construed as precluding the Commission from appointing one or more officers of the Commission as examiner apart from those mentioned under <u>section 70</u> of this Act and ascribing to such officers such other designations as it deems fit, and from directing or requiring all or any of the officers to exercise all or any of the powers of the Commission under this Act.</p>	<p>(2) For the purpose of subsection (1) of this section, the Commission <u>may</u> appoint one or more qualified persons other than the <u>designated staff</u> of the Commission to conduct special examination or investigation, under conditions of confidentiality, of the books and affairs of the capital market operator.</p> <p>Recommended for deletion</p>	<p>Sub section (3) is recommended for deletion as it is redundant in view of the amendment above which has amended the word ‘officer’ to ‘staff’ and has expanded the use of the word ‘staff’ to include other designated staff.</p>
---	---	--

Current Section 48 Proposed New Section 73 – Failing capital market operator

(1) Where, after an examination under section 49 of this Act or otherwise howsoever, the Commission is satisfied that the capital market operator is in a grave situation as regards the matters referred to under subsection (1) of section 49, or the capital market operator informs the Commission that-

- (a) it is likely to become unable to meet its obligations under this Act;
- (b) it is about to suspend its obligations to any extent; or
- (c) it is insolvent; the Commission may ~~by order in writing~~ exercise any one or more of the powers specified in subsection (2) of this section.

(2) The Commission may by order in writing pursuant to subsection (1) of this section-

- (a) prohibit the capital market operator from the public for a period as may be ~~set out in the order~~, and make the prohibition subject to such

New Section 73 – Failing capital market operator

(1) Where, after an examination under section 74 of this **Bill** or otherwise, the Commission is satisfied that the capital market operator is in a grave situation as regards the matters referred to under subsection (1) of section 74, or the capital market operator informs the Commission that-

- (a) it is likely to become unable to meet its obligations under this **Bill**;
- (b) it is about to suspend its obligations to any extent; or
- (c) it is insolvent; the Commission may exercise any one or more of the powers specified in subsection (2) of this section.

(2) **Pursuant to subsection (1) of this section, the** Commission may -

- (a) prohibit the capital market operator from receiving funds or other assets from the public for a period as may be **prescribed by the Commission**, and make the prohibition subject

Although an order is a directive, it is recommended that the use of the word ‘order in writing’ should be deleted as reference to orders by the Commission has been misconstrued to mean an order of Court thereby frustrating attempts by the Commission to effectively regulate the market.

<p>exceptions, and impose such conditions in relation to the exceptions as may be set out in the order, and from time to time, by further order similarly made, extend the period;</p> <p>(b) require the capital market operator to take any steps or any action or to do or not to do any act or thing whatsoever, in relation to the capital market operator or its business or its directors or officers which the Commission may consider necessary and which is set out in the order, within such times as may be stipulated therein;</p> <p>(c) remove for reasons to be recorded in writing, with effect from such date as may be set out in the order, any manager or officer of the capital market operator, notwithstanding anything in any written law, or any limitations contained in the memorandum and articles of association of the capital market operator;</p> <p>(d) in respect of a capital market operator, notwithstanding anything in any written law or any limitations</p>	<p>to such exceptions, and impose such conditions in relation to the exceptions as may be set out <u>by the Commission, provided that the Commission may</u> extend the period <u>from time to time</u>;</p> <p>(b) require the capital market operator to take any steps or any action or <u>to refrain from taking any step or action</u>, in relation to the capital market operator or its business or its directors or officers which the Commission may consider necessary within such times as may be stipulated therein;</p> <p>(c) remove for reasons to be recorded in writing, with effect from such date as may be set out in the <u>notice</u>, any manager or officer of the capital market operator, notwithstanding anything in any written law, or any limitations contained in the memorandum and articles of association of the capital market operator;</p> <p>(d) retained</p>	<p>Amendment recommended for clarity.</p>
---	---	---

<p>contained in the memorandum and articles of association of the capital market operator, and in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors, and for reasons to be recorded in writing-</p> <p>(i) remove from office, with effect from such date as may be set out in the order, any director of the capital market operator; or</p> <p>(ii) appoint any person or persons to manage the affairs of the capital market operator in the interim, and provide in the order for the person or persons so appointed to be paid by the capital market operator such remuneration as may be set out in the order;</p> <p>(e) appoint any person to advise the capital market operator in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the capital market operator such remuneration as may be set out in the order.</p>	<p>(i) remove from office, with effect from such date as may be <u>specified by the Commission</u>, any director of the capital market operator; or</p> <p>(ii) appoint any person or persons to manage the affairs of the capital market operator in the interim, and provide for the person or persons so appointed to be paid by the capital market operator such remuneration as may be <u>determined by the Commission</u>;</p> <p>(e) appoint any person to advise the capital market operator in relation to the proper conduct of its business, and provide for the person so appointed to be paid by the capital market operator such remuneration as may be <u>determined by the Commission</u>.</p>	
<p><u>Current Section 49 Proposed New Section 74 – Control of failing capital market operator</u></p>	<p><u>Proposed New Section 74 – Control of failing capital market operator</u></p> <p>(1) If, after taking steps under section <u>73</u> of this</p>	

<p>(1) If, after taking steps under section 48 of this Act as in the opinion of the Commission may be appropriate in the circumstance, the state of affairs of the capital market operator concerned does not improve significantly, the Commission may assume control of the whole of the property and affairs of the capital market operator, carry on the whole of its business and affairs or assume control of such part of its property, business and affairs as the Commission considers necessary or appoint persons to do so on behalf of the Commission.</p> <p>(2) Where the Commission or an appointed person has assumed control of the business of a capital market operator in pursuance of subsection (1) of this section, the capital market operator shall submit its capital market business to the control of the Commission and shall provide the Commission or appointed person with such facilities as the Commission or the appointed person may require to carry on the business of the capital market</p>	<p><u>Bill</u> as in the opinion of the Commission may be appropriate in the circumstance, the state of affairs of the capital market operator concerned does not improve significantly, the Commission may assume control of the whole of the property and affairs of the capital market operator, carry on the whole of its business and affairs or assume control of such part of its property, business and affairs as the Commission considers necessary or appoint persons to do so on behalf of the Commission.</p> <p>(2) Where the Commission or an appointed person has assumed control of the business of a capital market operator in pursuance of subsection (1) of this section, the capital market operator shall submit its capital market business to the control of the Commission and shall provide the Commission or appointed person with such facilities as the Commission or the appointed person may require to carry on the business of the capital market operator. <u>All</u> capital market operators shall cooperate with the Commission at all times.</p>	
---	---	--

<p>operator and notwithstanding the provisions of this section, all capital market operators shall cooperate with the Commission at all times.</p>		
<p><u>Current Section 50 Proposed New Section 75 – Management of failing capital market operator</u></p> <p>(1) Where the Commission or an appointed person has assumed control of the business of a capital market operator pursuant to section 49 of this Act, the Commission or an appointed person shall remain in control of and continue to carry on the business of the capital market operator in the name and on behalf of the capital market operator until such time as-</p> <p>(a) the Commission is satisfied that adequate provision has been made for the repayment of investors; or</p> <p>(b) in the opinion of the Commission, it is no longer necessary for the Commission to remain in control of the business of the capital market operator.</p>	<p><u>Proposed New Section 75 – Management of failing capital market operator</u></p> <p>(1) Where the Commission or an appointed person has assumed control of the business of a capital market operator pursuant to section 74 of this Bill, the Commission or an appointed person shall remain in control of and continue to carry on the business of the capital market operator in the name and on behalf of the capital market operator until such time as-</p> <p>(a) and (b) retained</p>	

<p>(2) The cost and expenses of the Commission or the remuneration of an appointed person, as the case may be, shall be payable from the funds and properties of the capital market operator as a first charge on the funds of the capital market operator</p>	<p>retained</p>	
<p><u>Current Section 51 Proposed New Section 76 – Power of the Commission to revoke registration or apply to Court.</u></p> <p>Notwithstanding anything contained in any law or memorandum and articles of association of a capital market operator, where the Commission or an appointed person has, pursuant to an order under section 49 of this Act, assumed control of a capital market operator whose paid-up capital is lost or unrepresented by available assets, the Commission may-</p> <p>(a) make an order revoking the capital market operator's registration; and</p> <p>(b) apply to the Federal High Court for an order for the Commission or any</p>	<p><u>Proposed New Section 76 – Power of the Commission to revoke registration or apply to Court</u></p> <p>Notwithstanding anything contained in any law or memorandum and articles of association of a capital market operator, where the Commission or an appointed person has, pursuant to section 74 of this <u>Bill</u>, assumed control of a capital market operator whose paid-up capital is lost or unrepresented by available assets, the Commission may-</p> <p>(a) <u>revoke the registration of the</u> capital market operator; and</p> <p>Retained</p>	

<p>person nominated by the Commission to purchase or acquire the capital market operator for a nominal fee for the purpose of its restructuring</p>		
<p><u>Proposed new Section 77</u></p>	<p><u>Proposed new Section 77- Powers of Examiners in relation to Capital Market Operators</u></p> <p><u>(1) In carrying out an inspection or investigation of the affairs of a capital market operator, the examiner may</u></p> <p><u>(a)(i) summon any person who is or was a director, employee, partner or member, of the capital market operator and whom the examiner believes is in possession of or has under his control, any document relating to the affairs of the capital market operator, to lodge such document with the examiner or to produce such document, against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings;</u></p> <p><u>(ii) administer an oath or affirmation or otherwise examine any person who is or formerly was a director, employee or partner, of the capital market operator</u></p> <p><u>(b) at any time within normal working hours, without prior notice enter and search any premises occupied by the capital market operator and require the production of any document relating to the affairs of that capital market operator ;</u></p>	<p>The proposed new provisions provided under section (77) and (78) clearly sets out the powers of examiners in relation to capital market operators and other persons.</p>

	<p><u>(c) cause to be opened any strong room, safe or other container in which the examiner reasonably suspects any document of the capital market operator is kept;</u></p> <p><u>(d)examine and make extracts from and copies of any document of the capital market operator or, against the issue of a receipt, remove such document temporarily for that purpose;</u></p> <p><u>(e)against the issue of a receipt, seize any document of the capital market operator if the examiner is of the opinion that the document contains information relevant to the inspection; and</u></p> <p><u>(f) retain any seized document for as long as it may be required for any criminal or other proceedings.</u></p> <p><u>(2) Any capital market operator whose document has been removed or retained, or from whom a document has been seized, under subsection (1)(a) or (e) or his authorised representative, may examine and copy such document and make extracts therefrom under the supervision of the examiner.</u></p>	
<p><u>Proposed new Section 78</u></p>	<p><u>Proposed new Section 78- Powers of Examiners in relation to other persons</u></p> <p><u>(1)In relation to the inspection and investigation of the affairs of a capital market operator an examiner may:</u></p> <p><u>(a) (i) summon any person, if the examiner has</u></p>	<p>The proposed new provisions provided under section (77) and (78) clearly sets out the powers of examiners in relation to capital market operators and other persons.</p>

reason to believe that such person may be able to provide information relating to the affairs of the capital market operator or whom the Commission reasonably believes is in possession of, or has under control, any document relating to the affairs of the capital market operator, to lodge such document with the examiner or to appear at a time and place specified in the summons to be examined or to produce such document and to examine, or against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings;

(i) Administer an oath or affirmation or otherwise examine any person referred to in subparagraph (a)(i);

(b) on the authority of an order issued by the Investments and Securities Tribunal at any time without prior notice:

(i) enter any premises and require the production of any document relating to the affairs of the capital market operator;

(ii) enter and search any premises for any documents relating to the affairs of the capital market operator;

(iii) open any strong room, safe or other container which he or she suspects contains any document relating to the affairs of the capital market operator;

(iv) examine, make extracts from and copy any document relating to the affairs of the capital

market operator or, against the issue of a receipt, remove such document temporarily for that purpose;

(v) against the issue of a receipt, seize any document relating to the affairs of the capital market operator if the examiner is of the opinion that the item contains information relevant to the inspection;

(vi) retain any seized document for as long as it may be required for criminal or other proceedings, provided that an examiner may proceed without the order, if the person in control of any premises consents to the actions contemplated in this paragraph.

(2) In examining the affairs of any person under this Section, an examiner shall at all times avoid unreasonable hindrance to the daily business of the person

(3) (a) an order contemplated in subsection (1) (b) may be issued, on application of the Commission, to the Investments and Securities Tribunal

(b) Such an order may only be issued if it appears from information under oath that there is reason to believe that a document relating to the affairs of the capital market operator being inspected is kept at the premises or in the custody of the person concerned.

(2) Any person whose document has been removed or retained, or from whom a document has been seized, under subsection (1)(a) or (b) or his authorised representative,

	<u>may examine and copy such document and make extracts therefrom under the supervision of the examiner.</u>	
<p><u>Current Section 53 Proposed New Section 79 – Application to the Federal High Court for winding up</u></p> <p>(4) This section shall have effect and section 408 of the Companies and Allied Matters Act 1990 shall be construed as if the cancellation of the registration of a capital market operator under this Act had been included as a ground for winding up by the Federal High Court under this section.</p>	<p><u>Proposed New Section 79 – Application to the Federal High Court for winding up</u></p> <p>(4) This section shall have effect and section 408 of the Companies and Allied Matters Act 1990 shall be construed as if the cancellation of the registration of a capital market operator under this Bill had been included as a ground for winding up by the Federal High Court under this section.</p>	
<p><u>NEW PART VIII – MANAGEMENT OF SYSTEMIC RISK</u></p>	<p><u>PART VIII – MANAGEMENT OF SYSTEMIC RISK</u></p>	
<p><u>Proposed New Section 80-</u></p>	<p><u>New Section 80 -Definition of terms</u></p> <p><u>For the purposes of this Part–</u> <u>“capital market participant” includes an investor, issuer, capital market operator, securities exchanges, Custody and Depository, Clearing and Settlement, Central Counterparty and Trade Repository Entities;</u></p> <p><u>“systemic risk in the capital market” means a situation where one or more of the following events occur or is likely to occur:</u></p>	<p>This part is recommended for inclusion in the Bill to enable the Commission monitor, manage and mitigate systemic risk in the Nigerian capital market.</p>

	<p><u>(a) financial distress in a significant market participant or in a number of market participants;</u></p> <p><u>(b) an impairment in the orderly functioning of the capital market; or</u></p> <p><u>(c) an erosion of public confidence in the integrity of the capital market.</u></p>	
<p><u>Proposed New Section 81</u></p>	<p><u>Proposed New Section 81- Information for purpose of systemic risk</u></p> <p><u>(1)The Commission may, notwithstanding any provision under this Bill, by notice in writing request any capital market participant to submit to the Commission any information or document:</u></p> <p><u>(a) which the Commission considers necessary for the purposes of monitoring, mitigating and managing systemic risks in the capital market; or</u></p> <p><u>(b) where the Commission receives a request from a financial sector regulator.</u></p> <p><u>(2) For the purposes of subsection (1), where the capital market participant concerned is solely under the regulatory purview of another financial sector regulator the notice shall be issued through that regulator.where the primary business operations of the capital market participant concerned is under the regulatory purview of another financial sector regulator, the Commission may liaise and cooperate with that regulator for the purpose of obtaining the relevant information</u></p> <p><u>(3) Any capital market participant who is required to submit any information or document under</u></p>	

	<p><u>this section shall provide such information or document notwithstanding any obligation under any contract, agreement or arrangement whether express or implied to the contrary.</u></p> <p><u>(4) Any capital market participant who fails to comply with the notice issued under subsection (1) shall be liable to a penalty not less than N5,000,000.</u></p>	
<p><u>Proposed New Section 82</u></p>	<p><u>Proposed New Section 82- Power of Commission to issue directive for systemic risk</u></p> <p><u>(1) Where the Commission considers it necessary in the interest of monitoring, mitigating or managing systemic risk in the capital market, the Commission may issue a directive in writing requiring any capital market participant to take such measures as the Commission may consider necessary.</u></p> <p><u>(2) In exercising its power under subsection (1), the Commission shall take into consideration the interest of financial stability of the capital market.</u></p> <p><u>(3) For the purposes of subsection (1), where the primary business operations of the capital market participant concerned is under the regulatory purview of another financial sector regulator, the Commission may liaise and cooperate with that regulator for the purpose of issuing the directive;</u></p> <p><u>(4) Before issuing a directive under subsection (1), the Commission shall give the capital market participant an opportunity to be heard.</u></p> <p><u>(5) Notwithstanding subsection (4), the Commission may issue a directive under</u></p>	

	<p><u>subsection (1) without first giving the capital market participant an opportunity to be heard if any delay would aggravate systemic risk in the capital market.</u></p> <p><u>(6) Where a directive is issued pursuant to subsection (5) the capital market participant shall be given an opportunity to be heard after the directive has been issued.</u></p> <p><u>(7) When a capital market participant is given an opportunity to be heard under subsection (6), a directive issued under subsection (1) may be amended or modified.</u></p> <p><u>(8) Any person who fails to comply with the directive issued under subsection (1) shall be liable to a penalty of not less than N5,000,000.</u></p>	
<p><u>Proposed New Section 83</u></p>	<p><u>Proposed New Section 83- Arrangements with other supervisory authorities</u></p> <p><u>(1) Notwithstanding any provision in this Bill, the Commission may for the purposes of monitoring, mitigating and managing systemic risk in the capital market or contributing towards financial stability– (a) provide assistance to any financial sector regulatory authority or Government agency responsible for promoting financial stability;</u></p> <p><u>(b) obtain any information or document from, or share any information or document with, any financial sector regulatory authority or Government agency responsible for promoting financial stability if the Commission considers it necessary that such information or document be so obtained or shared in managing systemic risk in the capital market or promoting financial</u></p>	

stability; or
(c) enter into arrangements to cooperate with any financial sector regulatory authority and co-ordinate stability measures with such regulatory authorities.

(2) Where the Commission shares any information or documents under paragraph (1)(b):
(a) with any financial sector regulatory authority or Government agency responsible for promoting financial stability in Nigeria, such information or document shall not be disclosed to any person except with the written consent of the Commission; or;
(b) with any financial sector regulatory authority outside Nigeria, such regulatory authority shall give an appropriate undertaking for protecting the confidentiality of such information or document and the purposes for which the information or document may be used.

(3) For the purposes of this section, “financial sector regulatory authority” means any authority, body, agency or entity responsible for:
(a) monitoring, mitigating and managing systemic risk for promoting financial stability; or
(b) the supervision or oversight of capital market intermediaries or participants.

<p><u>PART IX- REGULATION OF SECURITIES</u></p>	<p><u>PART IX- REGULATION OF SECURITIES</u></p>	
<p>A-REGISTRATION OF SECURITIES</p>		
<p><u>Current Section 54 Proposed New Section 84 – Compulsory registration of securities and investments of public companies and collective investment schemes.</u></p> <p>(1) All securities of a public company and all securities or investments of a collective investment scheme shall be registered with the Commission under the terms and conditions herein contained and as may be supplemented by regulations prescribed by the Commission from time to time.</p> <p>(2) The issuer shall file with the Commission a registration statement</p>	<p><u>Proposed New Section 84 – Compulsory registration of securities and investments of public companies</u></p> <p>(1) All securities of a public company and all securities <u>to be issued under this Bill</u> shall be registered with the Commission under the terms and conditions herein contained and as may be supplemented by regulations prescribed by the Commission from time to time.</p> <p>(2) The issuer shall file with the Commission a registration statement which shall <u>contain such information and shall be signed by such persons</u></p>	<p>To align with practice. In practice, persons named as members of the board of directors and every professional party to the offer sign the registration statement.</p>

<p>which shall be signed by each issuer, its chief executive officer or officers, its principal financial officer and every person named as a member of the board of directors or persons performing similar functions and in case the issuer is a foreign person, by its duly authorised representative in Nigeria.</p> <p>(3) A registration statement shall be deemed effective only as to the securities or investments specified therein as proposed to be issued.</p> <p>(4) The Commission shall issue a certificate of registration in respect of securities and investments registered by it.</p> <p>(5) No securities or investments of a public company or collective investment scheme shall be issued, transferred, sold or offered for subscription by or sale to the public without the prior registration of the securities or investment with the Commission.</p>	<p><u>as the Commission may prescribe from time to time</u> and in case the issuer is a foreign person, by its duly authorised representative in Nigeria.</p> <p>(3) A registration statement shall be deemed effective only as to the securities specified therein as proposed to be issued.</p> <p>(4) The Commission shall issue a certificate of registration in respect of securities registered by it.</p> <p>(5) No securities shall be issued, transferred, sold or offered for subscription by or sale to the public without the prior registration of the securities with the Commission.</p>	
---	---	--

<p>(6) Any person who issues, transfers, sells, or offers for subscription or sale to the public, the securities or investments of a public company or collective investment scheme without the prior registration of the securities or investments with the Commission commits an offence and is liable on conviction to a fine of ₦1,000,000 or to a term of imprisonment of 3 years or to both such fine and imprisonment.</p> <p>(7) The Commission may, in lieu of a prosecution under subsection (2) of this section, impose a penalty of ₦1,000,000 and a further sum of ₦5,000 for every day which the violation continues.</p>	<p><u>(6) A person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Nigeria, securities of a public company, or to list such securities on a securities exchange outside Nigeria shall seek the approval of the Commission;</u></p> <p><u>(7) Any person who issues, transfers, sells, or offers securities for subscription or sale to the public, without the prior registration of the securities with the Commission commits an offence and is liable on conviction to a fine of ₦5,000,000 or to a term of imprisonment of 3 years or to both such fine and imprisonment.</u></p> <p><u>(8) The Commission may, in lieu of a prosecution under subsection (2) of this section, impose a penalty of ₦5,000,000 and a further sum of ₦20,000 for every day which the violation continues.</u></p>	
--	--	--

<p><u>Current Section 55 Proposed New Section 85 – Electronic and other means of issuing and transferring securities.</u></p> <p>(1) Securities registered by the Commission including securities issued pursuant to part XIII of this Act, may be issued or transferred electronically or by any other means or system approved by the Commission under such terms and conditions as the Commission may prescribe, through a securities exchange or capital trade point or any other self regulatory organisation.</p> <p>(2) The Commission shall prescribe the documents and information to be provided by the issuer, an issuing house, stockbroker or any other person authorised by the Commission to offer securities for sale or subscription to the public.</p>	<p><u>Current Section 55 Proposed New Section 85 – Electronic and other means of issuing and transferring securities</u></p> <p>(1) Securities registered by the Commission, may be issued or transferred electronically or by any other means or system approved by the Commission under such terms and conditions as the Commission may prescribe, through a securities exchange.</p> <p>(2) retained</p>	
<p>B — CORPORATE RESPONSIBILITY OF PUBLIC COMPANIES</p>		
<p><u>Current Section 60 Proposed New Section 86 – Filing of annual and periodic reports with the Commission.</u></p>	<p><u>Proposed New Section 86 – Filing of annual and periodic reports with the Commission.</u></p>	

<p>(1) A public company whose securities are required to be registered under this Act shall file with the Commission on a periodic or annual basis, its audited financial statements and such other returns as may be prescribed by the Commission from time to time.</p> <p>(2) The chief executive officer and the chief financial officer or officers or persons performing similar functions in a public company filing periodic or annual reports under subsection (1) of this section, shall certify in each annual or periodic report filed, that-</p> <p>(a) the signing officer has reviewed the report;</p> <p>(b) based on the knowledge of the officer, the report does not contain</p> <p>(i) any untrue statement of a material fact, or</p> <p>(ii) omit to state a material fact,</p>	<p>(1) A public company whose securities are required to be registered under this <u>Bill</u> shall file with the Commission on an annual basis, its audited financial statements and such other <u>periodic</u> returns as may be prescribed by the Commission from time to time.</p> <p>(2) retained</p>	<p>It is recommended that section (60) be amended as the reference to both periodic and annual basis is imprecise as annual basis is a periodic basis.</p>
---	--	--

which would make the statement, misleading in the light of the circumstances under which such statement was made;

(c) based on the knowledge of such officer, the financial statements and other financial information included in the report fairly present in all material respects the financial condition and results of operations of the company as of, and for the periods presented in the report.

(d) the signing officers:-

(i) are responsible for establishing and maintaining internal controls.

(ii) have designed such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities particularly during the period in which the periodic reports are being prepared;

<p>(iii) have evaluated the effectiveness of the company's internal controls as of date within 90 days prior to the report;</p> <p>(iv) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;</p> <p>(e) the signing officers have disclosed to the Auditors of the company and audit committee-</p> <p>(i) all significant deficiencies in the design or operation of internal controls which would adversely affect the company's ability to record, process, summarise and report financial data and have identified for the company's Auditors any material weakness in internal controls, and</p> <p>(ii) any fraud, whether or not material, that involves management or other employees who have significant role in the company's</p>		
--	--	--

<p>internal controls;</p> <p>(f) the signing officers have identified in the report whether or not there were significant changes in internal controls or other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.</p>		
<p><u>Current Section 61 Proposed New Section 87 – System of internal control of public companies.</u></p> <p>(1) A public company shall establish a system of internal controls over its financial reporting and security of its assets and it shall be the responsibility of the board of directors to ensure the integrity of the company's financial controls and reporting.</p> <p>(2) The board of directors of a public company shall report on the effectiveness of the company's internal control system in its annual report.</p>	<p><u>Current Section 61 Proposed New Section 87 – System of internal control of public companies.</u></p> <p>(1) A public company shall establish a system of internal controls over its financial reporting and security of its assets and it shall be the responsibility of the board of directors to ensure the integrity of the company's <u>internal</u> controls and reporting.</p> <p>(2) Retained</p>	<p>There is inconsistency in the use of language “internal controls” and “financial controls” are used interchangeably. It is recommended that financial control be replaced with internal control as the definition of internal control in sub (3) of this section covers financial reporting.</p>

<p>(3) In this section, "internal control" means policies, procedures and practices put in place by management to ensure safety of assets, accuracy of financial records and reports, achievement of corporate objectives and compliance with laws and regulations</p>	<p>(3) In this section, "internal control" means policies, procedures and practices put in place by management to ensure safety of assets, accuracy of financial records and reports, achievement of corporate objectives and compliance with laws, regulations <u>and applicable corporate governance standards.</u></p>	
<p><u>Current Section 62 Proposed New Section 88 – Auditors of public companies to register with the Commission.</u> No person shall carry on the business of auditing of a public company unless that person is registered by the Commission on such terms and conditions as may be prescribed from time to time</p>	<p><u>Proposed New Section 88 – Auditors of public companies to register with the Commission.</u> Retained</p>	

<p><u>Current Section 63 Proposed New Section 89 – Duty of auditor to report on internal controls of public companies.</u></p> <p>An auditor of a public company shall, in his audit report to the company, issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the public company.</p>	<p><u>Proposed New Section 89 – Duty of auditor to report on internal controls of public companies.</u></p> <p>Retained</p>	
<p><u>Current Section 64 - Disclosure of quarterly earning forecasts by listed public companies</u></p> <p>A listed public company shall within 20 working days prior to the commencement of a quarter disclose to the relevant securities exchange its quarterly earning forecast.</p>	<p><u>Current Section 64 – Disclosure of quarterly earning forecasts by listed public companies</u></p> <p>The entire provision is recommended for deletion.</p>	<p>To align with international best practice. In other jurisdictions, public companies are not required to disclose their earning forecast as it may be subject of litigation.</p>
<p><u>Current Section 65 Proposed New Section 90 – Penalties for contravention of sections 60, 61, 62, 63 and 64.</u></p> <p>(1) A public company who contravenes the provisions of sections 60, 61, 62, 63 and 64 is liable to a penalty of not less than ₦1,000,000 and a further penalty of ₦25,000 per day for the period the</p>	<p><u>Proposed New Section 90 – Penalties for contravention of sections 86, 87..</u></p> <p>(1) A public company who contravenes the provisions of sections 86, 87, <u>or whose account is audited by an auditor that is not registered with the Commission</u> is liable to a penalty of not less than ₦1,000,000 and a further penalty of ₦25,000 per day for the period the violation continues.</p>	

<p>violation continues.</p> <p>(2) An Auditor who contravenes the provisions of sections 60, 61, 62, 63 and 64 is liable to a penalty of ₦100,000 and a further penalty of ₦5,000 per day for the period the violation continues.</p>	<p>(2) An Auditor who contravenes the provisions of sections <u>88 and 89</u> is liable to a penalty of <u>not less than</u> ₦1,000,000 and a further penalty of ₦5,000 per day for the period the violation continues.</p>	
--	---	--

C- IN GENERAL

<p><u>Current Section 66 Proposed New Section 90 – Contravention of Part VIII by bodies corporate.</u></p> <p>(+) Where a contravention of any provision under this part is committed by a body corporate and it is proved that the contravention has been committed-</p> <p>(a) with the connivance of or as a result of any neglect on the part of a director, manager, secretary or other similar officer, servant or agent of the body corporate or any person purporting to act in any such capacity; or</p> <p>(b) as a result of a director, manager, secretary or other similar officer, servant or agent of the body</p>	<p><u>Proposed New Section 90 – Contravention of Part IX by bodies corporate.</u></p> <p>Reference to sub (1) deleted. Substance of the provision retained.</p>	
--	--	--

<p>corporate or any person purporting to act in any such capacity knowingly or wilfully authorising the contravention, the director, manager, secretary or other similar officer, servant or agent of the body corporate or any person purporting to act in any such capacity shall be deemed liable to the same extent as the corporate body.</p> <p>(2) The Commission may administratively apply any of the penalties prescribed for the contravention of any of the provisions of this part.</p>	<p>Recommended for deletion.</p>	<p>This provision existed before administrative penalties were introduced to Section A above and Section B does not contain criminal liability provisions. It is therefore recommended that this be deleted.</p>
<p>PART IX X: PUBLIC OFFER AND SALE OF SECURITIES AND INVITATIONS TO THE PUBLIC</p>		
<p><u>Current Section 67 Proposed New Section 91 – Control of invitation to the public.</u></p> <p>(1) No person shall make any invitation to the public to acquire or dispose of any securities of a body corporate or to deposit money with any body corporate for a fixed period or payable at call, whether bearing or not bearing</p>	<p><u>Current Section 67 Proposed New Section 91 – Control of invitation to the public.</u></p> <p>(1) No person shall make any invitation to the public to acquire or dispose of any securities or to deposit money with anybody corporate for a fixed period or payable at call, whether bearing or not bearing interest unless <u>the person or body corporate</u> concerned is-</p>	<p>Ambit of persons who may offer securities to the public was broadened to include companies not incorporated in Nigeria, unincorporated bodies whose securities may be registered by the Commission and entities which seek to raise money from the public for commercial or investment related business activity, to accommodate micro, small and</p>

<p>interest unless the body corporate concerned is-</p> <p>(a) a public company, whether quoted or unquoted, and the provisions of sections 73 to 87 of this Act are duly complied with; or</p> <p>(b) a statutory body or bank established by or pursuant to an Act of the National Assembly and is empowered to accept deposits and savings from the public or issue its own securities (as defined under this Act), promissory notes, bills of exchange and other instruments:</p> <p>Provided that nothing in this subsection shall render unlawful the sale of any shares by or under the</p>	<p>(a) a public company, <u>body corporate (wherever incorporated) or an unincorporated body whose securities are registered with the Commission;</u> or</p> <p>(b) a statutory body or bank established by or pursuant to an Act of the National Assembly and is empowered to accept deposits and savings from the public or issue its own securities (as defined under this <u>Bill</u>), promissory notes, bills of exchange and other instruments: or</p> <p>(c) <u>A collective investment scheme, government body or an agency of a government body, supranational body or such other entity approved by the Commission to issue securities under this Bill;</u></p> <p><u>(d) An entity not being a licensed bank, a public company or any entity as described in (a) – (c) above seeking to solicit funds from the public for a commercial or investment related business activity under terms and conditions as may be prescribed by the Commission from time to time.</u></p> <p>Provided that nothing in this subsection shall render unlawful the sale of any shares by or under the supervision of any court or tribunal as</p>	<p>medium scale enterprise, venture capital and private equity funding etc.</p>
--	--	---

<p>supervision of any court or tribunal as may be authorised by law.</p> <p>(2) If an invitation to the public is made in breach of subsection (1) of this section, all persons making the invitation and every officer who is in default or any body corporate making the invitation shall each be separately liable to a penalty of ₹500,000 in the case of a body corporate and ₹100,000 in the case of an individual.</p> <p>(3) If, any person acquires or disposes of any securities, or deposits money with any company, as a result of any invitation to the public made in breach of subsection (1) of this section, he shall be entitled to-</p> <p>(a) rescind such transactions; and</p> <p>(b) either in addition to or in place of</p>	<p>may be authorised by law.</p> <p><u>(2) the term “commercial or investment business activities” referred to in subsection (1) of this section means any activity relating to micro, small and medium scale enterprise, venture capital and private equity funding or such other commercial or investment business activities as the Commission may determine from time to time</u></p> <p><u>(3) If an invitation to the public is made in breach of subsection (1) of this section, all persons making the invitation and every officer who is in default or any body corporate making the invitation shall each be separately liable to a penalty of not less than 10% of the value of the securities or deposits received in the case of a body corporate and ₹2,000,000 in the case of an individual.</u></p> <p><u>(4) If, any person acquires or disposes of any securities, or deposits money with any company, as a result of any invitation to the public made in breach of subsection (1) of this section, he shall be entitled to-</u></p> <p><u>(a) rescind such transactions; and</u></p> <p><u>(b) either in addition to or in place of rescinding</u></p>	<p>It is recommended that the penalty be made more stringent to act as a deterrent to would be offenders.</p>
--	---	---

<p>rescinding the transaction, recover compensation for any loss sustained by him from any person who is liable whether convicted or not, in respect of the breach.</p> <p>(4) Where, in accordance with subsection (3)—of this section, any person claims to rescind any transaction, he shall do so within a reasonable time and shall not be entitled to rescind any transaction with the body corporate or to recover compensation from it unless he takes steps to rescind the transaction before the commencement of the winding-up of the body corporate:</p> <p>Provided that the application of this subsection to bar the right of a claimant to rescind a transaction shall not prejudice his right to recover compensation from any person other than the body corporate. __</p>	<p>the transaction, recover compensation for any loss sustained by him from any person who is liable whether convicted or not, in respect of the breach.</p> <p>(5) Where, in accordance with subsection (4) of this section, any person claims to rescind any transaction, he shall do so within a reasonable time and shall not be entitled to rescind any transaction with the body corporate or to recover compensation from it unless he takes steps to rescind the transaction before the commencement of the winding-up of the body corporate:</p> <p>Provided that the application of this subsection to bar the right of a claimant to rescind a transaction shall not prejudice his right to recover compensation from any person other than the body corporate.</p>	
<p>Current Section 68 Proposed New Section 92 – Invitation to the public to deposit money by a body corporate</p> <p>68 (1) A public company making an invitation to the public to deposit</p>	<p>Proposed New Section 92 – Invitation to the public to deposit money by a body corporate</p> <p>(1) <u>Any person or body corporate</u> making an invitation to the public to deposit money with</p>	

<p>money with it shall, prior to the making of the invitation, obtain the written consent of the Commission and shall only make the invitation in accordance with such conditions and restrictions as may be imposed by the Commission.</p> <p>(2) The Commission may in its absolute discretion grant or withhold the consent referred to in subsection (1) of this section, and without prejudice to the generality of the foregoing, may require that any advertisement or circular to be used in connection with the invitation shall be registered with or approved by the Commission.</p> <p>(3) If any advertisement or circular used in connection with the invitation contains any untrue statement then, subject to subsection (4) of this section, any person who made the invitation and every person who was a director of a company making the invitation at the time when the advertisement or circular was published commits an offence and is liable on conviction to pay compensation to any person who</p>	<p>it shall, prior to the making of the invitation, obtain the written consent of the Commission and shall only make the invitation in accordance with such conditions and restrictions as may be imposed by the Commission.</p> <p>(2) Retained</p> <p>(3) If any advertisement or circular used in connection with the invitation contains any untrue statement then, subject to subsection (4) of this section, any person who made the invitation and every person who was a director of a company making the invitation at the time when the advertisement or circular was published commits an offence and is liable on conviction to pay compensation <u>within one month</u> to any person who deposited money with the <u>body corporate</u> having relied on the</p>	
--	--	--

<p>deposited money with the public company—having relied on the advertisement or circular, for any loss they may have sustained by reason of such untrue statement.</p> <p>(4) No person shall be liable under subsection (3) of this section, if he proves that-</p> <p>(a) he had reasonable ground to believe and did believe up to the time of publication of the advertisement or circular that the statement was true; or</p> <p>(b) the advertisement or circular was published without his knowledge and that on becoming aware of its publication he immediately gave reasonable public notice that it was published without his knowledge.</p> <p>(5) If any person deposits any money with a public company as a result of an untrue statement of a material fact made, whether innocently or fraudulently, in any advertisement or circular published in connection with any invitation to the public made by or on behalf of that public company,</p>	<p>advertisement or circular, for any loss they may have sustained by reason of such untrue statement.</p> <p>(4) retained</p> <p>(5) If any person deposits any money with a <u>body corporate</u> as a result of an untrue statement of a material fact made, whether innocently or fraudulently, in any advertisement or circular published in connection with any invitation to the public made by or on behalf of that <u>body corporate</u>, the person shall be entitled to require the <u>body corporate</u> immediately to repay such money</p>	
---	--	--

<p>the person shall be entitled to require the public company immediately to repay such money with interest at the current bank rate per annum or such higher rate as may have been agreed to be paid on the deposit.</p>	<p>with interest at the current <u>interbank</u> rate per annum or such higher rate as may have been agreed to be paid on the deposit.</p>	
<p><u>Current Section 69 Proposed New Section 93 – Meaning of Invitation to the public</u></p> <p>(1) For the purposes of this Act, an invitation shall be deemed to be an invitation to the public if it is an offer or invitation to make an offer which is -</p> <p>(a) published, advertised or disseminated by newspaper, broadcasting, cinematograph or any other means whatsoever;</p> <p>(b) made to or circulated among any persons whether selected as members or as debenture holders of the company concerned or as clients of the persons making or circulating the</p>	<p><u>Proposed New Section 93 – Meaning of Invitation to the public</u></p> <p>(1) For the purposes of this <u>Bill</u>, an invitation shall be deemed to be an invitation to the public if it is an offer or invitation to make an offer which is -</p> <p>(a) published, advertised or disseminated by newspaper, broadcasting, cinematograph or any other means whatsoever;</p> <p>(b) made to or circulated among any persons whether selected as members or as debenture holders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner;</p>	

<p>invitation or in any other manner;</p> <p>(c) made to anyone or more persons upon the terms that the person or persons to whom it is made may renounce or assign the benefit of the offer or invitation or any of the securities to be obtained under it in favour of any other person or persons;</p> <p>(d) made to any one or more persons to acquire any securities dealt in by a securities exchange or capital trade point or in respect of which the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange or capital trade point.</p> <p>(2) Nothing contained in this section shall be taken as requiring any invitation to be treated as an invitation to the public if it can properly be regarded in all circumstances as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving</p>	<p>(c) made to anyone or more persons upon the terms that the person or persons to whom it is made may renounce or assign the benefit of the offer or invitation or any of the securities to be obtained under it in favour of any other person or persons;</p> <p>(d) made to any one or more persons to acquire any securities dealt in by a securities exchange or in respect of which the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange.</p> <p>(2) Nothing contained in this section shall be taken as requiring any invitation to be treated as an invitation to the public if it can properly be regarded in all circumstances as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it.</p>	
--	--	--

<p>the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it.</p> <p>(3) For the purpose of this section, the issuance of any form of application for securities or of any form whatsoever to be completed on the deposit of money with a company shall be deemed to be an invitation to acquire those shares or to deposit money</p>	<p>(3) Retained</p>	
<p><u>Current Section 70 Proposed New Section 94 – Offers for sale deemed to be made by the company</u></p> <p>Where any company allots or agrees to allot any of its securities to any person with a view to the public being invited to acquire any of those securities then, for all the purposes of this Act, any invitation so made shall be deemed to be an invitation to the public made by the company as well as by the person actually making the invitation, and any person who acquires any such securities in response to the invitation shall be deemed to be an allottee from the</p>	<p><u>Proposed New Section 94 – Offer for sale deemed to be made by an Issuer of Securities</u></p> <p>Where an <u>issuer</u> allots or agrees to allot any of its securities to any person with a view to the public being invited to acquire any of those securities then, for all the purposes of this <u>Bill</u>, any invitation so made shall be deemed to be an invitation to the public made by the company as well as by the person actually making the invitation, and any person who acquires any such securities in response to the invitation shall be deemed to be an allottee from the company of those securities:</p>	

<p>company of those securities:</p> <p>Provided that where-</p> <p>(a) an invitation to the public is made in respect of any such securities within six months after the allotment or agreement to allot; or</p> <p>(b) at the date when the invitation to the public was made, the whole consideration to be received by the company in respect of those securities had not been so received, it shall be deemed, unless the contrary is proved, that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those securities.</p>	<p>Provided that where-</p> <p>(a) an invitation to the public is made in respect of any such securities within six months after the allotment or agreement to allot; or</p> <p>(b) retained.</p>	
<p><u>Current Section 71 Proposed New Section 95 – Form of application for shares to be issued with prospectus</u></p> <p>(1) Subject to the provisions of section 76 of this Act, no person shall issue any form of application to deposit money for the purpose of subscribing to, purchasing or in any way acquiring the securities of a public company unless the form is</p>	<p><u>Proposed New Section 95 – Form of application for shares to be issued with prospectus</u></p> <p>(1) Subject to the provisions of section 100 of this Bill, no person shall issue any form of application to deposit money for the purpose of subscribing to, purchasing or in any way acquiring the securities of a body corporate unless the form is issued with a prospectus which complies with the requirements of section 100 of this Bill:</p>	

<p>issued with a prospectus which complies with the requirements of section 79 of this Act:</p> <p>(2) Where the form of application to deposit money referred to in subsection (1) of this section is issued in respect of debenture securities, the form shall in addition be accompanied with a trust deed.</p> <p>(3) This section shall not apply if it is shown that the form of application was issued either -</p> <p>(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares; or</p> <p>(b) in relation to shares which were not offered to the public.</p> <p>(4) A person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of not less than ₹100,000.</p>	<p>(2) Where the form of application to deposit money referred to in subsection (1) of this section is issued in respect of debenture securities, the form shall in addition be accompanied with a trust deed or <u>agency agreement</u>.</p> <p>(3) Retained</p> <p>(4) A person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of not less than <u>₹5,000,000</u>.</p>	
		Provision made wider to accommodate all issuers of securities

<p><u>Current Section 72 Proposed New Section 96 – Effective date of a prospectus</u></p> <p>A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.</p>	<p><u>Proposed New Section 96 – Effective date of a prospectus</u></p> <p>A prospectus issued by or on behalf of <u>an issuer</u> or in relation to an intended <u>issue</u> shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.</p>	
<p><u>Current Section 73 Proposed New Section 97 – Effective date of a prospectus</u></p> <p>(1) Subject to the provisions of section 76 of this Act, every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state the matters specified in part I of the third Schedule to this Act and set out the reports specified in part II of that Schedule and parts I and II shall have effect subject to the provisions contained in that Schedule.</p> <p>(2) Any condition requiring or binding an applicant for shares in a company to waive compliance with any requirement of this section or</p>	<p><u>Proposed New Section 97 – Effective date of a prospectus</u></p> <p>(1) Subject to the provisions of section <u>100</u> of this <u>Bill</u>, every prospectus issued by or on behalf of a company, or by or on behalf of any <u>person or body corporate</u> who is or has been engaged or interested in the formation of the company, shall state the matters specified in part I of the third Schedule to this <u>Bill</u> and set out the reports specified in part II of that Schedule and parts I and II shall have effect subject to the provisions contained in that Schedule.</p> <p>(2) Retained</p>	

<p>purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.</p> <p>(3) Where there is non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if he proves that-</p> <p>(a) as regards any matter not disclosed, he was not a party to it; or</p> <p>(b) the non-compliance or contravention arose from an honest mistake of fact on his part; or</p> <p>(c) the non-compliance or contravention was in respect of matters which in the opinion of the Tribunal were immaterial or was otherwise such as</p>	<p>(3) Where there is non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if he proves that-</p> <p>(a) <u>he had made all enquiries as were reasonable in the circumstances; and after making such enquiries, he had reasonable grounds to believe and did believe at the time the prospectus is issued that-</u></p> <p><u>(i) there was no material omission in the prospectus; and</u></p> <p><u>(ii) the statement or information contained in the prospectus was true and not misleading;</u> or</p> <p>(b) the non-compliance or contravention arose from an honest mistake of fact on his part; or</p> <p>(c) the non-compliance or contravention was in respect of matters which in the opinion of the Tribunal were immaterial or was otherwise such as should, in the opinion of the Tribunal,</p>	
---	--	--

<p>should, in the opinion of the Tribunal, having regard to all the circumstances of the case, reasonably be excused, provided that, where there is a failure to include in a prospectus a statement with respect to the matters specified by regulations, no director or other person shall incur any liability in respect of the failure, unless it is proved that he had knowledge of the matters not disclosed.</p>	<p>having regard to all the circumstances of the case, reasonably be excused, provided that, where there is a failure to include in a prospectus a statement with respect to the matters specified by regulations, no director or other person shall incur any liability in respect of the failure, unless it is proved that he had knowledge of the matters not disclosed.</p>	
<p><u>Current Section 74 Proposed New Section 98 – Exemption from application of provisions relating to prospectus in certain cases.</u> The provisions of sections 74 and 73 of this shall not apply to the issue-</p> <p>(a) made to the existing members of a company or to a prospectus or form of application relating to shares in the company whether or not an applicant for shares has the right to renounce in favour of other persons; or</p> <p>(b) of a prospectus or form of application relating to securities which are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a securities exchange or</p>	<p><u>Proposed New Section 98 – Exemption from application of provisions relating to prospectus in certain cases.</u></p> <p>The provisions of sections 95 and 97 of this <u>Bill</u> shall not apply to the issue-</p> <p>(a) retained</p> <p>(b) of a prospectus or form of application relating to securities which are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a securities exchange.</p>	

<p>capital trade point.</p>		
<p><u>Current Section 75 Proposed New Section 99 – Prohibition of issuance, circulation, etc of certain notices, circulars and advertisements.</u></p> <p>(1) No person shall without the prior approval of the Commission issue, circulate, publish, disseminate or distribute any notice, circular or advertisement to the public which</p> <p>(a) offers for subscription or purchase of securities in a company;</p> <p>(b) invites subscription for or purchase of securities; or</p> <p>(c) calls attention to-</p> <p>(i) an offer or intended offer for subscription or purchase of securities in a company;</p> <p>(ii) an invitation or intended invitation to subscribe for or purchase any such securities; or</p>	<p><u>Proposed New Section 99 – Prohibition of issuance, circulation, etc of certain notices, circulars and advertisements.</u></p> <p>(1) Retained</p>	

<p><i>(iii)</i> a prospectus.</p> <p>(2) This section shall not apply to-</p> <p><i>(a)</i> a notice or circular which relates to an offer or invitation not made or issued to the public;</p> <p><i>(b)</i> a registered prospectus;</p> <p><i>(c)</i> a notice, circular or advertisement which calls attention to a registered prospectus and states that allotments of, or contracts with respect to the shares referred to in the prospectus shall be made only on the basis of one of the forms of application referred to in and attached to a copy of the prospectus and contains no other information or matter other than some or all of the following information, namely-</p> <p><i>(i)</i> the number and description of the securities in the company to which the prospectus relates,</p> <p><i>(ii)</i> the name of the company, the date of its incorporation and the number of the company's issued securities and where the issue price of any securities is to be paid by installments, the</p>	<p>(2) Retained</p>	
---	---------------------	--

<p>amounts paid and unpaid on those issued securities,</p> <p>(iii) the general nature of its main business or the proposed main business of the company,</p> <p>(iv) the names, addresses and occupation of the directors or proposed directors,</p> <p>(v) the names and addresses of the brokers or underwriters (if any), to the issue,</p> <p>(vi) the name of the securities exchange or capital trade point (if any) of which the brokers or underwriters to the issue are members,</p> <p>(vii) particulars of the time and place at which copies of the registered prospectus and form of application for the shares to which it relates may be obtained; and</p> <p>(d) a notice or circular which-</p> <p>(i) accompanies a notice or circular referred to in paragraphs (a) or (c) of this section;</p>	<p>(vi) the name of the securities exchange (if any) of which the brokers or underwriters to the issue are members <u>or participants</u>,</p>	
--	--	--

<p>(ii) is issued or circulated by a person whose ordinary business includes advising clients in connection with their investments and is issued or circulated only to clients so advised in the course of that business;</p> <p>(iii) contains a statement that the investment to which it or the accompanying document relates is recommended by that person; and</p> <p>(iv) where the person is an underwriter or sub-underwriter of an issue of securities to which the notice or circular relates, contains a statement that the person making the recommendation is an underwriter or sub-underwriter as the case may be.</p> <p>(3) This section applies to notices, circulars and advertisements published or disseminated by a newspaper, radio or television broadcasting, cinematograph, or any other means.</p> <p>(4) A person who-</p> <p>(a) contravenes the provisions of this section; or</p>	<p>(3) This section applies to notices, circulars and advertisements published or disseminated by a newspaper, radio or television broadcasting, cinematograph, <u>electronic media platforms</u>, or any other means.</p> <p>(4) A person who-</p> <p>(a) contravenes the provisions of this section; or</p>	<p>It is recommended that provision be made wide enough to include the electronic media which is a major means of communication.</p>
---	---	--

<p>(b) knowingly authorises or permits an act which constitutes a contravention of this section, commits an offence and is liable on conviction to a fine of ₹100,000 or to a term of imprisonment of not less than three years or to both such fine and imprisonment.</p> <p>(5) The Commission may, in lieu of a prosecution pursuant to subsection (4) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than ₹100,000 and a further sum of not less than ₹5,000 for every day the violation continues.</p> <p>(6) Where a notice, circular or advertisement relating to a company is issued, circulated, published, disseminated or distributed in contravention of this section by or with the authority or permission of an officer of the company, the company is liable to a penalty of ₹500,000 and a further sum of not less than ₹25,000 for every</p>	<p>(b) knowingly authorises or permits an act which constitutes a contravention of this section, commits an offence and is liable on conviction to a fine of <u>₹5,000,000</u> or to a term of imprisonment of not less than three years or to both such fine and imprisonment.</p> <p>(5) The Commission may, in lieu of a prosecution pursuant to subsection (4) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than <u>₹5,000,000</u> and a further sum of not less than ₹5,000 for every day the violation continues.</p> <p>(6) Where a notice, circular or advertisement relating to a company is issued, circulated, published, disseminated or distributed in contravention of this section by or with the authority or permission of an officer of the company, the company is liable to a penalty of <u>₹5,000,000</u> and a further sum of not less than <u>₹5,000</u> for every day the violation continues.</p>	
---	---	--

<p>day the violation continues.</p>		
<p><u>Current Section 76 Proposed New Section 100 – Exemption certificate and effect.</u> Where- (a) it is proposed to offer any securities in a company to the public by a prospectus issued generally (that is to say to persons who are not existing members of the company); and (b) the application is made to a securities exchange or capital trade point for permission for those securities to be dealt in or quoted on that securities exchange or capital trade point; the securities exchange or capital trade point to which the application is made may, at the request of the applicant, grant a certificate of exemption that is, a certificate that, having regard to the proposal (as stated in the request) as to the size and other circumstances of the issue of securities and as to any limitations on the number and class of persons to whom the offer is to be</p>	<p><u>Proposed New Section 100 – Exemption certificate and effect.</u> Where- (a) it is proposed to offer any securities in a company to the public by a prospectus issued generally (that is to say to persons who are not existing members of the company); and (b) the application is made to a securities exchange for permission for those securities to be dealt in or quoted on that securities exchange; the securities exchange to which the application is made may, at the request of the applicant, grant a certificate of exemption that is, a certificate that, having regard to the proposal (as stated in the request) as to the size and other circumstances of the issue of securities and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Third Schedule to this Act will be unduly cumbersome.</p>	

<p>made, compliance with the requirements of the Third Schedule to this Act will be unduly cumbersome.</p> <p>(2) If a certificate of exemption is given and the proposal mentioned in subsection (1) of this section are complied with and the particulars and information required to be published in connection with the application for permission made to the securities exchange or capital trade point are so published, then-</p> <p>(a) a prospectus giving the relevant particulars and information, in the form in which they are so required to be published, shall be deemed to comply with the requirements of the Third schedule to this Act; and</p> <p>(b) after the permission applied for is granted, sections 74 and 73 of this shall not apply to any issue of a prospectus or form of application relating to the securities.</p>	<p>(2) If a certificate of exemption is given and the proposal mentioned in subsection (1) of this section are complied with and the particulars and information required to be published in connection with the application for permission made to the securities exchange are so published, then-</p> <p>(a) a prospectus giving the relevant particulars and information, in the form in which they are so required to be published, shall be deemed to comply with the requirements of the Third schedule to this <u>Bill</u>; and</p> <p>(b) after the permission applied for is granted, sections <u>95</u> and <u>97</u> of this <u>Bill</u> shall not apply to any issue of a prospectus or form of application relating to the securities.</p>	
<p><u>Current Section 77 Proposed New Section 101 – Expert’s statement on prospectus</u></p> <p>(1) A prospectus inviting persons to</p>	<p><u>Proposed New Section 101 – Expert’s statement on prospectus</u></p> <p>(1) retained</p>	

subscribe for securities in a company and including a statement purporting to be made by an expert shall not be issued unless-

(a) the expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue of the statement included in the form and context in which it is; and

(b) a statement appears in the prospectus that the expert has given and has not withdrawn his consent.

(2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue commits an offence and is liable on conviction to a fine of ~~₹~~100,000 or a term of imprisonment of not less than three years or to both such fine and imprisonment.

(3) The Commission may, in lieu of a prosecution for the offence prescribed in subsection ~~two~~ of this

(2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue commits an offence and is liable on conviction to a fine of ₹2,000,000 or a term of imprisonment of not less than three years or to both such fine and imprisonment.

(3) The Commission may, in lieu of prosecution for the offence prescribed in subsection (2) of this section, impose a

<p>section, impose a penalty of not less than ₹100,000 and a further penalty of not less than ₹5,000 for every day the violation continues.</p>	<p>penalty of not less than ₹2,000,000 and a further penalty of not less than ₹25,000 for every day the violation continues.</p>	
<p><u>Current Section 78 Proposed New Section 102 – Prospectus on invitation to the public to acquire or dispose of securities</u></p> <p>(1) Notwithstanding the provisions of section 67 of this Act, no person shall make an invitation to the public to acquire or dispose of any securities of a public company if-</p> <p>(a) within six months prior to the making of the invitation, a prospectus relating to such securities and complying in all respects with the relevant provisions of sections 75, 76 and 79 of this Act has been delivered to the Commission and registered by it, in accordance with section 80 of this Act;</p> <p>(b) every person to whom the invitation is made is supplied with a true copy of such prospectus as filed with the Commission; and</p>	<p><u>Proposed New Section 102 – Prospectus on invitation to the public to acquire or dispose of securities</u></p> <p>(1) Notwithstanding the provisions of section <u>91</u> of this <u>Bill</u>, no person shall make an invitation to the public to acquire or dispose of any securities of a public company except-</p> <p>(a) within six months prior to the making of the invitation, a prospectus relating to such securities and complying in all respects with the relevant provisions of sections <u>99, 100</u> and <u>103</u> of this <u>Bill</u> has been delivered to the Commission and registered by it, in accordance with section <u>104</u> of this <u>Bill</u>;</p> <p>(b) retained</p>	

<p>(c) every copy of the prospectus states on its face that it has been registered with the Commission at the time when the invitation is first made and the date of registration is reflected thereon .</p> <p>(2) The provisions of paragraph (b) of subsection (1) of this section does not apply to an invitation made by or through a member of a securities exchange or capital trade point to a client of that member or to an invitation made by or through an exempted dealer.</p>	<p>(c) retained.</p> <p>(2) The provisions of paragraph (b) of subsection (1) of this section does not apply to an invitation made by or through a member of a securities exchange to a client of that member or to an invitation made by or through an exempted dealer.</p>	
<p><u>Current Section 79 Proposed New Section 103 – General and restricted invitations to the public.</u></p> <p>(1) Except as provided in section 76 of this Act, where a public company invites the public to acquire its securities, the prospectus referred to in section 77 of this Act shall state the matters specified in Part 1 of the Third Schedule to this Act and set out the report</p>	<p><u>Proposed New Section 103 – General and restricted invitations to the public</u></p> <p>(1) Except as provided in section <u>100</u> of this <u>Bill</u>, where a public company invites the public to acquire its securities, the prospectus referred to in section <u>101</u> of this <u>Bill</u> shall state the matters specified in Part 1 of the Third Schedule to this <u>Bill</u> and set out the report specified in Part II of the same <u>Schedule</u>.</p>	

<p>specified in Part II of the same Schedule.</p> <p>(2) Subsection (1) of this section shall not apply to an invitation by a company in respect of its shares -</p> <p>(a) made solely to the existing shareholders of that company; or</p> <p>(b) which in all respects is uniform with its existing listed shares.</p> <p>(3) A prospectus relating to any invitation to the public to acquire or dispose of any securities of a public company, being an invitation not falling within subsection (1) of this section, either because it does not invite the public to acquire any securities or because it is excluded from the ambit of that subsection, may not state all the matters or set out the reports specified in the Third Schedule to this Act but shall not contain any untrue statement, and if the securities to which it relates are dealt in on any securities exchange or capital trade point or if application</p>	<p>(2) Retained</p> <p>(3) A prospectus relating to any invitation to the public to acquire or dispose of any securities of a public company, being an invitation not falling within subsection (1) of this section, either because it does not invite the public to acquire any securities or because it is excluded from the ambit of that subsection, may not state all the matters or set out the reports specified in the Third Schedule to this <u>Bill</u> but shall not contain any untrue statement, and if the securities to which it relates are dealt in on any securities exchange or if application has been, or is being made to a securities exchange for permission to deal in those securities, the prospectus shall-</p>	
---	---	--

<p>has been, or is being made to a securities exchange or capital trade point for permission to deal in those securities the prospectus shall-</p> <p>(a) state that the securities to be dealt in on that securities exchange or capital trade point or, as the case may be, that application has been or is to be made for permission for the securities to be dealt in on that securities exchange or capital trade point;</p> <p>(b) state whether or not that securities exchange or capital trade point is an approved securities organisation within the meaning of this Act; and</p> <p>(c) contain the particulars and information required by that securities exchange or capital trade point, and in any other case, shall state that the securities are not dealt in on any securities exchange or capital trade point.</p> <p>(4) An invitation falling within subsection (1) of this section shall, hereafter in this Act be described as a "general invitation" and an</p>	<p>(a) state that the securities to be dealt in on that securities exchange or, as the case may be, that application has been or is to be made for permission for the securities to be dealt in on that securities exchange;</p> <p>(b) state whether or not that securities exchange is an approved securities organisation within the meaning of this <u>Bill</u>; and</p> <p>(c) contain the particulars and information required by that securities exchange.</p> <p>(4) An invitation falling within subsection (1) of this section shall, hereafter in this <u>Bill</u> be described as a "general invitation" and an invitation falling within subsection (2) of this</p>	
---	--	--

<p>invitation falling within subsection (2) of this section shall, hereafter in this Aet be described as a" restricted invitation".</p>	<p>section shall, hereafter in this <u>Bill</u> be described as a" restricted invitation".</p>	
<p><u>Current Section 80 Proposed New Section 104 – Registration of prospectus.</u></p> <p>(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Commission a copy of the prospectus for registration, signed by every person who is named in it as a director of the company, or by his agent authorised in writing and having endorsed on it or attached to it-</p> <p>(a) any consent to the issue of the prospectus required by section 68 of this Aet from any person as an expert ; and</p> <p>(b) in the case of a prospectus issued generally, a copy of any contract required by paragraph 11 of the Third Schedule to this Aet to be stated in the prospectus; and</p>	<p><u>Proposed New Section 104 – Registration of prospectus.</u></p> <p>(1) Retained</p> <p>(a) any consent to the issue of the prospectus required by section <u>92</u> of this <u>Bill</u> from any person as an expert; and</p> <p>(b) in the case of a prospectus issued generally, a copy of any contract required by paragraph 11 of the Third Schedule to this <u>Bill</u> to be stated in the prospectus; and</p>	

<p>(c) in the case of a prospectus deemed by virtue of a certificate granted under section 67 of this Act to comply with the requirements of the Third Schedule, a contract or a copy of such contract or a memorandum of a contract which was made available for inspection in connection with the application made under that section to the securities exchange or capital trade point; and</p> <p>(d) where the persons making any report required by Part II of the Third Schedule to this Act have made in it or without giving the reasons have indicated in it any such adjustments as are mentioned in paragraph 21 of the Third Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.</p> <p>(2) The references in paragraphs (b) and (c) of subsection (1) of this section to the copy of a contract required to be endorsed on or attached to a prospectus shall -</p>	<p>(c) in the case of a prospectus deemed by virtue of a certificate granted under section <u>91</u> of this <u>Bill</u> to comply with the requirements of the Third Schedule, a contract or a copy of such contract or a memorandum of a contract which was made available for inspection in connection with the application made under that section to the securities exchange; and</p> <p>(d) where the persons making any report required by Part II of the Third Schedule to this <u>Bill</u> have made in it or without giving the reasons have indicated in it any such adjustments as are mentioned in paragraph 21 of the Third Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.</p> <p>(2) Retained</p>	
---	--	--

<p>(a) in the case of a contract wholly or partly in any language other than English, be taken as references to a copy of a translation in English of the parts of the contract that are in any other languages other than English from the original language of the contract being a translation certified in any manner acceptable to the Commission to be a correct translation.</p> <p>(b) in the case of a copy of a contract or memorandum of a contract required to be made available for inspection under paragraph (c) of subsection (1) of this section, and which is wholly or partly in any language other than English, shall include a reference to a copy of a translation of the contract or memorandum or a copy embodying a translation of a part of it and certified in a manner acceptable to the Commission.</p> <p>(3) Every prospectus shall, on the face of it-</p> <p>(a) state that a copy has been delivered for registration as required by this section; and</p>	<p>(3) Every prospectus shall, on the face of it-</p> <p>(a) state that a copy has been <u>registered</u> as required by this section; and</p>	
--	--	--

<p>(b) specify or refer to statements included in the prospectus which specify any document required by this section to be endorsed on or attached to the copy so delivered.</p> <p>(4) The Commission shall not register a prospectus unless it is satisfied that –</p> <p>(a) it is dated and signed as required by this section;</p> <p>(b) it has endorsed on it or attached to it the documents (if any) specified; and</p> <p>(c) the prospectus otherwise complies with the requirements of this Aet.</p> <p>(5) Where the Commission refuses to register a prospectus on the ground that it fails to comply with the requirements of this Aet, an aggrieved person may appeal to the Tribunal established by this Aet within twenty-one days after notification of the refusal by the Commission.</p> <p>(6) If a prospectus is issued without a</p>	<p>(b) retained.</p> <p>(4) Retained</p> <p>(a) Retained</p> <p>(b) Retained</p> <p>(c) the prospectus otherwise complies with the requirements of this <u>Bill</u>.</p> <p>(5) Where the Commission refuses to register a prospectus on the ground that it fails to comply with the requirements of this <u>Bill</u>, an aggrieved person may appeal to the Tribunal established by this <u>Bill</u> within twenty-one days after notification of the refusal by the Commission.</p> <p>(6) If a prospectus is issued without a copy of it</p>	
--	---	--

<p>copy of it being delivered under this section to the Commission or without the copy so delivered having endorsed on it or attached to it the documents required under this Act the company and every person who is knowingly a party to the issue of the prospectus, shall be jointly and severally liable to a penalty of not less than ₦25,000 in the case of a company and not less than ₦5,000 in the case of other persons for every day from the date of issue of the prospectus until a copy of it is so delivered with the required documents endorsed on it or attached to it.</p>	<p>being <u>registered</u> under this section to the Commission or without the copy so <u>registered</u> having endorsed on it or attached to it the documents required under this <u>Bill</u> the company and every person who is knowingly a party to the issue of the prospectus, shall be jointly and severally liable to a penalty of not less than <u>₦5,000,000</u> in the case of a company and not less than <u>₦5,000</u> in the case of other persons for every day from the date of issue of the prospectus until a copy of it is so delivered with the required documents endorsed on it or attached to it.</p>	
<p><u>Current Section 81 Proposed New Section 105 – Contract in prospectus, etc., not to be varied without leave.</u> A company limited by shares shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus or a statement in lieu of prospectus, except with the approval of the statutory meeting. A company limited by shares shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus or a statement in lieu</p>	<p><u>Proposed New Section 105 – Contract in prospectus, etc., not to be varied without leave.</u> Retained</p>	

<p>of prospectus, except with the approval of the statutory meeting.</p>		
<p><u>Current Section 82 Proposed New Section 106 – Document with offer of securities for sale to be deemed a prospectus.</u></p> <p>(1) Where a company allots or agrees to allot any securities in the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the statements in and omissions from prospectus or otherwise relating to a prospectuses, shall apply and have effect accordingly as if-</p> <p>(a) the securities have been offered to the public for subscription; and</p> <p>(b) persons accepting the offer in respect of any shares, are subscribers for those securities but without prejudice to the liability, if</p>	<p><u>Proposed New Section 106 – Document with offer of securities for sale to be deemed a prospectus.</u></p> <p>(1) Retained.</p>	

<p>any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise.</p> <p>(2) For the purposes of this Act shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot securities was made with a view to the shares being offered for sale to the public if it is shown-</p> <p>(a) that an offer of all or any part of the securities for sale to the public was made within six months after the allotment or agreement to allot; or.</p> <p>(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the securities had been so received.</p> <p>(3) The provisions of section 73 of this Act as applicable to this section shall have effect as if it requires a prospectus to state in addition to the</p>	<p>(2) For the purposes of this <u>Bill, it shall be deemed</u> unless the contrary is proved, that an allotment of, or an agreement to allot securities was made with a view to the shares being offered for sale to the public if it is shown-</p> <p>(a) retained</p> <p>(b) retained</p> <p>(3) The provisions of section <u>97</u> of this <u>Bill</u> as applicable to this section shall have effect as if it requires a prospectus to state in addition to the matters required by that section to be stated</p>	
---	--	--

<p>matters required by that section to be stated in a prospectus, the following-</p> <p>(a) the amount of the consideration received by the company in respect of the securities to which the offer relates; and</p> <p>(b) the place and time at which the contract under which the said securities have been or are to be allotted may be inspected, and section 80 of this Act as applied by this section shall have effect as though the persons making the offer were named in a prospectus as directors of that company.</p> <p>(4) Where a person making an offer to which this section relates is a company it shall be sufficient if the document is signed on behalf of the company by two directors of the company or by such other persons as may be authorised in writing by the company.</p>	<p>in a prospectus, the following-</p> <p>(a) Retained</p> <p>(b) the place and time at which the contract under which the said securities have been or are to be allotted may be inspected, and section <u>104</u> of this <u>Bill</u> as applied by this section shall have effect as though the persons making the offer were named in a prospectus as directors of that company.</p> <p>(4) Retained</p>	
--	--	--

<p><u>Current Section 83 Proposed New Section 107 – Interpretation as to prospectus statements.</u></p> <p>For the purposes of the provisions of this Act, a statement -</p> <p>(a) included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and</p> <p>(b) shall be deemed to be included in a prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated or issued with it.</p>	<p><u>Proposed New Section 107 – Interpretation as to prospectus statements.</u></p> <p>For the purposes of the provisions of this <u>Bill</u>, a statement -</p> <p>(a) Retained</p> <p>(b) Retained</p>	
<p><u>Current Section 84 Proposed New Section 108 – Form of statement in lieu of prospectus. Fourth Schedule</u></p> <p>A statement in lieu of prospectus shall be in the form and contain the particulars set out in part I of the fourth schedule to this Act and, in the cases mentioned in Part II of that schedule, set out the reports specified therein, and the said parts I and II shall have effect subject to the provisions contained in part III of</p>	<p><u>Proposed New Section 108 – Form of statement in lieu of prospectus. Fourth Schedule</u></p> <p>A statement in lieu of prospectus shall be in the form and contain the particulars set out in part I of the fourth schedule to this <u>Bill</u> and, in the cases mentioned in Part II of that schedule, set out the reports specified therein, and the said parts I and II shall have effect subject to the provisions contained in part III of that schedule.</p>	

<p>that schedule.</p>		
<p><u>Current Section 85 Proposed New Section 109 – Civil liability for mis-statements in prospectus</u></p> <p>(1) Where a prospectus invites persons to subscribe for shares in a company, the persons referred to in subsection (2) of this section shall be liable to pay compensation to all persons who subscribe for shares or debentures relying on the prospectus for the loss or damage they may have sustained by reason of any untrue statement or mis-statement included in it.</p> <p>(2) A person liable to pay compensation under subsection (1) of this section includes-</p> <p>(a) any director of the company at the time of the issue of the prospectus;</p> <p>(b) any person who consented to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;</p>	<p><u>Proposed New Section 109– Civil liability for mis-statements in prospectus</u></p> <p>(1) Retained</p> <p>(2) A person liable to pay compensation under subsection (1) of this section includes-</p> <p>(a) retained</p> <p>(b) retained</p>	

<p>(c) any employee of the company who participated in or facilitated the production of the prospectus; and</p> <p>(d) the issuing house and its principal officers.</p>	<p>(c) retained</p> <p>(d) retained</p> <p><u>(e) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;</u></p> <p><u>(f) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus;</u></p> <p><u>(g) a person named in the prospectus with his consent as a stockbroker, underwriter, auditor, banker or solicitor of the issuer or other expert in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus;</u></p>	
--	---	--

<p>(3) Where under section 77 of this Act the consent of a person is required to the issue of a prospectus and he has given that consent he shall not by reason only of his having given the consent be liable under this section as a person who has authorised the issue of prospectus except in respect of an untrue statement or mis-statement purported to be made by him as an expert.</p> <p>(4) No person shall be liable under subsection (1) of this section if he proves-</p> <p>(a) that, having consented to become a director of the company, he withdrew his consent in writing before the issue of the prospectus, and that it was issued without his authority or consent;</p> <p>(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he immediately gave reasonable public notice that it was issued without his knowledge or</p>	<p>(3) Where under section <u>101</u> of this <u>Bill</u> the consent of a person is required to the issue of a prospectus and he has given that consent he shall not by reason only of his having given the consent be liable under this section as a person who has authorised the issue of prospectus except in respect of an untrue statement or mis-statement purported to be made by him as an expert.</p> <p>(4) Retained</p> <p>(a) Retained</p> <p>(b) Retained</p>	
--	--	--

<p>consent;</p> <p>(c) that, after the issue of the prospectus and before allotment, he, on becoming aware of any untrue statement or mis-statement in it, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or</p> <p>(d) that, as regards every untrue statement or mis-statement-</p> <p>(i) not purporting to be made on the authority of an expert, or of an official public document or statement, he had reasonable ground to believe and did up to the time of the allotment of the shares, as the case may be, believe that the statement was true,</p> <p>(ii) purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it fairly represented the statement, or was a</p>	<p>(c) Retained</p> <p>(d) Retained</p> <p>(i) Retained</p> <p>(ii) purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation and he had reasonable ground to believe and did up to the time of the issue of the</p>	
---	--	--

correct and fair copy of or extract from the report or valuation and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 77 of this ~~Act~~ to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, and

(iii) purporting to be a statement made by an official person or contained in what purports to be a copy of or an extract from an official public document, it was a correct and fair representation of the statement or copy of or extract from the document.

(5) The provisions of subsection (4) of this section shall not apply in the case of a person liable by reason of his having given a consent required of him by section 77 of this ~~Act~~ as a person who has authorised the

prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 101 of this ~~Bill~~ to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, and

(iii) Retained

(5) The provisions of subsection (4) of this section shall not apply in the case of a person liable by reason of his having given a consent required of him by section 101 of this ~~Bill~~ as a person who has authorised the issue of a prospectus in respect of an untrue statement

issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert.

(6) A person who, apart from this subsection, would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section ~~60~~ of this ~~Act~~ as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves that -

(a) having given his consent under section ~~77~~ of this ~~Act~~ to the issue of the prospectus, he withdraws it in writing before ~~delivery of a copy~~ of the prospectus ~~for registration~~; or

(b) after ~~delivery of a copy~~ of the prospectus ~~for registration~~ and before allotment he, on becoming aware of the untrue statement or mis-statement, withdrew his consent in writing and gave

purporting to be made by him as an expert.

(6) A person who, apart from this subsection, would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section 86 of this Bill as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves that -

(a) having given his consent under section 101 of this Bill to the issue of the prospectus, he withdraws it in writing before registration of the prospectus; or

(b) after registration of the prospectus and before allotment he, on becoming aware of the untrue statement or mis-statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or

<p>reasonable public notice of the withdrawal and of the reason for his withdrawal; or</p> <p>(c) he was competent to make the statement and that he had reasonable ground to believe and did, up to the time of the allotment of the shares, believe that the statement was true.</p> <p>(7) Where</p> <p>(a) the prospectus contains the name of a person as a director of the company or as having agreed to become a director of the company and he has not consented to become director, or has withdrawn his consent in writing before the issue of the prospectus, and has not authorised or consented to such issue; or</p> <p>(b) the consent of a person is required under section 77 of this Act to the issue of the prospectus and he either has not given the consent or has withdrawn it</p>	<p>(c) Retained</p> <p>(7) Where-</p> <p>(a) Retained</p> <p>(b) the consent of a person is required under section <u>101</u> of this <u>Bill</u> to the issue of the prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus;</p>	
--	--	--

<p>before the issue of the prospectus;</p> <p>(c) the directors of the company, except a director without whose knowledge or consent the prospectus was issued, and any other person who authorised such issue, commits of an offence and is liable to indemnify the person so named or whose consent was so required, as the case may be against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect of the issue of the prospectus or the inclusion in the prospectus of the statement.</p> <p>(8) A person shall not be deemed for the purpose of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section 77 of this Act to the</p>	<p>(c) the directors of the company, except a director without whose knowledge or consent the prospectus was issued, and any other person who authorised such issue, is liable to indemnify the person so named or whose consent was so required, as the case may be against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect of the issue of the prospectus or the inclusion in the prospectus of the statement.</p> <p>(8) A person shall not be deemed for the purpose of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section <u>101</u> of this <u>Bill</u> to the inclusion in it of a</p>	
--	--	--

<p>inclusion in it of a statement purporting to be made by him as an expert.</p>	<p>statement purporting to be made by him as an expert.</p>	
<p><u>Current Section 86 Proposed New Section 110 – Criminal liability for mis-statements in prospectus</u></p> <p>(1) Where a prospectus includes any untrue statement or mis-statement, any director or officer who authorised the issue of the prospectus commits an offence and is liable-</p> <p>(a) on conviction to a fine of not less than ₹1,000,000,000 or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or</p> <p>(b) on summary conviction, to a fine of not less than ₹1,000,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.</p>	<p><u>Proposed New Section 110 – Criminal liability for mis-statements in prospectus</u></p> <p>(1) Retained</p> <p>(a) on conviction to a fine of not less than ₹1,000,000 or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or</p> <p>(b) on summary conviction, to a fine of not less than ₹1,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.</p>	

<p>(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 77 of this Act to the inclusion in it of a statement purporting to be made by him as an expert.</p>	<p>(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 101 of this Bill to the inclusion in it of a statement purporting to be made by him as an expert.</p>	
<p><u>Current Section 87 Proposed New Section 111 – Criminal liability in respect of statements in lieu prospectus</u></p> <p>1) Where a statement in lieu of prospectus includes any untrue statement or mis- statement, any person who authorised the delivery of the statement in lieu of prospectus for registration commits an offence and is liable-</p> <p>(a) on conviction to a fine of not less than ₦1,000,000,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or</p> <p>(b) on summary conviction, to a fine not exceeding</p>	<p><u>Proposed New Section 111 – Criminal liability in respect of statements in lieu prospectus</u></p> <p>(1) Retained</p> <p>(a) on conviction to a fine of not less than ₦1,000,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or</p> <p>(b) on summary conviction, to a fine not less than ₦1,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that</p>	

<p>₦1,000,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement or mis-statement was true.</p> <p>(2) For the purposes of this section-</p> <p>(a) any information included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form or context in which it is included; and</p> <p>(b) an information shall be deemed to be included in a statement in lieu of prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated in it.</p>	<p>the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement or mis-statement was true.</p> <p>(2) For the purposes of this section-</p> <p>(a) Retained</p> <p>(b) Retained.</p>	
---	---	--

<p><u>Current Section 88 Proposed New Section 112 – Allotment of securities.</u></p> <p>Where a public offer of securities is made, whether listed or not, under such rules and regulations as may be laid down by the Commission, the issuer and the issuing house shall be responsible for the allotment of the securities of the company, subject to the approval of such allotment by the Commission in accordance with the guidelines prescribed under the rules and regulations made hereunder.</p>	<p><u>Proposed New Section 112 – Allotment of securities.</u></p> <p>Where a public offer of securities is made, whether listed or not, under such rules and regulations as may be laid down by the Commission, the issuer and the issuing house shall be responsible for the allotment of the securities of the company, subject to the approval of such allotment by the Commission in accordance with the guidelines prescribed under the rules and regulations made hereunder.</p> <p><u>Provided that the Commission may by Rules specify such offers as would be exempt from the provisions of this Section.</u></p>	
<p><u>Current Section 89 Proposed New Section 113 – Opening of subscription lists.</u></p> <p>(1) No allotment shall be made of any securities in a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later</p>	<p><u>Proposed New Section 113 – Opening of subscription lists.</u></p> <p>(1) No allotment shall be made of any securities in a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus; and in this Bill, the beginning of the said third day or such later time, as mentioned in this subsection, is hereafter referred to as "the time of the opening</p>	

time (if any) as may be specified in the prospectus; and in this Act, the beginning of the said third day or such later time, as mentioned in this subsection, is hereafter referred to as "the time of the opening of the subscriptions lists."

(2) In subsection (1) of this section, the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement, provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the provisions of subsection (1) or (2) of this section but, in the event of any such

of the subscriptions lists."

(2) Retained

(3) The validity of an allotment shall not be affected by any contravention of the provisions of subsection (1) or (2) of this section but, in the event of any such contravention, the company and every director or officer is liable to a penalty of not less than ~~N~~2,000,000.

contravention, the company and every director or officer is liable to a penalty of not less than N50,000.

(4) In the application of this section to a prospectus offering securities for sale, the provisions of subsections (1), (2) and (3) of this section shall have effect with the substitution of references to sale, for references to allotment, and with the substitution for reference to the company and every director or officer of the company who is in default, ~~or~~ reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for securities in a company made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day following the opening of the subscription lists, unless before the expiration of the said third day, a person responsible under section ~~86~~ of this ~~Act~~ for the

(4) In the application of this section to a prospectus offering securities for sale, the provisions of subsections (1), (2) and (3) of this section shall have effect with the substitution of references to sale, for references to allotment, and with the substitution for reference to the company and every director or officer of the company who is in default, with reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for securities in a company made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day following the opening of the subscription lists, unless before the expiration of the said third day, a person responsible under section 110 of this Bill for the prospectus, has given a public notice having the effect under that section of excluding or limiting the responsibility of the person giving

<p>prospectus, has given a public notice having the effect under that section of excluding or limiting the responsibility of the person giving the public notice.</p> <p>(6) In reckoning for the purposes of this section and section 95 of this Act, the third day after another day or any intervening day which is a Saturday or Sunday or which is a public holiday in any part of Nigeria shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday there shall for the said purpose be substituted the first day after which is none of them.</p>	<p>the public notice.</p> <p>(6) In reckoning for the purposes of this section and section 119 of this Bill, the third day after another day or any intervening day which is a Saturday or Sunday or which is a public holiday in any part of Nigeria shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday there shall for the said purpose be substituted the first day after which is none of them.</p>	
<p><u>Current Section 90 Proposed New Section 114 – No allotment unless minimum subscription received.</u></p> <p>No allotment shall be made of any securities of a company offered to the public for subscription unless the subscription level exceeds the minimum percentage prescribed by the Commission from time to time.</p>	<p><u>Proposed New Section 114 – No allotment unless minimum subscription received.</u></p> <p>Retained</p>	
<p><u>Current Section 91 Proposed New Section 115 – Application monies to</u></p>	<p><u>Proposed New Section 115 – Application monies to be held in trust until allotment.</u></p>	

be held in trust until allotment.

(1) Application monies and other monies paid prior to allotment of shares by an applicant on account of shares or other securities shall, until the allotment of the shares or other securities, be held in a separate account as deposit by the issuing house on such terms and condition as may be prescribed by the Commission.

(2) If any default is made in complying with the provisions of subsection (1) of this section, the issuing house who knowingly and wilfully authorises or permits the default is liable on conviction to pay a fine of not less than ~~₹100,000~~ or to imprisonment for a term of not less than ~~six months~~ or to both such fine and imprisonment

(3) The Commission may, in lieu of a prosecution under subsection (2) of this section, also sanction a person who contravenes the provisions of subsection (1) of this section by imposing a penalty of not less than ~~₹500,000~~ and a

(1) Retained

(2) If any default is made in complying with the provisions of subsection (1) of this section, the issuing house who knowingly and wilfully authorises or permits the default is liable on conviction to pay a fine of not less than ~~₹5,000,000~~ or to imprisonment for a term of not less than one year or to both such fine and imprisonment

(3) The Commission may, in lieu of a prosecution under subsection (2) of this section, also sanction a person who contravenes the provisions of subsection (1) of this section by imposing a penalty of not less than ~~₹5,000,000~~ and a further sum of not less than ₹5,000 for every day in which the violation continues.

<p>further sum of not less than ₹5,000 for every day in which the violation continues.</p>		
<p><u>Current Section 92 Proposed New Section 116 – Prohibition of allotment in certain cases</u></p> <p>(1) A public company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares unless, at least three days before the first allotment of the shares, there has been delivered to the Commission for registration :-</p> <p><i>a)</i> a statement in lieu of prospectus signed by every person who is named in it as a director of the company or by his agent authorised in writing in the form and the particulars set out in Part I of the Fourth Schedule to this Act; and</p> <p><i>(b)</i> in the cases mentioned in Part II</p>	<p><u>Proposed New Section 116 – Prohibition of allotment in certain cases</u></p> <p>(1) A public company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares unless, at least three days before the first allotment of the shares, there has been <u>registered by the Commission</u>:-</p> <p><i>(a)</i> a statement in lieu of prospectus signed by every person who is named in it as a director of the company or by his agent authorised in writing in the form and the particulars set out in Part I of the Fourth Schedule to this <u>Bill</u>; and</p> <p><i>(b)</i> Retained.</p>	

<p>of the Fourth Schedule, setting out the specified reports, and the said Parts I and II of the Fourth Schedule shall have effect subject to the provisions contained in Part III of that schedule.</p> <p>(2) Every statement in lieu of a prospectus delivered under subsection (1) of this section shall, where the persons making any such statement have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 6 of the Fourth Schedule to this Act have endorsed on or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for the adjustments.</p> <p>(3) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and willfully authorises or permits the contravention commits an offence</p>	<p>(2) Every statement in lieu of a prospectus delivered under subsection (1) of this section shall, where the persons making any such statement have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 6 of the Fourth Schedule to this <u>Bill</u> have endorsed on or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for the adjustments.</p> <p>(3) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and willfully authorises or permits the contravention commits an offence and is liable on conviction to a fine of not less than <u>₹5,000,000</u> or to a term of imprisonment</p>	
---	---	--

<p>and is liable on conviction to a fine of not less than ₹100,000 or to a term of imprisonment of not less than three years or to both such fine and imprisonment.</p> <p>4) The Commission may, in lieu of a prosecution under subsection (3) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than ₹500,000 and a further penalty of not less than ₹5,000 for every day the violation continues.</p>	<p>of not less than three years or to both such fine and imprisonment.</p> <p>(4) The Commission may, in lieu of a prosecution under subsection (3) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than <u>₹5,000,000</u> and a further penalty of not less than <u>₹50,000</u> for every day the violation continues.</p>	
<p><u>Current Section 93 Proposed New Section 117 – Effect of irregular allotment</u></p> <p>(1) An allotment made by a company to an applicant in contravention of the provisions of sections 90 and 92 of this Act shall be voidable at the instance of the applicant-</p> <p>(a) within one month after the holding of the statutory meeting of the company; or</p> <p>(b) where the allotment is made after the holding of the statutory</p>	<p><u>Proposed New Section 117 – Effect of irregular allotment</u></p> <p>(1) An allotment made by a company to an applicant in contravention of the provisions of sections <u>114</u> and <u>116</u> of this <u>Bill</u> shall be voidable at the instance of the applicant-</p> <p>(a) retained</p> <p>(b) retained</p>	

<p>meeting, within one month after the date of the allotment and the allotments shall be so voidable notwithstanding that the company is in the course of being wound up.</p> <p>(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of the provisions of sections 90 and 92 of this Act with respect to an allotment, he shall be liable to compensate the company and the allottee respectively, for any loss, damage or costs which the company or the allottee may have sustained or incurred thereby but proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.</p>	<p>(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of the provisions of sections 114 and 116 of this Bill with respect to an allotment, he shall be liable to compensate the company and the allottee respectively, for any loss, damage or costs which the company or the allottee may have sustained or incurred thereby but proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.</p>	
<p><u>Current Section 94 Proposed New Section 118 – Action for rescission.</u></p> <p>A shareholder may bring an action against a company which has allotted shares under a prospectus for the rescission of all allotments and the repayment to the holders of the shares of the whole or part of the issued price which has been</p>	<p><u>Proposed New Section 118 – Action for rescission.</u></p> <p>A shareholder may bring an action against a company which has allotted shares under a prospectus for the rescission of all allotments and the repayment to the holders of the shares of the whole or part of the issued price which has been paid in respect of them if the prospectus :-</p>	

<p>paid in respect of them if the prospectus :-</p> <p>(a) contained a material statement, promise or forecast which was false, deceptive or misleading; or</p> <p>(b) did not contain a statement, report or account required to be contained in it by section 75 and the Third Schedule to this Act.</p>	<p>(a) contained a material statement, promise or forecast which was false, deceptive or misleading; or</p> <p>(b) did not contain a statement, report or account required to be contained in it by section <u>99</u> and the Third Schedule to this <u>Bill</u>.</p>	
<p><u>Current Section 95 Proposed New Section 119 – Allotment of securities and dealing on securities exchange, etc.</u></p> <p>(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the securities offered by it to be dealt with on any securities exchange or capital trade point, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has-</p> <p>(a) not been applied for before the third day after the first issue of the</p>	<p><u>Proposed New Section 119 – Allotment of securities and dealing on securities exchange, etc</u></p> <p>(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the securities offered by it to be dealt with on any securities exchange any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has-</p> <p>(a) Retained</p>	

<p>prospectus; or</p> <p>(b) been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the securities exchange or capital trade point.</p> <p>(2) Where permission for a dealing referred to in subsection (1) of this section has been applied for or if applied for has been refused, the company shall immediately repay, without interest, all monies received from applicants in pursuance of the prospectus and if the monies are not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay the monies with interest at the current bank rate per annum from the expiration of the eight days, but a director shall not be liable if he</p>	<p>(b) been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the securities exchange.</p> <p>(2) Where permission for a dealing referred to in subsection (1) of this section has been applied for or if applied for has been refused, the company shall immediately repay, without interest, all monies received from applicants in pursuance of the prospectus and if the monies are not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay the monies with interest at the current <u>inter</u>bank rate per annum from the expiration of the eight days, but a director shall not be liable if he proves that the default in the repayment of the monies was not due to any misconduct or negligence on his part.</p>	
--	--	--

<p>proves that the default in the repayment of the monies was not due to any misconduct or negligence on his part.</p> <p>(3) All monies received by virtue of this section shall be kept in a separate trust account on such terms and conditions as may be prescribed by the Commission so long as the issuing house may become liable to repay the monies specified under subsection (2) of this section; and if default is made in complying with this subsection, the issuing house and any of its officers, who is in default shall be jointly and severally liable to a penalty of ₦1,000,000 and a further sum of not less than ₦50,000 for everyday the violation continues.</p> <p>(4) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section is void.</p> <p>(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the</p>	<p>(3) Retained.</p> <p>(4) Retained</p> <p>(5) Retained</p>	
--	--	--

<p>application for permission, though not at the time granted, shall be given further consideration.</p> <p>(6) This section shall have effect-</p> <p>(a) in relation to any securities agreed to be taken by a person underwriting an offer by a prospectus as if he had applied for them in pursuance of the prospectus; and</p> <p>(b) in relation to a prospectus offering securities for sale, with the following modifications -</p> <p>(i) references to sale shall be substituted for references to allotment,</p> <p>(ii) the persons by whom the offer is made and shall be liable under subsection (2) of this section to repay monies received from applicants, and references to the company's liability under that subsection shall be</p>	<p>(6) This section shall have effect-</p> <p>(a) Retained</p> <p>(b) Retained</p> <p>(i) Retained</p> <p>(ii) the persons by whom the offer is made shall be liable under subsection</p>	
--	---	--

<p>construed accordingly, and</p> <p>(iii) for the references in subsection (3) of this section to the company and every officer of the company who is in default there shall be substituted references to any person by or through whom the offer is made and who knowingly and willfully authorises or permits the default.</p>	<p>(iii) Retained</p>	
<p><u>Current Section 96 Proposed New Section 120 – Return of surplus monies to subscribers, etc.</u></p> <p>(1) The Commission shall have the power to prescribe the maximum period within which surplus monies due to subscribers shall be returned.</p> <p>(2) The Commission may, subject to subsection (3) of this section, prescribe the rate of interest payable to subscribers whose surplus monies are held beyond the period prescribed pursuant to subsection (1) of this section.</p> <p>(3) The interest due and payable under subsection (2) of this section</p>	<p><u>Proposed New Section 120 – Return of surplus monies to subscribers, etc.</u></p> <p>(1) Retained</p> <p>(2) Retained</p> <p>(3) The interest due and payable under subsection (2) of this section shall not be less than one per</p>	

<p>shall not be less than one per cent above the Central Bank of Nigeria minimum rediscount rate and the Commission may, in addition, require a company which fails to honour its obligation under this subsection to pay a higher rate of interest on the surplus monies.</p> <p>(4) A person who fails to comply with the provisions of this section is liable to a penalty of ₦1,000,000 and a further sum of not less than ₦50,000 for every day the violation continues.</p>	<p>cent above the Central Bank of Nigeria monetary policy rate <u>+5%</u> and the Commission may, in addition, require a company which fails to honour its obligation under this subsection to pay a higher rate of interest on the surplus monies.</p> <p>(4) A person who fails to comply with the provisions of this section is liable to a penalty of <u>₦5,000,000</u> and a further sum of not less than ₦50,000 for every day the violation continues.</p>	
--	---	--

PART XI: CONDUCT OF SECURITIES BUSINESS

<p><u>Current Section 97 Proposed New Section 121 – Prohibition of certain cash transactions.</u></p> <p>For the purpose of this Act, no cash transaction shall be carried out in the capital market in excess of an amount to be determined by the Commission from time to time.</p>	<p><u>Proposed New Section 121 – Prohibition of certain cash transactions.</u></p> <p>For the purpose of this <u>Bill</u>, no cash transaction shall be carried out in the capital market in excess of an amount to be determined by the Commission from time to time.</p>	
--	---	--

<p><u>Proposed New Section 122 –</u></p>	<p><u>Proposed New Section 122 – Prohibition of transactions in non-dematerialised securities</u> <u>No Securities shall be transacted upon in the secondary market unless such has been deposited with the Central Securities Depository.</u></p> <p><u>All securities to be transacted upon in the secondary market shall be deposited with a Central Securities Depository</u></p>	<p>To promote full dematerialization and enhance transparency, thereby reducing fraudulent activities in the securities market.</p>
<p><u>Current Section 98 Proposed New Section 123 – Securities dealer to issue Contract notes.</u></p> <p>A securities dealer shall, within the prescribed time and in respect of every securities transaction either as a principal or agent, issue a contract note which complies with section 99 of this Act.</p>	<p><u>Proposed New Section 123 – Securities dealer to issue Contract notes.</u></p> <p>A securities dealer shall, within the prescribed time and in respect of every securities transaction either as a principal or agent, issue a contract note which complies with section 124 of this <u>Bill</u></p>	

<p><u>Current Section 99 Proposed New Section 124 – Contents of contract notes.</u></p> <p>(1) A contract note given by a securities dealer under section 98 of this Act shall include-</p> <p>(a) the name and style under which the securities dealer carries on his business as a securities dealer and the address of the principal place at which he so carries on his business;</p> <p>(b) the name and address of the person to whom the securities dealer gives the contract note;</p> <p>(c) the date on which the transaction took place and, if outside a securities exchange or capital trade point, a statement to that effect;</p> <p>(d) the number, amount and description of the securities which are the subject of the contract;</p> <p>(e) the price per unit of the securities;</p>	<p><u>Proposed New Section 124 – Contents of contract notes.</u></p> <p>(1) A contract note given by a securities dealer under section <u>123</u> of this <u>Bill</u> shall include-</p> <p>(a) the name and style under which the securities dealer carries on his business as a securities dealer and the address of the principal place at which he so carries on his business;</p> <p>(b) the name and address of the person <u>in whose favour</u> the securities dealer <u>issues</u> the contract note;</p> <p>(c) the date on which the transaction took place;</p> <p>(d) retained</p> <p>(e) retained</p>	<p>The expression “to whom the securities dealer gives....” Appears ambiguous as it may mean a person other than the person in whose favour the transaction was conducted. It is recommended that the words “in whose favour” are used instead.</p>
--	--	---

<p>(f) the amount of the consideration;</p> <p>(g) the rate and amount of commission (if any) charged;</p> <p>(h) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and</p> <p>(i) if the settlement amount with or without benefit is to be added to or deducted from the settlement amount in respect of right to a benefit purchased or sold together with the securities, the first-mentioned amount and the nature of the benefit.</p>	<p>(f) retained</p> <p>(g) retained</p> <p>(h) retained</p> <p>(i) retained.</p>	
<p>(2) A securities dealer shall not include in a contract note given under subsection (1) of this section the name and style which he knows, or is reasonably expected to know is not the name of the person with or for whom he has entered into the transaction.</p> <p>(3) A reference in this section to a securities dealer dealing or entering</p>	<p>Recommended for deletion</p> <p>Recommended for deletion.</p>	

<p>into a transaction as principal includes a reference to a person-</p> <p>(a) dealing or entering into a transaction on behalf of a person associated with him;</p> <p>(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or</p> <p>(c) where he carries on business as a securities dealer on behalf of a body corporate in which his interest and the interest of his director together constitute a controlling interest.</p> <p>(4) For the purpose of this section-</p> <p>(a) a securities dealer who is a member of a securities exchange or capital trade point shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a securities exchange or capital trade point; and</p>	<p>(3) For the purpose of this section-</p> <p>(a) a securities dealer who is a member of a securities exchange shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a securities; and</p>	<p>This addresses knowingly creating a contract note with false details</p> <p>This provision appears out of place and secretariat observed it was a repetition of and properly situated in current Section 101 (2) i.e proposed section 126.</p>
---	--	---

<p>(b) a transaction takes place in the ordinary course of business at a securities exchange or capital trade point in the prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.</p> <p>(5) For the purpose of this section, a person is not associated with another person by reason only that he is a director of a body corporate of which the other person is also a director whether or not the body corporate carries on a business of dealing in securities.</p> <p>(6) A securities dealer who fails to issue a contract note is liable to a penalty of not less than ₦50,000 and not more than ₦100,000.</p> <p>(7) Any securities dealer or its principal officer who issues a contract note containing false or misleading information commits an offence and is liable to a penalty of ₦100,000, or an amount equivalent to four times the amount</p>	<p>(b) a transaction takes place in the ordinary course of business at a securities exchange in the prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.</p> <p>(4) For the purpose of this section, a person is not associated with another person by reason only that he is a director of a body corporate of which the other person is also a director whether or not the body corporate carries on a business of dealing in securities.</p> <p>(5) A securities dealer who fails to issue a contract note is liable to a penalty of not less than ₦200,000 and not more than ₦500,000.</p> <p>(6) Any securities dealer or its principal officer who issues a contract note containing false or misleading information commits an offence and is liable to a penalty of ₦1,000,000, or an amount equivalent to four times the amount involved in the transaction, which ever is higher or on to a term of imprisonment not exceeding 3 years.</p>	<p>Recommended for deletion. Same comment applies as in current subsection (3) below.</p>
---	---	---

<p>involved in the transaction, which ever is higher or on to a term of imprisonment not exceeding 3 years.</p> <p>(8) Where an investor suffers a loss as a result of the contravention of sections 98 and 99 of this Act, the securities dealer shall refund to the investor an amount equivalent to the loss, together with interest at a rate to be prescribed by the Commission from time to time.</p>	<p>(7) Where an investor suffers a loss as a result of the contravention of sections <u>123</u> and <u>124</u> of this <u>Bill</u>, the securities dealer shall refund to the investor an amount equivalent to the loss, together with interest at a rate to be prescribed by the Commission from time to time.</p>	
<p><u>Current Section 100 Proposed New Section 125 – Disclosure of certain interests in securities by securities dealers, etc.</u></p> <p>(1)Where a securities dealer, investment adviser, underwriter or an associated person of a securities dealer, investment adviser or underwriter, issues circulars or other similar written communications with respect to securities or a class of securities in which he has interest, he shall disclose in legible form, the nature of that interest.</p>	<p><u>Proposed New Section 125 – Disclosure of certain interests in securities by securities dealers, etc.</u></p> <p>(1) Retained</p>	

<p>(2) For the purposes of subsection (1) of this section, interest shall include any financial benefit or advantage which will, or is likely to, accrue directly or indirectly on or arising out of the disposal of the securities.</p> <p>(3) Where a securities dealer, investment adviser, underwriter or an associated person of a securities dealer, investment adviser or underwriter-</p> <p>(a) has purchased securities for the purpose of offering all or any of them to the public for purchase; and</p> <p>(b) offers to sell any of those securities to any person, he shall not make a recommendation with respect to the securities offered for the purpose unless he has informed each person to whom the recommendation is made that he purchased the securities for that purpose.</p> <p>(4) Where-</p> <p>(a) securities have been offered for sale</p>	<p>(2) For the purposes of subsection (1) of this section, interest shall include any financial benefit or advantage which will, or is likely to, accrue directly or indirectly on or arising out of <u>dealings in the securities.</u></p> <p>(3) Retained</p> <p>(4) Where-</p> <p>(a) retained</p>	<p>The recommended amendment provides a broader coverage for interest of securities dealers which must be declared.</p>
--	---	---

<p>(b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased, he shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a securities exchange or capital trade point, or make a recommendation with respect to those securities within a period to be prescribed by the Commission from time to time, unless the offer or recommendation complies with the provisions of subsection (5).</p> <p>(5) An offer or recommendation shall not be made under subsection (4) of this section unless it contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities which he has acquired, or is or will or may be required to</p>	<p>(b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased, he shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a securities exchange, or make a recommendation with respect to those securities within a period to be prescribed by the Commission from time to time, unless the offer or recommendation complies with the provisions of subsection (5).</p> <p>(5) Retained</p>	
--	---	--

<p>acquire under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.</p> <p>(6) A person who is a securities dealer, investment adviser, or the representative of a securities dealer or investment adviser shall not issue to any person any circular or other communication or written offer or recommendation to which subsection (1), (3) or (4) of this section applies unless the circular or other communication or the written offer or recommendation is signed by a director, executive officer or secretary in the case of a corporate body, and that individual in the case of a natural person.</p> <p>(7) Where a person who is a securities dealer, investment adviser, or the representative of a securities dealer or investment adviser issues to any person a circular or other communication or a</p>	<p>(6) A person who is a securities dealer, investment adviser, or the representative of a securities dealer or investment adviser shall not issue to any person any circular or other communication or written offer or recommendation to which subsection (1), (3) or (4) of this section applies unless the circular or other communication or the written offer or recommendation is signed by a director, executive officer or secretary in the case of a body <u>corporate</u>, and that individual in the case of a natural person.</p> <p>(7) Retained</p>	
--	--	--

<p>written offer or recommendation to which subsection (1), (3), (4) or (5) of this section applies, the first mentioned person shall preserve for a period of 7 years a copy of the circular or other communication or of the written offer or recommendation, duly signed by any of the persons mentioned in subsection (6) of this section.</p> <p>(8) Reference in this section to an offer of securities shall be construed to include a reference to a statement that is not an offer but expressly or impliedly invites a person to whom it is made, to offer to acquire securities.</p> <p>(9) Any person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not less than N100,000 and not more than N500,000, or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>	<p>(8) Retained</p> <p>(9) Any person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not less than <u>N500,000</u> and not more than <u>N1,000,000</u>, or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>	
<p><u>Current Section 101 Proposed New Section 126 – Dealing as Principal</u></p>	<p><u>Proposed New Section 126 – Dealing as Principal</u></p>	

<p>1) A securities dealer shall not as a principal deal in any securities with a person who is not a securities dealer unless that other securities dealer is acting in the transaction as principal and not as agent.</p> <p>(2) A reference in this section to a securities dealer dealing or entering into a transaction as principal includes a reference to a person-</p> <p>(a) dealing or entering into a transaction on behalf of a person associated with him;</p> <p>(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or</p> <p>(c) where he carries on business as a dealer for a body corporate in which his interest and the interests of his directors together constitute a controlling interest.</p> <p>(3) A securities dealer who, as a principal, enters into a transaction</p>	<p>1) A securities dealer shall not as a principal deal in any securities with a person who is not a securities dealer unless that securities dealer is acting in the transaction as principal and not as agent.</p> <p>(2) Retained</p> <p>(3) Retained</p>	<p>It is recommended that the word “other” be deleted to eliminate the ambiguity created by it in the provision.</p>
--	--	--

<p>of sale or purchase of securities with a person who is not a securities dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.</p> <p>(4) The provisions of subsection (1) of this section shall not apply in relation to a transaction entered into by a dealer who is a member of a securities exchange or capital trade point and specialises in transactions relating to odd lots of securities being a transaction of sale or purchase of an odd lot of securities.</p> <p>(5) Where a securities dealer fails to comply with subsection (1) or (3) of this section in respect of a contract for sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the securities dealer not later than 30 days after the receipt of the contract note.</p>	<p>(4) Recommended for deletion.</p> <p>(4) Retained.</p>	<p>Odd lots of securities are no longer carried on in the Nigeria capital market.</p>
---	---	---

<p>(6) Where a dealer fails to comply with subsection (1) or (3) of this section in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner , rescind the contract.</p> <p>(7) Nothing in subsections (5) and (6) of this section shall affect any right which a person has apart from the provisions of these subsections.</p> <p>(8) A person who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine of not less than N20,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.</p>	<p><u>(5)</u> Retained</p> <p><u>(6)</u> Nothing in subsections <u>(4)</u> and <u>(5)</u> of this section shall affect any right which a person has apart from the provisions of these subsections.</p> <p><u>(7)</u> A person who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine of not less than N200,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.</p>	
<p><u>Current Section 102 Proposed New Section 127 – Dealings by employees of securities dealers</u></p> <p>(1) A securities dealer shall not give an unsecured credit to an employee or to a person who is associated with the employee if-</p>	<p><u>Proposed New Section 127 – Dealings by employees and associated persons of securities dealers.</u></p> <p>(1) A securities dealer shall not give an unsecured credit to an employee, a person who is associated with the employee, <u>or associated persons</u> if-</p>	<p>The provision has been expanded to sanction both the securities dealer and the employees/beneficiaries and possibly any other vehicle by which the offence is committed.</p>

<p>(a) the unsecured credit is given for the purpose of enabling or assisting the person to whom the unsecured credit is given to purchase or subscribe for any securities; or</p> <p>(b) the person giving, authorising or approving the unsecured credit knows or has reason to believe that the unsecured credit will be used for the purpose of purchasing or subscribing for securities.</p> <p>(2) A person who contravenes or fails to comply with any of the provisions of subsection one of this section commits an offence and is liable on conviction to a fine of not less than ₦100,000 and not more than ₦500,000, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.</p>	<p>(a) Retained</p> <p>(b) Retained</p> <p>(2) A person who contravenes or fails to comply with any of the provisions of subsection <u>(1)</u> of this section commits an offence and is liable to a <u>penalty</u> of not less than <u>₦500,000</u> and not more than <u>₦1,000,000</u>, exceeding two years or to both such fine and imprisonment.</p> <p><u>(3.) Notwithstanding the provisions of subsection (2), a person who contravenes the provisions of this Section shall be liable to forfeit to the Commission, the profit made or to be made from the contravention as the Commission may determine.</u></p>	<p>Stiffer sanctions have been recommended for violating the provision and produce a more deterrent effect, taking into consideration the current value of the naira.</p>
---	---	---

	<p><u>(4) An employee or any person to whom unsecured credit is advanced in contravention of this Section and any vehicle through which such loan advancement is made shall be equally liable in the manner specified in subsection (2) and (3) of this section.</u></p>	
<p><u>Current Section 103 Proposed New Section 128 – Securities dealers to give priority to client's orders</u></p> <p>(1) A securities dealer shall not, except as permitted by subsection (3) of this section, whether as principal or on behalf of a person associated with him, enter into a transaction of purchase or sale of securities to be traded on the floor of a securities exchange or capital trade point if a client of the securities dealer who is not associated with the securities dealer has instructed the securities dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.</p> <p>(2) A securities dealer who contravenes the provisions of this section commits an offence and is</p>	<p><u>Proposed New Section 128 – Securities dealers to give priority to client's orders</u></p> <p>(1) A securities dealer shall not, except as permitted by subsection (4) of this section, whether as principal or on behalf of a person associated with him, enter into a transaction of purchase or sale of securities to be traded on the floor of a securities exchange if a client of the securities dealer who is not associated with the securities dealer has instructed the securities dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.</p> <p>(2) A securities dealer who contravenes the provisions of this section <u>shall be liable to a</u></p>	<p>It is recommended that the cap on the penalty be removed. Decriminalization of the violation of this section is important to make</p>

<p>liable on conviction to a fine of not less than ₦100,000 and not more than ₦500,000.</p> <p>(3) The provisions of subsection (1) of this section shall not apply in relation to the entering into of a transaction by a securities dealer as principal or on behalf of a person associated with him if-</p> <p>(a) the instruction from the client of the securities dealer requires the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities by reasons of those conditions; or</p> <p>(b) the transaction is entered into in prescribed circumstances</p>	<p><u>penalty of not less</u> than ₦500,000.</p> <p><u>(3) Notwithstanding the provisions of Subsection (2), a person who contravenes the provisions of this Section shall in addition be liable to forfeit to its client, the securities it acquired or proceeds of securities it sold, while a client's order was pending, to the extent of the client's order.</u></p> <p>(4) Retained</p> <p>(a) retained</p> <p>(b) recommended for deletion</p>	<p>for easier and quicker redress. Also, the monetary penalty needs to be increased in view of current reality regarding the value of the naira.</p> <p>Recommended for deletion to eliminate ambiguity.</p>
---	---	--

<p><u>Current Section 104 Proposed New Section 129 – Securities lending and margin requirements.</u></p> <p>(1) For the purpose of preventing the excessive use of credit for the purchase or carrying of securities by dealers or member companies, the Commission may make regulations to provide for margin requirements, for the amount of credit which may, from time to time, be extended and maintained by securities dealers on all or specified securities or transactions or class of securities and transactions and for matters connected.</p> <p>(2) The Commission may also make regulations for securities lending transactions by securities dealers.</p>	<p><u>Proposed New Section 129 – Securities lending and margin requirements.</u></p> <p>(1) For the purpose of preventing the excessive use of credit for the purchase or <u>transacting in</u> securities by dealers or member companies, the Commission may make regulations to provide for margin requirements, for the amount of credit which may, from time to time, be extended and maintained by securities dealers on all or specified securities or transactions or class of securities and transactions and for matters connected.</p> <p>(2) Retained.</p>	
<p>PART XII: TRADING IN SECURITIES</p>		
<p><u>Current Section 105 Proposed New Section 130 – False trading and market rigging transactions</u></p> <p>(1) A person shall not create, or</p>	<p><u>Proposed New Section 130 – False trading and market rigging transactions</u></p> <p>(1) Retained</p>	

<p>cause to be created, or do anything which may create a false or misleading appearance —</p> <p>(a) of active trading in any securities on a securities exchange or capital trade point;</p> <p>or</p> <p>(b) with respect to the market for the price of any such securities.</p> <p>(2) A person shall not-</p> <p>(a) by means of purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities; or</p> <p>(b) by any fictitious transactions or devices, maintain, inflate, depress, or cause fluctuations in the market price of any securities.</p> <p>(3) Without prejudice to the generality of subsection (1) of this section, a person who-</p> <p>(a) effects, participates in, is concerned with or carries out,</p>	<p>(a) of active trading in any securities on a securities exchange; or</p> <p>(b) with respect to the market for the price of any such securities .</p> <p>(2) Retained</p>	
---	--	--

<p>either directly or indirectly, any transaction, sale or purchase of any securities, being a transaction, sale or purchase which does not involve any change in the beneficial ownership of the securities; or</p> <p>(b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposed to make or cause to be made, or knows that a person associated with him has made or caused to be made, an offer to purchase the same number, or substantially the same number of securities at a price which is substantially the same as the first mentioned price; or</p> <p>(c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or cause to be made, or knows that a person associated with him has made or caused to be made or proposes to</p>	<p>(c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or cause to be made, an offer to sell the same number of securities at a price which is substantially the same as the first-mentioned</p>	
---	---	--

<p>make or cause to be made, an offer to sell the same number of securities at a price which is substantially the same as the first-mentioned price, shall be deemed to have created a false or misleading appearance of active trading in securities on a securities exchange or capital trade point.</p> <p>(4) For an act referred to in subsection (3) of this section, it is a defence if a person establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities exchange or capital trade point.</p>	<p>price, shall be deemed to have created a false or misleading appearance of active trading in securities on a securities exchange.</p> <p>(4) For an act referred to in subsection (3) of this section, it is a defence if a person establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities exchange.</p>	
<p><u>Current Section 106 Proposed New Section 131 – Securities market manipulation</u></p> <p>(1) A person shall not effect, take part in, be concerned with or carry out, either directly or indirectly, two or more transactions in securities of a body corporate being transactions</p>	<p><u>Proposed New Section 131 – Securities market manipulation</u></p> <p>(1) A person shall not effect, take part in, be concerned with or carry out, either directly or indirectly, two or more transactions in securities of a body corporate being transactions which have, or are likely to have the effect of raising or lowering the price of securities of the body corporate on a securities exchange with intent</p>	

<p>which have, or are likely to have the effect of raising or lowering the price of securities of the body corporate on a securities exchange or capital trade point with intent to induce other persons to purchase, sell or subscribe for securities of the body corporate or of a related body corporate.</p> <p>(2) A person shall not effect, take part in, be concerned with or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions which have or are likely to have the effect of maintaining or stabilizing the price of securities of the body corporate on a securities exchange or capital trade point with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate.</p> <p>(3) A reference in this section to a transaction in relation to securities of a body corporate</p>	<p>to induce other persons to purchase, sell or subscribe for securities of the body corporate or of a related body corporate.</p> <p>(2) A person shall not effect, take part in, be concerned with or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions which have or are likely to have the effect of maintaining or stabilizing the price of securities of the body corporate on a securities exchange with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate.</p> <p>(3) Retained</p>	
--	---	--

<p>include:</p> <p>(a) a reference to the making of an offer to subscribe, sell or purchase such securities of the body corporate; and</p> <p>(b) a reference to the making of an invitation however made which expressly or impliedly invites a person to offer to subscribe, sell or purchase such securities of the body corporate.</p> <p>(4) No securities of a public company listed on any recognized securities exchange shall be bought or sold outside the facilities of a recognized exchange on which the securities are listed.</p> <p>(5) Any person who contravenes the provisions of subsection (4) above shall be liable to a penalty of ₦500,000 in addition to a nullification of the said transaction.</p>	<p>(4) No <u>listed</u> securities shall be <u>traded</u> outside the facilities of a recognized exchange.</p> <p>(5) Any person who contravenes the provisions of subsection (4) above shall be liable to a penalty of <u>₦1,000,000 or three times the value of the transaction whichever is higher,</u> in addition to a nullification of the said transaction.</p>	<p>The amendment to section 106 (4) is required to bring the law in line with best practices while also promoting transparency in the capital market. It is also important to delete “public company” in the provision in order to accommodate securities other than equities.</p> <p>Subsection (5) is recommended to produce a more deterrent effect by making the penalty more severe.</p>
--	--	---

--	--	--

<p><u>Current Section 107 Proposed New Section 132 – False or misleading statements</u></p> <p>No person shall knowingly, recklessly or negligently make a statement, or disseminate information, which is false or misleading in any material particular and likely to induce the sale or purchase of the securities by other persons or likely to have the effect of raising, lowering, maintaining or establishing the market price of securities.</p>	<p><u>Proposed New Section 132 – False or misleading statements.</u></p> <p>Retained.</p>	
<p><u>Current Section 108 Proposed New Section 133 – Fraudulently inducing persons to deal in securities</u></p> <p>(1) No person shall-</p> <p>(a) make or publish any statement, promise or forecast which he knows</p>	<p><u>Proposed New Section 133 – Fraudulently inducing persons to deal in securities</u></p> <p>Retained</p>	

to be misleading, false or deceptive; or

(b) dishonestly conceals material facts;

(c) recklessly make or publish, dishonestly or otherwise of any statement, promise or forecast which is misleading, false or deceptive; or

(d) record or store in, or by means of any mechanical, electronic or other device, create information which he knows to be false or misleading in a material particular with intent to induce or attempt to induce another person to deal in securities;

(e) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

(2) It is a defence to any liability under subsection (1) of this section if it is established that, at the time

<p>when the person so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.</p>		
<p><u>Current Section 109 Proposed New Section 134 – Dissemination of illegal information</u></p> <p>A person shall not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of any statement or illegal information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate which is related to that body corporate if —</p> <p>(a) the person or a person associated with that person has entered into any such transaction or done any such act or thing; or</p> <p>(b) the person has received or expects to receive directly or</p>	<p><u>Proposed New Section 134 – Dissemination of illegal information</u></p> <p>Retained.</p>	

<p>indirectly any consideration or benefit for circulating or disseminating or authorising or being concerned in the circulation or dissemination of the statement or information.</p>		
<p><u>Current Section 110 Proposed New Section 135 – Prohibition of fraudulent means.</u> No person shall directly or indirectly in connection with the purchase or sale of any securities to- (a) employ any device, scheme or artifice to defraud; or (b) engage in any act, practice or course of business which operate or would operate as a fraud or deceit upon any person.</p>	<p><u>Proposed New Section 135 – Prohibition of fraudulent means.</u> No person shall directly or indirectly in connection with the purchase or sale of any securities- (a) and (b) retained</p>	<p>The word “to” is not necessary in the provision.</p>
<p><u>Current Section 111 Proposed New Section 136 – Prohibition of dealing in securities by insiders</u> 1) Subject to section 104 of this Act, a person who is an insider of a company shall not buy or sell, or otherwise deal in the securities of the company which are offered to the public for sale or subscription if he has information which he knows</p>	<p><u>Proposed New Section 136 – Prohibition of dealing in securities by insiders</u> (1) <u>A</u> person who is an insider of a company shall not buy or sell, or otherwise deal in the securities of the company which are offered to the public for sale or subscription if he has information which is unpublished <u>and</u> price sensitive in relation to those securities.</p>	<p>Reference to section 104 is not required as there is no clear link between the subject matter of the sections. Also, there is need to delete the expression “which he knows” in order to impose a strict liability on all insiders in this regard.</p>

is unpublished price sensitive information in relation to those securities

~~(2) The provisions of subsection (1) of this section applies where~~

~~(a) a person has information which he knowingly obtains (directly or indirectly) from another person who-~~

~~(i) is connected with a particular company, or was at any time within the six months preceding the obtaining of the information, so connected,~~

~~(ii) the former person knows about, or has reasonable cause to know that the latter individual holds, the information by virtue of being so connected; and~~

~~(b) the former person knows or has reasonable cause to believe that, because of the latter's connection and position, it would be reasonable to expect him not to disclose the information except for the proper~~

Recommended for deletion.

~~performance of the functions attached to that position.~~

~~(3) The former person mentioned in subsection (2) of this section-~~

~~(a) shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities; and~~

~~(b) shall not himself deal in securities of any other company if he knows that the information is unpublished price sensitive information in relation to those securities and it relates to any transaction (actual or contemplated) involving the first company and the other company, or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.~~

~~(4) Where a person is contemplating or has contemplated making (with or without another person) a take over offer for a~~

~~company in a particular capacity, that person shall not deal in securities of that company in another capacity if he knows that the offer is contemplated or is no longer contemplated and the offer is unpublished price sensitive information in relation to those securities.~~

~~(5) Where a person has knowingly obtained (directly or indirectly) from an individual to whom subsection (4) of this section applies, information that the offer referred to in that subsection is being contemplated or is no longer contemplated, the former person shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities.~~

~~(6) A person who is for the time being prohibited by the provisions of this section from dealing on an approved securities exchange or capital trade point in any securities shall not counsel or procure any other person to deal in those securities,~~

<p>knowing or having reasonable cause to believe that that person would deal in those securities.</p>		
<p><u>Current Section 112 Proposed New Section 137 – Abuse of information obtained in official capacity.</u></p> <p>(1) This section applies to any information which-</p> <p>(a) is held by a public officer or former public officer by virtue of his position or former position as a public officer, or is knowingly obtained by a person (directly or indirectly) from a public officer or former public officer who he knows or has reasonable cause to believe held the information by virtue of any such position;</p> <p>(b) it is reasonable to expect a person in the position of a public officer or former position of a public officer not to disclose except for the proper performance of the functions attaching to that position; and</p> <p>(c) the person holding it knows it</p>	<p><u>Proposed New Section 137 – Abuse of information obtained in official capacity.</u></p> <p>(1) Retained</p>	

<p>is unpublished price sensitive information in relation to securities of a particular company (hereinafter referred to as "relevant securities").</p> <p>(2) This section applies to a public officer holding information to which this section applies and to a person who knowingly obtained any such information (directly or indirectly) from a public officer or former public officer who that person knows or has reasonable cause to believe held the information by virtue of his position or former position as a public officer.</p> <p>(3) Subject to section 113 of this Act a person to whom this section applies shall not-</p> <p>(a) deal in any relevant securities;</p> <p>(b) counsel or procure any other person to deal in any such securities, knowingly or having reasonable cause to believe that other person, would deal in those securities; or</p>	<p>(2) Retained</p> <p>(3) Subject to section <u>138</u> of this <u>Bill</u> a person to whom this section applies shall not-</p> <p>(a) retained</p> <p>(b) retained</p>	
--	---	--

<p>(c) communicate to any other person the information held or (as the case may be) obtained as mentioned in subsection (2) of this section if he knows or has reasonable cause to believe that he or some other person shall make use of the information for the purpose of dealing or of counselling or procuring any other person to deal on a securities exchange or capital trade point in any such securities.</p>	<p>(c) retained</p>	
<p>(4) If it appears to the Commission that the members, officers or employees of or persons otherwise connected with any body by appearing to it to exercise public functions may have access to unpublished price sensitive information relating to securities, the Commission may declare that those persons are public officers for the purposes of this section.</p>	<p>(4) Retained</p>	
<p><u>Current Section 113 Proposed New Section 138 – Actions not prohibited by sections 111 and 112 as dealings in securities by insiders.</u></p>	<p><u>Proposed New Section 138 – Actions not prohibited by sections 136 and 137 as dealings in securities by insiders.</u></p>	

~~The provisions of sections 111 and 112 of this Act do not prohibit a person by reason of his having any information from-~~

~~a) doing any particular thing otherwise than with a view to the making of a profit or the avoidance of a loss (whether for himself or another person) by the use of that information;~~

~~(b) entering into a transaction in the course of the exercise in good faith of his functions as a liquidator, receiver or trustee in bankruptcy;~~

~~(c) doing any particular thing if the information-~~

~~(i) was obtained by him in the course of a business of a stockbroker in which he was engaged or employed, or~~

~~(ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business, and he does that thing in good faith in the course of that business; or~~

A person shall not be guilty of insider dealing by virtue only of:

(a) retained

(b) retained

(c) recommended for deletion.

<p>(d) doing any particular thing in relation to any particular securities, if the information was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business and he does that thing in good faith in the course of that business.</p>	<p>(c) retained.</p>	
<p><u>Current Section 114 Proposed New Section 139 - Effect of contravention.</u> Any transaction done in contravention of section 111 or 112 of this Act is avoidable at the instance of the Commission.</p>	<p><u>Proposed New Section 139 - Effect of contravention.</u> Any transaction done in contravention of section 136 or 137 of this <u>Bill</u> is voidable at the instance of the Commission.</p>	
<p><u>Current Section 115 Proposed New Section 140 - Criminal liability under this Part.</u> Any person who contravenes any of the provisions of this part of this Act commits an offence and is liable on conviction —</p> <p>(a) in the case of a person not being a body corporate, to-</p> <p>(i) a fine of not less than</p>	<p><u>Proposed New Section 140 - Criminal liability under this Part.</u> Any person who contravenes any of the provisions of this part of this <u>Bill</u> commits an offence and is liable on conviction —</p> <p>(a) retained</p> <p>(i) a fine of not less than ₦<u>1,000,000</u> or an</p>	

<p>₹500,000 or an amount equivalent to double the amount of profit derived by him or loss averted by the use of the information obtained in contravention of any of the provisions of this part; or</p> <p>(ii) to imprisonment for a term not exceeding seven years; or</p> <p>(b) in the case of a person being a body corporate, to a fine not less than ₹1,000,000 or an amount equivalent to twice the amount of profit derived by it or loss averted by the use of the information obtained in contravention of any of the provisions of this part.</p>	<p>amount equivalent to <u>three times</u> the amount of profit derived by him or loss averted by the use of the information obtained in contravention of any of the provisions of this part <u>whichever is higher</u>; or</p> <p>(ii) to imprisonment for a term not <u>less than five</u> years; or</p> <p>(b) in the case of a person being a body corporate, to a fine not less than ₹5,000,000 or an amount equivalent to <u>three times</u> the amount of profit derived by it or loss averted by the use of the information obtained in contravention of any of the provisions of this part, <u>whichever is higher</u>.</p>	
<p><u>Current Section 116 Proposed New Section 141 - Compensation to be determined by the Commission or Tribunal.</u></p> <p>(1) A person who is liable under this part of this Act shall pay compensation at the order of the Commission or the Tribunal, as the case may be, to any</p>	<p><u>Proposed New Section 141 - Compensation to be determined by the Commission or Tribunal.</u></p> <p>(1) A person who is liable under this part of this <u>Bill</u> shall pay compensation at the order of the Commission or the Tribunal, as the case may be, to any aggrieved person who, in a transaction for the purchase or sale of securities</p>	

<p>aggrieved person who, in a transaction for the purchase or sale of securities entered into with the first-mentioned person or with a person acting for or on his behalf, suffers a loss by reason of the difference between the price at which the securities would have likely been dealt in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.</p> <p>(2) The amount of compensation for which a person is liable under subsection (1) of this section is the amount of the loss sustained by the person claiming the compensation or any other amount as may be determined by the Commission or the Tribunal.</p>	<p>entered into with the first- mentioned person or with a person acting for or on his behalf, suffers a loss by reason of the difference between the price at which the securities would have likely been dealt in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.</p> <p>(2) Retained.</p> <p><u>(3) Notwithstanding the criminal liabilities for any violation of the provisions of this part of the Bill, the Commission may impose monetary penalties on violators.</u></p>	<p>Insider dealing is a grave offence that could negatively impact on the confidence in the market. Punishment for insider dealings is not stringent enough. It is proposed that the punishment be more severe, giving the Commission powers to impose civil remedies for the purpose of compensating those affected by insider dealings as is the practice in Malaysia</p>
--	--	---

PART XIII - REGULATION OF DERIVATIVES MARKET AND TRADING

Proposed New Section 142

Proposed New Section 142 - Definition of Terms in relation to derivatives market and trading

‘CCP Entity’ means an entity registered by the Commission to interpose itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts

“Derivative” means an option, a swap, a futures contract, a contract for difference or any other contract or instrument whose market price, value, or delivery or payment obligations are derived from, referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation;

“Derivatives business” means any undertaking to provide the services identified and prescribed in the Rules and Regulations of the Commission.

“Derivatives position” means an obligation or right of a person arising from derivatives trading.

	<p><u>“Information Processor” means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term “securities information processor” does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organization, any bank, broker, dealer would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association bank activities, or any common carrier.</u></p> <p><u>“Trade in derivatives” means to enter into a derivatives contract.</u></p>	
<p><u>Proposed New Section 143</u></p>	<p><u>Proposed New Section 143 - General Provisions</u></p> <p><u>(1) The Commission shall issue rules, formulate policies, promote, develop, as well as supervise, matters concerning derivatives (contracts), derivatives markets or business, derivatives exchanges, derivatives market infrastructure,</u></p>	

derivatives business operators, regulatory association of derivatives business operators, and prevention of unfair derivatives trading practices, and is generally empowered to:

(a) govern derivatives offering and trading and related activities;

(b) provide for oversight of the activities of derivatives market professionals so as to ensure that their conduct is honest, fair and responsible;

(c) provide for the monitoring of regulated entities and, more specifically, of their activities, their exercise of delegated powers, the adequacy of their capital and resources, the accessibility of their services, and the transactions carried out via the facilities or systems they operate;

(d) regulate market participants and regulated entities so as to ensure compliance with the principles set out in this provision and with the obligations deriving from those principles;

(e) facilitate the control of systemic risk in derivatives trading, particularly through rules applicable to derivatives clearing and to clearing systems and central depository operations; and

(f) provide for the implementation and

	<u>administration of programs to deal with complaints generally and protect clients in derivatives-related matters.</u>	
<u>Proposed New Section 144</u>	<u>Proposed New Section 144 - Legal Entity Identifier</u> <u>(1) There shall be a Legal Entity Identifier for any corporate or institutional entity involved directly or indirectly in securities transaction in Nigeria to ensure the proper monitoring and minimization of systemic risks arising from the activities of parties and counter-parties</u> <u>(2) All current and future participants in the securities transaction shall obtain the Legal Entity Identifier from the authorized issuer</u>	<p>The LEI would create uniquely distinct legal entity codes for all entities that engage in financial transactions and associated reference data. The codes would provide uniqueness and exclusivity to the extent that once a code is assigned even where the entity ceases to exist; the code is never assigned to another entity.</p>
PART XIV: MERGER CONTROL		
<u>Current Section 117 Proposed New Section 145 – Meaning of merger certain words used in the part</u>	<u>Proposed New Section 145 – Meaning of certain words used in the part</u> <u>‘acquiring firm’ means a firm – (a) that, as a result of a transaction in any circumstances set out in [section 147], would directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another firm;</u>	

“asset” includes any real or personal property, whether tangible or intangible, intellectual property, goodwill, chose in action, right, licence, cause of action or claim and any other asset having a commercial value;

"company" without prejudice to the provisions of the Companies and Allied Matters Act, means any body corporate and includes a firm or association of individuals";

"court" for the purpose of this Part means the Federal High Court;

"director", in relation to a firm, means a partner in the firm.

“merger” means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person;

‘party to a merger’ means an acquiring firm or a target firm;

“person” includes a body corporate

	<p>"regulations" means regulations made by the Commission pursuant to this part of this <u>Bill</u>;</p> <p><u>'target firm' means a firm – (a) the whole or part of whose business would be directly or indirectly controlled by an acquiring firm as a result of a transaction in any circumstances set out in [section 147];</u></p> <p><u>“undertaking” means any person, being an individual, a body corporate, an unincorporated body of persons or any other entity capable of carrying on commercial or economic activities relating to goods or services”</u></p>	
<p><u>Current Section 118 Proposed New Section 146 – Extent of application of this part</u></p> <p>146. (1) Notwithstanding anything to the contrary contained in any other enactment, every merger, acquisition or business combination between or among companies shall be subject to the prior review and approval of the Commission.</p> <p>(2)The provisions of this part of the Act shall apply to partnerships.</p>	<p><u>Proposed New Section 146 – Extent of application of this part</u></p> <p>146. (1) Notwithstanding anything to the contrary contained in any other enactment, every merger, acquisition or business combination between or among companies shall be subject to the prior review and approval of the Commission.</p> <p>(2) <u>Any transaction consummated pursuant to authority given by any Federal Government owned agency under any statutory provisions vesting such power in the agency, shall in addition be subject to</u></p>	

<p>(3) Nothing in this section shall apply to holding companies acquiring shares solely for the purpose of investment and not using same by voting or otherwise to cause or attempt to cause a substantial restraint of competition or tend to create a monopoly in any line of business enterprise.</p> <p>(4) Any transaction consummated pursuant to authority given by any Federal Government owned agency under any statutory provisions vesting such powers with the agency, shall in addition be subject to the Commission's approval.</p>	<p><u>the Commission's approval.</u></p> <p>(3) Nothing in this section shall apply to holding companies acquiring shares solely for the purpose of investment and not using same by voting or otherwise to cause or attempt to cause a substantial restraint of competition or tend to create a monopoly in any line of business enterprise.</p>	
<p><u>Current Section 119 Proposed New Section 147 – Meaning of merger</u></p> <p>(1) A merger means any amalgamation of the undertakings or any part of the undertakings or interest of two or more companies or the undertakings or part of the undertakings of one or more companies and one or more bodies corporate.</p>	<p><u>Proposed New Section 147 – Meaning of merger</u></p> <p>(1) <u>For purposes of this Bill, a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking</u></p>	

<p>(2) A merger contemplated in subsection (1) of this section may be achieved in any manner, including through-</p> <p>(a) purchase or lease of the shares, interest or assets of the other company in question; or</p>	<p>(2) Retained</p> <p>(a) purchase or lease of the shares, interest or assets of the other <u>undertaking</u> in question;</p> <p><u>(b) the acquisition of a controlling interest in a section of the business or assets of an undertaking capable of itself being operated independently whether or not the business in question is carried on by a company;</u></p> <p><u>(c) acquiring by whatever means the controlling interest in a foreign undertaking that has a controlling interest in a subsidiary in Nigeria;</u></p> <p><u>(d) in the case of a conglomerate undertaking, acquiring the controlling interest of another undertaking or a section of the undertaking being acquired capable of being operated independently;</u></p> <p><u>(e) vertical integration;</u></p> <p><u>(f) exchange of shares between or among undertakings which result in substantial change in ownership structure through whatever</u></p>	
---	--	--

<p>(b) amalgamation or other combination with the other company in question.</p> <p>(3) A person controls a company if that person-</p> <p>(a) beneficially owns more than one half of the issued share capital of the company;</p> <p>(b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;</p> <p>(c) is able to appoint or to veto the appointment of a majority of the directors of the company;</p> <p>(d) is a holding company, and the company is a subsidiary of that</p>	<p><u>strategy or means adopted by the concerned undertakings;</u></p> <p><u>(g) a full function joint venture; or</u></p> <p>(h) amalgamation or other combination with the other <u>undertaking</u> in question.</p> <p>(3) A person controls an undertaking if that person-</p> <p>(a) beneficially owns more than one half of the issued share capital <u>or assets</u> of the <u>undertaking</u>;</p> <p>(b) retained</p> <p>(c) retained</p> <p>(d) Retained</p>	
---	---	--

<p>company as contemplated by the Companies and Allied Matters Act.</p> <p>(e) in the case of a company that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust</p> <p>ƒ has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e).</p>	<p>(e) in the case of <u>an undertaking</u> that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;</p> <p>(f) <u>in the case of the undertaking being a nominee undertaking, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the nominee undertaking;</u> or</p> <p>(g) has the ability to materially influence the policy of the <u>undertaking</u> in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).</p> <p><u>(4) For the purposes of subsection (1) of this section, an undertaking shall not be deemed to exercise control over the business of another undertaking where:</u></p> <p><u>(a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and</u></p>	
--	---	--

	<p><u>dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set;</u></p> <p><u>(b) control is acquired by an office holder according to the laws of the Federation relating to liquidation, winding up, insolvency.</u></p>	
<p><u>Current Section 120 Proposed New Section 148 – Thresholds and categories of mergers.</u></p> <p>(1) The Commission shall from time to time prescribe-</p> <p>(a) a lower and an upper threshold of combined annual turnover or assets, or a lower and an upper threshold of combinations of turnover</p>	<p><u>Proposed New Section 148 – Thresholds and categories of mergers</u></p> <p>(1). Retained</p>	

<p>and assets in Nigeria, in general or in relation to specific industries, for purposes of determining categories of mergers;</p> <p>(b) a method for the calculation of annual turnover or assets to be applied in relation to each of the prescribed thresholds.</p> <p>(2) For the purpose of this part of this Act-</p> <p>(a) "a small merger" means a merger or proposed merger with a value at or below the lower thresholds established in terms of subsection 1 (a);</p> <p>(b) "an intermediate merger" means a merger or proposed merger with a value between the lower and upper thresholds established in terms of subsection 1 (a); and</p> <p>(c) "a large merger" means a merger or proposed merger with a value at or above the upper threshold established in terms of subsection</p>	<p>(2) For the purpose of this part of this Act <u>Bill</u>-</p> <p>(a) retained</p> <p>(b) retained</p> <p>(c) retained</p>	
--	---	--

1(a).

~~(4) Pending the time the Commission prescribes the thresholds referred to in subsection (1) of this section, the lower threshold shall be x500,000,000, while the upper threshold shall be x5,000,000,000.~~

Current Section 122 Proposed New Section 149 – Small merger notification and implementation.

Proposed New Section 149 – Small merger notification and implementation.

1) A party to a small merger-

(a) is not required to notify the Commission of that merger unless the Commission requires it to do so; and

(b) may implement the merger without approval unless required to notify the Commission.

(2) A party to a small merger may voluntarily notify the Commission of the merger at any time.

(3) Within 6 months after a small merger has commenced implementation, the Commission may require the parties to the merger to notify the Commission of the merger in the prescribed manner ~~and form~~ if, in the opinion of the Commission, having regard to the provisions of section ~~121~~ of this ~~Act~~, the merger-

(a) may substantially prevent or lessen competition; or

(b) cannot be justified on public interest ground.

(4) A party to a merger required to notify the Commission of a merger pursuant to subsection (3) of this section shall take no further steps to implement the merger until the

1) A party to a small merger-

(a) retained

(b) may implement the merger without approval unless required to notify the Commission in terms of subsection (3).

(2) Retained.

(3) Within 6 months after a small merger has commenced implementation, the Commission may require the parties to the merger to notify the Commission of the merger in the prescribed manner if, in the opinion of the Commission, having regard to the provisions of section 151 of this Bill, the merger-

(a) Retained

(b) Retained.

(4) A party to a merger required to notify the Commission of a merger pursuant to subsection (3) of this section shall take no further steps to implement the merger until the merger has been approved or conditionally approved.

Current Section 123 Proposed New Section 150 – Notification and implementation of large mergers.

(1) A party to an intermediate or a large merger shall notify the Commission of that merger in the prescribed manner ~~and form.~~

~~(2) In the case of an intermediate or a large merger, the primary acquiring company and the primary target company shall each provide a copy of the notice contemplated in subsection (1) to-~~

~~(a) any registered trade union that represents a substantial number of its employees; or~~

~~(b) the employees concerned or representatives of the employees concerned, if there are no such registered trade unions.~~

(3) The parties to an intermediate or large merger shall not implement the merger until it has been approved, with or without conditions, by the Commission.

New Section 150 – Notification and implementation of large mergers.

(1) A party to an intermediate or large merger shall notify the Commission of that merger in the prescribed manner

Recommended for deletion

(2) The parties to an intermediate or large merger shall not implement the merger until it has been approved, with or without conditions, by the Commission.

<u>Current Section 121 Proposed New</u>	<u>Proposed New</u>	
<p><u>Section 151 – Consideration of mergers.</u></p> <p>(1) Whenever required to consider a merger, the Commission shall-</p> <p>(a) initially determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2) of this section; and</p> <p>(b) if it appears that the merger is likely to substantially prevent or lessen competition, then determine -</p> <p>(i) whether or not the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than, and off-set, the effects of any prevention or lessening of competition, that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented, and</p> <p>(ii) whether the merger can or cannot</p>	<p><u>Section 151 – Consideration of mergers.</u></p> <p>(1) Retained</p>	

<p>be justified on substantial public interest grounds by assessing the factors set out in subsection (3);</p> <p>(c) otherwise, determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3);</p> <p>(d) determine whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the merger.</p> <p>(2) When determining whether or not a merger is likely to substantially prevent or lessen competition, the Commission shall assess the strength of competition in the relevant market, and the probability that the company, in the market after the merger, will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including —</p>	<p>(2) Retained</p>	
--	---------------------	--

- | | | |
|---|--|--|
| <p>(a) the actual and potential level of import competition in the market;</p> <p>(b) the ease of entry into the market, including tariff and regulatory barriers;</p> <p>(c) the level and trends of concentration, and history of collusion, in the market;</p> <p>(d) the degree of countervailing power in the market;</p> <p>(e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;</p> <p>(f) the nature and extent of vertical integration in the market;</p> <p>(g) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and</p> <p>(h) whether the merger will result in the removal of an effective competitor.</p> | | |
|---|--|--|

<p>(3) When determining whether a merger can or cannot be justified on public interest grounds, the Commission shall consider the effect that the merger will have on-</p> <p>(a) a particular industrial sector or region;</p> <p>(b) employment;</p> <p>(c) the ability of small businesses to become competitive; and</p> <p>(d) the ability of national industries to compete in international markets.</p> <p>(4) After making the initial determination, the Commission may grant an approval in principle to the merger and direct the merging companies to make an application to the court to order separate meetings of shareholders of the merging companies in order to get their concurrence to the proposed merger.</p> <p>(5) If a majority representing not less than three quarters in value of the shares of members being present and voting either in person or by</p>	<p>(3) Retained</p> <p>(d) the ability of national industries to compete in international markets.</p> <p><u>(2) In making a determination in respect</u></p> <p><u>(3) Before making a determination in relation to a merger or a proposed merger, the Commission may decide to hold a hearing publicly or in private and shall appoint a date, time and place for holding the hearing and give notice of the date, time, and place so appointed and of the matters to be considered at the hearing to the persons entitled to be present at the hearing.</u></p> <p><u>(4) Any undertaking making a merger notification shall furnish to the Commission such documents and information as may be required to enable the Commission exercise its functions under this Bill.</u></p>	
--	--	--

<p>proxy at each of the separate meetings agree to the scheme, the scheme shall be referred to the Commission for approval.</p>	<p><u>(5) The Commission may, in considering mergers with significant economic impact, collaborate or refer the merger to a specialist regulator constituted by the Commission/President for that purpose.</u></p> <p><u>(6) A merger shall be deemed to have significant economic impact where it falls within the threshold of a large merger</u></p>	
<p><u>Current Section 124 Proposed New Section152 – Merger Investigations</u></p> <p>(1) The Commission may investigate or appoint an inspector to investigate any merger, and may designate one or more persons to assist the inspector.</p> <p>(2) The Commission may require any party to a merger to provide additional information in respect of the merger.</p> <p>(3) Any person may voluntarily file any document, affidavit, statement or other relevant information in respect of a merger.</p>	<p><u>Proposed New Section152 – Merger Investigations</u></p> <p>(1) Retained</p> <p>(2) Retained</p> <p>(3) Any person, <u>whether or not a party to or a participant in merger proceedings</u>, may voluntarily file any document, affidavit, statement or other relevant information in respect of a merger.</p>	

<p><u>Current Section 125 Proposed New</u></p>	<p><u>Proposed New</u></p>	
<p><u>Section 153 – Intermediate merger procedure before the Commission</u></p>	<p><u>Section 153 – Intermediate merger procedure before the Commission</u></p>	
<p>(1) Within 20 working days after all parties to an intermediate merger have fulfilled all their notification requirements in the prescribed manner and form, the Commission after having considered the merger in terms of section 121 of this Act, may issue a certificate in the prescribed form-</p>	<p>(1) Within 20 working days after all parties to an intermediate merger have fulfilled all their notification requirements in the prescribed manner and form, the Commission after having considered the merger in terms of section 151 of this Bill, may</p>	
<p>(a) approving the merger;</p>	<p>(a) retained;</p>	
<p>(b) approving the merger subject to any conditions; or</p>	<p>(b) retained</p>	
<p>(c) prohibiting implementation of the merger.</p>	<p>(c) retained</p>	
<p>(2) The Commission may extend the period in which it has to consider the proposed merger as provided by subsection (1) of this section by a single period not exceeding 40 working days and, in that case, shall issue an extension certificate to any party who notified it of the merger.</p>	<p>(2) Retained</p>	

<p>(3) If, upon the expiration of the 20 working days period provided for in subsection (1) of this section or of an extension contemplated in subsection (2) of this section, the Commission has not issued a certificate referred to in subsection (1) of this section, the merger shall be deemed as having been approved, subject to section 127 of this Act.</p> <p>(4) The Commission shall-</p> <p>(a) publish a notice of the decision referred to in subsection (2) of this section in the Gazette; and</p> <p>(b) issue written reasons for the decision if -</p> <p>(i) it prohibits or conditionally approves the merger, or</p> <p>(ii) requested to do so by a party to the merger.</p> <p><u>Current Section 126 Proposed New Section 154 – Large merger procedure before the Commission</u> After receiving notice of a large</p>	<p>(3) If, upon the expiration of the 20 working days period provided for in subsection (1) of this section or of an extension contemplated in subsection (2) of this section, the Commission has not issued a certificate referred to in subsection (1) of this section, the merger shall be deemed as having been approved, subject to section <u>155</u> of this <u>Bill</u>.</p> <p>(4) The Commission shall-</p> <p>(a) publish a notice of the decision referred to in subsection (2) of this section <u>on its website</u>; and</p> <p>(b) retained</p> <p>(i) retained</p> <p>(ii) retained.</p> <p><u>Proposed New Section 154 – Large merger procedure before the Commission</u> Retained</p>	
--	---	--

<p>merger, the Commission shall-</p> <p>(a) refer the notice to the court ; and</p> <p>(b) within 40 working days after all parties to a large merger have fulfilled all the prescribed notification requirements, forward to the Court a statement, whether or not implementation of the merger is-</p> <p>(i) approved; (ii) approved subject to any conditions; or (iii) prohibited.</p>		
<p><u>Current Section 127 Proposed New Section155 – Revocation of merger approval</u></p> <p>(1) The Commission may revoke its own decision to approve or conditionally approve a small, intermediate or large merger if-</p> <p>(a) the decision was based on incorrect information for which a party to the merger is responsible; (b) the approval was obtained by deceit; or (c) a company concerned in the</p>	<p><u>Proposed New Section155 – Revocation of merger approval</u></p> <p>Retained</p>	

<p>merger has breached an obligation attached to the decision.</p> <p>(2) If the Commission revokes a decision to approve a merger under subsection (1) of this section, it may prohibit the merger even though a time limit prescribed in this part may have elapsed.</p>		
<p><u>Current Section 128 Proposed New Section156 – Power to order the break-up of company</u></p> <p>(1) Where the Commission determines that the business practice of a company substantially prevents or lessens competition, the Commission may in the public interest order the break- up of the company into separate entities in such a way that its operations do not cause a substantial restraint of competition in its line of business or in the market.</p> <p>(2) Before the break-up order becomes effective, the affected company shall have been notified by the Commission and given a specified</p>	<p><u>Proposed New Section156 – Power to order the break-up of company</u></p> <p>Retained.</p>	

<p>time within which to make representation to the Commission.</p> <p>(3) Thereafter the Commission shall refer the order to the Court for sanctioning.</p>		
---	--	--

PART XV - MERGERS, TAKE-OVERS AND CORPORATE RESTRUCTURINGS

Proposed New Section 157

Proposed New Section 157 - Definition of words used in this part

In this part

“Acting in Concert” shall have the meaning assigned to it in the Code;

“bid” means an invitation to an offer;

“Code” means the Nigerian Takeover Code as may be formulated from time to time by the Commission;

“Company”, as used in this part, means a public company whether or not it is listed on any securities exchange and includes a public company by default pursuant to Section 23 of the Companies and Allied Matters Act;

“control”, as used in this part means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of more than thirty per cent, or

such other amount in a company, howsoever effected as may be prescribed by the Commission from time to time;

"invitation" means a statement, however expressed, which offers to acquire shares from a person who holds shares;

"merger" means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person

"offer" means a statement, however expressed, that offers to acquire shares from a person who holds shares;

"offeree company" means a company whose shares are the subject of a take-over bid;

"offeror" means a person or two or more persons jointly or in concert who make a take-over bid;

"take over" except as maybe otherwise defined in the code, means the acquisition by one company

	<p>of sufficient shares in another company to give the acquiring company control over that other company;</p> <p>"take-over bid" means an <u>offer made to acquire all or part of the voting shares or voting rights, or any class or classes of voting shares or voting rights, in a company and includes—</u></p> <p><u>(a) a take-over or merger transaction howsoever effected which has the effect or potential effect of obtaining or consolidating control in the company;</u></p> <p><u>(b) a partial offer [as defined in the Code];</u></p> <p><u>(c) a take-over offer by a parent company for the voting shares or voting rights in its subsidiary; or</u></p> <p><u>(d) an arrangement or reorganization that involves the voting shares or voting rights of a listed company;</u></p>	
<p><u>Current Section 131</u></p> <p>(1) Where any person—</p> <p>(a) acquires shares, whether by a series of transactions over a period of time or not, which (taken together with shares held or acquired by persons acting in concert with him) carry 30 per cent or more (or any lower or higher threshold as may be prescribed by the Commission</p>	<p>Recommended for deletion.</p>	

~~from time to time) of the voting rights of a company; or~~

~~(b) together with persons acting in concert with him, holds not less than 30% but not more than 50 per cent (or a lower or higher threshold as may be prescribed by the Commission from time to time) of the voting rights and such person or any person acting in concert with him, acquires additional shares which increase his percentage of the voting rights, such person shall make a take over offer to the holder of any class of equity share capital in which such person or any person acting in concert with him holds shares.~~

~~(2) All shareholders of the same class of an offeree company shall be treated similarly by an offeror.~~

~~(3) During the course of an offer or when an offer is in contemplation, neither an offeror nor the offeree company nor any of the representatives and advisers of the offeror or offeree shall furnish information to some~~

<p>shareholders which is not made available to all shareholders</p>		
<p><u>Proposed New Section158</u></p>	<p><u>Proposed New Section158 -</u> <u>(1) No Public Company shall, without the prior approval or “No Objection” of the Commission, undertake a proposal, scheme, transaction, an arrangement, or activity or issue securities or offer for subscription or purchase of securities in relation to:</u></p> <p><u>(a) The conversion of a public company or the reconstruction of its shares;</u></p> <p><u>(b) a carve-out, spin-off, split-off or other form of restructuring of its operations;</u></p> <p><u>(c) The acquisition or disposal of asset which results in a significant change in the business direction or policy of a public company or any other listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity;</u></p> <p><u>(2) A person who proposes to effect a compromise, arrangement or scheme by way of issue of securities for the amalgamation of two or more listed companies, shall seek the approval of the Commission;</u></p>	
<p><u>Proposed New Section159</u></p>	<p><u>Proposed New Section159 - Mergers by amalgamation</u> <u>(1) Where a merger involving a public company</u></p>	

or public companies is achieved or to be achieved by amalgamation or other combination with the other undertaking in question;

(a) The Commission may grant an approval in principle to the company (ies) involved to make an application to the court to order separate meetings of shareholders of the merging companies in order to get their concurrence to the proposed merger.

(b) If a majority representing not less than three quarters in value of the shares of members being present and voting either in person or by proxy at each of the separate meetings agree to the scheme, the scheme shall be referred to the Commission for approval.

(2) If the merger is approved by the Commission, the parties shall apply to the court for the merger to be sanctioned and when so sanctioned, the same shall become binding on the companies and the court may by the order sanctioning the merger or by the subsequent order make provision for any or all of the following matters :-

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the Scheme are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons who in such manner as the court may direct, dissent to the Scheme; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger shall be fully and effectively carried out

(3) An order under paragraph (d) of subsection (2) of this section shall not be made unless-

(a) the whole of the undertaking and the property, assets and liabilities of the transferor company are being transferred into the transferee company; and

(b) the court is satisfied that adequate provision by way of compensation or otherwise have been made with respect to the employees of the company to be dissolved.

(4) Where an order under this section provides for the transfer of property or liabilities, that property or liabilities shall by virtue of the order, be transferred to and become the property or liabilities of the transferee company, and in the case of any property, if the order so directs, be freed from any charge which by virtue of the merger ceases to have effect.

(5) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the Commission for registration within seven days after the making of the order and a notice of the order shall be published in the Gazette and in at least one national newspaper and if in default is liable to a fine of not less than x250,000.

(6) In this section-

(a) "property " includes property rights and powers of every description;

	<p>(b) "liabilities" includes rights, powers and duties of every description notwithstanding that such rights, powers and duties are of a personal character which could not generally be assigned or performed vicariously;</p>	
<p><u>Proposed New Section 160</u></p>	<p><u>Proposed New Section 160 – Takeover code</u></p> <p><u>(1) The Commission may prescribe a Code on Takeovers which shall be published in the Gazette;</u></p> <p><u>(2) The Code shall contain principles and rules governing the conduct of all persons or parties involved in a take-over offer, merger or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.</u></p> <p><u>(3) The Commission shall administer the Code according to the objectives specified in subsection (4) and may do all such things as may be necessary or expedient to give full effect to the provisions of this Part and the Code and without limiting the generality of the foregoing, may-</u></p> <p><u>(a) issue rules</u></p> <p><u>i. interpreting the Code;</u></p> <p><u>ii. on the practice and conduct of persons involved in or affected by any take-over offer, merger or compulsory acquisition, or in the</u></p>	

course of any take-over, merger or compulsory acquisition; and

(b) enquire into any matter relating to any take-over offer, merger or compulsory acquisition whether potential or otherwise, and for this purpose, may issue public statements as the Commission thinks fit with respect thereto.

(4) In making any recommendation and in administering the Code and exercising its powers under this Bill, the Commission ensure that the acquisition of voting shares or control of companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure—

(a) that the shareholders and directors of an offeree and the market for the shares that are the subject of the take-over offer—

i. are aware of the identity of the acquirer and offeror;

ii. have reasonable time in which to consider a take-over offer; and

iii. are supplied with sufficient information necessary to enable them to assess the merits of any take-over offer;

(b) that, so far as practicable, all shareholders of an offeree have equal opportunities to participate in benefits accruing from the take-over offer, including in the premium payable for control; and

	<p><u>(c) that fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, merger or compulsory acquisition would be achieved;</u></p> <p><u>(d) in its response to, or making recommendations with respect to any take-over offer, merger or compulsory acquisition, the directors of the offeree and acquirer shall act in good faith to observe the objects, and the manner in which they observe the objects, specified in this subsection, and that minority shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the offeree or the acquirer.</u></p> <p><u>(5) The Commission shall in the exercise of its power to publish a code under this section, consult with stakeholders by inviting written submissions through a notice published in two national daily newspapers. The Code shall not be effective until this consultation has been made.</u></p>	
<p><u>Proposed New Section 161</u></p>	<p><u>Proposed New Section 161 –</u></p> <p><u>(1) Except as may be specified in the Code, no person or two or more persons jointly or in concert, shall make a take-over bid unless an authority to proceed with the take-over bid has been granted under this section and is in force at the date of the take-over bid.</u></p> <p><u>(2) An application for an authority to proceed</u></p>	

with a takeover bid shall

(a) be made to the Commission by or on behalf of the person or persons proposing to make the bid;

(b) give the name and other particulars of that person or those persons; and

(c) give particulars of the proposed bid and contain such information and be accompanied by documents or reports of such a kind as may be prescribed by regulations.

(3) The Commission may require the person or persons making an application to furnish it with such further information as it reasonably considers necessary to enable it make a decision on the application and that person or those persons shall, if it is in their power to do so, give the information to the Commission.

(4) The Commission may consult with such persons as it deems necessary in order to make a decision on an application.

(5) Except as may be necessary for the purpose of any consultation pursuant to subsection (4) of this section, the Commission shall keep confidential the contents of an application, any document or report accompanying an application

and any information given pursuant to subsection (3) of this section.

(6) For the purpose of deciding whether or not to grant an authority to proceed with a takeover bid, the Commission shall:

(a) have regard to the likely effect of the take-over bid if successfully made-

(i) on the economy of Nigeria; and

(ii) on any policy of the Federal Government with respect to manpower and development, and if the Commission is satisfied that none of the matters referred to in paragraphs (a) and (b) of this subsection would be adversely affected, it shall grant an authority to proceed with the proposed take-over bid, but if not so satisfied it shall refuse to do so.

(b) determine whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the takeover.

(7) An authority to proceed with a proposed take-over bid shall be-

(a) in writing signed by or on behalf of the Commission;

(b) dated and give sufficient particulars of the proposed take-over bid to enable it to be

	<p><u>identified.</u></p> <p><u>(8) An authority to proceed with a take-over bid shall remain in force-</u></p> <p><u>(a) for the period of three months following the date of authority; or</u></p> <p><u>(b) for such longer period as the Commission may, on application made to it before the expiration of the period referred to in paragraph (a) of this subsection allow</u></p>	
<p><u>Current Section 139 Proposed New Section 162 – Consideration for shares</u></p> <p>Where a bid under a take-over bid states that the consideration for the shares deposited pursuant to the bid is to be paid in money or partly in money, the offeror shall make adequate arrangements to ensure that funds are available to make the required monetary payment for those shares.</p>	<p><u>Proposed New Section 162 – Consideration for shares</u></p> <p>(1)Where the consideration for the shares deposited pursuant to a take-over bid , merger or other arrangements is to be paid in <u>cash</u> or partly in <u>cash</u>, the offeror shall make adequate arrangements to ensure that funds are available to make the required monetary payment for those shares.</p> <p>(2) <u>Where the consideration for the shares deposited pursuant to a takeover bid, merger or other arrangements is the securities of a public company, the provisions of this Bill on Registration of Securities and Invitations to the Public shall be complied with.</u></p>	
<p><u>Proposed New Section 163</u></p>	<p><u>Proposed New Section 163 - Payment for</u></p>	

loss of office

(1) No payment for loss of office may be made by any person to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a merger, takeover, or other form of corporate restructuring unless the payment has been approved by a resolution of the relevant shareholders.

(2) The relevant shareholders are the holders of the shares to which the bid relates and any holders of shares of the same class as any of those shares.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought by being made available for inspection by the members both—

(i) at the company's registered office for not less than 15 days ending with the date of the meeting, and

(ii) at the meeting itself.

(4) Neither the person making the offer, nor any related party of his, is entitled to vote on the resolution, but at any meeting to consider the resolution they are entitled (if they would

	<p><u>otherwise be so entitled) to be given notice of the meeting, to attend and speak and if present (in person or by proxy) to count towards the quorum.</u></p> <p><u>(5) No approval is required under this section on the part of shareholders in a body corporate that is a wholly-owned subsidiary of another body corporate.</u></p> <p><u>(6) A payment made in pursuance of an arrangement entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and (b) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy, is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.</u></p>	
<p><u>Proposed New Section 164</u></p>	<p><u>Proposed New Section 164 – Liability for false or misleading statements and conduct</u></p> <p><u>(1) Where any document or information is required to be submitted to the Commission under this Part or the Code in relation to a take-over offer, merger or restructuring–</u></p> <p><u>(a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger or restructuring, its officers or associates;</u></p> <p><u>(b) an offeree, its officers or associates;</u></p>	

	<p><u>(c) a financial adviser or an expert; or</u></p> <p><u>(d) any other person,</u> <u>shall not–</u></p> <p><u>(i) submit or cause to be submitted any document or information that is false or misleading;</u></p> <p><u>(ii) provide or cause to be provided any document or information from which there is a material omission; or</u></p> <p><u>(iii) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.</u></p> <p><u>(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not below N5,000,000 or to imprisonment for a term not exceeding ten years or to both;</u></p> <p><u>(3) The Commission may in lieu of prosecution, impose a fine of not less than N3,000,000 in addition to any of the actions specified in Section 138 (Action by the Commission in cases of non-compliance)</u></p>	
<p><u>Proposed New Section 165</u></p>	<p><u>Proposed New Section 165 – Contravention of Part XV of this Bill</u></p> <p><u>(1) Where any person who is under an obligation to comply with, observe or give effect to the provisions of this Part or the Code,</u></p>	

or any rules made pursuant to this part, contravenes or fails to comply with, observe or give effect to any such provision or ruling, the Commission may take one or more of the following actions:

(a) direct the person in breach to comply with, observe or give effect to any such provision of this Part, the Code or rules;

(b) impose a penalty, in proportion to the severity or gravity of the breach on the person in breach, but in any event not less than N 2,000,000;

(c) direct a securities exchange to deprive the person in breach access to the facilities of the securities exchange;

(d) where the person in breach is a listed company, direct the securities exchange—

(i) to suspend trading in the securities of the company;

(ii) to suspend the listing of the company; or

(iii) to remove from the official list the company or the class of securities of the company;

e) where the entity in breach is a company that is not listed, direct any securities exchange to prohibit the listing of any of its securities;

f) direct a securities exchange to prohibit the person in breach from engaging in transactions to be executed through the use of the facilities of the securities exchange; or

(g) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.

2) The Commission shall give a written notice to a person in breach of its intention to take action under subsection (1) and shall give the person in breach an opportunity to be heard prior to taking any action under subsection (1).

(3) For the purposes of paragraph (1)(h), in determining whether or not restitution is to be made by a person in breach, the Commission shall have regard to—

(a) the profits that have accrued to such person in breach; or

(b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.

(4) Where a person has failed to comply with a penalty imposed by the Commission under paragraph (1)(b), the Commission may sue and recover the penalty as a civil debt.

(5) Without prejudice to any other remedy, where a direction under paragraph (1)(h) had required the person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue and

recover the restitution as a civil debt due to the persons aggrieved by the breach.

(6) To the extent that any of the amount obtained under paragraph (1)(h) or subsection (6) has not been distributed due to the difficulty of ascertaining or notifying the aggrieved persons, such amount shall be—

(a) paid to the National Investor Protection Fund or any nationwide trust scheme maintained to compensate investors pursuant to this Bill;

or

(b) retained by the Commission to defray—

(i) the cost of developing and facilitating educational programmes for capital markets investors and professionals; or

(ii) the cost of regulating the capital markets, as the Commission may determine.

(7) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this ABill or any of the provisions of applicable securities laws against the person in breach.

(8) For the purposes of this section—

“breach” means a failure to comply with, observe or give effect to the provisions of this Part or the Code or any rules made pursuant to this part, in circumstances where there is an obligation to do so.

“person in breach” means a person who

	<p><u>contravenes or fails to comply with, observe or give effect to the provisions of this Part or the Code or any rule made pursuant to this part, in circumstances where the person is under an obligation to do so.</u></p>	
<p><u>PART XIII:</u> COLLECTIVE INVESTMENT SCHEMES A-GENERAL</p>		
<p><u>Current section 152 Proposed New Section 166-Definition of certain words used in this part</u></p> <p>"auditor" means a member of a body of Accountants, from time to time, recognised by an Act of the National Assembly and appointed as Auditor of a company or trust by managers with the approval of the trustees;</p> <p>"authorised unit trust scheme" means any unit trust scheme which is authorised by the Commission and registered in the register maintained by the Commission for the purpose of this part;</p> <p>"custodian" means a person who has custody as a bailee of securities or certificate issued in the investor's name with the investor's name</p>	<p><u>Proposed New Section 166-Definition of certain words used in this part</u></p> <p>Retained</p> <p>Retained</p> <p><u>"close-ended investment company" means a management investment company that has and issues fixed or non-redeemable securities.</u></p> <p>"custodian" means a <u>legal corporate entity</u> who has custody as a bailee of securities or certificates issued in the name appearing in the issuer's register as the <u>legal</u> owner of the</p>	<p>A custodian cannot be an individual person.</p>

<p>appearing in the issuer's register as the beneficial owner of the securities;</p> <p>"dealing in securities" means doing any of the following things (whether as a principal or as an agent), that is, making or offering to make with any person or inducing or attempting to induce any person to enter into or offer to enter into any agreement for or with a view to acquiring, holding or disposing of securities or any other property or any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;</p> <p>"filing" means delivery to the Commission through mails or otherwise of all papers or applications required to be filed with the Commission pursuant to this Act and regulations made thereunder, and the date on which</p>	<p>securities;</p> <p>Retained</p> <p>"filing" means delivery to the Commission through mails, <u>electronically</u> or otherwise, of all papers or applications required to be filed with the Commission pursuant to this Act and regulations made thereunder, and the date on which the papers or applications are actually received by the Commission shall be the date of filing the papers or applications;</p>	<p>The addition of the word “electronically” gives flexibility for better automated platforms. It would also improve record collation, retrieval, analysis as well as report generation across the industry.</p>
---	---	--

the papers or applications are actually received by the Commission at its principal office shall be the date of filing the papers or applications;

"holder" means any investor or beneficiary who has acquired units of a collective investment scheme and is entitled to a pro rata share of dividends, interest or other income of the securities comprised in the unit;

"income accrual" means any dividend or interest or any other income for distribution received by the trustee, custodian or manager on behalf of investors in a portfolio in the course of any income distribution period or carried forward from any previous income distribution period or due to such investors in respect of dividends or interest or any income declaration made but not yet distributed;

"issuer" means the person performing the duties of a

Retained

Retained

“Issuer” means the person performing the duties of a manager pursuant to the

<p>manager pursuant to the provisions of the trust deed or other agreement under which the units or securities are issued;</p> <p>"manager" means a fund or portfolio manager registered by the Commission;</p> <p>"open-ended investment company" means a company with an authorised share capital whose article of association authorises the acquisition of its own shares, structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of shares representing a separate portfolio with a distinct investment policy;</p> <p>"participatory interest" means any interest, undivided share or shares whether called a participatory interest, unit or by any other name, and whether the value of such interest, unit, undivided share or shares remain constant or varies</p>	<p>provisions of the trust deed or other agreement under which the units or securities are issued <u>or such other person as may be determined by the Commission from time to time;</u></p> <p>Retained</p> <p>Retained</p> <p>Retained</p>	
--	---	--

<p>from time to time, which may be acquired by an investor in a portfolio;</p> <p>"prospectus" includes offer for sale, advertisement, circular, letter, notice, scheme of arrangement, or other equivalent document published or circulated relating to the collective investment scheme;</p> <p>"register" means the register established and maintained for the purpose of this part;</p> <p>"scheme" means collective investment scheme;</p> <p>"trust deed" or "custodial agreement" means the agreement drawn up between the trustees or custodian and the manager for regulating the operation of a collective investment scheme</p> <p>"trustee" under a unit trust scheme or such other arrangement, means the person in whom the property for the time</p>	<p>Retained</p> <p>Retained</p> <p>Retained</p> <p>Retained</p> <p>"trustee" under a unit trust scheme or such other arrangement, means the corporate entity in whom the property for the time being subject to any trust created in pursuance of the scheme is or may be</p>	<p>The use of the term "person" gives the impression that registered individuals can act in the capacity of trustee in a collective investment scheme. The amendment is also</p>
---	---	--

<p>being subject to any trust created in pursuance of the scheme is or may be vested in accordance with the terms of the trust;</p> <p>"units" in relation to a unit trust scheme, means any units (described whether as units or otherwise) into which are divided the beneficial interest in the assets subject to any trust created under the scheme;</p> <p>"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever.</p>	<p>vested in accordance with the terms of the trust;</p> <p>Retained</p> <p>Retained.</p>	<p>recommended for purposes of continuity especially in the event of death or incapacity of such individual. It is therefore recommended that the function of trustee be limited to corporate entities in the case of CIS.</p>
<p><u>Current section 153 Proposed New Section 167- Meaning of collective investment schemes, etc.</u></p> <p>(1) "Collective investment scheme", means a scheme in whatever form, including an open-ended investment company, in</p>	<p><u>Proposed New Section 167- Meaning of collective investment schemes, etc.</u></p> <p>“Collective Investment Scheme” means a scheme <u>or arrangement</u> in whatever form, including an open-ended <u>and close-ended</u> investment company, in pursuance</p>	<p>A close ended fund is organized as a publicly traded investment company by the SEC. Like a mutual fund, a close ended fund is a pooled investment fund with a manager overseeing</p>

<p>pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which-</p> <p>(a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;</p> <p>(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme authorised by any other Act.</p>	<p>of which members of the public <u>or qualified investors</u> are invited or permitted to invest money or other assets in a portfolio, and in terms of which-</p> <p>(a) two or more investors contributing money or other assets</p> <p><u>(b) such contributions are pooled and such portfolio of the scheme is managed as a whole ;</u></p> <p><u>(c) such contributions entitle such persons to hold a participatory interest in the portfolio of the scheme through shares, units or any other form of participatory interest;</u></p> <p><u>(d) such persons</u> share the risk and the benefit of investment in their participatory interest in the portfolio of the scheme in accordance with the basis determined in a deed or other constituting document; but not a collective investment scheme authorized by any other <u>Bill.</u></p>	<p>the portfolio, it raises a fixed amount of capital. Additionally, the definition was reviewed to expand the scope of what constitutes a CIS to cover offerings targeted at any category of persons (whether the public as a whole or the identification of specific investors). The source document reviewed were the UK Financial Services and Markets Act 2000 and the Securities and Futures Act cap 289 2001 (amended in 2006), Singapore.</p>
---	--	---

<p><u>Current section 154 Proposed New Section 168- Types of collective investment schemes.</u></p> <p>(1) The Commission may approve a collective investment scheme which is administered as-</p> <p>(a) unit trust scheme;</p> <p>(b) open-ended investment company; or</p> <p>(c) real estate investment company or trust.</p> <p>(2) The Commission may by notice published in the Gazette, designate a scheme as constituting a collective investment scheme.</p> <p>(3) For the purpose of this part of</p>	<p><u>Proposed New Section 168- Types of collective investment schemes.</u></p> <p>(1) The Commission may approve a collective investment scheme which is administered as-</p> <p>(a) unit trust scheme;</p> <p>(b) open-ended <u>or close-ended</u> investment company;</p> <p>(c) real estate investment company or trust. <u>or</u></p> <p><u>(d) specialized or alternative schemes</u></p> <p><u>(2)</u> the Commission may by notice <u>on its website</u> designate a scheme as constituting a collective investment scheme</p> <p>(3) For the purpose of this part of this Act the provisions of sections 160 and 161 of the</p>	<p>A close ended fund is organized as a publicly traded investment company by the SEC. Like a mutual fund, a close ended fund is a pooled investment fund with a manager overseeing the portfolio; it raises a fixed amount of capital.</p> <p>This allows the Commission to direct the classification of many collective investment schemes that traditionally pool capital in co-operative structure, if it does not affect the administrative stability of the groups in the ratio of the invested components to the administrative carry cost</p>

<p>this Act the provisions of sections 160 and 161 of the Companies and Allied Matters Act 1990 shall not apply to a scheme constituted as an open ended investment company or real estate investment company.</p>	<p>Companies and Allied Matters Act Cap C20 Laws of the Federation 2004 shall not apply to an alternative investment fund constituted as an open-ended investment company or real estate investment company.</p>	
<p><u>Current section 155 Proposed New Section 169- Principles for the administration of a scheme.</u> (1) A manager shall administer a collective investment scheme: (a) honestly and fairly;</p>	<p><u>Proposed New Section 169- Principles for the administration of a scheme</u> Retained.</p>	

<p>(b) with skill, care and diligence; And (c) in the interest of investors and the securities industry.</p> <p>(2) Every authorised scheme shall adhere to the principle of segregation and identification, as may be prescribed by the Commission from time to time.</p> <p>(3) For the purpose of this part of this Act the provisions of sections 160 and 161 of the Companies and Allied Matters Act 1990 shall not apply to a scheme constituted as an open ended investment company or real estate investment company</p>		
<p><u>Current section 156 Proposed New Section 170- Disclosure of information</u></p> <p>Before the manager of a scheme enters into a transaction with an investor-</p> <p>(a) information about the investment objectives of the scheme, the calculation of the net asset value and dealing prices, charges, risk factors and distribution of income accruals shall be disclosed to the investor; and</p>	<p><u>Proposed New Section 170- Disclosure of information</u></p> <p>Before the manager of a scheme enters into a transaction with an investor –</p> <p>(a) information about the investment objectives of the scheme, <u>the type of securities the scheme invests in</u>, the calculation of the net asset value and dealing prices, charges, risk factors and distribution of income accruals shall be disclosed to the investor; and</p>	<p>The inclusion of the types of securities to be invested in as a mandatory disclosure information is recommended so that potential investors take due guidance.</p>

<p>(b) information that is necessary to enable the investor to make an informed decision shall be given to the investor timeously and in a comprehensible manner</p>	<p>(b) retained</p>	
<p><u>Current section 157 Proposed New Section 171- Duties of manager of a scheme</u></p> <p>(1) The manager of a scheme shall-</p> <p>(a) avoid conflict between the interests of the manager and the interests of an investor;</p> <p>(b) disclose the interests of its directors and management to the investor;</p> <p>(c) maintain adequate financial resources to meet its commitments and to manage the risks to which its collective investment scheme is exposed;</p> <p>(d) organize and control the scheme in a responsible manner;</p> <p>(e) keep proper records;</p> <p>(f) employ adequately trained staff and ensure that they are properly supervised;</p> <p>(g) have well-defined compliance procedures; and</p>	<p><u>Proposed New Section 171- Duties of manager of a scheme</u></p> <p>(1) The manager of a scheme shall-</p> <p>(a) avoid conflict between the interests of the <u>sponsor</u>, manager and the interests of an investor;</p> <p>(b) disclose the interests of its directors and management to the investor;</p> <p>(c) maintain adequate financial resources to meet its commitments and to manage the risks to which its alternative investment fund is exposed;</p> <p>(d) organise and control the scheme in a responsible manner;</p> <p>(e) keep proper records;</p> <p>(f) employ adequately trained staff and ensure that they are properly supervised;</p> <p>(g) have well-defined compliance procedures; and</p>	<p>This is suggested to avoid or limit the occurrence of exploitation of investors by issuers. How the regulator ensures that this conflict is avoided is critical to the success or failure of the schemes. This would also be pertinent where the issuer is different from the manager.</p>

<i>(h)</i> promote investor education	<i>(h)</i> promote investor education.	
<p><u>Current section 158 Proposed New Section 172- Requirements for administration of collective investment schemes</u></p> <p>(1) No person shall perform any act or enter into any agreement or transaction for the purpose of administering a scheme, unless such person is-</p> <p>(a) incorporated under the Companies and Allied Matters Act; and</p> <p>(b) registered as a fund or portfolio manager by the Commission.</p> <p>(2) Any person who contravenes the provisions of this section is liable to a penalty of not less than N100,000 and a further sum of N5,000 per day during which the contravention continues.</p>	<p><u>Proposed New Section 172- Requirements for administration of collective investment schemes</u></p> <p>(1) No person shall perform any act or enter into any agreement or transaction for the purpose of administering a scheme, unless such person is-</p> <p>(a) incorporated under the Companies and Allied Matters Act; and</p> <p>(b) registered as a fund or portfolio manager by the Commission.</p> <p>(2) Any person who contravenes the provisions of this section is liable to a penalty of not less than <u>N1,000,000</u> and a further sum of <u>N50,000</u> per day during which the contravention continues.</p>	
<p><u>Current section 159 Proposed New Section 173- Prohibition of misleading names and acts</u></p> <p>(1) No person may, unless registered as a manager under this</p>	<p><u>Proposed New Section 173- Prohibition of misleading names and acts</u></p> <p>(1) No person may, unless registered as a manager under this <u>Bill</u>, include in or have as part of the name of its business or in any</p>	

~~Act~~, include in or have as part of the name of its business or in any description of his business any reference to a collective investment scheme, open ended investment company, unit trust or real estate investment and no person who is not registered as a manager or trustee or custodian under this ~~Act~~ may perform any act calculated to lead the public to believe that any business carried on by such person consists of or is connected with the administration of a collective investment scheme.

(2) Any person who contravenes the provision of this section is liable to a fine of not less than ~~₦100,000~~ and a further sum of ~~₦5,000~~ per day during which the contravention continues.

description of his business any reference to a collective investment scheme, closed or open-ended investment company, unit trust, real estate investment and no person who is not registered as a manager or trustee or custodian under this Bill may perform any act calculated to lead the public to believe that any business carried on by such person consists of or is connected with the administration of a collective investment scheme.

(2) Any person who contravenes the provision of this section is liable to a fine of not less than ₦1,000,000 and a further sum of ₦50,000 per day during which the contravention continues.

<u>Current section 160 Proposed New Section 174- Authorisation of collective investment scheme</u>	<u>Proposed New Section 174- Authorisation of collective investment scheme</u>	
<p>(1) No person shall establish or operate a collective investment scheme or carry on or purport to carry on the business of a collective investment scheme unless such scheme is authorised by and registered with the Commission.</p>	<p>(1) Retained</p>	
<p>(2) An application for authorization under this section shall be in the form prescribed by the Commission and shall be accompanied by such documents as may be prescribed, from time to time, by the Commission.</p>	<p>(2) Retained</p>	
<p>(3) Upon application to the Commission in accordance with this Act by the manager of a scheme, the Commission may authorise and register the scheme where-</p> <p>(a) the Commission is satisfied that the competence in respect of</p>	<p>(3) Retained</p>	

matters of the kind with which they would be concerned in relation to a scheme and probity of the manager and its directors and management as well as external auditors, trustee or custodian, as the case may be, are such as to render them suitable to act as manager, trustee or custodian in respect of the scheme;

(b) the manager, trustee or custodian, of the scheme is:

(i) a body corporate which is incorporated under the Companies and Allied Matters Act,

(ii) having capital and reserve as may be prescribed by the Commission from time to time, and

(iii) registered by the Commission;

(c) the Commission is satisfied that the scheme is such that the effective control of its affairs is

(c) the Commission is satisfied that the scheme is such that the effective control of its affairs is vested in the trustee and exercised independently of the manager

The trustee is the legal title holder of the scheme holding the scheme's assets in trust for the unit holders who are the beneficiaries of the schemes assets. Consequently, the trustee ought to have effective control over

<p>vested in the manager and exercised independently of the trustee or custodian of the scheme;</p> <p>(d) the Commission is satisfied that the trust deed or custodial agreement is in compliance with the provisions of this Act and the rules and regulations of the Commission for the time being in force; and</p> <p>(e) the name of the scheme is not, in the opinion of the Commission, undesirable.</p> <p>(4) The Commission may refuse to authorise a scheme if in the opinion of the Commission it fails to comply with the provisions of this part of this Act and shall so notify the manager, trustee or custodian under the scheme stating its reasons for refusal within sixty days of filing the application.</p>	<p><u>on behalf of the unit-holders</u> of the scheme;</p> <p>(d) retained</p> <p>(e) retained</p> <p>(4) The Commission may refuse to authorise a scheme if in the opinion of the Commission it fails to comply with the provisions of this part of this Act and shall so notify the manager, trustee or custodian under the scheme stating its reasons for refusal within sixty days of filing the application.</p> <p><u>(5) If the Commission fails or neglects to notify the manager, custodian or trustee of its decision within 20 working days of the application, such application shall be deemed to have been approved.</u></p>	<p>these assets to enable it safeguard the assets from any abuse by the scheme's manager.</p> <p>It is suggested that a maximum time limit for time taken for approval to be given be stated in the Bill. This is expected to aid attention to service and turnaround time in the interest of the public and operators.</p>
--	--	---

<p><u>Current section 161 Proposed New Section 175- Registration of units or securities of a scheme</u></p> <p>(1) It shall not be lawful for any person, directly or indirectly to deal in units or securities of a scheme (described whether as units, securities or otherwise) unless such units or securities have been duly registered with the Commission.</p> <p>(2) A scheme, or any other arrangement may be registered pursuant to this Act by the issuer filing an application with the Commission in accordance with the provisions of this part of this Act and the rules and regulations thereunder.</p> <p>(3) Any application for registration of units or securities of a scheme or any other arrangement, filed pursuant to this section shall become effective on the sixtieth day after filing or such earlier date as the Commission may</p>	<p><u>Proposed New Section 175- Registration of units or securities of a scheme</u></p> <p>(1) to (4) are retained.</p>	

<p>determine having due regard to the adequacy of the information contained in such application and registration shall be deemed effective only as regards the units or securities specified therein as proposed to be offered.</p> <p>(4) The Commission shall establish and maintain a register of units or securities and collective investments schemes (in this part of this Act referred to as the "register")</p> <p>(5) Any person who contravenes the provisions of this section is liable to a fine of not less than N100,000 and a further sum of N5,000 for every day the contravention continues.</p>	<p>(5) Any person who contravenes the provisions of this section is liable to a <u>penalty</u> of not less than <u>N1,000,000</u> and a further sum of <u>N50,000</u> for every day the contravention continues.</p>	
<p><u>Current section 162 Proposed New Section 176- Alteration of trust deed, custodial agreement or change of name of scheme to be approved by the Commission</u></p> <p>(1) No manager, trustee or</p>	<p><u>Proposed New Section 176- Alteration of trust deed, custodial agreement or change of name of scheme to be approved by the Commission</u></p> <p>(1) Retained.</p>	

<p>custodian under a scheme shall make any alteration in the trust deed or custodial agreement in which are expressed the trusts of an authorised scheme or to make any change in the name of an authorised scheme without prior approval of the Commission.</p> <p>(2) A manager or trustee under a scheme who contravenes the provision of subsection (1) of this section, is liable to a fine of N100,000 and a further sum of N5,000 for every day the contravention continues.</p>	<p>(2) A manager or trustee under a scheme who contravenes the provision of subsection (1) of this section, is liable to a penalty of <u>N1,000,000</u> and a further sum of <u>N50,000</u> for every day the contravention continues.</p>	
<p><u>Current section 163 Proposed New Section 177- Revocation of authorisation of scheme.</u></p> <p>(1) Subject to the provisions of this section, the Commission may revoke the authorisation of a scheme if-</p> <p>(a) there is a contravention of any provision of this part of this Act</p>	<p><u>Proposed New Section 177- Revocation of authorisation of scheme.</u></p> <p>Retained</p> <p>(a) there is a contravention of any provision of this part of this <u>Bill</u> or of any rule or</p>	

<p>or of any rule or regulation made thereunder; or</p> <p>(b) the Commission is no longer satisfied in respect of the matter specified in subsection (3) (a), (c) and (d) of section 160 of this Act; or</p> <p>(c) the interest of the holders of units or securities created under the scheme so requires.</p> <p>(2) The Commission shall before such revocation-</p> <p>(a) notify the manager and the trustee or custodian under the scheme and the manager and trustee or custodian may within twenty-one days from the date of such notification make representations in writing to the Commission in respect of the proposed revocation; and</p> <p>(b) consider any representation duly made by the manager and trustee under the scheme.</p> <p>(3) The Commission shall</p>	<p>regulation made thereunder; or</p> <p>(b) the Commission is no longer satisfied in respect of the matter specified in subsection (3) (a), (c) and (d) of section 160 of this <u>Bill</u>; or</p> <p>Retained</p> <p>Retained</p> <p>Retained</p>	
---	---	--

<p>communicate its decision to revoke its authorisation of the scheme within thirty days after the making of the representations or if none are made within thirty days after the last day for making of the representation under this section.</p> <p>(4) Whenever the authorisation of a scheme under this Act is revoked, the Commission shall appoint-</p> <p>(a) the trustee for the scheme; or</p> <p>(b) if the trustee was found negligent in the discharge of its duties, an administrator to take over the property or undertaking of the manager to the scheme and the trustee or administrator so appointed shall be an agent of the unit holders and observe the utmost good faith towards them in any transaction on their behalf.</p> <p>(5) Whenever the trustee or an administrator is so appointed, notice shall be given to the unit holders by publication of the revocation of the</p>	<p>Retained</p> <p>(4) Whenever the authorisation of a scheme under this is <u>Bill</u> revoked, the Commission shall appoint-</p> <p>Retained</p> <p>Retained</p> <p>Retained</p>	
--	--	--

<p>scheme and the appointment of the trustee or administrator in three (3) daily newspapers.</p> <p>(6) The manager shall within seven days after the revocation, file with the Commission, a statement of the affairs of the scheme including names, addresses of all creditors, the securities held and such other information as may be prescribed by the Commission.</p> <p>(7) The manager shall also submit a copy of the statement of affairs filed with the Commission pursuant to subsection (6) of this section to the trustee or administrator as the case may be.</p> <p>(8) If any manager makes default in complying with the requirements of subsection (c) above, he shall be guilty of an offence and shall be liable to a fine of not less than ₦50,000 for every day during which the default continues.</p> <p>(9) The trustee or administrator</p>	<p>(6) The manager shall within seven days after the revocation, file with the Commission, a statement of the affairs of the scheme including names, addresses of all creditors, <u>unit holders</u>, the securities held and such other information as may be prescribed by the Commission.</p> <p>Retained</p> <p>(8) If any manager makes default in complying with the requirements of subsection <u>(1)(c)</u> above, he shall be guilty of an offence and shall be liable to a fine of not less than ₦50,000 for every day during which the default continues.</p>	<p>The amendment is suggested so as to enable the Commission know the finite and specific underlying unit holders to a scheme that is being revoked i.e. the final beneficial unit holders in the event of liquidation of the fund post scheme revocation.</p>
---	---	--

<p>material fact; or</p> <p>(b) omits to state a material fact necessary in order to make the statement, in the light of the circumstances under which it was made, not misleading; is liable to the purchaser of such units or securities who may bring an action before the Tribunal to recover the consideration paid for such units or securities, or for damages if he no longer owns the units or securities; the purchaser not knowing of such untruth or omission and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.</p>		
<p><u>Current section 166 Proposed New Section 180- Redemption of units or securities</u></p> <p>(1) Whenever the holder of units or securities of an authorised scheme so requests, the manager under the scheme, shall, within the time prescribed by the Commission, buy from the holder such number of</p>	<p><u>Proposed New Section 180- Redemption of units or securities</u></p> <p>(1) Whenever the holder of units or securities of an authorised <u>open-ended</u> scheme so requests, the manager under the scheme, shall, within the time prescribed by the Commission, buy from the holder such number of those units or securities as the holder may specify at the</p>	<p>The provision presupposes that all funds are open-ended. SEC, however, permits the registration of close-ended schemes. This provision where not amended as suggested would make it mandatory for even close ended schemes to buy-back the units of unit holders whenever they so request.</p>

those units or securities as the holder may specify at the price for the time being at which the manager buys units or securities of the scheme.

(2) No manager of a scheme shall suspend the right or postpone the date of redemption of units or securities by a holder provided that such suspension or postponement may be done during public holidays or emergencies or when the stock exchange is closed or whenever the Commission permits it.

(3) Any manager of a scheme who contravenes the provisions of this section is liable to a ~~fine~~ of ~~₦500,000~~ and in addition shall be liable to a penalty of ~~₦50,000~~ for everyday the contravention continues.

Current section 167 Proposed New Section 181- Prohibition of certain transactions and profits by manager under a scheme.

(1) No company that is a manager under a scheme or is a

price for the time being at which the manager buys units or securities of the scheme.

(2) Retained.

(3) Any manager of a scheme who contravenes the provisions of this section is liable to a **penalty** of **₦5,000,000** and in addition shall be liable to a penalty of ~~₦50,000~~ for everyday the contravention continues.

Proposed New Section 181- Prohibition of certain transactions and profits by manager under a scheme.

(1) No company that is a manager under a scheme or is a subsidiary or holding company

<p>subsidiary or holding company of the manager or a director or a person engaged in the management of such a company shall carry out transactions for itself or himself, or make a profit for itself or himself from a transaction in any assets held under the scheme.</p> <p>(2) A company that is a manager of a scheme constituted under a trust or is a subsidiary or holding company of the manager shall not :-</p> <p>(a) borrow money on behalf of the scheme for the purpose of acquiring securities or other property for the scheme;</p> <p>(b) lend money that is subject to the trusts of the scheme to a person to enable him to purchase units or securities of the scheme;</p> <p>(c) mortgage, or charge or impose any other encumbrance on any securities or other property subject to the trust of the scheme; or</p>	<p>of the manager or a director or a person engaged in the management of such a company shall carry out transactions for itself or himself, or make a profit for itself or himself from a transaction in any assets held under the scheme.</p> <p>(2) A company that is a manager of a scheme constituted under a trust or is a subsidiary or holding company of the manager shall not :-</p> <p>(a) borrow money on behalf of the scheme for the purpose of acquiring securities or other property for the scheme <u>save where the Scheme is registered as a hedge fund or specialized fund as may be determined by the Commission from time to time;</u></p> <p>(b) lend money that is subject to the trusts of the scheme to a person to enable him to purchase units or securities of the scheme;</p> <p>(c) mortgage, or charge or impose any other encumbrance on any securities or other property subject to the trust of the scheme; or</p>	
--	---	--

<p>(d) engage in any transaction that is not in the interest of unit or security holders and of the scheme.</p> <p>(3) Any person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of ₦100,000 or to a term of imprisonment of not less than three years or to both such fine and imprisonment.</p> <p>(4) The Commission may, in addition to a prosecution under subsection (3) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty in an amount that is equal to the profits made from any such transaction or an amount of ₦50,000 whichever is higher.</p>	<p>(d) engage in any transaction that is not in the interest of unit or security holders and of the scheme.</p> <p>(3) Any person who contravenes the provisions of this section, commits an offence and is liable on conviction to a <u>penalty of ₦1,000,000</u> or to a term of imprisonment of not less than three years or to both such fine and imprisonment</p> <p>(4) The Commission may, in addition to a prosecution under subsection (3) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty in an amount that is equal to the profits made from any such transaction or an amount of <u>₦500,000</u> whichever is higher.</p>	
<p><u>Current section 168 Proposed New Section 182- Liability of the trustees and custodian under a scheme.</u></p> <p>Any provision in the trust deed or custodial agreement in which are expressed the trusts or agreement</p>	<p><u>Proposed New Section 182- Liability of the trustees and custodian under a scheme.</u></p> <p>Retained</p>	

<p>created in pursuance of an authorised scheme shall be void in so far as it would have the effect of exempting the trustee or custodian under the scheme from or indemnifying it against liability for breach of trust or the custodial agreement where, having regard to the provisions of the trust deed or the custodial agreement conferring on him any powers, authorities or discretion, he fails to exercise the degree of care and diligence required of him as trustee or custodian</p>		
<p><u>Current section 169 Proposed New Section 183- Audit of accounts of a scheme and annual general meetings</u></p> <p>(1) The manager of an authorised scheme shall cause proper books of account to be kept and annual accounts to be prepared which shall give a fair and true view of the affairs of the scheme during each</p>	<p><u>Proposed New Section 183- Audit of accounts of a scheme and annual general meetings</u></p> <p>Retained</p>	

year covered by the accounts and the accounts shall be audited by a person appointed as auditor by the manager of the scheme with the consent of the trustee or custodian for the scheme.

(2) A copy of the Auditors' report on the accounts and of such account certified by an Auditor shall be sent by the manager to the Commission and also published in national newspapers within three months after the end of the period to which the accounts relate or as the Commission may, from time to time, prescribe.

(3) The Auditor shall certify that the scheme has been operated within the provisions of this Act and the regulations prescribed by the Commission.

(4) The manager of an open-ended investment company and real estate investment company shall call an annual general meeting of investors with the consent of the trustee or custodian not later than four months after each year end to

(4) The manager of an open-ended investment company and real estate investment company shall call an annual general meeting of investors with the consent of the custodian not later than four months after each year end to consider the accounts and other matters affecting the scheme.

AGMs are not compulsory for funds structured as trust since the trustee as legal title holder ensures that actions are done in the interest of the unit holders. Thus, the AGM requirement is applicable to funds structured as companies. This however does not preclude a fund structured as trust from holding general meetings or EGMs.

<p>consider the accounts and other matters affecting the scheme.</p> <p>(5) An extraordinary general meeting of unit holders of a scheme may be convened- (a) at the request of the trustees; (b) by a requisition of twenty-five percent of unit holders; or</p> <p>(c) by the court on application by a member where the court is satisfied that it is just and equitable to do so.</p>	<p>Retained</p> <p>Retained</p>	
<p><u>Current section 170 Proposed New Section 184- Determination of market price of units or securities.</u></p> <p>1) A unit or security shall be valued at its fair market price.</p> <p>(2) The Commission may by regulation prescribe the mode and method of determining the fair market price</p>	<p><u>Proposed New Section 184- Determination of market price of units or securities</u></p> <p>Retained</p>	
<p><u>Current section 171 Proposed New Section 185- Investment of a</u></p>	<p><u>Proposed New Section 185- Investment of a collective investment scheme</u></p>	

<p><u>collective investment scheme.</u></p> <p>(1) A scheme fund shall be invested by a manager in accordance with the provisions of the trust deed or custodial agreement with the objectives of safety and maintenance of fair returns on amounts invested.</p> <p>(2) Subject to guidelines issued by the Commission, from time to time, the funds and assets of a scheme shall be invested in any of the following-</p> <p>(a) bonds, bills and other securities issued or guaranteed by the Federal Government and the Central Bank of Nigeria;</p> <p>(b) bonds, debentures, redeemable preference shares and other debt instruments issued by corporate entities listed on a securities exchange and registered under this Act;</p> <p>(c) ordinary shares of public limited companies listed on a securities exchange and registered under this</p>	<p>Retained</p> <p>Retained</p> <p>(b) bonds, debentures, redeemable preference shares and other debt instruments issued by corporate entities listed on a securities exchange and registered under this Bill;</p> <p>(c) ordinary shares of public limited companies listed on a securities exchange and registered under this Bill with good track records;</p>	<p>The requirement of 5years dividend is too onerous and places at a disadvantage solid blue chip companies who in managing</p>
---	---	---

<p>Aet with good track records having declared and paid dividends in the preceding five years;</p> <p>(d) bank deposits and bank securities of which the banks shall be rated by rating agencies registered by the Commission;</p> <p>(e) investment certificates of closed-end investment fund or hybrid investment funds listed on a securities exchange and registered under this Aet with a good track records of earning;</p> <p>(f) units sold by open-end investment funds or specialist open-end investment funds listed on the securities exchange recognised by the Commission;</p> <p>(g) real estate investment; and</p> <p>(h) such other instruments as the Commission may, from time to time, prescribe.</p>	<p>retained</p> <p>(e) investment certificates of closed-end investment fund or hybrid investment funds listed on a securities exchange and registered under this <u>Bill</u> with a good track records of earning;</p> <p>(f) units sold by open-end investment funds or specialist open-end investment funds <u>registered</u> by the Commission;</p> <p>(g) real estate investment, <u>private equity investment, infrastructure investments, commodities traded on an exchange registered by the Commission</u>; and</p> <p>retained</p>	<p>economic down circles retain capital in the business for one or two years rather than pay out. The deletion of reference to dividend payments in the preceeding 5 years enables the investment manager to make investment decisions based on technical analysis such as momentum price earning, smart beta etc which differ from dividends or returns only approach. Increasingly, the world is also moving in this new direction.</p> <p>Open ended funds are by structure not required to be listed, and where listed, are usually only for information purpose.</p> <p>Enlargement of the investment universe is expected to promote and attract more investments that would help address the deep infrastructure deficit challenge in the country.</p>
---	--	---

<p>(3) A manager may invest the funds and assets of a scheme fund in units of any investment funds: Provided that such investment fund may only be invested in the categories of investments set out in subsection (2) of this section and in real estate.</p>	retained	
<p>(4) The Commission may, by regulation, impose additional restrictions on investments by a manager where such additional restrictions are imposed with the objects of protecting the interest of a scheme or its beneficiaries.</p>	retained	
<p>(5) For the purpose of complying with any guideline set by the Commission as to the quality of instruments and banks that scheme fund assets may be invested in, and to ensure the safety of scheme assets in general, a manager shall have due regard to the risk rating of instruments that has been undertaken by a rating company registered under this Act.</p>	retained	

Current section 172 Proposed New Section 186- Inspections and investigation

(1) The Commission may conduct an investigation into the business of a person whether registered or authorised in pursuance to this Act or not, who is involved in the administration of a collective investment scheme or the soliciting of investment in a collective investment scheme.

(2) For the purposes of an investigation in terms of subsection (1) the Commission may in writing direct such person to-

(a) provide it with any information, document or record about such business;

(b) appear before it at a specified time and place if the Commission has reason to believe that such person is contravening or failing to comply with the provisions of this Act.

Proposed New Section 186- Inspections and investigation. .

Retained.

Current section 173 Proposed New Section 187- Powers of the Commission after an investigation

(1) If the Commission, after an investigation or inspection under section 172, considers that the interests of the investors of a collective investment scheme or of members of the public so require, it may-

(a) apply to the court under the Companies and Allied Matters Act for the winding-up of a manager of a collective investment scheme as if it were a creditor thereof;

(b) apply to the court, for the appointment of a receiver in respect of a manager of a collective investment scheme as if it were a creditor thereof;

(c) require a manager to appoint, in accordance with the Commission's directions, in place of the serving trustee or custodian, a competent person nominated by the

Proposed New Section 187- Powers of the Commission after an investigation

(1) If the Commission, after an investigation or inspection under section 186, considers that the interests of the investors of a collective investment scheme or of members of the public so require, it may-

Commission;

(d) require a manager to take steps, in accordance with the Commission's directions, for the winding-up of a portfolio of its collective investment scheme, and for the realisation of the assets and the distribution of the net proceeds thereof, together with any income accruals or other moneys available for distribution among the investors in proportion to their respective participatory interests;

(e) direct a manager or a trustee or custodian to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by an investigation or inspection;

(f) direct a manager to withdraw from the administration of a collective investment scheme, whereupon the trustee or custodian shall in accordance

with the Commission's directions but subject to this Act arrange for another manager to take over the administration of the collective investment scheme; or

(g) in the case of a collective investment scheme being administered in contravention of this Act, apply to the court to have the collective investment scheme wound up, in which case the court may make any order it considers appropriate for the winding-up of the collective investment scheme.

(2) The commission may oppose any application for

(a) the winding up of a manager;

(b) a judicial management order in respect of a manager; or

(c) the winding-up of a portfolio of a collective investment scheme.

(3) Any person who intends to

make an application contemplated in subsection (2) must give timely notice of such application to the Commission.

(4) A person who refuses or fails to comply with a request or direction referred to in paragraphs (c), (d), (e), (f) or (g) of subsection (1) commits an offence and is liable on conviction to a fine of not less than N100,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Current section 174 Proposed New Section 189- Cancellation or suspension of registration of a manager.

(1) The Commission may cancel the registration of a manager under this ~~Act~~ if-

(a) the manager has contravened or failed to comply with any provision

(4) A person who refuses or fails to comply with a request or direction referred to in paragraphs (c), (d), (e), (f) or (g) of subsection (1) commits an offence and is liable on conviction to a fine of not less than N1,000,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Proposed New Section 189- Cancellation or suspension of registration of a manager.

(1) The Commission may cancel the registration of a manager under this Bill if-

(a) the manager has contravened or failed to comply with any provision of this Bill or any

<p>of this Aet or any direction or requirement given or imposed under this Aet, and that such contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors;</p> <p>(b) upon completion of an investigation or inspection, the manner in which a manager carries on the business of a collective investment scheme is unsatisfactory or undesirable or not calculated to serve the best interests of its investors;</p> <p>(c) the registration of the manager was obtained through misrepresentation; or</p> <p>(d) the manager is wound up, either voluntarily or by the court.</p> <p>(2) Whenever there is cause to cancel the registration of a manager on any of the grounds referred to in paragraph (a), (b) or (c) of subsection (1), the</p>	<p>direction or requirement given or imposed under this <u>Bill</u>, and that such contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors;</p> <p>retained</p>	
--	---	--

Commission may, in lieu of such cancellation, suspend the registration of the affected manager for a period not exceeding 12 months at a time subject to such conditions as the Commission may determine.

(3) The Commission may not cancel or suspend the registration of a manager on any ground contemplated in subsection (1) (a), (b) or (c) unless it has —

(a) notified the manager of its intention and of the grounds upon which it proposes to do so;

(b) allowed the manager to make representations to it in connection with the proposed cancellation or suspension; and

c) afforded the manager a reasonable opportunity to rectify or eliminate the defect, irregularity or undesirable practice.

(4) An application for re-registration as a manager by a company whose

retained

retained

registration has been cancelled under this section shall be dealt with as if it were its first application for registration.

(5) If the registration of a manager is cancelled in pursuance of subsection (1)(a), (b) or (c) the provisions of this ~~Act~~ with regard to the continuance or the winding-up of the portfolio of a collective investment scheme or the winding-up of the manager shall apply: Provided that the Commission may in any such case direct the former manager to defray, in whole or in part, the expenses incurred in continuing the administration of the collective investment scheme, or in realising any of its assets, and also any remuneration to which a trustee or custodian may be entitled.

(6) If the registration of a manager has been suspended under subsection (2) of this section, the manager shall not, during the period of suspension,

(5) If the registration of a manager is cancelled in pursuance of subsection (1)(a), (b) or (c) the provisions of this Bill with regard to the continuance or the winding-up of the portfolio of a collective investment scheme or the winding-up of the manager shall apply: Provided that the Commission may in any such case direct the former manager to defray, in whole or in part, the expenses incurred in continuing the administration of the collective investment scheme, or in realising any of its assets, and also any remuneration to which a trustee or custodian may be entitled.

retained

<p>issue any fresh participatory interests, but shall, in respect of participatory interests issued, transfer the administration of the scheme to another manager approved by the Commission on the recommendation of the trustee or custodian.</p>		
<p><u>Current section 175 Proposed New Section 190- Commission may object to publication or distribution of misleading, objectionable, etc. documents.</u></p> <p>The Commission may object to the terms of any price list, advertisement, brochure or similar document relating to a scheme published or proposed to be published by a manager or any of its authorised agents, if the Commission considers the terms are calculated to mislead or are, for any other good and sufficient reason, objectionable or undesirable, and the Commission may direct the manager to discontinue or refrain from publishing or distributing any such document, or to amend its terms.</p>	<p><u>Proposed New Section 190- Commission may object to publication or distribution of misleading, objectionable, etc. documents.</u></p> <p>Retained</p>	

<p><u>Current section 176 Proposed New Section 191- Power of Commission to request audit.</u></p> <p>(1) The Commission may direct a manager to have all books of accounts and financial statements audited and to submit the results of such an audit to the Commission within the time specified by the Commission.</p> <p>(2) Any person who, in respect of an audit contemplated in subsection (1), gives information, an explanation or access to records which he or she knows to be false or misleading commits an offence and is liable on conviction to a fine of ₦1,000,000 or imprisonment for one year or both such fine and imprisonment</p>	<p><u>Proposed New Section 191- Power of Commission to request audit.</u></p> <p>Retained</p>	
<p><u>Current section 177 Proposed New Section 192- Declaration of certain practices as irregular or undesirable.</u></p> <p>(1) The Commission may, by notice declare a particular practice or manner of administration of schemes</p>	<p><u>Proposed New Section 192- Declaration of certain practices as irregular or undesirable.</u></p> <p>retained</p>	

to be an "irregular or undesirable practice" or an "undesirable manner of administration".

(2) No person shall, after 21 days from the date of publication of the notice whereby a practice or manner of administration has been declared to be irregular or undesirable, employ such a practice or manner of administration otherwise than for the sole purpose of fulfilling any obligations entered into before the date of such notice or to comply with any directives by the Commission under subsection (3).

(3) The Commission may in writing direct any person who employed a practice or manner of administration which was declared to be irregular or undesirable (pursuant to subsection (1) of this section) to rectify anything which was caused by or arose out of the employment of that irregular or undesirable practice or manner of administration whether or not it occurred before, during or after the

<p>date of the declaration referred to in subsection (1), of this section.</p> <p>(4) A person who has been directed in terms of subsection (3) to rectify anything shall effect such rectification within seven days after being so directed or within such longer time as the Commission may approve.</p> <p>(5) A person who-</p> <p>(a) contravenes subsection (2);</p> <p>(b) refuses or fails to comply with a direction referred to in subsection (3); or</p> <p>(c) fails to comply with subsection (4); commits an offence and is liable on conviction to a fine of not less than N100,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.</p>	<p>(c) fails to comply with subsection (4); commits an offence and is liable on conviction to a fine of not less than <u>N1,000,000</u> or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.</p>	
<p><u>Current section 178 Proposed New Section 193- Appointment and termination of appointment of trustee or custodian.</u></p> <p>(1) A manager shall appoint either a trustee or a custodian for any scheme managed by it having regard</p>	<p><u>Proposed New Section 193- Appointment and termination of appointment of trustee or custodian.</u></p> <p>retained</p>	

to the structure of the scheme.

(2) A person may not become or act as a trustee or custodian unless that person is registered as such by the Commission.

(3) A trustee or custodian intending to retire from an appointment in terms of this section, shall give to the manager and the Commission not less than three months ' notice of such intention, and during the said period of three months the manager concerned shall take steps to appoint another trustee or custodian competent to act as such.

(4) When the appointment of a trustee or custodian is terminated, that trustee or custodian shall within 7 days submit a report to the Commission stating- (a) the asset and liabilities of the scheme;

(b) whether any irregularity or undesirable practice has taken place or is taking place in the conduct of

<p>the affairs of the scheme which has caused or is likely to cause financial loss to investors in a portfolio of the scheme;</p> <p>(c) particulars of any such irregularity or undesirable practice; and</p> <p>(d) the reason, if known, for the termination of the appointment.</p> <p>(5) If a manager fails to take the steps specified in subsection (4) of this section within the said period of three months, the Commission may, after consultation with the manager, direct the manager to appoint as trustee or custodian a competent person nominated by the Commission.</p> <p>(6) When it is impracticable for a trustee or custodian to perform any or all its duties, the trustee or custodian may with the approval of the Commission appoint a representative which is independent from the manager and</p>	<p>(5) If a <u>trustee or custodian</u> fails to take the steps specified in subsection (4) of this section within the said period of three months, the Commission may, after consultation with the manager, direct the manager to appoint as trustee or custodian a competent person nominated by the Commission.</p> <p>retained</p>	
--	--	--

<p>any of its agents, to perform such duties.</p> <p>(7) A trustee or custodian of a scheme who has appointed a representative under subsection (6) of this section, is not thereby relieved of any of its responsibilities or duties under the scheme.</p>		
<p><u>Current section 179 Proposed New Section 194- Qualification and registration of trustee or custodian.</u></p> <p>(1) The Commission may by regulation prescribe the qualification and conditions for any person or institution to become or act as a manager , trustee or custodian.</p> <p>(2) A company or institution referred to in subsection (1) of this section may not become or act as a manager, trustee or custodian unless it maintains capital and reserves as may be prescribed by the Commission from time to time.</p>	<p><u>Proposed New Section 194- Qualification and registration of trustee or custodian.</u></p> <p>Retained</p>	

<p>(3) The Commission may not register a person as a trustee or custodian unless it is satisfied that-</p> <p>(a) the person is not in relation to the manager, either a holding company or a subsidiary or fellow subsidiary company within the meaning of those terms as defined in the Companies and Allied Matters Act; and</p> <p>(b) the general financial and commercial standing and independence of the person is such that it is fit for performing the functions of a trustee or custodian and that the person is by reason of the nature of its business sufficiently experienced and equipped to perform such functions.</p>		
<p><u>Current section 180 Proposed New Section 195- Suspension or revocation of the registration of trustee or custodian</u></p> <p>(1) The Commission may revoke or suspend the registration of a trustee or custodian, whenever the Commission is no longer satisfied</p>	<p><u>Proposed New Section 195- Suspension or revocation of the registration of trustee or custodian</u></p> <p>(1) The Commission may revoke or suspend the registration of a trustee or custodian, whenever the Commission is no longer satisfied that the requirements contained in subsection (3) of section 179 of this Bill are</p>	

<p>that the requirements contained in subsection (3) of section 179 of this Act are met by the trustee or custodian.</p> <p>(2) The Commission shall, before revoking or suspending a registration in terms of subsection (1), notify the trustee or custodian concerned of the grounds upon which such action is contemplated against it, and must give it a reasonable opportunity of showing cause why the proposed action should not be taken.</p>	<p>met by the trustee or custodian.</p> <p>Retained.</p>	
<p><u>Current section 181 Proposed New Section 196- Duties of trustee or custodian.</u></p> <p>(1) A trustee or custodian shall-</p> <p>(a) ensure that the basis on which the sale, issue, repurchase or cancellation, as the case may be, of participatory interests effected by or on behalf of a scheme is carried out in accordance with this Act and the trust deed or custodial agreement;</p>	<p><u>Proposed New Section 196- Duties of trustee or custodian.</u></p> <p>197 (1) A trustee or custodian shall-</p> <p>(a) ensure that the basis on which the sale, issue, repurchase or cancellation, as the case may be, of participatory interests effected by or on behalf of a scheme is carried out in accordance with this Bill and the trust deed or custodial agreement;</p>	

<p>(b) ensure that the selling or repurchase price of participatory interests is calculated in accordance with this Act and the trust deed or custodial agreement;</p> <p>(c) carry out the instructions of the manager unless they are inconsistent with this Act or the trust deed or custodial agreement;</p> <p>(d) verify that, in transactions involving the assets of a scheme, any consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction;</p> <p>(e) verify that the income accruals of a portfolio are applied in accordance with this Act and the trust deed or custodial agreement;</p> <p>(f) enquire into and prepare a report on the administration of the scheme by the manager during each annual accounting period, in which it shall be stated whether</p>	<p>(b) ensure that the selling or repurchase price of participatory interests is calculated in accordance with this <u>Bill</u> and the trust deed or custodial agreement;</p> <p>(c) carry out the instructions of the manager unless they are inconsistent with this <u>Bill</u> or the trust deed or custodial agreement;</p> <p>(d) retained</p> <p>(e) verify that the income accruals of a portfolio are applied in accordance with this <u>Bill</u> and the trust deed or custodial agreement;</p> <p>(f) enquire into and prepare a report on the administration of the scheme by the manager during each annual accounting period, in which it shall be stated whether the scheme has been administered in accordance with the provisions of this <u>Bill</u> and the trust deed or custodial</p>	
--	--	--

<p>the scheme has been administered in accordance with the provisions of this Act and the trust deed or custodial agreement;</p> <p>(g) if the manager does not comply with the limitations and provisions referred to in paragraph (f) of this subsection, state the reason for the non-compliance and outline the steps taken by the manager to rectify the situation;</p> <p>(h) send the report referred to in paragraph (f) of this subsection to the Commission and to the manager in good time to enable the manager include a copy of the report in its annual report; and (i) ensure that -</p> <p>(i) there is a legal separation of assets held under custody and that the legal entitlement of investors to such assets is assured; and</p> <p>(ii) appropriate internal control systems are maintained and that records clearly identify the nature</p>	<p>agreement;</p> <p>(g) retained</p> <p>(h) send the report referred to in paragraph (f) of this subsection to the Commission and to the manager in good time to enable the manager include a copy of the report in its annual report; and ensure that-</p> <p>(i) there is a legal separation of assets held under custody and that the legal entitlement of investors to such assets is assured; and</p> <p>(ii) appropriate internal control systems are maintained and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where</p>	
--	---	--

and value of all assets under custody, the ownership of each asset and the place where documents of title pertaining to each asset are kept.

(2) A trustee or custodian shall report to the manager any irregularity or undesirable practice, concerning the collective investment scheme of which it is aware and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian, it shall as soon as possible report such irregularity or undesirable practice to the Commission.

(3) The trustee or custodian shall satisfy itself that every income statement, balance sheet or other return prepared by the manager in terms of section ~~169~~ fairly represents the assets and liabilities, as well as the income and distribution of income, of every portfolio of the scheme administered by the manager.

documents of title pertaining to each asset are kept.

(2) Retained

(3) The trustee or custodian shall satisfy itself that every income statement, balance sheet or other return prepared by the manager in terms of section 183 fairly represents the assets and liabilities, as well as the income and distribution of income, of every portfolio of the scheme administered by the manager.

<p>(4) At the request of the trustee or custodian, every director or employee of the manager shall submit to the trustee or custodian any book or document or information relating to the administration by the manager of its collective investment scheme which is in its possession or at its disposal, and which the trustee or custodian may consider necessary to perform its functions.</p> <p>(5) No person shall interfere with the performance by a trustee or custodian of its functions under this Act.</p> <p>(6) A trustee or custodian of a collective investment scheme which fails to perform any of its duties referred to in this section, is liable to a penalty of N500,000-</p>	<p>(4) Retained</p> <p>(5) No person shall interfere with the performance by a trustee or custodian of its functions under this <u>Bill</u>.</p> <p>(6) A trustee or custodian of a collective investment scheme which fails to perform any of its duties referred to in this section, is liable to a penalty of <u>not less than N5,000,000</u>.</p>	
<p><u>Current section 182 Proposed New Section 197- Status of assets.</u> For the purposes of this Act any-</p> <p>(a) money or other assets received from an investor; and</p>	<p><u>Proposed New Section 197- Status of assets</u> For the purposes of this <u>Bill</u> any -</p> <p>Retained</p>	

<p>(b) asset of a portfolio, are regarded as being trust property for the purposes of the Trustee Investments Act.</p>		
<p><u>Current section 183 Proposed New Section 198- Liability of trustee or custodian in respect of loss of assets.</u></p> <p>The trustee or custodian shall indemnify the manager and investors against any loss or damage suffered in respect of money or other assets in the custody of the trustee or custodian and which loss or damage is caused by a willful or negligent act or omission by the trustee or custodian.</p>	<p><u>Proposed New Section 198- Liability of trustee or custodian in respect of loss of assets.</u></p> <p>Retained</p>	
<p><u>Current section 184 Proposed New Section 199- Appointment and removal of auditor.</u></p> <p>(1) A manager in consultation with the trustee or custodian, shall appoint an Auditor registered by the Commission for the purpose of auditing the whole of the business of</p>	<p><u>Proposed New Section 199- Appointment and removal of auditor.</u></p> <p>Retained</p>	

<p>the scheme administered by it.</p> <p>(2) No director or employee of a manager, trustee or custodian and no firm of which any such director or employee is a member may be appointed as an Auditor of a scheme;</p> <p>(3) A manager shall within thirty days from the date of appointment of an Auditor apply to the Commission for the approval of such appointment;</p> <p>(4) The Commission may withdraw a prior approval of the appointment of an Auditor;</p> <p>(5) An Auditor may be removed by the manager in consultation with the trustee or custodian and the Commission shall accordingly be informed by the manager.</p>		
<p><u>Current section 185 Proposed New Section 200 - Duty of auditor to disclose irregularity or undesirable practice.</u></p> <p>(1) The auditor shall-</p>	<p><u>Proposed New Section 200 - Duty of auditor to disclose irregularity or undesirable practice.</u></p> <p>(1) The auditor shall-</p>	

<p>(a) report to the manager any irregularity or undesirable practice in the administration of the collective investment scheme which has come to his notice in the ordinary course of fulfilling his audit responsibilities or performing other functions in terms of this Aet; and</p> <p>(b) if there is reasonable cause to believe that such report is or might be of material significance to the Commission, submit a copy of such report to the Commission.</p> <p>(2) For the purposes of this section, a report is of material significance to the Commission if it deals with a matter which, because of its nature or potential financial impact, has caused or is likely to cause financial loss to the scheme or any of its investors or creditors.</p> <p>(3) An Auditor who fails to perform any of the duties referred to in this section, is liable to a penalty of N100,000</p>	<p>(a) report to the manager any irregularity or undesirable practice in the administration of the collective investment scheme which has come to his notice in the ordinary course of fulfilling his audit responsibilities or performing other functions in terms of this <u>Bill</u>; and</p> <p>Retained</p> <p>Retained</p> <p>(3) An Auditor who fails to perform any of the duties referred to in this section, is liable to a penalty of <u>not less than ₦1,000,000.</u></p>	
--	---	--

Current section 186 Proposed New Section 201 - Power to make regulations on the constitution and management of collective investment schemes.

(1) The Commission may make regulations as to the constitution and management of collective investment schemes, the powers and duties of the manager and trustee or custodian of any such scheme, and the rights and obligations of persons participating in any such scheme.

(2) Without prejudice to the generality of subsection (1) of this section, the Commission may make regulations under this section-

(a) as to the issue and redemption of the units or securities under the scheme; (b) as to the expenses of the scheme and the means of meeting them;

(c) for the appointment, removal, powers and duties of an auditor for the scheme;

Proposed New Section 201 - Power to make regulations on the constitution and management of collective investment schemes.

retained

(d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;

(e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;

(f) requiring the preparation of periodic reports with respect to the scheme and the furnishing of those reports to the participants and the Commission; and

(g) with respect to amendment of the scheme.

(3) Regulations made under this scheme -

(a) may make provision as to the contents of the trust deed or custodial agreement, including provision requiring any of the matters mentioned in subsection (2) of this section to be dealt with

in the trust deed or custodial agreement;

(b) shall be binding on the manager, trustee, custodian, participants independent of the contents of the trust deed or custodial agreement and, in the case of the participants, shall have effect as if contained in it;

(c) shall not impose limits on the remuneration payable to the manager of a scheme; and

(d) may contain such incidental and transitional provisions as the Commission thinks necessary or expedient.

(e) may exempt any specialized scheme from the applicability of the provision of this part of the Bill;

Current section 187 Proposed New Section 202 - Alteration of schemes and change of manager, trustee or custodian.

(1) The manager of an authorised scheme shall give written notice to the Commission of-

(a) any proposed alteration to the scheme; and

(b) any proposal to replace the trustee or custodian of the scheme

(2) Any notice given in respect of a proposed alteration involving a change in the trust deed or custodial agreement shall be accompanied by a certificate signed by a legal practitioner to the effect that the change will not affect the compliance of the trust deed or custodial agreement with this Act and the regulations made under section ~~186~~ of this Act.

(3) The trustee or custodian of an authorised scheme shall give written notice to the Commission of any proposal to replace the

Proposed New Section 202 - Alteration of schemes and change of manager, trustee or custodian.

retained

(2) Any notice given in respect of a proposed alteration involving a change in the trust deed or custodial agreement shall be accompanied by a certificate signed by a legal practitioner to the effect that the change will not affect the compliance of the trust deed or custodial agreement with this Act and the regulations made under section 201 of this Bill.

manager of the scheme or in the case of an open ended investment company replace the board of directors or transfer the assets of the scheme to a new scheme or wind-up the scheme.

(4) No effect shall be given to any of the proposals referred to in subsections (1) and (3) of this section unless – (a) the Commission has given its approval to the proposal; or

(b) one month has elapsed since the date on which the notice was given under subsection (1) or (3) of this section without the Commission having notified the manager or trustee that the proposal is not approved.

(5) The manager or the trustee or custodian of an authorised scheme shall not be replaced except by persons who satisfy the requirements of section ~~188~~ of this Act or regulations made thereunder: Provided that where any of them has

(5) The manager or the trustee or custodian of an authorised scheme shall not be replaced except by persons who satisfy the requirements of section 203 of this Bill or regulations made thereunder: Provided that where any of them has been so replaced, the former manager or trustee or custodian,

<p>been so replaced, the former manager or trustee or custodian, shall within 14 days, handover all properties and documents of the scheme in his possession to the trustee or custodian and, in the case of a trustee or custodian, to the manager.</p>	<p>shall within 14 days, handover all properties and documents of the scheme in his possession to the trustee or custodian and, in the case of a trustee or custodian, to the manager.</p>	
<p><u>Current section 188 Proposed New Section 203 - Restriction on activities of managers</u></p> <p>(1) The manager of an authorised scheme shall not engage in any activities other than those mentioned in subsection (2) of this section.</p> <p>(2) The activities referred to in subsection (1) of this section are- (a) acting as manager of-</p> <p>(i) a scheme;</p> <p>(ii) an open-ended investment company or any body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the expert management of its</p>	<p><u>Proposed New Section 203 - Restriction on activities of managers</u></p> <p>Retained</p>	

<p>funds by or on behalf of that body; or</p> <p>(iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and</p> <p>(b) activities for the purposes of or in connection with those activities mentioned in paragraph (a) of this subsection.</p>		
<p><u>Current section 189 Proposed New Section 204 - Publication of scheme particulars.</u></p> <p>(1) The manager of an authorised scheme shall publish particulars of the scheme ("scheme particulars") or make available to the public, upon request, any document containing information about the scheme in a manner prescribed by the Commission from time to time.</p>	<p><u>Proposed New Section 204 - Publication of scheme particulars.</u></p> <p>(1) Retained</p>	

(2) Regulations made under this section may-

(a) require the manager of an authorised scheme to submit and publish or make available revised or further scheme particulars if-

(i) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulation; or

(ii) a significant new matter has arisen, disclosure of which would have been required in previous particulars if it had arisen when those particulars were prepared.

(b) provide for the payment of compensation to any person who has become or agreed to become participant in the scheme and suffered loss as a result of-

(i) any untrue or misleading

(2) Retained

<p>statement in the particulars;</p> <p>(ii) or the omission from the particulars of any matter required by the regulations to be included by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars.</p> <p>(4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.</p>	<p>(3) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.</p>	
<p><u>Current section 190 Proposed New Section 205 - Power of intervention</u></p> <p>(1) If it appears to the Commission that-</p> <p>(a) any of the requirements for the registration of a scheme as an authorised scheme are no longer satisfied; or</p> <p>(b) the manager or trustee or custodian of such a scheme has contravened any provision of this</p>	<p><u>Proposed New Section 205 - Power of intervention</u></p> <p>(1) If it appears to the Commission that-</p> <p>(a) retained</p> <p>(b) the manager or trustee or custodian of such a scheme has contravened any provision of this <u>Bill</u> or any rules or regulations made</p>	

~~Act~~ or any rules or regulations made thereunder or, in purported compliance with any such provisions has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this ~~Act~~, or

(c) it is desirable in the interests of participants or potential participants in the scheme, the Commission may give directives in accordance with the provisions of subsection (2) of this section.

(2) The directives referred to in subsection (1) of this section may-

(a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption of units or securities under the scheme on a date specified in the directive until such further date as is specified in that order or directive; or

thereunder or, in purported compliance with any such provisions has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Bill, or

(b) require the manager and trustee or custodian of the scheme to wind it up by such date as is specified in the directive or if no date is specified, as soon as practicable;

(c) appoint any person to take over and perform the duties of the manager or trustee or custodian for such interim period as may be required pending the appointment of such manager, trustee or custodian pursuant to the provisions of the trust deed or custodial agreement.

(3) The revocation of the registration of an authorised scheme shall not affect the operation of any directive under subsection (1) of this section which is then in force; and a directive may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised scheme has been revoked if a directive under that subsection was already in force at the time of revocation.

<p>Current section 191 Proposed New Section 206 - Representation against directive or its revocation</p> <p>(1) Where the Commission proposes to-</p> <p>(a) give a directive under section 190 of this Act; or</p> <p>(b) revoke such directive otherwise than at the request of the manager or trustee or custodian of the scheme, it shall give the applicants or, as the case may be, the manager and trustee or custodian of the scheme written notice of its intention to do so stating the reasons for which it proposes to act and giving particulars of the rights conferred by subsection (2) of this section.</p> <p>(2) A person on whom a notice is served under subsection (1) of this section may, within twenty one days of the date of service, make written representations to the Commission and, if desired, oral representations to a person appointed for that purpose by the Commission.</p>	<p><u>Proposed New Section 206 - Representation against directive or its revocation</u></p> <p>(1) Where the Commission proposes to-</p> <p>(a) give a directive under section 205 of this Bill; or</p> <p>(b) Retained</p> <p>(2) Retained</p>	
--	--	--

<p>(3) The Commission shall have regard to any representations made in accordance with subsection (2) of this section in determining whether to refuse the application or revoke the order, as the case may be.</p>	<p>(3)Retained</p>	
<p><u>Current section 192 Proposed New Section 207 - Open-ended Investment company .</u></p> <p>(1) An open-ended investment company shall be registered by the Commission if-</p> <p>(a) it is a body corporate incorporated in accordance with the Companies and Allied Matters Act;</p> <p>(b) it has capital and reserve as prescribed by the Commission from time to time;</p> <p>(c) its article of association provide that it may acquire its own shares; and</p> <p>(d) it satisfies all other conditions which may be prescribed by the commission from time to time.</p> <p>(2) The assets and investments of an open-ended investment company</p>	<p><u>Proposed New Section 207 - Open-ended and close-ended investment company .</u></p> <p>(1) Retained</p> <p>(2) The assets and investments of an open-</p>	

<p>shall be in the custody of a registered custodian or trustee.</p>	<p>ended <u>and close-ended</u> investment company shall be in the custody of a registered custodian or trustee.</p> <p><u>(3) A close-ended investment company shall be registered by the Commission if</u></p> <p><u>(a) it is a body corporate incorporated in accordance with the Companies and Allied Matters Act;</u></p> <p><u>(b) it has fixed capital prescribed by the Commission;</u></p> <p><u>(c) it satisfies all other conditions which may be prescribed by the commission from time to time.</u></p>	
<p><u>Current section 193 Proposed New Section 208 - Real estate investment companies or trusts</u></p> <p>(1) A body corporate incorporated for the sole purpose of acquiring intermediate or long term interests in real estate or property development may raise funds from the capital market through the issuance of securities which shall have the following characteristics-</p>	<p><u>Proposed New Section 208 - Real estate investment companies or trusts</u></p> <p>(1) A body corporate incorporated for the sole purpose of acquiring intermediate or long term interests in real estate or property development may raise funds from the capital market through the issuance of securities which shall have the following characteristics:</p>	

<p>(a) an income certificate giving the investor a right to a share of the income of any property or property development; and</p> <p>(b) an ordinary share in the body corporate giving the investor voting rights in the management of that body corporate.</p> <p>(2) Under this Act, a trust may be constituted for the sole purpose of acquiring a property on a 'trust for sale" for the investors.</p> <p>(3) The trust referred to in subsection (2) of this section shall have the following characteristics :-</p> <p>(a) the investors shall acquire units in the trust through which they shall be entitled to receive periodic distribution of income and participate in any capital appreciation of the property concerned; and</p> <p>(b) the investors shall also be entitled to retain control over their</p>	<p>(a) an income certificate giving the investor a right to a share of the income of any property or property development; and</p> <p>(b) an ordinary share in the body corporate giving the investor voting rights in the management of that body corporate.</p> <p><u>(c) such condition as the Commission may prescribe from time to time</u></p> <p>(2) Retained.</p> <p>(3) Retained</p>	<p>It expands the discretionary powers of the Commission.</p>
--	--	---

<p>investments by investing directly in a particular property rather than in a portfolio of investments.</p> <p>(4) The Commission shall, from time to time, make rules and regulations regulating the activities and securities (whether the securities are described as asset backed-securities or otherwise) of real estate investment companies or trusts referred to in subsections (1) and (2) of this section.</p>	<p>(4) Retained</p>	
<p><u>Current section 194 Proposed New Section 209 - Registration of real estate investment company</u></p> <p>A real estate investment company or trust may be registered by the Commission if it-</p> <p>(a) is a body incorporated under the Companies and Allied Matters Act;</p> <p>(b) has a capital and reserve as prescribed by the Commission from time to time;</p> <p>(c) carries on business as a collective investment scheme solely in properties;</p>	<p><u>Proposed New Section 209 - Registration of real estate investment company</u></p> <p>Retained</p>	

<p>(d) complies with the requirement prescribed by the Commission through its rules and regulations made from time to time.</p>		
<p><u>Current section 195 Proposed New Section 210 - Foreign collective investment schemes</u></p> <p>(1) The Commission may approve an application by a manager or operator of a scheme administered in a foreign jurisdiction to solicit investment in such scheme from investors in Nigeria where-</p> <p>(a) the application complies with the conditions prescribed by the Commission;</p> <p>(b) a copy of the approval or registration by the relevant foreign jurisdiction authorising the foreign collective investment scheme to act as such is filed with the Commission.</p> <p>(2) Any person who solicits investment in a foreign collective</p>	<p><u>Proposed New Section 210 - Foreign collective investment schemes</u></p> <p>(1) The Commission may approve an application by a manager or operator of a scheme administered in a foreign jurisdiction to solicit investment in such scheme from investors in Nigeria where-</p> <p>(a) the application complies with the conditions prescribed by the Commission;</p> <p>(b) a copy of the approval or registration by the relevant foreign jurisdiction authorising the foreign collective investment scheme to act as such is filed with the Commission.</p> <p>(2) Any person who solicits investment in a foreign collective investment scheme which is not approved by the Commission, is liable to a</p>	

<p>investment scheme which is not approved by the Commission, is liable to a penalty of not less than N100,000 and a further penalty of N5,000 for every day the contravention continues</p>	<p>penalty of not less than <u>N1,000,000</u> and a further penalty of <u>N50,000</u> for every day the contravention continues.</p>	
<p><u>Current section 196 Proposed New Section 211 - Supplemental investigations.</u></p> <p>(1) The Commission may appoint one or more competent inspectors to investigate and report on-</p> <p>(a) the affairs of, or of the manager or trustee or custodian of any authorised scheme;</p> <p>(b) the affairs of, or of the operator or trustee or custodian of any recognised foreign scheme so far as relating to activities carried on in the Federal Republic of Nigeria; or</p> <p>(c) the affairs of, or of the operator or trustee or custodian of, any other scheme if it appears to the Commission that it is in the interest of the participants to do so or that the matter is of public concern.</p> <p>(2) Any inspector appointed under subsection (1) of this section to</p>	<p><u>Proposed New Section 211- Supplemental investigations.</u></p> <p>Retained</p>	

investigate the affairs of, or of the manager, trustee or operator of any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of or the manager, trustee or operator of, any other such scheme as is mentioned in that subsection whose manager, trustee or operator is the same person as the manager, trustee or operator of the first mentioned scheme.

(3) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in judicial proceedings or on grounds of confidentiality as between a client and professional legal adviser in proceedings in any court except that a legal practitioner may be required to furnish the name and address of his client.

(4) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.

(5) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless-

(a) the customer is a person who the inspector has reason to believe may be able to give information relevant to the investigation; and

(b) the Commission is satisfied that the disclosure or production is necessary for the purposes of the investigation.

(6) An inspector appointed under this section may, and if so directed by the Commission, make interim reports to the Commission and on the conclusion of his investigation shall make a final report to the Commission.

(7) A report made under subsection (6) of this section shall be written or printed as the Commission may direct and the Commission may, if it thinks fit-

(a) furnish a copy, on request and on payment of the prescribed fee, to

<p>the manager, trustee or operator or any participant in a scheme under investigation or any other person whose conduct is referred to in the report; and</p> <p>(b) cause the report to be published.</p>		
---	--	--

PART XVII: INVESTORS PROTECTION FUND

<p><u>Current section 197 Proposed New Section 212 - Establishment of an investors protection fund</u></p> <p>(1) A securities exchange or capital trade point shall establish and maintain a fund to be known as the investor protection fund.</p> <p>(2) An investor protection fund shall be administered by a board of trustees subject to the regulatory supervision of the Commission.</p> <p>(3) The assets of an investor protection fund shall be vested in the board of trustees and kept separate and applied for the purposes as set out in this part</p>	<p><u>Proposed New Section 212 - Establishment of an investors protection fund</u></p> <p>(1) A securities exchange or shall establish and maintain a fund to be known as the investor protection fund.</p> <p>(2) Retained</p> <p>(3) The assets of an investor protection fund shall be vested in the board of trustees and kept separate and applied for the purposes as set out in this part of this Bill.</p>	
---	--	--

<p>of this Act.</p>		
<p><u>Current section 198 Proposed New Section 213 - Objectives of an investor protection fund</u></p> <p>The objectives of an investor protection fund shall be to compensate investors who suffer pecuniary loss arising from-</p> <p>(a) the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange or capital trade point; and</p> <p>(b) defalcation committed by a dealing member firm 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 dealing member firm in the course of its business as a capital market operator.</p>	<p><u>Proposed New Section 213 - Objectives of an investor protection fund</u></p> <p>The objectives of an investor protection fund shall be to compensate investors who suffer pecuniary loss arising from-</p> <p>(a) the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange -; and</p> <p>(b) defalcation committed by a dealing member firm 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 dealing member firm in the course of its business as a capital market operator;</p> <p><u>(c) Revocation or cancellation of the registration of a dealing member firm pursuant to the provisions of section 59 of this Bill.</u></p>	<p>To align with section (212) of the Bill which deals with the application of the investors protection fund.</p>

<p><u>Current section 199 Proposed New Section 214 - Composition and tenure of the board of trustees.</u></p>	<p><u>Proposed New Section 214 - Composition and tenure of the board of trustees.</u></p>	
<p>(1) The board of trustees of an investor protection fund shall consist of a maximum of 9 members to be drawn as follows-</p> <p>(a) a representative from the dealing member firms;</p> <p>(b) a representative from the securities exchange or capital trade point;</p> <p>(c) a representative from the Central Securities Clearing System Limited;</p> <p>(d) a representative from the Securities and Exchange Commission;</p> <p>(e) one person representing the institutional investors;</p> <p>(f) a representative of the Association of Capital Market Registrars;</p> <p>(g) one person with proven integrity and knowledgeable in</p>	<p>(1) The board of trustees of an investor protection fund shall consist of a maximum of 9 members to be drawn as follows-</p> <p>(a) a representative from the dealing member firms;</p> <p>(b) a representative from the securities exchange;</p> <p>(c) a representative from <u>one of the Custody and Depository, Clearing and Settlement, Central Counter Party or Trade Repository Entities</u>;</p> <p>(d) a representative from the Securities and Exchange Commission;</p> <p>(e) one person representing the institutional investors;</p> <p>(f) a representative of the Association of Capital Market Registrars;</p> <p>(g) one person with proven integrity and</p>	

<p>the capital market matters;</p> <p>(h) one person representing registered shareholders association; and</p> <p>(i) one person who shall be a legal practitioner knowledgeable in capital market matters.</p> <p>(2) A member of the board of trustees shall be nominated by the board of a securities exchange or capital trade point for a period of four years on the recommendation of the body he represents: Provided that a member may be withdrawn at any time by the body on whose recommendation he was appointed.</p>	<p>knowledgeable in the capital market matters;</p> <p>(h) one person representing registered shareholders association; and</p> <p>(i) one person who shall be a legal practitioner knowledgeable in capital market matters.</p> <p>(2) A member of the board of trustees shall be nominated by the board of a securities exchange - for a period of four years on the recommendation of the body he represents: Provided that a member may be withdrawn at any time by the body on whose recommendation he was appointed;</p> <p><u>(3) Upon the expiration of the tenure of four years, a member may be reappointed by the body he represents for a further tenure of 4 years. Provided that a member whose tenure has ended may be re-appointed by the Board of the Investor Protection Fund as a defacto member for a maximum period of 6 months. The temporary member shall exercise all the rights and privileges and responsibility of a board member.</u></p>	<p>There is currently no provision for the reappointment of a member of the board of trustees. The challenge with this is that where all the members step down upon the expiration of their four year tenure, a vacuum is created and institutional memory may be lost resulting in information gaps which may hamper the smooth running of the new members.</p>
--	---	--

<p><u>Current section 200 Proposed New Section 215 - Removal from the board of trustees.</u></p> <p>A member of the board of trustees shall cease to be a member if-</p> <p>(a) before the expiration of his tenure, he ceases to be a member of the body he represents on the board of trustees; or</p> <p>(b) his membership on the board of trustees is withdrawn by the body he represents; or</p> <p>(c) he is guilty of any crime involving dishonesty or sanctioned for misconduct by any professional body or association; or</p> <p>(d) on a resolution of the other members of the board of trustees supported by at least two-thirds of its membership, is adjudged to be engaged in activities prejudicial to or inconsistent with his position as a member of the board of trustees.</p>	<p><u>Proposed New Section 215 - Removal from the board of trustees.</u></p> <p>Retained.</p>	
--	--	--

<p><u>Current section 201 Proposed New Section 216 - Powers of the board of trustees.</u></p> <p>Without prejudice to the provisions of the Trustees Investments Act, the board of trustees shall have power to-</p> <p>(a) administer the investor protection fund as to engender investors confidence and promote general market development;</p> <p>(b) prepare its own rules governing the operations and effective management of the investor protection fund subject to the approval of the securities exchanges or capital trade point and the Commission; and</p> <p>(c) do anything or perform any act incidental to or in relation with the operation and management of the investor protection fund</p>	<p><u>Proposed New Section 216 - Powers of the board of trustees.</u></p> <p>Without prejudice to the provisions of the Trustees Investments Act, the board of trustees shall have power to-</p> <p>(a) retained</p> <p>(b) prepare its own rules governing the operations and effective management of the investor protection fund subject to the approval of the securities exchange - and the Commission; and</p> <p><u>(b)</u> retained</p>	
<p><u>Current section 202 Proposed New Section 217 - Monies constituting the investor protection fund</u></p> <p>An investor protection fund shall</p>	<p><u>Proposed New Section 217 - Monies constituting the investor protection fund</u></p> <p>An investor protection fund shall consist of-</p>	

consist of-

(a) all monies paid to the board of trustees by dealing members of the securities exchange ~~or capital trade point~~ in respect of which an investor protection fund has been established as may be prescribed by the securities exchange ~~or capital trade point~~ from time to time;

(b) the interest and profits, from time to time, accruing from the investment of an investor protection fund;

(c) all monies paid to an investor protection fund by a securities exchange ~~or capital trade point~~ in accordance with the provisions of this part of this ~~Act~~;

(d) all monies recovered by or on behalf of the board of trustees in the exercise of any right of action conferred by this part of this ~~Act~~;

(a) all monies paid to the board of trustees by dealing members of the securities exchange - in respect of which an investor protection fund has been established as may be prescribed by the securities exchange - from time to time;

(b) the interest and profits, from time to time, accruing from the investment of an investor protection fund;

(c) all monies paid to an investor protection fund by the securities exchange - in accordance with the provisions of this part of this Bill;

(d) all monies recovered by or on behalf of the board of trustees in the exercise of any right of action conferred by this part of this Bill;

<p>(e) all monies paid by an insurer pursuant to any contract of insurance or indemnity entered into by a dealing member or the board of trustees;</p> <p>(f) all monies held by any investor protection fund or by whatever name so called, established by a securities exchange or capital trade point - prior to the coming into force of this Act; and</p> <p>(g) all other monies lawfully paid into an investor protection fund.</p>	<p>(e) all monies paid by an insurer pursuant to any contract of insurance or indemnity entered into by a dealing member or the board of trustees;</p> <p>(f) all monies held by any investor protection fund or by whatever name so called, established by <u>the</u> securities exchange - prior to the coming into force of this <u>Bill</u>; and</p> <p>(g) all other monies lawfully paid into an investor protection fund.</p>	
<p><u>Current section 203 Proposed New Section 218 - Fund to be kept in separate bank account.</u></p> <p>All monies forming a part of an investor protection fund shall be paid or transferred into a separate bank account in Nigeria pending the investment or application of such monies in accordance with the provisions of this part of this Act.</p>	<p><u>Proposed New Section 218 - Fund to be kept in separate bank account.</u></p> <p>All monies forming a part of an investor protection fund shall be paid or transferred into a separate bank account in Nigeria pending the investment or application of such monies in accordance with the provisions of this part of this <u>Bill</u>.</p>	
<p><u>Current section 204 Proposed New</u></p>	<p><u>Proposed New Section 219 - Payments</u></p>	

Section 219 - Payments out of the investor protection fund

The board of trustees may apply the funds of an investor protection fund for payment of-

(a) payment of claims by investors arising from the insolvency, bankruptcy or negligence of a failed dealing member firm as may be ascertained, determined or directed under the provisions of this Act;

(b) claims, including costs, of an investor allowed by the securities exchange ~~or capital trade point~~ arising from defalcation committed by a dealing member firm 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 dealing member firm in the course of its business as a capital market operator;

out of the investor protection fund

The board of trustees may apply the funds of an investor protection fund for payment of-

(a) payment of claims by investors arising from the insolvency, bankruptcy or negligence of a failed dealing member firm as may be ascertained, determined or directed under the provisions of this **Bill**;

(b) claims, including costs, of an investor allowed by the securities exchange arising from defalcation committed by a dealing member firm 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 dealing member firm in the course of its business as a capital market operator;

(c) any amount ordered to be paid as compensation to an investor by the Commission or the Tribunal in respect of any claim or loss arising from defalcation as provided for in paragraph (b) of section 158 of this Act;

(d) all legal, professional and other expenses incurred in investigating or defending claims made under this part of the Act or incurred in relation to an investor protection fund or in the exercise by the board of trustees of the rights, powers and authority vested in it by this part of the Act in relation to an investor protection fund;

(e) all premiums payable in respect of contracts of insurance or indemnity entered into by the board of trustees;

(c) any amount ordered to be paid as compensation to an investor by the Commission or the Tribunal in respect of any claim or loss arising from defalcation as provided for in paragraph (b) of section 172 of this Bill;

Provided that payment of any claim, award or order for compensation under (a) to (c) shall be subject to the maximum compensation sum as may be approved from time to time by the Board.

(d) all legal, professional and other expenses incurred in investigating or defending claims made under this part of the Bill or incurred in relation to an investor protection fund or in the exercise by the board of trustees of the rights, powers and authority vested in it by this part of the Bill in relation to an investor protection fund;

(e) all premiums payable in respect of contracts of insurance or indemnity entered into by the board of trustees;

<p>(f) the expenses incurred or involved in the administration of the investor protection fund including the salaries and wages of persons employed by the board of trustees in relation thereto; and</p> <p>(g) all other monies payable out of an investor protection fund in accordance with the provisions of this Act.</p>	<p>(f) the expenses incurred or involved in the administration of the investor protection fund including the salaries and wages of persons employed by the board of trustees in relation thereto; and</p> <p>(g) all other monies payable out of an investor protection fund in accordance with the provisions of this Bill.</p>	
<p><u>Current section 205 Proposed New Section 220 - Accounts of an Investor protection fund</u></p> <p>1) A board of trustees shall establish and keep proper books of accounts in relation to an investor protection fund and shall, not later than three months following the end of the financial year of the fund, cause the income and expenditure for the year and a balance sheet to be made out.</p> <p>(2) A securities exchange or capital trade point shall, on the recommendation of the board of trustees appoint an Auditor to audit</p>	<p><u>Proposed New Section 220 - Accounts of an Investor protection fund</u></p> <p>(1) Retained.</p> <p>(2) A securities exchange - shall, on the recommendation of the board of trustees, appoint an Auditor to audit the accounts of the investor protection fund established by it.</p>	

<p>the accounts of the investor protection fund established by it.</p> <p>(3) The Auditor appointed pursuant to subsection (2) of this section shall regularly and fully audit the accounts of the investor protection fund and shall complete the audit not later than one month following the period referred to in subsection (1) of this section to enable the audited accounts to be submitted by the board of trustees to the Commission not later than two months following the period referred to in subsection (1) of this section.</p>	<p>(3) Retained</p>	
<p><u>Current section 206 Proposed New Section 221 - Power of the board of trustees to delegate functions to its management subcommittee.</u></p> <p>(1) The board of trustees may for the purpose of management of the investor protection fund appoint a management subcommittee of not less than 3 and not more than 5 persons.</p> <p>(2) The board of trustees may by resolution delegate to a</p>	<p><u>Proposed New Section 221 - Power of the board of trustees to delegate functions to its management subcommittee.</u></p> <p>Retained.</p>	

subcommittee appointed under subsection (1) of this section all or any of its powers.

(3) Any power, authority or discretion so delegated by the board of trustees may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred on a majority of the members of the sub-committee.

(4) Any such delegation by the board of trustees may at any time in like manner be rescinded or varied.

(5) The board of trustees may at any time remove any member of a sub-committee appointed by it under this section and may fill any vacancy in the sub-committee howsoever arising.

(6) A decision of a sub-committee of the board of trustees shall be of no effect until it is confirmed or ratified by the board of trustees.

<p><u>Current section 207 Proposed New Section 222 - Minimum amount in the investor protection fund</u></p> <p>(1) An investor protection fund shall consist of such minimum amount as may by regulation be approved by the Commission, from time to time, to be paid to the credit of the investor protection fund on the establishment of a securities exchange or capital trade point.</p> <p>(2) The board of trustees shall have the discretion to determine the amount or minimum amounts to be contributed by each dealing member firm to the Fund subject to the approval of the securities exchange or capital trade point.</p>	<p><u>Proposed New Section 222 - Minimum amount in the investor protection fund</u></p> <p>(1) An investor protection fund shall consist of such minimum amount as may by regulation be approved by the Commission, from time to time, to be paid to the credit of the investor protection fund on the establishment of a securities exchange.</p> <p>(2) The board of trustees shall have the discretion to determine the amount or minimum amounts to be contributed by each dealing member firm to the Fund subject to the approval of the securities exchange. -.</p>	
<p><u>Current section 208 Proposed New Section 223 - Protection of the investor protection fund in the event of any reduction.</u></p> <p>If for whatever reason the investor protection fund falls below the minimum amount approved for a securities exchange or capital trade point the board of trustees shall take</p>	<p><u>Proposed New Section 223 - Protection of the investor protection fund in the event of any reduction.</u></p> <p>If for whatever reason the investor protection fund falls below the minimum amount approved for a securities exchange - the board of trustees shall take steps to make up the deficiency-</p>	

<p>steps to make up the deficiency-</p> <p>(a) by direct transfer to the investor protection fund of an amount which is equal to the deficiency from other funds of the securities exchange or capital trade point; or</p> <p>(b) in the event that there are insufficient funds to transfer under paragraph (a) of this section, by determining the amount which each dealing member shall contribute to the investor protection fund.</p>	<p>(a) by direct transfer to the investor protection fund of an amount which is equal to the deficiency from other funds of the securities exchange -; or</p> <p>(b) in the event that there are insufficient funds to transfer under paragraph (a) of this section, by determining the amount which each dealing member shall contribute to the investor protection fund.</p>	
<p><u>Current section 209 Proposed New Section 224 - Levy to meet liabilities .</u></p> <p>(1) If at any time the amount available in an investor protection fund is not sufficient to satisfy the liabilities which are ascertained against any dealing member firm, the securities exchange or capital trade point on the recommendation of the board of trustees may impose on any or every dealing member firm a levy of such amount as it thinks fit to meet the deficiency.</p>	<p><u>Proposed New Section 224 - Levy to meet liabilities</u></p> <p>(1) If at any time the amount available in an investor protection fund is not sufficient to satisfy the liabilities which are ascertained against any dealing member firm, the securities exchange on the recommendation of the board of trustees may impose on any or every dealing member firm a levy of such amount as it thinks fit to meet the deficiency.</p>	

<p><u>an investor protection fund</u></p> <p>A securities exchange or capital trade point may, from time to time, from its general funds give or advance, any sums of money to an investor protection fund on such terms and conditions as it may deem fit.</p>	<p>A securities exchange may, from time to time, from its general funds give or advance, any sums of money to an investor protection fund on such terms and conditions as it may deem fit.</p>	
<p><u>Current section 211 Proposed New Section 226 - Investment of the funds of an investor protection fund.</u></p> <p>Any monies in an investor protection fund which are not immediately required for its purposes may be invested by the board of trustees in any manner in which the trustees are for the time being authorised by the Trustee Investment Act to invest trust Funds</p>	<p><u>Proposed New Section 226 - Investment of the funds of an investor protection fund.</u></p> <p>Retained</p>	
<p><u>Current section 212 Proposed New Section 227- Application of the investor protection fund</u></p> <p>(1) The funds of an investor protection fund shall be held and applied for the purpose of-</p> <p>(a) compensating persons who suffer pecuniary loss from the</p>	<p><u>Proposed New Section 227 - Application of the investor protection fund</u></p> <p>(1) The funds of an investor protection fund shall be held and applied for the purpose of-</p> <p>(a) compensating persons who suffer pecuniary</p>	

<p>revocation or cancellation of the registration of a capital market operator pursuant to the provisions of section 38 of this Act;</p> <p>(b) the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange or capital trade point; and</p> <p>(c) any defalcation committed by a member company or any of its directors or employees in relation to any money or other property which, was entrusted or received or deemed received by a member company or any of its directors or employees whether before or after commencement of this Act in the course of or in connection with the business of that company or any other occurrence in respect of which the claim arose.</p>	<p>loss from the revocation or cancellation of the registration of a capital market operator pursuant to the provisions of section <u>59</u> of this <u>Bill</u>;</p> <p>(b) the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange or ; and</p> <p>(c) any defalcation committed by a member company or any of its directors or employees in relation to any money or other property which, was entrusted or received or deemed received by a member company or any of its directors or employees whether before or after commencement of this <u>Bill</u> in the course of or in connection with the business of that company or any other occurrence in respect of which the claim arose.</p> <p><u>Provided that the claim shall first be made to the defaulting capital market operator who committed the defalcation and the capital market operator is unable to satisfy the claim.</u></p>	<p>The proviso is proposed to sub section (3) of this section so as to make the IPF the last resort for investor claims. The capital market operator should have the primary responsibility of resolving the claim in line with the Commission's complaint</p>
--	--	--

<p>2) For the purposes of this section, "a director of a member company" includes a person who, as at the time of the defalcation in question has been or has ceased to be a director of a member company if, at the time of the defalcation the person claiming compensation has reasonable grounds for believing that person to be a director of a member company.</p>	<p>(2)For the purposes of this section, "a director of a member company" includes a person who, as at the time of the defalcation in question has been or has ceased to be a director of a member company if, at the time of the defalcation the person claiming compensation has reasonable grounds for believing that person to be a director of a member company.</p>	<p>management framework</p>
<p><u>Current section 213 Proposed New Section 228 - Claims against an investor protection fund</u></p> <p>(1) Subject to this part of this Act, every person who suffers pecuniary loss as provided in section 212 of this Act shall be entitled to claim compensation from the investor protection fund established for the securities exchange or capital trade point to which the defaulting member company belongs.</p>	<p><u>Proposed New Section 228 - Claims against an investor protection fund</u></p> <p>(1) Subject to this part of this Bill, every person who suffers pecuniary loss as provided in section 226 of this Bill shall be entitled to claim compensation from the investor protection fund established for the securities exchange - to which the defaulting member company belongs.</p> <p><u>(2) A claim for compensation shall first be made to the defaulting capital market operator who committed the defalcation;</u></p>	

<p>(2) A claim for compensation under this part shall be made in the first instance to a securities exchange or capital trade point who shall within 30 days verify every claim and determine the amount or extent, if any, to which the claim shall be allowed.</p> <p>(3) A verified claim shall be paid by the investor protection fund to an investor within 14 days of such verification by the securities exchange or capital trade point.</p> <p>(4) The provisions of subsection (2) of this section shall be without prejudice to the power of the Commission or the Tribunal to direct or order the payment of compensation in accordance with the provisions of this Act.</p>	<p><u>(3) Where the capital market operator is unable to satisfy the claim,</u> a claim for compensation shall be made to a securities exchange who shall within <u>90</u> days verify every claim and determine the amount or extent, if any, to which the claim shall be allowed.</p> <p><u>(4)</u> A verified claim shall be paid by the investor protection fund to an investor within 14 days of such verification by the securities exchange. <u>Provided that payment shall be made subject to fulfillment of the preconditions for compensation as may have been put in place by the board from time to time.</u></p> <p><u>(5)</u> The provisions of subsection (3) of this section shall be without prejudice to the power of the Commission or the Tribunal to direct or order the payment of compensation in accordance with the provisions of this Bill.</p>	<p>The 30 day duration for verification of claims by the securities exchange is too short.</p> <p>The 14 day period for compensation of verified claims is too short especially with the escalation in cases of identity fraud</p>
--	---	--

~~(5)~~ Subject to subsections ~~(2)~~ and ~~(3)~~ of this section, a person shall not have any claim against an investor protection fund in respect of a defalcation concerning money or other property which, prior to the commission of the defalcation, had in the due course of the administration of a trust ceased to be under the control of the director or directors of the dealing member firm concerned.

~~(6)~~ Subject to this part of this ~~Act~~ and any limit that may be determined by the securities exchange ~~or capital trade point~~ and approved by the Commission from time to time, the amount which any claimant shall be entitled to claim as compensation from an investor protection fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable cost of disbursement incidental to the making and proving of his claim) less any amount or value of all monies or other benefits received or receivable by him from any source other than the investor protection fund in reduction of the

(6) Subject to subsections (3) and (4) of this section, a person shall not have any claim against an investor protection fund in respect of a defalcation concerning money or other property which, prior to the commission of the defalcation, had in the due course of the administration of a trust ceased to be under the control of the director or directors of the dealing member firm concerned.

(7) Subject to this part of this **Bill** and any limit that may be determined by the securities exchange and approved by the Commission from time to time, the amount which any claimant shall be entitled to claim as compensation from an investor protection fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable cost of disbursement incidental to the making and proving of his claim) less any amount or value of all monies or other benefits received or receivable by him from any source other than the investor protection fund in reduction of the loss.

<p>loss.</p> <p>(7) In addition to any compensation payable under this part of this Act, interest shall be payable out of the investor protection fund concerned on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of five per cent per annum calculated from the day upon which a claim arose and continuing until the day upon which the claim is satisfied.</p>	<p>(8) In addition to any compensation payable under this part of this Bill, interest shall be payable out of the investor protection fund concerned on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of five per cent per annum calculated from the day upon which a claim arose and continuing until the day upon which the claim is satisfied.</p>	
<p><u>Current section 214 Proposed New Section 229 - Notice calling for claims against the investor protection fund.</u></p> <p>(1) The Commission, a securities exchange or capital trade point, as the case may be, may cause to be published in any two national daily newspapers circulating in Nigeria a notice, in or to the effect of a form prescribed by the Commission, specifying a date, not being earlier than one month after the said publication, on which claims for compensation from</p>	<p><u>Proposed New Section 229 - Notice calling for claims against the investor protection fund.</u></p> <p>(1) The Commission <u>or</u> a securities exchange , as the case may be, may cause to be published in any two national daily newspapers circulating in Nigeria, a notice, in or to the effect of a form prescribed by the Commission, specifying a date, not being earlier than one month after the said publication, on which claims for compensation from the investor protection fund, in relation to the person specified in the notice, may be made.</p>	

<p>the investor protection fund, in relation to the person specified in the notice, may be made.</p> <p>(2) A claim for compensation from an investor protection fund in respect of a defalcation shall be made in writing to the board of trustees within 6 months after the claimant became aware of the defalcation, and any claim which is not so made shall be barred unless the Commission otherwise determines.</p> <p>(3) No action for damages shall lie against a securities exchange or capital trade point or against any member or employee of a securities exchange or capital trade point or of a board of trustees or management sub-committee by reason of any notice published in good faith and without malice for the purposes of this section.</p>	<p>(2) Retained</p> <p>(3) No action for damages shall lie against a securities exchange or against any member or employee of a securities exchange or of a board of trustees or management sub-committee by reason of any notice published in good faith and without malice for the purposes of this section.</p> <p><u>(4) An investor must lodge a claim in respect of section 212 not later than 7 years from the date of occurrence of the defalcation, revocation or cancellation of the registration of the dealing member firm and insolvency or bankruptcy of the dealing member firm.</u></p>	<p>A new subsection is proposed to provide a limitation period particularly as the document retention period is put at 7 years. Also for verification purposes, claims dating back 7 years and beyond have lower chances of proper verification of the claim and the claimant identity due to non availability of</p>
---	---	---

		document or change in the personal data of claimant.
<p><u>Current section 215 Proposed New Section 230 - Power to settle claims</u></p> <p>The board of trustees may, subject to this part of this Act, settle any claims for compensation from an investor protection fund as may be determined, from time to time and as the case may be, by a securities exchange, capital trade point, the Commission or the Tribunal.</p>	<p><u>Proposed New Section 230 - Power to settle claims</u></p> <p>The board of trustees may, subject to this part of this <u>Bill</u>, settle any claims for compensation from an investor protection fund as may be determined, from time to time and as the case may be, by a securities exchange, the Commission or the Tribunal.</p>	
<p><u>Current section 216 Proposed New Section 231 - Form of order of the Tribunal</u></p> <p>(1) Where, in any proceedings brought before the Tribunal to establish a claim, the Tribunal is satisfied that the claimant has a valid claim, the Tribunal shall by order-</p> <p>(a) declare the fact and the date of the defalcation or other loss suffered by a claimant;</p> <p>(b) the claim payable; and</p> <p>(c) direct that the investor protection fund concerned settles the claim so declared and deal with</p>	<p><u>Proposed New Section 231 - Form of order of the Tribunal</u></p> <p>(1) Retained</p> <p>(a) Retained</p> <p>(b) Retained</p> <p>(c) direct that the investor protection fund concerned settles the claim so declared and deal</p>	

<p>the same in accordance with the provisions of this part of this Act.</p> <p>(2) The Tribunal may make rules of practice and procedure generally for proceedings under this part of this Act.</p> <p>(3) In any proceedings under this part of this Act all questions of costs shall be at the discretion of the Tribunal.</p>	<p>with the same in accordance with the provisions of this part of this <u>Bill</u>.</p> <p>(2) The Tribunal may make rules of practice and procedure generally for proceedings under this part of this <u>Bill</u>.</p> <p>(3) In any proceedings under this part of this <u>Bill</u> all questions of costs shall be at the discretion of the Tribunal.</p>	
<p><u>Current section 217</u> <u>Proposed New Section 232 - Power to require production of evidence.</u></p> <p>The securities exchange, capital trade point, the Commission or the Tribunal, as the case may be, may require any person to produce and deliver any securities, documents or statements of evidence necessary to support any claim made or necessary for the purpose of determining a claim or for any other proceedings in connection with any matter pending before it.</p>	<p><u>Proposed New Section 232 - Power to require production of evidence</u></p> <p>The securities exchange, -, the Commission or the Tribunal, as the case may be, may require any person to produce and deliver any securities, documents or statements of evidence necessary to support any claim made or necessary for the purpose of determining a claim or for any other proceedings in connection with any matter pending before it.</p>	
<p><u>Current section 218</u> <u>Proposed New Section 233 - Subrogation.</u></p>	<p><u>Proposed New Section 233 - Subrogation</u></p>	

<p>On payment out of an investor protection fund of any monies in respect of any claim under this part of this Act, the board of trustees of an investor protection fund shall be subrogated, to the extent of the payment made out of the investor protection fund, to all the rights and remedies of the claimant in relation to the loss suffered by him.</p>	<p>On payment out of an investor protection fund of any monies in respect of any claim under this part of this <u>Bill</u>, the board of trustees of an investor protection fund shall be subrogated, to the extent of the payment made out of the investor protection fund, to all the rights and remedies of the claimant in relation to the loss suffered by him.</p>	
<p><u>Current section 219 Proposed New Section 234 - Application of insurance money.</u></p> <p>No claimant against an investor protection fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this part of this Act in respect of such contract, or have any right or claim with respect to any money paid by the insurer in accordance with any such contract</p>	<p><u>Proposed New Section 234 - Application of insurance money.</u></p> <p>No claimant against an investor protection fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this part of this <u>Bill</u> in respect of such contract, or have any right or claim with respect to any money paid by the insurer in accordance with any such contract</p>	
<p><u>Current section 220 Proposed New Section 235 - Penalty for contravention</u></p> <p>Any securities exchange, capital trade point, director, official or employees of the securities</p>	<p><u>Proposed New Section 235 - Penalty for contravention</u></p> <p>Any securities exchange, -, director, official or employees of the securities exchange -, who contravenes any of the provisions of this part of</p>	

<p>exchange or the capital trade point, who contravenes any of the provisions of this part of this Act, shall be liable to a penalty of ₦1,000,000 and a further sum of ₦25,000 for every day during which the contravention continues.</p>	<p>this <u>Bill</u>, shall be liable to a penalty of ₦1,000,000 and a further sum of ₦25,000 for every day during which the contravention continues.</p>	
<p><u>Current section 221 Proposed New Section 236 - Penalty for contravention</u> In this part of this Act</p> <p>"board of trustees" " refers to the board of trustees of an investor protection fund established under section 197 of this Act;</p> <p>"investor protection fund" means an investor protection fund established by a securities exchange or capital trade point pursuant to the provisions of this part to mitigate losses suffered by investors;</p> <p>"securities exchange or capital trade point" in relation to a protection fund, means the securities exchange or capital trade point which established the fund.</p>	<p><u>Proposed New Section 236 - Penalty for contravention</u> In this part of this <u>Bill</u> –</p> <p>"board of trustees" " refers to the board of trustees of an investor protection fund established under section <u>212</u> of this <u>Bill</u></p> <p>"investor protection fund" means an investor protection fund established by a securities exchange pursuant to the provisions of this part to mitigate losses suffered by investors;</p> <p>"securities exchange" in relation to a protection fund, means the securities exchange which established the fund.</p>	

PART XVIII

~~BORROWING~~ ISSUANCE OF DEBT SECURITIES BY FEDERAL, STATE AND LOCAL GOVERNMENTS AND THEIR AGENCIES

<p><u>Current section 222 Proposed New Section 237 - Bodies to which this part applies.</u></p> <p>This part applies to the following</p> <p>(a) the Federal Government</p> <p>(b) Federal Government agencies;</p> <p>(c) State Governments and their agencies;</p> <p>(d) The Federal Capital Territory and its agencies;</p> <p>(e) Local Governments; and</p> <p>(f) any company which is wholly owned by the Federal, State, Federal Capital Territory and Local Governments</p>	<p><u>Proposed New Section 237 - Bodies to which this part applies.</u></p> <p>This part applies to the following-</p> <p>(a) the Federal Government <u>and its agencies;</u></p> <p><u>(b)</u> State Governments and their agencies;</p> <p><u>(c)</u> the Federal Capital Territory and its agencies; <u>and</u></p> <p><u>(d)</u> Local Governments;</p>	<p>It is recommended that sub (f) be deleted as wholly owned companies of the Federal, State, Federal Capital Territory and Local Governments are by their nature private companies – allowing them to borrow from the market via invitation to the public is inconsistent with prohibition under Section 67(1) ISA. These wholly owned companies should be subject to the same market access requirements as other companies. The Federal, State, Federal Capital Territory and Local Governments are at liberty if they choose to use private companies for any project to issue securities to the market on their own balance sheet and use the proceeds</p>
---	--	---

		of such issuance to capitalize their wholly owned companies.
<p><u>Current section 223 Proposed New Section 238 - Issue of registered bonds or promissory notes</u></p> <p>(1) A body to which this part of this Act applies may raise, from time to time, internal loans for any specific project authorised by the approving authority of the body in any one or more of the following ways-</p> <p>(a) by the issue of securities in the form of registered bonds; or</p> <p>(b) by the issue of securities in the form of promissory notes;</p> <p>Provided that the total amount of loans outstanding at any particular time including the proposed loan shall not exceed fifty per cent of the actual revenue of the body concerned for the preceding year.</p>	<p><u>Proposed New Section 238 - Issue of registered bonds or promissory notes</u></p> <p>(1) <u>Subject to subsections (2), (3) and (4) of this section, a body to which this part of this Bill applies may issue and offer to the public, debt securities in the form of –</u></p> <p>(i) registered bonds; or</p> <p>(ii) promissory notes; <u>or</u></p> <p>(iii) non-interest financial instruments; or</p> <p>(iv) <u>such other form as may be approved by the Commission from time to time.</u></p>	<p>The amendment to section (1)(a) and (b) are proposed because the extant provision unduly limits the types of debt securities by which funds may be raised in the market by Federal, State, local governments, FCT and their agencies to bonds and promissory notes and may preclude the raising of funds by way of other emergent debt securities.</p> <p>The proposed amendments are recommended to bring clarity and versatility into borrowing by these bodies and empower SEC or any SEC approved agency to provide debt sustainability guidelines. Additionally, the proposed amendments would enable these bodies raise funds based on the merits and cash flows of specific projects without restrictions based/on current or historic revenue streams. For this purpose, it is suggested that separate regimes be created for revenue tied debt securities and project tied debt securities – employing a revenue to debt service ratio as debt sustainability limit for the later. This entails deleting the proviso to Section 223(1).</p> <p>It is suggested that the proviso to Section 223(1) which limits the total amount a body may raise for projects to half of the body’s</p>

	<p><u>(2) Debt securities issued in pursuance of paragraph (i) of subsection (1) of this section, can be either –</u></p> <p><u>(a) general obligation debt securities issued on the full faith and credit of the issuing body and backstopped by the consolidated revenue fund or other statutory fund of such body; or</u></p> <p><u>(b) revenue/project tied debt securities issued for a specific project(s) and backstopped by revenues from the project or a specific asset or assets or a guarantee from the government or</u></p>	<p>actual preceding year revenue be deleted as it is unduly restrictive. It totally discounts any projected revenue streams from the project for which funds are to be borrowed and takes a short-term view of borrowing failing to distinguish between ability to pay interest and ability to repay principal. It also fails to take account of the overall debt sustainability position of government bodies. The proviso should be amended such that the borrowing limit is not unduly restrictive. A debt sustainability basis should be employed and account should be taken of distinction between ability to pay interest and ability to repay principal – taking into account that principal repayment may well be at the back end of the life of the borrowing by bullet repayment.</p> <p>The amendments have also been made to allow flexibility for issuance of non-interest securities such as Sukuks and other non interest products.</p>
--	---	---

other third party.

(3) A body to which this Part applies shall be entitled to issue general obligation debt securities only where –

(a) its total annual debt service obligations, including the debt service obligation arising from such proposed issuance, will not at any particular time exceed forty per cent of the total revenue that accrued to its consolidated revenue fund or other statutory fund in the twelve-month period immediately preceding the proposed new issuance; or

(b) it complies with such other debt sustainability ratios as may be specified by the Commission or other legitimate authority from time to time which takes account of the body's total current and future debt service obligations, its other contractual obligations, and the variability of the body's future revenue.

(4) A body to which this Part applies shall be entitled to issue revenue or project tied debt securities only where –

(a) the assets of and revenues from the project to which revenue or project tied debt securities relate are “ring-fenced”;

(b) the project(s) or assets to be funded or acquired as the case may be from the

proceeds of the revenue or project tied debt securities has a minimum rating of “A” (or such other rating as the Commission may from time to time specify) from at least two rating agencies recognized by the Commission;

c) the revenue or project tied debt securities are guaranteed by a body to which this Bill applies, the provisions as specified in Section 223(3) and Section 224 would apply to the guarantor;

(d) the revenue or project tied debt securities are guaranteed by a bank, insurance company or any third party acceptable to the Commission, such a guarantor must have a minimum of an “A” rating and comply with any other provisions as may be specified by the Commission from time to time; and

(e) such other requirements as may be determined by the Commission from time to time.

(2) Every issue of a registered bond or other securities for the purpose of raising any specified sum of money shall be deemed to be by bond or securities issued in respect of a separate loan notwithstanding that

(5) Retained.

<p>the sum of money so raised is part only of a sum of money authorised by any other law to be raised by way of a loan.</p> <p>(3) Securities created or issued under this part of this Act shall be securities to which the Trustee Investments Act applies.</p>	<p>(6) <u>Debt</u> securities created or issued under this part of this <u>Bill</u> shall be securities to which the Trustee Investments Act applies.</p> <p>(7) <u>The proceeds of securities issued under this part of the Act shall be utilized solely for the purpose for which the securities were issued.</u></p>	
<p><u>Proposed New Section 239 -</u></p>	<p><u>Proposed New Section 239- Appointment of registered custodians</u></p> <p>(1) <u>Subject to the consent of its approving authority a body may appoint any reputable financial institution registered by the Commission as Custodians, for the purpose of warehousing bond proceeds for the duration of the execution of projects or objectives noted on the prospectus of such bond</u></p> <p>(2) <u>The Custodians appointed pursuant to subsection (1) of this section shall have the power to -</u></p>	

	<p><u>(a) receive and hold monies accruing from the issue of bonds;</u></p> <p><u>(b) carry out the duties of a Custodian as stipulated in this Bill and any regulations made thereunder, to the extent necessary for the purpose of warehousing bond proceeds for the duration of the execution of projects or objectives noted on the prospectus of such bond;</u></p> <p><u>(c) make payments in relation to the objectives of the bond upon authorization from the licensed Project Managers appointed pursuant to section 236 (2) (b) of this Bill; and</u></p> <p><u>(d) refuse the execution of any payment that may be in contravention of any of the provisions of the prospectus of each bond.</u></p>	
<p><u>Proposed New Section 240 -</u></p>	<p><u>Proposed New Section 240 - Appointment of registered project managers</u></p> <p><u>(1) Subject to the consent of its approving authority a body may appoint any reputable institution registered by the Commission as project managers, for the purpose of authorization of payments in line with the objectives noted on the prospectus of such</u></p>	

	<p><u>bond.</u></p> <p><u>(2) The project managers shall rely on an acceptable advance payment guarantee provided by contractors, evidence of project execution and the approval of the Commission to authorize custodians to execute payments.</u></p>	
<p><u>Proposed New Section 241 -</u></p>	<p><u>Proposed New Section 241 – Federal Government bonds</u></p> <p><u>Where a Federal Government Bond is intended to finance government deficits, management of monetary policies, restructuring of existing debt stock or establishment of benchmark yields under the Bill, the –</u></p> <p><u>(a) Debt Management Office shall be Trustee; and</u></p> <p><u>(b) Central Bank of Nigeria shall be the Custodian.”</u></p>	
<p><u>Current section 224 Proposed New Section 242 - Restriction on raising of funds from the capital market.</u></p> <p>(1) A body to which this part of this Act applies shall not raise sums of money or any part thereof by way of any internal loan directly from the capital market except in accordance with the</p>	<p><u>Proposed New Section 242 - Restriction on raising of funds from the capital market.</u></p> <p>(1) A body to which this part of this Bill applies shall <u>not issue debt securities to the public</u> except in accordance with the provisions of this Bill and the rules and regulations made thereunder.</p>	<p>Amended to align with changes proposed to Section 238.</p>

provisions of this ~~Act~~ and the rules and regulations made thereunder.

(2) An application to raise a loan under this part of this ~~Act~~ shall be in such form as the Commission may direct.

(3) An application made under this section shall, be accompanied by such documents as may be prescribed by the Commission, from time to time, and shall include —

(a) in the case of a State Government and the Federal Capital Territory-

(i) a copy of the law authorising the issue of the ~~bond~~ specifying that a sinking fund to be fully funded from the consolidated revenue fund account of the issuer be established;

(ii) a copy of a rating report by an accredited rating agency registered by the Commission; and

(2) An application to issue debt securities under this part of this **Bill** shall be in such form as the Commission may direct.

(3) An application made under this section shall, be accompanied by such documents as may be prescribed by the Commission, from time to time, and shall include —

(a) in the case of a State Government and the Federal Capital Territory-

(i) a copy of the law authorising the issue of the securities specifying **(in the case of General Obligation Debt Securities)** that a sinking fund to be fully funded from the consolidated revenue fund account of the issuer be established **and that funding required for the sinking fund shall constitute a charge on the consolidated revenue fund of the issuer;**

(ii) a copy of a rating report by an accredited rating agency registered by the Commission; and

(iii) **in the case of General Obligation**

Sections 224(3)(a)(i)(iii) and (b)(iii), effectively creates a charge on the Federation Account contrary to Section 162 of the Constitution (See AG Abia v AG FED) and should be amended such that the charge created is on the consolidated revenue fund of the concerned government and in the case of the local government, the State/Local Government Joint Account.

(iii) an irrevocable letter of authority issued by the Accountant-General of the State or any person performing that function in the Federal Capital Territory, to the Accountant-General of the Federation, to deduct at source from the statutory allocation due to the issuer in the event of default by or failure of the issuer to meet its payment obligations.

(b) in the case of a local government-

(i) a copy of the law of the State to which it belongs authorising the issue of the bond by the local government and specifying that a sinking fund to be fully funded from funds accruing to the local

Debt Securities, an irrevocable letter of authority issued by the Accountant-General of the State or any person performing that function in the Federal Capital Territory, to the Accountant-General of the Federation, to deduct at source from the statutory allocation due to the issuer in the event of default by or failure of the issuer to meet its payment obligations.

iv) an irrevocable letter of guarantee issued by the bank or acceptable third party with no less than an “A” rating, committing to provide such funds as may be required to meet the principal and interest obligations in favour of the Trustees where a general obligation bond is not backed or partly backed by an irrevocable letter of authority as specified in Section 240 above

(b) in the case of a local government-

(i) a copy of the law of the State to which it belongs authorising the issue of the bond by the local government and specifying that a sinking fund to be fully funded from funds accruing to the local government from the Federation Account be established and that funding

This provision is recommended to provide further security for prospective bondholders.

<p>government from the Federation Account be established;</p> <p>(ii) a copy of a rating report by an accredited rating agency registered by the Commission; and</p> <p>(iii) an irrevocable letter of authority issued by the Accountant-General of the State on behalf of the local government, guaranteeing the deduction at source from the statutory allocation due to the local government, in the event of default by or failure of the local government to meet its payment obligations; and</p> <p>(c) in the case of a Federal or State Government agency or a company wholly owned by the Federal or State Government -</p> <p>(i) a copy of the law or instrument</p>	<p><u>required for the sinking fund shall constitute a charge on the consolidated revenue fund of the State;</u></p> <p>(ii) a copy of a rating report by an accredited rating agency registered by the Commission; and</p> <p>(iii) an irrevocable letter of authority issued by the Accountant-General of the State on behalf of the local government, guaranteeing the deduction at source from the statutory allocation due to the local government, in the event of default by or failure of the local government to meet its payment obligations; and</p> <p>(c) in the case of a Federal or State Government agency -</p> <p>(i) a copy of the law or instrument establishing</p>	
--	--	--

<p>establishing the agency or company authorising the agency or company to issue the bond; and</p> <p>(ii) an irrevocable letter of guarantee of repayment of the loan issued by the Federal or State Government that owns the agency or company.</p>	<p>the agency <u>and</u> authorising the agency to issue the <u>debt securities</u>;</p> <p>(ii) an irrevocable letter of guarantee of repayment of the loan issued by the Federal or State Government that owns the agency or company;</p> <p><u>(iii) an irrevocable letter of guarantee or repayment of the loan issued by the federal or state government that owns the agency; and</u></p> <p><u>(iv) an irrevocable letter of guarantee by any third party to the debt securities committing to provide sums required to meet principal and interest obligations in the event of default as provided for under the guarantee;</u></p> <p><u>(d)In the case of revenue or project tied debt securities,</u></p> <p><u>(i) irrevocable letter of consent by the banker to the project on the funding of the debt service reserve account or sinking fund to be established to meet maturing principal and interest obligations from the accruing project cash flows;</u></p>	<p>This provision is recommended to provide further security for prospective bondholders.</p>
---	--	---

<p>(4) The Commission may, in addition to conditions that may be prescribed in subsection (4) of this section, prescribe conditions or issue directives relating to any borrowing by State Governments and their agencies concerning any of the following matters —</p> <p>(a) the funding of the sinking fund;</p> <p>(b) underwriting;</p> <p>(c) federal Irrevocable Standing Payment Order to the trustees of the sinking fund; and</p> <p>(d) completion of the project, as would guarantee the repayment to the subscribers.</p> <p>(5) The fund shall be managed by</p>	<p><u>(ii) a copy of a rating report by an accredited rating agency registered by the Commission;</u></p> <p><u>(iii) Irrevocable letter of guarantee by any third party to the debt securities committing to provide sums required to meet principal and interest obligations in the event of default as provided for under the guarantee;</u></p> <p>(4) The Commission may, in addition to conditions that may be prescribed in subsection <u>(3)</u> of this section, prescribe conditions or issue directives relating to any borrowing by State Governments and their agencies concerning any of the following matters —</p> <p>(a) the funding of the sinking fund;</p> <p>(b) underwriting;</p> <p>(c) federal Irrevocable Standing Payment Order to the trustees of the sinking fund; and</p> <p>(d) completion of the project, as would guarantee the repayment to the subscribers.</p>	<p>Reference to subsection 4 is incorrect. The correct reference is section (3) which is where the conditions are prescribed.</p>
---	---	---

<p>a corporate trustee registered by the Commission.</p> <p>(6) The Commission may impose any penalty on a defaulting body and this may include —</p> <p>(i) reprimand;</p> <p>(ii) publication in the national dailies; and</p> <p>(iii) blacklisting or foreclosure from raising further facility in the capital market.</p> <p>(7) The trustee shall have the power to take legal action against the defaulting body failing which bondholders, holding at least 10 per cent of the value of the bond shall have the right to call a meeting to pass a resolution compelling the trustee to take legal action.</p> <p>(8) A bondholder who feels dissatisfied may personally initiate legal action to enforce his rights</p>	<p>(5) The <u>sinking</u> fund shall be managed by a corporate trustee registered by the Commission.</p> <p>(6) The Commission may impose any penalty on a defaulting body and this may include —</p> <p>(i) reprimand;</p> <p>(ii) publication in the national dailies; and</p> <p>(iii) blacklisting or foreclosure from raising further facility in the capital market.</p> <p>(7) The trustee shall have the power to take legal action against the defaulting body failing which bondholders, holding at least 10 per cent of the value of the bond shall have the right to call a meeting to pass a resolution compelling the trustee to take legal action.</p> <p>(8) Retained</p>	
---	---	--

under the trust deed irrespective of the legal duty of the trustee to take such legal action.

~~(9) Where the Commission is satisfied with the securities offered by the issuer, it shall on an application by the issuing house waive the requirement for an irrevocable letter of authority provided that the issuing house shall not revert to the use of the irrevocable letter of authority to the office of the Accountant-General of the Federation for the recovery of the loan.~~

(40) Where the body raising funds is the Federal Government of Nigeria, the requirements for approval of primary issues shall not apply, provided that where the securities are to be traded on a securities exchange or capital trade point, they shall be subject to the regulatory requirements relating to secondary market transactions.

(41) Any amount deducted

Recommended for deletion.

(9) Where the body raising funds is the Federal Government of Nigeria, the requirements for approval of primary issues shall not apply, provided that where the securities are to be traded on a securities exchange or -, they shall be subject to the regulatory requirements relating to secondary market transactions.

Section 224 (9) is recommended for deletion as scenarios where an ISPO is not required have been provided for under the proposed amendment to section 223.

<p>pursuant to the provisions of this section shall be credited into the sinking fund established under section 251 of this part of this Act for purpose of redeeming the outstanding obligation.</p> <p>(12) A copy of the Irrevocable Letter of Authority issued pursuant to the provisions of this section shall also be lodged with the trustees appointed under section 245 of this part of this Act.</p>	<p>(10) Any amount deducted pursuant to the provisions of this section shall be credited into the sinking fund established under section <u>259</u> of this part of this <u>Bill</u> for purpose of redeeming the outstanding obligation.</p> <p>(11) A copy of <u>any</u> Irrevocable Letter of Authority issued pursuant to the provisions of this section shall also be lodged with the trustees appointed under section <u>254</u> of this part of this <u>Bill</u>.</p>	
<p><u>Current section 225 Proposed New Section 243 Loans to be charged upon revenue</u></p> <p>The principal monies and interest represented or secured by any registered bond or securities issued under this Act shall be charged on and payable out of the general revenue and assets of the body concerned and of the assets of the appropriate authority or project which is the beneficiary of the proceeds of the loan.</p>	<p><u>Proposed New Section 243 - Loans to be charged upon revenue</u></p> <p>Retained</p>	
<p><u>Current section 226 Proposed New Section 244 - Bodies to publish details of loans in the Gazette or other official document.</u></p>	<p><u>Proposed New Section 244 - Bodies to publish details of loans in the Gazette or other official document</u></p>	

<p>(1) The particulars of each loan to be raised pursuant to this Act shall be published in the Gazette or any other official document by the body raising the loan and shall include the following-</p> <ul style="list-style-type: none">(a) the beneficiary of the loan;(b) the sum of money to be raised by the loan;(c) the mode or modes of raising the loan;(d) the rate of interest payable on the loan; <p>(e) the dates in each year on which the half-yearly or quarterly interest on the loan shall be payable;</p> <p>(f) the time at which a half-yearly or quarterly appropriation out of the general reserve and assets of the body or project of the body shall be made as a contribution;</p> <p>(g) the date of redemption of the registered bond or securities to be issued for the purpose of raising the loan; and</p> <p>(h) any other information relating to the loan considered necessary to effectively raise the loan.</p>	Retained	
---	----------	--

<p>(2) The date of redemption of any registered bond or securities shall not be later than twenty five years from the date of the issuance of the registered bond or securities.</p> <p>(3) Where it is deemed expedient by a body to reserve an option to redeem any registered bond or securities at any date earlier than the date of redemption specified for such bond or securities by the directions under subsection (1) of this section, the body shall by such directions further specify the terms and conditions upon which the bond or securities may be redeemed at such earlier date.</p>		
<p><u>Current section 227 Proposed New Section 245- Register of securities and appointment of registrar</u></p> <p>(1) A body shall keep a register in which all transactions in securities entered into by the body are recorded and into which shall be entered all information which by this Act are required to be entered in the register.</p> <p>(2) A body shall for the purpose</p>	<p><u>Proposed New Section 243 - Register of securities and appointment of registrar</u></p> <p>(1) A body shall keep a register in which all transactions in securities entered into by the body are recorded and into which shall be entered all information which by this Bill are required to be entered in the register</p>	

<p>of carrying out its functions under subsection (1) of this section appoint any registrar registered with the Commission as registrar and the appointment shall be subject to such terms and conditions as may be deemed fit by the body concerned.</p> <p>(3) A register kept under this section shall be kept in such place as may be approved on behalf of the body and shall among other things, include the following:</p> <p>(a) the names and addresses of the holders for the time being of the securities concerned and the persons deriving title therefrom;</p> <p>(b) the amount of securities held by every holder; and</p> <p>(c) the date on which the name of every holder is entered in respect of the securities held in his name.</p> <p>(4) The registrar may be required to</p>	<p>(2) A body shall for the purpose of performing its obligations under subsection (1) of this section appoint any registrar registered with the Commission as registrar and the appointment shall be subject to such terms and conditions as may be deemed fit by the body concerned.</p> <p>Retained</p>	<p>Section 227 (2) is recommended for amendment. Reference to "carrying out" and "functions" to be deleted and replaced with the words "performing and "obligations". Wording considered more appropriate.</p>
--	--	--

<p>submit his books of account in connection with his functions under this part of this Act to an independent audit.</p>	<p>(4) The registrar may be required to submit his books of account in connection with his functions under this part of this Bill to an independent audit.</p>	
<p><u>Current section 228 Proposed New Section 246 - Appointment of issuing house</u> Subject to the consent of its approving authority, a body may appoint any reputable issuing house registered with the Commission, for the purpose of undertaking on behalf of the body, the raising of any specific loan pursuant to the provisions of this part of this Act.</p>	<p><u>Proposed New Section 246 - Appointment of issuing house</u> Subject to the consent of its approving authority, a body may appoint any reputable issuing house registered with the Commission, for the purpose of undertaking on behalf of the body, the issuance of debt securities pursuant to the provisions of this part of this Bill.</p>	
<p><u>Current section 229 - Liability of a body in respect of issue of registered securities</u> A body shall pay to the person registered for the time being as the bond holder of the principal sum represented by the body and the interest due on that sum at the rate and on the dates specified under section 226 of this Act or in pursuance of an option to redeem the bond.</p>	<p><u>Current section 229 - Liability of a body in respect of issue of registered securities</u> Recommended for deletion.</p>	<p>This provision is recommended for deletion as it is more appropriate for inclusion in the relevant trust deed and not in a Statute.</p>
<p><u>Current section 230 - Bond holders to be registered</u> For the purposes of this part of this Act, no person shall be entitled to</p>	<p><u>Current section 230 - Bond holders to be registered</u> Recommended for deletion.</p>	<p>This provision is recommended for deletion as it is more appropriate for inclusion in the relevant trust deed and not in a Statute.</p>

<p>any registered bond unless he is registered as a bond holder in respect of the bond.</p>		
<p><u>Current section 231 - Condition for registration of bond holders</u> No person shall be registered as a bond holder at any time unless he had paid in full the purchase price of the bond</p>	<p><u>Current section 231 - Condition for registration of bond holders</u> Recommended for deletion.</p>	<p>This provision is recommended for deletion as it is more appropriate for inclusion in the relevant trust deed and not in a Statute.</p>
<p><u>Current section 232 Proposed new section 247 - Bond certificate</u></p> <p>(1) Every bond holder shall be entitled to receive from the registrar a bond certificate covering the amount of his holding and no bond holder, other than the first bond holder shall be entitled to receive a bond certificate or any other duly authorised evidence of title to such bonds provided by a recognised securities exchange; capital trade point or clearing house unless he has paid the prescribed fee.</p> <p>(2) The registrar may, with the approval of the approving authority</p>	<p><u>Proposed new section 247 - Bond certificate</u></p> <p>(1) <u>Debt securities which are in registered form shall be issued in uncertificated (dematerialized or immobilized (book-entry)) form which shall be electronically registered in the account of the holder of the debt securities in any recognized custody, clearing or settlement platform</u></p> <p>(2) <u>Notwithstanding subsection (1) of this section, every holder of debt securities issued in registered form</u> shall be entitled to receive from the registrar a bond certificate covering the amount of his holding and no bond holder, other than the first bond holder shall be entitled to receive a bond certificate or any other duly authorised evidence of title to such debt securities provided by a recognised securities exchange or clearing house unless he has paid the prescribed fee.</p> <p>(3) The registrar may, with the approval of</p>	<p>It is suggested that the provision be amended to provide for electronic delivery of title via investor's custody account and also to align with current practices.</p>

<p>of the body and on payment of the prescribed fee, issue more than one bond certificate in the aggregate covering any holding by one person.</p>	<p>the approving authority of the body and on payment of the prescribed fee, issue more than one certificate in the aggregate covering any holding <u>of debt securities in registered form</u> by one person.</p>	
<p><u>Current section 233 - Transfer of registered bonds</u> (1) For the purposes of this part of this Act, the title of any bond holder to a registered bond, shall not be deemed to be transferred to any other person except upon the execution of an approved instrument of transfer to the other person and upon the registration of the transferee as the bond holder as provided under section 234 of this Act. (2) Interest which is due in respect of a registered bond but which has not been paid to a bond holder for the time being shall not be deemed to be payable to a transferee of that bond unless the instrument of transfer expressly provides for the payment of that interest to the transferee.</p>	<p><u>Current section 233 - Transfer of registered bonds</u> Recommended for deletion.</p>	<p>This provision is recommended for deletion as it is more appropriate for inclusion in the relevant trust deed and not in a Statute.</p>

<p><u>Current section 234 - Registration of transfer of bonds</u></p> <p>(1) No person shall be registered as the transferee of a registered bond except on surrender, to the body or the appointed registrar, of the bond certificate and the instrument of transfer relating to the bond and on the payment of the prescribed fees.</p> <p>(2) The registrar shall effect the transfer of the title to a bond within the period stipulated by the securities exchange or capital trade point and he shall post a written notice of the receipt of an application for transfer to the registered holder in whose name the application is made.</p>	<p><u>Current section 234 - Registration of transfer of bonds</u></p> <p>Recommended for deletion.</p>	<p>This provision is recommended for deletion as it is more appropriate for inclusion in the relevant trust deed and not in a Statute.</p>
<p><u>Current section 235 Proposed new section 2468- Registration of liens on bonds.</u></p> <p>(1) The registrar may register a lien on any registered bond in accordance with such provisions as are prescribed by the rules and regulations of a securities exchange or capital trade point and on the</p>	<p><u>Proposed new section 2468- Registration of liens on bonds.</u></p> <p>(1) The registrar may register a lien on any <u>debt securities issued in registered form</u> in accordance with such provisions as are prescribed by the rules and regulations of a securities exchange and on the payment of the prescribed fees.</p>	

<p>payment of the prescribed fees.</p> <p>(2) As from the commencement of the Aet, a lien which is registered under this section of this Aet shall have priority over any lien not so registered or which is registered subsequent thereto.</p>	<p>(2) As from the commencement of the <u>Bill</u>, a lien which is registered under this section of this <u>Bill</u> shall have priority over any lien not so registered or which is registered subsequent thereto.</p>	
<p><u>Current section 236 Proposed new section 249 - Closing of register</u></p> <p>The register shall be closed for a period of twenty-one days immediately preceding each date on which interest on that bond falls due and no transfer of that bond shall be registered during that period.</p>	<p><u>Proposed new section 249 - Closing of register</u></p> <p>Retained.</p>	
<p><u>Current section 237 Proposed new section 250 - Register to be conclusive</u></p> <p>(1) The entries in a bond register shall be e conclusive evidence of the facts, matters, particulars and transactions to which those entries relate.</p> <p>(2) A copy of an entry in the register certified under the hand of</p>	<p><u>Proposed new section 250 - Register to be conclusive</u></p> <p>(1) The entries in a bond register shall be <u>presumed to be a correct representation</u> of the facts, matters, particulars and transactions to which those entries relate.</p> <p>(2) Retained</p>	<p>It is suggested that the provision be amended to reflect that the entries raise only a presumption of correctness. This will place the onus on anyone who asserts otherwise to rebut same.</p>

<p>the Minister, Commissioner, Chairman or such other appropriate officer of a body or the appointed registrar, to be a true copy of the original entry shall be receivable in evidence in any judicial proceeding unless a judge shall otherwise direct.</p>		
<p><u>Current section 238 Proposed new section 251 - Promissory notes</u></p> <p>(1) Every promissory note shall be signed by the Minister, Commissioner or Chairman or such other appropriate officer of a body and shall, when issued, bind the relevant body to pay the principal sum mentioned in that note and the interest thereon in accordance with the provisions of this part of this Act at the rate and on the dates specified by the directions issued pursuant to section 226 of this Act or in pursuance of an option to redeem the note reserved in the directives.</p> <p>(2) Promissory notes shall be issued in such denominations as the Minister, Commissioner or Chairman or such other appropriate officer of a body may, with the</p>	<p><u>Proposed new section 251 - Promissory notes</u></p> <p>(1) Every promissory note shall be signed by the Minister, Commissioner or Chairman or such other appropriate officer of a body and shall, when issued, bind the relevant body to pay the principal sum mentioned in that note and the interest thereon in accordance with the provisions of this part of this <u>Bill</u> at the rate and on the dates specified by the directions issued pursuant to section <u>244</u> of this <u>Bill</u> or in pursuance of an option to redeem the note reserved in the directives.</p> <p>(2) Retained</p>	

<p>approval of the approving authority of the body, direct.</p>		
<p><u>Current section 239 Proposed new section 252 - Manner and effect of endorsement.</u></p> <p>Notwithstanding the provisions of the Bills of Exchange Act to the contrary-</p> <p>(a) no endorsement of a promissory note shall be valid unless made by the signature of the holder written on the back of the note in one of the spaces provided for that purpose; and</p> <p>(b) no person shall, by reason only of his having endorsed a promissory note, be liable to pay any money due either as principal or as interest on the promissory note.</p>	<p><u>Proposed new section 252 - Manner and effect of endorsement.</u></p> <p>Retained</p>	
<p><u>Current section 240 Proposed new section 253- Rights of survivorship</u></p> <p>1) Notwithstanding anything to the contrary contained in any other law,</p>	<p><u>Proposed new section 253 - Rights of survivorship</u></p> <p>Retained</p>	

<p>or enactment :-</p> <p>(a) when a promissory note is payable to two or more persons jointly and either or any of them dies, the note shall be payable to the survivor or survivors of the deceased person or persons; and</p> <p>(b) where a promissory note is payable to two or more persons severally, and either or any of them dies, the note shall be payable to the survivor or survivors of the deceased person or persons or to the representative of the deceased or to any of them.</p> <p>(2) Nothing contained in this section shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any promissory note to which subsection (1) of this section applies.</p>		
<p><u>Current section 241 Proposed new section 254 - Registered bonds</u></p> <p>(1) Every registered bond shall be signed by the Minister, Commissioner or Chairman or such</p>	<p><u>Proposed new section 254 - Registered bonds</u></p> <p>(1) Every registered bond shall be signed by the Minister, Commissioner or Chairman or such</p>	

<p>other appropriate officer of a body and shall, when issued, bind the issuer to pay the principal sum and the interest on that sum in accordance with the provisions of this Act at the rate and on the dates specified in the trust deed.</p> <p>(2) Registered bonds shall be issued in such denominations as the Minister, Commissioner, Chairman or such other appropriate officer of a body with the consent of the Commission may direct.</p>	<p>other appropriate officer of a body and shall, when issued, bind the issuer to pay the principal sum and the interest on that sum in accordance with the provisions of this Bill at the rate and on the dates specified in the trust deed.</p> <p>(2) Retained</p>	
<p><u>Current section 242 Proposed new section 255 - Appropriation of revenue.</u></p> <p>Where any interest is payable under this Act in respect of any bond or securities, a body shall in each payment on the half year ending or quarterly ending with the date on which the interest on such bond or securities falls due, appropriate out of the general revenue and assets of the body and of the assets of the project or of the appropriate authority a sum sufficient to meet all</p>	<p><u>Proposed new section 255 - Appropriation of revenue.</u></p> <p>Where any interest is payable under this Bill in respect of any bond or securities, a body shall in each payment on the half year ending or quarterly ending with the date on which the interest on such bond or securities falls due, appropriate out of the general revenue and assets of the body and of the assets of the project or of the appropriate authority a sum sufficient to meet all interest payable on that date by the body and shall authorise payment of</p>	

<p>interest payable on that date by the body and shall authorise payment of such interest out of the sum so appropriated.</p>	<p>such interest out of the sum so appropriated.</p>	
<p><u>Current section 243 - Payment of interest</u></p> <p>(1) The interest due on a registered bond or securities shall be payable half yearly or quarterly on the dates specified in a trust deed made pursuant to this Act.</p> <p>(2) Where any amount has become payable on any date as interest due on any registered bond or securities, interest on that amount shall, after that date, be paid or payable by a body or any other person responsible for the default in payment to any person.</p>	<p><u>-Payment of interest</u></p> <p>Recommended for deletion.</p>	<p>Stipulation of provision for payment of interest is a matter for the trust deed and should not be included in the Bill.</p> <p>Also provision may impede issuance of zero coupon bonds or bonds with interest moratorium which are the debt instruments of choice for infrastructure and like projects.</p>
<p><u>Current section 244 Proposed new section 256 - Payments</u></p>	<p><u>Proposed new section 256 - Payments</u></p> <p>Retained</p>	

<p>All payments of interest and all payments of principal amount due on any registered bond or securities shall be made at the registered office of the issuer or at any other lawfully authorised place as may be specified within Nigeria for the payment of any such interest or principal amount.</p>		
<p><u>Current section 245 Proposed new section 257 - Payments</u></p> <p>(1) The Minister, Commissioner, Chairman or other appropriate officer of a body subject to the approval of the approving authority may appoint a registered trustee company or any reputable bank or a reputable insurance company licensed under the applicable laws for the time being in force as trustee for the purpose of acting on behalf of the bond holders with regard to every loan raised under this Act provided that a trustee appointed under this subsection shall not have any fiduciary relationship with the</p>	<p><u>Proposed new section 257 - Payments</u></p> <p>(1) The Minister, Commissioner, Chairman or other appropriate officer of a body subject to the approval of the approving authority may appoint a registered trustee company as trustee for the purpose of acting on behalf of bond holders of debt securities in registered form with regard to every debt security issued under this Bill provided that a trustee appointed under this subsection shall not have any fiduciary relationship with the issuers.</p>	

<p>issuers.</p> <p>(2) A draft copy of any trust deed made pursuant to this part of this Act shall be sent to the Commission for prior approval.</p>	<p>(2) A draft copy of any trust deed made pursuant to this part of this Bill shall be sent to the Commission for prior approval</p>	
<p><u>Current section 246 Proposed new section 258 - Powers of trustees.</u></p> <p>The trustees appointed under this part of this Act shall have all the powers conferred upon trustees by the Trustees Investment Act and any other enforceable law for the time being in force, and without prejudice to the provisions of those laws-</p> <p>(a) the trustees may, at their discretion and upon request in writing of a majority of bond holders present and voting at a special meeting duly convened for that purpose, institute proceedings to obtain the repayment of a bond at anytime after such bond shall have become repayable under its terms of</p>	<p><u>Proposed new section 258 - Powers of trustees.</u></p> <p>The trustees appointed under this part of this Bill shall have all the powers conferred upon trustees by the <u>trust deed under which they are appointed, the</u> Trustees Investment Act and any other enforceable law for the time being in force.</p>	<p>It is suggested that this general power be expanded to include powers which may be conferred on trustees by the trust deed</p> <p>It is recommended that the powers mentioned in (a) to (h) be deleted as they would be appropriately situated in the Rules and Regulations of the Commission.</p>

issue;

~~(b) the trustees may act on the advice or opinion of any solicitor, valuer, surveyor, broker, auctioneer, accountant or other expert whether obtained by a body to which this part applies or by the trustees or otherwise;~~

~~(c) save as herein otherwise expressly provided the trustees shall, as regards all trusts, powers, authorities and discretion vested in them, have absolute discretion as to the exercise, and provided they have acted honestly and reasonably shall be in no wise responsible for any loss or damage which may result from the exercise or non exercise thereof;~~

~~(d) the trustees shall not be responsible for acting upon any resolution purporting to have been passed at any meeting of the bond holders in respect whereof minutes have been made and signed, provided that the meeting~~

~~was convened in accordance with the provisions of the trust deed;~~

~~(e) without prejudice to the right of indemnity conferred upon the trustees by law, the trustees and attorneys, agents or other persons appointed by the trustees under this section shall be indemnified by a body against all liabilities and expenses reasonably incurred by them in the execution of the powers of the trustees under this part of this Act;~~

~~(f) the Minister, Commissioner, Chairman or the appropriate officer of a body may in writing give the trustees such general or specific direction not inconsistent with the provisions of this part of this Act, on any matter relating to the trust and the trustees shall give effect to every such direction and shall not be liable on account of anything done or purported to be done by them in good faith in connection thereof;~~

~~(g) whenever in the interest of bond holders the trustees deem it expedient, the trustees may delegate by a power of attorney to any other person or body corporate with the consent of the Minister, Commissioner or Chairman or any appropriate officer, all or any of the powers vested in them under this part of this Act upon such terms and conditions as the trustees may deem fit and the trustee shall be responsible for all the acts and defaults of any person, company to which such powers are so delegated; and~~

~~(h) the trustees may in the discharge of their function under this part of this Act employ such agents and upon such conditions as they may think reasonable and appropriate, subject to the approval of the Minister, Commissioner or Chairman or the appropriate officer appointed in his place by a body to which this part applies.~~

<p><u>Current section 247 Proposed new section 259 - Trustee may be interested party</u></p> <p>A trustee or any director of the trustee shall not be precluded from underwriting or guaranteeing the subscription of or subscribing for or otherwise acquiring, holding or dealing with any part of the securities provided that such a trustee, director or officer is not thereby put in a position in which he holds more than twenty-five percent interest in the bond or securities and provided that such interest is disclosed to the approving authority of the body concerned before a person is so appointed.</p>	<p><u>Proposed new section 259 - Trustee may be interested party</u></p> <p>Retained</p>	
<p><u>Current section 248 Proposed new section 260 - Power to appoint new trustees</u></p> <p>The power to appoint new trustees under this part of this Act shall be vested in the Minister, Commissioner, Chairman or any appropriate officer subject to the approval of the approving authority of that body but no trustee shall be appointed who shall not previously have been approved by resolution passed by a majority of bond</p>	<p><u>Proposed new section 260 - Power to appoint new trustees</u></p> <p>Retained</p>	

<p>holders present at a meeting duly called for such purpose</p>		
<p><u>Current section 249 Proposed new section 261 - Waiver by trustees.</u></p> <p>The trustees may if they deem it to be in the interest of the bond holders, unless otherwise directed by a resolution passed by a majority of bond holders at a meeting duly convened for such purpose, validate as they shall deem fit, any breach by a body or any authority acting in that behalf of any covenants and provisions of this part of this Act, but without prejudice to the rights of the trustees in respect of any subsequent breach thereof.</p>	<p><u>Proposed new section 261 - Waiver by trustees.</u></p> <p>The trustees may if they deem it to be in the interest of the bond holders, unless otherwise directed by a resolution passed by a majority of bond holders at a meeting duly convened for such purpose, validate waive as they shall deem fit, any breach by a body or any authority acting in that behalf of any covenants and provisions of this part of this Bill, but without prejudice to the rights of the trustees in respect of any subsequent breach thereof.</p>	<p>It was observed that the provision uses the word “validate” instead of “waive” which appears more apt in the context of the provision. It is recommended that the section be redrafted to change “validate” to “waive”.</p>
<p><u>Current section 250 Proposed new section 262 - Appropriation of revenue for sinking fund.</u></p> <p>After the date specified in the particulars published pursuant to section 226 of this Act as the date from which contributions to the</p>	<p><u>Proposed new section 262 - Appropriation of revenue for sinking fund</u></p> <p>After the date specified in the particulars published pursuant to section 244 of this Bill as the date from which contributions to the sinking fund for debt securities shall commence, and with the approval of the appropriate authority,</p>	

<p>sinking fund for any loan shall commence, and with the approval of the appropriate authority, in each quarter or half year ending with the interest payment dates specified in the particulars the body shall appropriate out of its general revenue and assets and of the project or of the appropriate authority, a sum determined as the contribution to the sinking fund established for the purpose of redeeming the loan.</p>	<p>in each quarter or half year ending with the interest payment dates specified in the particulars the body shall appropriate out of its general revenue and assets and of the project or of the appropriate authority, a sum determined as the contribution to the sinking fund established for the purpose of redeeming the <u>debt securities</u>.</p>	
<p><u>Current section 251 Proposed new section 263- Separate sinking fund.</u> A separate sinking fund shall be established for each loan raised under this part of this Act.</p>	<p><u>Proposed new section 263 - Separate sinking fund.</u> A separate sinking fund shall be established for each <u>issuance of debt securities</u> under this part of this <u>Bill</u>.</p>	
<p><u>Current section 252 Proposed new section 264 - Investment of sinking fund.</u> (1) All monies appropriated under section 250 of this Act as contributions to the sinking fund established for any loan shall be paid to the trustees appointed under section 245 of this Act and</p>	<p><u>Proposed new section 264 - Investment of sinking fund.</u> (1) All monies appropriated under section <u>262</u> of this <u>Bill</u> as contributions to the sinking fund established for any <u>issuance of debt securities</u> shall be paid to the trustees appointed under section <u>257</u> of this <u>Bill</u> and may be invested in such securities as are specified in the Trustee</p>	

<p>may be invested in such securities as are specified in the Trustee Investments Act.</p> <p>(2) The trustees may, from time to time, with the approval of the appropriate authority vary any investment made pursuant to subsection (1) of this section or may realise and re-invest any moneys invested under that subsection.</p> <p>(3) The dividends, interest, bonus and other profits of any investment of any part of any sinking fund shall be invested by the trustees so as to form a part of that sinking fund in like manner as moneys appropriated under section 250 of this Act as contributions to that sinking fund.</p>	<p>Investments Act.</p> <p>(2) Retained</p> <p>(3) The dividends, interest, bonus and other profits of any investment of any part of any sinking fund shall be invested by the trustees so as to form a part of that sinking fund in like manner as moneys appropriated under section 262 of this Bill as contributions to that sinking fund.</p>	
<p><u>Current section 253 Proposed new section 265 - Cessation of contribution to sinking fund</u></p> <p>(1) Notwithstanding anything to the contrary contained in this part of this Act, if at any time the trustees are satisfied that the sinking fund of any loan raised under the provisions of</p>	<p><u>Proposed new section 265 - Cessation of contribution to sinking fund</u></p> <p>(1) Notwithstanding anything to the contrary contained in this part of this Bill, if at any time the trustees are satisfied that the sinking fund of any <u>general obligation debt securities issued</u> under the provisions of this part of this <u>Bill</u></p>	

<p>this part of this Act will be sufficient with further accumulations of interest, but without further payments of contributions, to enable the loan to be redeemed at the time fixed for its redemption they shall inform the body accordingly, and the Minister, Commissioner, or Chairman or any appropriate officer shall be authorised in such event to suspend further payments of half-yearly or quarterly contributions to that sinking fund.</p> <p>(2) The contributions to that sinking fund shall be recommenced if the trustees at any time thereafter inform the appropriate authority that they are no longer satisfied that the sinking fund without further accumulations of interest will be sufficient for the redemption of that loan.</p>	<p>will be sufficient with further accumulations of interest, but without further payments of contributions, to enable the <u>debt securities</u> to be redeemed at the time fixed for its redemption they shall inform the body accordingly, and the Minister, Commissioner, or Chairman or any appropriate officer shall be authorised in such event to suspend further payments of half-yearly or quarterly contributions to that sinking fund.</p> <p>(2) Retained</p>	
<p><u>Current section 254 Proposed new section 266 Expenses to be paid out of sinking fund.</u></p> <p>There shall be paid out of the sinking fund all expenses specifically incurred in, or incidental to, the</p>	<p><u>Proposed new section 266 - Expenses to be paid out of sinking fund.</u></p> <p>There shall be paid out of the sinking fund all expenses specifically incurred in, or incidental to, the investment and management of that fund</p>	

<p>investment and management of that fund and the re-payment of the loan for which the fund was established.</p>	<p>and the re-payment of the <u>debt securities</u> for which the fund was established.</p>	
<p><u>Current section 255 Proposed new section 267 - Deficiency in fund to be charged upon revenue.</u></p> <p>In the event of the sinking fund established by an issuer pursuant to the provisions of this part of this Act being found at the time fixed for the repayment of the loan to be insufficient for such redemption, the deficiency shall be made good out of the general revenue and assets of the body concerned and that of the project which is the beneficiary of the loan.</p>	<p><u>Proposed new section 267 - Deficiency in fund to be charged upon revenue.</u></p> <p>In the event of the sinking fund established by an issuer pursuant to the provisions of this part of this <u>Bill</u> being found at the time fixed for the repayment of the <u>debt securities</u> to be insufficient for such redemption, the deficiency shall be made good out of the general revenue and assets of the body concerned and (or) the project <u>or assets funded by the proceeds of the debt securities.</u></p>	
<p><u>Current section 256 - Payment into sinking fund in case of default by a body.</u></p> <p>Upon default by a body to meet its payment obligations under the loan and after the expiration of six months therefrom the trustees shall present the copy of the irrevocable letter of authority referred to in subsection (3) of section 224 of this Act to the Accountant General of the Federation who shall take</p>	<p><u>Current section 256 - Payment into sinking fund in case of default by a body.</u></p> <p>Recommended for deletion</p>	<p>This provision is recommended for deletion because it will become redundant with the proposed amendment of section 224 which makes the funding of the sinking fund by the ISPO automatic.</p>

<p>immediate steps to deduct from the statutory allocation of the body concerned such amount or amounts as are specified by the trustees as required to be paid into the sinking fund for the purpose of redeeming any outstanding obligations under the loan.</p>		
<p><u>Current section 257 - .Issue of duplicate and renewal of bonds certificate and promissory notes</u></p> <p>1) The registrar may issue duplicate bond certificates and duplicate securities in such circumstances as may be prescribed.</p> <p>(2) The registrar may issue renewals of bond certificates and promissory notes in such circumstances as may be prescribed.</p>	<p><u>Current section 257 - .Issue of duplicate and renewal of bonds certificate and promissory notes</u></p> <p>Recommended for deletion</p>	<p>Section 257 is recommended for deletion as the provision is more suited for trust deed and not the Act.</p>
<p><u>Current section 258 - .Right of registrar to compel application to issue renewal of promissory notes</u></p> <p>The registrar may in such circumstances as may be</p>	<p><u>Current section 258 - .Right of registrar to compel application to issue renewal of promissory notes</u></p> <p>Recommended for deletion</p>	<p>Section 258 is recommended for deletion as the provision is more suited for trust deed and</p>

<p>prescribed- (a) issue a notice to the holder of any promissory note directing him to apply for a renewal of the promissory note; and</p> <p>(b) withhold payment of the interest or principal amount due in respect of that promissory note until the application for renewal has been made and determined.</p>		<p>not the Act.</p>
<p><u>Current section 259 Proposed new section 268 - Consolidation and subdivision of bonds and securities</u></p> <p>Subject to such condition as the Minister, Commissioner, Chairman or an appropriate officer of a body may specify, the registrar may-</p> <p>(a) on the application of a person claiming to be entitled to any bond or securities; or</p> <p>(b) on being satisfied of the genuineness of the claim of such applicant; or</p>	<p><u>Proposed new section 268 - Consolidation and subdivision</u></p> <p>Subject to such condition as the Minister, Commissioner, Chairman or an appropriate officer of a body may specify, the registrar may-</p> <p>(a) on the application of a person claiming to be entitled to any <u>debt</u> securities; or</p> <p>(b) retained</p>	

<p>(c) on surrender of the bond certificate relating to such bond or of such securities received in the specified manner; or</p> <p>(d) on payment of the prescribed fee, consolidate or sub-divide such bond or securities and issue to the applicant one or more new bond certificates or securities as may be required.</p>	<p>(c) on surrender of the certificate relating to such <u>debt</u> securities or of such securities received in the specified manner; or</p> <p>(d) retained</p>	
<p><u>Current section 260 Proposed new section 269 - Indemnity bond</u></p> <p>Where an application is made to the registrar under this part of this Act for the issue of a duplicate security or for the exchange, renewal, consolidation or sub-division of any bond or securities, the registrar may require the applicant as a condition precedent to the grant of the application, to execute a bond with or without sureties undertaking to indemnify the body concerned against the claims of all persons claiming under the original bond certificate or securities or under the bond or securities so exchanged, renewed, consolidated or subdivided, as the</p>	<p><u>Proposed new section 269 - Indemnity bond</u></p> <p>Where an application is made to the registrar under this part of this <u>Bill</u> for the issue of a duplicate security or for the exchange, renewal, consolidation or sub-division of any <u>debt</u> securities, the registrar may require the applicant as a condition precedent to the grant of the application, to execute a bond with or without sureties undertaking to indemnify the body concerned against the claims of all persons claiming under the original bond certificate or securities or under the bond or securities so exchanged, renewed, consolidated or subdivided, as the case may be</p>	

<p>case may be.</p>		
<p><u>Current section 261 Proposed new section 270 - Immediate discharge in certain cases.</u></p> <p>On payment by or on behalf of a body to the holder of a registered bond or securities of the amount expressed therein on or after the date when it becomes due or on the renewal of a promissory note under section 258 of this Act or on the consolidation or sub-division of a bond or securities under section 259 of this Act, a body shall be discharged in the same way to the same extent as if such bond or securities were a promissory note payable to the bearer.</p>	<p><u>Proposed new section 270 - Immediate discharge in certain cases.</u></p> <p>On payment by or on behalf of a body to the holder of a registered bond or securities of the amount expressed therein on or after the date when it becomes due <u>for</u> consolidation or sub-division of a bond or securities under section <u>268</u> of this <u>Bill</u> , a body shall be discharged in the same way to the same extent as if such bond or securities were a promissory note payable to the bearer.</p>	
<p><u>Current section 262 Proposed new section 271 - Discharge in other cases.</u></p> <p>Except as otherwise provided in this part of this Act the liability of a body shall-</p> <p>(a) in respect of any registered bond or securities redeemed on or</p>	<p><u>Proposed new section 271 - Discharge in other cases.</u></p> <p>Except as otherwise provided in this part of this <u>Bill</u> the liability of a body shall-</p> <p>(a) retained</p>	

after the date on which payment of the principal amount becomes due, be discharged after the lapse of six years from that date;

~~(b) in respect of any securities in place of which a duplicate is issued under section 257 of this Act be discharged after the lapse of six years from the date of the issue of such duplicate or from the date of the last payment of interest on such securities, whichever date is later;~~

(c) in respect of a securities for which a renewed securities is issued under section 258 of this Act or upon a consolidation or subdivision under section 259 of this Act, be discharged after the lapse of six years from the date of the issue of the renewed securities or of the new bond or securities, as the case may be.

(b) Recommended for deletion

(c) in respect of a securities for which a consolidation or subdivision under section 268 of this Bill applies, be discharged after the lapse of six years from the date of the issue of the consolidated or sub-divided securities as the case may be.

Section 257 to which this subsection applies has been recommended for deletion. The provision is therefore redundant.

<u>Current section 263 Proposed new section 272 - Summary procedure in special cases.</u>	<u>Proposed new section 272 - Summary procedure in special cases.</u>	
<p>If within six months of the death of a person who was entitled to a registered bond or securities, the nominal or face value of which does not in the aggregate exceed ₦5,000, probate of the will or letters of administration of the estate of the deceased person is not produced to the registrar, the registrar may, after such inquiry as he may deem necessary, determine which person is entitled to such bond or securities and may-</p> <p>(a) where any such bond or securities relates to a loan due for payment, authorise the registration of the name of such survivor or survivors in substitution for the name of the deceased person in the register of bond and securities and the payment to such survivor or survivors of the amount due in respect of that bond;</p> <p>(b) where any such bond or securities relates to a loan not due for repayment, authorise the registration of the name of such survivor or survivors in substitution for the name of the deceased.</p>	<p>Retained</p>	

<p>(2) Any creditor or claimant against the estate of the deceased person may recover his debt or claim out of money paid to any survivor or survivors under subsection (1) of this section and remaining in his hands unadministered in the same manner and to the same extent as if the said person had obtained letters of administration of the estate of the deceased, and nothing in this section shall affect any claim of an executor or administrator or other representative of the deceased against such person other than a claim to recover amounts lawfully paid by him in the course of the administration of the estate of the deceased.</p>		
<p><u>Current section 264 Proposed new section 273 - Signature to be printed on certificates.</u></p> <p>Every bond certificate or securities issued under this part of this Act shall bear in a printed, stamped, engraved form-</p>	<p><u>Proposed new section 273 - Signature to be printed on certificates.</u></p> <p>Every bond certificate or securities issued under this part of this Bill shall bear in a printed, stamped, engraved form-</p>	

<p>(a) the crest of the body concerned (if any);</p> <p>(b) the signature of the Minister, Commissioner, Chairman or such other appropriate officer of a body;</p> <p>(c) the signature of the registrar; and</p> <p>(d) where applicable, the signature of the appropriate authority in the case of a statutory corporation which is directly the beneficiary of the loan to which the bond certificate or securities relates.</p>	<p>(a) to (d) retained</p>	
<p><u>Current section 265 Proposed new section 274 - Notice of trust not receivable except as provided.</u></p> <p>1) Except as otherwise provided in or under this part of this Act, no notice of any trust in respect of any registered bond or securities shall be receivable by the registrar or a relevant body.</p>	<p><u>Proposed new section 274 - Notice of trust not receivable except as provided.</u></p> <p>1) Except as otherwise provided in or under this part of this Bill, no notice of any trust in respect of any registered bond or securities shall be receivable by the registrar or a relevant body.</p>	

<p>(2) The registrar shall not be deemed to have received notice of a trust by reason only of the fact that he has recognised an endorsement on a bond or securities by an executor or an administrator as such, nor shall he inquire into the terms of any will by which such executor or administrator may be bound.</p>	<p>(2) Retained</p>	
<p><u>Current section 266 Proposed new section 275 Exemption from stamp duties.</u></p> <p>All documents or instruments made or used under the provisions of this part of this Act shall be in such form as may be prescribed and shall be exempted from stamp duty payable to the Federal or a State Government</p>	<p><u>Proposed new section 275 - Exemption from stamp duties.</u></p> <p>All documents or instruments made or used under the provisions of this part of this Bill shall be in such form as may be prescribed and shall be exempted from stamp duty payable to the Federal or a State Government</p>	
<p><u>Current section 267 Proposed new section 276 - Delegation of power.</u></p> <p>A body may delegate to the Minister, Commissioner or Chairman or such other appropriate officer all or any of the powers conferred on it by subject to such restriction, conditions and qualifications, not</p>	<p><u>Proposed new section 276 - Delegation of power.</u></p> <p>A body may delegate to the Minister, Commissioner or Chairman or such other appropriate officer all or any of the powers conferred on it by subject to such restriction, conditions and qualifications, not inconsistent with the provisions of this part of this Bill as may be specified.</p>	

<p>inconsistent with the provisions of this part of this Act as may be specified.</p>		
<p><u>Current section 268 Proposed new section 277 - Inspection of register and documents, etc.</u></p> <p>(1) No person shall be entitled to inspect, or to receive information in relation to registered bonds or securities, except on payment of such fee and in such circumstances and on such terms and conditions as may be approved from time to time by the Commission.</p> <p>(2) Nothing in this section shall apply to the Auditor-General of the Federation or of a State, the Accountant-General of the Federation or of a State or such other appropriate officer of the Federal or State Government or any public officer acting in his official capacity.</p>	<p><u>Proposed new section 277 - Inspection of register and documents, etc.</u></p> <p>Retained</p> <p>Retained</p>	

<p><u>Current section 269 Proposed new section 278 - Power to make rules and regulations under this Part.</u></p> <p>(1) The Commission may make such rules and regulations generally for the purpose of giving effect to the provisions of this part of this Act and the rules and the regulations may include —</p> <p>(a) the manner in which payment of interest in respect of bonds or securities is to be made and acknowledged;</p> <p>(b) the circumstance in which promissory notes shall be renewed before further payment of interest thereon may be claimed;</p> <p>(c) the issue of duplicate bond certificates and duplicate securities;</p> <p>(d) the renewal of bond certificates and securities;</p> <p>(e) the manner of payment of interest to joint holders of bond or</p>	<p><u>Proposed new section 278 - Power to make rules and regulations under this Part.</u></p> <p>(1) The Commission may make such rules and regulations generally for the purpose of giving effect to the provisions of this part of this Bill and the rules and the regulations may include —</p> <p>(a) retained;</p> <p>(b) retained;</p> <p>(c) retained;</p> <p>(d) retained;</p> <p>(e) retained;</p>	
--	---	--

<p>securities;</p> <p>(f) the circumstances in which alterations may be made in the registration of bond or securities;</p> <p>(g) the payment of principal sums or interest and transfer of bond and securities in the case of persons under a legal disability;</p> <p>(h) the disposal of unclaimed interest;</p> <p>(i) the fees to be paid in respect of anything to be issued or done under the provisions of this part of this Act; and</p> <p>(j) all matters required by this part of this Act to be prescribed and all</p>	<p>(f) retained;</p> <p>g) retained;</p> <p>(h) retained;</p> <p>(i) the fees to be paid in respect of anything to be issued or done under the provisions of this part of this <u>Bill</u>;</p> <p><u>(j) matters that must, at the minimum, be provided for and covered in a trust deed or other like instrument;</u></p> <p><u>(k) debt sustainability guidelines and ratios that issuers of debt securities under this part of this Bill must comply with; and</u></p> <p><u>(l) all matters required by this part of this <u>Bill</u> to be prescribed and all matters incidental to or</u></p>	<p>It is suggested that the provision be amended to afford the Commission power to prescribe matters that must, at the minimum, be contained in a trust deed and also prescribe debt sustainability guidelines and ratios. This will obviate the need to state such matters in the Bill.</p>
--	---	--

<p>matters incidental to or connected with the matters hereinbefore enumerated.</p>	<p>connected with the matters hereinbefore enumerated.</p>	
<p><u>Current section 270 Proposed new section 279 - Requirements of securities exchanges, etc.</u></p> <p>A body to which this part of this Act applies in exercising the powers granted under this part of this Act shall comply with the listing requirements of the securities exchanges and capital trade points.</p>	<p><u>Proposed new section 279 - Requirements of securities exchanges, etc</u></p> <p>A body to which this part of this <u>Bill</u> applies in exercising the powers granted under this part of this <u>Bill</u> shall comply with the listing requirements of the securities exchanges.</p>	
<p><u>Current section 271 Proposed new section 280 - Binding obligation on successive governments or bodies.</u></p> <p>Any loan raised by any of the bodies to which this part of this Act applies shall, until the loan is fully repaid, be a binding and continuing obligation on the Federal, State or Local Government, boards or supervising Ministries of corporate entities to which this Act applies with regards to the repayment of all principal sums and interest payments due and outstanding under the loan including other terms and conditions arising therefrom.</p>	<p><u>Proposed new section 280 - Binding obligation on successive governments or bodies.</u></p> <p>Any loan raised by any of the bodies to which this part of this <u>Bill</u> applies shall, until the loan is fully repaid, be a binding and continuing obligation on the Federal, State or Local Government, boards or supervising Ministries of corporate entities to which this <u>Bill</u> applies with regards to the repayment of all principal sums and interest payments due and outstanding under the loan including other terms and conditions arising therefrom.</p>	

<p><u>Current section 272 Proposed new section 281 - Application of enactments.</u></p> <p>Nothing in this part of this Act shall be construed as derogating from the provisions of any other enactment which restricts the borrowing of money by anybody to which the provisions of this part of this Act applies or requires the consent of any authority to the raising of such money by any such body.</p>	<p><u>Proposed new section 281 - Application of enactments.</u></p> <p>Nothing in this part of this <u>Bill</u> shall be construed as derogating from the provisions of any other enactment which restricts the borrowing of money by anybody to which the provisions of this part of this <u>Bill</u> applies or requires the consent of any authority to the raising of such money by any such body.</p>	
<p><u>Proposed new section 282</u></p>	<p><u>Proposed new section 282 - Offences, remedies and penalties</u></p> <p><u>(1) It shall be an offence to divert or mismanage the proceeds of any bond issued under this Part.</u></p> <p><u>(2) Where a Minister, Commissioner, Chairman or an appropriate officer of a body which has issued debt securities under this part is found guilty of having diverted or mismanaged or played a role in the diversion or mismanagement of any bond proceed,</u></p> <p><u>(a) the Minister, Commissioner, Chairman or an appropriate officer of a body shall –</u></p> <p><u>(i) retribute to the body the total amount diverted or mismanaged; and</u></p>	

(ii) pay a penalty amounting
; and

(b) shall be liable on conviction to a term of imprisonment not exceeding fifteen (15) years each.

The provisions of this subsection (2) shall apply notwithstanding that the relevant officer has ceased to hold office.

(3) Where a Project Manager licensed under this Part is found guilty of having diverted or mismanaged or played a role in the diversion or mismanagement of any bond proceed,

(a) the Project Manager shall –

(i) retribute to the body the total amount diverted or mismanaged; and;

(ii) pay a penalty amounting to five hundred per cent (500%) of the total amount diverted or mismanaged to the Commission; and

(b) every director and staff of the Project Manager involved in the diversion or mismanagement commits an offence and shall be liable on conviction to imprisonment for a term not exceeding fifteen (15) years each

(4) Where a Custodian licensed under this Part is found guilty of having diverted or

mismanaged or played a role in the diversion or mismanagement of any bond proceed, -

(a) the Custodian shall –

(i)restitute to the body the total amount diverted or mismanaged, and

(ii) pay a penalty amounting to five hundred per cent (500%) of the total amount diverted or mismanaged to the Commission; and

(b) Every Director and staff of the Custodian involved in the diversion or mismanagement shall be liable to imprisonment for a term not exceeding fifteen (15) years each.

(5) where an Officer(s) within the Commission or the Commission itself is found guilty of having diverted or mismanaged or played a role in the diversion or mismanagement of any bond proceed, the –

(a) Commission shall restitute to the body the total amount diverted or mismanaged;

(b) tenure of members of the Board of the Commission shall cease with immediate effect;

(c) members of the Board and staff of the Commission involved shall be –

(i) disqualified from holding offices or

appointments in any financial services related institution, and

(ii) liable on conviction to imprisonment for a term not exceeding fifteen (15) years

(6) Without prejudice to the provisions of Section 224 (6) and subsections (2) (3) (4) and (5) of this section, where any person who is under an obligation to comply with, observe or give effect to the provisions of this Part of the Act, or any rules made pursuant to this part, contravenes or fails to comply with, observe or give effect to any such provision or rule, the Commission may take one or more of the following actions:

(a) direct the person in breach to comply with, observe or give effect to any such provision of this Part or rules;

(b) where the person in breach is a Minister, Commissioner, Chairman or an appropriate officer of a body who contravenes any of the provisions of this part of the Act

(i) impose a penalty of not less than N5,000,000 on each defaulting party; and

(ii) require the person(s) in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach; this provision shall apply notwithstanding that

the appropriate officer has ceased to hold office
(c) Where the person in breach is the Registrar,
Trustee, Issuing House, Book runner, Project
Manager, Custodian or other professional party
to the transaction;

(i) Impose a penalty of not less than N5,000,000
on each defaulting party and N25,000 for every
day of continuing default; and

(ii) require the person(s) in breach to take such
steps as the Commission may direct to remedy
the breach or mitigate the effect of such breach;

(iii) Prohibit the defaulting Party from
participating in other capital market
transactions until the breach is remedied and the
penalty paid;

(iv) direct the Exchange to prevent the
defaulting party from carrying out any services
or transactions on the Exchange.

(7) Where a person has failed to comply with a
penalty imposed by the Commission under
subsection (1), the Commission may sue for and
recover the penalty as a civil debt due to the
Government of Nigeria.

B –

ISSUANCE OF DEBT SECURITIES BY BODY CORPORATE AND SUPRANATIONAL BODIES

Proposed new section 283

Proposed new section 283 – Issuance of debt securities by body corporate and supranational bodies

(1) No public company, foreign public company, supranational body or other approved entity shall issue debt securities to the public without the prior review and approval of the Commission;

(2) The Commission may make rules and regulations for the purpose of giving effect to the provisions of subsection (1) above and the rules and regulations may include -

(a) the eligibility criteria for the issuance of debt securities;

(b) the mode of issue;

(c) the minimum rating requirements;

(d) the disclosure and reporting requirements;

(e) the fees to be paid in respect of anything to be issued or done under the provisions of this part of this Act;

(f) matters that must at the minimum be provided for and covered in a trust deed or other like instrument; and

(g) all matters required by this part of this Act to be prescribed and all matters incidental to or connected with the matters hereinbefore enumerated

	<p><u>Provided that No Issuer shall offer bond if it is in default of payment of interest or repayment of _____ principal in respect of previous debts issuance for a period of more than six (6) months.</u></p>	
<p><u>Current section 273 Proposed new section 284 - Interpretation of certain words used in this part.</u></p> <p>In this part of the Aet :</p> <p>"appropriate officer" means the chief executive or any other officer authorised by the board of a statutory or government agency;</p> <p>"approving authority" in the case of the Federal Government means the Federal Executive Council, in the case of a state means the Executive Council of the State, in the case of a Local Government means the Local Government Council and in the case of a government agency or statutory body, the board or the supervisory Ministry of that body, as the case may be;</p>	<p><u>Proposed new section 284 - Interpretation of certain words used in this part.</u></p> <p>In this part of the Bill :</p> <p>"appropriate officer" means the chief executive or any other officer authorised by the board of a statutory or government agency;</p> <p>"approving authority" in the case of the Federal Government means the Federal Executive Council, in the case of a state means the Executive Council of the State, in the case of a Local Government means the Local Government Council and in the case of a government agency or statutory body, the board or the supervisory Ministry of that body, as the case may be;</p>	

"body" or "bodies" means the body or bodies referred to under section ~~222~~ of this ~~Act~~;

"bond" means an instrument of indebtedness issued by a body to which this part of this ~~Act~~ applies to secure the repayment of money borrowed by such body;

"bond holder" means a person holding a registered bond and whose name is entered as the owner thereof in the register;

"Chairman" means the Chairman of a Local Government Council;

"Commissioner" means the Commissioner in a State responsible for matters relating to finance;

"Executive Council" means the Federal Executive Council or the Executive Council of a State;

"body" or "bodies" means the body or bodies referred to under section 237 of this Bill;

"bond" means an instrument of indebtedness issued by a body to which this part of this Bill applies to secure the repayment of money borrowed by such body;

"bond holder" means a person holding a registered bond and whose name is entered as the owner thereof in the register;

"Chairman" means the Chairman of a Local Government Council;

"Commissioner" means the Commissioner in a State responsible for matters relating to finance;

"Executive Council" means the Federal Executive Council or the Executive Council of a State;

<p>"issuing house" means the paying agent appointed under the provisions of this part of this Aet;</p> <p>"loan" means internal and external loan and include any arrangement under which a body is to be afforded credit facilities and references to the making, acceptance, repayment or application for a loan or to any other form of transaction relating to a loan shall be construed accordingly;</p> <p>"Minister" shall have the same meaning as contained in subsection 315 of this Aet"</p> <p>"paying agent" means the paying agent appointed under the provisions of this part of this Aet;</p> <p>"promissory note" means a promissory note issued by a body under the provisions of this part of this Aet;</p> <p>"register" means the register of</p>	<p>"issuing house" means the paying agent appointed under the provisions of this part of this <u>Bill</u>;</p> <p>"loan" means internal loan and include any arrangement under which a body is to be afforded credit facilities and references to the making, acceptance, repayment or application for a loan or to any other form of transaction relating to a loan shall be construed accordingly;</p> <p>"Minister" shall have the same meaning as contained in subsection 315 of this <u>Bill</u> "</p> <p>"paying agent" means the paying agent appointed under the provisions of this part of this <u>Bill</u>;</p> <p>"promissory note" means a promissory note issued by a body under the provisions of this part of this <u>Bill</u>;</p> <p>"register" means the register of securities and of the holders of such securities kept by</p>	
--	--	--

<p>securities and of the holders of such securities kept by the registrar for purposes of this part of this Act;</p> <p>"registrar" means a registrar appointed by a body under this part of this Act;</p> <p>"registered securities" includes bonds and promissory notes issued under the provisions of this part of this Act;</p> <p>"securities holder" means a person holding a registered securities and whose name is entered as the owner thereof in the register kept or maintained under this part of this Act;</p> <p>"trustee" means the trustee appointed under the provisions of this part of this Act.</p>	<p>the registrar for purposes of this part of this <u>Bill</u>;</p> <p>"registrar" means a registrar appointed by a body under this part of this <u>Bill</u>;</p> <p>"registered securities" includes bonds and promissory notes issued under the provisions of this part of this <u>Bill</u>;</p> <p>"securities holder" means a person holding a registered securities and whose name is entered as the owner thereof in the register kept or maintained under this part of this <u>Bill</u>;</p> <p>"trustee" means the trustee appointed under the provisions of this part of this <u>Bill</u>.</p>	
--	---	--

PART XVI XIX: ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF THE INVESTMENTS AND SECURITIES TRIBUNAL

<p><u>Current section 274 Proposed new section 285 - Establishment of the Investments and Securities Tribunal.</u></p>	<p><u>Proposed new section 285 - Establishment of the Investments and Securities Tribunal.</u></p>	
---	---	--

<p>There is established a body to be known as the Investments and Securities Tribunal (in this Act referred to as "the Tribunal") to exercise the jurisdiction, powers and authority conferred on it by or under this Act.</p>	<p>There is <u>hereby</u> established a body to be known as the Investments and Securities Tribunal (in this <u>Bill</u> referred to as "the Tribunal") to exercise the jurisdiction, powers and authority conferred on it by <u>Bill</u>.</p>	
<p><u>Current section 275 Proposed new section 286 - Composition of the Tribunal.</u></p> <p>(1) The Tribunal shall consist of ten (10) persons to be appointed by the Minister as follows:</p> <p>(a) a full-time Chairman who shall be a legal practitioner of not less than fifteen years with cognate experience in capital market matters;</p> <p>(b) four other full-time Members, three of whom shall be Legal Practitioners of not less than 10 years experience and one person who shall be knowledgeable in Capital Market matters who shall devote themselves to issues relating to adjudication and shall not exercise any administrative</p>	<p><u>Proposed new section 286 - Composition of the Tribunal.</u></p> <p>(1) The Tribunal shall consist of <u>not less than eight (8)</u> persons to be appointed <u>as full time members</u> by the <u>President upon the recommendation of the National Judicial Council as follows-</u></p> <p>(a) a Chairman who shall be a legal practitioner of not less than fifteen years <u>post call experience</u> in capital market matters;</p> <p>(b) <u>seven other members each of whom shall be a Legal Practitioner of not less than 12 years post call experience in Capital Market matters.</u></p>	<ol style="list-style-type: none"> 1. There are sufficient numbers of Nigerian Lawyers with reasonable Capital Market experience and qualifications to handle disputes in the Market. 2. The best practice now is to seek expert opinion and not have assessors sit as panelists. 3. The idea behind 12 years experience and above is an attempt at raising the bar to ensure that reasonably qualified persons are appointed.

<p>function;</p> <p>(e) five other part time members who shall be persons of proven ability and expertise in corporate and capital market matters.</p> <p>(2) The Chairman shall be the Chief Executive and Accounting Officer and shall be responsible for the overall control, supervision and administration of the Tribunal.</p>	<p><u>(2) No person appointed as a member of the Tribunal shall be removed from office except as provided in this Act.</u></p> <p><u>(3) Retained</u></p> <p><u>(4) No member of the Tribunal shall exercise any administrative function except as otherwise delegated by the Chairman..</u></p>	<p>4. The security of tenure is important for the members of the Tribunal to effectively discharge their functions. This will also ensure continuity and guard against political interference.</p>
<p><u>Proposed new section 287 -</u></p>	<p><u>Proposed new section 287- Functions of the National Judicial Council</u></p> <p><u>(1) The National Judicial Council shall be responsible for the screening and interview of all candidates for appointment as Chairman and Members of the Tribunal, in a manner that allows for competition among candidates and transparency in the selection process.</u></p> <p><u>(2) The National Judicial Council shall have the power to recommend to the President any disciplinary action against the Chairman or any member(s) of the Tribunal including the removal of the said Chairman or a member(s)</u></p>	

	<p><u>of the Tribunal on any or all of the grounds provided for in this Bill.</u></p>	
<p><u>Proposed new section 288 -</u></p>	<p><u>Proposed new section 288 - Vacancy in the office of the Tribunal</u></p> <p><u>In the absence of the Chairman of the Tribunal, the most senior member of the Tribunal by virtue of date of appointment shall act as the Chairman pending the return of the Chairman or appointment of a new Chairman.</u></p>	
<p><u>Current section 276 Proposed new section 289 - Constitution of the Tribunal</u></p> <p>(4) For the purpose of exercising any jurisdiction conferred by this Act, the Tribunal shall be duly constituted if it consists of not less than 3 members of the Tribunal.</p>	<p><u>Proposed new section 289 - Constitution of the Tribunal.</u></p> <p><u>(1) The Tribunal shall have and exercise jurisdiction throughout the Federation, and for that purpose, the whole area of the Federation shall be divided by the Chairman into such number of Divisions (not less than four) as he may, from time to time, specify and he may designate any such Division or part thereof by such name as he may think fit.</u></p> <p><u>(2) For the purpose of exercising any jurisdiction conferred by this Bill, the Tribunal shall be duly constituted by each member of the Tribunal sitting alone;</u></p> <p><u>(3) Subject to the directions of the Tribunal's Chairman, each member of the Tribunal shall sit</u></p>	<p>The idea is to ensure that the Chairman is in control of the Tribunal and give directions in the exercise of his powers.</p>

<p>(2) The Chairman of the Tribunal may constitute a panel of three (3) from its membership whenever he deems it necessary for the purpose of exercising the jurisdiction vested in the Tribunal by this Act or any other Act provided that:</p> <p>(a) a member presiding as chairman of any panel shall be a legal practitioner; and</p> <p>(b) for the purpose of this Act, the sitting of any of such panel shall be deemed a sitting of the Tribunal.</p>	<p><u>alone for the trial of civil and criminal causes or matters arising from the Nigerian Capital market and for the disposal of any other legal business related thereto and pending at such places in the Federation and at such times as the Tribunal's Chairman may determine.</u></p> <p><u>(4) The Chairman of the Tribunal shall take precedence over the other Members of the Tribunal.</u></p>	<p>This is aimed at defining protocol and order of precedence in the Tribunal.</p>
<p><u>Current section 277 Proposed new section 290 - Term of office</u></p> <p>(1) The Chairman shall hold office for a term of 5 years renewable for</p>	<p><u>Proposed new section 290 - Term of office</u></p> <p>(1) The Chairman of the Tribunal shall hold office for a term of <u>10</u> years and no more.</p>	<p>This is to enhance productivity, promote competence and best practice. It also gives the members security of tenure.</p>

<p>another term of 5 years and no more.</p> <p>(2) Other members shall hold office for a term of 4 years renewable for another term of 4 years and no more</p>	<p>(2) Other members <u>of the Tribunal</u> shall hold office for a <u>single</u> term of <u>8</u> years and no more.</p> <p><u>Provided that no person above 65 years shall be appointed or remain in office as a member of the Tribunal.</u></p>	
<p><u>Current section 278 Proposed new section 291 - Disqualification of members of the Tribunal.</u></p> <p>(1) A member of the Tribunal shall cease to hold office if-</p> <p>(a) he becomes of unsound mind; or</p> <p>(b) he becomes bankrupt or he makes a compromise with his creditors; or</p> <p>(c) he is convicted of a felony or any offence involving dishonesty; or</p> <p>(d) he is guilty of serious misconduct in relation to his duties; or</p> <p>(e) in the case of a person who has a</p>	<p><u>Proposed new section 291 - Disqualification of members of the Tribunal.</u></p> <p>(1) (a) to (d) retained</p> <p>(e) he is disqualified or suspended (other than at his own request) from <u>the legal</u> profession in</p>	

<p>professional qualification, he is disqualified or suspended (other than at his own request) from practicing his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.</p>	<p>any part of Nigeria <u>or outside Nigeria</u> by the order of any competent authority made in respect of him personally.</p>	
<p><u>Current section 279 Proposed new section 292 - Resignation and removal.</u></p> <p>(1) A member of the Tribunal may, by notice in writing under his hand addressed to the Minister resign his office:</p> <p>Provided that the member shall, unless he is permitted by the Minister to relinquish his office continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is the earlier.</p> <p>(2) A member of the Tribunal</p>	<p><u>Proposed new section 292 - Resignation and removal.</u></p> <p>(1) A member of the Tribunal may, by notice in writing under his hand addressed to the <u>President through the National Judicial Council</u> resign his office:</p> <p>Provided that the member shall, unless he is permitted by the <u>President</u> to relinquish his office continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is earlier.</p> <p>(2) A member of the Tribunal shall be removed</p>	

<p>shall be removed from office by an order made by the Minister on-</p> <p>(a) any of the grounds referred to in section 278 of this Act; or</p> <p>(b) the ground of proven charge of misbehaviour or incapacity after due inquiry has been made and the member concerned has been informed of the charge against him and given an opportunity of being heard in respect of the charge.</p>	<p>from office by an order made by the <u>President on the recommendation of the National Judicial Council based</u> on-</p> <p>(a) any of the grounds referred to in section <u>291</u> of this <u>Bill and after he has been given a fair hearing</u>; or</p> <p>(b) retained</p>	
<p><u>Current section 280 Proposed new section 293 - Salaries, allowances and other conditions of service of members of the Tribunal.</u></p> <p>The salaries and allowances of the Chairman, members and Chief Registrar of the Tribunal shall be equivalent to that of the Chief Judge, Judges and Chief Registrar of the Federal High Court respectively.</p>	<p><u>Proposed new section 293 - Salaries, allowances and other conditions of service of members of the Tribunal</u></p> <p>Retained</p>	
<p><u>Current section 281 Proposed new section 294 - Filling up of vacancies.</u></p>	<p><u>Proposed new section 294 - Filling up of vacancies.</u></p>	

<p>If, for reason other than temporary absence, any vacancy occurs in the office of a member of the Tribunal then the Minister shall appoint another person in accordance with the provisions of this Act to fill the vacancy.</p>	<p>If, for reason other than temporary absence, any vacancy occurs in the office of a member of the Tribunal then the President shall <u>on the recommendation of the National Judicial Council</u> appoint another person in accordance with the provisions of this <u>Bill</u> to fill the vacancy.</p>	
<p><u>Current section 282 Proposed new section 295 - Chief Registrar of the Tribunal</u></p> <p>(1) The Minister may from time to time, appoint a fit and proper person to be Chief Registrar of the Tribunal, who shall perform such duties in exercise of powers and as may from time to time, be assigned to him by the rules of the Tribunal and subject thereto by any special order of the Chairman.</p> <p>(2) The Chief Registrar ; Deputy Chief Registrar and Registrar, shall have power to administer oaths and perform such other duties with respect to any proceedings in the Tribunal</p>	<p><u>Proposed new section 295 - Chief Registrar of the Tribunal</u></p> <p>(1) <u>The Chief Registrar of the Tribunal shall be appointed by the Tribunal;</u></p> <p>(2) <u>The Chief Registrar of the Tribunal shall be a legal practitioner of not less than 10 years' post call experience. He shall perform such duties in exercise of the powers and authority of the Tribunal as may, from time to time, be assigned to him by the Tribunal, Rules of the Tribunal and, the Tribunal's Chairman.</u></p> <p>(3) The Chief Registrar <u>or any other officer of the Tribunal so authorised</u>, shall have power to administer oaths and perform such other duties with respect to any proceedings in the Tribunal as may be prescribed by the rules or by any special</p>	<p>The recommendations made to section are in consonance with best practice.</p> <p>This is to avoid limiting the exercise of these functions to specific persons.</p>

<p>as may be prescribed by the rules or by any special order of the Chairman.</p> <p><u>Current section 283 Proposed new section 296 - Other staff of the Tribunal, etc.</u></p> <p>(1) The Tribunal shall employ the services of such staff as the Tribunal may deem necessary for the efficient performance of its functions under or pursuant to this part of this Act.</p> <p>(2) The remuneration (including allowances) and terms and conditions of service of the staff of the Tribunal shall be as may be determined by the Tribunal provided that it is not less than what is obtainable in similar institutions in the Capital Market.</p> <p>(3) All sums payable by virtue of this section and under section 280 of this Act shall be charged on and paid out of the Consolidated Revenue Fund of the Federation.</p> <p>(4) All employees of the Tribunal shall be entitled to pensions and</p>	<p>order of the Chairman.</p> <p><u>Proposed new section 296 - Other staff of the Tribunal, etc.</u></p> <p>(1) The Tribunal shall employ the services of such staff as the Tribunal may deem necessary for the efficient performance of its functions under or pursuant to this part of this <u>Bill</u>.</p> <p>(2)The remuneration (including allowances) and terms and conditions of service of the staff of the Tribunal shall be as may be determined by the Tribunal provided that it is not less than what is obtainable in <u>any other Federal Government institution</u> in the <u>Nigerian capital market</u>.</p> <p>(3) All sums payable by virtue of this section and under section <u>290</u> of this <u>Bill</u> shall be charged on and paid out of the Consolidated Revenue Fund of the Federation.</p> <p>(4)Retained</p>	
--	--	--

<p>other retirement benefits.</p> <p>(5) Nothing in this section shall prevent the appointment of a person to any office, on terms which preclude the grant of pension and other retirement benefits.</p>	<p>(5) Retained</p>	
<p><u>Current section 284 Proposed new section 297 Jurisdiction of the Tribunal, etc.</u></p> <p>(1) The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving</p> <p>(a) a decision or determination of the Commission in the operation and application of this Act, and in particular, relating to any dispute-</p> <p>(i) between capital market operators;</p>	<p><u>Proposed new section 297 Jurisdiction of the Tribunal, etc.</u></p> <p>(1) The Tribunal shall <u>have exclusive jurisdiction to adjudicate on disputes arising from investments and securities transactions in the Nigerian Capital Market.</u></p> <p><u>(2)The Tribunal shall, in particular, adjudicate on matters relating to disputes between:</u></p> <p><u>(a) the Commission and any person (individual or corporate) in respect of any capital market matter;</u></p> <p><u>(b) capital market operators and securities exchanges;</u></p> <p><u>(c) capital market operators inter se;</u></p>	<p>This will afford market participants unrestrained access to justice without prejudice to the complaints management framework of the Commission</p>

<p>(ii) between—capital market operators and their clients;</p> <p>(iii) between an investor and a securities exchange or capital trade point or clearing and settlement agency;</p> <p>(iv) between capital market operators and self regulatory organisation;</p> <p>(b) the Commission and self regulatory organisation;</p> <p>(e) a capital market operator and the Commission;</p> <p>(d) an investor and the Commission;</p> <p>(e) an issuer of securities and the Commission; and</p>	<p><u>(d)</u> capital market operators and their clients;</p> <p><u>(e)</u> <u>public companies and the Commission or the securities exchanges or investors;</u></p> <p><u>(f)</u> an investor and a securities exchange, or <u>a custody and depository, central counterparty, - clearing and settlement or trade repository entity;</u></p> <p><u>(g)</u> <u>capital market operators and self regulatory organisations;</u></p> <p><u>(h)</u> the Commission and self regulatory organisation;</p> <p><u>(i)</u> a capital market operator and the Commission;</p> <p><u>(j)</u> an investor and the Commission;</p> <p><u>(k)</u> an issuer of securities and the Commission;</p>	
--	---	--

(1) disputes arising from the administration, management and operation of collective investment schemes.

(2) The Tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly.

(3) In the exercise of its jurisdiction the Tribunal shall have the power to interpret any law, rules or regulation as may be applicable.

(1) disputes arising from the administration, management and operation of collective investment schemes;

(m) disputes relating to the review, approval and regulation of mergers, takeovers, acquisitions and all forms of business combinations.

(3) The Tribunal shall also exercise jurisdiction on any other matter as may be prescribed by an Bill of the National Assembly.

(4) In the exercise of its jurisdiction the Tribunal shall have the power to interpret this Bill any other enactment, rules or regulation as may be applicable.

(5) The Tribunal shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by an arbitration panel, the commission, an exchange or any other body within the capital market relating to or connected with,

	<p><u>arising from or pertaining to any matter of which the Tribunal has the jurisdiction.</u></p> <p><u>(6) The Tribunal shall have and exercise jurisdiction and powers in criminal causes and matters arising from any causes or matters of which jurisdiction is conferred on the Tribunal by this Bill or any other enactment in amendment of this Bill or replacing this Bill.</u></p>	<p>The proposed amendment is in line with best practice, the Tribunal should have enforcement powers.</p>
<p><u>Current section 285 Proposed new section 298 - Funds of the Tribunal.</u></p> <p>(1) The Tribunal shall establish and maintain a fund, which shall be applied towards the discharge of its functions under this Act.</p> <p>(2) There shall be paid and credited to the Fund established under subsection (1) of this section-</p> <p>(a) annual subventions from the Federal Government with respect to recurrent and capital expenditures;</p> <p>(b) fees collected for the services</p>	<p><u>Proposed new section 298 - Funds of the Tribunal.</u></p> <p>(1) The Tribunal shall establish and maintain a fund, which shall be applied towards the discharge of its functions under this <u>Bill</u>.</p> <p>(2) There shall be paid and credited to the Fund established under subsection (1) of this section-</p> <p><u>(a) Funds provided to the Tribunal by the Federal Government;</u></p> <p><u>(b) 0.001% or such other higher percentage of the value of daily secondary market transactions in the Nigerian capital market as will be agreed upon between the Tribunal and the Securities and Exchange Commission;</u></p>	<p>The proposed amendments to the provision relating to the funds of the tribunal are recommended to ensure adequate funding and independence for the smooth operations of the Tribunal.</p>

<p>rendered by the Tribunal under this Act; and</p> <p>(e) such other sums of money as may be provided by the Federal Government for the Tribunal.</p>	<p>(c) fees collected for the services rendered by the Tribunal under this <u>Bill</u>; and</p> <p><u>(d) Monetary gifts, contributions and other funds that may be received by the Tribunal.</u></p>	
<p><u>Current section 286 Proposed new section 299 - Power to accept gift.</u></p> <p>The Tribunal may accept any grant of money or contributions on such terms and conditions, if any, as may be specified by the person or organisation making such grant or contribution provided that the terms and conditions are consistent with the functions and objectives of the Tribunal.</p>	<p><u>Proposed new section 299 - Power to accept gift.</u></p> <p>Retained</p>	
<p><u>Current section 287 Proposed new section 300- Account and audit.</u></p> <p>The Tribunal shall keep proper accounts of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor appointed from a list of Auditors and in accordance with the</p>	<p><u>Proposed new section 300- Account and audit.</u></p> <p>The Tribunal shall keep proper accounts of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor appointed from a list of <u>auditors</u> and in accordance with the guidelines supplied by the Accountant-General of the Federation.</p>	

<p>guidelines supplied by the Accountant-General of the Federation.</p>		
<p><u>Current section 288 Proposed new section 301 - Application of the funds of the Tribunal.</u></p> <p>The Tribunal may from time to time apply the proceeds of the funds established in section 285 of this Act</p> <p>(a) to meet the cost of administration of the Tribunal;</p> <p>(b) to reimburse members of the Tribunal or any committee of the Tribunal for expenses authorised; and</p> <p>(c) to meet the cost of capital projects.</p>	<p><u>Proposed new section 301 - Application of the funds of the Tribunal.</u></p> <p>The Tribunal may apply the proceeds of the funds established in section <u>298</u> of this <u>Bill</u>-</p> <p>(a) retained;</p> <p>(b) to reimburse members of the Tribunal <u>and staff</u> or any committee of the Tribunal for expenses authorised;</p> <p><u>(c) pay the salaries, remuneration or allowances, pensions and gratuities as applicable to the Members of the Tribunal and staff of the Tribunal;</u></p> <p><u>(d) finance staff promotion, training, internships, scholarships, research and similar activities;</u></p> <p><u>(e) maintain any property acquired by or vested</u></p>	

	<p><u>in the Tribunal;</u></p> <p><u>(f) meet any capital expenditure approved by the Tribunal; and</u></p> <p><u>(g) Implement all or any of the functions of the Tribunal under this Bill or any matter connected with those functions.</u></p>	
<p><u>Current section 289 Proposed new section 302 - Appeals from decisions of the Commission.</u></p>	<p><u>Proposed new section 302 - Appeals from decisions of the Commission.</u></p> <p><u>(1) No action or appeal shall commence before the Tribunal or Court with respect to any dispute except the aggrieved party has exhausted the internal dispute resolution mechanisms in the market as may be stipulated in this Bill or Rules and Regulations made thereunder.</u></p> <p><u>(2)Where any petition or complaint filed before any capital market operator, public company or other regulated entities or self regulatory organisation remains unresolved after 14 days of filing:</u></p> <p><u>(a) an aggrieved party may file a complaint with the Commission; and</u></p> <p><u>(b) where such a petition or complaint filed with the Commission remains unresolved after 45 days from the date of filing or is resolved to</u></p>	

the dissatisfaction of either party within the said period, an aggrieved party may file an action or appeal against the decision at the Tribunal within a period of 30 days from the end of the 45 days stated above or from the date of receipt of a copy of the decision appealed against.

(3) The aggrieved party shall give to the Commission 14 days' pre-action notice in writing of its intention to institute an action or appeal against its decision.

(4) Where an aggrieved party intends to institute an action or appeal having exhausted the disputes resolution mechanism established for the capital market, it shall give to the Commission 14 days' pre-action notice in writing of its intention to institute an action or appeal against its decision.

(4) A person aggrieved by any action or decision of the Commission under this Act, may institute an action in the Tribunal or appeal against such decision within the period stipulated under this Act:

~~Provided that the aggrieved person shall give to the Commission 14 days notice in writing of his intention to institute an action or appeal against its~~

(5) A person aggrieved by any action or decision of the Commission under this Bill, may institute an action in the Tribunal or appeal against such decision within the period stipulated under this Bill:

decision.

(2) An appeal under this part of this Act shall be filed within a period of thirty days from the date on which a copy of the order which is being appealed against is made, or deemed to have been made by the Commission and it shall be in such form and be accompanied by such fees as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for the delay.

(3) On receipt of an appeal under subsection (2) of this section the Tribunal may, after giving the parties an opportunity of being heard, make such orders thereon as it deems fit, confirming, modifying or setting aside the order appealed against.

(4) The Tribunal shall cause a copy of every order so made to

(6) An appeal under this part of this Bill shall be filed within a period of thirty days from the date on which a copy of the order which is being appealed against is made, or deemed to have been made by the Commission and it shall be in such form and be accompanied by such fees as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for the delay.

(7) On receipt of an appeal under subsection (2) and (6) of this section the Tribunal may, after giving the parties an opportunity of being heard, make such orders thereon as it deems fit, confirming, modifying or setting aside the order appealed against.

(8) The Tribunal shall cause a copy of every order so made to be forwarded to the parties to

<p>be forwarded to the parties to the appeal and to the Commission.</p> <p>(5) The Tribunal, shall in the exercise of its powers under this Aet, conduct its proceedings in such manners as to avoid undue delays and shall dispose of any matter before it finally within three months from the date of the commencement of the hearing of the substantive action.</p>	<p>the appeal and to the Commission.</p> <p>(9)The Tribunal, shall in the exercise of its powers under this <u>Bill</u>, conduct its proceedings in such manners as to avoid undue delays and shall dispose of any matter before it finally within three months from the date of the commencement of the hearing of the substantive action.</p> <p><u>Provided that no judgment shall be rendered void by virtue of a delay in delivering same except where it is established that the delay occasioned a miscarriage of justice.</u></p>	
<p><u>Current section 290 Proposed new section 303 - Powers and procedures of the Tribunal.</u></p> <p>(1) The Tribunal may make rules regulating its procedures.</p> <p>(2) The Tribunal shall have, for the purposes of discharging its functions under this Aet, power to-</p> <p>(a) summon and enforce the attendance of any person and</p>	<p><u>Proposed new section 303 - Powers and procedures of the Tribunal.</u></p> <p>1) Retained</p> <p>(2) The Tribunal shall have, for the purposes of discharging its functions under this <u>Bill</u>, power to-</p> <p>(a) to (g) retained</p>	

<p>examine him on oath;</p> <p>(b) require the discovery and production of documents;</p> <p>(c) receive evidence on affidavits;</p> <p>(d) call for the examination of witness or documents;</p> <p>(e) review its decisions;</p> <p>(f) dismiss an application for default or deciding matters <i>ex-parte</i>;</p> <p>(g) set aside any order or dismissal of any application for default or any order made by it <i>ex-parte</i>; and</p> <p>(h) do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under this Act.</p> <p>(3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes.</p>	<p>(h) do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under this <u>Bill</u></p> <p>(3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil <u>and criminal</u> court for all purposes.</p>	
--	---	--

<p>(4) Proceedings of the Tribunal may be held in camera as and when deemed appropriate in the interest of the public.</p>	<p>(4) Retained.</p>	
<p><u>Current section 291 Proposed new section 304 - Right to legal representation.</u></p> <p>A party may appear either in person or authorise one or more legal practitioners to represent it before the Tribunal.</p>	<p><u>Proposed new section 304 - Right to legal representation.</u></p> <p>Retained</p>	
<p><u>Current section 292 - Onus of proof</u></p> <p>The onus of proving any matter before the Tribunal shall be on the applicant or appellant as the case may be.</p>	<p><u>Current section 292</u></p> <p>Recommended for deletion</p>	<p>The provision is recommended for deletion as it is a settled principle of law that he who asserts a claim must prove it.</p>
<p><u>Current section 293 Proposed new section 305 - Judgment of the Tribunal.</u></p> <p>(1) The Tribunal shall give its judgment in writing and may make orders as to fines, suspensions, withdrawal of registration or licenses, specific performance, or restitution as it may deem appropriate in each case.</p>	<p><u>Proposed new section 305 - Judgment of the Tribunal.</u></p> <p>(1) The Tribunal shall <u>have all the inherent powers of a superior court of record and</u> shall give its judgment in writing and may make <u>or impose sanctions but not limited to</u> fines, suspensions, withdrawal of registration or licenses, specific performance, or restitution, <u>imprisonment and such other sanctions</u> as it</p>	<p>The existing provision limits the tribunal to the listed sanctions. Whereas, the amendment seek to grant the tribunal more discretion in imposing sanctions. The circumstance of each case will determine the nature of sanction that can be imposed.</p>

<p>(2) A certified true copy of the decision of the Tribunal shall be supplied to the parties upon request.</p> <p>(3) An award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the Tribunal.</p>	<p>may deem appropriate in each case.</p> <p><u>(2) A certified true copy of the decision of the Tribunal shall be supplied to the parties upon request subject to payment of the prescribed fees.</u></p> <p><u>(3) The Tribunal shall have the power to enforce its judgment and accordingly, may commit any person for contempt.</u></p> <p><u>(4) An award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the Tribunal.</u></p>	<p>This is to enable the Tribunal control proceedings before it, enforce its judgment and act independently and decisively.</p>
<p><u>Current section 294 Proposed new section 306 - Exclusion of proceedings.</u></p> <p>The Tribunal shall have exclusive jurisdiction on matters specified in this Aet.</p>	<p><u>Proposed new section 307 - Exclusion of proceedings.</u></p> <p>The Tribunal shall have exclusive jurisdiction on matters specified in this Bill.</p>	
<p><u>Current section 295 Proposed new section 307 - Appeal to the Court of Appeal.</u></p> <p>(1) Any person dissatisfied with a decision of the Tribunal may appeal against such decision to the Court of Appeal if-</p>	<p><u>Proposed new section 304 - Appeal to the Court of Appeal.</u></p> <p>Retained</p>	

<p>(a) the decision was taken in the exercise of its appellate jurisdiction, on points of law only; or</p> <p>(b) it is a final decision taken in the exercise of its original jurisdiction, on points of law or mixed law and fact; or</p> <p>(c) it is an interlocutory decision of the tribunal, on points of law only.</p> <p>(2) Without prejudice to the power of the Tribunal to review its own decision, only persons who participated in the proceedings of the Tribunal may appeal against the decision of the Tribunal.</p>		
<p><u>Current section 296 Proposed new section 308 - Costs</u> Parties to an appeal shall bear their cost</p>	<p><u>Proposed new section 308 - Costs</u> <u>Subject to the provisions of this Bill, or any other enactment or Rules, the award of cost shall be on indemnity basis.</u></p>	
<p><u>Current section 297 Proposed new section 309 - Further appeals</u> An appeal against the decision of the Court of Appeal at the instance of either party or the Commission shall lie to the Supreme Court.</p>	<p><u>Proposed new section 309- Further appeals</u> Retained</p>	

PART XX:	MISCELLANEOUS	
<u>Current section 298 - Powers of Minister to issue directives</u> Without prejudice to the foregoing provisions of this Act, the Minister may give to the Commission such directives as appear to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply.	<u>Current section 298 - Powers of Minister to issue directives</u> Recommended for deletion	The provision is recommended for deletion since it is suggested that the Commission report directly to the President. The President is already presumed to have the power of direction as long as he is acting in consonance with the provisions of the Bill.
<u>Current section 299 – Power to administer oath</u> Subject to any legislation governing the administration of oaths, the Commission shall have the powers to administer oath on any person.	<u>Current section 299 – Power to administer oath</u> Provision recommended for deletion here.	It is suggested that the provision would be more appropriately situated under Powers of the Commission.
<u>Current section 300 Proposed new section 310 - Delegation</u> The Commission may, by general or special order in writing delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as	<u>Proposed new section 310 - Delegation</u> The Commission may, by general or special order in writing delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and	

<p>may be specified in the order, such of its powers and functions under this Act as it may deem necessary</p>	<p>functions under this <u>Bill</u> as it may deem necessary.</p>	
<p><u>Current section 301 Proposed new section 311 - _____ Legal Proceedings and Right to represent Commission before court or Tribunal.</u></p>	<p><u>Proposed new section 311 - _____ Legal Proceedings and Right to represent Commission before court or Tribunal.</u></p> <p>(1)<u>Except as otherwise specifically provided under the provisions of this Bill, no suit against the Commission for any act done in pursuance or execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve months after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months after the ceasing thereof.</u></p> <p>(2)<u>No suit shall be commenced against the Commission before the expiration of a period of 28 days after written notice of intention to commence the suit shall have been served upon the Commission by the intending plaintiff or his agent; and the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.</u></p>	

<p>Any legal practitioner employed by the Commission shall be entitled to represent the Commission before any court or the Tribunal.</p>	<p><u>(3)</u> Any legal practitioner employed by the Commission shall be entitled to represent the Commission before any court or the Tribunal.</p>	
<p><u>Current section 302 - Proposed new section 312- Protection of action taken in good faith.</u></p> <p>No suit, prosecution or other legal proceedings shall lie against any officer, member or other employee of the Commission for anything which is done in good faith or intended to be done under this Act or the rules and regulations made thereunder.</p>	<p><u>Proposed new section 312 - Protection of action taken in good faith.</u></p> <p>No suit, prosecution or other legal proceedings shall lie against any officer, member or other employee of the Commission for anything which is done in good faith or intended to be done under this <u>Bill</u> or the rules and regulations made thereunder.</p>	
<p><u>Current section 303 - Proposed new section 313 - Penalty</u></p> <p>(1). Except as otherwise specifically provided under the provisions of this Act, any person who violates or contribute in the violation of the provisions of this Act or of any rule and regulation made thereunder is liable to a penalty of not less than N100,000 and a further sum of N5,000 per day for every day that the violation</p>	<p><u>Proposed new section 313- Penalty</u></p> <p>(1). Except as otherwise specifically provided under the provisions of this <u>Bill</u>, any person who violates or contribute in the violation of the provisions of this <u>Bill</u> or of any rule and regulation made thereunder shall be liable to such penalty <u>as may be prescribed by the Commission from time to time</u>;</p>	<p>It is recommended that the general provision on penalties not specifically provided for in the ISA, 2007 be deleted to give the Commission the discretion, in its rules, impose such sanctions as it deems appropriate, given the nature or severity of the offence committed.</p>

~~continues.~~

(2) The Commission may in addition to any penalty that may be prescribed under this ~~Act~~, direct any person who has contravened of any of the provisions of this ~~Act~~ and any regulation made thereunder, to compensate any person who may have suffered any direct loss as a result of the contravention.

(3) In appropriate cases, the Commission may also direct the forfeiture to the victim, any direct benefit or advantage received or receivable by the person in contravention.

(4) Notwithstanding the provisions of subsections (2) and (3), of this section the complainant of a contravention may seek by action, consequential or punitive damages or any other remedy that may be available under the law.

(2) The Commission may in addition to any penalty that may be prescribed under this Bill, direct any person who has contravened any of the provisions of this Bill and any regulation made thereunder, to compensate any person who may have suffered any direct loss as a result of the contravention.

(3) Retained

(4) Retained.

<p>(5) In the exercise of its powers to impose a penalty under this Act, the Commission shall accord the person in violation a fair hearing.</p>	<p>(5) In the exercise of its powers to impose a penalty under this <u>Bill</u>, the Commission shall accord the person in violation a fair hearing.</p>	
<p><u>Proposed new section 314 -</u></p>	<p><u>Proposed new section 314 - General offences</u></p> <p><u>Except as otherwise specifically provided under the provisions of this Bill -</u></p> <p><u>(1) A person who willfully obstructs or interrupts the Commission in the discharge of its functions of exercise of its powers under this Bill commits an offence and liable on conviction to imprisonment for a term not less than two years or to a fine not less than N5,000,000 or to both fine and imprisonment.</u></p> <p><u>(2) A person who destroys any record which may be required by the Commission for the discharge of any of its functions under this Bill, with intent to mislead the commission or to prevent or impede any investigation or inquiry under this Bill, commits an offence and liable on conviction to a term of three years imprisonment or to a fine not less than N5,000,000 or to both fine and imprisonment.</u></p> <p><u>(3) Any person who provides any information or furnishes any document which is false,</u></p>	<p>The proposed amendment is intended to empower the Commission to proceed against persons who deliberately or willfully obstruct the Commission from carrying out its functions under this Bill.</p>

	<p><u>misleading, or from which there is a material omission, commits an offence and is liable on conviction to imprisonment for a term of not less than three years or to a fine of not less than N5,000,000;</u></p> <p><u>(4) Any person who willfully disobeys any directive of the Commission made in pursuance of its powers, functions or objectives under this Bill commits an offence and liable on conviction to imprisonment for a term not less than two years or to a fine not less than N5,000,000 or to both such fine and imprisonment.</u></p> <p><u>(5) Any person who</u></p> <p><u> (i) uses any device, scheme, or artifice to defraud; or</u></p> <p><u> (ii) engages in any act, practice or course of business which operates or would operate as a fraud on any person;</u></p> <p><u>commits an offence and shall be liable on conviction to a term of imprisonment not less than three years or a fine of not less than N5,000,000 in addition to such other penalty as may be prescribed under this Bill and the rules and regulations;</u></p>	
<p><u>Current section 304 - Proposed new section 315 - Criminal prosecution</u> Where in the course of its</p>	<p><u>Proposed new section 315- Right to appear in Court.</u></p>	

<p>investigation, the Commission discovers evidence of possible criminality, the Commission shall be obliged to pass such information to the appropriate criminal prosecuting authorities, such as, the office of the Attorney General of the Federation, the Attorney General of a State and the Economic and Financial Crimes Commission.</p>	<p>(1) <u>Subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, any legal practitioner in the employment of the Commission may with the consent of the Executive Chairman, prosecute or defend criminal or other proceedings in the name of and on behalf of the Commission in respect of matters relating to the Nigerian capital market in the course of carrying out the objectives of this Bill.</u></p> <p>(2) <u>Notwithstanding the provisions of any enactment to the contrary, a person appointed under this provision of this Bill, who is a legal practitioner shall, while so appointed be entitled to represent the Commission as legal practitioner for the purpose and in the course of his employment, without prejudice to the power of the Commission to engage private legal practitioners in any proceedings.</u></p>	<p>The right of lawyers of the Commission This provision is recommended to provide further security for prospective bondholders and private legal practitioners to appear in court to represent the Commission in criminal and other matters has become necessary as a result of lack of diligent prosecution by the relevant criminal prosecuting authorities.</p>
<p><u>Current section 305 - Proposed new section 316 - Offences by companies and market participants</u></p> <p>(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was</p>	<p><u>Proposed new section 316 - Offences by companies and market participants</u></p> <p>(1) Where an offence under this Bill has been committed by a company <u>or market participant</u>, every person who at the time the offence was committed was in charge of, and was responsible to, the company <u>or market</u></p>	<p>To align the provision with the actual intendment of the law.</p>

<p>committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against.</p> <p>(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against.</p> <p>(3) If the Commission is satisfied that a person (corporate or individual)-</p> <p>(a) is engaged or has engaged in any form of market abuse or other violations under this Act; or</p>	<p><u>participant</u> for the conduct of the business of the company, as well as the company <u>or market participant</u>, shall be deemed to be guilty of the offence and shall be liable to be proceeded against.</p> <p>(2) Notwithstanding anything contained in subsection (1), where an offence under this <u>Bill</u> has been committed by a <u>company or market participant</u> and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company <u>or market participant</u>, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against.</p> <p>(3) If the Commission is satisfied that a person (corporate or individual)-</p> <p>(a) is engaged or has engaged in any form of market abuse or other violations under this <u>Bill</u>; or</p>	
--	--	--

<p>(b) by taking or refraining from taking any action, has required or encouraged another person or persons to engage in behaviour which if engaged in by a market participant or company would amount to market abuse or violation under this Aet, it may impose on the person a penalty of such amount or of such nature as it considers appropriate.</p> <p>(c) where the Commission is entitled to impose a penalty on a person, it may impose a penalty on the person, or in addition, publish a statement to the effect that the person has engaged in market abuse or violation under this Aet.</p>	<p>(b) by taking or refraining from taking any action, has required or encouraged another person or persons to engage in behaviour which if engaged in by a market participant or company would amount to market abuse or violation under this Bill, it may impose on the person a penalty of such amount or of such nature as it considers appropriate.</p> <p>(c) where the Commission is entitled to impose a penalty on a person, it may impose a penalty on the person, or in addition, publish a statement to the effect that the person has engaged in market abuse or violation under this Bill.</p>	
<p><u>Current section 306 - Proposed new section 317 - Offences by companies and market participants</u></p> <p>(1) An employee of a capital market operator or public company shall have the right to disclose any information connected with the activities of his work place which tends to show one or more of the following-</p>	<p><u>Proposed new section 317 - Offences by companies and market participants</u></p> <p>Subsections (1) to (4) retained</p>	

(a) that a criminal offence has been, is being or is likely to be committed;

(b) that a person has failed, is failing, is likely to fail or otherwise omitted to comply with any legal obligation to which he is subject;

(c) that any disclosure tending to show any matter falling within (a) or (b) above has been, is being or is likely to be deliberately concealed.

(2) For the purpose of subsection (1) of this section, it shall be immaterial whether the relevant failure occurred, occurs or would occur in Nigeria or elsewhere, and whether the law applying to it is that of Nigeria or any other country or territory.

(3) A disclosure is made in accordance with subsection (1) of this section if the employee-

(a) makes the disclosure in good faith-

(i) to his employer;

<p>(i) where his employer fails, refuses or omits to act, to the Commission; or</p> <p>(ii) where the relevant failure or omission relates solely or mainly to the conduct of a person other than his employer, or any other matter for which a person other than his employer has legal responsibility, to that other person.</p> <p>(b) the employee reasonably believes that the information disclosed and any allegation contained in it, are substantially true; and</p> <p>(c) in all the circumstances of the case, it is reasonable for the employee to make the disclosure.</p> <p>(4) In determining whether it is reasonable for the employee to make the disclosure, regard shall be had to the following-</p> <p>(a) the identity of the person to whom the disclosure is made;</p> <p>(b) the seriousness of the relevant</p>		
---	--	--

failure, or omission;

(c) whether the relevant failure is continuing or is likely to occur in the future.

(5) No employer shall subject an employee to any detriment by any act or any deliberate failure to act on the ground that the employee has made a disclosure in accordance with the provisions of this Act.

(6) Where an employee has been subjected to any detriment in contravention of subsection (5) of this section, he may present a complaint to the Commission.

(7) Upon receipt by the Commission of such complaint, the Commission shall cause an investigation to be carried out and if satisfied that the provision of this section has been contravened, the Commission shall direct the affected capital market operator or public company to reinstate the

(5) No employer shall subject an employee to any detriment by any act or any deliberate failure to act on the ground that the employee has made a disclosure in accordance with the provisions of this [Bill](#).

Subsections (6) to (12) retained

affected employee or pay compensation in accordance with subsection (9) of this section within one (1) month of such directive.

(8) Where the detriment suffered is other than dismissal or termination, the Commission shall direct the capital market operator or public company to restore the affected employee to his appropriate position within one (1) month of such directive.

(9) Any employee relieved of his employment without any just cause other than for reason of disclosure made pursuant to the provision of this section shall be entitled to a compensation which shall be calculated as if he had attained the maximum age of retirement or had served the maximum period of service, in accordance with his conditions of service.

(10) Any capital market operator

<p>or public company which contravenes the provisions of this section is liable to a penalty not exceeding ₦5,000,000 in addition to the payment of compensation to the employee in accordance with subsection (9) of this section.</p> <p>(11) For the purpose of this section, "detriment" includes dismissal, termination, redundancy, withholding of benefits and entitlements, suspension and any other act that has negative impact on the employee.</p> <p>(12) Apart from the provisions of the Constitution of the Federal Republic of Nigeria, any provision in any other law or agreement that precludes the application of this section shall be void</p>		
<p><u>Current section 307- Proposed new section 318 - Change of name of capital market operators, managers, portfolio or collective investment scheme and change of shareholding or directors.</u></p> <p>(1) A capital market operator may</p>	<p><u>Proposed new section 318 - Change of name of capital market operators, managers, portfolio or collective investment scheme and change of shareholding or directors.</u></p> <p>(1) Retained</p>	

not without the prior approval in writing of the Commission-

(a) change the name under which it is registered under this Act or change its shareholding or directors;

(b) use or refer to itself by a name other than the name under which it is so registered or a literal translation thereof;

(c) use or refer to itself by an abbreviation or a derivative of such name.

(2) Any change-

(a) in the name of a capital market operator, manager, portfolio or scheme; or

(b) of shareholding or directors, shall not be effective without the prior approval in writing of the Commission

(2) Retained

(3) An exchange holding company shall not

	<p><u>effect a change in its controlling shareholding without the prior approval of the Commission.</u></p>	
<p><u>Current section 308- Proposed new section 319- Removal of Appointees</u></p> <p>(1) The Commission may by notice require a capital market operator to terminate the appointment of a director or officer of that capital market operator, if the director or officer is no longer a fit and proper person to hold the office in question.</p> <p>(2) When the Commission intends to act as in subsection (1) of this section, the Commission shall give notice to the capital market operator, and, unless it is impracticable to do so, the director or officer concerned, of the Commission 's intention and the reasons therefor, and the director or officer shall thereupon cease to perform the functions of the office in question pending the final outcome of any appeal (if any) to the Tribunal under the provisions of this Act.</p>	<p><u>Proposed new section 319- Removal of Appointees and cancellation of registration</u></p> <p>(1) Retained.</p> <p>(2) When the Commission intends to act as in subsection (1) of this section, the Commission shall give notice to the capital market operator, and, unless it is impracticable to do so, the director or officer concerned, of the Commission's intention and the reasons <u>thereof</u>, and the director or officer shall thereupon cease to perform the functions of the office in question pending the final outcome of any appeal (if any) to the Tribunal under the provisions of this <u>Bill</u>.</p> <p><u>(3) Where an officer of a capital market operator has contravened, failed or refused to comply with the provisions of this Bill or any regulations made there under, the Commission may, after giving an opportunity of being heard,</u></p>	

	<p><u>the Commission suspend or remove that officer from office.</u></p> <p><u>(4) Where the Commission, after giving an officer of a capital market operator an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with any provision of this Bill or any regulations made thereunder, the Commission may in the public interest or for the protection of investors, direct the capital market operator to suspend or remove the officer from office and where the capital market operator fails to comply with the directive of the Commission, the Commission may suspend or remove the officer from office.</u></p> <p><u>(5) The Commission may suspend or cancel a certificate of registration granted to a capital market operator who violates the provisions of this Bill provided no cancellation shall be made unless the person concerned has been given a reasonable opportunity of being heard.</u></p>	
<p><u>Current section 309- Proposed new section 320- Power to Exempt</u></p> <p>If the Minister is of the opinion and after consultation with the Commission, that it is necessary or expedient so to do in the public interest, he may, by order published in the Gazette, exempt</p>	<p><u>Proposed new section 320- Power to Exempt</u></p> <p>If the <u>President</u> is of the opinion and after consultation with the Commission, that it is necessary or expedient so to do in the public interest, he may, by order published in the Gazette, exempt any person or class of persons</p>	<p>To align with earlier provisions which have recommended that the Commission report directly to the President of the Federal Republic of Nigeria.</p>

<p>any person or class of persons buying or selling securities or otherwise dealing with the securities market from the operation of the provisions of this Act.</p>	<p>buying or selling securities or otherwise dealing with the securities market from the operation of the provisions of this Bill.</p>	
<p><u>Current section 310- Proposed new section 321- Committees of the Commission.</u></p> <p>(1) The Commission may appoint one or more committees to carry out, on its behalf such of its functions as the Commission may determine.</p> <p>(2) A committee appointed under subsection (1) of this section shall consist of such number of persons as may be determined by the Commission; and a person other than a member of the Commission shall hold office on the committee in accordance with the terms of his appointment.</p> <p>(3) A decision of a committee of the Commission shall be of no effect until it is confirmed by the Commission.</p>	<p><u>Proposed new section 321- Committees of the Commission.</u></p> <p>Retained</p>	

<p><u>Current section 311- Proposed new section 322- Seal of the Commission</u></p> <p>(1) The fixing of the seal of the Commission shall be authenticated by the signature of the Director-General and the Secretary or any two members of the Commission duly authorised in that regard.</p> <p>(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed by or on behalf of the Commission by the Chairman or any person specially authorised to act for that purpose by the Commission.</p> <p>(3) Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.</p>	<p><u>Proposed new section 322- Seal of the Commission</u></p> <p>(1) The fixing of the seal of the Commission shall be authenticated by the signature of the <u>Executive Chairman</u> and the Secretary or any two members of the Board duly authorised in that regard.</p> <p>(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed by or on behalf of the Commission by the <u>Executive</u> Chairman or any person specially authorised to act for that purpose by the <u>Board</u>.</p> <p>(3) Retained</p>	<p>It is recommended that the use of the word “Commission” to refer to activities reserved for the Board should be amended to read “Board”. This is intended to create a clear delineation between the Board and the management of the Commission.</p>

<p>(4) The validity of any proceedings of the Commission or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Commission or committee, or by any defect in the appointment of a member of the Commission or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the Commission or committee.</p>	<p>(4) The validity of any proceedings of the <u>Board</u> or of a committee thereof shall not be adversely affected by any vacancy in the membership of the <u>Board</u> or committee, or by any defect in the appointment of a member of the <u>Board</u> or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the <u>Board</u> or committee.</p>	
<p><u>Current section 312- Proposed new section 323- Application and relevance of other laws not barred.</u></p> <p>(1) Notwithstanding the provisions of this Act the relevant provisions of all existing enactments, including the following-</p> <p>(a) the Trustees Investments Act;</p> <p>(b) the Borrowing by Public Bodies Act;</p> <p>(c) the Companies and Allied Matters Act;</p>	<p><u>Proposed new section 323- Application and relevance of other laws not barred</u></p> <p>(1) Notwithstanding the provisions of this <u>Bill</u> the relevant provisions of all existing enactments, including the following-</p> <p>(a) the Trustees Investments Act;</p> <p>(b) the Borrowing by Public Bodies Act;</p> <p>(c) the Companies and Allied Matters Act;</p> <p>(d) the Insurance Act;</p>	

<p>(d) the Insurance Act;</p> <p>(e) the Central Bank of Nigeria Act;</p> <p>(f) the Nigeria Social Insurance Trust Fund Act;</p> <p>(g) the Banks and Other Financial Institutions Act;</p> <p>(h) the Nigerian Investment Promotion Act;</p> <p>(i) the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act;</p> <p>(j) the Chartered Institute of Stockbrokers Act, shall be read with such modification as to bring them into conformity with the provisions of this Act in relation to capital market matters.</p> <p>(2) Without prejudice to the generality of subsection (1) of this section, the provisions of this Act shall be in addition to the application of other laws not barred and not in derogation of the provisions of any other law or</p>	<p>(e) the Central Bank of Nigeria Act;</p> <p>(f) the Nigeria Social Insurance Trust Fund Act;</p> <p>(g) the Banks and Other Financial Institutions Act;</p> <p>(h) the Nigerian Investment Promotion Act;</p> <p>(i) the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act;</p> <p><u>(j) Pension Reform Act;</u></p> <p><u>(k) Nigeria Sovereign Investment Authority Act;</u></p> <p>(j) the Chartered Institute of Stockbrokers Act, shall be read with such modification as to bring them into conformity with the provisions of this <u>Bill</u> in relation to capital market matters.</p> <p>(2) Without prejudice to the generality of subsection (1) of this section, the provisions of this <u>Bill</u> shall be in addition to the application of other laws not barred and not in derogation of the provisions of any other law or enactment for the time being in</p>	
--	--	--

<p>enactment for the time being in force.</p> <p>(3) Apart from the Constitution of the Federal Republic of Nigeria, if the provisions of any other law, in relation to capital market matters including the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.</p>	<p>force.</p> <p>(3) Apart from the Constitution of the Federal Republic of Nigeria, if the provisions of any other law, in relation to capital market matters including the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this <u>Bill</u>, the provisions of this <u>Bill</u> shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.</p>	
<p><u>Current section 313- Proposed new section 324- Rules and regulations.</u></p> <p>(1) The Commission may, from time to time, make rules and regulations for the purpose of giving effect to the provisions of this Act and may in particular and without prejudice to the generality of the foregoing provisions, make rules and regulations-</p> <p>(a) to alter or modify, from time to time, in consultation with the</p>	<p><u>Proposed new section 324- Rules and regulations</u></p> <p>(1) The Commission may, from time to time, make rules and regulations for the purpose of giving effect to the provisions of this <u>Bill</u> and may in particular and without prejudice to the generality of the foregoing provisions, make rules and regulations-</p> <p>(a) to alter or modify, from time to time, the provisions of the Second Schedule to this <u>Bill</u>;</p>	<p>The deletion of “consultation with the Minister” is recommended to expedite the rule making process while ensuring the</p>

<p>Minister, the provisions of the Second Schedule to this Act;</p> <p>(b) prescribing the forms for returns and other information required under this Act;</p> <p>(c) prescribing the procedure for obtaining any information required under this Act;</p> <p>(d) requiring returns to be made within the period specified therein by any company or enterprise to which this Act applies;</p> <p>(e) prescribing the procedure and criteria for approval of mergers, take-overs, acquisitions and business combinations under this Act;</p> <p>(f) prescribing any fees payable under this Act;</p> <p>(g) prescribing the procedure and criteria for regulating cross border offerings, listing and trading of securities by foreign issuers;</p>	<p>(b) prescribing the forms for returns and other information required under this <u>Bill</u>;</p> <p>(c) prescribing the procedure for obtaining any information required under this <u>Bill</u>;</p> <p>(d) requiring returns to be made within the period specified therein by any company or enterprise to which this <u>Bill</u> applies;</p> <p>(e) prescribing the procedure and criteria for approval of mergers, take-overs, acquisitions and business combinations under this <u>Bill</u>;</p> <p>(f) prescribing any fees payable under this <u>Bill</u>;</p> <p>(g) prescribing the procedure and criteria for regulating cross border offerings, listing and trading of securities by foreign issuers;</p>	<p>independence of the Commission.</p>
---	--	--

(h) prescribing that the provisions of this ~~Act~~ shall not apply or shall apply with such modifications (if any) as may be specified in the regulations to any person or class of persons or any securities or class of securities or to any transaction;

(i) prescribing the information to be contained in any prospectus or offer documents filed under this ~~Act~~;

(j) prescribing the procedure, criteria for the authorisation, revocation and operation of collective investment schemes including prudential and product regulation;

(k) prescribing the activities which constitute "insider dealings" the rules governing dealings in securities by insiders and defining the term "insider dealings";

(l) without prejudice to the provisions of the Companies and Allied Matters Act specifying for

(h) prescribing that the provisions of this Bill shall not apply or shall apply with such modifications (if any) as may be specified in the regulations to any person or class of persons or any securities or class of securities or to any transaction;

(i) prescribing the information to be contained in any prospectus or offer documents filed under this Bill;

(j) to (n) retained

the protection of investors-

(i) the matters to be disclosed relating to the public issue of securities, transfer of securities of public companies and other matters incidental thereto;

(ii) the returns that are required to be filed by all public companies;

(iii) the form, manner and procedure for obtaining proxies including the information to be disclosed to investors before proxies are given by any person; and

(iv) the manner in which such matters shall be disclosed by the companies.

(m) prescribing the requirement for the identification of persons doing business with capital market operators;

(n) prescribing as it deems

<p>appropriate, necessary rules for dealing with unclaimed dividends and unclaimed certificates by public companies and their agents;</p> <p>(o) providing for anything requiring to be prescribed under this Act; and</p> <p>(p) generally for carrying out the principles and objectives of this Act.</p> <p>(2) The Commission shall in the exercise of powers to make rules in this section consult with stakeholders.</p> <p>(3) Any instrument issued under subsection (1) of this section shall be under the signature of the Director General of the Commission and the Secretary or any two members as may be authorised.</p> <p>(4) Any regulation under this Act shall be deemed made fifteen days after receipt by the Minister unless the Minister, before the expiration of the fifteen days, directs that it be</p>	<p>(o) providing for anything requiring to be prescribed under this <u>Bill</u>; and;</p> <p>(p) generally for carrying out the principles and objectives of this <u>Bill</u>.</p> <p>(2) Retained.</p> <p>(3) Any instrument issued under subsection (1) of this section shall be under the signature of the <u>Executive Chairman</u> of the Commission and the Secretary or any two members as may be authorised.</p>	<p>The deletion of “consultation with the Minister” is recommended to expedite the rule making process while ensuring the independence of the Commission. Where rules are approved by the</p>
--	--	---

<p>modified, amended or rescinded.</p> <p>(5) Every regulation made by the Commission shall be published in the Gazette or any official document.</p> <p>(6) Notwithstanding the provisions of subsection (1) of this section the Commission may, from time to time, amend or revoke rules or regulations for purposes of giving effect to the provisions of this Act and the rules and regulations made thereunder.</p> <p>(7) Any regulations or rules made under this Act may, where appropriate, prescribe penalties for default.</p>	<p>(4) Notwithstanding the provisions of subsection (1) of this section the Commission may, from time to time, amend or revoke rules or regulations for purposes of giving effect to the provisions of this <u>Bill</u> and the rules and regulations made thereunder.</p> <p>(5) Any regulations or rules made under this <u>Bill</u> may, where appropriate, prescribe penalties for default.</p>	<p>Board, a time limit is not required in the law.</p> <p>The deletion is recommended to align with the actual practice where the rules and regulations of the Commission are posted on its website.</p>
<p><u>Current section 314- Proposed new section 325- Repeals and Savings</u></p> <p>(1) The Investments and Securities Act No 45, 1999 is repealed.</p> <p>(2) It is hereby declared that without limiting the provisions of</p>	<p><u>Proposed new section 325- Repeals and Savings</u></p> <p>(1) The Investments and Securities Act <u>No 29, 2007</u> is repealed.</p> <p>(2) It is hereby declared that without limiting the provisions of the Interpretation Act, the</p>	

<p>the Interpretation Act, the repeal of the Act shall not affect any document made or anything whatsoever done or purported to have been done under the enactment so repealed.</p> <p>(3) Every order , requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under the enactment repealed by this Act shall, if in force at the commencement of this Act, continue in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.</p>	<p>repeal of the Act shall not affect any document made or anything whatsoever done or purported to have been done under the enactment so repealed.</p> <p>(3) Every order, requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under the enactment repealed by this Bill shall, if in force at the commencement of this Bill, continue in force and have effect as if made, issued, given or done under the corresponding provisions of this Bill.</p>	
<p>PART XXI: INTERPRETATION AND CITATION</p>		
<p><u>Current section 315- Proposed new section 326- Interpretation</u></p> <p>In this Act:</p> <p>"agent" means a person authorised by another to act for or in place of</p>	<p><u>Proposed new section 326- Interpretation</u></p> <p>In this Bill:</p> <p>“agent” definition retained</p>	

<p>him and in relation to a securities dealer, includes a person who is, or has been a banker of the dealer at any given time;</p> <p>"approved securities organisation" means a body corporate which is approved by the Commission under this Act as a securities organization;</p> <p>"associated person" means a subsidiary, affiliate or agent of a member of any capital market operator;</p> <p>"auditor" means a member of a body of accountants, from time to time, recognised by an Act or any other enactment and appointed as auditor of a company or trust by managers with the approval of the trustees;</p> <p>"board" means the board or council, in relation to a securities exchange or capital trade point and includes the persons for the time being in whom the management of</p>	<p>"approved securities organisation" means a body corporate which is approved by the Commission under this <u>Bill</u> as a securities organisation;</p> <p>"associated person" definition retained</p> <p>"auditor" definition retained;</p> <p>"board" means the board or council, in relation to a securities exchange and includes the persons for the time being in whom the management of the securities exchange is vested;</p>	
---	---	--

~~the securities exchange or capital trade point is vested;~~

"book" ~~includes~~ any register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or micro-film, electronic process or otherwise;

"capital market operator" means any persons (individual or corporate), duly registered by the Commission to perform specific functions in the capital market;

~~"capital trade point" means a mini exchange registered by the Commission pursuant to this Bill, which constitutes, maintains or provides market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing, with respect to securities, the functions commonly performed by a securities exchange;~~

"book" means any register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or micro-film, electronic process or otherwise;

"capital market operator" definition retained

Recommended for deletion

<p>"certificate of registration" means any certificate or license issued by the Commission as a part of its registration functions under this Act;</p> <p>"clearing and settlement company" means any corporate body who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities and provides facilities for comparison of data regarding the terms of settlement of securities transaction on or for the allocation of securities settlement responsibilities;</p> <p>"collective investment scheme" means a scheme in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which-</p> <p>(a) two or more investors</p>	<p>"certificate of registration" definition retained</p> <p>"clearing and settlement company" definition retained</p> <p>"collective investment scheme" means a scheme in whatever form, including an open-ended <u>or close ended</u> investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which-</p>	<p>To align with amendment made in the body of the Bill.</p>
---	--	--

<p>contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;</p> <p>(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme authorised by any other Act;</p> <p>"Commission" means the Securities and Exchange Commission established in section 1 of this Act;</p> <p>"company" has the same meaning as defined in the Companies and Allied Matters Act 1990;</p>	<p>(a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;</p> <p>(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme authorised by any other <u>Bill</u>;</p> <p>"Commission" definition retained</p> <p>"company" definition retained;</p> <p><u>“control” means control of an entity by a person who-</u></p> <p><u>(a) beneficially owns more than one half of</u></p>	
---	---	--

the issued share capital or assets of the undertaking;

(b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;

(c) is able to appoint or to veto the appointment of a majority of the directors of the company;

(d) is a holding company, and the company is a subsidiary of that company as contemplated by the Companies and Allied Matters Act.

(e) in the case of an undertaking that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) in the case of the undertaking which is a nominee undertaking, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the nominee undertaking; or

<p>"custodian" means a person who has custody as a bailee of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register as the beneficial owner of the securities;</p> <p>"dealer" means a person engaged in the business of buying and selling of securities for his own account;</p> <p>"dealer's representative" means a person, by whatever name described, in the direct employment of, or acting for, or by arrangement with, a dealer, who performs for that dealer any of the functions of a dealer (other than work ordinarily performed by accountants, clerks</p>	<p><u>(g) has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).</u></p> <p>"custodian" definition retained;</p> <p>"dealer" definition retained;</p> <p>"dealer's representative" definition retained;</p>	
---	--	--

or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise; and includes any director or officer of a body corporate who performs for the body corporate any of those functions (whether or not his remuneration is as aforesaid);

"dealing member" means a body corporate that is a member of a recognised securities exchange and is licensed to engage in dealing in securities on that exchange;

"dealing in securities" means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into-

(a) any agreement for or with a view to acquiring, disposing or subscribing for, or underwriting of securities; or

"dealing member" definition retained;

"dealing in securities" definition retained;

<p>(b) any agreement the purpose or pretended purpose of securing a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;</p> <p>"defalcation" means a default, act of embezzling, failure to meet an obligation, misappropriation of trust funds or money held in any fiduciary capacity and failure to properly account for such funds;</p> <p>"director" has the same meaning as is assigned to it in the Companies and Allied Matters Act;</p> <p>"depository" means a custodian who holds securities on behalf of known investors but whose name appears on the issuer's register as a fiduciary nominee for the benefit of the investors and who operates a system of central handling of securities of a particular class of an</p>	<p>"defalcation" definition retained;</p> <p>"director" definition retained;</p> <p>"depository" definition retained;</p>	
--	---	--

issuer deposited within its system and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of certificates;

"executive officer" in relation to a body corporate, means any person by whatever name called and whether or not he is a director of the body corporate who is concerned or takes part in the management of the body corporate;

"exchange" means any exchange registered by the Commission pursuant to this Act which constitutes, maintains or provides a market place for bringing together, purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by an exchange;

"expert" ~~includes~~ every engineer, legal practitioner, accountant and any other person whose profession

"executive officer" definition retained;

"exchange" definition retained;

"expert" means a person whose profession

<p>gives authority to a statement made by him;</p> <p>"fine" means monies imposed by a court or tribunal as prescribed by this Act;</p> <p>"Government securities" means securities which are direct obligations of and guaranteed as to principal and interest repayment by the Federal Government of Nigeria, or a State or Local Government;</p> <p>"insider" means-</p> <p>(a) any person who is or is connected with the company in one or more of the following capacities-</p> <p>(i) a director of the company or a related company;</p> <p>(ii) an officer of the company or a related company;</p> <p>(iii) an employer of the company or a related company;</p> <p>(iv) an employee of the company,</p>	<p>gives authority to a statement made by him <u>and includes engineer, legal practitioner, accountant and such other persons as may be prescribed by the Commission ;</u></p> <p>"fine" means monies imposed by a court or tribunal as prescribed by this <u>Bill</u>;</p> <p>"Government securities" definition retained;</p> <p>"insider" definition retained</p>	
---	--	--

involved in a professional or business relationship to the company;

(v) any shareholder of the company who owns 5 per cent or more of any class of securities or any person who is or can be deemed to have any relationship with the company or member;

(vi) members of audit committee of a company; and

(b) any of the persons listed in paragraph (a), who by virtue of having been connected with any such person or connected with the company in any other way, possesses unpublished price sensitive information in relation to the securities of the company, and any reference to unpublished price sensitive information in relation to any securities of a company is a reference to information which-

(i) relates to specific matters relating or of concern (directly or

indirectly) to that company, that is, is not of a general nature relating or of concern to that company; and

(ii) is not generally known to those persons who are accustomed to or would be likely to deal in those securities but which would, if it were generally known to them be likely materially to affect the price of those securities;

~~"insider dealing" includes insider trading and occurs when a person or group of persons who being in possession of some confidential and price sensitive information not generally available to the public, utilizes such information to buy or sell securities for the benefit of himself, itself or any person;~~

"investment adviser means a person who carries on a business of advising others concerning securities or who as part of a regular business, issues or publishes analysis or makes reports

"insider dealing" means the utilization of confidential and price sensitive information not generally available to the public to buy or sell securities by people in possession of such confidential and price sensitive information for the benefit of himself, itself or any person;

"investment adviser" definition retained;

Amended for clarity.

concerning securities;

Provided that the term investment adviser shall not include-

(a) a bank as defined in the Banks and Other Financial Institutions Act,

(b) a company or society registered under the Insurance Act,

(c) the proprietor of a newspaper and holder of a permit issued under the Newspapers Act and where-

(i) the newspaper is distributed generally to the public it is distributed only to subscribers to, and purchasers of, the newspaper for value;

(ii) the advice is given or the analysis or reports are issued or published only through that newspaper;

(iii) that no person receives any commission or other consideration for giving the advice or for issuing or publishing the analysis or reports; and

(iv) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor.

"investment adviser's representative" means a person, in the direct employment of or acting for or by arrangement with any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission, or otherwise; and includes any director or officer of a body corporate who performs for such body corporate any of those functions (whether or not his remuneration is as aforesaid);

"listing rules or requirements", in relation to a body corporate which maintains or provides, or proposes to maintain or provide, a stock market for dealing in securities in a securities exchange ~~or capital~~

"investment adviser's representative" definition retained;

"listing rules or requirements", in relation to a body corporate which maintains or provides, or proposes to maintain or provide, a stock market for dealing in securities in a securities exchange means rules governing or relating to :-

~~trade point~~ means rules governing or relating to :-

(a) the admission to the official list of the body corporate, or bodies corporate, governments, or other persons for the purpose of quotation on the stock market, or made available by bodies corporate, governments, unincorporated bodies or other persons or the removal from that official list and for other purposes; or

(b) the activities or conduct of bodies corporate, governments, and other persons who are admitted to that list, whether those rules:-

(i) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or

(ii) are made by another person and adopted by the body corporate;

"market maker" means any

(a) the admission to the official list of the body corporate, or bodies corporate, governments, or other persons for the purpose of quotation on the stock market, or made available by bodies corporate, governments, unincorporated bodies or other persons or the removal from that official list and for other purposes; or

(b) the activities or conduct of bodies corporate, governments, and other persons who are admitted to that list, whether those rules:-

(i) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or

(ii) are made by another person and adopted by the body corporate;

"market maker" definition retained;

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

"market participant" means any person (individual or corporate) involved in any aspect of capital market transaction or operation under this Bill;

"member company" means a company which carries on business of dealing in securities and is recognised as a member company by a securities exchange ~~or capital trade point~~;

"Minister" means the minister responsible for matters relating to finance;

"market participant" definition retained;

"member company" means a company which carries on business of dealing in securities and is recognised as a member company by a securities exchange;

"Minister" means the minister responsible for matters relating to finance;

<p>"Ministry" means Ministry of Finance;</p> <p>"open-ended investment company" means a company with an authorised share capital whose articles of association authorises the acquisition of its own shares structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of shares representing a separate portfolio with a distinct investment policy;</p> <p>"partnership" means a business association owned by two or more persons that is not organised as a company or corporation;</p> <p>"penalty" means administrative or civil fines imposed by the Commission and payable to the Commission;</p>	<p>"Ministry" means Ministry of Finance;</p> <p>"open-ended investment company" definition retained</p> <p>"partnership" definition retained</p> <p>;</p> <p>"penalty" definition retained</p> <p><u>"Person" means an individual , body corporate, firm or other entity</u></p>	
---	--	--

<p>"portfolio" means a group of assets including any amount of cash;</p> <p>"portfolio investment" means an investment in shares or other securities traded on a securities exchange or capital trade point;</p> <p>"promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion of it , but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and</p> <p>"prospectus" means any written or electronic information, notice, advertisement or other forms of invitation offering to the public for subscription or purchase, any shares, debentures or other approved and recognised securities of a company and other issues or scheme</p>	<p>"portfolio" definition retained ;</p> <p>"portfolio investment" definition retained ;</p> <p>"promoter" definition retained ; and</p> <p>"prospectus" definition retained;</p>	
---	---	--

<p>"public officer" means any person working in the public service of the Federation or of a State as defined in the Constitution of the Federal Republic of Nigeria;</p> <p>"quotation", in relation to securities and in relation to a stock market of a securities exchange or capital trade point includes the displaying or providing, on a stock market of a securities exchange or capital trade point, information concerning :-</p> <p>(a) prices or considerations; in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that stock market;</p> <p>(b) offers or invitations; in a case where offers or invitations are made on that stock market, being offers or invitations which are intended, or may reasonably be expected, to result, whether</p>	<p>"public officer" definition retained;</p> <p>"quotation", in relation to securities and in relation to a stock market of a securities exchange includes the displaying or providing, on a stock market of a securities exchange, information concerning :-</p> <p>(a) to (c) retained</p>	
--	--	--

directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration, those prices or that consideration; or

(c) in any case, the price at which, or the consideration for which, particular persons or particular classes of persons, propose or may reasonably be expected to sell, purchase or exchange the securities;

"related company" in relation to a company, means anybody corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company;

"relevant authority" means-
(a) in relation to a member company, the securities exchange ~~or capital trade point~~ by which the company is recognized;

"rules", in relation to a securities

"related company" definition retained;

"relevant authority" means-
(a) in relation to a member company, the securities exchange by which the company is recognized;

"rules", in relation to a securities exchange,

~~exchange or capital trade point,~~
means the rules governing the members by whatever name called and wherever contained and includes rules contained in the memorandum of association and the articles of association of the securities exchange ~~or a capital trade point~~;

"securities" means-

(a) debentures, stocks or bonds issued or proposed to be issued by a government;

(b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate;

(c) any right or option in respect of any such debentures, stocks, shares, bonds or notes;

or

(d) commodities futures, contracts, options and other derivatives, and the term securities in this Act

means the rules governing the members by whatever name called and wherever contained and includes rules contained in the memorandum of association and the articles of association of the securities exchange;

"securities" definition retained

includes those securities in the category of the securities listed in (a) - (d) above which may be transferred by means of any electronic mode approved by the Commission and which may be deposited, kept or stored with any licensed depository or custodian company as provided under this Act

"securities dealer" means a firm who is a member of a securities exchange or capital trade point or any other recognized place for securities transactions, engaged in the business of effecting transactions in securities for his own account, or on the account of others or both;

"securities exchange" means ~~an exchange or approved trading facility such as a commodity exchange, metal exchange, petroleum exchange, options, futures exchanges, over the counter market, and other derivatives exchanges;~~

"securities dealer" means a firm who is a member of a securities exchange or any other recognized place for securities transactions, engaged in the business of effecting transactions in securities for his own account, or on the account of others or both;

"securities exchange" means any organization, association, or group of persons, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by an exchange as that term is generally understood,

and includes the market place and the market facilities maintained by such exchange.

The term “facility” when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. ;

"securities lending" means the temporary exchange of securities, generally for cash or other securities of at least an equivalent value, with an obligation to redeliver a like quantity of the same securities on a future date and includes securities loan, repurchase agreement (Repos) and self-buy back agreements;

"self regulatory organisation" means any registered securities exchange, ~~capital trade point~~, an

"securities lending" definition retained

"self regulatory organisation" means any registered securities exchange, an association of securities dealers, clearing house, capital

association of securities dealers, clearing house, capital market trade association or any other self regulatory body approved as such, by the Commission;

"share" means a proprietary interest in the share capital of a body corporate and except where a distinction between stock and shares is expressed or implied, includes stock;

"share certificate" means an instrument of a body corporate certifying that the person named is entitled to a certain number of shares and is prima facie evidence of his ownership whether electronically expressed or otherwise as may be approved by the Commission and kept, lodged or stored with a licensed depository or custodian company in accordance with the provisions of this Act;

"stockbroker" means a member of the Chartered Institute of

market trade association or any other self regulatory body approved as such, by the Commission;

"share" means a proprietary interest in the share capital of a body corporate and except where a distinction between stock and shares is expressed or implied, includes stock;

"share certificate" means an instrument of a body corporate certifying that the person named is entitled to a certain number of shares and is prima facie evidence of his ownership whether electronically expressed or otherwise as may be approved by the Commission and kept, lodged or stored with a licensed depository or custodian company in accordance with the provisions of this [Bill](#);

"stockbroker" means a member of the

Stockbrokers recognized by an Act, or any other enactment, registered by the Commission as a market operator or a dealing member of a securities exchange or ~~capital trade point~~, or any other recognized mode of securities transaction and engaged in the business of effecting transactions in securities;

"stock market" or other place or facility at which or on which securities are traded;

"transfer agent or registrar" means any person engaged on behalf of an issuer of securities or on behalf of itself in-

- (a) creating and maintaining the register of members of an issuer;
- (b) counter-signing such securities upon issuance;
- (c) monitoring the issuance of such securities with a view to

Chartered Institute of Stockbrokers recognized by an Act, or any other enactment, registered by the Commission as a market operator or a dealing member of a securities exchange or any other recognized mode of securities transaction and engaged in the business of effecting transactions in securities;

"stock market" means a securities exchange or other place or facility at which or on which securities are traded;

“surplus or return monies” means monies payable to subscribers for over subscriptions, unallotted shares and for aborted offers.

"transfer agent or registrar" definition retained

preventing unauthorised issuance, a function commonly performed by a person called a registrar;

(d) registering the transfer of such securities;

(e) exchanging or converting such securities;

(f) transferring, record ownership of such securities by book-keeping entry without physical issuance of securities certificates;

"trust account" means:

(a) an account established under a trust deed in relation to the provisions of this ~~Act~~; or

(b) an account kept by a capital market operator on behalf of his client under the provisions of this ~~Act~~"

"trust deed" means the agreement drawn up between the trustees and the managers or between such persons approved by

"trust account" means:

(a) an account established under a trust deed in relation to the provisions of this Bill; or

(b) an account kept by a capital market operator on behalf of his client under the provisions of this Bill "

"trust deed" means the agreement drawn up between the trustees and the managers or between such persons approved by the Commission and in

the Commission and in relation to the provisions of this ~~Act~~ for regulating the operations of a collective investment scheme or other approved schemes, funds, debentures, bonds or market operations;

"trustee" means, a person registered by the Commission to so act, and in whom the property for the time being, subject to any trust created in pursuance of an approved scheme or operation, is or may be vested, in accordance with the terms of the trust;

"underwriter" means a person registered by the Commission who has temporarily purchased securities from an issuer with a view to offering or selling the securities for the issuer in connection with the distribution of such securities or participates or has a direct or indirect participation in any such undertaking; but does not include a person whose interest is limited to a commission from an

relation to the provisions of this Bill for regulating the operations of a collective investment scheme or other approved schemes, funds, debentures, bonds or market operations;

"trustee" definition retained;

"underwriter" definition retained ;

<p>underwriter or a dealer not in excess of the usual and customary distributor's or seller's commission;</p> <p>"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under a unit trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property;</p> <p>"units" in relation to a unit trust scheme, means sub-divisions of beneficial interest in the assets of a unit trust scheme or of any other trust scheme created under this Act.</p>	<p>"unit trust scheme" definition retained;</p> <p>"units" in relation to a unit trust scheme, means sub-divisions of beneficial interest in the assets of a unit trust scheme or of any other trust scheme created under this Bill.</p>	
--	--	--