



EXPOSURE OF THE COMMISSION'S PROPOSED NEW RULES ON THE ISSUANCE AND ALLOTMENT OF PRIVATE COMPANIES' SECURITIES (RE-EXPOSURE)

The following rules were exposed in May 2024. 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.

LEGEND

Additions are underlined
Justifications are *italicized*

1. Definition of Terms

Bonds/Debentures are non-convertible debt instruments with defined maturities, variable periodic interest payments and amortized or bullet principal repayments at maturity;

Qualified Investor means an institutional investor or high net worth individual as defined in the Commission's rules;

Securities in these rules refers to fixed income securities including bonds, debentures and alternative asset classes such as sukuk.

2. Scope/Applicability

These rules shall apply to:

- a) Debt securities issuances by private companies either by way of public offer or other methods as may be approved by the Commission, where the offer is:
 - i. Published, advertised or disseminated in a newspaper, broadcast, cinematograph, internet media or any other means by which the public is made aware of the offer;



- ii. made to anyone or circulated among persons on the terms that the person or persons to whom it is made may renounce or assign the benefit of the securities to be obtained in favour of any other person or persons;
 - iii. made to or circulated among members or debenture holders of the company concerned or clients of the person circulating information on the offer or in any other manner;
 - iv. made to one or more persons to acquire securities dealt in by a securities exchange or the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange.
- b) Registered exchanges and platforms which admit debt securities issued by private companies for trading, price discovery or information repository purposes.
- c) Registered capital market operators who are parties in issuances and allotment of debt securities of private companies

3. Commencement

These rules shall become effective immediately on the date issued by the Commission.

4. Existing Debt Securities of Private Companies

At the issuance of these rules, a private company with existing debt securities which are:

- a. held by qualified investors, the issuer shall no later than three (3) months from the date of issuance of these rules, file an application for the registration of the outstanding securities to the Commission.

Failure to comply with this provision shall attract a penalty of not less than ₦2,000,000 (Two Million Naira) and a further sum of ₦100,000 (One hundred thousand Naira) for every day the violation continues.

5. Eligibility

- a) A private entity seeking to issue securities under these rules shall:



- i. be a company duly incorporated under Companies and Allied Matters Act (CAMA), or other enabling Laws;
- ii. have at least three (3) years track record of operation.

Provided that, it shall not be required:

- a) the private company is set up by a state or municipal government for the purpose of issuing bonds;
- b) where the company has existed for less than three (3) years, a guarantor who must have a minimum of three (3) operational track record and investment grade rating shall be provided.

No Issuer shall offer securities if it is in default of payment of interest or repayment of principal in respect of previous debt issuance(s) for a period of more than six (6) months.

- b) Issuers and the bonds to be issued shall be rated by a rating agency (optional for private placements);
- c) The credit rating of a bond shall not be below investment grade;
- d) All necessary approvals (where applicable) in relation to the issue, from other regulatory authorities shall be obtained and filed with the Commission ~~through the securities exchange~~. Any conditions imposed by such regulatory authorities, shall be complied with throughout the tenor of the bond;

6. **General**

- a) These rules shall apply only to debt securities issued by a private company.
- b) Private companies may issue debt securities under a shelf programme in accordance with the Commission's rules on Shelf Registration.
- c) The option of book building in the issuance of debt securities shall be available to a private company, in accordance with the provisions of the Commission's rules on Book Building.
- d) Any party that makes any misrepresentation to prospective investors or violates the provisions of these rules, shall be subject to sanctions/penalty as prescribed in these rules and the ISA.



7. Restrictions

- a) A private company shall not offer its equity securities (shares) to the public under any circumstance.
- b) Debt securities issued under these rules, shall be sold only to qualified investors.
- c) Only registered capital market operators shall be parties to debt securities issuances under these rules.
- d) No private company or any person acting on its behalf shall offer, sell or allot securities to the public without the prior registration of the securities by the Commission.
- e) Securities purchased in a public offer pursuant to these rules shall only be traded on a registered securities exchange.

8. Conditions for Securities Issuance

A private company may issue its securities under these Rules provided that: -

- a) Only bonds/debentures and other debt instruments including sukuk and as may be determined by the Commission from time to time, shall be issued;
- b) For sukuk issuances, the issuer shall comply with the provisions on sukuk (as applicable) and set out in the Commission's Rules, as amended from time to time.
- c) The securities shall be offered to and traded only by qualified investors;
- d) A private company may undertake a maximum of three debt securities issuances within a one-year period, whether through a shelf program, either in series or tranches or one-off offering, the total amount to be raised not exceeding ₦15 billion, provided that where a private company intends to undertake any further debt securities issuance, it shall be required to re-register as a public company.



9. Registration Requirements

A private company intending to offer its debt securities by way of an offer to the public or private placement under these rules, shall, along with a duly completed checklist for debt securities issued by private companies, file the following ~~through the securities exchange~~ with the Commission:

- a) A copy each of the board and shareholders' resolutions authorizing the issue;
- b) 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;
- c) Memorandum and Articles of Association of the issuer. Provided that where the document has already been filed with the ~~securities exchange~~ 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;
- d) 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 filing with the ~~securities exchange~~ Commission. Provided that the account shall remain valid throughout the offer period.
- e) A draft prospectus containing the following information:
 - i. Amount of securities offered;
 - ii. Basic terms of the securities to be offered, including status of the bond, minimum subscription, coupon rate, maturity, listing;
 - iii. Offer period;
 - iv. Purpose of the offering/use of proceeds;
 - v. Risks of investment;
 - vi. Tax considerations
 - vii. Company's profile/business;
 - viii. Management and Board;
 - ix. Extract of 3 years audited accounts;
 - x. Reporting accountant's report;
 - xi. Rating reports (where applicable);
 - xii. Extract of Solicitor's opinion on the claims and litigation of the issuer



- xiii. Any other information that the Commission may require from time to time.
- f) Draft trust deed (in the case of a shelf programme, a programme trust deed);
 - g) Draft vending agreement between the issuer and issuing house;
 - h) Draft joint issuing houses' agreement (where applicable);
 - i) Draft underwriting agreement and sub-underwriting agreement (where applicable);
 - j) Form SEC 6 (duly completed)
 - k) Letter of "No Objection" from the relevant regulatory body (where applicable);
 - l) Details of any asset or collateral provided to secure the debt issue, or third-party guarantee (where applicable)
 - m) A copy of the mandate letter from the issuer to the issuing house;
 - n) 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;
 - o) 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;
 - p) Schedule of claims & litigations of the Issuer and the solicitor's opinion;
 - q) Letter of confirmation of going concern from the directors of the issuer;
 - r) Any other document required by the Commission under these Rules and Regulations.



10. Execution of Offer Documents

- a) The copies of the approved prospectus shall be signed by the directors of the issuer and other parties to the offer and together with other offer documents, shall be forwarded to the Commission for registration ~~through the securities exchange~~. 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 or holding a completion board meeting the following executed documents must be filed within 2 business days with the Commission ~~through the securities exchange~~ (where applicable): -
 - i. Executed shelf prospectus;
 - ii. Executed supplementary prospectus/ pricing supplement;
 - iii. Vending agreement (signed and stamped);
 - iv. Programme and series trust deeds (signed and stamped);
 - v. Underwriting agreement (signed and stamped);
 - vi. Sub-underwriting agreement (signed and stamped);
 - vii. Specimen e-allotment notice;
 - viii. Signed newspaper advert material;
 - ix. Power of attorney in case of absentee parties;
 - x. Any other material information.
- c) Where the securities registered by the Commission under this part are not offered to the public or select qualified investors within a period of 6 months after the registration, the Issuer shall revert to the Commission ~~through the securities exchange~~, for a revalidation of the registration before they are offered to the public.

11. Allotment

- a) For securities offered under these rules, whether listed or not, the issuer and the issuing house shall be responsible for the allotment of the securities of the company, in accordance with the guidelines prescribed hereunder.
 - i. No fresh offer of securities shall be made unless the allotment with respect to any previous offer has been concluded or the offer aborted.



- ii. An allotment of securities shall not be made, unless the sums payable on application for the amount stated in the prospectus have been paid to and received by the issuer and issuing house.
- iii. In the case of a fixed price offer, where the issue is less than 50% subscribed, the offer shall be aborted and the Commission shall be notified within one (1) business day.
- iv. Where the offer is aborted, subscribers' funds shall be refunded within two (2) business days.
- v. In the case of an over-subscription, a minimum modified pro-rating approach shall be adopted. This entails that all subscribers to 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 subscribers would be allotted equal proportion of the amount applied for. Where the minimum subscription cannot accommodate all the subscribers, the minimum to be allotted shall be reduced so as to accommodate all the subscribers.
- vi. The issuer/issuing house shall within five (5) working days of allotment, publish the allotment and approval on the issuer's website.
- vii. The Commission may declare any irregular allotment of securities null and void and may prescribe appropriate measures to rectify such irregularities.

12. Listing of Securities

- a) A private company may list its securities on a registered securities exchange upon approval by the Commission.
- b) Such securities shall be listed not later than thirty (30) days after completion of allotment.

13. Summary Report on Completion of Offer

The issuing house shall within twenty-one (21) working days of allotment, file with the Commission a summary report containing among others, the following:



- a) Post allotment information including: -
 - i. summary of applications received;
 - ii. list of allottees of 50,000 units of securities or more and list of all allottees acquiring 5% or more of the securities on offer;
 - 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
- b) Problems arising generally from the conduct of the issue;
- 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;
- 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 ninety (90) days after the conclusion of an issue on the appropriate SEC Form, detailed information on the utilization of proceeds. 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, Issuing House 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 Shariah 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. Code of Conduct

Registered exchanges and capital market operators shall strictly abide by the Code of Conduct for Capital Market Operators and their Employees as set out in the Commission's Rules and Regulations.

17. Sanctions/Penalty

- a) Any person who issues or allots securities without the prior approval of the Commission, or violates any provisions of these rules shall be liable to any one or more of the following sanctions:
- i. A penalty of not less than ₦10,000,000 (Ten Million Naira) and a further sum of ₦100,000 (One Hundred 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. The Commission may ratify or rescind 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.

18. Fee Structure

- a) The following registration fee shall be applicable:
 - First ₦500 Million @ 0.15%
 - Next ₦500 Million @ 0.145%
 - Balance above ₦1 Billion @ 0.1425%
- b) A non-refundable filing fee of ₦100,000 (One Hundred Thousand Naira only) shall be payable to the securities exchange Commission.
- c) The fees chargeable by the parties shall also be in line with the fees regime provided in the Commission's Rules and Regulation.

Justification

These rules are made pursuant to Section 43 (1) (b) of the Business Facilitation (Miscellaneous Provisions) Act 2022 which amends Section 67 (1) of the Investments and Securities Act and empowers the SEC to prescribe regulation for the issuance and allotment of private companies' securities.