APPROVED NEW RULES/AMENDMENTS TO THE SEC RULES AND REGULATIONS

The following are the approved New Rules and Amendments to the SEC Rules and Regulations

New rules:-

1. Code of Conduct for Rating Agencies
2. Code of Conduct for Underwriters
3. Code of Conduct for Trustees.
4. Rule on Trading in unlisted securities
5. Rules on Securitization
6. Rules on National Investor Protection Fund.

Amendments:-

A. Rules on additional disclosure requirements
B. The Rules on mergers;
    a. Rule 421 -New Definitions of terms,
    b. Rule 423 (3) – New penalities,
    c. Rule 425 (2) (a) & (b) – Collapse of merger procedure,
    d. Rule 426 (2) and (4) – Requirement for merger notification,
    e. Rule 428 – Clearance of scheme document.

C. The rules on Takeovers
    1. Rule 445 (5) – Announcement of takeover bid,
    2. Rule 445 (1) (c) – Effective date for takeover bid,
    3. Rule 446 (g) – Expert opinion,
    4. Rule 446 (3) – New rule on Directors'circular,
    5. Rule 448 (8) –New rule on Post bid requirements.

D. Other sundry amendments
    1. Rule 20 (7) – Sponsored individuals and Compliance officers,

2. Rule 305 (6) – Proceeds of Issue,
3. Rule 312 (5) – Effect of undersubscription.

The details of the new rules and amendments are as follows:-

A. CODE OF CONDUCT FOR RATING AGENCIES

1. Quality of the Rating Process:

A Rating Agency shall:

a. prohibit Rating Agent analysts from making proposals or recommendations regarding the design of structured finance products that the Rating Agency rates;
b. adopt reasonable measures so that the information they use is of sufficient quality to support a credible rating.
c. establish and implement a rigorous and formal review function for periodically reviewing the methodologies models and significant changes to the methodologies and models it uses;
d. ensure that the decision-making process for reviewing and potentially up grading or downgrading a current rating of a product is conducted in an objective manner. The review of the rating report shall be published.
e. ensure that Rating Agency employees that make up the Rating Agency rating committees have appropriate knowledge and experience in developing a rating opinion for the relevant type of credit;
f. establish new products review process for reviewing the feasibility of providing a rating for a structure that is materially different from the structures a Rating Agency currently rates;
g. assess whether existing methodologies and models for determining credit ratings of structured products are appropriate when the risk characteristics of the assets underlying a structured product change materially;
h. ensure that adequate resources are allocated to monitoring and updating its ratings.

2. Independence and avoidance of conflicts of interest

A Rating Agency shall:-

a. disclose whether any issuer, originator, issuing house, subscriber or other client and its affiliates make up more than 10% of the Rating Agency's annual revenue;
b. establish polic**y** and procedures for reviewing the past work of analysts that leave the employment of the Rating Agency;
c. conduct formal and periodic reviews of remuneration polic**y** and practices for Rating Agency analysts to ensure that these policy and practices do not compromise the objectivity of the Rating Agency's rating process;
d. define what it considers or not to be an ancillary business.
e. Not rate an issuer that own the rating agency.

3. **Responsibilities to the Investing Public and Issuers**
A Rating Agency shall:-

a. publish verifiable, quantifiable historical information about its rating opinions, and where possible, standardized in such a way to assist investors in drawing performance comparisons between different Rating Agenc**ies.**
b. differentiate ratings of structured finance products from other ratings, preferably through different rating symbols;
c. indicate the attribute and limitations of each credit opinion, and the limits to which it verifies information provided to it by the issuer or originator of a rated security;
d. provide investors and/or subscribers (depending on the Rating Agency business model) with sufficient information about its loss and cash-flow analysis of structured finance products.
e. disclose the principal methodology in use in determining a rating.

4. **Disclosure of the Code of Conduct and Communications with Market Participants**
A Rating Agency shall publish in a prominent position on its home webpage links to the Rating Agency's code of conduct, a description of the methodologies it uses and information about the Rating Agency's historic performance data.

<u>Justification</u>

The new code of conduct for rating agencies is created to deal with matters relating to the quality of the rating process, the independence and avoidance of

conflicts of interest, the responsibilities to the investing public and issuers and disclosure of the code of conduct and communications with market participants.

B. CODE OF CONDUCT FOR UNDERWRITERS

1. The underwriter shall:-

a. ensure that it does not deviate and act contrary to what is contained in the Underwriting Agreement.
b. take adequate steps to ensure that all parties to the Underwriting Agreement are treated fairly.
c. ensure that in the case of rights issue the Underwriting commitment is as agreed upon by the Shareholders resolution.
d. maintain details of all Underwriting and sub-underwriting agreements it embarked on.
e. maintain high standards of integrity, and fairness in all its dealings with its clients and other underwriters in the conduct of its business.
f. ensure that its personnel act in an ethical manner in all its dealings with the issuer.
g. render high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.
h. disclose to the issuer its possible source or potential areas of conflict of duties and interest while providing underwriting services.
i. avoid conflict of interest between itself and the issuer.
j. develop a strategy to maintain a harmonious relationship among other Underwriters.
k. not indulge in any unfair competition, which is likely to be harmful to the interest of other underwriters or likely to place such other underwriters in a disadvantageous position.
l. not make any statement, either oral or written, which would misrepresent: -

    (i) the services that the underwriter is capable of performing for the issuer, or has rendered to other issuers;
    (ii) his underwriting commitment.

m. not divulge to, the press or any person any confidential information about the issuer, which has come to its knowledge and shall not deal in securities of the issuer without first making disclosures to the Board of the Issuer as required under this code.

n. not willfully make untrue statements or suppress any material fact in any document, report, papers or information furnished to the Board and the Commission
o. not connive with the issuer or any other person to undermine the operations of the capital market.
p. not render, directly or indirectly any investment advice about any security in a publicly accessible media, unless a disclosure of its interest in the said security has been made, while rendering such advice.

Provided that where an employee of the underwriter is rendering such advice, he/she shall also disclose the interest of his/her family members and associates in the said security.

q. where an offer is sub–underwritten all parties to the underwriting agreement shall abide by the provisions of the sub-underwriting and the Underwriting agreements.

2. Underwriters Responsibilities to the Commission

The Underwriter shall:-

a. ensure the Commission is promptly informed of any action, legal proceedings/disputes or processes initiated against it in respect of breach or non-compliance by or against it, of any law, rules and regulations, directives of the Commission or of any other regulatory body.
b. comply with all rules and regulations of the Commission relating to underwriting.

Justification

The new code of conduct for underwriters is created to enhance the duties and responsibilities of underwriters.

C. CODE OF CONDUCT FOR TRUSTEES

Trustees shall:-

a. act in line with the trust deed or other constituent documents, adhere to the Trustee Investment Act, the Investment & Securities Act, the SEC Rules & Regulations and any other documents, law, rules and regulations which govern the trustees and the trust fund.

b. ensure and ascertain that the fund manager and custodians comply with the relevant provisions of the trust deed and other constituent documents, the Trustee Investment Act, the Investment & Securities Act, the SEC Rules & Regulations, Indenture Agreement and any other document, laws, rules and regulations which govern the trustees and the trust fund.
c. deal fairly, objectively, and impartially with all parties including fund managers, custodians, fund contributors, unit trust holders, beneficiaries, lenders and investors.
d. exercise the duty of loyalty to the beneficiaries of the trust and shall act with reasonable care, skill and exercise prudent judgment when acting on behalf of the beneficiaries to the trust.
e. maintain independence and objectivity by, among others, avoiding conflicts of interest.
f. make full and fair disclosure of all matters that could reasonably be expected to impair its independence and objectivity or interfere with their duties to parties to the trust, where conflicts cannot be reasonably avoided.
g. protect the interest of the unit holders, fund contributors, lenders, investors and all other beneficiaries to the Trust.
h. review on a regular basis the efficiency and effectiveness of the Trust's success in meeting its goals, including assessing the performance and actions of Trust service providers, such as investment managers, consultants, and actuaries.
i. maintain confidentiality of the Trust, participant and beneficial information.
j. communicate with the Commission, participants, and beneficiaries, in a timely, accurate, and transparent manner.
k. act in good faith and in the best interests of the Trust participants and beneficiaries.
l. avoid self-dealing, and refusing any gift that could reasonably be expected to affect its loyalty.
m. adopt a reasonable measure to enhance use of credible and quality information related to the Trust.
n. ensure that employees have appropriate knowledge and experience in relation to their work.
o. protect the interest of participants to the Trust, and ensure the security of Trust assets are safe guarded.
p. exercise effective oversight over fund managers of collective investment schemes and other related funds.
q. ensure that established standards or criteria for investment decision making, are embedded in the approved trust deed.

r. ensure that the funds for CIS and sinking funds account of different issuers shall not be co-mingled for effective management, transparency and accountability.
s. ensure accurate residual balance is reported in the sinking fund accounts after payments of coupon and principal.
t. have a mechanism for periodic monitoring of projects/investments disclosed in the offer document.
u. ensure submission of accurate and reconcilable statement of affairs (backed by bank statements) of the funds under its management to the Commission when required.
v. avoid possible conflict of interest in the management of the funds to ensure it meets its obligation to the investors.
w. ensure maximum risk diversification in the management of the funds account of issuers, collective Investment schemes and other funds.

Justification

The new code of conduct for trustees is created to guide trustees on matters relating to their responsibilities to their stakeholders and the public at large.

D. RULE ON TRADING IN UNLISTED SECURITIES

a. All Securities of unlisted public companies shall be bought, sold or transferred only by means of a system approved by the Commission and under such terms and conditions as the Commission may prescribe from time to time.

b. No person shall buy, sell or otherwise transfer securities of an unlisted public company except through the platform of a registered securities exchange established for the purpose of facilitating over-the-counter trading of securities.

c. Any unlisted public company, director, company secretary, registrar, broker/dealer or such other persons who facilitate the buying, selling or transfers of the securities of an unlisted public company otherwise than through the platform of a duly registered securities exchange, shall be liable to a penalty of not less than N100, 000 in the first instance and not more than N5, 000 for every day of default.

Justification

To ensure that all securities of unlisted public companies are traded within securities exchanges that are registered with the Commission.

E. RULES ON SECURITIZATION

A. Definition of terms

For purpose of these rules, the term:

(i) "**Affiliate**" refers to an entity which is a party directly or indirectly, through one or more intermediaries, controls or is controlled by the entity.

(ii) "**Asset-backed securities**" (ABS): refers to certificates, whether written or electronic in character, issued by an Special purpose vehicle (SPV), the repayment of which shall be derived from the cash flow of the pool of assets in accordance with the terms and conditions of the transaction.

(iii) "**Assets**" whether used alone or in the term "Asset-backed securities" refers to loans receivable or other similar financial assets with an expected cash payment stream. The term "Asset" shall include, but shall not be limited to, receivables, mortgage loans and other debt instruments and receivables under non-financial contracts (e.g. service contracts)

(iv) "**Asset pool**" means the group of identified assets underlying the ABS.

(v) "**CBN**" refers to the Central Bank of Nigeria.

(vi) "**Commission**" refers to the Securities and Exchange Commission (SEC).

(vii) "**Control**" means an investor controls an investee when it is exposed or has rights to variable returns from the involvement with the investee and has the ability to affect those returns through its power over the investee.

(viii) "**Credit Enhancement**" means one or more initiatives taken by the Originator in a securitization structure to enhance the security, credit or the rating of the securitized instrument, by providing cash collateral, profit retention, subordination, over collateralization, credit insurance and any combination of these

measures and any other form of credit enhancement as may be approved by the Commission.

(ix) "**Eligible Instruments**" means registered securities and such other readily marketable securities which the Commission may, from time to time, approve or authorize.

(x) "**Investible Funds**" means proceeds of collections from the asset pool which are not yet due for distribution to holders of ABS.

(xi) "**Issuer**" refers to an SPV that issues ABS.

(xii) "**Liquidity Support**" means additional support to finance temporary shortfalls in collections or temporary disruptions.

(xiii) "**Obligee**" means a person to whom an obligation is owed under a contract or legal procedure.

(xiv) "**Originator**" means the person or entity that transfers assets from its own balance sheet to the SPV that was the original obligee of the assets, including but not limited to the financial institutions that grant loans in whose books the assets were created.

(xv) "**Parent company**" is a person who has control over another person directly or indirectly through one or more subsidiaries.

(xvi) "**Transaction**" means the securitization structure as approved by the Commission.

(xvii) "**Securitization**" means an issuance of securities backed by a pool of assets.

(xviii) "**Seller(s)"** means the person or entity who sells to the SPV the assets forming the asset pool in accordance with the terms of the transaction who may also be the Originator.

(xix) "**Servicer**" refers to the entity or entities designated by the SPV to collect and record payments received on the pool of assets, to remit such collections to the SPV, and perform such other services as may be required.

(xx) "**Special Purpose Vehicle**" (SPV) means a legal entity formed with the exclusive purpose of acquiring and holding certain assets for the sole benefit of noteholders in the ABS, such that the noteholders have acquired nothing but undivided interests in the asset pool.

(xxi) "**Subsidiary**" means an entity that is controlled by another entity.

B. Registration Requirements

All applications in respect of securitization filed with the Commission shall comply with the general provisions on registration of securities as set out in these rules (where applicable).

In addition, the Applicant shall also file with the Commission all documents in relation to the transaction including, but not limited to the following (where applicable):-

(1) **Sale Agreement:-**

The Sale Agreement shall among other things provide for:-

a. The transfer of assets from the originator to the Special Purpose Vehicle (SPV) for the beneficiaries.
b. Quality of assets transferred and effect of breaches of representations and warranties.
c. Establishment of a mechanism for the substitution and the effect of any breaches thereof (optional).
d. A mechanism for substitution will be covered under the effect of breaches of representations and warranties.

(2) **Servicing/ Administration Agreement:-**

This agreement shall cover:-

a. the servicing /on-going administration of the securitized assets;
b. management of incoming cash flows;
c. provision for actions to be taken to cater for shortfalls in interest payments arising from defaults;

d. procedure to be followed in accelerating noteholders' interest in the pool of assets in the event of a default by the Issuer or performance of the assets below specified minimum.

e. conditions under which the Servicer's/ Administrator's appointment may be terminated and the subsequent appointment of a substitute Servicer/ Administrator; and

f. In the event that the Servicer's/ Administrator's appointment is terminated, proceeding against defaulting debtors in realizing the underlying collateral.

(3) **Liquidity Facility Agreement:-**

This shall set out the terms and conditions on which the Liquidity Facility (if provided) can be drawn.

Sources of liquidity facilities may include servicer advancements, bank facilities and cash reserves.

Provided that the Liquidity Agreement shall not provide protection against or assume risk for defaulted receivables.

Basic Requirements of the Liquidity agreement

The liquidity agreement shall include the following:-

(i) the name of the liquidity provider;

(ii) the nature and amount of the liquidity to be provided;

(iii) terms of repayment;

(iv) such other information as the Commission may require from time to time.

(v) Terms/conditions for granting the liquidity facility provided it shall be based on market rates.

(vi) Terms/conditions for termination/reduction where the quality of the securitized asset has deteriorated.

(vii) Asset cover ratio provided it shall not be below two times the value of the liquidity facility.

(viii) Maturity of the liquidity facility provided it shall not be more than 365 days. However, it could be renewed.

(4) **Credit Enhancement Document:**

This document shall detail the protection provided to noteholders under the Asset Backed Securities (ABS).

(5) **Rating Report:**
No ABS shall be issued to the public unless such ABS has been rated by a duly registered rating agency.

(6) **Trust Deed** – the trust deed shall govern the relationship between the SPV, the trustees and the noteholders.

(7) Any other document that may be required by the Commission.

C. Special Purpose Vehicle (SPV)

(1) A Special Purpose Vehicle shall be incorporated as
   a.) a public limited liability company; or
   b.) A trust created by a written instrument or any other legal entity which the Commission may by regulation permit to be used for a securitization transaction;

(2) When incorporated, the Special Purpose Vehicle shall bear in its name the acronym 'SPV'.

(3) The objects of the SPV as stated in its Memorandum and Articles of Association/ Constitution shall be limited to matters related to the securitization transaction. Such matters shall include but shall not be limited to the acquisition, management and collection of assets, the assumption of risk, the issue of ABS to noteholders and the engagement of a servicer to administer the pool of assets.

(4) The SPV shall only carry out activities related to or ancillary to the securitization transaction regardless of its legal form.

(5) The SPV shall not have any employee and as such shall contract out all services to third parties and shall keep separate records, books of accounts, etc.

(6) No more than 30% of the directors of the SPV shall be nominees of any Sponsor or associated in any manner with the Sponsor or any of the Sponsor's subsidiaries.

(7) No person who has been convicted for any offence bordering on dishonesty by any court of competent jurisdiction, suspended or barred from capital market activities shall be eligible to be a Director of an SPV.

(8) All Changes in the constitution of the SPV, its place of business or change of name shall not be effected without the prior approval of the Commission.

(9) The securitization transaction filed by the SPV and approved by the Commission shall terminate, where:

(a.) within 6 months from the approval of the transaction there has neither been a transfer of assets nor the issuance of asset backed securities for sale to noteholders, unless the timeframe is specifically extended by the Commission on application by the Issuer**.** The Commission may grant an extension of an additional six (6) months on the transaction.

Provided that the extension shall not be granted where the initial period of six (6) months has lapsed before the application is made. In addition, all relevant documents shall be up-dated.

(b.) it has paid in full monies owed to noteholders who invested in the asset backed securities issued by it.

(c.) holders of 2/3 majority of the total number of outstanding asset backed securities resolve to dissolve the SPV, and the approval of the Commission has been obtained, and

(d.) Such other conditions that the Commission may prescribe from time to time.

D. POWERS OF THE SPV

The SPV shall have the following powers:-

1. Accept the sale or transfer of assets from the Originator.
2. Issue Asset Backed Securities to the noteholders.
3. Enter into agreement with any person for the purpose of the securitization.
4. Invest/seek benefits from the transferred assets in accordance with the approval of the Commission.
5. Undertake all activities necessary to carry out the foregoing.

Provided, that the SPV shall not undertake any activity other than that permitted under these rules and its constitutional documents.

E. RESTRICTIONS

The SPV shall:-

1. not have any operational employee.
2. not have more than 30% of its Directors from the originator.
3. contract for all services with third parties, which may include the Originator.
4. maintain its accounts and records separate from any other person or entity.
5. hold assets out as separate and not co-mingle its assets with those of any other entity.

F. Additional Disclosure Requirements

Additional disclosure requirements shall include:-

1. Description of the proposed transaction to be registered which shall include:

(a.) The nature and mechanics of the sale of assets from the Originator/ Seller to the SPV including the terms, conditions and circumstances specified in the transaction wherein the assets may be reverted to the originator / seller.

(b.) Liquidity support arrangements

(c.) Credit enhancements for the proposed transaction may be provided in the following manner:-

(i.) Guarantee issued by an entity other than the Originator / Seller or its subsidiary/ affiliate, its parent company or the Parent company's subsidiary/ affiliate, or the Trustee.

(ii.) Over-collateralization provided by the seller wherein the value of assets conveyed to the SPV exceeds the value of the securities to be issued.

(iii.) Subordinated securities issued by an SPV to any entity including those issued to Originator/ Seller(s) that are lower ranking, or junior to the other obligations and are paid after claims to holders of senior securities are satisfied; and

(iv.) Any other form of credit enhancements as may be approved by the Commission.

(d.) The identities and qualifications of the directors of the Originator/ Seller, Servicer (where applicable) and the description of any compensation the Issuer or any party has received or will receive in the future, in connection with the proposed transaction.

(e.) The identity, qualification and compensation of the Trustee(s) that will administer or hold the assets of the ABS on behalf of the investors.

(f.) The aggregate principal amount of the value of the securities to be issued, the principal amount of each class within the proposed transaction and the denominations thereof in which the ABS will be issued.

(g.) The structure of the proposed transaction including the payment priorities of each class of securities within the ABS, anticipated

payments and yields for each class and the circumstances under which the ABS may be redeemed.

(h.) A full description of the assets contained, or to be contained, in the rating report for the ABS issued by the registered/recognised rating agency(ies), including the criteria used or to be used to rate the ABS and any limitations, qualifications or material risks not addressed in the rating report;

(j.) A full description of how the Issuer/SPV will collect and maintain remittances from the Assets pending distribution to holders of the ABS, including the Issuer's/SPV's investment policy and the identity of the Issuer's/SPV's investment advisor, if any;

(k.) The plan for the management and administration of the Assets, Asset pool and the ABS, including the process for the disposition of the foreclosed properties if any; and

(i.) The manner of disposal of any residual value or asset with the SPV after all obligations to holders of securities shall have been settled.

(ii.) Analysis of yields or investment returns from the proposed transaction.

2. Policy on redemption of securities and or substitution in case of a breach of warranty and liquidation of underlying assets.
3. Description of any relationship or interest of the selling institution's Parent, subsidiaries, affiliates or shareholders, directors or officers, with the SPV.
4. Letter of Authorization /'No Objection' from the Central Bank of Nigeria (CBN) where the Seller/Originator is a bank or NAICOM where the Originator/Sellers is an Insurance Company or such other regulatory approval as may be required.
5. The Originator/Seller of the pool of assets shall submit a certification signed under oath by its authorized officer(s) as to the accuracy of any part of the offering document, contributed to, by such Originator/Seller.
6. The Commission may conduct inspections/examination on the operation of the SPV.

G. Eligible Assets in Securitization Transactions

In a single securitization transaction, the underlying assets shall represent the debt obligation of a homogeneous pool of obligors. Subject to this condition, all on balance sheet standard assets may be securitized, except the following:

1. Revolving credit facilities (credit card receivables)
2. Encumbered Assets
3. Securitization exposures
4. Loans with bullet repayment of both principal and interest.

H. Transfer of Assets

1. The conveyance of the Assets to the SPV shall be absolute and on a **"**without recourse basis**"** and shall be deemed to be a 'true sale' when it results in the following:-

a. The transferred Assets are legally isolated and put beyond the reach of the Originator or Seller and its creditors;
b. The SPV has the right to pledge, mortgage or exchange the transferred Assets;
c. The Seller relinquishes absolute control over the assets transferred;
d. The transfer shall be effected by either a sale, assignment or exchange, in any event on a without recourse basis to the Seller;
e. The SPV shall have the right to profits and disposition with respect to the Assets;
f. The Seller shall not have the right to recover the assets and the transferee shall not have the right to reimbursement of the price or other consideration paid for the Assets; and
g. The SPV shall undertake the risks associated with the Assets. This shall not, however, prevent the transferor from giving normal representations or warranties in respect of the Assets sold.

Provided however that nothing above shall prevent the Seller from:-

i. Providing usual warranties or representations with respect to the quality of assets, and assuming the obligation to repurchase or replace assets which fail to meet quality standard (optional). The purchase price should be market related and confirmed by an independent Auditor.
ii. Providing a guarantee of payment on market terms;
iii. Providing a guarantee of liquidity other than guarantee of payment;
iv. Serving as Servicer on the transaction;

v. Holding a portion of asset-backed securities issued by the Issuer, including ABS subordinated to the rights of other asset-backed securities holders.

2. Where an asset is assigned to an SPV in accordance with these rules, such assignment shall be treated as final, absolute and binding on the Seller, the SPV and all third parties and shall not be:-

   a) Subject to annulment, rescission, revocation**,** termination, variation or abatement by any person and for any reason whatsoever except as provided in the applicable sale and purchase agreement;
   b) Subject to any rights of the creditors of the Originator for any reason whatsoever;
   c) Subject to any rights of a liquidator, receiver, originator or other similar officer of the Originator for any reason whatsoever.

3. The provision of this rule shall not apply:-
   a) where there is fraud on the part of the SPV, or
   b) in respect of an assignment entered into, at a time the SPV knew or ought to have known that an application for the dissolution, and winding up of the Seller by reason of insolvency was pending or that the Seller had taken formal steps under any applicable law, to bring about its dissolution and winding up by reason of insolvency.

I. Withdrawal/Cancellation of Registration

1. Procedure for the withdrawal or cancellation of registration of securities:
   a. Where the Commission finds prima facie evidence that the originator or seller has undertaken the securitization so as to take undue advantage of these rules, the Commission shall immediately issue a directive to put the transaction on hold pending the outcome of investigation. The Commission may subsequently withdraw or cancel the transaction and registration of the securities.
   b. The Commission shall publish a notice of withdrawal/cancellation of the transaction in two national newspapers and/or post it on its website and shall simultaneously furnish the SPV with a copy of the said notice. The SPV and all persons acting on its behalf in the distribution of the said securities shall immediately terminate the offering and return any and all subscription monies received from subscribers within 48 hours after the notice is published.

2. Effects of Withdrawal of Registration of ABS Transaction

The registration of the transaction shall automatically be terminated, cancelled or withdrawn in any of the cases provided for under these rules. The said withdrawal of registration shall have effects as the withdrawal by the Commission of the registration of the securities.

J. Appointment of an Interim Representative

If the Commission finds, upon verified information, that an SPV has no authorized representative to act on its behalf or such persons cannot act for any reason resulting in the interruption of its activities pursuant to the approved transaction, the Commission shall have the power (upon consultation with the Trustees of directors) to appoint any person or persons to act as an interim representative for the Special Purpose Vehicle. The interim representative shall have full and exclusive authority to implement the approved Transaction.

In the event of the appointment of an interim representative, the Commission shall post a notice on its website and publish same in at least two (2) national newspapers.

K. Delivery of Property and Records to the Interim Representative

Where an interim representative has been appointed in accordance with these rules:-

1. The directors of the SPV shall take all appropriate steps to safe guard the property and the holders of the securities of the SPV and shall deliver the property, accounts, documents and seals of the SPV to the interim representative.
2. Any person who possesses property or documents of the SPV shall notify the representative of such possession.

L. Failure to Continue Business

The Commission shall after due notice and hearing, withdraw the registration of the securities of an SPV upon finding that the SPV cannot continue to undertake its business. The procedures to be taken shall be in accordance with the rules relating to withdrawal of registration of the ABS and the SPV.

M. The Servicer

The Servicer shall collect and record payments received on the assets, remit such collections to the SPV, and perform such other duties pursuant to the terms and conditions of the Servicing Agreement. Collections made by the Servicer shall be remitted promptly to the SPV or as may be agreed upon by the parties in the servicing agreement, but in no case shall the remittance period be longer than one (1) month.

N. Reports

1. The Servicer shall prepare periodic reports as may be required by the SPV, the trustee or its interim representative in advance of the interest payment date, including reports of any borrower or obligor who fails to pay its debt or obligation as at when due or any adverse development that may affect the collection of any loan account or receivable comprising the asset pool.
2. It shall make and keep books, records, and accounts in reasonable detail which accurately and fairly reflect the transactions.
3. Copies of such reports shall be forwarded to the Commission on quarterly basis.
4. The Commission may conduct examination on the operations of the servicer.

O. Extent of Authority

1. The Servicer shall have such authority as is expressly stated in the servicing agreement and, unless otherwise specifically provided therein, such authority shall encompass the general powers of administration.
2. The Servicer shall have no authority to waive penalties and charges, agree to any subordination, release or impairment of the security interest or cause to be done, any act or thing that is likely to have an adverse impact on the receivables except with the written authority from the Board of the SPV, trustee or the interim representative, as the case may be.

P. Standard of Conduct

The Servicer shall be independent of the SPV and shall not share common ownership, officers, or directors with the SPV. The originator or any of the Sellers may act as the Servicer as may be approved by the Commission.

Justification

The proposed rules are created to allow for the process of taking an asset or group of assets and through financial engineering, transforming them into a security. The rules provide for the definition of terms, the structure, special types of securitization, and motives for securitization and includes Special Purpose Vehicles.

F. RULES ON NATIONAL INVESTOR PROTECTION FUND.

Preamble

In furtherance of the Commission's mandate to regulate and develop the Nigerian capital market and in particular, its duty to ensure the protection of investors in the Capital Market, the Board of the Securities and Exchange Commission approved the establishment of a nationwide fund known as the **National Investor Protection Fund.** The following rules have also been approved by the Board to provide details of management of the fund, disbursements from the fund and other matters relating thereto.

Part 1 PRELIMINARY

Citation and Commencement

These rules shall be cited as the National Investor Protection Fund Rules 2015 and shall come into effect as approved by the Commission.

Part 2 ESTABLISHMENT OF THE NATIONAL INVESTOR PROTECTION FUND

1. Pursuant to the provisions of Section 13 K of the Investments and Securities Act 2007 there is hereby established the National Investor Protection Fund. (In these Rules, known as **"the Fund")**

2. The Fund shall:-
   a) Be a Company Limited by Guarantee duly incorporated under the Provisions of the Companies and Allied Matters Act, (CAMA) Cap C20, LFN, 2004;

b) Be a Legal person with perpetual succession and may sue and be sued in its name;

c) Be for the purpose of compensating investors whose losses are not covered under the Investor Protection Fund administered by Securities Exchanges and Capital Trade Points;

d) Have a Board which shall consist of the Board of Directors of the Fund and shall be responsible for the Administration of the Fund;

e) Have a Secretariat from which day to day activities of the Fund shall be carried out.

Part 3 APPLICABILITY OF THESE RULES

These rules shall apply only to defalcations by Capital Market Operators not dealing members of Securities Exchanges or Capital Trade Points.

Part 4 THE BOARD

4. The Board shall consist of:-
   - i) The Chairman who shall be the Director General of the Securities and Exchange Commission
   - ii) Such number of Executive Commissioners appointed for the Commission from time to time.
   - iii) three other members who shall be appointed by the Commission.

5. The members mentioned under Section 4 (iii) shall be persons qualified to be appointed as Directors in a public company in Nigeria and must possess not less than ten (10) years cognate experience in the capital market.

6. The tenure of the Director General and other Executive Commissioners as members of the Board of Directors of the Fund shall be tied to their respective tenures as members of the Commission's Executive Management, stipulated under the Investments and Securities Act, 2007(as amended).

7. The tenure of other members of the Board shall be for a term of two (2) years renewable for another term upon approval by the Board of the Commission and no more.

Provided that a member of the Board shall cease to hold office if he-

(*a*) becomes of unsound mind;

(*b*) becomes bankrupt or makes a compromise with creditors;

(*c*) is convicted of a felony or any offence involving dishonesty;

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

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

8. The Board shall be responsible for the general management of the Fund.

Part 5 MANAGEMENT OF THE FUND

9 The Fund shall be managed by the Board of Directors or such Fund Manager as may be appointed by the Board.

10 Every decision taken by the Board in the course of administration of the Fund shall be in accordance with the provisions of these Rules.

11 Where the Fund is managed by a Fund Manager:-

(a) The Fund Manager shall be duly registered by the Commission;

b) The Fund Manager shall invest the resources of the Fund as shall be approved by the Board from time to time;

c) The Proceeds from the investment of the Fund shall either be further invested or deposited in a designated account as shall be determined by the Board;

12 The Board shall act in good faith and take decisions in the interest of the Fund at all times.

Part 6 FUNDING

13 The Commission shall provide the initial take-off grant of the Fund. Other sources of funds shall be:-

i. Grants, subventions and Donations.

ii. Annual contributions to be made by all Capital Market Operators not subject to contribute to the Investors Protection Fund of Securities Exchanges and Capital Trade Points;

Provided that the amount of contributions to be made by the respective class of persons in paragraph (ii) above shall be determined by the Board from time to time.

iii. Assets, properties or cash that shall be realized from liquidated operators after compensation to investors;

v. Proceeds from investment of the resources of the Fund;

vi. Monies borrowed by the Board from the Commission for the purpose of the Fund.

14 Contributions to the Fund and proceeds from the investment of the Fund shall be lodged in a special account opened for this purpose by the Board.

Part 7 ELIGIBILITY TO BENEFIT FROM THE FUND

15 The Board shall determine who is eligible to benefit from the Fund.

16 Beneficiaries of the Fund shall be investors who suffer pecuniary loss arising from:-

(*a*) the insolvency, bankruptcy or negligence of a Capital Market Operator; and

(*b*) defalcation committed by a Capital Market Operator 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 Capital Market Operator in the course of its business for which it was registered by the Commission as a capital market operator.

Provided, subject to the approval of the Board that an investor who participated in the wrongful act of the Capital Market Operator shall not benefit from the Fund.

17 These Rules do not apply to transactions not regulated by the Commission.

18 Persons who bring claims as beneficiaries to the Fund shall be required to tender to a designated officer of the Fund, evidence of claims against the Capital Market Operator. Such claims shall be confirmed by the Fund.

Part 8 PAYMENTS FROM THE FUND

19 There shall from time to time, be paid from the Fund:-

a) Monies required by the Board for the payment of Compensation to claims made in accordance with these rules;

b) Monies required for the arrangement, service or repayment of loans obtained by the Board for the Commission;

c) Any expenses incurred in establishing the Fund or incurred by the Board in its administration and management of the Fund including expenses arising from professional services;

d) All other monies payable out of the Fund in accordance with the Provisions of the Investments and Securities Act, 2007 as approved by the Board.

Part 9 COMPENSATION OF INVESTORS

20 The Board of the Fund shall for the purpose of compensating investors set up a Committee **("The Verification Committee")** which shall be charged

with the responsibilities of reviewing the claims of investors and making recommendations to the Board.

21 Compensation of an investor shall begin with an application from an investor to the Fund.

22 An application shall:-

i. Be brought within twelve (12) months after the investor became aware or ought reasonably to have become aware of the status of the investments;

ii. Be brought in the form to be prescribed by the Board;

iii. Be accompanied by evidence of investments with the Capital Market Operator;

iv. Contain Proof that the Capital Market Operator is in distress and that the Applicant has suffered loss;

v. Contain accurate materials and facts to prove the claims of the Applicant;

23 The Committee shall investigate the claims of an Applicant and after deliberation on such claims shall present to the Board of the Fund, the findings of its investigation.

24 The decision of the Board on the recommendation of the Verification Committee shall be FINAL.

Part 10 AMOUNT OF COMPENSATION

25 The maximum amount payable to an investor who has suffered loss shall be Two Hundred Thousand Naira (N200, 000.00) or its equivalent in form of shares/units.

Provided that where the amount of loss is lesser, the investor shall be paid the calculated amount of loss.

26 The amount of compensation may be reviewed from time to time as approved by the Board of the Fund.

27 The Fund is not under any obligation to pay compensation to an investor.

28 **Any claim prior to the incorporation of the Fund shall not be covered by the Fund**.

Part 11 ADJUSTED PAYMENTS

29 Payments of compensation could be adjusted by the Board depending on the recommendation submitted by the Verification Committee and other facts before it.

30 The following are circumstances that may necessitate a decision for adjusted payments:-

a) Where the Board is satisfied payment in full would not be prudent having regard to other applications for compensation, or to any uncertainty as to the amount of the investor overall net claim, it may determine to pay an appropriate lesser sum in final settlement;

b) The Board may determine to reduce the compensation which would otherwise be payable to an investor in circumstances where it is satisfied that the investor is partly to blame for the loss which he has suffered,

c) The Board may also determine to make a payment on account or to pay a lesser sum where the investor has any prospect of recovery in respect of the claim from any third party or through an application for compensation to any other person or authority.

Part 12 RECOVERIES AND SUBROGATION

31 The Board upon the payment to any investor shall be subrogated to all rights of the investor against the distressed Capital Market Operator to the extent of such payment, and such subrogation shall include the right on the part of the Board to receive the same dividends from the proceeds of the assets of such distressed Capital Market Operator.

32 In the event that an investor recovers or receives any payment in respect of a claim from a Capital Market Operator; such an investor shall refund to the Fund any monies paid to him/her by the Fund as compensation.

33 Any amount received by the Board by virtue of this rule shall be paid into the account of the Fund.

Part 13 REPORTS

Annual

34 The Board shall not later than three (3) months after the end of its financial year submit an Annual Report to the Commission covering each successive financial year.

35 The Annual Report shall inter alia include:-

a) A statement showing the movements in the Fund during the year and a statement of assets and liabilities of the Fund at the end of the year,
b) A statement indicating all payments into the Fund and payments out of the Fund during the year, and
c) An Audit Report of the accounts of the Fund by approved Auditors of the Fund.

Quarterly

36 The Board shall also make quarterly reports to the Commission giving details of the exercise of its powers and functions.

37 The Board shall notify the Commission in writing of significant events occurring in the process of administering the Fund.

Part 14 RECORDS

38 The Board shall keep proper records which show and explain the transactions of the Fund and shall:-

a) Disclose with reasonable accuracy the position of the Fund at any time;

b) Maintain and preserve these records in a readily accessible place for a period of ten (10) years from the end of the year during which the last entry was made on such record.

Justification

The proposed new rules on National Investor Protection Fund is made in order to enforce the Commission's mandate to regulate and develop the Nigerian capital market and ensure the protection of investors in the Capital Market.

AMENDMENTS

A. PROPOSED ADDITIONAL DISCLOSURE REQUIREMENTS

1. Amendment to Rule 279(2) – registration requirements:

Rule 279 (2)(6) of the Rules and Regulations is amended to include an additional paragraph.
The existing rule shall become sub rule (a), while a new sub rule (b) is created stating documents to be filed with the commission after the signing of offer documents or the holding of a CBM.

The **new sub rule (b)** reads as follows:-

"Upon signing the offer documents or holding a Completion Board Meeting the following documents must be filed within three (3) working days with the Commission:-

1. Two (2) signed/executed copies of the full Shelf Prospectus (where applicable);
2. Two (2) signed/ executed copies of the Pricing Supplement prospectus/Right circular/ Placement memorandum;
3. Two (2) signed/executed copies of the prospectus & Abridged prospectus (where applicable).
4. Two (2) copies of Vending Agreement (signed/ sealed and stamped);
5. Two (2) copies each of programme and supplemental Trust Deeds (signed, sealed and stamped);

6. Two (2) copies of underwriting Agreement (signed, sealed and stamped) (where applicable);
7. Two (2) copies of Sub-underwriting Agreement (signed, sealed and stamped) (where applicable);
8. Two (2) copies of Specimen bond/share certificate/E-allotment;
9. Two (2) signed copies of Newspaper advert material (Not applicable for private placement offers);
10. NSE certificate of exemption. (Not applicable for Rights issue programme, Private placement and offer by unquoted Companies);
11. Power of Attorney in case of absentee parties;
12. Two copies of verification Questionnaire (Applicable only when the issuer holds Completion Board Meeting)".

Justification

Item 12 – The verification questionnaire should not be submitted if the issuer opts not to hold Completion Board Meeting (CBM). Where the CBM is not held, it would be of no material effect to still insist that verification questionnaires be included as documents required to be submitted as a post CMB requirement.

Exemption Certificate:

The NSE exemption Certificate is only applicable for public offer as the exemption is ideally meant for the circulation of an abridged prospectus instead of a full blown prospectus.

2. Amendment to Rule 279(3)(5)(ii):

A shelf prospectus shall be effective for a period of two years from the date of its issue and it shall not be renewed.

An amendment is proposed as follows:-

"A shelf prospectus shall be effective for a period of three years from the date of its issue and shall be subject to renewal as may be approved by the Commission. Provided, that the Shelf prospectus of sub-nationals shall be effective for an indefinite period until determined by the Commission".

Justification

Currently the 2 years tenure of a shelf prospectus makes it impossible for issuers to comply with the requirement of full utilization of issue proceeds of previous offers before filing subsequent tranches. Consequently, issuers find it enormously challenging to go beyond the first tranche/series. In other jurisdictions the shelf life of the shelf programme is 3 years.

3. New Rule 279(9) for Incorporation by reference

Rule 279 is amended to include a new item. The **new sub rule (9)** reads as follows:-

"Information may be incorporated in the offer document by reference to one or more previously or simultaneously published documents that have been previously approved or filed with the Commission.

a. Information incorporated by reference shall be the latest available to the Issuer.
b. Information may be incorporated by reference if it is contained in one of the following documents:-

    1) Annual and interim financial information and Documents prepared on the occasion of a specific transaction such as a merger or demerger;
    2) Audit report and financial statements
    3) Earlier approved and published prospectus; or
    4) Regulated information

c. When Information is incorporated by reference, a cross-reference list shall be provided in the offer document to enable investors to identify easily, specific items of information.
d. The document containing the referenced information shall be in English Language
e. The referenced information shall be easily accessible and shall be proved to be updated regularly (where applicable).
f. If a document which may be incorporated by reference contains information which has undergone material changes, the issuer shall file fresh documents;
g. The issuer may incorporate information in the offer document by making reference only to certain parts of a document, provided that it states that

the non-incorporated parts are either not relevant for the investor or covered elsewhere in the offer document.

h. When incorporating by reference, Issuers shall endeavor not to endanger investor protection in terms of providing detailed and accessible information.
i. Incorporation by reference shall only be available to supranational bodies and any other issuer able to demonstrate a track record of updating essential information on a public domain which is easily accessible."

Justification

This would reduce duplication of information with the Commission and encourage issuers to ensure that essential corporate information is readily available to the investing public.

4. Amendment to Rule 287 (1): Statements required in a Prospectus

Rule 287(1) of the Rules and Regulations is amended to include an advisory clause which will be applicable to equity and fixed income. The proposed new rule is as follows:-

Advisory Clause (Equity/Fixed Income)

"Investors are advised to note that liability for false or misleading statements or acts made in connection with the prospectus is provided in sections 85 and 86 of the ISA."

Justification

This is to direct investors on how to seek redress where they feel short changed.

5. Amendment to Rule 288 (1)(d):

Rule 288 (1)(d) of the Rules and Regulations is to be amended to include a summary of the capital structure of the issuer. The amended rule shall read as follows:-

(d) the offer stating the requirements of rules 287 (2) and (3), the times of opening and closing of the offer, the share capital of the company showing the authorized share capital, issued and fully paid share capital and the indebtedness of the company, including details of bridging loans if any, and a summary of the capital structure which shall contain the following information about the issuer:-

A) Cash and cash equivalent.

B) Short term debt.

C) Long term debt.

D) Total shareholder's equity**.**

E) Guarantees - Where a guarantee is provided in respect of an issue of securities, the prospectus must contain relevant information relating to the guarantee which is material to the issue.

F)Notifications: For **a Book-building offer (the Red herring prospectus).-** Where the final offer price and/or the amount of the securities which will be offered cannot be included in the prospectus, the criteria and/or conditions in accordance with which these elements will be determined or, in the case of price, must be disclosed in the prospectus.

Justification

It provides a snapshot of the capital structure of the company.

6. Amendment to Rule 288 (1)(e) Contents of a Prospectus : Under names and addresses of Directors(Equity)

Rule 288(1)(e) is amended by inserting after the word 'directors,' "… Audit Committee members…" to read as follows:-

(e) Names and addresses of the directors, Audit Committee members and the other parties to the issue.

Justification

For ease of reference and in line with the Code of Corporate Governance.

7. Amendment to Rule 288(1)(g) on Historical financial Information - Statutory Auditors (Equity)

Rule 288(1)(g) of the Rules and Regulations is amended to include detailed information about the statutory auditors of the company. The amended rule shall read as follows:-

"(g) five (5) year audited historical financial information comprising of the following:-

i. accounting policies, balance sheets, profit and loss accounts, cash flow and notes to the accounts:
Provided that where the company has existed for less than five (5) years, audited historical financial information for the number of years in existence or an audited statement of affairs for a new company;

ii. Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).
Where the auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material."

Justification

Express disclosure of the information on the auditors of a company would help give the investor some form of confidence as to the accuracy of the financial information contained in the prospectus. The Auditor's report alone may not suffice for this purpose as it does not indicate how long the auditor has been engaged by the Issuer.

8. Amendment to Rule 288(1)(h)

Letter from the reporting accountants reviewing the audited accounts for the period.

Rule 288 (1) (h) should be amended to include the follows:-

'…or Management discussions and Analysis where the offer is restricted to Qualified Institutional Buyers (QIBs)"

Justification

Recent applications by offshore companies, has shown that management discussions is acceptable internationally even though it is not a

requirement locally, therefore there is need to bring our rules in alignment. This provision if accepted will make it less challenging to situate an offer that has management discussions in place of a reporting accountant's report.

9. New Rule 288(1)(p) :

Rule 288(1) of the Rules and Regulations is amended to include a new sub rule (1)(p) to read as follows:-

> "the extract of the AGM and Board Resolution authorizing the issue"

The existing sub rule (1)(p) which is the "catch all" provision of the rule would then become sub rule 1(q).

Justification

It will intimate prospective investors of the resolution that authorized the issue.

10. Amendment to Rule 288(3) on Risk Factors:

"Detailed risk factors shall be provided in an offering document to enable an investor take an informed decision. The details of the risk factors should be extensively stated without stating the mitigants".

Justification

The proposed amendment aims at broadening the scope of the risk factors that an issuer may report on. The existing rule appears restrictive. The proposed amendment is also being made to align our rules with international best practice.

11. New Rule 288(7)(c):

Rule 288(7) of the Rules and Regulations is amended to include a new sub rule (c) to read as follows:-

"A prospectus should contain descriptions of major customers/suppliers (i.e. those individually contributing 10% or more of turnover/purchase for each of the last three financial years and the latest financial period [if any]), level of sales/purchase, and whether or not the company is dependent on the major customers/suppliers for business. (if applicable)"

Justification

To further disclose the company's reliance on a major customer or suppliers.

12. **Amendment to Rule 288(7):Information about the Issuer** (Equity and Fixed Income)

Rule 288(7) of the Rules and Regulations is to be amended to include the following:

1. Heading of sub rule (7) – Delete the word '**company**' and replace with the word '**issuer**'.

Justification

The word Issuer is wider, it includes both equity (i.e. companies) and fixed income issuers (i.e. corporate, states and supra nationals)

2. The existing sub rules (a) and (b) should be (g) and (h). The amendment to the rule shall read as follows:

"(7) Information on the issuer

a. History and Development of the Issuer;
b. The important events in the development of the issuer's business;
c. Investments;
d. A description, (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the registration of the document;
e. A description of the issuer's principal investments that are in progress, including the geographic distribution of these

investments (home and abroad) and the method of financing (internal or external);

f. Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.
g. availability of raw materials, i.e. where the company derives or will derive its raw materials from;(equity)
h. quality control procedures or quality management programme in place. (equity)
i. Provide a description of the issuer's policy on dividend distributions and any restrictions thereon.(equity)
j. Material Contracts (Equity and Fixed Income)

    i. A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the five years immediately preceding publication of the prospectus.

    ii. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration of the document**".**

<u>Justification</u>

Knowledge of the principal investments by the Issuer should be one of the minimum disclosures in the prospectus for a debt and equity offering. For a bond issue by a State, this should be related to the projects already carried out by the State in the past.

This will serve the dual purpose of providing the Commission with information on investments which can be reconciled with report on utilization of offer proceeds, as well as give the uninformed investor an idea as to the investment policies of the Issuer.

The new Rule 288 (7)(i) is justified by the fact that disclosure on the returns that have accrued to existing investors is important in equity issues to help the potential investor reach an informed decision. Unpaid

dividend only becomes a concern where an investor is sure that dividends will be paid.

With regard to Rule 288 (7)(j) the existing rules do not require a summary. Usually, the prospectus only contains a list of such contracts with no summary on the terms of such contracts to educate the investor. This rule would also apply where the contract was entered into by a parent company of a group, on behalf of its subsidiaries and binds the issuer.

13. Amendment to Rule 288(10) on Directors' interest

Rule 288(10) of the Rules and Regulations is amended to include a new sub (10)(c) to read as follows: -

"Details of any family relationship or associations between the substantial shareholders, promoters, directors, key management or key technical personnel."

Justification

This is included as part of the disclosure of information to ensure transparency and expose any possible conflict of interest.

14. New Rule 288(16)(3) on Additional Financial Information (Fixed Income)

Rule 288(16) of the Rules and Regulations is to be amended to include a new sub. New sub rule (3) is as follows:-

(3) Additional financial information

The prospectus must also disclose the following financial information:

a. If a material deficiency is identified in the issuer's ability to meet its cash obligations, disclose the course of action that the issuer has taken or proposes to take to remedy the deficiency. Include a statement whether there has been any default on payments of either interest/profits and/or principal sums for any borrowing/financing throughout the past one financial year and the subsequent financial period; and

b. If the issuer or any other entity in the group is in breach of terms and conditions or covenants associated with credit arrangement or bank loan/financing which can materially affect the issuer's financial position and results or business operations, or the investments by holders of debenture/sukuk of the issuer, provide details of the credit arrangement or bank loan/financing and any actions taken or to be taken by the issuer or other entity in the group to rectify the situation, including status of any restructuring negotiations or agreement, if applicable.

Pro forma financial information is required if the debenture/sukuk offered causes or has a material effect on the issuer/group's assets, liabilities or earnings.

Justification

This disclosure will enhance the disclosure requirement on credit quality. This will also help investors to be aware of the level of indebtedness of the issuer in making investment decisions.

15. New Rule 288 (23):

Rule 288 of the Rules and Regulations is to be amended to include a **new sub rule (23) Expert's Reports** (Equity and Fixed Income) to read as follows:-

(1) A prospectus shall contain excerpts from, or summaries of, opinion expressed and conclusion recorded in any expert's report. The expert's report must be signed and dated within six (6) months of the issue of the prospectus to ensure that the contents are substantially relevant.

(2) Where valuations of property assets have been carried out for inclusion in a prospectus, a summary of the valuation must be included in the prospectus.

(3) Where the offering involves sukuk, the Shariah pronouncement including detailed reasoning/justification from the Shariah adviser must be disclosed in the prospectus.

(4) If the expert becomes aware of significant changes affecting the content of its report, either:

(a) between the date of the report and the issue of the prospectus; or

(b) after the issue of the prospectus and before the issue of the debt instrument,

The expert has an on-going obligation to either cause its report to be updated for the changes and, where applicable cause the issuer to issue a supplementary prospectus or replacement prospectus, or withdraw his consent to the inclusion of the report in the prospectus.

(5) Failure to comply with sub (4) above shall result in the issuer and the expert being liable for any misleading statement or material omission in the outdated report.

(6) The full expert report should be made available for inspection.

Justification

The full expert's report is required as part of the documents available for inspection for regulatory compliance and to ensure that the content of the report is in line with what is captured in the prospectus.

There is provision for this in our prospectus. However, to strengthen the disclosure of information, we suggest that where valuations of property assets have been carried out for inclusion in a prospectus, a summary of the valuation report (this provision may be important in the issuance of a sukuk). The expert's report must be signed and dated within 6 months of the issue of the prospectus.

16. Amendment to Rule 323 (7): (Conditions for approval of offer)

Upon approval by the Commission of the red herring prospectus, it shall be circulated by the book runner to the qualified institutional/ high net worth investors, inviting offer for subscription to the securities.

Rule 323 (7) should be amended to read as follows:-

"Upon approval by the Commission of the red herring prospectus, the book runner shall commence the book-building by circulating the prospectus to the qualified institutional/high net worth investors, within two business days, inviting offer for subscription to the securities.

Justification

To avoid ambiguity on the commencement of book building process by the issuer.

17. Amendment of Rule 323 (14): (Conditions for approval of offer)

The existing rule 323(14) shall be 323(14)(a):-

A new Rule 323 (14)(b) is hereby created as follows:-

The updated offer documents shall be signed and submitted to the Commission within three (3) working days from the date of approval (along with the basis of allotment where the offer is by book building).

Justification

The current rule connotes that there is a day i.e. the day the completion board meeting is held and all signatures are obtained. Holding of the CBM is now optional and given the challenges of obtaining signatures, the period given in the proposed amendment to the rule will help resolve the challenge.

18. Amendment to Rule 323(18) - Conditions for approval of offer:

Rule 323 (18) of the Rules and Regulations is amended to include an additional paragraph as stated below:
A **new Sub Rule 323 (18) (a) & (b)** is created to state as follows:

(a) The executed offer documents and evidence of qualification of high net-worth investors shall be filed with the Commission within two (2) working days of the signing of the offer document or the Completion Board Meeting.

(b) Completion Board Meeting or signing of offer documents must be concluded within three (3) days of approval of offer documents by the Commission".

Justification

In view of the fact that most directors and parties to a transaction may be in different locations; three (3) working days will enable the Issuing House (s)/Issuer enough time to circulate the offer documents to the directors and professional parties to the transaction for their signatures.

19. Amendment to Rule 344:(Placement Memorandum)

Rule 344 of the Rules and Regulations is amended to include a new sub rule (g) to read as follows:-

> "the extract of the AGM and Board Resolution authorizing the issue"

The existing sub rules (g) and (h) would then become sub rule (h) and (i) respectively.

Justification

It will intimate prospective investors of the resolution that authorized the issue. Since the intendment of the rule is that it should also be applicable to private placements, the same amendment proposed in Rule 288(1)(p)is reflected in rule 344.

20. Amendment to Rule 565 – (Requirements for Registration)

Rule 565 of the Rules and Regulations is to be amended by the insertion of a **new sub rule (7)** which reads as follows:-

> **"(7) A statement of investment principle of the trustee shall be contained in the Trust Deed and form part of the extracts in the prospectus."**

Justification

Trustees should be required to disclose how they intend to invest the fund available to them to ensure optimal return on investment to bondholders and also for regulatory compliance.

B. PROPOSED AMENDMENTS TO THE RULES ON MERGERS

1. **Amendment to Rule 421 - Definition of terms**
Some additional definitions were made as follows:-

"Affected Transactions" means any transaction which forms part of a series of transactions or scheme, whatever form it may take, which;

(a) taking into account any securities held before such transaction or scheme, has or will have the effect of:-

(i) vesting control of any company in any person, or two or more persons acting in concert, in whom control did not vest prior to such transaction or scheme; or

(ii) any person, or two or more persons acting in concert, acquiring or becoming the sole holder or holders of, all the securities, of a particular class, of any company (excluding a private company); or

(b) involves the acquisition by any person, or two or more persons acting in concert, of securities of a company in excess of the limits prescribed by the rules;

Justification

The inclusion of the definition "Affected Transactions" was considered necessary to give a definitive conceptual meaning to the word "affected transaction" as used in Section 13 (P) of the ISA.

"Acting in Concert" shall have the same meaning as provided in section 132 (3) of the ISA".

Justification

The inclusion of the definition "Acting in Concert" was considered necessary to align the rules with the ISA.

"Holding Company" shall have the same meaning as provided in Companies and Allied Matters Act 1999 or as maybe amended from time to time"

Justification

The term "Holding Company" was not expressly defined anywhere in the Rules, its inclusion therefore aligns the provisions

of the Rules with Section 118 (3) of the ISA which deals with exempt transactions.

2. Amendment to Rule 423 – Approval by the Commission

A new **Rule 423 (3)** was created to read as follows:-

Any entity which contravenes the provisions of section 118 (1) of the ISA and Rule 423 (1) above shall be penalised as specified in Schedule II of these rules and regulations.

New Penalties under Schedule II in respect of Mergers,acquisitions, External Restructuring and other form of Business Combinations are stated below:

Mergers:

- Merger among companies with combined assets or turnover between N1,000,000,000.00 and N5,000,000,000.00 shall be liable to a penalty of not less than N1,500,000.00 and N5,000.00 for every day of continuing default or nullification of the said transaction from the date of consummation of the transaction.

- Merger among companies with combined assets or turnover of N5,000,000,000.00 and above shall be liable to a penalty of not less than N2,000,000.00 and N5,000.00 for every day of continuing default or nullification of the said transaction from the date of consummation of the transaction .

Acquisitions

- An acquisition in a private/ unlisted public companies with combined assets or turnover of N500,000,000.00 and above shall be liable to a penalty of not less than N1,000,000.00 and N5,000.00 for every day of continuing default or nullification of the said transaction from the date of consummation of the transaction

External Restructuring and other form of Business Combinations

- Any entity which contravenes the provisions of Rule 440 shall be liable to a penalty of not less than N500,000.00 and N5,000.00 for every day of continuing default or nullification of the said transaction from the date of consummation of the transaction.

Justification

Further to the requirement of Section 118 of the ISA which mandates that every merger, acquisition or business combinations shall be subject to the prior review and approval of the Commission, the practice of proceeding without the prior review and approval of the Commission and thereafter bringing an application for a ratification of the transaction has become common place.

Such applications for ratification defeat the Commission's role of initially determining whether such transactions are likely to substantially prevent or lessen competition.

In a bid to discourage the practice, the rule is proposing stiff penalties to serve as a deterrent to companies.

3. Amendment to Rule 425 (Procedures for obtaining approval for mergers)

The opening paragraph under Rule 425 should be amended to exclude:-

"...acquisitions or other forms of external restructuring..."

Rule 425 is amended to read as follows:-

"Companies proposing a merger shall"

Rule 425(1) (a) and (b) is amended to read as follows:-

(a) file with the Commission, a merger notification and a draft Scheme for evaluation.

(b) upon notification of approval in principle, in (a) above file an application in the Federal High Court seeking an Order to convene a court ordered meeting;

(c) Issue notice of court-ordered meeting to members and publish same in two national dailies and a copy filed with the Commission.

(d) comply with post-approval requirements.

Justification

To foster an efficient review of merger applications and to align the rules with the provisions of the ISA.The merger procedure are merged into one i.e merger notification and scheme of arrangement for a merger are submitted together in order to speed up the approval process of a merger.

4. Amendment to Rule 426 (Requirements for Merger notification)

A new Rule 426 (2) and (4) is created to read as follows:-

(2) The report shall be accompanied by a draft scheme document which shall contain the following:-

(i) Separate letters from the chairmen of the merging companies addressed to their respective shareholders;

(ii) Explanatory statement to the shareholders by the joint financial advisers addressing the following—

(*a*) The proposals;
(*b*) Conditions precedent;
(*c*) Reasons for the proposal;
(*d*) The synergies/benefits;
(*e*) Plan for employees;
(*f*) Capital gains tax;
(*g*) Approved status;
(*h*) Meetings and voting rights;
(*i*) Instructions on proxies;
(*j*) Settlement and certificate;
(*k*) Information regarding each of the merging companies;
(*l*) Recommendation;
(*m*) Further information under appendices as follows:

APPENDICES I and II

A. Background information on the merging companies—

– Beneficial ownership;
– Indebtedness;
– Shareholders' resolution;
– extract from Memorandum and Articles;

B. ~~Memorandum on profit forecast —~~

~~– Letters from reporting accountants;~~

~~– Profit forecast for at least two years;~~

~~– Basis and assumptions for the profit forecast.~~

C. Letters from financial advisers.

D. Documents available for inspection.

APPENDIX III

Information on the enlarged company—
A. Pro forma statement of shareholding.
B. Pro forma profit and loss account.
C. Pro forma balance sheet.

APPENDIX IV

STATUTORY AND GENERAL INFORMATION:
A. Responsibility statement.
B. Disclosure of interest by the directors of the merging companies.
C. Material contracts to the Scheme.
D. Claims and litigations against the merging companies.
E. Consents of parties to the Scheme.
F. General information.

APPENDIX V

BASIS OF VALUATION AND ALLOTMENT OF NEW SHARES:
– Background.
– Basis and assumptions.
– Valuation method.
– Allotment of new shares.
– Post scheme shareholdings.

APPENDIX VI

Scheme of arrangement between the merging companies:

A. Preliminary (expressions and meanings);

B. & C. Statement of the authorized share capital of the merging companies and shareholding positions;

D. State the various resolutions for the proposed Scheme;

E. The Scheme, detailing the following:

(1) State proposals of the Scheme;
(2) effects of the Scheme or allotment;
(3) consequences of the Scheme or certificate;
(4) creditors;
(5) employees;
(6) directors;
(7) conditions precedent;
(8) effective date of Scheme;
(9) modification;
(10) date.

APPENDIX VII

Notices of court-ordered meetings to the shareholders of the merging companies:-

(a) The Notice required for the court ordered meeting shall be as specified in the Companies and Allied Matters Act or as prescribed by the Court.

<u>Justification</u>

In order to ensure that notice of the court ordered meeting is adequately disseminated.

(b) evidence of increase in share capital of the acquiring company to accommodate any anticipated increase in paid-up capital following the Share Exchange;

(*c*) prescribed fees—

(i) public companies – value of shares issued by the resultant company, calculated thus—

1st ₦500 million – 0.3 %

next ₦500 million – 0.225 %

any sum thereafter – 0.15%

(ii) Private companies – **Total consideration of the transaction** calculated as in (i) above;

Justification

The amount that has accrued from transactions involving certain companies based on the applicable rule in Rule 428 Appendix VII (ii) was negligible. The department was of the opinion that fees in respect of private companies should be based on total consideration as against the nominal value of the issued and paid-up capital of the resultant company.

(*d*) Scheme document (if necessary) or draft particulars in the case of listing on the second-tier securities market;

(*e*) two copies of the draft financial services agreement;

(*f*) copies of draft proxy forms for each of the merging companies;

(*g*) a certified copy of the court-order directing the holding of the shareholders' meeting;

(*h*) a statement that the certificate of incorporation of one of the merging companies shall be the certificate of the surviving or resultant company (where applicable);

(*i*) proposed amendment to the original Memorandum and Articles of Association of the resultant company (where applicable).

(3) (*a*) The Scheme document shall set out, on top of the front cover page, the following statement to be highlighted in bold letter:

"THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION";

(*b*) immediately after the statement in (*a*) above, the following shall be stated in small letters—

"If you are in doubt as to what action to take, it is recommended that you consult your stockbroker, banker, solicitor, accountant, or any other independent professional adviser";

(*c*) immediately after the statement in (*b*) above the following shall be stated in small letters—

"If you have sold all your shares in (names of the merging companies) please hand over this document and the accompanying proxy forms to the purchaser(s), the stockbroker or bank through whom the shares were sold, for transmission to the purchaser";

(*d*) the Scheme document shall contain, at the bottom of the front cover page, the following statement highlighted in bold letters:

"THE PROPOSALS WHICH ARE THE SUBJECT OF THE SCHEME OF MERGERS (ARRANGEMENT) SET OUT IN THIS DOCUMENT HAVE BEEN CLEARED WITH THE SECURITIES AND EXCHANGE COMMISSION. THE ACTIONS THAT YOU ARE REQUIRED TO TAKE ARE SET OUT ON PAGES (STATE PAGE NUMBERS)".

(4) Any document required to accompany **the scheme document** which has been previously filed with the Commission may be incorporated by proper reference provided that such documents were filed within 6 months of the present application and is found acceptable by the Commission.

(5) Letter of consent given by the parties to the scheme duly notarized by a notary public or a Commissioner for Oath. Where consent is contained by a power of attorney it shall be executed.

Justification

To foster an efficient review of merger applications and to align the rules with the provisions of the ISA, Rule 426 has been amended to cover all requirements for a scheme document in a clearer process and all the Appendixes under Rule 428 (Clearance of scheme document) have been merged here. Amendments were made under Appendix I&II and Appendix VII.

5. Rule 428 (Clearance of Scheme Document)

a. The New Heading to **Rule 428** is amended to read**,** "**Requirements for Formal Approval'**

b. **Rule 428 (1)** is deleted.

~~1. Prior to making an application for court ordered meeting in respect of intermediate and large mergers, the following documents should be filed for the review and clearance of the Commission:~~

~~i. letters of consent given by the parties to the scheme duly notarized by a notary public or a commissioner of oath. Where a consent is contained by a power of attorney it shall be executed.~~

~~ii. Any other document as may be required by the Commission.~~

c. **Rule 428 (2**) is amended as **New Rule 428** to read as follows:

" Upon receipt of favorable response to a merger notification from the Commission, a formal application for approval of a proposed merger, shall be filed with the Commission accompanied by the following:-

(i) **Two copies of executed scheme documents**
(ii) **Two copies of Court-Ordered meeting/resolutions**
(iii) **Two executed copies of Financial Services Agreement**
(iv) **Copies of Scrutineers reports**
(v) **All executed contracts in respect of the merger**

Justification

Rule 428 has been amended to align the rules with the provisions of the ISA. Provisions of rule 428(1) was deleted as the procedure has changed and made clearer under Rule 425 and 426.

C. Proposed Amendments – Takeovers

1. Amendment to Rule 445(Take-over bids) – New sub rule (5)

A new Rule 445 (5) is created to read as follows:-

"In addition to (4) above, an Offeror shall make an announcement on the floor of the exchange of their intention to make a takeover bid to the Offeree Company".

Justification

The requirement for a publication in the newspaper additional announcement should be made on the floor of relevant securities exchanges to prevent the effect of unconfirmed rumors on price movement.

2. Amendment to Rule 445(Take-over bids) – New sub rule (1)(c)

A new 445 (1) (c) is created to read as follows:-

"The takeover bid referred to in Subsection (1) above shall be deemed to be dated as follows:-

i. On the date on which it is dispatched;
ii. On the latest date on which such bid is dispatched, where it is dispatched on more than one day; or
iii. On the date on which it is posted, where dispatched by post".

Justification

To expressly state the effective dates of a bid as provided in Section 132 (2) of the ISA.

3. Amendment to Rule 446(Contents of a bid) – New sub rule (1)(g)

A new Rule 446 (1) (g) is created to read as follows:-

(g) Include a report, opinion or statement by an expert where such expert has consented in writing to the inclusion and a copy of such report, opinion or statement shall be forwarded to the Commission along with the expert's consent in writing by the Offeror Company or its agent.

Justification

To clearly spell out the provisions of Section 141 of the ISA in the form of a rule in order to forestall confusion as to who bears the

onus of forwarding a copy of the expert's opinion (where applicable) to the Commission.

4. Amendment to Rule 446(Contents of a bid) – New sub rule (3) - Directors' Circular

A new sub rule (3) is created on Directors' circular to read as follows:-

(1) The directors of an Offeree company shall upon receipt of a bid dispatched to each of them, send a directors' circular to each shareholder of the Offeree company and to the Commission at least seven days before the date on which the take-over bid is to take effect.

(2) Where the directors do not send a directors' circular as required under sub rule (1) above within ten days of the date of a take-over bid, the directors shall forthwith notify the shareholders of the Offeree company and the Commission that a directors' circular shall be sent to them, and may recommend that no shares be tendered pursuant to the take-over bid until the directors' circular is sent;

(3) The Notice referred to in (2) above shall be signed by two directors and shall acknowledge receipt of a bid detailing the particulars of the Offeror company and a time frame within which a directors' circular shall be forwarded;

(4) The Directors' circular shall state the particulars of the Offeror, the number of shares sought to be acquired, the effect of the bid on the operations of the company and the employees, expert's opinion where applicable, opinion and recommendation of the Offeree's directors.

(5) The directors' circular shall contain (where applicable), the dissenting opinion of a director who disagrees with any statement in the directors' circular together with a statement setting out the reasons for his dissenting opinion or disagreement.

(6) The directors of an Offeree company shall approve a directors' circular which contains the recommendations of a majority of them, and the approval shall be evidenced by the signature of one or more than one director.

(7) A directors' circular shall include particulars of any payment made to an officer or former officer of an offeree company by way of compensation for loss of his office, or of any office in connection with the management of the company's affairs, or of any office in connection

with the management of any subsidiary of the company, or as consideration for or in connection with his retirement from any office.

5. Amendment to Rule 448(Registration of take-over bid) – New sub rule (8) Post Bid Requirements

A new sub rule (8) is created for Post bid requirements to read as follows:-

(1) The number of days within which the Offeror may take up shares deposited pursuant to a bid shall be;
   (i) Ten days after the date of the takeover bid where a takeover bid is for all of the shares of a class in an Offeree company;
   (ii) Twenty-one days after the date of the takeover bid where a takeover bid is for less than all the shares of any class in the Offeree Company.

(2) Shares may be deposited pursuant to the bid no later than thirty-five days from the date of the takeover bid, provided that the Commission may grant an extension of time upon application.

(3) Where the number of shares deposited is greater than the number of shares the Offeror is willing or bound to take up, the shares shall be taken up rateably by the Offeror and shall be pre-approved by the Commission;

(4) Any amendment to a takeover bid after the bid has been registered with the Commission and dispatched shall be pre-approved by the Commission;

(5) The treatment of the shares of any dissenting shareholder should be disclosed to the Commission together with documentary evidence of payment and the order of the court (where applicable);

(6) Where the Offeror is entitled to not less than ninety percent of the shares of an Offeree company due to a takeover bid, notice of this fact must be issued to the holders of the remaining shares and a copy of this notice must be forwarded to the Commission;

(7) An aggrieved shareholder of an Offeree company may lodge a complaint with the Commission.

D. OTHER SUNDRY AMENDMENTS TO THE RULES

1. Amendment to Rule 20(Qualifications of sponsored individuals and Compliance officers).

A new sub rule (7) is proposed to Rule 20 and reads as follows:

Where:

a. A registered sponsored individual is transferring his/her employment/services from a capital market operator to another capital market operator to perform the same function; the sponsored individual need not appear before the Registration Committee Meeting.

b. A sponsored individual is registered for a specific function (e.g. Issuing House function) and intends transferring his/her employment/services to another House registered for a different function (e.g. Broker/Dealer function) then such sponsored individual shall appear before the Registration Committee Meeting to be registered for the new function, notwithstanding his earlier registration with the Commission.

c. Where a registered Sponsored Individual resigns his/her employment to a non-Capital Market Operator for a period of twelve(12) months, he shall apply as a fresh sponsored individual, if he intends to be employed in the Capital Market.

<u>Justification</u>

This is to ensure that sponsored individuals are adequately monitored and the Commission has the opportunity to re assess individuals for technical competency and fitness, especially when a sponsored individual moves to a new entity to perform a new function or has been out of practice for over twelve months.

2. Amendment to Rule 305 (6): (Proceeds of issue)

The existing rule 305 (6) states as follows:-

"The issuer is prohibited from using the proceeds of the issue for purposes other than those stated in the prospectus".

An amendment is proposed by inserting the following statement:-

"… without the prior written approval of the Commission. Provided that such proposed change must be in line with the objective of the Capital Raising Exercise".

The amended Rule 305(6) shall read as follows:-

"The issuer is prohibited from using the proceeds of the issue for purposes other than those stated in the prospectus without the prior written approval of the Commission. Provided that such proposed change must be in line with the objective of the Capital Raising Exercise".

<u>Justification</u>

Where there are changes to the utilization, prior approval of the Commission must be obtained. In addition, the proposed changes must be in line with the objective of the capital raising exercise.

3. Rule 312 (5): (Undersubscription)

The existing rule 312(5) reads as follows:-

Where an equity issue is not fully subscribed, the under-subscribed portion which is not underwritten shall revert to the company as part of its unissued authorized share capital. In the case of a bond issue, the unsubscribed portion shall revert to the company for cancellation.

It is proposed that an amendment be made to Rule **312**(5) as follows:-

a. Where an equity issue is not fully subscribed, the under-subscribed portion which is not underwritten shall revert to the company as part of its unissued authorized share capital. In the case of a bond issue, the unsubscribed portion which is not underwritten shall revert to the Issuer for cancellation. Provided that where it is offered under a shelf registration, the unsubscribed portion shall revert to the shelf.

b. In all cases of an Issue not being fully subscribed, a revised utilization of offer proceeds schedule shall be forwarded to the Commission along with the basis of allotment.

Justification

To prevent undue manipulation of the disclosed utilization schedule. This will ensure proper monitoring of issue proceeds.