

INVESTMENTS AND SECURITIES ACT, 2025

EXPLANATORY MEMORANDUM

This Act repeals the Investments and Securities Act, No. 29, 2007 and enacts the Investments and Securities Act, 2025, to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian Capital Market as well as to regulate the market to ensure capital formation, the protection of investors, maintenance of fair, efficient and transparent market and reduction of systemic risk.

INVESTMENTS AND SECURITIES ACT, 2025

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INVESTMENTS AND SECURITIES ACT, 2025

A Bill

For

An Act to repeal the Investments and Securities Act, No. 29, 2007 and enact the Investments and Securities Act, 2025, to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian Capital Market as well as to regulate the market to ensure capital formation, the protection of investors, maintenance of fair, efficient and transparent market and reduction of systemic risk; and for related matters.

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria —

PART I — ESTABLISHMENT, OBJECTIVES, FUNCTIONS, AND POWERS OF THE SECURITIES AND EXCHANGE COMMISSION

1. (1) There is established the Securities and Exchange Commission (in this Act referred to as "the Commission").
(2) The Commission —
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) may sue and be sued in its corporate name; and
 - (c) shall have the power to acquire, hold or dispose of any property, movable or immovable for the purpose of performing any of its functions under this Act.
- (3) Except as otherwise provided in this Act, the Commission shall be independent in the performance of its functions and objectives under this Act.
2. The Commission shall have its head office in a location which is by law designated as the capital of the Federal Republic of Nigeria and may establish zonal offices in any part of Nigeria in accordance with the decision of the Board of the Commission.
3. (1) The Commission shall be the apex regulatory authority for the Nigerian capital market and shall perform the functions and exercise all the powers prescribed in this Act.
(2) The objectives of the Commission shall be to —
 - (a) act in the public interest having regard to the protection of investors and the maintenance of fair, efficient and transparent markets;

Establishment of the Securities and Exchange Commission

Head office of the Commission

Objectives, functions and powers of the Commission

- (b) protect the integrity of the securities market against all forms of market abuse and insider dealing;
- (c) prevent unauthorised, illegal, unlawful, fraudulent and unfair trade practices relating to securities and investments;
- (d) contribute to the reduction of systemic risk and promote financial stability;
- (e) ensure the development of the capital market and facilitate capital formation for economic development; and
- (g) pursue such other objectives as may be related to those stated in paragraphs (a) - (e).

(3) The Commission shall —

- (a) regulate investments and securities business in Nigeria as defined in this Act;
- (b) register and regulate securities exchanges, commodities exchanges, virtual and digital asset exchanges and other market venues;
- (c) register securities of public companies;
- (d) register and regulate all securities offered to the public as defined in this Act;
- (e) render assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges;
- (f) register, regulate and supervise corporate and individual capital market operators as defined in this Act;
- (g) register and regulate the workings of collective investment schemes and such other schemes as may be approved by the Commission;
- (h) regulate credit enhancement services in the capital market;
- (i) register and regulate securities depository companies, clearing and settlement companies, custodians of assets and securities, collateral managers, credit rating agencies, virtual asset service providers, digital asset operators, credit enhancement facility providers, and such other agencies and intermediaries as may be approved by the Commission;
- (j) register derivative products and regulate the derivatives market;

- (k) regulate the operations of the National Savings Scheme or any other similar scheme as may be established;
- (l) register and regulate self-regulatory organisations, and capital market trade associations to which it may delegate its powers;
- (m) register and regulate collateral management companies, warehouse operators and warehouses which issue warehouse receipt in relation to commodities to be traded on a registered exchange;
- (n) register and regulate the issuance of electronic warehouse receipts, to be traded on a commodity exchange;
- (o) register and regulate online forex trading activities, platforms and intermediaries;
- (p) review and approve takeovers and all forms of business combinations and affected transactions of public companies;
- (q) authorise and regulate cross-border securities transactions;
- (r) prevent and sanction unauthorised and illegal dealing in securities and investment schemes;
- (s) advise the Minister on matters relating to the securities industry; and
- (t) perform such other functions consistent with this Act as are necessary or expedient for giving effect to the provisions of this Act.

(4) In performing its functions under this Act, the Commission shall have the powers to

- (a) intervene in the management and control of capital market operators, public companies and regulated entities which it considers have acted in a manner detrimental to the interest of its investors, shareholders, committed grave corporate governance violations, have failed, is failing or is in crisis, including entering into the premises and doing whatsoever it deems necessary in the interest of the public and for the protection of investors;
- (b) appoint independent directors into the boards of public companies in which the Commission has intervened or taken a regulatory action;

- (c) place directors of public companies on probation for a period of time considered reasonable by the Commission in accordance with regulations made under this Act;
- (d) remove any person associated with misconduct or mismanagement of a public company or capital market operator;
- (e) issue directives to regulated entities on matters relating to activities of the capital market;
- (f) call for information from, inspect, conduct inquiries on, and audit securities exchanges, capital market operators, collective investment schemes and all other regulated entities or associated persons;
- (g) audit, call for the production of records and documents of public companies and other regulated entities;
- (h) call for, or furnish to any person, such information as it may consider necessary for the efficient performance of its functions;
- (i) investigate any person in connection with the violation or suspected violation of this Act or other securities laws, codes and regulations;
- (j) obtain subscriber records held or maintained by internet service providers, telephone service providers and other electronic communication providers located within Nigeria which identify subscribers, payment details and other relevant details including content of communication in connection with the violation or suspected violation of this Act or other securities laws, code and regulations;
- (k) impose administrative caution, lien or seek judicial order to freeze the assets (including stocks and bank accounts) of any person or firm who is being investigated for capital market infractions pending the outcome of investigation;
- (l) in conjunction with the Attorney General of the Federation, provide information and assistance on request to other local and foreign regulators on freezing or sequestration of funds or assets within Nigeria;
- (m) enter, seize property, seal up the premises of persons illegally carrying on capital market operations and investment schemes and seek an order of forfeiture for the recovered assets;
- (n) establish a National Confiscation Wallet and Multi-Party Combination Wallet;

- (o) ensure the domestication of private keys;
- (p) obtain audit work papers, communications and other information relating to the audit or review of financial statements of public companies and all regulated entities;
- (q) disqualify any person considered unfit from being employed or participating or continuing to participate in any arm of the securities industry;
- (r) facilitate the linking of all markets in securities with information and communication technology facilities;
- (s) administer oath on any person subject to any legislation governing the administration of oaths;
- (t) compel attendance for statement or testimony under oath in accordance with the rights and privileges afforded by the laws of the Federal Republic of Nigeria;
- (u) establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by securities exchanges;
- (v) provide for the treatment of unclaimed dividends of public companies, including public companies that are defunct or have ceased to exist;
- (w) take any step necessary for the protection of investors, in the public interest and for the maintenance of fair and orderly markets;
- (x) keep and maintain a register of foreign portfolio investments;
- (y) promote investors' education and the training of all categories of intermediaries in the securities industry;
- (z) promote innovations in the capital market;
- (aa) levy, fees, administrative fines and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of this Act;
- (bb) conduct, cause to be conducted, and disseminate research findings on any matter provided for in this Act;

(cc) relate with domestic and foreign regulators and supervisors of other financial institutions including entering into cooperation agreement on matters of common interest;

(dd) prepare guidelines, organise training programmes and disseminate information necessary for the establishment of securities exchanges and other market venues;

(ee) appoint or procure the appointment of all such qualified persons, professionals or experts to give effect to or for performance of any of its objectives, functions and powers in this Act;

(ff) exercise all the preceding powers against persons, companies, associations and schemes involved in the promotion, distribution or sale of unauthorised or illegal investment schemes and securities; and

(gg) collaborate with any authority in respect to identity management.

(5) Where the Commission is empowered to take any action against an entity or its officers that is also regulated by another regulator, the Commission shall collaborate with the regulator of such entity in taking any regulatory action in accordance with the framework agreed between the Commission and such regulator.

PART II — ESTABLISHMENT OF THE GOVERNING BOARD OF THE COMMISSION

4. (1) There shall be for the Commission, a Governing Board (in this Act referred to as "the Board"), which shall be responsible for the policy and general administration of the affairs of the Commission.

Composition of the Board of the Commission

(2) The Board shall consist of—

(a) a part-time Chairman;

(b) the Director-General who shall be the chief executive and accounting officer;

(c) three full-time Commissioners one of whom shall be a legal practitioner qualified to practice in Nigeria with a minimum of 12 years post call to bar experience;

(d) a representative of the Central Bank of Nigeria not below the rank of a Director;

(e) a representative of the National Pension Commission not below the rank of a Director;

(f) a Director of the Federal Ministry responsible for finance; and

(g) two part-time Commissioners with proven integrity and knowledge of capital market matters, one of whom shall be a legal practitioner qualified to practice in Nigeria with a minimum of 12 years post call to bar experience.

5. (1) The members of the Board shall be appointed by the President on the recommendation of the Minister.

Appointment and
tenure of members
of the Board

(2) The appointment of the Director-General and the three full-time Commissioners shall be subject to confirmation by the Senate.

(3) The Director-General shall hold office for a term of five years in the first instance and may be reappointed for a further term of five years and no more.

(4) The three full-time Commissioners shall hold office in the first instance for a term of four years and may be re-appointed for a further term of four years and no more.

(5) The Chairman and part-time Commissioners (other than the *ex-officio* Commissioners) shall each hold office for a term of four years and no more.

(6) Notwithstanding the provisions of subsections (2) and (3), the President may extend the tenure of the Director-General and any of the full-time Commissioners whose term of office has expired until a successor to such Director-General or full-time Commissioner is appointed:

Provided that such extension shall not exceed a period of three months.

(7) A person shall not be qualified for appointment to the Board of the Commission unless he is a fit and proper person and in the case of —

(a) the Chairman of the Board and Director-General of the Commission, he is a holder of a university degree with not less than 15 years cognate experience in capital market operations;

(b) any other member other than an *ex-officio* member, he is a holder of a university degree with not less than 12 years cognate experience in capital market operations or legal practice as the case may be; and

(c) an *ex-officio* member, he is not below the rank of a director in the Central Bank of Nigeria, the National Pension Commission, and the Federal Ministry responsible for finance.

6. (1) The Board of the Commission shall —

Duties of the Board

- (a) give strategic direction to the Commission, formulate general policies for the regulation and development of the capital market for the achievement and performance of the functions of the Commission;
- (b) approve the audited accounts of the Commission;
- (c) appoint auditors for the Commission;
- (d) consider and approve the annual budget of the Commission as may be presented to it by the management;
- (e) approve the establishment of zonal offices of the Commission;
- (f) establish departments to achieve the objectives and the efficient performance of the functions of the Commission under this Act; and
- (g) carry out such other activities as are necessary and expedient for the purposes of achieving the objectives of the Commission.

(2) The Board shall consider and approve the duties of the full time Commissioners on the recommendation of the Director-General.

(3) The Board may also approve the reassignment of the full time Commissioners by the Director-General.

7. The Director-General and the full time Commissioners shall devote their full time to the service of the Commission and while holding office shall not hold any other office or employment except where appointed by virtue of their office in the Commission into the membership of the Board of any agency of the government in Nigeria or any international organisation to which the Commission is a member or an affiliate.

Director-General and full time Commissioners to be fully devoted to the Commission

8. The Director-General or, any of the Commissioners designated by the Director-General to act in his absence, shall be responsible for the management and administration of the Commission and shall be answerable to the Board of the Commission.

Management of the Commission

9. (1) A member of the Board shall cease to hold office if he —

- (a) is medically certified to be of unsound mind or incapable of discharging his duties owing to ill health;
- (b) is adjudged bankrupt or makes a compromise with his creditors;
- (c) is convicted of a felony or any offence involving fraud or dishonesty by a court of competent jurisdiction;

Disqualification, cessation of appointment and resignation

(d) is found guilty of serious misconduct in relation to his duties; or

(e) is a person who has a professional qualification, and is disqualified or suspended from practicing his profession in any part of Nigeria or any other country by the order of any competent authority made in respect of him personally.

(2) The President may at any time, on the recommendation of the Minister, remove a person to whom subsection (1) applies, provided that no full time member of the Board of the Commission shall be removed from office without the approval of the Senate.

(3) Any member of the Board, including the Director-General, may resign his appointment at any time by giving at least three months' prior notice in writing to the President of his intention to do so.

(4) Where the Chairman, Director-General, or any Commissioner dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, there shall be appointed a fit and proper person to take his place on the Board for the unexpired period of the term of appointment in the first instance in the manner prescribed in section 5 of this Act.

10. (1) The Director-General and the three full time Commissioners shall be paid such remuneration and allowances as may be determined by the Board of the Commission.

Remuneration and allowances of members of the Board

(2) The allowances for the part-time members shall be in accordance with the prevailing guidelines on remuneration for part-time members of public bodies issued by the appropriate agency of the Federal Government.

11. (1) Meetings of the Board shall take place as often as may be required but not less than four times in any financial year of the Commission.

Meetings of the Board

(2) The Chairman shall preside at every meeting of the Board and in his absence, the members present at such meeting shall appoint one of their members to preside.

(3) The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters contained in it.

First Schedule

12. (1) Where a member of the Board is directly or indirectly interested in —

Disclosure by Members of the Board

(a) the affairs of any company or enterprise being deliberated upon by the Board; or

(b) any contract made or proposed to be made by the Board, such member shall, immediately after relevant facts have come to his knowledge, disclose the nature of his interest to the other members of the Board at the meeting of the Board.

(2) A disclosure made under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member after the disclosure shall —

(a) not participate or continue to participate in any deliberation or decision of the Board with regard to the subject matter in respect of which his interest is so disclosed;

(b) not influence or seek to influence a decision to be made in relation to the matter; and

(c) be excluded for the purpose of constituting a quorum of the Board from any deliberation or decision on the subject matter.

(3) The members of the Board of the Commission shall subscribe to and be bound by a code of ethics to be approved by the Minister.

PART III — STAFF OF THE COMMISSION

13. (1) There shall be for the Commission a Secretary who shall be appointed by the Board.

Appointment of the Secretary and other staff of the Commission

(2) The Secretary shall be a legal practitioner of not less than 10 years' post-call experience.

14. The remuneration (including allowances) and the terms and conditions of service of the Secretary and other staff of the Commission shall be determined by the Board.

Remuneration of the Secretary and other staff of the Commission

15. (1) The Secretary shall —

Duties of the Secretary

(a) attend the meetings of the Board, and its committees and render all necessary secretarial services in respect of the meetings and advise on compliance by the meetings with applicable laws and regulations;

(b) keep and maintain records of the Board; and

(c) discharging such administrative and other secretarial duties as may be required by the Board or the Director-General.

(2) The Secretary shall exercise the powers of the Board only with the authority of the Board.

16. (1) Service in the Commission shall be public service for the purpose of this Act and accordingly, every staff of the Commission shall be entitled to pension and other retirement benefits as prescribed by law. Service in the Commission to be pensionable
- (2) Nothing in this section shall prevent the appointment of a person to any office on such terms and conditions, which preclude the grant of pension and other retirement benefits.

PART IV — FINANCIAL PROVISIONS

17. (1) The Commission shall establish and maintain a fund (in this Act referred to as "the Fund") into which shall be paid - Fund of the Commission
- (a) funds provided to the Commission by the Federal Government;
 - (b) penalties, fees, charges and administrative cost of proceedings; and
 - (c) monetary gifts, contributions and other funds that may be received by the Commission.
- (2) The Commission shall maintain and operate bank accounts for funds as approved by the Board.
18. The Commission shall apply the proceeds of the Fund established under section 17 of this Act to — Application of Fund of the Commission
- (a) meet the cost of administration of the Commission;
 - (b) reimburse members of any committee set up by the Commission for expenses duly authorised or approved;
 - (c) pay the salaries, fees, allowances, pensions, gratuities, or other remuneration payable to the staff and members of the Board of the Commission;
 - (d) maintain any property acquired by or vested in the Commission;
 - (e) implement all or any of the functions and powers of the Commission under this Act or any matter connected with those functions and powers;
 - (f) propagate capital market literacy in Nigeria; and
 - (g) meet any capital expenditure approved by the Board.
19. (1) The Commission shall establish a reserve account into which all surpluses from the Fund shall be paid, Reserve account

- (2) Disbursement from the reserve account shall be approved by the Board.
- (3) The Commission may invest funds in the reserve account in securities prescribed by the Trustee Investments Act and such other modifying legislation or in such other securities as may be approved by the Board. Cap. T22, LFN. 2004
- (4) Any deduction to be made from the Commission's fund shall be in accordance with the provisions of the Fiscal Responsibility Act. Act No. 31,2007
20. (1) The Commission may accept gifts of land, money or other testamentary dispositions, endowments and contributions on such terms and conditions, if any, as may be specified by the donor of the gift. Power to accept gifts
- (2) The Commission shall not accept any gift if the conditions attached by the donor are inconsistent with the functions, powers and objectives of the Commission or if the acceptance of the gift would compromise the observance and maintenance of proper conduct and professionalism in the discharge of its duties and performance of its functions.
21. The Commission shall charge, retain and utilise for its purposes — Penalties and fees to be retained and utilised by the Commission
- (a) penalties imposed for violation of this Act and the rules and regulations made under it; and
- (b) fees collected for the services rendered by the Commission under this Act, including recovery of costs of administrative proceedings.
22. The Commission may, subject to the approval of the Board, borrow by way of loan a specified amount of money as it may require for meeting its obligations and performing its functions under this Act. Borrowing by the Commission
23. The Commission may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds as may be approved by the Board. Investments by the Commission
24. (1) The Board shall cause to be prepared, not later than 30 September in each year, an estimate of the income and expenditure of the Commission during the next succeeding year and when prepared, they shall be submitted to the Minister and the National Assembly. Annual estimates, account and audit
- (2) The Commission shall cause to be kept, proper books of records and accounts which shall be audited by auditors appointed by the Board.
25. The Commission, shall not later than three months after the end of each year, submit to the Minister and the National Assembly, a report on the activities and administration Annual report

of the Commission during the immediate preceding year and, shall include in such reports, audited accounts of the Commission and the report of the auditor on the accounts.

PART V — REGISTRATION AND REGULATION OF SECURITIES EXCHANGES,
FINANCIAL MARKET INFRASTRUCTURES AND OTHER SELF
REGULATORY ORGANISATIONS

A — SECURITIES EXCHANGES

26. (1) A person shall not establish or operate a securities exchange as defined in this Act unless such a person has been registered with the Commission in accordance with the provisions of this Act and the rules and regulations made under it.

Registration of a
securities exchange

(2) Where any person contravenes subsection (1) —

(a) the Commission shall halt all of its operations immediately or within such timeframe as the Commission may determine; and

(b) each of the directors, promoters or any person who can reasonably be regarded as being in control of the company shall be deemed to have committed an offence and is liable on conviction to a term of imprisonment of not less than five years or a fine of ₦10,000,000 or both.

(3) The Commission may, in lieu of prosecution under subsection (2), impose a penalty of not less than the prescribed paid-up share capital of the relevant securities exchange as specified by the Commission and a further sum of not less than ₦100,000 for every day the violation continues.

27. (1) A securities exchange may be registered by the Commission as a —

Categories of
securities exchanges

(a) composite securities exchange; or

(b) non-composite securities exchange.

(2) A composite securities exchange shall permit the listing, quotation and trading of all types of securities, commodities or financial products or instruments on its platform and shall perform such functions as may be prescribed by the Commission.

(3) A non-composite securities exchange may be registered by the Commission as —

(a) a mono securities exchange which specialises in the listing, quotation and trading of a particular security, commodity, or financial product or instrument; or

- (b) an alternative trading system which provides trading systems that bring together orders from buyers and sellers and could be set in either a physical location or be made available for trading activities on the internet.

28. (1) Every securities exchange shall be an entity incorporated or registered in Nigeria as defined in section 357 of this Act.

Conditions for
registration of
securities exchanges

(2) An application for registration shall be accompanied by such information and particulars as the Commission may by regulations require.

(3) The Commission may register a body corporate as a securities exchange if it is satisfied that the rules of the body corporate make adequate provisions, where applicable with respect to —

- (a) the exclusion from its membership or trading, persons who are not of good character and who do not possess a high degree of business integrity;
- (b) the expulsion, suspension or discipline of members or participants for conduct inconsistent with just and equitable principles in the transaction of securities business or for contravention of or failure to comply with the rules of the securities exchange or the provisions of this Act;
- (c) the conditions under which securities may be listed, quoted or admitted on that securities exchange;
- (d) the conditions governing dealings in securities by the members or participants;
- (e) the class or classes of securities which may be dealt in by members or participants; and
- (f) a fair representation of persons in the selection of members of the board or participants of the securities exchange and the administration of its affairs and provided that in securities exchanges with listed companies, at least one or more representatives of listed companies and investors shall each be represented by one or more members or participants on its board.

(4) In considering an application for registration, the Commission may have regard to any information in its possession whether provided by the applicant or not:

Provided that any information to be relied upon by the Commission must have been requested from the applicant, and such information shall be verified by the Commission as accurate.

(5) The Commission, in granting approval to register a securities exchange under this section, shall ensure that the interest of the public will be served by the grant of the approval.

(6) The Commission shall issue a certificate of registration to a body corporate registered under this section.

29. (1) The appointment and removal of the chief executive and other principal officers of a securities exchange shall be subject to the prior approval of the Commission in writing.

Appointment and removal of chief executive and principal officers of a securities exchange

(2) The Commission may suspend or remove the chief executive or a principal officer of a securities exchange, if it is satisfied that such officer has contravened, failed or refused to comply with the —

(a) provisions of this Act or any regulations made under it;

(b) rules of the securities exchange;

(c) directives of the Commission:

Provided that the chief executive or such principal officer, shall be given an opportunity to be heard before the suspension or removal from office by the Commission.

30. (1) A securities exchange shall —

Responsibilities of a securities exchange

(a) conduct its business in a fair and transparent manner with due regard to the rights of members or participants and their clients;

(b) ensure compliance with this Act by its members or participants and issuers of securities listed, quoted or admitted on that exchange, report any non-compliance to the Commission and assist the Commission in enforcing the provisions of this Act;

(c) develop and enforce rules, listing requirements and directives as applicable;

(d) inform the Commission of any matter that may pose a systemic risk to the financial markets as soon as it becomes aware of such matter;

(e) notify the Commission as soon as it commences an insolvency proceeding or when such proceeding is commenced against it, or when it has received a notification regarding insolvency proceedings against members or participants; and

(f) do all other things that are necessary for, incidental or conducive to the proper operation of an exchange that are consistent with this Act.

(2) The Commission may, in order to achieve the objectives of this Act, assume responsibility of one or more of the regulatory or supervisory functions referred to in subsection (1);

(3) A securities exchange, shall at the end of every quarter file a detailed report on its surveillance and enforcement activities with the Commission.

(4) Nothing in this section shall preclude the Commission from carrying out inspections or conducting enquiries or audit of any member or participant of a securities exchange.

31. A securities exchange shall maintain proper books of account and records relating to its operations which shall be made available to the Commission for inspection.

Securities exchange
to maintain proper
books of account

32. (1) An amendment shall not be made to the rules or the listing requirements of a securities exchange, whether by way of rescission, amendment, alteration, deletion, substitution or addition, unless the board of the securities exchange, has forwarded a written notice of the proposed amendment to the Commission for approval.

Approval of
amendments to
listing rules

(2) Nothing in this section shall preclude the Commission, after consultation with the board of a securities exchange, from amending the rules or the listing requirements of the securities exchange, by a notice in writing specifying the amendment and the date the amendment shall come into effect.

(3) Any notice under this section may be served personally, electronically or by registered post.

33. Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member or participant of the securities exchange, it shall, within seven days, notify the Commission in writing of the name and other particulars of the member or participant, and the nature of and reason for the action taken by the securities exchange, against the affected member or participant.

Securities exchange
to give notice of
disciplinary actions

34. (1) The Commission may review any disciplinary action taken by a securities exchange, against its members or participants and may affirm or set aside such decision after giving the member or participant and the securities exchange an opportunity of being heard.

Review of
disciplinary actions
taken by a securities
exchange

(2) Nothing in this section shall preclude the Commission from suspending, expelling or otherwise imposing or causing disciplinary action to be taken against a member or participant of a securities exchange where such securities exchange fails to act against such member or participant:

Provided that, before exercising the power conferred upon it by this subsection, the Commission shall give the affected member or participant and the securities exchange an opportunity of being heard.

35. (1) The Commission may, where it deems appropriate, issue directives to a securities exchange with respect to —

Power to issue directives to a securities exchange

- (a) trading on or through the facilities of that securities exchange or pertaining to any securities listed on the securities exchange;
- (b) the manner in which a securities exchange carries on its business including the manner of reporting off-market transactions; or
- (c) any other matter which the Commission considers necessary for the effective administration of this Act.

- (2) A securities exchange that fails or refuses to comply with or respond to a directive given under subsection (1) is liable to a penalty of not less than ₦10,000,000 and a further penalty of not less than ₦500,000 for every day the non-compliance continues.

- (3) Where the Commission, after giving an executive officer of a securities exchange, an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with the provisions of this Act or any regulations made under it or the rules of the securities exchange, the Commission may suspend or remove the executive officer from office.

- (4) The Commission may, in the public interest or for the protection of investors, and after giving the executive officer an opportunity of being heard, direct the securities exchange in writing to remove the executive officer and where the securities exchange fails to comply with the directive of the Commission under subsection (3), the Commission may suspend or remove the executive officer from office.

36. (1) Where the Commission deems it necessary for the protection of persons transacting in particular securities on a securities exchange, it may suspend or prohibit further trading in the securities and give notice in writing to the securities exchange.

Prohibition of trading in particular securities

- (2) Where, after receiving the notice given under subsection (1), the securities exchange fails to take action to prevent trading in the securities to which the notice relates, and the Commission still deems it necessary to prohibit trading in the securities, the Commission may, by notice in writing, to the securities exchange, prohibit trading in the securities for such period, not exceeding 14 days:

Provided that the Commission shall have the power by notice in writing to increase the period for a further period not exceeding 30 days at a time.

(3) A securities exchange which permits trading in securities in contravention of a notice under subsection (2) is liable to a penalty of not less than ₦1,000,000 and a further sum of ₦50,000 for every day the contravention continues.

(4) In addition to the provisions of subsection (3), the Commission may —

- (a) revoke the registration of the securities exchange;
- (b) refuse to consider or process any further request or application for approval, registration or consent made or to be made to the Commission by the securities exchange;
- (c) apply to a court of law under the Companies and Allied Matters Act for —
 - (i) a beneficial, efficient and orderly administration or winding up, as the case may be, of the securities exchange in the best interest of the market, or
 - (ii) an administrator, liquidator or an official receiver, being in each case, a qualified professional and not necessarily a court official, to take-over management under the supervision of the court in respect of the securities exchange as if the Commission were a creditor:

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Provided that a person appointed under subparagraph (i) or (ii) have the same powers which would be available to a liquidator under winding up proceedings;

- (d) after giving opportunities to the executive officers of the securities exchange to be heard, appoint other competent persons to serve in a committee in place of the serving chief executive officer and executive management and board of the securities exchange; or
- (e) apply to the Tribunal for an enforcement order in respect of its directive to suspend trading on the specified securities:

Provided that the Commission may take any of the actions where it considers that the interest of investors or of members of the public or the integrity of the market so requires.

37. (1) The Commission may revoke the registration granted under section 26 of this Act if the entity —

Revocation of
certificate of a
securities exchange

- (a) ceases to operate as a securities exchange within the meaning of this Act;

(b) is wound up;

(c) is operating in a manner detrimental to the interests of investors and the public;

(d) engages in other businesses for which it is not registered in accordance with the provisions of this Act; or

(e) fails to comply with the terms and conditions of the registration granted by the Commission.

(2) A revocation under this section shall not be made unless the securities exchange has been given an opportunity of being heard.

(3) In revoking the certificate of registration of a securities exchange, the Commission shall state the reasons and the effective date for such revocation.

(4) The revocation made under subsection (1) shall contain such transitional provisions as the Commission may deem fit in the public interest or for the protection of investors.

(5) A securities exchange, shall not by reason of complying with such transitional provisions as may be prescribed by the Commission under subsection (4) be regarded as having contravened the provisions of this Act or the rules and regulations made under it.

(6) Revocation of registration under this section shall not operate to —

(a) avoid or affect any agreement, transaction or arrangement entered into by a securities exchange, whether such agreement, transaction or arrangement was entered into before or after the withdrawal of the registration under subsection (1); or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

(7) The Commission shall publish a notice of the revocation on its website or such other medium as it deems fit.

38. (1) The Commission shall issue directives and make rules and regulations to govern the listing of the securities of a securities exchange or an exchange holding company on a related securities exchange, which shall cover —

(a) conflicts of interests that may arise;

Listing of a securities exchange or an exchange holding company on securities exchange

- (b) corporate governance and administration matters;
- (c) listing process and trading requirements; and
- (d) such other matters as may be deemed necessary by the Commission.

(2) The Commission may, by notice in writing, exempt a securities exchange or an exchange holding company from complying with any listing requirement of the related securities exchange.

39. (1) An exchange holding company shall ensure —

Responsibilities of
exchange holding
company

- (a) an orderly and fair market in relation to securities that are traded on the market through the facilities of the securities exchange of the exchange holding company or through the facilities of any of its subsidiaries that is duly approved as a securities exchange;
- (b) the prudent risk management of its business and operations; and
- (c) that the exchange holding company or any of its subsidiaries registered by the Commission to operate as a securities exchange, complies with any lawful requirements placed on it under this Act or the rules and regulations made under it and other laws applicable to it.

(2) In discharging its duty under subsection (1), the exchange holding company shall —

- (a) act in the public interest, and in particular having regard to the protection of investors; and
- (b) ensure that where its own interest conflicts with the interest referred to in paragraph (a), the interest in paragraph (a) shall prevail.

(3) An exchange holding company shall immediately notify the Commission if it becomes aware of —

- (a) any matter which adversely affects or is likely to adversely affect the ability of —
 - (i) the exchange holding company to meet its obligations in respect of its business as an exchange holding company or a securities exchange, including its ability to comply with any requirement as may be specified by the Commission, where applicable, or
 - (ii) any subsidiary of the exchange holding company to meet its obligations in respect of its business, including the ability of any

such subsidiary to comply with any requirement as may be specified by the Commission, where applicable; or

- (b) any irregularity, breach of any provision of this Act or rules and regulations made under it, the rules of a securities exchange or any other matter which, in the opinion of the exchange holding company, indicates or may indicate, that the financial standing or financial integrity of any of its subsidiaries or the chief executive or directors of such subsidiary, as the case may be, is in question or may reasonably be affected.

- (4) Where an exchange holding company, approved as a securities exchange undertakes any function of a subsidiary that is approved as a securities exchange, such exchange holding company shall enter into arrangements as the Commission may determine as to how the duties and obligations of the exchange holding company and the subsidiary, under this Act or rules and regulations made under it are satisfied.

- 40. (1) Where an exchange holding company, a securities exchange, or other similar body intends to enter into an agreement or arrangement, to dispose of or acquire assets, which value threshold has been specified by the Commission, it shall obtain the Commission's prior written consent.

Disposal and acquisition of assets

- (2) Where the Commission makes a specification under subsection (1), it shall have regard to whether the assets referred to in the specification are integral to the operations of the exchange holding company, securities exchange, or any other similar body corporate, as the case may be, or significant in affecting the business direction of such entities.

B — FINANCIAL MARKET INFRASTRUCTURES

- 41. (1) A person shall not establish or operate a financial market infrastructure as defined in this Act unless the person has obtained a certificate of registration from the Commission in accordance with the provisions of this Act and the rules and regulations made under it.

Establishment and operation of a financial market infrastructure

- (2) Where any person contravenes subsection (1) —

- (a) the Commission shall shut down its operations and seal up its premises immediately or within such timeframe as the Commission may determine; and

- (b) each of the directors, promoters or any person who can be regarded as being in control of the company shall be deemed to have committed an offence and is liable on conviction to a fine of not less than the prescribed paid-up share capital of the relevant financial market infrastructure function as specified by the Commission or to imprisonment for a term of not less than five years or both.

(3) The Commission may in lieu of prosecution under subsection (2), impose a penalty of not less than the prescribed paid-up share capital of the relevant financial market infrastructure function as specified by the Commission.

42. (1) An application for approval to establish or operate a financial market infrastructure shall be made in such manner as the Commission may direct.

Registration of
financial market
infrastructures

(2) The Commission, in granting approval to register a financial market infrastructure, shall ensure that it is in the interest of the public to do so.

43. (1) The Commission may, in the interest of the public and for the protection of investors or counterparts, by notice in writing —

Protection of
investors in a
financial market
infrastructure

(a) withdraw or revoke the approval granted to a financial market infrastructure with effect from the date specified in the notice; or

(b) direct the financial market infrastructure to cease to operate or provide such services with effect from the date specified in the notice.

(2) Notwithstanding the withdrawal of approval or the issuance of a directive under subsection (1), the Commission may permit the financial market infrastructure to carry on such activities affected by the revocation as the Commission may specify in the notice published under that subsection for the purpose of —

(a) winding down the operations of the financial market infrastructure or ceasing to provide the services specified in the notice; or

(b) ceasing to provide the services specified in the notice.

(3) The Commission shall not take any action specified under subsection (1) without giving the entity concerned an opportunity to be heard.

(4) Any withdrawal of approval or directive issued by the Commission under subsection (1) shall not operate to —

(a) avoid or affect any agreement, transaction or arrangement entered into through the financial market infrastructure whether such agreement, transaction or arrangement was entered into before, or after the withdrawal of the approval or issuance of the directive; or

(b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

(5) The Commission shall publish the notice of revocation on its website and any other medium as it deems fit.

44. A financial market infrastructure shall make rules for the effective performance of its functions, which shall be subject to the prior approval of the Commission. Financial market infrastructure rules

C — PROVISIONS RELATING TO INSOLVENCY OF FINANCIAL MARKET INFRASTRUCTURES, AND OTHER MATTERS

45. (1) Subject to the provisions of this Part, the insolvency law provisions shall not apply to — Modification of insolvency law rules
- (a) market contracts as defined in this Act;
 - (b) action taken under the rules of a securities exchange with respect to market contracts;
 - (c) action taken under the rules of a financial market infrastructure with respect to market contracts;
 - (d) action taken under the rules of a financial market infrastructure to transfer cleared client contracts, or settle cleared client contracts or cleared house contracts, in accordance with the default rules of the financial market infrastructure;
 - (e) where cleared client contracts transferred in accordance with the default rules of a financial market infrastructure was entered into by a clearing member or client as principal, action taken to transfer client trades, or group of client trades, corresponding to those cleared client contracts;
 - (f) action taken to transfer any collateral or any security over such collateral in conjunction with the transfer of any cleared client contract or client trade as mentioned in paragraphs (d) or (e); and
 - (g) a transfer of any property made by a financial market infrastructure to —
 - (i) any client of a participant or member, where such property comprises the collateral remaining on a client account following the completion of the default management process in respect of the participant or member, or
 - (ii) any other person, in connection with a qualifying property transfer made under paragraphs (d), (e) or (f) and in each case to the extent that such transfer is made in accordance with the default rules of the financial market infrastructure.

(2) The provisions of this section shall apply in relation to insolvency proceedings in respect of a —

- (a) member of a securities exchange;
- (b) member of a financial market infrastructure; or
- (c) party to a market contract begun after a financial market infrastructure has commenced an action as defined under its default rules in relation to a person that is a party to the contract as principal, but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts are to be dealt with in the proceedings.

(3) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or other arrangement until completion of the financial market infrastructure's default proceedings and a debt or other liability which may not be proved or claimed, shall not be taken into account for the purpose of set-off until such completion.

(4) Subject to subsection (3), in an insolvency proceeding, the insolvency office holder appointed is not allowed to select, affirm or avoid individual market contract.

46. Notwithstanding any provision of any other law, none of the items listed in this section shall be regarded as invalid on the ground of inconsistency with the law relating to the insolvency of any person or the distribution of the assets of a person on insolvency, bankruptcy, winding up, receivership or any other arrangement or subject to challenge, avoidance, or revocation under Nigerian law on —

Proceedings of a financial market infrastructure to take precedence over insolvency procedures

- (a) a market contract;
- (b) the default rules of a financial market infrastructure;
- (c) the rules of a financial market infrastructure relating to the settlement of a market contract not dealt with under its default rules;
- (d) the transfer of any clearing member client contract or the settlement of any cleared contract in accordance with the default rules of a financial market infrastructure;
- (e) clearing member client contract transferred in accordance with the default rules of a financial market infrastructure, the transfer of any client trade between a participant and its client, or group of client trades, that corresponds to that clearing member client contract;

(f) a transfer of any collateral or any security over such collateral in conjunction with the transfer of any clearing member client contract or client trade as mentioned in paragraphs (d) or (e);

(g) a qualifying property transfer; and

(h) any net sum certified by a financial market infrastructure under its default rules to be payable to or by a defaulting participant or member:

Provided that nothing in this section shall be construed to limit the exercise of any right of a financial market infrastructure under insolvency laws or as specified in the rules of the financial market infrastructure.

47. (1) A conflicting order shall not be made under the Bankruptcy Act and the Companies and Allied Matters Act or any other law dealing with bankruptcy or insolvency in relation to any matter under subsection (2) and none of those matters shall be regarded as invalid, revocable, or subject to challenge by an insolvency office-holder.

Disapplication of
conflicting orders
under insolvency
laws

Cap. B2 LFN, 2004

(2) The matters to which subsection (1) apply are —

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(a) a market contract;

(b) a disposition of property under a market contract;

(c) the provision of market collateral;

(d) a contract effected by a financial market infrastructure for purposes of realising property provided as market collateral;

(e) a disposition of property in accordance with the rules of a financial market infrastructure as to the application of property provided as market collateral;

(f) a market charge;

(g) the default rules of the financial market infrastructure;

(h) the rules of the financial market infrastructure for the netting and settlement of market contracts;

(i) any default proceedings and action taken under the default rules of a financial market infrastructure including, any transfer prescribed in section 45 (1) (d) - (g) of this Act; and

- (j) any net sum certified by a financial market infrastructure under its default rules.

48. (1) Subject to section 46 of this Act, where a net sum has been certified by a financial market infrastructure under its default rules as payable by or to a defaulter, then such sum is provable in the winding up or administration or, as the case may be, is payable to the relevant office-holder of an insolvency proceeding, and shall be taken into account, where appropriate, for set-off applicable in the case of winding up or administration or other insolvency proceeding, in the same way as a debt due before the commencement of the insolvency proceeding.

Net sum payable upon compliance with default proceedings

(2) Where a sum is taken into account which arises out of a market contract entered into at a time when the creditor had notice that a meeting of creditors had been summoned under any insolvency law or provisions in effect in Nigeria, or that a winding up petition was pending, or that an application for an administration order was pending or that any person had given notice of intention to appoint an administrator, the value of any profit to the creditor from the sum being so taken into account is recoverable from it by the relevant office-holder unless the court directs otherwise, but this provision does not apply where the sum arises from an ordinary contract.

49. (1) A person who has control of any asset of a defaulter has a duty to provide the financial market infrastructure such assistance as the financial market infrastructure may reasonably require for the purpose of its default proceedings.

Duty to provide assistance

(2) Where the control of such assets by the person is as a result of lawfully holding same as a security, an insolvency office holder shall also acknowledge and defer to such secured creditor's right to the extent that the person does not need to elect to surrender such security and is entitled to enforce same without any general insolvency rule restriction.

50. (1) The avoidance of, or the principle in relation to property dispositions, fraudulent preferences and the priority of payments under any law of insolvency does not apply to —

Disapplication of avoidances, fraudulent preference, and priority of payments

(a) a market contract;

(b) margin provided in relation to a market contract;

(c) a default fund contribution to a financial market infrastructure;

(d) a contract made by the financial market infrastructure for realising that margin or contribution or any disposition of property in accordance with the financial market infrastructure's rules applicable to margin;

- (e) any disposition of property in accordance with the rules of the financial market infrastructure as to the application of property provided as margin or as default fund contribution;
- (f) a collateral arrangement under which collateral is provided by a clearing member to a financial market infrastructure;
- (g) a transfer of a clearing member client contract, a client trade or a collateral arrangement; or
- (h) a qualifying property transfer;

Provided that, where the non-defaulter had notice of a winding up petition when entering into a market contract or taking margin or contribution, any resulting profit is recoverable from the non-defaulter unless the court otherwise directs, and this proviso does not apply to market contracts where the person entering into the contract is a financial market infrastructure acting in accordance with its rules, or where the contract is effected under the default rules of a financial market infrastructure.

(2) The following may not be challenged as a transaction at an undervalue, a preference or a transaction defrauding the general body of creditors —

- (a) a market contract to which a securities exchange or financial market infrastructure is a party or which is entered into under its default rules;
- (b) a disposition of property under that market contract;
- (c) margin provided in relation to a market contract, a collateral arrangement, any contract effected by a financial market infrastructure for the purpose of realising the property provided as margin, or any disposition of property in accordance with the rules of the financial market infrastructure as to the application of property provided as margin;
- (d) a default fund contribution made to a financial market infrastructure, any contract effected by a financial market infrastructure for the purpose of realising the property provided as a default fund contribution, or any disposition of property in accordance with the rules of the financial market infrastructure as to the application of property provided as default fund contribution;
- (e) a transfer of a clearing member client contract, a client trade or a collateral arrangement; or
- (f) a qualifying property transfer.

(3) The power to disclaim onerous property or to rescind contracts shall not apply to a

- (a) market contract;
- (b) collateral arrangement;
- (c) transfer of a clearing member client contract, a client trade or a collateral arrangement;
- (d) qualifying property transfer; or
- (e) contract effected by the financial market infrastructure for the purpose of realising property provided as margin in relation to a market contract or as default fund contribution.

(4) Where property, other than land, is held by the financial market infrastructure as margin for a market contract or as default fund contribution —

- (a) the property may be applied in accordance with the financial market infrastructure's rules notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the financial market infrastructure had notice of the interest, right or breach of duty at the time the property was provided as margin or default fund contribution; and
- (b) no execution or other legal process for the enforcement of a judgment or court order may be commenced or continued, and no distress may be levied against the property by a third party, except, in the case of margin or default fund contribution, with the financial market infrastructure's written consent.

51. Without prejudice to any specific provision of this section, the rules of a financial market infrastructure as to —

- (a) the settlement of market contracts and transfer orders,
- (b) the netting of any right and obligation of clearing member or participant in the financial market infrastructure under the rules of the financial market infrastructure or one or more market contracts,
- (c) the set-off of any obligation between the financial market infrastructure and a clearing member or participant or between clearing members or participants in the financial market infrastructure,

Protection of certain
actions of financial
market
infrastructure

- (d) the termination, close out or cancellation of any market contract,
- (e) the transfer of any market contract and associated collateral,
- (f) the enforcement of any security interest of a financial market infrastructure in respect of any collateral provided by a clearing member or participant for any market contract,
- (g) the appropriation of any collateral held by a financial market infrastructure under its default rules, in set-off against any obligation of a clearing member or participant that has become a defaulter under such default rules,
- (h) any qualifying collateral transfer, or
- (i) the certification by a financial market infrastructure as to the final net sum representing any sums from a clearing member or participant to a financial market infrastructure, or from a financial market infrastructure to a clearing member or participant, following the completion of the financial market infrastructure's default proceedings, and any action taken by a financial market infrastructure under such rules,

shall be protected and shall not be subject to challenge under the laws of contract or insolvency or any other provision of law in Nigeria, by any person, clearing member or participant or any insolvency office-holder under any insolvency proceedings.

52. Terms used in this Part shall be construed as defined in section 357 of this Act.

Terms used in this
Part

D — SETTLEMENT FINALITY OF TRANSFER ORDERS

53. (1) The insolvency law shall have no effect in relation to —

Modification of
insolvency laws

- (a) transfer orders effected through a system and action taken under the rules of a system with respect to such orders; and
- (b) collateral security.

(2) The provisions of this section shall apply to insolvency proceedings in respect of a

- (a) participant in a system, or
- (b) system operator of a system,

but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from transfer orders or collateral security fail to be dealt with in the proceedings.

54. (1) The following shall not be regarded as invalid on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up, administration, receivership, or any other arrangement, or in the administration of an insolvent estate or with the law relating to other insolvency proceedings of a country or territory outside Nigeria —

Protection of
transfer orders and
systems

- (a) a transfer order;
- (b) the default arrangements of a system;
- (c) the rules of a system as to the settlement of transfer orders not dealt with under its default arrangements; or
- (d) a contract for the purpose of realising collateral security in connection with participation in a system other than under its default arrangements.

- (2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the Companies and Allied Matters Act or any successor insolvency law, shall not be exercised in such a way as to prevent or interfere with —

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- (a) the settlement in accordance with the rules of a system of a transfer order not dealt with under its default arrangements;
- (b) any action taken under the default arrangements of a system; or
- (c) any action taken to realise collateral security in connection with participation in a system otherwise than under its default arrangements.

- (3) Contracts between a relevant financial market infrastructure and a participant or an insolvent participant are protected from the laws of insolvency, and a financial market infrastructure shall be treated as a secured creditor of priority, irrespective of the nature of the collateral it holds, with respect to the collateral pledged by such insolvent participant.

- (4) Without prejudice to subsections (1) - (3), no provision of any insolvency law in Nigeria shall have the effect to —

- (a) invalidate dispositions made after the commencement of insolvency proceedings;
- (b) enable an insolvency office-holder to disclaim onerous contracts;

(c) invalidate pre-insolvency transactions in particular circumstances, such as transfers made at an undervalue or preferences; or

(d) suspend the enforcement of security, such as in the moratorium applicable in an administration of an insolvent company, or by reason of rights claimed by third-parties in property provided as margin, so as to frustrate the operation of the provisions or actions specified in section 53 of this Act.

(5) A debt or other liability arising out of a transfer order which is the subject of action taken under default arrangements of a financial market infrastructure may not be proved in a winding up, bankruptcy, or administration, until the completion of the action taken under such default arrangements, and a debt or other liability which by virtue of this subsection may not be proved or claimed shall not be taken into account for the purposes of any set-off until the completion of the action taken under default arrangements of the financial market infrastructure.

55. (1) This section shall not apply in relation to any transfer order given by a participant which is entered into a system after a — Limitation of protection

(a) court has made an order of winding up in respect of that participant or a system operator which is not a participant in the system, or

(b) creditors' voluntary winding-up resolution has been passed in respect of that participant, unless the conditions mentioned in either subsection (2) or (4) are satisfied.

(2) The conditions referred to in subsection (1) are that the —

(a) transfer order is carried out on the same business day of the system that the event specified in subsection (1) (a) or (b) occurs; and

(b) system operator can show that it did not have notice of that event at the time the transfer order became irrevocable.

(3) For the purposes of subsection (2) (b) the relevant system operator shall be taken to have notice of an event specified in subsection (1) (a) or (b) if it deliberately failed to make enquiries as to that matter in circumstances in which a reasonable person would have done so.

(4) This Part shall only apply where the following conditions are satisfied —

(a) the system operator is a financial market infrastructure which is registered by the Commission to perform clearing and related functions such as a central counterpart, a settlement agent or a clearing house;

(b) a clearing member of that financial market infrastructure has defaulted;
and

(c) the transfer order has been entered into the system under the provisions of the default rules of the financial market infrastructure that provide for the transfer of the positions or assets of a clearing member on its default.

56. Insolvency proceedings shall not have retroactive effect on the rights and obligations of a participant arising from, or in connection with, its participation in a system earlier than the moment of opening of such proceedings.

No retroactive effect on proceedings

57. (1) Terms used in this Part shall be construed as defined in section 357 of this Act.

Terms used in this Part

(2) Any financial market infrastructure registered by the Commission to perform clearing and related functions such as a central counterpart, a settlement agent or a clearing house shall be treated as the system operator for the purpose of this Part.

E — MATTERS RELATING TO INSOLVENCY LAWS IN OTHER JURISDICTIONS

58. A court shall not, under any law, give effect to any —

Insolvency laws in other jurisdictions

(a) order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Nigeria; or

(b) act of a person appointed outside Nigeria to perform any function under the law of insolvency in a place outside Nigeria, if the making of the order or the performance of the act is prohibited, in the case of a court within Nigeria or an official receiver or liquidator by provisions made by or under sub-part C and D Part V of this Act:

Provided that the making of the order or the doing of the act would be prohibited in the case of a court within Nigeria or an official receiver or liquidator by provisions made by or under sub-part C and D Part V of this Act.

F — SELF-REGULATORY ORGANISATIONS AND TRADE ASSOCIATIONS

59. (1) An entity, trade group or association shall not operate or hold itself out as a self-regulatory organisation unless registered as such by the Commission upon fulfilment of the conditions as the Commission may prescribe.

Registration of a self-regulatory organisation

(2) The Commission shall register an entity as a self-regulatory organisation, where the Commission is satisfied that such entity is able to discharge the obligations of a self-regulatory organisation under this Act and the rules and regulations made under it.

(3) Upon receipt of a no objection from the Commission, an entity registered under subsection (2) may, under the terms of an agreement with another self-regulatory

organisation, take-over some or all of the obligations of such self-regulatory organisation under this Act, the rules and regulations made under it or the rules of that self-regulatory organisation or such other laws or rules as may be applicable to that self-regulatory organisation.

- (4) The Commission may permit the merger of self-regulatory organisations in the overall interest of the capital market.
- (5) A self-regulatory organisation shall perform regulatory functions to the extent that the Commission may prescribe.
- (6) A decision of a self-regulatory organisation on any aggrieved person shall be subject to review by the Commission.

60. A self-regulatory organisation or trade association shall —

Duties of a
registered self-
regulatory
organisation

- (a) at all times act in the public interest to ensure the integrity of the market and the protection of investors;
- (b) supervise the conduct of its members to ensure a fair, orderly and efficient market;
- (c) immediately notify the Commission if it becomes aware of any matter which adversely affects or is likely to adversely affect the interests of the market or the investing public;
- (d) immediately notify the Commission if it becomes aware of any contravention by its members of any provision of this Act or the rules and regulations made under it; and
- (e) not make a decision under its rules that adversely affects the rights of a member unless it has given the affected member an opportunity to make representations to it about the matter.

PART VI — REGISTRATION AND REGULATION OF CAPITAL MARKET OPERATORS

- 61. (1)** A person shall not operate in the Nigerian capital market or carry on investments and securities business unless the person is registered in accordance with this Act and the rules and regulations made under it.
- (2) The Commission shall prescribe the conditions for registration including qualifications and skills required to operate in the Nigerian capital market.
 - (3) An application for registration under this Part shall be in the manner and upon payment of the fees prescribed by the Commission.

Registration of
capital market
operators

- (4) Any person who violates the provisions of subsection (1), commits an offence and is liable on conviction to a fine of not less than N5,000,000 or imprisonment for a term of not less than five years or both.
- (5) The Commission may in lieu of prosecution consider an application from any entity which has violated the provisions of this section, and upon payment of an appropriate penalty as may be determined by the Commission, and fulfilment of other conditions of registration, register such entity.
- (6) The Commission may suspend or revoke a certificate of registration issued under this section for a violation of any provision of this Act or regulations made under it, provided that the person concerned has been given a reasonable opportunity of being heard.
62. (1) The appointment of the chief executive and other principal officers of a capital market operator shall be subject to the prior notification and ratification by the Commission.
- (2) The Commission may suspend or remove the chief executive or a principal officer of a capital market operator, if it is satisfied that such officer has contravened, failed, or refused to comply with the provisions of this Act or any rules and regulations of the Commission.
63. (1) A capital market operator shall keep or cause to be kept such accounting and other records —
- (a) as shall sufficiently show and explain the transactions and financial position of his business and enable true and fair profit and loss accounts and balance sheets to be prepared, regularly; and
- (b) in a manner that shall enable them to be conveniently and properly audited.
- (2) A capital market operator shall be deemed not to have complied with subsection (1) in relation to records unless the accounting and other records of the capital market operator —
- (a) are kept in sufficient detail to show particulars of all —
- (i) money received or paid by the capital market operator, including money paid to or disbursed from a trust account,
- (ii) purchases and sales of securities made by the capital market operator, the charges and credits arising from them, and the names of the buyers and sellers, respectively of each of those securities,

Appointment and removal of chief executive and principal officers of a capital market operator

Accounts to be kept by capital market operator

- (iii) income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid by the capital market operator,
- (iv) the assets and liabilities, including contingent liabilities, of the capital market operator,
- (v) securities which are the property of the capital market operator showing by whom the securities or the documents of title to the securities are held and, where they are held by some other person, whether or not they are held as securities against loans or advances,
- (vi) securities that are not the property of the capital market operator and for which the dealer or any nominee controlled by the security dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as securities for loans or advances made to the capital market operator,
- (vii) purchases and sales of options made by the capital market operator and all fees (being options money) arising from them,
- (viii) arbitrage transactions entered into by the capital market operator, and
- (ix) underwriting transactions entered into by the capital market operator;

- (b) are kept in sufficient detail to show particulars of every transaction by the capital market operator;
- (c) specify the day on which or the period during which each transaction by the capital market operator took place; and
- (d) contain copies of acknowledgements of the receipt of securities or of documents of title to securities received by the capital market operator from clients for sale or safe custody clearly showing the name in which the particular securities are registered.

(3) Without prejudice to subsection (2), a capital market operator shall keep records in sufficient detail to show particulars of all transactions by the capital market operator with or for the account of—

- (a) clients of the capital market operator;

(b) the capital market operator himself; and

(c) employees of the capital market operator.

(4) A director or an officer of a capital market operator who contravenes or fails to comply with any of the provisions of this section, commits an offence and is liable on conviction to a fine of not less than ₦2,000,000 or imprisonment for a term of not less than one year.

(5) The Commission may, in lieu of prosecution for the offence prescribed in subsection (4), sanction a director or an officer of a capital market operator who violates the provisions of this section by imposing an administrative fine of not less than ₦2,000,000 and a further sum of not less than ₦5,000 for every day in which the violation continues.

64. (1) A capital market operator shall maintain separate accounts for transactions carried out on behalf of different clients.

Maintenance of
separate accounts
and payment into
certain trust
accounts

(2) Except as may be otherwise provided in this Act, no capital market operator shall mix the proceeds of the account of a client with other accounts whether belonging to the capital market operator or his clients.

(3) A capital market operator shall establish and keep in a bank one or more trust accounts to be designated or evidenced as trust accounts, into which the capital market operator shall pay all amounts (less any brokerage and other proper charges) received —

(a) from or on account of any person (other than a capital market operator) for the purchase of securities which are not attributable to securities delivered to the capital market operator; and

(b) for or on account of any person (other than a capital market operator) from the sale of securities which are not paid to that person or as that person directs not later than the next business day following the day on which they were received by the capital market operator.

(4) The payment of amounts required by subsection (3) to be made by a capital market operator shall be made by the capital market operator not later than the next business day following the day on which the amounts were received by the capital market operator.

(5) A capital market operator who contravenes or fails to comply with any of the provisions of this section is liable to a penalty of not less than ₦2,000,000 and a further sum of ₦5,000 for every day the violation continues.

65. (1) A capital market operator who withdraws money from a trust account without the requisite authority commits an offence and is liable on conviction to a fine of not less than ₦5,000,000 or imprisonment for a term of not less than one year or both.
- (2) For the purpose of subsection (1), a withdrawal from a trust account shall be deemed to be without requisite authority where the withdrawal is made for a purpose other than —
- (a) to pay the person entitled to the payment;
 - (b) to defray brokerage and other proper charges; or
 - (c) as may otherwise be authorised by law.
- (3) The Commission may, in lieu of prosecution for the offence prescribed under subsection (1), sanction a capital market operator who violates the provisions of this section by imposing a penalty of not less than ₦5,000,000.
- (4) In addition to the penalty prescribed under subsection (3), the Commission shall direct the capital market operator to refund the money received together with the interest at a rate to be determined by the Commission.
66. A capital market operator shall not, except as otherwise provided in this Part, utilise any money held in a trust account for purposes other than the purpose of the trust.
67. Nothing in this section shall be construed as taking away or affecting any lawful claim or lien which a person may have against or upon any money held in a trust account or against or upon any money received for the purchase of securities or from the sale of securities before such money are paid into a trust account and shall not be affected by the provisions of sections 64, 65 and 66 of this Act.
68. (1) A capital market operator or depository shall supply on demand to his client copies of all entries in his books relating to any transaction carried out on behalf of that client and the capital market operator shall be entitled to levy a reasonable charge.
- (2) A client or any person authorised by the client shall be entitled at any time, free of charge either personally or by his agent, to inspect any contract notes and vouchers relating to the transaction.
69. (1) A capital market operator shall keep a register, in the prescribed form, of the securities in which he has an interest.
- (2) Particulars of the securities in which a capital market operator has an interest shall be entered in the register within seven days of the acquisition of the interest.

Penalty for withdrawing money from trust account without authority

Money in trust account not available for personal use

Claims and lien not affected

Right to copies of book entries of transactions and to inspect contract notes

Register of securities

- (3) Where a change in securities, not being a prescribed change, occurs in the interest of a person to whom this Part applies, he shall, within seven days after the change, enter in the register full particulars of the change, including the date of the change and the reason for the change.
 - (4) For the purposes of this subsection, an acquisition or disposal of securities shall be deemed to be a change in the interest of a person.
 - (5) The Commission may extend the provisions of subsection (1) to include any other person whose activities are connected with securities transactions.
70. (1) A capital market operator to whom this Part applies shall in the prescribed form, give notice to the Commission of such particulars relating to the register of securities as may be prescribed including the location of the register. Particulars of register
- (2) The notice required to be given under subsection (1) shall be given in —
 - (a) the case of a person who is required by this Act to hold the Commission's registration; and
 - (b) any other case, within 14 days after becoming a person to whom this Part applies.
 - (3) A person to whom this Part applies shall, within 14 days of his ceasing to be such a person give to the Commission the notice required under subsection (1) and the notice of the cessation.
 - (4) A person who fails or neglects to give the notice required under this section commits an offence and is liable on conviction to a fine of not less than ₦1,000,000.
 - (5) The Commission may, in lieu of prosecution under subsection (4), impose a penalty of not less than ₦1,000,000 and a further sum of not less than ₦5,000 for every day the violation continues.
71. (1) The Commission or any person authorised by it may require any person to whom this Part applies to produce for inspection, the register required to be kept under section 69 of this Act and the Commission or any person so authorised may take extracts from it. Production of register
- (2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) to make a copy of or take extracts from the register commits an offence and is liable on conviction to a fine of not less than ₦500,000.
 - (3) The Commission may, in lieu of prosecution under subsection (2), impose a penalty of not less than ₦500,000 and a further sum of ₦5,000 for every day during which the violation continues.

72. The Commission may supply a copy of the extract of a register obtained under section 71 (1) of this Act to any person who, in the opinion of the Commission, and in the public interest is to be informed of the dealings in securities disclosed in the register.

Extracts of register

PART VII — INSPECTIONS AND INVESTIGATIONS

73. (1) The Commission shall conduct routine and special inspection and investigation of regulated entities.
- (2) Staff of the Commission shall be assigned responsibility for the inspection and investigation of all regulated entities.
- (3) The staff shall discharge supervisory duties in respect of all regulated entities and for that purpose shall —
- (a) have a right of access at all times to the records, books, accounts and vouchers of regulated entities;
 - (b) examine periodically the records, books and affairs of regulated entities; and
 - (c) require from directors, managers and employees of regulated entities such information and explanation as may be deemed necessary to the discharge of their duties under this Act.
- (4) Regulated entities shall produce to the examiners at such times as the examiners may specify, all records, books, accounts, documents and information which they may require.
- (5) For the purpose of this Part, references to examiners are references to the staff referred to in subsection (2).
- (6) This Part shall also apply to an associated person as defined in this Act.

Designation of staff of the Commission for supervision of all regulated entities and securities exchanges

74. The Commission shall, in the case of routine examinations, forward a copy of the report arising from the examination together with its recommendations, to the regulated entity concerned with instruction that it be placed before the meeting of the board of directors of the regulated entity specially convened for the purpose of considering the report and the recommendations on it.

Routine examination and report

75. (1) The Commission shall order a special examination or investigation of the records, books and affairs of a regulated entity where it is satisfied that —

Special examination

- (a) it is in the public interest to do so;

- (b) the regulated entity has been carrying on its business in a manner detrimental to the interest of its clients, beneficiaries and creditors;
- (c) the regulated entity has insufficient assets to cover its liabilities to the clients, beneficiaries and creditors;
- (d) the regulated entity has been contravening the provisions of this Act or the rules and regulations made under it; or
- (e) an application is made for it by —
 - (i) a director or shareholder of the regulated entity, or
 - (ii) a client, beneficiary or creditor of the regulated entity:

Provided that in the case of paragraph (e), the Commission may not order a special examination or investigation of the records, books and affairs of a regulated entity if the Commission is satisfied that it is not necessary to do so.

- (2) For the purpose of subsection (1), the Commission may appoint one or more qualified persons other than or in addition to its staff to conduct special examination or investigation, under conditions of confidentiality, of the records, books and affairs of the regulated entity.

76. (1) Where, after an examination under section 75 of this Act, the Commission is satisfied that the regulated entity is in a grave situation as regards the matters referred to under section 75(1), or the regulated entity informs the Commission that it is — Failing regulated entity

- (a) likely to become unable to meet its obligations under this Act,
- (b) about to suspend its obligations to any extent, or
- (c) insolvent,

the Commission may exercise any of the powers specified in subsection (2).

- (2) The Commission may, in addition to all other powers under this Act —

- (a) prohibit the regulated entity from receiving funds or other assets from the public for a period as may be set by the Commission, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions as may be prescribed by the Commission;

- (b) require the regulated entity to take any step or action or to refrain from taking any step or action, in relation to its operations, directors, or officers as may be stipulated by the Commission;
- (c) remove for reasons to be recorded in writing, with effect from such date as may be set out in the notice, any director, manager or officer of the regulated entity notwithstanding any written law, or any limitations contained in the memorandum and articles of association of the regulated entity;
- (d) in respect of a regulated entity notwithstanding any written law or any limitations contained in the memorandum and articles of association of the regulated entity and for reasons to be recorded in writing —
 - (i) remove from office, with effect from the date as may be specified by the Commission, any director or officer of the regulated entity, or
 - (ii) appoint any person to manage the affairs of the regulated entity in the interim, and provide for the person so appointed to be paid by the regulated entity the remuneration as may be determined by the Commission; or
- (e) appoint any qualified person to advise the regulated entity in relation to the proper conduct of its business, and provide for the person so appointed to be paid by the regulated entity, such remuneration as may be determined by the Commission.

77. (1) Where, after taking steps under section 75 of this Act, the Commission is of the opinion that the state of affairs of the regulated entity concerned has not improved significantly, the Commission may assume control of the regulated entity or appoint persons to do so on its behalf. Control of failing regulated entity

(2) Where the Commission or an appointed person has assumed control of the business of a regulated entity under subsection (1), the regulated entity shall submit its capital market business to the control of the Commission and shall provide the Commission or the appointed person with such facilities as the Commission or the appointed person may require to carry on the business of the regulated entity.

(3) A regulated entity shall cooperate with the Commission at all times.

78. (1) The Commission or an appointed person that assumes control of the business of a regulated entity, shall remain in control until the Commission is satisfied that — Management of failing regulated entity

- (a) adequate provision has been made for the repayment of investors; or

(b) it is no longer necessary to remain in control of the business of the regulated entity.

(2) The cost and expenses of the Commission and an appointed person, may be payable from the funds and properties of the regulated entity as a first line charge.

79. Notwithstanding anything contained in any law or memorandum and articles of association of a regulated entity, where the Commission or an appointed person has assumed control of a regulated entity whose paid-up capital is lost, the Commission may revoke the registration of the regulated entity, and take reasonable steps to protect the assets of investors.

Control of regulated entity with lost paid up capital

80. (1) In relation to the inspection and investigation of the affairs of a regulated entity an examiner may —

Power of examiners in relation to other persons

(a) summon any person, to provide information relating to the affairs of the regulated entity or to produce such document to the examiner or to appear at a time and place specified in the summons to be examined and produce such document;

(b) retain the document received as may be required for purposes of the inspection or any legal or regulatory proceedings;

(c) administer an oath or affirmation or otherwise examine any person referred to in paragraph (a); or

(d) on the authority of an order issued by the Tribunal —

(i) enter any premises and demand for the production of any document relating to the affairs of the regulated entity,

(ii) enter and search any premises for any document relating to the affairs of the regulated entity,

(iii) examine, make extracts from and copy any document relating to the affairs of the regulated entity or, remove such document temporarily for that purpose,

(iv) seize any document relating to the affairs of the regulated entity as the examiner may consider necessary, or

(v) retain any seized document for as long as it may be required for criminal or other proceedings:

Provided that an examiner may proceed without the order, if the person in control of any premises consents to the actions contemplated in this paragraph.

- (2) An order provided in subsection (1) (b) shall be issued, on application by the Commission to the Tribunal.
- (3) The order under subsection (2) may only be issued if it appears from information under oath that there is reason to believe that a document relating to the affairs of the regulated entity being inspected is kept at the premises or in the custody of the person concerned.
- (4) A person whose document has been removed or retained, or from whom a document has been seized under subsection (1) or his authorised representative, may examine, copy such document and make extracts from it under the supervision of the examiner.

81. (1) Where the Commission makes an order revoking the registration of a regulated entity and requiring the business of that regulated entity to be wound up, the regulated entity shall, within 14 days of the date of the order, apply to the Federal High Court for an order of winding up of its affairs and the Federal High Court shall hear the application in priority to all other matters.

Application to the
Federal High Court
for winding up

(2) Where the regulated entity fails to apply to the Federal High Court within the period specified in subsection (1), the Commission may apply to the Federal High Court for the winding up of the regulated entity.

(3) The Commission, if satisfied that it is in the public interest to do so, may, without waiting for the period mentioned in subsection (1) to elapse, appoint any person as the official receiver or provisional liquidator and the person so appointed shall have the power conferred by or under the Companies and Allied Matters Act and shall be deemed to have been appointed official receiver or provisional liquidator by the Federal High Court for the purpose of that Act.

Act No. 3, 2020

(4) This section shall have effect and the provisions of the Companies and Allied Matters Act on winding up shall be construed as if the cancellation of the registration of a regulated entity under this Act had been included as a ground for winding up by the Federal High Court under this section.

(5) The official receiver or provisional liquidator of a regulated entity shall forward to the Commission copies of any returns which he is required to make under the Companies and Allied Matters Act.

PART VIII — MANAGEMENT OF SYSTEMIC RISK

82. (1) Notwithstanding the provisions of any other law, the Commission may, by notice in writing, request any capital market participant to submit any information or document —

Request for information in respect of systemic risk

(a) which the Commission considers necessary for the purpose of monitoring, mitigating and managing systemic risks in the capital market; or

(b) where the Commission receives a request from a financial sector regulator.

(2) For the purpose of subsection (1), where the primary business operations of the relevant capital market participant are under the regulatory purview of another financial sector regulator, the Commission shall liaise and cooperate with such regulator for the purpose of issuing the directive.

(3) Where a notice is issued to a capital market participant under subsection (1), the capital market participant shall provide the required information or document notwithstanding any obligation under any contract, agreement or arrangement whether express or implied to the contrary.

(4) A capital market participant who fails to comply with a notice issued under subsection (1) is liable to a penalty of not less than ₦20,000,000 and a further penalty of not less than ₦50,000 for every day that the violation continues, and in the case of a director, or principal officer of an entity, is liable on conviction to a fine of not less than ₦5,000,000 or imprisonment for a term of one year.

83. (1) The Commission may issue a directive in writing requiring a capital market participant to take such measures as may be deemed necessary in the interest of monitoring, mitigating or managing systemic risk in the capital market or in the interest of the public.

Power of the Commission to issue directive for management of systemic risk

(2) The Commission may, without notice or a hearing, issue a directive or an order under this subsection to suspend trading in a security or related derivative, or to suspend all trading on a recognised exchange or otherwise, if in the opinion of the Commission —

(a) there is systemic risk requiring immediate action to be taken in the public interest; and

(b) the order is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction.

- (3) In exercising its power under this section, the Commission shall also take into consideration the financial stability of the capital market, and the directive shall take effect immediately.
- (4) For the purpose of issuing a directive under subsection (1), where the primary business operations of the capital market participant concerned is under the regulatory purview of another financial sector regulator, the Commission shall liaise and cooperate with such regulator.
- (5) Where a directive has been issued under subsection (2), the capital market participant or any person directly affected by the order and who consider themselves aggrieved by it, shall nonetheless be given an opportunity to be heard within 14 working days after making oral or written representations to the Commission.
- (6) A directive issued under subsection (2) may be amended or modified after the capital market participant or aggrieved person has been given an opportunity to be heard under subsection (5).
- (7) A capital market participant, its officers or any person who fails to comply with the notice issued under subsection (1), is liable to a penalty of not less than ₦5,000,000 and a further penalty of not less than ₦10,000 for every day that the violation continues.

84. (1) Notwithstanding the provisions of any other law, the Commission may for the purpose of monitoring, mitigating and managing systemic risk in the capital market or contributing towards financial stability —

Arrangements with other supervisory authorities

- (a) provide assistance to any financial sector regulator;
 - (b) obtain any information or document from, or share any information or document with, any financial sector regulator if the Commission considers it necessary that such information or document be so obtained or shared in managing systemic risk in the capital market or promoting financial stability; or
 - (c) enter into arrangements to cooperate with any financial sector regulator to co-ordinate stability measures.
- (2) Where the Commission shares any information or documents with any financial sector regulator, such financial sector regulator shall give an appropriate undertaking for protecting the confidentiality of such information or document and the purpose for which the information or document may be used.

85. Terms used in this Part shall be construed as defined in section 357 of this Act.

Terms used in this Part

PART IX — REGULATION OF SECURITIES

A — REGISTRATION OF SECURITIES

86. (1) All securities to be issued under this Act shall be registered with the Commission under the terms and conditions contained in this Act and the rules and regulations made under it.

Registration of
securities to be
issued under this
Act

(2) The issuer shall file with the Commission a registration statement which shall contain such information and shall be signed by such persons as the Commission may prescribe.

(3) A registration statement shall be deemed effective only as to the securities specified in it as proposed to be issued.

(4) The Commission shall issue a certificate of registration in respect of securities registered by it.

(5) Securities shall not be issued, transferred, sold, or offered for subscription or sale to the public without the prior registration of the securities with the Commission.

(6) A person who proposes to make available, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, outside Nigeria, securities of a public company or other securities to be registered under this Act, or to list such securities on a securities exchange outside Nigeria shall seek the prior approval of the Commission and where applicable, report to a securities exchange registered with the Commission.

(7) A person who issues, transfers, sells, or offers securities for subscription or sale to the public, without the prior registration of the securities with the Commission commits an offence and is liable on conviction to a fine of not less than 50% of the value of the securities offered to the public, and in the case of a director or relevant principal officer of the entity, a fine of not less than 10% of the value of the securities offered to the public or imprisonment for a term of not less than five years.

(8) The Commission may, in lieu of a prosecution under subsection (7), direct the affected entity or individual to refund the money received together with interest on it at the prevailing commercial bank rate.

87. (1) Securities registered by the Commission, may be issued or transferred electronically or by any other means or system approved by the Commission under such terms and conditions as the Commission may prescribe.

Electronic and other
means of issuing
and transferring
securities

(2) The Commission shall prescribe the documents and information to be provided by the issuer, an issuing house, stockbroker or any other person authorised by the Commission to offer securities for sale or subscription to the public.

B — CORPORATE RESPONSIBILITY OF PUBLIC COMPANIES

88. (1) A public company whose securities are required to be registered under this Act shall file with the Commission on an annual basis, its audited financial statements and such other periodic returns as may be prescribed by the Commission.

Filing of annual and periodic reports with the Commission

(2) The chief executive officer and the chief financial officer or officers or persons performing similar functions in a public company filing periodic or annual reports under subsection (1), shall certify in each annual or periodic report filed, that —

(a) the signing officer has reviewed the report;

(b) based on the knowledge of the officer, the report does not —

(i) contain any untrue statement of a material fact, or

(ii) omit to state a material fact, which may make the statement, misleading in the light of the circumstances under which such statement was made;

(c) based on the knowledge of such officer, the financial statements and other financial information included in the report fairly present in all material respects the financial condition and results of operations of the company as of, and for the period presented in the report;

(d) the signing officers —

(i) are responsible for establishing and maintaining internal controls,

(ii) have established such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities particularly during the period in which the periodic reports are being prepared,

(iii) have evaluated the effectiveness of the company's internal controls as of date within 90 days prior to the report, and

(iv) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(e) the signing officers have disclosed to the auditors of the company and audit committee —

(i) all significant deficiencies in the design or operation of internal controls which may adversely affect the company's ability to record, process, summarise and report financial data and have identified for the company's auditors any material weakness in internal controls; and

(ii) any fraud, whether or not material, that involves management or other employees who have significant role in the company's internal controls; and

(f) the signing officers have identified in the report whether or not there were significant changes in internal controls or other factors that may significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

89. (1) A public company shall establish a system of internal controls over its financial reporting and security of its assets and the board of directors shall ensure the integrity of the company's internal controls and reporting.

System of internal control of public companies

(2) The board of directors of a public company shall report on the effectiveness of the company's internal control system in its annual report.

(3) In this section, "internal control" means policies, procedures and practices prescribed by management to ensure safety of assets, accuracy of financial records and reports, achievement of corporate objectives and compliance with laws, regulations and applicable corporate governance standards.

(4) A public company which contravenes the provisions of section 88 and this section, is liable to a penalty of not less than ₦5,000,000 and a further penalty of ₦50,000 per day for every day the violation continues.

90. A person shall not carry on the business of auditing of a public company unless that person is registered by the Commission on such terms and conditions as may be prescribed.

Auditors of public companies to register with the Commission

91. An auditor of a public company shall, in his audit report to the company, issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the public company.

Duty of auditor to report on internal controls of public companies

92. (1) A public company which appoints an auditor that is not registered with the Commission is liable to a penalty of not less than ₦5,000,000 and a further penalty of ₦50,000 per day for the period the violation continues.

Penalties for non-compliance with sections 90 and 91

- (2) An auditor who contravenes the provisions of sections 90 and 91 is liable to a penalty of not less than ₦1,000,000 and a further penalty of ₦5,000 per day for the period the violation continues.

C — TREATMENT OF UNCLAIMED DIVIDENDS OF PUBLIC COMPANIES

93. (1) Unclaimed dividends under the regulatory purview of the Commission shall be treated as prescribed in the rules and regulations made under this Act. Unclaimed dividends of public companies
- (2) A person shall not treat unclaimed dividend as prescribed in subsection (1) in a manner other than as prescribed in the rules and regulations made under this Act.
- (3) A person who contravenes this section or the rules and regulations made under this Act, commits an offence and is liable on conviction to a fine of not less than ₦10,000,000 or imprisonment for a term of not less than five years or both.
- (4) The Commission may, in lieu of prosecution, sanction a person who violates the provisions of this section and the rules and regulations made under it, to a penalty of not less than ₦10,000,000 and ₦50,000 per day for every day the violation continues.

D — GENERAL PROVISIONS

94. Where a contravention of any provision under this Part is committed by a body corporate and it is proved that the contravention has been committed — Contravention of this Part by a body corporate
- (a) with the connivance of, or as a result of any neglect on the part of a director, manager, secretary or other similar officer, servant or agent of the body corporate or any person purporting to act in any such capacity, or
- (b) as a result of a director, manager, secretary or other similar officer, servant or agent of the body corporate or any person purporting to act in any such capacity, knowingly or wilfully authorising the contravention,
- the director, manager, secretary or other similar officer, servant or agent of the body corporate or any person purporting to act in any such capacity shall be deemed liable to the same extent as the body corporate.

E — INVITATIONS TO THE PUBLIC

95. (1) A person shall not make any invitation to the public to acquire or dispose of any securities or to deposit money with any body corporate for a fixed period or payable at call, whether bearing or not bearing interest unless the person or body corporate concerned is — Control of invitations to the public

- (a) a public company and the securities it seeks to offer to the public have been registered with the Commission;
- (b) a statutory body or bank established by or under an Act of the National Assembly and is empowered to accept deposits and savings from the public or issue its own securities, as defined under this Act, promissory notes, bills of exchange and other instruments;
- (c) an entity licensed by the Central Bank of Nigeria and empowered to accept deposits and savings from the public;
- (d) a collective investment scheme;
- (e) government body or an agency of a government body, supranational body or such other entity approved by the Commission to issue securities under this Act; or
- (f) a free trade zone entity whose capital raising exercise has been approved by the Commission:

Provided that where the Commission approves a capital raising exercise by an entity operating within a free trade zone, such entity shall thereupon become subject to relevant tax laws and regulations in Nigeria; and nothing in this subsection shall render unlawful the sale of any shares by or under the supervision of any court or tribunal as may be authorised by law.

- (2) The term commercial or investment business activities referred to in subsection (1) means any activity relating to micro, small and medium scale enterprise, venture capital and private equity funding or such other commercial or investment business activities as the Commission may determine.
- (3) The provisions of section 142 of Companies and Allied Matters Act, shall not be applicable to issuers of securities under this Act.
- (4) Where an invitation to the public is made in breach of subsection (1), all persons making the invitation and every officer who is in default or any body corporate making the invitation shall each be separately liable to a penalty of at least 10% of the gross value of the securities or deposits received in the case of a body corporate and ₦2,000,000 in the case of an individual.
- (5) Where, any person acquires or disposes of securities, or deposits money with any company, as a result of any invitation to the public made in breach of subsection (1), he shall be entitled to —

- (a) rescind such transactions; and

(b) either in addition to or in place of rescinding the transaction, recover compensation for any loss sustained by him from any person who is liable in respect of the breach.

- (6) Where, in accordance with subsection (5), a person claims to rescind any transaction, he shall do so within a reasonable time and shall not be entitled to rescind any transaction with the body corporate or to recover compensation from it unless he takes steps to rescind the transaction before the commencement of the winding-up of the body corporate:

Provided that the application of this subsection to bar the right of a claimant to rescind a transaction shall not prejudice his right to recover compensation from any person other than the body corporate.

96. (1) A person making an invitation to the public to deposit money with it shall, prior to the making of the invitation, obtain the written consent of the Commission and shall only make the invitation in accordance with such conditions and restrictions as may be imposed by the Commission.

Invitation to the
public to deposit
money

- (2) The Commission may grant or withhold the consent referred to under subsection (1) and may require that any advertisement or circular to be used in connection with the invitation shall be registered with or approved by the Commission.

- (3) Where any advertisement or circular used in connection with the invitation contains any untrue statement, subject to subsection (4), any person who made the invitation and every person who was a director of a company making the invitation at the time the advertisement or circular was published is liable to pay compensation within one month to any person who deposited money with the body corporate having relied on the advertisement or circular, for any loss they may have sustained by reason of such untrue statement.

- (4) A person shall not be liable under subsection (3), if he proves that —

(a) he had reasonable ground to believe and did believe up to the time of publication of the advertisement or circular that the statement was true; or

(b) the advertisement or circular was published without his knowledge and that on becoming aware of its publication he immediately gave reasonable public notice that it was published without his knowledge.

- (5) Where any person or body corporate deposits any money with a body corporate as a result of an untrue statement of a material fact made, whether innocently or fraudulently, in any advertisement or circular published in connection with any invitation to the public made by or on behalf of that body corporate, the person shall be entitled to require that person or the body corporate immediately to repay such

money with interest at the current interbank rate per annum or such higher rate as may have been agreed to be paid on the deposit.

97. (1) For the purposes of this Act, an invitation shall be deemed to be an invitation to the public if it is an offer or invitation to make an offer which is —

Meaning of
invitation to the
public

- (a) published, advertised or disseminated by newspaper, broadcasting, cinematograph, electronic or any other means;
- (b) made to or circulated among persons whether selected as members or as debenture holders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner;
- (c) made to one or more persons upon the terms that the person to whom it is made may renounce or assign the benefit of the offer or invitation or any of the securities to be obtained under it in favour of any other person; or
- (d) made to one or more persons to acquire securities dealt in by a securities exchange or in respect of which the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange.

- (2) Nothing contained in this section shall be taken as requiring any invitation to be treated as an invitation to the public if it can properly be regarded in all circumstances as not being calculated to result, directly or indirectly, in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it.

- (3) For the purpose of this section, the issuance of any form of application for securities or of any form to be completed on the deposit of money with a company shall be deemed to be an invitation to acquire those shares or to deposit money.

98. Where an issuer allots or agrees to allot any of its securities to any person with a view to the public being invited to acquire any of those securities, for the purposes of this Act, any invitation so made shall be deemed to be an invitation to the public by the issuer as well as by the person actually making the invitation, and a person who acquires any such securities in response to the invitation shall be deemed to be an allottee from the company of those securities:

Offers for sale
deemed to be made
by an issuer

Provided that where —

- (a) an invitation to the public is made in respect of such securities within six months after the allotment or agreement to allot, or

- (b) at the date when the invitation to the public was made, the whole consideration to be received by the issuer in respect of those securities had not been so received,

it shall be deemed, unless the contrary is proved, that the allotment or agreement to allot was made by the issuer with a view to an invitation to the public being made in respect of those securities.

99. (1) Subject to the provisions of section 104 of this Act, a person shall not issue any form of application to deposit money for the purpose of subscribing to, purchasing or in any way acquiring the securities of a body corporate unless the form is issued with a prospectus which complies with the requirements of section 107 of this Act.

Form of application for shares to be issued with prospectus

- (2) Where the form of application to deposit money referred to in subsection (1) is issued in respect of debenture securities, the form shall in addition be accompanied with a trust deed or agency agreement.

- (3) This section shall not apply if it is shown that the form of application was issued either in —

(a) connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to the securities; or

(b) relation to securities which were not offered to the public.

- (4) A person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of not less than N5,000,000 or imprisonment for a term of not less than two years.

- (5) The Commission may, in lieu of a prosecution under subsection (4), impose a penalty of not less than N10,000,000 and a further sum of not less than N20,000 for everyday which the violation continues.

100. A prospectus issued by or on behalf of an issuer or in relation to an intended issue shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Effective date of a prospectus

101. (1) Subject to the provisions of section 104 of this Act, every prospectus issued by or on behalf of a company, or by or on behalf of any person or body corporate who is or has been engaged or interested in the formation of the company, shall state the matters specified in Part I of the Third Schedule to this Act and set out the reports specified in Part II of that Schedule.

Contents of a prospectus

Third Schedule

- (2) Any condition requiring or binding an applicant for securities to waive compliance with any requirement of this section or purporting to affect him with notice of any

contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Where there is non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if he proves that —

- (a) as regards any matter not disclosed, he was not a party to it;
- (b) the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, were immaterial, having regard to all the circumstances of the case, and is to be excused:

Provided that, where there is a failure to include in a prospectus a statement with respect to the matters specified by regulations made under this Act, no director or other person shall incur any liability in respect of the failure, unless it is proved that he had knowledge of the matters not disclosed.

102. The provisions of sections 99 and 101 of this Act shall not apply to an issue —

- (a) made to the existing members of a company or to a prospectus or form of application relating to shares in the company whether or not an applicant for shares has the right to renounce in favour of other persons; or
- (b) of a prospectus or form of application relating to securities which are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a securities exchange.

Exemption from application of provisions relating to prospectus in certain cases

103. (1) A person shall not without the prior approval of the Commission issue, circulate, publish, disseminate or distribute any notice, circular or advertisement to the public which —

- (a) offers for subscription or purchase of securities in a company;
- (b) invites subscription for or purchase of securities; or
- (c) calls attention to —
 - (i) an offer or intended offer for subscription or purchase of securities in a company,

Prohibition of issuance or circulation of certain notices, circulars and advertisements

(ii) an invitation or intended invitation to subscribe for or purchase any such securities, or

(iii) a prospectus.

(2) This section shall not apply to a —

(a) notice or circular which relates to an offer or invitation not made or issued to the public;

(b) registered prospectus;

(c) notice, circular or advertisement which calls attention to a registered prospectus and states that allotments of, or contracts with respect to the securities referred to in the prospectus shall be made only on the basis of one of the forms of application referred to in and attached to a copy of the prospectus and contains no other information or matter other than some or all of the following information —

(i) the number and description of the securities to which the prospectus relates,

(ii) the name of the issuer, the date of its incorporation and the number of the issuer's issued securities and where the issue price of any securities is to be paid by instalments, the amounts paid and unpaid on those issued securities,

(iii) the general nature of its main business or the proposed main business of the issuer,

(iv) the names, addresses and occupation of the directors or proposed directors,

(v) the names and addresses of capital market operators to the issue,

(vi) the name of the securities exchange, if any, of which the brokers and issuing houses to the issue are members or participants, and

(vii) particulars of the time and place at which copies of the registered prospectus and form of application for the shares to which it relates may be obtained; and

(d) notice or circular which —

(i) accompanies a notice or circular referred to in paragraphs (a) or (c),

(ii) is issued or circulated by a person whose ordinary business includes advising clients in connection with their investments and is issued or circulated only to clients so advised in the course of that business,

(iii) contains a statement that that person recommends the investment to which it or the accompanying document relates, and

(iv) contains a statement that the person making the recommendation is an underwriter or sub-underwriter as the case may be.

(3) This section applies to notices, circulars and advertisements published or disseminated by a newspaper, radio or television broadcasting, cinematograph, electronic media platforms, or any other means.

(4) A person who —

(a) contravenes the provisions of this section, or

(b) authorises or permits an act which constitutes a contravention of this section,

commits an offence and is liable on conviction to a fine of not less than N5,000,000 or imprisonment for a term of not less than three years or both.

(5) The Commission may, in lieu of prosecution under subsection (4), sanction a person who contravenes the provisions of this section by imposing a penalty of not less than N50,000,000 and a further sum of not less than N20,000 for every day the violation continues.

(6) Where a notice, circular or advertisement relating to a company is issued, circulated, published, disseminated or distributed in contravention of this section by or with the authority or permission of an officer of the company, the company is liable to a penalty of not less than N5,000,000 and a further sum of not less than N5,000 for every day the violation continues.

104. (1) Where it is proposed to offer any securities to the public by a prospectus issued generally and an application is made to a securities exchange for permission for those securities to be dealt in or quoted on that securities exchange, the securities exchange may exempt the applicant from compliance with the Third Schedule to this Act.

Exemption
certificate and effect
Third Schedule

(2) In considering an application under subsection (1), the securities exchange shall have regard to the proposal as stated in the request as to the size and other circumstances of the issue of securities and as to any limitations on the number

Third Schedule

and class of persons to whom the offer is to be made and if compliance with the requirements of the Third Schedule will be unduly cumbersome.

105. (1) A prospectus inviting persons to subscribe for securities of a company and including a statement purportedly made by an expert shall not be issued unless —

Expert's statement
on prospectus

(a) the expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue of the statement included in the form and context in which it is; and

(b) a statement appears in the prospectus that the expert has given and has not withdrawn his consent.

- (2) Where any prospectus is issued in contravention of this section, the company and every person who is a party to the issue commits an offence and is liable on conviction to a fine of not less than N2,000,000 or imprisonment for a term of not less than three years or both.

- (3) The Commission may, in lieu of prosecution for the offence prescribed in subsection (2), impose a penalty of not less than N2,000,000 and a further penalty of not less than N5,000 for every day the violation continues.

106. Notwithstanding the provisions of section 95 of this Act, no person shall make an invitation to the public to acquire or dispose of any securities except —

Prospectus on
invitation to the
public to acquire or
dispose of securities

(a) within six months prior to the making of the invitation, a prospectus relating to such securities and complying in all respects with the relevant provisions of sections 103, 104 and 107 of this Act has been delivered to the Commission and registered by it, in accordance with section 108 of this Act; and

(b) every person to whom the invitation is made is supplied with a true copy of such prospectus as filed with the Commission.

107. (1) Except as provided in section 104 of this Act, where an issuer invites the public to acquire its securities, the prospectus referred to in section 101 of this Act shall state the matters specified in Part I of the Third Schedule to this Act and set out the report specified in Part II of that Schedule.

General and
restricted invitations
to the public

Third Schedule

- (2) Subsection (1) shall not apply to an invitation by an issuer in respect of its shares —

(a) made solely to the existing shareholders of that issuer; or

(b) which in all respects is uniform with its existing listed shares.

(3) A prospectus relating to any invitation to the public to acquire or dispose of any securities of an issuer, being an invitation not falling within subsection (1) either because it does not invite the public to acquire any securities or because it is excluded from the ambit of that subsection, may not state all the matters or set out the reports specified in the Third Schedule to this Act but shall not contain any untrue statement, and if the securities to which it relates are dealt in on any securities exchange or if application has been, or is being made to a securities exchange for permission to deal in those securities, the prospectus shall —

Third Schedule

(a) state that the securities to be dealt in on that securities exchange or, as the case may be, that application has been or is to be made for permission for the securities to be dealt in on that securities exchange;

(b) state whether or not that securities exchange is an approved trading facility within the meaning of this Act; and

(c) contain the particulars and information required by that securities exchange.

(4) An invitation falling within subsection (1) shall, in this Act be described as a "general invitation" and an invitation falling within subsection (2) shall, in this Act be described as a "restricted invitation".

108. (1) A prospectus shall not be issued by or on behalf of an issuer or in relation to an intended issuer unless, on or before the date of its publication, there has been delivered to the Commission a copy of the prospectus for registration, signed by every person who is named in it as a director of the issuer, or by his agent authorised in writing and having endorsed on it or attached to it —

Registration of prospectus

(a) any consent to the issue of the prospectus required by section 105 of this Act from any person as an expert;

(b) in the case of a prospectus issued generally, a copy of any contract required by paragraph 11 of the Third Schedule to this Act to be stated in the prospectus;

Third Schedule

(c) in the case of a prospectus deemed by virtue of a certificate granted under section 104 of this Act to comply with the requirements of the Third Schedule, a contract or a copy of the contract or a memorandum of a contract which was made available for inspection in connection with the application made under that section to the securities exchange; and

Third Schedule

(d) where the persons making any report required by Part II of the Third Schedule to this Act have made in it or without giving the reasons have indicated in it any such adjustments as are mentioned in paragraph 21 of

Third Schedule

the Third Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.

(2) The references in subsection (1) (b) and (c) to the copy of a contract required to be endorsed on or attached to a prospectus shall in the case of a —

(a) contract wholly or partly in any language other than English, be taken as references to a copy of a translation in English of the parts of the contract that are in any other languages other than English from the original language of the contract being a translation certified in any manner acceptable to the Commission to be a correct translation; or

(b) copy of a contract or memorandum of a contract required to be made available for inspection under subsection (1) (c), and which is wholly or partly in any language other than English, include a reference to a copy of a translation of the contract or memorandum or a copy embodying a translation of a part of it and certified in a manner acceptable to the Commission.

(3) Every prospectus shall, on the face of it —

(a) state that a copy has been registered as required by this section; and

(b) specify or refer to statements included in the prospectus which specify any document required by this section to be endorsed on or attached to the copy so delivered.

(4) The Commission shall not register a prospectus unless it is satisfied that —

(a) it is dated and signed as required by this section;

(b) it has endorsed on it or attached to it the documents, if any, specified; and

(c) the prospectus otherwise complies with the requirements of this Act.

(5) Where the Commission refuses to register a prospectus on the ground that it fails to comply with the requirements of this Act, an aggrieved person may appeal to the Tribunal established by this Act within 21 days after notification of the refusal by the Commission.

(6) Where a prospectus is issued without a copy of it being registered by the Commission or without the copy so registered having endorsed on it or attached to it the documents required under this Act, the issuer and every person who is a party to the issue of the prospectus, shall be jointly and severally liable to a penalty of not less than N20,000,000 and a further sum of N50,000 for every day the violation continues from the date of issue of the prospectus, or such other sum as the Commission may deem necessary in the circumstance.

109. An issuer shall not vary the terms of a contract referred to in the prospectus or a statement in lieu of prospectus, except with the approval of the Commission and in the case of a company, the consent of shareholders in addition to the approval of the Commission.

Contract in prospectus not to be varied without leave

110. (1) Where an issuer offers or agrees to offer securities with a view to offering those securities to the public, any document by which the offer is made shall be deemed to be a prospectus so issued, and shall have effect as if —

Document of offer of securities to be deemed a prospectus

(a) the securities have been offered to the public for subscription; and

(b) persons accepting the offer are subscribers for those securities but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise.

(2) For the purposes of this Act, unless the contrary is proved, it shall be deemed that an allotment of, or an agreement to allot securities was made with a view to the securities being offered to the public if it is established that —

(a) an offer of all or any part of the securities is made, or

(b) at the date when the offer was made the whole consideration to be received by the issuer in respect of the securities had been so received.

(3) Any prospectus issued under this section shall comply with a prospectus issued under section 101 of this Act and provide the following information; the —

(a) amount of the consideration received by the issuer in respect of the securities to which the offer relates;

(b) place and time where the relevant offer documents may be inspected, and

(c) identity of any person making the offer, who shall be deemed to be a director or the equivalent of the issuer.

(4) Where a person makes an offer to which this section relates, it shall be sufficient if the document is signed on behalf of the issuer by two directors or the equivalent or by such other persons as may be authorised by the issuer.

111. For the purposes of the provisions of this Act, a statement —

Interpretation as to prospectus

(a) included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

- (b) shall be deemed to be included in a prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated or issued with it.

112. A statement in lieu of prospectus shall be in the form and contain the particulars set out in Part I of the Fourth Schedule to this Act and, in the cases mentioned in Part II of that Schedule, set out the reports specified in it, and Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

Form of statement in lieu of prospectus
Fourth Schedule

113. (1) Where a prospectus invites persons to subscribe for securities, the persons referred to in subsection (2) shall be liable to pay compensation to all persons who subscribe for such securities relying on the prospectus for the loss or damage they may have sustained by reason of any untrue statement or misstatement included in it.

Civil liability for misstatements in prospectus

(2) A person liable to pay compensation under subsection (1) includes —

- (a) any director of the issuer or the equivalent at the time of the issue of the prospectus;
- (b) any person who consented to be named and is named in the prospectus as a director of the issuer or the equivalent or as having agreed to become a director or the equivalent either immediately or after an interval of time;
- (c) any employee of the issuer who participated in or facilitated the production of the prospectus;
- (d) the issuing house and its principal officers;
- (e) a person named in the prospectus as stockbroker, underwriter, auditor, banker or solicitor of the issuer or other expert in relation to the offer;
- (f) promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation; or
- (g) a person named in the prospectus with his consent as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus.

(3) Where under section 105 of this Act the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason only of his having given the consent be liable under this section as a person who has authorised

the issue of prospectus except in respect of an untrue statement or misstatement purported to be made by him as an expert.

(4) A person shall not be liable under subsection (1) if he proves that —

- (a) having consented to become a director of the issuer or the equivalent, he withdrew his consent in writing before the issue of the prospectus, and that it was issued without his authority or consent;
- (b) the prospectus was issued without his knowledge or consent, and that on becoming aware, he immediately gave reasonable public notice that it was issued without his knowledge or consent;
- (c) after the issue of the prospectus and before allotment, he, on becoming aware of any untrue statement or misstatement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or
- (d) as regards every untrue statement or misstatement —
 - (i) not purporting to be made on the authority of an expert, or of an official public document or statement, he had reasonable ground to believe and did up to the time of the allotment of the securities, as the case may be, believed that the statement was true,
 - (ii) purporting to be a statement by an expert and he had reasonable ground to believe that the person making the statement was competent to make it and that person had given the consent required by section 105 of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, and
 - (iii) purporting to be a statement made by an official person or contained in what purports to be a copy of or an extract from an official public document, it was a correct and fair representation of the statement or copy of or extract from the document.

(5) The provisions of subsection (4) shall not apply to a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert in the case of a person liable by reason of his having given a consent required of him by section 105 of this Act.

(6) A person who, apart from this subsection, would under subsection (1) be liable, by reason of his having given a consent required of him by section 105 of this Act as a person who has authorised the issue of a prospectus in respect of an untrue

statement purporting to be made by him as an expert, shall not be so liable if he proves that —

- (a) having given his consent under section 105 of this Act to the issue of the prospectus, he withdraws it in writing before registration of the prospectus;
- (b) after registration of the prospectus and before allotment he, on becoming aware of the untrue statement or misstatement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or
- (c) he was competent to make the statement and that he had reasonable ground to believe that the statement was true.

114. Where a prospectus includes any untrue statement or misstatement, any director or the equivalent, or an officer who authorised the issue of the prospectus or statement in lieu of a prospectus commits an offence and is liable on conviction to a fine of not less than N1,000,000,000 or imprisonment for a term not less than three years or both. Criminal liability for misstatement in prospectus
115. (1) Where a public offer of securities is made, whether listed or not, the issuer and the issuing house shall be responsible for the allotment of such securities, subject to the approval of the allotment by the Commission in accordance with the rules and regulations made under this Act. Allotment of securities
- (2) Without prejudice to the provisions of subsection (1), the validity of an allotment shall not be affected where it is undertaken under such exemptions and conditions as may be specified by the Commission.
116. Allotment shall not be made of any securities offered to the public for subscription unless the subscription level meets the minimum percentage prescribed by the Commission. No allotment below minimum subscription
117. (1) Application money and other money paid prior to allotment of securities by an applicant on account of securities shall, until the allotment of the securities, be held in a separate trust account by a custodian as nominee to the issuing house on such terms and condition as may be prescribed by the Commission. Application money to be held in trust until allotment
- (2) Any issuing house who contravenes or permits the contravention of subsection (1) is liable on conviction to a fine of not less than N5,000,000 or imprisonment for a term of not less than one year or both.
- (3) The Commission may, in lieu of prosecution under subsection (2), impose a penalty of not less than N5,000,000 and a further sum of not less than N50,000 for every day in which the violation continues.

(4) All application money paid by an issuing house or subscriber prior to allotment into a separate account in a bank or other financial institution shall be held in trust and upon the liquidation of such bank or financial institution shall not be construed as part of the assets, deposit liabilities or other liabilities of that entity in furtherance of the liquidation process.

(5) In the event of liquidation of a bank or financial institution in whose custody application money is kept prior to allotment, the money held in the trust account mentioned in subsection (4) shall be treated as priority to any other claim and the liquidator shall transfer such money to the issuing house in respect of the offer for which the money were deposited with the bank or financial institution.

118. A shareholder may bring an action against an issuer which has allotted securities under a prospectus for the rescission of all allotments and the repayment to the holders of the securities of the whole or part of the issued price which has been paid in respect of them if the prospectus —

Action for rescission

(a) contained a material statement, which was false, deceptive or misleading;
or

Third Schedule

(b) did not contain a statement, report or account required to be contained in it by section 101 and the Third Schedule to this Act.

119. (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the securities offered by it to be dealt with on any securities exchange, any allotment made on an application under the prospectus shall, whenever made, be void if the permission has —

Allotment of securities and dealing on securities exchange

(a) not been applied for within three days after the issuance of the prospectus;
or

(b) been refused before the expiration of the offer period or such longer period as may be notified to the applicant by the securities exchange.

(2) Where application or permission for a dealing referred to in subsection (1) has not been made or applied for or if made or applied for has been refused, the issuer or sponsor shall repay, with accrued interest, money received from applicants under the prospectus, and if the money is not repaid within a period stipulated by the Commission, the issuer or sponsor and its directors shall be jointly and severally liable to repay the money with interest at the current interbank rate per annum from the expiration of the period stipulated by the Commission.

(3) All money received by virtue of this section shall be kept in a separate trust account on such terms and conditions as may be prescribed by the Commission, and the issuing house shall be liable to repay the money specified under subsection (2).

- (4) The issuing house and any of its officers, who violates the provisions of subsection (2) shall be jointly and severally liable to a penalty of not less than ₦5,000,000 and a further sum of not less than ₦50,000 for every day the violation continues.
- (5) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section is void.
- (6) For the purposes of this section, permission shall not be deemed to be refused if the applicant is notified that the application shall be given further consideration by the Commission.
- (7) This section shall have effect in relation to —
 - (a) any securities agreed to be taken by a person underwriting an offer by a prospectus as if he had applied for them under the prospectus; and
 - (b) a prospectus offering securities for sale, with the following modifications
 - (i) references to sale shall be substituted for references to allotment,
 - (ii) the persons by whom the offer is made shall be liable under subsection (2) to repay money received from applicants, and references to the issuer's liability under that subsection shall be construed accordingly, and
 - (iii) for the references in subsection (3) to the issuer and every officer of the issuer who is in default there shall be substituted references to any person by or through whom the offer is made and who authorises or permits the default.

120. (1) The Commission shall have the power to prescribe the maximum period within which surplus money due to subscribers shall be returned.
- (2) The Commission may, subject to subsection (3), prescribe the rate of interest payable to subscribers whose surplus money are held beyond the period prescribed under subsection (1).
- (3) The interest due and payable under subsection (2) shall not be less than the Central Bank of Nigeria Monetary Policy Rate plus 5% and the Commission may, in addition, require a company which fails to honour its obligation under this subsection to pay a higher rate of interest on the surplus money.
- (4) A person who fails to comply with the provisions of this section is liable to a penalty of not less than ₦5,000,000 and a further sum of not less than ₦50,000 for every day the violation continues.

Return of surplus
money to
subscribers

PART X — CONDUCT OF SECURITIES BUSINESS

121. For the purpose of this Act, no cash transaction shall be carried out in the capital market.
122. All securities to be transacted in the secondary market shall be in dematerialised form.
123. (1) There shall be a legal entity identifier for any entity involved directly or indirectly in securities transactions to monitor and minimise systemic risks, arising from parties' and counterparties' activities.
- (2) All participants in securities transactions shall obtain the legal entity identifier from an authorised issuer.
- (3) Every party in a financial transaction shall have a legal entity identifier and disclose it in every securities transaction it is involved in for accuracy of financial data and risk management.
124. A securities dealer shall, where applicable, within the prescribed time and in respect of every securities transaction either as a principal or agent, issue a contract note or other form of transaction confirmation which complies with this Part.
125. (1) A contract note or other form of transaction confirmation given by a securities dealer under this Part shall include —
- (a) the name and style under which the securities dealer carries on his business as a securities dealer and the address of the principal place at which he so carries on his business;
 - (b) the name and address of the person in whose favour the securities dealer issues the contract note or other form of transaction confirmation;
 - (c) the date on which the transaction took place;
 - (d) the number, amount and description of the securities which are the subject of the contract or transaction;
 - (e) the price per unit of the securities;
 - (f) the amount of the consideration;
 - (g) the rate and amount of commission, if any, charged;
- Prohibition of cash transactions
- Prohibition of transactions in non-dematerialised securities
- Legal entity identifier
- Securities dealer to issue contract note or transaction confirmation
- Contents of contract note or transaction confirmation

(h) the amounts of all stamp duties or other duties and taxes payable in connection with the contract or transaction; and

(i) if the settlement amount, and any other relevant information with or without the benefit is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the first-mentioned amount, and the nature of the benefit.

(2) A securities dealer who fails to issue a contract note or other form of transaction confirmation in accordance with this Act is liable to a penalty of not less than N200,000.

(3) Where a contract note or other form of transaction confirmation containing false or misleading information is issued by any securities dealer, the securities dealer and any of its principal officers who issued or authorised the issuance commits an offence and is liable on conviction in the case of the —

(a) securities dealer, to a fine of not less than N10,000,000 or an amount equivalent to four times the amount of profit derived by it or loss avoided in the transaction, or to imprisonment for a term not less than three years or both, and

(b) principal officer to a fine of not less than N2,000,000 or an amount equivalent to four times the amount of profit derived or loss avoided in the transaction whichever is higher and or to imprisonment for a term of not less than five years.

(4) Where an investor suffers a loss as a result of the contravention of sections 124 and this section of this Act, the securities dealer shall refund to the investor an amount equivalent to the loss, together with interest at a rate to be prescribed by the Commission.

126. (1) Where a securities dealer, fund manager, investment adviser, underwriter or a person associated with any of them, issues circulars or other similar written communications with respect to securities or a class of securities in which he has interest, he shall disclose in legible form, the nature of that interest.

Disclosure of certain
interests in
securities by
securities dealers

(2) For the purposes of subsection (1), interest shall include any financial benefit or advantage which will, or is likely to, accrue directly or indirectly on or arising out of dealings in the securities.

(3) Where a securities dealer, fund manager, investment adviser, underwriter or an associated person of any of them —

- (a) has purchased securities for the purpose of offering all or any of the securities to the public; and
 - (b) offers to sell any of the securities to any person, he shall not make a recommendation with respect to the securities offered for the purpose unless he has informed each person to whom the recommendation is made that he purchased the securities for that purpose.
- (4) Where securities have been offered for subscription or purchase, and a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased, he shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, other than in the ordinary course of trading on a securities exchange, or make a recommendation with respect to those securities within a period to be prescribed by the Commission, unless the offer or recommendation complies with the provisions of subsection (5).
- (5) An offer or recommendation shall not be made under subsection (4) unless it contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities which he has acquired, or may be required to acquire under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.
- (6) A securities dealer, fund manager, investment adviser, or any of their representative shall not issue to any person any circular, other communication, written offer or recommendation to which subsections (1), (3) or (4) apply unless the circular or other communication or the written offer or recommendation is signed by a director, executive officer or secretary in the case of a body corporate, and that individual in the case of a natural person.
- (7) Where a securities dealer, fund manager, investment adviser, or any of their representative issues to any person a circular, other communication, written offer or recommendation to which subsections (1), (3), (4) or (5) apply, the first mentioned person shall preserve for a period of seven years a copy of the circular or other communication or of the written offer or recommendation, duly signed by any of the persons mentioned in subsection (6).
- (8) Reference in this section to an offer of securities shall be construed to include a reference to a statement that is not an offer but expressly or impliedly invites a person to whom it is made, to offer or acquire securities.
- (9) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not less than N5,000,000, or to imprisonment for a term not more than three years or both.

127. (1) A securities dealer shall not as a principal deal in any securities with a person who is not a securities dealer except as permitted under subsection (3). Dealing as principal

(2) A reference in this section to a securities dealer dealing or entering into a transaction as principal includes a reference to a person —

(a) dealing or entering into a transaction on behalf of a person associated with him;

(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or

(c) who carries on business as a dealer for a body corporate in which his interest and the interests of his directors together constitute a controlling interest.

(3) A securities dealer who, as a principal, enters into a transaction of sale or purchase of securities with a person who is not a securities dealer shall state in the contract note or transaction confirmation that he is acting in the transaction as principal and not as agent.

(4) Where a securities dealer fails to comply with subsection (1) or (3) in respect of a contract for sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the securities dealer not later than 30 days after the receipt of the contract note.

(5) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

(6) Nothing in subsections (4) and (5) shall affect any right which a person has apart from the provisions of these subsections.

(7) A person who contravenes or fails to comply with any of the provisions of this section, commits an offence and is liable on conviction to a fine of not less than N1,000,000, or an amount equivalent to four times the amount involved in the transaction, whichever is higher or to imprisonment for a term not more than six months or both.

(8) The Commission may, in lieu of prosecution under subsection (7), impose a penalty of not less than N5,000,000 and a further sum of not less than N10,000 for every day the violation continues.

128. (1) A securities dealer shall not give an unsecured credit to an associated person, an employee, or a person who is associated with the employee of the securities dealer, if the —

Dealing by
employees and
associated persons
of securities dealers

(a) unsecured credit is advanced for the purpose of enabling the person to purchase or subscribe for any securities; or

(b) person giving, authorising or approving the unsecured credit knows or has reason to believe that the unsecured credit will be used for the purpose of purchasing or subscribing for securities.

(2) A person who fails to comply with the provisions of subsection (1), commits an offence and is liable on conviction to a fine of not less than ₦2,000,000 or imprisonment for a term not more than two years or both.

(3) The Commission may, in lieu of prosecution under subsection (2), impose a penalty of not less than ₦5,000,000 and a further sum of not less than ₦10,000 for every day the violation continues.

(4) Notwithstanding the provisions of subsections (2) and (3), a person who contravenes the provisions of this section shall be liable to forfeit to the Commission, the profit made or to be made from the contravention.

(5) An employee or any person to whom unsecured credit is advanced in contravention of this section and any agent through which such unsecured credit advancement is made shall be equally liable in the manner specified in subsections (2), (3) and (4).

129. (1) Subject to subsection (4), a securities dealer shall not whether acting as principal or on behalf of a person associated with him, enter into a transaction of purchase or sale of securities for its own account, if a client of the securities dealer who is not associated with the securities dealer has instructed the securities dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with such instruction.

Securities dealers to give priority to client's orders

(2) A securities dealer who contravenes the provisions of this section shall be liable to a penalty of not less than ₦500,000.

(3) A securities dealer shall, in addition to the penalty prescribed in subsection (2), be liable to forfeit to its client, the securities acquired or proceeds of securities sold, while the instruction of the client was pending, to the extent of the pending instruction of such client.

(4) The provisions of subsection (1) shall not apply to a transaction entered into by a securities dealer as principal or on behalf of a person associated with him where the —

(a) instruction from the client of the securities dealer requires the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold;

(b) dealer has been unable to purchase or sell the securities by reasons of those conditions; and

(c) transaction is entered into in prescribed circumstances.

130. The Commission may make regulations to —

Securities lending
and margin
requirements

(a) prevent the excessive use of credit in purchasing or transacting in securities by dealers or member companies;

(b) provide for margin requirements, for the amount of credit which may be extended and maintained by securities dealers; and

(c) provide for securities lending transactions by securities dealers and for matters connected with it.

131. (1) A regulated entity shall not —

Unauthorised sale or
transfer of securities

(a) sell, transfer, or otherwise dispose of the securities of a client without an express mandate or authorisation from the client; or

(b) withhold, refuse, neglect or otherwise fail to remit proceeds of the sale of the client's securities.

(2) A person who contravenes the provisions of subsection (1), commits an offence and is liable on conviction, to a fine of not less than N50,000,000 or an amount equivalent to four times the amount of profit derived by it in the transaction, whichever is higher, and a further sum of N50,000 for every day the violation continues.

(3) In addition to the penalty prescribed under subsection (2) the —

(a) person shall be liable to restitute to the client the loss suffered with interest at the prevailing commercial bank rate; and

(b) Commission may suspend or revoke the registration of the regulated entity, or take any other action as it may deem fit.

PART XI — TRADING IN SECURITIES

132. (1) A person shall not create, or cause to be created, or do anything which may create a false or misleading appearance of active trading in any securities on a securities exchange or in relation to the market for the price of any such securities.

False trading and
market rigging
transactions

(2) A person shall not —

(a) by means of purchase or sale of any securities not involving a change in the beneficial ownership of those securities; or

(b) by any fictitious transactions or devices,

maintain, inflate, depress, or cause fluctuations in the market price of any securities.

(3) Without prejudice to subsection (1), a person shall be deemed to have created a false or misleading appearance of active trading in securities on a securities exchange or financial market infrastructure where such person —

(a) approves, participates in, is concerned with or carries out, either directly or indirectly, any transaction on securities which does not involve any change in the beneficial ownership of the securities;

(b) makes or causes to be made an offer to sell securities at a specified price where he knows that a person associated with him has made or caused to be made, an offer to purchase the same or substantially the same number of securities at a price which is substantially the same as the first mentioned price; or

(c) makes or causes to be made an offer to purchase any securities at a specified price where he knows that a person associated with him has made or caused to be made, an offer to sell the same number of securities at a price which is substantially the same as the first mentioned price.

(4) A person shall not be deemed to have violated the provisions of this section if it is established that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities exchange or financial market infrastructure.

133. A person shall not make a statement, or disseminate information, which is false or misleading and likely to induce the sale or purchase of securities by other persons or likely to have the effect of raising, lowering, maintaining or establishing the market price of securities.

False or misleading
statements

134. (1) A person shall not —

(a) make or publish any statement, promise or forecast which is misleading, false or deceptive;

(b) dishonestly conceals material facts with the intent to induce another person to deal in securities;

Fraudulently
inducing persons to
deal in securities

(c) record, create or store in any way, information which is false or misleading with the intent to induce another person to deal in securities; or

(d) make any untrue statement or omit to state a material fact with the intent to conceal a misleading statement.

(2) It is a defense to any liability under section 133 and subsection (1) if it is established that, at the time when the person made, published, recorded or stored the information or material facts, he had no reasonable grounds to believe that the information was false, misleading or may be available to any other person.

135. A person shall not disseminate, or authorise or participate in the dissemination of any statement or illegal information which is likely to increase, reduce or maintain the price of any securities by reason of any transaction entered into or things done in relation to the securities if the person or a person associated with that person has —

Dissemination of
illegal information

(a) entered into any such transaction or done any such act or thing; or

(b) received or expects to receive directly or indirectly any consideration or benefit for disseminating, authorising or being concerned in the circulation or dissemination of the statement or information.

136. A person shall not directly or indirectly in connection with the purchase or sale of securities employ any device, scheme or artifice to defraud, or engage in any act, practice or course of business which operates as a fraud or deceit upon any person.

Prohibition of
fraudulent means

137. (1) A person who is an insider shall not buy or sell, or otherwise deal, directly or indirectly in any securities if he has material non-public information in relation to those securities.

Prohibition of
dealing in securities
by insiders

(2) A person in a relationship with an issuer shall not with the knowledge of a material fact of the issuer that has not been publicly disclosed, inform, recommend or encourage another person to purchase or sell securities of the issuer.

(3) A person who becomes an insider in a public company or any other issuer, other than a collective investment scheme, shall within 14 days of becoming an insider or of carrying out an insider transaction or within such other period as may be prescribed by regulation, file a report disclosing, in the prescribed manner and form, any direct or indirect beneficial ownership of or control or direction over securities of the public company or other issuer and any interest in, or right or obligation associated with, a related financial instrument and the insider shall make such other disclosure as may be required by the regulations under this Act.

138. A person shall not be guilty of insider dealing by virtue of —

Actions not
prohibited under
section 137

- (a) doing any particular thing other than with a view to the make a profit or avoid a loss, whether for himself or another person, by the use of that information; or
- (b) entering into a transaction in the course of the performance in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

139. (1) The Commission may proceed against a person who contravenes any provision of this Part by failing, omitting or refusing to file an insider report, fraudulently inducing, rigging, issuing misleading information, or manipulating the market or by buying, selling, or otherwise dealing, directly or indirectly in the securities of a body corporate while in possession of material, non-public information or communicating such information in connection with a transaction on or through the facilities of a securities exchange or financial market infrastructure or from, or through a broker or dealer.

Civil and criminal liability under this Part and authority to award bounty to informant

(2) A person who —

- (a) contravenes subsection (1),
- (b) had knowledge of the contravention and benefitted from it or failed to report such contravention,
- (c) directly or indirectly influenced the person who committed such contravention, or
- (d) facilitated any part of the activity which led to the contravention,

commits an offence and is liable on conviction, in the case of —

- (i) an individual to a fine of not less than ₦10,000,000 or an amount equivalent to four times the amount of profit derived or loss avoided in the transaction whichever is higher; and to imprisonment for a term of not less than five years, or
- (ii) a body corporate, to a fine of not less than ₦50,000,000 or an amount equivalent to four times the amount of profit derived by it or loss avoided in the transaction as a result of such unlawful manipulation, purchase, sale, or communication.

(3) The Commission may in lieu of criminal prosecution of a person who violates any Part of this Act impose a penalty of not less than ₦20,000,000, or four times the profit gained or loss avoided in the transaction whichever is higher.

- (4) In addition to subsection (3), the Commission may suspend or withdraw the registration of such person if the person is a capital market operator, or member of a securities exchange or financial market infrastructure.
- (5) There shall be paid from amounts imposed as a penalty under this section and recovered by the Commission, such sums, not more than 10% of such amount as the Commission deems appropriate, to a person who provides information leading to the successful prosecution of the matter or imposition of such penalty.
- (6) A person shall not directly or indirectly take reprisal or subject an employee to detriment where the employee has —
- (a) sought advice about providing information, expressed an intention to provide information, or provided information to the Commission, a self-regulatory organisation or a law enforcement agency about an act of the person that has occurred, is ongoing or is about to occur, and that the employee reasonably believes is contrary to this Act or the rules and regulations made under it or other regulatory instrument of a financial market infrastructure or self-regulatory organisation; or
 - (b) in relation to information provided under paragraph (a), cooperated, testified or otherwise assisted in —
 - (i) an investigation by the Commission, a financial market infrastructure, self-regulatory organisation or a law enforcement agency, or
 - (ii) a proceeding of the Commission, financial market infrastructure, a self-regulatory organisation, or a judicial proceeding.
- (7) For the purposes of subsection (6), a reprisal is any measure taken against an employee that adversely affects his employment and includes —
- (a) ending or threatening to end the employee's employment;
 - (b) demoting, disciplining, suspending, or threatening to demote, discipline or suspend an employee;
 - (c) imposing or threatening to impose a penalty related to the employment of the employee,
 - (d) intimidating or coercing an employee in relation to his employment; or
 - (e) any other measure detrimental to the employee's employment.

- (8) A provision in an agreement, including a confidentiality agreement, between a person or company and an employee of the person or company is void to the extent that it precludes or purports to preclude the employee from —
- (a) providing information prescribed in subsection (6) (a) to the Commission, a self-regulatory organisation or a law enforcement agency; or
 - (b) in relation to information provided under subsection (6) (a), cooperating, testifying or otherwise assisting, or expressing an intention to cooperate, testify or otherwise assist in —
 - (i) an investigation by the Commission, a self-regulatory organisation or a law enforcement agency, or
 - (ii) a proceeding of the Commission or a self-regulatory organisation, or a judicial proceeding.
- (9) Where a person has directly or indirectly taken a reprisal against an employee or subjected an employee to any detriment in contravention of subsection (6), without limiting the actions the employee may otherwise take, the employee may —
- (a) make a complaint to be dealt with by final and binding settlement by arbitration under a collective agreement;
 - (b) where final and binding settlement by arbitration under a collective agreement is not available, make a complaint to the Commission; or
 - (c) bring an action before a court of competent jurisdiction.
- (10) The Commission, the Tribunal, an arbitrator or the court hearing a complaint or action under subsection (9) may order one or more of the following remedies —
- (a) the employee's reinstatement, with the same seniority status that the employee would have had if the contravention had not occurred; or
 - (b) payment to the employee of two times the amount of remuneration the employee would have been paid by the employer if the contravention had not taken place between the date of the contravention and the date of the order, and in this subsection, "remuneration" includes all payments, benefits, bonuses, entitlements and allowances.
- (11) The Commission may in addition to any other penalty imposed under this Part direct a person who is liable under this Part to pay compensation to any aggrieved person who suffered a loss by reason of the difference between the price at which the securities would have been dealt with had the contravention not occurred.

PART XII — MERGERS, TAKE-OVERS AND CORPORATE RESTRUCTURING

140. (1) Without prejudice to the powers of other financial market regulators, a public company shall not, without the prior approval of the Commission, undertake a proposal, scheme, transaction, arrangement, or activity or issue securities or offer for subscription or purchase of securities in relation to —

Control of restructuring of public companies

- (a) the conversion of a public company or the reconstruction of its shares;
- (b) a carve-out, spin-off, split-off or other form of restructuring of its operations; or
- (c) the acquisition or disposal of asset which results in a significant change in the business direction or policy of a public company or any other listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity.

- (2) A person who proposes to effect a compromise, arrangement or scheme by way of issue of securities for the amalgamation of two or more listed companies, shall seek the approval of the Commission.

- (3) In granting approval under this section, the Commission shall consider whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the transaction.

141. (1) Where a merger involving a public company is achieved or to be achieved by amalgamation or other combination with the other undertaking in question —

Merger by amalgamation and other combination

- (a) the Commission may grant an approval in principle to the company involved to make an application to the court to order separate meetings of shareholders of the merging companies in order to get their concurrence to the proposed merger; and

- (b) if a majority representing not less than three quarters in value of the shares of members being present and voting either in person or by proxy at each of the separate meetings agree to the scheme, the scheme shall be referred to the Commission for approval.

- (2) Where the merger is approved by the Commission, the parties shall apply to the court for the merger to be sanctioned and when so sanctioned, it shall become binding on the companies and the court may by the order sanctioning the merger or by a subsequent order make provision for any or all of the following matters —

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

- (b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;
 - (e) the provision to be made for any person who in such manner as the court may direct, dissents to the scheme; and
 - (f) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or merger shall be fully and effectively carried out.
- (3) An order under subsection (2) (d) shall not be made unless the —
- (a) whole of the undertaking and the property, assets and liabilities of the transferor company are being transferred into the transferee company; and
 - (b) court is satisfied that adequate provision by way of compensation or otherwise have been made with respect to the employees of the company to be dissolved.
- (4) Where an order under this section provides for the transfer of property or liabilities, that property or liabilities shall by virtue of the order, be transferred to and become the property or liabilities of the transferee company, and in the case of any property, if the order so directs, be freed from any charge which by virtue of the merger ceases to have effect.
- (5) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy to be delivered to the Commission for registration within seven days after the making of the order and a notice of the order shall be published in at least one national newspaper.
- (6) Any person that contravenes subsection (5), is liable to a fine of not less than N250,000 and N1,000 for every day the violation continues.
- (7) In this section —
- (a) "property" includes property rights and powers of every description; and

(b) "liabilities" includes rights, powers and duties of every description notwithstanding that such rights, powers and duties are of a personal character not generally assigned or performed vicariously.

142. (1) The Commission shall regulate and govern the conduct of persons involved in take-overs, mergers or compulsory acquisition, including an acquirer, target company, offeror, offeree and their officers and associates.

Takeover rules and regulations

(2) A person shall not acquire shares, whether by a series of transactions or not, which carry 30% or more of the voting rights of a company.

(3) A person, whether by a series of transactions or not, acting in concert with another, shall not acquire shares which taken together with the shares held or acquired by them, carry 30% or more of the voting rights of a company.

(4) A person intending to acquire 30% or more of the shares specified in subsections (2) and (3) shall make a take-over bid to other shareholders.

(5) The Commission shall ensure that the acquisition of voting shares or control of companies is conducted in an efficient, competitive and transparent manner.

(6) The Commission shall ensure that shareholders and directors of an offeree and the market for the shares that are the subject of the take-over —

(a) are aware of the identity of the acquirer and offeror;

(b) have reasonable time in which to consider a take-over; and

(c) are supplied with sufficient information necessary to enable them assess the merits or otherwise of any take-over.

(7) Shareholders of an offeree shall have equal opportunities to participate in the benefits accruing from the take-over, including in the premium payable for control.

(8) The acquirer and the target company shall ensure that there is fair and equal treatment of shareholders, in particular, minority shareholders, in relation to the take-over, or compulsory acquisition.

(9) The directors of the acquirer and the target company shall, with respect to a take-over, merger and compulsory acquisition act in good faith and ensure that shareholders are not subject to oppression or disadvantaged by the treatment and conduct of the directors of the acquirer or the target company.

143. (1) Save as otherwise provided in this Part, any person who makes a take-over bid shall do so in accordance with the provisions of this Act and the rules and regulations made under this Act.

Compliance with code and rules

- (2) Subject to exemptions, an acquirer who has obtained control in a public company or seeks to obtain control in a public company shall make a take-over bid, in accordance with the provisions of the rules and regulations made under this Act.
- (3) Subject to any exemption, an acquirer who has obtained control shall not acquire any additional voting rights or voting shares in that company or voting rights, as the case may be, except in accordance with the provisions of the rules and regulations made under this Act.
- (4) Where an acquirer fails to comply with the provisions of subsection (2) or with the directives of the Commission, the acquirer shall be liable to a penalty of not less than N10,000,000 and N25,000 for every day the violation continues, and shall in addition sell down his holdings in the target company under a supervised process and relinquish control, arising from such holdings.
- (5) Any other person who contravenes the provisions of this section shall be liable to a penalty of not less than N10,000,000 and a further sum of N25,000 for every day which the violation continues and such other sanction as may be deemed appropriate.
- (6) A person who asserts that it qualifies for any exemption shall, within 30 days following the acquisition of shares which would otherwise require it to make a mandatory take-over bid, give notice of such acquisition to the Commission and seek exemption from making the mandatory take-over bid.

144. (1) Except as may be specified in the rules and regulations, no person or two or more persons jointly or in concert, shall make a takeover bid unless an authority to proceed with the takeover bid has been granted by the Commission under this section and is in effect at the date of the takeover bid.

Authority to proceed
with takeover

(2) An application for an authority to proceed with a takeover bid shall —

- (a) be made to the Commission by or on behalf of the person proposing to make the bid;
- (b) give the name and other particulars of that person; and
- (c) give particulars of the proposed bid and contain such information and be accompanied by such documents or reports, as may be prescribed by regulations made under this Act.

(3) The Commission may require the person making an application to furnish it with such further information as it reasonably considers necessary to enable it make a decision on the application and that person shall, give the information to the Commission.

(4) The Commission may consult with persons as it deems necessary in order to make a decision on an application.

(5) Except as may be necessary for the purpose of any consultation under subsection (4), the Commission shall keep confidential the contents of an application, any document or report accompanying an application and any information given under subsection (3).

(6) For the purpose of deciding whether or not to grant an authority to proceed with a takeover bid, the Commission shall —

(a) have regard to the likely effect of the take-over bid if successfully made —

(i) on the economy of Nigeria, and

(ii) on any policy of the Federal Government with respect to manpower and development; and

(b) determine whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the take-over.

(7) Where the Commission is satisfied that none of the matters referred to in subsection (6) would be adversely affected, it shall grant an authority to proceed with the proposed take-over bid.

(8) An authority to proceed with a proposed take-over bid shall be —

(a) in writing signed by or on behalf of the Commission; and

(b) dated and give sufficient particulars of the proposed take-over bid to enable it to be identified.

(9) An authority to proceed with a take-over bid shall remain in effect for —

(a) the period of three months following the date of authority; or

(b) such longer period as the Commission may, on application made to it before the expiration of the period referred to in paragraph (a) allow.

145. Where the consideration for the shares deposited under a take-over bid, merger or other arrangements is to be paid —

Arrangement for funds

(a) in cash or partly in cash, the offeror shall ensure that funds are available to make the required monetary payment for those shares; or

(b) by the securities of a public company, the provisions of this Act on registration of securities and invitations to the public shall apply.

146. (1) A payment for loss of office may not be made by any person to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a merger, take-over, or other form of corporate restructuring unless the payment has been approved by a resolution of the relevant shareholders.

No payment for loss of office

(2) For the purpose of subsection (1), the relevant shareholders are the holders of the shares to which the bid relates and any holder of shares of the same class as any of those shares.

(3) A resolution approving a payment to which this section applies shall not be passed unless a memorandum setting out particulars of the proposed payment, including its amount, is made available for inspection by the members of the company whose approval is sought at the —

(a) company's registered office for at least 15 days ending with the date of the meeting; and

(b) meeting itself.

(4) A person making the offer or any related party of such person shall not be entitled to vote on the resolution:

Provided that at any meeting to consider the resolution, such persons shall be entitled to be given notice of the meeting, to attend and speak and if present, in person or by proxy, count towards the quorum.

(5) A payment made under an arrangement —

(a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and

(b) to which the company whose shares are the subject of the offer, or any person to whom the transfer is made, is privy,

is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

147. (1) Where any document or information is required to be submitted to the Commission under this Part or the rules and regulations in relation to a take-over, merger or restructuring —

Liability for false or misleading statement

- (a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger or restructuring, its officers or associates;
- (b) an offeree, its officers or associates;
- (c) a financial adviser or an expert; or
- (d) such other person as the Commission may determine;

shall not —

- (i) submit or cause to be submitted any document or information that is false or misleading,
- (ii) provide or cause to be provided any document or information from which there is a material omission, or
- (iii) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.

(2) A person who contravenes subsection (1), commits an offence and is liable on conviction to a fine of not less than ₦5,000,000 or to imprisonment for a term not more than five years or both.

(3) The Commission may, in lieu of prosecution, impose a penalty of not less than ₦10,000,000 in addition to any of the actions specified in section 148.

148. (1) Where any person who is under an obligation to comply with the provisions of this Part, or the rules and regulations made under this Act, contravenes or fails to comply with any such provision or rule, the Commission may in addition to the penalties specified in this Part, take one or more of the following actions —

Action by
Commission in
cases of non-
compliance

- (a) direct the person in breach to comply with any such provision of this Part, or rules and regulations made under Act;
- (b) direct a securities exchange to deprive the person in breach access to the facilities of the securities exchange;
- (c) where the person in breach is a listed company, direct the securities exchange to —
 - (i) suspend trading in the securities of the company,
 - (ii) suspend the listing of the company, or

- (iii) remove from the official list, the company or the class of securities of the company;
 - (d) where the entity in breach is a company that is not listed, direct any securities exchange to prohibit the listing of any of its securities;
 - (e) direct a securities exchange to prohibit the person in breach from engaging in transactions to be executed through the use of the facilities of the securities exchange; or
 - (f) require the person in breach to take such steps as the Commission may direct to remedy the breach or mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach.
- (2) Prior to taking any action under subsection (1), the Commission shall —
 - (a) notify the person in breach of its intention to take action; and
 - (b) call on the person to show cause within a specified period why action should not be taken by the Commission.
- (3) In determining whether or not restitution is to be made by a person in breach under subsection (1)(f), the Commission shall have regard to —
 - (a) the profits that have accrued to such person in breach; or
 - (b) whether one or more persons have suffered loss or been otherwise adversely affected as a result of the breach.
- (4) Where a person has failed to comply with a penalty imposed by the Commission under subsection (1)(b), the Commission may sue and recover the penalty as a civil debt.
- (5) Without prejudice to any other remedy, where the Commission has directed a person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue and recover the restitution as a civil debt due to the persons aggrieved by the breach.
- (6) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or other applicable securities laws against the person in breach.

PART XIII — COLLECTIVE INVESTMENTS SCHEMES

150. Collective investment scheme means a scheme or arrangement in whatever form, including an open-ended and close-ended investment scheme, under which members of the public or qualified investors are invited or permitted to invest money or other assets in a portfolio, and in terms of which —

Meaning of collective investment scheme

- (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) such contributions are pooled and the portfolio of the scheme is managed as a whole;
- (c) such contributions entitle such investors to hold a participatory interest in the portfolio of the scheme through shares, units or any other form of participatory interest; or
- (d) such 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.

151. (1) The Commission may approve a collective investment scheme which is administered as —

Types of collective investment scheme

- (a) unit trust scheme;
- (b) open-ended or close-ended investment company;
- (c) real estate investment company or trust;
- (d) specialised or alternative investment scheme; or
- (e) such other schemes as may be approved by the Commission.

(2) Notwithstanding the provisions of subsection (1), the Commission may by notice, designate a scheme as constituting a collective investment scheme.

(3) For the purpose of this Part, sections 184, 185 and 187 of the Companies and Allied Matters Act, shall not apply to a scheme constituted as an open-ended investment company or real estate investment company.

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152. (1) A manager shall administer a collective investment scheme honestly and fairly —

Principles for the administration of the scheme

- (a) with skill, care and diligence;

(b) in the interest of investors and the securities industry; and

(c) ensuring that the assets of the collective investment scheme are adequately protected and segregated.

(2) Every authorised scheme shall adhere to the principle of segregation and identification, as may be prescribed by the Commission.

153. Before the manager of a scheme enters into a transaction with an investor —

Disclosure of
information

(a) information about the investment objectives of the scheme, the types of securities the scheme invests in, the calculation of the net asset value and dealing prices, charges, risk factors and distribution of income accruals shall be disclosed to the investor; and

(b) information that is necessary to enable the investor to make an informed decision shall be given to the investor timeously and in a comprehensible manner.

154. The manager of a scheme shall —

Duties of managers
of a scheme

(a) avoid conflict between the interests of the promoter or manager and the interests of an investor;

(b) disclose the interests of its directors, owners or management to the investor;

(c) maintain adequate financial resources to meet its commitments and to manage the risks to which schemes under its management are exposed;

(d) organise and control the scheme in a responsible manner;

(e) keep proper records;

(f) employ adequately trained staff and ensure that they are properly supervised;

(g) have well-defined compliance procedures; and

(h) promote investor education.

155. (1) A person shall not perform any act or enter into any agreement or transaction for the purpose of administering a scheme, unless such person is —

Requirements for
administration of a
collective
investment scheme

(a) incorporated under the Companies and Allied Matters Act; and

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(b) registered as a fund or portfolio manager by the Commission.

(2) A person who contravenes the provisions of this section is liable to a penalty of not less than ₦10,000,000 and a further sum of ₦100,000 for every day the violation continues.

(3) Notwithstanding the provisions of subsection (2), any person in breach shall reconstitute to the investors any loss suffered, with interest at the prevailing prime lending rate of the bankers to the person in breach.

156. (1) A person may not, unless registered as a manager under this Act, include in or have as part of the name of its business or in any description of his business any reference to a collective investment scheme, open ended investment company, unit trust or real estate investment scheme and no person who is not registered as a manager or trustee or custodian under this Act may perform any act calculated to lead the public to believe that any business carried on by such person consists of or is connected with the administration of a collective investment scheme.

Prohibition of misleading names and actions

(2) Any person who contravenes the provision of this section is liable to a penalty of not less than ₦5,000,000 and a further sum of ₦100,000 for every day that the violation continues.

157. (1) A person shall not establish or operate a collective investment scheme, carry on or purport to carry on the business of a collective investment scheme without the prior review and approval of the Commission.

Authorisation of collective investment schemes

(2) An application for authorisation under this section shall be in the form prescribed by the Commission and shall be accompanied by such documents as may be prescribed by the Commission.

(3) Upon application to the Commission in accordance with this Act by the manager of a scheme, the Commission may authorise the scheme where the —

(a) Commission is satisfied that the competence in respect of matters of the kind with which they would be concerned in relation to a scheme and probity of the manager and its directors and management as well as external auditors, trustee or custodian, as the case may be, are such as to render them suitable to act as manager, trustee or custodian in respect of the scheme;

(b) manager, trustee or custodian, of the scheme is —

(i) a body corporate which is incorporated under the Companies and Allied Matters Act,

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- (ii) having funds, capital and reserve as may be prescribed by the Commission, and
 - (iii) registered by the Commission;
 - (c) Commission is satisfied that the scheme is such that proprietary interest in the scheme assets is vested in the trustee and the scheme is managed by the manager for the benefit of the unit-holders of the scheme;
 - (d) Commission is satisfied that the trust deed or custodial agreement is in compliance with the provisions of this Act and the rules and regulations of the Commission for the time being in effect; and
 - (e) name of the scheme is not, in the opinion of the Commission, undesirable.
- (4) The Commission may refuse to authorise a scheme if it fails to comply with the provisions of this Part and shall so notify the manager, trustee or custodian under the scheme stating its reasons for refusal within 60 days of filing the application.
158. (1) A person shall not, directly or indirectly, deal in units or participatory interest of a scheme unless such units or participatory interest have been duly registered with the Commission.
- Registration of units or securities of a scheme
- (2) A scheme or any other arrangement may be registered under this Act by the issuer filing an application with the Commission in accordance with the provisions of this Part and the rules and regulations made under Act.
- (3) The Commission shall establish and maintain a register of units or securities and collective investments schemes (in this Part referred to as "the register").
- (4) Any person who contravenes the provisions of this section is liable to a penalty of not less than ₦5,000,000 and a further sum of ₦100,000 for every day the contravention continues.
159. (1) A manager, trustee or custodian of a scheme shall not make any alteration in the trust deed or custodial agreement in which are expressed the trusts of an authorised scheme or make any change in the name of an authorised scheme without the prior approval of the Commission.
- Alteration of trust deed, custodial agreement, or change of name of scheme
- (2) A manager or trustee of a scheme who contravenes the provision of subsection (1), is liable to a penalty of ₦5,000,000 and a further sum of ₦100,000 for every day the violation continues.
160. (1) Subject to the provisions of this section, the Commission may revoke the authorisation of a scheme where —
- Revocation of authorisation of a scheme

- (a) there is a contravention of any provision of this Part or of any rule or regulation made under this Act;
- (b) the Commission is no longer satisfied in respect of the matter specified in section 157(3) (a), (c) and (d) of this Act; or
- (c) the interest of the holders of units or participatory interest created under the scheme so requires.

(2) The Commission shall before the revocation —

- (a) notify the manager and the trustee or custodian under the scheme, who may within 21 days from the date of the notification make representations in writing to the Commission in respect of the proposed revocation; and
- (b) consider any representation duly made by the manager and trustee under the scheme.

- (3) The Commission shall communicate its decision to revoke its authorisation of the scheme within 30 days after the making of the representations or if none are made within 30 days after the last day for making of the representation under this section.
- (4) Whenever the authorisation of a scheme under this Act is revoked, the Commission shall appoint a trustee or an independent administrator as it deems fit, who shall be an agent of the unit holders and observe utmost good faith in the discharge of its responsibilities.
- (5) Whenever the trustee or an administrator is so appointed, notice shall be given to the unit holders by publication of the revocation of the scheme and the appointment of the trustee or administrator in three national daily newspapers.
- (6) The manager shall within 14 days after the revocation, file with the Commission, a statement of the affairs of the scheme including names, addresses of all creditors, unit holders, the securities held and such other information as may be prescribed by the Commission.
- (7) The manager shall submit a copy of the statement of affairs filed with the Commission under subsection (6) to the trustee or administrator as the case may be.
- (8) A manager who defaults in complying with the requirements of subsection (6), commits an offence and is liable to a penalty of not less than ₦1,000,000 and not less than ₦50,000 for every day the violation continues.

(9) The trustee or administrator shall realise all the property or undertaking and buy all the units of the scheme at the prevailing price subject to deduction of costs of realisation as well as the remuneration for the appointment and other costs as shall be approved by the Commission.

(10) The trustee or administrator so appointed shall within one month after ceasing to act as the administrator or trustee, deliver to the Commission a statement of receipts and payments during the period.

(11) Any trustee or administrator who fails to comply with the provisions of subsection (10) is liable to a fine of ₦50,000 for every day the violation continues.

161. (1) Any letter, notice, circular or document prepared by the manager for the purpose of offering units or securities of a scheme to the public, shall be approved by the trustee or custodian as the case may be and submitted to the Commission for approval before such letter, notice, circular or document is published.

Approval of prospectus and other offer documents

(2) There shall be included in the document referred to in subsection (1), information in relation to such matters, if any, as may be prescribed by the Commission.

162. A manager of a scheme who offers or sells by means of a letter, notice, circular, document or oral communication which -

Liability for material misstatement

(a) includes an untrue statement of a material fact, or

(b) omits to state a material fact necessary in order to make the statement, in the light of the circumstances under which it was made, not misleading,

is liable to refund to the purchaser the consideration paid for such units or participatory interest with interest at the prevailing prime lending rate of the banker to the person in breach, and in addition, the manager shall be liable to a penalty of not less than ₦50,000,000 in the first instance and ₦50,000 for every day the violation continues.

163. (1) Whenever the holder of units or participatory interest of an authorised open-ended scheme so requests, the manager under the scheme, shall, within the time prescribed by the Commission, buy from the holder such number of those units or participatory interest as the holder may specify at the price for the time being at which the manager buys units or participatory interest of the scheme.

Redemption of units or securities

(2) A manager of a scheme shall not suspend the right or postpone the date of redemption of units or participatory interest by a holder provided that such suspension or postponement may be done during public holidays or emergencies or when the securities exchange is closed or whenever the Commission permits it.

- (3) A manager of a scheme who contravenes the provisions of this section is liable to a penalty of not less than ₦1,000,000 and ₦50,000 for every day the violation continues.

164. (1) A company that is a manager under a scheme or is a subsidiary or holding company of the manager or a director or a person engaged in the management of such a company shall not carry out transactions for itself or himself, or make a profit for itself or himself from a transaction in any assets held under the scheme.

Prohibition of certain transactions and profits

(2) A company that is a manager of a scheme constituted under a trust or is a subsidiary or holding company of the manager shall not —

(a) borrow money on behalf of the scheme for the purpose of acquiring securities or other property for the scheme save as provided for by the trust deed, articles of the company or partnership deed as is relevant for the investment activities of the scheme with consent of the trustees and approval of the Commission;

(b) lend money that is subject to the trusts of the scheme to a person to enable him to purchase units or participatory interest of the scheme;

(c) mortgage, charge or impose any other encumbrance on any securities or other property subject to the trust of the scheme save for securities lending and borrowing; or

(d) engage in any transaction that is not in the interest of unit or participatory interest holders and of the scheme.

(3) A person who contravenes the provisions of this section, commits an offence and is liable upon conviction to a fine of not less than ₦5,000,000 or to imprisonment for a term of not less than three years or both.

(4) The Commission may, in lieu of prosecution under subsection (3), sanction a person who contravenes the provisions of this section by imposing a penalty of an amount that is equal to the profits made from any such transaction or an amount not less than ₦5,000,000 whichever is higher.

165. Any provision in the trust deed or custodial agreement in which are expressed the trusts or agreement created under an authorised scheme shall be void if it would have the effect of exempting the trustee or custodian under the scheme from or indemnifying it against liability for breach of trust or the custodial agreement where, having regard to the provisions of the trust deed or the custodial agreement conferring on him any powers, authorities or discretion, he fails to exercise the degree of care and diligence required of him as trustee or custodian.

Liabilities of trustees and custodians under a scheme

166. (1) The manager of an authorised scheme shall cause proper books of account to be kept and annual accounts to be prepared which shall give a fair and true view of the affairs of the scheme during each year covered by the accounts and the accounts shall be audited by a person appointed as auditor by the manager of the scheme with the consent of the trustee for the scheme.
- Audit of accounts of a scheme and annual general meeting
- (2) A copy of the auditors' report on the accounts and of such account certified by an auditor shall be sent by the manager to the Commission and published within three months after the end of the period to which the accounts relate as the Commission shall prescribe.
- (3) The auditor shall certify that the scheme has been operated within the provisions of this Act and the regulations prescribed by the Commission.
- (4) The manager of an open-ended investment company and real estate investment company shall call an annual general meeting of investors with the consent of the trustee not later than four months after the end of each year, to consider the accounts and other matters affecting the scheme.
- (5) An extraordinary general meeting of unit holders of a scheme may be convened —
- (a) at the request of the trustees;
 - (b) by a requisition of 25% of unit holders; or
 - (c) by the court on application by a member where the court is satisfied that it is just and equitable to do so.
167. A unit or participatory interest shall be valued at its fair market price and the Commission may by regulation prescribe the mode and method of determining the fair market price.
- Fair market price
168. (1) A scheme fund shall be invested by a manager in accordance with the provisions of the trust deed, custodial agreement or partnership agreement and other governing legal instruments with the objectives of safety and maintenance of fair returns on amounts invested.
- Investment of a scheme fund
- (2) Subject to guidelines issued by the Commission, the funds and assets of a scheme shall be invested in any of the following —
- (a) bonds, Sukuk, bills and other securities issued, sponsored or guaranteed by the Federal Government, government-sponsored or owned agencies, and the Central Bank of Nigeria;
 - (b) securities of sub-nationals and supra-nationals;

- (c) bonds, Sukuk, redeemable preference shares and other debt instruments issued by corporate entities, where such securities are listed, noted or traded or to be traded on a recognised exchange or platform and registered under this Act;
 - (d) ordinary shares of public limited companies listed or traded on a securities exchange and registered under this Act with good track records;
 - (e) created indices comprising basket of securities, commodities or derivatives listed or traded or to be traded on a recognised exchange or platform;
 - (f) money market instruments, bank deposits and securities of issuers that have been rated by rating agencies registered by the Commission;
 - (g) securities of an authorised closed-ended investment scheme, whether or not listed on a securities exchange and registered under this Act;
 - (h) units of an open-end investment schemes registered by the Commission;
 - (i) real estate investment, private debt registered with the Commission, commodities and derivatives traded on a securities exchange;
 - (j) securities listed or traded on a regulated exchange in a jurisdiction which is a member of the International Organisation of Securities Commissions, provided that investments in foreign securities shall not exceed 20% of the assets under management or such percentage as may be prescribed by the Commission;
 - (k) equity and debt securities of private companies, small and medium enterprises, infrastructure projects, infrastructure companies, real estate investment projects, real estate investment companies, or other alternative asset classes as specified in the rules and regulations made under this Act, provided that such scheme shall be strictly restricted to qualified investors as a specialised or alternative investment scheme; or
 - (l) such other instruments as the Commission may prescribe.
- (3) A manager may invest the funds and assets of a scheme fund in units of any investment funds:

Provided that such investment fund may only be invested in the categories of investments set out in subsection (2) and in real estate.

- (4) The Commission may, by regulation, impose additional restrictions on investments by a manager with the objects of protecting the interest of a scheme or its beneficiaries.
- (5) For the purpose of complying with any guideline set by the Commission as to the quality of financial instruments, debt securities, and issuers that scheme assets may be invested in, and to ensure the safety of scheme assets in general, a manager shall have due regard to the risk rating of instruments and issuers that has been undertaken by a rating company registered under this Act.

169. (1) A manager, trustee or custodian shall not —

Misappropriation of
clients' funds

- (a) misappropriate funds or securities of a client; or
- (b) withhold, refuse, neglect or otherwise fail to remit the proceeds of sale of the client's securities.
- (2) A person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction, to a fine of not less than N50,000,000 or an amount equivalent to four times the amount of profit derived by the person in the transaction, whichever is higher, and a further sum of N50,000 for every day the violation continues.
- (3) In addition to the penalty prescribed under subsection (2) —
- (a) the person referred to in subsections (1) and (2), shall be liable to restitute to the client the loss suffered with interest at the prevailing commercial bank rate; and
- (b) the Commission may suspend or revoke the registration of the participant, or take any other action as it may deem fit.

170. (1) The Commission may —

Investigation and
inspection

- (a) undertake continuous inspection of the business operations as it relates to a collective investment scheme's authorised parties involved in the management, administration and custody of assets of the scheme; or
- (b) investigate the business of a person whether registered or not who is involved in the unauthorised administration of a scheme or soliciting for investment in a scheme.
- (2) For the purposes of an investigation in terms of subsection (1), the Commission may in writing direct such person to —

(a) provide it with any information, document or record about such business; and

(b) appear before it at a specified time and place if the Commission has reason to believe that such a person is contravening or failing to comply with the provisions of this Act.

171. (1) Where the Commission, after an investigation or inspection under section 170 of this Act, considers that the interests of the investors of a scheme or of members of the public so require, it may —

Powers of the Commission after investigation

(a) direct a manager or a trustee or custodian to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by an investigation or inspection;

(b) remove and replace any party in a manner as the Commission may deem appropriate, and where the manager is removed, the trustee or custodian shall in accordance with the Commission's directives but subject to this Act arrange for another manager to take-over the administration of the collective investment scheme;

(c) require the trustee or manager to take steps, in accordance with the Commission's directives for the winding-up of a scheme, and for the realisation of the assets and the distribution of the net proceeds, together with any income accruals or other money available for distribution among the investors in proportion to their respective participatory interests; or

(d) in the case of a scheme being administered by a capital market operator in contravention of this Act, take steps in accordance with relevant provisions of the rules and regulations to have the scheme wound up.

(2) A person who refuses or fails to comply with any directive made under subsection (1) is liable to a penalty of not less than ₦5,000,000 and another ₦50,000 per day for every day the violation continues.

172. (1) The Commission may cancel the registration of a manager where —

Cancellation or suspension of registration of a manager

(a) the manager has contravened or failed to comply with any provision of this Act or rules and regulations made under it, and that such contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors;

(b) on completion of an investigation or inspection, the manner in which a manager carries on the business of a collective investment scheme is

consistently unsatisfactory or undesirable or not calculated to serve the best interests of its investors; or

(c) the manager is wound up, either voluntarily or by the court.

- (2) Whenever there is cause to cancel the registration of a manager on any of the grounds referred to in subsection (1), the Commission may, in lieu of such cancellation, suspend the registration of the affected manager for a period not more than 12 months at a time subject to such conditions as the Commission may determine.
- (3) The Commission may not cancel or suspend the registration of a manager on any ground specified in subsection (1) unless it has —
- (a) notified the manager of its intention and of the grounds upon which it proposes to do so;
 - (b) allowed the manager to make representations to it in connection with the proposed cancellation or suspension; and
 - (c) afforded the manager a reasonable opportunity to rectify or eliminate the defect, irregularity or undesirable practice.
- (4) Where the registration of a manager is cancelled under subsection (1), the provisions of this Act with regard to the continuance or the winding-up of a scheme or the winding-up of the manager, shall apply:

Provided that the Commission may in any such case direct the former manager to defray, in whole or in part, the expenses incurred in continuing the administration of the scheme, or in realising any of its assets, and any remuneration to which a trustee or custodian may be entitled.

- (5) Where the registration of a manager has been suspended under subsection (2), the manager shall not, during the period of suspension, issue any fresh participatory interests, but shall, in respect of participatory interests already issued, transfer the administration of the scheme to the trustee or custodian pending the appointment of another manager approved by the Commission on the recommendation of the trustee or custodian.

173. The Commission may object to the terms of any price list, advertisement, brochure or similar document relating to a scheme published or proposed to be published by a manager or any of its authorised agents, if the Commission considers the terms are calculated to mislead or are, for any other good and sufficient reason, objectionable or undesirable, and the Commission may direct the manager to discontinue or refrain from publishing or distributing any such document or to amend its terms.

Objection to misleading terms in a publication

174. (1) The Commission may direct a manager to audit all books of accounts and financial statements and submit the results of such an audit to the Commission within the time specified by the Commission.

Power of the Commission to request audit

- (2) A person who, in respect of an audit contemplated in subsection (1), gives information, an explanation or access to records which he knows to be false or misleading commits an offence and is liable on conviction to a fine of N1,000,000 or imprisonment for a term of one year or both.

175. (1) The Commission may, by notice declare a particular practice or manner of administration of schemes to be an "irregular or undesirable practice" or an "undesirable manner of administration".

Irregular or undesirable practices

- (2) A person shall not, after 21 days from the date of publication of the notice whereby a practice or manner of administration has been declared to be irregular or undesirable, employ such a practice or manner of administration otherwise than for the sole purpose of fulfilling any obligation entered into before the date of such notice or to comply with any directive by the Commission under subsection (3).

- (3) The Commission may in writing direct any person who employed a practice or manner of administration which was declared to be irregular or undesirable under subsection (1) to rectify anything which was caused by or arose out of the employment of that irregular or undesirable practice or manner of administration whether or not it occurred before, during or after the date of the declaration referred to in subsection (1).

- (4) A person who has been directed under subsection (3) to rectify anything shall effect such rectification within three days after being so directed or within such longer time as the Commission may approve.

- (5) A person who —

(a) contravenes subsection (2),

(b) refuses or fails to comply with a direction referred to in subsection (3),
or

(c) fails to comply with subsection (4),

commits an offence and is liable on conviction to a fine of not less than N10,000,000 or to imprisonment for a term not less than two years or both.

176. (1) A manager shall appoint either a trustee or a custodian for any scheme managed by it having regard to the structure of the scheme.

Appointment and termination of appointment of trustee or custodian

- (2) A person may not become or act as a trustee or custodian unless that person is registered as such by the Commission.
- (3) A trustee or custodian intending to resign from an appointment under this section, shall give to the manager and the Commission not less than three months' notice of such intention, and during three months period, the manager concerned shall take steps to appoint another trustee or custodian competent to act as such.
- (4) The appointment of a trustee or custodian shall not be terminated except with prior approval of the Commission, and the manager shall give not less than 30 days' notice to the Commission, the trustee or custodian of its intention to terminate such appointment stating reasons for the termination.
- (5) Where the appointment of a trustee or custodian is terminated, the trustee or custodian shall within seven days submit a report to the Commission stating —
- (a) the assets and liabilities of the scheme;
 - (b) whether any irregularity or undesirable practice has taken place or is taking place in the conduct of the affairs of the scheme which has caused or is likely to cause financial loss to investors in a portfolio of the scheme;
 - (c) particulars of any such irregularity or undesirable practice; and
 - (d) the reason, if known, for the termination of the appointment.
- (6) Where a trustee or custodian fails to take the steps specified in subsection (3) within the period of three months, the Commission shall direct the manager to appoint as trustee or custodian a competent person approved by the Commission.
- (7) Where it is impracticable for a trustee or custodian to discharge any or all of its duties, the trustee or custodian may with the approval of the Commission appoint a representative which is independent from the manager and any of its agents, to discharge such duties.
- (8) A trustee or custodian of a scheme who has appointed a representative under subsection (7), is not relieved of any of its responsibilities or duties under the scheme.

177. (1) The Commission may by regulation prescribe the qualification and conditions for any person or institution to become or act as a manager, trustee or custodian to a collective investment scheme.

Qualification and
registration of
trustee or custodian

(2) A company or institution referred to in subsection (1) may not become or act as a manager, trustee or custodian unless it maintains capital and reserves as may be prescribed by the Commission.

(3) The Commission may not approve the appointment of a person as a trustee or custodian unless it is satisfied that the —

(a) person is not in relation to the manager, either a holding company or a subsidiary or related company within the meaning of those terms as defined in the Companies and Allied Matters Act;

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(b) person or a related party does not have significant shareholdings with the manager, or hold board appointment with the manager; and

(c) general financial and commercial standing and independence of the person is such that it is fit for performing the functions of a trustee or custodian and that the person is by reason of the nature of its business sufficiently experienced and equipped to perform such functions.

178. (1) The Commission may revoke or suspend the registration of a trustee or custodian, where the Commission is no longer satisfied that the requirements contained in section 177 of this Act are met by the trustee or custodian.

Suspension or revocation of registration of a trustee or custodian

(2) The Commission shall, before revoking or suspending a registration under subsection (1), notify the trustee or custodian concerned of the grounds on which such action is taken against it, and shall give it a reasonable opportunity of showing cause why the proposed action should not be taken.

179. (1) A trustee or custodian shall —

Duties of trustees or custodians

(a) ensure that the basis on which the sale, issue, repurchase or cancellation, as the case may be, of participatory interests effected by or on behalf of a scheme is carried out in accordance with this Act, and rules and regulations under this Act;

(b) ensure that the selling or repurchase price of participatory interests is calculated in accordance with the rules and regulations made under this Act, the trust deed or custodial agreement;

(c) verify that, in transactions involving the assets of a scheme, any consideration is remitted within time limits which are acceptable market practice in the context of a particular transaction;

(d) verify that the income accruals of a portfolio are applied in accordance with this Act and the trust deed or custodial agreement;

- (e) inquire into and prepare a report on the administration of the scheme by the manager during each annual accounting period, in which it shall be stated whether the scheme has been administered in accordance with the provisions of this Act, the rules and regulations made under this Act, and the trust deed or custodial agreement;
 - (f) if the manager does not comply with the limitations and provisions referred to in paragraph (e), state the reason for the non-compliance and outline the steps taken by the manager to rectify the situation;
 - (g) send the report referred to in paragraph (e) to the Commission and to the manager to enable the manager include a copy of the report in its annual report; and
 - (h) ensure that —
 - (i) there is a legal separation of assets held under custody and that the legal entitlement of investors to such assets is assured, and
 - (ii) appropriate internal control systems are maintained and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where documents of title pertaining to each asset are kept.
- (2) A trustee or custodian shall report to the manager any irregularity or undesirable practice, concerning the collective investment scheme of which it is aware and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian, it shall report such irregularity or undesirable practice to the Commission within the period prescribed in the rules and regulations made under this Act.
- (3) The trustee or custodian shall satisfy himself that every income statement, balance sheet or other return prepared by the manager under section 166 of this Act, fairly represents the assets and liabilities, and the income and distribution of income, of every portfolio of the scheme administered by the manager.
- (4) At the request of the trustee or custodian, every director or employee of the manager shall submit to the trustee or custodian any record, book or document or information relating to the administration by the manager of its collective investment scheme which is in its possession or at its disposal, and which the trustee or custodian may consider necessary to perform its functions.
- (5) In addition to the duties contained in this section, the trustee or custodian shall discharge such other duties as may be prescribed in the rules and regulations made under this Act.

- (6) A person shall not interfere with the performance by a trustee or custodian of its functions under this Act and rules and regulations made under this Act.
 - (7) A trustee or custodian of a scheme which fails to discharge any of its duties referred to in this section, is liable to a penalty of not less than N50,000,000 in the first instance and N50,000 for every day the violation continues.
180. For the purpose of this Act any money or other assets received from an investor and assets of a scheme, are regarded as being trust property. Status of assets
181. The custodian shall indemnify the investors against any loss or damage suffered in respect of money or other assets in the custody of the custodian and which loss or damage is caused by a willful or negligent act or omission by the custodian. Liability of custodian for loss of assets
182. (1) A manager in consultation with the trustee or custodian shall appoint an auditor registered by the Commission for the purpose of auditing the whole of the business of the scheme administered by it. Appointment and removal of auditor
- (2) A director or employee of a manager, trustee or custodian and a firm of which any such director or employee is a member shall not be appointed as an auditor of a scheme.
- (3) A manager shall within 30 days from the date of appointment of an auditor apply to the Commission for the approval of such appointment.
- (4) The Commission may withdraw a prior approval of the appointment of an auditor.
- (5) An auditor may be removed by the manager in consultation with the trustee or custodian and the Commission shall accordingly be informed by the manager.
183. (1) The auditor shall — Duty of auditor to disclose irregularity or undesirable practice
- (a) report to the manager and trustee any irregularity or undesirable practice in the administration of the scheme which has come to his notice in the ordinary course of fulfilling his audit responsibilities or performing other functions under this Act; and
 - (b) submit a copy of such report to the Commission, where there is reasonable cause to believe that the report is or might be of material significance to the Commission, within a period not more than 10 working days from the day the irregularity was observed.
- (2) For the purposes of this section, a report is of material significance to the Commission if it deals with a matter which, because of its nature or potential financial impact, has caused or is likely to cause financial loss to the scheme or any of its investors or creditors.

- (3) An auditor who fails to discharge any of the duties referred to in this section, is liable to a penalty of not less than N5,000,000.

184. (1) The Commission may make regulations as to the constitution and management of collective investment schemes, the powers and duties of the manager and trustee or custodian of any such scheme, and the rights and obligations of persons participating in any such scheme.

Power to make regulations on the constitution and management of collective investments scheme

- (2) Without prejudice to the generality of subsection (1), the Commission may make regulations under this section —

- (a) as to the issue and redemption of the units or participatory interest in the scheme;
- (b) as to the expenses of the scheme and the means of meeting them;
- (c) for the appointment, removal, powers and duties of an auditor for the scheme;
- (d) for restricting or regulating the investment and borrowing powers exercisable in relation to a scheme;
- (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
- (f) requiring the preparation of periodic reports with respect to the scheme and the furnishing of those reports to the participants and the Commission; and
- (g) with respect to the amendment of the scheme.

- (3) Regulations made under this section —

- (a) may make provision as to the contents of the trust deed or custodial agreement, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the trust deed or custodial agreement;
- (b) shall be binding on the manager, trustee, custodian, participants independent of the contents of the trust deed or custodial agreement and, in the case of the participants, shall have effect as if contained in it;
- (c) may impose limits on the remuneration payable to the manager of a scheme;

(d) may contain such incidental and transitional provisions as the Commission deems necessary or expedient; and

(e) may exempt any scheme designated as a specialised or alternative investment scheme by the Commission from the applicability of any provision of this Part.

185. (1) The manager of a scheme shall give written notice to the Commission of any —

(a) proposed alteration to the scheme; and

(b) proposal to replace the trustee or custodian of the scheme.

Alteration of
schemes and
replacement of
manager, trustee or
custodian

(2) Any notice given in respect of a proposed alteration involving a change in the trust deed or custodial agreement or any governing document, shall be accompanied by a certificate signed by a legal practitioner to the effect that the change shall not affect the compliance of the trust deed or custodial agreement or any governing document with this Act and rules and regulations made under this Act.

(3) The trustee or custodian of a scheme shall give written notice to the Commission of any proposal to replace the manager of the scheme or in the case of an investment company replace the board of directors or transfer the assets of the scheme to a new scheme or wind-up the scheme.

(4) Effect shall not be given to any of the proposals referred to in subsections (1) and (3) unless —

(a) the Commission has given its approval to the proposal; or

(b) one month has elapsed since the date on which the notice was given under subsection (1) or (3) without the Commission having notified the manager or trustee that the proposal is not approved.

(5) The manager or the trustee or custodian of a scheme shall not be replaced except by persons who satisfy the requirements of section 177 of this Act and the rules and regulations made under it:

Provided that where any of them has been so replaced, the former manager or trustee or custodian, shall within 14 days, handover all properties and documents of the scheme in his possession to the trustee or custodian and, in the case of a trustee or custodian, to the manager.

186. (1) The manager of a scheme shall not engage in activities other than those mentioned in subsection (2).

Restriction of
activities of
managers

(2) The activities referred to in subsection (1) are —

(a) acting as manager of —

(i) a scheme,

(ii) an open-ended investment company or any body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the expert management of its funds by or on behalf of that body, or

(iii) any other scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and

(b) activities for the purposes of or in connection with those activities mentioned in paragraph (a).

187. (1) The manager of a scheme shall publish particulars of the scheme or make available to the public, upon request, any document containing information about the scheme in a manner prescribed by the Commission.

Publication of
scheme particulars

(2) Regulations made under this section may —

(a) require the manager of a scheme to submit and publish or make available revised or further scheme particulars where —

(i) there is a significant change affecting any matter contained in such particulars previously published or made available which inclusion was required by the regulation, or

(ii) a significant new matter has arisen, disclosure of which would have been required in previous particulars if it had arisen when those particulars were prepared; or

(b) provide for the payment of compensation to any person who has become or agreed to become participant in the scheme and suffered loss as a result of —

(i) any untrue or misleading statement in the particulars; or

(ii) the omission from the particulars of any matter required by the regulations to be included by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars.

- (3) Regulations made under this section shall not affect any liability which any person may incur apart from the regulations.

188. (1) Where it appears to the Commission that —

*Power of
intervention*

- (a) any of the requirements for the registration of a scheme is no longer satisfied;
- (b) the manager or trustee or custodian of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provisions has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
- (c) it is desirable in the interests of participants or potential participants in the scheme, the Commission may give directives in accordance with the provisions of subsection (2).

(2) The directives referred to in subsection (1) may —

- (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption of units or participatory interest in the scheme on a date specified in the directive until such further date as is specified in that order or directive;
- (b) require the manager and trustee or custodian of the scheme to wind it up by such date as is specified in the directive or if no date is specified, as soon as practicable; or
- (c) appoint any person to take-over and discharge the duties of the manager or trustee or custodian for such interim period as may be required pending the appointment of such manager, trustee or custodian under the provisions of the trust deed or custodial agreement.

- (3) The revocation of the registration of a scheme shall not affect the operation of any directive under subsection (1).

189. (1) Where the Commission —

*Issuance of directive
or its revocation*

- (a) gives a directive under section 188 of this Act, or
- (b) revokes such directive otherwise than at the request of the manager or trustee or custodian of the scheme,

it shall give the applicants or, as the case may be, the manager and trustee or custodian of the scheme written notice of its intention to do so stating the reasons for which it proposes to act and giving particulars of the rights conferred by subsection (2).

(2) A person on whom a notice is served under subsection (1) may, within 21 days of the date of service, make written representations to the Commission and, if desired, oral representations to a person appointed for that purpose by the Commission.

(3) The Commission shall have regard to representations made in accordance with subsection (2) in determining whether to refuse the application or revoke the order.

190. (1) An open-ended investment company shall be registered by the Commission if — Investment company

(a) it is a body incorporated in accordance with the Companies and Allied Matters Act;

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(b) it has capital and reserve as prescribed by the Commission;

(c) its article of association provide that it may acquire its own shares; and

(d) it satisfies all other conditions which may be prescribed by the Commission.

(2) Upon registration, the assets and investments of an open-ended investment company shall be in the custody of a registered custodian.

191. (1) A body corporate incorporated for the sole purpose of acquiring intermediate or long term interests in real estate or property development may raise funds from the capital market through the issue of securities which shall have the following characteristics — Real estate investment

(a) an income certificate giving the investor a right to a share of the income of any property or property development;

(b) an ordinary share in the body corporate giving the investor voting rights in the management of that body corporate; and

(c) such other feature as the Commission may prescribe.

(2) Under this Act, a trust may be constituted for the sole purpose of acquiring a property on a "trust for sale" for the investors.

(3) In the trust referred to in subsection (2), investors shall be entitled to —

(a) receive a periodic distribution of income and participate in any capital appreciation of the property concerned; and

(b) retain control over their investments by investing directly in a particular property rather than in a portfolio of investments.

(4) The Commission shall make rules and regulations regulating the activities and securities whether described as asset backed-securities or otherwise of real estate investment companies or trusts referred to in subsections (1) and (2).

192. A real estate investment company may be registered by the Commission if it —

Registration of real estate investment company

(a) is a body incorporated under the Companies and Allied Matters Act;

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(b) has a capital and reserve as prescribed by the Commission;

(c) carries on business as a collective investment scheme solely in properties; and

(d) complies with the requirement prescribed by the Commission through its rules and regulations.

193. (1) The Commission may approve an application by a manager or operator of a scheme administered in a foreign jurisdiction to solicit investment in such scheme from investors in Nigeria where —

Foreign collective investment schemes

(a) the application complies with the conditions prescribed by the Commission; and

(b) a copy of the approval or registration by the relevant foreign regulator authorising the foreign collective investment scheme to act as such is filed with the Commission.

(2) A person who invites the public to invest in a foreign collective investment scheme which is not approved by the Commission shall in addition to restituting the investors of deposits received, be liable to a penalty of not less than ₦10,000,000 or 10% of the gross value of the participatory interest of the scheme, whichever is higher.

(3) Where any person acquires or disposes of any participatory interest in a scheme, or deposits money with any company as a result of an invitation to the public made in breach of subsection (2), he shall be entitled to —

(a) rescind such transactions; and

- (b) either in addition to or in place of rescinding the transaction, recover compensation for any loss sustained by him from any person who is liable in respect of the breach.

194. (1) The Commission may appoint one or more competent inspectors to investigate and report on the affairs of the —

*Appointment of
inspectors*

- (a) manager, trustee or custodian of any scheme;
 - (b) operator, trustee or custodian of any recognised foreign scheme relating to activities carried on in Nigeria; or
 - (c) operator, trustee or custodian of, any other scheme if it appears to the Commission that it is in the interest of the participants to do so or that the matter is of public concern.
- (2) An inspector appointed under subsection (1) to investigate the affairs of the manager, trustee, custodian or operator of any scheme may also, if necessary for the purpose of that investigation, investigate the affairs of, the manager, trustee, custodian or operator of, any other such scheme as is mentioned in subsection (1) whose manager, trustee, custodian or operator is the same person as the manager, trustee, custodian or operator of the first-mentioned scheme.
- (3) Where a person claims a lien on a document, its production shall be without prejudice to the lien.
- (4) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless the —
- (a) customer is a person whom the inspector has reason to believe may be able to give information relevant to the investigation; and
 - (b) Commission is satisfied that the disclosure or production is necessary for the purpose of the investigation.
- (5) An inspector appointed under this section shall if so directed by the Commission, make interim reports to the Commission and on the conclusion of his investigation shall make a final report to the Commission.
- (6) A report made under subsection (5) shall be written or printed as the Commission may direct and the Commission may, if it deems fit —
- (a) furnish a copy, on request and on payment of the prescribed fee, to the manager, trustee, custodian or operator or any participant in a scheme

under investigation or any other person whose conduct is referred to in the report; and

(b) cause the report to be published on its website and by any other means it deems fit.

195. With the exception of specialised or alternative scheme, collective investment schemes shall be treated as pass-through vehicles for purposes of taxation.

Treatment of collective investment schemes

196. (1) The Commission shall have the power to enter and seal up all prohibited schemes and shall obtain an order of the Tribunal or a court to freeze and forfeit all assets of such schemes to the Federal Government of Nigeria.

Prohibited schemes

(2) The cost and expenses incurred under subsection (1) shall be a first charge from the funds and properties of the illegal scheme including assets of its owners, promoters or managers, whether acquired legitimately or otherwise.

(3) The promoter and operator of any entity engaged in a prohibited scheme commits an offence and are liable on conviction to a fine of not less than N20,000,000 or imprisonment to a term of 10 years or both.

(4) Notwithstanding the provisions of subsection (3), the Commission shall be entitled to recover expenses incurred in the course of investigating such prohibited schemes through the office of the Attorney-General of the Federation.

197. Terms used in this Part shall be construed as defined in section 357 of this Act.

Terms used in this Part

PART XIV — INVESTOR PROTECTION FUND

198. (1) An exchange shall establish and maintain a fund to be known as the investor protection fund.

Establishment of an investor protection fund

(2) An investor protection fund shall be administered by a board of trustees' subject to the regulatory supervision of the Commission.

(3) The assets of an investor protection fund shall be vested in the board of trustees and kept separate and applied for the purposes as set out in this Part.

199. The objectives of an investor protection fund shall be to compensate investors who suffer pecuniary loss arising from —

Objectives of investor protection fund

(a) the insolvency, bankruptcy or negligence of a license holder firm of an exchange;

(b) defalcation committed by a dealing member firm or any of its directors, officers, employees or representatives in relation to securities, money or

any property entrusted to, or received or deemed received by the dealing member firm in the course of its business as a capital market operator; or

(c) revocation or cancellation of the registration of a dealing member firm under section 61 (6) of this Act.

200. (1) The board of trustees of an investor protection fund shall consist of a maximum of nine members, comprising of —

Composition and
tenure of board of
trustees

(a) a representative from the dealing member firms;

(b) a representative from the exchange;

(c) a representative from one of the financial market infrastructures;

(d) a representative of the Commission;

(e) one person representing the institutional investors;

(f) a representative of association of capital market registrars or custodians;

(g) one person with proven integrity, who is knowledgeable in capital market matters;

(h) one person representing a registered association of the relevant investor class; and

(i) one person who shall be a legal practitioner knowledgeable in capital market matters.

(2) A member of the board of trustees shall —

(a) be appointed by the board of an exchange on the recommendation of the body he represents; and

(b) hold office for a term of three years and may be re-appointed for a further term of three years and no more, on the recommendation of the body he represents.

(3) Notwithstanding the provisions of subsection (2), the board of trustees may appoint a member whose tenure has expired as a temporary member provided that such appointment shall be for a maximum term of six months and no more.

(4) A temporary member appointed under subsection (3) may exercise all the rights, privileges and responsibilities of a board member.

201. A member of the board of trustees shall cease to be a member if —

Removal from the
board of trustees

- (a) before the expiration of his tenure, he ceases to be a member of the body he represents on the board of trustees;
- (b) his membership on the board of trustees is withdrawn by the body he represents and on whose recommendation he was appointed;
- (c) he is guilty of any crime involving dishonesty or sanctioned for misconduct by any professional body or association; or
- (d) on a resolution of the other members of the board of trustees supported by at least two-thirds of its membership, is adjudged to be engaged in activities prejudicial to or inconsistent with his position as a member of the board of trustees.

202. Without prejudice to the provisions of the Trustees Investments Act, the board of trustees shall have power to—

Powers of the board
of trustees

- (a) administer the investor protection fund as to engender investors' confidence and promote general market development;
- (b) prepare its own rules governing the operations and effective management of the investor protection fund subject to the approval of the exchange and the Commission; and
- (c) perform any act incidental to or in relation with the operation and management of the investor protection fund.

Cap. T22, LFN,
2004

203. An investor protection fund shall consist of —

Money accruing to
the investor
protection fund

- (a) all money paid to the board of trustees by dealing members of the exchange in respect of which an investor protection fund has been established as may be prescribed by the exchange;
- (b) the interest and profits accruing from the investment of an investor protection fund;
- (c) all money paid to an investor protection fund by the exchange in accordance with the provisions of this Part;
- (d) all money recovered by or on behalf of the board of trustees in the exercise of any right of action conferred by this Part;
- (e) all money paid by an insurer under any contract of insurance or indemnity entered into by a dealing member or the board of trustees;

(f) all money held by any investor protection fund or by whatever name so called, established by the exchange prior to the coming into effect of this Act; and

(g) all other money lawfully paid into an investor protection fund.

204. All money forming a part of an investor protection fund shall be paid or transferred into a separate bank account in Nigeria pending the investment or application of such money in accordance with the provisions of this Part.

Fund to be kept in separate bank account

205. (1) The board of trustees may apply the funds of an investor protection fund for payment of —

Payment out of the investor protection fund

(a) claims by investors arising from the insolvency, bankruptcy or negligence of a failed dealing member firm as may be ascertained, determined or directed under the provisions of this Act;

(b) claims, including costs, of an investor allowed by the exchange, arising from defalcation committed by a dealing member firm or any of its directors, officers, employees or representatives in relation to securities, money or any property entrusted to, or received or deemed received by the dealing member firm in the course of its business as a capital market operator;

(c) any amount ordered to be paid as compensation to an investor by the Commission or the Tribunal in respect of any claim or loss arising from defalcation as provided for in section 214 of this Act;

(d) claims arising from losses incurred by revocation or cancellation of the registration of a dealing member firm under the provisions of section 61 (6) of this Act;

(e) all legal, professional and other expenses incurred in investigating or defending claims made under this Part of the Act or incurred in relation to an investor protection fund or in the exercise by the board of trustees of the rights, powers and authority vested in it by this Part of the Act in relation to an investor protection fund;

(f) all premiums payable in respect of contracts of insurance or indemnity entered into by the board of trustees;

(g) the expenses incurred or involved in the administration of the investor protection fund including the salaries and wages of persons employed by the board of trustees in relation to it; and

(h) all other money payable out of an investor protection fund in accordance with the provisions of this Act.

- (2) Payment of any claim, award, or order for compensation under subsection (1) (a)-(d), shall be made subject to such limitations on the amount that may be claimed as determined by the board of trustees and approved by the Commission.

206. (1) A board of trustees shall establish and keep proper books of accounts in relation to an investor protection fund and shall, not later than three months following the end of the financial year of the fund, cause the income and expenditure for the year and a balance sheet to be published.

Accounts of investor protection fund

- (2) An exchange shall, on the recommendation of the board of trustees, appoint an auditor to audit the accounts of the investor protection fund established by it.

- (3) The auditor appointed under subsection (2) shall regularly and thoroughly audit the accounts of the investor protection fund and shall complete the audit not later than one month following the period referred to in subsection (1) to enable the audited accounts to be submitted by the board of trustees to the Commission not later than two months following the period referred to in subsection (1).

207. (1) The board of trustees may for the purpose of management of the investor protection fund appoint a management subcommittee of at least three and not more than five persons.

Board of trustees may delegate functions

- (2) The board of trustees may by resolution delegate to a subcommittee appointed under subsection (1) all or any of its powers.

- (3) Any power, authority or discretion so delegated by the board of trustees may be exercised by members forming a majority of the subcommittee as if that power, authority or discretion had been conferred on a majority of the members of the subcommittee.

- (4) Any delegation by the board of trustees may at any time in like manner be rescinded or varied.

- (5) The board of trustees may at any time remove any member of a subcommittee appointed by it under this section and may fill any vacancy in the subcommittee.

- (6) A decision of a subcommittee of the board of trustees shall be of no effect until it is confirmed or ratified by the board of trustees.

208. (1) An investor protection fund shall consist of such minimum amount as may by regulation be approved by the Commission to be paid to the credit of the investor protection fund on the establishment of an exchange.

Minimum amount in investor protection fund

- (2) The board of trustees shall have the discretion to determine the amount or minimum amounts to be contributed by each dealing member firm to the fund subject to the approval of the exchange.
209. Where for any reason, the investor protection fund falls below the minimum amount approved for an exchange, the board of trustees shall take steps to make up the deficiency —
- Protection of the investor protection fund
- (a) by direct transfer to the investor protection fund of an amount which is equal to the deficiency from other funds of the exchange; or
 - (b) in the event that there are insufficient funds to transfer under paragraph (a), by determining the amount which each dealing member shall contribute to the investor protection fund.
210. (1) Where at any time the amount available in an investor protection fund is not sufficient to satisfy the liabilities which are ascertained against any dealing member firm, the exchange on the recommendation of the board of trustees may impose on any or every dealing member firm a levy of such amount as it deems fit to meet the deficiency.
- Levy to meet liabilities
- (2) The amount of such levy shall be paid within the time and in the manner specified by the board of trustees either generally or in relation to any particular case.
211. An exchange may, from its general funds, give or advance any sums of money to an investor protection fund on such terms and conditions as it may deem fit.
- Power of an exchange to make an advance to an investor protection fund
212. The board of trustees of an investor protection fund shall determine the manner of investing the money accruing to the fund as authorised by the Trustee Investments Act.
- Investment of the funds of an investor protection fund
- Cap. T22, LFN, 2004
213. (1) The funds of an investor protection fund shall be held and applied for compensating persons who suffer pecuniary loss from —
- Application of the funds of an investor protection fund
- (a) the revocation or cancellation of the registration of a capital market operator under the provisions of section 61(6) of this Act;
 - (b) the insolvency, bankruptcy or negligence of a dealing member firm, or member company of an exchange; and
 - (c) any defalcation committed by a member company or any of its directors or employees in relation to any money or other property which, was entrusted or received or deemed received by a member company or any of its directors or employees whether before or after commencement of

this Act in the course of or in connection with the business of that company or any other occurrence in respect of which the claim arose.

- (2) For the purposes of this section, "a director of a member company or dealing member firm" includes a person who, as at the time of the defalcation in question has been or has ceased to be a director of a member company or dealing member firm if, at the time of the defalcation the person claiming compensation has reasonable grounds for believing that person to be a director of a member company or dealing member firm.

214. (1) A claim for compensation relating to a defalcation by a license holder shall first be made to such license holder where it is not insolvent or bankrupt and the license holder shall settle the claim within 14 days or such other period as may be approved by the Commission.

Claims against a
license holder

- (2) Where the license holder fails to settle the claim, under subsection (1), the investor shall be entitled to make a claim to the investor protection fund of the exchange.

- (3) Where the fund settles the claim under subsection (2), the exchange shall proceed against the license holder to recover the amount paid in settling the claim.

215. (1) Subject to the provisions of this Part, a person who suffers pecuniary loss as provided in section 213 of this Act shall be entitled to claim compensation from the investor protection fund established for the exchange to which the defaulting member company or dealing member firm belongs.

Claims against an
investor protection
fund

- (2) A claim for compensation shall first be made to the defaulting capital market operator who committed the defalcation.

- (3) Where the capital market operator is unable to satisfy the claim, a claim for compensation under this Part shall be made to an exchange which shall within 90 days verify every claim and determine the amount or extent, if any, to which the claim shall be allowed.

- (4) Subject to fulfilling such preconditions for compensation as may have been prescribed by the board of trustees, a verified claim shall be paid by the investor protection fund to an investor within 14 days of such verification by the exchange.

- (5) The provisions of subsection (3) shall be without prejudice to the power of the Commission or the Tribunal to direct or order the payment of compensation in accordance with the provisions of this Act.

- (6) Subject to subsections (3) and (4), a person shall not have any claim against an investor protection fund in respect of a defalcation concerning money or other property which, prior to the commission of the defalcation, had in the due course

of the administration of a trust ceased to be under the control of the director or directors of the dealing member firm concerned.

(7) Subject to this Part and any limit that may be determined by the exchange and approved by the Commission, the amount which any claimant shall be entitled to claim as compensation from an investor protection fund shall be the amount of the actual pecuniary loss suffered by the person, including the reasonable cost of disbursement incidental to the making and proving of the claim, less any amount or value of all money or other benefits received or receivable by the person from any source other than the investor protection fund in reduction of the loss.

(8) In addition to any compensation payable under this Part, interest shall be payable out of the investor protection fund concerned on the amount of the compensation, less any amount attributable to costs and disbursements, at a rate to be determined by the board of trustees.

216. (1) The Commission or an exchange may cause to be published in any two national daily newspapers circulating in Nigeria, a notice, in or to the effect of a form prescribed by the Commission, specifying a date, not being earlier than one month after the publication, on which claims for compensation from the investor protection fund, in relation to the person specified in the notice, may be made.

Notice calling for claims against the investor protection fund

(2) A claim for compensation under this Part shall be made in writing to the board of trustees within six years from the date of occurrence of the defalcation, revocation or cancellation of the registration of the dealing member firm and insolvency or bankruptcy of the dealing member firm, and any claim which is not so made shall be barred unless the Commission by its rules and regulations determines otherwise.

(3) An action for damages shall not lie against an exchange or against any member or employee of an exchange or of a board of trustees or management subcommittee by reason of any notice published in good faith and without malice for the purposes of this section.

217. The board of trustees may, subject to this Part, settle any claim for compensation from an investor protection fund as may be determined, by an exchange, the Commission or the Tribunal.

Power to settle claims

218. Where, in any proceedings brought before the Tribunal to establish a claim, the Tribunal is satisfied that the claimant has a valid claim, the Tribunal shall by order —

Form of order of the Tribunal

(a) declare the fact and the date of the defalcation or other loss suffered by a claimant;

(b) declare the claim payable; and

(c) direct that the investor protection fund concerned settles the claim so declared and deal with the same in accordance with the provisions of this Part.

219. The exchange, Commission or Tribunal may require any person to produce and deliver any securities, documents or statements of evidence necessary to support any claim made or necessary for the purpose of determining a claim or for any other proceedings in connection with any matter pending before it. Power to require production of evidence
220. On payment out of an investor protection fund of any money in respect of any claim under this Part, the board of trustees of an investor protection fund shall be subrogated, to the extent of the payment made out of the investor protection fund, to all the rights and remedies of the claimant in relation to the loss suffered by him. Subrogation
221. A claimant against an investor protection fund shall not have any right of action against any person with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or have any right or claim with respect to any money paid by the insurer in accordance with such contract. Application of insurance money
222. An exchange, its director, official or employee, who contravenes any of the provisions of this Part, is liable to a penalty of N1,000,000 and a further sum of N25,000 for every day during which the violation continues. Penalty for violation
223. Terms used in this Part shall be construed as defined in section 357 of this Act. Terms used in this Part

PART XV — COMMODITIES EXCHANGE AND WAREHOUSE RECEIPTS

A — COMMODITIES EXCHANGE

224. (1) A person shall not establish or maintain or hold himself out as providing or maintaining a commodity exchange unless such exchange has been registered by the Commission. Establishment of commodities exchanges
- (2) A person who contravenes this provision commits an offence and is liable on conviction to a fine of not less than N10,000,000 or imprisonment for a term not more than five years or both.
- (3) The Commission may, in lieu of prosecution under subsection (2), impose a penalty of at least the prescribed paid-up share capital of the relevant securities exchange as specified by the Commission and a further sum of not less than N100,000 for every day the violation continues.
225. (1) The Commission shall prescribe the minimum share capital for a commodities exchange. Conditions for registration

- (2) A commodities exchange shall be an entity incorporated or registered in Nigeria as defined in the interpretation section of this Act.
 - (3) An application for registration shall be accompanied by particulars, including rules of an exchange, and such other information as the Commission may by regulations require.
 - (4) The Commission may, in considering an application, have regard to any information in its possession whether provided by the applicant or not.
 - (5) Where the Commission discovers that the information referred to in subsection (3) adversely affects the application for registration, the Commission shall forward such information to the applicant for clarification.
 - (6) Where the Commission considers the clarification provided under subsection (5) unsatisfactory it shall refuse the application.
226. (1) A commodities exchange shall make rules for the effective performance of its functions, which rules shall be subject to the prior approval of the Commission.
- Rules of
commodities
exchange
- (2) The rules of an exchange shall provide for —
 - (a) the exclusion from trading on its platform, persons who are not of good character and who do not possess a high degree of business integrity;
 - (b) the expulsion, suspension, or discipline of license holders for conduct inconsistent with just and equitable principles in the transaction of commodities business, or for contravention of or failure to comply with the rules of the commodities exchange or the provisions of this Act;
 - (c) the conditions under which commodities may be listed, quoted or admitted on that commodities exchange;
 - (d) the conditions governing dealings in commodities by the license holders;
 - (e) the types of commodities which may be dealt in by license holders; and
 - (f) a fair representation of persons in the selection of members of the board or license holders of the commodities exchange and the administration of its affairs.
 - (3) An amendment shall not be made to the rules of a commodities exchange, in any form, unless the board of the commodities exchange, has submitted a written application of the proposed amendment to the Commission for approval.

services, except through a duly registered subsidiary or duly registered third party; and

(h) do such other things as are necessary for, incidental, or conducive to the proper operation of an exchange.

(2) A commodities exchange shall perform regulatory functions including regulatory oversight, inspection, examination, and maintenance of adequate surveillance systems on the trading activities of its license holders and any other function as may be prescribed by the Commission.

(3) A commodities exchange, shall at the end of every quarter file a detailed report on its surveillance and enforcement activities with the Commission.

(4) The Commission may, in order to achieve the objectives of this Act, assume responsibility of one or more of the regulatory or supervisory functions referred to in subsection (1).

(5) Nothing in this section shall preclude the Commission from carrying out inspections or conducting enquiries or audit of any license holder of a commodities exchange.

229. (1) The appointment of the chief executive and other principal officers of a commodities exchange shall be subject to the prior written approval of the Commission.

Appointment and removal of chief executive and principal officers of a commodities exchange

(2) The Commission may, in writing, direct a commodities exchange to remove the chief executive or an officer performing the functions of a chief executive and where the commodities exchange fails to comply with the directive of the Commission, the Commission may suspend or remove such officer from office in the public interest or for the protection of investors.

(3) The Commission may suspend or remove the chief executive or a principal officer of a commodities exchange, if it is satisfied that such officer has contravened, failed, or refused to comply with the —

(a) provisions of this Act or rules and regulations made under it;

(b) rules of the commodities exchange; or

(c) directive of the Commission;

Provided that the chief executive or such other principal officer shall be given an opportunity to be heard before the suspension or removal from office by the Commission.

230. Where a commodities exchange reprimands, penalizes, suspends, expels, or otherwise takes disciplinary action against a license holder, the commodities exchange shall, within seven days of such action, notify the Commission in writing of the—
- Commodities exchange to give notice of disciplinary actions
- (a) name and other particulars of the license holder; and
 - (b) nature of, and reason for the action taken by the commodities exchange, against the affected license holder.
231. The Commission may review any disciplinary action taken by a commodities exchange against a license holder and may affirm or set aside such decision, after granting fair hearing to the license holder and the commodities exchange.
- Review of disciplinary actions taken by a commodities exchange
232. Nothing in this section shall preclude the Commission from taking disciplinary action against a license holder, where a commodities exchange fails to sanction a license holder:
- Oversight function on commodities exchanges
- Provided that, before taking such action, the Commission shall give the license holder and the commodities exchange an opportunity of being heard.
233. (1) The Commission may, where appropriate, issue directives to a commodities exchange with respect to—
- Power to issue directives to a commodities exchange
- (a) trading on the commodities exchange or pertaining to any commodities listed on the commodities exchange,
 - (b) the manner in which a commodities exchange carries on its business including the manner of reporting off-market transactions, or
 - (c) any other matter which the Commission considers necessary for the effective administration of this Act,
- and the commodities exchange shall comply with the directives.
- (2) A commodities exchange which fails to comply with a directive given under subsection (1) shall be liable to a penalty of not less than ₦10,000,000, in the first instance and a further sum of not less than ₦500,000 for every day the violation continues.
234. (1) Where the Commission deems it necessary to protect persons transacting in particular contracts in commodities on a commodities exchange, it may prohibit or suspend trading in the commodities for a period not exceeding 14 days, and give notice in writing of the prohibition or suspension to the commodities exchange and the relevant depository, central counterparty, clearing house and warehouse:
- Prohibition of trading in particular contracts in commodities

Provided that the Commission may by notice in writing, extend the suspension for a further period not more than 30 days at a time.

(2) A commodities exchange which fails to comply with a notice given under subsection (1) is liable to a penalty of not less than ₦1,000,000, in the first instance and a further sum of ₦50,000 for every day the violation continues.

(3) The Commission may, in addition to the penalty prescribed under subsection (2) —

(a) refuse to consider any application made to the Commission by the commodities exchange;

(b) revoke the instrument of registration of the commodities exchange;

(c) petition the court for winding-up of the commodities exchange; or

(d) take any other action as it may deem fit.

235. (1) The Commission may revoke any instrument of registration granted if the body corporate ceases to operate as a commodity exchange, is being wound up, operating in a manner detrimental to public interest, or has provided to the Commission any information that was false or misleading in a material particular.

Revocation of
registration

(2) A body corporate shall be deemed to have ceased to operate as a commodity exchange if it has ceased to operate for more than 180 days unless it has obtained the approval of the Commission to do so, or by virtue of any directive issued by the Commission.

236. (1) A person shall not, whether as principal or agent, carry on business of or hold himself out as —

Registration of
commodity broker

(a) a commodity broker;

(b) a commodity broker's representative;

(c) a commodity trading adviser;

(d) a commodity pool operator;

(e) a spot commodity broker;

(f) spot commodity pool operator; or

(g) any other professional or entity as may be determined by the Commission unless such person is registered by the Commission in accordance with the provisions of this Act or rules and regulations made under it.

(2) A person who contravenes subsection (1), commits an offence and is liable on conviction to a fine of not less than ₦10,000,000 or imprisonment for a term of not less than three years or both.

237. (1) Whenever the Commission has reason to believe that an emergency exists, it may direct a commodity exchange or a clearing house to take such action as it considers necessary to maintain or restore orderly trading. Emergency powers

(2) Where a commodity exchange or a clearing house fails to comply with the directives of the Commission under subsection (1) within such time as is specified by the Commission, the Commission may take any action it deems necessary to restore orderly trading.

(3) In this section, "emergency" includes, in addition to threatened or actual market manipulations, any act of government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for commodity or any other undesirable situations or practices which in the opinion of the Commission constitutes an emergency.

(4) Without prejudice to subsection (1) where a commodity exchange or a clearing house exercises its powers under its rules to take emergency action, the Commission may modify such emergency action, including setting aside the emergency action.

238. (1) A person other than a clearing house, a commodities exchange, a commodity broker, a commodity trading adviser or commodity pool operator shall not— Prohibition of use of certain titles

(a) take or use the title or description "clearing house" "commodity exchange" "commodity broker", "spot commodity broker", "commodity trading adviser", "commodity pool operator", or "spot commodity pool operator"; or

(b) take or use, or have attached to or exhibited at any place, any title or description that resembles the titles specified in paragraph (a) or so closely resembles such titles as to be calculated to deceive.

(2) A person who contravenes the provisions of this section is liable to a penalty of not less than ₦10,000,000 and a further sum of ₦20,000 for every day the violation continues.

239. (1) A person shall not —

Offences

- (a) create or cause to be created or do anything that is calculated to create a false or misleading appearance of active trading in a commodity exchange, or a false or misleading appearance with respect to the market for, or the price of trading in, commodity contracts;
- (b) execute, or hold himself out as having executed, an order for the purchase or sale of a commodity contract on a commodity exchange without having effected a purchase in good faith or sale of the commodity contract in accordance with the business rules and practices of the commodity exchange;
- (c) circulate, disseminate, authorise the circulation or dissemination of, any statement or information to the effect that the price of trading in any class of commodity contracts is, or is likely to rise or fall because of the market operations of one or more persons knowing such information to be about false trading;
- (d) directly or indirectly —
 - (i) manipulate, or attempt to manipulate, the price of a commodity contract that may be dealt in on a commodity exchange, or
 - (ii) corner, or attempt to corner, any commodity which is the subject of any commodity contract;
- (e) directly or indirectly, in connection with any transaction with any other person involving trading in a commodity contract —
 - (i) employ any device, scheme or artifice to defraud that other person,
 - (ii) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person, or
 - (iii) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (f) directly or indirectly, for the purposes of inducing or attempting to induce another person to trade in a commodity contract or class of commodity contracts, make or publish —
 - (i) any statement which is, at the time and in the light of the circumstances in which it is made, false, misleading or deceptive with respect to any material fact and which he knows, or has

reasonable grounds for believing, is false, misleading or deceptive,
or

(ii) any statement which is, by reason of the omission of a material fact rendered false, misleading or deceptive and which he knows, or has reasonable grounds for believing, is rendered false, misleading or deceptive by reason of the omission of that fact.

(2) A person who contravenes any provision of this section commits an offence and is liable on conviction, in the case of —

(a) an individual, to a fine of not less than ₦5,000,000 or to imprisonment for a term of not less than five years or both, or

(b) a body corporate, to a fine of not less than ₦50,000,000.

B — WAREHOUSE RECEIPTS

240. (1) A person shall not operate a warehouse storing commodities linked to an exchange or issuing warehouse receipts tradable on an exchange without registration of the warehouse by the Commission. Registration of
warehouses

(2) The Commission may, upon application in the prescribed form, register a warehouse operator for the operation of a warehouse in accordance with the provisions of this Act.

(3) The registration under subsection (2), shall be granted subject to the Commission satisfying itself that the warehouse —

(a) is suitable for the proper storage of the particular commodities;

(b) operator meets the conditions for eligibility to operate a registered warehouse of the kind applied for as may be prescribed in the rules and regulations made under this Act; and

(c) operator agrees, as a condition to the granting of the registration, to comply with and abide by the provisions of regulations made under this Act.

(4) A person, who operates a registrable warehouse without obtaining registration as required under this Act, commits an offence and is liable on conviction to a fine of not less than ₦3,000,000 or imprisonment for a term of not less than five years or both.

- (5) A person who continues to operate a warehouse after the suspension or revocation of its instrument of registration, commits an offence and is liable on conviction to a fine of N2,000,000 or imprisonment for a term of not less than five years or both.
- (6) The Commission may, in lieu of criminal prosecution under subsections (4) and (5), impose a penalty of not less than N10,000,000 and a further sum of N50,000 for every day the violation continues.
241. (1) The Commission may revoke or suspend the registration of a warehouse for any violation of the provisions of this Act after granting to the warehouse operator the opportunity of being heard. Revocation and suspension of warehouse registration
- (2) Where the registration of a warehouse is revoked or suspended, the warehouse operator shall take such steps as prescribed in the rules and regulations made under this Act.
- (3) The revocation or suspension of a registration under the provisions of this Act or the rules and regulations made under it shall not affect the validity of receipts issued by an issuer of warehouse receipts.
242. A warehouse operator shall insure its warehouse structures and facilities as well as the commodities stored in the warehouse as prescribed by the rules and regulations made under this Act. Insurance of warehouse and commodities
243. (1) The Commission or its appointed agent may inspect any warehouse. Inspection of warehouse by the Commission
- (2) A person who obstructs a warehouse inspector or any other authorised person in the exercise of the powers conferred on him by this Act or who neglects or refuses to produce to a warehouse inspector or any other authorised person, any commodity, document, book of accounts or other records on demand, commits an offence and is liable on conviction to a fine of not less than N500,000 or imprisonment for a term of not more than three months or both.
- (3) The Commission may, in lieu of criminal prosecution in subsection (2), impose a penalty of not less than N1,000,000 and a further sum of N5,000 for every day the violation continues.
244. (1) A person shall not operate a collateral management company without registration by the Commission, and a collateral management company shall provide the services stipulated in the rules and regulations made under this Act. Registration of collateral management company
- (2) The collateral management company shall make necessary arrangements for provision of pledging against a warehouse receipt and the activities of eligible pledgees.

245. (1) A warehouse receipt as defined in this Act shall only be issued by an entity duly registered by the Commission and in a manner prescribed by the Commission.

Issuance of
warehouse receipt

(2) A commodity received note may be issued by a warehouse operator or any entity so authorised for a maximum period of two days or such period as may be determined by the Commission, to a depositor of commodities until the issuance of the warehouse receipt to the depositor.

(3) A person who violates the provisions of this section commits an offence and is liable on conviction to a fine of not less than ₦1,000,000 or imprisonment for a term of six months or both.

(4) A person who issues a warehouse receipt in contravention of the provisions of this section is liable, in lieu of criminal prosecution, to a penalty of not less than ₦2,000,000 and a further sum of ₦5,000 for every day the violation continues.

246. (1) A warehouse receipt drawn and issued shall be first proof of the holder having proprietary rights in the commodities.

Warehouse receipt
as evidence of
proprietary rights

(2) A person acquires proprietary rights in the commodities, in relation to a warehouse receipt, if he is entitled to the ownership of the commodities —

(a) in return for a binding commitment to extend credit or for extension of an immediately available credit, whether or not drawn;

(b) as security for or in total or partial satisfaction of a pre-existing claim;

(c) by accepting delivery under a pre-existing contract for purchase; or

(d) in return for any consideration sufficient to support a pre-existing contract.

247. (1) A warehouse receipt shall be in the prescribed form and comply with standardisation rules, and have such content as prescribed in the rules and regulations made by the Commission under this Act.

Form,
standardisation and
contents of
warehouse receipt

(2) The issuer of a warehouse receipt shall be liable to the person who suffers loss as a result of false or inaccurate information contained in a warehouse receipt, or for omission of any term required to be included in the warehouse receipt under this Act.

248. (1) Where a warehouse receipt is issued on commodities, it shall be traded on a commodity exchange where such commodities are listed on the exchange for trading.

Trading in
warehouse receipts

- (2) For the purpose of settlement of a warehouse receipt, a commodity exchange and its depository shall establish connectivity with the electronic warehouse receipt system of the issuer.

249. (1) A warehouse receipt issued to the bearer or to the order of a named person shall be transferable by endorsement and delivery.

Negotiable
warehouse receipts

- (2) Words capable of rendering any warehouse receipts non-negotiable shall not be inserted into such warehouse receipts.

250. (1) Delivery of a commodity which is the subject of a warehouse receipt shall be done in accordance with the rules and regulations made by the Commission under this Act.

Obligation of a
warehouse operator
to deliver

- (2) Except as provided under this Act or any rules and regulations made by the Commission, an issuer of a warehouse receipt shall deliver stored commodities upon demand by the holder of the warehouse receipt, if the holder —

(a) makes full payments for the warehouse operator's charges for storage and other services relating to the commodities either through the clearing house if the stored commodities are traded on the exchange or directly through a medium as may be approved by the Commission if the commodities are not traded on the exchange, or does not make full payment and a lien is placed on the commodities, after deducting the exact quantity of the commodities at open market value as at that date, plus ancillary cost;

(b) signs relevant documents acknowledging the delivery of the commodities; and

(c) satisfies the warehouse operator of the identity of the person taking possession of commodities.

- (3) Except as may be permitted by rules and regulations made by the Commission, an issuer of a warehouse receipt shall not —

(a) issue warehouse receipts for commodities in respect of which the issuer, its directors or staff have interest; or

(b) trade in commodities which it is registered to store.

- (4) Where an issuer of a warehouse receipt is permitted by regulation to trade in its own commodities, and in fulfilling any additional condition for grant of the registration, it shall ensure that —

(a) there is a clear separation of the commodities owned by it from other commodities it is authorised to store;

(b) there are clear and transparent records available to show the demarcation of the commodities; and

(c) it issues receipt in respect of its commodities indicating that the commodities belong to it.

251. (1) A warehouse operator shall take all necessary precautions to ensure that the delivery of commodities is made to a person who has lawfully obtained a warehouse receipt.

Obligation to deliver commodities to persons with valid titles or right

(2) A warehouse operator's title or right to the possession of commodities shall only be derived —

(a) directly or indirectly from a transfer made by a depositor at the time of or subsequent to deposit of commodities; or

(b) by a warehouse operator's lien on the commodities.

(3) Unless a warehouse operator's title or right to possession of the commodities is obtained in accordance with the provisions of subsection (2), the warehouse operator shall incur liability for refusing to deliver the commodities according to the terms indicated on the warehouse receipt.

252. (1) Subject to rule and regulations made by the Commission, a warehouse operator's lien on commodities deposited or the proceeds of such commodities shall derive from all —

Warehouse operator's right to lien

(a) lawful charges for storage and preservation of commodities;

(b) lawful claims for money advanced, interest, insurance, transportation, labour, weighing, and other charges and expenses in relation to such commodities;

(c) reasonable charges and expenses incurred for notice and advertisements of sale; and

(d) sale of the commodities where there is default in satisfying the warehouse operator's lien.

(2) The term 'warehouse operator's lien' used in subsection (1) is the right of a warehouse operator to recoup fees and charges for services rendered or supplied or repayment of sums advanced in accordance with the provisions of subsection (1) and the term "right of lien" shall be construed accordingly.

253. (1) A warehouse operator's lien may be enforced subject to the provisions of this Act and rules and regulations made under it against—

Enforcement of lien

- (a) all commodities, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and
- (b) the established interest of the depositor in any other commodities deposited with the warehouse operator, whether or not deposited by the debtor himself, provided that such exercise of lien shall only be to the extent and value of the established debtors interest in these other commodities.

(2) A warehouse operator's lien may be satisfied by —

- (a) the sale of a portion of the deposited commodities and any costs associated with the sale at the prevailing market price;
- (b) other remedies allowed by law for the enforcement of a lien against personal property; or
- (c) any other action for recovery of the warehouse operator's claim.

(3) A warehouse operator who has a valid lien against the person demanding the commodities may refuse to deliver the commodities until the lien is satisfied.

(4) Other remedies available under the law that a creditor may have against a debtor for the collection from a depositor of all charges and advances which the depositor has expressly or impliedly contracted with a creditor, shall also be available to a warehouse operator notwithstanding the warehouse operator's lien on the commodities.

254. A warehouse operator shall lose the right to the lien on the commodities by —

Loss of right of lien

- (a) surrendering possession of the commodities; or
- (b) refusing to deliver the commodities upon demand made in accordance with the provisions of this Act.

255. (1) Except as otherwise provided in this Act or rules and regulations made under it, where a warehouse operator delivers commodities for which a warehouse receipt had been issued, the issuer shall cancel the receipt.

Cancellation of warehouse receipt after the delivery of commodities

(2) Where an issuer of a warehouse receipt, fails to cancel the receipt as provided for under subsection (1), and a third party purchaser without notice acquires title to the receipt, the issuer of the warehouse receipt shall remain liable for the market value of the commodities.

- (3) Where an issuer of a warehouse receipt, fraudulently fails to cancel a receipt upon which delivery has been made, the issuer commits an offence and is liable on conviction to a fine of not less than N20,000,000, and in addition pay the prevailing market value of the commodities.

256. (1) Except as otherwise provided in this Act, where a warehouse operator delivers part of the commodities for which a warehouse receipt had been issued, the issuer of the warehouse receipt shall cancel the receipt and issue a new receipt for the remaining commodities.

Delivery of commodities in parts

- (2) An issuer of a warehouse receipt who fails to comply with the provisions of subsection (1), commits an offence and is liable on conviction to imprisonment for a term of one year and in addition liable to pay the market value of the commodities not delivered.

- (3) Where a receipt is not cancelled as provided under subsection (1) and the purchaser acquires title to the receipt before or after the delivery of any portion of the commodities, the issuer of the warehouse receipt shall remain liable to the purchaser.

257. (1) A person shall not alter a warehouse receipt in a manner that conveys a false information or misrepresentation of information contained in the receipt.

Altered warehouse receipts

- (2) An alteration to a warehouse receipt shall be regarded as immaterial, if the alteration does not affect the prior proprietary rights of the holder or convey a false information or misrepresentation.

- (3) Any person who acquired an interest or relied on an altered warehouse receipt shall be entitled to the remedies provided in Section 258 of this Act.

- (4) Any person who violates the provisions of subsection (1) commits an offence and is liable on conviction to a fine of N5,000,000 or imprisonment for a term of not less than two years or both.

- (5) The Commission may, in lieu of criminal prosecution for a violation of subsection (1), impose a penalty of not less than N10,000,000.

258. (1) A purchaser of an altered warehouse receipt for value without notice of the alteration shall acquire the same proprietary rights against the issuer which the purchaser would have acquired if the receipt had not been altered at the time of purchase.

Rights of purchasers of altered receipts

- (2) A purchaser of a warehouse receipt shall be regarded to have had notice of alteration, if before the purchase of the warehouse receipt, the purchaser or his agent took part or influenced the alteration of the warehouse receipt and shall be

liable to be proceeded against under this Act in the same way and manner as the issuer of the warehouse receipt.

- (3) A purchaser of an altered warehouse receipt for value without notice of the alteration shall be entitled to proceed against the issuer to claim damages for the loss suffered as a result of the alteration.

259. (1) A warehouse receipt holder shall acquire after negotiation as provided under this Act — Rights derived from negotiation

(a) title to the warehouse receipt;

(b) title to the commodities, including, to the extent that such activities are authorised by the depositor and noted on the warehouse receipt, the packed, processed, substituted or otherwise transformed commodities of the depositor;

(c) all rights accruing under the law, including rights to commodities delivered to the warehouse operator after the warehouse receipt was issued;

(d) the obligation of the warehouse operator to hold or deliver the commodities according to the terms of the warehouse receipt and any related storage agreement fee; and

(e) liability to pay outstanding storage charges, advances and other fees endorsed on the warehouse receipt.

(2) Title and rights acquired under subsection (1) are not invalidated by the surrender of the commodities by the warehouse operator.

(3) Where a warehouse receipt is negotiable, no person shall have a lien by virtue of any judicial process to commodities in the possession of a warehouse operator except where —

(a) a warehouse receipt is originally issued upon delivery of the commodities by a person who had no power to deposit the commodities; or

(b) the receipt is first surrendered to the warehouse operator or its negotiation is ordered by the Tribunal or a court, and the warehouse operator shall not be compelled to deliver the commodities in accordance with any judicial process until the receipt is surrendered to the warehouse operator or made a subject of litigation before the Tribunal or a court.

(4) A person who purchases a warehouse receipt for value without notice of the judicial or arbitral process takes the commodities free of the lien imposed by the judicial or

arbitral process without removing the liability of the transferor to any claim against him in that respect.

260. (1) A warehouse operator shall not deliver the commodities if, prior to delivery, he receives information or otherwise becomes aware that a person to whom delivery is about to be made is not legally entitled to the delivery. Liability for wrongful delivery of commodities
- (2) A warehouse operator who proceeds to deliver the commodities in its custody in violation of subsection (1), shall be liable to all persons having proprietary rights to or in the possession of the commodities in the exact market value of the commodities wrongfully delivered.
261. Except as otherwise provided in this Act or rules and regulation made under it, an issuer of a warehouse receipt shall be liable to the holder of a warehouse receipt for the commodities named in the receipt not being in existence, or by the commodities delivered not corresponding with the description in the warehouse receipt subject only to changes that may occur in the commodities, over time when stored in accordance with the conditions specified in this Act or by the rules and regulations made under it. Liability for wrongful description of commodities
262. Except for unavoidable damages, reasonable wear and tear, or deterioration associated with the nature and type of the commodities and mode of storage, and other exemptions provided under this Act and the rules and regulations made under it, a warehouse operator is liable in damages for loss of, or injury to the commodities caused by the warehouse operator's failure to exercise due and reasonable care as circumstances may demand. Liability for loss or injury to commodities
263. An issuer of a warehouse receipt, its employee, agent, or servant who issues or aids in the issuance of a receipt knowing that the commodities for which such receipt is issued have not been received by the warehouse operator, or are not under his direct control at the time of issuing such receipt, commits an offence and is liable on conviction for — Liability for issuance of receipts for commodities not received
- (a) an individual, to a fine of not less than ₦2,000,000 or imprisonment for a term not more than two years or both; or
- (b) a corporate body, to a fine of ₦10,000,000.
264. An issuer of a warehouse receipt, its employee, agent or servant who knowingly issues or aids in the fraudulent issuance of a receipt for commodities knowing that the receipt contains a false statement, commits an offence and is liable on conviction to a fine of not less than ₦10,000,000 or imprisonment for a term not more than three years or both. Liability for false statement in a warehouse receipt
265. An issuer of a warehouse receipt, its employee, agent, or servant, who knowingly issues or aids in the issuance of a duplicate or additional negotiable receipt for the same commodities or any part which is outstanding and not cancelled, without plainly Liability for issuance of unmarked duplicate receipts

placing on the face of the warehouse receipt the word 'duplicate' commits an offence and is liable on conviction to a fine of not less than ₦10,000,000 or imprisonment for a term not more than three years or both.

266. A person who deposits with a warehouse operator registered under this Act, stolen commodities, or commodities to which he has no title, or upon which there is an undisclosed lien or mortgage, commits an offence and is liable on conviction to a fine of not less than ₦5,000,000 or imprisonment for a term not more than two years or both.

Liability for depositing commodities with defective title

267. Terms used in this Part shall be construed as defined in section 357 of this Act.

Terms used in this Part

PART XVI — ISSUANCE OF SECURITIES

A — FEDERAL GOVERNMENT AGENCIES, STATES, LOCAL GOVERNMENTS AND THEIR RESPECTIVE AGENCIES

268. This Part applies to —

Bodies to which this Part applies

- (a) Federal Government agencies;
- (b) State Governments and their agencies;
- (c) the Federal Capital Territory and its agencies;
- (d) Local Governments;
- (e) any company which is wholly owned by the Federal, State, Federal Capital Territory or Local Governments; and
- (f) any borrowing by a company which is guaranteed or sponsored by the Federal, State, Federal Capital Territory or Local Governments.

269. (1) Subject to subsections (2), (3) and (4), a body to which this Part applies may issue to the public, debt securities in the form of —

Issue of registered bonds, promissory notes, general obligation debt securities and revenue or project tied debt securities (project bonds)

- (a) bonds;
- (b) promissory notes;
- (c) non-interest financial instruments; or
- (d) such other instruments as may be approved by the Commission.

- (2) Debt securities issued under subsection (1) (a), may be —

(a) general obligation debt securities issued on the full faith and credit of the issuing body charged upon and payable out of the revenue fund or other statutory fund of such body; or

(b) project-tied debt securities issued for specific projects charged upon and payable out of —

(i) the revenue from the project,

(ii) a specific asset or assets, or

(iii) a guarantee from the relevant Federal, State or Local government or other acceptable third party.

(3) A body to which this Part applies shall be entitled to issue general obligation debt securities only where —

(a) the Internally Generated Revenue (IGR) of the State or Federal Capital Territory is not less than 60% of its consolidated revenues for three years;

(b) its total annual debt service obligations, including the debt service obligation arising from the proposed issuance, is not at any time exceeding 40% of the actual revenue that accrued to its consolidated revenue fund or other statutory fund in the 12 months period immediately preceding the proposed new issuance; or

(c) it complies with such other debt sustainability ratio as may be specified by the Commission or other relevant authority which takes account of the total current and future debt service obligations, other contractual obligations, and the variability of the future revenue of the issuing body.

(4) A body to which this Part applies shall be entitled to issue project-tied debt securities only where —

(a) the assets of, and revenues from the project to which the project-tied debt securities relate are ring-fenced;

(b) the projects, instruments or assets to be funded or acquired as the case may be from the proceeds of the issue has the minimum investment grade rating from at least two rating agencies recognised by the Commission or such other rating as the Commission may specify;

(c) the project-tied debt securities are guaranteed by —

(i) a body to which this Part applies other than the issuer, and the provisions as specified in subsection (3) shall apply to the guarantor, or

(ii) a bank, insurance company or other third party acceptable to the Commission:

Provided that such a guarantor shall have the minimum investment grade rating and satisfy any other conditions as may be specified by the Commission; and

(d) it meets such other requirements as may be determined by the Commission.

(5) Bonds or other securities issued under this Part for the purpose of raising any specified sum of money shall be deemed to be separate, notwithstanding that the sum of money so raised is part of a sum of money authorised by any other law to be raised.

(6) Securities created or issued under this Part shall be securities to which the Trustee Investments Act applies. Cap. T22, LFN, 2004

(7) The proceeds of securities issued under this Part shall be utilised solely for the purpose for which the securities were issued.

270. (1) Subject to the consent of its approving authority, a body to which this Part applies shall appoint any financial institution registered with the Commission as custodian, for the purpose of warehousing proceeds of the bond for the duration of the execution of projects or the purpose of issue as stated in the prospectus of such bond. Appointment of custodians

(2) For the purpose of giving effect to this section, the custodian appointed under subsection (1) shall have the power to —

(a) receive and hold money accruing from the issue of the bonds;

(b) discharge the duties of a custodian as stipulated in this Act and any rules and regulations made under it;

(c) make payments in relation to the purpose of issue of the bond in accordance with such conditions as may be specified by the Commission; and

(d) refuse the execution of any payment that may be in contravention of the content of the trust deed of a bond.

271. (1) A body to which this Part applies shall not issue securities to the public except in accordance with the provisions of this Act and the rules and regulations made under it.

Restriction on raising of funds from the capital market

(2) An application to issue securities under this Part shall be in such form as the Commission may direct.

(3) An application made under this section shall be accompanied by such documents as may be prescribed by the Commission and include —

(a) in the case of a State Government and the Federal Capital Territory —

(i) a copy of the law authorising the issue of the securities specifying, in the case of general obligation debt securities, that a sinking fund to be fully funded from the revenue fund account of the issuer shall be established and that funding required for the sinking fund shall constitute a charge on the revenue fund of the issuer,

(ii) a copy of a rating report by a rating agency registered or recognised by the Commission,

(iii) in the case of general obligation debt securities, an irrevocable letter of authority issued by the Accountant-General of the State or any person performing that function in the Federal Capital Territory, to the Accountant-General of the Federation, to deduct at source from the statutory allocation due to the issuer, and

(iv) an irrevocable letter of guarantee issued by the bank or acceptable third-party with at least the minimum investment grade rating, committing to provide such funds as may be required to meet the principal and interest obligations in favour of the trustees where a general obligation bond is not fully or partly backed by a charge on the internally generated revenue of the issuer or an irrevocable letter of authority as specified in subparagraph (iii);

(b) in the case of a local government —

(i) a copy of the law of the State to which it belongs authorising the issue of the bond by the local government and specifying that a sinking fund to be fully funded from funds accruing to the local government from the Federation Account shall be established and that funding required for the sinking fund shall constitute a charge on the revenue fund of the State,

(ii) a copy of a rating report by a rating agency registered or recognised by the Commission,

(iii) an irrevocable letter of authority issued by the Accountant-General of the State on behalf of the local government, guaranteeing the deduction at source from the statutory allocation due to the local government, as the first line charge to meet its payment obligations, and

(iv) an irrevocable letter of guarantee issued by the bank or acceptable third-party with at least the minimum investment grade rating, committing to provide such funds as may be required to meet the principal and interest obligations in favour of the trustees where a general obligation bond is not fully or partly backed by a charge on the internally-generated revenue of the issuer or an irrevocable letter of authority as specified in subparagraph (iii);

(c) in the case of a Federal or State Government agency —

(i) a copy of the law or instrument establishing and authorising the agency to issue the securities,

(ii) an irrevocable letter of guarantee of repayment of the obligation, issued by the Federal or State Government that owns the agency or company provided that the provisions of this section would apply in the case of a State Government, and

(iii) where applicable, an irrevocable letter of guarantee of repayment of the obligation, issued by an acceptable third-party committing to be liable for the repayment of the principal and interest in the event of default; and

(d) in the case of project-tied debt securities —

(i) an irrevocable letter of consent by the banker to the project on the funding of the debt service reserve account or sinking fund to be established to meet maturing principal and interest obligations from the accruing project cash flows,

(ii) a copy of a rating report by a rating agency registered or recognised by the Commission, and

(iii) an irrevocable letter of guarantee of repayment of the loan issued by an acceptable third-party committing to be liable for the repayment of the principal and interest in the event of default.

(4) The Commission may, in addition to conditions prescribed in subsection (3), prescribe conditions or issue directives relating to any borrowing by State Governments and their agencies concerning any of the following matters —

- (a) the funding of the sinking fund;
- (b) underwriting;
- (c) federal irrevocable standing payment order to the trustees of the sinking fund; and
- (d) completion of the project, as would guarantee the repayment to the subscribers.

(5) The sinking fund shall be managed by a corporate trustee registered by the Commission.

(6) The Commission may impose any penalty on a defaulting body and this may include —

- (a) reprimand;
- (b) publication in the national dailies; and
- (c) blacklisting or foreclosure from raising further facility in the capital market.

(7) The trustee shall have the power to take legal action against the defaulting body failing which bondholders, holding at least 10% of the value of the bond shall have the right to call a meeting to pass a resolution compelling the trustee to take legal action.

(8) A bondholder who feels dissatisfied may personally initiate legal action to enforce his rights under the trust deed irrespective of the legal duty of the trustee to take such legal action.

(9) Where the body raising funds is the Federal Government of Nigeria, the requirements for approval of primary issues shall not apply, provided that where the securities are to be traded on a securities exchange, they shall be subject to the regulatory requirements relating to secondary market transactions.

(10) Any amount deducted under the provisions of this section shall be credited into the sinking fund established under section 289 of this Act for the purpose of redeeming the outstanding obligation.

(11) A copy of any irrevocable letter of authority issued under the provisions of this section shall be lodged with the trustees appointed under section 283 of this Act.

272. The principal money and interest represented or secured by any bond or securities issued under this Act shall be charged on and payable out of the general revenue and assets of the body concerned and of the assets of the appropriate authority or project which is the beneficiary of the proceeds of the issue.

Loans to be charged upon revenue

273. (1) The particulars of funds raised under this Act shall be published in the Federal Government Gazette or any other official document by the body raising the funds and shall include —

Bodies to publish details of funds in the Federal Government Gazette or other official document

(a) the beneficiary;

(b) the sum of money to be raised;

(c) the mode or modes of raising;

(d) the rate of interest payable;

(e) the dates in each year on which the half-yearly or quarterly interest on the funds shall be payable;

(f) the time at which a half-yearly or quarterly appropriation out of the general reserve and assets of the body or project of the body shall be made as a contribution;

(g) the date of redemption of the bond or securities to be issued for the purpose of raising the funds; and

(h) any other information relating to the funds considered necessary by the Commission.

(2) The date of redemption of any bond or securities shall not be later than 25 years from the date of the issuance provided that the Commission may on application grant such other longer period as it deems necessary.

(3) Where it is deemed expedient by a body to reserve an option to redeem any bond or securities at any date earlier than the date of redemption specified for such bond or securities under subsection (1) the body shall specify the terms and conditions upon which the bond or securities may be redeemed at such earlier date.

274. (1) A body shall keep a register of all information of transactions in securities and other information as required by this Act.

Register of securities and appointment of Registrar

- (2) A body shall for the purpose of carrying out its obligations under subsection (1) appoint any securities transfer agent registered with the Commission as Registrar and the appointment shall be subject to such terms and conditions as may be deemed fit by the body concerned.
- (3) A register kept under this section shall be kept in such place as may be approved on behalf of the body and shall include the —
- (a) names and addresses of the holders for the time being of the securities concerned and the persons deriving title from them;
 - (b) amount of securities held by every holder; and
 - (c) date on which the name of every holder is entered in respect of the securities held in his name.
- (4) The Registrar may be required to submit his books of account in connection with his functions under this Part for an independent audit.
275. An issuer shall appoint any issuing house registered by the Commission, for the purpose of undertaking the issuance of securities under this Part. *Appointment of issuing house*
276. (1) Securities shall be allotted in dematerialised form and shall be electronically registered, if applicable, on the account of the holder of the securities with any recognised depository, clearing or settlement platform. *Dematerialised debt security*
- (2) Notwithstanding the provisions of subsection (1), every holder of securities issued shall be entitled to receive from the securities transfer agent an electronic proof of ownership covering the amount of his holding.
277. The entries in a bond register shall be presumed to be a correct representation of the facts, matters, particulars and transactions to which those entries relate. *Entries in a bond register*
278. (1) Every promissory note shall be signed by the issuer and shall, when issued, bind the relevant body to pay the principal sum mentioned in that note and the interest on it in accordance with the provisions of this Part at the rate and on the dates specified under section 269 of this Act or under an option to redeem the note reserved in the directives. *Promissory notes*
- (2) Promissory notes shall be issued in such denominations as the issuer may, with the approval of the approving authority of the body, direct.
279. Notwithstanding the provisions of the Bills of Exchange Act to the contrary — *Manner and effect of endorsement*

(a) an endorsement of a promissory note shall not be valid unless made by the signature of the holder written on the back of the note in a space provided for that purpose; and

(b) a person shall not, by reason only of his having endorsed a promissory note, be liable to pay any money due either as principal or as interest on the promissory note.

280. (1) Notwithstanding anything to the contrary contained in any other law, or enactment — Rights of survivorship

(a) when a promissory note is payable to two or more persons jointly and any or all die, the note shall be payable to a survivor of the deceased person; and

(b) where a promissory note is payable to two or more persons severally, and any or all die, the note shall be payable to a survivor of the deceased person or to the representative of the deceased or to any of them.

(2) Nothing contained in this section shall affect any claim which any representative of a deceased person may have against a survivor under or in respect of any promissory note to which subsection (1) applies.

281. (1) Every bond shall be signed by the issuer and when issued, bind the issuer to pay the principal sum and the interest on that sum in accordance with the provisions of this Act at the rate and on the dates specified in the trust deed. Bonds

(2) Bonds shall be issued in such denominations as the issuer may determine.

282. (1) Where any interest is payable in respect of securities, the issuer shall appropriate a sum sufficient to meet all interest payable on the date prescribed. Appropriation and payment of interest

(2) The interest due on securities shall be payable on the dates specified in the issuing documents or trust deed.

(3) Save as otherwise provided in the issuing documents, where any interest has become payable on any date, interest on that amount shall, after that date, be paid or payable by a body or any other person responsible for the default in payment to any person.

283. (1) The issuer may appoint a trustee for the purpose of acting on behalf of bond holders of debt securities in registered form with regard to every debt security issued under this Act provided that a trustee appointed under this subsection shall not have any fiduciary relationship with the issuer. Appointment of trustees

- (2) A draft copy of any trust deed made under this Part shall be sent to the Commission for prior approval.
284. The trustees appointed under this Part shall have all the powers conferred upon trustees by the trust deed under which they are appointed, the Trustee Investments Act and any other relevant law for the time being in effect. Powers of trustees
Cap. T22, LFN, 2004
285. A trustee shall not underwrite an offer unless it has been registered with the Commission as an underwriter: Trustee as underwriter
- Provided that the trustee shall not underwrite a transaction for which he is a trustee.
286. The power to appoint new trustees under this Part shall be vested in the issuer, and a trustee shall not be appointed without a prior approved resolution passed by a majority of bondholders present at a meeting duly called for that purpose. Power to appoint new trustees
287. Except otherwise directed by a resolution passed by a majority of bond holders at a meeting duly convened for such purpose, the trustees may, in the interest of the bond holders, waive a breach of any covenant or provision of this Part by a body or an authority acting in that behalf: Waiver by trustees
- Provided that such a waiver shall not affect the rights of the trustees in respect of any subsequent breach.
288. After the date specified in the particulars published under section 273 of this Act as the date from which contributions to the sinking fund for debt securities shall commence, and with the approval of the appropriate authority, at the end of each quarter or half-year with the interest payment dates specified in the particulars, the body shall appropriate out of its general revenue and assets, of the project, or such other verifiable source of revenue of the appropriate authority, a sum determined as the contribution to the sinking fund established for the purpose of redeeming the debt securities. Appropriation of revenue for sinking fund
289. A separate sinking fund shall be established for each issuance of debt securities under this Part. Separate sinking fund
290. (1) All money appropriated under section 288 of this Act as contributions to the sinking fund shall be paid to the trustees appointed under section 283 of this Act and may be invested in such securities as are specified in the Trustee Investments Act. Investment of sinking fund
Cap. T22, LFN, 2004
- (2) The trustees may, with the approval of the appropriate authority vary any investment made under subsection (1) or may realise and re-invest any money invested under that subsection.
- (3) The dividends, interest, bonus and other profits of any investment of any part of any sinking fund shall be invested by the trustees so as to form a part of that sinking

fund in like manner as money appropriated under section 288 of this Act as contributions to that sinking fund.

291. (1) Notwithstanding anything to the contrary contained in this Part, if at any time the trustees are satisfied that the sinking fund of any debt securities issued under the provisions of this Part is sufficient with further accumulations of interest, but without further payments of contributions, to enable the debt securities to be redeemed at the time fixed for its redemption, they shall inform the body accordingly, and the issuer shall be authorised in such event to suspend further payments of half-yearly or quarterly contributions to that sinking fund.
- Cessation of contribution to sinking fund
- (2) The contributions to that sinking fund shall be recommenced if the trustees at any time inform the appropriate authority that they are no longer satisfied that the sinking fund without further accumulations of interest is sufficient for the redemption of the debt securities.
292. There shall be paid out of the sinking fund all expenses specifically incurred in, or incidental to, the investment and management of that fund and the repayment of the debt securities for which the fund was established.
- Expenses to be paid out of sinking fund
293. In the event of the sinking fund established by an issuer under the provisions of this Part being found at the time fixed for the repayment of the debt securities to be insufficient for such redemption, the deficiency shall be made good out of the general revenue and assets of the body concerned or the project or assets funded by the proceeds of the debt securities.
- Deficiency in fund to be charged upon revenue
294. Subject to conditions as the issuer may provide, the Registrar shall consolidate or subdivide securities and issue to the applicant one or more new certificates as may be required on —
- Consolidation and subdivision
- (a) the application of a person claiming to be entitled to any debt securities;
 - (b) being satisfied of the genuineness of the claim of such applicant;
 - (c) surrender of the certificate relating to such debt securities or of such securities received in the specified manner; and
 - (d) payment of the prescribed fee.
295. Where an application is made to the registrar under this Part for the issuance of a duplicate certificate or for the exchange, renewal, consolidation or sub-division of any certificate, the registrar may require the applicant to execute a bond to indemnify the body concerned against the claims of persons claiming under the original certificate or under the certificate so exchanged, renewed, consolidated or subdivided in accordance with the guidelines issued by the Commission.
- Indemnity bond

296. On payment by or on behalf of a body to the holder of a security of the amount expressed in it on or after the date when it becomes due or on the consolidation or subdivision of a security under this Act, a body shall be discharged in the same way to the same extent as if the security were a promissory note payable to the bearer. Immediate discharge in certain cases
297. Except as otherwise provided in this Part, an action shall not lie against the issuer in respect of any securities — Limitation of legal action
- (a) redeemed on or after the date on which payment of the principal amount becomes due, after the lapse of six years from that date;
 - (b) for which a duplicate certificate is issued after the lapse of six years from the date of the issue of such duplicate or from the date of the last payment of interest on such securities, whichever date is later; or
 - (c) for which a renewed certificate is issued or consolidated or subdivided under this Act, after the lapse of six years from the date of the issuance.
298. Subject to laws applicable to the administration of the estate of a deceased person, the registrar may summarily determine an application by the beneficial owners of securities in its custody where the nominal or face value does not in aggregate exceed ₦50,000. Summary procedure in special cases
299. (1) Except as otherwise provided in this Part, no notice of any trust in respect of any securities shall be receivable by the securities transfer agent or a relevant body. Notice of trust not receivable except as provided
- (2) The securities transfer agent shall not be deemed to have received notice of a trust by reason only of the fact that he has recognised an endorsement on a security by an executor or an administrator as such, and shall not inquire into the terms of any will by which such executor or administrator may be bound.
300. A document or an instrument made or used under the provisions of this Part shall be in such form as may be prescribed by the Commission and shall be exempted from stamp duty payable to the Federal or a State Government. Exemption from stamp duties
301. An issuer may delegate to the Minister, Commissioner or Chairman or such other appropriate officer all or any of the powers conferred on it by the approving authority subject to such restriction, conditions and qualifications, consistent with the provisions of this Part and the rules and regulations as may be prescribed by the Commission. Delegation of power
302. (1) A person shall not be entitled to inspect, or to receive information in relation to securities, except on payment of such fee and in such circumstances and on such terms and conditions as may be approved by the Commission. Inspection of register and documents

(2) Nothing in this section shall apply to the Auditor-General for the Federation or a State, the Accountant-General of the Federation or a State or such other appropriate officers of the Federal, State Government or any public officer acting in his official capacity.

303. The Commission may make such rules and regulations generally for the purpose of giving effect to the provisions of this Part and the rules and regulations may include

Power to make rules and regulations under this Part

- (a) the manner in which payment of interest is to be made and acknowledged in respect of securities;
- (b) the circumstance in which promissory notes shall be renewed before further payment of interest may be claimed;
- (c) the manner of payment of interest to joint holders of securities;
- (d) the circumstances in which alterations may be made in the registration of securities;
- (e) the payment of principal sums or interest and transfer of securities in the case of persons under a legal disability;
- (f) the disposal of unclaimed interest;
- (g) the fees to be paid in respect of anything to be issued or done under the provisions of this Part;
- (h) matters that shall at the minimum be provided for and covered in a trust deed or other like instrument;
- (i) debt sustainability guidelines and ratios that issuers of securities under this Part shall comply with;
- (j) factors to be considered by custodians in disbursing proceeds of securities issued under this Part; and
- (k) all matters required by this Part to be prescribed and all matters incidental to or connected with the matters enumerated.

304. A body to which this Part applies in exercising the powers granted under this Part shall comply with the listing requirements of the relevant securities exchange.

Requirements of securities exchanges

305. Any amount raised or guaranteed by any of the bodies to which this Part applies shall, until such amount is fully repaid, be a binding and continuing obligation on the Federal, State or Local Government, boards or supervising ministries of corporate entities to which this Act applies with regards to the repayment of all principal sums

Binding obligation on successive governments or bodies

and interest payments due and outstanding under the issue including other terms and conditions arising from it.

306. Nothing in this Part shall be construed as derogating from the provisions of any other enactment which restricts the borrowing of money by any body to which the provisions of this Part applies or requires the consent of any authority to the raising of such money by the body.

Application of
enactments

307. (1) A person shall not divert or mismanage the proceeds of any bond issued under this Part.

Offences, remedies
and penalties

- (2) Where an appropriate officer or any other officer of a body which has issued debt securities under this Part is found guilty of having diverted or mismanaged or contributed in the diversion or mismanagement of any bond proceeds, the officer shall —

(a) restitute to the issuer the total amount diverted or mismanaged, and pay a penalty amounting to 500% of the total amount diverted or mismanaged to the Commission; and

(b) be liable on conviction to imprisonment for a term of not more than 15 years.

- (3) The provisions of subsection (2) shall apply notwithstanding that the relevant officer has ceased to hold office.

- (4) Where a custodian appointed in accordance with the provisions of this Part is found guilty of having diverted, mismanaged or contributed in the diversion or mismanagement of any bond proceed —

(a) the custodian shall —

(i) restitute to the issuer the total amount diverted or mismanaged,
and

(ii) pay a penalty amounting to 500% of the total amount diverted or mismanaged to the Commission; and

(b) every director and staff of the custodian involved in the diversion or mismanagement commits an offence and is liable on conviction to imprisonment for a term not more than 15 years.

- (5) Without prejudice to the provisions of section 271 (6) and subsections (2) (3) and (4), where a person who is under an obligation to comply with, observe or give effect to the provisions of this Part, or any rules made under this Part, fails to do so, the Commission may take one or more of the following actions —

(a) direct the person in breach to comply with, observe or give effect to any such provision of this Part or the rules and regulations made under this Act;

(b) where the person in breach of the provisions of this Part is an appropriate officer of the issuer, the Commission shall require the person to take such steps as it may direct to remedy or mitigate the effect of the breach, and this provision shall apply notwithstanding that the appropriate officer has ceased to hold office; or

(c) where the person in breach is the Registrar, trustee, issuing house, custodian or other professional party to the issue under this Part, the Commission may —

(i) impose a penalty of not less than ₦5,000,000 on each defaulting party and ₦25,000 for every day the violation continues,

(ii) require the person in breach to take such steps as it may direct to remedy the breach or mitigate the effect of such breach,

(iii) prohibit the defaulting party from participating in other capital market transactions until the breach is remedied and the penalty paid, and

(iv) direct the securities exchange to prevent the defaulting party from carrying out any services or transactions on the exchange.

(6) Where a person has failed to comply with a penalty imposed by the Commission under this section, the Commission may sue for and recover the penalty as a civil debt.

B — ISSUANCE OF DEBT SECURITIES BY BODY CORPORATE AND SUPRANATIONAL BODIES

308. (1) A company whether local or foreign, supranational body or other approved entity shall not issue debt securities to the public without the prior review and approval of the Commission.

Issuance of debt securities subject to prior review and approval

(2) The Commission may make rules and regulations for the purpose of giving effect to the provisions of subsection (1) which shall include —

(a) the eligibility criteria for the issuance of debt securities;

(b) the mode of issue;

- (c) the minimum rating requirements;
- (d) the disclosure and reporting requirements;
- (e) the fees to be paid in respect of anything to be issued or done under the provisions of this Part;
- (f) matters that shall at the minimum be provided for and covered in a trust deed or other like instrument; and
- (g) matters required, prescribed, incidental or connected to this section.

(3) An entity referred to in subsection (1) may not issue debt securities where it is in default of payment of interest or repayment of principal in respect of previous debt issuances for a period of more than one month.

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| <p>309. A person who diverts or mismanages the proceeds of any debt issuance under this Part commits an offence and is liable on conviction to imprisonment for a term not more than 15 years.</p> | <p>Mismanagement or diversion of proceeds</p> |
| <p>310. The Commission may in lieu of criminal prosecution direct a person who diverts or mismanages the proceeds of any debt issuance under this Part to —</p> <ul style="list-style-type: none"> (a) restitute to the issuer the total amount diverted or mismanaged; and (b) pay a penalty to the Commission amounting to 500% of the total amount diverted or mismanaged. | <p>Administrative sanctions</p> |
| <p>311. The provisions of section 307 of this Act shall apply notwithstanding that the relevant officer has ceased to hold office.</p> | <p>Cessation of office</p> |
| <p>312. Without prejudice to the provisions of section 303 of this Act, or any rules and regulations made under this Act, the Commission may take one or more of the following actions —</p> <ul style="list-style-type: none"> (a) direct the person in breach to comply with, observe or give effect to any such provision of this Part or rules and regulations made under this Act; and (b) where the person in breach of the provisions of this Part is an appropriate officer of the issuer, the Commission shall require the person to take such steps as it may direct to remedy or mitigate the effect of the breach. | <p>The Commission may take action</p> |
| <p>313. Terms used in this Part shall be construed as defined in section 357 of this Act.</p> | <p>Terms used in this Part</p> |

PART XVII — ESTABLISHMENT, JURISDICTION, AUTHORITY AND
PROCEDURE OF THE INVESTMENTS AND SECURITIES
TRIBUNAL

- 314.** (1) There is established the Investments and Securities Tribunal (in this Act referred to as "the Tribunal"). Establishment of the Investments and Securities Tribunal
- (2) The Tribunal shall exercise the jurisdiction, powers and authority as conferred on it by this Act.
- 315.** The Tribunal shall consist of 12 persons to be appointed as members by the President on the recommendation of the Minister as follows — Composition of the Tribunal
- (a) a Chairman who shall be a legal practitioner with at least 15 years post call experience in capital market matters;
- (b) five full-time members comprising —
- (i) four legal practitioners with at least 10 years' post-call experience in capital market matters, and
- (ii) one person who is not a legal practitioner with 10 years' experience in capital market matters; and
- (c) six part-time members, two of whom shall be legal practitioners with at least 10 years' post-call experience in capital market matters, and four other persons who are knowledgeable in capital market matters.
- 316.** (1) The Minister shall recommend to the President eligible candidates for appointment as Chairman and members of the Tribunal. Functions of the Minister
- (2) The Minister shall have the power to recommend to the President any disciplinary action against the Chairman or any member of the Tribunal including the removal of the Chairman or a member of the Tribunal on any or all of the grounds provided for in this Act.
- 317.** In the absence of the Chairman, the most senior full-time member of the Tribunal by virtue of date of appointment shall act in his stead pending the return of the Chairman or appointment of a new Chairman: Vacancy in the office of the Tribunal
- Provided that where all such members have the same date of appointment, the date of Call to Bar shall be used.
- 318.** (1) The Tribunal shall have and exercise jurisdiction throughout the Federation, and the Chairman shall, for administrative purposes, divide the Federation into such number of divisions as may be deemed appropriate. Constitution of the Tribunal

- (2) For the purpose of exercising any jurisdiction conferred on it by this Act, the Tribunal shall be duly constituted if it consists of at least three members:

Provided that the member presiding over any such panel of the Tribunal shall be a legal practitioner.

319. (1) The Chairman shall hold office for a term of five years renewable for another term of five years and no more. Term of office

- (2) Other members of the Tribunal shall hold office for a term of four years renewable for another term of four years and no more.

320. A member of the Tribunal shall cease to hold office if he —

Disqualification of members of the Tribunal

- (a) becomes of unsound mind or owing to ill-health is incapable of carrying out his duties;
- (b) is adjudged bankrupt or he makes a compromise with his creditors;
- (c) is convicted of a felony or any offence involving fraud or dishonesty by a court of competent jurisdiction;
- (d) is guilty of serious misconduct in relation to his duties; or
- (e) is disqualified or suspended from practising his profession in any part of Nigeria or outside Nigeria by the order of any competent authority made in respect of him personally.

321. (1) A member of the Tribunal may, by notice in writing under his hand addressed to the President through the Minister resign his office:

Resignation and removal

Provided that the member shall, unless he is permitted by the President to relinquish his office continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is earlier.

- (2) A member of the Tribunal may be removed from office by an order made by the President on the recommendation of the Minister based on —

- (a) any of the grounds referred to in section 320 of this Act and after he has been given an opportunity of being heard in respect of the charge; or
- (b) the ground of proven charge of misbehaviour or incapacity after due inquiry has been made and the member concerned has been informed of

the charge against him and given an opportunity of being heard in respect of the charge.

322. (1) The salaries and allowances of the Chairman, full-time members and Chief Registrar of the Tribunal shall be equivalent to the remuneration of the Chief Judge, Judges and Chief Registrar of the Federal High Court respectively. Salaries, allowances and other conditions of service of members of the Tribunal
- (2) Without prejudice to the provision of subsection (1), the Tribunal may pay such allowances to the Chairman, members, and the Chief Registrar, as exigencies of duties may require towards the performance of their functions.
323. Where, for reasons other than temporary absence, a vacancy occurs in the office of a member of the Tribunal, the President shall, on the recommendation of the Minister, appoint another person to fill the vacancy in accordance with the provisions of this Act. Filling up of vacancies
324. (1) The Chief Registrar of the Tribunal shall be appointed by the Minister. Chief Registrar of the Tribunal
- (2) The Chief Registrar of the Tribunal shall —
- (a) be a legal practitioner of at least 10 years' post-call experience in capital market matters; and
- (b) discharge such duties in exercise of the powers and authority of the Tribunal as may be assigned to him by the Tribunal, the rules of the Tribunal, and the Chairman.
- (3) The Chief Registrar, or any other officer of the Tribunal so authorised, shall have the power to administer oaths and discharge other duties with respect to any proceedings in the Tribunal as may be prescribed by the rules or any order of the Chairman.
325. (1) The Tribunal shall employ the services of such staff as it may deem necessary for the efficient performance of its functions under this Act. Other staff of the Tribunal
- (2) The remuneration, including allowances, and terms and conditions of service of the staff of the Tribunal shall be as may be determined by the Tribunal.
- (3) The employees of the Tribunal shall be entitled to pensions and other retirement benefits.
- (4) Nothing in this section shall prevent the appointment of a person to any office, on terms which preclude the grant of pension and other retirement benefits.
326. (1) The Tribunal shall have exclusive jurisdiction to adjudicate on disputes arising from investments and securities transactions in Nigeria. Jurisdiction of the Tribunal

(2) Subject to the provisions of section 318(2), the Tribunal shall exercise exclusive original jurisdiction, where —

- (a) the complaint is against a direct action of the Commission;
- (b) a matter had been referred to the Commission and the Commission failed to act within 60 days; or
- (c) the matter arose from a regulatory action taken by the Commission under the provisions of this Act.

(3) Subject to the provisions of subsection (2), the Tribunal shall exercise appellate jurisdiction on matters —

(a) relating to disputes between —

- (i) the Commission and any person in respect of any capital market matter,
- (ii) capital market operators and securities exchanges or financial market infrastructure,
- (iii) capital market operators *inter se*,
- (iv) capital market operators and their clients,
- (v) public companies and the Commission or the exchanges or investors,
- (vi) an investor and an exchange or financial market infrastructure,
- (vii) capital market operators and self-regulatory organisations,
- (ix) an investor and the Commission, or
- (x) an issuer of securities and the Commission;

(b) arising from the administration, management and operation of collective investment schemes; or

(c) relating to the review, approval and regulation of mergers, takeovers and restructuring of public companies.

(4) The Tribunal shall exercise jurisdiction on any other matter as may be prescribed by an Act of the National Assembly.

- (5) In the exercise of its jurisdiction under this Act, the Tribunal shall have the power to interpret this Act, any other enactment, rules or regulations as may be applicable.

327. (1) The Tribunal shall establish and maintain a Fund, which shall be applied towards the performance of its functions under this Act. Fund of the Tribunal

(2) There shall be paid and credited to the Fund established under subsection (1) —

- (a) annual subventions from the Federal Government with respect to recurrent and capital expenditures;
- (b) such other sums of money as may be provided by the Federal Government; and
- (c) such other money as may accrue to the Tribunal from the Nigerian capital market.

328. (1) The Tribunal shall keep proper accounts of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor appointed from a list of auditors and in accordance with the guidelines supplied by the Auditor-General for the Federation. Accounts and audit

(2) The Tribunal shall cause to be prepared, not later than 30 September in each year, an estimate of its income and expenditure during the succeeding year and when prepared, be submitted to the Minister and the National Assembly.

(3) The Tribunal shall prepare and submit to the Minister, a report in such form as the Minister may direct on the activities of the Tribunal during the immediate preceding year and shall include in the report, a copy of the audited accounts of the Tribunal for that year and the auditors' report on it.

329. The Tribunal may accept any grant of money or contributions on such terms and conditions, if any, as may be specified by the person or organisation making such grant or contribution provided that the terms and conditions are consistent with the functions and objectives of the Tribunal. Power to accept gifts

330. The Tribunal may apply the proceeds of the Fund established in section 327 of this Act to — Application of the Fund of the Tribunal

- (a) meet the cost of administration of the Tribunal;
- (b) reimburse members of the Tribunal and staff or any committee of the Tribunal for expenses authorised;

- (c) pay the salaries, remuneration or allowances, pensions and gratuities as applicable to the members and staff of the Tribunal;
- (d) finance staff promotion, training, internships, scholarships, research and similar activities;
- (e) maintain any property acquired by or vested in the Tribunal;
- (f) meet any capital expenditure approved by the Tribunal; and
- (g) perform all or any of the functions of the Tribunal under this Act or any matter connected with those functions.

331. (1) A person aggrieved by any action or decision of the Commission under this Act, may institute an action in the Tribunal or appeal against such decision within the period stipulated under this Act.

Actions against and appeals from decisions of the Commission

(2) An action or appeal shall not be commenced at the Tribunal or in any other court in respect of anything covered under this Act unless the aggrieved party has given to the Commission at least 14 days' written notice of its intention to commence the action, and the notice shall state the cause of action, the name and address of the aggrieved party and the relief which he claims.

(3) An appeal under this Part shall be filed within a period of 30 days from the date on which a copy of the order which is being appealed against is made, or deemed to have been made by the Commission and it shall be in such form and accompanied by such fees as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the period of 30 days if it is satisfied that there was sufficient cause for the delay.

(4) On receipt of an appeal under subsection (3), the Tribunal may, after giving the parties an opportunity of being heard, make such orders as it deems fit, confirming, modifying or setting aside the order appealed against.

(5) The Tribunal, shall in the exercise of its powers under this Act, conduct its proceedings in such manner as to avoid undue delays and shall dispose of any matter before it finally within three months from the date of the commencement of the hearing of the substantive action;

Provided that no judgment shall be rendered void by virtue of a delay in delivering same except where it is established that the delay occasioned a miscarriage of justice.

332. (1) The Tribunal may make rules regulating its procedures.

Powers and procedures of the Tribunal

(2) The Tribunal shall have, for the purposes of performing its functions under this Act, power to —

- (a) summon and enforce the attendance of any person and examine him on oath;
- (b) require the discovery and production of documents;
- (c) receive evidence on affidavits;
- (d) call for the examination of witness or documents;
- (e) review its decisions;
- (f) dismiss an application for default;
- (g) decide matters ex-parte;
- (h) enforce its judgment;
- (i) commit any person for contempt;
- (j) set aside or vary any of its orders; and
- (k) do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under this Act.

(3) Any proceeding before the Tribunal shall be a judicial proceeding and the Tribunal shall be a civil court for all purposes.

(4) Proceedings of the Tribunal may be held in camera as and when deemed appropriate in the circumstances of the case.

333. A party may appear in person or authorise one or more legal practitioners to represent it before the Tribunal.

Right to legal representation

334. (1) The Tribunal shall give its judgment in writing and may make or impose sanctions including penalties, suspensions, withdrawal of registration or licenses, specific performance, or restitution, and such other sanctions as it may deem appropriate in each case.

Judgment of the Tribunal

(2) A certified true copy of the decision of the Tribunal shall be supplied to the parties upon request subject to payment of the prescribed fees.

335. The Tribunal shall have exclusive jurisdiction on all the matters specified in this Act.

Exclusion of proceedings

336. A person dissatisfied with a decision of the Tribunal may appeal against such decision to the Court of Appeal if —
- (a) the decision was taken in the exercise of its appellate jurisdiction, on points of law only;
 - (b) it is a final decision taken in the exercise of its original jurisdiction, on points of law or mixed law and fact; or
 - (c) it is an interlocutory decision of the Tribunal, on points of law only.
337. An appeal against the decision of the Court of Appeal at the instance of any party shall lie to the Supreme Court.
338. A legal practitioner employed by the Tribunal shall be entitled to represent the Tribunal before any court of law in Nigeria.
339. A suit, prosecution or other legal proceedings shall not lie against any member or staff or officer of the Tribunal for anything which is done in good faith or intended to be done under this Act or the rules and regulations made under it.

Appeal to the Court of Appeal

Further appeals

Legal representation

Protection for actions taken in good faith

PART XVIII — MISCELLANEOUS PROVISIONS

340. (1) The Minister may give to the Commission such directive as appears to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply.
- (2) If the Minister is of the opinion and after consultation with the Commission, that it is necessary or expedient and in public interest, he may by order published in the Federal Government Gazette exempt any person or class of persons buying or selling securities or otherwise dealing with the securities market from the operations of the provisions of this Act.
- (3) The Commission may, by general or special order in writing delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.
341. (1) A suit shall not be commenced against the Commission before the expiration of a period of 14 days after written notice of intention to commence the suit shall have been served upon the Commission by the intending plaintiff or his agent, and the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.

Power of the Minister and delegation

Legal proceedings, pre-action notice and right to represent Commission before Court or Tribunal

(2) A legal practitioner employed by the Commission shall be entitled to represent the Commission before any court or the Tribunal.

342. A suit, prosecution or other legal proceedings shall not lie against any officer, member or other employee of the Commission for anything which is done in good faith or intended to be done under this Act or the rules and regulations made under it.

Protection of action
taken in good faith

343. (1) Except as otherwise specifically provided under this Act, any person who contravenes or contributes in the contravention of this Act or of any rule and regulation made under it is liable to a penalty of not less than ₦1,000,000 and a further sum of ₦20,000 per day for every day the violation continues.

Penalty

(2) The Commission may in addition to any penalty that may be prescribed under this Act or the rules and regulations made under it, direct any person who has contravened any of the provisions of this Act and any rules and regulations made under it, to compensate any person who may have suffered any direct loss as a result of the contravention.

(3) The Commission may in appropriate cases direct a complete disgorgement of all profits made from the contravention of any provision in this Act.

(4) The Commission may, in appropriate cases, direct the forfeiture to the victim, of any direct benefit or advantage received or receivable by the person in contravention.

(5) Notwithstanding the provisions of subsections (2), (3) and (4), the complainant of a contravention may seek by action, consequential or punitive damages or any other remedy that may be available under the law.

(6) A capital market operator shall be deemed to have ceased to operate as such if it has ceased to operate for more than 180 days unless it has obtained the approval of the Commission to do so, or by virtue of any directive issued by the Commission.

(7) The Commission shall, in the exercise of its powers to impose a penalty or sanction under this Act, accord the person in breach fair hearing.

(8) Where no specific penalty has been prescribed for any criminal offence under this Act, a person who commits an offence shall on conviction be liable to a fine of not less than ₦1,000,000 or imprisonment for a term of two years or both.

344. Except as otherwise specifically provided under this Act a person who —

General offences

(a) wilfully obstructs, interferes with or interrupts the Commission in the performance of its functions or exercise of its powers under this Act commits an offence and is liable on conviction to a fine of not less than

N10,000,000 or imprisonment for a term of not less than two years or both;

- (b) destroys any record which may be required by the Commission for the performance of any of its functions under this Act, with intent to mislead the Commission or to prevent or impede any investigation or inquiry under this Act, commits an offence and is liable on conviction to a fine of not less than N20,000,000 or imprisonment for a term of not less than three years or both;
- (c) provides any information or furnishes any document which is false, misleading, or from which there is a material omission, commits an offence and is liable on conviction to a fine of not less than N20,000,000 or imprisonment for a term of not less than three years or both;
- (d) fails to comply with any directive of the Commission made under this Act, is liable to a penalty of not less than N5,000,000 in the first instance and N20,000 for every day the violation continues; or
- (e) uses any device, scheme, or artifice to defraud, or engages in any act, practice or course of business which operates or would operate as a fraud on any person, commits an offence and is liable on conviction to imprisonment for a term of not less than three years or a fine of not less than N5,000,000 and in addition to such other penalty as may be prescribed under this Act and the rules and regulations made under it.

345. (1) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 relating to the power of prosecution by the Attorney-General of the Federation, any legal practitioner in the employment of the Commission may with the consent of the Attorney-General of the Federation, prosecute or defend criminal matters, in the name and on behalf of the Commission in respect of matters relating to the Nigerian capital market in accordance with the objectives of this Act.

Criminal
prosecution

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2004

- (2) Notwithstanding the provisions of any enactment to the contrary, a person appointed under this provision, who is a legal practitioner shall, while so appointed be entitled to represent the Commission as legal practitioner for the purpose and in the course of his employment, without prejudice to the power of the Commission to engage private legal practitioners in any proceedings.

346. (1) Where an offence under this Act has been committed by a company, issuer of securities, or market participant, every person who at the time the offence was committed was in charge of, and was responsible to, the company, issuer of securities or market participant for the conduct of the business of the company, as well as the company, issuer of securities or market participant, shall be deemed to have committed the offence and is liable to be proceeded against.

Offences by
companies and
market participants

(2) Notwithstanding the provision of subsection (1), where an offence under this Act has been committed by a company, issuer of securities or market participant and it is proved that the offence has been committed with the consent or connivance of, or is attributable to neglect on the part of, any director, manager, secretary or other officer of the company, issuer of securities or market participant, such director, manager, secretary or other officer shall also be deemed to have committed the offence and is liable to be proceeded against.

(3) Where the Commission is satisfied that a person is engaged in any form of market abuse or other violations under this Act, or by taking or refraining from taking any action, has required or encouraged another person to engage in behaviour which if engaged in by a market participant or company amounts to market abuse or violation under this Act, it may impose on the person a penalty of such amount or of such nature as it considers appropriate.

(4) Where the Commission is empowered to impose a penalty on a person or an entity, it may impose a penalty and in addition, may publish a statement to the effect that the person or entity has engaged in market abuse or violation under this Act.

347. (1) An employee of a capital market operator, market participant, public company or other issuer of securities shall have the duty to disclose any information connected with the activities of his work place which tends to show that —

Obligation of persons to disclose information connected with activities of their employer

(a) a criminal offence has been, is being or is likely to be committed;

(b) a person has failed, is failing, is likely to fail or otherwise omitted to comply with any legal obligation to which he is subject; or

(c) any information tending to show any matter falling within paragraph (a) or (b) has been, is being or is likely to be concealed.

(2) For the purpose of subsection (1), it shall be immaterial whether the relevant failure occurred, occurs or would occur in Nigeria or elsewhere, and whether the law applying to it is that of Nigeria or any other country or territory.

(3) An information shall be deemed provided in accordance with subsection (1) if the employee, makes the disclosure in good faith to his employer, and where his employer fails, refuses or omits to act, to the Commission, or where the relevant failure or omission relates solely or mainly to the conduct of a person other than his employer, or any other matter for which a person other than his employer has legal responsibility, to that other person:

Provided that the employee reasonably believes that the information disclosed and any allegation contained in it, are substantially true, and in all circumstances that it is reasonable for the employee to make the disclosure.

- (4) Notwithstanding the provisions of subsection (3), an employee shall have the right to make a disclosure directly to the Commission and the Commission may in appropriate circumstances maintain the anonymity of the identity of the employee.
- (5) In determining whether it is reasonable for the employee to make the disclosure, regard shall be had to —
- (a) the identity of the person to whom the disclosure is made;
 - (b) the seriousness of the failure, or omission; or
 - (c) whether the failure is continuing or is likely to occur in the future.
- (6) An employer shall not subject an employee to any detriment by any act or failure to act on the ground that the employee has made a disclosure in accordance with the provisions of this Act.
- (7) Where an employee has been subjected to any detriment in contravention of subsection (6), he may present a complaint to the Commission.
- (8) The Commission shall, on receipt of such complaint, cause an investigation to be carried out and if satisfied that the provision of this section has been contravened, the Commission shall direct the affected capital market operator, market participant, public company or other issuer of securities to reinstate the affected employee or pay compensation in accordance with subsection (10) within one month of such directive.
- (9) Where the detriment suffered is other than dismissal or termination, the Commission shall direct the capital market operator, market participant, public company or other issuer of securities to restore the affected employee to his appropriate position within one month of such directive.
- (10) An employee relieved of his employment without any just cause other than for reason of disclosure made under this section shall be entitled to a compensation which shall be calculated as if he had attained the maximum age of retirement or had served the maximum period of service, in accordance with his conditions of service.
- (11) A capital market operator, market participant, public company or other issuer of securities which contravenes the provisions of this section is liable to a penalty of not less than ₦5,000,000 in addition to the payment of compensation to the employee in accordance with subsection (9).

(12) For the purpose of this section, 'detriment' includes dismissal, termination, redundancy, withholding of benefits and entitlements, suspension and any other act that has negative impact on the employee.

(13) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 any provision in any other law or agreement which precludes the application of this section shall be void.

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348. (1) Where a person has failed to comply with a penalty imposed by the Commission, the Commission may sue and recover the administrative penalty as a civil debt.

Power to recover
administrative
penalties as debt

(2) Without prejudice to any other remedy, where the Commission has directed a person in breach to make restitution in the form of monetary payment, and the person in breach fails to pay the restitution, the Commission may sue and recover the restitution as a civil debt due to the persons aggrieved by the breach.

(3) Nothing in this section shall preclude the Commission from taking any of the actions that it is empowered to take under this Act or other applicable laws against the person in breach.

(4) For the purposes of this section —

"breach" means a failure to comply with directives of the Commission, observe or give effect to the provisions of this Act or any rules and regulations made under this Act, in circumstances where there is an obligation to do so; and

"person in breach" means a person who contravenes or fails to comply with directives of the Commission, observe or give effect to the provisions of this Act or any rules and regulations made under this Act, in circumstances where the person is under an obligation to do so.

349. (1) A capital market operator shall not, without the prior approval in writing of the Commission —

Change of name of
capital market
operators, managers,
portfolio or
collective
investment scheme
and change of
shareholding or
directors

(a) change the name under which it is registered under this Act or change its shareholding or directors;

(b) use or refer to itself by a name other than the name under which it is so registered or a literal translation of it; or

(c) use or refer to itself by an abbreviation or a derivative of such name.

(2) Any change in the name of a capital market operator, manager, portfolio or scheme or of shareholding or directors, shall not be effective without the prior approval in writing of the Commission.

- (3) An exchange holding company shall not effect a change in its controlling shareholding without the prior consent of the Commission.

350. (1) Except with the written consent of the Commission, a person shall not use a name, or title which includes the word —

Prohibition of use of certain titles

- (a) securities,
- (b) exchange,
- (c) fund manager,
- (d) investment, or
- (e) broker,

or any other word that suggests that the person is registered to perform a function in the Nigerian capital market.

- (2) Any person who contravenes the provisions of this section is liable to an administrative penalty of not less than N10,000,000 in the first instance and a further penalty of N20,000 for every day the violation continues.

351. (1) The Commission may in the interest of investor protection or public interest, by notice suspend or terminate the appointment of the director or officer of a capital market operator or public company, if the director or officer has failed or refused to comply with the provisions of this Act or is no longer a fit and proper person to hold the office.

Removal of appointees and cancellation of registration

- (2) The Commission may suspend or cancel the registration granted to a capital market operator who violates the provisions of this Act provided that no cancellation shall be made unless the person concerned has been given an opportunity of being heard.

352. (1) The Commission may appoint one or more committees, to carry out on its behalf such of its functions as it may determine and a person other than a member of the Board or a staff of the Commission shall hold office on the committee in accordance with the terms of his appointment.

Committees of the Commission

- (2) A decision of a committee of the Commission shall be of no effect until it is confirmed by the Commission.

353. (1) The affixing of the seal of the Commission shall be authenticated by the signature of the Director-General and the Secretary or any two members of the Board duly authorised.

Seal of the Commission

- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, is not required to be under seal shall be made or executed by or on behalf of the Commission by the Director-General or any person specially authorised to act for that purpose by the Board.
354. (1) Notwithstanding the provisions of this Act the relevant provisions of all existing enactments shall be read with such modification as to bring them into conformity with the provisions of this Act in relation to capital market matters.
- (2) Subject to the Constitution of the Federal Republic of Nigeria, 1999, if the provisions of any other law, in relation to capital market matters are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.
355. (1) The Commission shall make rules and regulations for the purpose of giving effect to the provisions of this Act and shall in particular and without prejudice to the provisions, make rules and regulations which may include the underlisted and other incidental matters —
- (a) to alter or modify the provisions of the Second Schedule to this Act;
 - (b) prescribing the forms for returns and other information required under this Act;
 - (c) prescribing the procedure for obtaining any information required under this Act;
 - (d) requiring returns to be made within the period specified by any entity to which this Act applies;
 - (e) prescribing the procedure and criteria for approval of mergers, takeovers, acquisitions and business combinations under this Act;
 - (f) prescribing any fees payable under this Act;
 - (g) prescribing the manner for regulating securitization transactions in Nigeria;
 - (h) prescribing the procedure and criteria for regulating cross-border offerings, listing and trading of securities by foreign issuers, and free trade entities;
 - (i) prescribing that the provisions of this Act shall not apply or shall apply with such modifications, if any, as may be specified in the rules and regulations to any person or class of persons or any securities or class of securities or to any transaction;

Application and
relevance of other
laws not barred

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2004

Rules and
regulations

Second Schedule

- (j) prescribing the information to be contained in any prospectus or offer documents filed under this Act;
- (k) prescribing the procedure, criteria for the authorisation, revocation and operation of collective investment schemes including prudential and product regulation;
- (l) prescribing the activities which constitute insider dealings the rules governing dealings in securities by insiders and defining the term 'insider dealings';
- (m) concerning derivatives, derivatives markets or business, derivatives exchanges, derivatives market infrastructure, derivatives business operators, trade association of derivatives business operators, and preventing unfair derivatives trading practices;
- (n) concerning digital and virtual asset services and related activities;
- (o) prescribing the treatment of unclaimed money that remain unpaid after 24 months or other prescribed period, after their payment date;
- (p) prescribing the establishment of a national confiscation wallet, multi-party combination wallet;
- (q) prescribing the domestication of private keys;
- (r) without prejudice to the provisions of any law, specifying for the protection of investors, prescribing —
 - (i) the returns that are required to be filed by all public companies,
 - (ii) matters relating to the conduct of annual general meetings, extraordinary general meetings and other statutory meetings of public companies and collective investment schemes particularly relating to attendance, use of proxies, voting and other related matters,
 - (iii) the form, manner and procedure for obtaining proxies including the information to be disclosed to investors before proxies are given by any person,
 - (iv) corporate governance standards for public companies and regulated entities,

(v) sustainability reporting guidelines and disclosures including social and environmental sustainability standards for public companies and regulated entities,

(vi) the manner in which such matters shall be disclosed by the companies, and

(vii) the matters to be disclosed relating to the issue of securities, transfer of securities and matters incidental to it;

(s) prescribing the requirement for the identification of persons doing business with capital market operators;

(t) prescribing as it deems fit, appropriate rules on treatment of dividends, unclaimed securities and certificates, and other matters incidental to it;

(u) providing for anything requiring to be prescribed under this Act; and

(v) for carrying out the principles and objectives of this Act.

(2) The Commission shall in the exercise of powers to make rules in this section consult with stakeholders, and any regulation under this Act shall be deemed made 15 days after receipt by the Minister unless the Minister, before the expiration of the 15 days, directs that it be modified, amended or rescinded.

(3) Any instrument issued under subsection (1) shall be under the signature of the Director-General of the Commission and the Secretary or any two members of the Board as may be authorised.

(4) Notwithstanding the provisions of subsection (1) the Commission may amend or revoke rules or regulations for purpose of giving effect to the provisions of this Act and the rules and regulations made under it.

(5) Any regulations or rules made under this Act may where appropriate prescribe penalties for default.

356. (1) The Investments and Securities Act, No. 29, 2007 is repealed.

Repeals and savings

(2) Notwithstanding the provisions of the Interpretation Act, the repealed Act shall not affect any document made or anything done or purported to have been done under it.

Cap. 123, LFN, 2004

(3) Every order, requirement, certificate, notice, circular, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under the repealed Act, shall, if in effect at the commencement of this Act,

continue in effect and have effect as if made, issued, given or done under the corresponding provisions of this Act.

357. In this Act —

Interpretation

"agent" means a person authorised by another to act for or in place of him and in relation to a securities dealer, includes a person who is, or has been a banker of the dealer at any given time;

"appropriate officer" means the chief executive or any other officer authorised by the council of a state government, local government, or board of a statutory or government agency;

"approving authority" in the case of the Federal Government means the Federal Executive Council, in the case of a state government means the executive council of the State, in the case of a local government means the local government council and in the case of a government agency or statutory body means the board or the supervisory ministry of that body;

"asset" includes any real or personal property, whether tangible or intangible, intellectual property, goodwill, choses in action, right, license, cause of action or claim and any other asset having a commercial value;

"associated person" means a subsidiary, affiliate or agent of a member of any regulated entity;

"auditor" means a member of a body of accountants, recognised by an Act or any other enactment and appointed as auditor of a company or collective investment scheme by managers with the approval of the trustees;

"bid" means an invitation or an offer;

"board of trustees" refers to the board of trustees of an investor protection fund;

"bond" means an instrument of indebtedness issued by a body to secure the repayment of money borrowed by such body;

"bond holder" means a person holding a bond and whose name is entered as the owner in the register;

"book" includes any register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or micro-film, electronic process or otherwise;

"breach" means a failure to comply with directives of the Commission, observe or give effect to the provisions of this Act or any rules made under this Act, in circumstances where there is an obligation to do so;

"capital market" means a financial market that brings buyers and sellers together to trade securities, commodities, and other financial assets;

"capital market operator" means any persons, individual or corporate, duly registered by the Commission to perform specific functions in the capital market;

"capital market participant" means an investor, issuer, capital market operator, securities exchange, financial market infrastructure or any other person or entity participating in the capital market;

"cash" means any cash equivalent other than physical cash;

"central clearing house" means an entity responsible for settling trading accounts, clearing trades, regulating delivery, and reporting trading data, and it is a central location or central processing mechanism through which payment system participants agree to exchange payments;

"central counterparty" means a central clearing house that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts;

"central securities depository" means an entity that enables securities transactions to be processed and settled by book entry, provides securities accounts, central safekeeping services, asset services, which may include, among other things, the administration of corporate actions and redemptions, and plays an important role in helping to ensure the integrity of securities issues;

"certificate of registration" means any certificate or license issued by the Commission as a part of its registration functions under this Act;

"cleared contract" means a clearing member contract or a clearing member client contract;

"clearing house", in relation to a commodity exchange, means a body corporate that clears and settles commodity contracts, and ensures that parties honour contractual obligations arising out of those commodity contracts;

"clearing member" means a user of a central counter party or central clearing house authorised to perform clearing services, which has entered into an agreement with the central counter party or central clearing house, or in relation to a commodities exchange means an institution that is licensed by a commodities

exchange to clear and settle deals resulting from trading on the exchange on its own account as well as on accounts of its clients;

"clearing member client contract" means a contract between a financial market infrastructure and one or more clearing members' clients or indirect clients which is recorded in the accounts of the financial market infrastructure as a position held for the account of a client, an indirect client or a group of clients or group of indirect clients;

"clearing member contract" means a contract between a financial market infrastructure and a clearing member recorded in the accounts of the financial market infrastructure as a position held for the account of a clearing member itself;

"clearing and settlement company" means any corporate body which acts as an intermediary in making payments or deliveries or both in connection with transactions in securities and provides facilities for comparison of data regarding the terms of settlement of securities transaction or for the allocation of securities settlement responsibilities;

"client trade" means a contract between two or more clearing members' clients or indirect clients which corresponds to a clearing member client contract, other than any excluded trades;

"close-ended investment scheme" means a pooled investment fund in whatever legal form which raises a fixed and irredeemable amount of capital for investment into a portfolio of assets and securities in accordance with a specified investment objective for purposes such as capital preservation and income generation, and can be listed and traded on a recognised exchange;

"code" means the Nigerian Takeover Code as may be formulated by the Commission in accordance with the provisions of this Act;

"collateral management company" means a company registered by the Commission to manage commodities as collateral or engaged in any other activity connected with or related to any commodity or any other activity as may be determined by the Commission;

"collateral security" means any realisable asset provided under a charge or repurchase or similar agreement, or otherwise, including credit claims and money provided under a charge, for the purpose of securing rights and obligations potentially arising in connection with a system;

"collateral security charge" means collateral security that consists of realisable assets, including money, provided under a charge;

"collective investment scheme" means a scheme or arrangement in whatever form, including an open-ended and close-ended investment scheme, under which members of the public or qualified investors 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) such contributions are pooled and such portfolio of the scheme is managed as a whole;
- (c) such contributions entitle such investors to hold a participatory interest in the portfolio of the scheme through shares, units or any other form of participatory interest; or
- (d) such 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;

"commercial or investment business activities" means any activity relating to micro, small and medium scale enterprise, venture capital and private equity funding or such other commercial or investment business activities as the Commission may determine;

"Commission" means the Securities and Exchange Commission;

"commissioner" means the commissioner in a state responsible for matters relating to finance;

"commodity" means —

- (a) any produce, item, commodities, article, index, right, or interest of any nature as may be prescribed in the rules and regulations made under this Act;
- (b) produce, items, commodities or article that is the subject of any commodity forward contract, leveraged commodity trading, contract, future contract and other commodities derivatives including precious metals, electricity, crude oil and gas, agricultural produce, livestock, currency, solid minerals, digital assets, by-products of commodities, processed commodities products and such other commodities as are customarily traded on the exchange;

- (c) leveraged commodity trading, contract made under trading in differences, spot commodity trading, or futures trading, including an index, a right or an interest in such commodity, tangible property or intangible property of any nature that belongs to a class of indices, rights or interests;

"commodity contract" means any contract in relation to a commodity;

"commodity exchange" means —

- (a) a market, whether in Nigeria or any other jurisdiction, registered or recognised by the Commission where commodity contracts are regularly made or traded;
- (b) an electronic system, whether operating in Nigeria or elsewhere, through which trading in commodity contracts is carried out, but excludes an electronic facility which merely provides price or other information relating to commodity contract, whether that facility is part of or carried on in conjunction with the provision of any other information not related to commodity contracts and which does not permit users of the facility to channel orders for, execute transactions in, or make markets in, commodity contracts; or
- (c) a platform for trading of commodity futures contract and other commodities derivatives;

"commodity forward contract" means a contract the effect of which is that one party agrees to deliver a specified commodity, or a specified quantity of a specified commodity, to another party at a specified future time and at a specified price payable at that time, but does not include a commodity futures contract;

"company" has the same meaning as defined in the Companies and Allied Matters Act, No. 3, 2020 and includes any other company recognised by the Commission under any other Act;

"control" means control of an entity by a person who —

- (a) beneficially owns more than one half of the issued share capital or assets of the undertaking;
- (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;
- (c) is able to appoint or to veto the appointment of a majority of the directors of the company;

- (d) is a holding company, and the company is a subsidiary of that company as contemplated by the Companies and Allied Matters Act, No. 3, 2020;
- (e) in relation to takeover means the acquisition or holding of, or entitlement to exercise or control the exercise of voting shares or voting rights of more than 30%, or such other threshold, as may be prescribed by the Commission;
- (f) in the case of an undertaking that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;
- (g) in the case of the undertaking which is a nominee undertaking, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the nominee undertaking; or
- (h) has the ability to materially influence the policy of the undertaking in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) - (g);

"corner" means to acquire enough units of a security or to hold a significant commodity position to be able to manipulate its price;

"court" means the Investments and Securities Tribunal, Federal High Court, or any other court of competent jurisdiction;

"credit enhancement service" means any financial strategy or service provided by financial institutions or third parties to improve the credit rating, credit quality or liquidity of a borrower or a financial product;

"custodial agreement" means the agreement drawn up between the custodian and other parties in a collective investment scheme;

"custodian" means a person who has custody as a bailee of assets, securities or certificates issued in the name of the investor, or in the name of a scheme and its trustee which appears in the issuer's register as the beneficial or legal owner of such assets, securities or certificates;

"dealer" means a person engaged in the business of buying and selling of securities for own account;

"dealing member" means a body corporate that is a member of a recognised exchange and is licensed to engage in dealing in securities on that exchange;

"dealing in securities" means making or offering to make with any person, whether as principal or agent, or inducing or attempting to induce any person to enter into or to offer to enter into —

- (a) any agreement for or with a view to acquiring, holding, disposing or subscribing for, or underwriting of securities; or
- (b) any agreement for the purpose of securing a profit to any of the parties from the proceeds or yield of securities or by reference to fluctuations in the value of securities;

"default arrangement" means a system put in place to limit systemic and other types of risk which arise in the event of a participant appearing to be unable, or likely to become unable, to meet its obligations in respect of a transfer order, including, any default rules within the meaning of Part V - C or any other arrangement for —

- (a) netting;
- (b) the closing out of open positions;
- (c) the application or transfer of collateral security; or
- (d) the transfer of assets or positions on the default of a participant in the system;

"defaulter" means a person in respect of whom action has been taken by a financial market infrastructure under its default arrangements;

"default proceeding" means any action taken by a financial market infrastructure under its default rules;

"default rules" mean the rules of a registered securities exchange or registered financial market infrastructure which provide for the taking of action in the event of a person appearing to be unable, or likely to be unable, to meet his obligations under the rules of the registered securities exchange or registered financial market infrastructure or otherwise in respect of one or more market contracts connected with the registered securities exchange or registered financial market infrastructure;

"delivery" means voluntary transfer of possession or legal title from one person to another;

"depositor" means any person who deposits a commodity in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an

outstanding warehouse receipt or who is lawfully entitled to possession of the commodity;

"depository" means a custodian who holds securities on behalf of known investors but whose name appears on the issuer's register as a fiduciary nominee for the benefit of the investors and who operates a system of central handling of securities of a particular class of an issuer deposited within its system and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of certificates;

"derivatives" means any financial instrument or contract that creates rights and obligations and whose market price, value, delivery or payment obligations are derived from, referenced to or based on the value of one or more underlying including an asset, a security, a rate or index, a measure of economic value or a default event and any other instrument designated as a derivative by rules and regulations made under this Act;

"director" means a director as defined in the Companies and Allied Matters Act No. 3, 2020;

"eligible pledgee" means any financial institution licensed by the Central Bank of Nigeria to among other things provide financing against securities including warehouse receipts that is admitted to the electronic warehouse receipt system of a collateral management company;

"entity" means any legal person incorporated under the Companies and Allied Matters Act No. 3, 2020 or registered under an Act of the National Assembly, including Nigeria Export Processing Zones Authority Act, Cap. N107, Laws of the Federation of Nigeria, 2004, Oil and Gas Free Zones Authority Act, Cap. O5, Laws of the Federation of Nigeria, 2004 and subnational, local governments, agencies of government and supranational bodies;

"exchange" in relation to an investor protection fund means the securities exchange which established the fund;

"exchange holding company" means a parent company of any entity approved as a securities exchange or any other entity that has been approved as an exchange holding company by the Commission;

"executive council" means the Federal Executive Council or the executive council of a state;

"executive officer" in relation to a body corporate, means any person by whatever name called and whether a director or not who participates in the management of the body corporate;

"expert" means an engineer, legal practitioner, accountant or any other person whose profession gives authority to a statement made or action taken by him;

"facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service for the purpose of effecting or reporting a transaction on an exchange including any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange, and any right of the exchange to the use of any property or service;

"filing" means delivery to the Commission through mails, electronically or otherwise of all papers or applications required to be filed with the Commission under this Act and regulations made under this Act, and the date on which the papers or applications are actually received by the Commission at its principal office shall be the date of filing the papers or applications;

"financial market infrastructure" means any entity set up to carry out centralised, multilateral clearing, settlement, caching or recording activities, or provide a platform for trading securities, and, includes systemically important market participants, trade repositories, securities exchanges, central counterparties, central clearing houses, central securities depositories, and securities settlements systems;

"financial sector regulator" means any government authority, body, agency or entity within or outside Nigeria responsible for —

- (a) monitoring, mitigating and managing systemic risk for promoting financial stability; or
- (b) the supervision or oversight of financial market intermediaries or capital market participants;

"general obligation debt securities" means debt securities issued to finance the various projects of the government and repayable out of the general revenue and assets of the issuer;

"government securities" means securities which are direct obligations of and whose principal and interest repayments are guaranteed by the Federal Government of Nigeria, a State Government or a Local Government;

"holder" in relation to —

- (a) collective investment scheme means any investor or beneficiary who has acquired units of a collective investment scheme and is entitled to a pro-rata share of dividends, interest, profit or other income of the securities comprised in the units; or

- (b) warehouse receipt means a person who is in possession of a warehouse receipt and has proprietary interest in the commodities;

"income accrual" in relation to a collective investment scheme means any dividend or interest or profit or any other income for distribution received by the trustee, custodian or manager on behalf of investors in a portfolio in the course of any income distribution period or carried forward from any previous income distribution period or due to such investors in respect of dividends or interest or any income declaration made but not yet distributed;

"indirect participant" means an institution, central counterparty, settlement agent, clearing house, or system operator —

- (a) which has a contractual relationship with a participant in a system that enables the indirect participant to effect transfer orders through that system, and

- (b) the identity of which is known to the system operator;

"insider" includes —

- (a) any person who is connected with the company in any of the following capacities—

(i) a director of the company or a related company,

(ii) an employee or officer of the company or a related company,

(iii) an employer of the company or a related company,

(iv) a person involved in a professional or business relationship with the company,

(v) any shareholder of the company who owns 5% or more of any class of securities;

(vi) members of audit committee of a company; or

(vii) in any relationship whatsoever with the company, its member or any other insider listed in subparagraph (i) to (vi);

- (b) any of the persons not listed in paragraph (a), who by virtue of having been connected with any such person or connected with the company in whatever way, possesses unpublished price sensitive information in relation to the securities of the company;

(c) any person holding unpublished price sensitive information in relation to securities of a particular body corporate; and

(d) other persons who misappropriated, and took advantage of, confidential information from their employers;

"insider dealing or insider trading" means buying or selling of securities by an insider and occurs when a person or group of persons who being in possession of confidential, non-public and price sensitive information utilises such information to buy or sell securities for his or its benefit or for the benefit of any other person;

"insolvency proceedings" means any judicial or administrative proceeding in Nigeria against a person or an entity under a law relating to bankruptcy or insolvency in which the assets and affairs of the person or entity are subject to the control or the supervision of a tribunal, judicial or administrative body for the purpose of reorganisation or liquidation and extends, where appropriate, to an administrative and business rescue-oriented receivership where the interests of various categories of creditors, collective insolvency priority and preference rules are acknowledged whether based on a special statute or otherwise;

"institution" in relation to a financial market infrastructure means —

(a) relevant capital market operator;

(b) a public authority or publicly guaranteed undertaking;

(c) any undertaking whose head office is outside Nigeria and whose functions correspond to those specified in paragraphs (a) and (b); or

(d) any undertaking which is treated by the Commission as an institution which participates in a system and is responsible for discharging the financial obligations arising from transfer orders effected through the system;

"internal control" means policies, procedures and practices prescribed by management to ensure safety of assets, accuracy of financial records and reports, achievement of corporate objectives and compliance with laws, regulations and applicable corporate governance standards;

"investment adviser" means a person registered by the Commission to carry on the business of advising others concerning securities, or issue, publish analysis or make reports concerning securities:

Provided that the term investment adviser shall not include —

(a) a bank as defined in the Banks and Other Financial Institutions Act, No. 5, 2020;

(b) a company or society registered under the Insurance Act Cap. I 17 laws of the Federation of Nigeria, 2004;

(c) the proprietor of a newspaper and holder of a permit issued under the Newspapers Act and where —

(i) the newspaper is distributed generally to the public, it is distributed only to subscribers to, and purchasers of, the newspaper for value,

(ii) the advice is given or the analysis or reports are issued or published only through that newspaper,

(iii) no person receives any commission or other consideration for giving the advice or for issuing or publishing the analysis or reports, and

(iv) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor;

"investor protection fund" means a fund established by an exchange to mitigate losses suffered by investors;

"invitation" means a statement, however expressed, which offers securities to a person or class of persons;

"issuer" means —

(a) any person or entity that issues securities under this Act,

(b) in relation to collective investment schemes, any person or company discharging the duties of a manager under the provisions of the trust deed or other agreement under which the units or securities are issued or such other person as may be determined by the Commission, or

(c) in relation to issuance of securities under Part XVI, the body or bodies referred to in section 268 of this Act;

"legal entity identifier" means a code that uniquely identifies every distinct entity or structure that is a party to a financial transaction;

"listed company" means a company admitted into the official list of a securities exchange for the purpose of, among others, the quotation, trading of, and dealing

in, the securities of the company and which is subject to the regulatory oversight of that securities exchange;

"listing" means the admission of securities, commodities, financial products or instruments into the official list of a registered exchange for the purpose of, among others, the admission, quotation, trading of, and dealing in such securities, commodities, financial products or instruments which is subject to the regulatory oversight of that securities exchange;

"listing rules" means regulations applicable to any listed company or listing on a registered exchange, subject to the oversight and approval of the Commission";

"loan" means internal loan and includes any arrangement under which a body is to be afforded credit facilities and references to the making, acceptance, repayment or application for a loan or to any other form of transaction relating to a loan shall be construed accordingly; or means any arrangement for a credit facility including the making, acceptance, repayment and application of such facility or any other transaction connected to it;

"manager" means a fund or portfolio manager registered by the Commission;

"market charge" means a charge, whether fixed or floating, granted in favour of a financial market infrastructure for the purpose of securing debts or liabilities arising from and in connection with ensuring the performance of market contracts;

"market collateral" means one or more of the forms of security accepted by a financial market infrastructure;

"market contract" in relation to securities exchange and financial market infrastructure means contracts by —

- (a) a member of the securities exchange with a person other than the securities exchange whether or not made on the securities exchange;
- (b) the securities exchange, with its member, or with a financial market infrastructure or with another securities exchange, for the purpose of enabling the rights and liabilities of that member or financial market infrastructure or other securities exchange under a transaction to be settled;
- (c) a securities exchange with its member or with a financial market infrastructure or with another securities exchange for the purpose of providing central counterparty services to that member or financial market infrastructure or other securities exchange;

(d) a financial market infrastructure, with its member or with another financial market infrastructure, for the purpose of —

(i) enabling the rights and liabilities of that member or other financial market infrastructure under a transaction to be settled, or

(ii) providing central counterparty services to that member or other financial market infrastructure; or

(e) a financial market infrastructure in relation to transactions cleared through its system including clearing member contract, clearing member client contract and client trade;

"market contract" means —

(a) in relation to securities exchange, contracts entered into by —

(i) a member of the securities exchange with a person other than the securities exchange which are either contracts made on the securities exchange or contracts, the making of which the member was subject to the rules of the securities exchange,

(ii) the securities exchange, with a member of the securities exchange, or with a financial market infrastructure or with another securities exchange, for the purpose of enabling the rights and liabilities of that member or financial market infrastructure or other securities exchange under a transaction to be settled, or

(iii) a securities exchange with a member of the securities exchange or with a financial market infrastructure or with another securities exchange for the purpose of providing central counterparty services to that member or financial market infrastructure or other securities exchange;

(b) in relation to a financial market infrastructure, contracts entered into by the financial market infrastructure, with a member of the financial market infrastructure, or with another financial market infrastructure, for the purpose of —

(i) enabling the rights and liabilities of that member or other financial market infrastructure under a transaction to be settled, or

(ii) providing central counterparty services to that member or other financial market infrastructure;

(c) in relation to transactions cleared through a financial market infrastructure —

(i) a "clearing member house contract" being a contract between a financial market infrastructure and a clearing member recorded in the accounts of the financial market infrastructure as a position held for the account of a clearing member itself,

(ii) a "clearing member client contract" being a contract between a financial market infrastructure and one or more clearing members' clients or indirect clients which is recorded in the accounts of the financial market infrastructure as a position held for the account of a client, an indirect client or a group of clients or group of indirect clients,

(iii) a "client trade" being a contract between two or more clearing members' clients or indirect clients which corresponds to a clearing member client contract, other than any excluded trades, or

(iv) contracts entered into by a financial market infrastructure with another financial market infrastructure for the purpose of providing central counterparty services to a securities exchange or clearing house;

"market participant" means any person involved in any aspect of capital market transaction or operation under this Act;

"market venue" means any platform whether physical or virtual where securities and other financial instruments are traded;

"member" means a company which carries on business of dealing in securities and is recognised as a member of a securities exchange;

"merger" means the amalgamation, combination, acquisition, establishment, or otherwise directly or indirectly, by one or more persons, whether by purchase of shares or lease of assets, resulting in a joint venture, control over or significant interest in the whole or a part of a business of any other person;

"minister" means the minister responsible for matters relating to finance;

"offer" means a statement, however expressed, which offers securities to a person or class of persons;

"offeree company" means a company whose shares are the subject of a take-over bid;

"offeror" means a person or two or more persons jointly or in concert who make a take-over bid;

"open-ended investment company" means a collective investment scheme incorporated as a company with variable capital permitting realisation or redemption of shares of representative investment value in the underlying portfolio of assets or securities of the company;

"participatory interest" means any interest, undivided unit or share whether called a participatory interest, unit or by any other name, and whether the value of such interest, unit, undivided share or shares remain constant or varies, which may be acquired by an investor in a portfolio;

"participant" in relation to Part V means —

- (a) an institution;
- (b) a system operator;
- (c) a body corporate or unincorporated association which performs any combination of the functions of a financial market infrastructure, registered by the Commission to perform clearing and related functions such as a central counterparty, a settlement agent or a clearing house, with respect to a system; or
- (d) an indirect participant which is treated as a participant, or is a member of a class of indirect participants which are treated as participants.

"penalty" means administrative fines or other sums imposed by the Commission and payable to the Commission;

"person in breach" means a person who contravenes or fails to comply with directives of the Commission, observe or give effect to the provisions of this Act or rules and regulations made under this Act, in circumstances where the person is under an obligation to do so.

"portfolio" means a group of assets including any amount of cash;

"portfolio investment" means, an investment in the form of a portfolio, including transaction in securities;

"prohibited scheme" including those commonly known as a "Ponzi or Pyramid Scheme" means —

(a) any investment scheme that pays existing contributors with funds collected from new contributors to the scheme promising high returns with little or no risk whether or not the scheme —

(i) limits the number of persons who may participate, either expressly or by the application of conditions affecting the eligibility of a person to enter into, or receive compensation under the scheme, or

(ii) is operated at a physical address or through the internet or other electronic means, or

(b) any scheme where participants attempt to make money by recruiting new participants usually where —

(i) the promoter promises a high return with little or no risk,

(ii) no genuine product or service is actually sold,

(iii) the primary emphasis is on recruiting new participants,

(iv) the product or service is not registered, or

(v) the promoters or marketers are not licensed or registered;

"project-tied debt securities" means debt securities issued to fund specific capital projects and backed by the asset or income of the project for which the bond was issued and may also mean a revenue bond;

"promoter" means promoter as defined in the Companies and Allied Matters Act No. 3, 2020 and includes promoter of a collective investment scheme;

"promissory note" means a promissory note issued by a body under the provisions of this Act; or means an unconditional promise signed by the maker promising to pay a fixed sum of money on demand or at a specified time.

"prospectus" means any written or electronic information, notice, advertisement or other forms of invitation offering to the public for subscription or purchase, any shares, debentures or other approved and recognised securities of a company and other issues or scheme and includes offer for sale, advertisement, circular, letter, notice, electronic website or app or other equivalent statements or document published or circulated electronically, via print media or otherwise relating to the collective investment scheme and inviting prospective investors to register into the scheme by reason of the representation made;

"public officer" means any person working in the public service of the Federation, States and Local Governments or as defined in the Constitution of the Federal Republic of Nigeria 1999, Cap. C23, Laws of the Federation of Nigeria, 2004;

"qualifying property transfer" means the transfer of a tangible or intangible property made in accordance with the default rules of the financial market infrastructure;

"quotation" means the provision of information on the bid and offer prices on securities, commodities, financial products or instruments for the purpose of facilitating the trading of, and dealing in such securities, commodities, financial products or instruments;

"register" means the register of securities and of the holders of such securities;

"registrar" means an entity registered by the Commission to perform the function of a registrar and is usually engaged in —

- (a) creating and maintaining the register of members of an issuer;
- (b) counter-signing such securities upon issuance;
- (c) monitoring the issuance of such securities with a view to preventing unauthorised issuance;
- (d) registering the transfer of such securities;
- (e) exchanging or converting such securities; and
- (f) transferring, record ownership of such securities by book-keeping entry without physical issuance of securities certificates;

"regulated entity" means an entity or institution that is registered, regulated or recognised by the Commission to perform functions, carry out activities or act in any other manner as may be prescribed under this Act or the rules and regulations made under this Act;

"related company" means any body corporate which is a company's subsidiary or holding company or a subsidiary of that company's holding company;

"rules" in relation to a registered exchange, means the rules governing the members by whatever name called and wherever contained and includes rules contained in the memorandum of association and the articles of association of the securities exchange;

"securities" means —

- (a) debentures, stocks or bonds issued by a government;
- (b) debentures, stocks, shares, bonds, notes issued by a body corporate, any right or option in respect of any such debentures, stocks, shares, bonds or notes;
- (c) virtual and digital assets;
- (d) investment contracts;
- (e) commodities, futures, contracts, options and other derivatives; or
- (f) any other instrument deemed as securities which may be transferred by means of any electronic mode or which may be deposited, kept or stored with any depository or custodian;

"securities dealer" means a firm who is a member of a securities exchange or any other recognised place for securities transactions, engaged in the business of transacting in securities on own account, or on the account of others or both;

"securities exchange or registered exchange" means an organised facility which maintains and provides an infrastructure —

- (a) for bringing together buyers and sellers of securities, virtual assets, commodities, or financial products or instruments;
- (b) for matching bids and offers for securities, virtual assets, commodities, or financial products or instruments of multiple buyers and sellers; and
- (c) whereby a matched bid and offer for securities, virtual assets, commodities, or financial products or instruments constitutes a transaction;

"securities holder" means a person holding securities and whose name is entered as the owner in the register;

"securities lending" means the temporary exchange of securities, generally for cash or other securities of at least an equivalent value, with an obligation to return a like quantity of the same securities on a future date and includes securities loan, repurchase agreement, and self-buy back agreements;

"securities settlements system" means an entity that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules, and such systems allow transfers of securities either free of payment or against payment;

"securities transfer agent" means a registrar or any entity, registered by the Commission and appointed by an issuer to maintain the register of holders of securities;

"self-regulatory organisation" means any entity registered or recognised by the Commission as such;

"settlement account" means an account used to hold funds, securities or other assets and to settle transactions between participants in a system;

"settlement agent" means a body corporate providing settlement accounts to the institutions and any financial market infrastructure which is registered by the Commission to perform clearing and related functions such as a central counterpart, a settlement agent or a clearing house in a system for the settlement of transfer orders within the system and, for extending credit to such institutions and any such entity for settlement purposes;

"share" means a proprietary interest in the share capital of a body corporate and except where a distinction between stock and shares is expressed or implied, includes stock;

"significant market participant" means a registered market operator whose —

- (a) market activities directly or indirectly, as measured by its gross revenue, operating assets, assets under management, mean value of securities traded, account for at least 25% of aggregate revenue arising from activities in the sector or market, aggregate operating assets in the sector or market, aggregate assets under management in the sector or market or aggregate securities traded in a sector or market;
- (b) consolidated revenue of subsidiaries or associates or related parties under a group structure generated from their activities constitute at least 25% of the aggregate revenue arising from activities of the sector or the market, or whose consolidated operating assets, assets under management account for at least 25% of the aggregate operating assets or assets under management of the sector or market; or
- (c) any other entity as the Commission may determine.

"stockbroker" means a member of any association or institute of stockbrokers registered by the Commission as a market operator and a dealing member of a securities exchange;

"surplus money" means money payable to subscribers resulting from over subscription of an offer;

"system" means a formal arrangement operated by any financial market infrastructure which is registered by the Commission for the purposes of recording, clearing or settling payments, securities, derivatives or other financial transactions, through which transfer orders may be executed, cleared or settled in accordance with common rules and standardised arrangements;

"system operator" means the entity or entities legally responsible for the operation of a system;

"systemic risk" means a situation where one or more of the following events occur or is likely to occur in the capital market —

- (a) financial distress in a systemically important market participant or in a number of market participants;
- (b) an impairment in the orderly functioning of the capital market;
- (c) an erosion of public confidence in the integrity of the capital market;
- (d) a major market disturbance characterised by or constituting sudden fluctuations of securities prices that threaten fair and orderly dealing in the capital market;
- (e) a major market disturbance characterised by or constituting a substantial disruption in the system for clearance and settlement of transactions;
- (f) a major disruption in the functioning of the capital market or of a significant segment of the market, including a major disruption in the availability of capital to market participants;
- (g) a major disruption in the transmission, execution or processing of securities transactions;
- (h) a substantial threat of such a major market disturbance or major disruption; or
- (i) any other event as may be determined by the Commission;

"systemically important market participant" means a significant market participant designated as such by the Commission, or other regulatory authority, with the potential to trigger systemic risk;

"take-over" except as may be otherwise defined in the Code, means the acquisition by one company of sufficient shares in another company to give the acquiring company control over that other company;

"take-over bid" means an offer made to acquire all or part of the voting shares or voting rights, or any class or classes of voting shares or voting rights, in a company and includes —

- (a) a take-over or merger transaction which has the effect or potential effect of obtaining or consolidating control in the company;
- (b) a partial offer as defined in the Code;
- (c) a take-over offer by a parent company for the voting shares or voting rights in its subsidiary; or
- (d) an arrangement or reorganisation that involves the voting shares or voting rights of a listed company;

"tradable instrument" refers to tradable assets, or negotiable items, such as securities, commodities, warehouse receipts, financing contracts, derivative, index, or any item that underlies a derivative;

"trade repositories" means an entity that maintains a centralised electronic record or database of transaction data;

"trust account" means an account —

- (a) established under a trust deed, or
- (b) kept by a capital market operator on behalf of his client;

"trust deed" means an agreement drawn up between —

- (a) the trustee and the manager of a collective investment scheme,
- (b) the trustee and issuer of a bond or other debt instrument, or
- (c) any other parties approved by the Commission;

"trustee" —

- (a) under a unit trust scheme or such other arrangement, means the corporate entity in whom the property for the time being subject to any trust created under the scheme is or may be vested in accordance with the terms of the trust; or
- (b) with respect to revocation of registration of the scheme, means such qualified person and professional appointed by the Commission to take-

over the role of a trustee of the scheme and administer same in the best interest and protection of the investing public;

"unclaimed money" means money due to investors or shareholders as a result of an aborted offer, rejected application, over subscription, buy-out, squeeze-out, take-over, reconstruction or other related transactions;

"underwriter" means a person registered by the Commission who has temporarily purchased securities from an issuer with a view to offering or selling the securities in connection with the distribution of such securities;

"units" in relation to a unit trust scheme, means any participatory interest howsoever described into which are divided the beneficial interest in the assets subject to any trust created under the scheme;

"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property;

"unpublished price sensitive information" means information which —

(a) directly or indirectly relates to matters of concern that are not of general nature to a company, and

(b) is not generally known to the public but may materially affect the price of the securities of the company;

"warehouse" means any commercial space, building, silo, cold chain, tank farm or compressed tank, vessel, vault, structure or other protected enclosure approved by the Commission to be used or useable, for the storage or conditioning of commodities or buildings used for storage purposes or including operation of a warehouse which issues warehouse receipt in relation to commodities to be traded on a registered exchange;

"warehouse operator" means a person registered under this Act engaged in the business of operating or controlling a warehouse for receiving, storing, shipping or handling of commodities for a fee and includes its agent or employee;

"warehouse operator's lien" means the right of a warehouse operator to recoup fees and charges for services rendered or supplied or repayment of sums advanced in accordance with the provisions of this Act and the term "right of lien" shall be construed accordingly;

"warehouse receipt" means a document of title to commodities in whatever form issued by a warehouse operator, collateral manager, or other persons permitted

by the Commission to issue a warehouse receipt in respect of commodities deposited in a warehouse; and

"warehouse receipt system" means a centralised electronic system maintained by a warehouse operator or collateral management company or any other entity approved by the Commission for the registration of possession, ownership and transfer of commodities stored in a registered warehouse and matters incidental to it.

358. This Act may be cited as the Investments and Securities Act, 2025.

Citation

SCHEDULES

First Schedule

Section 11 (3)

PROCEEDINGS OF THE BOARD OF THE COMMISSION

1. (1) The Commission may, subject to this Act, make standing orders regulating its proceedings or those of any of its committees.
- (2) At any meeting of the Board of the Commission the Chairman shall preside and, in his absence, the members present at the meeting shall appoint one of their members to preside.
- (3) The quorum for a meeting of the Board of the Commission shall be five members, two of whom shall be non-executive members.
- (4) Where the Board of the Commission desires to obtain the advice of any person on a matter, the Board may co-opt such person for such period as it deems necessary, provided that such person shall not be entitled to vote at any meeting of the Board and shall not count in forming a quorum.
- (5) Unless as otherwise provided in this Act, decisions shall be by a simple majority of the vote of the members present but, in case of an equality of votes, the presiding Chairman shall have a casting vote.

Committees

2. (1) The Board may appoint one or more standing or ad-hoc committees to perform on its behalf such of its functions as it may determine.
- (2) A committee appointed under this paragraph shall consist of such number of persons (which may include non-members of the Board) as may be determined by the Board and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.
- (3) A decision of a committee appointed under subparagraph (1) shall be of no effect until it is approved by the Board.
- (4) The quorum of a meeting of a committee of the Commission shall be as determined by the Board.
- (5) The Chairman of a committee shall have a casting vote.

Conflict of interest

3. Any member of the Commission and any person holding office on a committee of the Commission who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Commission or a committee shall disclose his interest, recuse himself and not vote on any question relating to the contract or arrangement.

INVESTMENTS AND INVESTMENT BUSINESS

PART I — TYPES OF INVESTMENTS

Investments Include-Shares

1. Shares and stock in the share capital of a company.

Debentures

2. Debentures, including debenture stock, loan stock, bonds and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3 of this Schedule.

Government and Public Securities

3. Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a supranational, government, local or public authorities.

Virtual Assets

4. Virtual assets, digital assets and other distributed ledger technology (DLT) offers, tokens and products.

Instruments Entitling to Shares or Securities

5. Warrants or other instruments entitling the holder to subscribe for investments falling within paragraphs 1-4 of this Schedule.

Certificates Representing Securities

6. Certificates or other instruments which confer —
 - (a) proprietary rights in respect of any investment falling within paragraphs 1-5 of this Schedule;
 - (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
 - (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

Units or Shares in Collective Investment Scheme

7. Units or shares in a collective investment scheme shall include shares in a closed ended investment company or an open-ended investment company or a real estate investment company, units in a unit trust scheme or a real estate investment trust and participatory in a scheme in whatever form.

Options

8. Options to acquire or dispose of —

- (a) an investment falling within any other paragraph of this Schedule;
- (b) currency of the Federal Republic of Nigeria or of any other currency traded on the securities exchange;
- (c) gold or silver;
- (d) an option to acquire or dispose of investments falling within this paragraph by virtue of subparagraphs (a), (b) or (c); or
- (e) such other investments as may be deemed by the Commission as an option.

Futures

9. Rights under contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date at a price agreed upon when the contract is made.
10. Forms of investment or capital instrument within the meaning of investment generally and such other investments as may be deemed by the Commission as an option.

PART II — INVESTMENT BUSINESS

Dealing in Securities

1. Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

Arranging deals in Investments

2. Making, or offering or agreeing to make arrangements with a view to —

- (a) another person buying, selling, subscribing for or underwriting a particular investment; or

- (b) a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

Managing Investments

- 3. Managing, or offering or agreeing to manage, assets belonging to another person if —
 - (a) those assets consist of or include investments; or
 - (b) the arrangements for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them.

Investment Advice

- 4. Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

Establishing Collective Investment Schemes

- 5. Establishing, operating or winding up a collective investment scheme, including acting as manager, trustee or custodian of a collective investment scheme.
- 6. Any other activity falling within the definition of activities constituting investment business.

Investment Contracts

- 7. Establishing a contract or scheme for the placing of capital or laying out of money in a way intended to secure income or profit from its employment by the promoter.

Third Schedule

Sections 101 (1), 104 (1), (2),
107 (1), (3), 108 (1) (b), (c),
(d) and 118 (b)

PART I — MANDATORY CONTENTS OF A PROSPECTUS

The Company's Proprietorship, Management and its Capital Requirement

1. The prospectus shall state the —

- (a) number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the issuer;
- (b) number of shares, if any, fixed by the issuer's articles as the qualification of a director or its equivalent, and any provision in the articles as to the remuneration of directors or its equivalent; and
- (c) names, descriptions and addresses of the directors or its equivalent or proposed directors or its equivalent.

2. Where shares are offered to the public for subscription, the prospectus shall give particulars of the —

- (a) minimum quantum which in the opinion of the directors or its equivalent, must be raised by the issue of those securities in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following —
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,
 - (ii) any preliminary expenses payable by the issuer, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring subscriptions for, any securities in the entity,
 - (iii) the repayment of any money borrowed by the issuer in respect of any of the foregoing matters, and
 - (iv) working capital; and

- (b) amounts to be provided in respect of the matters mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

Details Relating to the Offer

3. (1) The prospectus shall state the —

- (a) time of the opening of the subscription lists; and
- (b) amount payable on application and allotment on each, including the amount, if any, payable by way of premium.

- (2) In the case of second or subsequent offer of securities, there shall also be stated the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted and the amount, if any, paid on the securities so allotted, including the amount, if any, paid by way of premium.

4. (1) There shall be stated the number, description and amount of any shares or debentures of the issuer company which any person has, or is entitled to be given an option to subscribe for.

(2) The following particulars of the option shall be given the —

- (a) period during which it is exercisable;
- (b) price to be paid for shares or debentures subscribed for under it;
- (c) consideration, if any, given or to be given for it or the right to it; and
- (d) names and addresses of the persons to whom it or the right to it, was given or, if given to existing shareholders or debenture holders as such the relevant shares or debentures.

- (3) References in this paragraph to subscribing for shares or debentures include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

5. The prospectus shall state the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and —

- (a) in the latter case the extent to which they are so paid up; and

- (b) in either case the consideration for which those shares or debenture have been issued or are proposed or intended to be issued.

Property acquired or to be acquired by the Company

6. (1) For purposes of paragraphs 8 and 9 of this Schedule, relevant property is property purchased or acquired by the issuer, or proposed to be purchased or acquired —

- (a) which is to be paid wholly or partly out of the proceeds of the issue offered for subscription by the prospectus; and
- (b) the purchase or acquisition of which has not been completed at the date of the issue of the prospectus.

- (2) Paragraphs 8 and 9 of this Schedule shall not apply to property —

- (a) the contract for which purchase or acquisition was entered into in the ordinary course of the issuer's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract;
or

- (b) in respect of which the amount of the purchase money is not material.

7. In respect of any relevant property, the prospectus shall state —

- (a) the names and addresses of the vendors;
- (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the issuer is a sub-purchaser, the amounts so payable to each vendor; and
- (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the issuer or any person who is, or was at the time of the transaction, a promoter or a director or his equivalent or proposed director or his equivalent of the issuer had any interest direct or indirect.

8. There shall be stated the amount, if any, paid or payable as purchase money in cash, shares or debentures for any relevant property, specifying the amount, if any, payable for goodwill.

9. (1) Subparagraphs (2) - (4) shall apply with respect to the interpretation of paragraphs 6-8 of this Schedule.

(2) Every person is deemed a vendor who has entered into any contract (absolute or conditional) for the sale or purchase, or for any option of purchase of any property to be acquired by the company, in any case where the —

(a) purchase money is not fully paid at the date of the issue of the prospectus;

(b) purchase money is to be paid or satisfied wholly original, paid out of the proceeds of the issue offered for subscription by the prospectus; or

(c) contract depends for its validity or fulfilment on the result of that issue.

(3) Where any property to be acquired by the issuer is to be taken on lease, the provisions of paragraphs 6 - 8 of this Schedule shall apply as if "the vendor" includes the lessor, "purchase money" includes the consideration for the lease, and "sub-purchaser" includes a sub-lessor.

(4) For the purposes of paragraph 8 of this Schedule, where the vendors or any of them are a firm, the members of the firm are not to be treated as separate vendors.

Commission and Preliminary Expenses

10. (1) The prospectus shall state —

(a) the amount, if any, paid within the two preceding years, or payable, as commission, but not including commission to sub-underwriters, for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for shares in or debentures of the company, or the rate of any such commission;

(b) the amount or estimated amount of any preliminary expenses and the person by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable; and

(c) any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration.

(2) Subparagraph (1), so far as it relates to preliminary expenses, does not apply in the case of a prospectus issued more than two years after the date at which the issuer is entitled to commence business.

Contracts

11. (1) The prospectus shall give the date of parties to and general nature of every material contract.

- (2) Subparagraph (1) does not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the issuer, or a contract entered into more than two years before the date of issue of the prospectus.

Auditors

12. The prospectus shall state the names and addresses of the issuer's auditors.

Interests of Directors and their Equivalents

13. (1) The prospectus shall give full particulars of the —
- (a) nature and extent of the interest, if any, of every director or his equivalent in the promotion of, or in the property proposed to be acquired by the issuer; and
 - (b) interest of such a director or his equivalent in being a partner in a firm, and the nature and extent of the interest of the firm.
- (2) With the particulars under subparagraph (1) (b) must be provided a statement of all sums paid or agreed to be paid to the director or his equivalent or the firm in cash or securities or otherwise by any person either to induce him to become, or to qualify him as, a director or his equivalent or otherwise for services rendered by him or the firm in connection with the promotion of the issuer.
- (3) This paragraph does not apply in the case of a prospectus issued more than two years after the date at which the issuer is entitled to commence business.

Other Matters

14. Where any prospectus inviting the public for subscription of shares for which the company's share capital is divided into different classes of shares, the prospectus shall state the voting right at meetings of the company as conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.
15. Any prospectus shall state the length of operation of the issuer.

PART II — AUDITORS' AND ACCOUNTANTS' REPORTS TO BE SET OUT IN THE PROSPECTUS

16. (1) The prospectus shall set out a report by the issuer's auditors with respect to —
- (a) profits and losses and assets and liabilities, in accordance with subparagraphs (2) and (3), as the case requires; and

- (b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the respective five financial years immediately preceding the issue of the prospectus, detailing such class of shares for which such dividends were paid and of which dividends was not paid:

Provided that where no account was made in respect of any part of the five years, ending on a date three months before the issue of the prospectus, the report shall contain a statement of that fact.

(2) Where the issuer has no subsidiaries, the report shall deal with —

- (a) profits and losses of the issuer in respect of each of the five financial years immediately preceding the issue of the prospectus; and
- (b) the assets and liabilities of the issuer at the last date to which the issuer's accounts were made up.

(3) Where the issuer has subsidiaries, the report shall deal separately with —

- (a) the issuer's profits or losses, as provided by subparagraph (2), and in addition deal either —
 - (i) as a whole with the combined profits or losses of its subsidiaries, if it concerns members of the issuer, or
 - (ii) individually with the profits or losses of each subsidiary if it concerns members of the issuer, or, instead of dealing separately with the issuer's profits or losses, deal as a whole with the profits or losses of the issuer and (if they concern members of the issuer) with the combined profits and losses of its subsidiaries; and
- (b) deal separately with the issuer's assets and liabilities as provided by subparagraph (2), and in addition deal either —
 - (i) as a whole with the combined assets and liabilities of its subsidiaries with or without the issuer's assets and liabilities, or
 - (ii) individually with the assets and liabilities of each subsidiary, indicating the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the issuer.

Accountants' Report

17. Where, the proceeds of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, there shall be set out in the prospectus a report by accountants on the —
- (a) profits or losses of the business in respect of each of the five years immediately preceding the issue of the prospectus; and
 - (b) assets and liabilities of the business at the last date to which the accounts of the business were made up.
18. (1) Subparagraphs (2) and (3) apply if —
- (a) any proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition of shares in any other body corporate; and
 - (b) by reason of that acquisition or in consequence of or in connection with it, that body corporate shall become a subsidiary of the issuer.
- (2) There shall be set out in the prospectus a report by accountants upon the —
- (a) profits or losses of the other body corporate in respect of each of the five years immediately preceding the issue of the prospectus; and
 - (b) assets and liabilities of the other body corporate at the last date to which its accounts were made.
- (3) The accountants' report required by this paragraph shall —
- (a) indicate how accounting treatment of profits or losses of the acquired body shall affect the issuer's assets and liabilities and whether there exist allowances to be made in relation to such assets and liabilities of the acquiring company; and
 - (b) where the other body corporate has subsidiaries, deal with the profit or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by paragraph 16(3) of this Schedule in relation to the company and its subsidiaries.

Provisions Interpreting Preceding Paragraphs and Modifying them in Certain Cases

19. Where, in the case of an issuer which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the issuer or business have only been made up in respect of four years, three years, two years or

one year, the preceding paragraphs of this Part have effect as if references to four years, three years, two years or one year (as the case may be) were substituted for references to five years.

20. The expression financial year, in this Part means the year in respect of which the accounts of the issuer or of the business (as the case may be) are made up, and where by reason of any alteration of the date on which the financial year of the issuer or business terminates the accounts have been made up for a period greater or lesser than one year, that greater or lesser period is for purposes of this Part deemed to be a year.
21. Any report required by this Part shall either indicate by way of note any adjustments in respect of the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary, or shall make those adjustments and indicate that adjustments have been made.
22. (1) A report required by paragraph 17 or 18 of this Schedule shall be made by accountants qualified under this Act for appointments as auditors of an issuer.
(2) Such a report shall not be made by any accountant who is an officer or servant, or partner of or in the employment of an officer or servant, of the issuer or the issuer's subsidiary or holding company or of a subsidiary of the issuer's holding company; and in this subparagraph, "officer" includes a proposed director or his equivalent.
(3) The accountant making any report for purposes of paragraph 17 or 18 of this Schedule shall be named in the prospectus.

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO THE COMMISSION BY A COMPANY AND REPORTS TO BE SET OUT IN IT

PART I — FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED IN IT

Statement in lieu of prospectus delivered for registration by

Pursuant to section of the Companies and Allied Matters Act, No. 3, 2020.

Delivered for registration by shares of x the nominal share capital of the shares of x issuer divided into shares of x

Amount (if any) of above capital which consists of redeemable shares

The earliest date on which the issuer has power to redeem these shares

Names, descriptions and addresses of directors or his equivalent or proposed directors

Amount of shares issue

Amount of commissions paid in connection with the issue of the shares

Amount of discount, if any, allowed on the issue of shares, or so much of them as has not been written off at the date of the statement

Amount (if any) paid or payable as commission for subscribing or agreeing to procure subscriptions for any shares or debentures in the issuer:

Amount paid

Payable

Rate of the commission

The number of shares (if any) which persons have agreed of a commission to subscribe absolutely.

Rate or percentage

Unless more than one year has elapsed since the date on which the issuer was entitled to commence business.

Naira.....

Amount of preliminary expenses.....

By whom those expenses have been paid or are payable.....

Name of promoters

Amount paid or intended to be paid to promoter.....

Consideration for payment

Amount (Naira)

Intended to be paid.....

Consideration.....

Any other benefit given to any promoter.....

Name of promoter

Nature and value of benefit.....

Consideration for giving of benefit consideration.....

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Shares of Naira fully paid upon which Naira per share credited as paid

Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.

Debenture.....

Consideration for the issue or intended issue of those shares or debenture.

Consideration

Number, description and amount of any shares or debentures which any persons has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted with a view to his offering them for sale.

Share of Naira of.....

Debentures.....

Period during which option is exercisable.....

Price to be paid for shares or debentures subscribed for or acquired under option.

Consideration.....

Consideration for option or right to option.

Persons to whom option or, right to option was given or, if given to exist in shareholders or debenture holders as such the relevant shares or debentures.....

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material, or in the case of re-registration of a private company as public, names and addresses of vendors property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company or where the amount of the purchase money is not material.

Name.....

Address.....

Name

Address.....

Total Purchase Price

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill

Cash.....

Share.....

Debenture.....

Goodwill.....

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time of such transaction a promoter, director or proposed director of the company had any interest direct or indirect.

Particulars.....

Date of, parties to, and general nature of every material contract (other than contract entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

Date of parties to

Nature of contract

Time and place at which the contracts or copies of them may be inspected and, in the case of a contract wholly or partly in a foreign language, a copy of a translation of it in English or embodying a translation in English or of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Time.....

Place.....

Name of Auditor.....

Address

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to come or to qualify him as a director or otherwise for services rendered or to be rendered to the company by him or by the firm.

Nature and extent, of interest of director.....

Rates of the dividends, if any, paid by the company in respect of each class of shares in the company in each of the five years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Rates of dividends.....

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

Particulars (signature of the persons named above as directors or proposed directors or of their agents authorised in writing).....

Date.....

PART II — REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, there shall be set out a report made by accountants (who shall be named in the statement) upon the —

(a) profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Commission; and

(b) assets and liabilities of the business at the last date to which the accounts of the business were made up.

2. Where it is proposed to acquire share in a body corporate which by reason of the acquisition or anything to be done in consequence or in connection with it will become a subsidiary of the company, there shall be set out a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with paragraph 3 (1) or (2) of this Schedule, as the case requires, indicating —

(a) how the profits or losses of the other body corporate dealt with by the report would in respect of the shares to be acquired, have concerned members of the company; and

(b) what allowance would have fallen, to be made in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

3. (1) If, in the case mentioned in paragraph 2 of this Part of this Schedule the other body corporate has no subsidiaries, the report referred to in that paragraph shall so far as regards —

(a) profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial statement years immediately preceding the delivery of the statement to the Commission; and

(b) assets and liabilities, dealt with the assets and liabilities of the body corporate at the late date to which the accounts of the body corporate were made up.

(2) If the other body corporate has subsidiaries, the report shall —

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by subparagraph (1) (a), and in addition deal either —

(i) as a whole with the combined profits or losses of its subsidiaries, if they concern members of the other body corporate, or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate; instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by subparagraph (1) and, in addition, deal either —

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities, or

(ii) individually with the assets and liabilities of each subsidiary, and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

PART III — PROVISIONS APPLYING TO PART I AND II OF THIS SCHEDULE

4. In this Schedule the expression "vendor" includes a vendor as defined in paragraph 9 of the Third Schedule of this Act.

5. If, in the case of business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body

corporate have only been made up in respect of four years, three years, two years, or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

6. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses of assets and liabilities dealt with by the report which appear to the persons making the report necessary, shall make those adjustments and indicate that adjustments have been made.
7. Any report by accountants required by Part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA, 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.


KAMORU OGUNLANA Esq.
CLERK TO THE NATIONAL ASSEMBLY

6TH DAY OF MARCH 20²⁵

SCHEDULE TO THE INVESTMENTS AND SECURITIES BILL, 2025

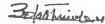
SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Investments and Securities Bill, 2025	An Act to repeal the Investments and Securities Act, No. 29, 2007 and enacts the Investments and Securities Act, 2025, to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian Capital Market as well as to regulate the market to ensure capital formation, the protection of investors, maintenance of fair, efficient and transparent market and reduction of systemic risk; and related matters.	This Bill repeals the Investments and Securities Act, No. 29, 2007 and enacts the Investments and Securities Act, 2025, to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian Capital Market as well as to regulate the market to ensure capital formation, the protection of investors, maintenance of fair, efficient and transparent market and reduction of systemic risk.	4th December, 2024	12th December, 2024

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.


KAMORU OGUNLANA Esq.
Clerk to the National Assembly

6TH Day of MARCH, 2025

I ASSENT.


BOLA AHMED TINUBU, GCFR
President of the Federal Republic of Nigeria

25TH Day of March, 2025