



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

Legend: Additions are underlined; Deletions are ~~struck through~~; Justifications are *italicized*

1. Proposed amendment to Rule 42 (2)- Half-Yearly Returns

Full Text of the Existing Rule:

The completed form shall be returned to the Commission on or before January 31st following the year under review, hard or electronic copy

Proposed Amendment:

The completed corporate governance form (with accompanying documents) shall be filed annually with the Commission on or before ninety (90) days following the company's financial year end, in hard or electronic copy.

Justification:

As contained in the Financial Reporting Council (FRC) of Nigeria Act, the custody of corporate governance regulations and reporting resides with the FRC and FRC

in a press release on guidance for reporting on compliance with the NCCG directed that the timelines for completing the template with the Code for financial years ending after January 1, 2020 in view of the varying financial year ends adopted by reporting entities shall be 90 days after the financial year end.

Public companies are also required by the NCCG to provide a comprehensive report on corporate governance in the reporting entities' Annual Audited Financial Statements. Rule 39 of the SEC Rules & Regulations require public companies to forward their Audited Accounts on or before 90 days after year end. It would also align with the Federal Government policy of ease of doing business and foster regulatory harmony between SEC and FRC.



Major Amendment

1. Proposed Amendment to Part C14- Depository and Participants

The following rules were exposed in April 2021. However, due to the inclusion of some comments received from stakeholders and further review by the Rules Committee, there is a need to re-expose the rules to reflect the new amendments for the information of the public.

B22- Central Securities Depositories

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Definition of terms

Central Securities Depository means ~~a depository as defined in the Investments and Securities Act for the purposes of these rules~~ means an entity that provides securities accounts, central safekeeping services and asset services, which may include the administration of corporate actions and redemptions and plays an important role in helping to ensure the integrity of securities issues.

CSD means Central Securities Depository

Financial Institution for the purpose of this rule means an entity whose primary function is the provision of financial services that include capital market, banking, insurance and pension.

LEI means Legal Entity Identifier which represents a 20-digit, alpha-numeric code that connects to key reference information which enables clear and unique identification of entities participating in global financial markets as may be amended from time to time by the relevant global authorities.

Participant means an entity that signs participation agreement ~~with a CSD to hold custody of~~ and administer securities or an interest in securities in accordance with the rules of a CSD.

Principal Officer for the purpose of this rule means an employee who is part of executive management team of a CSD responsible for day to day running of the entity.

Applicability

These rules shall apply to entities registered by the Commission as Central Securities Depositories

Registration Requirements

An application for registration of a CSD shall be made in the appropriate SEC form and shall be accompanied by:

- (1) Copy of certificate of incorporation certified by the company secretary;
- (2) Copy of the Memorandum and Articles of Association certified by the Corporate Affairs Commission, which shall include among other powers, the power to act as a depository CSD;
- (3) Certified copy of Corporate Affairs Commission's Form showing names and particulars of the directors of the company;
- (4) Copy of the latest audited accounts or statement of affairs and management accounts for companies in operation for less than one (1) year and management accounts not more than thirty (30) days old as at the time of filing;
- (5) Application for registration of all principal officers and compliance officers on the appropriate SEC Forms
- (6) Copy of draft rules and regulations;



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- (7) Sworn undertaking to promptly furnish the Commission with a copy of any amendment to the rules of the CSD;
- (8) Information on the infrastructure depository application to be deployed by the CSD;
- (9) Fidelity bond of a value not less than 25% of paid up capital;
- (10) Sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;
- (11) Sworn undertaking to comply with and enforce compliance by its Participants with the provisions of the Act and these rules and regulations;
- (12) Information on the organization of the company including the organizational and shareholding structure, members of the board, principal officers as well as rules and procedures;
- (13) Evidence of minimum paid up capital of N5 billion as contained in the schedule to these rules and regulations;
- (14) Evidence of payment of applicable fees as contained in the schedule to these rules and regulations ~~Filing fee of N50,000;~~
- (15) Any other document or information that may be required by the Commission from time to time.

Additional Requirements

A registered CSD shall have:

1. Sufficient assets and resources, which include financial, management and human resources with appropriate experience, to perform its functions as set out in these Rules;
2. An effective and reliable infrastructure to facilitate its operations or services;
3. A comprehensive risk management processes;
4. Appropriate systems, controls and procedures that are reliable and secure and have adequate scalable capacity;
5. Adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls;
6. Proper arrangements for security and back-up procedures.
7. A dispute resolution mechanism in line with the Commission's rules on complaint management



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Eligibility

An application for registration as a CSD shall not be considered unless the sponsor is one of the following:

- (1) a financial institution licensed by the appropriate regulatory agency;
- (2) a recognized securities exchange registered by the Commission;
- (3) a body corporate engaged in the provision of financial services where not less than 75% of the equity capital is held by any of the institutions mentioned in (1) and (2) above.

A sponsor under this rule is a person who, acting alone or in partnership with others, holds not less than 30% of the equity capital of a CSD at incorporation.

Ownership structure

- (1) A single CSD Participant at all times shall not whether directly or indirectly hold more than 5% of the equity capital of a CSD.

Functions

Functions of a CSD include:

1. Maintaining securities accounts
2. Provision of safekeeping/custodial services.
3. Confirmation and settlement of trades.
4. Any other function as may be approved by the Commission from time to time

Duties and Responsibilities

A CSD shall:

- (1) enforce its rules, provisions of the Act and the rules and regulations made thereunder;
- (2) supervise compliance by Participants with the CSD rules, provided that nothing in these rules shall be construed to confer an automatic SRO status on the CSD, except the CSD applies for, fulfils the terms and conditions for SRO status as provided in the Rules and Regulations of the Commission and the application is approved by the Commission.
- (3) manage the primary data delivered to it by Registrars, transactions data obtained from the Exchanges and primary data created and delivered to it by the Dealing Members;
- (4) hold all securities of the same kind deposited with it by a Participant collectively in a separate central securities depository account;



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- (5) have a robust system that ensures segregation between its own assets and the securities of its Participants as well as segregation among the securities of Participants;
- (6) notify a Participant in writing or as otherwise agreed to by the Participant of an entry made in the Participant's central securities account;
- (7) balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer:
 - a) in respect of any certificated security, not less than once every six (6) months;
 - b) in respect of each kind of un-certificated security:
 - i) if that aggregate has not changed, not less than once every month.
 - ii) if that aggregate has changed, on the business day after such change;
- (8) administer and maintain a record of un-certificated securities deposited with it;
- (9) be entitled to access the records of un-certificated securities administered and maintained by its Participants;
- (10) disclose its fees and charges to Participants and issuer. The fees shall be subject to prior approval of the Commission.
- (11) disclose to –
 - a) the Commission information about the securities held by a Participant in a central securities account;
 - b) an issuer information about the securities issued by that issuer and held by Participants in a central securities account;
- (12) notify the Commission within ~~48 hours~~ two (2) business days where a Participant ceases to be a Participant;
- (13) conduct its business in a prudent manner and with due regard to the right of the Participants, clients and issuers.
- (14) Seek prior approval of the Commission before deploying any ~~infrastructure/software~~ depository application/software.
- (15) Perform any other function necessary for effective provision of CSD services.

Legal Entity Identifiers

1. A CSD may shall issue LEIs subject to approval of the Commission and certification by the relevant global authority in line with the laid down procedures;



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2. Any entity or CSD seeking to issue LEIs shall be sponsored by the Commission for accreditation;
3. An entity or a CSD shall issue LEIs subject to the accreditation of the relevant global authority in line with the laid down procedures;
4. All eligible capital market operators as defined by the Commission shall obtain LEIs from the approved CSD or an entity;
5. Any institutional or high net worth investor may obtain an LEI.
6. An entity or a CSD approved to issue LEIs shall render returns to the Commission in a manner to be determined by the Commission from time to time.

Governance

1. A CSD shall have:
 - a) Rules and procedures that support financial stability, safety and efficiency of its activities;
 - b) A charter for the Board and Management that clearly stipulates responsibility and accountability which should be made publicly available;
 - c) ~~Standard operating procedures~~ Policies that stipulate its entire business processes and operations and must be duly approved by the board;
 - d) Processes to identify, assess and manage potential conflicts of interest of members of the Board, principal officers, employees or any person directly or indirectly linked to the Board.
2. The Board and Management of a CSD shall have the required mix of skills and competence to discharge their duties
3. The Board of a CSD shall have due regard for ~~consider~~ the interest of all relevant stakeholders before making decisions.

Composition of the Board

1. A CSD shall have a Board, which should be independent of Management;
2. Appointment of Board members shall be subject to approval of the Commission;
3. The Board shall comprise of:
 - a) A Chairman
 - b) A Chief Executive Officer;
 - c) At least one Independent Director;
4. The majority of Board members shall be Non-Executive Directors;
5. The Board shall have a minimum of 5 members
6. Board members other than the Chief Executive Officer shall hold office for a period of 4 years subject to cumulative maximum of 2 terms.



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7. The Board shall have all the relevant Board Committees, including a Risk Management Committee.

Appointment of Chief Executive and Principal Officers

1. The Chief Executive Officer of a CSD shall hold office for a period of five (5) years in the first instance and may be re-appointed for a further period of five (5) years and no more;
2. The appointment of a Chief Executive Officer and Principal Officers of a CSD shall be subject to the prior approval of the Commission;
3. The Chief Executive Officer and the other Principal Officers of a CSD shall be registered by the Commission as sponsored individuals;
4. The Chief Executive Officer and other Principal Officers of a CSD shall:
 - a. Be persons of proven integrity with no record of criminal conviction;
 - b. Hold at least a university degree or its equivalent;
 - c. Have at least ten (10) years cognate experience in the financial markets for Chief Executive Officer and Principal Officers respectively;
 - d. Not have been found complicit in the operation of an institution that has failed or been declared bankrupt or has had its operating license revoked as a result of mismanagement or corporate governance abuses;
 - e. Not have been found liable for financial impropriety or any other misdemeanor by any court, panel, regulatory agency or any professional body or previous employer;
 - f. Comply with any other criteria which the Commission may, in the public interest, determine from time to time.

(16) CSD Rules

- (1) A CSD shall make rules pursuant to the Act and these Rules and Regulations must be approved by the Commission.
- (2) CSD shall have rules, procedures, and participation agreements that are clear, understandable, enforceable and consistent with relevant laws and regulations.
- (3) The rules and procedures shall be made publicly available
- (4) The rules shall amongst others, provide for:
 - a) protection against custody risk
 - b) equitable criteria for the acceptance and expulsion of a Participant and for such acceptance and expulsion to be in the interest of issuers and investors;
 - c) adequate steps to be taken by the CSD, or a person to whom the securities depository has delegated its investigation and disciplinary functions to investigate and discipline a Participant or officer or employee of a Participant who contravenes or fails to comply with the Act, the rules and regulations made thereunder, and the depository rules and shall require a report on the



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- disciplinary proceedings to be furnished to the Commission within thirty (30) days after the completion of such proceedings;
- d) requirements in respect of a Participants' financial soundness and valid financial cover that the Participant shall hold in respect of:
 - i. the Participant's actual and potential liabilities;
 - ii. conditional and contingent liabilities to the securities depository; and
 - iii. liabilities which existed before, or after a person has ceased to be a Participant;
 - e) a Participant's securities depository accounts do not show a debit balance;
 - f) the manner in which a CSD or a Participant shall keep records of clients or owners or beneficial owners of securities or other interests in securities;
 - g) the manner in which Participants shall give instructions to the securities depository;
 - h) the purpose for which the depository may issue directives;
 - i) the manner in which a Participant shall hold and administer securities;
 - j) a declaration that the rules are binding on the CSD, a Participant, an issuer of securities deposited in the depository, their officers, employees and clients.

Outsourcing

1. Where a CSD outsources any of its functions, services or activities, it shall take full responsibility for the functions, services and activities outsourced.
2. A CSD that outsources any of its functions, services or activities shall ensure that the outsourcing does not affect the discharge of its obligations to Participants and clients.
3. A CSD shall ensure that outsourcing of functions, services and activities does not:
 - a. change the terms and conditions of its registration with the Commission;
 - b. affect its effective management of risks;
4. Where a CSD outsources any of its functions, services and activities to a third-party, it shall ensure that it obtains a "no objection" from the Commission and shall be responsible for the acts of the third party;
5. A CSD shall ensure that a third-party to which it outsources any of its functions, services or activities:
 - a. has the necessary business continuity arrangement;
 - b. protects any confidential information of the CSD, Participants and clients.
6. A CSD shall have the necessary expertise and resources to evaluate the functions, services and activities provided by a third-party;



Framework for Comprehensive Management of Risks

1. A CSD shall have risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by it
2. CSDs' risk-management frameworks shall be subject to periodic review.
3. CSDs' shall have risk management tools to effectively manage systemic risks arising from its interconnectedness with other CSDs and FMIs;
4. CSDs' risk management shall be capable of identifying critical situations that may impact its going concern status in terms of operations as well as development of appropriate policies for business continuity, recovery plans or winding-down.

Business Risks

A CSD shall:

1. Have policies and procedures to identify, monitor and manage general business risks;
2. Maintain a viable plan for raising additional equity should its equity fall close to or below the capital required;
3. Hold sufficient liquid net assets to enable it operate as a going concern if it incurs general business losses. The net asset position shall be determined by:
 - a. Its general business risk profile; and
 - b. The length of time required to achieve a recovery or orderly winding down.

Operational Risks

A CSD shall:

1. Have clearly defined operational reliability objectives and policies designed to achieve those objectives.
2. Have comprehensive information security policies that address all potential vulnerabilities and threats.
3. Have a business continuity plan to mitigate the risk of major disruptions.
4. Identify, monitor, and manage operational risks posed by its staff, Participants, other FMIs and service utility providers;
5. Have risk management tools to effectively manage CSD interoperability risks;
6. Put in place necessary controls and safeguards to ensure cyber security, protection of confidential information, records and data from unauthorized access, alteration, destruction, disclosure or dissemination
7. Any other measures that may mitigate risks

Access and Participation

A CSD shall:

1. Have participation criteria that are:



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- a) Non-discriminatory, fair and transparent in the interest of protecting the integrity of the market
 - b) Risk-based, publicly disclosed and adequate to ensure that its Participants meet appropriate operational, financial, and legal requirements to allow them to fulfill their obligations in a timely manner.
2. Ensure regular communication to its Participants on the assessment of the risks arising from its operations.

Incidental Services

1. A CSD shall seek the Commission's approval before:
 - a) Carrying out any business apart from its core function of providing depository, clearing and settlement services and any other incidental services thereto.
 - b) Where a CSD intends to offer incidental services, it shall maintain those incidental services operationally separate from its core functions.

(17) Systems and procedures

A CSD shall have systems and procedures which will enable it to co-ordinate with the issuer, the registrar and the Participants, to reconcile the records of ownership of securities with the issuer, registrar and Participants on a daily basis.

(18) Connectivity

A CSD shall maintain continuous electronic means of communication with all its Participants, issuers, registrars, CCPs and other CSDs.

(19) Delivery versus payment

A CSD shall have a mechanism in place to ensure that the interest of the persons buying and selling securities held in the depository are adequately protected and shall register the transfer of a security in the name of the transferee only after it is satisfied that payment for such transfer has been made.

(20) Withdrawal by Participant

A CSD shall allow any Participant to terminate its participation agreement where the request complies with the conditions stipulated for that purpose in the rules of the CSD.

(21) Evaluation of Systems and Controls

- (1) A CSD shall have adequate mechanisms for the purpose of reviewing, monitoring and evaluating its internal controls;
- (2) A CSD shall cause to be inspected annually, the mechanisms referred to in (1) above by an expert and forward the report to the Commission within one (1) month from the date of inspection;
- (3) An expert for the purpose of this sub-rule is an independent person with requisite skills and knowledge and who is recognized by the Commission.

(22) Safety of Records



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A CSD shall:

1. Ensure that the confidentiality, availability and integrity of its records and data processing systems are maintained at all times and take all necessary precautions to ensure that records are not lost, destroyed or tampered with as well as ensure that sufficient back up of records are kept at all times off-site the office of the CSD.
2. Have a disaster recovery site outside its operational environment.

Records to be maintained

- (1) A CSD shall maintain the following records and documents:
 - (a) the names of the transferor, transferee and dates of transfer of securities;
 - (b) ~~a register and index of beneficial owners~~ balances and trading history of transactions;
 - (c) ~~details of the holdings of securities of beneficial owners at the end of each day;~~
 - (d) records of instruction received from and communication with Participants, issuers, registrars and beneficial owners;
 - (e) records of approval, notice, entry and cancellation of pledge, or hypothecation;
 - (f) register of Participants indicating their details;
 - (g) such other records as may be specified by the Commission for carrying on the activities as a CSD.
- (2) Without prejudice to any enactment and these rules, a CSD shall preserve the records and documents required to be maintained for a minimum period of six (6) years from the date of last entry in the records or date the document was made.

Reports to be filed

1. A CSD shall file with the Commission:
 - a) Its monthly operational report within 5 working days after the end of each calendar month
 - b) Its quarterly financial statements within 1 month after the end of every quarter.
 - c) Its annual report and audited financial statement within 3 months after the end of each financial year
 - d) Any other information which the Commission may require from time to time.



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Justification

The Proposed amendments are intended to improve the regulations and enhance the operations of Central Securities Depositories, particularly in the area of risk management. They are also aimed at aligning the operations of CSDs with international best practices, particularly the Principles of Financial Market Infrastructures of Committee on Payment and Market Infrastructure- International Organisation of Securities Commission (CPMI-IOSCO).