

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

New Rule

- (a) Proposed Rule on Revenue Bonds

Sundry Amendments

- (b) Proposed amendments to align the Rules with the proposal to discontinue issuance of Dividend/Return Money Warrants in the Capital Market
- (c) Proposed amendment to Rule 234 on Inter-Dealer Broker
- (d) Proposed amendment to the Rules on Mergers and Takeover

Details of the proposal are as follows:

A. PROPOSED RULE ON REVENUE BONDS

Name/Citation of the Rule: Revenue Bonds

New Rule 567 to be created as follows:

567 (1) Definition of Terms

“Credit Enhancement” A credit enhancement is a method through which a company improves its debt or credit worthiness. Credit enhancements provide additional assurance that a borrower will honour its obligation through the provision of collateral, insurance, or a third party guarantee. Credit enhancements reduce the credit/default risk of a debt, thereby increasing the overall credit rating and lowering interest rates.

“Revenue Bond” A revenue bond is a bond issued by a State, Local Government or government agency to finance projects that will generate income. Such income would serve as first source of repayment of the obligations and may be augmented by third party guarantee.

Rule 567 (2) Conditions for approval of a Revenue Bond

(2) In addition to the general registration requirements as stated in Rule 279(2) an issuer of a revenue bond shall file the following additional disclosure documents:

- (a) A Feasibility Study and Report stating the rationale for the project, estimates of revenues that the facility could generate, along with any economic, operating, or engineering aspects of the project that would be of interest to the Issuer.
 - (b) A pledge by the State, Local Government or government agency to the Issuer stating that the revenues generated by the operating projects shall be utilized in defraying principal and coupon payments due to the Bondholders.
 - (c) An Indenture/Trust Deed stating how revenue received by the State, Local Government or government agency shall be disbursed to the Bondholders.
 - (d) Evidence of a dedicated escrow/sinking fund account specifically for servicing of the revenue bond with revenue earmarked from the project.
- (3) The State, Local Government or government agency shall provide the following assurances/guarantees in the prospectus:
- (a) An undertaking that the bond proceeds shall be expended solely for the project.
 - (b) A statement to the effect that construction works (where applicable) shall be inspected quarterly by professionals and the reports of such inspections submitted to the Commission;
 - (c) A statement that the completed project shall be handled and maintained in a businesslike manner by named professionals;
 - (d) A schedule of fees or the rate structure to be charged, designed to keep the project self-supporting; and
 - (e) A statement in respect of financial safeguards for the bond proceeds and revenue to be generated from the asset by the State, Local Government or government agency.
 - (f) An undertaking that the asset financed by the revenue bond and the resultant revenue shall be ring-fenced through the use of an SPV in whose name the title of the completed project shall be issued, where applicable.
 - (g) An undertaking that the ownership of the asset shall not be transferred to the State, Local Government or government agency until full redemption of the bond obligation.

- (4) The State, Local Government or government agency shall also forward to the Commission a statement as to the flow of funds under the revenue bond. The flow of funds shall include information regarding:
- a. Operation and maintenance of the project;
 - b. Debt service provisions for principal and coupon;
 - c. Debt service reserve arrangements;
 - d. Reserve Maintenance Fund to supplement the general maintenance fund (where applicable);
 - e. Surplus Funds which may be used for several purposes, such as early redemption of bonds (where the Trust Deed or Bond Indenture permit), paying for improvements; and
 - f. Such other purposes as may be prescribed by the Commission from time to time.

New Rule 568 to be created as follows:

1.3 **Rule 568 Credit enhancements for revenue bonds by States, Local Governments or government agencies**

- (1) To mitigate the risk of investing in revenue bonds, States, Local Governments or government agencies may employ any or a combination of the following credit enhancements in order to encourage investments in the bond:

(a) Irrevocable Standing Payment Order (ISPO)

- (i) The State, Local Government or government agency issuing the revenue bond may issue an ISPO as a back-up to the projected revenue streams of the funded project.
- (ii) The ISPO may only be triggered in the event of a default, provided that there shall be a liquidity facility provider to supplement any shortfall prior to the draw down from the ISPO.

(b) Insurance

- (i) Where there is an insurance policy on the project financed with the proceeds of the revenue bond, a catastrophe clause shall be inserted in the trust deed or bond indenture.

(ii) The catastrophe clause shall state that where a facility is destroyed due to a catastrophic event such as flood, hurricane, tornado, or the like, the State, Local Government or government agency shall use the insurance purchased to call the bonds and pay the bondholders all amounts due to them.

(c)Third Party Guarantees

A third party guarantee may be provided to the effect that interest and principal payment shall be made by a third party, should the issuer default due to reasons such as insolvency or bankruptcy.

(d)Additional Funding from Endowments

Projects initiated by States, Local Governments or government agencies that receive additional funding from endowments shall have the interests from such endowments used as collateral for the revenue bond.

(e)Such other credit enhancements as may be approved by the Commission from time to time.

Provided however that investment in revenue bond issues not backed by any of the above listed credit enhancements shall be restricted to Qualified Institutional Investors and High Net-worth Individuals as defined under the Rules and Regulations of the Commission.

B. PROPOSED AMENDMENTS TO ALIGN THE RULES WITH THE PROPOSAL TO DISCONTINUE ISSUANCE OF DIVIDEND AND RETURN MONEY WARRANTS IN THE CAPITAL MARKET

a. Rule 44- Payment of Dividend

Full Text of Existing Rule 44 (1):

Dividend declared shall be paid en-bloc by the issuance of a cheque or transfer of funds to the registrar not later than seven (7) working days after the annual general meeting where the dividend was declared.

Rule 108 (2)- Opening of Account for Payment of Dividend

Full Text of Existing Rule 108(2):

The total dividend declared by the company shall be paid en-bloc into the said account within 24 hours after the opening of the account and evidence of such payment forwarded to the Commission and the registrar within 24 hours.

Proposed Amendment to Rule 44(1):

Dividend declared shall be paid en-bloc by the issuance of a cheque or transfer of funds to the registrar ~~not later than seven (7) working days~~ within 24 hours after the annual general meeting where the dividend was declared.

b. Rule 66- Suspension of Broker

Full Text of Existing Rule 66 (1)(f):

(1) Any broker suspended for a period of more than three (3) months, shall provide the Commission, not later than five (5) working days from the date of receipt of notice of the suspension, with the following:

(f) clients dividend warrant or certificates yet to be delivered;

Proposed amendment: Deletion of the phrase "dividend warrant"

(f) clients' ~~dividend warrant~~ certificates yet to be delivered;

c. Rule 106 -Mode of Return

Full Text of Existing Rule 106:

(1)All return monies shall be paid electronically. Such monies may however be paid by return warrant where the subscriber has not provided bank details;

(2)Warrants shall be dispatched by registered post or through a reputable courier service.

Proposed Amendment to Rule 106:

(1)All return monies shall be paid electronically to affected subscribers. ~~Such monies may however be paid by return warrant where the subscriber has not provided bank details;~~

~~(2)Warrants shall be dispatched by registered post or through a reputable courier service.~~

d. Rule 107 (4)- Custody and Transfer of Unclaimed Monies

Full Text of Existing Rule 107(4):

All unclaimed return monies shall after six (6) months be transferred by the registrar into an investors' protection fund established pursuant to the Act;

Proposed Amendment:

All unclaimed return monies shall after six (6) months be transferred by the registrar into the National Investor Protection Fund established pursuant to the Act;

e. Rule 108 (3) -

Full Text of Existing Rule 108(3):

The registrar shall be responsible for effecting dividend payment either by way of electronic transfer or by issuance and distribution of dividend warrant to the beneficiaries within the time limit prescribed in these rules and regulations;

Proposed Amendment:

(3) The Registrar shall be responsible for effecting dividend payment either by way of electronic transfer ~~or by issuance and distribution of dividend warrant~~ to the beneficiaries within the time limit prescribed in these rules and regulations;

f. Rule 108(4)

Full Text of Existing Rule 108(4):

Upon receipt of the notice of and money for dividend/interest from the company, the registrar shall prepare and dispatch warrants to security holders within 20 working days from the date of receipt thereof;

Proposed Amendment:

Upon receipt of the notice of and money for dividend/interest from the company, the registrar shall ~~prepare and dispatch warrants~~ effect the payment of dividend by electronic transfer to security holders within ~~20~~ 2 working days from the date of receipt thereof;

g. Rule 108(5)

Full Text of Existing Rule 108(5):

All dividend/interest warrants shall be signed by the registrar or any other person duly authorized by the company to act as registrar;

Proposed Amendment:

Deletion of the existing Sub-Rule (5) since it will no longer be relevant.

h. Rule 108(6)

Full Text of Existing Rule 108(6):

A statement of all unclaimed dividend/interest warrants shall be submitted by the registrar to the Commission in such form and at such time as the Commission shall prescribe;

Proposed Amendment:

A statement of all unclaimed dividends/~~interest warrants~~ shall be submitted by the registrar to the Commission in such form and at such time as the Commission shall prescribe;

i. Rule 108(9)

Full Text of Existing Rule 108(9):

Failure to open and fully fund the account by the Company shall attract a penalty of N1 million per day and a further penalty of 5% above the MPR on the amount declared;

Proposed Amendment:

The penalty provision is segregated and expanded to prescribe a penalty for contravention by the Registrar.

Failure to ~~open and~~ fully fund the account by the Company within the stipulated time frame shall attract a penalty of N1 million per day and a further penalty of 5% above the MPR on the amount declared;

Proposed Amendment: Creation of Sub-Rule 108(9)(b) as follows:

In the event of a failure to open the account within the stipulated time frame, the Registrar shall be liable to a penalty of N1million and a further sum of N100,000 for every day of default.

j. Rule 108(10)

Full Text of Existing Rule 108(10):

In the event of failure to effect dividend payment either by electronic transfer or dispatch of dividend warrant to beneficiaries within the time stipulated by these rules and regulations, the registrar shall be liable to a penalty of N1m for every day of default.

Proposed Amendment:

In the event of failure to effect dividend payment ~~either by electronic transfer or dispatch of dividend warrant~~ to beneficiaries within the time stipulated by these rules and regulations, the registrar shall be liable to a penalty of N1m for every day of default.

k. Schedule IX: Code of Conduct for Capital Market Operators and their Employees

Existing Clause (6)(d) of the Code of Ethics Peculiar to Employees of Registrars' Departments

An employee of a Registrar's Department shall:

- (d) not delay without reasonable cause and authorisation, the despatch to any share-holder of his dividend warrant, return money, share/stock certificate and notices of annual and extra-ordinary general meetings. In addition, care must be exercised in addressing mails for despatch to share/stock holders;

Proposed amendment:

- (d) not delay without reasonable cause and authorisation, the despatch to any share-holder of his ~~dividend warrant, return money,~~ share/stock certificate and notices of annual and extra-ordinary general meetings. In addition, care must be exercised in addressing mails for despatch to share/stock holders;

l. Schedule X: Code of Corporate Governance by Public Companies

Existing Clause 22.4 (Part C, Protection of Shareholder Rights)

The Board should ensure that the company promptly renders to shareholders documentary evidence of ownership interest in the company such as share certificates, dividend warrants and related instruments. Where these are rendered electronically, the Board should ensure that they are rendered promptly and in a secure manner;

Proposed amendment:

The Board shall ensure that the company promptly renders to shareholders electronic evidence of ownership of interest in the company in a prompt and in a secure manner.

C. PROPOSED AMENDMENT TO RULE 234- INTER-DEALER BROKER

Existing Rule 234

Inter-Dealer Broker

Inter-Dealer Broker (IDB) means a brokerage firm operating in the bonds or OTC derivatives market, which acts as an intermediary between major dealers in the capital market (brokers and market makers).

Proposed amendment

Inter-Dealer Broker (IDB) means a financial intermediary operating in the bonds or OTC derivatives market, which acts as an intermediary between major dealers and other financial institutions in the capital market such as but not limited to brokers, market makers, pension funds, fund managers and insurance companies.

D. PROPOSED AMENDMENTS TO THE RULES ON MERGERS AND TAKEOVER

1. Existing Rule 445(1)

- a) No person shall acquire, through a series of transactions or otherwise, more than 30% of the shares of a public quoted company without making a bid.
- b) Where an existing shareholder, together with persons acting in concert, holds not less than 30% but not more than 50% of the shares of a company acquires

additional shares, such person(s) shall make a takeover bid to the other shareholders of the company.

c) A takeover made in violation of sub rules (a) and (b) shall be void.

d) The foregoing provisions shall not apply:

i. Where an ailing company undertakes a private placement which results in the strategic investor acquiring more than 30% of the voting rights of the company;

ii. An acquisition or holding of or entitlement to exercise or control the exercise of more than 30% voting shares of a company by an allotment made in accordance with a proposal particulars of which were set out in a prospectus where:

a. The prospectus was the first prospectus for the initial public offer of voting shares issued by the company;

b. The person who acquired the voting shares was a promoter in respect of the prospectus and the effect of the acquisition on the person's voting power in the company has been disclosed in the prospectus;

c. The prospectus has been registered with the Commission.

iii. An acquisition of shares or rights over shares which would not increase the percentage of the voting rights held by that person e.g. if a shareholder takes up his entitlement under a fully underwritten rights issue.

iv. Convertible securities.

Proposed Amendment to 445 (1)

Where any person, directly or indirectly-

a) acquires shares or an interest in shares, whether by a series of transactions over a period of time or not, which (taken together with shares held or acquired by persons acting in concert with him) carry 30 per cent or more of the voting rights of a public company; or

b) together with persons acting in concert with him, holds not less than 30% but not more than 50 per cent of the voting rights and such person or any person acting in concert with him, acquires additional shares or an interest in shares, or is interested in additional shares which increase his percentage of the voting rights of a public quoted company,

Such person shall make a takeover offer to the holders of any class of equity share capital in the target company through an agent who shall be a registered Capital Market Operator;

2. Existing Rule 445 (3)

A take-over bid shall not be made:-

- a. to fewer than 20 shareholders representing 60% of the members of the target company or such other members as may be prescribed by the Commission from time to time, or
- b. where the shares to be acquired under the bid are shares in a private company.

Proposed Amendment

A take-over bid shall not be made or required:-

- a) to fewer than 20 shareholders representing 60% of the members of the target company or such other members as may be prescribed by the Commission from time to time, or
- b) Where the shares to be acquired under the bid are shares in a private company save where such private company within the immediate preceding twelve months converted from a public quoted company to a private company;
- c) Where an ailing company undertakes a private placement approved by the Commission which results in the strategic investor acquiring more than 30% of the voting rights of the company;
- d) An acquisition or holding of or entitlement to exercise or control the exercise of more than 30% voting shares of a company by an allotment made in accordance with a proposal particulars of which were set out in a prospectus where:
 - I. The prospectus was the first prospectus for the initial public offer of voting shares issued by the company;
 - II. The person who acquired the voting shares was a promoter in respect of the prospectus and the effect of the acquisition on the person's voting power in the company has been disclosed in the prospectus;
 - III. The prospectus has been registered with the Commission.
- e) Upon conversion of convertible securities issued with the approval of shareholders in a general meeting.
- f) Where shares carrying 50% or more of the outstanding voting rights of the company are held directly or indirectly by one person;

- g) Where holders of shares carrying 50% or more of the outstanding voting rights of the company state in writing that they would not accept a mandatory offer;

4. **Existing Rule 445 (4)**

A take-over bid shall for purpose of information, be advertised in at least two (2) national daily newspapers.

Proposed Amendment

An amendment to Rule 445 (4) is proposed to read as follows:

(4) Where a mandatory offer is triggered in line with the provisions of Rule 445 (1) above, an application for authority to proceed with a takeover bid shall be filed with the Commission within three business days;

5. **Existing Rule 445 (5)**

In addition to (4) above, an Offeror shall make an announcement on the floor of the exchange of their intention to make a takeover bid to the Offeree Company

Proposed Amendment

The intention to make a takeover bid shall be advertised in at least two (2) national daily newspapers, the company's website and announced on the floor of the Exchange;

6. **Proposed Creation of New Sub Rule 445 (6)**

Where an announced offer has lapsed, failed or been withdrawn, a bidder or party acting in concert shall not, within the succeeding 18 months from the date of announcement of the offer;

a. Make a takeover offer for the voting shares or voting rights that had been the subject of the previous takeover offer;

b. Acquire any further voting shares or voting rights in the company except as may be authorized by the Commission;

c. Acquire any of the target's voting shares or voting rights if the bidder holds voting shares or voting rights carrying over 30% but not more than 50% of

the class of voting shares or voting rights that had been the subject of a previous takeover offer;

d. Acquire any interest in the voting shares or voting rights on more favourable terms than those made available under its lapsed offer until any competing offers have been declared unconditional or have lapsed.

7. **Proposed Creation of New Sub Rule 445 (7)**

Where an acquirer withdraws from making (or is unable to make) a bid having acquired such number of shares which has triggered the obligation to make an offer under this Rule 445, the Commission shall require the acquirer to dispose of sufficient shares in the Company within a limited period to unconnected persons which brings the holding of the acquirer to below 30% or 50% as applicable;

8. **Proposed Creation of New Sub Rule 445 (8)**

In the event of withdrawal of the open offer, the acquirer shall within 48 hours, through the agent to the offer:

a) Make an announcement in the same newspapers in which the public announcement of the open offer was published, providing grounds and reasons for withdrawal of the offer;

b) Simultaneously with announcement, inform in writing to:-

i. The Board

ii. The Exchanges on which the shares of the target company are listed, and the exchanges shall forthwith disseminate such information to the public; and

ii. The target company at its registered office.

9. **Proposed Creation of New Sub Rule 445 (9)**

(9) (a) Any acquisition made in violation of this Rule 445 shall be void and the provisions of Rule 445 (7) above shall apply.

(9) (b) The Commission shall in addition to Subsection (a) above impose a penalty of not less than N1,000,000 on each culpable party and N5,000 for every day of continuing default.

10. **Existing Rule 447 (1) - Authority to proceed with take-over bid**

- (1) (a) A take over bid shall not be made unless an authority to proceed with take-over had been obtained from the Commission.
- (b) An application for authority to proceed with a take-over bid shall be made to the Commission by or on behalf of the person proposing the bid before the proposed bid is made.
- (c) The application shall state the following:
 - (i) the name and other particulars of the person making the bid;
 - (ii) the particulars of the proposed bid with supporting documents in compliance with the provisions of the Act and these rules and regulations;
 - (iii) any other information or documents that may be required by the Commission from time to time.

Proposed Amendment

- (b) Subject to the provisions of Rule 445 (4), an application for authority to proceed with a take-over bid shall be made to the Commission by or on behalf of the person proposing the bid before the proposed bid is made.

11. Existing Rule 447 (2) - Authority to proceed with take-over bid

- (2) (a) The authority to proceed with a bid granted by the Commission shall be for a period of three months subject to renewal upon application by the person making the bid.
- (b) The application for renewal of the authority to proceed with a bid shall be made within fourteen (14) days prior to the expiration of the authority and such renewal shall be for a period of not more than three (3) months.

Proposed Amendment

- (b) The application for renewal of the authority to proceed with a bid shall be made within fourteen days prior to the expiration of the authority to proceed and such renewal shall be for a period of not more than one (1) month.

12. Proposed Creation of New Sub Rule 447 (2) (c)

- (c) Where an authority to proceed with a bid is granted by the Commission and no bid is registered or made within the validity period including any extension granted, the provisions of Rule 445 (7) shall apply and the offeror shall be prohibited from acquiring any new shares in the company for a period of 12 months immediately following the expiration of the authority to proceed.

13. Existing Rule 448 - Registration of take-over bid

(1) The persons making a take-over bid shall lodge with the Commission, a copy of the proposed bid for registration before it is dispatched.

Proposed Creation of New Sub Rule (1) (a)

(a) The takeover bid referred to in Subsection (1) above shall be deemed to be dated as follows:-

i. On the date on which it is dispatched;

ii. On the latest date on which such bid is dispatched, where it is dispatched on more than one day; or

iii. On the date on which it is posted, where dispatched by post