

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

Pursuant to Section 313 of the Investments and Securities Act, 2007, the following new Rules and Sundry amendments are added/made to the Commission's Rules and Regulations.

NEW RULES

1. ASSET MANAGER CODE OF PROFESSIONAL CONDUCT

1.1 General Principles of Conduct

Managers have the following responsibilities to their clients.

Managers must:

1. Act in a professional and ethical manner at all times.
2. Act for the benefit of clients.
3. Act with independence and objectivity.
4. Act with skill, competence, and diligence.
5. Communicate with clients in a timely and accurate manner.
6. Uphold the applicable rules governing capital markets.

1.2 CODE OF PROFESSIONAL CONDUCT

1.2.1 Obligation to clients

Managers must:

1. Place client interests before their own.
2. Preserve the confidentiality of information communicated by clients within the scope of the Manager–client relationship.
3. Refuse to participate in any business relationship or accept any gift that could reasonably be expected to affect their independence, objectivity, or loyalty to clients.

1.2.2 Investment Process and Actions

Managers must:

1. Use reasonable care and prudent judgment when managing client assets.
2. Not engage in practices designed to distort prices or artificially inflate trading volume with the intent to mislead market participants.
3. Deal fairly and objectively with all clients when providing investment information, making investment recommendations, or taking investment action.
4. Have a reasonable and adequate basis for investment decisions.
5. When managing a portfolio or pooled fund according to a specific mandate, strategy, or style:

- a. Take only investment actions that are consistent with the stated objectives and constraints of that portfolio or fund.
- b. Provide adequate disclosures and information so investors can consider whether any proposed changes in the investment style or strategy meet their investment needs.
6. When managing separate accounts and before providing investment advice or taking investment action on behalf of the client:
 - a. Evaluate and understand the client's investment objectives, tolerance for risk, time horizon, liquidity needs, financial constraints, any unique circumstances (including tax considerations, legal or regulatory constraints, etc.) and any other relevant information that would affect investment policy.
 - b. Determine that an investment is suitable to a client's financial situation.

1.2.3 Trading

Managers must:

1. Not act or cause others to act on material non-public information that could affect the value of a publicly traded investment.
2. Give priority to investments made on behalf of the client over those that benefit the Managers' own interests.
3. Use commissions generated from client trades to pay for only investment-related products or services that directly assist the Manager in its investment decision-making process and not in the management of the firm.
4. Maximize client portfolio value by seeking best execution for all client transactions.
5. Establish policies to ensure fair and equitable trade allocation among client accounts.

1.2.4 Risk Management, Compliance and Support

Managers must:

1. Develop and maintain policies and procedures to ensure that their activities comply with the provisions of this Code and all applicable legal and regulatory requirements.
2. Appoint a compliance officer responsible for administering the policies and procedures and for investigating complaints regarding the conduct of the Manager or its personnel.
3. Ensure that portfolio information provided to clients by the Manager is accurate and complete and arrange for independent third-party confirmation or review of such information.
4. Maintain records for an appropriate period of time in an easily accessible format.
5. Employ qualified staff and sufficient human and technological resources to thoroughly investigate, analyze, implement, and monitor investment decisions and actions.
6. Establish a business-continuity plan to address disaster recovery or periodic disruptions of the financial markets.

7. Establish a firm-wide risk management process that identifies, measures, and manages the risk position of the Manager and its investments, including the sources, nature, and degree of risk exposure.

1.2.5 Performance and Valuation

Managers must:

1. Present performance information that is fair, accurate, relevant, timely, and complete. Managers must not misrepresent the performance of individual portfolios or of their firm.
2. Use fair-market prices to value client holdings and apply, in good faith, methods to determine the fair value of any securities for which no independent, third-party market quotation is readily available.

1.2.6 Disclosures

Managers must:

1. Communicate with clients on an ongoing and timely basis.
2. Ensure that disclosures are truthful, accurate, complete, and understandable and are presented in a format that communicates the information effectively.
3. Include any material facts when making disclosures or providing information to clients regarding themselves, their personnel, investments, or the investment process.
4. Disclose the following:
 - a. Conflicts of interests generated by any relationships with brokers or other entities, other client accounts, fee structures, or other matters.
 - b. Regulatory or disciplinary action taken against the Manager or its personnel related to professional conduct.
 - c. The investment process, including information regarding lock-up periods, strategies, risk factors, and use of derivatives and leverage.
 - d. Management fees and other investment costs charged to investors, including what costs are included in the fees and the methodologies for determining fees and costs.
 - e. The amount of any soft or bundled commissions, the goods and/or services received in return, and how those goods and/or services benefit the client.
 - f. The performance of clients' investments on a regular and timely basis.
 - g. Valuation methods used to make investment decisions and value client holdings.
 - h. Shareholder/unit holder voting policies.
 - i. Trade allocation policies.
 - j. Results of the review or audit of the fund or account.
 - k. Significant personnel or organizational changes that have occurred at the Manager.
 - l. Risk management processes.

2. FIXED INCOME PRIMARY ISSUANCE FEES

S/N	COST CENTRE	FEE RATES
1.	SEC	1st N500 Mn @ 0.15%
		Balance above N1 Bn @ 0.1425%
2.	NSE	Companies already having Equity Listing @ 0%
		Companies not having Equity Listing @ 0.0375%
		States and Supra-nationals @ 0.05%
3.	FMDQ Listing Fees	@0.09% of issue size (N1Bn), ranging to @ 0.002% of issue size (> N200Bn)
4.	ISSUING HOUSE	1 ST N1 Bn @ Max of 1.35%
		Next N1 Bn @ Max of 1.225%
		Balance above N2 Bn @Max of 1.15%
5.	CSCS	@ 0.0075% of Offer Size
		Capped @ N5 Mn
6.	RECEIVING AGENT	@ 0.25% of Offer size
7.	STOCKBROKER	@ 0.13% of Offer size
8.	REGISTRARS	N30 (Existing Application)
		N40 (New Application)
		Take on fee of N1 Mn
9.	SOLICITOR TO THE ISSUE	@ 0.05% of Offer size
		Subject to a cap of N10 Mn
10.	SOLICITOR TO THE COMPANY	@ 0.01% of Offer size
		Subject to a cap of N5 Mn
11.	REPORTING ACCOUNTANT	@ 0.05% of Offer size
		Subject to a min of N1 Mn
		Subject to a max of N7.5 Mn



12.	AUDITORS	@ 0.01% of Offer size
		cap of N4 Mn
13.	TRUSTEES	Max of 0.035% of Offer size
		Cap of N5 Mn

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3. EQUITY PRIMARY ISSUANCE FEES

S/NO	COST CENTRE	FEE RATES
1.	SEC	1 st N500 Mn @ 0.275%
		Next N500 Mn @ 0.225%
		Balance above N1Bn @ 0.15%
2.	NSE	Main Board – Listing Fees – 0.25% of Offer size subject to maximum fee of N200m
		Premium Board – Listing Fees – 0.25% of Offer size subject to maximum fee of N400m
		ASEM – flat Fee of N100,000.00
3.	ISSUING HOUSE	1 st N1Bn @ 1.35%
		Next N1Bn @ 1.225%
		Balance over N2Bn @ 1.15%
4.	CSCS	At 0.0075% of offer size capped @ N5Mn
5.	RECEIVING AGENT	@ 0.50% of offer size
6.	STOCKBROKER	0.13% of offer size
7.	REGISTRARS	N30 (Existing Application)
		N40 (New Application)
		Take on fee @ N1m
8.	SOLICITOR TO THE ISSUE	0.05% of offer size
		Subject to a min of N1Mn
		Capped at N10Mn
9.	SOLICITOR TO THE COMPANY	At 0.01% of offer size
		Subject to N500,000

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		Capped at N5Mn
10.	REPORTING ACCOUNTANT	0.05% of offer size
		Subject to a min of N1Mn
		and a max of N7.5Mn
11.	AUDITORS	At 0.01% of offer size
		capped @ N4Mn
12.	UNDERWRITING	Max of 2.3% of offer size
13.	PRINTING/ADVERTISEMENT/PUBLICITY/OTHER EXPENSES	Max of 0.2 % of offer size
	TOTAL	Max of 2.833% (excluding underwriting commission and Registrars fee)

NOTE: PURSUANT TO SECTION 309 OF THE ISA WHICH EMPOWERS THE MINISTER TO EXEMPT ANY PERSON OR CLASS OF PERSONS FROM THE OPERATION OF THE PROVISIONS OF THE ACT, THE MINISTER OF FINANCE HAS WAIVED THE NAIRA VALUE CAP PLACED ON TRANSACTION FEES PAYABLE TO SOLICITORS, AUDITORS, TRUSTEES, REPORTING ACCOUNTANTS AND THE DEPOSITORY (CSCS).

SUNDRY AMENDMENTS

1. HARMONIZATION OF REGISTRATION REQUIREMENTS FOR INCIDENTAL FUNCTIONS

a. Rule 56 (1) - Functions of Brokers

Existing Rule

Registered brokers shall have the following functions amongst others:-

- (a) sale and purchase of securities on a recognized securities exchange on behalf of clients.
- (b) other services ancillary to (a) above;
- (c) disclose to the Commission any dealings in a security valued at a minimum of 500,000 units executed in a single deal or in multiple deals on the same day on behalf of his clients.
- (d) shall report any suspected market manipulation or insider dealing to the Commission within 48 hrs.

Proposed Amendment

- (a) sale and purchase of securities on a recognized securities exchange on behalf of clients;
- (b) other services ancillary to (a) above providing technology platform for clients to trade under clients account;

- (c) disclose to the Commission any dealings in a security valued at a minimum of 500,000 units executed in a single deal or in multiple deals on the same day on behalf of his clients;
- (d) report any suspected market manipulation or insider dealing to the Commission within 48 hours;
- (e) providing investment advice to clients;
- (f) publishing investment research;
- (g) report any suspected market manipulation or insider dealing to the Commission within 48 hrs.

Justification

Recommended additional functions are based on research from other jurisdictions like USA, Kenya and UK.

b. Rule 67 – SUB-BROKER; Registration Requirements

Existing Rule 67 (1)- Corporate Sub-Broker

An application for registration as corporate sub-broker shall be filed on Form SEC 3 as contained in schedule III to these rules and regulations and accompanied by –

- (a) two (2) sets of completed Form SEC 2 to be filed by the sponsored individual;
- (b) a copy of the certificate of incorporation certified by the Corporate Affairs Commission (CAC). Where a copy not certified is filed, the applicant shall present the original copy for sighting by an authorized officer of the Commission;
- (c) a copy of the memorandum and articles of association certified by the Corporate Affairs Commission which among others shall include powers to act as a sub-broker;
- (d) a copy of the CAC Form containing particulars of directors certified by the Corporate Affairs Commission;
- (e) copy of latest audited accounts or audited statement of affairs for companies in operation for less than one year;
- (f) profile of the company covering among others brief history of the company, organizational structure, shareholding structure, principal officers, etc;
- (g) Fidelity bond representing 20% of paid-up capital;
- (h) sworn undertaking to keep proper records and render returns (to be notarized);

- (i) a copy of the agreement signed between the sponsoring broker/dealer firm and sub-broker;
- (j) evidence of minimum paid-up capital of N1 million;
- (k) Sworn undertaking to comply with the provisions of the Act and the rules and regulations as may be required from time to time by the Commission (to be notarized);
- (l) A recommendation letter from the sponsoring broker/dealer firm;
- (m) Evidence of compliance with rule 20(4);
- (n) any other information or document that may be required by the Commission from time to time.

Proposed Amendment

An application for registration as sub-broker shall be filed on Form SEC 2C as contained in schedule III to these rules and regulations and accompanied by... **(this is an amendment of opening sentence)**

Justification

The correct application form is Form SEC 2C not Form SEC 3.

- (d) copy of ~~CAC~~ Return on allotment and particulars of Directors (Forms CO2 and CO7) certified by the Corporate Affairs Commission; **(this is an amendment of item (d) mentioned above)**

Justification

Form CO2 is the Return on Allotment of the company's shares. It is required to verify issued and paid up capital, while CAC Form CO7 gives detailed particulars of directors.

- (j) evidence of minimum paid-up capital of N10 million; **(this is an amendment of item (j) mentioned above)**

Justification

Amended to reflect the new paid up capital as implemented by SEC.

- (l) letter of recommendation and undertaking signed by the sponsoring Broker/Dealer on behalf of the Sub-Broker **(this is an amendment of item (l) mentioned above)**.

Justification

Amended to reflect the contents of the circular dated August 17, 2015 on the new minimum capital requirement issued by the Commission.

- (n) operational manual and organizational chart; **(new item)**

Justification

Being a corporate entity, it should have structures in place. The manual will be in consonance with the applied function(s) and contain among others: Policies, Position Statements, Action Plans, Internal Control Process etc.

c. Rule 67 (2) Individual Sub-Broker

~~(a) An application for registration as an individual sub-broker shall be filed on Form SEC 2 as provided in schedule III of these rules and regulations and shall be accompanied by the following:~~

~~(i) Certified copy of certificate of registration of business name (where applicable);~~

~~(ii) Evidence of minimum net worth of N500,000;~~

~~(iii) Sworn undertaking to comply with the provisions of the Act and the rules and regulations as may be required from time to time by the Commission;~~

~~(iv) Evidence of compliance with rule 20(4);~~

~~(v) Sworn undertaking to keep proper records and render returns.~~

~~(b) Rule 83(3) and (4) shall, with all necessary modifications, apply in case of denial or suspension of registration of a sub-broker.~~

Proposed Amendment

Rule 67 (2) to be expunged

Justification

Currently there are two registered Individual Sub-Brokers who are inactive and have not been filing returns. Correspondences to the operators are returned undelivered. Also there has not been any application for registration of Individual Sub-Broker for many years.

d. Rule 84 – Functions of Issuing House

Existing Rule

Issuing houses shall have the following functions amongst others:-

- (1) providing financial advisory services for schemes and issuance of securities under the relevant provisions of the Act, CAMA or any other law;
- (2) acting as agent of issuer for purposes of issuances of securities and schemes under the relevant provisions of the Act, CAMA or any other law;
- (3) coordinating activities of other professionals and parties to an issue or scheme;

(4) preparing the registration statement, the prospectus, the scheme document or any and other transaction documents;

(5) any other roles ancillary to any of the above.

Proposed Amendment

Creation of a new sub (5) as follows:

(5) underwriting issuance of securities

Justification

Underwriting is a core function of Issuing Houses in several other comparative jurisdictions. It is the practice of the Commission that once an operator is registered as an issuing house, the operator automatically performs the function of an underwriter.

Proposed Amendment

Creation of a new sub (6) as follows:

(6) Sponsoring issuers of publicly offered/privately placed fixed income securities including bonds (sovereign, agency, sub-national, corporate and supranational), asset-backed or mortgage-backed securities and mutual funds for listing on a recognized Exchange.

Justification

At the time of the drafting of the current Rule 84, the Commission had not registered the FMDQ OTC and the drafters of the Rule did not envisage a time when Issuing Houses rather than Stockbrokers will be recognized as sponsors of securities for listing on a recognized exchange. The Issuing Houses are classified as registration members by the FMDQ.

e. Existing Rule 84(5)

(5) Any other roles ancillary to any of the above

Proposed Amendment

Renumbering existing sub-rule (5) as sub-rule (7) as follows:

(7) Any other roles ancillary to any of the above

f. Rule 88 (1) Registration Requirements

Existing Rule

Where a corporate body not registered as an issuing house intends to be registered as an underwriter, it shall file Form S.E.C 3 as contained in schedule III to these Rules and Regulations and shall be accompanied by ...

Proposed Amendment

Where a corporate body ~~not registered as an issuing house~~ intends to be registered as an Underwriter, it shall file FORM S.E.C 3 as contained in schedule III to these Rules and Regulations and shall be accompanied by ...

Justification

To distinguish between an Issuing House which by practice has underwriting as an incidental function and a non-Issuing House that has underwriting as its sole function.

g. Rule 89 (1) – UNDERWRITERS; Eligibility

Existing Rule

No person may act as an underwriter in any public issue of securities unless such a person is registered by the Commission to perform the function.

Proposed Amendment

No person, *other than an Issuing House*, may act as underwriter in any public issue of securities unless such a person is registered by the Commission to perform the function.

Justification

To clear the confusion that a registered Issuing House needs to register separately as an Underwriter before performing the function of Underwriting, given that underwriting is ancillary to Issuing House function.

h. Rule 89 (2) – UNDERWRITERS; Eligibility

Existing Rule

(2) The following may be registered as underwriters—

- (a) banks;
- (b) issuing houses;
- (c) insurance companies;
- (d) any other person as may be determined by the Commission from time to time.

Proposed Amendment

(2) The following may be registered as underwriters—

- (a) banks;
- ~~(b) issuing houses~~
- (b) insurance companies;
- (c) any other person as may be determined by the Commission from time to time.

Justification

Deletion of (b) issuing houses is proposed, in light of the recommendation to make underwriting functions ancillary to the functions of an issuing house. This will negate the need for an issuing house to apply for the additional function of underwriter.

i. Rule 92 – Functions of Fund/Portfolio Manager;

Existing Rule

Fund/portfolio managers may perform the following functions amongst others:-

- (1) investment advisory services;
- (2) selection of securities for the fund/portfolio;
- (3) publication of financial market periodicals;
- (4) management of funds and portfolios on behalf of investors;
- (5) any other role ancillary to any of the above.

Proposed Amendment of sub-rule (2)

- (2) selection of securities for the fund/portfolio in exercise of a discretionary mandate;

Justification

Research conducted in Malaysia, India and South Africa reveal that fund management includes both investment and advisory services even though investment advisory can also be a stand-alone function. In the UK and Singapore however, management of assets appears to be separate and distinct from investment advisory and is not stated as an ancillary function to managing assets.

j. Rule 178 (1) – Capital Market Experts Or Professionals; Registration Requirements

Existing Rule

(1) The following experts/professionals whose opinion impact directly on capital market transactions are subject to registration by the Commission:

- a) legal practitioners;
- b) accountants;
- c) auditors;
- d) engineers;
- e) estate valuers;
- f) property managers
- g) any other expert/professional that may be determined by the Commission from time to time.

Proposed Amendment

Deletion of sub-rule (c) and (e) as follows:

(1) The following experts/professionals whose opinion impact directly on capital market transactions are subject to registration by the Commission:

- c) auditors;
- e) estate valuers
- f) any other expert/professional that may be determined by the Commission from time to time.

Justification

Auditing and Accounting functions are business lines carried out by the same person and practicing licenses are issued for the practice of both accounting and auditing without distinguishing the two. Both functions can be carried out by the same person under one license.

Section 62 of ISA 2007 requires Auditor of public companies to register with the Commission. However, no provision was made in the Rules regarding registration requirement of the auditors. An auditor should therefore not be a distinct capital market expert from Accountant because no information from any other jurisdiction was found on this function. .

The Nigerian Institute of Estate Surveyors and Valuers (NIESV) lists property management and development, infrastructure and facilities management, building maintenance management amongst others as the professional services rendered by the Estate Surveyor and Valuer whose activities are regulated by one body. In fact, property management is an incidental function of estate valuation.

k. Rule 179 – REPORTING ACCOUNTANTS

Proposed Creation of New Sub (5) as follows:

(5) The Reporting Accountant to an entity cannot act as Auditor to that same entity or affiliated entity

Justification

To avoid any conflict of interest

l. Rule 181 – ESTATE SURVEYORS

Existing Rule- Estate Surveyors

Proposed Amendment – Addition of Valuers as follows:

Estate Surveyors and Valuers;

Justification

For consistency with Rule 178(1).

m. Rule 181 – ESTATE SURVEYORS

Proposed Amendment- Creation of New Sub-Rule (4)

(4) The estate valuer to an entity cannot act as property manager to that same entity or affiliated entity.

Justification

To avoid any conflict of interest especially with respect to Real Estate Investment Schemes.

2. AMENDMENT TO RULE ON TRADING IN UNLISTED SECURITIES – INCLUSION OF DEBT SECURITIES

1. Existing Rule (a):

All Securities of unlisted public companies shall be bought, sold or transferred only by means of a system approved by the Commission and under such terms and conditions as the Commission may prescribe from time to time.

A slight amendment replacing the words “unlisted public” with “public unlisted” is being proposed. The new Rule will read as follows:

(a) All securities of public unlisted companies shall be bought, sold or transferred only by means of a system approved by the Commission and under such terms as the Commission may prescribe from time to time.

2. New Rule (b) to provide as follows:

(b) All debt securities issued in Nigeria, i.e. issued by the Federal Government of Nigeria (“FGN”), Subnationals (State and Local Government), Supranational and Public Companies, shall be bought, sold or transferred in the secondary market only through a SEC registered trading facility or Securities Exchange.

3. A new Rule (c) to include regulation of trading in foreign currency securities of Nigerian entities listed in other jurisdictions is proposed as follows:

- (c) All exchange of debt securities traded (including foreign currency securities of Nigerian entities listed in other jurisdictions e.g. Eurodollar bonds) in the Nigerian capital market shall be executed on or reported to a SEC-registered Securities Exchange or trading facility.

4. Existing Rule (b) which provides that:

No person shall buy, sell or otherwise transfer securities of an unlisted public company except through the platform of a registered securities exchange established for the purpose of facilitating over-the-counter trading of securities.

To be slightly amended and renumbered as Rule (d) to compel trading of securities of public companies on SEC-registered platforms only, is proposed as follows:

- (d) No person shall buy, sell or otherwise transfer securities of a public unlisted company or government agency except through the platform of a SEC-registered securities exchange or trading facility established for the purpose of facilitating over-the-counter trading of securities.

5. Existing Rule (c) which provides that:

Any unlisted public company, director, company secretary, registrar, broker/dealer or such other persons who facilitates the buying, selling or transfers of the securities of an unlisted public company otherwise than through the platform of a registered securities exchange, shall be liable to a penalty of not less than N100, 000 in the first instance and not more than N5, 000 for every day the infraction continues.

The existing Rule (c) as outlined above to be slightly amended and renumbered as Rule (e) to read as follows:

6. Any public unlisted company, director, company secretary, registrar, broker/dealer or such other persons who facilitate the buying, selling or transfer of the securities of a public unlisted company or government agency otherwise than through the platform of a SEC-registered securities exchange or trading facility shall be liable to a penalty of not less than N100,000 in the first instance and not more than N5,000 for every day of default.

General Justification:

1. *Innovative and audacious regulatory reforms are required to galvanise the market for it to gain visibility and ultimately provide governance for all fixed income trading activities in the Nigerian capital market.*
2. *Sharp practices which can result in price distortions and metamorphose into systemic risk are rife in the market, limiting a lot of the market's growth potential.*
3. *Such regulatory reform will provide comfort to other financial market regulators such as the National Pension Commission and the National Insurance Commission, whose philosophy remains to permit their regulated entities to invest in securities purchased in the secondary market through a recognised securities exchange, anchored on the attendant governance such platforms promote.*
4. *It will boost governance and transparency, enable proper sizing of the Nigerian debt capital market by the regulator, and improve market integrity.*

3. RULES ON REGISTRATION OF ALL CAPITAL MARKET OPERATORS WITH RELEVANT TRADE GROUPS/ASSOCIATIONS

Existing Title of Rule 25- Membership of Self Regulatory Organizations

Proposed amendment

Deletion of the words "membership of" and addition of the phrase "Trade Associations"

Proposed new title

Self Regulatory Organizations/Trade Associations

Additional Proposed amendments

The Rule should be further amended to introduce two (2) sub-headings namely:

- (1) Membership
- (2) Registration

Following this amendment the new Rule 25 will read as follows:

Title: Self Regulatory Organizations/Trade Associations

(1) Membership

- a) Every person registered to perform any function in the market shall be a member of an SRO or a Trade Association

- b) A broker or dealer shall be a member of an association of securities dealers to effect transactions in an over-the-counter (OTC) market
- c) Where the broker dealer effects transactions on any exchange and over-the-counter market, the appropriate self-regulatory organization shall be the exchange(s) and the association of the relevant over-the-counter (OTC) market

(2) **Registration**

All Trade Associations whose members have been registered to perform any capital market function shall be registered with the Commission.

Justification

To ensure that all trade groups/associations are registered with the Commission and make for a robust implementation of the Complaints Management Rules put in place by the Commission.

4. AMENDMENT TO RULE 35 (7)- CHANGE OF STATUS OF REGISTRANT

Existing Rule

Any person who fails to comply with the provisions of this regulation shall be liable to a late filing fee of N500 for every day that the default subsists and shall have its registration summarily suspended if the period of default exceeds ninety (90) days.

Proposed Amendment: Creation of sub-rule (a) and (b)

(a) Any person who fails to comply with the provisions of this regulation shall be liable to a minimum penalty of N20, 000.00 and a further sum of not more than N5, 000.00 for every day that the default subsists.

(b) Such person shall have their registration suspended if the period of default exceeds 90 days.

Justification

The issue of late filing of documents or updating documents by Capital Market Operators has become a matter of concern to the Commission as they file at their own convenience, in disregard to SEC Rules and Regulations since the penalty is not deterrent enough. This behavior by Capital Market Operators is mainly responsible for the delay in updating CMO records. The fee increase might serve as an additional deterrent measure.

5. AMENDMENT TO RULE 314- COST OF ISSUE

Existing Rule:

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

Proposed Amendment:

“The total cost of issue shall not exceed 2.833% for equity and 2.293% for bonds of the total gross proceeds excluding underwriting commission and registrars’ fees from the issue or such percentage of the gross total proceeds as the Commission may prescribe from time to time”.

Justification:

Based on the studies conducted by a market wide Committee it was observed that the Nigerian Capital Market is one the most expensive in terms of transaction cost. This adversely deters issuers and investors from the market.

In order to address the concern and improve Nigeria’s ‘Global competitiveness’ and ‘ease of doing business’ in line with the Ten Year Master Plan a proposal is being made to reduce Transaction Cost in a holistic manner having bench marked the primary issuance fee with other emerging markets such as Malaysia and South Africa. This is aimed at increasing volume of transaction and encouraging more issuers to access the market for their financing needs.

6. PROPOSED AMENDMENT TO RULE 420- RULE ON GLOBAL DEPOSITORY RECEIPTS

1.0 **Name/Citation of the Rule:** Depository Receipts by Nigeria Entities – Rule 420

Existing Rule

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

- a. nature of the programme;
- b. number of shares involved;
- c. parties (foreign/local);
- d. international clearing system desired;
- e. in the case of transaction on the stock exchange, the issuer must disclose the parties (foreign/local involved and number of shares in the transaction);
- f. copies of documents obtained from and filed with the foreign country;

g. evidence that the programme has been cleared by the Central Bank of Nigeria or the National Insurance Commission where the programme involves a bank or an insurance company. Evidence of clearance by other regulatory agencies would be required where applicable;

h. copies of latest annual report;

i. copies of resolution at annual general meeting (A.G.M.) or extraordinary general meeting (E.G.M.);

In the case of Level I G.D.R., compliance with the above and the existing rules on foreign investments, may qualify the issuer for a “no objection” letter from the Commission.

(2) Where the issuer is to raise capital as in (1) above, full disclosure requirements of the Commission must be met. In addition, the issuer is required to file the following information with the Securities and Exchange Commission:-

a. a certified copy of the resolution of the members/directors authorizing the issue (Corporate Affairs Commission certified true copy required);

b. number of shares for the G.D.R./A.D.R. and the percentage it represents of the outstanding shares of the issuer;

c. capital history of the issuer (e.g. total share capital, paid-up capital, issued and un-issued, etc.);

d. parties to the issue;

e. evidence of approval of the foreign regulatory authorities;

f. evidence of consent(s) of any international party to the transaction;

g. certified true copy of resolution of members at A.G.M./E.G.M. of the issuer approving the offer;

h. currency in which securities for the programme would be denominated (e.g. dollars, pound sterling, local currency, etc.);

i. a prospectus for foreign capital sourcing and another one for local offering (a single document for both domestic and foreign markets may be issued);

j. rights and obligations attached to each class of securities/shares if different classes of securities are being issued.

Provided however that new offerings must meet the requirements of both the local and foreign jurisdictions.

(3) GDR issues shall be approved only upon satisfactory account of utilization of proceeds from previous raising.

1.1 **Proposed Amendment**

Rule 420 of the Securities and Exchange Commission Rules is hereby amended by substituting, for the heading, a new heading "Depository Receipts" to cater for all kinds of depository receipts which may be issued or traded in Nigeria or by Nigerian entities. The entire Rule 420 is hereby amended as follows:

Depository Receipts

This Rule shall apply to sponsored and unsponsored Global Depository Receipts representing ownership of securities issued by Nigerian entities and such other Depository Receipts representing ownership of securities issued by foreign entities which are tradable on the international capital market;

Justification

The new heading and description is to make provision for all variants of depository receipts which are within the regulatory purview of the Commission.

1.2 **Rule 420 (1) – Definitions**

"Depository" means a bank or institution incorporated in Nigeria or other jurisdiction with valid registration as a capital market operator/intermediary or a foreign capital market operator/intermediary which carries on the business of issuing depository receipts, acting as transfer agent, and corporate actions agent in relation to depository receipts;

"DR" means Depository Receipts;

"Global Depository Receipts" means negotiable certificates or instruments which confer ownership of a specified number of shares or debentures issued by Nigerian entities which are tradable on the international capital markets;

"Issuing Entity/Issuer" means the Underlying Entity in the case of Sponsored DRs and the Depository in the case of Un-sponsored DRs.

"Level I" means an Un-sponsored or Sponsored DR Programme tradable only on an OTC market.

"Level II" means ~~a Sponsored DR programme listed on an Exchange~~ Sponsored GDRs issued by a Nigerian entity representing beneficial interests and contractual rights on a specified number of shares or debentures, which are non-capital raising and listed on an Exchange;

"Level III" means ~~a sponsored DR programme used for the purpose of capital raising through a public offering and listed on an Exchange~~ Sponsored GDRs issued by a Nigerian entity for the

purpose of capital raising through a public offering, representing beneficial interests and contractual rights on a specified number of shares or debentures and listed on an Exchange;

“Nigerian Depository Receipts” means negotiable certificates or instruments which confers ownership of a specified number of shares or debentures issued by foreign entities which are listed/tradable on an Exchange in Nigeria;

“Sponsored NDR program” ~~means the issuance of DRs at the discretion of the Underlying Entity and in accordance with the deposit agreement between the issuer and the depository.~~ means a DR program issued involving a contractual relationship with the Underlying Foreign Entity, which may be capital raising or non-capital raising, and listed on an Exchange in accordance with the terms and conditions of issuance. Sponsored NDRs represent beneficial interests and contractual rights on a specified number of shares or debentures listed and traded on an International Exchange.

“Underlying Entity” means the entity that issues the securities represented by the DRs.

“Underlying Securities” means securities issued by the Underlying Entity.

“Un-sponsored DR program” means the issuance of DRs without the involvement of the Underlying Entity (non-capital raising) and in accordance with the terms and conditions of the issuance.

Justification

To provide clarity for the use of certain terms adopted in the previous rules and new terms introduced in this amendment. Definitions which have been covered by the main SEC Rules have been excluded.

1.3 Rule 420 (2) – Depository Receipts by Nigerian Entities

The former Rule 420 (1) has been moved to Rule 420 (2)(b). A new Rule 420 (2) (a) is inserted as follows:

Depository Receipts by Nigerian Entities

- (a) A Global Depository Receipt Programme shall not be established by a Nigerian entity covered under the Act without obtaining the ‘No Objection’ of the Commission in writing;
- (b) For all levels of Global Depository Receipts, the Issuer shall furnish the Commission with the following:-
 - i. nature of the programme;
 - ii. number of securities involved and the percentage they represent of the outstanding securities of the issuer (where applicable);

- iii. parties (foreign/local);
 - iv. international clearing system to be utilised;
 - v. copies of documents obtained from and filed with the foreign ~~country~~ regulatory body;
 - vi. copies of latest annual report (where applicable);
 - vii. Board Resolution of the Issuing Entity;
 - viii. Such other documents as may be required from time to time to aid the Commission in its review process.
- (C) In the case of Level I G.D.R., compliance with the above and the existing guidelines on foreign investments, may qualify the Issuer for a "No Objection" letter from the Commission.
- (d) Subsequent GDR issues shall be approved only upon satisfactory account of utilization of proceeds from previous capital raising DRs.

Justification

The new heading has been created to provide a distinction between Depository Receipts by Nigerian Entities and the new provisions on Depository Receipts by foreign entities which are to be traded in Nigeria.

1.4 Rule 420(3) Level I GDR- Unsponsored DR Programs

A new Rule 420(3) ~~(6)~~ has been created to highlight the specific requirements which are peculiar to Unsponsored DR Programs as follows:

- a. In an unsponsored programme under this Rule, the depository shall be deemed to be the Issuer for the purpose of all disclosure requirements under the Investments and Securities Act and these Rules.
- b. In an unsponsored programme, the Issuer shall furnish the Commission with information on the following:
 - i. evidence of valid registration of the depository as a Capital Market Operator/Intermediary or a Foreign Capital Market Operator/intermediary as is applicable;
 - ii. evidence of the rights and obligations attached to the depository receipts ;
 - iii. prospectus or listing documents.

- iv. Such other documents as may be required by the Commission
- c. The prospectus or listing document shall in addition to the standard content of a prospectus, include information about the Issuer of the Depository Receipts, underlying shares, and Key information about the Issue of the DRs, terms and conditions of the Issue.

Justification

For ease of reference and to avoid windy provisions, specific requirements which apply only to unsponsored DRs have been extracted and inserted in this subsection.

1.5 Rule 420(4) (5) Level II GDR- Sponsored DR Programs

A new Rule 420(4) (5) has been created to highlight the specific requirements which are peculiar to Sponsored DR Programs as follows:

- a. In a sponsored Level II GDR programme, the issuer of the underlying securities shall be deemed to be the Issuer for the purpose of all disclosure requirements under the Investments and Securities Act and these Rules.
- b. In a sponsored programme, the Issuer shall furnish the Commission with the following additional information:-
 - i. certified true copy of the MEMART of Issuer or its equivalent;
 - ii. copies of resolutions passed at the Annual General Meeting (A.G.M.) or Extraordinary General Meeting (E.G.M.) of the Issuer authorising the conduct of the programme;
 - iii. resolution of the Board of Directors of the Issuer authorizing the conduct of the program, where applicable;
 - iv. evidence of authorisation of the Depository to conduct the programme;
 - v. evidence of valid registration of the Depository as a Capital Market Operator or a Foreign Capital Market Operator/intermediary as applicable
 - vi. evidence of share capital of the Issuer (authorised, issued and fully paid);
 - vii. number of the underlying securities;
 - viii. evidence of the rights and obligations attached to the depository receipts;
 - ix. prospectus or listing document;
 - x. copy of the deposit agreement with the depository;
 - xi. Such other documents as may be required by the Commission

Justification

For ease of reference and to avoid windy provisions, specific requirements which apply only to sponsored DRs have been extracted and inserted in this subsection.

1.6 Rule 420(5) (3) – Level III GDR – Capital Raising

Rule 420 (2) has been moved to Rule 420(5) ~~(3)~~ – A new Heading Level III GDR – Capital Raising has been created for ease of reference.

Where the Global Depository Programme is for the purpose of raising capital, the Issuer is required to file the following additional information with the Commission:-

- i. capital history of the issuer (e.g. total share capital, paid-up capital, issued and un-issued, etc.) with evidence of increase in share capital (where applicable);
- ii. currency in which securities for the programme would be denominated (e.g. dollars, pound sterling, local currency, etc.);
- iii. evidence that the programme has been cleared by the Central Bank of Nigeria or the National Insurance Commission where the programme involves a bank or an insurance company. Evidence of clearance by other regulatory agencies would be required where applicable.
- iv. a signed copy of audited accounts for the preceding three (3) years or number of years for which the issuer company has been in operation, (if less than 3 years in the case of an existing company) which shall not be more than 9 months old. Where the latest audited accounts are more than 9 months old, recent interim audited accounts for the first 6 months of the financial year must be included.
- v. rights and obligations attached to each class of securities if different classes of securities are being issued.

Justification

The provisions of the former rule were all contained in one long proviso. The new rule 420 (5) has been created to specify the additional requirements for a capital raising GDR.

1.7 Rule 420(6) ~~(4)~~ – Nigerian Depository Receipts

A new Rule 420(6) ~~(4)~~ has been inserted to make provisions for the issuance/listing of Depository Receipts in Nigeria by Foreign entities as follows:

- a. A Depository Receipt Programme shall not be listed or traded on any exchange in Nigeria without the prior approval/ registration of the Commission.
- b. The Commission may approve the listing of a Depository Receipts Programme on an exchange in Nigeria upon compliance with these rules or other requirements as may be prescribed by the Commission from time to time.
- c. An Issuer of Depository Receipts in Nigeria shall file a prospectus/information Memorandum in accordance with the provisions of the Investments and Securities Act and these Rules;
- d. An Issuer applying for the listing of a Depository Receipt Program shall in addition to the applicable provisions of Rule 420 (2) above:

- i. confirm the approval or registration of the Underlying Securities by the relevant foreign authority;
 - ii. furnish the Commission with the information required in Rule (2) above to the extent applicable; and
 - iii. confirm the name of its primary exchange; and indicate that the primary exchange is a member of the World Federation of Exchanges ("WFE") or such Exchange recognised by the Commission;
- e. Where the Underlying Entity for an unsponsored NDR opts to issue a sponsored NDR, the Commission shall require the cancellation of the unsponsored programme. This rule is applicable only to NDRs with equity securities as underlying assets;
 - f. Any document to be filed with the Commission or sent to investors must be in English language;
 - g. All subsequent listings of additional units of a Depository Receipt shall also be subject to the Commission's approval upon payment of relevant fees.
 - h. Except as otherwise provided in these rules, the issuance of a DR Programme shall be implemented within 3 months from the date of approval by the Commission, failure of which the entity shall revert to the Commission with the status of the proposed programme;

Justification

The new rule makes provisions for the registration of GDRs by Foreign Entities with the Commission and the documents to be provided in this regard.

1.8 Rule 420 (7) – Additional Information

A new Rule 420 (7) has been created as follows:

In addition to the provisions of Rule 420 (1) – (6) above, the Commission, in deciding whether to grant an application for approval, may request further information which may be reasonably required to verify whether the provisions of the Investments and Securities Act and the Rules have been complied with, or any information that the Commission considers appropriate to protect investors and ensure the smooth operation of the market.

Justification

To accommodate the possibility of requesting additional information where such information has not been specified above or contemplated by the Rules and is necessary for the review of peculiar transactions.

7. PROPOSED AMENDMENT TO RULE 456(1)(f)- OBLIGATIONS OF THE CUSTODIAN OF A COLLECTIVE INVESTMENT SCHEME

Name/Citation of the Rule: Obligations of the Custodian of a Collective Investment Scheme

Existing Rule

The Custodian shall:

Be independent of a scheme's fund manager, and not be affiliated to either of the parties.

Proposed Amendment

Be independent of a scheme's fund manager and trustee and not be affiliated to either of the parties.

Justification

To require independence from both the Fund Manager and Trustee.

8. AMENDMENT TO SCHEDULE I OF THE COMMISSION'S RULES AND REGULATIONS-REGISTRATION FEES, MINIMUM CAPITAL REQUIREMENTS, SECURITIES AND OTHERS

The following amendment is proposed to Schedule I to break up the Registration fee into 3 components: Filing fees, Processing fees and Registration fees.

S/N	CATEGORY	CURRENT FEES =N=	PROPOSED FEES =N=
1	Filing fee for all categories	5,000.00	50,000.00
2	Processing fee for all categories	N/A	200,000.00

The following amendment is proposed to categorise market participants by registration threshold.

S/N	TYPES OF FUNCTION	CURRENT REGISTRATION FEES =N=	PROPOSED REGISTRATION FEES =N=
1.	Stock/Commodities Exchange	100,000.00	1,000,000.00
2.	Over the Counter Market	N/A	1,000,000.00
3.	Clearing & Settlement Agency/Depository Agency	100,000.00	1,000,000.00
4.	Bankers to an Issue	100,000.00	1,000,000.00
5.	Issuing House	200,000.00	500,000.00



6.	Broker/Dealer	100,000.00	500,000.00
7.	Registrar	100,000.00	500,000.00
8.	Trustee	100,000.00	500,000.00
9.	Registrar	100,000.00	500,000.00
10.	Fund Manager	100,000.00	500,000.00
11.	Underwriter	200,000.00	500,000.00
12.	Market Maker	200,000.00	500,000.00
13.	Inter Broker/Dealer	N/A	500,000.00
14.	Custodian of Securities	200,000.00	500,000.00
15.	Capital Trade Point	N/A	500,000.00
16.	Broker	100,000.00	300,000.00
17.	Dealer	100,000.00	300,000.00
18.	Rating Agency	100,000.00	300,000.00
19.	Capital Market Consultants (Corporate)	100,000.00	300,000.00
20.	Capital Market Consultants (Partnership)	50,000.00	300,000.00
21.	Corporate Investment Adviser	100,000.00	300,000.00
22.	Sub-broker	50,000.00	200,000.00
23.	Individual Investment Adviser	50,000.00	200,000.00
24.	Capital Market Consultants (Individual)	20,000.00	200,000.00
25.	Sponsored Individual	10,000.00	50,000.00

Justification:

The Commission incurs huge cost in the process of registering prospective Capital Market Operators. This is absolutely unsustainable, considering the current financial situation of the Commission.

This justified the reason why the current registration fees for all categories of operators and consultants are adjusted by between 200% to 300% percent, across the board. We believe, this is also a way of reducing the unnecessary influx of prospective operators into the Market, considering the fact that it is already highly saturated with operators that contribute very little to the market.

9. PROPOSED AMENDMENT TO SCHEDULE VI- BASIS OF COMPUTATION OF BID AND OFFER PRICES FOR COLLECTIVE INVESTMENT SCHEMES

Existing Rule- Schedule VI

The bid and offer prices of units in a collective investment scheme shall be based on the net asset value of the scheme calculated on a weekly basis by the scheme manager....

Proposed Amendment

The bid and offer prices of units in an open-ended collective investment scheme shall be based on the net asset value of the scheme calculated on a daily basis by the scheme's manager...

Justification

The practice (which is more expedient) has been to calculate the unit price and NAV of open-ended funds daily as these figures are not readily available otherwise.

Proposed Amendment

A proposed addition to "Note" at the end of Schedule VI as follows:

The closing unit price of Closed-ended funds shall be published on a daily basis on the fund manager's website.