



Exposure Of Sundry Amendments To The Rules And Regulations Of The Commission (July 2018)

New Rule

1. Proposed Rules on Nominee Companies

Major Amendment

2. Proposed amendment to Rules on Collective Investment Schemes

Sundry Amendments

3. Proposed amendment to the Rule 45 (Part C) – Registrable Functions
4. Proposed amendment to Rule 51- Reports to be Filed/Schedule II (Penalties)
5. Proposed amendment to Rule 57- Net Capital Requirement
6. Proposed amendment to Rule 58- Determination of Net (Liquid) Capital
7. Proposed amendment to Rule 125- Prohibition of Assignment
8. Proposed creation of New Rule under Part C13- Right of Investor to appoint Custodian
9. Proposed amendment to Rule 132- Use of Nominees
10. Proposed amendment to Schedule I- Registration Fees, Minimum Capital Requirement, Securities & Others

Details of the proposals are as follows:

New Rule

1. PROPOSED RULES ON NOMINEE COMPANIES IN THE NIGERIAN CAPITAL MARKET

1. Definition of Terms

- **Nominee**

A Nominee is a company formed by a bank or other financial institution for the purpose of holding securities and other assets and administering them on behalf of the actual owners under the terms of a custodial or nominee agreement.

- **Holding Company:**

Means a bank or other eligible financial institution that owns and controls a Nominee.



- **Client:**

Means a person who has entered into agreement with a Nominee to hold and manage its securities or other assets.

2. Business of the Nominee Companies

- The business of the Nominee shall be to take title of property, money or securities in trust for and on behalf of clients as nominee for, or representative of such clients, to hold and deal with such property, money or securities strictly in accordance with any directions given by the respective clients from time to time to the Nominee.
- A nominee shall not engage in any business or activity except the business of nominee companies described above

3. Functions of Nominee

- Maintaining accounts of securities of clients
- Collecting all rights and benefits on behalf of, or accruing to clients in respect of securities held
- Managing the holding of clients including facilitating sale, purchase, lending and borrowing securities and settlement of investment obligations based on the clients' mandates
- ensuring compliance with contractual obligations with clients and custodians
- maintaining and reconciling records of the services referred to in sub-clauses (i) to (iv) above;
- maintaining sufficient information and record to identify the beneficial owners of securities held by it.
- providing periodic information to clients and custodians (where securities and other assets are transferred to the nominee by custodian).

4. Dealing with assets of clients

The Nominee shall deal with the assets that it holds on behalf of clients including custodians as follows:

a) Securities

- Securities as defined in the Investments and Securities Act (ISA) 2007 shall be registered in the name of the Nominee or in the name of Nominee and client
- Securities shall be stored and held in safe and secure custody or electronically administered and maintained and shall be protected by adequate and appropriate security and administrative systems.



- iii) The Nominee shall collect corporate action entitlements relating to all securities held on behalf of clients, verify the calculations and convey all details to clients
- iv) The Nominee shall have no authority to demand for board membership of companies or to exercise any voting rights attached to shares registered in the nominee company's name unless instructed to do so by its clients

b) Money

- i) The Nominee shall open a trust account or accounts for clients with one or more banks. The Account name must reflect that it is a Clients' Account
- ii) The Nominee shall forthwith deposit in the account or accounts opened in terms of the above clause, any money, which is accepted or received by it
- iii) The Nominee shall deal with cash so deposited in accordance with the directions given to it by its clients from time to time
- iv) The Nominee shall not co-mingle clients' monies with its own
- v) A nominee shall not receive or hold clients' monies except for the purpose of investing in securities under clients' instructions

c) Property

- i) Immovable property shall be registered in the name of the Nominee or in the name of the client with power of attorney in favour of the nominee
- ii) Immovable property shall be managed and secured in accordance with sound property management practices in relation to the particular property concerned, and shall be maintained in a like manner
- iii) Movable property received shall be dealt with as if it is the property of the nominee and shall be kept in safe and secure custody and shall be properly maintained if necessary
- iv) Any title deed, certificate or document pertaining to property shall be dealt with as if it were a marketable security
- v) The Nominee shall collect all rents relating to immovable property and pay all expenses incidental to the maintenance thereof as well as in respect of movable property held on behalf of clients, verify the calculations and timely payment thereof and convey all details to clients

d) Clients' Records and Accounts

- i) The nominee shall maintain a custody account for every client and provide access to such account to the client



- ii) The nominee shall keep and maintain proper books of account and other records necessary to identify assets of each client and to discharge its obligations to its clients
- iii) The nominee shall provide clients with any information reasonably required by the client concerning assets held on his or its behalf
- iv) The nominee shall obtain the written authority of the client prior to receiving or holding any assets on behalf of such client
- v) The Nominee shall report regularly to its clients on assets held on their behalf and shall include all movements and changes in the holding concerned which occurred since the date on which the holding commenced or immediately prior to the report or as the client requests
- vi) The Nominee shall maintain basic information on the securities holders including transaction details and maintain documents in relation to transactions that have been made on behalf of the investors

e) Liabilities

The Nominee shall not out of its own volition incur any liability of whatsoever nature excluding liabilities arising from acts performed in carrying out its objectives as set out in its Memorandum and Articles of Association and/or arising from the Agreement signed with its clients

f) Others

- i. The Nominee shall put in place mechanisms to protect the interest of clients and help preserve market integrity
- ii. The nominee shall ensure that its assets are segregated from the assets of clients.
- iii. When a nominee account is opened with a depository by a nominee company, the nominee shall make a declaration that it is acting as a nominee for its client, and the name of the client will also be recorded in the depository system.
- iv. The nominee shall keep clients' assets in such a way as to protect them from foreclosure, appropriation/attachment by creditors or liquidators of nominee.
- v. In the case of merger/acquisition, the nominee shall notify the clients, who shall reserve the right to appoint another custodian/nominee or elect to remain with the new entity.



- vi. In the event that the registration of a nominee is revoked/suspended, the nominee shall within 24 hours of receiving the Commission's notification of revocation/suspension inform its clients who shall appoint another custodian/nominee within 30 days from the effective date of revocation/suspension, failing which, the Commission shall appoint another custodian/nominee to takeover custody of the assets.
- vii. In the event of a decision by the nominee to discontinue business, the nominee shall within 2 working days notify the Commission and its clients. The clients shall appoint another custodian/nominee within 30 days from the date of the notice and the nominee shall transfer assets to the appointed custodian/ nominee of the clients within 5 working days.
- viii. A nominee's decision to discontinue business shall not be effective without complying with the Commission's Rule on Withdrawal of Registration

5. PAYMENT

The nominee Company may demand payment for providing custody and asset administration services including providing information to account holders, rights holders and others, including for providing notifications of change and statements of holdings. However, this does not apply in regard to information to which public authorities are entitled by law or regulations.

6. OWNERSHIP STRUCTURE

The nominee company shall be wholly or jointly owned by (a) financial institution(s) with a minimum or combined minimum net worth of N30 billion naira.

7. OBLIGATIONS OF THE PARENT COMPANY

In consideration of the services to be undertaken from time to time by the Nominee, the parent company shall submit a sworn undertaking to the Commission that it-

- i) is fit and proper to own a nominee for purposes of carrying out functions of Nominees as provided in SEC Rules and Regulations;
- ii) has an operational structure which allows for oversight by Executive Management and the Board of Directors over the business of the nominee; and is committed



to the employment and retention of adequate number of suitably qualified personnel of integrity by the Nominee and shall ensure continuous education/training of the staff in relevant disciplines; and has evidence of a documented system of internal controls which ensures that its nominee is effectively run, that the assets of clients are safeguarded and segregated and the records of the nominee accurately reflects the information of clients, their assets and transactions;

- iii) has evidence of appropriately documented procedures to exclude unauthorized access to critical systems, the thorough testing of systems and the continuity of operations of all critical applications of its nominee company, including disaster recovery and a business continuity plan;
- iv) has an appropriate documented system of risk management;
- v) shall pay all expenses of and incidental to the formation of the Nominee Company;
- vi) shall pay all the liquidation expenses of the Nominee Company of whatsoever nature and kind, in the event of the winding up of the Nominee Company;
- vii) shall not dispose of the shares it holds in the Nominee Company to any person without the prior written approval of the Commission and its lead Regulator concerned;
- viii) shall guarantee the due performance of the obligations of the Nominee Company to its clients.

8. REGISTRATION AS A NOMINEE COMPANY

All persons not registered by the Commission as Custodians, carrying on the business of Nominee and holding securities including equities, money market and fixed income securities, derivatives etc. except Pension Assets, on behalf of actual owners shall apply to the Commission for registration as Nominee

9. REQUIREMENTS FOR REGISTRATION AS A NOMINEE COMPANY

An applicant for registration as nominee shall be sponsored by its holding company which shall submit the undertaking required under "Obligations of Holding Company" above along with the under listed documents completed by the Nominee company, its directors and sponsored individuals:



- i. Form SEC 3 in duplicate;
- ii. Form SEC 2 and 2D – completed by all Directors and Sponsored Individuals/ Compliance Officer in duplicates;
- iii. Evidence of Required Minimum Paid-up Capital of N1,000,000,000.00 (One Billion Naira) unimpaired by losses;
- iv. Evidence that the parent company/ shareholders (financial institutions) have a/ combined minimum net worth of N30 billion naira;
- v. Current Fidelity Bond covering at least 25% of the minimum capital as stipulated by the Commission's Rules and Regulations;
- vi. Detailed curriculum vitae of sponsored individuals and Directors which should include details of activities from secondary school to date arranged chronologically with dates; (all gaps in employment and educational history should be explained);
- vii. Copies of credentials of sponsored individuals from secondary school to date (including NYSC discharge/ exemption certificates); originals are required for sighting by officers of the Commission;
- viii. Sponsored individuals shall meet the requirements specified in the SEC Rules on Sponsored Individuals and Compliance Officers and Qualifications of Sponsored Individuals and Compliance Officers;
- ix. Police clearance report for each Sponsored Individual: Each sponsored individual is to report at the Commission's head office or any of its zonal offices with three recent passport photographs to commence the process;
- x. Copy of means of identification of the Directors and the Sponsored Individuals of the Company (International Passport, Driver's license or Permanent Voters Card);
- xi. Profile of the Nominee which should include among others brief history of the company, organizational and shareholding structure, principal officers as well as details of past and current activities;
- xii. Operational manual and organizational chart of the company;
- xiii. Business plan;
- xiv. A copy of each of the following, duly certified by the Corporate Affairs Commission (CAC);
 - a. Certificate of Incorporation
 - b. Memorandum and Articles of Association– this should include the power to perform the specified function;
- xv. CAC Form(s) showing Share Capital, Return of Allotment, and Particulars of Directors;
- xvi. Latest audited accounts or audited statement of affairs of the company;



- xvii. Sworn undertaking to keep proper records and render returns as may be specified by the Commission from time to time signed by a director and company secretary (to be notarized);
- xviii. Sworn undertaking to abide by SEC Rules and Regulations and Investments and Securities Act signed by a director and company secretary (to be notarized);
- xix. Evidence of payment of fees as contained in Schedule 1 of SEC Rules and Regulations;
- xx. Any other documents as may be required by the Commission

10. OTHER REGISTRATION REQUIREMENTS

- a. A nominee shall have minimum of three sponsored Individuals, one of whom shall be a compliance officer;
- b. The Managing Director of the Company shall at all times be among the sponsored individuals by complying with the requirements for registration of sponsored individuals;
- c. A nominee shall have necessary infrastructure, including vaults for safe custody of title documents, agreements etc. and information technology capability required to effectively discharge its functions.

11. CODE OF CONDUCT

A Nominee shall abide by the Code of Conduct for Capital Market Operators and their employees as set out in the Commission's rules and regulations. In addition, any person registered by the Commission as Nominee shall:

- a. not carry out any business except the business of Nominees prescribed in these rules
- b. not invest in securities
- c. put in place a robust risk management procedure and mechanism for compliance with Anti Money Laundering/Combating Financing of Terrorism (AML/CFT) regulations.
- d. keep clients' assets in such a manner as to protect them from foreclosure, appropriation/attachment by creditors or liquidators of the nominee.
- e. in the case of merger/acquisition, notify the clients, who shall reserve the right to appoint another custodian/nominee or elect to remain with the new entity.
- f. within 24 hours, in the event that its registration is suspended/revoked, notify all its clients including custodians of the suspension/revocation and their obligation to



appoint another custodian/nominee within 30 days from the effective date of suspension/revocation. Where any client fails to appoint another custodian/nominee, the Commission shall appoint another custodian/nominee to takeover custody of the assets.

- g. in the event of a decision by the nominee to discontinue business, notify the Commission and its clients within 24 hours. The Nominee shall notify the clients of their obligation to appoint another custodian/nominee within 30 days from the date of the notice and the nominee shall transfer assets to the appointed custodian/nominee of the clients within 5 working days, failing which the Commission shall appoint a Custodian..
- h. comply with the Commission's Rules on Withdrawal of Registration before the decision to discontinue business shall be effective.

12. A nominee shall comply with the Commission's Rules on Internal controls; Monitoring, review, evaluation and inspection of systems and controls; Separate custody account; Agreement with the client; Preservation of records and Disclaimer of liability.

Major Amendment

Sundry Amendments to Rules on Collective Investment Schemes

1. New Rule

Name/citation of the Rule – Offer Process for Closed-Ended Collective Investment Schemes/ 450 (B)

Full Text of the Rules –

A. Filing of Registration Statement

- (1) The Registration Statement for the offer of units shall be filed by an issuing house and shall conform with the requirements of the Investments and Securities Act (ISA), these Rules and Regulations and any other requirement prescribed by the Commission.
- (2) The Registration Statement shall be accompanied by the following documents –
 - a.** An executed SEC Form 6A



- b.** Draft Prospectus
- c.** Draft Trust Deed
- d.** Draft Custody Agreement
- e.** Draft Vending Agreement
- f.** Original letters of consent from the prospective parties to the Scheme dated and signed by named persons giving the consent. Provided that a corporate entity giving consent shall do so through duly authorized persons who shall be a director, company secretary or persons acting in those capacities with the seal of that entity
- g.** Original letters of consent from the directors of the Fund Manager and any other individual that is a party to the Scheme, dated and signed by the named persons giving the consent and duly notarized
- h.** Sworn "Undertaking to File Periodic Reports and Returns" with the Commission
- i.** Board Resolution from the Board of the Fund Manager / Promoter authorizing the launching of the unit trust scheme
- j.** Evidence of payment of SEC fees
- k.** Rating Report (where applicable)
- l.** Evidence of appointment of a Sharia Adviser (for sharia compliant funds)
- m.** Such other relevant documents as may be required from time to time.

(3) The Issuer/Fund Manager shall make a sworn declaration that it has fully disclosed all material facts in the Offer document and the declaration shall be signed by the Chief Executive Officer and the Company Secretary.

B. Executed Offer Documents

Convening of a completion board meeting for a closed-ended CIS offer shall be optional; however executed Offer documents of a closed-ended CIS offer shall be submitted to the Commission within 5 working days of clearance by the Commission.

C. Parties to an Issue/Scheme

Where there is more than one Issuing House for a public offer of a scheme, the Lead Issuing House shall not be a subsidiary, affiliate or a related company of the Fund Manager or Promoter.

D. Opening and Closing of Offer

- a) An offer for a closed-ended scheme shall remain open for a period not exceeding 28 working days.



- b) The Commission may grant an application for extension of time under any of the following circumstances –
 - (i) Upheavals, which could be either religious, political or social. These must be national or within the catchment areas of the fund manager or promoter
 - (ii) Crisis such as labor unrest or riots which could lead to office shutdowns;
 - (iii) A minimum of three (3) days public holidays within an offer period;
 - (iv) Natural disasters such as earthquake, fire outbreaks, etc.
- c) The application for extension of time shall be made within 5 working days prior to closing date of the Offer as stated in the Offer documents.
- d) Notwithstanding the provisions stated herein, no offer shall continue beyond the closing date unless prior written approval of the Commission is obtained.

E. Proceeds of Issue

- a) The Issuing House to a scheme's offer shall ensure that all proceeds of an issue are deposited in an interest-yielding account with the Custodian.
- b) No withdrawal shall be made from the account except a lump sum representing the total cost of issue in accordance with the terms of the vending agreement and as disclosed in the Prospectus.
- c) In the case of over-subscription the Custodian shall within one working day of clearance of allotment transfer electronically such sum representing the value of the over-subscription including accrued interest in the name of the Offer to the Registrar.
- d) The Registrar shall return all surplus monies to the affected subscribers within five working days of the approval of the allotment proposal.
- e) The Commission may grant an application for the absorption of the oversubscribed portion of a closed-ended CIS offer subject to:
 - (i) The filing of an application for registration of the units in the requisite Form; and
 - (ii) Payment of the requisite fees.
- f) The Registrar shall within 14 working days of approval of allotment, forward to the Commission, the following:
 - (i) statement of amounts received;
 - (ii) names and addresses of subscribers whose application monies were returned and the mode and evidence of dispatch.
- g) The Fund Manager is prohibited from using or investing the proceeds of the issue for purposes other than those stated in the Prospectus, Trust Deed, or Memorandum and Articles of Association of the CIS –in the case of an open-ended investment company.
- h) If return monies are not dispatched in compliance with sub-rule (d) above, accrued interest shall be paid to the unsuccessful applicants at a rate not below CBN MPR + 5%.



F. Allotment Period and Submission of Allotment Proposal

- (1) An allotment proposal shall be presented to the Commission not later than 2 weeks after the close of the issue unless the Commission on application by the issuer deems it necessary, in the interest of the public and for the protection of investors, to grant a written extension of time not exceeding two weeks.
- (2) The Allotment Proposal filed by the Issuing House shall include –
 - i. summary of applications received;
 - ii. list of allottees of 50,000 units of securities or more and list of all allottees acquiring 5% or more of the units on offer;
 - iii. list of all applications received including list of those rejected and the basis for rejection;
 - iv. draft newspaper announcement.
- (3) The Commission may declare any irregular allotment of units null and void and may prescribe appropriate measures to rectify such irregularities.
- (4) Where the Fund Manager/Issuing House fails to submit allotment proposal within the stipulated period or any extended period granted, the Commission may impose appropriate penalty or direct that the issue be aborted irrespective of the level of subscription.

G. Summary report on completion of a public offer

The Issuing House shall within 21 working days of approval of allotment file with the Commission a summary report containing among others, the following:

- a) problems arising generally from the conduct of the issue;
- b) satisfactory compliance of parties with their obligations under the issue;
- c) details regarding the return of surplus monies;
- d) details and any evidence of dispatch of share certificates/electronic statements;
- e) details and evidence of payment of net proceeds of the issue to the issuer;
- f) analysis of total costs incurred during the course of the offer;
- g) any other relevant information and recommendation.

H. Power of the Commission to abort an Offer

- a) The allotment proposal of a closed-ended CIS shall only be cleared for allotment if it is 50% subscribed.
- b) The Commission may direct that a scheme's offer be aborted if it is considered to be in the public interest to do so.

I. Under-subscription

- a) Where a scheme's offer is less than 50% subscribed –



- i. The Offer shall be aborted by the Fund Manager/Issuing House within 4 weeks of the closing date of the Offer.
- ii. The Issuing House shall publish in at least two daily national newspapers details of the decision to abort the Offer not later than 5 working days after the Commission has been notified of the decision.
- b) The Registrar to the Offer shall return monies to subscribers to the aborted Offer not later than 15 days of the decision to abort the Offer and 2 days of the money being remitted to the Registrar.
- c) Subject to the prior approval of the Commission, an aborted Offer may be resuscitated by the Fund Manager/Issuing House within 15 days of the date of notification of the aborted Offer to the Commission.
- d) No resuscitation of such Offer shall be entertained by the Commission after subscription monies have been returned to subscribers as prescribed in paragraph (b) above.

J. Publication of Allotment

- a) The Issuing House shall within five working days of allotment, publish the allotment in at least two national daily newspapers.
- b) Units shall be listed not later than 30 days after the allotment clearance (where applicable).

K. Cost of issue

- a) The total Offer cost of a closed-end CIS shall not exceed 1.65% of the total Offer size or such percentage as the Commission may prescribe from time to time.
- b) Provided that the fees for professional parties shall not exceed 1.30% (inclusive of VAT) of the offer costs, of which Issuing House fees must not exceed 0.50%.
- c) Provided further that where such Offer is not fully subscribed, the total costs shall not exceed 1.65% of the amount raised.

L. Underwriting of a Scheme Offer

Underwriting of a scheme offer is optional. Where an issuing house elects to underwrite an offer, the general provisions in the Rules on underwriting of public issues shall apply.

M. Vending Agreement

- a) All vending agreements shall be submitted to the Commission for clearance along with other registration documents.
- b) The Vending Agreement shall, among other things, provide for the following:-
 - i. Definition of terms;
 - ii. Obligations of the Issuing House(s);



- iii. Obligations of the Fund Manager and Promoter (where applicable);
 - iv. Representation and warranties by the Fund Manager/Promoter;
 - v. Covenant by the Fund Manager;
 - vi. Covenant by the Issuing House(s);
 - vii. Indemnities;
 - viii. Remuneration of the Issuing House(s);
 - ix. Terms of the relationship between the joint Issuing Houses where there is more than one Issuing House;
 - x. Conditions and terminations;
 - xi. Time;
 - xii. Notices;
 - xiii. Governing laws;
 - xiv. Arbitration.
- c) The Arbitration Clause in the Vending Agreement shall include provisions to the effect that—
- i. Whenever a dispute arises between the parties, the Commission shall be notified within 5 working days;
 - ii. a maximum period of 10 working days will be allowed for the parties to resolve the dispute themselves or to appoint arbitrator(s);
 - iii. the Arbitrator(s) shall have a maximum period of 10 working days to resolve the dispute after the exchange of pleadings by the parties, failing which the matter shall be referred to the Commission for resolution;
 - iv. any party aggrieved by the decision of the Commission may refer the matter to the Investments and Securities Tribunal (IST).
- d) The Indemnity Clause in the Agreement shall not exclude but ensure due diligence on the part of the Issuing House(s).
- e) The Vending Agreement shall contain a statement that the terms and conditions of the Agreement are in conformity with the provisions of the Act, and the Commission's Rules and Regulations made thereunder.

N. Quality and Completeness of Offer Documents

- a) The Applicant shall ensure the completeness of every application and document submitted in respect of an offer.
- b) The Applicant shall ensure that where the Commission has raised deficiencies, such deficiencies are addressed in subsequent submissions of the Offer documents.
- c) Any subsisting deficiencies observed shall attract a penalty of not less than one hundred thousand naira (N100,000.00) per submission.



- d) This fine shall be payable by the Applicant without recourse to the Offer proceeds of the CIS being registered.

O. Additional Information

The Offer documents of a CIS shall disclose the policies and procedures for addressing and resolving conflict of interest between the Fund Manager or Trustee and the Scheme.

Justification – *In view of the defragmentation of rules and the requirement for new rules to simplify and streamline the open-ended offer process, there is need to expressly state the applicable provisions for closed-ended funds as well. The Rules applicable to company IPOs were replicated here with variations to make them suitable for funds.*

2. New Rule

Name/citation of the Rule – Offer Process for Open-Ended Collective Investment Schemes/ 450 (C)

Full Text of the Rules –

A. Applicability

These Rules shall apply to the registration, authorization and offering process of open-ended Collective Investment Schemes.

B. Registration Requirements

- (1) An application for the registration and authorization of an open-ended CIS and registration of the units or securities of the Scheme shall be made to the Commission by the Fund Manager via a letter of application for registration (registration statement) and shall conform to the requirements of the Investments and Securities Act, these Rules and Regulations and any other requirement prescribed by the Commission from time to time.
- (2) The Registration Statement shall be accompanied by the following documents –
 - a. An executed SEC Form 6A
 - b. Draft Prospectus
 - c. Draft Trust Deed
 - d. Draft Custody Agreement
 - e. Original letters of consent from the prospective parties to the Scheme dated and signed by named persons giving the consent. A corporate entity giving consent shall do so through duly authorized persons who shall be a director, company secretary or persons acting in those capacities with the seal of that entity.



- f. Original letters of consent from the Directors of the Fund Manager and any other individual that is a party to the Scheme, dated and signed by the named persons giving the consent and duly notarized.
- g. Sworn "Undertaking to File Periodic Reports and Returns" with the Commission
- h. Board Resolution from the board of the Fund manager / Promoter authorizing the launching of the unit trust scheme.
- i. Evidence of payment of SEC fees
- j. Rating Report (where applicable)
- k. Evidence of appointment of Sharia Adviser (for sharia-compliant funds)
- l. Such other relevant documents as may be required from time to time

(3) The interval between the initial filing of documents and the approval or disapproval by the Commission shall not exceed the 60 day period stipulated in the ISA having due regard to the adequacy of the filing.

C. Filing of Executed Scheme Document

Executed Scheme Documents shall be submitted to the Commission within 3 working days of their clearance.

D. Scheme Launch

- (1) An open-ended CIS shall be launched and open for subscription after registration and authorization by the Commission.
- (2) The Scheme's constituent documents as well as its offering/marketing documents shall disclose the commencement date of the Scheme.
- (3) A scheme's marketing material shall not contain any misleading or false statements regarding the Scheme or a participatory interest in the Scheme.
- (4) The Fund Manager of a scheme shall not market the Scheme in a manner that is fraudulent, misleading, or deceptive in respect to:
 - (i) The nature of the Collective Investment Scheme;
 - (ii) The conditions on which a participatory interest of the Scheme may be purchased or sold;
 - (iii) The price at which a participatory interest may be purchased or sold;
 - (iv) The risks associated with the Scheme;
 - (v) Any other material aspects of the Scheme.
- (5) The general guidelines on advertisement as prescribed by these Rules and Regulations shall apply to the marketing of a Scheme.
- (6) Prior to the registration and authorization of a scheme by the Commission, a fund manager shall not:



- (i) Distribute any marketing or advertisement material relating to the Scheme;
 - (ii) Make any reference to such schemes at product launches.
- (7) The Scheme's documents shall disclose the time frame within which electronic Statements will be issued to subscribers, and monies returned to unsuccessful subscribers as the case may be.
- (8) Subscription monies for a scheme shall be paid to the Scheme's Custodian who shall hold same pending investment by the Fund Manager.

E. Scheme Launch Report

- (1) A report on the initial subscription to the Scheme as well as the Scheme's initial investments shall be filed within 90 days of registration and authorization of the Scheme.
- (2) The report shall contain:
- a. A summary of applications received;
 - b. list of subscribers of 50,000 units of the Fund's units and list of all investors holding 5% or more of the Scheme's units;
 - c. list of all applications received including list of applications rejected and the basis for rejection;
 - d. evidence of the Fund Manager's subscription for proprietary stake in the Scheme;
 - e. report on and evidence of any return monies;
 - f. evidence of the Scheme's initial investments;
 - g. details of and any evidence of dispatch of electronic statements;
 - h. any other relevant information

F. Abortion of a Scheme Launch

- (1) The Fund Manager shall notify the Commission where it seeks to abort the launch or offer of an open-ended scheme and such notification shall state reasons for the proposed abortion.
- (2) The Commission may approve the abortion of an open-ended scheme launch and/or revoke the registration and authorization of a scheme where it is deemed to be in the interest of the public.

G. Cost of issue

- (1) The total set up and launch cost of an open-ended CIS shall not exceed 1% of the Scheme's total initial registration size or such percentage as the Commission may prescribe from time to time.
- (2) Provided that the fees for professional parties shall not exceed 0.80% (inclusive of VAT);



- (3) Provided further that where such initial registration size is not fully subscribed, the total cost shall not exceed 1% of initial amount raised.

H. Quality and Completeness of Offer Documents

- (1) The Applicant shall ensure the completeness of every application and document submitted in respect of an offer.
- (2) The Applicant shall ensure that where the Commission has raised deficiencies, such deficiencies are addressed in subsequent submissions of the Offer documents.
- (3) Any subsisting deficiencies observed shall attract a penalty of not less than one hundred thousand naira (N100,000.00) per submission.
- (4) This penalty shall be payable by the Applicant without recourse to the offer proceeds of the CIS being registered.

I. Additional Information

In addition to the minimum disclosure requirements of the Prospectus or Scheme Offer document as prescribed in these Rules, the following shall also be disclosed:

- (1) The policies and procedures for addressing and resolving conflict of interest between the Fund Manager or Trustee and the Scheme;
- (2) Means by which subscribers may obtain relevant information regarding the Fund.

Justification – *Collective Investment Schemes in Nigeria have traditionally been offered through the Initial Public Offer (IPO) mode –though neither the ISA nor SEC Rules prescribe any particular mode or method of offer. Consequently, Schemes’ offer processes are made subject to the involvement of prescribed parties like Issuing House(s), Stockbrokers, Reporting Accountants, and Solicitors; while the process involves a fixed Offer period, allotment etc. as well as fixed costs.*

The consequence of the foregoing has been a system that is both cost and time inefficient – leading to situations where investors’ monies remain idle for weeks pending conclusion of an Offer and allotment thereof.

Agitations by the Fund Managers Association (FMAN) as well as the then CMC sub-committee on Investment Management for an efficient system led to research which revealed that CISs/Mutual Funds offer process do not follow the ordinary IPO or Offer for subscription mode.

3. New Rule

Name/citation of the Rule – Allowable fees/expenses/ 451 (I)



Full Text of the Rule –

I. Marketing/Distribution fees;

Justification – *In view of FMAN's proposal to relinquish marketing and distribution of funds to brokers and other third parties, the attendant costs will no longer be part of the fees to fund managers but will be separate costs borne by the fund and payable to the respective third party responsible for marketing and distribution.*

The old sub-rule 451(l) will now become 451(m).

4. Amendment

Name/citation of the Rule to be Amended – Advertising / 452

Full Text of the Existing Rule –

- (1) Further to rule ..., every advertisement by a scheme shall be approved by the Commission;
- (2) No advertisement shall be made stating that a scheme has been fully subscribed or oversubscribed during the period the scheme is open for subscription, except to the effect that the issue is open or closed;
- (3) An advertisement shall not compare one scheme to another;
- (4) If any scheme indicates the past performance of the scheme in an advertisement, the basis for computing the rates of return/yield, and adjustments made (if any) shall be expressly indicated with a statement that such information is not necessarily indicative of future results and may not necessarily provide a basis for comparison with other investments.

Proposed Amendment – Guidelines for Advertisement

- (1) Further to the general Rules on Advertisements, every advertisement by a scheme shall be approved by the Commission;
- (2) No issuing house or fund manager shall publish any advertisement relating to a CIS offer or invitation to subscribe without the approval of the Commission;
- (3) No advertisement shall be made stating that a scheme has been fully subscribed or oversubscribed during the period the scheme is open for subscription, except to the effect that the issue is open or closed;
- (4) An advertisement shall not compare one scheme to another;
- (5) No advertisement, circular or any statement with respect to the sale price of units, the payments of other benefits received or likely to be received by unit holders, or invitation



to buy units shall be made without disclosing also the yield from the units and unless such circulars, advertisements, etc., are cleared by the trustee and approved by the Commission;

- (6) If any scheme indicates the past performance of the scheme in an advertisement, the basis for computing the rates of return/yield, and adjustments made (if any) shall be expressly indicated with a statement that such information is not necessarily indicative of future results and may not necessarily provide a basis for comparison with other investments;
- (7) An advertisement of a CIS shall not be misleading. An advertisement shall be considered to be misleading if it contains—
- (i) Statements made about the performance or activities of the CIS in the absence of necessary explanatory or qualifying notes, which may give an exaggerated picture of the performance than what it really is;
 - (ii) An inaccurate portrayal of past performance or its portrayal in a manner that suggests that past gains or income will be repeated in future.
 - (iii) Ambiguous and high sounding words, slogans and terminologies such as **“invest and haul in the future”, “top offer”, “superior offer”, “brighter future”,** etc.
 - (iv) Statements that promise or guarantee rapid returns or increase in profits.
- (8) An advertisement shall avoid the use of extensive technical legal terminology or complex language and the inclusion of excessive details, which may distract the investor.
- (9) Models, celebrities, fictional characters, landmarks or the likes shall not be displayed on or form part of the advertisements.
- (10) No advertisement shall include any slogans or brand names for the issue except the normal commercial name of the CIS or brand names of its products already in use. No slogans, expletives or non-factual and unsubstantiated titles shall appear in the advertisements.
- (11) The historical financial information and all other information to be incorporated in advertisement materials shall not exceed the period and information as contained in the approved offer documents.
- (12) Evidence of any award received by the fund manager to be stated in the advertisements shall be forwarded to the Commission for clearance before the advertisements.
- (13) The publication of the following advisory clause: “Please read the Prospectus and where in doubt, consult your stockbroker, fund/portfolio manager, accountant, banker, solicitor or any other professional adviser for guidance before subscribing”, shall be



stated as a footnote in all print and electronic media advertisements of a CIS offer/invitation to subscribe.

Justification – *To provide comprehensive rules on advertisement of CIS*

5. Amendment

Name/citation of the Rule to be Amended – Contents of Prospectus / 463(e), (p) & (z)(ii)

Full Text of the Existing Rule – Every prospectus shall contain the information required by the Act and shall in addition state the following information:

- e) The offer stating the requirements of rule 466, the dates of opening and closing of the offer, and the names of the trustee and custodian to the scheme;
- p) a forecast of income of the fund for the next three (3) years;
- z) detailed information of the Fund with respect to the following:

ii) three (3) to five (5) years financial summary. Where the Fund has just been created and is yet to solicit for investment, a statement of affairs of the Fund including financial projection.

Proposed Amendment – Every prospectus shall contain the information required by the Act and shall in addition state the following:

- e) The offer stating the requirements as prescribed under these Rules and Regulations, the dates of opening and closing of the offer **for closed-ended funds and commencement date for open-ended funds**, and the names of the trustee and custodian to the scheme;
- y) detailed information of the Fund with respect to the following:
 - ii) three (3) to five (5) years financial summary for privately managed portfolios converting to a CIS

Justification – *The requirement for an offer period with opening and closing dates are only applicable to closed-ended funds since open-ended fund units, once registered, can be offered for the life of the fund and as such not restricted to an offer period.*

In addition, the forecast projection requirement should be expunged as they add no value to the fund since these projections are based on assumptions that always vary significantly from the market conditions in future. Furthermore, the removal of this provision will reduce



offer costs because the fund will no longer require a reporting accountant as a party to the offer.

6. Amendment

Name/citation of the Rule to be Amended – Contents of a Trust Deed/ 465(d)&(e)

Full Text of the Existing Rules –

- (4) redemption of units by the Fund Manager at prices calculated in the manner prescribed under these Rules and Regulations, and for settlement in respect thereof to be effected not later than five (5) working days following the transaction;
- (5) investment policy, including investment outlets;

Proposed Amendments –

- (4) redemption of units **of open-ended funds** by the Fund Manager at prices calculated in the manner prescribed under these rules and regulations, and for settlement in respect thereof to be effected not later than five (5) working days following the transaction;
- (5) investment policy, including investment outlets **and target asset allocation stated within a range;**

7. (a) Amendment

Name/citation of the Rule to be Amended – Contents of a Trust Deed / 465(k)

Full Text of the Existing Rule –

(k) in addition to (j) above, the Fund Manager of the Scheme shall be entitled to an incentive fee not exceeding 30% of total returns in excess of 10% of the Scheme's net asset value per annum;

Proposed Amendment –

(k) a statement as to the incentive fee to be charged

Justification – *To remove any ambiguity concerning the calculation and application of incentive fees and align with global best practice.*

(b) New Rule



Name/citation of the Rule – Regulation on Incentive Fee / 465 (ff)

Full Text of the Rule –

- (a) all unit trust schemes shall benchmark an appropriate index.
- (b) a fund manager may charge incentive fee where a Fund has outperformed its stated benchmark. The incentive fee shall be chargeable on the total annual returns above 5% of the benchmark and up to 20% of the returns; Provided that:
 - (i) a Fund's stated benchmark shall be reflective of the nature of the Fund and its underlying instruments;
 - (ii) only actively managed Funds may charge incentive fee;
 - (iii) where a Fund underperforms its benchmark, the management fee charged shall decrease by the same percentage by which the Fund underperformed;
 - (iv) the fund performance must have reached a high-water mark. A high-water mark is reached when the fund's value (per unit basis) exceeds its highest historical record.
- (c) the provisions of this Rule shall also apply to open-ended investment companies, real estate investment schemes and other relevant schemes.

Justification – *To remove any ambiguity with regards to the calculation and application of incentive fees and align with global best practice. This is also to ensure that fund managers are only compensated for performance when previous losses are recouped. This will ensure fairness to unit holders.*

8. Amendment

Name/citation of Rule to be amended – Contents of Trust Deed / 465(I)

Full Text of Existing Rule –

- (I) a statement that the annual management fee and other expenses shall not exceed 5% of the net asset value of the Fund;

Proposed Amendment –

- (I) a statement that the annual management fee and other expenses shall not exceed **3.5%** of the net asset value of the Fund;

Justification – *It is recommended that the above proposal take effect from January 1, 2019 and be further reduced to 3% effective January 1, 2021 to give fund managers enough time to grow CIS funds with the use of alternative distribution channels after which*



economies of scale will justify a renegotiation of expenses downwards to make Nigerian funds globally competitive and attractive.

9. New Rule

Name/citation of the Rule – Types of Unit Trust Schemes

Full Text of the Rules –

The name of a fund shall mirror the asset allocation and/or investment objective of the fund.

Justification – *This is in line with international best practice. It will also ensure that the investing public is clear on what type of fund is being invested in.*

a) New Rule

Name/citation of the Rule – A. Equity Fund

Full Text of the Rules –

(1) Definition

An Equity Fund is a type of unit trust scheme authorized by the Commission having a minimum allocation of 70% of a fund's asset in equities listed on an exchange registered or recognized by the Commission.

(2) Use of Name/Title

The name and title '**Equity Fund**' or some other related variations such as '**Aggressive Fund**' or '**Growth Fund**' shall apply exclusively to schemes that qualify as such further to the definition in (1) above;

Provided that no scheme or proposed scheme shall hold itself out in any form of communication (application for registration, offer documents, advertisement, letter, circular etc) as an equity fund where such does not meet the definition and other criteria specified in these rules. Accordingly any existing scheme with the name 'equity' or 'aggressive' or 'growth' that does not meet the qualifying criteria set in this Rule shall cease to use the appellation or upgrade to meet the criteria.

(3) Investment Restriction

An Equity Fund may invest up to 15% in the equity security of any single company, provided that this will not apply to a fund whose principal objective is to track or replicate an index.

(4) Investment Objective



The trust deed of an Equity Fund shall state that the investment objective of such fund is capital growth and/or income generation.

(5) Benchmark

The trust deed of an Equity Fund shall disclose the relevant benchmark, which shall be equity indices of a securities exchange or OTC platform or any other recognized index that is registered or recognized by the Commission. **Provided that the identified benchmark shall be the relevant benchmark for the fund for a period of not less than 10 years.**

(6) Sector Fund

A sector fund is a type of equity fund that allocates at least 70% of the fund to a particular sector.

Justification – *To provide for the minimum rules on other types of collective investment schemes in addition to the rules on money market funds as requested by the Fund Managers Association of Nigeria (FMAN). It also ensures that in comparing performance, only funds with the same asset classes and asset allocation ranges are comparable.*

b) **Amendment**

Name/citation of Rule to be Amended – Money Market Fund/J2

Full Text of Existing Rule – J2. Money Market Fund

Proposed Amendment – B. Money Market Fund

Justification – *To bring the entire money market fund rules under the proposed new rules on Types of Unit Trust Schemes*

c) **Amendment**

Name/citation of Rule to be Amended – Money Market Fund; Definition / 468

Full Text of Existing Rule –

Money Market Fund: is a *collective investment scheme* authorized by the Commission having as its primary objective, the provision to investors/participants in the Scheme of steady streams of income derived from investments in high quality money market instruments with financial institutions rated by a registered rating agency as may be specified from time to time by the Commission.

Proposed Amendment –

1. Definition



A Money Market Fund is a *type of unit trust scheme* authorized by the Commission with the primary objective to provide investors/participants in the Scheme with steady streams of income derived from investments in high quality money market instruments with financial institutions rated by a registered rating agency as may be specified from time to time by the Commission.

Justification – *To accurately describe money market funds as unit trust schemes*

d) **New Rule**

Name/citation of the Rule – **Money Market Fund / Investment Objective and Benchmark**

Full Text of the Rules –

17. Investment Objective

The trust deed of a Money Market Fund shall state that the investment objective of such fund is capital preservation

18. Benchmark

The trust deed of a Money Market Fund shall disclose the relevant benchmark, which shall be the 90-day treasury bill yield index or similar index as provided by a securities exchange or OTC platform or any other recognized index that is registered or recognized by the Commission. **Provided that the identified benchmark shall be the relevant benchmark for the fund for a period of not less than 10 years.**

Justification – *Proposed by Fund Managers Association of Nigeria (FMAN) further to the CIS Strategy Document (2013-2018) to ensure that all funds provide full disclosure of relevant information in their trust deeds.*

e) **New Rule**

Name/citation of the Rule – **C. Ethical Fund**

Full Text of the Rules –

(1) Definition

An Ethical Fund is a type of unit trust scheme authorized by the Commission with ethical investment objectives or other moral/ethical-based investment strategies.

(2) Use of Name/Title



The name and title '**Ethical Fund**' shall apply exclusively to schemes that qualify as such on the basis of the definition provided in (1) above:

Provided that no scheme or proposed schemes shall hold itself out in any form of communication (application for registration, offer documents, advertisement, letter, circular etc.) as an ethical fund where such does not meet the definition and other criteria specified in this Rule. Accordingly any existing scheme with the name 'ethical' that does not meet the qualifying criteria set in this Rule shall cease to use the appellation or upgrade to meet the criteria.

Justification – *To provide for the minimum rules on other types of collective investment schemes in addition to the rules on money market funds as requested by the Fund Managers Association of Nigeria (FMAN).*

f) **New Rule**

Name/citation of the Rule – **D. Faith-based Fund**

Full Text of the Rules –

(1) Definition

A Faith-based Fund is a type of unit trust scheme authorized by the Commission with investment objectives and/or strategies based on religious principles. This includes shari'ah compliant funds or other faith-based investment strategies.

(2) Use of Name/Title

The name and title '**Faith-based Fund**' or some other variation reflective of the faith or religion shall apply exclusively to schemes that qualify as such on the basis of the definition provided in (1) above; where it is a shari'ah compliant fund then the name and title 'Islamic/Shari'ah Fund' or other related variation is permissible.

Provided that no scheme or proposed schemes shall hold itself out in any form of communication (application for registration, offer documents, advertisement, letter, circular etc.) as a faith-based fund where such does not meet the definition and other criteria specified in these rules. Accordingly, any existing scheme with the name 'faith-based' or related variation that does not meet the qualifying criteria set in this Rule shall cease to use the appellation or upgrade to meet the criteria.

Justification – *This addition is further to the observation made at the Rules Committee meeting on Tuesday May 8, 2018 to separate ethical funds from faith-based funds.*



g) **Amendment**

Name/citation of Rule to be amended – Islamic Fund/J3

Full Text of Existing Rule – J3. Islamic Fund

Proposed Amendment – D (3) Islamic Fund

Justification – *Being a type of faith-based fund, this amendment proposes to bring the entire Islamic fund rules under the broad title of Faith-based Fund*

h) **New Rule**

Name/citation of the Rule – E. Fixed Income Fund

Full Text of the Rules –

(1) Definition

A Fixed Income Fund is a collective investment scheme authorized by the Commission with a minimum of 70% allocation to bonds or other debt instruments with a term to maturity of not less than 365 days

(2) Use of Name/Title

The name and title '**Fixed Income Fund**' or '**Bond Fund**' shall apply exclusively to schemes that qualify as such on the basis of the definition provided in (1) above;

Provided that no scheme or proposed schemes shall hold itself out in any form of communication (application for registration, offer documents, advertisement, letter, circular etc.) as a fixed income fund where such does not meet the definition and other criteria specified in this Rule. Accordingly, any existing scheme with the name 'fixed income' or 'bond' that does not meet the qualifying criteria set in this Rule shall cease to use the appellation or upgrade to meet the criteria.

(3) Investment Objective

The trust deed of a Fixed Income Fund shall state that the investment objective of such fund is income generation.

(4) Benchmark

The trust deed of a Fixed Income Fund shall disclose the relevant benchmark, which shall be any generic fixed income indices as provided by a securities exchange or OTC platform or any other recognized index that is registered or recognized by the Commission. **Provided that the identified benchmark shall be the relevant benchmark for the fund for a period of not less than 10 years.**



Justification – *To provide for the minimum rules on other types of collective investment schemes in addition to the rules on money market funds as requested by the Fund Managers Association of Nigeria (FMAN). It also ensures that in comparing performance, only funds with the same asset classes and asset allocation ranges are comparable.*

i) **New Rule**

Name/citation of the Rule – **F. Balanced Fund**

Full Text of the Rules –

(1) Definition

A Balanced Fund is a type of unit trust scheme authorized by the Commission with an asset allocation range of a minimum of 40% and a maximum of 60% to equities and a minimum of 40% and a maximum of 60% to fixed income and money market instruments provided that the fund shall maintain a minimum of 20% to fixed income securities at all times.

(2) Use of Name/Title

The name and title '**Balanced Fund**' shall apply exclusively to schemes that qualify as such on the basis of the definition provided in (1) above;

Provided that no scheme or proposed scheme shall hold itself out in any form of communication (application for registration, offer documents, advertisement, letter, circular etc.) as a balanced fund where such does not meet the definition and other criteria specified in these rules. Accordingly any existing scheme with the name 'balanced' that does not meet the qualifying criteria set in this Rule shall cease to use the appellation or upgrade to meet the criteria.

(3) Investment Objective

The trust deed of a Balanced Fund shall state that the investment objective of such fund is income generation and/or capital growth

(4) Benchmark

On a quarterly basis, the relevant fund management trade association shall publish a composite benchmark, which shall be based on the acceptable benchmarks for individual asset classes as provided by a securities exchange or OTC platform or any other recognized index that is registered or recognized by the Commission. This should be disclosed by the Fund Manager on its website as the relevant benchmark for the fund.

Justification – *To provide for the minimum rules on other types of collective investment schemes in addition to the rules on money market funds as requested by the Fund Managers*



Association of Nigeria (FMAN). It also ensures that in comparing performance, only funds with the same asset classes and asset allocation ranges are comparable.

10. New Rule

Name/citation of the Rule – Investment Restrictions for Collective Investment Schemes

Full Text of the Rules –

1. The following restrictions shall apply to investments made by schemes.
2. The value of a Fund's investment in:
 - i. Equity securities issued by a single company shall not exceed 5% or in the case of a company with a market capitalization of N50 billion or more, 10% of the Fund's NAV; Provided however that an Equity Fund may invest up to 15% in the equity security of any single company, and provided further that these will not apply to a fund whose principal objective is to track or replicate an index.
 - ii. Money market instruments issued by any single issuer shall not constitute more than 20% of a Fund's NAV. Provided however, that a Money Market Fund shall ensure compliance with the Rules on Money Market Funds;
 - iii. With the exemption of federal government bonds, bonds issued by any single issuer or one group of companies shall not constitute more than 30% of a Fund's NAV; Provided that for Federal Government bonds the 30% restriction shall apply to a single issue;
 - iv. Fixed deposits with any single institution shall not constitute more than 20% of a Fund's NAV;
 - v. Units/shares of any collective investment scheme shall not constitute more than 20% of a Fund's NAV; Provided that this shall not apply to a feeder fund or fund of funds;
 - vi. No fund, other than Real Estate Investment Schemes, shall have any direct exposure to real assets.
3. No equity investment of a scheme shall represent more than 10% of the outstanding securities of an issuer;
4. The provisions of this Rule shall not affect the applicability of the investment restrictions in unlisted securities as provided in the Rules on Investment by Collective Investment Schemes in Unlisted Securities.



5. Where the investment limit as prescribed in this Rule is exceeded as result of a corporate action or through an appreciation or depreciation of the Fund's NAV, a fund manager shall not make any further acquisition with respect to any security with which the relevant limit is breached, and the fund manager shall within a period of not more than 3 months from the date of the breach take all necessary steps and actions to rectify the breach.

Justification – *To provide for investment restrictions for collective investment schemes without recourse to the Trustee Investment Act. The restriction on investment in real estate assets is to prevent inaccurate valuation given the disparity between valuation frequency for funds (daily) and valuation of real estate assets (annual).*

11. Amendment

Name/citation of the Rule to be Amended – Investment by Collective Investment Schemes in Unlisted Securities / Unquoted Company /494(3)

Full Text of the Existing Rule –

Unquoted company:

A Fund Manager shall only invest in unlisted securities of a Company that has:

- a) demonstrated compliance with the Code of Corporate Governance;
- b) consistently produced audited accounts for the preceding five (5) years;
- c) a consistent history of profitability for at least the preceding five (5) years, and has paid dividend at least once in the preceding five (5) years.
- d) The company shall not be leveraged above a reasonable amount as may be prescribed by the Commission from time to time.

Proposed Amendment –

(3) Unquoted Company

A Fund Manager shall only invest in unlisted securities of a Company that is traded on a registered over-the-counter (OTC) market.

Justification – *To make it less onerous for fund managers to ensure continuous compliance with eligible unlisted securities*

12. Amendment

Name/citation of the Rule to be Amended – Investment by Collective Investment Schemes in Unlisted Securities / Rating /496



Full Text of the Existing Rule –

Rating

(1) A collective investment scheme (CIS) shall only invest in the unlisted securities of a company that has been rated to be of investment grade by a reputable/SEC registered rating agency;

(2) A collective investment scheme (CIS) which invests in unlisted securities shall undergo and submit a report of an annual rating by a SEC registered rating agency.

Proposed Amendment – Delete existing rule

Justification: *Fund managers have argued that this is an excessive cost to investors with little corresponding value.*

13. Amendment

Name/citation of the Rule to be Amended – Investment by Collective Investment Schemes in Unlisted Securities / Additional Disclosure /497

Full Text of the Existing Rule –

Additional Disclosure

A Fund Manager seeking to invest assets of a Fund in unlisted securities shall disclose:

Proposed Amendment –

A Fund Manager seeking to invest assets of a Fund in unlisted securities shall disclose **in the Fund's prospectus and on the Fund Manager's website:**

14. Amendment

Name/citation of the Rule to be Amended – Fund of Funds and Feeder Funds /J5.

Full Text of the Existing Rule –

J5. Fund of Funds and Feeder Funds

Proposed Amendment –

Umbrella Funds, Fund of Funds and Feeder Funds

Justification – *To make provisions for umbrella funds which are defined within the rules*



15. Amendment

Name/citation of the Rule to be Amended – Sub-Fund of Funds/520

Full Text of the Existing Rule –

“**Sub-Fund of Funds**” means a group of funds under a Master Fund and/or an umbrella fund.

Proposed Amendment –

“**Sub-Fund(s)**” means a fund or group of funds under an umbrella fund.

Justification – *For clarity in distinction of terms and based on global practice*

16. Amendment

Name/citation of the Rule to be Amended –Umbrella Fund/520

Full Text of the Existing Rule –

“**Umbrella Fund**” means a mutual fund that invests primarily in other funds also called fund of funds

Proposed Amendment –

“**Umbrella Fund**” means a shell structure under which sub-funds are managed and each sub-fund is invested separately based on its investment objective.

Justification – *For clarity in distinction of terms and based on global practice*

17. New Rule

Name/citation of the Rule – B. Registration and General Requirements of Umbrella Funds

Full Text of the Rules –

- (1) Requirements for the authorization of a Unit Trust scheme shall apply;
- (2) The sub-funds of an Umbrella Fund may invest directly in underlying assets and other funds with similar investment objectives as the sub-fund;
- (3) The Umbrella Fund structure may be adopted for administrative and cost efficiency provided that –



- a. Investors of one sub-fund may exchange the units of that sub-fund for another sub-fund under the same Umbrella fund at no additional administration costs and upon fair valuation of the unit prices of both sub-funds;
- b. The Fund Manager shall disclose, in the fund's trust deed or other governing document, measures to ring-fence/segregate the assets and liabilities of each sub-fund within an Umbrella Fund;
- c. Such measures for segregation shall be such that the assets of one sub-fund cannot be used to discharge the liabilities of another sub-fund.

Justification – *To provide a framework for the regulation of umbrella funds, distinct from fund of funds and feeder funds. It is also to guard against a ripple effect with an Umbrella Fund in a situation where one or more sub-funds become insolvent.*

18. Amendment

Name/citation of the Rule to be Amended – **Registration Requirements of Fund of Funds/ Fees & Charges /502(4)**

Full Text of the Existing Rule –

Fee/Charges

- a) The management fee charged to Fund of funds shall be commensurate to the degree of investment strategies employed by the Fund Manager to achieve the stated objective and shall not be more than 3% of the NAV per annum

Proposed Amendment –

Fee/Charges

- a) The management fee charged to a Fund of Funds shall be commensurate to the degree of investment strategies employed by the Fund Manager to achieve the stated objective and shall not be more than 1.5% of the NAV per annum

Justification – *To reduce TER in order to make CIS funds more attractive and globally competitive. It is recommended that the above proposal take effect from January 1, 2019 and be further reduced to 3% effective January 1, 2021 to give fund managers enough time to grow CIS funds with the use of alternative distribution channels after which economies of scale will justify a renegotiation of expenses downwards to make Nigerian funds globally competitive and attractive.*

19. Amendment

Name/citation of the Rule to be Amended – **Registration Requirements of Feeder Funds/ Fees & Charges /503(3)**



Full Text of the Existing Rule –

Fee/Charges

The total fees/charges (on the Master and Feeder Funds levels) to the feeder-fund shall be commensurate with the degree of investment strategies employed by the Fund Manager to achieve the stated objective and shall not exceed 3% of the Fund's NAV per annum

Proposed Amendment –

Fee/Charges

The total fees/charges (on the Master and Feeder Funds levels) to the feeder-fund shall be commensurate with the degree of investment strategies employed by the Fund Manager to achieve the stated objective and shall not exceed 1.5% of the Fund's NAV per annum.

Justification – *To reduce TER in order to make CIS funds more attractive and globally competitive. It is recommended that the above proposal take effect from January 1, 2019 in line with other TER reductions.*

20. Amendment

Name/citation of the Rule to be Amended – General Requirements of Feeder Funds / 504(2)

Full Text of the Existing Rule – A Feeder Fund Manager shall appoint a custodian/trustee for the fund;

Proposed Amendment – Delete existing sub-rule

Justification – *This is unnecessary and burdensome since the feeder fund undertakes no investments on its own and is established for the purpose of achieving the investment objectives of a Master Fund. Consequently, the custodian/trustee of the Master Fund is responsible for monitoring the activities of the feeder fund.*

21. New Rule

Name/citation of the Rule – Total Expense Ratio for REICO

Full Text of the Rule – The total expense ratio for a REICO shall not exceed 3.5% of its net asset value;

Justification – *To reduce TER in order to make REIS more attractive and globally competitive. It is recommended that the above proposal take effect from January 1, 2019*



and be further reduced to 3% effective January 1, 2021 to give fund managers enough time to grow CIS funds with the use of alternative distribution channels after which economies of scale will justify a renegotiation of expenses downwards to make Nigerian funds globally competitive and attractive.

22. Amendment

Name/citation of the Rule to be Amended – Contents of Trust Deed / 532(j) and (l)

Full Text of the Existing Rule –

(j) All fund expenses including the annual management fee shall not exceed 5% of the net asset value of the fund

(l) In addition to (j) above, the fund manager of the trust shall be entitled to an incentive fee not exceeding 30% of total returns in excess of 10% of the scheme's net asset value per annum

Proposed Amendment –

(j) all REIT expenses, including the annual management fee shall not exceed 3.5% of net asset value of the REIT;

(l) in addition to (j) above, the fund manager of the REIT may charge an incentive fee in the manner provided in these Rules ;

Justification – *To reduce TER in order to make REIS more attractive and globally competitive. It is recommended that the above proposal take effect from January 1, 2019 and be further reduced to 3% effective January 1, 2021 to give fund managers enough time to grow CIS funds with the use of alternative distribution channels after which economies of scale will justify a renegotiation of expenses downwards to make Nigerian funds globally competitive and attractive.*

23. Amendment

Name/citation of the Rule to be Amended – SCHEDULE I / PART C - Securities

Full Text of the Existing Rule –

- | | |
|--|------------|
| (1) Application fee for registration of a Collective Investment Scheme, flat rate of | N35,000.00 |
|--|------------|



- (2) Filing fee for registration of securities flat rate of N10,000.00

Proposed Amendment –

Registration Fees for Units/Securities and Others

- (1) Application fee for registration of a Collective Investment Scheme, flat rate of N50,000.00
- (2) Filing fee for registration of units/securities flat rate of N10,000.00

Justification – *General review of SEC fees*

24. Amendment

Name/citation of the Rule to be Amended – Authorization fee for units of the fund of unit trust scheme /Schedule I Part C(5)

Full Text of the Existing Rule –

Authorization fee for units of the fund of unit trust scheme:

First N10 million	0.1%
Next N10 million	0.075%
Above N20 million and up to N40 million	0.050%
Any sum thereafter	0.025%

Proposed Amendment –

Authorization fee for units of a unit trust scheme (including ETFs):

Up to N5 billion	0.027%
Over N5 billion	0.025%

Justification – *To simplify fee structure to make Nigerian funds globally competitive and attractive.*



25. Amendment

Name/citation of the Rule to be Amended – Registration of real estate investment funds /Schedule I Part C(6)

Full Text of the Existing Rule –

(6) Registration of real estate investment funds

First N50 million	0.1%
Next N50 million	0.075%
Above N100 million and up to N200 million	0.050%
Any sum thereafter	0.025%

Proposed Amendment –

(6) Authorization fee for units/securities of Real Estate Investment Schemes; Specialized Funds; Private Equity Funds and Venture Capital Funds

Up to N10 billion	0.027%
Over N10 billion	0.025%

Justification – *To simplify fee structure to make Nigerian funds globally competitive and attractive.*

26. Amendment

Name/citation of the Rule to be Amended – Registration of Venture Capital funds /Schedule I Part C(7)

Full Text of the Existing Rule –

(7) Registration of Venture Capital funds

First N100 million	0.1%
Next N100 million and up to N400 million	0.075%
Above N400 million and up to N900 million	0.050%
Any sum thereafter	0.025%

Proposed Amendment – Delete entire provision



Justification – *The fee structure for venture capital funds has been provided for in the proposed amendment to the registration of fees for Real Estate Investment Schemes*

27. New Rule

Name/citation of the Rule – (7) Authorization fee for Infrastructure Funds

Full Text of the Rule –

Up to N15 billion	0.075%
Over N15 billion	0.050%

Justification – To provide an authorization fee structure for Infrastructure Funds

28. Amendment

SCHEDULE III

Forms

- FORM S.E.C. 6A: Registration of Unit Trust Scheme
- FORM S.E.C. 6A1: Registration of Real Estate Investment Schemes
- FORM S.E.C. 6A2: Registration of Venture Capital funds
- FORM S.E.C. 6A3: Registration of Private Equity Funds
- FORM S.E.C. 6A4: Registration of Foreign Collective Investment Schemes
- FORM S.E.C. 6A5: Registration of Infrastructure Funds
- FORM S.E.C. 6A6: Registration of Exchange Traded Funds
- FORM S.E.C. 6A7: Registration of Additional Units/Securities of Collective Investment Schemes
- FORM S.E.C. 6A8: Registration of Specialized Funds
- FORM S.E.C. QR8: Quarterly Return for Private equity funds, Specialized Funds, Venture Capital Funds and Infrastructure Funds



29. Amendment

SCHEDULE IV

Information, Returns and Reports Required to be Filed by Collective Investment Schemes

11. Quarterly report by Custodian

30. Amendment

SCHEDULE VI

Basis of Computation of Bid and Offer Prices for Collective Investment Schemes

(1) Name/citation of the Rule to be Amended - Basis of Computation of Bid And Offer Prices For Collective Investment Schemes / Schedule VI

Full Text of the Existing Rule – 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 as follows:

Offer Price:

Value per unit = (1) minus (summation of 2- 10) divided by number of units on sale rounded off.

- the
1. Total market value of securities based on the Exchange daily official list as at date of valuation (lowest market offer price).
 2. Stamp duties;
 3. Brokerage fee;
 4. S.E.C. fee;
 5. Other relevant approved costs
 6. Actual cost of investment in unquoted securities (if applicable);
 7. Estimate of capital appreciation/diminution in value for unquoted companies(if applicable);



8. Un-invested cash;
9. Undistributed income to date less expenses;
10. Total value of money market instrument;
11. Manager's charge.

Bid Price:

Value per unit = summation of (1) minus (2 - 8) divided by number of units on sale rounding off.

- of
1. Total market value of securities based on exchange daily official list as at date valuation (highest market bid price).
 2. Actual cost of investment in unquoted securities (if applicable).
 3. Estimate of capital appreciation for unquoted companies (if applicable).
 4. Un-invested cash.
 5. Undistributed income to date less expenses.
 6. Total value of money market instruments.
 7. Stamp duties.
 8. Brokerage fee.
 9. S.E.C. fee.
 10. Other relevant approved costs.

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 as follows:

Offer Price:

Value per unit = Summation 1 to 6 minus (7 to 10) divided by number of units on sale rounded off.

1. Total market value of securities based on the Exchange daily official list as at the date of valuation;



- (if
2. Estimate of capital appreciation/diminution in value for unquoted companies applicable);
 3. Actual cost of investment in unquoted securities (if applicable)
 4. Un-invested cash;
 5. Undistributed income to date less expenses;
 6. Total value of money market instrument;
 7. Stamp duties;
 8. Brokerage fee;
 9. SEC fee;
 10. Scheme's Allowable Expenses;

Bid Price:

Value per unit = Summation 1 to 6 minus (7 to 10) divided by number of units on sale rounding off.

1. Total market value of securities based on exchange daily official list as at date of valuation;
2. Actual cost of investment in unquoted securities (if applicable).
3. Estimate of capital appreciation for unquoted companies (if applicable).
4. Un-invested cash.
5. Undistributed income to date less expenses.
6. Total value of money market instruments.
7. Stamp duties.
8. Brokerage fee.
9. S.E.C. fee.
10. Scheme's Allowable Expenses.

Justification – *To review the computation to reflect the value per unit in terms of assets minus liabilities divided by number of outstanding units*



(2) Name/citation of the Rule to be Amended - Basis of Computation of Bid And Offer Prices For Collective Investment Schemes / Schedule VI Note

Full Text of the Existing Rule –

Note:

Securities traded on a Stock Exchange or any regulated market will generally be valued at the last traded price quoted on the relevant exchange or market as at the date of computation. If no trade is reported for that date or if the exchange was not open on that day, the last published sale price or the recorded bid price (whichever is more recent) shall be used. Unlisted equity securities will be valued initially at cost and thereafter, as the Scheme's Manager shall in its discretion deem appropriate. Unlisted securities (other than equities), for which there is an ascertainable market value will be valued generally at the last known price dealt on the market on which the securities are traded on or before the day preceding the relevant date of valuation and unlisted securities (other than equities), for which there is no ascertainable market value, will be valued at cost plus interest (if any) accrued from purchase to (but excluding) the Valuation Date plus or minus the premium or discount (if any) from par value written off over the life of the security. Any value otherwise than in Nigeria Naira shall be converted at the prevailing market exchange rate.

Proposed Amendment –

Note:

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

Securities traded on a Stock Exchange or any regulated market will generally be valued at the last traded price quoted on the relevant exchange or market as at the date of computation. If no trade is reported for that date or if the exchange was not open on that day, the last published sale price or the recorded bid price (whichever is more recent) shall be used. Unlisted equity securities will be valued initially at cost and thereafter, as the Scheme's Manager shall in its discretion deem appropriate.

Valuation of Unlisted Securities should comply with the International Financial Reporting Standards

Justification –

For valuation of unlisted securities, IFRS is recommended since all funds have been required to comply with these standards since 2013. The previous note contradicted IAS 39, IFRS 9 and 13. In addition, the audited accounts of funds revealed that they currently comply with IFRS instead of the current provision in the SEC Rules and Regulations.



31. Form SEC 6A8 – Registration of Specialized Funds

FORM SEC 6A₈

(To be completed in duplicate)

SECURITIES AND EXCHANGE COMMISSION (SEC)

Instructions for Completion of Forms

NIGERIA



- i. All questions must be answered in the spaces provided and not left blank. Where a question is not applicable please indicate by N/A in the space provided.
- ii. Information supplied/entered in the application form must be valid and correct as at a date not earlier than 30 days preceding the date of this application.
- iii. In the event of any material change to the information provided in this application prior to the authorization of the Offer/Scheme, the applicant shall notify the Commission of such changes immediately.
- iv. Any false/misleading information found to have been supplied herein shall attract appropriate sanction/penalty in line with the requirement of the SEC Rules and Regulations.



Date of submission of application	
Reference/Processing Application No	
Cheque NO.	

1. APPLICANT/REGISTRANT

- a) Name
(Exact name as in certificate of incorporation)
- b) Address
(Registered Office Address)
- c) Telephone Number

2. THE SCHEME/FUND

- a) (i) Name of proposed Scheme
- (ii) Proposed Date of Commencement
- b) Objective of the Scheme:
.....
.....
.....
- c) (i) Number of units proposed for issue:
- (ii) Value per unit:



(iii) Minimum Subscription Level per investor:

d) Investment Allocation (*investment mix of the proposed Fund in % terms*)

(i) By Asset Class:

Listed Equities	Unquoted Equities	Fixed Income	REIS	Commodities	Derivatives	SEC Registered Funds	Others - Specify

(ii) By Jurisdiction:

Nigeria (<i>at least 80%</i>)	Eligible Foreign Jurisdiction (<i>i.e. IOSCO Ordinary Member countries</i>):

**attach an appendix if necessary*

e) (i) State voting rights of unit holders (if any)

.....
.....
.....

(ii) Disclose any special rights under the (proposed) scheme

.....
.....

f) Details of redemption provisions (if any):

.....
.....
.....
.....

g) (i) Frequency of Distribution of Income:

.....



.....

(ii) State provision for closure of register of unit holders

.....

.....

.....

(iii) Is automatic reinvestment of distribution permitted? Please give

details

.....

.....

.....

(iv) Briefly explain proposals for accounting to unit holders, the share of fund individually invested

.....

.....

h) Disclose borrowing limit of the Fund

i) Investment - Portfolio of Fund prior to Application with SEC (if applicable)

(i) Equities

(1

) Quoted

(2

) Unquoted

(ii) Money Market

(1) Treasury

Bills/Certificates

(2

) Commercial Paper

(3

) Bankers Acceptances

(4

) Others specify

(iii) Bonds

}¹ Government Bond

(2

) Corporate Bond

(iv) Real Estate Investment
(Specify).....

(v) Other



- j) Disclose procedure for undertaking continuous due diligence and risk assessment of investible assets (*attach an appendix if necessary*):
-
-
-
-
- k) Disclose valuation basis and methodology per asset class (*attach an appendix if necessary*):
-
-
-
-
- l) Management Fees
- m) Fund Benchmark
- n) Incentive Fees
- o) Name and Address of Trustee and Custodian for the Scheme
-
-
-
-
- (i) Disclose special relationship of Trustee and Custodian with Management Company of the Fund
-
-



-
-
- (ii) Remuneration
- (iii) Basis of Remuneration

3. THE MANAGEMENT COMPANY

- a) Name & Address

.....

.....

.....

- b) Date & Place of Incorporation

.....

- c) Date of commencement of business

.....

- d) Name(s) of Substantial Shareholders (5% & above)

	Name of Company	No. of shares	Amount	%
NIGERIAN				
FOREIGN				

- e) Give the names of beneficial owners of nominee shareholding of at least 5% of the ordinary share capital apart from pension funds. (*State the percentage in each case*)

.....

.....



f) Details of funds and portfolio being managed (indicate Country of operation)

Name of Fund	Year Commenced	Privately managed funds/ Aggregate Value			Institutional Investors/ Aggregate Value		
		Quoted Equities	Money Markets	Others	Quoted Equities	Money Markets	Others

(Attach schedule to accommodate additional clients if need be)

g) State specific lines of business (where appropriate) and percentage contribution to turnover from each line

No.	Description	% contribution to	
		Turnover	Net Profit
1			
2			
3			

h) Furnish details of Affiliates as follows:

(i) Name of Affiliate

.....

(ii) Address:

(iii) Nature of Affiliate

i) Management and Principal Officers

Name	Educational Qualification	Position Held	Addresses	Share Qualification	% Shareholding in relation to	No. of Units of Schemes held	Remarks
------	---------------------------	---------------	-----------	---------------------	-------------------------------	------------------------------	---------



					total share capital		

- j) Give full details of contingent liabilities (if any) and estimate probability of falling due:

.....

.....

.....

- k) (i) Are you a member of any Association of Fund Managers or Security Dealers? Yes/No

- (ii) Have you ever been found guilty of any misdemeanor or breach of the rules of any such association?

- l) (i) Is any Investment advisory contract subsisting between your company and any other? Yes/No

- (ii) Give details about such Investment Advisers below:

Name & Address	Pertinent Fund	Basis of Remuneration
.....
.....

- m) (i) Are your officers covered by a Fidelity guarantee Insurance? Yes/No

Name & Insurer	Insured Valued	Date Last	Previous Claims
----------------	----------------	-----------	-----------------



		Premium paid	(if any)
.....
.....
.....
.....

n) Furnish details regarding previous claims relating to (m) above

.....

.....

.....

.....

o) Five Year Financial Summary (including management account as at immediate quarter preceding submission of application)

4. TRUSTEE

a. (i) Name of Proposed Trustee

(ii) Date & Place of Incorporation.....

b. Relationship with Management Company.....

c. Authorized Capital

d. Issued and paid-up Capital

e. Management of Trustee Company

Name	Educational	Position Held	Address	Units of Scheme held	Remark
------	-------------	---------------	---------	----------------------	--------



--	--	--	--	--	--

f. Particulars of Trusteeship of other Unit Trust Schemes within the last 10 years

Title of Scheme	Year Commenced	Status	Reasons for Cessation

g. Have you ever been found guilty of breach of Trust under the laws of Nigeria? Yes/No

If yes, please give details

.....

.....

.....

h. (a) Remuneration/Charges of Trustee

(b) State basis

i. Briefly describe operational procedure and provision for safe custody of the funds and assets of the Unit Trust Scheme(s) under your Trusteeship

.....

.....



-
.....
- j. Five Year Financial Summary (including management account as at immediate quarter preceding submission of application).

SIGNATURES AND CERTIFICATION

Pursuant to the requirements of the Investment and Securities Act CAP I24 LFN 2007 and the Rules and Regulations thereunder, the Applicant/Registrant has duly caused this application form to be signed on its behalf by the undersigned hereunto duly authorised.

.....
Applicant/Registrant

Date..... Signature

.....
(Full Name and Title)

I certify that to the best of my knowledge and belief the information set forth in this application form is true, complete and correct.

.....
Date

.....
Signature

.....
(Full Name and Title)

NB: This form should be duly notarized.



Sundry Amendments

1. PROPOSED AMENDMENT TO RULE 45 (PART C): REGISTRABLE FUNCTIONS

Full text of Existing Rule:

(1) The following are capital market operators:

- a. issuing houses/merchant bankers;
- b. underwriters;
- c. broker/dealers;
- d. sub-brokers;
- e. receiving bankers;
- f. registrars;
- g. trustees;
- h. investment advisers (corporate and individuals);
- i. fund/portfolio managers;
- j. rating agencies;
- k. market makers
- l. custodian
- m. any other function the Commission may determine from time to time.

Proposed Amendment: Creation of new item “m” under Rules 45 to read as follows:

(1) The following are Capital Market Operators:

- a. Issuing Houses/Merchant Bankers;
- b. Underwriters;
- c. Broker/Dealers;
- d. Sub-brokers;
- e. Receiving Bankers;
- f. Registrars;
- g. Trustees;
- h. Investment Advisers (corporate and individuals);
- i. Fund/Portfolio Managers;
- j. Rating agencies;
- k. Market Makers
- l. Custodian



- m. Nominee
- n. Any other function the Commission may determine from time to time.

Justification: *To make "Nominee" one of the registrable functions*

2. PROPOSED AMENDMENT TO RULE 51- REPORTS TO BE FILED/SCHEDULE II (PENALTIES)

Full Text of Existing Rule 51 (1) (b)&(c):

(b) Annual accounts certified by an auditor and prepared on a calendar or fiscal year basis, shall be filed not later than six (6) months after the end of the accounting year.

(c) Where a market operator fails to file quarterly returns twice in a year and nine (9) months after the annual accounts becomes due, the market operator shall be referred for further enforcement action.

Provided that an operator who was not active during a reporting period shall file a nil return supported by affidavit.

Proposed Amendment:

(b) Annual accounts certified by an auditor and prepared on a calendar or fiscal year basis, shall be filed not later than ~~six (6)~~ three (3) months after the end of the accounting year.

(c) Where a market operator fails to file quarterly returns twice in a year and ~~nine (9)~~ six (6) months after the annual account becomes due, the market operator shall be referred for further enforcement action.

Provided that an operator who was not active during a reporting period shall file a nil return supported by affidavit.

Justification: *This amendment is based on the recommendation of the Technical Committee on Harmonization of Quarterly Returns Template comprising of the Commission and the NSE. Based on the observation of the Committee, Capital Market Operators (CMOs) file returns to the Commission using standardized templates. In particular, broker/dealers file returns to the Commission and the NSE using the same template. Filing of audited accounts to the NSE by broker/dealers is within 3 months after accounting year end. Thus, there is a need to harmonise the reporting period for all CMOs to file their returns at the same time to the Commission.*



The current practice is not in tune with the risk-based approach to monitoring of CMOs and the information required may have become obsolete six months after the accounting year of a CMO.

PROPOSED AMENDMENT TO SCHEDULE II (PENALTIES/FINES)

Full Text of Existing Rule:

- Late filing of quarterly/yearly returns (N2,000.00 per day for the period of default)
- Non-filing of quarterly/yearly returns (N5,000.00 per day for the period of default)

Proposed Amendment:

- ~~Late filing of quarterly/yearly returns (N2,000.00 per day for the period of default)~~
- ~~Non-filing of quarterly/yearly returns (N5,000.00 per day for the period of default)~~
- Late/ non-filing of quarterly/yearly returns (N5,000.00 per day for the period of default)

Justification:

This will remove the ambiguity on when to apply penalty for late filing and non-filing of a return. The penalty is also expected to be a deterrent to non-compliance to the relevant rules.

3. PROPOSED AMENDMENT TO RULE 57- NET CAPITAL REQUIREMENT

Full text of Existing Rule: Net Capital Requirement

(1) No broker or dealer shall permit his aggregate indebtedness to exceed 10 times its net capital.

(2) Net capital shall be computed as specified below:

(a) Determine equity by subtracting the broker-dealer's liabilities from its assets (broker-dealer assets include cash; money owed by customers and other broker-dealers; securities held in proprietary trading and investment accounts; and fixed assets like buildings, furniture and equipment. Broker-dealer liabilities include money owed to customers and other broker-dealers, bank loans, debt securities issued by the broker-dealer, or funds loaned to it by the parent company);



- (b) Add back certain subordinated liabilities to equity, subject to certain conditions;
- (c) Deduct illiquid assets, such as the value of fixed assets from equity;
- (d) Deduct unsecured receivables.

Proposed Amendment: Net (Liquid) Capital Requirement

- (1) No broker or dealer shall permit its aggregate indebtedness to exceed 10 times its net liquid capital.
- (2) Net (liquid) capital shall be computed as specified below:
 - (a) Determine net worth by subtracting the broker/dealer's total liabilities from its total assets;
 - (b) Deduct illiquid assets such as the value of non-current assets from net worth
 - (c) Deduct Haircut Charge

Justification: *Use of "Net Liquid Capital" instead of "Net Capital" better portrays the subject matter which is liquid capital after haircut. Also the proposed computation is more straight forward and easier to understand.*

4. PROPOSED AMENDMENT TO RULE 58: DETERMINATION OF NET (LIQUID) CAPITAL

Full Text of Existing Rule:

(1) Every stock broker (broker/dealer) registered with the Commission shall compute and report in all statutory report/filing its Net (liquid) Capital applying the following procedures:

(a) Total asset

Less: total liabilities

Net-Worth

Add: Reserves/earning

Subordinated loans

Net capital before adjustments

(b) Less: Fixed assets

Prepaid expenses

Exchange membership fee

Unquoted investments



Unsecured receivable (loan)

Net capital before provisions

(c) Less: Provisions (Haircuts)

Net (liquid) capital

(d) Less: Required minimum capital base

Within threshold/in excess/shortfall

(2) Definition of Terms

Networth means the difference obtained when the liabilities are subtracted from the assets of a stockbroking firm.

Prepaid Expense means payment in lieu of service or goods delivery. It is an asset to the company not immediately recoverable.

Unquoted Investment means investment in securities that are not listed on the stock exchange. The value of such investment cannot be immediately determined.

Unsecured receivable (loan) means a debit balance on the account of clients that are not covered by any collateral, but by the assets acquired by the stockbroking firm under a margin loan agreement or any other form of unsecured loan agreement.

Subordinated loan means the lending of cash or collateral to a broker/dealer for use in the company. The lender has last claim in the assets in case of financial difficulties. This type of loan is usually obtained from the company's promoters or its directors.

Provisions (Hair cut) means an industry term that is applied to the value of an asset. Depending on its liquidity, the value is reduced by what amount could be expected if the asset had to be liquidated in a hurry.

Proposed Amendment:

(1) Every broker/dealer registered with the Commission shall compute and report in all statutory reports/filings its Net (liquid) Capital applying the following procedures:

(a)



	Total Assets	XXXX
Less:	<u>Total Liabilities</u>	<u>XXXX</u>
	<u>Net-Worth</u>	<u>XXXXX</u>
Less:	Non Currents Assets	XXXX
	Intangible Assets	XXXX
	Statutory Deposits	XXXX
	<u>Other Assets</u>	<u>XXXX</u>
	<u>Net Liquid Capital Before Haircut</u>	<u>XXXXX</u>
Less:	<u>*Total Risk Weight (Haircut Charge)</u>	XXXX
	<u>Net Liquid Capital</u>	<u>XXXXX</u>
Less:	Threshold (10% Aggregate Indebtedness)	XXXX
	<u>Excess/(Shortfall) Net Liquid Capital</u>	<u>XXXXX</u>

- (b) Broker/Dealers shall render monthly report on their Net Capital Position in a specified form to the Nigerian Stock Exchange and the Commission.
- (c) Any Broker/Dealer with a shortfall in net liquid capital shall be suspended from trading.

*Computation of Risk Weight (Haircut) shall be the summation of the following:

10% of Listed Equities (Nigerian);
15% of Nigerian Depository receipt NDR;
15% of Listed Preference Stock (Nigerian)
50% of Foreign Listed Securities/Euro Bonds;
100% of Unlisted Foreign Securities
10% of Foreign Currency balance /position not hedged
10% of Mutual Funds;
0% of Federal Government Bonds;
0% of Treasury Bills;



0% of Supra-national Bonds;
15% of Sub-National Bonds;
100% of Unlisted Equities (Nigerian) not traded in SEC registered OTC market;
20% of Unlisted Equities (Nigerian) traded in SEC registered OTC markets;
20% of Investment Grade Commercial Papers
20% of Bankers Acceptance and Certificate of Deposits
80% of Unsecured loans, receivables and advances to clients
15% of Margin loans and securities lending
100% of Non-investment grade Corporate Bonds
20% Corporate Bonds (Investment grade)
35% of Derivatives (Options and Futures)
10% of Exchange Traded Funds and REITS
10% Concentration charge on any instrument above 35% of Portfolio

Definition of Terms

Aggregate Indebtedness means total liabilities of a Broker-Dealer (including off-balance sheet items) arising in connection with any transaction whatsoever which among others include money borrowed, money payable against securities held, clients and non-clients free credit balances, lawsuit damages / penalties, guarantees and contingencies where occurrence of loss is probable.

Hair cut means a percentage by which investment in certain assets would be discounted to provide for market volatility and uncertainties.

Net liquid capital means an organization's net worth, which is calculated by subtracting its total liabilities from its total assets, including deduction of illiquid assets and haircut. It is the ability of an organization to meet its financial obligations to customers and creditors.

Networth means the difference obtained when the total liabilities are subtracted from the total assets of a stockbroking firm.

OTC (Over the Counter) Market means SEC registered decentralized market, without a central physical location where market participants trade unlisted securities through agreed electronic trading systems and in compliance with established market rules.



Other Assets refer to any other asset not specifically mentioned in the calculation above and is illiquid.

Quoted Investment means investment in securities that are listed on a recognized stock exchange.

Threshold means 10% of aggregate indebtedness. SROs shall establish early warning Net (liquid) Capital levels which is at 8 times the threshold.

Justification: *The new formula is more practical because it provides a logical method to compute and report Net Liquid Capital to the Commission and includes more definition of terms.*

SEC requires every broker/dealer to maintain at all times sufficient minimum levels of liquid assets or net liquid capital to enable broker/dealers to meet up with its short term obligations at any point in time.

The Net Liquid Capital Rule focuses on liquidity and is aimed at protecting investors, counter parties and creditors. It requires broker/dealers to have sufficient liquid resources on hand at all times to settle claims promptly. The Rule is to provide a cushion of liquid assets in excess of liabilities to cover potential markets, credit and other risks which may arise if the assets should be required to be liquidated. It provides liquidity test in relation to aggregate indebtedness (all liabilities) and client related receivables.

The table below provides justifications for the proposed haircuts on securities:

Asset Class	Recommendation	Justification
Listed Equities (Nigerian);	10%	Listed equities are marked to market hence quoted value in the financial statements is realisable. High haircut on this will push Brokers away from capital market into money market instruments (T-bills) with lower haircut. This is recommended to encourage greater participation in the capital market.
Listed Nigerian Depository receipt NDR;	15%	Same as Listed Equities (Nigerian). However the investors are also exposed to the risks in the economy of the issuer.
Listed Preference Stock (Nigerian)	15%	This is also marked to market hence quoted value in the financial statements is realisable, the 5% premium added over haircut for equities is due to the hybrid nature of the instrument.
Foreign Listed Securities;	50%	The 50% high hair cut is to compensate for country risk (political risk, exchange rate risk, economic risk, sovereign risk and transfer risk, which is the risk of capital being locked up or frozen by government action, restrictions on repatriation of capital, legal restriction etc)



Unlisted Foreign Securities	100%	This is due to the difficulty in valuation/ price determination as well as verification of securities, in addition to the risks that are associated with listed foreign securities.
Convertible currencies /position not hedged	10%	This is due to Foreign Exchange risk
Mutual Funds;	10%	Mutual funds are regulated by the Commission and valuation/price determination is available, value in the financial statements is realisable. This was recommended to encourage greater participation by market intermediaries and encourage development of the instruments and diversification
Federal Government Bonds;	0%	This is backed by the guarantee of the Federal Government of Nigeria.
Treasury Bills;	0%	This is backed by the guarantee of the Federal Government of Nigeria.
Supra-national Bonds;	0%	This is due to the quality of the instruments issued by international development agencies with very sound credit rating.
Sub-National Bonds;	15%	This instrument also has good credit rating however recent fall in commodity prices has exposed the vulnerability of state governments, the instrument is traded and marked to market, the 15% haircut is to account for liquidity/credit risk.
Unlisted Equities (Nigerian) not traded in SEC registered OTC market;	100%	This is due to the difficulty in valuation/ price determination.
Unlisted Equities (Nigerian) traded in SEC registered OTC markets;	20%	The OTC market allows for price discovery of these instruments, value of the OTC traded equities are marked to market hence quoted value in the financial statements is realisable.
Investment Grade Commercial Papers	20%	This instrument has short maturity.
Bankers' Acceptance and Certificate of Deposits	20%	This instrument has short maturity and is backed by the credit backing of the bank (guarantee of the bank)
Unsecured loans, receivables and advances to clients	80%	This haircut is after making appropriate prudential provision for non-performing loans.
Margin loans and Securities lending	15%	This is subject to the net realisable value of the collateral being higher than the loan/advance
Non-investment grade Corporate Bonds	100%	These are junk bonds.
Corporate Bonds (Investment grade)	20%	This is because the secondary market for corporate bonds is currently inactive and most bond holders are forced to hold-to-maturity.



Derivatives (Options and Futures)	35%	These are high risk and complex instruments.
Exchange Traded Funds & REITs	10%	This is because they have similar features with listed equities and the funds as well as the fund managers are regulated by the Commission.
Concentration charge on any instrument above 35% of Portfolio	10%	This is to account for concentration risk.

5. PROPOSED AMENDMENT TO RULE 125- PROHIBITION OF ASSIGNMENT

Full text of Existing Rule:

A custodian of securities shall not assign or delegate its functions as a custodian of securities to any other person unless such person is a registered custodian or depository of securities and has the written consent of the client to do so.

Proposed Amendment:

A custodian of securities shall not assign or delegate its functions as a custodian of securities to any other person unless such person is a nominee, registered custodian or depository of securities and has the written consent of the client to do so.

Justification: *To further give effect to the use of nominees by investors, custodians and other Capital Market Operators.*

6. PROPOSED CREATION OF A NEW RULE UNDER PART C13- RIGHT OF INVESTOR TO APPOINT CUSTODIAN

Proposed Creation of New Rule 126:

Investors shall reserve the right to appoint custodians that will hold their accounts, assets, securities and other investment instruments.

Justification: *To give investors especially retail investors the opportunity to choose the custodian(s) to hold their assets, securities and other investment instruments as against the current practice where clients' assets are pooled in omnibus accounts without the full knowledge or consent of the client(s). It would also give investors (who invest in shares) the right to appoint custodian(s).*

7. PROPOSED AMENDMENT TO RULE 132- USE OF NOMINEES

Full text of Existing Rule:



A custodian who uses nominee(s) to hold its clients' investments shall disclose to the Commission in advance the names of the nominee(s) it intends to use and ensure that:

- (1) the nominee acts only in accordance with its clients' instructions;
- (2) each nominee is dedicated to the holding and to activities relating to the holding of investments;
- (3) it accepts responsibility in writing to its clients for any of the nominees used, to the same extent as for its own action; and
- (4) any report on compliance by the Custodian with rules and regulations relating to clients' assets cover the nominee(s) as well.

Proposed Amendment: Use of Nominee Company

~~A custodian who uses nominee(s) to hold its clients' investments shall disclose to the Commission in advance the names of the nominee(s) it intends to use and ensure that:~~

A custodian shall use nominee(s) to hold its clients' investments and disclose to the Commission in advance the names of the nominee(s) it intends to use and ensure that:

~~(4) — any report on compliance by the Custodian with rules and regulations relating to clients' assets cover the nominee(s) as well.~~

(4) the nominee company is registered with the Commission to carry out the functions of nominee before engaging it

(5) all clients' assets are transferred to the nominee(s) immediately

Justification

- *The best way of ensuring segregation of clients' assets from the custodian's proprietary assets is by making it compulsory for the custodians to make use of a nominee to hold the clients' assets. Through this, commingling of assets and the risks associated with that are eliminated.*
- *To enable the Commission bring all Nominee Companies under proper regulation and hold them accountable for submitting reports to the Commission.*

8. PROPOSED AMENDMENT TO SCHEDULE I- REGISTRATION FEES, MINIMUM CAPITAL REQUIREMENTS, SECURITIES AND OTHERS

Proposed Amendment: Creation of Registration fee for Nominee



Registration fee of N500,000.00 and Minimum Capital of N1,000,000,000.00

Justification: *To include registration fee and minimum capital of Nominee company in the appropriate Schedule.*