

**SECURITIES AND EXCHANGE COMMISSION  
SEC TOWER, 272 SAMUEL ADESUJO ADEMULEGUN STREET  
CENTRAL BUSINESS DISTRICT  
ABUJA**

**DECISION**

**IN THE MATTER OF THE INVESTMENT AND SECURITIES ACT 2007:  
BEFORE THE SECURITIES AND EXCHANGE COMMISSION  
ADMINISTRATIVE PROCEEDINGS COMMITTEE (SEC APC) HELD 3<sup>RD</sup>  
FEBRUARY, 2016**

**APC/1/2016: AFOLABI GABRIEL OLUWASEYI & 9 OTHERS V. BGL  
SECURITIES LTD & 22 OTHERS**

**IN RE:**

- Performance of a capital market function without registration
- Promoting/Marketing products not registered by the Commission
- Failure/Refusal to resolve clients' complaints
- Failure to file statutory returns
- Furnishing the Commission with false and misleading information
- Other violations of the Investments and Securities Act, 2007, SEC Rules and Regulations, the Code of Conduct for Capital Market Operators and their Employees and Code of Corporate Governance for Public Companies.

**BETWEEN**

- |  |                              |
|--|------------------------------|
| 1. Afolabi Gabriel Oluwaseyi                       | 1 <sup>st</sup> Complainant  |
| 2. First Registrars & Investor Services Ltd        | 2 <sup>nd</sup> Complainant  |
| 3. NOUN Staff Cooperative Multipurpose Society Ltd | 3 <sup>rd</sup> Complainant  |
| 4. Dr. Rufus Chika Okoro                           | 4 <sup>th</sup> Complainant  |
| 5. Ministry of Finance, Delta State                | 5 <sup>th</sup> Complainant  |
| 6. Azort Nigeria Ltd                               | 6 <sup>th</sup> Complainant  |
| 7. Estate of Late Chief John Chuks Adigwe          | 7 <sup>th</sup> Complainant  |
| 8. Chief Professor Marcellus Umunnakwe Ojua        | 8 <sup>th</sup> Complainant  |
| 9. Orsule Ann Awase                                | 9 <sup>th</sup> Complainant  |
| 10. Mahmoud Usman                                  | 10 <sup>th</sup> Complainant |

And

- |                              |                            |
|------------------------------|----------------------------|
| 1. BGL Securities Ltd        | 1 <sup>st</sup> Respondent |
| 2. BGL Assets Management Ltd | 2 <sup>nd</sup> Respondent |

3. Albert E. Okumagba	3 <sup>rd</sup> Respondent
4. Peter Adebola	4 <sup>th</sup> Respondent
5. Joseph Ashley-Osuzoka	5 <sup>th</sup> Respondent
6. Victor Obire	6 <sup>th</sup> Respondent
7. Nkechi Azubuike	7 <sup>th</sup> Respondent
8. Adekunle Alli	8 <sup>th</sup> Respondent
9. Ande Ewubare	9 <sup>th</sup> Respondent
10. Chibundu N. Edozie	10 <sup>th</sup> Respondent
11. Mohan Lalchandani	11 <sup>th</sup> Respondent
12. Anthony Nwozor	12 <sup>th</sup> Respondent
13. Oluwo Oluwale W.	13 <sup>th</sup> Respondent
14. Joshua Sesan Adetiloye	14 <sup>th</sup> Respondent
15. Victor Inyang	15 <sup>th</sup> Respondent
16. Hilary Eludu	16 <sup>th</sup> Respondent
17. Musa Kida	17 <sup>th</sup> Respondent
18. Hajia Fatima Abdurrahman	18 <sup>th</sup> Respondent
19. Ehime Alofoje	19 <sup>th</sup> Respondent
20. Adum Bili Andrew	20 <sup>th</sup> Respondent
21. Ofem Mbui Omni	21 <sup>st</sup> Respondent
22. Ms. Mshelia Clara Bittinger	22 <sup>nd</sup> Respondent
23. Nnite Chinwe Ogochukwu	23 <sup>rd</sup> Respondent

#### **WITNESSES:**

1. The Complainants
2. Investment Management Services Department
3. Monitoring Department

#### **OBSERVER MEMBER**

1. Mrs. Elizabeth Osoka - Capital Market Solicitors Association
2. Nicholas Nyamali - Fund Managers Association of Nigeria
3. Emeka Madubuike - Association of Stockbroking Houses of Nigeria

#### **ENFORCEMENT TEAM**

Mr. Amos Azi - Enforcement Officer  
 Mr. Mohammed Ali  
 Mr. Solomon Ngoladi

#### **COUNSEL TO RESPONDENTS**

Ishmael Ebodaghe - Counsel to the 4<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup> & 22<sup>nd</sup> Respondent  
 Blessing Nwozor - Counsel to the 12<sup>th</sup> Respondent

## **COUNSEL TO COMPLAINANTS**

Bayo Aina & Egondur Nwoke - Counsel to the 1<sup>st</sup> Complainant.  
Kennedy Appiah - Counsel to the 6<sup>th</sup> Complainant.  
Akinkunmi Adekola - Counsel to the 7<sup>th</sup> Complainant.

## **WITNESSES**

1. Mr. Bello Gwamba - Enforcement Department  
2. Mr. Ali Mohammed - Monitoring Department  
3. Tayo Siyanbola - Investment Management Department

## **SECRETARIAT**

Mrs. Pamela Obioru - Secretary  
Lawal Shehu Mandiya  
Victoria Mampak  
David Oyalami  
Emeka Ezeogu  
Savia Emmanuel

## **Memorandum of Facts**

1. The 1<sup>st</sup> -10<sup>th</sup> Complainants are persons who invested monies in the Guaranteed Consolidated Notes (GCN), Private Placement and other schemes promoted by the 1<sup>st</sup> – 23<sup>rd</sup> Respondents and filed complaints against the Respondents with the Commission.
2. The 1<sup>st</sup> Respondent was registered by the Commission to carry on business as a broker/dealer.
3. The 2<sup>nd</sup> Respondent was registered by the Commission to perform the function of fund/portfolio management services.
4. The 3<sup>rd</sup> Respondent is the Chairman of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents while the 4<sup>th</sup>, 5<sup>th</sup> and 6 to 11<sup>th</sup> Respondents are managing director, deputy managing directors and directors of the 1<sup>st</sup> Respondent respectively.

5. The 4<sup>th</sup>, 5<sup>th</sup>, and 9<sup>th</sup> Respondents are both directors and sponsored individuals while the 12<sup>th</sup> – 14<sup>th</sup> Respondents are sponsored individuals of the 1<sup>st</sup> Respondent.
6. The 15<sup>th</sup> and 16<sup>th</sup> Respondents are the managing director and deputy managing director of the 2<sup>nd</sup> Respondent while the 20<sup>th</sup> – 23<sup>rd</sup> Respondents are its sponsored individuals.
7. The 8<sup>th</sup> and 10<sup>th</sup> Respondents are directors in both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents while the 17<sup>th</sup>-19<sup>th</sup> Respondents are directors of the 2<sup>nd</sup> Respondent.
8. The Commission received 10 complaints at various times from May 20, 2015 to November 10, 2015 valued at **₦2, 941,715,993.69 (Two billion, nine hundred and forty one million, seven hundred and fifteen thousand, nine hundred and ninety three naira, sixty nine kobo.)** from investors complaining about the failure of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to liquidate their investments in the Guaranteed Consolidated Notes which matured or became due.

#### **Complaints against the 1<sup>st</sup> Respondent**

9. The 1<sup>st</sup> Complainant wrote a letter dated 10<sup>th</sup> November, 2015 to the Commission complaining of the 1<sup>st</sup> Respondent's failure to liquidate his investment in its Guaranteed Consolidated Notes worth **₦5,000,000.00** (Five Million Naira). **(See Exhibit 1)**
10. The 1<sup>st</sup> Complainant stated that the 1<sup>st</sup> Respondent has made several promises to pay vide letters dated May 22, 2015, June 11, 2015 and an email dated August 13, 2015 to him but has failed to make good any of the promises. **(See Exhibits 2, 3 and 4)**
11. Upon receipt of the 1<sup>st</sup> Complainant's letter, the Commission by a letter dated November 17, 2015 directed the 1<sup>st</sup> Respondent to respond to the allegations contained therein on or before November 27, 2015; **(See Exhibit 5)** but the 1<sup>st</sup> Respondent failed/refused to comply with the directives in the said letter.

12. The 2<sup>nd</sup> Complainant by a letter dated October 13, 2015 complained to the Commission of the 1<sup>st</sup> Respondent's failure/refusal to refund the sum of **₦855,539,809.55** (Eight Hundred and Fifty-Five Million, Five Hundred and Thirty-Nine Thousand, Eight Hundred and Nine Naira, Fifty-Five Kobo) being excess of return money and dividends paid to it in the name of BGL/Energy Resources Management Nig. Ltd/MF and BGL/Energy Resources Management Nig. Ltd in the Bank PHB 2007 Initial Public Offer. **(See Exhibit 6 -6xvii)**
13. Upon receipt of the 2<sup>nd</sup> Complainant's letter, the Commission by a letter dated November 17, 2015 directed the 1<sup>st</sup> Respondent to respond to the allegations contained therein on or before November 27, 2015. **(See Exhibit 7)**
14. In response to the Commission's letter, the 1<sup>st</sup> Respondent by a letter dated November 24, 2015 stated that it was not the direct beneficiary of the excess return money and dividends in issue but its client; Energy Resources Management Nig. Ltd. **(See Exhibit 8)**
15. The 1<sup>st</sup> Respondent further stated that its said client applied the money to purchase more Bank PHB Plc shares from the secondary market.
16. The 3<sup>rd</sup> Complainant by a letter dated October 20, 2015 complained of the 1<sup>st</sup> Respondent's failure/refusal to fully liquidate its investment in the 1<sup>st</sup> Respondent's Guaranteed Consolidated Notes. **(See Exhibit 9)**
17. The 3<sup>rd</sup> Complainant stated that to date, the 1<sup>st</sup> Respondent's obligation to it is worth **₦24, 998,740.00** (Twenty-Four Million, Nine Hundred and Ninety-Eight Thousand, and Seven Hundred and Forty Naira).
18. Upon receipt of the 3<sup>rd</sup> Complainant's letter, the Commission by a letter dated November 17, 2015 directed the 1<sup>st</sup> Respondent to respond to the allegations contained therein on or before November 27, 2015; **(See Exhibit 10)** but the 1<sup>st</sup> Respondent refused to comply with the directives given in the said letter.
19. The 4<sup>th</sup> Complainant by a letter dated 3<sup>rd</sup> November, 2015 complained of the 1<sup>st</sup> Respondent's failure/refusal to liquidate his investment worth **₦5, 000,000.00**(Five Million Naira) in its Guaranteed Consolidated Notes. **(See Exhibit 11 – 11(i,ii,iii)**

20. Upon receipt of the 4<sup>th</sup> Complainant's letter, the Commission by a letter dated November 17, 2015 directed the 1<sup>st</sup> Respondent to respond to the allegations contained therein on or before November 27, 2015; **(See Exhibit 12)** but the 1<sup>st</sup> Respondent failed/refused to comply with the Commission's directives given in the said letter.

### **Complaints against the 2<sup>nd</sup> Respondent**

21. The 5<sup>th</sup> Complainant by a letter dated 5<sup>th</sup> November, 2015 complained of the 2<sup>nd</sup> Respondent's failure/refusal to liquidate its investment in the 2<sup>nd</sup> Respondent's Guaranteed Consolidated Notes worth **₦1,876,161,078.13** (One Billion, Eight Hundred and Seventy-Six Million, One Hundred and Sixty-One Thousand, Seventy-Eight Naira, Thirteen Kobo) **(See Exhibit 13 -13(i,ii,iii,iv))**
22. Upon receipt of the 5<sup>th</sup> Complainant's letter, the Commission by a letter dated November 17, 2015 directed the 2<sup>nd</sup> Respondent to respond to the allegations contained therein on or before November 27, 2015; **(See Exhibit 14)** but the 2<sup>nd</sup> Respondent failed/refused to respond to the said letter.
23. The 6<sup>th</sup> Complainant through its solicitors, Moses & Associates wrote a letter dated 11<sup>th</sup> September, 2015 to the Commission complaining of the 2<sup>nd</sup> Respondent's failure/refusal to liquidate its investment with it worth **₦200,000,000.00** (Two Hundred Million Naira). **(See Exhibit 15)**
24. The Commission wrote a letter dated October 16, 2015 to the 2<sup>nd</sup> Respondent giving it till October 30, 2015 to comment on the matter; **(See Exhibit 16)** but the 2<sup>nd</sup> Respondent failed/refused to respond and or comply with the directives given in the said letter.
25. The 7<sup>th</sup> Complainant through its solicitor, R.A. Adekola & Co, wrote a letter dated October 26, 2015 complaining of the 2<sup>nd</sup> Respondent's failure to liquidate its investment worth **₦40,000,000.00** (Forty Million Naira). **(See Exhibit 17 -17(i,ii,iii,iv,v))**

26. According to the 7<sup>th</sup> Complainant, the 2<sup>nd</sup> Respondent made several promises to liquidate the investment but never made good of any of its promises.
27. Upon receipt of the 7<sup>th</sup> Complainant's letter, the Commission by a letter dated November 17, 2015 directed the 2<sup>nd</sup> Respondent to respond to the allegations contained therein on or before November 27, 2015; **(See Exhibit 18)** but the 2<sup>nd</sup> Respondent failed/refused to comply with the directives given in the said letter.
28. The 8<sup>th</sup> Complainant by a letter dated 3<sup>rd</sup> November, 2015 complained of the 2<sup>nd</sup> Respondent's failure/refusal to fully liquidate his investment in its Guaranteed Consolidated Notes worth **₦10,970,133.51** (Ten Million, Nine Hundred and Seventy Thousand, One Hundred and Thirty-Three Naira, Fifty-One Kobo). **(See Exhibit 19 – 19(i-Xii))**
29. Upon receipt of the 8<sup>th</sup> Complainant's letter, the Commission by a letter dated November 17, 2015 directed the 2<sup>nd</sup> Respondent to respond to the allegations contained therein on or before November 27, 2015; **(See Exhibit 20)** but the 2<sup>nd</sup> Respondent failed/refused to comply with the Commission's directive given in the said letter.
30. The 9<sup>th</sup> Complainant by a letter dated June 16, 2015 complained of the 2<sup>nd</sup> Respondent's failure to liquidate her investment worth **₦3, 085,068.49** (Three million, eighty five thousand, sixty eight naira, forty nine kobo) in its Guaranteed Consolidated Notes. **(See Exhibit 21-21(i,ii) )**
31. Upon receipt of the complaint, the Commission wrote a letter dated July 23, 2015 directing the 2<sup>nd</sup> Respondent to respond to the 9<sup>th</sup> Complainant's matter. **(See Exhibit 22)**
32. By a letter dated July 31, 2015, the 2<sup>nd</sup> Respondent represented to the Commission that it had reached a repayment agreement with the 9<sup>th</sup> Complainant. **(See Exhibit 23)**
33. Subsequently, the 9<sup>th</sup> Complainant by another letter dated August 17, 2015 informed the Commission that the 2<sup>nd</sup> Respondent made a proposal

to repay her in two tranches (August 31, 2015 and December 30, 2015) and that she had consented to the proposal. **(See Exhibit 24 & 24(i))**

34. The Commission wrote further letter dated October 16, 2015 to the 9<sup>th</sup> Complainant to enquire about the status of the repayment. **(See Exhibit 25)**
35. In her response dated November 9, 2015, the 9<sup>th</sup> Complainant informed the Commission that the 2<sup>nd</sup> Respondent had failed repeatedly to make good the repayment agreement. **(See Exhibit 26)**
36. The 10<sup>th</sup> Complainant by a letter dated 20<sup>th</sup> May, 2015 complained of the failure/refusal of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to liquidate his investments worth **₦10,746,659.45** (Ten Million, Seven Hundred and Forty-Six Thousand, Six Hundred and Fifty-Nine Naira, Forty-Five Kobo). **(See Exhibit 27)**
37. The Commission by a letter dated July 23, 2015 directed the 2<sup>nd</sup> Respondent to respond to the matter. **(See Exhibit 28)**
38. The 2<sup>nd</sup> Respondent by a letter dated July 31, 2015 represented to the Commission that it had reached a repayment agreement with the 10<sup>th</sup> Complainant. **(See Exhibit 29)**
39. The Commission by a letter dated 14<sup>th</sup> August, 2015 forwarded the 2<sup>nd</sup> Respondent's response to the 10<sup>th</sup> Complainant for his comments. **(See Exhibit 30)**
40. By a letter dated August 17, 2015 the 10<sup>th</sup> Complainant informed the Commission that he did not reach any repayment agreement with the 2<sup>nd</sup> Respondent. **(See Exhibit 31)**
41. The Guaranteed Consolidated Notes Scheme promoted by the 1<sup>st</sup> to 23<sup>rd</sup> Complainants is a scheme not registered by the Commission.



42. Furthermore, records within the Commission disclosed that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to meet up with the new capital requirement prescribed for their registered functions.
43. The 1<sup>st</sup> Respondent's asset mix ratio as at September 30, 2015 stood at 7.8% which was far below the 60/40% liquidity requirement.
44. The 1<sup>st</sup> Respondent solicited deposits from investors via its brochures. **(See Exhibit 32- 32(i-v))**
45. The 1<sup>st</sup> and 3<sup>rd</sup> to 14<sup>th</sup> Respondents have failed /refused to file 1<sup>st</sup> Respondent's 2014 audited accounts.
46. The 2<sup>nd</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> – 23<sup>rd</sup> Respondents have failed/refused to file statutory returns of the 2<sup>nd</sup> Respondent for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Quarters of 2015.

Consequent upon the above, the 1<sup>st</sup>-23<sup>rd</sup> Respondents have now been invited to the Administrative Proceedings Committee (APC) of the Commission to show cause why sanctions should not be imposed on them for violating the provisions of the Investments & Securities Act, 2007, SEC Rules & Regulations, Code of Conduct for Capital Market Operators and Their Employees as well as Code of Corporate Governance, to wit:

1. The 1<sup>st</sup> and 3<sup>rd</sup> -14<sup>th</sup> Respondents violated Section 38 of the Investments and Securities Act 2007 when they engaged in a capital market activity that they were not registered to perform to wit; promoting and selling the Guaranteed Consolidated Notes, a fund management scheme by nature;
2. The 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Sections 160 and 161(1) of the Investments and Securities Act, 2007 by promoting the Guaranteed Consolidated Notes and Guaranteed Premium Notes which are schemes not registered by the Commission.
3. The 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Sections 110 of the Investments and Securities Act 2007, Rules 246 and 400(1)(a) for promoting and selling a

device or scheme called Guaranteed Consolidated Notes which operated as a fraud or deceit on the investing public.

4. The 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Section 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees prohibiting any conduct that would adversely affect the general investing public's image and confidence in the capital market arising from their ill-handling of the above enumerated complaints.
5. The 1<sup>st</sup> Respondent violated Rule 22(4) of the SEC Consolidated Rules 2013 by operating below the required asset mix ratio of 60/40%.
6. The 1<sup>st</sup> Respondent violated Rule 63 of the SEC Consolidated Rules 2013 by soliciting for deposits in Guaranteed Consolidated Notes via its brochures and other means.
7. The 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Rule 34(1) (e) of SEC Consolidated Rules 2013 by their failure to resolve clients' complaints or give a satisfactory explanation to the Commission in that regard.
8. The 1<sup>st</sup> and 3<sup>rd</sup> to 14<sup>th</sup> Respondents violated Rules 34 (1) (c) and Rule 51(1)( c) of the SEC Consolidated Rules 2013 when they failed to file their audited account for 2014.
9. The 2<sup>nd</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> – 23<sup>rd</sup> Respondents violated Rules 34 (1) (c) and 51(1) (c) of the SEC Consolidated Rules 2013 when they failed to file their statutory returns for 2015.
10. The 2<sup>nd</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> – 23<sup>rd</sup> Respondents violated Rule 34(1) (a) of SEC Consolidated Rules 2013 when they misrepresented to the Commission that the 10<sup>th</sup> Complainant had accepted their repayment proposal knowing same to be false and misleading.

Signed

HOD, Enforcement Department

## **PRELIMINARY ISSUES**

In December 2015, the SEC APC scheduled hearing in **APC/1/2016: Afolabi Gabriel Oluwaseyi & 9 Others V. BGL Securities Limited and 22 others** for Wednesday, 3<sup>rd</sup> February, 2016. To this end, the Secretariat dispatched hearing notices to all parties to the matter. Thereafter, the Secretariat received a letter from the law office of Pinheiro & Company purporting to represent BGL Securities Ltd and all the other 22 Respondents and drew the attention of the Committee to the pendency of two suits before the Federal High Court Lagos with Suit Numbers; **FHC/L/CS/1050/15** and **FHC/L/CS/767/15**. It was the contention of Messrs Pinheiro & Company that the Committee should not go ahead with the planned hearing because the subject matter of the present hearing is the same or substantially the same as that in aforementioned suits before the Federal High Court Lagos.

In order to better appreciate the position being canvassed by Messrs Pinheiro and Company, it is pertinent to offer a background to the events leading up to the hearing.

Between 2014 and 2015, the Securities and Exchange Commission received a plethora of complaints against BGL PLC and its subsidiaries and in response set up a Committee to investigate these allegations. Upon conclusion of the investigation, BGL Asset Management Ltd, BGL Capital Ltd, BGL Securities Ltd and its sponsored individuals were suspended from performing any capital market activity.

In response, BGL Plc and its subsidiaries initiated an action at the Federal High Court Lagos (**FHC/L/CS/767/15**) challenging the decision of the Committee on the grounds that the Executive Management Committee of the Commission is not the competent body to pronounce such sanction. Accordingly, an interim order dated 27<sup>th</sup> May, 2015 was obtained by the Plaintiffs which restrained the Commission from implementing or enforcing the said sanction. However, the said Federal High Court Lagos, in its subsequent ruling, vacated the Interim Order dated **27<sup>th</sup> May, 2015** which restrained the Commission from giving effect to the suspension of BGL Group from capital market activities.

However, BGL Group filed a Notice of Appeal at the Court of Appeal, Lagos challenging the ruling of the Federal High Court Lagos which vacated the

interim order against the Commission. They also filed a motion on notice at the said Federal High Court to set aside its decision.

Subsequently, the SEC APC in July, 2015 scheduled hearing in **APC/1/2015: Rivers State Ministry of Finance & 31 Ors. V. BGL PLC & 31 Ors** for 4<sup>th</sup> & 5<sup>th</sup> August, 2015. The Respondents upon receipt of the Hearing Notices proceeded again to the Federal High Court, Lagos and instituted another action in **FHC/L/CS/1050/15** and obtained an interim injunction restraining the SEC APC from holding or conducting any trial or hearing in respect of the alleged complaints as contained in APC/1/2015 pending the hearing and determination of the motion on notice filed. The Court made an order directing the parties herein to maintain the *status quo ante bellum* pending further orders. This order is yet to be vacated as at today.

However, a careful perusal of the prayers as contained in the motion *ex-parte* filed by the Plaintiff/Applicant in **FHC/L/CS/1050/15** shows that the prayers sought by the Plaintiff/ Applicant touches and concerns only complaints as contained in APC/1/2015. The present matter (APC/1/2016) brought before the SEC APC as contained in the Memorandum of facts is totally different from the first, as it concerns a fresh set of complainants, complaints different from those contained in APC/1/2015 although the Respondents in both are substantially the same.

The prayer of the Plaintiff/ Applicant as contained in its motion *ex-parte* in Suit No; FHC/L/CS/1050/15 is reproduced below for clarity:

*“An order of interim injunction restraining the 2<sup>nd</sup> Defendant/ Respondent from holding and /or conducting any trial or hearing in respect of the alleged complaints against the Plaintiff/ Applicants contained in Complaint No; **APC/1/2015: Rivers State Ministry of Finance & 31 Ors. V. BGL PLC & 31 Ors** slated for 4<sup>th</sup> & 5<sup>th</sup> August, 2015 and or any other date pending the hearing and determination of the motion on notice filed”.*

It was based on this prayer as highlighted above that the court ordered that parties in that suit should maintain the *status quo ante bellum*. There was no blanket order from the Federal High Court, Lagos precluding the SEC APC from holding any future hearing in respect of other complaints not contained in APC/1/2015.

It is therefore the ruling of this Committee that since the Plaintiff/Applicants limited their prayers in the motion *ex-parte* to the complaints as contained in **APC/1/2015: Rivers State Ministry of Finance & 31 Ors. V. BGL PLC & 31 Ors**, whatever order they obtained cannot in anyway preclude the SEC APC from hearing complaints from other investors who were not parties in APC/1/2015 aforementioned since the pending action in court can therefore not bar a further investor from complaining.

The SEC APC therefore proceeded to hear and determine the issues in APC/1/2016 as follows:

## **SPECIFIC FINDINGS OF THE COMMITTEE**

### **ALLEGATION 1**

**That 1<sup>st</sup> and 3<sup>rd</sup> -14<sup>th</sup> Respondents violated Section 38 of the Investments and Securities Act 2007 when they engaged in a capital market activity that they were not registered to perform to wit; promoting and selling the Guaranteed Consolidated Notes, a fund management scheme by nature;**

In the Memorandum of Facts as presented by the Enforcement Officer, it was alleged that the 1<sup>st</sup>, 3<sup>rd</sup> – 14<sup>th</sup> Respondent engaged in a capital market activity which they were not registered to perform by marketing and selling Guaranteed Consolidated Notes (GCN) to members of the investing public. It was the contention of the Enforcement officer that the aforementioned Respondents were registered by the SEC as broker/dealers hence could not be engaged in the marketing and sale of the GCN which by their very nature were fund management products.

To further buttress this point, the Enforcement Officer tendered numerous documents among which are the following Exhibits which were attached to the Memorandum of facts;

- i. **Exhibit 1 (i):** Investment Letter 0000000436 from BGL Securities Limited addressed to the 1<sup>st</sup> Complainant (Afolabi Gabriel Oluwaseyi) acknowledging receipt of the sum of ₦5, 000,000 (Five Million Naira) only, being investment in the 1<sup>st</sup> Respondent's Guaranteed Consolidated Notes.

- ii. **Exhibit 11 (i):** Investment Letter 0000000373 from BGL Securities Limited addressed to the 4<sup>th</sup> Complainant (Okoro Rufus Chika) acknowledging receipt of the sum of ₦5, 000,000 (Five Million Naira) only, being investment in the 1<sup>st</sup> Respondent's Guaranteed Consolidated Notes.
- iii. **Exhibit 17 (iii):** Official receipt of BGL Securities dated 06-05-2012 issued in favour of 7<sup>th</sup> Complainant (Adigwe Chuks John) acknowledging the receipt of the sum of ₦30, 000,000 (Thirty Million Naira) only.
- iv. **Exhibit 19 (i):** SpringBank Plc Managers cheque dated 15-10-2010 for the sum of ₦5, 000,000 (Five Million Naira) only, issued in favour of BGL Securities Limited on behalf of Ojuah Marcellus Umunnakwe (8<sup>th</sup> Complainant).
- v. **Exhibit 19 (ii):** Official receipt of BGL Securities PLC dated 15-10-2010 acknowledging receipt of the sum of ₦5, 000,000 from 8<sup>th</sup> Complainant (Ojuah Marcellus Umunnakwe) being investment in the 1<sup>st</sup> Respondent's Guaranteed Consolidated Notes.
- vi. **Exhibit 19(iii):** Spring Bank Plc funds transfer form dated 15-10-2010 evidencing the transfer of the sum of ₦5, 000,000 (Five Million Naira) only, to BGL Securities Limited by 8<sup>th</sup> Complainant (Chief Marcellus U. Ojuah) for the purpose of investments.
- vii. **Exhibit 19 (xii):** Letter dated 14/12/2013 on BGL Securities Limited letterhead, addressed to 8<sup>th</sup> Complainant (Ojuah Marcellus Umunnakwe) acknowledging receipt of the sum of N10, 000,000 being investments in GCN and signed by Ehime Alofoje (19<sup>th</sup> Respondent) and Kamardeen Azeez on behalf of BGL Asset Management Limited.
- viii. **Exhibit 32:** Marketing document issued by BGL Securities limited for the marketing of Guaranteed Consolidated Notes attached to the complaint of the 10<sup>th</sup> Complainant (Mahmoud Usman)

Also, during the Examination-in-Chief of the 1<sup>st</sup> Witness for SEC; Mr. Bello Gwamba (Head of the Enforcement Division of the Commission), he tendered documentary evidence to show that the 1<sup>st</sup> Respondent was registered by the Securities and Exchange Commission in 2008 to perform the functions of a broker /dealer. He also tendered Certified True Copies of **Form CO7 (Particulars of Directors or Any Change Therein)** admitted in evidence and marked **Exhibit A1** and dated 19<sup>th</sup> June, 2015 showing that the 3<sup>rd</sup> – 11<sup>th</sup>

Respondents are Directors of the 1<sup>st</sup> Respondent. While the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Respondents are sponsored individuals of the 1<sup>st</sup> Respondent.

The Committee received written responses to the SEC Memorandum of Facts from the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> & 13<sup>th</sup> Respondents. The 4<sup>th</sup>, 9<sup>th</sup> & 12<sup>th</sup> Respondents were physically present at the hearing. The 4<sup>th</sup> & 13<sup>th</sup> Respondents were represented by Ishmael Ebhodaghe of Benateva Partners, while the 12<sup>th</sup> Respondent was represented by B. Nwozor-Israel of Blessing Nwozor-Israel & Co.

### **DEFENCE OF THE 4<sup>TH</sup> RESPONDENT**

It was the contention of the 4<sup>th</sup> Respondent in his written defence submitted in response to the memorandum of facts that;

- i. That he became the Managing Director of the 1<sup>st</sup> Respondent on April 1, 2012.
- ii. That all financial matters of the 1<sup>st</sup> Respondent were handled by the Treasury and Financial Control Units of BGL Plc and these two units were answerable to the 3<sup>rd</sup> Respondent.
- iii. That the Guaranteed Consolidated Note (GCN) and Guaranteed Premium Note (GPN) were products originated by Credit & Products Units of the 2<sup>nd</sup> Respondent and the letter-headed papers of the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent were used interchangeably but all the signatories are from 2<sup>nd</sup> Respondent.
- iv. That all financial and investment decisions in relation to all GCN and GPN investments were handled solely by the Treasury and Financial Control Units with direct reportorial responsibility only to the 3<sup>rd</sup> and 10<sup>th</sup> Respondents.
- v. That his responsibility with respect to the GCN and GPN was limited to roles as assigned or delegated to him by the 3<sup>rd</sup> and 10<sup>th</sup> Respondents.
- vi. That he neither designed nor participated in the design, solicitation and marketing of the GCN and GPN as both products had been designed and marketed before his appointment as Managing Director of the 1<sup>st</sup> Respondent and thus his role upon appointment was limited principally to championing efforts to liquidating the GCN and GPN obligations.

- vii. That he resigned from the 1<sup>st</sup> Respondent on the 9<sup>th</sup> February, 2015, effective 28<sup>th</sup> March, 2015.

However during the oral testimony of the 4<sup>th</sup> Respondent in the course of the proceedings, he testified thus;

“I was the Managing Director of BGL Securities Ltd from **1<sup>st</sup> of April, 2012 to 30<sup>th</sup> June, 2015**...the product (GCN) dated back to 2010 ... We did not prepare any document for GCN . It is a product of BGL Asset Management Limited...We are not licensed as fund managers. However, I would like to say that BGL PLC operated a group structure...across all these subsidiaries, **we normally have cross selling of products that is being prepared by any of the subsidiaries.**”

The 4<sup>th</sup> Respondent further stated that;

“BGL Securities is the largest subsidiary of the BGL PLC and initially we had up to 15 offices...**the way we operate is that at times staff in various offices can sell equities and some of them sell GCN products** and when they want to give letters to clients it would be electronically generated...**the staff in various offices market the product to their various clients**”

Also when the 4<sup>th</sup> Respondent was asked if he was aware that receipts were issued in the name of BGL Securities Ltd. in favour of these clients for investments in the GCN, he stated thus;

“During my own tenure, I am not aware of any. But before I became Managing Director of BGL Securities I saw some and it was corrected.”

On further enquiry as to whether BGL Securities can acknowledge receipt of monies not paid into its account or paid to BGL Asset Management Limited, the 4<sup>th</sup> Respondent stated thus;

“It is not possible for them to collect money that is not paid into BGL Securities account... There is no way you can issue receipt for payments that you did not receive”

Furthermore when the 4<sup>th</sup> Respondent was asked if he was aware that BGL Securities Ltd. also marketed those papers (GCN), he stated thus;



“Yes I am aware that they market it but I have this comment to make, I have to make some clarifications. I am aware that BGL Securities Ltd marketed the product and that is the group policy. The group policy says that there should be cross selling of products of different subsidiaries and some of the meetings that we have had we have been trying to deemphasize that, look we have to face our own core area. We cannot continue to market the product of others. I don’t know whether the people that did the investigation noticed; during the period that I was an MD they should check the level of GCN or GPN that we made, you will see that its very low.”

To further buttress the point made by the Enforcement Officer that BGL Securities were engaged in the marketing and sale of the GCN during the period when the 4<sup>th</sup> Respondent was its Managing Director, he was shown **Exhibits 17 (3) &19 (4)**. He was then asked whether the evidence showed money transferred to 1<sup>st</sup> Respondent on 6<sup>th</sup> May, 2012 when he was the MD. In response to this he stated thus;

“The period actually fell during the period I was MD of BGL Securities...From what I said earlier on Sir, if you still recall what I said that we were doing cross-selling of products and one of the products that we were doing cross-selling is GCN even before I became an MD, I said that before”

Finally the 4<sup>th</sup> Respondent was asked if he admits that the 1<sup>st</sup> Respondent sold the GCN products and he answered thus;

“Because it was a group structure; I never denied that.”

### **DEFENCE OF THE 6<sup>TH</sup> RESPONDENT**

The 6<sup>th</sup> Respondent was not present during the hearing but sent in a written response dated 12<sup>th</sup> January, 2016 in response to the allegations against him as contained in the Memorandum of facts. In his response he stated thus;

- i. I was only appointed a director (i.e. Executive Director, Operations) in BGL Securities Limited on December 2, 2013....
- ii. Suffice to say here that BGL Securities Limited as a subsidiary of BGL Plc, using its network of branches, **only marketed the GPN/GCN products on**

**behalf of BGL Asset Management Limited in line with the BGL Plc's Group directives.**

- iii. The printing of certain documents on the letterhead of BGL Securities Limited is a regrettable mistake by some staff that did not take reasonable care before printing BGL Asset Management Limited mandates on BGL Securities Limited letter-head papers. I am aware that prior to when the product was finally scrapped by the Group Company, erring staff were warned to desist from using BGL Securities Limited letterheads to print GPN/GCN mandates. We sincerely regret this action.
- iv. Due to the fact that the BGL Securities Limited had a larger outreach of branches across the country and personnel than BGL Asset Management Limited, the Group Company (i.e. BGL Plc) had as far back as 2007/2008 used its platform to market all the products (i.e. GPN/GCN, Financial Advisory, Public Sector Transactions, etc) of all companies in the group, including that of BGL Asset Management Limited and BGL Capital Limited. It is a common knowledge that branches in each of the designated regions under the supervision of Regional Executives/ Executive Director(s) always ensured that proceeds of marketed products were ultimately hived-off to the respective subsidiaries and the funds deposited into the designated accounts in the subsidiaries.

**DEFENCE OF THE 9<sup>TH</sup> RESPONDENT**

The 9<sup>th</sup> Respondent was present at the hearing and also sent in a written response dated 12<sup>th</sup> January, 2016 in response to the allegations against him as contained in the Memorandum of facts. In his response he stated thus;

- i. I became a sponsored individual on April 10<sup>th</sup>, 2014 and was appointed a director in BGL Securities Limited on July 15<sup>th</sup>, 2013.
- ii. It should be kindly noted that an analysis of the complaints reveal the following as itemized in Exhibit 3. of the Ten complaints ;
  - a) Five (5) of the complainants invested directly with BGL Asset Management. BGL Securities did not have any contact with them.
  - b) Two (2) of the Complaints happened before my appointment as a Director or sponsored individual.

- c) For the balance three (3) cases, BGL Securities Limited only marketed the products on behalf of BGL Asset management in line with the BGL Plc's directive to the Company.
- iii. The printing of certain correspondences on the letterhead of BGL Securities Limited is a regrettable mistake by some staff that did not take reasonable care before printing. I personally made effort to ensure that all correspondence were on BGL Asset Management Limited Letterhead- See Exhibit 4.
- iv. Due to the fact that BGL Securities Limited had a larger outreach of branches and personnel than BGL Asset Management Limited (the company at some point had presence in over 20 states of the Federation), the Group Company had as far back as 2007/2008 used its platform to market the products of all the companies in the group, including BGL Capital Limited and BGL Asset Management Limited. My region always ensured that marketed products (including GPN/GCN/Financial Advisory, public sector transactions, etc) were ultimately hived-off to the respective subsidiaries while the funds deposited directly by clients/staff into the designated accounts in the subsidiaries.
- v. Permit me to reiterate, for the records that;
  - a) Every role I performed while being a director and sponsored individual were initiated and mandated by the Group Company, BGL Plc Limited, with instructions given by the Chief Executive
  - b) While my team was involved in marketing the GCN/GPN products for BGL Asset Management Limited; proceeds were paid into the designated account in BGL Asset Management Limited.

Furthermore during the oral testimony of the 9<sup>th</sup> Respondent, he adopted his written submission and also admitted that three of the complaints happened in his time as a director and sponsored individual of the 1<sup>st</sup> Respondent. He stated that these cases involved the co-marketing of the GCN/GPN products with BGL Asset Management Limited in line with the directive of the group (BGL PLC) to the 1<sup>st</sup> Respondent. He also confirmed that the 1<sup>st</sup> Respondent marketed the GCN/GPN products.

When asked if the 1<sup>st</sup> Respondent and himself marketed the GCN products while being aware that they were not licensed as fund managers he replied thus;

“When I came on board, the impression I got although erroneous was that it was a private fund owned by BGL Asset management and since we had the reach we could go ahead and help them to market but on our part we didn’t do the needed due diligence to confirm if it was really a private fund or not”

When asked if he was aware that BGL Securities were issuing those notes (GCN), he stated thus;

“It was just erroneous that most staff didn’t do a bit of due diligence and were printing on letterheads. But if you look at my defense, there was a memo I wrote to staff in my region that if they were doing that they should desist from that as that is not allowed”.

## **DEFENCE OF THE 12<sup>TH</sup> RESPONDENT**

The 12<sup>th</sup> Respondent was present during the proceedings and stated thus during his testimony;

In 1997 I was seconded to BGL Limited, then BGL Ltd was just one company and I was there as a trader. In 2007 BGL Ltd had grown so we did a private placement and it was highly successful and after that private placement, the necessity arose for us to unbundle and BGL Ltd was unbundled into BGL PLC, BGL Asset Management Ltd (2<sup>nd</sup> Respondent), BGL Securities Ltd (1<sup>st</sup> Respondent) and BGL Private Equity. After the unbundling, I was retained in BGL PLC...In a management meeting Albert Okumagba (3<sup>rd</sup> Respondent) said there was a need to expand BGL Securities and I remember I told Albert that the planned expansion was unnecessary... In 2010 I moved from BGL Plc to BGL Securities as a Deputy Managing Director... I left BGL Securities in November 2012.”

Also, during Examination –in- Chief of the 12<sup>th</sup> Respondent by his counsel, he stated thus when he was asked if he had anything to say about the sale of the Guaranteed Consolidated Notes and Guaranteed Premium Notes;

“I was the Chief trader of BGL Securities Ltd...but however when BGL Securities expanded into about 28 branches and the cost of managing BGL Securities rose up, some staff came up with GCN notes as a product and when they came up with GCN as a product, I, Tony Nwozor resisted it with my blood... But however because I was in the system I cannot totally exonerate myself.”

When a question was put to the 12<sup>th</sup> Respondent on why he resisted the sale of the GCN product, he stated thus;

“First of all I resisted the expansion and the GCN came up because the way we expanded there wasn’t enough opportunities for BGL Securities because we were almost everywhere... Then before I came into BGL Securities they felt what else could the staff do beyond marketing of equities so they brought GCN. But people like me said No! I resisted it because it was beyond the capital market activities...The GPN came in after I had left.”

On the issue of whether he was a sponsored individual of BGL Securities he stated thus;

“I was trading for City Code before I came to BGL and it was in City Code that I regularized my position as a sponsored individual...so I transferred to BGL.”

During Cross-examination, the Enforcement Officer asked the 12<sup>th</sup> Respondent what was the relationship between the GCN and the expansion of the BGL Group. He responded thus;

“After the expansion, it became necessary that income arising from the market for BGL Securities as a whole was a little below the cost of running BGL Securities... so what else do you do to enhance your income? So that is why some people came up with that idea”.

## **DEFENCE OF THE 13<sup>TH</sup> RESPONDENT**

The 13<sup>th</sup> Respondent was not present during the hearing but was represented by Ishmael Ebhodaghe of counsel who also prepared a written response to the allegations against the 13<sup>th</sup> Respondent as contained in the Memorandum of facts. The major contention of the response was that although he was a

sponsored individual of the 1<sup>st</sup> Respondent at some point, but this status ceased in October 2010 when he resigned from the employment of the 1<sup>st</sup> Respondent and that all the transactions leading up to the complaints in the Memorandum of facts occurred 2 to 5 years after the 13<sup>th</sup> Respondent had left the employment of the 1<sup>st</sup> Respondent thus he is not privy to any of the transactions.

It should be noted that the 13<sup>th</sup> Respondent did not tender any documentary evidence to support his claim.

## **SPECIFIC FINDINGS**

From the forgoing, it was established at the hearing as follows:

- That the 1<sup>st</sup> Respondent is registered by the Securities and Exchange Commission to perform the functions of a broker /dealer. The 3<sup>rd</sup> – 11<sup>th</sup> Respondents are directors of the 1<sup>st</sup> Respondent while the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Respondents are sponsored individuals of the 1<sup>st</sup> Respondent.

A **broker-dealer** is an individual or company that buys and sells securities for its clients and for itself. They act as financial intermediaries that provide financial and investment services to investors including the execution of trades and advice on which securities to buy or sell. From the above definition it can be deduced that the primary business of any broker/dealer within the ambit of the relevant securities legislation governing the Nigerian Capital Market is the trading of securities for either its client or itself.

This position is further reinforced by the provisions of **Sections 56 (1) & (2) of the SEC Rules & Regulations 2013** made pursuant to the Investments and Securities Act 2007 which lists the functions of brokers/ dealers thus:

### **(1) Brokers**

Registered brokers shall have the following functions amongst others:-

- (a) sale and purchase of securities on a recognized securities exchange on behalf of his clients.
- (b) other services ancillary to (a) above;

### **(2) Dealers**

Registered dealers shall have the following functions amongst others:-

(a) sale and purchase of securities on a recognized securities exchange on his own account;

(b) other services ancillary to (a) above;

- That incontrovertible oral and documentary evidence adduced in the course of the hearing points to the fact that the Guaranteed Consolidated Notes (GCN) was designed and actually created by the 1<sup>st</sup> Respondent and its employees marketed and sold the Guaranteed Consolidated Notes (GCN). These products which were undeniably marketed and sold by the 1<sup>st</sup> Respondent and its employees clearly do not fall within the definition of “Securities” as provided for by either the Investments and Securities Act (hereinafter referred to as the ISA) or the Rules and Regulations made thereunder; as these products were by their very structure fund management products and the registration requirements, functions and responsibilities of fund/portfolio managers are provided for in Sections 91 – 95 of the Rules and Regulations made pursuant to the ISA
- That the 1<sup>st</sup> Respondent and its employees neither possessed the requisite authority nor the necessary skill needed to market, sell and manage these products as they were registered by the Commission as broker/dealers. This is especially as **Section 38 (1), (a) & (b)** of the **ISA 2007** provides that;

No persons shall-

(a) operate in the Nigerian capital market as an expert or professional or in any other capacity as may be determined by the Commission; or

(b) carry on investments and securities business unless the person is registered in accordance with this Act and the rules and regulations made thereunder.

- That in the written submissions received from some of the Respondents, a lot of weight was placed on the supposition that the BGL group operated a “**shared services structure**” which “permitted” the cross selling of products amongst subsidiaries. However, this is a rather erroneous perception as the fact that the BGL Group operated a shared services structure does not in any way permit a broker/dealer to undertake duties & responsibilities that are the exclusive preserve of fund/portfolio managers under the law.

- That whatever the structure the BGL Group decided and continues to operate is an internal untidy arrangement of the organization unknown to SEC which arrangement could not have in any material particular conferred a fund/portfolio manager license on a broker/dealer especially as it is trite law that you cannot give what you don't have. It appeared to have been the intention of the BGL Group, as shown in the evidence of the Respondents who testified, to leverage on the size of BGL Securities Limited and its vast branch network to market and sell the GCN/GPN notes but in doing so the 1<sup>st</sup> Respondent and its employees and Directors breached the provisions of the ISA and the SEC Rules and Regulations made pursuant thereto.
- That the 1<sup>st</sup> Respondent, its directors, sponsored individuals & its employees went beyond the scope of the license granted it to operate within the confines of the Nigerian capital market as broker/ dealers. The apparently pretentious submission that they marketed the Notes and collected the monies from the investing public on behalf of BGL Asset Management Limited is untenable as both entities are separate and distinct under the Companies & Allied Matters Act and were licensed by SEC as such irrespective of the fact that they were related entities.
- That the argument by the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 15<sup>th</sup> Respondents that they were not personally involved in the sale of these products is untenable as the cross selling of products was a management and board decision of which they were part.
- That the 4<sup>th</sup> Respondent was the Managing Director of the 1<sup>st</sup> Respondent and it has been shown that under his tenure as MD he was aware that staff of the 1<sup>st</sup> Respondent were engaged in the marketing and sale of the Notes and were issuing official receipts on behalf of the 1<sup>st</sup> Respondent and he did nothing to stop this in view of the fact that the group "permitted" cross selling of products amongst subsidiaries.
- That the 6<sup>th</sup> Respondent also admitted to being appointed a Director of the 1<sup>st</sup> Respondent effective December, 2<sup>nd</sup> 2013 and that the complaints of the 1<sup>st</sup>, 4<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup> Complainants happened while he was still a director.
- That the 9<sup>th</sup> Respondent also admitted that he was appointed a director of the 1<sup>st</sup> Respondent on July 15<sup>th</sup>, 2013 and he remains a director till date while he became a sponsored individual of the 1<sup>st</sup> Respondent on April 14<sup>th</sup>, 2014, and in Page 3 of his written response to the Memorandum of fact he



clearly admitted to have been involved in the marketing of the GCN/GPN products “on behalf of BGL Asset Management Limited.” It is very instructive to note that there was no evidence of any mandate authorizing the 1<sup>st</sup> Respondent to market or sell such Notes on behalf of BGL Asset Management Ltd especially when it was in evidence that BGL Securities was marketing, selling and managing the Notes using its own letterheads.

- That the 12<sup>th</sup> Respondent was a sponsored individual and the Deputy Managing Director of the 1<sup>st</sup> Respondent who transferred his sponsored individual status from Citi Group. He also admitted during his testimony that during the period while he was a sponsored individual and Deputy Managing Director of the 1<sup>st</sup> Respondent, employees of the 1<sup>st</sup> Respondent marketed and sold the GCN/ GPN products.

The Committee therefore holds that the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, and 14<sup>th</sup> Respondents went outside the scope of their registration with the Commission and breached the provisions of **Section 38 (1) (a) & (b) of the ISA 2007** and punishable under Section 38 (4) by marketing and selling the Guaranteed Consolidated Notes contrary to their registered function with the SEC which was as a broker/dealer as provided for under Rule 56 of the SEC Rules and Regulations 2013.

## **Allegation 2**

**That 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Sections 160 and 161(1) of the Investments and Securities Act, 2007 by promoting the Guaranteed Consolidated Notes and Guaranteed Premium Notes which are schemes not registered by the Commission.**

In the Memorandum of Facts as presented by the Enforcement Officer, it was alleged that the 1<sup>st</sup> – 23<sup>rd</sup> Respondents promoted the Guaranteed Consolidated Notes and Guaranteed Premium Notes which are schemes not registered by the Commission.

The provisions of the aforementioned Section of the ISA are reproduced below for ease of reference;

**“160** (1) No person shall establish or operate a collective investment scheme or carry on or purport to carry on the business of a collective

investment scheme unless such scheme is authorised by and registered with the Commission.”

“**161** (1) It shall not be lawful for any person, directly or indirectly to deal in units or securities of a scheme (described whether as units, securities or otherwise) unless such units or securities have been duly registered with the Commission.”

The purport of the above sections is quite clear and unequivocal as any person seeking to establish, operate or carry on the business of a collective investment scheme must obtain the requisite authorization from the Securities and Exchange Commission.

The question that naturally arises after a combined reading of the aforementioned provisions of the ISA is “Could the Guaranteed Consolidated Notes and Guaranteed Premium Notes being marketed and sold by the 1<sup>st</sup> – 23<sup>rd</sup> Respondents be considered to be Collective Investment Schemes in order to bring it within the purview of Sections 160 & 161 (1)?

**Section 153** of the ISA 2007 sheds some light on the above question as it defines Collective Investment Schemes as;

“**153** (1) "Collective investment scheme", means a scheme in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which-

(a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;

(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme authorised by any other Act.

- During the entire proceedings, the Enforcement Officer failed to lead oral evidence or tender any documentary evidence to show that the GCN / GPN products marketed and sold by both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and their respective employees were “Collective Investment Schemes” as contemplated by Section 153 of the ISA 2007.

- That the evidential burden of proof in relation to the allegations as contained in the Memorandum of Facts lie with the party who asserts and it is therefore the ruling of this Committee that the Enforcement Officer failed to discharge the evidential burden in relation to this allegation hence this allegation is hereby struck out.

### **ALLEGATION 3**

**The 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Sections 110 of the Investments and Securities Act 2007, Rules 246 and 400(1)(a) for promoting and selling a device or scheme called Guaranteed Consolidated Notes which operated as a fraud or deceit on the investing public.**

In the Memorandum of Facts, it was alleged that the 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated **Sections 110** of the Investments and Securities Act 2007, **Rules 246 and 400(1)(a)** of the Rules and Regulations made pursuant thereto.

The aforementioned sections are now reproduced below for ease of reference;

**“110.** No person shall directly or indirectly in connection with the purchase or sale of any securities to-

(a) employ any device, scheme or artifice to defraud; or

(b) engage in any act, practice or course of business which operate or would operate as a fraud or deceit upon any person.”

#### **“Rule 246: Fraud and misrepresentation**

No broker or dealer shall purchase or sell any security by means of any manipulative, deceptive or other fraudulent device or contrivance or make any fictitious quotation.”

#### **Rule “400 (1) (a). Manipulative and deceptive devices and contrivances**

(1) A person involved in securities trading shall not:-

(a) employ any device, scheme or artifice to defraud or capable of defrauding any person or institution;

- It is clear from the provisions of Section 110 of ISA 2007 & Rule 246 of SEC Rules that the drafters of the law intended them to apply strictly to the sale

and/or trading in securities and to persons dealing in such. The GCN and GPN products cannot be considered to be securities in any sense of the word but were at best fund management products. Therefore the provisions of these sections i.e. S. 110 & Rule. 246 do not apply in this instance.

- However **Rule 400 (1) (a)** of the SEC Rules and Regulations is applicable to a person involved in securities trading, and the 1<sup>st</sup> Respondent is a capital market operator who was registered by the Securities and Exchange Commission to carry on the function of broker dealer whose essential function was securities trading either for themselves or on behalf of clients. So clearly the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, and 14<sup>th</sup> Respondents fall within the ambit of the provisions of Rule 400.

The next question is “did the aforementioned Respondents employ any device, scheme or artifice to defraud or capable of defrauding any person or institution”?

In order to answer this question the Committee paid particular attention to some of the exhibits tendered by the Enforcement Officer and attached to the Memorandum of Facts. **Exhibit 32 (Attachment1)** is a marketing document generally issued by the 1<sup>st</sup> Respondent particularly to the 10<sup>th</sup> Complainant which described the Guaranteed Consolidated Notes being marketed by the 1<sup>st</sup> Respondent without the requisite authority as “a high yield investment product with a guaranteed rate of return on your investment”. Also listed as part of the features of the GCN product on the marketing document are:

- i. Guaranteed minimum investment return which is a function of invested amount and duration
- ii. Guaranteed security of investment capital

Also, **Exhibit 32 (i), (ii), (iii), (iv) & (v) particularly (ii)** which were marketing documents issued by the 2<sup>nd</sup> Respondent described the BGL Guaranteed Premium Note as;

- i. A high yield investment product with a guaranteed rate of return on your investment”.
- ii. The note is suited for those investors seeking guaranteed returns and minimal risk on investments.

iii. For investors who seek to preserve their capital while earning a competitive investment return, the BGL Guaranteed Premium Note is a viable option

iv. Guaranteed security of investment capital.

- The above exhibits however, show that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent guaranteed the security of the investment capital of the Complainants and also offered a guaranteed rate of return which necessarily meant that the investment capital of the complainants and the guaranteed returns thereto could not be eroded under any circumstance.
- Unfortunately, however, documentary and oral evidence placed before the Committee suggest otherwise as upon maturity of the investments, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failed/ neglected and/or refused to redeem the investments of the complainants, citing reasons such as “difficulty in converting our investments/assets to cash within our initial expected time frame”
- That the mere fact that the 1<sup>st</sup> Respondent and its employees lacked the requisite authority to deal with the GCN products in the way and manner in which they did suggests that there was a premeditated intention to defraud the members of the investing public. This is especially as evidence before this Committee proves that even the 2<sup>nd</sup> Respondent who was registered by the Commission as a Fund/ Portfolio Manager did not even have ultimate custody and/or control over the monies invested by the complainants in the GCN/ GPN products as evident in the testimony of the 15<sup>th</sup> Respondent ( the Managing Director of the 2<sup>nd</sup> Respondent from 2<sup>nd</sup> March, 2014 to 27<sup>th</sup> March, 2015) as follows ;

“BGL Asset Management was situated away from the head office. The head office is on Catholic Mission Street on Lagos Island, and BGL Asset Management offices were on Victoria Island...Now you have to understand the structure of the GCN and GPN. **BGL Asset Management was listed as the Fund Manager but we never managed in actual sense any of the funds, the funds were managed by the Group Treasury which resided in the head office** and you would observe that when one of your witnesses, the 2<sup>nd</sup> witness came up, I made the point of highlighting that particular point where she emphasized that from her analysis, there was no evidence to prove that investments were being done for those two products (GCN and GPN) by BGL Asset Management,

and I hereby affirm that I did not direct any investment of funds for those products...Now funds will come into BGL Asset Management accounts, no doubt; But those accounts were managed by the Group Treasury and also the Group Financial Control, which they did not report to me, they were not even within the same premises with BGL Asset Management. **So that structure meant that the financial control function and the treasury function was done out of the head office and the staff there reported to group, so they reported to Messrs, Albert Okumagba and Chibundu Edozie (the 3<sup>rd</sup> and 10<sup>th</sup> Respondent) and they may have had a reporting line also to the Chief Financial Officer. They did not report to me.**”

- That the evidence of the 15<sup>th</sup> Respondent clearly shows that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent marketed and sold products which the 1<sup>st</sup> Respondent had no authority to market and the 2<sup>nd</sup> Respondent had no control whatsoever as to how the monies received were invested bearing in mind that the 2<sup>nd</sup> Respondent was registered by the SEC as a fund manager and one of the basic functions of a fund/ portfolio manager is the management of funds and portfolios on behalf of investors.
- That the 2<sup>nd</sup> Respondent abdicated its responsibility to the Group Financial Control and Group Treasury of BGL PLC which is not for all intents and purposes a capital market operator in any sense of the word. The Group Financial Control and Group Treasury didn't even report to the Managing Director of the 2<sup>nd</sup> Respondent.
- Also during the Examination-in-chief of the 12<sup>th</sup> Respondent who was at a point in his career the Deputy Managing Director of the 1<sup>st</sup> Respondent, he alluded to the fact that the Guaranteed Consolidated Notes (GCN) was indeed a creation of the 1<sup>st</sup> Respondent when he stated thus;

“I was a chief trader of BGL. My core function was trading on the floor of the Nigerian Stock Exchange; executing strategic transactions for BGL. **However, when BGL expanded into about 28 branches and the cost of managing BGL rose up, some staff came up with GCN as a product.** When they came up with the product, I, Tony Nwozor (you can do an audit search on my character) resisted it. However, because I was in the system, I cannot totally exonerate myself.”

- When he was asked how he resisted it he further stated thus;

First of all, I resisted the expansion and the GCN came up because the way we expanded, there were not enough responsibilities or opportunities for BGL because we were almost everywhere. Then, before I came into BGL Securities, they said “look, what else will the staff do beyond marketing of equities?” so they brought GCN.

- Also, during the cross examination of the 12<sup>th</sup> Respondent by the Enforcement Officer, he was asked to explain the relationship between Guaranteed Consolidated Notes and the expansion of BGL and he stated thus;

“After the expansion, it became necessary that income arising from the market for BGL as a whole was a little below the cost of running BGL. It is clear? So, what else do you do to enhance your income? So some people came up with that idea.”

Based on the foregoing, the Committee holds that the marketing and sale of the GCN products by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, and 14<sup>th</sup> Respondents was a scheme concocted to defraud, was capable of defrauding any person or institution and indeed defrauded the complainants in this matter.

#### **ALLEGATION 4**

**The 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees prohibiting any conduct that would adversely affect the general investing public’s image and confidence in the capital market arising from their ill-handling of the above enumerated complaints.**

Section 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees provides that;

An Employer shall;

“(iii) shall not engage in any act that would adversely affect the general investing public’s image of, and confidence in, the capital market.”

In the course of the proceedings, it was established:

- That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sold and marketed the GCN and GPN products to members of the investing public and they did this through their respective employees.
- That the 1<sup>st</sup> Respondent marketed and sold these products without the requisite regulatory authorization to do so as they were registered by the Commission as Broker/Dealer and not Fund Managers.
- That the 2<sup>nd</sup> Respondent marketed and sold these products to the public knowing fully well that it had no custody/control over the funds being invested by the public and/or how they were invested or managed.
- That the 2<sup>nd</sup> Respondent basically acted as a conduit to channel these funds to the BGL PLC who has no business whatsoever taking investment decisions on behalf of the 2<sup>nd</sup> Respondent as it was not a capital market operator.
- That these products were marketed as low risk, high yield investments with a guaranteed rate of return and which offered a guaranteed security on the investment capital **See Exhibits 32 & 32 (1)** but upon maturity of the Complainant's investments, the 1<sup>st</sup> – 23<sup>rd</sup> Respondents failed, neglected and/or refused to pay and/or redeem the investments of the complainants in their GCN and GPN products.
- That when the 1<sup>st</sup> & 2<sup>nd</sup> Respondents were unable to fulfill their financial obligations to the Complainants, they requested for extension of time within which to meet these obligations which had crystallized and still were unable to meet those obligations notwithstanding the extended periods requested and enjoyed by them.
- That till date the 1<sup>st</sup> – 23<sup>rd</sup> Respondent have refused/failed/neglected to pay the sums due to the 1<sup>st</sup> – 10<sup>th</sup> Complainants who bought into their GCN and GPN products which were described as a “low risk, high yield investment”



with a guaranteed rate of return and guaranteed security on investment capital.

The question that arises in the minds of any right thinking reasonable person is “bearing in mind the nature of the investments which were supposedly risk free and the conduct of the 1<sup>st</sup> – 23<sup>rd</sup> Respondents as listed above, has the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in this matter adversely affected the general investing public’s image and confidence in the Nigerian capital market?

- That the answer is obviously in the affirmative because two of the key drivers of capital markets anywhere in the world are confidence and trust; the absence of which would lead to investor apathy and raise serious questions as to ethical standards of operations.
- That one of the key mandates of the SEC is investor protection. The actions/inactions of the Respondents in this matter have gone a long way in denting the public’s image and confidence in the Nigerian capital market.

The Committee therefore holds that the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Respondents violated **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** by engaging in conduct capable of adversely affecting the general investing public’s image and confidence in the capital market.

### **Allegation 5**

**The 1<sup>st</sup> Respondent violated Rule 22(4) of the SEC Consolidated Rules 2013 by operating below the required asset mix ratio of 60/40%.**

This allegation was established from the testimony of the 3<sup>rd</sup> witness; Mr. Ali Mohammed (a staff of the Inspectorate Division of the Commission) during his Examination-in-chief, when he stated thus;

“I work in the Monitoring Department in the Inspectorate Division. We analyse quarterly financial statements from various Capital Market Operators (CMOs) at the end of every quarter. At the end of the financial year we review annual audited accounts of companies.”

- When asked if he reviewed the accounts of the 1<sup>st</sup> Respondent he stated thus;

“I reviewed the 2<sup>nd</sup> and 3<sup>rd</sup> Quarter of 2015. Also in the course of our review, we give priorities to capital adequacy, liquidity and equally we look at the liabilities of the firm and so on and so forth. In the course of reviewing their 3<sup>rd</sup> Quarter returns, we had issues with their compliance with the asset mix ratio; that is Rule 22(4) of the Rules.”

On further enquiry as to what the issue with the accounts of the 1<sup>st</sup> Respondent was he stated;

“It is the issue of liquidity because the Rules provide that a capital market operator should have at least a minimum of 60% liquid assets and 40% fixed assets. Going by their submissions, they were far, far below that because their assets mix ratio is just 9.4% (liquid assets) whereas they are expected to have at least 60%.”

- That the 3<sup>rd</sup> witness tendered **Exhibit A11** (A memo from the Inspectorate Division to the Enforcement Department dated 10<sup>th</sup> December, 2015) to back up his claims.

The Committee has taken a critical look at the content of the aforementioned Exhibit which detailed the findings of the Monitoring Department and in the absence of any evidence from the 1<sup>st</sup> Respondent to the contrary challenging the findings of the 3<sup>rd</sup> witness, the Committee holds that the 1<sup>st</sup> Respondent breached Rule 22 (4) of the SEC Rules and Regulations by not maintaining an asset mix ratio in line with provisions of the said Rule.

## **Allegation 6**

**The 1<sup>st</sup> Respondent violated Rule 63 of the SEC Consolidated Rules 2013 by soliciting for deposits in Guaranteed Consolidated Notes via its brochures and other means.**

The provisions of Rule 63 of SEC Rules and Regulations state thus;

**“63. Soliciting deposit:**

Pursuant to the provisions of the Act, no broker/dealer shall solicit deposits through brochures, salesmen, canvassers or by any other means.”

This allegation was established from the following:

- i. The uncontroverted oral and documentary evidence were adduced which showed that the 1<sup>st</sup> Respondent and its employees solicited for deposits from the Complainants as evident in **Exhibit 32**, a marketing document issued by BGL Securities Limited for the marketing of Guaranteed Consolidated Notes which was attached to the 10<sup>th</sup> Complainant ‘s letter of complaint.
- ii. Attachment to **“Exhibit 1”** which is a copy of Investment Letter 0000000436 issued by BGL Securities Ltd to the 1<sup>st</sup> Complainant evidencing receipt of the sum of N5, 000,000 (Five Million Naira only being investment in the 1<sup>st</sup> Respondent’s Guarantee Consolidated Notes.
- iii. Attachment to **“Exhibit 11”** which is a copy of Investment Letter 0000000373 issued by BGL Securities Ltd to the 4<sup>th</sup> Complainant evidencing receipt of the sum of N5, 000,000 (Five Million Naira only) being investment in the 1<sup>st</sup> Respondent’s Guarantee Consolidated Notes.
- iv. **Exhibit 17 (i)** which is a letter addressed to the Managing Director of BGL Securities Ltd from the 7<sup>th</sup> Complainant dated 7<sup>th</sup> May 2012 requesting the 1<sup>st</sup> Respondent to place the sum of N30, 000,000 as an investment in the Guaranteed Consolidated Note.
- v. **Exhibit 17 (ii)** which is a receipt issued by BGL Securities Limited evidencing payment of the sum of N30, 000,000.

vi. Also during the oral testimony of the 4<sup>th</sup> Respondent when he stated that;

“BGL Securities is the largest subsidiary of the BGL PLC and initially we had up to 15 offices...**the way we operate is that at times staff in various offices can sell equities and some of them sell GCN products** and when they want to give letters to clients it would be electronically generated...**the staff in various offices market the product to their various clients”**

Furthermore when the 4<sup>th</sup> Respondent was asked if he was aware that BGL Securities Ltd. also marketed those papers (GCN), he stated thus;

“Yes I am aware that they market it but I have this comment to make...I have to make some clarifications. I am aware that BGL Securities Ltd marketed the product and that is the group policy. The group policy says that there should be cross selling of products of different subsidiaries and in some of the meetings that we have had we have been trying to deemphasize that. That, we have to face our own core area, we cannot continue to market the product of others. I don't know whether the people that did the investigation noticed; during the period that I was an MD- they should check the level of GCN or GPN that we made, you will see that it was very low”

- The position of the 4<sup>th</sup> Respondent that it was the group policy for the 1<sup>st</sup> Respondent to market the GCN notes was also echoed by the 6<sup>th</sup> and 9<sup>th</sup> Respondents who were also directors of the 1<sup>st</sup> Respondent.

The Committee therefore holds that the Enforcement Officer was able to establish during the proceedings that the 1<sup>st</sup> Respondent through the instrumentality of its employees solicited for deposits from the 1<sup>st</sup>, 4<sup>th</sup>, 7<sup>th</sup> & 10<sup>th</sup> Complainants and this was done in contravention of the provisions of Rule 63 of the SEC Rules and Regulation which forbade a broker/dealer from soliciting for deposits.

## **Allegation 7**

**The 1<sup>st</sup> to 23<sup>rd</sup> Respondents violated Rule 34(1) (e) of SEC Consolidated Rules 2013 by their failure to resolve clients' complaints or give a satisfactory explanation to the Commission in that regard.**

The provision of the aforementioned rule states thus;

**“34. Suspension/Cancellation of Registration**

(1) The Commission may suspend or cancel the registration granted to a market operator for any registered function where the market operator contravenes any of the provisions of the Act, the rules and regulations, the code of conduct for capital market operators or fails to do any of the following:

(e) resolve the complaints of clients or fails to give a satisfactory reply to the Commission in this regard.

- That the Committee in the course of the hearing saw evidence of letters written by the SEC to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents requesting its comments on issues of outstanding indebtedness to various Complainants with a view to resolving the aforementioned complaints.
- That in all the cases, the Respondents either failed/refused and/or neglected to offer any response to the Commission or offer a satisfactory reply to the queries of the Commission. See the following exhibits attached to the memorandum of facts; **EXHIBITS 5, 10, 12, 14, 16, 18, 20 and 28.**

In view of the foregoing, the Committee holds that the 1<sup>st</sup> & 2<sup>nd</sup> Respondents failed to resolve the complaints of clients and failed to give satisfactory responses to the Commission in this regard.

**Allegation 8**

**The 1<sup>st</sup> and 3<sup>rd</sup> to 14<sup>th</sup> Respondents violated Rules 34 (1) (b) and Rule 51(1)( c) of the SEC Consolidated Rules 2013 when they failed to file their audited account for 2014.**

One of the allegations against the 1<sup>st</sup> and 3<sup>rd</sup> to 14<sup>th</sup> Respondent in the Memorandum of Facts is that they violated Rules 34 (1) (b) and 51 (1) (c) of the SEC Rules and Regulations.

Rule 34 (1) (b) states that:

**“34. Suspension/Cancellation of Registration**

(1) The Commission may suspend or cancel the registration granted to a market operator for any registered function where the market operator contravenes any of the provisions of the Act, the rules and regulations, the code of conduct for capital market operators or fails to do any of the following:

(b) submit periodic returns or reports as required by the Commission;”

While Rule 51 (1) (c) states that;

### **51. Reports to be filed**

(1) Every market operator whether active or not shall file with the Commission reports listed in schedule IV of these rules and regulations:-

(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.

During the testimony of the staff of the Monitoring Department of the Securities and Exchange Commission, who was tasked with the review of audited account of companies he stated (when he was asked if the 1<sup>st</sup> Respondent had filed their annual audited account for 2014) as follows ;

No, to the best of my knowledge and based on my consultation with my superiors, it has not been filed.

In view of the forgoing and in the absence of any evidence to suggest that the 1<sup>st</sup> Respondent filed its audited accounts for 2014, the Committee holds that the 1<sup>st</sup> Respondent failed to discharge its statutory obligations under the provisions of Rule 34 (1) (b) of the SEC Rules and Regulations.

### **Allegation 9**

**The 2<sup>nd</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> – 23<sup>rd</sup> Respondents violated Rules 34 (1) (b) and 51(1) (c) of the SEC Consolidated Rules 2013 when they failed to file their statutory returns for 2015.**

One of the allegations against the **2<sup>nd</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> – 23<sup>rd</sup> Respondents** in the Memorandum of Facts is that they violated the provisions of Rules 34 (1) (b) and 51 (1) (c) of the SEC Rules and Regulations.

Rule 34 (1) (b) states that:

**“34. Suspension/Cancellation of Registration**

(1) The Commission may suspend or cancel the registration granted to a market operator for any registered function where the market operator contravenes any of the provisions of the Act, the Rules and Regulations, the Code of Conduct for Capital Market Operators or fails to do any of the following:

(b) submit periodic returns or reports as required by the Commission;”

While Rule 51 (1) (c) states that;

**“51. Reports to be filed**

(1) Every market operator whether active or not shall file with the Commission reports listed in schedule IV of these rules and regulations:-

(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.”

This allegation was established from the following:

- **EXHIBIT A13** tendered by the Enforcement Officer which is a memo dated 26<sup>th</sup> November, 2015 from the Fund Management Supervision Division to the Enforcement Division which revealed that the Fund Management Supervision Division has not received any Return from the 2<sup>nd</sup> Respondent for the year 2015.
- That the 2<sup>nd</sup> Respondent failed to adduce any evidence to counter the position of the Enforcement officer and the funds management supervision division as shown in Exhibit A13.

The Committee therefore holds that the 2<sup>nd</sup> Respondent contravened Rules 34(1)(b) and 51(1)(c) of the SEC Rules and Regulations 2013 by failing to discharge its statutory obligations under the said Rules .

## **Allegation 10**

**The 2<sup>nd</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> – 23<sup>rd</sup> Respondents violated Rule 34(1) (a) of SEC Consolidated Rules 2013 when they misrepresented to the Commission that the 9<sup>th</sup> Complainant had accepted their repayment proposal knowing same to be false and misleading.**

**Rule 34(1) (a) of SEC Consolidated Rules provides as follows:**

### **“34. Suspension/Cancellation of Registration**

(1) The Commission may suspend or cancel the registration granted to a market operator for any registered function where the market operator contravenes any of the provisions of the Act, the rules and regulations, the code of conduct for capital market operators or fails to do any of the following:

(a) furnish any information relating to its activities as required by the Commission or furnishes information which is false and misleading in any material particular;”

The Enforcement Officer contended that the 2<sup>nd</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 15<sup>th</sup> – 23<sup>rd</sup> Respondents violated the aforementioned Rule 34(1) (a) of the SEC Rules and Regulations by furnishing the Commission with false and misleading information with regards to the complaints of the 9<sup>th</sup> Complainant. To further buttress this point, the following exhibits were tendered;

**Exhibits 22:** Letter from the Securities and Exchange Commission to BGL Asset Management limited dated July, 23 2015 in respect of the complaint of the 9<sup>th</sup> Respondent

**Exhibit 23:** Letter from BGL Asset Management to SEC dated 31<sup>st</sup> July, 2015

**Exhibit 24:** Letter from the 9<sup>th</sup> Complainant to the SEC dated 17<sup>th</sup> August, 2015

**Exhibit 24 (i):** Consent form signed by the 9<sup>th</sup> Complainant and dated 5-08-2015.

**Exhibit A8:** Letter from the 9<sup>th</sup> Complainant to the Chairman, Administrative Proceedings Committee dated 28<sup>th</sup> January, 2016 with three attachments.



- That the aforementioned exhibits established that the Commission wrote a letter dated 23-07-2015 to the 2<sup>nd</sup> Respondent requesting it to comment on the complaint of the 9<sup>th</sup> Respondent.
- That the 2<sup>nd</sup> Respondent responded in a letter dated 31-07-2016 stating that they were in discussions with the client and had proposed a settlement plan which she has since accepted.
- That however the 9<sup>th</sup> Complainant in Exhibit 24 dated 17<sup>th</sup> August, 2015 and her oral testimony at the hearing stated that she never assented to the repayment plan proposed to her as it involved the liquidation of the outstanding indebtedness in two installments as opposed to her request that she be paid a lump sum. The 1<sup>st</sup> attachment to Exhibit A8 which is an email dated 24<sup>th</sup> June, 2015 from Temitope Wilson, a staff of the BGL Group supports her position. The 1<sup>st</sup> paragraph to the aforementioned email stated thus;

“Thank you for your email which we received today. We have read the attached letter dated 8<sup>th</sup> June, 2015 in which you have stipulated that you are not happy with the repayment plan and will not consent to it”

NB: The 9<sup>th</sup> Complainant, on 5<sup>th</sup> August, 2015 executed Exhibit 24(1) purportedly consenting to the repayment plan in two tranches. However, there is a remark at the bottom of the document stating as follows “(1) one lump sum payment- N3, 039,698.64”. The phrase was endorsed by the same complainant. The oral testimony of the complainant and Exhibit 24 read in conjunction with Exhibit 24(1) clearly shows that the 9<sup>th</sup> Complainant did not consent to 2<sup>nd</sup> Respondent’s repayment plan.

- That on the strength of the aforementioned exhibits tendered and the oral testimony of the 9<sup>th</sup> Complainant which was uncontroverted, the Committee holds that the 2<sup>nd</sup> Respondent misled and gave false information to the Commission in its letter dated 31-07-2015 when in stated that the 9<sup>th</sup> Complainant had consented to their repayment plan knowing that this information was false and misleading.

## DECISION OF THE COMMITTEE

Pursuant to the powers conferred on the Commission by the **Investments and Securities Act, (ISA) 2007, the SEC Rules and Regulations** made pursuant thereto, and for the maintenance of integrity in the Capital Market, the Administrative Proceedings Committee of the Commission hereby decides and directs as follows;

1. That by their actions and/or omissions the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Respondents engaged in acts capable of adversely affecting the investing public's image of, and confidence in the capital market.
2. That all the allegations against the 20<sup>th</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> Respondents were not substantiated hence they are hereby discharged.
3. That pursuant to **Schedule VIII Rule 16 (h) of the SEC Rules and Regulations** made pursuant to the **Investments and Securities Act 2007**, the 1<sup>st</sup> Respondent is hereby ordered to restitute the following Complainants the amount stated below being monies and accrued interest due to the Complainants for their investment in the Guaranteed Consolidated Notes (GCN) marketed and sold to the Complainants by the 1<sup>st</sup> Respondent;

COMPLAINANT	AMOUNT INVESTED	INTEREST RATE	AMOUNT DUE
Afolabi Gabriel Oluwaseyi	N5, 000,000	13.50%	N5, 332, 876. 71
Dr. Okoro Rufus Chika	N5, 000,000	14%	N5, 700,000
Estate of Late Chief John Chuks Adigwe	N30, 000,000	15%	N43, 657,421.92

4. That pursuant to **Schedule VIII Rule 16 (h) of the SEC Rules and Regulations** made pursuant to the **Investments and Securities Act 2007**, the 2<sup>nd</sup> Respondent is hereby ordered to restitute the following Complainants the amount stated below being monies and accrued interest due to the Complainants for their investment in the Guaranteed

Consolidated Notes (GCN) marketed and sold to the Complainants by the 2<sup>nd</sup> Respondent;

<b>COMPLAINANT</b>	<b>AMOUNT DUE</b>
NOUN Staff Cooperative Multipurpose Society	N24, 034,246.58
Delta State Ministry of Finance	N1, 876,161,078.13
Azort Nigeria Limited	N204, 832,876.71
Prof Ojuah Marcellus Umunnakwe	N10 970, 133, 51
Orsule Ann Awase	N3, 039,698.64
Mahmoud Usman	N10, 746,659.45

5. That the 1<sup>st</sup> Respondent refund the 2<sup>nd</sup> Complainant the sum of ₦855, 539, 809.55 (Eight Hundred and Fifty Five Million, Five Hundred and Thirty Nine Thousand Eight Hundred and Nine Naira Fifty Five Kobo) being return monies and accrued interest paid to the 1<sup>st</sup> Respondent.
6. That the 3<sup>rd</sup> Respondent is hereby banned for a period of 20 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
7. That the 4<sup>th</sup> Respondent is hereby banned for a period of 5 years from engaging in capital market activities in the Nigerian Capital Market.
8. That the 5<sup>th</sup> Respondent is hereby banned for a period of 4 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.

9. That the 6<sup>th</sup> Respondent is hereby banned for a period of 3 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
10. That the 7<sup>th</sup> Respondent is hereby banned for a period of 1 year from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
11. That the 8<sup>th</sup> Respondent is hereby banned for a period of 1 year from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
12. That the 9<sup>th</sup> Respondent is hereby banned for a period of 2 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
13. That the 10<sup>th</sup> Respondent is hereby banned for a period of 20 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules**

**and Regulations made pursuant to the Investments an Securities Act 2007.**

14. That the 11<sup>th</sup> Respondent is hereby banned for a period of 1 year from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007.**
15. That the 12<sup>th</sup> Respondent is hereby banned for a period of 1 year from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007.**
16. That the 13<sup>th</sup> Respondent is hereby banned for a period of 1 year from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007.**
17. That the 14<sup>th</sup> Respondent is hereby banned for a period of 2 years from engaging in capital market activities in the Nigerian Capital Market.
18. That the 15<sup>th</sup> Respondent is hereby banned for a period of 2 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007.**

19. That the 16<sup>th</sup> Respondent is hereby banned for a period of 2 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
20. That the 19<sup>th</sup> Respondent is hereby banned for a period of 2 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
21. That the 21<sup>st</sup> Respondent is hereby banned for a period of 2 years from engaging in capital market activities in the Nigerian Capital Market and is hereby ordered to pay a penalty of ₦100, 000 (One Hundred Thousand Naira only) for breach of **Rule 1(iii) of the Code of Conduct for Capital Market Operators and Their Employees** as contained in the **SEC Rules and Regulations made pursuant to the Investments an Securities Act 2007**.
22. That the 1<sup>st</sup> Respondent is hereby ordered to pay a penalty of ₦5, 000,000 (Five Million Naira) only for the breach of **Rule 400(1) (a) of the SEC Rules and Regulations made pursuant to the Investments and Securities Act 2007**.
23. That the 1<sup>st</sup> Respondent is hereby ordered to pay a penalty of ₦5, 000,000 (Five Million Naira) only for the breach of **Rule 1 (iii) of the Code of Conduct for Capital Market Operators and their Employees** of the **SEC Rules and Regulations made pursuant to the Investments and Securities Act 2007**.
24. That the 2<sup>nd</sup> Respondent is hereby ordered to pay a penalty of ₦5, 000,000 (Five Million Naira) only as penalty for the breach of **Rule 1 (iii) of the Code of Conduct for Capital Market Operators and their Employees**

of the **SEC Rules and Regulations made pursuant to the Investments and Securities Act 2007.**

25. That the 1<sup>st</sup> Respondent is hereby ordered to pay penalty of ₦10, 000,000 (Ten Million Naira) only as penalty for the breach of **Rule 22 (4) of the SEC Rules and Regulations made pursuant to the Investments and Securities Act 2007.**
26. That the 1<sup>st</sup> Respondent is hereby ordered to pay the sum of ₦7, 000,000 (Seven Million Naira) only as penalty for the breach of **Rule 63 of the SEC Rules and Regulations.**
27. That pursuant to **Section 38 (5) of the Investments and Securities Act 2007 and Rules 34 (1), (b)&(e) of the SEC Rules and Regulations** made pursuant thereto the certificate of registration of the 1<sup>st</sup> Respondent is hereby cancelled without prejudice to the recovery of all existing liabilities due to the Complainants and penalties payable to the Commission.
28. That pursuant to **Rules 34 (1), (a)&(b) of the SEC Rules and Regulations** made pursuant to the **Investments and Securities Act 2007**, the certificate of registration of the 2<sup>nd</sup> Respondent is hereby cancelled without prejudice to the recovery of all existing liabilities due to the Complainants and penalties payable to the Commission.
29. That pursuant to **Section 304 of the Investments and Securities Act 2007** all information on possible criminality in this matter be and is hereby referred to the appropriate law enforcement agencies and the Enforcement Department of the Commission shall follow up and ensure that the matter is brought to a logical conclusion.

**The Honourable Minister for Finance hereby confirms the above decision of the Administrative Proceedings Committee**

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,

---

**Honourable Minister for Finance**

---

**CHAIRMAN**

---

**SECRETARY**

