

**A BILL**

**FOR**

**AN ACT**

**TO REPEAL**

**THE**

**INVESTMENTS AND SECURITIES ACT, 2007  
(2007 No.29)**

**AND**

**ENACT**

**THE**

**INVESTMENTS AND SECURITIES ACT, 2024**

## **THE INVESTMENTS AND SECURITIES BILL, 2024**

### **EXPLANATORY MEMORANDUM**

The Bill, amongst other things, provides for-

- (a) the functions and powers of the Securities & Exchange Commission over the capital market;
- (b) the repeal of the Investments and Securities Act 2007, enactment of the Investments and Securities Act, 2021;
- (c) the regulation of securities, collective investment schemes, exchanges, and financial market infrastructures;
- (d) the prohibition of illegal dealing in securities and investment schemes;
- (e) special rules for netting, set off and the modification of general insolvency rules as it relates to capital market; and
- (f) a set of new market infrastructures and wide-ranging system of regulation of investment and securities business in Nigeria, especially in the area of derivatives, management of systemic risk, funding schemes and platforms, and alternative trading systems, where new provisions were made.

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**A Bill**

**FOR**

**AN ACT TO REPEAL THE INVESTMENTS AND SECURITIES ACT 2007 (Act No. 29 2007), AND ENACT THE INVESTMENTS AND SECURITIES BILL, 2021, AND TO ESTABLISH THE SECURITIES AND EXCHANGE COMMISSION AS THE APEX REGULATORY AUTHORITY FOR THE NIGERIAN CAPITAL MARKET AS WELL AS REGULATION OF THE MARKET TO ENSURE CAPITAL FORMATION, THE PROTECTION OF INVESTORS, MAINTAIN FAIR, EFFICIENT AND TRANSPARENT MARKET AND REDUCTION OF SYSTEMIC RISK; AND FOR RELATED MATTERS**

**Sponsors: Senator Opeyemi Bamidele Senator Osita Izunaso**

[ ] **Commencement**

**Be it enacted by the National Assembly of the Federal Republic of Nigeria as follows;**

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

1. (1) There is hereby established a body to be known as the Securities and Exchange Commission (in this Bill referred to as the "Commission")
- (2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Commission shall have the power to acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Bill.
- (4) **Except as otherwise provided in this Bill, the Commission shall be independent in the discharge of its functions and objectives under this Bill.**

Establishment of the Securities and Exchange Commission

**Comment**

Section 1(4) is a new provision designed to emphasize the independence of the Commission in line with the requirements of the International Organization of Securities Commissions (IOSCO).

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

Head office of the Commission.

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 organisation for the Nigerian capital market and shall carry out the functions and exercise all the powers prescribed in this Bill.
- (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;
  - (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;
  - (f) pursue such other objectives as may be related to those stated above.

Objectives, Functions  
and Powers of the  
Commission

#### Comment

Section 3(2) distils objectives for the Commission as against subsuming objectives under “functions” in Section 13 of the 2007 Act.

- (3) The Commission shall:
- (a) Regulate investments and securities business in Nigeria as defined in this Bill;
  - (b) register and regulate securities exchanges, commodities 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 Bill;
  - (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 Bill;
  - (g) register and regulate the workings of collective investment schemes and such other schemes as may be approved by the Commission from time to time;
  - (h) register and regulate securities depository companies, clearing and settlement companies, custodians of assets and securities, credit rating agencies and such other agencies and intermediaries;
  - (i) register derivative products and regulate the derivatives market

- (j) regulate the operations of the National Savings Scheme or any other similar scheme as may be established.
- (k) register and regulate self-regulatory organisations, and capital market trade associations to which it may delegate its powers;
- (l) register and regulate collateral management companies and warehouses which issue Warehouse receipt in relation to commodities to be traded on a registered Exchange.
- (m) register and regulate the issuance of electronic warehouse receipts, to be traded on a commodity exchange.
- (n) review the fairness of mergers and acquisitions of public companies to ensure that all shareholders are fairly and equitably treated and given sufficient information regarding the transaction;
- (o) review and approve takeovers and all forms of business combinations and affected transactions of public companies;
- (p) authorise and regulate cross-border securities transactions;
- (q) prevent and sanction unauthorized and illegal dealing in securities and investment schemes.
- (r) Advise the Minister on all matters relating to the securities industry
- (s) perform such other functions not inconsistent with this Bill as are necessary or expedient for giving full effect to the provisions of this Bill.

## Comments

- i. Section 3(3)(b), has simplified Section 13(b) of the 2007 Act by the insertion of “market venues” and the deletion of “capital trade point”, “futures, options and derivatives exchanges” and “recognized investment exchange”
- ii. Section 3(3)(c) has been amended for clarity by the deletion of the words “and entities”
- iii. Section 3(3)(d) is a new provision inserted to emphasize that all categories of securities regulated under this Bill which are offered to the public must be registered with and regulated by the Commission.
- iv. Section 3(3)(e) amends Section 13(e) of the 2007 Act by the deletion of “capital trade points” due to continued irrelevance and in recognition that its activities have been taken over by other intermediaries
- v. Section 3(3)(g) is an amendment of the Section 13(h) of the 2007 Act to provide greater clarity on this important function of the Commission.
- vi. Section 3(3)(i) is a new provision that recognizes the existing mandate of the Commission to regulate the derivatives market
- vii. Section 3(3)(j) is a new provision that recognizes the mandate of the Commission to regulate the activities of the National Savings Scheme established for the Nigerian financial system pursuant to recommendations in the Nigerian Capital Market Master Plan (2015-2025) and the work of the Market-wide Technical Committee.

- viii. Section 3(3)(k) is an amendment of Section 13(o) of the 2007 Act for increased clarity by the insertion of the word “register” and the deletion of the words “promote”, “capital trade points” and “securities exchanges”.
- ix. Section 3(3)(l) & (m) are new provisions that amplify the mandate of the Commission to regulate various segments of the Nigerian commodities ecosystem.
- x. Section 3(3)(n) is a new provision that reflects the revised mandate of the Commission in respect of Mergers and Acquisitions, in view of the enactment of the Federal Competition and Consumer Protection Council Act (FCCPCA) 2018.
- xi. Section 3(3)(o) amends Section 13(p) of the 2007 Act by the deletion of the words “mergers” and “acquisitions”, to reflect the new position under the FCCPCA 2018.
- xii. Section 3(3)(q) is a new provision that properly spells out the mandate of the Commission to decisively address the challenge of Ponzi Schemes and other unregistered investment schemes.

**(4) In discharging its functions under this Bill, 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 has acted in a manner detrimental to the interest of its investors, shareholders, committed grave corporate governance violations, has 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 Board 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;
- (d) remove any person associated with misconduct and/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 discharge of its functions;
- (i) investigate any person in connection with the violation or suspected violation of this Bill 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 bill 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/ firm who is being investigated for capital market infractions pending the outcome of investigation;
- (l) 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) obtain audit work papers, communications and other information relating to the audit or review of financial statements of public companies and all regulated entities;
- (o) disqualify any person considered unfit from being employed or participating or continuing to participate in any arm of the securities industry;
- (p) facilitate the linking of all markets in securities with information and communication technology facilities;
- (q) administer oath on any person subject to any legislation governing the administration of oaths;
- (r) 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;
- (s) establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by securities exchanges.
- (t) Provide for the treatment of unclaimed dividends of public companies, including public companies that are defunct or have ceased to exist.
- (u) Take any step necessary for the protection of investors, in the public interest and for the maintenance of fair and orderly markets..

- (v) keep and maintain a register of foreign portfolio investments;
- (w) promote investors' education and the training of all categories of intermediaries in the securities industry;
- (x) promote innovations in the capital market;
- (y) levy fees, penalties 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 Bill;
- (z) conduct, cause to be conducted, and disseminate research finding into all or any aspect of the securities industry;
- (aa) relate with domestic and foreign regulators and supervisors of other financial institutions including entering into cooperation agreement on matters of common interest;
- (bb) prepare guidelines, organise training programmes and disseminate information necessary for the establishment of securities exchanges;
- (cc) appoint or procure the appointment of all such qualified persons, professionals, experts to give effect to or discharge any of the foregoing functions;
- (dd) exercise all the preceding powers against unauthorised persons, companies, associations and schemes involved in the promotion, distribution or sale of unauthorized or illegal investment schemes and securities;
- (ee) exercise such other powers not inconsistent with this Bill as are necessary or expedient for giving full effect to the provisions of this Bill;

### Comments

- i. Section 3(4) clearly outlines and separates the “powers” of the Commission as against the current merger of “powers and functions” under Section 13 of the 2007 Act.
- ii. Section 3(4)(a) is an expansion of Section 13(v) of the 2007 Act to strengthen the powers of the Commission to intervene in the affairs of regulated entities in appropriate circumstances, in order to protect investors and forestall collapse of institutions.
- iii. Section 3(4)(b) is a new provision which empowers the Commission to appoint Independent Directors to temporarily run the affairs of a public company. This power is necessary to give full effect to the Commission’s intervention in a public company, especially in instances where the directors of the company have been suspended or are undergoing investigation.
- iv. Section 3(4)(c) is a new provision that empowers the Commission in deserving circumstances to require directors of public companies who are either undergoing investigation or have been found culpable for the commission of an infraction, to step aside for a specified period of time.

- v. Section 3(4)(d) is a new provision which expressly mandates the Commission to remove from office any individual found culpable for misconduct in and/or the mismanagement of a public company or capital market operator.
- vi. Section 3(4)(e) is a new provision that clearly spells out the powers of the Commission to issue mandatory directives to regulatory entities
- vii. Section 3(4)(f) amends Section 13(r) of the 2007 Act through the insertion of the phrase “or associated persons” to ensure a wider reach in the exercise of this power by the Commission
- viii. Section 3(4)(g) is a new provision that resolves any lingering controversy about the powers of the Commission to audit the affairs of public companies and other regulated entities and request for documents or records from these institutions.
- ix. Section 3(4)(i) is a new provision that outlines the investigative powers the Commission already possesses in the body of the 2007 Act.
- x. Section 3(4)(j) is a new provision designed to empower the Commission to obtain phone, internet and electronic records which would immensely facilitate its investigation and enforcement process.
- xi. Section 3(4)(k) is an amendment of Section 13(x) of the 2007 Act. The significant insertion is the phrase “impose administrative caution”, which empowers the Commission in appropriate circumstances to secure for investors (without the need for a court order) monies and assets of persons being investigated for capital market infractions.
- xii. Section 3(4)(l), (n), (q) and (r) are new provisions which confer important regulatory powers upon the Commission in tandem with express recommendations of IOSCO.
- xiii. Section 3(4)(o) is an amendment of Section 13(bb) of the 2007 Act to provide more clarity on this important power of the Commission.
- xiv. Section 3(4)(s) is an amendment of Section 13(k) of the 2007 Act for clarity. Accordingly, the opening statement in Section 13(k) “act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end” has been deleted. Reference to “capital trade points” has also been expunged.
- xv. Section 3(4)(t) is a new provision that amplifies the existing powers of the Commission under the 2007 Act to make Rules and Regulations on the subject matter, with the additional mandate of establishing modalities for handling unclaimed dividends of defunct public companies.
- xvi. Section 3(4)(u) is a new provision which significantly strengthens the Commission’s powers to protect investors. The provision is crafted largely from the deleted portion of Section 13(k) of the 2007 Act as highlighted above.
- xvii. Section 3(4)(x) is a new provision that emphasizes the existing mandate of the Commission to encourage and support innovations that could accelerate the development of the Nigerian capital market.

- xviii. Section 3(4)(z) slightly expands the powers granted to the Commission under Section 13(z) of the 2007 Act and imposes upon the Commission the responsibility to disseminate research findings to relevant stakeholders
- xix. Section 3(4)(cc) is a new provision which empowers the Commission to seek the expertise it requires to discharge its regulatory mandate
- xx. Section 3(4)(dd) is a new provision which empowers the Commission to clamp down decisively on illegal investment schemes and their promoters.

## **PART II: ESTABLISHMENT OF THE BOARD OF THE COMMISSION AND ITS MEMBERSHIP**

4. (1) There shall be for the Commission, a 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, **non-executive** Chairman;
- b. A Director-General who shall be the Chief Accounting Officer;
- c. Three full-time Commissioners **one of whom shall be a legal practitioner qualified to practice in Nigeria with a minimum of twelve years post call to bar experience;**
- d. **The Director-General of the National Pension Commission;**
- e. A representative of the Central Bank of Nigeria **not lower than the cadre of a Director;**
- f. **A Director** of the Federal Ministry of 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 **twelve** years post call **to bar** experience.

**Comments:**

- i. Section 4(1) is an amendment to the preamble of Section 3(1) of the 2007 Act to include an outline of the fundamental mandate of the Board of the Commission.
- ii. Section 4(2)(a) amends Section 3(1)(a) of the 2007 Act for clarity, with the inclusion of the word “non-executive”.
- iii. Section 4(2)(b) amends Section 3(1)(b) of the 2007 Act. The major alteration is the deletion of the reference to the Director-General as “chief executive” and the new designation as “chief accounting officer”.
- iv. Section 4(2)(c) is an amendment to Section 3(1)(c) of the 2007 Act to provide for the appointment of a suitably qualified Legal practitioner to occupy the office requiring this professional competence.



- v. Section 4(1)(d) is a new provision that expands membership of the Board of the Commission through the inclusion of the Director-General of the National Pension Commission. This would ensure greater understanding about the capital market, so as to encourage increased investments by PFAs and PFCs in capital market products and instruments.
- vi. Section 4(1)(e) is an amendment to Section 3(1)(e) of the ISA 2007, the purpose of which is to stipulate a minimum level of seniority for the CBN's representative on the Commission's Board.
- vii. Section 4(1)(f) is an amendment to Section 3(1)(d) of the ISA 2007, the purpose of which is to stipulate a minimum level of seniority for the Ministry of Finance's representative on the Commission's Board
- viii. Section 4(1)(g) is an amendment to Section 3(1)(f) of the ISA 2007, the purpose of which is to strengthen the qualification criteria for non-executive Commissioners.

5. (1) **The Board shall be appointed by the President, provided that** the Director-General and the three full-time Commissioners shall be appointed by the President upon the recommendation of the minister and confirmation by the Senate.
- (2) 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.
- (3) 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
- (4) 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.
- (5) Notwithstanding the provisions of subsections (2) and (3) of this section, 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.
- (6) A person shall not be qualified for appointment to the Board of the Commission unless he is a fit and proper person and
- (a) in the case of 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) in the case of 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

Appointment and tenure of members of the Board.

- (c) in the case of an ex-officio member, he is not below the rank of a director in the Ministry or Central Bank of Nigeria, as the case may be.

**Comment:**

The highlighted portion in this Section is an amendment to Section 5(1) of the 2007 Act for completeness through the inclusion of a statement that recognizes the power of the President to appoint the entire Board.

**6. (1) The Board of the Commission shall:**

Duties of the Board.

- (a) formulate general policies for the regulation and development of the capital market and the achievement and exercise of the functions of the Commission;
- (b) approve the audited and management 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 discharge of the functions of the Commission under this Bill, 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.

**Comments**

The highlighted portion in this Section is a new provision that statutorily recognizes the current practice of approval of new Departments by the Board of the Commission.

- 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**

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

agency of the government in Nigeria or any international organization to which the Commission is a member or an affiliate.

8. The Director-General or, any of the Commissioners designated by the Director-General to act in his absence, shall be responsible for the day to day 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 carrying out his duties owing to ill health**;
  - (b) is **adjudged** bankrupt or makes a compromise with creditors;
  - (c) is convicted of a felony or any offence involving fraud or dishonesty **by a court of competent jurisdiction**;
  - (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 remove a person to whom subsection (1) of this section 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) **If 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 by Section 5 of this Bill.**

#### Comments:

- i. Subsection (1) of this Section contains minor amendments to Section 8(1) of the 2007 Act to provide greater clarity on the grounds for disqualification of Board members.
- ii. Subsections (3) & (4) are new provisions which stipulate the procedure for resignation of members of the Board and the manner through which vacancies on the Board should be filled.

- 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) Five members of the Board shall form a quorum at any meeting, two of whom shall be non-executive members
- (4) Unless as otherwise provided in this Bill, decisions shall be by a simple majority of the vote of the members present but, in case of an equality of vote, the presiding chairman shall have a casting vote.
- (5) The supplementary provisions set out in the first schedule to this Bill shall have effect with respect to the proceedings of the Board and the other matters contained therein
- 12.** (1) Where a member of the Board is directly or indirectly interested in: Disclosure by Board Members
- (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, as soon as possible 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) of this section 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

Comment: The highlighted portion in this section is a new provision that expands the fiduciary responsibility of a board member who has disclosed a potential conflict of interest.

### PART III: STAFF OF THE COMMISSION

- 13.** (1) There shall be for the Commission a Secretary who shall be appointed by the Board;  
(2) The Secretary shall be a legal practitioner of not less than ten (10) years post-call experience.

Appointment of the Secretary and other staff of the Commission.

- 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) carry out 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.

Comment: The highlighted portion in this Section is a minor amendment to Section 17(2) of the 2007 Act, through the replacement of “the Commission” with “the Board” to make it more specific and clear of ambiguity

- 16.** (1) Service in the Commission shall be public service for the purpose of this Bill 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.

Comment: The highlighted portion in this Section is a preamble which amends Section 18(1) of the 2007 Act for greater clarity.

#### PART IV FINANCIAL PROVISIONS

**17.** (1) The Commission shall establish and maintain a fund (in this Bill referred to as "the Fund") into which shall be paid the following:

Funds 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 may apply the proceeds of the Fund established under section 17 of this Bill to:

Application of funds 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 or other remuneration or allowances, pensions and gratuities 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 of the Commission under this Bill or any matter connected with those functions; and
- (f) meet any capital expenditure approved by the Board.

Comment: The highlighted portion in this section is a minor amendment to Section 20(c) of the ISA 2007. The word "employees" is deleted and replaced with the phrase "staff and members of the Board" for clarity.

**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 or substituting legislation or in such other securities as may be approved by the Board.

(4) No deduction shall be made from the Commission's fund except in accordance with the provisions of the Fiscal Responsibility Act, 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 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 functions.

#### Comment

The highlighted portion in this section is an amendment to Section 22(2) of the 2007 Act to further streamline the circumstances under which the Commission could accept gifts.

21. The Commission is entitled to charge, retain and utilize for its purposes:

Penalties, fees, etc. to be retained and utilized by the Commission

(a) penalties imposed for violation of this Bill and the rules and regulations made thereunder; and

(b) fees collected for the services rendered by the Commission under this Bill, 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 discharging its functions under this Bill.

Borrowing by the Commission

23. The Commission may, subject to the provisions of this Bill 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 the thirtieth day of 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 of the Commission during the immediately preceding year and, shall include in such reports, audited accounts of the Commission and the report of the auditor on the accounts.

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**PART V: REGISTRATION AND REGULATION OF SECURITIES EXCHANGES, FINANCIAL MARKET INFRASTRUCTURES AND OTHER SELF REGULATORY ORGANIZATIONS**

**A - SECURITIES EXCHANGES**

26. (1) No person shall establish or operate a securities exchange as defined in this Bill unless it has obtained a certificate of registration from the Commission in accordance with the provisions of this Bill and the rules and regulations made thereunder.

Registration of a securities exchange

(2) Where any person contravenes subsection (1) of this section:

(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 (5) years or both.

(3) In lieu of prosecution under subsection (2) of this section, the Commission may impose a penalty 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 N100,000 for every day the violation continues;

**Comments:**

- i. The heading of this Part amends the title of Part V of the 2007 Act. Reference to “Capital Trade Points” is deleted and replaced with “Financial Market Infrastructures”.
- ii. Subsection (1) of this section contains a slight amendment to Section 28 of the 2007 Act for clarity.
- iii. Subsections (2) & (3) are new provisions which stipulate actions which should be taken in respect of unregistered securities exchanges and sanctions for violators of the requirement to register with the Commission.



27. (1) A securities exchange may be registered by the Commission as a:
- (a) composite securities exchange or;
  - (b) Non-composite securities exchange.

Categories of securities exchanges

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

(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, and (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.

Comment: This Section is a new provision which introduces a broad categorization of securities exchanges for ease of registration and operations.

28. (1) Every securities exchange shall be a body corporate incorporated under the Companies and Allied Matters 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:

- (a) for 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) for 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 Bill;

(c) with respect to the conditions under which securities may be listed, **quoted or admitted** on that securities exchange;

(d) with respect to the conditions governing dealings in securities by the members **or participants**;

(e) with respect to the class or classes of securities which may be dealt in by members **or participants**; and

(f) with respect to 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, 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 pursuant to this section.

#### Comments:

- i. Subsection (2) of this section is an amendment to Section 28(2) of the 2007 Act to provide greater clarity.
- ii. Subsection (3) contains minor amendments to Section 29(2) of the 2007 Act to provide greater clarity.
- iii. Subsection (4) is a new provision that prescribes the nature of information that the Commission could rely upon in considering an application for registration.

**29. The appointment 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 of Chief Executive and principal officers of a securities exchange

#### Comment/

This is a new provision which prescribes that the appointment of the CEO and /or principal officers of an exchange must receive the prior approval of the

Commission. This would enable the Commission ensure that only fit and proper persons are appointed to the Executive Management positions of a securities exchange.

**30. (1) A securities exchange shall:**

- (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 Bill 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 Bill;
- (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;
- (f) do all other things that are necessary for, incidental or conducive to the proper operation of an exchange and that are not inconsistent with this Bill.

responsibilities of a securities exchange

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

(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.

Comment: This section is a major amendment to Section 32 of the 2007 Act. It broadly prescribes the duties and responsibilities 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 for inspection by the Commission.**

Securities exchange to maintain proper books of account

**Comment:**

This Section is an amendment to Section 37 of the 2007 Act. Reference to “capital trade points” and “self regulatory organizations” has been expunged.

**32.** (1) No amendment shall 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.

**Comment:**

Subsection (1) of this section is an amendment to Section 31(1) of the 2007 Act to provide greater clarity on the requirement for securities exchanges to seek the prior approval of the Commission before adopting amendments to their Rules.

**33.** Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member or participant of the securities exchange, the securities exchange shall, within 7 days notify the Commission in writing of the name and other particulars of the member or participant, 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 etc.

**Comment:** This section is a minor amendment to Section 33 of the 2007 Act by the deletion of “capital trade points” and “self regulatory organizations”.

**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 a 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.

**Comment:** The highlighted portions in this section are minor amendments to section 34 of the 2007 Act, with the inclusion of the word “participant”. The section also amends section 34 of the 2007 Act by the deletion of reference to “capital trade points” and “self regulatory organizations”

**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 Bill and the securities exchange shall comply with the directives.

(2) No action shall be competent before any court of law or tribunal with regard to any directive by the Commission under subsection (1) of this section without the joinder of the Commission as a party.

(3) A securities exchange, which, without reasonable excuse, fails or refuses to comply with a directive given under subsection (1) of this section shall be liable to a penalty of **not less than ₦10,000,000** and a further penalty of not less than **₦500,000** for every day during which the non-compliance continues.

(4) 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 Bill or any regulations made thereunder or the rules of the securities exchange, the Commission may suspend or remove the executive officer from office.

(5) 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 (4) of this section, the Commission may suspend or remove the executive officer from office.

**Comment:** This section is a minor amendment of section 35 of the 2007 Act. References to “capital trade points” and “self regulatory organizations” have

been expunged. subsection (3) prescribes increased penalties for the violation of the provisions of the sub-section (1) of the Section.

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) If, after receiving the notice given under subsection (1) of this section, 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 during 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) of this section is liable to a penalty **of not less than** ₦1,000,000 and a further sum of ₦50,000 for every day during which the contravention continues.

**(4) In addition to the provisions of subsection (3) of this section**, 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;
  - ii) An Administrator, Liquidator or an official receiver (being in each case, a suitably 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 thereof
  - iii) A person appointed pursuant to the above would have the same powers which would be available to a liquidator under a winding up.
- (d) after giving opportunities to the executive officers of the securities exchange to be heard, may appoint other competent

person(s) to serve in a Committee in place of the serving chief executive officer and executive management and board of the securities exchange;

(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 foregoing actions where it considers that the interest of investors or of members of the public or the integrity of the market so requires.

Comment: This section contains minor amendments to Section 36 of the 2007 Act, notable among which is introduction of the words “not less than” before the penalty to be imposed in instances of violation. The words “capital trade points” and “self regulatory organizations” used in the 2007 Act have been expunged. The section also has a new preamble and some of its provisions have been re-worded for clarity.

**37. (1) The Commission may revoke the certificate of registration granted under Section 28 of this Bill if the body corporate:**

Revocation of certificate of a securities exchange

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

(b) is wound up;

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

(d) engages in other business for which it is not registered in accordance with the provisions of this Bill.

(2) No revocation under this section shall be made unless the body corporate 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 pursuant to subsection (1) of this section shall contain such transitional provision as the Commission may deem fit in the public interest or for the protection of investors.

(5) A body corporate, shall not by reason of complying with such transitional provisions as may be prescribed by the Commission under subsection (4) of this section be regarded as having contravened the provisions of this Bill or the rules and regulations made thereunder.

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

(a) avoid or affect any agreement, transaction or arrangement entered into by a body corporate, 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.

**Comments:**

i. Subsection(1)(d) is a new provision which provides for a different circumstance in which the license of a securities exchange could be revoked.

ii. Subsections (3) to (6) are new subsections inserted to empower the Commission to make transitional arrangements (in the public interest and for the protection of investors) in the event of revocation of the registration of a securities exchange, while subsection (7) mandates the Commission to publish the notice of revocation.

**38. (1) The Commission shall issue appropriate 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:**

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

- (a) possible conflicts of interests that may arise;
- (b) corporate governance and administration matters;
- (c) listing process and trading requirements;
- (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 Bill or



the rules and regulations made thereunder and other laws applicable to it.

(2) In performing its duty under subsection (1) the exchange holding company

Shall:

(a) act in the public interest, having particular regard to the need for the protection of investors; and

(b) ensure that where its own interest conflicts with the interest referred to in paragraph (a), the latter 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—

i) the ability of 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) the ability of any subsidiary of the exchange holding company to meet its obligations in respect of its business as a securities exchange, as the case may be, including the ability of any such subsidiary to comply with any requirement as may be specified by the Commission, where applicable.

(b) any irregularity, breach of any provision of this Bill or rules and regulations made thereunder, 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 such arrangements as the Commission may determine as to how the duties and obligations of the exchange holding company and such subsidiary, under this Bill or rules and regulations made thereunder 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, etc.

(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.

Comment:

The three preceding/highlighted sections are new provisions that stipulate modalities for the listing of a securities exchange or an exchange holding company on another securities exchange, specify the duties of exchange holding companies and outline modalities for the disposal of assets of exchange holding companies and securities exchanges.

## B – FINANCIAL MARKET INFRASTRUCTURES

41. (1) No person shall establish or operate a financial market infrastructure as defined in this Bill unless it has obtained a certificate of registration from the Commission in accordance with the provisions of this Bill and the rules and regulations made thereunder.

Establishment or operation of a financial market infrastructure

(2) Where any person contravenes subsection (1) of this section;

(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 not less than the prescribed paid-up share capital of the relevant financial market infrastructure function as specified by the Commission or to a term of imprisonment of not less than five (5) years or to both such fine and imprisonment;

(3) In lieu of prosecution under subsection (2) of this section, the Commission may 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) In granting approval to register a financial market infrastructure under this section, the Commission shall ensure that the grant of the approval shall serve the interest of the public.

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

Withdrawal of approval

(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) of this section, 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) protecting investors or the public.

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

(5) 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

(6) The Commission shall publish the notice of revocation

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

Financial Market  
Infrastructure rules

## Comment

This is a new sub-part of the ISA created to make robust provisions for the registration and regulation of various types of Financial Market Infrastructures.

### **C – PROVISIONS RELATING TO INSOLVENCY OF FINANCIAL MARKET INFRASTRUCTURES, AND OTHER MATTERS**

**45. (1)** The general insolvency law provisions shall have no effect in relation to: Modification of general insolvency law rules

- (a) market contracts;
- (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) above;
- (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,
  - (ii) any other person, in connection with any transfer made pursuant to paragraphs (d), (e) or (f) of this subsection, in each case to the extent that such transfer is made in accordance with the default rules of the financial market infrastructure (a "qualifying property transfer"), subject to the provisions of this Segment.

(2) The provisions of this Segment shall apply in relation to-

- (a) insolvency proceedings in respect of a member of a securities exchange; or
- (b) insolvency proceedings in respect of a member of a financial market infrastructure; or
- (c) insolvency proceedings in respect of a 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 will not be taken into account for the purpose of set-off until such completion.

(4) Subject to subsection 3 of this section, 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:

- (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;

Proceedings of a financial market infrastructure take precedence over insolvency procedures

(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) above;

(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) No conflicting order shall be made pursuant to the Bankruptcy Act and the Companies and Allied Matters Act (as may be amended or re-enacted from time to time) or any other law dealing with bankruptcy or insolvency in relation to any matter under subsection (2) of this section and none of those matters shall be regarded as invalid, revocable, or subject to challenge by an insolvency office-holder.

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

(a) a market contract;

(b) a disposition of property pursuant to a market contract;

(c) the provision of market collateral;

(d) a contract effected by a financial market infrastructure for purposes of realizing 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;

Disapplication of  
conflicting orders under  
General Insolvency  
Laws

(i) any default proceedings and action taken under the default rules of a financial market infrastructure including, without limitation, any transfer described in paragraphs (d) to (g) of Section 45 (1) of this Bill; and

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

**48.** (1) Subject to section 46 of this Bill, 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 will 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 said Insolvency Proceeding.

Net sum payable upon compliance with default proceedings

(2) If 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 force 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 realizing 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;
- (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. 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) None of the following may 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; or
- (b) a disposition of property pursuant to that market contract; or
- (c) margin provided in relation to a market contract, a collateral arrangement, any contract effected by a financial market infrastructure for the purpose of realizing 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; or
- (d) a default fund contribution made to a financial market infrastructure, any contract effected by a financial market infrastructure for the purpose of realizing 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; or

(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 is dis-applied in relation to:

(a) a market contract;

(b) a collateral arrangement;

(c) a transfer of a clearing member client contract, a client trade or a collateral arrangement;

(d) a qualifying property transfer; or

(e) a contract effected by the financial market infrastructure for the purpose of realizing 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;

(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 Segment, the rules of a financial market infrastructure as to:

(a) the settlement of market contracts and transfer orders;

Protection of certain actions of financial market infrastructure

- (b) the netting of any rights and obligations 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 obligations between the financial market infrastructure and a clearing member or participant or between clearing members/participants in the financial market infrastructure;
- (d) the termination, close out or cancellation of any market contract;
- (e) the transfer of any market contract and any associated collateral;
- (f) the enforcement of any security interest of a financial market infrastructure in respect of any collateral provided by a clearing member / participant in respect of any market contract;
- (g) the appropriation of any collateral held by a financial market infrastructure pursuant to its default rules, in set off against any obligations of a clearing member / participant that has become a defaulter pursuant to such default rules;
- (h) any qualifying collateral transfer;
- (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 actions taken by a financial market infrastructure pursuant to 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 pursuant to any insolvency proceedings.

**52. In this Part:**

Definition of certain words used in this part

"cleared contract" means a clearing member contract or a clearing member client contract;

"clearing member" means an authorised user of a central counter party or central clearing houses, authorised to perform clearing services and which has entered into a clearing house agreement with the central counter parties or central clearing houses;

“central clearing house” means an entity responsible for settling trading accounts, clearing trades, regulating delivery, and reporting trading data. 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;

“default proceeding” means actions taken by a financial market infrastructure pursuant to its default rules;

"default rules" means 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;

“financial market infrastructure” means any entity set up to carry out centralized, multilateral payment, clearing, settlement, caching or recording activities, or provide a platform for trading securities, and, includes systemically important payment systems, trade repositories, securities exchanges, central counterparties, central clearing houses, central securities depositories, and securities settlements systems;

“Insolvency Proceeding”, where referred to in this Segment or elsewhere in this Bill, refers to any collective judicial or administrative proceeding against a juristic person or unregistered entity in Nigeria pursuant to a law relating to bankruptcy or insolvency in which proceeding the assets and affairs of the concerned debtor are subject to the control or the supervision of a court, tribunal or judicial body for the purpose of reorganization or liquidation. This extends where appropriate to an administrative and business rescue oriented receivership where the interests of various categories of creditors and collective insolvency

priority and preference rules are acknowledged whether based on a special statute or otherwise.

"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 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" means:

(1) in relation to a securities exchange:

(a) contracts entered into by a member of the securities exchange with a person other than the securities exchange which are either:

(i) contracts made on the securities exchange; or

(ii) contracts, the making of which the member was subject to the rules of the securities exchange;

(b) contracts entered into by 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;

(c) contracts entered into by 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;

(2) in relation to a financial market infrastructure:

(a) 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 enabling the rights and liabilities of that member or other financial market infrastructure under a transaction to be settled;

(b) 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 providing central counterparty services to that member or other financial market infrastructure;

(3) in relation to transactions cleared through a financial market infrastructure:

(a) 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;

(b) 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 indirect clients;

(c) 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;

(d) 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.

“securities settlements systems” means an entity that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules. Such systems allow transfers of securities either free of payment or against payment;

“systemically important payment system” is a payment system which has been designated by the Commission, or such other regulatory authority, to have the potential to trigger systemic risks in the event of it being insufficiently protected against the risks to which it is exposed; and

“trade repositories” means an entity that maintains a centralized electronic record (database) of transaction data.

#### D – Settlement Finality of Transfer Orders

**53.** (1) The general insolvency law shall have no effect in relation to:

(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 Segment apply to:

Modification of  
insolvency laws

- (a) insolvency proceedings in respect of a participant in a system;
  - (b) insolvency proceedings in respect of a 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) None of the following shall 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:
- (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 realizing collateral security in connection with participation in a system otherwise than pursuant to 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-
- (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 realize collateral security in connection with participation in a system otherwise than pursuant to 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 the foregoing, 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, shall be applied so as to frustrate the operation of the provisions or actions specified in section 53 above.

(4) 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. A debt or other liability which by virtue of this paragraph 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 Segment does not apply in relation to any transfer order given by a participant which is entered into a system after: Limitation of protection

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

(2) The conditions referred to in this subsection are that-

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

(b) the 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) of this section, the relevant system operator shall be taken to have notice of an event specified in subsection (1)(a) or (b) of this section 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 discharge clearing and related functions such as a central counterparty, 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 pursuant to 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 effects 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 effects of proceedings

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

Definition of certain words used in this part

(2) In this Part:

“collateral security” means any realizable 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 realizable assets (including money) provided under a charge;

“default arrangements” means the arrangements put in place by a system 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 C or any other arrangements 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 system under its default arrangements;

“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

“institution” 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 of a relevant capital market operator as specified in (a) and (b) above; or

(d) any undertaking which is treated by the Commission as an institution to which the provisions of this Segment apply which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders which are effected through the system;

“participant” means-

(a) an institution;

(b) a system operator;

(c) a body corporate or unincorporated association which carries out any combination of the functions of a financial market infrastructure which is registered by the Commission to discharge 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, in accordance with this section.

“settlement account” means an account used to hold funds or securities (or both) 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 discharge clearing and related functions such as a central counterparty, 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;

“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 and/or settled in accordance with common rules and standardized arrangements;

“system operator” means the entity or entities legally responsible for the operation of a system;

**Comment:** The 13 preceding/highlighted sections are new provisions created to deal with the insolvency of Financial Market Infrastructures and other participants. The need to establish insolvency procedures separate from those listed in CAMA 2020 stems from the peculiarity of the structure, operations and transactions of Financial Market Infrastructures and the identified participants.

#### E – Matters Relating to Segments (c) and (d)

**58.** A court shall not, pursuant to any enactment or rule of law or otherwise, recognize or give effect to:

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

(b) any act of a person appointed outside Nigeria to perform any function under the law of insolvency in a place outside Nigeria,

insofar as 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 Parts C and D of Part V of this Bill.

Insolvency laws in other jurisdictions

**Comment:** This section is an ancillary provision to Segments c and d.

## F – Self-Regulatory Organisations and Trade Associations

**59.** No entity, trade group or association shall operate or hold itself out as a self-regulatory organisation unless recognized or registered as such by the Commission.

Registration or Recognition of a self-regulatory organisation

**60.** A self-regulatory and Trade Association organisation 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 of this Bill or the rules and regulations made thereunder by its members
- (e) not make a decision under its rules that adversely affects the rights of its members unless it has given the affected member an opportunity to make representations to it about the matter.

Comment: The two highlighted sections are new provisions that clearly outline the Commission's authority to register and regulate Self Regulatory Organizations in the Nigerian capital market.

## **PART VI REGISTRATION AND REGULATION OF CAPITAL MARKET OPERATORS**

**61.** (1) No person shall operate in the Nigerian capital market or carry on investments and securities business unless the person is registered in accordance with this Bill and the rules and regulations made thereunder;

Registration of capital market operators

(2) The Commission shall prescribe the conditions for registration including the level of knowledge and skill required to operate in the Nigerian capital market

(3) An application for registration under this part of this Bill shall be in the manner and upon payment of the fees prescribed by the Commission.

(4) Any person who violates the provisions of subsection (1) of this section, commits an offence and is liable on conviction to a fine of not less than N5,000,000 or to a term of imprisonment not less than five (5) years or to both such fine and imprisonment;

(5) In lieu of prosecution, the Commission may 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 Bill or regulations made pursuant thereto, provided that the person concerned has been given a reasonable opportunity of being heard.

## Comments

- i. Subsections (4) and (5) of this section are new provisions that stipulate penalties for operating as a capital market operator without prior registration with the Commission.
- ii. Subsection (6) is an amendment to Section 38(4) of the 2007 Act to provide greater clarity on the need for fair hearing before the suspension or revocation of the registration of a capital market operator.

**62.** (1) A capital market operator shall keep or cause to be kept such accounting and other records:

Accounts to be kept by  
capital market operator

- (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 will enable them to be conveniently and properly audited.

(2) A capital market operator shall be deemed not to have complied with subsection (1) of this section 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:
  - i) all monies received or paid by the capital market operator, including monies paid to or disbursed from a trust account,
  - ii) all 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,

- iii) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid by the capital market operator,
- iv) all the assets and liabilities (including contingent liabilities) of the capital market operator,
- v) all 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) all 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) all purchases and sales of options made by the capital market operator and all fees (being options monies) arising from them,
- viii) all arbitrage transactions entered into by the capital market operator; and
- ix) all 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 or names in which the particular securities are registered.

(3) Without prejudice to subsection (2) of this section, 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 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 to a term of imprisonment of not less than one year or to both such fine and imprisonment.

(5) The Commission may, in lieu of prosecution for the offence prescribed in subsection (4) of this section, sanction a capital market operator who violates the provisions of this section by imposing a penalty 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.

**Comment:** Subsections (4) and (5) of this section amend Section 39 (4) and (5) of the 2007 Act by stipulating higher penalties to serve as a deterrent for non-compliance with the requirement to keep accurate records.

**63.** (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 Bill**, 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 or banks one or more trust accounts to be designated or evidenced as trust accounts, into which the capital market operator shall pay:

(a) all amounts (less any brokerage and other proper charges) received 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) all amounts (less any brokerage and other proper charges) received 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 banking business day following the day on which they were received by the capital market operator.

(4) The payment of amounts required by subsection (3) of this section to be made by a capital market operator shall be made by the capital market operator not later than the next banking 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.

Comments:

- i. The highlighted portion of subsection (2) is an amendment to Section 40(2) of the 2007 Act by the introduction of a preamble that contextualises the prohibition on commingling of proceeds of accounts of clients.
- ii. Subsection (5) amends Section 40 (5) of the 2007 Act by stipulating a higher lump sum penalty to serve as a deterrent for non-compliance with the requirement to maintain separate accounts and bank accounts for client transactions.

**64.** (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 to a term of imprisonment not less than one year or to both such fine and imprisonment.

Penalty for withdrawing money from trust account without authority

(2) For the purpose of subsection (1) of this section, 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) of this section, 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) of this section, the Commission shall direct the capital market operator to refund the monies received together with the interest thereon at a rate to be determined by the Commission.

(5) A capital market operator who withdraws money from a trust account with the intent to defraud, commits an offence and is liable on conviction to a fine of not less than **₦5,000,000** or to imprisonment for a term of not less than **three years** or to both such fine and imprisonment

Comment: This Section is an amendment to Section 41 of the 2007 Act through the stipulation of higher penalties to serve as a deterrent for non-compliance with the prescription on the treatment/management of Trust accounts.

- 65.** A capital market operator shall not except as otherwise provided in this part of this Bill utilize any money held in a trust account for purposes other than the purpose of the trust. Money in trust account not available for personal use
- 66.** 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 monies held in a trust account or against or upon any monies received for the purchase of securities or from the sale of securities before such monies are paid into a trust account. Claims and lien not affected.
- 67.** (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 he shall be entitled to levy a reasonable charge thereof. Right to copies of book entries of transactions and to inspect contract notes
- (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 said transaction.
- 68.** (1) A capital market operator shall keep a register, in the prescribed form, of the securities in which he has an interest. Register of securities.
- (2) Particulars of the securities in which a capital market operator has an interest shall be entered in the register within 7 days of the acquisition of the interest.
- (3) Where a change in securities (not being a prescribed change) occurs in the interest of a person to whom this part of this Bill applies, he shall, within 7 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 any person.
- (5) The Commission may extend the provisions of subsection (1) of this section to include any other person whose activities are connected with securities transactions.



**69.** (1) A capital market operator to whom this part of this Bill 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) of this section shall be given:

(a) in the case of a person who is required by this Bill to hold the Commission's registration Certificate, on his application for the Certificate; and

(b) in any other case, within 14 days after becoming a person to whom this part of this Bill applies.

(3) A person to whom this part of this Bill applies shall, within 14 days of his ceasing to be such a person give to the Commission the notice required under subsection (1) of this section 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 not less than **₦1,000,000** or to a term of imprisonment not less than six months or to both such fine and imprisonment.

(5) The Commission may, in lieu of prosecution under subsection (4) of this section, impose a penalty of not less than **₦1,000,000** and a further sum of not less than **₦5,000** for everyday violation continues.

**70.** (1) The Commission or any person authorised by it may require any person to whom this part of this Bill applies to produce for inspection, the register required to be kept pursuant to section 62 of this Bill and the Commission or any person so authorised may take extracts therefrom.

Production of register

(2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) of this section 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** or for a term of imprisonment of not less than six months or to both fine or imprisonment.

(3) The Commission may, in lieu of prosecution under subsection (2) of this section, impose a penalty of not less than **₦500,000** and a further sum of **₦5,000** for every day during which the violation continues.

## Comment

The highlighted portions in the two preceding sections enhance the penalties contained in Sections 57 and 58 of the 2007 Act dealing with violation of

requirements in respect of the creation and preservation of a register containing securities in which a capital market operator has interest.

**71.** The Commission may supply a copy of the extract of a register obtained under subsection (1) of section 70 of this Bill to any person who, in the opinion of the Commission, should in the public interest be informed of the dealings in securities disclosed in the register.

Extracts of register.

## **PART VII INSPECTIONS AND INVESTIGATIONS**

**72.** (1) The Commission shall conduct routine and special inspection and investigation of **regulated entities**.

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

(2) **Staff** of the Commission shall be assigned responsibility for the inspection and investigation of all **regulated entities**.

(3) **The staff** shall carry out supervisory duties in respect of all **regulated entities** and for that purpose shall:

a. have a right of access at all times to the books, accounts and vouchers of **regulated entities**;

b. examine periodically the books and affairs of **regulated entities**;

c. require from directors, managers and employees of **regulated entities** such information and explanation as may be deemed necessary to the performance of his duties under this Bill.

(4) **Regulated entities** shall produce to the examiners at such times as the examiners may specify, all 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 subsections (2) of this section.**

(6) **This part shall also apply to an associated person as defined in this Bill.**

### Comments:

- i. The highlighted portions in Subsections (1) to (3) of this section are minor amendments to Section 45 of the 2007 Act through the insertion of the words “regulated entities” and “staff”.
- ii. Subsections (5) and (6) are new provisions which enhance the powers of the Commission to conduct inspections.

**73.** 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 thereon.

Routine examination and report.

**Comments:**

The highlighted portion in this section is a minor amendment to Section 46 of the 2007 Act through the insertion of the word “regulated entities”.

**74.** (1) The Commission shall order a special examination or investigation of the 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 Bill or the rules and regulations made thereunder; or
- (e) an application is made therefore 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) of this subsection, the Commission may not order a special examination or investigation of the 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) of this section, 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 books and affairs of the **regulated entity**.

**Comments:**

The highlighted portions in this section are minor amendments to Section 47 of the 2007 Act through the insertion of the word “regulated entities”.

**75.** (1) Where, after an examination under section 74 of this Bill or otherwise, the Commission is satisfied that the **regulated entity** is in a grave situation as regards the matters referred to under subsection (1) of section 74, or the **regulated entity** informs the Commission that:

Failing regulated entity

- (a) it is likely to become unable to meet its obligations under this Bill;
- (b) it is about to suspend its obligations to any extent; or
- (c) it is insolvent;

the Commission may exercise any one or more of the powers specified in subsection (2) of this section.

(2) Pursuant to subsection (1) of this section, the Commission may in addition to all other powers under this Bill:

- (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 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 in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors, and for reasons to be recorded in writing:
  - i) remove from office, with effect from such 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** such remuneration as may be **determined by the Commission**;
- (e) appoint any 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**.

Comment:

The highlighted portions in this section are minor amendments to Section 48 of the 2007 Act through the insertion of the word “regulated entities” and the phrase “as determined by the Commission”.

**76.** (1) If, after taking steps under section 75 of this Bill, 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** pursuant to subsection (1) of this section, the **regulated entity** shall submit its capital market business to the control of the Commission and shall provide the Commission or appointed person with such facilities as the Commission or the appointed person may require to carry on the business of the **regulated entity**.

(3) All **regulated entities** shall cooperate with the Commission at all times.

**Comments:**

The highlighted portions in this section are minor amendments to Section 49 of the 2007 Act through the insertion of the word “regulated entities” and the phrase “as determined by the Commission”.

**77.** (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 charge.

**Comment:**

The highlighted portions in this section are minor amendments to Section 50 of the 2007 Act through the insertion of the word “regulated entities”.

**78.** 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

Comment:

The highlighted portions in this section are minor amendments to Section 51 of the 2007 Act through the insertion of the word “regulated entities”.

**79.** (1) In carrying out an inspection or investigation of the affairs of a regulated entity, the examiner may:

Powers of Examiners in relation to regulated entity

- a. summon any person, or director, employee, agent, partner or member, of the regulated entity, who is believed to be in possession or control, of any document relating to the affairs of the regulated entity, to lodge or produce such document with the examiner or produce such document, to retain any such document for as long as it may be required for purposes of the inspection or any legal or regulatory proceedings;
- b. administer an oath or affirmation or otherwise examine any person, or a director, employee, agent or partner, of the regulated entity.
- c. at any time within normal working hours;

(i) enter and search any premises occupied by the regulated entity and require the production of any document relating to the affairs of that regulated entity;

(ii) examine and make extracts from and copies of any document of the regulated entity or, against the issue of a receipt, remove such document temporarily for that purpose; provided that the examiner shall keep confidential any document so copied or removed and shall have same returned in the event that no wrongdoing is discovered, and destroy any copies thereof.

(iii) seize any document of the regulated entity if the examiner is of the opinion that the document contains information relevant to the inspection; and

- d. retain any seized document as may be required for any legal proceedings.

(2) Any regulated entity or its authorised representative, whose documents have been removed or retained, or from whom a document has been seized, under paragraph (a) or (c) of subsection (1), may copy such document and make extracts therefrom under the supervision of the examiner.

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

- (ii) retain the document received as may be required for purposes of the inspection or any legal or regulatory proceedings;
- (iii) Administer an oath or affirmation or otherwise examine any person referred to in subparagraph (a)(i);

(b) on the authority of an order issued by the Investments and Securities Tribunal:

- (i) enter any premises and require 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;
- (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) (a) an order contemplated in subsection (1) (b) shall be issued, on application by the Commission to the Investments and Securities Tribunal

(b) Such an order 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.

(3) Any person whose document has been removed or retained, or from whom a document has been seized, under subsection (1) of this section or his authorised representative, may examine and copy such document and make extracts therefrom under the supervision of the examiner.

**Comment:**

The two preceding/highlighted sections are new provisions that stipulate the powers of an examiner in respect of the conduct of inspections.

**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 fourteen 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) If the **regulated entity** fails to apply to the Federal High Court within the period specified in subsection (1) of this section, 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) of this section 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 provisional liquidator by the Federal High Court for the purpose of that Act.

(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 Bill had been included as a ground for winding up by the Federal High Court under this section.

(5) The liquidator of a registered **regulated entity** shall forward to the Commission copies of any returns which he is required to make under the Companies and Allied Matters Act 1990.

**Comment:**

The highlighted portions in this section are minor amendments to Section 53 of the 2007 Act through the insertion of the word “regulated entities”.

**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:

- i. which the Commission considers necessary for the purpose of monitoring, mitigating and managing systemic risks in the capital market; or
- ii. where the Commission receives a request from a financial sector regulator.

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

Request for information in respect of systemic risk



- (3) Where a notice is issued to a capital market participant pursuant to subsection (1) of this section, 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) of this section is liable to a penalty of not less than N5,000,000 and a further penalty of not less than N10000 for every day that the infraction continues.
- 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.
- (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) of this section, where the primary business operations of the capital market participant concerned is under the regulatory purview of another financial sector regulator, the Commission may liaise and cooperate with such regulator;
- (5) Where a directive has been issued pursuant to subsection (2) above, 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 pursuant to subsection (2) above may be amended or modified after the capital market participant or aggrieved person has been given an opportunity to be heard pursuant to the provisions of subsection (5) above.

Power of Commission to issue directive for management of systemic risk

(7) A capital market participant, its officers or any person who fails to comply with the notice issued under subsection (1) of this section is liable to a penalty of not less than N5,000,000 and a further penalty of not less than N10000 for every day that the infraction 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:

- (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.** In this Part:

“capital market participant” includes an investor, issuer, capital market operator, securities exchanges, financial market infrastructures;

“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 capital market intermediaries or participants.

“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 significant market participant or in a number of market participants;
- (b) an impairment in the orderly functioning of the capital market; or
- (c) an erosion of public confidence in the integrity of the capital market.

Arrangements with other supervisory authorities

Definition of certain words used in this Part

- (d) a major market disturbance characterized by or constituting sudden fluctuations of securities prices that threaten fair and orderly dealing in the capital market
- (a) a major market disturbance characterized by or constituting a substantial disruption in the system for clearance and settlement of transactions.
- (b) 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.
- (c) a major disruption in the transmission, execution or processing of securities transactions.
- (d) a substantial threat of such a major market disturbance or major disruption.
- (e) any other event as may be determined by the Commission

“significant market participant” means a registered market operator:

- (a) Whose market activities directly or indirectly, as measured by its gross revenue, operating assets, assets under management, mean value of securities traded, account for not less than 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) Whose consolidated revenue of subsidiaries or associates or related parties under a group structure generated from their activities constitute not less than 25% of the aggregate revenue arising from activities of the sector or the market; or whose consolidated operating assets; assets under management account for not less than 25% of the aggregate operating assets or assets under management of the sector or market. or
- (c) Any other entity as the Commission may from time to time determine.

Comment: Part VIII is a new part that deals extensively with the management and control of systemic risk in the Nigerian capital market by the Commission.

## **PART IX: REGULATION OF SECURITIES**

### **A — REGISTRATION OF SECURITIES**

- 86.** (1) All securities of a public company and all securities **to be issued under this Bill** shall be registered with the Commission under the terms and conditions herein contained and as may be supplemented by regulations prescribed by the Commission from time to time.

registration of securities to be issued under this Bill

- (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 from time to time.**
- (3) A registration statement shall be deemed effective only as to the securities specified therein as proposed to be issued.
- (4) The Commission shall issue a certificate of registration in respect of securities registered by it.
- (5) No securities shall be issued, transferred, sold, or offered for subscription by 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 bill, or to list such securities on a securities exchange outside Nigeria shall seek the prior approval of the Commission and where applicable, report same to a securities exchange registered with the Commission;**
- (7) Any 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 ₦5,000,000** or to a term of imprisonment of 3 years or to both such fine and imprisonment.
- (8) The Commission may, in lieu of a prosecution under subsection (7) of this section, impose a penalty of **not less than ₦5,000,000** and a further sum of **not less than ₦20,000** for every day which the violation continues.

**Comment:** Amendments have been proposed to section 54 of the ISA 2007. The amendments proposed in subsections 1, 2, 6 and 8 revamp the regulatory regime around compulsory registration of securities prior to issuance to the public, and also increases the penalty regime for violation of the provisions.

- 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.
- (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.

Electronic and other means of issuing and transferring securities.

## B — CORPORATE RESPONSIBILITY OF PUBLIC COMPANIES

- 88.** (1) A public company whose securities are required to be registered under this Bill shall file with the Commission on an annual basis, its audited

Filing of annual and periodic reports with the Commission.

financial statements and such other periodic returns as may be prescribed by the Commission from time to time.

- (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) of this section, 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 would 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;
    - 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 would adversely affect the company's ability to record, process, summarize 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;
  - (f) the signing officers have identified in the report whether or not there were significant changes in internal controls or other factors that could 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 it shall be the responsibility of the board of directors to ensure the integrity of the company's internal controls and reporting.
- (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 put in place 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 sections 88 or this section, is liable to a penalty of not less than ₦5,000,000 and a further penalty of ₦25,000 per day for every day the violation continues.

System of internal control of public companies

Comment: This is an amendment to section 61 of the ISA 2007. It introduces a punishment regime for violating the provisions of this bill relating to filing of annual and periodic reports with the Commission and system of internal control of public companies

- 90.** No person shall 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 from time to time.
- 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.
- 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 ₦25,000 per day for the period the violation continues.
- (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.

Auditors of public companies to register with the Commission

Duty of auditor to report on internal controls of public companies

Penalties for non-compliance with Section 90 and 91

Comment: This is an amendment to section 62 of the ISA 2007. It introduces a punishment regime for violating the provisions of this bill relating to the audit public companies.

### C - TREATMENT OF UNCLAIMED DIVIDENDS OF PUBLIC COMPANIES

- 93.** (1) Unclaimed Dividends of public companies under the regulatory purview of the Commission shall be treated as prescribed under the Rules and Regulations made pursuant to this Bill.
- (2) It shall be unlawful for any person to treat unclaimed dividend as described in subsection (1) of this section in a manner other than as prescribed under the rules and regulations made pursuant to this bill.

Unclaimed dividends of public companies

- (3) Any person who contravenes this section or the rules and regulations made pursuant to this Bill commits an offence and is liable upon conviction to a fine of not less than N10,000,000 or to imprisonment for a term not less than 5 years or to both such fine and imprisonment.
- (4) In lieu of prosecution, the Commission may sanction a person who violates the provisions of this section and the rules and regulations made thereunder to a penalty of not less than N10,000,000 and N50,000 per day for every day the violation continues.

Comment: This is a new provision introduced in the Bill. It creates a framework for the treatment of unclaimed dividends under the regulatory purview of the Commission.

#### D — GENERAL

- 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:
- (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 willfully 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 corporate body.

Contravention of this Part by a body corporate

#### **PART X: PUBLIC OFFERS, SALE OF SECURITIES AND INVITATIONS TO THE PUBLIC**

- 95.** (1) No person shall make any invitation to the public to acquire or dispose of any securities or to deposit money with anybody corporate for a fixed period or payable at call, whether bearing or not bearing interest unless the person or body corporate concerned is:
- 1. a public company **and the securities it seeks to offer to the public have been registered with the Commission;**
  - 2. a statutory body or bank established by or pursuant to 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 Bill), promissory notes, bills of exchange and other instruments;
  - 3. **an entity licensed by the Central Bank of Nigeria and empowered to accept deposits and savings from the public;**

Control of invitations to the public.

4. a collective investment scheme, government body or an agency of a government body, supranational body or such other entity approved by the Commission to issue securities under this Bill;
5. an economic Free Trade Zone whose capital raising exercise has been approved by the Commission; or
6. such other entity other than an entity described in (a) – (d) above seeking to solicit funds or other assets from the public for a commercial or investment related business activity under terms and conditions as may be prescribed by the Commission from time to time.

Provided that 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) of this section 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 from time to time.
- (3) The provisions of section 142 of Companies and Allied Matters Act 2020 shall not be applicable to issuers of securities under this bill.
- (4) If an invitation to the public is made in breach of subsection (1) of this section, all persons making the invitation and every officer who is in default or anybody corporate making the invitation shall each be separately liable to a penalty of not less than 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) If, any person acquires or disposes of any securities, or deposits money with any company, as a result of any invitation to the public made in breach of subsection (1) of this section, 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 (3) of this section, any 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.

Comment: This is an amendment to Section 67 of the 2007 Act. New categories of issuers are recognized, as a key step towards the introduction of new innovations and offerings such as crowdfunding as well as the facilitation of “commercial and investment business activities”, subject to the approval of the Commission and other controls stipulated in the Bill.

96. (1) **Any 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 in its absolute discretion grant or withhold the consent referred to in subsection (1) of this section, and without prejudice to the generality of the foregoing, 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) If any advertisement or circular used in connection with the invitation contains any untrue statement then, subject to subsection (4) of this section, any person who made the invitation and every person who was a director of a company making the invitation at the time when 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) No person shall be liable under subsection (3) of this section, 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) If 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 Bill, 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 whatsoever; or
  - (b) made to or circulated among any 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; or
  - (c) made to anyone or more persons upon the terms that the person or persons 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 persons; or
  - (d) made to any one or more persons to acquire any 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 whatsoever 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 then, for all the purposes of this Bill, 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 any 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 any 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 Bill, no person shall 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 Bill.
- (2) Where the form of application to deposit money referred to in subsection (1) of this section 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:
- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the securities; or
  - (b) in 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 ₦5, 000,000 or imprisonment for a period not less than two years.
- (5) The Commission may, in lieu of a prosecution under subsection (4) of this section, impose a penalty of not less than ₦10,000,000 and a further sum of not less than ₦20,000 for every day which the violation continues.

Form of application for shares to be issued with prospectus.

**Comment:** This is a minor amendment to section 71 of the ISA 2007 by increasing the criminal sanction for violating provisions of the bill related to Form of application for shares to be issued with prospectus.

- 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.
- 101.** (1) Subject to the provisions of Section 104 of this Bill, 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 Bill and set out the reports specified in part II of that Schedule and parts I and II shall have effect subject to the provisions contained in that 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.

Effective date of a prospectus

Contents of a prospectus

- (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; or
  - (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 in the opinion of the Tribunal, were immaterial or was otherwise such as should, in the opinion of the Tribunal, having regard to all the circumstances of the case, reasonably be excused, provided that, where there is a failure to include in a prospectus a statement with respect to the matters specified by regulations, 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 Bill 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) No person shall 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;
    - ii) an invitation or intended invitation to subscribe for or purchase any such securities; or
    - iii) a prospectus.

Prohibition of issuance, circulation, etc. of certain notices, circulars and advertisements

- (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) a registered prospectus;
  - (c) a 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, namely:

- 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,
  - 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) a notice or circular which:
- i) accompanies a notice or circular referred to in paragraphs (a) or (c) of this section;
  - 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) where the person is an underwriter or sub-underwriter of an issue of securities to which the notice or circular relates, 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) 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.
- (5) A person who:
- (a) contravenes the provisions of this section; or

- (b) authorizes 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 ₦5,000,000** or to a term of imprisonment of not less than three years or to both such fine and imprisonment.
- (6) The Commission may, in lieu of prosecution pursuant to subsection (4) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than **₦5,000,000** and a further sum of not less than **₦5,000** for every day the violation continues.
- (7) 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 ₦5,000,000** and a further sum of not less than **₦5,000** 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 the application is made to a securities exchange for permission for those securities to be dealt in or quoted on that securities exchange;

Exemption certificate and effect.

the securities exchange to which the application is made may, at the request of the applicant, grant a certificate of exemption that is, a certificate that, having 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 and class of persons to whom the offer is to be made, compliance with the requirements of the Third Schedule to this Bill will be unduly cumbersome.

- (2) If a certificate of exemption is given and the proposal mentioned in subsection (1) of this section are complied with and the particulars and information required to be published in connection with the application for permission made to the securities exchange are so published, then:
  - (a) a prospectus giving the relevant particulars and information, in the form in which they are so required to be published, shall be deemed to comply with the requirements of the Third schedule to this Bill; and
  - (b) after the permission applied for is granted, Sections 99 and 101 of this Bill shall not apply to any issue of a prospectus or form of application relating to the securities.

**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) If 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 ₦2,000,000** or a term of imprisonment of not less than three years or to both such fine and imprisonment.
- (3) The Commission may, in lieu of prosecution for the offence prescribed in subsection (2) of this section, impose a penalty of not less than **₦2,000,000** and a further penalty of not less than ₦5,000 for every day the violation continues.

**106.** Notwithstanding the provisions of Section 95 of this Bill, no person shall make an invitation to the public to acquire or dispose of any securities except:

- (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 Bill has been delivered to the Commission and registered by it, in accordance with Section 108 of this Bill;
- (b) every person to whom the invitation is made is supplied with a true copy of such prospectus as filed with the Commission; and
- (c) every copy of the prospectus states on its face that it has been registered with the Commission at the time when the invitation is first made and the date of registration is reflected thereon.

The provisions of paragraph (b) of this section does not apply to an invitation made by or through a member of a securities exchange to a client of that member or to an invitation made by or through an exempted dealer.

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

**107.** (1) Except as provided in Section 104 of this Bill, where an issuer invites the public to acquire its securities, the prospectus referred to in section 105 of this Bill shall state the matters specified in Part I of the Third Schedule to this Bill and set out the report specified in Part II of the same Schedule.

- (2) Subsection (1) of this section 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) of this section, 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 Bill 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

General and restricted invitations to the public.

been, or is being made to a securities exchange for permission to deal in those securities, the prospectus shall:

- 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 Bill; and
  - c. contain the particulars and information required by that securities exchange.
- (4) An invitation falling within subsection (1) of this section shall, hereafter in this Bill be described as a "general invitation" and an invitation falling within subsection (2) of this section shall, hereafter in this Bill be described as a "restricted invitation".

**108.** (1) No prospectus shall 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 Bill from any person as an expert; and
  - (b) in the case of a prospectus issued generally, a copy of any contract required by paragraph 11 of the Third Schedule to this Bill to be stated in the prospectus; and
  - (c) in the case of a prospectus deemed by virtue of a certificate granted under Section 104 of this Bill to comply with the requirements of the Third Schedule, a contract or a copy of such 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
  - (d) where the persons making any report required by Part II of the Third Schedule to this Bill have made in it or without giving the reasons have indicated in it any such adjustments as are mentioned in paragraph 21 of the Third Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.
- (2) The references in paragraphs (b) and (c) of subsection (1) of this section to the copy of a contract required to be endorsed on or attached to a prospectus shall:
- (a) in the case of 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.

- (b) in the case of a copy of a contract or memorandum of a contract required to be made available for inspection under paragraph (c) of subsection (1) of this section, and which is wholly or partly in any language other than English, shall 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 Bill.
- (5) Where the Commission refuses to register a prospectus on the ground that it fails to comply with the requirements of this Bill, an aggrieved person may appeal to the Tribunal established by this Bill within 21 days after notification of the refusal by the Commission.
- (6) If a prospectus is issued without a copy of it being registered under this section by the Commission or without the copy so registered having endorsed on it or attached to it the documents required under this Bill, **the issuer and every person who is a party** to the issue of the prospectus, shall be jointly and severally liable:
- (a) **in the case of an issuer, a penalty of not less than ₦5,000,000 and a further sum of ₦25,000 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;**
  - (b) **in the case of any other person, not less than ₦2,000,000 and a further sum of ₦5,000 for every day the violation continues from the date of issue of the prospectus.**

**Comment:** Amendments are proposed to increase the penalty regime contained in Section 80 of the ISA 2007.

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, in addition to the Commission's approval, the consent of shareholders.

Contract in prospectus, etc., not to be varied without leave.

Comment: This is an amendment to section 81 of the ISA 2007 to expand the regulatory purview of the commission.

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:
- (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 Bill, 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 pursuant to Section 101 of this Bill and provide the following information:
- (a) the amount of the consideration received by the issuer in respect of the securities to which the offer relates; and
  - (b) the place and time where the relevant offer documents may be inspected, and
  - (c) the identity of any person(s) making the offer, who shall be deemed to be a director or the equivalent of the issuer.
- (4) Where a person making 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 person(s) as may be authorised by the issuer.

Document of offer of securities to be deemed a prospectus.

Comment: Amendments are proposed above to section 82 (3) of the ISA 2007 for clarity.

111. For the purposes of the provisions of this Bill, a statement:
- (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

Interpretation as to prospectus

- (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 Bill and, in the cases mentioned in Part II of that schedule, set out the reports specified therein, and the said 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

**113.** (1) Where a prospectus invites persons to subscribe for securities, the persons referred to in subsection (2) of this section 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) of this section 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; and
  - (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) a 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 thereof;
  - (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 Bill 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) No person shall be liable under subsection (1) of this section if he proves:

- (a) that, 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) that 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) that, 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) that, 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 Bill 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) of this section shall not apply in the case of a person liable by reason of his having given a consent required of him by Section 105 of this Bill 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.
- (6) A person who, apart from this subsection, would under subsection (1) of this section be liable, by reason of his having given a consent required of him by Section 105 of this Bill 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 Bill to the issue of the prospectus, he withdraws it in writing before registration of the prospectus; or
  - (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 officer who authorised the issue of a prospectus or statement in lieu of a prospectus commits an offence and is liable on conviction to a fine of not less than ₦1,000,000 or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

Criminal liability for misstatement in prospectus

**115.** (1) Where a public offer of securities is made, whether listed or not, under such rules and regulations as may be laid down by the Commission, 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 hereunder.

Allotment of securities.

(2) Without prejudice to the provisions of subsection (1) of this section, the validity of an allotment shall not be affected where it is undertaken pursuant to such exemptions and conditions as may be specified in the rules and regulations made hereunder.

**Comment:** This is an introduction to the bill amending to section 88 of the ISA 2007.

**116.** No allotment shall be made of any securities offered to the public for subscription unless the subscription level meets the minimum percentage prescribed by the Commission from time to time.

No allotment below minimum subscription

**117.** (1) Application monies and other monies 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 as deposit by the Issuing House on such terms and condition as may be prescribed by the Commission.

Application monies to be held in trust until allotment

(2) If any default is made in complying with the provisions of subsection (1) of this section, the Issuing House who authorizes or permits the default is liable on conviction to pay a fine of not less than ₦5,000,000 or to imprisonment for a term of not less than one year or to both such fine and imprisonment.

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

(4) All application monies 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 monies are kept prior to allotment, the monies held in the trust account mentioned in subsection (4) of this section shall be treated as priority to any other claim and the liquidator shall within 48 hours after assumption of duty transfer such monies to the issuing house in respect of the offer for which the monies were deposited with the bank or financial institution.

Comment: This is an amendment to Section 93 of the 2007 Act.

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

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 in pursuance of the prospectus shall, whenever made, be void if the permission has:

Allotment of securities and dealing on securities exchange, etc.

- (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) of this section 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, all monies received from applicants in pursuance of the prospectus. However, if the monies are 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 monies with interest at the current interbank rate per annum from the expiration of the period stipulated by the Commission.
- (3) All monies 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 monies specified under subsection (2) of this section.
- (4) The Issuing House and any of its officers, who violates the provisions of subsection (2) above shall be jointly and severally liable to a penalty of not less than N5,000,000 and a further sum of not less than N50,000 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 it is intimated that the application for permission, though not at the time granted, shall be given further consideration.
- (7) This section shall have effect:
  - (a) in relation to any securities agreed to be taken by a person underwriting an offer by a prospectus as if he had applied for them in pursuance of the prospectus; and
  - (b) in relation to 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) of this section to repay monies 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) of this section 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 authorizes or permits the default.

[Comment: An amendment is proposed to section 95 of the ISA 2007 to increase civil penalties for violation amongst others.](#)

- 120** (1) The Commission shall have the power to prescribe the maximum period within which surplus monies due to subscribers shall be returned.
- (2) The Commission may, subject to subsection (3) of this section, prescribe the rate of interest payable to subscribers whose surplus monies are held beyond the period prescribed pursuant to subsection (1) of this section.
  - (3) The interest due and payable under subsection (2) of this section shall not be less than the Central Bank of Nigeria Monetary Policy Rate plus five per cent 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 monies.
  - (4) A person who fails to comply with the provisions of this section is liable to a penalty of not less than **N5,000,000** and a further sum of not less than N50,000 for every day the violation continues.

Return of surplus monies to subscribers, etc.

[Comment: An amendment is proposed to section 96 of the ISA 2007 to increase civil penalties for violation.](#)

## XI CONDUCT OF SECURITIES BUSINESS

- 121.** For the purpose of this Bill, no cash transaction shall be carried out in the capital market in excess of an amount to be determined by the Commission from time to time. Prohibition of certain cash transaction
- 122.** All Securities to be transacted in the secondary market shall be deposited with a Central Securities Depository. Prohibition of transactions in non-dematerialized securities
- Comment: This provision was inserted to ensure that only dematerialized securities are traded in the secondary market.
- 123.** (1) There shall be a Legal Entity Identifier for any entity involved directly or indirectly in securities transactions in Nigeria to ensure proper monitoring and minimization of systemic risks arising from parties and counter-parties' activities. legal entity identifier
- (2) All participants in securities transactions shall obtain the Legal Entity Identifier from an authorized issuer.
- (3) For the purpose of this section, a "Legal Entity Identifier" means a code that uniquely identifies every distinct entity or structure that is a party to a financial transaction.
- Comment: This provision makes it mandatory for every party in a financial transaction to own a Legal Entity Identifier (LEI) and disclose same in every securities transaction it is involved in. This is proposed 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 of this Bill**. Securities dealer to issue contract note/transaction confirmation
- Comment: An amendment is proposed to section 98 of the 2007 Act with the introduction of the highlighted words.
- 125.** (1) A contract note or other form of transaction confirmation given by a securities dealer under this part shall include: Contents of contract note/transaction confirmation
- (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;
  - (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 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 Bill** is liable to a penalty of not less than **₦200,000**.
- (3) Any securities dealer or its principal officer who issues a contract note or other form of transaction confirmation containing false or misleading information is liable to a penalty of **₦1,000,000**, or an amount equivalent to four times the amount involved in the transaction, whichever is higher or on conviction to a term of imprisonment not exceeding 3 years **or to both such fine and imprisonment**.
- (4) Where an investor suffers a loss as a result of the contravention of sections 124 and this section of this Bill, 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 from time to time.

Comments: This is an amendment of section 99 of the 2007 Act.

i. Subsections (2) – (5) has been deleted and the remaining subsections renumbered accordingly.

ii. The words “if outside a securities exchange or capital trade point, a statement to that effect” were deleted from subsection (1) (c).

iii. the provisions of Subsection (2) & (3) introduced an amendment to subsections (6) & (7) by increasing the penalty regime as highlighted above.

- 126** (1) Where a securities dealer, **fund manager**, investment adviser, underwriter or an associated person of 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.
- (2) For the purposes of subsection (1) of this section, 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

Disclosure of certain interests in securities by securities dealers, etc

- (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:
- (a) securities have been offered for subscription or purchase; and
  - (b) 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 from time to time, unless the offer or recommendation complies with the provisions of subsection (5).
- (5) An offer or recommendation shall not be made under subsection (4) of this section 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 is or will 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 person who is a securities dealer, **fund manager**, investment adviser, or **any of their representative** shall not issue to any person any circular or other communication or written offer or recommendation to which subsection (1), (3) or (4) of this section applies 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 person who is a securities dealer, **fund manager**, investment adviser, or **any of their representative** issues to any person a circular or other communication or a written offer or recommendation to which subsection (1), (3), (4) or (5) of this section applies, the first mentioned person shall preserve for a period of 7 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) of this section.
- (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) Any person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of **not less than N500,000**, or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Comment: This section proposes amendments to section 100 of the 2007 Act. It introduced the word “fund manager” in subsections 1, 3, 6 and 7 as highlighted above. Furthermore, an increase in the penalty regime is proposed in subsection 9 above.

- 127** (1) A securities dealer shall not as a principal deal in any securities with a person who is not a securities dealer.
- (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) where he 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) of this section 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) of this section 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) of this section 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 is liable to a fine of not less than ~~N~~**1,000,000**, or an amount equivalent to four times the amount involved in the transaction, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (8) In lieu of prosecution under subsection (2) of this section, the Commission may 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.**

Dealing as principal

Comment: This amendment introduced some changes in section 101 (3) of the 2007 Act as highlighted above. In addition, section 101 (4) of the 2007 Act has been deleted. The amendment highlighted in subsection (7) proposes an increase in the penalty regime, while a new subsection (8) is introduced to provide for penalty in lieu of prosecution.

**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:

Dealing by employees and associated persons of securities dealers.

- (a) the unsecured credit is advanced for the purpose of enabling the person to purchase or subscribe for any securities; or
  - (b) the person giving, authorizing 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 any of the provisions of subsection (1) of this section commits an offence and is liable upon conviction to a fine of not less than **₦2,000,000** or a term of imprisonment not exceeding two years or to both such fine and imprisonment.
- (3) **In lieu of prosecution under subsection (2) of this section, the Commission may 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.**
- (4) **Notwithstanding the provisions of subsection (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 subsection (2), (3) and (4) of this section.**

Comment: This is an amendment to increase the penalty regime in Section 102 (2) of the 2007 Act. Furthermore, additional subsections have been introduced to provide for forfeiture of profits made from violation of the section, as well as expansion to the scope of the provisions to apply to employees or persons through whom the unsecured credits were advanced. The amendment also introduced the word “associated person in subsection (1)”, and proposed the deleting of some words in section 102 (1) (a).

**129** (1) A securities dealer shall not, except as permitted by subsection (4) of this section, whether as principal or on behalf of a person associated with him, enter into a transaction of purchase or sale of securities to be traded on a securities exchange 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 the 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) of this section shall not apply in relation to the entering into of a transaction by a securities dealer as principal or on behalf of a person associated with him if:
- (a) the 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) the dealer has been unable to purchase or sell the securities by reasons of those conditions, and
  - (c) the transaction is entered into in prescribed circumstances.

Comment: The penalty for violation has been increased as highlighted above and a new subsection (3) has been introduced to provide for forfeiture of proceeds to clients. Section 103 (3) (a) was recast and divided into paragraphs (a) and (b).

- 130** (1) For the purpose of preventing the excessive use of credit for the purchase or **transacting in** securities by dealers or member companies, the Commission may make regulations to provide for margin requirements, for the amount of credit which may, from time to time, be extended and maintained by securities dealers on all or specified securities or transactions or class of securities and transactions and for matters connected.
- (2) The Commission may also make regulations for securities lending transactions by securities dealers.

Securities lending and margin requirements

Comments: The word “transacting in” replaced “carrying of” in section 104 (1) of the 2007 Act.

## PART XII – TRADING IN SECURITIES

- 131** (1) No person shall 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.
- (2) No person shall:
- (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.

False trading and market rigging transactions

- (3) Without prejudice to subsection (1) of this section, 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 if 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; or
  - (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.

Comment: This amendment proposes a redraft of section 105 of the 2007 Act for clarity. Subsection (1) (a) and (b) of the 2007 Act have been merged, while modifications have been made to subsections (3) and (4).

- 132.** No person shall 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

Comment: This provision amends Section 107 of the 2007 Act by introducing modifications in language.

- 133.** (1) No person shall:
- (a) make or publish any statement, promise or forecast which is misleading, false or deceptive; or
  - (b) dishonestly conceals material facts;
  - (c) record, create or store in any way whatsoever, information which is false or misleading with the intent to induce another person to deal in securities;
  - (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 132 and subsection (1) of this section if it is established that, at the time when the person made, published,

Fraudulently inducing persons to deal in securities

recorded or stored the information/**material facts**, he had no reasonable grounds to believe that the information was **false, misleading or** would be available to any other person.

Comment: This amendment is a redrafting of section 108 of the 2007 Act for clarity with the introduction of few words as highlighted above. Also paragraph (c) of subsection (1) of the 2007 Act has been deleted.

**134.** No person shall disseminate, or authorize **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:

Dissemination of illegal information

- (a) the person or a person associated with that person has entered into any such transaction or done any such act or thing; or
- (b) the person has received or expects to receive directly or indirectly any consideration or benefit for disseminating or authorizing or being concerned in the circulation or dissemination of the statement or information.

Comment: This provision is a redraft of section 109 of the 2007 Act. It introduces new words in provision as shown above, as well as expunged some words from the provisions.

**135.** No person shall directly or indirectly in connection with the purchase or sale of any securities:

Prohibition of fraudulent means

- (a) employ any device, scheme or artifice to defraud; or
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

**136** (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) **No person in a relationship with an issuer shall 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 mutual fund, 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.

Comment: New provisions have been introduced in subsections (2) and (3) above to replace the sections 111 and 112 of the 2007 Act relating to insider dealing. The amendment seeks to improve on the existing framework in regulating insider trading under the Nigerian securities laws. It proposes additional disclosure requirements for insiders and expands the scope of the applicability of the law.

**137. A person shall not be guilty of insider dealing by virtue only of:**

Actions not prohibited under section 136

- (a) doing any particular thing otherwise than with a view to the making of a profit or the avoidance of 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 exercise in good faith of his functions as a liquidator, receiver or trustee in bankruptcy.

Comment: This is a proposed amendment to section 113 of the 2007 Act. It proposed the deleting of paragraphs (c) and (d) of the referred section.

**138 (1) Where it appears to the Commission that a person has violated any Part of this Bill 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, the Commission may sanction:**

Civil and Criminal liability under this Part and authority to award bounty to informant.

- (a) the person who committed such violation; and
  - (b) a person who:
    - i. had knowledge of the violation and benefited therefrom or failed to report such violation,
    - ii. directly or indirectly influenced the person who committed such violation, or
    - iii. facilitated any part of the activity which led to the violation.
- (2) Any person sanctioned under the provisions of subsection (1) of this section shall on conviction be liable:
- (a) in the case of a person not being a body corporate, to:
    - i. a fine of not less than N10,000,000 or an amount equivalent to four times the amount of profit derived or loss avoided in the transaction as a result of such unlawful manipulation, purchase, sale, or communication or whichever is higher; and
    - ii. to imprisonment for a term of not less than five years.



- (b) in the case of a body corporate, to a fine of not less than N50,000,000 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 Bill impose a penalty of not less than N20,000,000, or four times the profit gained or loss avoided in the transaction as a result of such unlawful manipulation, purchase, sale, or communication.
- (4) In addition to subsection (3) above, the Commission may suspend or withdraw the registration of such person if the person is a registered 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 exceeding 10 percent of such amount as the Commission deems appropriate, to the person or persons who provide information leading to the successful prosecution of the matter or imposition of such penalty.
- (6) No person shall directly or indirectly take reprisal or subject an employee to detriment because 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 Bill or the Rules and Regulations made thereunder or other regulatory instrument of a securities exchange or self-regulatory organisation; or
  - (b) in relation to information provided under clause (a), cooperated, testified or otherwise assisted in:
    - i. an investigation by the Commission, a securities exchange, self-regulatory organisation or a law enforcement agency, or
    - ii. a proceeding of the Commission, securities exchange, 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 or her employment and includes but is not limited to:
  - (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 or her 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 described 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; or
  - (b) if 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, 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
  - (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

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 or persons, who suffered a loss by reason of the difference between the price at which the securities would have been dealt with if the contravention had not occurred.

**Comment:** This amendment proposes major amendments to the existing regulatory framework on insider trading and market manipulation by

redefining the punishment regime for such actions, and creates adequate protection for whistle blowers who cooperate with the Commission. It replaces the provisions of sections 114, 115, and 116 of the 2007 Act.

### **PART XIII MERGERS, TAKE OVERS AND CORPORATE RESTRUCTURING**

**139** (1) No public company shall, 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;
  - (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) Any 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.

**140** (1) Where a merger involving a public company or public companies 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 (ies) 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.
  - (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) If the merger is approved by the Commission, the parties shall apply to the court for the merger to be sanctioned and when so sanctioned, the same shall become binding on the companies and the court may by the order sanctioning the merger or by the 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 persons who in such manner as the court may direct, dissent to the Scheme; and
  - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger shall be fully and effectively carried out
- (3) An order under paragraph (d) of subsection (2) of this section shall not be made unless:
- (a) the whole of the undertaking and the property, assets and liabilities of the transferor company are being transferred into the transferee company; and
  - (b) the 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 thereof 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 the Gazette and in at least one national newspaper and if in default is liable to a fine of not less than N250,000 and N1000 for every day the default continues.
- (6) In this section:
- (a) "property " includes property rights and powers of every description;
  - (b) "liabilities" includes rights, powers and duties of every description notwithstanding that such rights, powers and duties are of a personal character which could not generally be assigned or performed vicariously;

Comment: Following the establishment of the Federal Competition and Consumer Protection Commission (FCCPC) and the ceding of certain aspects of merger control to FCCPC, some amendments as highlighted above, have

been made to the provisions regulating mergers and acquisitions as contained in the ISA 2007.

- 141** (1) The Commission shall regulate and govern the conduct of all persons involved in take-overs, mergers or compulsory acquisition, including an acquirer, offeror, offeree and their officers and associates.
- (2) (a) No person shall acquire shares, whether by a series of transactions or not, which carry 30 per cent or more (or any lower or higher threshold as may be prescribed by the Commission from time to time) of the voting rights of a company.
- (b) No persons, whether by a series of transactions or not, acting in concert with another, shall acquire shares which taken together with the shares held or acquired by them, carry 30 per cent or more (or any lower or higher threshold as may be prescribed by the Commission from time to time),
- (c) A person or persons intending to acquire 30% or more of the shares specified in (a) and (b) above shall make a take-over bid to other shareholders.
- (3) The Commission shall ensure that the acquisition of voting shares or control of companies is conducted in an efficient, competitive and transparent manner.
- (4) 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 offer:
- i) are aware of the identity of the acquirer and offeror;
  - ii) have reasonable time in which to consider a take-over offer; and
  - iii) are supplied with sufficient information necessary to enable them assess the merits or otherwise of any take-over offer;
- (5) All shareholders of an offeree shall have equal opportunities to participate in the benefits accruing from the take-over offer, including in the premium payable for control;
- (6) The acquirer and the target company shall ensure that there is fair and equal treatment of all shareholders, in particular, minority shareholders, in relation to the take-over offer, or compulsory acquisition;
- (7) The directors of the offeree and acquirer 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 offeree or the acquirer.

Comment: with of certain aspects of competition law to FCCPC, these amendments have been made to create standards for the segments of competition law still under the Commission's regulatory purview.

- 142** (1) Save as otherwise provided in this part, any person who makes a take-over offer shall do so in accordance with the provisions of the rules and regulations made pursuant to this Bill;
- (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 offer, in accordance with the provisions of the rules and regulations made pursuant to this Bill.
- (3) Subject to exemptions, an acquirer who has obtained control shall not acquire any additional 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 pursuant to this Bill.
- (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 as the Commission may deem necessary;
- (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 punishment as may be deemed appropriate.

Comment: with of certain aspects of competition law to FCCPC, these amendments have been made to create standards for the segments of competition law still under the Commission's regulatory purview.

- 143** (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 force at the date of the takeover bid.
- (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 or persons proposing to make the bid;
  - (b) give the name and other particulars of that person or those persons; and
  - (c) give particulars of the proposed bid and contain such information and be accompanied by documents or reports of such a kind as may be prescribed by regulations.
- (3) The Commission may require the person or persons making an application to furnish it with such further information as it reasonably considers

Authority to  
proceed with  
takeover

necessary to enable it make a decision on the application and that person or those persons 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 pursuant to subsection (4) of this section, the Commission shall keep confidential the contents of an application, any document or report accompanying an application and any information given pursuant to subsection (3) of this section.
- (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,
  - (b) determine whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the takeover.**
- (7) Where the Commission is satisfied that none of the matters referred to in subsection (6) above 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;
  - (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 force:
  - (a) for the period of three months following the date of authority; or
  - (b) for such longer period as the Commission may, on application made to it before the expiration of the period referred to in paragraph (a) of this subsection, allow.

**Comment:** This is a proposed amendment to the provisions section 134 of the 2007 Act. A new subsection (7) is introduced, while modifications have been proposed to subsections (1), (3) and (6).

- 144** (1) **Where the consideration for the** shares deposited pursuant to a take-over bid, **merger or other arrangements** is to be paid **in cash** or **partly in cash**, the offeror shall make adequate arrangements to ensure that funds are available to make the required monetary payment for those shares.

Arrangement  
for Funds

- (2) Where the consideration for the shares deposited pursuant to a takeover bid, merger or other arrangement is the securities of a public company, the provisions of this Bill on Registration of Securities and Invitations to the Public shall apply.

Comment: This is a proposed amendment to section 139 of the 2007 Act to expand its application beyond take-over bids to mergers and other arrangements. A new subsection has also been introduced to make the ISA applicable in some instances of a merger, take-over or other arrangement in the securities of a public company.

- 145** (1) No payment for loss of office may 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, takeover, 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 holders of shares of the same class as any of those shares.

- (3) A resolution approving a payment to which this section applies must 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:

- i) at the company's registered office for not less than 15 days ending with the date of the meeting, and
- ii) at the meeting itself.

- (4) Neither the person making the offer, nor any related party of such person shall be entitled to vote on the resolution. Provided however 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) to count towards the quorum.

- (5) A payment made in pursuance of 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.

Comment: A new provision to prohibit payment for loss of office to a director, except through a prescribe process during a take-over is introduced in the Bill.



**146** (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 offer, 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 from time to time, 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 shall, on conviction, be liable to a fine of not less than N5,000,000 or to imprisonment for a term not exceeding ten years or to both;
- (3) The Commission may in lieu of prosecution, impose a penalty of not less than N10,000,000 in addition to any of the actions specified in Section 147 of this Bill.

**Comment:** A new provision is introduced in the Bill to create liability for submitting false or misleading statements to the commission in relation to a take-over offer, merger or restructuring.

**147** (1) Where any person who is under an obligation to comply with the provisions of this Part, or the rules and regulations made pursuant to this part, 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 hereunder;
- (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:
  - i) to suspend trading in the securities of the company;
  - ii) to suspend the listing of the company; or
  - iii) to 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 upon 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 paragraph (f) of subsection (1), 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 paragraph (b) of subsection (1), 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 Bill or other applicable securities laws against the person in breach.
- (7) For the purposes of this section:
- “breach” means a failure to comply with directive(s) of the Commission, observe or give effect to the provisions of this Part or any rules made pursuant to this part, in circumstances where there is an obligation to do so.
- “person in breach” means a person who contravenes or fails to comply with directive(s) of the Commission, observe or give effect to the provisions of this Part or any rule made pursuant to this part, in circumstances where the person is under an obligation to do so.

**Comment:** A new provision is introduced in the Bill to provide for actions the commission could take against a person who violates this part of the Bill.

**148** In this Part:

Definition of terms  
in this part

“Asset” includes any real or personal property, whether tangible or intangible, intellectual property, goodwill, chose in action, right, license, cause of action or claim and any other asset having a commercial value;

"Bid" means an invitation or an offer;

“Code” means the Nigerian Takeover Code as may be formulated from time to time by the Commission in accordance with the provisions of this Bill;

“Company”, means a public company whether or not it is listed on any securities exchange and includes a public company by default pursuant to the Companies and Allied Matters Act;

“control”, as used in this part means the acquisition or holding of, or entitlement to exercise or control the exercise of, voting shares or voting rights of more than thirty per cent, or such other threshold, as may be prescribed by the Commission from time to time;

"court" means the Federal High Court;

"invitation" means a statement, however expressed, which offers to acquire shares from a person who holds shares;

“merger” means the acquisition or establishment, directly or indirectly, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, or by joint venture, of control over or significant interest in the whole or a part of a business of any other person;

"offer" means a statement, however expressed, that offers to acquire shares from a person who holds shares;

"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;

"take over" except as maybe 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 howsoever effected 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 reorganization that involves the voting shares or voting rights of a listed company;

Comment: New definitions under this part have been introduced for words such as asset, code, control and mergers, while the definition of take-over bid was modified.

## PART XIV COLLECTIVE INVESTMENTS SCHEMES

**149.** Collective investment scheme", means a scheme or arrangement in whatever form, including an open-ended and close-ended investment scheme, in pursuance of 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 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;
- (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.

Comment: This is an amendment of section 153 of the 2007 Act with the aim of clearly stating the characteristics of a Collective Investment Scheme. The opening paragraph of the section is adjusted, while two additional paragraphs were also introduced.

**150** (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) specialized or alternative schemes; or
- (e) such other scheme as may be approved by the Commission from time to time.

- (2) **Notwithstanding the provisions of subsection (1) of this section**, the Commission may by notice, designate a scheme as constituting a collective investment scheme.
- (3) For the purpose of this part of this Bill the provisions of sections **184, 185 and 187** of the Companies and Allied Matters Act 2020 shall not apply to a scheme constituted as an open-ended investment company or real estate investment company.

*Comment: This amendment expands the types of collective Investment Scheme that can be administered in the Nigerian capital market, and empowers the Commission to create more should the need arise. The amendment also takes into consideration appropriate reference to the provisions of the CAMA 2020.*

- 151** (1) A manager shall administer a collective investment scheme honestly and fairly:
- (a) with skill, care and diligence; and
  - (b) in the interest of investors and the securities industry.
- (2) Every authorised scheme shall adhere to the principle of segregation and identification, as may be prescribed by the Commission from time to time.

Principles for the administration of the scheme

- 152.** Before the manager of a scheme enters into a transaction with an investor:
- (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.

Disclosure of information

*Comment: This amendment is a modification of section 156 (a) of the 2007 Act with the introduction of the highlighted words above.*

- 153** The manager of a scheme shall:
- (a) avoid conflict between the interests of the **promoter and** (or) manager and **the interests** of an investor;
  - (b) disclose the interests of its directors, **owners and 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) organize and control the scheme in a responsible manner;
  - (e) keep proper records;

Duties of Managers of a Scheme

- (f) employ adequately trained staff and ensure that they are properly supervised;
- (g) have well-defined compliance procedures; and
- (h) promote investor education.

Comment: section 157 of the 2007 Act is amended with the introduction of the certain words in paragraphs (a), (b), and (c).

- 154** (1) No person shall perform any act or enter into any agreement or transaction for the purpose of administering a scheme, unless such person is:
- (a) incorporated under the Companies and Allied Matters Act; and
  - (b) registered as a fund or portfolio manager by the Commission.
- (2) Any person who contravenes the provisions of this section is liable to a penalty of not less than **N1,000,000** and a further sum of **N50,000** per day during which the violation continues.

Requirements for administration of a Collective Investment Scheme

Comment: The penalty for violation of this provision was reviewed upward with the aim of deterring violators.

- 155** (1) No person may, unless registered as a manager under this Bill, 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 and no person who is not registered as a manager or trustee or custodian under this Bill 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.
- (2) Any person who contravenes the provision of this section is liable to a penalty of not less than **N1,000,000** and a further sum of **N50,000** for every day that the violation continues.

Prohibition of misleading names and actions

Comment: This amendment reviewed upward the punishment for use of misleading names and acts. It is an amendment to section 159 of the ISA 2007.

- 156** (1) No person shall establish or operate a collective investment scheme or carry on or purport to carry on the business of a collective investment scheme **without the prior review and approval of the Commission.**
- (2) An application for authorization under this section shall be in the form prescribed by the Commission and shall be accompanied by such documents as may be prescribed, from time to time, by the Commission.
- (3) Upon application to the Commission in accordance with this Bill by the manager of a scheme, the Commission may authorize the scheme where:

Authorization of Collective Investment Schemes

- (a) the 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) the manager, trustee or custodian, of the scheme is:
    - i) a body corporate which is incorporated under the Companies and Allied Matters Act,
    - ii) having **funds**, capital and reserve as may be prescribed by the Commission from time to time, and
    - iii) registered by the Commission;
  - (c) the Commission is satisfied that the scheme is such that the effective control of its affairs is vested in the **trustee** and exercised independently of the **manager on behalf of the unit-holders of the scheme**;
  - (d) the Commission is satisfied that the trust deed or custodial agreement is in compliance with the provisions of this Bill and the rules and regulations of the Commission for the time being in force; and
  - (e) the name of the Scheme is not, in the opinion of the Commission, undesirable.
- (4) The Commission may refuse to authorize a Scheme if it fails to comply with the provisions of this part of this Bill and shall so notify the Manager, Trustee or Custodian under the Scheme stating its reasons for refusal within sixty days of filing the application.
- 157** (1) It shall be unlawful for any person, directly or indirectly to deal in units or securities of a Scheme (described as units, securities or otherwise) unless such units or securities have been duly registered with the Commission.
- (2) A Scheme, or any other arrangement may be registered pursuant to this Bill by the issuer filing an application with the Commission in accordance with the provisions of this part of this Bill and the rules and regulations made thereunder.
- (3) Any application for registration of units or securities of a Scheme or any other arrangement, filed pursuant to this section shall become effective on the sixtieth day after filing or such earlier date as the Commission may determine having due regard to the adequacy of the information contained in such application and registration shall be deemed effective only as regards the units or securities specified therein as proposed to be offered.

Registration of  
units or securities  
of a scheme

- (4) The Commission shall establish and maintain a register of units or securities and collective investments schemes (in this part of this Bill referred to as the "register")
- (5) Any person who contravenes the provisions of this section 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.

**Comment:** With this amendment to section 161 of the 2007 Act, the penalty regime for dealing in unregistered units or securities of a scheme is reviewed upwards.

- 158** (1) No Manager, Trustee or Custodian under a Scheme shall make any alteration in the trust deed or custodial agreement in which are expressed the trusts of an authorised scheme or to make any change in the name of an authorised scheme without the prior approval of the Commission.
- (2) A manager or trustee under a scheme who contravenes the provision of subsection (1) of this section, is liable to a penalty of **₦1,000,000** and a further sum of **₦50,000** for every day the contravention continues.

Alteration of trust deed, custodial agreement, or change of name of scheme

**Comment:** This amendment reviewed the upward the penalty regime for altering a trust deed, custodial agreement or change of name of the scheme without the approval of the Commission. It is an amendment to section 162 of the 2007 Act.

- 159** (1) Subject to the provisions of this section, the Commission may revoke the authorization of a scheme if:
- (a) there is a contravention of any provision of this part of this Bill or of any rule or regulation made thereunder; or
  - (b) the Commission is no longer satisfied in respect of the matter specified in subsection (3) (a), (c) and (d) of section 156 of this Bill; or
  - (c) the interest of the holders of units or securities created under the scheme so requires.
- (2) The Commission shall before such revocation:
- (a) notify the manager and the trustee or custodian under the scheme, who may within 21 days from the date of such 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 authorization of the scheme within thirty days after the making of the representations or if

Revocation of Authorization of a Scheme



none are made within thirty days (30) after the last day for making of the representation under this section.

- (4) Whenever the authorization of a scheme under this Bill 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 the 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 (3) national daily newspapers.
- (6) The Manager shall within fourteen 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 also submit a copy of the statement of affairs filed with the Commission pursuant to subsection (6) of this section to the trustee or administrator as the case may be.
- (8) If any manager defaults in complying with the requirements of subsection (6) above, he shall be guilty of an offence and shall be liable to a fine of not less than N50,000 for every day that the default continues.
- (9) The Trustee or Administrator shall realize all the property or undertaking and buy all the units of the Scheme at the prevailing price subject to deduction of costs of realization 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 his ceasing to act as the Administrator or Trustee, deliver to the Commission a statement of his receipts and payments during the period.
- (11) Any Trustee or Administrator who fails to comply with the provisions of subsection (10) of this section shall be liable to a fine of N50,000.00 for every day during which the contravention continues.

**Comment:** This is an amendment to section 163 of the 2007 Act:

- i. Subsection (1) the proper section of the Bill has been referenced.
- ii. Subsection (4) of the section was redrafted for clarity.
- iii. In subsection (6) the timeframe for filing a statement of affairs of the scheme after revocation was increased to 14 days.

- 160** (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) of this section, information in relation to such matters (if any) as may be prescribed, from time to time, by the Commission.

**161** Any 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 securities with interest at the prevailing MPR plus 2%, and in addition the manager shall be liable to a penalty of not less than N5,000,000 and in addition shall be liable to a penalty of N50,000 for every day the violation continues.

Comment: This amendment revised the civil liability of a manager of a scheme who offers or sells units or securities with an untrue statement or omits to state a material fact. It dispenses the need for an investor to seek restitution from the tribunal as provided by section 165 of the 2007 Act.

**162** (1) Whenever the holder of units or securities of an authorized 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 securities as the holder may specify at the price for the time being at which the manager buys units or securities of the scheme.

Redemption of Units or Securities

(2) No Manager of a Scheme shall suspend the right or postpone the date of redemption of units or securities 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) Any manager of a scheme who contravenes the provisions of this section is liable to a penalty of not less than ~~N~~**1,000,000** and in addition shall be liable to a penalty of N50,000 for every day the violation continues.

Comment: In subsection (3) above, the penalty regime for violation of section 166 of the 2007 Act as it relates to redemption of units or securities has been increased from N500,000 to N1,000,000 in the first instance.

**163** (1) No 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 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 securities 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 security holders and of the scheme.
- (3) Any person who contravenes the provisions of this section, commits an offence and is liable upon conviction to a fine of **₦1,000,000** or to a term of imprisonment of not less than three years or to both such fine and imprisonment.
- (4) The Commission may, in lieu of prosecution under subsection (3) of this section, 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 N1,000,000 whichever is higher.

*Comment: this provision amends section 167 of the 2007 Act with a modification to subsection (2) (a) and increment of the fine payable by a violator of the section.*

- 164.** Any provision in the trust deed or custodial agreement in which are expressed the trusts or agreement created in pursuance of an authorised scheme shall be void in so far as 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.
- 165.** (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.
- (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

Liabilities of Trustees and Custodians under a scheme

Audit of accounts of a scheme and annual general meeting

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 Bill 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 each year end 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 percent 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.

*Comment: This is an amendment of section 169 of the 2007 Act. Reference to the custodian of the scheme in subsections (1) and (4) have been dispensed with.*

**166** A unit or security 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

**167** (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, from time to time, the funds and assets of a Scheme shall be invested in any of the following:

- (a) bonds, bills and other securities issued or guaranteed by the Federal Government 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 listed on a securities exchange and registered under this Bill;
- (d) ordinary shares of public limited companies listed **or traded** on a securities exchange and registered under this Bill with good track records;
- (e) **created indices comprising basket of securities, commodities or derivatives listed or traded or to be traded on a recognized Exchange or platform;**
- (f) **Money market instruments**, bank deposits and securities of **Issuers which** shall be rated by rating agencies registered by the Commission;

- (g) **Securities of an authorized** closed-end fund or listed on a securities exchange and registered under this Bill with a good track record of earning;
  - (h) units **of an** open-end investment funds registered by the Commission;
  - (i) real estate investment, **private equity investment, private debt registered with the Commission, infrastructure investments, commodities traded on an exchange registered by the Commission, derivatives traded on an 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 from time to time;**
  - (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 specified in the deed or agreements governing the Scheme where such Scheme is restricted strictly to qualified investors as an Alternative Asset Collective Investment Scheme; and**
  - (l) such other instruments as the Commission may, from time to time, 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) of this section and in real estate.
- (4) The Commission may, by regulation, impose additional restrictions on investments by a manager where such additional restrictions are imposed 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 Bill.

Comment: This is an amendment to section 171 of the 2007 Act. Modifications have been made to subsections (1) and (5), while new provisions have been introduced to expand the asset classes which funds of a scheme could be invested in.

**168** (1) The Commission **may**:

Investigation and  
inspection

- (a) undertake continuous inspection of the business operations as it relates to a Collective Investment Scheme's authorized parties involved in the management, administration and custody of assets of the collective investment scheme.
  - (b) investigate the business of a person whether registered or not who is involved in the unauthorized administration of a Scheme or soliciting for investment in a Scheme.
- (2) For the purposes of an investigation in terms of subsection (1) of this section, the Commission may in writing direct such person to:
- (a) provide it with any information, document or record about such business;
  - (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 Bill.

Comment: subsection (1) is a revision of Section 172 (1) of the 2007 Act for clarity.

- 169** (1) If the Commission, after an investigation or inspection under section 168, considers that the interests of the investors of a collective investment scheme or of members of the public so require, it may:
- (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 any party and replace same in a manner as the Commission may deem appropriate. Where the manager is removed, the trustee or custodian shall in accordance with the Commission's directions but subject to this Bill arrange for another manager to take over the administration of the collective investment scheme; or
  - (c) require the Trustee or Manager to take steps, in accordance with the Commission's directives for the winding-up of a portfolio of its collective investment scheme, and for the realization of the assets and the distribution of the net proceeds thereof, together with any income accruals or other moneys available for distribution among the investors in proportion to their respective participatory interests;
  - (d) in the case of a collective investment scheme being administered by a capital market operator in contravention of this Bill, take steps in line with relevant provisions of the Rules and Regulations to have the collective investment scheme wound up.

Powers of the Commission after investigation

- (2) A person who refuses or fails to comply with any directive made pursuant to subsection (1) above is liable to a penalty of not less than N1,000,000 and another N25,000 per day for every day the violation continues.

Comments: This is an amendment to section 173 of the 2007 Act with:

- i. a modification to paragraphs (b), (c), and (d) of subsection (1).
- ii. deletion of Subsections (2) and (3) of the original provision.
- iii. revision of subsection (4) of the original provision, now subsection (2) above to increase the penalty for failure to comply with the Commission's directive.

- 170** (1) The Commission may cancel the registration of a manager if:
- (a) the manager has contravened or failed to comply with any provision of this Bill **or Rules and Regulations**, and that such contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors;
  - (b) upon 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;
  - (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) above, the Commission may, in lieu of such cancellation, suspend the registration of the affected manager for a period not exceeding 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 contemplated in subsection (1) above 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) If the registration of a manager is cancelled in pursuance of subsection (1) above, the provisions of this Bill with regard to the continuance or the winding-up of the portfolio of a collective investment scheme or the winding-up of the manager, shall apply:

Cancellation or suspension of registration of a manager

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 collective investment scheme, or in realizing any of its assets, and also any remuneration to which a trustee or custodian may be entitled.

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

Comment: This is an amendment to section 174 of the 2007 Act as follows:

- i. modifications have been made to paragraphs (a) and (b) of subsection 1.
- ii. paragraph (c), subsection 1 of the original provision has been deleted.
- iii. modifications made to subsections (2) and (3) by expunging certain portions of the subsection.
- iv. deletion of subsection (4) of the original provision.

- 171.** 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

- 172.** (1) The Commission may direct a manager to have all books of accounts and financial statements audited and to 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) Any person who, in respect of an audit contemplated in subsection (1), gives information, an explanation or access to records which he or she knows to be false or misleading commits an offence and is liable on conviction to a fine of ₦1,000,000 or imprisonment for one year or both such fine and imprisonment.

- (3) **In lieu of prosecution under subsection (2) of this section, the Commission may impose a penalty of not less than N2,000,000 and a further sum of not less than N5,000 for every day the violation continues.**

Comment: This is an amendment to section 176 of the 2007 Act. It introduces a new subsection (3) permitting the commission to impose a penalty in lieu of prosecution.

- 173** (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) No person shall, 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 obligations entered into before the date of such notice or to comply with any directives 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 (pursuant to subsection (1) of this section) 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), of this section.
- (4) A person who has been directed in terms of 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 **₦1,000,000** or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

- (6) **In lieu of prosecution under subsection (2) of this section, the Commission may impose a penalty of not less than N2,000,000 and a further sum of not less than N5,000 for every day the violation continues.**

**Comment:** This is an amendment to section 177 of the 2007 Act. It introduces a new subsection (6) permitting the commission to impose a penalty in lieu of prosecution. Subsection (5) increases the penalty regime for violation of the section, while in subsection (4), the time limit to effect a rectification was reduced from seven to three days as highlighted above.

- 174** (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.
- (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 in terms of this section, shall give to the manager and the Commission not less than three months' notice of such intention, and during the said period of three months

Appointment  
and termination  
of appointment  
of trustee or  
custodian

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. 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 7 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) If a Trustee or Custodian fails to take the steps specified in subsection (3) of this section within the said 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 perform any or all 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 perform such duties.
- (8) A trustee or custodian of a scheme who has appointed a representative under subsection (7) of this section, is not thereby relieved of any of its responsibilities or duties under the scheme.

Comments: This provision amends section 178 of the 2007 Act. A new subsection (4) is introduced requiring the approval of the Commission before terminating the appointment of a trustee or custodian, while modifications have been made to subsections (3), (6) and (7) as highlighted above.

- 175**
- (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.
  - (2) A company or institution referred to in subsection (1) of this section may not become or act as a manager, trustee or custodian unless it maintains capital and reserves as may be prescribed by the Commission from time to time.
  - (3) The Commission may not approve the appointment of a person as a trustee or custodian unless it is satisfied that:

Qualification and registration of trustee or custodian

- (a) the 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; and
- (b) the person or a related party does not have significant shareholdings with the Manager, or hold Board appointment with the Manager, and
- (c) the 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.

Comment: This is an amendment to section 179 of the 2007 Act. A new subsection (3)(b) is inserted to expand the scope of the Commission's regulatory purview as it relates to non-approval for the appointment of a person as trustee or custodian, and a modification is made in subsection (1) as highlighted above.

- 176** (1) The Commission may revoke or suspend the registration of a Trustee or Custodian, when the Commission is no longer satisfied that the requirements contained in section 175 of this Bill are met by the trustee or custodian.
- (2) The Commission shall, before revoking or suspending a registration in terms of subsection (1), notify the trustee or custodian concerned of the grounds upon which such action is contemplated against it, and must give it a reasonable opportunity of showing cause why the proposed action should not be taken.

Suspension or revocation of registration of a trustee or custodian

- 177** (1) A trustee or custodian shall:

- (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 Bill, **Rules and Regulations of the Commission;**
- (b) ensure that the selling or repurchase price of participatory interests is calculated in accordance with **the Rules and Regulations made pursuant to this Bill**, the trust deed or custodial agreement;
- (c) verify that, in transactions involving the assets of a scheme, any consideration is remitted to 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 Bill and the trust deed or custodial agreement;
- (e) enquire 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 Bill, **the Rules and Regulations pursuant** and the trust deed or custodial agreement;
- (f) if the manager does not comply with the limitations and provisions referred to in paragraph (e) of this subsection, state the reason for the

Duties of trustees or custodians

- non-compliance and outline the steps taken by the manager to rectify the situation;
- (g) send the report referred to in paragraph (e) of this subsection 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 pursuant to this Bill.**
- (3) The trustee or custodian shall satisfy itself that every income statement, balance sheet or other return prepared by the manager in terms of section 165 fairly represents the assets and liabilities, as well as 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 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 perform such other duties as prescribed under the Rules and Regulations made pursuant to this Bill**
- (6) No person shall interfere with the performance by a trustee or custodian of its functions under this Bill **and Rules and Regulations made pursuant to this Bill**
- (7) A trustee or custodian of a collective investment scheme which fails to perform any of its duties referred to in this section, is liable to a penalty of not less than **N5,000,000.**

Comment: This an amendment to section 181 of the 2007 Act as follows:

- i. modifications in subsections (1), (2) and (6) as highlighted above.
- ii. introduction of a new subsection (5) to empower the Commission expand

the duties of a trustee or a custodian where necessary.

iii. review of the penalty regime in subsection (7) from N500,000 to N5,000,000.

**178.** For the purposes of this Bill any:

- (a) money or other assets received from an investor; and
- (b) asset of a portfolio,

Status of Assets

are regarded as being trust property for the purposes of the Trustee Investments Act.

**179.** 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

*Comment: This is an amendment to section 183 of the 2007 Act. Every reference to trustee in the section has been expunged.*

**180** (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) No director or employee of a manager, trustee or custodian and no firm of which any such director or employee is a member shall be appointed as an Auditor of a Scheme.

(3) A Manager shall within thirty 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.

*Comment: Section 184 (2) of the 2007 Act is amended with the replacement of “may” with “shall”*

**181** (1) The auditor shall:

- (a) report to the manager and trustee any irregularity or undesirable practice in the administration of the collective investment scheme which has come to his notice in the ordinary course of fulfilling his audit responsibilities or performing other functions in terms of this Bill; and
- (b) submit a copy of such report to the Commission, where there is reasonable cause to believe that such report is or might be of material significance to the Commission, within a period not exceeding ten working days from the day the irregularity was observed.

Duty of Auditor  
to disclose  
irregularity or  
undesirable  
practice

- (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 perform any of the duties referred to in this section, is liable to a penalty of not less than **N1,000,000**.

Comment: An amendment is made to section 185 of the 2007 by:

- i. inserting “trustee or custodian” in subsection (1) (a).
- ii. creating a timeframe for submission of a report by an auditor in subsection (1) (b) above.

**182** (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) of this section, the Commission may make regulations under this section:

- (a) as to the issue and redemption of the units or securities under 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 Schemes.
- (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) of this section 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 thinks necessary or expedient; and
- (e) may exempt any Scheme designated as Qualified Investors Schemes by the Commission from the applicability of any provision of this part of the Bill;

Comment: This is an amendment to section 186 of the 2007 Act by introducing a new subsection (3)(e) to empower the Commission to make rules that exempt qualified investors schemes from the provisions of this bill.

- 183** (1) The manager of an authorised scheme shall give written notice to the Commission of:
- (a) any proposed alteration to the Scheme; and
  - (b) any proposal to replace the Trustee or Custodian of the scheme.
- (2) Any notice given in respect of a proposed alteration involving a change in the trust deed or custodial agreement shall be accompanied by a certificate signed by a legal practitioner to the effect that the change will not affect the compliance of the Trust deed or custodial agreement with this Bill and rules and regulations made pursuant to this Bill.
- (3) The trustee or custodian of an authorised 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) No effect shall be given to any of the proposals referred to in subsections (1) and (3) of this section 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) of this section without the Commission having notified the manager or trustee that the proposal is not approved.
- (5) The manager or the trustee or custodian of an authorised scheme shall not be replaced except by persons who satisfy the requirements of section 186 of this Bill or rules and regulations made thereunder: 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.

Alteration of schemes and replacement of manager, trustee or custodian

Comment: This provision amends section 187 of the 2007 Act with slight modifications in subsection (2) as highlighted above. It has also been amended to reference the proper section in subsection (5).

**184** (1) The manager of an authorised scheme shall not engage in any activities other than those mentioned in subsection (2) of this section.

Restriction of activities of managers

(2) The activities referred to in subsection (1) of this section are:

(a) acting as manager of:

i) a scheme;

ii) an open-ended investment company or anybody 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 collective investment 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) of this subsection.

**185** (1) The manager of an authorised scheme shall publish particulars of the scheme ("scheme particulars") or make available to the public, upon request, any document containing information about the scheme in a manner prescribed by the Commission from time to time.

Publication of Scheme particulars

(2) Regulations made under this section may:

(a) require the manager of an authorised scheme to submit and publish or make available revised or further scheme particulars if:

i) there is a significant change affecting any matter contained in such particulars previously published or made available whose 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.

(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;

ii) or 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 under this section shall not affect any liability which any person may incur apart from the regulations.

**186** (1) If it appears to the Commission that:

Power of intervention



- (a) any of the requirements for the registration of a scheme as an authorised scheme are no longer satisfied; or
  - (b) the manager or trustee or custodian of such a scheme has contravened any provision of this Bill or any rules or regulations made thereunder 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 Bill, 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) of this section.
- (2) The directives referred to in subsection (1) of this section may:
- (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption of units or securities under the scheme on a date specified in the directive until such further date as is specified in that order or directive; or
  - (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;
  - (c) appoint any person to take over and perform 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 pursuant to the provisions of the trust deed or custodial agreement.
- (3) The revocation of the registration of an authorised scheme shall not affect the operation of any directive under subsection (1) of this section which is then in force; and a directive may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised scheme has been revoked if a directive under that subsection was already in force at the time of revocation.

**187** (1) Where the Commission proposes to:

- (a) give a directive under section 186 of this Bill; or
  - (b) revoke 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) of this section.
- (2) A person on whom a notice is served under subsection (1) of this section 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.

Issuance of  
directive or its  
revocation

- (3) The Commission shall have regard to any representations made in accordance with subsection (2) of this section in determining whether to refuse the application or revoke the order, as the case may be.

**188** (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;
- (b) it has capital and reserve as prescribed by the Commission from time to time;
- (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 from time to time.

(2) The assets and investments of an open-ended investment company shall be in the custody of a registered custodian or trustee.

(3) A closed-ended investment company shall be registered by the Commission if:

- (a) it is a body corporate incorporated in accordance with the Companies and Allied Matters Act;
- (b) it has the minimum capital prescribed by the Commission; and
- (c) it satisfies all other conditions which may be prescribed by the Commission from time to time.

Comments: Section 192 of the 2007 Act is amended with the introduction of a new subsection (3) to provide for a closed-ended investment company

**189** (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 issuance 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 from time to time.

(2) Under this Bill, 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) of this section, 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, from time to time, make rules and regulations regulating the activities and securities (whether the securities are described as asset backed-securities or otherwise) of real estate investment companies or trusts referred to in subsections (1) and (2) of this section.

**Comment:** This provision amends section 194 of the 2007 Act by making modifications to subsections (1) (c) and (3).

- 190.** A real estate investment company or trust may be registered by the Commission if it:
- (a) is a body incorporated under the Companies and Allied Matters Act (as may be amended or re-enacted from time to time);
  - (b) has a capital and reserve as prescribed by the Commission from time to time;
  - (c) carries on business as a collective investment scheme solely in properties;
  - (d) complies with the requirement prescribed by the Commission through its rules and regulations made from time to time.

Registration of real estate investment company

- 191** (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:
- (a) the application complies with the conditions prescribed by the Commission;
  - (b) a copy of the approval or registration by the relevant foreign jurisdiction authorizing the foreign collective investment scheme to act as such is filed with the Commission.
- (2) Any person who invites the public to invest in a foreign collective investment scheme which is not approved by the Commission shall be **liable to a penalty of not less than 10% of the gross value of the securities or units of the scheme or deposits received in the case of a body corporate and not less than N2,000,000 in the case of an individual.**
- (3) **If any person acquires or disposes of any securities or units in a scheme, or deposits money with any company as a result of an invitation to the public made in breach of subsection (2) of this section, 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.
- (4) **Where any person seeks to rescind a transaction in accordance with subsection (3) of this section, he shall do so within a reasonable time and shall not be entitled to rescind any transaction with the body corporate or to recover**

Foreign collective investment schemes

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.

Comment: This amendment reviewed upward the penalty regime for a violation of this section of the Bill. Additional provisions are also introduced to prohibit unregistered foreign collective investment schemes from inviting the public to subscribe to the scheme and create a remedy for investors who subscribe to such schemes in violation of the Bill.

- 192** (1) The Commission may appoint one or more competent inspectors to investigate and report on:
- (a) the affairs of, or of the manager or trustee or custodian of any authorised scheme;
  - (b) the affairs of, or of the operator or trustee or custodian of any recognized foreign scheme so far as relating to activities carried on in the Federal Republic of Nigeria; or
  - (c) the affairs of, or of the operator or 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) Any inspector appointed under subsection (1) of this section to investigate the affairs of, or of the manager, trustee or operator of any scheme may also if he thinks it necessary for the purposes of that investigation, investigate the affairs of or the manager, trustee or operator of, any other such scheme as is mentioned in that subsection whose manager, trustee or operator is the same person as the manager, trustee or operator of the first-mentioned scheme.
- (3) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in judicial proceedings or on grounds of confidentiality as between a client and professional legal adviser in proceedings in any court except that a legal practitioner may be required to furnish the name and address of his client.
- (4) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.
- (5) 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:
- (a) the customer is a person whom the inspector has reason to believe may be able to give information relevant to the investigation; and
  - (b) the Commission is satisfied that the disclosure or production is necessary for the purposes of the investigation.

Appointment  
of inspectors

- (6) An inspector appointed under this section may, and 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.
- (7) A report made under subsection (6) of this section shall be written or printed as the Commission may direct and the Commission may, if it thinks fit:
  - (a) furnish a copy, on request and on payment of the prescribed fee, to the manager, trustee 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.

**193. With the exception of Private Equity, Collective Investment Schemes shall be treated as pass-through vehicles for purposes of taxation.**

Treatment of collective investment schemes

Comment: This provision was introduced to exempt private equity and collective investment schemes from taxes.

**194**

Registration of Community

**195. (1) The Commission shall have the power to enter and seal up all prohibited schemes and shall obtain an Order of 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) above shall be a first charge from the funds and properties of the illegal scheme including assets of its owners, promoters and or managers, whether acquired legitimately or otherwise.
- (3) For the purposes of this Bill, “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:
    - i) Whether or not the scheme limits the number of persons who may participate therein, 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) Whether the scheme is operated at a physical address or through the internet or other electronic means.
  - (b) Any scheme where participants attempt to make money by recruiting new participants usually where:
    - i) the promoter promises a high return in a short period of time, and
    - ii) no genuine product or service is actually sold; or
    - iii) the primary emphasis is on recruiting new participants

- (4) The promoter(s) and operator(s) of any entity engaged in a prohibited scheme commits an offence and is liable upon conviction to imprisonment for a term of ten (10) years or a fine of N5,000,000 or both.

Comment: A new section is introduced to address the activities of unregistered and prohibited schemes. The provision empowers the Commission to seal up such schemes and obtain an Order of Court to freeze and forfeit the scheme's assets to the Federal Government of Nigeria.

**196** In this part:

"auditor" means a member of a body of Accountants, from time to time, recognized by an Act of the National Assembly and appointed as Auditor of a company or trust by managers with the approval of the trustees;

"authorised unit trust scheme" means any unit trust scheme which is authorised by the Commission and registered in the register maintained by the Commission for the purpose of this part;

“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 line with a specified investment objective for purposes such as capital preservation and income generation, and can be listed and traded on a recognized Exchange;

"custodian" means a corporate entity who has custody as a bailee of assets in the name of the Scheme and the Trustee with the name of the Trustee/Scheme appearing in the issuer's register as the legal owner of the securities;

"dealing in securities" means doing any of the following things (whether as a principal or as an agent), that is, making or offering to make with any person or inducing or attempting to induce any person to enter into or offer to enter into any agreement for or with a view to acquiring, holding or disposing of securities or any other property or any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;

"filing" means delivery to the Commission through mails, electronically or otherwise of all papers or applications required to be filed with the Commission pursuant to this Bill and regulations made thereunder, 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;

"holder" means any investor or beneficiary who has acquired units of a collective investment scheme whether close-ended or open-ended and who is entitled to a pro-rata share of dividends, interest, profit or other income of the securities comprised in the unit;

Definition of words used in this part

"income accrual" 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;

"issuer" means any person **or company** performing the duties of a manager pursuant to 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 from time to time**;

"manager" means a fund or portfolio manager registered by the Commission;

"open- ended investment company" means a **Collective Investment Scheme incorporated as a Company with variable capital permitting realization 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 from time to time, which may be acquired by an investor in a portfolio;

"prospectus" includes offer for sale, advertisement, circular, letter, notice, **electronic website or app** or other equivalent **statement (s) 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**;

"register" means the register established and maintained for the purpose of this part;

"scheme" means the collective investment scheme;

"trust deed" or "custodial agreement" means the agreement drawn up between the trustees or custodian and the manager for regulating the operation of a collective investment scheme;

"trustee":

- i) **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 in pursuance of the scheme is or may be vested in accordance with the terms of the trust;**
- ii) **with respect to revocation of registration of the scheme, 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

"units" in relation to a unit trust scheme, means any units (described whether as units or otherwise) 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 acquisition, holding, management or disposal of securities or any other property whatsoever.

Comment: An amendment is proposed to section 152 of the 2007 Act by the introduction of new definitions for some words used in this part of the Bill. In addition, the definition of open ended investment company, prospectus and trustees have been modified.

## PART XV INVESTOR PROTECTION FUND

- 197.** (1) A securities exchange shall establish and maintain a fund to be known as the 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 of this Bill.

Establishment of an Investor Protection Fund

- 198.** The objectives of an Investor Protection Fund shall be to compensate investors who suffer pecuniary loss arising from:
- (a) the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange; and
- (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;
- (c) **revocation or cancellation of the registration of a dealing member firm pursuant to the provisions of section 61 (6) of this Bill.**

Objectives of investor protection fund

Comment: A new provision is introduced to amend section 198 of the 2007 Act and expand the objectives of an Investor Protection Fund

- 199** (1) The board of trustees of an investor protection fund shall consist of a maximum of nine (9) members to be drawn as follows:

Composition and tenure of board of trustees



- (a) a representative from the dealing member firms;
- (b) a representative from the securities exchange;
- (c) a representative from one of the **financial market infrastructures**;
- (d) a representative of the Securities and Exchange 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 a securities exchange on the recommendation of the body he represents;
- (b) hold office for a period of **three years and may be re-appointed for a further period of three years and no more** on the recommendation of the body he represents;

(3) **Notwithstanding the provisions of subsection (2) of this section and subject to the provisions of section 200, the board of trustees may appoint a member whose tenure has expired as a temporary member provided such appointment shall be for a maximum period of 6 months and no more.**

(4) **A temporary member appointed pursuant to subsection (3) of this section may exercise all the rights, privileges and responsibilities of a board member.**

Comment: the above are amendments to section 199 of the 2007 Act as follows:

i. with regard to the constitution of an IPF's Board of Trustees modifications in subsection (1) (c), (f) and (h) as highlighted above to align the composition of the Board with market conventions.

ii. deletion of "capital trade point" in subsection 1 (b),

iii. revision of subsection (2) (b) to provide for the possibility of renewal of the tenure of a member of the Board of Trustees.

iv. introduction of new provisions in subsections (3) & (4) to allow for instances where an individual whose tenure had lapsed may be appointed to serve on the board of trustees temporarily.

**200.** 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; or
- (b) his membership on the board of trustees is withdrawn by the body he represents and on whose recommendation he was appointed; or
- (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.

**201.** 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 securities exchange and the Commission; and
- (c) do anything or perform any act incidental to or in relation with the operation and management of the investor protection fund.

**202.** An investor protection fund shall consist of:

Monies accruing to the investor protection fund

- (a) all monies paid to the board of trustees by dealing members of the securities exchange in respect of which an investor protection fund has been established as may be prescribed by the securities exchange from time to time;
- (b) the interest and profits, from time to time, accruing from the investment of an investor protection fund;
- (c) all monies paid to an investor protection fund by the securities exchange in accordance with the provisions of this part of this Bill;
- (d) all monies recovered by or on behalf of the board of trustees in the exercise of any right of action conferred by this part of this Bill;
- (e) all monies paid by an insurer pursuant to any contract of insurance or indemnity entered into by a dealing member or the board of trustees;
- (f) all monies held by any investor protection fund or by whatever name so called, established by the securities exchange prior to the coming into force of this Bill; and,
- (g) all other monies lawfully paid into an investor protection fund.

**203.** All monies 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 monies in accordance with the provisions of this part of this Bill.

Fund to be kept in separate bank account

- 204.** (1) The board of trustees may apply the funds of an investor protection fund for payment of:
- (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 Bill;
  - (b) claims, including costs, of an investor allowed by the securities 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 subsection (5) of section 213 of this Bill;
  - (d) claims arising from losses incurred by revocation or cancellation of the registration of a dealing member firm pursuant to the provisions of section 61 (6) of this Bill.
  - (e) all legal, professional and other expenses incurred in investigating or defending claims made under this part of the Bill 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 Bill 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 thereto; and
  - (h) all other monies payable out of an investor protection fund in accordance with the provisions of this Bill.

Payment out of the investor protection fund

- (2) Payment of any claim, award, or order for compensation under paragraph (a) to (d) of subsection (1) of this section, 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 from time to time.

Comment: New provisions are introduced in subsection (1) (d) to create additional uses to which the fund of an investor protection fund could be applied, and subsection (2) to empower the Board of Trustees to determine the maximum amount to be paid from the fund in satisfaction of a claim.

- 205** (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 made out.

Accounts of investor protection fund

- (2) A securities 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 pursuant to subsection (2) of this section 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) of this section 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) of this section.

**206** (1) The board of trustees may for the purpose of management of the investor protection fund appoint a management subcommittee of not less than 3 and not more than 5 persons.

board of trustees may delegate functions

- (2) The board of trustees may by resolution delegate to a subcommittee appointed under subsection (1) of this section 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 sub-committee as if that power, authority or discretion had been conferred on a majority of the members of the sub-committee.
- (4) Any such 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 sub-committee appointed by it under this section and may fill any vacancy in the sub-committee howsoever arising.
- (6) A decision of a sub-committee of the board of trustees shall be of no effect until it is confirmed or ratified by the board of trustees.

**207.** (1) An investor protection fund shall consist of such minimum amount as may by regulation be approved by the Commission, from time to time, to be paid to the credit of the investor protection fund on the establishment of a securities 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 securities exchange.

**208.** If for whatever reason the investor protection fund falls below the minimum amount approved for a securities 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 securities exchange; or
- (b) in the event that there are insufficient funds to transfer under paragraph (a) of this section, by determining the amount which each dealing member shall contribute to the investor protection fund.

- 209 (1) If 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 securities 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 thinks 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.
210. A securities exchange may, from time to time, 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 a securities exchange to make an advance to an
211. **The Board of Trustees of an investor protection fund shall determine the manner of investing the monies accruing to the fund as authorised by the Trustee Investment Act.** Investment of the funds of an investor protection fund
- Comment: This provision is an amendment to section 211 of the 2007 Act and was redrafted for clarity*
- 212 (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 pursuant to the provisions of section 61(6) of this Bill;
  - (b) the insolvency, bankruptcy or negligence of a dealing member firm, or member company of a securities 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 Bill 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.
- 213 (1) Subject to the provisions of this Part, every person who suffers pecuniary loss as provided in section 212 of this Bill shall be entitled to claim compensation from the investor protection fund established for the securities Claims against an investor protection fund

exchange to which the defaulting member company or dealing member firm belongs.

- (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 a securities exchange who 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 securities exchange.
- (5) The provisions of subsection (3) of this section 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 Bill.
- (6) Subject to subsections (3) and (4) of this section, 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 of this Bill and any limit that may be determined by the securities exchange and approved by the Commission from time to time, 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 him (including the reasonable cost of disbursement incidental to the making and proving of his claim) less any amount or value of all monies or other benefits received or receivable by him from any source other than the investor protection fund in reduction of the loss.
- (8) In addition to any compensation payable under this part of this Bill, 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 the rate of five per cent per annum calculated from the day upon which a claim arose and continuing until the day upon which the claim is satisfied.

Comment: New subsections (2) & (3) have been introduced to complement the existing provisions on the manner in which a claim to the investor protection fund can be made. This is a departure from Section 213 (2) of the 2007 Act,

which requires a claim for compensation to be made in the first instance to the securities exchange. In addition, subsection (4) has been modified as highlighted above.

- 214** (1) The Commission or a securities exchange, as the case may be, 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 said publication, on which claims for compensation from the investor protection fund, in relation to the person specified in the notice, may be made.
- (2) A claim for compensation under this part of the Bill shall be made in writing to the board of trustees **within 6 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 otherwise determines.**
- (3) No action for damages shall lie against a securities exchange or against any member or employee of a securities exchange or of a board of trustees or management sub-committee by reason of any notice published in good faith and without malice for the purposes of this section.

Notice calling for claims against the investor protection fund

Comment: Subsection (2) is amended to align an investor's right to claim against the investor protection fund with the statute of limitation. The provision amends section 214 of the 2007 Act by increasing the period within which a claim for compensation could be made to within 6 years from the date of occurrence of the defalcation, revocation, cancellation, insolvency or bankruptcy of the dealing firm as against 6 months contained in the 2007 Act.

- 215.** The board of trustees may, subject to this part of this Bill, settle any claims for compensation from an investor protection fund as may be determined, from time to time and as the case may be, by a securities exchange, the Commission or the Tribunal.

Power to settle claims

- 216** (1) 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:
- (a) declare the fact and the date of the defalcation or other loss suffered by a claimant;
- (b) 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 of this Bill.

Form of order of the tribunal

(2) The Tribunal may make rules of practice and procedure generally for proceedings under this part of this Bill.

(3) In any proceedings, under this Part of this Bill, all questions of costs shall be at the discretion of the Tribunal.

**217.** The securities exchange, the Commission or the Tribunal, as the case may be, 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

**218.** On payment out of an investor protection fund of any monies in respect of any claim under this part of this Bill, 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

**219.** No claimant against an investor protection fund shall have any right of action against any person or body of persons with whom a contract of insurance or indemnity is made under this part of this Bill in respect of such contract, or have any right or claim with respect to any money paid by the insurer in accordance with any such contract.

Application if insurance money

**220.** Any securities exchange, director, official or employees of the securities exchange, who contravenes any of the provisions of this part of this Bill, shall be liable to a penalty of ₦1,000,000 and a further sum of ₦25,000 for every day during which the contravention continues.

Penalty for contravention

**221.** In this part of this Bill:

*"board of trustees"* refers to the board of trustees of an investor protection fund established under section 197 of this Bill

Definition of words used in this part

*"investor protection fund"* means an investor protection fund established by a securities exchange pursuant to the provisions of this part to mitigate losses suffered by investors;

*"securities exchange"* in relation to a protection fund, means the securities exchange which established the fund.

## **PART XVI: COMMODITY EXCHANGE AND WAREHOUSE RECEIPTS**

### **A. COMMODITY EXCHANGE**



**222.** (1) No person shall 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) Any person who contravenes this provision 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 more than 5 years or to both such fine and imprisonment.

(3) In lieu of prosecution under subsection (2) of this section, the Commission may impose a penalty 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 N100,000 for every day the violation continues

**223.** (1) The Commission may revoke any 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 direction issued by the Commission.

**224.** (1) No person shall establish, maintain or provide or assist in establishing, maintaining or providing, or hold himself out as maintaining or providing a clearing house for a commodity exchange unless the person is a body corporate registered as a clearing house.

Registration of clearing  
house

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not less than N10, 000, 000 or to imprisonment for a term not less than 3 years or to both such fine and imprisonment.

(3) The Commission may register a body corporate as a clearing house if it is satisfied that:

(a) the business rules of the body corporate make satisfactory provision relating to the registration of, and guaranteeing to its members of the performance of, commodity contracts made in a commodity exchange; and

(b) the interests of the public will be served by granting the application

- 225.** (1) Any person, who is aggrieved by the failure of a commodity exchange or a clearing house or any of the directors or employees of the commodity exchange or clearing house to enforce its business rules or by the contravention of this Bill or any regulations made thereunder in the enforcement of the business rules, has a right of action in damages for the actual amount of damages suffered by that person;
- (a) in any transaction that he has entered into on or subject to the business rules of a commodity exchange; and
  - (b) that is directly attributable to the failure to enforce the business rules, or the contravention of this Bill or any regulations made thereunder in the enforcement of the business rules.
- (2) No action for damages shall lie against a commodity exchange or a clearing house, or any of its directors or employees under subsection (1) unless the aggrieved person can show that, in failing to take action or in taking such action as was taken resulting in loss to him, the commodity exchange or the clearing house, or any of the directors or employees, acted in bad faith.
- (3) The right of action conferred by this section shall be the exclusive remedy available to any person who suffers loss as a result of an alleged failure of a commodity exchange or a clearing house, or any of its directors or employees, to enforce its business rules, or the contravention of this Act or any regulations made thereunder in the enforcement of the business rules.

Right of action against commodity exchange and clearing house

- 226.** (1) No person shall, whether as principal or agent, carry on business of or hold himself out as
- (a) a commodity broker
  - (b) a commodity broker's representative;
  - (c) a commodity trading adviser; or
  - (d) a commodity pool operator;
  - (e) a spot commodity broker;
  - (f) a spot commodity pool operator; or
  - (e) 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 Bill or any rules and regulations made pursuant thereto.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not less than N10, 000, 000 or to imprisonment for a term not less than 3 years or to both.

Registration of Commodity broker etc

**227.** (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 direction 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 such 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 but not limited to the setting aside such emergency action.

**228.** (1) No person other than a clearing house, a commodities exchange, a commodity broker, a commodity trading adviser or commodity pool operator shall

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) Any person who contravenes the provisions of this section shall be liable to a penalty of not less than N10,000,000 and a further penalty of N20,000 for every day the violation continues.

**229.** No person shall:

Offences

(1). 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.

(2). 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 bona fide purchase or sale of the commodity contract in

accordance with the business rules and practices of the commodity exchange.

- (3). 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 will, 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.
- (4). directly or indirectly:
  - (a) manipulate, or attempt to manipulate, the price of a commodity contract that may be dealt in on a commodity exchange; or
  - (b) corner, or attempt to corner, any commodity which is the subject of any commodity contract.
- (5) directly or indirectly, in connection with any transaction with any other person involving trading in a commodity contract:
  - (a) employ any device, scheme or artifice to defraud that other person;
  - (b) 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
  - (c) 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.
- (6). 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:
  - (a) 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
  - (b) 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.
- (7) any person who contravenes any provision of this section is guilty of an offence and shall be liable on conviction:
  - (a) in the case of an individual, to a fine not less than N5,000,000 or to imprisonment for a term not less than 5 years or to both such fine and imprisonment; or

(b) in the case of a body corporate, to a fine of not less than N50,000,000

## **B. WAREHOUSE RECEIPTS**

**230.** (1) No person shall 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 Bill.

(3) The registration under subsection (2) of this section, shall be granted subject to the Commission satisfying itself that:

(a) the warehouse is suitable for the proper storage of the particular goods;

(b) the Warehouse 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 pursuant to this Bill; and

(c) the warehouse operator agrees, as a condition to the granting of the registration, to comply with and abide by the provisions of regulations made pursuant to this Bill.

(4) A person, who operates a registrable warehouse without obtaining registration as required under this Bill, commits an offence and is liable upon conviction to a term of imprisonment of not less than 5 years, or to a fine not less than N3,000,000.00 or to both fine and imprisonment.

(5) A person who continues to operate a warehouse after the suspension or revocation of its operating registration in accordance with the provisions of this Bill commits an offence and liable on conviction to a term of imprisonment not exceeding 5 years or to a fine of N2,000,000.00 or to both fine and imprisonment.

(6) In lieu of criminal prosecution under subsection (4) and (5) of this section, the Commission may impose a penalty of not less than N10,000,000 and a further sum of not less than N50,000 for every day the violation continues.

**231.** (1) The Commission may revoke or suspend the registration of a warehouse for any violation of the provisions of this Bill 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 pursuant to this Bill.

- (3) The revocation or suspension of a registration pursuant to the provisions of this Bill or regulations made thereunder shall not affect the validity of receipts issued by an issuer of warehouse receipts.
- 232.** A registered 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 pursuant to this Bill. Insurance of warehouse, commodities etc
- 233.** (1) The Commission or its appointed agent may inspect any registered warehouse. Inspection of Warehouses by the Commission
- (2) A person who obstructs a warehouse inspector or any other authorized person in the exercise of the power conferred upon him by this Bill or who neglects or refuses to produce to a warehouse inspector or any other authorized person, any goods, documents, book of accounts or other such records on demand, commits an offence and is liable on conviction to imprisonment for three months or to a fine not exceeding N500,000.00.
- (3) In lieu of criminal prosecution in subsection (2) above, the Commission may impose a penalty of not less than N1, 000,000 and a further sum of N5, 000 for every day the violation continues.
- 234.** (1) No person shall operate a collateral management company without registration by the Commission. A collateral management company shall provide the services stipulated in the rules and regulations made pursuant to this Bill 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.
- 235.** (1) A warehouse receipt as defined in this Bill 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 goods 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 Warehouse Receipt shall be issued by an entity duly registered by the Commission and in a manner prescribed by the Commission.
- (4) Any person who violates the provisions of this Section commits an offence and shall be liable upon conviction to imprisonment for a term of not less than 6 months or a fine of N1,000,000 or to both such fine and imprisonment.

- (5) In lieu of Criminal prosecution, any person who issues a warehouse receipt in contravention of the provisions of this section is liable to a penalty of not less than N2,000,000 and a further sum of N5,000 for everyday the violation continues.
- 236.** (1) A Warehouse Receipt drawn and issued shall be prima facie proof of the holder having proprietary rights in the goods. Warehouse Receipt as evidence of proprietary rights
- (2) A person acquires proprietary rights in the goods, in relation to a Warehouse Receipt, if he is entitled to the ownership of the goods:
- (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.
- 237.** (1) A warehouse receipt shall be in the prescribed form and comply with standardization rules, and have such content as prescribed in rules and regulation made by the Commission pursuant to this Bill. Form, Standardization 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 Bill.
- 238.** (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.
- 239.** (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.
- 240.** (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 pursuant to this Bill. Obligation of a Warehouse Operator to deliver
- (2) Except as provided under this Bill or any regulations made from time to time by the Commission, an issuer of ware house receipt shall deliver

stored goods upon demand by the holder of the Warehouse Receipt , if the holder :

- (a) (i) makes full payments for the Warehouse Operator's charges for storage and other services relating to the goods 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
  - (ii) does not make full payment and a lien is placed on the commodities, after deducting the exact quantity of the goods at open market value as at that date, plus ancillary cost if any; and
  - (b) signs relevant documents acknowledging the delivery of the goods; and
  - (c) satisfies the Warehouse Operator of the identity of the person taking possession of goods;
- (3) Except as may be permitted by regulations made by the Commission an issuer of a Warehouse receipt shall not:
- (a) issue Warehouse Receipts for goods in respect of which the issuer, its directors or staff have interest.
  - (b) trade in goods which it is registered to store.
- (4) Where an issuer of a warehouse receipt is permitted by regulation to trade in its own goods, and in fulfilling any additional condition for grant of the registration, it must ensure that:
- (a) there is a clear separation of the goods owned by it from other goods it is authorized to store;
  - (b) there are clear and transparent records available to show the demarcation of the goods;
  - (c) it issues receipt in respect of its goods indicating that the goods belong to it;

**241.** (1) A Warehouse Operator shall take all necessary precautions to ensure that the delivery of goods is made to a person who has lawfully obtained a Warehouse Receipt.

Obligation to deliver goods to persons with valid titles or right

- (2) a Warehouse Operator's title or right to the possession of goods shall only be derived:
- (a) directly or indirectly from a transfer made by a depositor at the time of or subsequent to deposit of goods; or
  - (b) by a Warehouse Operator's lien on the goods.



- (3) Unless the title or right to possession of the goods by a Warehouse Operator is obtained in accordance with provisions of subsection (2) of this section, no title or right to possession of goods shall exonerate the Warehouse Operator from liability for refusing to deliver the goods according to the terms indicated on the Warehouse Receipt.

**242.** (1) Subject to regulations made from time to time by the Commission, a Warehouse Operator's lien on goods deposited or the proceed of such goods shall derive from all:

Warehouse Operator's  
right to lien

- (a) lawful charges for storage and preservation of goods;
- (b) lawful claims for money advanced, interest, insurance, transportation, labour, weighing, and other charges and expenses in relation to such goods;
- (c) reasonable charges and expenses incurred for notice and advertisements of sale; and
- (d) sale of the goods where there is default in satisfying the Warehouse Operator's lien.

- (2) The term "Warehouse Operator's Lien" used in subsection (1) of this section 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) of this section and the term "right of lien" shall be construed accordingly.

**243.** (1) A Warehouse Operator's Lien may be enforced subject to the provisions of this Bill and rules and regulations made thereunder against:

Enforcement of lien

- (a) all goods, 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 goods 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 goods.
- (2) A Warehouse Operator's lien may be satisfied by:
    - (a) the sale of a portion of the deposited goods in satisfaction of the lien 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 goods may refuse to deliver the goods 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 goods.

**244.** A Warehouse Operator shall lose the right to the lien upon the goods by:

Loss of right of lien

- (a) surrendering possession of the goods; or
- (b) refusing to deliver the goods upon demand made in accordance with the provisions of this Bill.

**245.** (1) Except as otherwise provided in this Bill or rules and regulations made thereunder, where a Warehouse Operator delivers goods for which a warehouse receipt had been issued, the issuer shall cancel the receipt.

Cancellation of Warehouse Receipt after the delivery of goods

- (2) Where an issuer of a warehouse receipt, fails to cancel the receipt as provided for under subsection (1) of this section, 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 goods.
- (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 imprisonment for a term of 2 years and shall, in addition pay the prevailing market value of the goods.

**246.** (1) Except as otherwise provided in this Bill, where a Warehouse Operator delivers part of the goods 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 goods.

Delivery of goods in parts.

- (2) An issuer of a warehouse receipt who fraudulently fails to comply with the provisions of subsection (1) of this section 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 goods not delivered.
- (3) Where a receipt is not cancelled as provided under subsection (1) of this section and the purchaser acquires title to the receipt before or after the delivery of any portion of the goods, the issuer of the Warehouse receipt shall remain liable to the purchaser.

**247.** (1) No person shall 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 250 of this Bill.
  - (4) Any person who violates the provisions of subsection (1) of this Section commits an offence and shall be liable upon conviction to imprisonment for a term of not less than 2 years and a fine of N5,000,000 or to both.
  - (5) In lieu of criminal prosecution for a violation of subsection (1), the Commission may impose a penalty of not less than N10,000,000.
- 248.** (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.
- (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 Bill in the same way and manner as the issuer of the warehouse receipt. .
- (3) Where an issuer of a warehouse receipt is unable to satisfy the requirements of subsection (1) above, the purchaser shall be entitled to proceed against the issuer to claim damages for the loss suffered as a result of the alteration.
- 249.** (1) A Warehouse Receipt holder acquires after negotiation as provided under this Bill:
- (a) title to the Warehouse Receipt;
  - (b) title to the goods, including, to the extent that such activities are authorized by the depositor and noted on the Warehouse Receipt, the packed, processed, substituted or otherwise transformed goods of the depositor;
  - (c) all rights accruing under the law, including rights to goods delivered to the Warehouse Operator after the Warehouse Receipt was issued;
  - (d) the obligation of the Warehouse Operator to hold or deliver the goods 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) of this section are not defeated by the surrender of the goods by the Warehouse Operator.

Rights of purchasers of altered receipts

Rights derived from negotiation

- (3) Where a Warehouse Receipt is negotiable, no person shall have a lien by virtue of any judicial process to goods in the possession of a Warehouse Operator except where:
- (a) a Warehouse Receipt is originally issued upon delivery of the goods by a person who had no power to deposit the goods
  - (b) the receipt is first surrendered to the Warehouse Operator or its negotiation is ordered by court, and the Warehouse Operator shall not be compelled to deliver the goods in accordance with any judicial process until the receipt is surrendered to the Warehouse Operator or made a subject of litigation before the court.
- (4) A person who purchases a Warehouse Receipt for value without notice of the judicial or arbitral process takes the goods 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.
- 250.** (1) A Warehouse Operator shall not deliver the goods 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 goods
- (2) A Warehouse Operator who proceeds to deliver the goods in its custody in violation of subsection (1) of this section above, shall be liable to all persons having proprietary rights in or in the possession of the goods in the exact market value of the goods wrongfully delivered.
- 251.** Except as otherwise provided in this Bill or rules and regulation made pursuant thereto, an issuer of a warehouse receipt shall be liable to the holder of a warehouse receipt for the goods named in the receipt not being in existence, or by the goods delivered not corresponding with the description in the warehouse receipt subject only to changes that may occur in the goods, over time when stored in accordance with the conditions specified in this Bill or by regulations made pursuant to this Bill. Liability for wrongful description of goods
- 252.** Except for unavoidable damages or deterioration associated with the nature and type of the goods and mode of storage, and other exemptions provided under this Bill and rules and regulations made thereunder, a Warehouse Operator is liable in damages for loss of, or injury to the goods caused by the Warehouse Operator's failure to exercise due and reasonable care as circumstances may demand. Liability for loss or injury to goods
- 253.** An issuer of a warehouse receipt, its employee, agent, or servant who issues or aids in the issuance of a receipt knowing that the goods 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: Liability for issuance of receipts for goods not received

- (a). for an individual to a term of imprisonment not exceeding two years or to a fine not less than N2,000,000.00 or to both fine and imprisonment.
- (b). for a corporate body to a fine of N10, 000,000.00.
- 254.** An issuer of a warehouse receipt, its employee, agent or servant who fraudulently issues or aids in the fraudulent issuance of a receipt for goods knowing that the receipt contains a false statement, commits an offence and is liable upon conviction to imprisonment for a term not exceeding three years or to a fine of not less than N1, 000,000.00 or to both fine and imprisonment. Liability for false statement in a warehouse receipt
- 255.** An issuer of a warehouse receipts , its employee, agent, or servant, who knowingly issues or aids in the issuance of a duplicate or additional negotiable receipt for the same goods or any part thereof which is outstanding and uncanceled, without plainly placing on the face of the warehouse receipt the word “Duplicate” commits an offence and liable on conviction to imprisonment for a term not exceeding 3 years or to a fine of not less than N1, 000,000.00 or to both fine and imprisonment. Liability for issuance of unmarked duplicate receipts
- 256.** A person who deposits with a warehouse operator registered under this Bill, goods 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 imprisonment for a term not exceeding three years or to a fine not less than N2,000,000.00 or to both fine and imprisonment. Liability for depositing goods with defective title
- 257.** Any dispute arising from the operation of this part of this Bill shall be resolved in line with the rules and regulations made pursuant to this Bill. Referral of disputes

### C. INTERPRETATION

**258.** In this part:

“*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*” is an institution that is licensed by a Commodities Exchange and is permitted to clear and settle deals resulting from trading on the Exchange. It entitles a member to clear and settle the trades executed on his own account as well as on accounts of clients.

“*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;

“*commingle*” means the storage of commodities by class, under circumstances other than identity preserved;

Interpretation of certain words used in this part

**“commodity”** means any produce, item, goods or article that is the subject of any commodity forward contract, leveraged commodity trading, contract made pursuant to trading in differences or spot commodity trading, and includes an index, a right or an interest in such commodity, and such other index, right or interest of any nature as the Commission may, prescribe to be a commodity; but does not include any produce, item, goods or article that is the subject of a commodity futures contract and any index, right or interest in such produce, item, goods or article;

**“commodity broker”** means a person who, whether as principal or agent, carries on the business of soliciting, or accepting orders, for the purchase or sale of any commodity or in relation to any commodity contract whether or not the business is carried on in conjunction with any other business;

**“commodity contract”** means any contract in relation to commodity as defined under this Bill not being a commodity futures contract or any contract made pursuant to a transaction in leveraged commodity trading;

**“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;

**“commodity futures contract”** means:

- (a) a contract in which 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 pursuant to the terms and conditions set out in the business rules of a futures market or pursuant to the business practices of a futures market; or the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the business rules or practices of the futures market at which the contract is made; or
- (b) such other contract or class of contracts as the Commission may prescribe, and includes a futures option transaction;

**“commodity exchange”** means:

- (a) a market, whether in Nigeria or any other jurisdiction, registered or recognised by the Commission at which commodity contracts are regularly made and/or traded; or

- (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;
- (c) a platform for trading of commodity futures contract and other commodities derivatives.

**“commodity pool operator”** means any person who carries on a business in the nature of a collective investment scheme within the meaning this Bill and who, in connection therewith, accepts or receives from other persons funds, security or property, either directly or through capital contributions, the sale of shares or other forms of security or otherwise for the purpose of trading in commodity contracts, and includes such persons as the Commission may from time to time prescribe;

**“commodity pool operator’s representative”** means a person in the direct employment of, or acting for, or by arrangement with, a commodity pool operator, who performs for that commodity pool operator any of the functions of a commodity pool operator;

**“commodity trading adviser”** means any person who —

- (a) carries on the business of advising others (directly or indirectly, through publications or writings, or by whatever means or media) on the making of commodity contracts, including the advisability of trading in any commodity contract made or to be made on, or subject to the business rules of, a commodity exchange;
- (b) as part of a regular business, issues or promulgates analyses or reports concerning the making of commodity contracts; or
- (c) pursuant to a contract or an arrangement with a customer or other person, undertakes on behalf of that customer or other person (whether on a discretionary authority or otherwise granted by the customer or other person) to make any commodity contract for the purposes of managing the client’s funds, but does not include:
  - (i) a bank; a commodity broker, commodity broker’s representative, commodity pool operator or commodity pool operator’s representative;
  - (ii) a person who carries on the business of printing or publishing a newspaper where in so far as the newspaper is distributed generally to the public it is distributed only to subscribers to, and purchasers of, the newspaper for

value and the advice is given or the analyses or reports are issued or promulgated only through that newspaper; and that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports; and

(iii) such other persons as the Commission may prescribe, if and only if the carrying on of the business by the abovementioned persons is solely incidental to the carrying on of their business;

**“conditioning”** include the process of drying and cleaning of commodities;

**“tribunal”** means the Investment and Securities Tribunal

**“customer”** means a person on whose account a commodity broker carries on trading in commodity contracts;

**“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;

**“delivery”** means voluntary transfer of possession or legal title from one person to another

**“eligible pledgee”** means any financial institution licensed by the Central Bank of Nigeria to amongst other things provide financing against securities including Warehouse Receipts that is admitted to the Electronic Warehouse Receipt system of a Collateral Management Company;

**“warehouse receipt system”** means a centralized electronic system as maintained by a Warehouse Operator/Collateral Management Company or any other entity approved by the Commission for registration of possession and ownership of commodities stored in a registered warehouse and its transfer and matters incidental thereto;

**‘fungible goods’** means goods or commodities whose individual units are capable of mutual substitution;

**‘goods’** as used in this Part means commodities as defined in this Bill;

**‘holder’** in this Part means a person who is in possession of a Warehouse Receipt who has proprietary interest in the goods;

**‘identity preserved’** means the handling of a commodity in such a manner that guarantees the return of the actual quality and quantity of the commodity to the depositor;

**“leveraged commodity trading”** means:

(a) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into or offer to enter into, a contract or an



arrangement on a margin basis (other than a commodity futures contract) whereby a person undertakes as determined by the terms and conditions of the contract or arrangement to:

- (i) make an adjustment between himself and another person according to whether a commodity is worth more or less, at a specified point in time;
  - (ii) pay an amount of money determined or to be determined by reference to the change in value of a commodity over a specified period of time; or
  - (iii) deliver to another person at an agreed future time an agreed amount of commodities at an agreed price;
- (b) the provision by any person referred to in paragraph (a) of any advance, credit facility or loan, directly or indirectly, to facilitate an act of the description referred to in that paragraph; or
- (c) the act of entering into or offering to enter into, or inducing or attempting to induce a person to enter into an arrangement with another person (whether on a discretionary basis or otherwise) or any contract to facilitate an act of the description referred to in paragraph (a) or (b) above;

**“non-clearing member”** is an individual or institution that is part of an exchange, without a clearing license and does not possess the ability to settle or clear transactions but take part in clearing as clients of a Clearing Member on the markets for which it provides clearing services.

**‘person’** means any individual, corporation, two or more persons having a joint or common interest, or other legal or commercial entity;

**“spot commodity broker”** means a person whether as principal or agent who carries on the business of soliciting or accepting orders, for the purchase or sale of any commodity by way of spot commodity trading, whether or not the business is part of, or is carried on in conjunction with, any other business, but does not include a commodity broker;

**“spot commodity pool operator”** means any person who carries on a business in the nature of a collective investment scheme within the meaning of this Bill and who, in connection therewith, accepts or receives from other persons funds, security or property, either directly or through capital contributions, the sale of shares or other forms of security or otherwise for the purpose of spot commodity trading, but does not include a commodity pool operator;

**“spot commodity trading”** means the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity.

*‘warehouse’* mean any building, silo, tank or compressed tank, 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 issue Warehouse receipt in relation to commodities to be traded on a registered Exchange;

*“warehouse operator”* means a person registered under this Bill 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 receipt’* means an electronic receipt of title to specific goods of a certain quality and quantity stored in a registered, and named Warehouse.

## **PART XVII: ISSUANCE OF SECURITIES**

### **A. FEDERAL GOVERNMENT AGENCIES, STATE, LOCAL GOVERNMENTS AND THEIR RESPECTIVE AGENCIES.**

**259.** This part applies to the following:

- (a) Federal Government agencies;
- (b) State Governments and their agencies;
- (c) The Federal Capital Territory and its agencies; and
- (d) Local Governments;
- (e) any company which is wholly owned by the Federal, State, Federal Capital Territory and Local Governments
- (f) any company whose borrowing is guaranteed or sponsored by the Federal, State, Federal Capital Territory and Local Governments.

Bodies to which this part applies.

Comment: Federal Government mentioned in Section 222(a) of the 2007 Act is deleted because the responsibility has been given to the DMO and a new provision introduced as item (f) above.

**260.** (1) Subject to subsections (2), (3) and (4) of this section, a body to which this part of this Bill applies may issue to the public, debt securities in the form of:

- (a) Bonds;
- (b) promissory notes;
- (c) non-interest financial instruments; or
- (d) Such other instruments as may be approved by the Commission from time to time

(2) Debt securities issued in pursuance of paragraph (1) (a) above, may be –

Issue of registered bonds, promissory notes, General Obligation Debt Securities and Revenue/Project Tied Debt Securities (project bonds)

- (a) general obligation debt securities issued on the full faith and credit of the issuing body charged upon and payable out of the consolidated revenue fund or other statutory fund of such body; or
  - (b) project-tied debt securities issued for a specific project(s) 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) its total annual debt service obligations, including the debt service obligation arising from the proposed issuance, shall not at any time exceed 40% of the actual revenue that accrued to its consolidated revenue fund or other statutory fund in the twelve-month period immediately preceding the proposed new issuance; or
  - (b) it complies with such other debt sustainability ratio as may be specified by the Commission or other relevant authority from time to time 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 asset(s) of, and revenues from the project to which Project Tied Debt Securities relate are “ring-fenced”; and
  - (b) the project(s) or asset(s) 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 recognized by the Commission or such other rating as the Commission may from time to time specify.
  - (c) the Project Tied Debt Securities are guaranteed by:
    - (i) a body to which this Part applies, (the provisions as specified in subsection (3) of this section and Section 262 would apply to the guarantor); or
    - (ii) a bank, insurance company or other third party acceptable to the Commission, Provided that such a guarantor must have the minimum investment grade rating and satisfy any other conditions as may be specified by the Commission from time to time.

- (d) it meets such other requirements as may be determined by the Commission from time to time
- (5) Any issue of 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 only of a sum of money authorised by any other law to be raised.
- (6) Securities created or issued under this part of this Bill shall be securities to which the Trustee Investments Act applies.
- (7) The proceeds of securities issued under this part of the Bill shall be utilized solely for the purpose for which the securities were issued.

Comment: Section 223 of the 2007 Act is replaced with the above Section.

- 261.** (1) Subject to the consent of its approving authority a body to which this part of the Bill applies shall appoint any financial institution registered with the Commission as custodians, for the purpose of warehousing proceeds of the bond for the duration of the execution of projects or purpose of issue as stated in the prospectus of such bond
- (2) For the purpose of giving effect to this section, the custodians appointed pursuant to subsection (1) shall have the power to:
- (a) receive and hold monies accruing from the issue of bonds;
  - (b) carry out the duties of a custodian as stipulated in this Bill and any rules and regulations made thereunder;
  - (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.

Appointment of  
Custodians

Comment: The above provisions on appointment of Custodians are new and aimed at ensuring that the proceeds of the issuance of securities under this part of the Bill are utilized for the stated purpose.

- 262.** (1) A body to which this part of the Bill applies shall not **issue securities to the public** except in accordance with the provisions of this Bill and the rules and regulations made thereunder.
- (2) An application to issue securities under this part of this Bill 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, from time to time, and shall include:

Restriction on raising of  
funds from the capital  
market

- (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 consolidated revenue fund account of the issuer be established and that funding required for the sinking fund shall constitute a charge on the consolidated revenue fund of the issuer;
  - (ii) a copy of a rating report by a rating agency registered or recognized by the Commission; and
  - (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.
  - (iv) an irrevocable letter of guarantee issued by the bank or acceptable third party with no less than 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 backed or partly backed by an irrevocable letter of authority as specified in paragraph (a) (iii) of this subsection.
- (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 be established and that funding required for the sinking fund shall constitute a charge on the consolidated revenue fund of the State;
  - (ii) a copy of a rating report by a rating agency registered or recognized 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) in the case of the Federal Capital Territory, an irrevocable letter of authority issued by the relevant authority in the Federal Capital Territory, to the Accountant-General of the Federation, to deduct at source from the statutory allocation due to the issuer such sums sufficient to cover the principal repayment and interest payment obligations to the credit of the sinking fund established in favour of the Trustees;
- (c) in the case of a Federal or State Government agency:

- (i) a copy of the law or instrument establishing the agency 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 Section 260 (3) 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;
- (d) In the case of Project tied debt securities:
- (i) 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 recognized by the Commission;
  - (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 that may be prescribed in subsection (3) of this section, 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:
- (i) reprimand;
  - (ii) publication in the national dailies; and

- (iii) blacklisting or foreclosure from raising further facility in the capitalmarket.
- (7) The trustee shall have the power to take legal action against the defaulting body failing which bondholders, holding at least 10 per cent 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 pursuant to the provisions of this section shall be credited into the sinking fund established under section 281 of this part of this Bill for purpose of redeeming the outstanding obligation.
- (11) A copy of any Irrevocable Letter of Authority issued pursuant to the provisions of this section shall also be lodged with the trustees appointed under section 275 of this part of this Bill.

Comment: Section 224 of the principal Act is amended as highlighted hereunder:

- i. In Section 224 (1), the words “raise sums of money or any part thereof by way of any internal loan directly from the capital market’ is deleted and replaced with “issue securities to the public”
- ii. Section 224 (3) (a) (i) of the principal act is redrafted as highlighted in 231 (3) (a) (i) above.
- iii. In Section 224 (3) (a) (iii) of the principal Act, the words “in the event of default by or failure of the issuer to meet its payment obligations” is deleted in 231 (3) (a) (iii) above.
- iv. A new section 231 (3) (a) (iv) is introduced as highlighted above.
- v. The highlighted part of 231 (3) (b) (i) is added to the provision of Section 224 (3) (b) (i) in the principal Act.
- vi. In Section 224 (3) (b) (iii) of the principal Act, the words “in the event of default by or failure of the local government” is replaced with the phrase “as first line charge” in 231 (3) (b) (iii) above.
- vii. A new section 231 (3) (b) (iv) is introduced as highlighted above.
- viii. Section 224 (3) (c) of the principal Act is redrafted as highlighted in 231 (3) (c) above.
- ix. A new section 231 (3) (d) is introduced as highlighted above.

x. Section 224 (9) of the principal act is deleted and the succeeding provisions renumbered accordingly.

**263.** The principal monies and interest represented or secured by any bond or securities issued under this Bill 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

**264.** (1) The particulars of funds raised pursuant to this Bill shall be published in the Gazette or any other official document by the body raising the funds and shall include the following:

Bodies to publish details of funds in the 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.

(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 further to subsection (1) of this section, the body shall specify the terms and conditions upon which the bond or securities may be redeemed at such earlier date.

**Comment:** In this Section, where “loan” was used in Section 226 of the 2007 Act it is either deleted or replaced with “fund”.

**265.** (1) A body shall keep a register of all information of transactions in securities and other information as required by this Bill.

Register of securities and appointment of registrar

(2) A body shall for the purpose of carrying out its obligations under subsection (1) of this section appoint any registrar 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 among other things, include the following:
  - (a) the names and addresses of the holders for the time being of the securities concerned and the persons deriving title therefrom;
  - (b) the amount of securities held by every holder; and
  - (c) the 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 of this Bill to an independent audit.

**266.** An issuer shall appoint any Issuing House registered by the Commission, for the purpose of undertaking the issuance of securities pursuant to the provisions of this part.

Appointment of issuing house.

Comment: Section 228 of the 2007 Act is redrafted as highlighted above, and Sections 229, 230, and 231 of the 2007 Act are deleted.

**267.** (1) Securities shall be allotted in dematerialized form and shall be electronically registered (if applicable) on the account of the holder of the securities with any recognized depository, clearing or settlement platform.

Bond certificate

- (2) Notwithstanding the provisions of subsection (1), every holder of securities issued shall be entitled to receive from the Registrar a Bond Certificate covering the amount of his holding.

Comment: Section 232 of the 2007 Act is redrafted as highlighted above, and Sections 233, 234, and 235 of the 2007 Act are deleted.

**268.** The register shall be closed for a period of 21 days immediately preceding each date on which the interest falls due and no transfer shall be registered during that period.

Closing of register.

**269.** 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.

Comment: In Sections 237 of the 2007 Act the word “conclusive evidence” is replaced with the words highlighted above. Section 238(2) is deleted.

**270.** (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 thereon in accordance with the provisions of this part of this Bill

Promissory notes.

at the rate and on the dates specified pursuant to section 264 of this Bill or in pursuance of an option to redeem the note reserved in the directives.

- (2) Promissory notes shall be issued in such denominations as the issuer may, with the approval of the approving authority of the body, direct.

Comment: In Sections 238 of the 2007 Act, the words “Minister, Commissioner or Chairman or such other appropriate officer of a body” is replaced with “the issuer” as highlighted above.

**271.** Notwithstanding the provisions of the Bills of Exchange Act to the contrary-

Manner and effect of endorsement.

- (a) no endorsement of a promissory note shall 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) no person shall, 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.

**272.** (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 the survivor or survivors of the deceased person or persons; 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 the survivor or survivors of the deceased person or persons 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 the survivor or survivors under or in respect of any promissory note to which subsection (1) of this section applies.

**273.** (1) Every bond shall be signed by the issuer and shall, when issued, bind the issuer to pay the principal sum and the interest on that sum in accordance with the provisions of this Bill 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 direct.

Comment: Section 241 of the 2007 Act is redrafted for clarity as highlighted above.

**274.** (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.

Comment: Sections 242, 243 and 244 of the principal Act are redrafted and compressed into a single section as highlighted above.

**275.** (1) **The issuer** may appoint a registered trustee company as 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 Bill provided that a trustee appointed under this subsection shall not have any fiduciary relationship with the issuers.

Appointment of trustees.

(2) A draft copy of any trust deed made pursuant to this part of this Bill shall be sent to the Commission for prior approval.

Comment: In Sections 245 of the 2007 Act, the words “Minister, Commissioner or Chairman or such other appropriate officer of a body” is replaced with “the issuer” as highlighted above.

**276.** The trustees appointed under this part of this Bill shall have all the powers conferred upon trustees by the trust deed under which they are appointed, the Trustees Investment Act and any other relevant law for the time being in force.

Powers of trustees.

Comment: Sections 246 of the 2007 Act is amended by deleting paragraphs (a) to (h).

**277.** No trustee shall underwrite an offer unless it has been registered with the Commission as an underwriter.

Trustee as underwriter

**Provided that the said trustee shall not underwrite a transaction for which he is a trustee.**

Comment: Section 247 of the 2007 Act is redrafted as highlighted above.

**278.** The power to appoint new trustees under this part shall be vested in **the issuer**. However, no trustee shall be appointed without a prior approved resolution passed by a majority of bondholders present at a meeting duly called for such purpose.

Power to appoint new trustees.

Comment: In Section 248 of the 2007 Act, the words “Minister, Commissioner or Chairman or such other appropriate officer of a body” is replaced with “the issuer” as highlighted above.

**279.** Unless otherwise directed by a resolution passed by a majority of bond holders at a meeting duly convened for such purpose, the trustees may if they deem it to be in the interest of the bond holders, waive any breach by a body or any authority acting in that behalf of any covenants and provisions of this part, but without prejudice to the rights of the trustees in respect of any subsequent breach thereof.

Waiver by trustees.

Comment: Sections 249 of the Principal Act is redrafted as highlighted above.

**280.** After the date specified in the particulars published pursuant to section 264 of this Bill as the date from which contributions to the sinking fund for debt securities shall commence, and with the approval of the appropriate authority, in each quarter or half year ending 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.

**281.** A separate sinking fund shall be established for each issuance of debt securities under this part of this Bill.

Separate sinking fund.

**282.** (1) All monies appropriated under section 280 of this Bill as contributions to the sinking fund shall be paid to the trustees appointed under section 275 of this Bill and may be invested in such securities as are specified in the Trustee Investments Act.

(2) The trustees may, from time to time, with the approval of the appropriate authority vary any investment made pursuant to subsection (1) of this section or may realize and re-invest any moneys 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 moneys appropriated under section 280 of this Bill as contributions to that sinking fund.

Investment of sinking fund.

**283.** (1) Notwithstanding anything to the contrary contained in this part of this Bill, if at any time the trustees are satisfied that the sinking fund of any debt securities issued under the provisions of this part will be 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.

(2) The contributions to that sinking fund shall be recommenced if the trustees at any time thereafter inform the appropriate authority that they are no

Cessation of contribution to sinking fund.

longer satisfied that the sinking fund without further accumulations of interest will be sufficient for the redemption of the debt securities.

**Comment:** In Section 253 of the 2007 Act the words “Minister, Commissioner or Chairman or such other appropriate officer” is replaced with “the issuer” as highlighted above.

**284.** 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.

**285.** In the event of the sinking fund established by an issuer pursuant to 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 and (or) the project or assets **funded by the proceeds of the debt securities.**

Deficiency in fund to be charged upon revenue.

**Comment:** Sections 256, 257, and 258 of the 2007 Act are deleted.

**286.** **Subject to conditions as the issuer may provide, the Registrar shall consolidate or sub-divide securities and issue to the applicant one or more new certificates as may be required -**

Consolidation and subdivision

(a) on the application of a person claiming to be entitled to any debt securities;  
or

(b) on being satisfied of the genuineness of the claim of such applicant; or

(c) on surrender of the certificate relating to such debt securities or of such securities receipted in the specified manner; or

(d) on payment of the prescribed fee.

**Comment:** Section 259 of the Principal Act is redrafted as highlighted above

**287.** Where an application is made to the Registrar under this part for the issue 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 with or without sureties to indemnify the body concerned against the claims of all persons claiming under the original certificate or under the certificate so exchanged, renewed, consolidated or subdivided, as the case may be.

Indemnity bond

**288.** On payment by or on behalf of a body to the holder of a security of the amount expressed therein on or after the date when it becomes due or on the consolidation or sub-division of a security under this Bill, 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.

**289.** Except as otherwise provided in this part, no action shall 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;
- (c) for which a renewed certificate is issued or consolidated or subdivided under this Bill, after the lapse of six years from the date of the issuance.

*Comment:* the above provision is new and is intended to ensure that legal actions in respect of matter dealt with under this part of this Bill are brought timeously.

**290.** If within six months of the death of a holder of security, the nominal or face value of which does not in aggregate exceed N5,000, for which a will or letters of administration of the estate of the deceased person is not produced to the Registrar, the Registrar may, after due diligence determine the beneficiary and may-

Summary procedure in special cases.

- (a) where the securities relate to a loan due for payment, authorise the registration of the name of such survivor or survivors in substitution for the name of the deceased person in the register of securities and the payment to such survivor or survivors of the amount due in respect of that bond;
- (b) where the securities relate to a loan not due for repayment, authorise the registration of the name of such survivor or survivors in substitution for the name of the deceased.

*Comment:* Section 263 (2) of the 2007 Act is deleted.

**291.** Every certificate in respect of securities issued under this part shall bear in a printed, stamped, engraved form:

Signature to be printed on certificates.

- (a) the crest of the body concerned (if any);
- (b) the signature of the issuer;
- (c) the signature of the Registrar; and
- (d) where applicable, the signature of the appropriate authority in the case of a statutory corporation which is directly the beneficiary of the debt securities to which the bond certificate or securities relates.

- 292.** (1) Except as otherwise provided in this part, no notice of any trust in respect of any securities shall be receivable by the Registrar or a relevant body.
- (2) The Registrar shall not be deemed to have received notice of a trust by reason only of the fact that he has recognized an endorsement on a security by an executor or an administrator as such, nor shall he inquire into the terms of any will by which such executor or administrator may be bound.
- 293.** All documents or instruments made or used under the provisions of this part of this Bill shall be in such form as may be prescribed and shall be exempted from stamp duty payable to the Federal or a State Government.
- 294.** 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, not inconsistent with the provisions of this part and regulations as may be prescribed by the Commission from time to time.
- 295.** (1) No person shall 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 from time to time by the Commission.
- (2) Nothing in this section shall apply to the Auditor-General of the Federation or of a State, the Accountant-General of the Federation or of a State or such other appropriate officer of the Federal or State Government or any public officer acting in his official capacity.
- 296.** (1) 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 the regulations may include:
- (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 thereon may be claimed;
- (c) the issue of duplicate certificates;
- (d) the renewal of certificates;
- (e) the manner of payment of interest to joint holders of securities;
- (f) the circumstances in which alterations may be made in the registration of securities;
- (g) the payment of principal sums or interest and transfer of securities in the case of persons under a legal disability;

Notice of trust not receivable except as provided.

Exemption from stamp duties.

Delegation of power.

Inspection of register and documents, etc.

Power to make rules and regulations under this Part.

- (h) the disposal of unclaimed interest;
  - (i) the fees to be paid in respect of anything to be issued or done under the provisions of this part;
  - (j) matters that must at the minimum be provided for and covered in a trust deed or other like instrument;
  - (k) debt sustainability guidelines and ratios that issuers of securities under this part must comply with;
  - (l) factors to be considered by custodians in disbursing proceeds of securities issued under this part; and
  - (m) all matters required by this part to be prescribed and all matters incidental to or connected with the matters hereinbefore enumerated.
- 297.** 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, etc.
- 298.** 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 Bill applies with regards to the repayment of all principal sums and interest payments due and outstanding under the issue including other terms and conditions arising therefrom. Binding obligation on successive governments or bodies.
- 299.** Nothing in this part shall be construed as derogating from the provisions of any other enactment which restricts the borrowing of money by anybody to which the provisions of this part applies or requires the consent of any authority to the raising of such money by any such body. Application of enactments.
- 300.** (1) It shall be an offence to divert or mismanage the proceeds of any bond issued under this Part. Offences, remedies and penalties
- (2). Where an appropriate officer of a body which has issued debt securities under this part is found guilty of having diverted or mismanaged or played a role in the diversion or mismanagement of any bond proceed:
- (a) (i) the appropriate officer of an issuer shall:
    - (i) retribute to the issuer the total amount diverted or mismanaged; and
    - (ii) pay a penalty amounting to five hundred per cent (500%) of the total amount diverted or mismanaged to the Commission; and
  - (b) shall be liable on conviction to a term of imprisonment not exceeding fifteen years each



- (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 or mismanaged or played a role in the diversion or mismanagement of any bond proceed:
  - (a) the custodian shall:
    - (i) retribute to the issuer the total amount diverted or mismanaged; and
    - (ii) pay a penalty amounting to five hundred per cent (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 shall be liable on conviction to imprisonment for a term not exceeding fifteen years each.
- (5). Without prejudice to the provisions of Section 262 (6) and subsections (2) (3) (4) and (5) of this section, where any person who is under an obligation to comply with, observe or give effect to the provisions of this part, or any rules made pursuant to 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 rules and regulations made thereunder;
  - (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(s) to take such steps as it may direct to remedy or mitigate the effect of the breach; this provision shall apply notwithstanding that the appropriate officer has ceased to hold office
  - (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 N5,000,000 on each defaulting party and N25,000 for every day of continuing default;
    - (ii) require the person(s) 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**

- 301.** (1) No company whether local or foreign, supranational body or other approved entity shall issue debt securities to the public without the prior review and approval of the Commission;
- (2) The Commission may make rules and regulations for the purpose of giving effect to the provisions of subsection (1) of this section from time to time 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 must at the minimum be provided for and covered in a trust deed or other like instrument; and
  - (g) all matters required, prescribed, incidental or connected to this section.
- (3) No entity referred to in subsection (1) may issue debt securities if it is in default of payment of interest or repayment of principal in respect of previous debts issuances for a period of more than six months.
- 302.** A person who diverts or mismanages the proceeds of any debt issuance under this Part commits an offence and shall be liable on conviction to a term of imprisonment not exceeding fifteen years.
- 303.** In lieu of criminal prosecution, any person who diverts or mismanages the proceeds of any debt issuance under this Part shall;
- (i) retribute to the issuer the total amount diverted or mismanaged; and
  - (ii) pay a penalty amounting to five hundred per cent (500%) of the total amount diverted or mismanaged to the Commission.
- 304.** The provisions of sections 303 shall apply notwithstanding that the relevant officer has ceased to hold office.

Issuance of Debt securities subject to prior review and approval

Mismanagement or diversion of proceeds

Administrative sanctions.

Cessation of office

**305.** Without prejudice to the provisions of Section 303, or any rules made pursuant to this part, the Commission may take one or more of the following actions:

The Commission may take action

(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 thereunder;

(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(s) to take such steps as it may direct to remedy or mitigate the effect of the breach; this provision shall apply notwithstanding that the appropriate officer has ceased to hold office

**306.** 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

The Commission may sue for penalty

## C – INTERPRETATION

**307.** In this part -

Interpretation of certain words used in this part

"*appropriate officer*" means the chief executive or any other officer(s) 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 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, as the case may be;

"*bond*" means an instrument of indebtedness issued by a body to which this part applies 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 thereof in the register;

"*chairman*" means the Chairman of a Local Government Council;

"*commissioner*" means the Commissioner in a State responsible for matters relating to finance;

"*executive council*" means the Federal Executive Council or the Executive Council of a State;

"*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 body concerned;

"*issuer*" means the body or bodies referred to under section 295 of this Bill;

"*issuing house*" means the paying agent appointed under the provisions of this part of this Bill;

"*loan*" means internal loan and include 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;

"*minister*" shall have the same meaning as contained in section 350 of this Bill "

"*paying agent*" means the paying agent appointed under the provisions of this part of this Bill;

"*project-tied debt securities*" means debt securities issued to fund specific capital projects and backed by the asset or income of the specific project for which the bond was issued and may also mean a Revenue Bond"

"*promissory note*" means a promissory note issued by a body under the provisions of this part;

"*register*" means the register of securities and of the holders of such securities kept by the Registrar for purposes of this part;

"*registrar*" means a Registrar appointed by a body under this part of this Bill;

"*securities*" includes bonds and promissory notes issued under the provisions of this part;

"*securities holder*" means a person holding securities and whose name is entered as the owner thereof in the register kept or maintained under this part;

"*trustee*" means the trustee appointed under the provisions of this part.

## **PART XVIII: ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF THE INVESTMENTS AND SECURITIES TRIBUNAL**

**308.** (1) There is **hereby** established a body to be known as the Investments and Securities Tribunal (in this Bill referred to as "the Tribunal")

(2) **The Tribunal shall exercise the jurisdiction, powers and authority as conferred on it by this Bill.**

Comment: this was a single provision (section 274) of the 2007 Act but is now broken into two subsections for clarity.

**309.** (1) The Tribunal shall consist of **twelve (12)** persons to be appointed **as members by the President on the recommendation of the Minister** as follows:

Establishment of the Investments and Securities Tribunal.

Composition of the Tribunal

- (a) a Chairman who shall be a legal practitioner with not less than fifteen (15) years post-call experience in capital market matters;
  - (b) five full time members who shall all be legal practitioners with not less than ten (10) years post-call experience in capital market matters
  - (c) six part-time members, two (2) of whom shall be legal practitioners with not less than ten (10) years' post-call experience in capital market matters, and four (4) other persons who are knowledgeable in capital market matters.
- (2) A person appointed as a member of the Tribunal shall not be removed from office except in accordance with the provisions of this Bill.
  - (3) The Chairman shall be the Chief Executive and Accounting Officer and shall be responsible for the overall control, supervision and administration of the Tribunal.
  - (4) No member of the Tribunal shall exercise any administrative function except as otherwise delegated by the Chairman. .

Comment: The number of members has been increased from 10 to 12. Being a specialized court, the IST needs to retain non-lawyers who are seasoned capital market experts, as their expertise is cited as part of the uniqueness of the IST. At the same time, the number of legal practitioners to be appointed into the Tribunal has been increased from the minimum of 4 to 8.

In the 2007 Act, the appointment was done by the Minister, but what is proposed in this Bill is for the appointment to be made by the President on the recommendation of the Minister. This is intended to make the IST more visible and in anticipation of recognition of the IST as a specialized court under the Constitution.

- 310.** (1) The Minister shall recommend to the President eligible candidates for appointment as Chairman and Members of the Tribunal.
- (2) The Minister shall have the power to recommend to the President any disciplinary action against the Chairman or any member(s) 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 Bill.

Functions of the Minister

Comment: this provides for adequate oversight by the Minister over the administration of the Tribunal.

- 311.** 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.

Comment: this provision allows for the Tribunal to continue its operations in the absence of the chairman.

**312.** (1) The Tribunal shall have and exercise jurisdiction throughout the Federation, and for that purpose, the Chairman shall, for administrative purposes, divide the entire 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 Bill, the Tribunal shall be duly constituted if it consists of not less than 3 members of the Tribunal;

Provided that the member presiding over any such panel shall be a legal practitioner.

Comment: the creation of divisions is for ease of operations, each panel being headed by a legal practitioner in line with existing practice.

**313** (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.

**314.** 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; or

(b) is adjudged bankrupt or he makes a compromise with his creditors; or

(c) is convicted of a felony or any offence involving fraud or dishonesty by a court of competent jurisdiction; or

(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.

Comment: Incapacitating ill-health and disqualification or suspension by a professional body abroad to which a member belongs are introduced as disqualifying factors.

**315.** (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 304 of this Bill 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.

**316.** (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) above, the Tribunal may, from time to time, pay such allowances to the Chairman, Members, and the Chief Registrar, as exigencies of duties may require towards the discharge of their functions.

Comment: the introduction of subsection (2) is meant to take care of allowances which are incidental to the proper discharge of the responsibilities of the members of the Tribunal.

**317.** If, for reason other than temporary absence, any vacancy occurs in the office of a member of the Tribunal then the **President shall on the recommendation of the Minister** appoint another person in accordance with the provisions of this Bill to fill the vacancy.

Filling up of vacancies.

**318.** (1) **The Chief Registrar of the Tribunal shall be appointed by the Tribunal.**

Chief Registrar of the Tribunal

(2) (a) **The Chief Registrar of the Tribunal shall be a legal practitioner of not less than ten (10) years' post call experience in capital market matters.**

(b) He shall perform such duties in exercise of the powers and authority of the Tribunal as may, from time to time, be assigned to him by the Tribunal, Rules of the Tribunal, and the Chairman.

(3) The Chief Registrar, or any other officer of the Tribunal so authorised, shall have power to administer oaths and perform such other duties with respect to any proceedings in the Tribunal as may be prescribed by the rules or by any order of the Chairman.

Comment: it is considered more efficient for the Chief Registrar to be appointed by the Tribunal instead of the Minister. It is also considered more professional

to appoint a qualified Legal Practitioner rather than “any fit and proper” person as stated in Section 282 of the 2007 Act.

- 319.** (1) The Tribunal shall employ the services of such staff as it may deem necessary for the efficient performance of its functions pursuant to this Bill.
- (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) All 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.

Other staff of the Tribunal, etc.

Comment: Section 283 (3) of the 2007 Act which provides for the expenses of the Tribunal to be charged and paid from the Consolidated Revenue Fund of the Federation has been deleted. This is because the Consolidated Revenue Fund is a Constitutional Fund which can only be disbursed in line with the provisions of the Constitution. Also the proviso in subsection (2) of the 2007 Act has been deleted because there is no similar institution to the tribunal in the capital market

- 320.** (1) The Tribunal shall have exclusive jurisdiction to adjudicate on disputes arising from investments and securities transactions in Nigeria.
- (2) Subject to the provisions of subsection (2) of Section 302, the Tribunal shall exercise exclusive original jurisdiction, where:
- (i) the complaint is against a direct action of the Commission; or
- (ii) a matter had been referred to the Commission and the Commission failed to act within sixty days.
- (3) Subject to the provisions of subsection (2) of this section, the Tribunal shall exercise appellate jurisdiction on matters:
- a. relating to disputes between
- i. the Commission and any person (individual or corporate) 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;

Jurisdiction of the Tribunal, etc.



- v. public companies and the Commission or the securities exchanges or investors;
- vi. an investor and a securities exchange or financial market infrastructure;
- vii. capital market operators and self-regulatory organisations;
- viii. a capital market operator and the Commission;
- ix. an investor and the Commission;
- x. an issuer of securities and the Commission;
- b. arising from the administration, management and operation of collective investment schemes;
- c. relating to the review, approval and regulation of mergers, takeovers and restructuring of public companies.

- (4) The Tribunal shall also 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 Bill, the Tribunal shall have the power to interpret this Bill, any other enactment, rules or regulation as may be applicable.

Comment: Section 284 of the 2007 Act has been redrafted to make the scope of the jurisdiction granted to the Tribunal clearer. For instance, the original and appellate jurisdictions of the Tribunal has been clearly spelt out.

- 321.** (1) The Tribunal shall establish and maintain a fund, which shall be applied towards the discharge of its functions under this Bill.
- (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
  - (c) Such other monies as may accrue to the Tribunal from the Nigerian capital market.

Funds of the Tribunal.

Comment: the 2007 Act includes “fees collected for services rendered by the Tribunal”, however, this has been removed not because the Tribunal does not charge fees, but such fees are paid directly to the Federal Government through Remita. In its stead, paragraph c above has been introduced.

**322.** 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 gift.

**323.** (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 of the Federation. Account and audit.

(2) The Tribunal shall cause to be prepared, not later than the thirtieth day of September in each year, an estimate of its income and expenditure during the next succeeding year and when prepared, they shall be submitted to the Minister and the National Assembly.

(3) 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 immediately preceding year and shall include in the report, a copy of the audited accounts of the Tribunal for that year and the auditors' report thereon.

Comments: These provisions are introduced to strengthen financial oversight.

**324.** The Tribunal may apply the proceeds of the fund established in sections 321 and 366 of this Bill to- Application of the funds 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 of the Tribunal 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) Implement all or any of the functions of the Tribunal under this Bill or any matter connected with those functions.

Comment: the scope of authorized expenses for the Tribunal has been increased as highlighted above.

**325.** (1) A person aggrieved by any action or decision of the Commission under this Bill, may institute an action in the Tribunal or appeal against such decision within the period stipulated under this Bill; Actions against and Appeals from decisions of the Commission.

(2) No action or appeal shall be commenced at the Tribunal (or in any other court in respect of anything covered under this Bill) unless the aggrieved party has given to the Commission at least 14 days written notice of its intention to commence same. 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 thirty 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 be accompanied by such fees as may be prescribed.

Provided that the Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for the delay.

(4) On receipt of an appeal under subsection (3) of this section the Tribunal may, after giving the parties an opportunity of being heard, make such orders thereon 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 Bill, conduct its proceedings in such manners 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.

**326.** (1) The Tribunal may make rules regulating its procedures.

(2) The Tribunal shall have, for the purposes of discharging its functions under this Bill, 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.

Powers and procedures  
of the Tribunal.

- (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 Bill
- (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.
- 327.** A party may appear in person or authorise one or more legal practitioners to represent it before the Tribunal. Right to legal representation.
- 328.** (1) The Tribunal shall give its judgment in writing and may make or impose sanctions including but not limited to 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.
- Comment: Section 293 (3) of the 2007 Act which requires the judgment of the Tribunal to be registered at the Federal High Court before its enforcement has been deleted. This is why the power to enforce its decisions and judgments and the power to cite for contempt has been added to the powers of the Tribunal.*
- 329.** The Tribunal shall have exclusive jurisdiction on all the matters specified in this Bill. Exclusion of proceedings.
- 330.** Any person dissatisfied with a decision of the Tribunal may appeal against such decision to the Court of Appeal if- Appeal to the Court of Appeal.
- (a) the decision was taken in the exercise of its appellate jurisdiction, on points of law only; or
  - (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.
- 331.** An appeal against the decision of the Court of Appeal at the instance of any party shall lie to the Supreme Court. Further appeals.
- 332.** Any legal practitioner employed by the Tribunal shall be entitled to represent the Tribunal before any court of law in Nigeria. Legal Representation.

**333.** No suit, prosecution or other legal proceedings shall 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 thereunder.

Protection for actions taken in good faith.

### **PART XIX: MISCELLANEOUS**

**334.** 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 Bill as it may deem necessary.

Delegation.

**335.** (1) No suit shall 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.

Legal proceedings, Pre action notice and right to represent Commission before court or Tribunal.

(2) Any legal practitioner employed by the Commission shall be entitled to represent the Commission before any court or the Tribunal.

**336.** No suit, prosecution or other legal proceedings shall 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 Bill or the rules and regulations made thereunder.

Protection of action taken in good faith.

**337.**

**338.** (1). Except as otherwise specifically provided under the provisions of this Bill, any person who violates or contributes in the violation of the provisions of this Bill or of any rule and regulation made thereunder shall be liable to a penalty of not less than **N1,000,000** and a further sum of **N20,000** per day for every day the violation continues;

Exemption of the Commission from the payment of taxes  
Penalty

(2) The Commission may in addition to any penalty that may be prescribed under this Bill, direct any person who has contravened any of the provisions of this Bill and any regulation made thereunder, to compensate any person who may have suffered any direct loss as a result of the contravention.

(3) In appropriate cases, the Commission may also direct the forfeiture to the victim, of any direct benefit or advantage received or receivable by the person in contravention.

(4) Notwithstanding the provisions of subsections (2) and (3), of this section the complainant of a contravention may seek by action, consequential or

punitive damages or any other remedy that may be available under the law.

- (5) In the exercise of its powers to impose a penalty or sanction under this Bill, the Commission shall accord the person in breach a fair hearing.
- (6) Where no specific penalty has been prescribed for any criminal offence under this Bill, a person who commits an offence shall upon conviction be liable to a fine of not less than N1,000,000 or imprisonment for a period of 2 years or to both such fine and imprisonment.

**339.** Except as otherwise specifically provided under the provisions of this Bill -

General Offences

- (1) A person who wilfully obstructs, interferes with or interrupts the Commission in the discharge of its functions or exercise of its powers under this Bill commits an offence and is liable on conviction to a term of imprisonment of not less than two years or to a fine not less than N5,000,000 or to both such fine and imprisonment.
- (2) A person who destroys any record which may be required by the Commission for the discharge of any of its functions under this Bill, with intent to mislead the Commission or to prevent or impede any investigation or inquiry under this Bill, commits an offence and is liable on conviction to a term of imprisonment of not less than three years or to a fine not less than N5,000,000 or to both such fine and imprisonment.
- (3) Any person who 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 term of imprisonment of not less than three years or to a fine of not less than N5,000,000 or to both such fine and imprisonment;
- (4) Any person who fails to comply with any directive of the Commission made in pursuance of its powers, functions or objectives under this Bill shall be liable to a penalty of not less than N5,000,000 in the first instance and N20,000 for every day the disobedience continues.
- (5) Any person who 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 shall be liable on conviction to a term of imprisonment of not less than three years or a fine of not less than N5,000,000 in addition to such other penalty as may be prescribed under this Bill and the rules and regulations made thereunder.

**340.** (1) Subject to the provisions of the Constitution of the Federal Republic of Nigeria relating to the power of prosecution by the Attorney General of the Federation, any legal practitioner in the employment of the Commission

Criminal prosecution

may with the consent of the Attorney General of the Federation, prosecute or defend criminal matters, in the name of and on behalf of the Commission in respect of matters relating to the Nigerian capital market in accordance with the objectives of this Bill.

(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.

**341.** (1) Where an offence under this Bill 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 be guilty of the offence and shall be liable to be proceeded against.

Offences by  
companies and  
market participants.

(2) Notwithstanding the provision of subsection (1), where an offence under this Bill 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 any 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 be guilty of the offence and shall be liable to be proceeded against.

(3) Where the Commission is satisfied that a person (corporate or individual) is engaged or has engaged in any form of market abuse or other violations under this Bill; or by taking or refraining from taking any action, has required or encouraged another person or persons to engage in behaviour which if engaged in by a market participant or company would amount to market abuse or violation under this Bill, it may impose on the person a penalty of such amount or of such nature as it considers appropriate.

(4) Where the Commission is entitled 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 Bill.

342. (1) An employee of a capital market operator, market participant, public company or other issuer of securities shall have the right to disclose any information connected with the activities of his work place which tends to show that-

- (a) a criminal offence has been, is being or is likely to be committed; or
- (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 disclosure tending to show any matter falling within (a) or (b) above has been, is being or is likely to be deliberately concealed.

(2) For the purpose of subsection (1) of this section, 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) A disclosure is made in accordance with subsection (1) of this section 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 the circumstances that it is reasonable for the employee to make the disclosure.

(4) 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 relevant failure, or omission;
- (c) whether the relevant failure is continuing or is likely to occur in the future.

(5) No employer shall subject an employee to any detriment by any act or any deliberate failure to act on the ground that the employee has made a disclosure in accordance with the provisions of this Bill.

(6) Where an employee has been subjected to any detriment in contravention of subsection (5) of this section, he may present a complaint to the Commission.

(7) Upon receipt by the Commission of such complaint, the Commission shall cause an investigation to be carried out and if satisfied that the provision of this section has been contravened, the Commission shall direct the

Obligation of persons to disclose information connected with activities of their employer.



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 (9) of this section within one (1) month of such directive.

(8) 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 (1) month of such directive.

(9) Any employee relieved of his employment without any just cause other than for reason of disclosure made pursuant to the provision of 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.

(10) Any capital market operator, **market participant**, public company or other issuer of securities which contravenes the provisions of this section is liable to a penalty not exceeding N5,000,000 in addition to the payment of compensation to the employee in accordance with subsection (9) of this section.

(11) 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.

(12) Apart from the provisions of the Constitution of the Federal Republic of Nigeria, any provision in any other law or agreement that precludes the application of this section shall be void.

**343.** (1) A capital market operator shall not, without the prior approval in writing of the Commission:

(a) change the name under which it is registered under this Bill 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 thereof;

(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.

Change of name of capital market operators, managers, portfolio or collective investment scheme and change of shareholding or directors.

<p><b>344.</b> (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 a capital market operator or public company, if the director or officer has failed or refused to comply with the provisions of this Bill or is no longer a fit and proper person to hold the office in question.</p> <p>(2) The Commission may suspend or cancel a certificate of registration granted to a capital market operator who violates the provisions of this Bill provided no cancellation shall be made unless the person concerned has been given an opportunity of being heard.</p>	<p>Removal of Appointees and cancellation of registration</p>
<p><b>345.</b> (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 Commission shall hold office on the committee in accordance with the terms of his appointment</p> <p>(2) A decision of a committee of the Commission shall be of no effect until it is confirmed by the Commission.</p>	<p>Committees of the Commission.</p>
<p><b>346.</b> (1) The fixing 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.</p> <p>(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be 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.</p>	<p>Seal of the Commission</p>
<p><b>347.</b> (1) Notwithstanding the provisions of this Bill the relevant provisions of all existing enactments, including the following-</p> <ul style="list-style-type: none"> <li>a. the Trustees Investments Act;</li> <li>b. the Borrowing by Public Bodies Act;</li> <li>c. the Companies and Allied Matters Act;</li> <li>d. the Insurance Act;</li> <li>e. the Central Bank of Nigeria Act;</li> <li>f. the Nigeria Social Insurance Trust Fund Act;</li> <li>g. the Banks and Other Financial Institutions Act;</li> <li>h. the Nigerian Investment Promotion Act;</li> <li>i. the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act;</li> <li>j. Pension Reform Act;</li> <li>k. Nigeria Sovereign Investment Authority Act;</li> <li>l. the Chartered Institute of Stockbrokers Act,</li> <li>m. the Bankruptcy Act</li> <li>n. the Federal Competition and Consumer Protection Act</li> </ul>	<p>Application and relevance of other laws not barred.</p> <p>Cap T22, LFN 2004.</p> <p>Cap B10, LFN 2004.</p> <p>Cap C20, LFN 2004.</p> <p>Cap I17, LFN 2004.</p> <p>Cap C4. LFN 2004.</p> <p>Cap N88 LFN 2004.</p> <p>Cap B3 LFN 2004.</p> <p>Cap N117, LFN 2004.</p> <p>Cap F34, LFN 2004.</p> <p>Cap C9, LFN 2004.</p>

- o. Federal Mortgage Bank of Nigeria Act, and all other laws regulating Mortgage practices in Nigeria
- p. the Money Laundering Prohibitions Act;
- q. the Companies Income Tax Act;
- r. the Stamp Duties Act;
- s. the Capital Gains Tax Act; and
- t. the Value Added Tax Act.
- u. Financial Reporting Council of Nigeria Act

shall be read with such modification as to bring them into conformity with the provisions of this Bill in relation to capital market matters.

- (2) Without prejudice to the generality of subsection (1) of this section, the provisions of this Bill shall be in addition to the application of other laws and not be in derogation of the provisions of any other law or enactment for the time being in force.
- (3) Apart from the Constitution of the Federal Republic of Nigeria, if the provisions of any other law, in relation to capital market matters including the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Bill, the provisions of this Bill shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.

**348.** (1) The Commission shall, from time to time, make rules and regulations for the purpose of giving effect to the provisions of this Bill and shall in particular and without prejudice to the generality of the foregoing provisions, make rules and regulations which may include the underlisted and other incidental matters:

- a) to alter or modify, from time to time, the provisions of the Second Schedule to this Bill;
- b) prescribing the forms for returns and other information required under this Bill;
- c) prescribing the procedure for obtaining any information required under this Bill;
- d) requiring returns to be made within the period specified therein by any entity to which this Bill applies;
- e) prescribing the procedure and criteria for approval of mergers, take-overs, acquisitions and business combinations under this Bill;
- f) prescribing any fees payable under this Bill;
- 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;

Rules and  
Regulations

- i) prescribing that the provisions of this Bill shall not apply or shall apply with such modifications (if any) as may be specified in the regulations to any person or class of persons or any securities or class of securities or to any transaction;
  - j) prescribing the information to be contained in any prospectus or offer documents filed under this Bill;
  - 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 prevent unfair derivatives trading practices
  - n) Prescribing the treatment of unclaimed monies that remain unpaid after twenty-four months or other prescribed period, after their payment date.”
  - o) without prejudice to the provisions of the Companies and Allied Matters Act specifying for the protection of investors:
    - (i) the returns that are required to be filed by all public companies;
    - (ii) the form, manner and procedure for obtaining proxies including the information to be disclosed to investors before proxies are given by any person; and
    - (iii) the manner in which such matters shall be disclosed by the companies.
    - (iv) the matters to be disclosed relating to the issue of securities, transfer of securities and matters incidental thereto;
  - (n) prescribing the requirement for the identification of persons doing business with capital market operators;
  - (o) prescribing as it deems fit, appropriate rules on treatment of dividends, unclaimed securities and certificates, and other matters incidental thereto;
  - (p) providing for anything requiring to be prescribed under this Bill; and
  - (q) for carrying out the principles and objectives of this Bill.
- (2) The Commission shall in the exercise of powers to make rules in this section consult with stakeholders.
- (3) Any instrument issued under subsection (1) of this section 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) of this section the Commission may, from time to time, amend or revoke rules or regulations for purposes of giving effect to the provisions of this Bill and the rules and regulations made thereunder.

- (5) Any regulations or rules made under this Bill may where appropriate prescribe penalties for default.

**349.** (1) The Investments and Securities Act No 29, 2007 is hereby repealed.

Repeals and Savings

- (2) It is hereby declared that without limiting the provisions of the Interpretation Act, the repeal of the Act shall not affect any document made or anything whatsoever done or purported to have been done under the enactment so repealed.

- (3) Every order, requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under the enactment repealed by this Bill shall, if in force at the commencement of this Bill, continue in force and have effect as if made, issued, given or done under the corresponding provisions of this Bill

## **PART XX: INTERPRETATION AND CITATION**

**350.** In this Bill:

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;

"*associated person*" means a subsidiary, affiliate or agent of a member of any regulated entity;

"*auditor*" means a member of a body of accountants, recognized 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;

"*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;

"*capital market operator*" means any persons (individual or corporate), duly registered by the Commission to perform specific functions in the capital market;

"*certificate of registration*" means any certificate or license issued by the Commission as a part of its registration functions under this Bill;

"*clearing and settlement company*" means any corporate body who 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;

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

- (a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;
- (b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme authorised by any other Act;

**"Commission"** means the Securities and Exchange Commission;

**"Commodity"** means —

- (a) any produce, item, goods or article as prescribed in the rules and regulations made pursuant to this Bill,
- (b) any index, right or interest in any produce, item, goods or article; or
- (c) any index, right, interest, tangible property or intangible property of any nature that is, or belongs to a class of indices, rights, interests, tangible properties or intangible properties.

**"company"** has the same meaning as defined in the Companies and Allied Matters Act 1990 or as amended;

**"control"** means control of an entity by a Person(s) 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.
- (e) 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;

(f) 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

(g) 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) to (f).

**“corner a market”** means to acquire enough units of a security or to hold a significant commodity position to be able to manipulate its price.

**"custodian"** means a person who has custody as a Bailee of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register as the beneficial owner of the securities;

**"dealer"** means a person engaged in the business of buying and selling of securities for his own account;

**"dealing member"** means a body corporate that is a member of a recognized securities exchange and is licensed to engage in dealing in securities on that exchange;

**"dealing in securities"** means (whether as principal or agent) making or offering to make with any person, 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, disposing or subscribing for, or underwriting of securities; or

(b) any agreement the purpose of securing a profit to any of the parties from the proceeds of securities or by reference to fluctuations in the price of securities;

**"director"** has the same meaning as is assigned to it in the Companies and Allied Matters Act;

**"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;

**“derivative”** means an option, swap, futures contract, contract for difference or any other contract or instrument whose market price, value, or delivery or payment obligations are derived from, referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation.

"**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;

"**exchange holding company**" means a parent company of any entity approved as a securities exchange, derivatives exchange, or other entity that has been approved as an exchange holding company by the Commission

"**expert**" includes every engineer, legal practitioner, accountant and any other person whose profession gives authority to a statement made 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 thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, 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;

"**financial market infrastructure**" means any entity set up to carry out centralized, clearing, settlement, caching or recording activities, or provide a platform for trading securities, and, includes trade repositories, securities exchanges, central counterparties, central clearing houses, central securities depositories, and securities settlements systems;

"**Government securities**" means securities which are direct obligations of and guaranteed as to principal and interest repayment by the Federal Government of Nigeria, or a State or Local Government;

"**insider**" includes:

- (a) any person who is or is connected with the company in one or more 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) **any person**, involved in a professional or business relationship to the company;
  - (v) any shareholder of the company who owns 5 per cent or more of any class of securities or any person who is or can be deemed to have any relationship with the company or member;
  - (vi) members of Audit Committee of a company;
- (b) any of the person(s) **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"** includes insider trading (buying or selling of securities by an insider) and occurs when a person or group of persons who being in possession of confidential and price sensitive information not generally available to the public, utilizes such information to buy or sell securities for the benefit of himself, itself or any person;

**"investment adviser"** means a person who carries on a business of advising others concerning securities or who as part of a regular business, issues or publishes analysis or makes 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,

(b) a company or society registered under the Insurance Act,

(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) that 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.

**"listing"** means the admission of securities, commodities and/or financial products/instruments of an issuer into the official list of a registered exchange for the purpose of, amongst others, the quotation, trading of, and dealing in, the securities, commodities, and/or financial products/instruments of the issuer on the facility/platform of a registered exchange; such that the issuer shall be subject to the exchange's regulatory oversight.

**"listing rules"** are regulations applicable to any company listed on a Registered Exchange, subject to the oversight and approval of the Commission"

**"market participant"** means any person (individual or corporate) involved in any aspect of capital market transaction or operation under this Bill;

**"member company"** means a company which carries on business of dealing in securities and is recognized as a member company by a securities exchange;

**"minister"** means the minister responsible for matters relating to finance;

**"penalty"** means administrative or civil fines imposed by the Commission and payable to the Commission;

**"portfolio"** is a group of assets including any amount of cash;

**"portfolio investment"** are investments in the form of a group (portfolio) of assets, including transactions in equity securities, such as common stock, and debt securities, such as banknotes, bonds, and debentures;

**"promoter"** means a party to the preparation of the prospectus, or of the portion of it, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

**"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 recognized securities of a company and other issues or scheme;

**"public officer"** means any person working in the public service of the Federation, States and Local Governments as defined in the Constitution of the Federal Republic of Nigeria;

**"quotation"** means the provision of information on the bid and offer prices on securities, commodities, and/or financial products/instruments for the purpose of facilitating the trading of, and dealing in such securities, commodities, and/or financial products/instruments.

**"registrar"** means any person 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 unauthorized issuance,
- (d) registering the transfer of such securities;
- (e) exchanging or converting such securities;
- (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 and/or recognised by the Commission to perform functions, carry out activities or act in any other manner as may be prescribed under this bill or the regulations made thereunder.

**"related company"** in relation to a company, means any body corporate which is that 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;
- (c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or
- (d) **virtual assets**;
- (e) **Investment Contracts**
- (f) commodities futures, contracts, options and other derivatives, and the term securities in this Bill includes those securities in the category of the securities listed in (a) - (d) above which may be transferred by means of any electronic mode approved by the Commission and which may be deposited, kept or stored with any licensed depository or custodian company as provided under this Bill

**"securities dealer"** means a firm who is a member of a securities exchange or any other recognized place for securities transactions, engaged in the business of transacting in securities on his 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, and/or financial products/instruments;
- (b) for matching bids and offers for securities, virtual assets, commodities, and/or financial products/instruments of multiple buyers and sellers; and
- (c) whereby a matched bid and offer for securities, virtual assets, commodities, and/or financial products/instruments constitutes a transaction.

"**securities lending**" means the temporary exchange of securities, generally for cash or other securities of at least an equivalent value, with an obligation to redeliver a like quantity of the same securities on a future date and includes securities loan, repurchase agreement (Repos) and self-buy back agreements;

"**self-regulatory organisation**" means any entity registered or recognized by the Commission as such.

"**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;

"**stockbroker**" means a member of an Institute or professional body of Stockbrokers recognized by an Act, or any other enactment, registered by the Commission as a market operator or a dealing member of a securities exchange, or any other recognized mode of securities transaction and engaged in the business of effecting transactions in securities;

"**surplus monies**" means monies payable to subscribers resulting from over subscription of an offer,

"**tradable instrument**" refers to tradable assets, or negotiable items, such as securities, commodities, warehouse receipts, financing contracts, derivative, or index, or any item that underlies a derivative.

"**trust account**" means:

(a) an account established under a trust deed; or

(b) an account kept by a capital market operator on behalf of his client "

"**trust deed**" means the agreement drawn up between the trustees and the managers or between such persons approved by the Commission;

"**trustee**" means, a person registered by the Commission to so act, and in whom the property for the time being, subject to any trust created in pursuance of an approved scheme or operation, is or may be vested, in accordance with the terms of the trust;

"**unclaimed monies**" mean monies 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 sub-divisions of beneficial interest in the assets of a unit trust scheme or of any other trust scheme created under this Bill.

***“unpublished price sensitive information”*** shall include information which-

- (i) relates to matters of concern (directly or indirectly) to that company, which is not of a general nature of that company; and
- (ii) is not generally known to persons who are accustomed or would be likely to deal in those securities but would materially affect the price of the securities;

**351.** This Bill may be cited as the Investments and Securities Bill, 2024.

Citation.

## SCHEDULES

Section 11 (5)

### FIRST SCHEDULE

#### PROCEEDINGS OF THE BOARD OF THE COMMISSION

- 1 (1) Pursuant to this Bill the Commission may 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 the member to preside.
- (3) The quorum for the meeting of the Board of the Commission shall be five (5), two (2) of whom must 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 invite such person for such period as it deems necessary provided that such person(s) shall not be entitled to vote at any meeting of the Commission and shall not count in forming a quorum.
- (5) The Chairman shall have a casting vote.

#### *Committees*

- 2 (1) The Commission may appoint one or more standing or *ad-hoc* committees to carry out 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 Commission) as may be determined by the Commission; and a person other than a member of the Commission shall hold office on the committee in accordance with the terms of his appointment.
  - (3) A decision of a committee of the Commission shall be of no effect until it is sanctioned by the Commission.
  - (4) The quorum of a meeting of the committee of the Commission shall be as determined by the Board.
  - (5) The Chairman shall have casting vote.
- 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 thereof shall disclose his interest, recuse himself and not vote on any question relating to the contract or arrangement.

## SECOND SCHEDULE

### INVESTMENTS AND INVESTMENT BUSINESS

#### PART I: TYPES OF INVESTMENTS

Investments include-

*Shares, etc.*

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.

*Instruments Entitling to Shares or Securities*

4 Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1, 2 or 3 of this Schedule.

*Certificates Representing Securities*

5 Certificates or other instruments which confer-

(a) proprietary rights in respect of any investment falling within paragraph 1, 2, 3 or 4 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.

*6 Units or shares in Collective Investment Scheme*

Units or shares in a collective investment scheme shall include shares in a closed ended investment company or units in an open-ended investment company or real estate investment company or trust etc.

### *Options*

7 Options to acquire or dispose of-

(a) an investment falling within any other paragraph of this Schedule;

(a) currency of the Federal Republic of Nigeria or of any other currency traded on the securities exchange;

(b) gold or silver; or

(d) an option to acquire or dispose of an investments falling within this paragraph by virtue of subparagraph (a), (b) or (c) of this Schedule.

(e) and such other investments as may be deemed by the Commission as an Option

### *Futures*

8 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.

9 Or any other 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-



- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or
- (b) arrangements with a view to 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, etc., Collective Investment Schemes*

5 Establishing, operating or winding up a collective investment scheme, including acting as trustee or custodian of an authorised 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.

## MANDATORY CONTENTS OF A PROSPECTUS

## PART I: MATTERS TO BE STATED

*The Company's Proprietorship, Management and its Capital Requirement*

## 1 The prospectus shall state-

- (a) the 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) the 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) the 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-

- (a) the 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,

(iv) working capital; and

(b) the amounts to be provided in respect of the matters above 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-

(a) the time of the opening of the subscription lists; and

(b) the 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-(a) the period during which it is exercisable;

(b) the price to be paid for shares or debentures subscribed for under it; (c) the consideration (if any) given or to be given for it or the right to it;

(d) the 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.

(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 vendor(s);

(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) to (4) of this paragraph shall apply with respect to the interpretation of paragraphs 6, 7 and 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-

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the 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) the contract depends for its validity or fulfillment 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, 7 and 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.

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.

*Commissions, Preliminary Expenses, etc.*

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;
  - (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 thereof.
- (2) Subparagraph (1) of this paragraph, 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) of this paragraph 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 (if any).

#### *Interests of Directors and their equivalents*

13. (1) The prospectus shall give full particulars of-

- (a) the 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;
  - (b) where the interest of such a director or his equivalent in being a partner in a firm, the nature and extent of the interest of the firm.
- (2) With the particulars under subparagraph (1) (b) of this paragraph 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
- (4) 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 PROSPECTUS**

Part XI

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 sub-paragraphs (2) and (3) of this paragraph, 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(s) was made in respect of any part of the five (5) years,

ending on a date three months before the issue of the prospectus, the report shall contain a statement of that fact.

(2) If the issuer has no subsidiaries, the report shall-

(a) deal with profits and losses of the issuer in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) deal with the assets and liabilities of the issuer at the last date to which the issuer's accounts were made up.

(3) If the issuer has subsidiaries, the report shall-

(a) deal separately with the issuer's profits or losses, as provided by sub-paragraph

(2) of this paragraph, and in addition deal either-

(i) as a whole with the combined profits or losses of its subsidiaries, so far as it concerns members of the issuer; or

(ii) individually with the profits or losses of each subsidiary so far as 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 (so far as 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) of this paragraph, 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 If, 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-

- (a) the profits or losses of the business in respect of each of the five years immediately preceding the issue of the prospectus; and
- (b) the 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) of this paragraph 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.
- (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-

- (a) the 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) the 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 subparagraph (3) of paragraph 16 of this Schedule in relation to the company and its subsidiaries.

*Provisions Interpreting Preceding Paragraphs and*

*Modifying them in Certain Cases*

- 19 If, 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 Bill 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.

FOURTH SCHEDULE

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 1990.

Delivered for registration by..... shares of ₦ ..... the nominal share capital of the.....shares of ₦ ..... issuer divided into..... shares of ₦ .....

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 issued

.....  
... ..

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/percentage .....

Unless more than one year has elapse 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) paid..... 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 or 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..... X

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill

Cash

.....  
..... X

Share

.....  
..... X

Debenture..... X

Goodwill .....X

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 of .....  
.....

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-

- (a) the 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) the 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 thereof or in connection therewith 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 subparagraph (1) or (2) of paragraph (1) or (2) of paragraph 3 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-

(a) so far as regards 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) so far as regards assets and liabilities, deal 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) of this paragraph; and in addition deal either

(b) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(c) 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

(d) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by subparagraph (1) of this paragraph and, in addition, deal either-

- (e) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or
- (f) 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 II: 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 Bill.
- 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 Bill 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.