REPORT OF THE LEGISLATIVE/BILLS REVIEW COMMITTEE- WAREHOUSE RECEIPT BILL, FINANCIAL REPORTING COUNCIL ACT & PENSION REFORM ACT

The Committee was inaugurated and mandated to:

1. Undertake a holistic review of the Pension Reform Act, Financial Reporting Council of Nigeria Act & the Warehouse Receipt Bill with a view to identifying the adequacy, overlaps or gaps therein;
2. Expand on existing provisions by improving content and language where necessary, or propose new provisions as applicable; and
3. Make recommendations to the Securities and Exchange Commission.

Committee Members:

Dr. Babatunde Ajibade, SAN – Chairman

Dr. Timi Austen-Peters – Member

Mrs. Yinka Edu – Member

Mrs. Azezah Muse-Sadiq – Member

Mr. Ayodeji Balogun – Member

Mr. Sola Oyetayo – Member

Mr. Opuiyo Oforiokuma – Member

Mr. Eguarekhide Longe – Member

Sir Sunny Nwosu, KSS – Member

Mr. Emomotimi Agama – Member

Rep. Financial Reporting Council of Nigeria – Member

Rep. National Pension Commission – Member

List of Stakeholders Engaged:

1. National Pension Commission (PENCOM)
2. Financial Reporting Council of Nigeria (FRCN)
3. Manufacturers Association of Nigeria
4. Capital Market Solicitors Association of Nigeria (CMSAN)
5. Independent Shareholders Association of Nigeria (ISAN)
6. KPMG
7. PricewaterhouseCoopers (PWC)
8. AFEX Ltd
9. Institute of Chartered Accountants of Nigeria (ICAN)
10. Association of National Accountants of Nigeria (ANAN)
11. Institute of Directors (IoD)
12. Nigerian Employers Consultative Association (NECA)
13. Nigerian Labour Congress (NLC)
14. Trades Union Congress (TUC)
15. Nigerian Stock Exchange (NSE)
16. Deloitte
17. Pension Fund Operators Association of Nigeria (PENOP)
18. Lagos Chambers of Commerce and Industry
19. Chartered Institute of Stock Brokers (CIS)
20. Nigeria Commodity Exchange
21. Federal Ministry of Agriculture

List of Stakeholders that Responded:

1. National Pension Commission (PENCOM)
2. Manufacturers Association of Nigeria
3. Capital Market Solicitors Association of Nigeria (CMSAN)
4. Independent Shareholders Association of Nigeria (ISAN)
5. KPMG
6. AFEX Ltd
7. Institute of Chartered Accountants of Nigeria (ICAN)

Methodology Adopted

- The methodology adopted was to seek input from as many stakeholders as members of the committee could think of, who would have relevant input to make into the content of the legislations in question.
- The committee resolved that these stakeholder views (inclusive of that of individuals or organisations represented on the committee) would then be subjected to deliberation by the committee, with a view to arriving at agreed recommendations.
- The expectation is of a rich and robust set of recommendations tapping on the combined knowledge and expertise of all the committee members.

SCHEDULE A

WAREHOUSE RECEIPT BILL

SECTION	COMMENTS/RECOMMENDATIONS/ PROPOSED AMENDMENTS	COMMITTEE MEMBERS AGREED POSITION
Section 1 - Establishment of the Nigerian Independent Warehouse Regulatory Agency	**Recommendation** Warehouse regulation should be the primary responsibility of an Exchange as an SRO under the supervision of the department in charge of Exchanges at the SEC. **Justification** This reduces the level of bureaucracy that is typical of government agencies and saves cost. There is also an issue of duplication of function / responsibility. Exchanges are liable for defaults of warehouses by virtue of the counterparty they provide on warehouse receipts, so should be responsible.	This recommendation is relevant, to the extent that the criteria for making Warehouse Receipts eligible for trading on commodities exchanges must be agreed in conjunction with the exchanges. However, as we envisage a multi-tiered system of regulation involving Warehouse Receipts that may not need to be tradable on an exchange, we do not see sufficient justification for making Warehouse

		regulation the primary responsibility of exchanges.
Section 1(2)- Establishment of a governing board for the Agency	**Recommendation** We propose that the right of the Agency to borrow and own property should be included in this section. **Justification** This section does not include the right of the Agency to own property.	Agreed
Section 1- Incorporation of Authority Address of the Head Office of the Agency	Considering the fact that the Agency is an independent federal body, it will ordinarily mean that it will have offices in all the 36 states of the Federation in addition to its corporate head office. However, this should be clearly stated in the Act. By not doing this, the Act leaves room for assumption and where an action arises, the issue of place of service will come up. This may lead to confusion. Thus, the address of the head office should be clearly stated. **Recommendation** An Act has to be clear, detailed, specific, and easily accessible. A detailed Act or Regulation leaves no room for	

	assumption or confusion. The powers and functions of the Agency are clearly stated in Section 1 of the Act, however, the act does not state where the head office of the Agency will be situated. In the Indian Act, clear provisions are made with respect to the power of the Agency and the place where its offices are to be situated. This comparator legislation should be used as a template.	
Section 2- Establishment of a governing board for the Agency	**Recommendation & Justification** The size of the Board is too large taking into consideration the push to reduce the cost of governance. A number of ministries/agencies/institutes represented on the Board are not necessary.	Agreed. We propose that the Board should be made up of representatives of SEC, CBN, Ministry of Trade and Investments, MAN, Min of Agriculture and the pre-eminent association representing Farmers. Remove everyone else. As in other jurisdictions,

		this gives a mix between private and public institutions, including the persons that are to be regulated by this law.
Section 2 (2)- Establishment of a governing board for the Agency	**Recommendation** A new sub (h) should be created to include **'Representative of the Manufacturers Association of Nigeria'** **Justification** *Contrary to the other association most of the members of MAN have warehouses, therefore they are the most likely to be affected by the ACT and can bring value to the discussion added value of the Board*	Agreed. MAN has been included above.
Section 4 (1) (i) -Cessation of membership.	**Recommendation** Recommends that Sub (i) of the provision should be removed. The sub section provides as follows *'the President is satisfied that it is not in the interest of the Agency or the public for the person to continue in office* **Justification** *The provision may give room for subjectivity in the choice of a*	Agreed.

	member of the Board. The instances of cessation of membership listed from (a) to (h) are relevant and sufficient enough to disqualify any member who is not fit to be a member of the Board	
Section 6 (e)- Powers of the Board	**Recommendation & Justification** This section makes it a function of the Board to employ staff. We believe that the DG charged with the responsibility of the daily operations of the Agency should be responsible for employment subject to confirmation by the Board.	We disagree. Powers of employment are typically vested in the Board, which then delegates the power to the Chief Executive.
Section 7- Functions of the Agency	**Recommendation & Justification** This section covers the functions of the Agency. It is important to stress the need for the Agency to liaise with the SEC in the performance of a number of its functions in order to ensure that both the Agency and the SEC are working together and not at cross purposes.	We agree. However, given the provision including a representative of SEC on the board, we believe this concern has been adequately addressed.
Section 7(1)- Functions of the Agency	**Recommendation** The function of the Agency should be expanded to include licensing of the warehouse operators. **Justification** This section only provides for registration of the warehouse but does not provide for registration of the warehouse operators	Agreed. This is addressed in the proposed amendments to section 7(1)(d) below.

Section 7(1)(d)- Functions of the Agency	**Recommendation** Delete the words “in” between the words “certify” and “licensed” in this subsection. **Justification** This section should be edited to correct a typographical error noted in that subsection	We have gone further and recommend that the opening words “certify in licensed” are replaced by “license and certify…”
Section 7(1)(m)- Functions of the Agency	**Recommendation** This reference should be replaced with the term “central registry” which is the term used and defined in this Act with reference to a warehouse receipt registry. **Justification** There is a reference to a “warehouse receipt registry” and this term is not defined in the definition section of the Bill.	Agreed. The term is defined in section 104 (the interpretation section).
Functions of the Agency Section 7(b)- Functions of the Agency	**Recommendation** Delete “Keeper” and replace with “Operator”. **Justification** The term “Operator” accurately captures all persons /entities to whom the Bill applies	Agreed. The term is defined in section 104 (the interpretation section).
Function of the Agency	**Recommendation**	Agreed.

Section 7(2) c- Functions of the Agency	Delete "Keeper" and replace with "Operator". **Justification** The term "Operator" accurately captures all persons/entities to whom the Bill applies.	
Section 13(1)- Licensing Procedure	**Recommendation** Rephrase to state "A Warehouse Operator shall not be registered by a commodities exchange unless it has been duly issued with a license from the Agency". **Justification** This restricts the applicability of the provision of the requirement for a license to persons who seek to participate in the Warehouse Receipt System programme, and allows persons not desirous of joining the system to continue to operate independently.	We disagree with both the recommendation and the justification. With the recommendation because the commodities exchange is not the sole focus of the Warehouse Receipts regime and with the justification because the definition of "Commercial Warehouse" in section 104 already establishes that an operator intends to issue Warehouse Receipts.
Section 13(2)- Licensing Procedure	**Recommendation** Delete "Keeper" and replace with "Operator".	Agreed.

	<u>Justification</u> The term "Operator" accurately captures all persons/entities to whom the Bill applies.	
Section 13 (2)- Issuance of Licenses	**<u>Recommendation</u>** Sub (2) of the provision should be amended to read as follows *"The Agency may, upon application in the prescribed form, issue a license for the operation of a commercial Warehouse in accordance with the provisions this Act to a Warehouse keeper* **other than a manufacturer member of the Manufacturers Association of Nigeria"** **<u>Justification</u>** *The rationale behind this suggested amendment is that the issuance of licenses would come at a cost which would add to manufacturing costs, therefore since members of MAN are reputable and reliable operators that are already abiding by strong regulations and can run warehouses in the most professional and standardized way for the benefit of their own businesses.*	We disagree.. The purpose of the act will be defeated if membership of MAN is sufficient to escape regulation.
Section 13(3)(b)- Issuance of licences	**<u>Recommendation</u>** We propose that this section should be amended as follows: "*the Warehouse keeper meets the conditions specified in section 17 of this Act and any additional conditions for eligibility to*	We disagree because there is no inconsistency between this section and section 17 as both cross-

	operate a licenced Warehouse of the kind applied for as may be prescribed in regulations issued pursuant to this Act;" . **Justification** This sub-section provides that the conditions for eligibility to operate a licensed warehouse may be prescribed in subsequent regulations issued by the Agency. However, section 17 of the Bill sets out conditions that must be met before a license is issued to a commercial Warehouse Operator.	refer to regulations made by the Agency pursuant to the Act.
Section 14- Issuance of licences	**Recommendation** Warehouses should be licensed by the department of weights and measures in the Ministry of Trade and Investment. Upon being licensed, the warehouse/collateral manager can then chose to register with an exchange of choice to be able to issue Warehouse Receipts. **Justification** - These ministries already have existing departments and staff trained to carry out this function. Setting up an entirely new agency will result in duplication of function, it will also lead to a fight for superiority and jurisdictional claim.	We disagree. As noted in relation to the first AFEX recommendation above, we envisage a multi-tiered warehousing regulation system in which the Agency will take input from all stakeholders, including the department of weights and measures in the Ministry of Trade & Industry.
Licensing Procedure	**Recommendation**	We disagree. Whilst the

Section 14(1)- Transitional provisions applicable to existing Warehouse Operators	Delete the entire section **<u>Justification</u>**	section is unclear and requires re-drafting, wholesale deletion is not the answer.
Section 14 (2)- Transitional provisions applicable to existing Warehouse Operators	**<u>Recommendation</u> & Justification** This provision in essence states that any commercial warehouse who is not licensed and continues to receive and warehouse goods after the cut-off date in the Act, must display a notice boldly stating that it is not licensed by the Agency. This provision inadvertently permits unlicensed warehousing.	This is noted. However, as the business of owning warehouses predates this proposed legislation, and as some Warehouse proprietors may not wish to issue Warehouse Receipts, we think the distinction between licensed and unlicensed warehouses is appropriate.
Section 14 (2)- Transitional provisions applicable to existing Warehouse Operators	**<u>Recommendation</u>** Section 14 should be amended as follows: The body of the section should be amended to read as follows: *14. (1) Subject to section 14(2) below, any person carrying on warehousing business prior to the commencement of this Act shall be allowed to carry on such business, provided he has made an application for registration within [30 days from the date*	We agree with the justification but find the original draft unclear, particularly with regard to the different periods stated as applicable to the transition in subsections

	specified in regulations made by the Agency]. *(2) The Agency shall, by regulations, provide for a transitional period not exceeding [1 year] for all existing commercial Warehouse Operators to fully comply and bring their operations in conformity with the provisions of this Act.* *(3) Notwithstanding the provisions of this Act, where an existing Warehouse Operator referred to in subsection (1) continues to receive and warehouse commodities or designated goods without a licence after a period of 6 months from the date specified in regulations made by the Agency, such warehouse operator shall not, at any time prior to obtaining a licence, issue a Warehouse Receipt.* *(4) Where the Warehouse Operator referred to in subsection (3) continues to operate without a licence after a period of 6 months from the date of specified in regulations made by the Agency, such warehouse operator must conspicuously display a notice in the form and manner prescribed in the regulations that it is neither bonded and licensed and shall not issue a Warehouse Receipt."* **Justification** This subsection does not appear to be a transitional provision as it covers instances where existing commercial warehouse operators fail to obtain a license within the timeframe specified in	(1) and (2). We propose that there should be a single transition period to be determined by the Agency upon consultation with stakeholders, after which the issuance of Warehouse Receipts by unlicensed warehouses becomes prohibited. Thus, sub-section 14(1) should be amended by the replacing "may with "shall". In sub-section 14(2), the phrase commencing with the word "section" in line 2 thereof and ending with the word "Agency" in line 4 thereof should be replaced with the phrase "fails to obtain a license within the period determined by the

	subsection 1 of section 14. We assume that this provision intends to exclude warehouse operators that do not intend to be regulated by this Act and have amended the section accordingly.	Agency in accordance with Section 14(1) above".
Section 15- Licensing procedure	**Recommendation** Obtaining a warehouse license should not be mandatory, it should however be a requirement for authorization to issue exchange tradable warehouse receipts. **Justification** - Warehouse Receipts can be exchange tradable or non-exchange tradable. A warehouse operator can get a full or a limited license. Full licenses permit the warehouse to issue receipts, while a limited license means the warehouse operator has to work with a collateral manager to issue warehouse receipts.	We disagree. The exemption for Warehouse Operators who do not intend to issue Warehouse Receipts is already captured by the definition of Warehouse in the Interpretation section 104.
Section 16- Licensing Procedure	**Recommendation** Delete "twelve months" and replace it with twenty four months". **Justification** The terms for a license should be increased to give Warehouse operators with certainty, in view of the substantial capital outlay	We disagree in consideration of the need to maintain confidence in the system through regular and periodic licensing renewal.

	for establishing warehouses.	
Section 17(2)(h)- Licensing Procedure	**<u>Recommendation</u>** Add "or as prescribed by a commodities exchange". **<u>Justification</u>** Provides a commodities exchange the leverage to stipulate.	We disagree, because the specific reference to commodities exchanges undermines the acknowledgement that Warehouse Receipts serve purposes other than trading on an exchange.
Section 21 – Causality Insurance and recovery of loss	**<u>Recommendation</u>** Sub (2)(b) should be amended to read as follows '*'Obtain from the Warehouse Operator an adequate insurance coverage for the commodities or goods deposited on its behalf and at its cost'* ***OR*** *The Act keeps only the sub-section (2) (a) as the only compulsory requirement* **<u>Justification</u>**	We agree that section 21 needs to be reviewed but think the review should go beyond what MAN has observed. We note that Section 17(2)(f) already makes it a condition for granting a license, that the Warehouse and the goods or products to be kept therein are fully insured in respect of fire, theft, etc. Given that this is a

	It's important that the depositor of commodities and goods get an evidence of the insurance before or at the time its goods are deposited in the warehouse in order to avoid any risk. Reason being between the time he "requests" the warehouse to insure its goods till he gets a confirmation or evidence, his goods may not be covered and in case of incident he would lose it. *Our recommendation is either section 21 (b) is reworded as proposed or the Act keeps only the sub-section (a) as the only compulsory requirement*	condition for obtaining a license, it appears incongruous that section 21(2) now seeks to impose a burden to insure on the depositor of commodities. It has to be one or the other. The current provisions leaves room for argument as to whose responsibility it is to arrange insurance for the deposited commodities. Consequently, we recommend that Section 21(2) should merely restate and reinforce the condition stipulated in section 17(2) (f), such that the responsibility for arranging adequate insurance rests squarely

		on the Warehouse Operator at all times.
Section 23- Revocation, suspension or refusal to grant a license	**Recommendation** This section covers the revocation, termination and suspension of licenses by the Agency. However it is silent on the timeline within which a warehouse operator can appeal a decision by the Agency with respect to the revocation, termination or suspension of its license. It only states that the warehouse operator can appeal to the Board. **Justification** It is important that this timeline be clearly stated as this ensures smooth administrative procedure.	We are not convinced that there is a need to specify a time limit for an operator to appeal against revocation, termination or suspension. It can be assumed that an operator whose license has been revoked, terminated or suspended will seek to have it reinstated by appeal within the shortest possible time.
Section 23 (5)- Revocation, suspension or refusal to grant a license	**Recommendation** This provision states that a warehouse operator whose license has been suspended may continue to warehouse goods based on regulations by the Agency. Similar to Section 14 (2) above, this provision inadvertently permits the operation of unlicensed warehouses.	We disagree. We think this provision is required because it is improbable that goods deposited in a licensed warehouse can be evacuated immediately upon suspension of a license and there is a need

		to enable the Warehouse to continue to operate under supervision.
Section 23 (5) – Revocation, suspension or refusal to grant a license	**Recommendation** The Provision should be removed as the provision is in conflict with sub-section (3) **Justification** The sub section (5) *is in conflict with the previous sub-section (3) with states* *"Where a license is revoked, suspended or has expired, the Warehouse Operator shall terminate, in the manner prescribed by the Agency, all arrangements covering the receiving, storing, shipping, conditioning, or handling of commodities in the Warehouse covered by the license."*	We disagree. The provision in sub-section (3) is consistent with sub-section (5) to the extent that it refers to termination "in the manner prescribed by the Agency" and enables the Agency to prevent acceptance of new deposits of commodities without disrupting existing deposits.
Section 25- Publication of particulars of Warehouse Owners and Operators	**Recommendation & Justification** This section provides for the duty of the Agency to publish information on all revoked licenses and omits the publication of all suspended licenses. This should be included.	Agreed.
Section 25 (a) Publication of particulars of Warehouse Owners and Operators	**Recommendation** Sub (a) should be amended to read as follows: *"The Agency shall ensure that–*	Agreed.

	(a) reliable data containing the identity of Warehouse owners, Warehouse Operators, licensed inspectors, reports of inspection of Warehouses as and a list of all revoked, **suspended or expired** *licenses are made available, on request, by any person or furnished periodically to the public;"* **Justification** *Warehouses with suspended and expired licenses have to be published for the public to be aware and for potential depositors to use only compliant warehouses*	
Section 26- Issuance of a Warehouse Receipt	**Recommendation** Add "and duly registered with a commodities exchange" **Justification** This is to ensure that the commodities exchange is carried along.	We disagree, because the specific reference to commodities exchanges undermines the acknowledgement that Warehouse Receipts serve purposes other than trading on an exchange.
Section 26- Issuance of a Warehouse Receipt	**Recommendation** Where a warehouse operator doesn't meet the fiduciary requirements to get a full license, he can work with a Collateral Manager who is authorized to issue receipts.	We disagree. The loophole that will be created by the establishment of a separate cadre of

	Justification Warehouse Operators or Collateral Managers who are licensed to issue warehouse receipts will have to provide guarantees to the exchange for the performance of its services.	Collateral Managers aside from Warehouse Operators will make regulation chaotic. If a Collateral Manager can meet the fiduciary requirements, why will a Warehouse Operator not be able to do so. Collateral Managers should be compelled to lease and operate warehouses themselves.
Section 27(1)- Warehouse Receipt as evidence of proprietary rights	**Recommendation** Add "deposited at the relevant Warehouse." **Justification** The addition firms up the language in the section to ensure that it captures the fact that goods have been deposited.	Agreed.
Section 27(2)-	**Recommendation**	We disagree. We think

Warehouse Receipt as evidence of proprietary rights	Add “or control” **Justification** This broadens the applicable scenarios to include instances where a person may have control but not be an owner.	this may create potential problems of interpretation as to the interests covered by a Warehouse Receipt.
Section 28- Form of Warehouse Receipt	**Recommendation** Warehouse receipts should be electronic and generated by the Exchange and domiciled with the depository. **Justification** Having the warehouse receipt in electronic form allows for ease of trading, also it helps to mitigate loss/ theft or duplication.	We disagree with the recommendation that Warehouse Receipts should only be generated by the Exchange and must be electronic. As we have noted Warehouse Receipts serve more than one purpose. The Agency should be given the discretion to determine the form of Warehouse Receipts in conjunction with the end users.
Section 28(1)- Form of Warehouse Receipts	**Recommendation** Delete “shall be only be printed by the Agency or at its order and”.	We disagree with this recommendation for the same reason as above.

	Justification The Warehouse Receipts should be printed by the Warehouse Operator. Liability for injury caused to a person for liability to omit a term to be included In the receipt rests with the Warehouse Operator.	
Section 28(2) Form of Warehouse Receipts	**Recommendation** Delete entire section **Justification** See comment on section 28(1) above.	We disagree with this recommendation for the same reason as above.
Section 29(1)- Contents of a Warehouse Receipt	**Recommendation** We propose that section 29(1) should be amended as follows: (i) Section 29(1)(c) should be amended as follows: "*the date of the issue of the receipt and the serial number of the receipt"* (ii) Section 29(1)(e) should be amended as follows: *"a statement as to whether the goods received shall be delivered to the bearer, or another person named or that person's order"*	We disagree with the recommendation in relation to the merger of sections 29(1) (c) and (d) as the separation of issues makes it clearer. We agree with the recommendations in relation to sections 29(1)(e), (k) and (m). We agree with the proposed additions in (i), (iii) and (v) but feel that (ii) and (iv) are

	(iii) Section 29(1)(k) should be amended as follows: *"the expiry date of the good, if any, or any other information of the nature or conditions of the goods which does not impair the Warehouse Operator's obligation to deliver on the duty of care of the Warehouse Operator"* (iv) Section 29(1)(m) should be amended as follows: *"the registered signature of the Warehouse Operator or its agent"* We propose that section 29(1) should also be amended to include the following additional information: (i) Name of the depositor and the market value of the goods at as at the date of deposit; (ii) name of the insurance company with which the deposited goods are insured, insured amount and duration of the insurance cover; (iii) a statement as to whether the Warehouse Receipt is	mere surplusage.

	negotiable or non- negotiable; (iv) the nature and fact of ownership of the goods, whether solely or jointly owned with others; (v) Stamp of the warehouse operator. **Justification** We believe that additional information should be contained in a Warehouse Receipt.	
Section 29(1)(2)(3) - Omission of Particulars of a Warehouse Receipt	The Act provides for contents of receipt in section 29(1) however, it does not state whether or not a receipt will be valid if it does not contain any particulars stated in subsection (1) of this section. Subsection (2) only states that a warehouse operator may insert in receipt any other terms and conditions which are not contrary to the provisions of this Act or its regulations or which are not ordinarily void. **Recommendation** Both comparator legislation provide that omission of particulars stated in the contents of a warehouse receipt will not invalidate the receipt. The Warehouse Receipt and Other Related Matter Act is silent on this provision. The purpose of including this provision will be to clarify the issue	

	of validity; thereby avoiding a question of validity where the warehouse receipt does not contain any of the particulars, as the provision would have dealt with such loophole. Section 29 should state in clear terms if the omission of one or any particulars stated in subsection (1) of the Act will invalidate the receipt or not. We recommend that the section should be redrafted with provisions similar to the comparator legislation.	
Section 30- Negotiable Warehouse Receipts	**Recommendation** Add a section 30(4) to state "All Negotiable Warehouse Receipts must be traded on a recognized securities exchange". **Justification** This will ensure that all trading of commodities is captured.	We disagree. This will unduly limit the utility of Warehouse Receipts as a means of improving commodities financing. The negotiability of Warehouse receipts is important to their utility as securities for raising finance independent of whether or not they will be traded on an exchange.

Section 32(c) Altered Warehouse Receipts	**Recommendation** Replace "without fraudulent intent" with "with fraudulent intent". **Justification** This must be the intended meaning, otherwise the provision does not make sense.	Agreed.
Section 33 (3)- Rights of purchasers of altered receipts against Warehouse Operator	**Recommendation** Delete the inclusion of the phrase "… or could reasonably be imputed…" **Justification** This is not an acceptable measurement for the liability of a purchaser of an altered receipt. Furthermore the alteration here must be such that it benefits the purchaser to the detriment of the seller for this knowledge of alteration to make him liable to be proceeded against. Bearing in mind that Section 32 (a) states that some forms of alteration will be immaterial.	We disagree. We think the provision is badly drafted and that the words "to have" should be inserted after "found" and that the words "possession of" should be deleted. Once this is done, the provision makes sense as it imputes guilt once knowledge of the alteration is established.
Section 34 (7) Lost or missing Warehouse receipt	**Recommendation** Sub (7) should be amended to read as follows: *"A person who after endorsing and delivering a Warehouse Receipt to another fraudulently reports it missing and obtains a duplicate Receipt commits an offence and liable on conviction to*	Agreed.

	five years **imprisonment** *without an option of fine.* **Justification** *The word "***imprisonment***" to be added after "five years"*	
Section 36- Trading in Warehouse Receipts on commodity exchanges	**Recommendation** Delete entire section. **Justification** There is no justification for the distinction between Warehouse Receipts on commodities financed by banks and other Warehouse Receipts in this legislation.	Agreed. We do not see justification for the distinction. If banks or the CBN through regulation decide that they will only finance commodities covered by exchange tradable Warehouse Receipts, this will achieve the same purpose and is a better channel for achieving this purpose.
Section 37- Application of provisions on Pioneer Status	**Recommendation** Delete "may be considered" and replace with "shall be eligible". **Justification** This provides certainty as to whether a Warehouse Operator will enjoy benefits of Pioneer Status or not.	Agreed.
Section 37-	We suggest the "may" be replaced with "shall" with respect to	Agreed. Same as above.

Application of provisions on Pioneer Status	consideration for pioneer status.	
Section 38- Obligation of a Warehouse Operator to deliver	**Recommendation** Rules and regulations should be drafted by the Exchange and approved by the SEC **Justification** These are dynamic policy issues. Including it in the bill makes it difficult to amend.	We disagree. As we noted with AFEX's first recommendation, the Warehouse Regulatory Agency should make its own regulations, but these regulations must have the input of SEC and the CBN and through SEC and the CBN, the Exchanges and Banks.
Section 38(2)- Obligation of a Warehouse Operator to deliver	**Recommendation** Sub (2) of the section should be amended to read as follows: *"A Warehouse Operator shall not issue negotiable Warehouse Receipts for goods in respect of which the Warehouse Operator, its directors or its staff has interest except it has obtained a licence* ***from the Agency*** *in that regard permitting the Warehouse Operator to trade in goods which he warehouses."* **Justification**	Agreed.

	For avoidance of doubt this sub-section should clarify that the license to trade goods should be obtained by the Warehouse operator from the Agency.	
Section 39(3) Obligation to deliver in accordance to the demand of the holder.	**Recommendation** Sub (3) should be amended to read as follows: *"Where a Warehouse Operator refuses to deliver the goods as demanded by the depositor or holder of a Warehouse Receipt because of the reason that the Warehouse Receipt was altered, the holder or depositor who had notice of alteration shall be prevented from making further demands based on any proprietary rights in the Warehouse Receipt* **other** *than those provided on the altered Warehouse Receipt* **Justification** *There's a missing word between "Receipts" and "than". Another wording could be "…on any proprietary rights in the warehouse receipt* **different from** *those provided on the altered warehouse receipt."*	Agreed.
Sections 43(3) and 44(3)	**Recommendation and Justification** There is a need to state clearly that the monies referred to are to	We disagree. We agree that the provision is not

	be paid as fines.	sufficiently detailed but don't agree that the market value of the goods should be paid as a fine. Rather it should be paid as compensation to the party or parties who has/have suffered loss as a result of the failure to retrieve and cancel a wholly or partially discharged Warehouse Receipt.
Section 46(3)- Rights & Obligations of a Warehouse Operator	"Add "," before "no title…"	Agreed.
Section 49(2)- Rights & Obligations of a Warehouse Operator	**Recommendation** Add "will apply" before "notwithstanding" Add "that" before "the owner…" **Justification**	Agreed.

	This addition will reflect the actual intention of the draftsman. Grammatical error.	
Section 49(1)(2) Liability for loss or injury to goods. Calculation of compensation/liability:	Except for unavoidable damages or deterioration associated with the nature and type of the goods and mode of storage provided under this Act and regulations made pursuant to this Act, a warehouse operator is liable for damages for loss of, or injury to the goods caused by the warehouse operator's failure to exercise due and reasonable care as circumstances may demand. **<u>Recommendation</u>** The Warehouse Receipt and Other Related Matters Act provides for liability for care of goods by a warehouse operator, it however does not cover the happening of events that are beyond the control of the warehouse operator. Events that cannot be controlled and can be attributable to circumstances such as force majure or an act of war. Furthermore, there is no provision on how to value the goods for the purpose of compensation. We recommend that this section be amended with provisions similar to the Indian Act.	

Section 50(3)	**<u>Recommendation</u>** The words "under sub-section 2" in section 50(3) should be deleted. **<u>Justification</u>** This sub-section erroneously states that the provisions of sub-section 2 deal with the mixing of fungible goods whereas this is not the case. Section 50(2) covers the requirement to keep any transformed products of deposited goods separate.	We disagree. Sub-section (2) does permit and recognize the possibility of fungibility when it refers to "other transformation of goods". Thus, the reference in sub-section (3) to fungibilty under sub-section 2 is not out of place.
Section 57 (a)-Method of Enforcement of lien	**<u>Recommendation</u>** *Sub (a) should be amended to read as follows* *" the sale of a portion of the deposited goods in satisfaction of the lien and any costs associated with the sale at the prevailing market price;* ***Provided that any sum realised from the sale which is in excess of the amount required in satisfaction of the lien shall be returned to the Depositor of the Goods, and until so returned, such sum shall be deemed to be held in trust for the Depositor of the Goods.*"** **<u>Justification</u>**	Agreed.

	This addition is important in order to avoid the Warehouse Operator gaining more than it should when realizing its lien.	
Section 58 (1)	**Recommendation and Justification** This provision states that where the warehouse operator has notified the depositor or holder to remove the goods from the warehouse and he fails to do so, the warehouse operator may sell the goods and use the proceeds to satisfy any lien it may have on the goods. Whilst this is fine, the provisions fails to state that in such a scenario the sum leftover (after satisfying right of lien) is to be credited to the depositor or holder.	We agree. The same proviso as suggested by MAN in relation to section 57 should be added to the section"
Section 58(1) Notice for disposal of perishable and hazardous goods. Modes of sending notice:	58(1) – Where the goods are: i. Perishable in nature; ii. Likely to deteriorate in value; iii. In a state of foul odour; iv. Corrosive and leaking; v. Highly inflammable or explosive; and vi. Likely to cause injury to life and other property, the warehouse operator shall give notice to the owner or to the person in whose name the goods are stored as is reasonable and possible under the circumstances, and where the person fails to comply with the notice to remove the goods from the warehouse,	

	within the time so specified, the warehouse operator may sell the goods with or without advertising and satisfy any lien he may have on the goods. **<u>Recommendation</u>** The comparator legislation provides for how notice should be given in a situation where the warehouse operator needs to dispose of perishable and hazardous goods. This is not provided for in the Warehouse Receipt and Other Related Matters Act The Act should make provision for the modes of sending notice by a warehouse operator to ensure that proper notice is given before the disposal of the goods. The Act merely states that notice should be given, it does not cover the entire aspect of notice as it is done in comparator legislation. It is expedient that the Act makes provision for the form of sending notice and when notice may be deemed to have been duly received.	

	We recommend that the mode of notice to be given as stated in comparative legislation be specified in the Act.	
Part VII Negotiation & Transfer of Warehouse Receipts Section 59(2)	**Recommendation** *Add to subsection (2)…. "The registrar shall effect the transfer of title a within the period stipulated by the securities exchange or capital trade point and he shall post a written notice to the receipt of an application for transfer to the registered holder."* **Justification** This addition provides certainty as to the process.	We disagree with this and would want to hear from an expert on how commodities exchanges work in practice. It appears to us that a distinction needs to be drawn between the Warehouse Receipt as a document of title to the underlying commodities and the Warehouse Receipt as the underlying asset on which trading on an Exchange is based. See Rules 290 – 311 of the SEC Rules, particularly Rules 308 & 309.
Part VII Negotiation & Transfer of	**Recommendation** Add a new (4)….."Notwithstanding the provisions of the Bills of	Agreed.

Warehouse Receipts Section 59	Exchange Act to the contrary, no endorsement of a negotiable Warehouse Receipt shall be valid unless made by a signature of the holder written on the Receipt, in one of the spaces provided for that purpose. **Justification**	
Section 60 (c)	**Recommendation and Justification** This provision is vague bearing in mind that the Warehouse operator can receive goods from a plethora of depositors. This provision has to be more specific (i.e. 'including rights to goods delivered by the (owner, depositor, or transferor) to the warehouse operator…')	Agreed. The sub-section should be redrafted to include rights to goods delivered by the (owner, depositor, or transferor) to the warehouse operator…')
Section 60 (4)	The word "transfer" to be changed to "transferor"	Agreed.
Section 63-Right of a transferee of a Warehouse Receipt Section 64-Rights and Obligation of a transferor and a transferee of a	**Recommendation** ***Option 1****: Section 63 and 64 are merged into 1 section titled:* *"***Rights and obligations of a transferor and a transferee of a negotiable Warehouse Receipt***"*** ***Option 2:*** **"63. Rights of a transferor and a transferee of a negotiable Warehouse Receipt "**	The preferred option is option 2, separating the right from the liabilites.

negotiable Warehouse Receipt	**"64 Obligations of a transferor and a transferee of a negotiable Warehouse Receipt"** **<u>Justification</u>** *There is duplication in the title and in the provisions of this section. We suggest that either the 2 sections are merged or section 63 to compile all the rights of a transferor and a transferee of a negotiable warehouse receipt and section 64 compiles the obligations of same*	
Section 66	**<u>Recommendation</u>** Warehouse Receipts should be domiciled in an exchange accredited Central Depository.	We disagree. The creation of a Central Registry for Warehouse Receipts and the establishment of a Depository for the purpose of trading in Warehouse Receipts are not mutually exclusive.
Part VIII Establishment of the Central Registry Section 68(2)	**<u>Recommendation</u>** Add "or non-negotiable" **<u>Justification</u>** This ensures that all non-negotiable Warehouse Receipts are also registered at the Central Registry.	We disagree. If a Warehouse Receipt is not negotiable and is only evidence of title as between the depositor and

		the Warehouse Operator, it should not require registration.
Section 72(1)-Referral of disputes	**Recommendation** The Section provides *"Where a dispute exists relating to a Warehouse Receipt transaction between the depositor and Warehouse Operator, such dispute shall first be referred to the Agency for settlement"* *This should be clarified* **Justification** *To avoid delay and uncertainty as regards with which Agency's official /department to contact, we recommend that this section assigns a particular office or Department for dispute resolution. Our preferred option would be the Agency's Board.*	We disagree. Whilst it will be useful for the Agency to design a dispute resolution system as envisaged by this section, the modalities for this should be prescribed in regulations and not in the Act, so as to ensure flexibility. Also, reference of a dispute to the Agency should be an option open to an aggrieved party and not a mandatory requirement. Thus, we recommend that "shall" be replaced with "may". Also, "exists" should be removed from line 1 after "dispute".

Section 72	Any Dispute / Complaint should be resolved using the SEC's Complaint Management Framework and the Exchanges Dispute Resolution procedures.	We disagree. SEC's Complaint Management Framework is already overburdened and disputes arising under this legislation may have no bearing on SEC's functions in any event.
Section 72 (2)- Referral of disputes	*2) In the settlement of a dispute the Agency may, afford the parties to such dispute,* **a hearing before ….***, to determine if a real dispute exists.* **<u>Justification</u>** *Same as above*	We agree with the deletion of the word "informal". As noted above, the modalities for dispute resolution by the Agency should be handled by regulation. However, we recommend that the requirement for a hearing prior to resolution should be mandatory and not permissive to comply with the Constitution. Thus, "may" should read as

		"shall".
Section 72 (3)- Referral	**Recommendation** *Sub (3) should be amended to read as follows* *'***Any Party dissatisfied with the ruling of the Board, may** *refer the dispute to the Arbitral Panel (referred to in section 73 of this Act) within twenty–one days of receipt of the notice of dispute* **Justification** *The expression "Where the Agency is not able to resolve a dispute" is not clear enough to determine whether this inability is noted by the parties or not.* *We recommend that the Parties to the dispute be granted the right to refer their case to the Arbitral Panel if they are not satisfied with the Board's decision*	We disagree. Once a party is dissatisfied with the outcome of the Agency's dispute resolution it should approach the appropriate regular court for relief.
Section 72 (2)	**Recommendation** The reference to "informal hearing" should be replaced with a statement to the effect that both parties will be granted audience.	Agreed. See comments above.
Section 73 (3)-Arbitral Panels	**Recommendation** *Sub (3) should be amended to read as follows* *'The Arbitral Panel shall conclude hearing on a matter referred to it and deliver a decision within thirty working days from the date of referral.* **The Arbitral Panel's decision shall be immediately**	We disagree. This recommendation does not give recognition to the fact that Arbitral awards can be challenged in Court in any

	applicable and shall have the authority of a final judgment **<u>Justification</u>** *This suggested addition is made for the sake of clarity and of enforcement in order to avoid further procedures that may take long time to be concluded.*	event, albeit on limited grounds.
Section 85 Offences and Penalty Offence by Companies:	A person who contravenes any of the provisions of this Act, to which no specific penalty is provided shall be liable on conviction for every such offence to imprisonment for a term exceeding two years or to a fine not below one million Naira or both fine and imprisonment. Ordinarily, this would be sufficient. But the provision for an outright penalty section specifically for a company that violates the Act, will ensure that the cloak of company is not relied upon to commit any of the offences stated therein. Furthermore, any director of such company can and will be held liable for the breach committed by him on behalf of the company. Of course the exception should not be removed. If such person can prove that the contravention took place without his knowledge or that he exercised all due diligence	

	to prevent the contravention. **Recommendation** The comparator legislation provides for offences committed by a company. The Indian Act provides separately for the liability of a company that commits any of the offences stated in its Chapter X. Furthermore, it provides for the person that will be held liable on behalf of the company. It is a way of ensuring that a perpetrator does not hide under the corporate veil to commit an act. This is even made easy by defining a company for the purpose of the Act to mean anybody corporate which includes a firm or any other association of individuals and a director means a partner in the firm. Thus, any person whosoever within the company, who commits an offence in relation to this chapter will be held liable for and on behalf of the company. This is highly recommended. This will ensure that a company that is involved in any act provided for in Part X of the Warehouse Receipt and Other Related Matter Act will be	

	held liable. It is another form of removing the veil of incorporation to bring out the perpetrator.	
Section 86 (1) (b)	**Recommendation & Justification** This provision covers the sources of funds for the Agency and states that the Agency shall receive fees for conducting inspections and supervision and alludes to the warehouse operators paying these fees for inspection/supervision to the Agency. Are the warehouse operators to pay the Agency for conducting inspections and supervisory functions? This seems a slippery slope. There is no mention of licensing fees from warehouse operators which should be the main source of funding for the Agency.	We disagree. The payment of fees to cover the costs of inspection and supervision is not abnormal. Also, section 15(4) of the Bill already provides for payment of annual license fees. Except an argument is made that this latter fee should be calibrated to cover the cost of inspection and supervision.
Section 92 (2)	**Recommendation and Justification** The reference to subsection 3 of Section 93 is wrong seeing as Section 93 ends at subsection 2.	Agreed. It appears the intended reference is to subsection (3) of section 91 of this Act..."
		Agreed.

		Agreed.
Section 101 (a) and (e)	**Recommendation & <u>Justification</u>** Another reference to the fact that the Act intends for the warehouse operators to pay the Agency for conducting inspections on the warehouses and performing other statutory functions. Again we reiterate that this practice does not bode well.	We disagree. The Agency should be able to raise funds from operators the same way SEC, CBN and other similar agencies do.
Section 104	**Recommendation** **Definition of Warehouse or commercial warehouse should be amended as follows**: "any building, structure or other protected enclosure to be used or usable, for the storage or conditioning of commodities or buildings used for storage purposes which issue or purport to issue a Warehouse Receipt"	Section 104

	Definition of Warehouse Receipt should be amended as follows: "*means a document of title to specific goods of a certain quality and quantity stored in a licensed, bonded and named Warehouse which may be negotiable or non-negotiable and which is printed by the Agency pursuant to this Act and issued by a Warehouse Operator."* **<u>Justification</u>** Better definitions of Warehouse or commercial warehouse.	
Section 104 Interpretation Section **Meaning of Goods**	"Goods" is not extensively defined in section 104 of the Act as it is defined in the comparator legislation. The section simply defines goods for the purpose of this Act to mean commodities which in turn is defined to include raw material, conditioned, agricultural produce, solid minerals or products in liquid or gaseous form. It may be useful for the Act to clearly exclude the "types" of goods outside the purview the Agency. **<u>Recommendation</u>**	Section 104 Interpretation Section **Meaning of Goods**

	The Warehouse Receipt Act of both comparator countries define goods to include all chattels personal, they however exclude actionable claims, monies and securities. The importance of this term necessitates a clear and simple definition in the law. The definition of goods means commodities, and commodity under the Act includes raw material, conditioned, agricultural produce, solid minerals or products in liquid or gaseous form and such other goods as the Agency shall from time to time designate **as commodities for storage in commercial warehouse**.	
Section 104 Interpretation Section Meaning of "**HOLDER**"	**"Holder"** means a person who is in possession of a warehouse receipt whether negotiable or non-negotiable, and who has proprietary interest in the goods. The Act does not differentiate between the right of a holder of a negotiable receipt and the right of a holder of a non-negotiable receipt. The definition does not clearly state which of the holder has a proprietary right and just a mere right of delivery. **Recommendation**	Section 104 Interpretation Section Meaning of "**HOLDER**"

	The choice of language in the comparator legislation shows a difference in the definition of a holder as applied to a negotiable receipt and a non- negotiable receipt. The comparator legislation defines a holder in respect of a negotiable receipt as a person with a right of propriety while for a non-negotiable receipt, a holder is the person to whom the goods are to be delivered or the assignee of that person. Thereby differentiating between persons with proprietary right as opposed to persons with a right of delivery. We recommend that the definition of a Holder should be defined in line with the definition provided for in the comparator legislation. This will make it clear as between parties who are holders of a negotiable receipt as opposed to those who are holders of a non-negotiable receipt.	
Section 104 : **Definition of Warehouse Receipt**	(104) warehouse receipt means a document of title to specific goods of a certain quality and quantity stored in a licensed, bonded, and named warehouse which may either be negotiable or non-negotiable. **<u>Recommendation</u>** The definition of a warehouse receipt should be broadened. In recent times, most receipts are usually electronically	Section 104 : **Definition of Warehouse Receipt**

	generated; there is no provision to that effect. The act does not capture the essence of the use of receipt; generally, a receipt is an acknowledgement of having received, or taken into one's possession, a specified amount of money, goods, etc., it could also be an acknowledgement in the payment of a bill, but for the purpose of this Act, it is said to be a document of title to specific goods. Whilst legally a receipt can be an evidence of title, in the context of the Act, the operative word here is "Acknowledgement" of the receipt which is issued by the warehouse operator. We propose that the section should read as follows: A warehouse Receipt means an acknowledgement in writing or in electronic form issued by a warehouse operator of specific goods of a certain quality and which may either be negotiable or non-negotiable.	
SCHEDULE Paragraph 2	**Recommendation & <u>Justification</u>** There will be a need to reduce the number that forms a quorum for the Board meetings bearing in mind our comment on the need to reduce what seems to be a bloated Board.	Agreed. We recommend that the quorum should be three members.
SCHEDULE Paragraph 6 (2)	**<u>Recommendation & Justification</u>** It seems unnecessary for the Chairman of the Board to submit	Agreed. More importantly, we recommend that this

	minutes to the Minister. It should be noted that the concerned Ministry is represented on the Board and will have access to the minutes through its representative.	Agency be seen as an inter-ministerial Agency to ensure its success.
General comment	**Recommendation** All references to warehouse keeper should be changed to warehouse operator. **Justification** For uniformity.	Agreed.
General comment	**Recommendation** A provision should be included that would protect the status of a warehouse receipt as a negotiable bill of exchange. We recommend that the following provision should be included in the Bill: *"The provisions of the Bill of Exchange Act Cap. B8, Laws of the Federation of Nigeria 2004, shall apply to a negotiable Warehouse Receipt issued under this Act. In the event of any inconsistency between the provisions of this Act and the Bill of Exchange Act, the provisions of this Act shall prevail".* **Justification** To protect the status of a warehouse receipt as a negotiable	Agreed.

	instrument.	

SCHEDULE B

PENSION REFORM ACT 2014

SECTION	COMMENTS	COMMITTEE MEMBERS AGREED POSITION
Section 2 (2) (3) - Application	The phrase '15 or more employees' in Section 2(2) of the Act was considered as a legislative 'anomaly' or 'absurdity', especially when read together with Section 2(3) of the Act, which used the phrase 'less than three employees'. It leaves some category of persons outside the scope of the Act, i.e. companies with employees that are between 4 and 14 in number. This cannot be the intention of the legislature.	Agreed that the number of employees should be change from Fifteen (15) to three (3) as proposed. The objective is to increase the coverage, so that it will cover as many people as possible.
Section 4(4)(b) - Rate of contribution to the scheme	The section requires the employer to contribute a minimum of 20% in the event that the employer decides to bear the full responsibility of the Scheme. This is another legislative anomaly because the ordinary total minimum rate for both employer and employee as provide in section 4 (1) (a) & (b) is 18%. This should therefore be amended	The committee accepted the proposed amendment and recommends that the rate of contribution for both employer and employee should remain 18%

	accordingly	
Section 4(6) – Rate of contribution to the scheme	There appears to be a gap after the phrase 'make payment" in the section resulting in an ambiguity on what type of payment is required. It is recommended that the phrase "of pension contributions or procurement of Group Life insurance Policy" should be inserted immediately after the word 'payment in the first line	The amendment is accepted as proposed. In addition to the proposed amendment, insert ' ***as if such group or life insurance policy were validly in place***"
Section 16 (5) – Withdrawal from retirements savings account	The provision appears to have given room for multiple withdrawals in situations where an employee was disengaged from employment more than once from different organizations.	Section 6 (5) should be amended to insert ' ***provided that no employee shall take advantage of this provision more than once prior to attaining the age of 50 years or retirement***
Section 27(2)(e) Secretary & Legal Adviser	The section is silent on the minimum qualifications of the company secretary and Legal Adviser. Amend to reflect the qualifications of a legal practitioner	The committee accepted the proposed amendments and recommends that ***the provision should stipulate minimum post call experience of a legal practitioner which***

		shall not be less than 10 years.
Section 39 - Federal Government Retirement Benefit Bond Redemption Fund	In order to give full effect to the provisions of this act , it is recommended that the funds shall be invested in accordance with applicable pension investment guidelines	The committee recommends that a new sub (6) should be created to read as follows "***all Funds standing to the credit of this provision shall be invested in accordance with the applicable pension guidelines for the investment of pension funds.*** The current sub (6) should be change to sub (7)
Section 41 - Federal Capital Territory Retirement Benefit Bond Redemption Fund	Same as above	The committee recommends that a new sub (8) should be created to read as follows ***all Funds standing to the credit of this provision shall be invested in accordance with the applicable pension guidelines for the investment of pension funds.*** The current sub (8) should

		be change to sub (9)
Section 43 – Miscellaneous provision relating to Transitional Arrangement Directorate for the Federal Capital Territory	Same as above	The committee recommends that a new sub (5) should be created to read as follows "***all funds accrued by virtue of section 43 (4) not immediately needed to pay pensioners, shall be invested in accordance with pension guidelines for investment of pension fund***
Section 44 - Establishment of Pension Transitional Arrangement Directorate for FCT	Same as above	The committee recommends that a new sub (8) should be created as recommended above (S. 43)
Section 82 – Pension Protection Fund	The section provides that 'The Commission shall established and maintain a fund to be known as the Pension Protection Fund for the benefits of eligible pensioners covered by any pension scheme established or recognize under this act.	It was agreed that a new sub (5) should be created to read as follows '***All such funds standing to the credit of Pension Protection Fund not immediately needed for the objective set out in section 82 (3) shall be***

		invested in accordance with the pension investment guidelines
Section 100 (3) – Offences Relating Misappropriation of Pension Fund	The section provides that in addition to any punishment which court may impose in respect of the offence, the court may order the forfeiture of any property, assets or fund with accrued interest or proceeds of any unlawful activity under the act.	The committee recommends that the proceeds shall be forfeited to the Pension Protection Fund.
Section 109 (2) - Limitation of Legal Action		It was agreed that the provision should be amended to insert a clause for pre-action notice.
Section 115 – Power to make Rules	The provision provides for powers of the Commission to make rules and guidelines for giving full effect to the provision of this Act. However it was noted that the clause is silent on whistle blowing, which is very material for effective regulation of the industry.	The Committee resolved that there need to have a Whistle blowing clause with a view to protect employees of both regulator and operators

SCHEDULE C

FINANCIAL REPOETING COUNCIL ACT

SECTION	COMMENTS	COMMITTEE MEMBERS AGREED POSITION
Section 2.1 Members of the FRC Board.	While it appears the Board has been fairly constituted with representatives from major regulatory authorities and the professional accounting bodies in Nigeria, stakeholders in the private sector appear to have been left out. Also, institutions that are of relevance to financial reporting are not fairly represented on the Board. For example, S.27 sets out the functions of the Directorate of the Actuarial Standard, however, no current member of the Board is an actuary or a representative of actuaries in Nigeria. We are of the view that the Board as currently constituted is too large, with a preponderance of government agencies.	We recommend that the Board should be made up of 23 members with equal representatives from the public and private sectors. All 23 members should be professional accountants (or actuaries) registered in Nigeria, provided that in appointing the Board, due cognizance is taken to ensure representation of accounting bodies established by Acts of National Assembly. Specifically, representatives from the private sector should be captains of industries, ex-finance directors of major corporations, retired audit partners and retired actuaries. We recommend that S.2.2 and S.3.1 of the Act be amended as follows: (2) **"**The Board shall consist of professional accountants and

		actuaries with - (a) A chairman who shall be a professional accountant with in-depth knowledge of the financial reporting process with professional experience of not less than 15 years and shall be a captain of industry, or retired finance director of major corporation or , retired audit partner or retired actuary. (a) One representative from the Association of National Accountants of Nigeria; and (b) One representative from the Institute of Chartered Accountants of Nigeria; (c) One representative from each of the following; (i) Office of the Accountant General of the Federation (ii) Office of the Auditor General for the Federation; (iii) Central Bank of Nigeria; (iv) Chartered Institute of Stockbrokers;

		(v) Chartered Institute of Taxation of Nigeria; (vi) Corporate Affairs Commission; (vii) Federal Inland Revenue Service; (viii) Federal Ministry of Industry, Trade and Investment; (ix) Federal Ministry of Finance (x) Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture; (xi) Securities and Exchange Commission; (xii) National Insurance Commission; (xiii) National Pension Commssion (d) Chief Executive Officer (e) 2 Executive Directors (f) 4 members of Organised Private Sector

		(g)Create a new provision “Council Secretary / Legal Officer, who shall also serve as Board Secretary”.
ESTABLISHMENT OF THE FINANCIAL REPORTING COUNCIL Section 2(1) (viii) Federal Ministry of Commerce.	Delete “Federal Ministry of Commerce and replace it with “Federal Ministry of Industry, Trade and Investment”.	There is no Federal Ministry of Commerce now in Nigeria.
Section .7.2.g The Act requires code of ethics for financial officers and certification of financial statement by Chief Executive Officer and Chief Financial Officer.	It is not clear what the “code of ethics” mentioned in this section is. Also, based on the organizational structure of some reporting entities, the designation of the Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO) title does not exist, but rather its equivalent (for example, General Manager in place of a CEO, Financial Controller or a Finance Director in place of a CFO). According to the “Transitional Concessions Agreed between the Nigerian Stock Exchange and the FRC regarding Rules 1 and 2 of the FRC’s Rules” as released by SEC, the CFO was explained as “the most senior person in the finance function”. This can as well pass for the Finance Director in some organizations. However, in practice, it is known that where the	We suggest that the Act should be amended to include definitions of the nomenclatures, **“Chief Executive Officer” and “Chief Financial Officer”** We suggest that the following definitions of CEO and CFO should be inserted in the Interpretations section of the Act: **“**Chief Executive Officer (CEO) shall connote the most senior corporate officer of a PIE and shall include all heads of organisations, irrespective of title used; **“**Chief Financial Officer (CFO) shall connote the corporate officer with the highest ranking role in the finance function primarily responsible for managing the financial matters in relation to the organisation, as well as financial reporting to higher management and shall include all such officers carrying out such functions no

	title of the person occupying the highest role in the finance function is not the “CFO”, the FRC demands that a CFO still attests the financial statements or a waiver (issued at a fee by the FRC) be obtained. The requirement for CEOs and CFOs to certify the financial statements is in line with world’s best practices and does not contradict the requirement of the Companies and Allied Matters Act (CAMA) of Nigeria but rather takes it a notch higher. However, we believe the Act should be amended with a view to introducing some clarity and flexibility to the titles used in practice to describe the most senior person in the finance function person of an organization, especially as it relates to certification of financial statements in Nigeria. Where the most senior person in the finance function is not a member of the board of directors, then he/she can be co-opted into the board especially in respect of financial reporting matters.	matter how described in the particular organisation.”

Section 7.2.h Entities to provide real time disclosures on material changes in financial conditions or operations.	This requirement is not clear and may be misconstrued or misinterpreted. Furthermore, matters of financial reporting are not real-time as figures reported are historical, and any matter on real time operations (for example, share price) are made available to the Nigerian Stock Exchange.	The Committee agreed that this section should be deleted from the Act
Section 7(2)a The Council shall have the power to enforce and approve enforcement of compliance with accounting, Auditing, corporate governance and financial reporting standards in Nigeria.	Delete “corporate governance”	.
Section 8.1.a The Council shall develop and publish accounting and financial Reporting standards to be observed in the preparation of Financial statement of public interest entities.	Standards (IFRS) for use in Nigeria, and it is in the process of adopting the International Public Sector Accounting Standards (IPSAS) for public sectors in Nigeria. The IFRS were not developed by the Council but adopted “as is” while updates are being made to the IPSAS by the IPSAS Board. As such, the use of “develop” in this section of the Act (and other sections e.g. S.25.a, S.57, S.24.b – c where similar provisions exist) might not reflect the	**“**The Council shall adopt and publish accounting and financial standards issued by relevant international accounting bodies, subject to such modifications as it may deem fit for use by public interest entities in Nigeria.” Other than this, additional provision can be made in the Act to cover accounting for national matters which are not covered in the adopted standards in S.8.1.a. See suggested wording below:

	true sense of the Council's objective as it does not develop and publish all accounting and financial reporting standards adopted for use in Nigeria. Similarly, in S.8.1.q, it is stated that the Council shall "develop or adopt and keep up-to-date auditing standards...". The Council does not develop auditing standards as the Nigerian Standards on Auditing (NSA) – developed and issued by ICAN or the International Standards of Auditing (ISAs) – developed and **issued** the International Auditing and Accounting Standards Board (IAASB) are adopted for use in Nigeria. The provisions of S.8.1.q are also repeated in S.53.1.	"The Council shall issue guidelines to public interest entities on national matters where there are no guidance in the adopted standards (in S.8.1.a) that cover such national matters.".
Section 8(1)g Monitor compliance with the reporting requirements specified in the adopted code of corporate governance.		Delete
Section 8(1)n Receives copies of qualified reports together with details of such qualifications from the auditors of the financial statements within 30	This is open ended and a gap has been created. If this gap is not closed by inserting a reasonable time frame, the resolution of the issues involved may be unduly delayed hurting the smooth business activities of the company involved and causing harms to the capital	. receive copies of all qualified reports together with detailed explanations for such reports qualifications from auditors of the financial statements within a period of 30days from the date of such qualification and such reports shall not be announced to the public

days of such qualifications and such reports shall not be announced to the public until all the accounting issues that are related to the reports are resolved by the council.	market and the nation's economy.	until all accounting issues relating to the reports are resolved by the Council not later than 60 days of the receipt of by the Council;"
Section 8.1.f Maintain a register of professional accountants and Other professionals engaged in the financial reporting process.	This sub-section gives the Council the power to maintain a register of professional accountants and other professionals without stipulating who these other professionals are or the purpose to which the register is to be put. It is unclear whether the intention is to make the FRC a super regulator of all professions. This is problematic as this connotes that the FRC has been given the discretion to decide which professionals should be on its register and whether the FRC should have power to determine the right of a professional to be added to such register. Indeed, it is unclear whether the FRC's discretion to maintain such a register is subordinate to or coterminous with or superior to the supervisory power of the relevant professional body to which such a professional belongs. Over time, it has also been contested if the Council has powers to license professionals engaged in the financial reporting process of	We suggest that Section 8.1.f be amended as follows: "maintain a register of professional accountants and actuaries engaged in the financial reporting process for public interest entities." We also suggest that the following be included in the Act: "The Council shall be empowered to issue registration numbers to professional accountants and actuaries engaged in the financial reporting process of public interest entities by means of a registration number which shall be indicated as part of their signatures in all letters and reports issued to or on behalf of a public interest entity by such professional accountants and actuaries."

	PIEs, for example, by giving these individuals FRC numbers and insisting that the FRC registration numbers must be disclosed as part of their signatures for all letters and reports emanating from or issued to a PIE. In that regard, although there is no expression provision in the Act that the FRC can license directors and office holders, the FRC has by means of circulars mandated such professionals to indicate their FRC registration numbers as part of their signatures. Over time, it has also been contested if the Council has powers to license professionals engaged in the financial reporting process of PIEs, for example, by giving these individuals FRC numbers and insisting that the FRC registration numbers must be disclosed as part of their signatures for all letters and reports emanating from or issued to a PIE. In that regard, although there is no expression provision in the Act that the FRC can license directors and office holders, the FRC has by means of circulars mandated such professionals to indicate their FRC registration numbers as part of their signatures.	
Section 10(a) Functions of the Board	This section should be amended to identify the parameters for determination of the board. That is, the issues for which those	

	determinations are to be made should be spelt out clearly, or at best qualification of the sentence should be provided. **<u>Justification</u>** The section does not identify the subject of the strategies to be determined by the board Recommendation "(a) determine broad strategies and priorities for the council;"	
Section 11(a) **OBJECTS OF THE COUNCIL** "Protect investors and other stakeholders interest;"	Section 11 (a) Add apostrophe after "s`" in the word "Investors`" and in the word "stakeholders`".	This is correction of grammatical error.
Section 11(c)	Delete 11(c)	
Section 15(4)(b) "to fix the fees of external auditors of the Council;"	Section 15 (4) (b) Delete the word "fix" and replace with the word "Recommend".	This will be in conformity with Good Corporate Governance practice.
Establishment of Committees for the council 15(4)(a)	Delete the "s" in "oversees"	Typographical error in statement

Section 16 Section 16 of the Act provides that the fixing of the seal of the Board shall be authenticated by the signature of the Chairman and any other person generally or specifically authorized by the Board to act for that purpose and that of the Executive Secretary.	The fore-going broad provision would empower any member of the board to GENERALLY OR SPECIFICALLY represent the board. This may give rise to inconsistencies and may cause chaos when determining compliance with this section by members of the board where a crisis or dispute arises. For example, a cursory look at Rule 7 of the South African Financial Reporting Standards Council (Rules of Procedure) provides that only the Chairperson and the Deputy Chairperson of the FRSC are authorised to publicly speak on behalf of the FRSC. Rule 7.2 of the same law also provides that the Chairperson of the FRSC, or in Chairperson's absence, the Deputy Chairperson may authorise another member of the FRSC to publicly speak on behalf of, or otherwise represent the FRSC. The authorisation is to be in writing and to specify the purpose for which the member is to represent the FRSC. Although the South African act discusses speaking publicly on behalf of the commission we take the hint to make any such delegations which authorizes the Chairman's signature as referred to in section 16 of the Nigerian Act to	

	be specified in the act.	
Section 20(1) Executive Secretary and other staff of the Council **Section 20(3)** Tenure of Office There shall be for the Council an Executive Secretary	Rephrase to read " There shall be for the Council A Chief Executive officer and 2 other Executive Directors Rephrase: "the board shall appointment" and replace with "the board shall appoint" **Justification** Typographical error	
Section 21 Cessation of office	Amend the section of the Act to enforce the provisions of the Pension Reform Act of 2014, OR rather, rephrase to read "the Pension Reform Act in force" **Justification** There is a new Pension Reform Act of 2014. Thus, Act No. 2 of 2004 has been eroded. The 2014 Act should apply instead.	

Establishment of Directorates **Section 23** **Section 33**	Delete Section 23(g)	.
Section 30.1 and S. 30.2 1) The Council shall make and issue such rules or ethical codes of practice to establish its procedures and policies for the purpose of monitoring registered auditors and other professionals rendering services to public interest entities. 2) The Council may revise such rules or codes by revoking, varying or adding to provisions of the rules or codes of practice, as the case may be	This power to make ethical rules and establish ethical codes of conduct for accountants or other professionals is vested in their professional bodies. The FRC should not be made a super regulator by virtue of this section. Where a need to investigate any professional arises, the FRC can lodge its complaints with the disciplinary committee of the professional body to whom the registered professional belongs.	This section should be deleted from the Act.
ESTABLIHSMENT OF FUND OF THE COUNCIL Section 33 .	The fines, levies and penalties stipulated under this section of the Act have been criticized as being excessive. The fact that it is contained in the Act, rather than regulations made thereunder, makes it difficult to amend. This has created the perception of the FRCN being a tax collector rather than a regulator. There is a need to amend this section of the Act and make the levies and fines payable under the Act more flexible and subject to prevalent	(a) every registered professional accountant or actuarist ,not less than N5,000 annually; (b) every publicly quoted company, an amount based on its market capitalization, annually as follows : (i) an amount equal to 0.05% of market capitalization or n250,000.00 whichever is lower,

	economic realities.	where the market capitalization of a company is not more than N1billion; (ii) an amount equal to 0.02%of market capitalization or N2,000,000 whichever is lower, where the market capitalization of a company is greater than N1BILLION but not more than N500billion; and (iii) N5,000,000 only, where the market capitalization of a company is greater than N500 billion. (c) Section 33(2)(c) Delete the phrase “or imprisonment for a term not exceeding 6 months”. **JUSTIFICATION** A fine of N500,000.00 or 6 months imprisonment is not in line with best practice and may discourage inventors.

S.41.1 and S.41.2 41 (1) The Council shall maintain a register of professionals. (2) A person shall not hold any appointment or offer any service for remuneration as a professional for public interest entities, unless he is registered under this Act.	Please see our comments above (in respect of S.30.1 and S.30.2) which explains that the supervision of professionals is vested in their different professional bodies, while the FRC should regulate adherence of financial statements of public interest entities ('PIEs') to the prescribed accounting standards. Also, some of the qualifications to be appointed as directors etc. of PIEs is already stipulated in CAMA. Consequently, this should not be further subject to the FRC's oversight. In addition, it is not clear if S.41.2 applies only to PIEs. However, Rule 2 of the FRC Rules amongst other provisions, requires that "any professional providing assurance or certifying any part of an annual report, financial statements, accounts, financial report, returns and other documents of a financial nature, shall certify by indicating his or her name and FRC registration number". This requirement of Rule 2 is silent on whether it applies to all entities or to PIEs only. Furthermore, any rules or guidelines issued by the Council should not in any way contradict the existing provisions of the law as in the FRC Act.	We suggest that S.41.1 and S.41.2 should be amended as set out below: 41 (1) The Council shall maintain a register of professionals accountants and actuaries who are involved in the financial reporting process of public interest entities. (2) A person shall not offer any service for remuneration as a professional accountant or actuary for public interest entities, unless he is registered under this Act.

Section 41(6)	.	Recommend that imprisonment be taken out. It could be abused. A suspension from carrying out business would be appropriate.
Section 43 No registered professional shall employ a person who has been suspended from practice, unless the Council has consented to such employment.	As earlier established, the regulation of various professions is vested in specific professional bodies. The FRC's oversight is limited to the financial reporting of PIEs. The section as it stands suggests that suspension of professionals (be it an accountant or any other professional) from the FRC's register should lead to their dismissal by their employers. This ignores the reality that professionals provide services to other entities other than PIEs.	We suggest that S.43 be amended as follows: "*No professional accountant or actuarist shall employ a person who has been suspended from the register maintained by the Council to undertake any services relating to the financial reporting process of a public interest entity, unless the Council has consented to such employment."*
Section 48 Powers of the Commission….	Amend the section of the Act to provide a remedial allowance to professionals who are unjustifiably de-registered.	No provision for redress for unjust or unwarranted de-registration
Sections 49, 50 & 51 Part VI, **Code of Corporate Governance**	Delete Sections 49-51	Delete Sections 49-51
Section 56.1 Where the Council has cause to seek amendment to any of its pronouncements, it shall do so in consultation with the relevant standards setting bodies and shall	The Council's power to make pronouncements was not established before this section which provides for the amendment of such pronouncements. Statutory bodies only have powers which they are granted by their establishing statutes. Thus, it would be prudent to establish the Council's power to make such	We suggest that this section should be amended as follows: "Where the Council has cause to make a clarification which is urgent, it shall make pronouncements, which shall be done in consultation with the relevant standards setting bodies provided that such pronouncement shall be temporary and be in

cause a notice to be published in— (a) the Gazette ; and (b) not less than two national daily newspapers, inviting comments from all interested persons.	pronouncements before proceeding to their amendment instead of presuming such inherent powers for the Council. Also, the relevant standards setting bodies referred to in this section are not known nor defined in the Act. In addition to this and to the extent that the relevant standard setting bodies are not known nor defined, the process of amendment of pronouncements doesn't seem to involve consultation with stakeholders for the public and private sectors.	force for a period of not more than one year and the Council shall thereafter make Guidelines in respect of such subject matter after causing a notice to be published in— (a) the Gazette ; and (b) not less than two national daily newspapers, inviting comments from all interested persons." The Act should also establish a process for engaging the stakeholders in the public and private sectors when making/amending its pronouncements and not just with "relevant standards bodies". Furthermore, the relevant standard setting bodies should be defined in the Act so they are known.
Section 45 Material irregularity	The Act explains material irregularity to include fraud, deliberate misstatements of financial statements, falsifications, defalcations, etc. While this explanation sheds some light as to what constitutes a material irregularity, it is somehow shallow as the examples of irregularities provided are all indicators of fraudulent activities alone. The Act should be updated to explain in more details what constitutes material irregularities. The update	Provisions of Section 40 of the Mauritius Financial Reporting Act 2004 can be adopted/tailored. Section 40 of the Mauritius Financial Reporting Act 2004 explains materiality irregularity as any unlawful act or omission committed by any person responsible for the management of a public interest entity, which –

	should go beyond matters of fraud so it is clear to professionals the nature of the matters that should be escalated to the Council based on S.45 of the Act.	a) represents a material breach of any fiduciary duty owed by such person to the public interest entity or the conduct or management thereof; b) has caused or is likely to cause material financial loss to the public interest entity or to any partner, member, shareholder, creditor or investor of the public interest entity in respect of his or its dealings with that entity; or c) is fraudulent or amounts to theft.
Section 57-60 These clauses deal with Compliance by public interest entities, Monitoring of financial statements and report, Preparation of financial report in accordance with standards and Practice review of professional accountants.	If these clauses are closely examined, they are duplications of other regulatory legislations and they constitute serious overlapping which should not be allowed to create uncertainty not only in the capital market but also in the economy as a whole.	
Section 57 **COMPLIANCE BY PUBLIC INTEREST ENTITIES**	Add “s” to the word “statement” to read “statements” and the word “report” to read “reports” and replace the word “is” in line three with the word “are”. **<u>JUSTIFICATION</u>** This is to Correct grammatical errors.	

Section 58 (3) Where a public interest entity files any financial statements and reports.	Add “s” to the word “report” in line one of section 58 (3) to read “reports”. **<u>JUSTIFICATION</u>** This is to Correct of grammatical error.	
Section 61.3 The Council shall require evidence of a second partner review and audit approach that registered professional accountants adopted on quality control.	Reference to second partner review in this section of the Act has been subject to different interpretations. However, it has been understood that this is the role of the engagement quality control reviewer as defined in ISA 220.7(a). The Council should clarify in the Act, the role/duties of the engagement quality control reviewer and/or define these roles as it relates to audit engagement quality control as contained in the International Standards of Auditing (ISAs)7. For the purpose of quality control on audits, requirements of the ISAs and International Standards on Quality Control (ISQC) 1 should be adopted.	We suggest that S.61.3 be amended as follows: “The Council shall require evidence of involvement of an engagement quality control reviewer that auditors adopted on audit quality control.” In connection therewith, an engagement quality control reviewer should be defined in the Interpretations section of the Act as having the same meaning as in ISA 220, Quality Control for an Audit of Financial Statements– as shown below: “Engagement quality control reviewer—A partner, other person in the firm, suitably qualified external person, or a team made up of such individuals, none of whom is part of the engagement team, with sufficient and appropriate experience and authority to objectively evaluate the significant judgments the engagement team made and the conclusions it reached in formulating the auditor’s report.” [ISA 220.7(c)]

Section 62.1.b The Council may investigate or cause to be investigated any breach of the Code of Conduct and Ethics by any registered professional.	Although, S.30 refers to rules and ethical codes, from the provisions of that section, the rules and ethical codes referred to therein are for the purpose of monitoring registered auditors and other professionals rendering services to public interest entities. Accordingly, the Code of Conduct of Ethics mentioned in S.62.1.b of the FRC Act is not defined or explained anywhere in the Act as a result of which professionals are not guided as to what constitutes a breach of the Code of Conduct. The Act needs to be updated to reflect that relevant code(s) for the purpose of this section are the professional standards which ordinarily apply to the professionals. The standard and globally recognized code is the IESBA Handbook of the Code of Ethics for Professional Accountants. It is recognized as a tool which establishes the fundamental principles of professional ethics for professional accountants.	We suggest that S.62.1.b be amended as follows: "Where there is a breach of the IESBA Handbook of the Code of Ethics for Professional Accountants, or the relevant professional code of conduct and guide for members issued by any national accounting body established by Acts of National Assembly, the Council shall cause the professional body to which the professional accountant is registered to investigate the breach and mete out due sanctions in line with the relevant professional code of conduct and guide for members."
Section 64 - 65 Sanctions, Fines and Penalties	Although the Act empowers the Council to sanction PIEs as provided for in S.65, the Council in practice imposes monetary and disciplinary actions on entities that are not PIEs. The arbitrary sanctions meted out on	We suggest that S.65 of the Act be deleted as its provisions have been sufficiently covered in S.64. Also, we recommend that the following be included in the Act: 1. All matters undertaken by the

	professionals and reporting entities has been a significant concern for investors. Although S.64.1 of the Act provides that the monetary sanction for noncompliance with the prescribed statement of accounting and financial reporting standards shall not exceed N20 million, there are regulations of the Council that provide for sanctions up to a N5 billion. In addition, as these fines and sanctions are for the most part connected with findings from the reviews/inspections performed by the FRC, it is best that such findings should be made confidential within the Council (unless otherwise authorised by the supervising Minister), in line with confidentiality ethics as contained in the relevant codes of ethics.	Council that pertain to the affairs of public interest entities shall remain confidential within the Council pursuant to the FRC's Code of Ethics. Any release of information pertaining to such matters shall only be authorised by the Minister." 2. "Release of information shall only be to a regulatory body or prosecuting authority, to enable that person, body or authority to undertake those responsibilities or as otherwise required or allowed by law." To further drive compliance and enhance both the quality of the financial reporting process and the audit, we also suggest that the following be included in the Act: 1. "The Council shall publish biannually the findings of its reviews of the financial statements of public interest entities, together with matters of relevance to financial

		reporting on its website. Such publications however will not include information of the reporting entities from which those findings were observed." **"**The Council shall annually organise a forum for professional accountants and actuaries to discuss such matters in (1) above in a concerted manner.**"**
Section 64.1 and S.64.2 64 (1) Any person who fails to comply with the prescribed statement of accounting and financial reporting standards developed by the Council or any decision of the Council to the effect that a public interest entity has failed to comply with any of its pronouncements under Act, and with such other accounting and financial reporting standards as may be specified under the relevant enactments, commits an offence and is liable on conviction to a fine of not exceeding N10,000,000.00 or imprisonment for a term not exceeding 2 years or both, provided	These provisions presume the noncompliance of PIEs without providing them a chance to defend their positions. As it is generally known, the International Financial Reporting Standards ('IFRS') are principle based standards with the outlook that entities should comply with the principles or explain in the notes to the account why non-compliance with the principle was a more prudent approach in the particular circumstance. Under such a regime, it is unconscionable that the FRC would presume preparers of accounts guilty of offences without understanding what they did from their own view point. Thus, it is imperative to amend this section to reflect the IFRS regime by allowing preparers and entities to make representations why they took certain views before the FRC may	We recommend that these sections be amended as follows: 64 (1) Any public interest entity which, in the opinion of the Council, fails to comply with the prescribed statement of accounting and financial reporting standards developed or adopted by the Council or any decision of the Council to the effect that a public interest entity has failed to comply with any of its pronouncements under this Act, and with such other accounting and financial reporting standards as may be specified under the relevant enactments, shall a. be served with a notice detailing the noncompliance and shall be required to make a representation to the Council within 60 days;

that the Council shall bring such no make compliance to the notice of the preparers of such financial statements. (2) Where a notice is served on a person or public interest entity under sub-section (1) of this Section, it shall, within 60 days of the service of the notice, restate its financial statements and resubmit them to the Council and to any government department or authority requiring such statement and hold a general meeting of its shareholders on the restated financial statements.	adjudge them in breach of the standards.	b. after making its representation to the Council, the Council shall within 30 days issue a decision whether the entity has satisfactorily explained the non-compliance or where it is unsatisfied refer the matter to its Board; c. in referring the matter to the Board, the Council shall recommend the next steps of action, subject to ratification by the Board; d. The public interest entity shall within 30 days implement the decision of the Board, failure to do so shall mean the public interest entity has committed an offence, and it shall be liable on conviction to a fine of not exceeding N10,000,000.00. (2) Where a decision is reached by the Board that a public interest entity under sub-section (1) of this Section has indeed failed to make up its accounts to the appropriate standard, it shall, within 30 days of the service of the notice, restate its financial statements and resubmit them to the Council and to any government department or authority requiring such statement and hold a general meeting of its shareholders on the restated financial statements.

Sanctions for non-compliance i. SSections 64 & 65		While the sanctions for non-compliance under section 64 are only applicable upon conviction by a court of competent jurisdiction, this is not the case under section 65 which allows the FRCN to impose sanctions on public interest entities, without necessarily first securing conviction from the courts. There is no justification for this difference. Section 65 needs to be reviewed to align it with the general position of law that only a court of law can impose penalty on a person/organisation. The FRCN should not be a judge in its own cause. The FRCN should work to establish whether or not a financial reporting breach has occurred, and leave it to the courts to determine the sanctions/penalties under the Act Delete 65
Section 77 "Public Interest Entities" means governments, government organizations, quoted and unquoted companies and all other Organizations which are required by law to file returns with regulatory authorities and this excludes private companies that routinely file returns	There have been several instances where stakeholders, courts of laws etc. have argued that the definition of a PIE as in the Act is ambiguous. One of the major issues leading to this is the lack of clarity on what constitutes "returns" which an organization is required to file by law i.e. whether they are only financial statements as defined in S.77 of the Act, or any operational/financial information that is required by law to be submitted by an entity to	Reference in the Act to PIE shall be taken to mean: i. Government, entities controlled by government and entities in which government has a shareholding of twenty (20) percent or more;

only with the Corporate Affairs Commission and the Federal Inland Revenue Service."	any regulatory authority other than the Corporate Affairs Commission and the Federal Inland Revenue Service. To address this ambiguity, our suggested meaning for PIEs has been included in the recommendation.	ii. All entities listed on a recognized stock exchange; Companies involved in issuing securities to the members of the public, including shares and debt securities;
"Financial statements" means the balance sheet.	Replace the term "Financial statements" with "statement of financial position". **JUSTIFICATION** This is in line with the International Financial Reporting Standards (IFRS).	
Income statements or profit and loss account.	Replace the term "income statements or profit and loss account" with "statement of comprehensive income or statement of financial performance". **JUSTIFICATION** This is in line with the International Financial Reporting Standards (IFRS).	
Statement of cash flows	Remove "s" from the word "flows" to read "flow". **JUSTIFICATION** This is in line with the International Financial	

	Reporting Standards (IFRS).	
TITLE OF THE ACT An act to Repeal the Nigerian Accounting standards Board Act, No. 22 of 2003 and Enact the Financial Reporting Council of Nigeria charged with the responsibility for, among other things, developing and Publishing Accounting and Financial Reporting Standards to be observed in the preparation of financial statement of Public Entities in Nigeria; and for related matters.	Add: "S" to the word "statement" to read "statements" and add the word "Interest" after the word "Public" to read "Public Interest Entities". **<u>JUSTIFICATION</u>** a. Tthe correct terminology is "Financial statements" Throughout the Act, reference was made to "public interest Entities"	We recommend that the long title be amended as follows: "*An act to repeal the Nigerian Accounting Standards Board Act, No.22 of 2003 and enact* *the Financial Reporting Council of Nigeria charged with the responsibilities for defining* *accounting and financial reporting standards to be observed in the preparation of financial statements in Nigeria, monitoring the quality of financial statements published by public interest entities including monitoring the quality of the audits of such entities. and* *Providing oversight on the regulatory activities of the accounting and actuarial professions in Nigeria*."
General The long title to the Act Describes the Act as "an act to	Based on this long title, the Act is believed to cover Public Interest Entities (PIEs). Over time however, there has been debate on the scope	

repeal the Nigerian Accounting Standards Board Act, No.22 of 2003 and enact the Financial Reporting Council of Nigeria charged with the responsibility for, among other things, developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statement of public entities in Nigeria; and for related matters".	of the FRC Act; whether it applies to only PIEs or to all public and private entities in Nigeria. This has resulted in uncertainties, legal tussles and disputes. According to legal interpretation also (RE: Federal High Court judgment on the case between Eko Hotels Limited and the FRC), the Act currently does not empower the Council to exercise any regulatory or penal powers over private entities. Another observation is that in this long title, reference is made to "public entities" and we believe the intended meaning of this is same as PIEs. However, reference to "among other things" in the long title to the Act appears to create the loop which further drives the lack of clarity on the roles, powers, functions and objects of the FRC, especially as it relates to its powers to oversee the financial reporting process of non-PIEs.	
General Perpetual existence of the board, and supervisory powers of the Minister.	The Act is silent on the perpetual existence or possible dissolution of the board. It is our view that the Act be amended to reflect that the board should exist in perpetuity. This way, there would never be a vacuum as members of the board would retire at various times but never together, thus ensuring continuity of the	We suggest that the following provisions be included in the Act as it relates to appointment to or dissolution of the board and supervision of the activities of the Council by the Minister in the absence of a board:

	board of the Council	**"A person shall** not be appointed or remain a member of the Board if he is: a) adjudged bankrupt or suspends payment to, or compounds or makes an arrangement with his creditors: b) found guilty of misconduct in relation to his duties; c) convicted of any offence involving fraud, dishonesty or other offence; or d) disqualified or suspended from practising his profession in Nigeria by order of a competent authority made in respect of him personally. A member of the Board may at any time resign his office by giving at least one month's notice in writing to the President through the Minister of his intention to do so. The President, upon, the recommendation of the Minister, may remove a member at any time from membership of the Board if: a) the member is disqualified on any of the grounds specified in section xx (above) of this Act;

		b) the member i. has become incapable, through illness or injury, of performing his functions; or ii. has contravened the provisions of this Act; iii. a conflict of interest has arisen in relation to the member; or iv. his removal appears to be necessary or expedient for the effective performance of the functions of the Council. If a member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Minister shall contact the body represented to nominate another person to fill the vacancy so occasioned and the person so nominated shall be deemed appointed for the remainder of the term of office of the member whose death, resignation, retirement, disqualification or

		removal occasioned the vacancy. The Board shall exist in perpetuity and shall not be dissolved provided that nothing in this section would preclude the retirement and/or removal of members of the Board from time to time." In effecting these recommendations, we also recommend that all powers of the Minister as it relates to its oversight roles on the activities of the FRC should be defined in the Act.