



## **Exposure Of Proposed New Rules On Issuance Of Commercial Papers And Amendment To Rule 8 (Exemptions)**

### **Proposed New Rule**

Proposed New Rule on Issuance of Commercial Papers

### **Proposed Amendment**

Proposed Amendment to Rule 8 (Exemptions)

Details of the proposal are as follows:

**Legend:** Additions are Underlined  
Deletions are ~~Struck through~~  
Justifications are *italicized*

## **PROPOSED NEW RULES ON ISSUANCE OF COMMERCIAL PAPERS**

### **1. Definition of Terms**

For the purposes of these rules, the following words and expressions have the following meanings, unless the context otherwise requires: -

**"Asset-Backed Commercial Paper"** means a Commercial Paper that is collateralized or secured by physical assets of the Issuer.

**"CAMA"** –means Companies and Allied Matters Act 2020 or as may be amended from time to time.

**"Clean Commercial Paper"** means a Commercial Paper that is not secured or backed by a guarantee.

**"Commercial Paper or CP"** means an unsecured promissory note with a maturity of not less than 30 days and cumulatively not more than 364 days, including rollovers.

**"Central Securities Depository"** shall have the meaning provided in the Commission's Rules and Regulation



**“Issuer”** means an entity intending to raise capital through the issuance of commercial papers. Reference to Issuers in this rule shall include promoters in cases where the Issuer is a non-operating SPV.

**“Issuing and Placing Agent”** means a SEC-registered issuing house or financial adviser that facilitates the placement of commercial papers with investors and registration of commercial papers with the Commission.

**“Issuing, Placing, and Collecting Agent or IPCA”** means a SEC-registered issuing house or financial adviser combining the role of a collecting and issuing and placing agent.

**“Non-Interest Commercial Paper or NICP”** means a commercial paper structured in accordance with general Shari’ah principles and should be either asset-based or asset backed.

**“Receiving Bank and Paying Agent”** means a deposit money bank licensed by the CBN and registered as a receiving bank with the Commission, that collects funds from and disburses payments to investors on behalf of the Issuer.

**“Rollover”** shall refer to the issuance of a commercial paper for the purpose of refinancing a maturing commercial paper.

**“Sponsor”** for the purpose of these rules shall mean, a SEC-registered issuing house or financial adviser appointed by the Issuer to coordinate the issuance and placement of commercial papers, including obtaining the required regulatory approvals.

**“Trustee”** means a person or entity that administers assets under CP/NICP issues and carries out any other fiduciary responsibilities for the benefit of investors.

## 2. **Scope**

These rules shall be applicable to all issuances of CPs. The rules should be read in conjunction with the Investment and Securities Act and general provisions of the Commission's Rules and Regulatory Guides.



### 3. Eligibility

- a. The following rules set out the eligibility criteria for prospective Issuers of CP, where the commercial paper is to be issued by an SPV, the promoters of the SPV shall be required to meet the eligibility criteria set out below:
  - i. The Issuer shall be a company duly incorporated under the CAMA or other enabling law;
  - ii. The Issuer must have been in operation for a minimum of five (5) years;
  - iii. The Issuer shall have three (3) years audited financial statements, the most recent being not older than nine (9) months from the Issuer's last financial year end;
  - iv. The Issuer's shareholders' funds (unimpaired by losses) shall not be less than Five Hundred Million Naira (₦500,000,000.00) as certified by its auditors and reflected in its latest audited financial statement, and shall be maintained at or above that level for the period any of its CPs remain outstanding;
  - v. The Issuer's total indebtedness, including the new issue of CPs should not exceed Four Hundred per cent (400%) of the Issuer's net worth (or gearing ratio of 4:1) as at the date of its latest audited accounts;
  - vi. Where the CP is guaranteed, the Issuer shall hold an approved credit or a comparable agreement with the guarantor;
  - vii. Issuers shall attain a credit rating of investment grade from a rating agency registered with the Commission;
  - viii. No Issuer shall offer CPs if it is currently in default of payment of interest or repayment of principal in respect of previous issuances;
  - ix. Where the Issuer does not meet the eligibility requirements stipulated above, the CP issuance shall be backed by a guarantor or such other credit enhancement provider that meets the eligibility requirements;



- x. Such other eligibility criteria as may be prescribed by the Commission from time to time.

#### **4. CONDITIONS FOR CP ISSUANCE**

- a) All CPs proposed to be issued shall first be registered with the Commission.
- b) The credit rating of the CP shall not be below investment grade;
- c) The maturity date of all outstanding CP issues shall fall within the validity period of the rating filed with the Commission. Where the rating will expire prior to the maturity of the CPs, the Issuer shall provide an extended or renewed investment-grade rating, no later than five (5) business days prior to the expiration of the initial rating;
- d) All CPs shall only be issued or sold to qualified institutional investors or high net worth individuals.;
- e) CPs shall not be issued with any embedded option and shall only be redeemable at maturity.
- f) Offerings of CPs by way of a private placement shall not exceed five (5) working days from the date the issue opens for subscription. Any unsold portion of the issue after five (5) working days of its opening for subscription shall not be issued.
- g) For a public offer, the offer period shall not exceed ten (10) working days;
- h) Issuers of NICPs shall in addition to these rules, comply with all relevant laws, Shari'ah rulings, principles and standards as issued by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), or other standard setters, recognized by the Commission.



## 5. GENERAL

### a) Mode of Issuance

- i. CPs may be issued as one-off issuances or under a shelf programme in accordance with the Commission's rules on Shelf Registration;
- ii. CPs shall be in the form of promissory notes and be issued at such discount to face value or interest rate, as may be determined by the Issuer;
- iii. CPs may be issued as securitised debt in form asset-backed securities, mortgage-backed securities or such other securitised structure as the Commission may permit;
- iv. Every issue of CP, and each CP rollover shall be treated as a new and separate issue;
- v. A CP may be issued by way of public offer or private placement;
- vi. The minimum size of a CP issue shall be One Hundred Million Naira (~~₦~~100,000,000) and in multiples of Fifty Million Naira (~~₦~~50,000,000) thereafter;
- vii. A CP issuance may be underwritten in line with the provisions of the Commission's rule on underwriting;

### b) Subscription Level

- i. The minimum level of subscription for a CP issuance shall be stated in the offer documents;
- ii. The minimum subscription level shall not be below 50% of the offer size;
- iii. Where a CP issue is underwritten, the underwriting shall cover the minimum level of subscription.



- iv. Where a CP issue not underwritten is below the minimum subscription level or less than 50% subscribed, the issue shall be aborted by the Issuer, and any subscription monies received shall be returned to the subscribers within two (2) business days of the closing date of the offer.

**c) Tenor and Rollover of CPs**

- i. CPs shall be issued for tenors not less than 30 days and not more than 364 days. Where a CP exceeds 364 days, it shall be regarded as a long-tenured debt instrument and be regulated under the relevant regulations of the Commission;
- ii. A CP may be rolled over at maturity, provided that the initial issuance and the rollover cumulatively, do not exceed 364 days and a disclosure to this effect is made in the offer document of the initial CP and subject to the written consent of the investor(s);
- iii. A CP issue shall be deemed a rollover where:
  - A. The funds of the investors from the matured CP issuance are withheld at the instance of the Issuer for investment in a new or rollover CP issuance;
  - B. The amount being rolled over is at least 50% of the initial CP issue, whether offered to new or existing investors.

Provided that the prior consent of the existing investors shall be sought before the rollover.

- iv. A CP shall not be rolled over more than two (2) times and the combined tenors of the initial CP issue and any subsequent rollover(s) shall not exceed 364 days;
- v. Where an investor objects to the rollover, the Issuer shall effect payment of the value of the CP held by the investor on the maturity date based on



the initial terms of the issue. Failure by the Issuer to make such payment, shall result in a default and attract a penalty of not less than Five Million Naira (₦5,000,000) in the first instance and Fifty Thousand Naira (₦50,000) for every day the default continues.

**d) Credit Enhancement and Guarantees**

- i. Issuers of CPs may be provided with credit enhancement in form of full or partial credits or guarantees by any of the following entities:
  - A. Federal Government of Nigeria;
  - B. CBN-Licensed Banks;
  - C. Development Finance Institutions;
  - D. Credit Guarantee Agencies and Corporations;
  - E. Any other category of guarantor as may be approved by the Commission.
- ii. The guarantee of NICPs shall be subject to the relevant Shari'ah principles;
- iii. Corporate entity guarantors shall have a minimum of investment-grade credit rating;
- iv. Guarantors of a CP Issue shall be deemed to be secondary obligors of the CP issue;
- v. In the event that the Issuer's credit risk crystallizes, the guarantor as the secondary obligor shall redeem its guarantee of the CPs by disbursing funds to the beneficiaries immediately.

**6. REGISTRATION REQUIREMENTS FOR CPs**



- a) A prospective Issuer of CPs shall, along with a **duly completed checklist for debt securities**, file the following:
- i. A copy of the resolution authorizing the issue, as may be permitted by the Issuer's Memorandum and Articles of Association;
  - ii. Current CAC report on the statutory information of the Issuer including, evidence of registration, statement of share capital, particulars of directors and company secretary, and shareholders, and their respective holdings;
  - iii. Memorandum and Articles of Association of the Issuer. Provided that where the document has already been filed with the Commission and there has been no change since the previous filing, the Issuer shall file an undertaking that there has been no change(s) to the document;
  - iv. A signed copy of the Issuer's latest audited accounts for the preceding 3 years, with the latest account not more than 9 months old at the time of filling. Provided that the account shall remain valid throughout the offer period;
  - v. A draft prospectus containing the following information:
    - A. Amount of CPs;
    - B. Basic terms of the CPs to be offered, status of the CPs including credit enhancement, rollovers, minimum subscription, discount/interest rate, maturity, listing;
    - C. Offer period;
    - D. Purpose of the offering/use of proceeds;
    - E. Details of repayment plan and source of funding for the issue;
    - F. Risks of investment;





- G. Tax considerations
  - H. Company's profile/business;
  - I. Management and Board;
  - J. Extract of 3 years audited accounts;
  - K. Reporting accountant's report;
  - L. Rating reports;
  - M. Any other information that the Commission may require from time to time.
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- vi. Draft trust deed (in the case of a shelf programme, a programme trust deed);
  - vii. Draft Issuing Placing and Collection Agency Agreement;
  - viii. Draft Paying Agency Agreement (where applicable);
  - ix. Draft Receiving and Paying Agent Agreement (where applicable);
  - x. Draft underwriting agreement (where applicable);
  - xi. Deed of Guarantee (where applicable);
  - xii. Duly completed relevant SEC Form for Registration of Securities
  - xiii. Letter of "No Objection" from the relevant regulatory body (where applicable);
  - xiv. Details of any asset or collateral provided to secure the CP issue, or third-party guarantee (where applicable)
  - xv. A copy of the mandate letter from the Issuer to the Sponsor;



- xvi. Letters of consent given by the parties to the issue, sworn to before a Notary Public or Commissioner for Oaths. Consent letters shall not be notarized by a person who is also a named signatory on the consent letter or who is a member or employee of the firm whose consent is required. Where the consent is contained in a power of attorney, it shall be executed and stamped by the stamp duties office;
- xvii. A sworn declaration that the Issuer has fully disclosed all material facts in the offer document. The declaration shall be signed by two directors and the company secretary;
- xviii. Schedule of claims & litigations of the Issuer and the solicitor's opinion;
- xix. Letter of confirmation of going concern from the directors of the Issuer;
- xx. Evidence of payment of filing, processing and registration fees;
- xxi. Any other document required by the Commission under these Rules and Regulations.

## **7. REGISTRATION REQUIREMENTS FOR NICPs**

- a) A prospective Issuer of NICPs shall, in addition to the registration requirements for CPs, file the following:
  - i. Evidence of the appointment of a Shari'ah Adviser, who:
    - A. Has never been convicted of any offence arising from criminal proceedings;
    - B. Has never been declared bankrupt;
    - C. Possesses the necessary qualification and expertise in Islamic commercial jurisprudence and Islamic finance.



- ii. A Shar'iah compliance certificate/report in respect of the NICP, which shall outline the basis, rationale and structure of the NICP issue, and its compliance with the applicable Shari'ah principles and standards;
- iii. Outstanding NICPs shall require a Shari'ah recertification on a quarterly basis.

## **8. EXECUTION OF ISSUE DOCUMENTS**

- a) The copies of the approved prospectus shall be signed by the directors of the Issuer, the Sponsor and other parties to the issue, and together with other offer documents, shall be forwarded to the Commission for registration. Where a party will not be available to sign the offer documents, he shall execute a power of attorney in favor of any other available party to sign on his behalf. The power of attorney shall be filed with the offer documents.
- b) Upon signing the offer documents, the following executed documents must be filed within 2 business days with the Commission (where applicable): -
  - i. Executed prospectus;
  - ii. Executed supplementary prospectus/ pricing supplement;
  - iii. Issuing Placing and Collection Agent/Issuing and Paying Agent agreement (signed and stamped);
  - iv. Receiving and paying agent agreement (signed and stamped)
  - v. Programme and series trust deeds (signed and stamped);
  - vi. Deed of guarantee (signed and stamped);
  - vii. Underwriting agreement (signed and stamped);
  - viii. Power of attorney in case of absentee parties;
  - ix. Any other material information.
- c) The offer shall open within two (2) days of obtaining the approval of the executed offer documents.
- d) Where the CPs registered by the Commission under this part are not offered to the public or select qualified investors within a period of one (1) month after



their registration, the Issuer shall revert to the Commission, for a revalidation of the registration before the CPs can be offered.

## **9. MATURITY AND REDEMPTION**

- a) Upon maturity of a CP, the holder of the CP shall present the instrument to the Paying Agent, who shall then effect payment in full;
- b) For the purposes of these rules, a part-payment of the CP value to investors shall be considered a default and shall attract a penalty of not less than ₦5,000,000 (Five Million Naira) in the first instance and a further sum of ₦50,000 (Fifty Thousand Naira) for every day the default continues.

## **10. ROLLOVER OF A CP**

- a) Where a CP is rolled over, the Issuer may be required to provide additional documents as may be determined by the Commission;
- b) An Issuer shall notify the Sponsor of a decision to rollover a CP,. The Issuer shall prior to the maturity of the CP comply with the following:
  - i. For a 30-day to 90-day CP, inform the Sponsor and the Paying Agent of its intention to rollover no later than ten (10) business days before the maturity date of the CP;
  - ii. For a CP with a tenor above 90 days, inform the Sponsor and the Paying Agent of its intention to rollover no later than fifteen (15) business days before the maturity date of the CP;
- c) The Sponsor shall notify the investors of the Issuer's intention to rollover and obtain their written consent. The Sponsor, for the purpose of the rollover shall comply with the following:
  - i. For a 30-day to 90-day CP, inform the investors of the Issuer's intention to rollover no later than ten (10) business days before the maturity date of the CP;



- ii. For a CP with a tenor above 90 days, inform the investors of the Issuer's intention to rollover no later than fifteen (15) business days before the maturity date of the CP;
- d) The Sponsor shall notify the Commission of the rollover, at least ten (10) business days before maturity, and file the applicable pricing supplement for the Commission's approval, along with the following:
  - i. A notice of the rollover;
  - ii. List of investors who have consented to the terms of the rollover;
  - iii. Sworn declaration by the Issuer that it has obtained the written consents of investors who have agreed to the terms of the rollover;
  - iv. Central securities depository report, confirming the holdings of investors who have agreed to the terms of the rollover;
- e) The Sponsor shall notify the Commission of the completion of the rollover within 5 days from the maturity date of the CP.

## **11. ALLOTMENT**

- a) For CPs offered under these rules, whether listed or not, the Issuer and Sponsor shall be responsible for the allotment of the CPs, in accordance with the guidelines prescribed hereunder:
  - i. No fresh offer of CPs shall be made unless the allotment with respect to any previous offer has been concluded or the offer aborted.
  - ii. An allotment of CPs shall not be made, unless the sums payable on application for the amount stated in the prospectus have been paid.



- iii. In the case of an over-subscription, the Issuer shall absorb not more than 15% of the CP issue size, and a minimum modified pro-rating approach shall be adopted. This entails that all investors in the offer shall be allotted the minimum subscription units as specified in the offer documents, and then the residual balance shall be pro-rated i.e. all investors would be allotted equal proportion of the amount applied for. Where the minimum subscription cannot accommodate all the investors, the minimum to be allotted shall be reduced so as to accommodate all the investors.
- iv. The Issuer and Sponsor shall within five (5) working days of allotment, publish the allotment on the Issuer's website.
- v. The Commission may declare any irregular allotment of CPs null and void and may prescribe appropriate measures to rectify such irregularities.

## **12. LISTING OF SECURITIES**

- a) CPs may be listed on a registered securities exchange.
- b) Such CPs shall be listed not later than seven (7) days after completion of allotment.

## **13. SUMMARY REPORT ON COMPLETION OF OFFER**

The Sponsor shall within five (5) working days of allotment, file with the Commission a summary report containing among others, the following:

- a) Allotment report including: -
  - i. summary of applications received;
  - ii. list of investors acquiring 5% or more of the CPs;
  - iii. list of all applications received including list of those rejected and the basis for rejection;



- iv. Statement of issue proceeds account;
  - v. Joint consent letter signed by the Issuer and the Issuing House(s) consenting to the basis of allotment.
  - vi. Evidence of publication of allotment
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- b) Issues arising generally from offer;
  - c) Satisfactory compliance of parties with their obligations under the issue;
  - d) Details regarding the return of surplus monies;
  - e) Status of listing of the securities at the exchange (where applicable);
  - f) Details and evidence of payment of net proceeds of the issue to the Issuer;
  - g) Analysis of total costs incurred during the course of the offer;
  - h) Any other relevant information and recommendation.

#### **14. UTILIZATION OF PROCEEDS**

- a) The Issuer is prohibited from using the proceeds of the issue for purposes other than those stated in the offer document without the prior approval of the Commission;
- b) The Issuer shall file with the Commission not later than ten (10) days after the conclusion of an issue on the appropriate SEC Form, detailed information on the utilization of proceeds.
- c) Evidence of such utilization shall be provided as appendix to the report. The rendition shall be on a quarterly basis until issue proceeds are fully utilized.



## 15. REPORTING

- a) The Issuer, Sponsor and the Trustee shall comply with the following continuous reporting and disclosure requirement as may be prescribed by the Commission from time to time: -
- i. Quarterly report on utilization of proceeds
  - ii. Quarterly unaudited financial statements of the Issuer
  - iii. Annual audited financial statements of the Issuer
  - iv. Review of annual rating report
  - v. Annual Shari'ah certification (where applicable)
  - vi. Any other information that the Commission may from time-to-time request
- b) Failure to file the periodic report/returns with the Commission within the prescribed period shall attract a penalty of not less than ₦1,000,000 (One Million Naira) and a further sum of ₦50,000 (Fifty Thousand Naira) for every day the default continues.

## 16. SANCTIONS/PENALTY

- a) Any person who issues or allots CPs without the prior approval of the Commission, or violates any provisions of these rules, except for sections with specified penalties, shall be liable to any one or more of the following sanctions:
- i. A penalty of not less than ₦5,000,000 (Five Million Naira) and a further sum of ₦50,000 (Fifty Thousand Naira) for every day the violation continues;
  - ii. Suspension, or withdrawal of the registration of the capital market operator(s) involved;
  - iii. Disgorgement of proceeds/income from the transaction; and





- iv. Ratification or Rescission of a transaction if it is in the interest of the public to do so;
- v. Any other sanction the Commission deems fit in the circumstance.

***Justification***

*To exercise adequate oversight over commercial papers, in line with the provisions of the Investments and Securities Act 2007, to ensure transparency, an orderly market and maintain the investor protection mandate of the Commission.*

**PROPOSED AMENDMENT TO RULE 8 (EXEMPTIONS)**

**Full Text of Existing Rule 8**

***Exemptions***

(1) The provisions of the Act and these rules and regulations requiring registration shall not apply to:

- (a) any note, draft, currency, bill of exchange or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which has a maturity at the time of issuance



not exceeding nine (9) months exclusive of days of grace, or the maturity of which is likewise limited;

(b) any security issued by a person, organized and operated exclusively for religious, educational, benevolent, charitable or reformatory purposes and not for pecuniary profit and no part of the net earning which accrues to the benefit of any person, shareholder or individual and subject to such other terms and conditions as may be stipulated by the Commission. Any issue of securities pursuant to this exemption shall not exceed in aggregate value the sum of N5,000,000;

(2) The Commission may by rules add any class of securities or transactions to those exempted under this regulation.

**Proposed Amendment:** Deletion of the current Rule 8(1)(a) and merger of Rule 8(1)(b) is with 8(1) as follows:

- 1) The provisions of the Act and these rules and regulations requiring registration shall not apply to any security issued by a person, organized and operated exclusively for religious, educational, benevolent, charitable or reformatory purposes and not for pecuniary profit and no part of the net earning which accrues to the benefit of any person, shareholder or individual and subject to such other terms and conditions as may be stipulated by the Commission. Any issue of securities pursuant to this exemption shall not exceed in aggregate value the sum of N20,000,000;

***Justification:***



**SEC NIGERIA**  
SECURITIES AND EXCHANGE COMMISSION, NIGERIA

*Given that the Commission is looking to commence regulation of commercial papers (and possibly other short-term debt instruments) with maturities even less than 364 days, Rule 8 (1)(a) becomes ineffective.*

Submitted for approval to expose.

**Simnom Garba (Mrs.)**