

## INVESTMENTS AND SECURITIES BILL, 2021

## ARRANGEMENT OF SECTIONS

*Section:*

## PART I: ESTABLISHMENT, OBJECTIVES, FUNCTIONS, AND POWERS

## SECURITIES AND EXCHANGE COMMISSION

1. Establishment of the Securities and Exchange Commission
2. Head office of the Commission.
3. Objectives, Functions and Powers of the Commission

## PART II: ESTABLISHMENT OF THE BOARD OF THE COMMISSION

## AND ITS MEMBERSHIP

4. Composition of the Board of the Commission
5. Appointment and tenure of office of members of the Board
6. Duties of the Board.
7. Director-General and full time Commissioners to be fully devoted to the Commission
8. Management of the Commission.
9. Disqualification, cessation of appointment and Resignation.
10. Remuneration and allowances of members of the board.
11. Meetings of the board of the Commission.
12. Disclosure by Board Members

## PART III: STAFF OF THE COMMISSION

13. Appointment of the Secretary and other staff of the Commission.
14. Remuneration of the Secretary and other staff of the Commission.
15. Duties of the Secretary
16. Service in the Commission to be pensionable.

## PART IV FINANCIAL PROVISIONS

17. Funds of the Commission
18. Application of funds of the Commission
19. Reserve Account
20. Power to accept gifts
21. Penalties, fees, etc. to be retained and utilized by the Commission

22. Borrowing by the Commission
23. Investments by the Commission
24. Annual estimates, account and audit.
25. Annual Report

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

A - SECURITIES EXCHANGES

26. Registration of a securities exchange
27. Categories of securities exchanges
28. Conditions for registration of securities exchanges
29. Appointment of Chief Executive and principal officers of a securities exchange
30. Responsibilities of a securities exchange
31. Securities exchange to maintain proper books of account
32. Approval of amendments to listing Rules
33. Securities exchange to give notice of disciplinary actions etc.
34. Review of disciplinary actions taken by a securities exchange
35. Power to issue directives to a securities exchange
36. prohibition of trading in particular securities
37. Revocation of certificate of a securities exchange
38. Listing of a securities exchange or an exchange holding company on securities exchange
39. Responsibilities of exchange holding company
40. Disposal and acquisition of assets, etc.

B - FINANCIAL MARKET INFRASTRUCTURES

41. Establishment or operation a financial market infrastructure
42. Registration of financial market infrastructures
43. Withdrawal of approval
44. Financial Market Infrastructure rules

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

45. Modification of general insolvency law rules
46. Proceedings of a financial market infrastructure take precedence over insolvency procedures
47. Disapplication of conflicting orders under General Insolvency Laws
48. Net sum payable on compliance of default proceedings
49. Duty to provide assistance
50. Disapplication of avoidances, fraudulent preference, and priority of payments
51. Protection of certain actions of financial market infrastructure
52. Definition of certain words used in this Part

D - SETTLEMENT FINALITY OF TRANSFER ORDERS

53. Modification of insolvency laws
54. Protection of transfer orders and systems
55. Limitation of protection
56. No retroactive effects of proceedings
57. Definition of certain words used in this Part

E - MATTERS RELATING TO PARTS (C) AND (D)

58. Insolvency laws in other jurisdictions

F - SELF-REGULATORY ORGANISATIONS AND TRADE ASSOCIATIONS

59. Registration or Recognition of a self-regulatory
60. Duties of a registered self-regulatory organization

PART VI: REGISTRATION AND REGULATION OF CAPITAL MARKET

OPERATORS

61. Registration of capital market operators
62. Accounts to be kept by capital market operator
63. Maintenance of separate accounts and payment into certain trust accounts

64. Penalty for withdrawing money from trust account without authority
65. Money in trust account not available for personal use
66. Claims and lien not affected.
67. Right to copies of book entries of transactions and to inspect contract notes
68. Register of securities
69. Particulars of register
70. Production of register
71. Extracts of register

#### PART VII: INSPECTIONS AND INVESTIGATIONS

72. Designation of staff of the Commission for supervision of all regulated entities and securities exchanges
73. Routine examination and report.
74. Special examination.
75. Failing regulated entity
76. Control of failing regulated entity
77. Management of failing regulated entity
78. Control of regulated entity with lost paid up capital
79. Powers of Examiners in relation to regulated entity
80. Power of Examiners in relation to other persons
81. Application to the Federal High Court for winding up

#### PART VIII - MANAGEMENT OF SYSTEMIC RISK

82. Request for Information in respect of systemic risk
83. Power of Commission to issue directive for management of systemic risk
84. Arrangements with other supervisory authorities
85. Definition of certain words used in this Part

#### PART IX - REGULATION OF SECURITIES

##### A - REGISTRATION OF SECURITIES

86. Registration of securities to be issued under the Bill.
87. Electronic and other means of issuing and transferring securities

## B - CORPORATE RESPONSIBILITY OF PUBLIC COMPANIES

88. Filing of annual and periodic reports with the Commission.
89. System of internal control of public companies
90. Auditors of public companies to register with the Commission
91. Duty of auditor to report on internal controls of public companies
92. Penalties for non-compliance with Section 90 and 91

## C - TREATMENT OF UNCLAIMED DIVIDENDS OF PUBLIC COMPANIES

93. Unclaimed dividends of public companies

## D - GENERAL

94. Contravention of this Part by a body corporate

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

95. Control of invitations to the public
96. Invitation to the public to deposit money
97. Meaning of invitation to the public
98. Offers for sale deemed to be made by an issuer
99. Form of application for shares to be issued with prospectus
100. Effective date of a prospectus
101. Contents of a prospectus
102. Exemption from application of provisions relating to prospectus in certain cases
103. Prohibition of issuance, circulation, etc. of certain notices, circulars and advertisements
104. Exemption certificate and effect.
105. Expert's statement on prospectus.
106. Prospectus on invitation to the public to acquire or dispose of securities
107. General and restricted invitations to the public.
108. Registration of prospectus.
109. Contract in prospectus, etc., not to be varied without leave.
110. Document of offer of securities to be deemed a prospectus

111. Interpretation as to prospectus.
112. Form of statement in lieu of prospectus
113. Civil liability for misstatements in prospectus
114. Criminal liability for misstatement in prospectus
115. Allotment of securities.
116. No allotment below minimum subscription.
117. Application monies to be held in trust until allotment
118. Action for rescission
119. Allotment of securities and dealing on securities exchange, etc.
120. Return of surplus monies to subscribers, etc.

#### PART XI - CONDUCT OF SECURITIES BUSINESS

121. Prohibition of certain cash transactions
122. Prohibition of transaction in non-dematerialized securities
123. Legal entity identifier
124. Securities dealer to issue contract notes/transaction confirmation
125. Contents of contract note/transaction confirmation
126. Disclosure of certain interests in securities by securities dealers, etc.
127. Dealing as principal
128. Dealing by employees and associated persons of securities dealers
129. Securities dealers to give priority to client's orders
130. Securities lending and margin requirement

#### PART XII - TRADING IN SECURITIES

131. False trading and market rigging transactions
132. False or misleading statements
133. Fraudulently inducing persons to deal in securities
134. Dissemination of illegal information
135. Prohibition of fraudulent means
136. Prohibition of dealing in securities by insiders
137. Actions not prohibited under section 136
138. Civil and criminal liability under this part and authority to award bounty to informant

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

139. Control of restructuring of public companies
140. Merger by amalgamation and other combination
141. Takeover rules and regulations
142. Compliance with code and rules
143. Authority to proceed with takeover
144. Arrangement of Funds
145. No payment for loss of office
146. Liability for false or misleading statement
147. Action by commission in cases of non-compliance
148. Definition of terms in this part

## PART XIV - COLLECTIVE INVESTMENT SCHEMES

149. Meaning of collective investment scheme
150. Types of collective investment scheme
151. Principles for the administration of the scheme
152. Disclosure of information
153. Duties of managers of a scheme
154. Requirements for administration of a collective investment scheme
155. Prohibition of misleading names and acts
156. Authorization of collective investment schemes
157. Registration of units or securities of a scheme
158. Alteration of trust deed, custodial agreement, or change of name of scheme
159. Revocation of authorization of a scheme
160. Approval of prospectus and other offer documents
161. Liability for material misstatement
162. Redemption of units or securities
163. Prohibition of certain transactions and profits
164. Liabilities of trustees and custodians under a scheme
165. Audit of accounts of a scheme and annual general meeting

166. Fairmarket price
167. Investment of a scheme's fund
168. Investigation and inspection
169. Powers of the commission after investigation
170. Cancellation or suspension of registration of a manager
171. Object to misleading terms in a publication
172. Power of the commission to request audit
173. Irregular or undesirable practices
174. Appointment and termination of appointment of trustee or custodian
175. Qualification and registration of trustee or custodian
176. Suspension or revocation of the registration of a trustee or custodian
177. Duties of trustees or custodians
178. Status of assets
179. Liability of custodian in respect of loss of assets.
180. Appointment and removal of auditor
181. Duty of auditor to disclose irregularity or undesirable practice
182. Power to make regulations on the constitution and management of collective investment scheme
183. Alteration of schemes and change of manager, trustee or custodian
184. Restriction of activities of managers
185. Publication of scheme particulars
186. Power of intervention
187. Issuance of directive or its revocation
188. Investment company
189. Real estate investment
190. Registration of Real Estate Investment Company
191. Foreign Collective investment scheme
192. Appointment of inspectors
193. Treatment of private equity and collective investment schemes
- 194.
195. Prohibited schemes



196. Definition of words used in this part

PART XV - INVESTOR PROTECTION FUND

197. Establishment of an investor protection fund

198. Objectives of an investor protection fund

199. Composition and tenure of board of trustees

200. Removal from the board of trustees

201. Power of the board of trustees

202. Monies accruing to the investor protection fund

203. Fund to be kept in separate bank account

204. Payment out of the investor protection fund

205. Accounts of an investor protection fund

206. Board of trustees may delegate functions

207. Minimum amount in the investor protection fund

208. Protection of the investor protection fund

209. Levy to meet liabilities

210. Power of a securities exchange to make an advance to an investor protection fund

211. Investment of the funds of an investor protection fund

212. Application of the funds of an investor protection fund

213. Claims against an investor protection fund

214. Notice calling for claims against the investor protection fund

215. Power to settle claim

216. Form of order of the tribunal

217. Power to require production of evidence

218. Subrogation

219. Application of insurance money

220. Penalty for contravention

221. Definition of words used in this part

PART XVI - COMMODITY EXCHANGE AND WAREHOUSE RECEIPTS

COMMODITY EXCHANGE

222. Establishment of commodities exchanges

223. Revocation of registration
224. Registration of clearing house
225. Right of action against commodity exchange and clearing house
226. Registration of Commodity broker etc
227. Emergency powers
228. Prohibition of use of certain titles
229. Offences

#### B. WAREHOUSE RECEIPTS

230. Registration of warehouses
231. Revocation and suspension of warehouse registration
232. Insurance of warehouse, commodities etc
233. Inspection of Warehouses by the Commission
234. Registration of Collateral Management Company
235. Issuance of Warehouse Receipt
236. Warehouse Receipt as evidence of proprietary rights
237. Form, Standardization and contents of Warehouse Receipt
238. Trading in warehouse receipts
239. Negotiable Warehouse Receipts
240. Obligation of a Warehouse Operator to deliver
241. Obligation to deliver goods to persons with valid titles or right
242. Warehouse Operator's right to lien
243. Enforcement of lien
244. Loss of right of lien
245. Cancellation of Warehouse Receipt after the delivery of goods
246. Delivery of goods in parts.
247. Altered Warehouse Receipts
248. Rights of purchasers of altered receipts against Warehouse Operator
249. Rights derived from negotiation
250. Liability for wrongful delivery of goods
251. Liability for wrongful description of goods
252. Liability for loss or injury to goods

253. Liability for issuance of receipt for goods not received
254. Liability for false statement in a warehouse receipt
255. Liability for issuance of unmarked duplicate receipts
256. Liability for depositing goods with defective title
257. Referral of disputes

C. INTERPRETATION

258. Interpretation of certain words used in this part.

PART XVII: ISSUANCE OF SECURITIES

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

259. Bodies to which this part applies.
260. Issue of registered bonds, promissory notes, General Obligation Debt Securities and Revenue/Project Tied Debt Securities (project bonds)
261. Appointment of Custodians
262. Restriction on raising of funds from the capital market
263. Loans to be charged upon revenue
264. Bodies to publish details of funds in the Gazette or other official document
265. Register of securities and appointment of registrar
266. Appointment of issuing house.
267. Bond certificate
268. Closing of register.
269. Entries in a Bond Register
270. Promissory notes.
271. Manner and effect of endorsement.
272. Rights of survivorship
273. Bonds
274. Appropriation and payment of interest
275. Appointment of trustees:
276. Powers of trustees

277. Trustee as underwriter
278. Power to appoint new trustees
279. Waiver by trustees
280. Appropriation of revenue for sinking fund.
281. Separate sinking fund.
282. Investment of sinking fund.
283. Cessation of contribution to sinking fund.
284. Expenses to be paid out of sinking fund
285. Deficiency in fund to be charged upon revenue
286. Consolidation and subdivision
287. Indemnity bond
288. Immediate discharge in certain cases.
289. Limitation of legal action
290. Summary procedure in special cases.
291. Signature to be printed on certificates
292. Notice of trust not receivable except as provided.
293. Exemption from stamp duties.
294. Delegation of power.
295. Inspection of register and documents, etc.
296. Power to make rules and regulations under this Part.
297. Requirements of securities exchanges, etc.
298. Binding obligation on successive governments or bodies.
299. Application of enactments.
300. Offences, remedies and penalties

B - ISSUANCE OF DEBT SECURITIES BY BODY CORPORATE AND  
SUPRANATIONAL BODIES

301. Issuance of Debt securities subject to prior review and approval
302. Mismanagement or diversion of proceeds
303. Administrative sanctions.
304. Cessation of office
305. The Commission may take action

306. The Commission may sue for penalty

C - INTERPRETATION

307. Interpretation of certain words used in this part

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

308. Establishment of the Investments and Securities Tribunal.

309. Composition of the Tribunal

310. Functions of the Minister

311. Vacancy in the office of the Tribunal

312. Constitution of the Tribunal

313. Term of office

314. Disqualification of members of the Tribunal

315. Resignation and removal

316. Salaries, allowances and other conditions of service of members of  
the Tribunal

317. Filling up of vacancies

318. Chief Registrar of the Tribunal

319. Other staff of the Tribunal, etc.

320. Jurisdiction of the Tribunal, etc.

321. Funds of the Tribunal

322. Power to accept gift

323. Account and audit

324. Application of the funds of the Tribunal.

325. Actions against and Appeals from decisions of the Commission

326. Powers and procedures of the Tribunal

327. Right to legal representation

328. Judgment of the Tribunal

329. Exclusion of proceedings

330. Appeal to the Court of Appeal

331. Further appeals

332. Legal Representation

333. Protection for actions taken in good faith

PART XIX: MISCELLANEOUS

334. Delegation

335. Legal proceedings, Pre action notice and right to represent  
Commission before court or Tribunal

336. Protection of action taken in good faith

337.

338. Penalty

339. General Offences

340. Criminal prosecution

341. Offences by companies and market participants.

342. Obligation of persons to disclose information connected with  
activities of their employer.

343. Change of name of capital market operators, managers, portfolio or  
collective investment scheme and change of shareholding or  
directors

344. Removal of Appointees and cancellation of registration

345. Committees of the Commission.

346. Seal of the Commission

347. Application and relevance of other laws not barred.

348. Rules and Regulations

349. Repeals and Savings

PART XX: INTERPRETATION AND CITATION

350. Interpretation

351. Citation

# A BILL

## FOR

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

*Sponsored by Ibrahim Babangida*

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows;

1 PART I - ESTABLISHMENT, OBJECTIVES, FUNCTIONS, AND POWERS OF  
 2 THE SECURITIES AND EXCHANGE COMMISSION

3 1.-(1) There is hereby established a body to be known as the  
 4 Securities and Exchange Commission (in this Bill referred to as the  
 5 "Commission").

Establishment  
of the Securities  
and Exchange  
Commission

6 (2) The Commission shall be a body corporate with perpetual  
 7 succession and a common seal and may sue and be sued in its corporate  
 8 name.

9 (3) The Commission shall have the power to acquire, hold or  
 10 dispose of any property, movable or immovable for the purpose of carrying  
 11 out any of its functions under this Bill.

12 (4) Except as otherwise provided in this Bill, the Commission shall  
 13 be independent in the discharge of its functions and objectives under this  
 14 Bill.

1 *Comment*

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

Head office of  
the Commission

5 2. The Commission shall have its head office in a location which is by  
6 law designated as the Capital of the Federal Republic of Nigeria and may  
7 establish zonal offices in any part of Nigeria in accordance with the decision of  
8 the Board of the Commission.

Objectives,  
Functions and  
Powers of the  
Commission

9 3.-(1) The Commission shall be the apex regulatory organisation for  
10 the Nigerian capital market and shall carry out the functions and exercise all the  
11 powers prescribed in this Bill.

12 (2) The Objectives of the Commission shall be to:

13 (a) Act in the public interest having regard to the protection of  
14 investors and the maintenance of fair, efficient and transparent markets;

15 (b) protect the integrity of the securities market against all forms of  
16 market abuse and insider dealing;

17 (c) prevent unauthorised, illegal, unlawful, fraudulent and unfair  
18 trade practices relating to securities and investments;

19 (d) contribute to the reduction of systemic risk and promote financial  
20 stability;

21 (e) ensure the development of the capital market and facilitate capital  
22 formation for economic development;

23 (f) pursue such other objectives as may be related to those stated  
24 above.

25 *Comment*

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

28 (3) The Commission shall:

29 (a) Regulate investments and securities business in Nigeria as defined  
30 in this Bill;



- 1 (b) register and regulate securities exchanges, commodities  
2 exchanges and other market venues;
- 3 (c) register securities of public companies;
- 4 (d) register and regulate all securities offered to the public as  
5 defined in this Bill;
- 6 (e) render assistance as may be deemed necessary to promoters and  
7 investors wishing to establish securities exchanges;
- 8 (f) register, regulate and supervise corporate and individual capital  
9 market operators as defined in this Bill;
- 10 (g) register and regulate the workings of collective investment  
11 schemes and such other schemes as may be approved by the Commission  
12 from time to time;
- 13 (h) register and regulate securities depository companies, clearing  
14 and settlement companies, custodians of assets and securities, credit rating  
15 agencies and such other agencies and intermediaries;
- 16 (i) register derivative products and regulate the derivatives market;
- 17 (j) regulate the operations of the National Savings Scheme or any  
18 other similar scheme as may be established.
- 19 (k) register and regulate self-regulatory organisations, and capital  
20 market trade associations to which it may delegate its powers;
- 21 (l) register and regulate collateral management companies and  
22 warehouses which issue Warehouse receipt in relation to commodities to be  
23 traded on a registered Exchange.
- 24 (m) register and regulate the issuance of electronic warehouse  
25 receipts, to be traded on a commodity exchange.
- 26 (n) review the fairness of mergers and acquisitions of public  
27 companies to ensure that all shareholders are fairly and equitably treated and  
28 given sufficient information regarding the transaction;
- 29 (o) review and approve takeovers and all forms of business  
30 combinations and affected transactions of public companies;

- 1 (p) authorise and regulate cross-border securities transactions;
- 2 (q) prevent and sanction unauthorized and illegal dealing in securities
- 3 and investment schemes;
- 4 (r) Advise the Minister on all matters relating to the securities industry
- 5 (s) perform such other functions not inconsistent with this Bill as are
- 6 necessary or expedient for giving full effect to the provisions of this Bill.

7 *Comments*

8 (i) Section 3(3)(b), has simplified Section 13(b) of the 2007 Act by the

9 insertion of "market venues" and the deletion of "capital trade point", "futures,

10 options and derivatives exchanges" and "recognized investment exchange"

11 (ii) Section 3(3)(c) has been amended for clarity by the deletion of the

12 words "and entities"

13 (iii) Section 3(3)(d) is a new provision inserted to emphasize that all

14 categories of securities regulated under this Bill which are offered to the public

15 must be registered with and regulated by the Commission;

16 (iv) Section 3(3)(e) amends Section 13(e) of the 2007 Act by the

17 deletion of "capital trade points" due to continued irrelevance and in

18 recognition that its activities have been taken over by other intermediaries;

19 (v) Section 3(3)(g) is an amendment of the Section 13(h) of the 2007

20 Act to provide greater clarity on this important function of the Commission;

21 (vi) Section 3(3)(i) is a new provision that recognizes the existing

22 mandate of the Commission to regulate the derivatives market;

23 (vii) Section 3(3)(j) is a new provision that recognizes the mandate of

24 the Commission to regulate the activities of the National Savings Scheme

25 established for the Nigerian financial system pursuant to recommendations in

26 the Nigerian Capital Market Master Plan (2015-2025) and the work of the

27 Market-wide Technical Committee;

28 (viii) Section 3(3)(k) is an amendment of Section 13(o) of the 2007

29 Act for increased clarity by the insertion of the word "register" and the deletion

30 of the words "promote", "capital trade points" and "securities exchanges".

1 (ix) Section 3(3)(l) & (m) are new provisions that amplify the  
2 mandate of the Commission to regulate various segments of the Nigerian  
3 commodities ecosystem;

4 (x) Section 3(3)(n) is a new provision that reflects the revised  
5 mandate of the Commission in respect of Mergers and Acquisitions, in view  
6 of the enactment of the Federal Competition and Consumer Protection  
7 Council Act (FCCPCA) 2018;

8 (xi) Section 3(3)(o) amends Section 13(p) of the 2007 Act by the  
9 deletion of the words "mergers" and "acquisitions", to reflect the new  
10 position under the FCCPCA 2018;

11 (xii) Section 3(3)(q) is a new provision that properly spells out the  
12 mandate of the Commission to decisively address the challenge of Ponzi  
13 Schemes and other unregistered investment schemes.

14 (4) In discharging its functions under this Bill, the Commission  
15 shall have the powers to:

16 (a) Intervene in the management and control of capital market  
17 operators, public companies and regulated entities which it considers has  
18 acted in a manner detrimental to the interest of its investors, shareholders,  
19 committed grave corporate governance violations, has failed, is failing or is  
20 in crisis, including entering into the premises and doing whatsoever it deems  
21 necessary in the interest of the public and for the protection of investors;

22 (b) appoint Independent Directors into the Board of Public  
23 Companies in which the Commission has intervened or taken a regulatory  
24 action;

25 (c) place directors of public companies on probation for a period of  
26 time considered reasonable by the Commission;

27 (d) remove any person associated with misconduct and/or  
28 mismanagement of a public company or capital market operator;

29 (e) issue directives to regulated entities on matters relating to  
30 activities of the capital market;

1 (f) call for information from, inspect, conduct inquiries on, and audit  
2 securities exchanges, capital market operators, collective investment schemes  
3 and all other regulated entities or associated persons;

4 (g) audit, call for the production of records and documents of public  
5 companies and other regulated entities;

6 (h) call for, or furnish to any person, such information as it may  
7 consider necessary for the efficient discharge of its functions;

8 (i) investigate any person in connection with the violation or  
9 suspected violation of this Bill or other securities laws, codes and regulations;

10 (j) obtain subscriber records held or maintained by internet service  
11 providers, telephone service providers and other electronic communication  
12 providers located within Nigeria which identify subscribers, payment details  
13 and other relevant details including content of communication in connection  
14 with the violation or suspected violation of this bill or other securities laws,  
15 code and regulations;

16 (k) impose administrative caution, lien or seek judicial order to freeze  
17 the assets (including stocks and bank accounts) of any person/ firm who is  
18 being investigated for capital market infractions pending the outcome of  
19 investigation;

20 (l) provide information and assistance on request to other local and  
21 foreign regulators on freezing or sequestration of funds or assets within  
22 Nigeria;

23 (m) enter, seize property, seal up the premises of persons illegally  
24 carrying on capital market operations and investment schemes and seek an  
25 Order of forfeiture for the recovered assets;

26 (n) obtain audit work papers, communications and other information  
27 relating to the audit or review of financial statements of public companies and  
28 all regulated entities;

29 (o) disqualify any person considered unfit from being employed or  
30 participating or continuing to participate in any arm of the securities industry;

1 (p) facilitate the linking of all markets in securities with  
2 information and communication technology facilities;

3 (q) administer oath on any person subject to any legislation  
4 governing the administration of oaths;

5 (r) compel attendance for statement or testimony under oath in  
6 accordance with the rights and privileges afforded by the laws of the Federal  
7 Republic of Nigeria;

8 (s) establish a nationwide trust scheme to compensate investors  
9 whose losses are not covered under the investors protection funds  
10 administered by securities exchanges.

11 (t) Provide for the treatment of unclaimed dividends of public  
12 companies, including public companies that are defunct or have ceased to  
13 exist.

14 (u) Take any step necessary for the protection of investors, in the  
15 public interest and for the maintenance of fair and orderly markets..

16 (v) keep and maintain a register of foreign portfolio investments;

17 (w) promote investors' education and the training of all categories  
18 of intermediaries in the securities industry;

19 (x) promote innovations in the capital market;

20 (y) levy fees, penalties and administrative costs of proceedings or  
21 other charges on any person in relation to investments and securities  
22 business in Nigeria in accordance with the provisions of this Bill;

23 (z) conduct, cause to be conducted, and disseminate research  
24 finding into all or any aspect of the securities industry;

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

28 (bb) prepare guidelines, organise training programmes and  
29 disseminate information necessary for the establishment of securities  
30 exchanges;

1 (cc) appoint or procure the appointment of all such qualified persons,  
2 professionals, experts to give effect to or discharge any of the foregoing  
3 functions;

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

7 (ee) exercise such other powers not inconsistent with this Bill as are  
8 necessary or expedient for giving full effect to the provisions of this Bill;

9 *Comments*

10 (i) Section 3(4) clearly outlines and separates the "powers" of the  
11 Commission as against the current merger of "powers and functions" under  
12 Section 13 of the 2007 Act;

13 (ii) Section 3(4)(a) is an expansion of Section 13(v) of the 2007 Act to  
14 strengthen the powers of the Commission to intervene in the affairs of  
15 regulated entities in appropriate circumstances, in order to protect investors  
16 and forestall collapse of institutions;

17 (iii) Section 3(4)(b) is a new provision which empowers the  
18 Commission to appoint Independent Directors to temporarily run the affairs of  
19 a public company. This power is necessary to give full effect to the  
20 Commission's intervention in a public company, especially in instances where  
21 the directors of the company have been suspended or are undergoing  
22 investigation;

23 (iv) Section 3(4)(c) is a new provision that empowers the  
24 Commission in deserving circumstances to require directors of public  
25 companies who are either undergoing investigation or have been found  
26 culpable for the commission of an infraction, to step aside for a specified period  
27 of time;

28 (v) Section 3(4)(d) is a new provision which expressly mandates the  
29 Commission to remove from office any individual found culpable for

1 misconduct in and/or the mismanagement of a public company or capital  
2 market operator;

3 (vi) Section 3(4)(e) is a new provision that clearly spells out the  
4 powers of the Commission to issue mandatory directives to regulatory  
5 entities;

6 (vii) Section 3(4)(f) amends Section 13(r) of the 2007 Act through  
7 the insertion of the phrase "or associated persons" to ensure a wider reach in  
8 the exercise of this power by the Commission;

9 (viii) Section 3(4)(g) is a new provision that resolves any lingering  
10 controversy about the powers of the Commission to audit the affairs of  
11 public companies and other regulated entities and request for documents or  
12 records from these institutions;

13 (ix) Section 3(4)(i) is a new provision that outlines the  
14 investigative powers the Commission already possesses in the body of the  
15 2007 Act;

16 (x) Section 3(4)(j) is a new provision designed to empower the  
17 Commission to obtain phone, internet and electronic records which would  
18 immensely facilitate its investigation and enforcement process;

19 (xi) Section 3(4)(k) is an amendment of Section 13(x) of the 2007  
20 Act. The significant insertion is the phrase "impose administrative caution",  
21 which empowers the Commission in appropriate circumstances to secure  
22 for investors (without the need for a court order) monies and assets of  
23 persons being investigated for capital market infractions;

24 (xii) Section 3(4)(l), (n), (q) and (r) are new provisions which  
25 confer important regulatory powers upon the Commission in tandem with  
26 express recommendations of IOSCO

27 (xiii) Section 3(4)(o) is an amendment of Section 13(bb) of the  
28 2007 Act to provide more clarity on this important power of the  
29 Commission;

30 (xiv) Section 3(4)(s) is an amendment of Section 13(k) of the 2007

1 Act for clarity. Accordingly, the opening statement in Section 13(k) "act in the  
2 public interest having regard to the protection of investors and the maintenance  
3 of fair and orderly markets and to this end" has been deleted. Reference to  
4 "capital trade points" has also been expunged;

5 (xv) Section 3(4)(t) is a new provision that amplifies the existing  
6 powers of the Commission under the 2007 Act to make Rules and Regulations  
7 on the subject matter, with the additional mandate of establishing modalities  
8 for handling unclaimed dividends of defunct public companies;

9 (xvi) Section 3(4)(u) is a new provision which significantly  
10 strengthens the Commission's powers to protect investors. The provision is  
11 crafted largely from the deleted portion of Section 13(k) of the 2007 Act as  
12 highlighted above;

13 (xvii) Section 3(4)(x) is a new provision that emphasizes the existing  
14 mandate of the Commission to encourage and support innovations that could  
15 accelerate the development of the Nigerian capital market;

16 (xviii) Section 3(4)(z) slightly expands the powers granted to the  
17 Commission under Section 13(z) of the 2007 Act and imposes upon the  
18 Commission the responsibility to disseminate research findings to relevant  
19 stakeholders;

20 (xix) Section 3(4)(cc) is a new provision which empowers the  
21 Commission to seek the expertise it requires to discharge its regulatory  
22 mandate;

23 (xx) Section 3(4)(dd) is a new provision which empowers the  
24 Commission to clamp down decisively on illegal investment schemes and their  
25 promoters.

## 26 PART II - ESTABLISHMENT OF THE BOARD OF THE COMMISSION

### 27 AND ITS MEMBERSHIP

Composition  
of the Board of  
the Commission

28 4.-(1) There shall be for the Commission, a Board which shall be  
29 responsible for the policy and general administration of the affairs of the  
30 Commission.



- 1 (2) The Board shall consist of:
- 2 (a) A part-time, non-executive Chairman;
- 3 (b) A Director-General who shall be the Chief Accounting Officer;
- 4 (c) Three full-time Commissioners one of whom shall be a legal
- 5 practitioner qualified to practice in Nigeria with a minimum of twelve years
- 6 post call to bar experience;
- 7 (d) The Director-General of the National Pension Commission;
- 8 (e) A representative of the Central Bank of Nigeria not lower than
- 9 the cadre of a Director;
- 10 (f) A Director of the Federal Ministry of Finance, and
- 11 (g) Two part-time Commissioners with proven integrity and
- 12 knowledge of capital market matters, one of whom shall be a legal
- 13 practitioner qualified to practice in Nigeria with a minimum of twelve years
- 14 post call to bar experience.

15 *Comments:*

- 16 (i) Section 4(1) is an amendment to the preamble of Section 3(1) of
- 17 the 2007 Act to include an outline of the fundamental mandate of the Board
- 18 of the Commission;
- 19 (ii) Section 4(2)(a) amends Section 3(1)(a) of the 2007 Act for
- 20 clarity, with the inclusion of the word "non-executive".
- 21 (iii) Section 4(2)(b) amends Section 3(1)(b) of the 2007 Act. The
- 22 major alteration is the deletion of the reference to the Director-General as
- 23 "chief executive" and the new designation as "chief accounting officer".
- 24 (iv) Section 4(2)(c) is an amendment to Section 3(1)(c) of the 2007
- 25 Act to provide for the appointment of a suitably qualified Legal practitioner
- 26 to occupy the office requiring this professional competence;
- 27 (v) Section 4(1)(d) is a new provision that expands membership of
- 28 the Board of the Commission through the inclusion of the Director-General
- 29 of the National Pension Commission. This would ensure greater
- 30 understanding about the capital market, so as to encourage increased

- 1 investments by PFAs and PFCs in capital market products and instruments;
- 2 (vi) Section 4(1)(e) is an amendment to Section 3(1)(e) of the ISA
- 3 2007, the purpose of which is to stipulate a minimum level of seniority for the
- 4 CBN's representative on the Commission's Board;
- 5 (vii) Section 4(1)(f) is an amendment to Section 3(1)(d) of the ISA
- 6 2007, the purpose of which is to stipulate a minimum level of seniority for the
- 7 Ministry of Finance's representative on the Commission's Board;
- 8 (viii) Section 4(1)(g) is an amendment to Section 3(1)(f) of the ISA
- 9 2007, the purpose of which is to strengthen the qualification criteria for non-
- 10 executive Commissioners.
- 11 5.-(1) The Board shall be appointed by the President, provided that
- 12 the Director-General and the three full-time Commissioners shall be appointed
- 13 by the President upon the recommendation of the minister and confirmation by
- 14 the Senate.
- 15 (2) The Director-General shall hold office for a term of five years in
- 16 the first instance and may be reappointed for a further term of five years and no
- 17 more.
- 18 (3) The three full-time Commissioners shall hold office in the first
- 19 instance for a term of four years and may be re-appointed for a further term of
- 20 four years and no more
- 21 (4) The Chairman and part-time Commissioners (other than the ex-
- 22 officio Commissioners) shall each hold office for a term of four years and no
- 23 more.
- 24 (5) Notwithstanding the provisions of subsections (2) and (3) of this
- 25 section, the President may extend the tenure of the Director-General and any of
- 26 the full-time Commissioners whose term of office has expired until a successor
- 27 to such Director-General or full-time Commissioner is appointed. Provided
- 28 that such extension shall not exceed a period of three months.
- 29 (6) A person shall not be qualified for appointment to the Board of the
- 30 Commission unless he is a fit and proper person and

Appointment  
and tenure of  
members of the  
Board

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

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

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

10 *Comment:*

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

14 6.-(1) The Board of the Commission shall:

15 (a) formulate general policies for the regulation and development  
16 of the capital market and the achievement and exercise of the functions of  
17 the Commission;

18 (b) approve the audited and management accounts of the  
19 Commission;

20 (c) appoint Auditors for the Commission;

21 (d) consider and approve the annual budget of the Commission as  
22 may be presented to it by the management;

23 (e) approve the establishment of zonal offices of the Commission;

24 (f) establish departments to achieve the objectives and the efficient  
25 discharge of the functions of the Commission under this Bill, and

26 (g) carry out such other activities as are necessary and expedient  
27 for the purposes of achieving the objectives of the Commission.

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

30 (3) The Board may also approve the reassignment of the full time

Duties of the  
Board

1 Commissioners by the Director-General.

2 *Comments:*

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

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

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

Management  
of the Commission

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

Disqualification,  
cessation of  
appointment and  
Resignation

16 9.-(1) A member of the Board shall cease to hold office if he-

17 (a) is medically certified to be of unsound mind or incapable of  
18 carrying out his duties owing to ill health;

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

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

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

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

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

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

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

*Comments:*

(i) Subsection (1) of this Section contains minor amendments to Section 8(1) of the 2007 Act to provide greater clarity on the grounds for disqualification of Board members;

(ii) Subsections (3) & (4) are new provisions which stipulate the procedure for resignation of members of the Board and the manner through which vacancies on the Board should be filled.

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

Remuneration and allowances of members of the Board

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

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

Meetings of the Board

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

(3) Five members of the Board shall form a quorum at any meeting,

1 two of whom shall be non-executive members

2 (4) Unless as otherwise provided in this Bill, decisions shall be by a  
3 simple majority of the vote of the members present but, in case of an equality of  
4 vote, the presiding chairman shall have a casting vote.

5 (5) The supplementary provisions set out in the first schedule to this  
6 Bill shall have effect with respect to the proceedings of the Board and the other  
7 matters contained therein.

Disclosure by  
Board Members

8 12.-(1) Where a member of the Board is directly or indirectly  
9 interested in:

10 (a) the affairs of any company or enterprise being deliberated upon by  
11 the board; or

12 (b) any contract made or proposed to be made by the Board;

13 Such member shall, as soon as possible after relevant facts have come to his  
14 knowledge, disclose the nature of his interest to the other members of the Board  
15 at the meeting of the Board

16 (2) A disclosure made under subsection (1) of this section shall be  
17 recorded in the minutes of the meeting of the Board and the member after the  
18 disclosure shall:

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

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

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

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

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

## PART III - STAFF OF THE COMMISSION

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

Appointment of the Secretary and other staff of the Commission

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

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

Remuneration of the Secretary and other staff of the Commission

15.-(1) The Secretary shall-

Duties of the Secretary

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

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

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

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

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

16.-(1) Service in the Commission shall be public service for the purpose of this Bill and accordingly, every staff of the Commission shall be entitled to pension and other retirement benefits as prescribed by law.

Service in the Commission to be pensionable

(2) Nothing in this section shall prevent the appointment of a person to any office on such terms and conditions, which preclude the grant of pension and other retirement benefits.

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

## PART IV - FINANCIAL PROVISIONS

Funds of the  
Commission

1  
2 17.-(1) The Commission shall establish and maintain a fund (in this  
3 Bill referred to as "the Fund") into which shall be paid the following:

- 4 (a) funds provided to the Commission by the Federal Government;  
5 (b) penalties, fees, charges and administrative cost of proceedings;

6 and

- 7 (c) monetary gifts, contributions and other funds that may be received  
8 by the Commission.

9 (2) The Commission shall maintain and operate bank accounts for  
10 funds as approved by the Board.

Application of  
funds of the  
Commission.

11 18. The Commission may apply the proceeds of the Fund established  
12 under section 17 of this Bill to:

- 13 (a) meet the cost of administration of the Commission;  
14 (b) reimburse members of any committee set up by the Commission  
15 for expenses duly authorised or approved;

16 (c) pay the salaries, fees or other remuneration or allowances,  
17 pensions and gratuities payable to the staff and members of the Board of the  
18 Commission;

19 (d) maintain any property acquired by or vested in the Commission;

20 (e) implement all or any of the functions of the Commission under this  
21 Bill or any matter connected with those functions; and

22 (f) meet any capital expenditure approved by the Board.

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

Reserve Account

26 19.-(1) The Commission shall establish a reserve account into which  
27 all surpluses from the Fund shall be paid.

28 (2) Disbursement from the reserve account shall be approved by the  
29 Board.

30 (3) The Commission may invest funds in the reserve account in



1 securities prescribed by the Trustee Investments Act and such other  
 2 modifying or substituting legislation or in such other securities as may be  
 3 approved by the Board.

4 (4) No deduction shall be made from the Commission's fund  
 5 except in accordance with the provisions of the Fiscal Responsibility Act,  
 6 2007

7 20.-(1) The Commission may accept gifts of land, money or other  
 8 testamentary dispositions, endowments and contributions on such terms and  
 9 conditions, if any, as may be specified by the donor of the gift. Power to accept  
gifts

10 (2) The Commission shall not accept any gift if the conditions  
 11 attached by the donor are inconsistent with the functions and objectives of  
 12 the Commission or if the acceptance of the gift would compromise the  
 13 observance and maintenance of proper conduct and professionalism in the  
 14 discharge of its duties and functions.

15 *Comment*

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

19 21. The Commission is entitled to charge, retain and utilize for its  
 20 purposes: Penalties, fees, etc.  
to be retained and  
utilized by the  
Commission

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

23 (b) fees collected for the services rendered by the Commission  
 24 under this Bill, including recovery of costs of administrative proceedings.

25 22. The Commission may, subject to the approval of the Board,  
 26 borrow by way of loan a specified amount of money as it may require for  
 27 meeting its obligations and discharging its functions under this Bill. Borrowing by  
the Commission

28 23. The Commission may, subject to the provisions of this Bill and  
 29 the conditions of any trust created in respect of any property, invest all or any  
 30 of its funds as may be approved by the Board. Investments by  
the Commission

Annual estimates,  
account and audit

1           24.-(1) The Board shall cause to be prepared, not later than the  
2 thirtieth day of September in each year, an estimate of the income and  
3 expenditure of the Commission during the next succeeding year and when  
4 prepared, they shall be submitted to the Minister and the National Assembly.

5           (2) The Commission shall cause to be kept, proper books of records  
6 and accounts which shall be audited by auditors appointed by the Board.

Annual Report

7           25. The Commission, shall not later than three months after the end of  
8 each year, submit to the Minister and the National Assembly, a report on the  
9 activities and administration of the Commission during the immediately  
10 preceding year and, shall include in such reports, audited accounts of the  
11 Commission and the report of the auditor on the accounts.

12       PART V - REGISTRATION AND REGULATION OF SECURITIES EXCHANGES,

13                       FINANCIAL MARKET INFRASTRUCTURES AND OTHER

14                               SELF REGULATORY ORGANIZATIONS

15                                       A - SECURITIES EXCHANGES

Registration of  
a securities  
exchange

16           26.-(1) No person shall establish or operate a securities exchange as  
17 defined in this Bill unless it has obtained a certificate of registration from the  
18 Commission in accordance with the provisions of this Bill and the rules and  
19 regulations made thereunder.

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

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

23           (b) each of the directors, promoters or any person who can reasonably  
24 be regarded as being in control of the company shall be deemed to have  
25 committed an offence and is liable on conviction to a term of imprisonment of  
26 not less than (5) years or both.

27           (3) In lieu of prosecution under subsection (2) of this section, the  
28 Commission may impose a penalty not less than the prescribed paid-up share  
29 capital of the relevant securities exchange as specified by the Commission and  
30 a further sum of not less than N100,000 for every day the violation continues;

1 *Comments:*

2 (i) The heading of this Part amends the title of Part V of the 2007  
3 Act. Reference to "Capital Trade Points" is deleted and replaced with  
4 "Financial Market Infrastructures".

5 (ii) Subsection (1) of this section contains a slight amendment to  
6 Section 28 of the 2007 Act for clarity.

7 (iii) Subsections (2) & (3) are new provisions which stipulate  
8 actions which should be taken in respect of unregistered securities  
9 exchanges and sanctions for violators of the requirement to register with the  
10 Commission.

11 27.-(1) A securities exchange may be registered by the Categories of  
12 Commission as a: securities exchanges

13 (a) composite securities exchange or;

14 (b) Non-composite securities exchange.

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

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

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

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

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

Conditions for  
registration of  
securities  
exchanges

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

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

5           (3) The Commission may register a body corporate as a securities  
6 exchange if it is satisfied that the rules of the body corporate make adequate  
7 provisions, where applicable:

8           (a) for the exclusion from its membership or trading, persons who are  
9 not of good character and who do not possess a high degree of business  
10 integrity;

11           (b) for the expulsion, suspension or discipline of members or  
12 participants for conduct inconsistent with just and equitable principles in the  
13 transaction of securities business or for contravention of or failure to comply  
14 with the rules of the securities exchange or the provisions of this Bill;

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

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

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

21           (f) with respect to a fair representation of persons in the selection of  
22 members of the board or participants of the securities exchange and the  
23 administration of its affairs and provided that in securities exchanges with  
24 listed companies, at least one or more representatives of listed companies and  
25 investors shall each be represented by one or more members or participants on  
26 its board.

27           (4) In considering an application, the Commission may have regard to  
28 any information in its possession whether provided by the applicant or not,  
29 provided that any information to be relied upon by the Commission must have  
30 been requested from the applicant, and such information shall be verified by

1 the Commission as accurate.

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

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

7 *Comments:*

8 (i) Subsection (2) of this section is an amendment to Section 28(2)  
9 of the 2007 Act to provide greater clarity;

10 (ii) Subsection (3) contains minor amendments to Section 29(2) of  
11 the 2007 Act to provide greater clarity;

12 (iii) Subsection (4) is a new provision that prescribes the nature of  
13 information that the Commission could rely upon in considering an  
14 application for registration.

15 29. The appointment of the chief executive and other principal  
16 officers of a securities exchange shall be subject to the prior approval of the  
17 Commission in writing.

Appointment of  
Chief Executive  
and principal  
officers of a  
securities exchange

18 *Comment:*

19 This is a new provision which prescribes that the appointment of the CEO  
20 and/or principal officers of an exchange must receive the prior approval of  
21 the Commission. This would enable the Commission ensure that only fit and  
22 proper persons are appointed to the Executive Management positions of a  
23 securities exchange.

24 30.-(1) A securities exchange shall:

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

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

Responsibilities  
of a securities  
exchange

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

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

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

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

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

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

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

20 *Comment:* This section is a major amendment to Section 32 of the 2007 Act. It  
21 broadly prescribes the duties and responsibilities of a Securities Exchange.

Securities exchange  
to maintain proper  
books of account

22 31. A Securities Exchange shall maintain proper books of account and  
23 records relating to its operations which shall be made available for inspection  
24 by the Commission.

25 *Comment:*

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

Approval of  
amendments to  
listing Rules

28 32.-(1) No amendment shall be made to the rules or the listing  
29 requirements of a securities exchange, whether by way of rescission,  
30 amendment, alteration, deletion, substitution or addition, unless the board of

1 the securities exchange, has forwarded a written notice of the proposed  
2 amendment to the Commission for approval.

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

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

10 *Comment:*

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

15 33. Where a securities exchange reprimands, fines, suspends,  
16 expels or otherwise takes disciplinary action against a member or  
17 participant of the securities exchange, the securities exchange shall, within 7  
18 days notify the Commission in writing of the name and other particulars of  
19 the member or participant, the nature of and reason for the action taken by  
20 the securities exchange, against the affected member or participant.

Securities exchange  
to give notice of  
disciplinary actions,  
etc.

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

23 34.-(1) The Commission may review any disciplinary action taken  
24 by a securities exchange, against its members or participants and may affirm  
25 or set aside such decision after giving the member or participant and the  
26 securities exchange an opportunity of being heard.

Review of  
disciplinary actions  
taken by a securities  
exchange

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

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

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

Power to issue  
directives to a  
securities exchange

8           35.-(1) The Commission may, where it deems appropriate, issue  
9 directives to a securities exchange with respect to-

10           (a) trading on or through the facilities of that securities exchange or  
11 pertaining to any securities listed on the securities exchange;

12           (b) the manner in which a securities exchange carries on its business  
13 including the manner of reporting off-market transactions; or

14           (c) any other matter which the Commission considers necessary for  
15 the effective administration of this Bill and the securities exchange shall  
16 comply with the directives.

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

20           (3) A securities exchange, which, without reasonable excuse, fails or  
21 refuses to comply with a directive given under subsection (1) of this section  
22 shall be liable to a penalty of not less than N10,000,000 and a further penalty of  
23 not less than N500,000 for every day during which the non-compliance  
24 continues.

25           (4) Where the Commission, after giving an executive officer of a  
26 securities exchange, an opportunity of being heard, is satisfied that such officer  
27 has contravened, failed or refused to comply with the provisions of this Bill or  
28 any regulations made thereunder or the rules of the securities exchange, the  
29 Commission may suspend or remove the executive officer from office.

30           (5) The Commission may, in the public interest or for the protection of



1 investors, and after giving the executive officer an opportunity of being  
2 heard, direct the securities exchange in writing to remove the executive  
3 officer and where the securities exchange fails to comply with the directive  
4 of the Commission under subsection (4) of this section, the Commission  
5 may suspend or remove the executive officer from office.

6 *Comment:* This section is a minor amendment of section 35 of the 2007 Act.  
7 References to "capital trade points" and "self regulatory organizations" have  
8 been expunged. subsection (3) prescribes increased penalties for the  
9 violation of the provisions of the sub-section (1) of the Section.

10 36-(1) Where the Commission deems it necessary for the  
11 protection of persons transacting in particular securities on a securities  
12 exchange, it may suspend or prohibit further trading in the securities and  
13 give notice in writing to the securities exchange.

Prohibition of  
trading in particular  
securities

14 (2) If, after receiving the notice given under subsection (1) of this  
15 section, the securities exchange fails to take action to prevent trading in the  
16 securities to which the notice relates, and the Commission still deems it  
17 necessary to prohibit trading in the securities, the Commission may, by  
18 notice in writing, to the securities exchange, prohibit trading in the securities  
19 during such period, not exceeding 14 days; provided that the Commission  
20 shall have the power by notice in writing to increase the period for a further  
21 period not exceeding 30 days at a time.

22 (3) A securities exchange which permits trading in securities in  
23 contravention of a notice under subsection (2) of this section is liable to a  
24 penalty of not less than N1,000,000 and a further sum of N50,000 for every  
25 day during which the contravention continues.

26 (4) In addition to the provisions of subsection (3) of this section,  
27 the Commission may:

28 (a) revoke the registration of the securities exchange;

29 (b) refuse to consider or process any further request or application  
30 for approval, registration or consent made or to be made to the Commission

1 by the securities exchange;

2 (c) apply to a court of law under the Companies and Allied Matters  
3 Act for-

4 (i) a beneficial, efficient and orderly Administration or winding up -  
5 as the case may be - of the securities exchange in the best interest of the market;

6 (ii) An Administrator, Liquidator or an official receiver (being in each  
7 case, a suitably qualified professional and not necessarily a court official), to  
8 take over management under the supervision of the court in respect of the  
9 securities exchange as if the Commission were a creditor thereof;

10 (iii) A person appointed pursuant to the above would have the same  
11 powers which would be available to a liquidator under a winding up.

12 (d) after giving opportunities to the executive officers of the securities  
13 exchange to be heard, may appoint other competent person(s) to serve in a  
14 Committee in place of the serving chief executive officer and executive  
15 management and board of the securities exchange;

16 (e) apply to the Tribunal for an enforcement order in respect of its  
17 directive to suspend trading on the specified securities:

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

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

27 37.-(1) The Commission may revoke the certificate of registration  
28 granted under Section 28 of this Bill if the body corporate:

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

1 (b) is wound up;

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

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

6 (2) No revocation under this section shall be made unless the body  
7 corporate has been given an opportunity of being heard.

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

11 (4) The revocation made pursuant to subsection (1) of this section  
12 shall contain such transitional provision as the Commission may deem fit in  
13 the public interest or for the protection of investors.

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

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

20 (a) avoid or affect any agreement, transaction or arrangement  
21 entered into by a body corporate, whether such agreement, transaction or  
22 arrangement was entered into before or after the withdrawal of the  
23 registration under subsection (1); or

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

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

28 *Comments:*

29 (i) Subsection(1)(d) is a new provision which provides for a

1 different circumstance in which the license of a securities exchange could be  
2 revoked.

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

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

8 38.-(1) The Commission shall issue appropriate directives and make  
9 rules and regulations to govern the listing of the securities of a securities  
10 exchange or an exchange holding company on a related securities exchange,  
11 which shall cover:

- 12 (a) possible conflicts of interests that may arise;  
13 (b) corporate governance and administration matters;  
14 (c) listing process and trading requirements;  
15 (d) such other matters as may be deemed necessary by the  
16 Commission.

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

Responsibilities  
of exchange holding  
company

20 39.-(1) An exchange holding company shall ensure:

21 (a) an orderly and fair market in relation to securities that are traded on  
22 the market through the facilities of the securities exchange of the exchange  
23 holding company or through the facilities of any of its subsidiaries that is duly  
24 approved as a securities exchange;

25 (b) the prudent risk management of its business and operations; and

26 (c) that the exchange holding company or any of its subsidiaries  
27 registered by the Commission to operate as a securities exchange, complies  
28 with any lawful requirements placed on it under this Bill or the rules and  
29 regulations made thereunder and other laws applicable to it.

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

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

5 (b) ensure that where its own interest conflicts with the interest  
6 referred to in paragraph (a), the latter shall prevail.

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

9 (a) any matter which adversely affects or is likely to adversely  
10 affect-

11 (i) the ability of the exchange holding company to meet its  
12 obligations in respect of its business as an exchange holding company or a  
13 securities exchange, including its ability to comply with any requirement as  
14 may be specified by the Commission, where applicable; or

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

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

25 (4) Where an exchange holding company, approved as a securities  
26 exchange undertakes any function of a subsidiary that is approved as a  
27 securities exchange, such exchange holding company shall enter into such  
28 arrangements as the Commission may determine as to how the duties and  
29 obligations of the exchange holding company and such subsidiary, under  
30 this Bill or rules and regulations made thereunder are satisfied.

Disposal and  
acquisition of  
assets, etc.

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

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

10          *Comment:*

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

16                                    B - FINANCIAL MARKET INFRASTRUCTURES

Establishment  
or operation of  
a financial market  
infrastructure

17           41.-(1) No person shall establish or operate a financial market  
18           infrastructure as defined in this Bill unless it has obtained a certificate of  
19           registration from the Commission in accordance with the provisions of this Bill  
20           and the rules and regulations made thereunder.

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

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

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

30           (5) years or to both such fine and imprisonment;

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

5 42.-(1) An application for approval to establish or operate a  
6 financial market infrastructure shall be made in such manner as the  
7 Commission may direct. Registration of  
financial market  
infrastructures

8 (2) In granting approval to register a financial market  
9 infrastructure under this section, the Commission shall ensure that the grant  
10 of the approval shall serve the interest of the public.

11 43.-(1) The Commission may, in the public interest or for the  
12 protection of investors or counterparties, by notice in writing- Withdrawal  
of approval

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

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

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

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

24 (b) protecting investors or the public.

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

28 (5) Any withdrawal of approval or directive issued by the  
29 Commission under subsection (1) shall not operate to:

30 (a) avoid or affect any agreement, transaction or

1 arrangement entered into through the financial market infrastructure whether  
2 such agreement, transaction or arrangement was entered into before or, after  
3 the withdrawal of the approval or issuance of the directive; or

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

6 (6) The Commission shall publish the notice of revocation

Financial Market  
Infrastructure  
rules

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

10 *Comment*

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

14 C - PROVISIONS RELATING TO INSOLVENCY OF FINANCIAL MARKET  
15 INFRASTRUCTURES, AND OTHER MATTERS

Modification  
of general  
insolvency law  
rules

16 45.-(1) The general insolvency law provisions shall have no effect in  
17 relation to:

18 (a) market contracts;

19 (b) action taken under the rules of a securities exchange with respect  
20 to market contracts;

21 (c) action taken under the rules of a financial market infrastructure  
22 with respect to market contracts;

23 (d) action taken under the rules of a financial market infrastructure to  
24 transfer cleared client contracts, or settle cleared client contracts or cleared  
25 house contracts, in accordance with the default rules of the financial market  
26 infrastructure;

27 (e) where cleared client contracts transferred in accordance with the  
28 default rules of a financial market infrastructure was entered into by a clearing  
29 member or client as principal, action taken to transfer client trades, or group of  
30 client trades, corresponding to those cleared client contracts;



1 (f) action taken to transfer any collateral or any security over such  
2 collateral in conjunction with the transfer of any cleared client contract or  
3 client trade as mentioned in paragraphs (d) or (e) above;

4 (g) a transfer of any property made by a financial market  
5 infrastructure to:

6 (i) any client of a participant or member, where such property  
7 comprises the collateral remaining on a client account following the  
8 completion of the default management process in respect of the participant  
9 or member,

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

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

16 (a) insolvency proceedings in respect of a member of a securities  
17 exchange; or

18 (b) insolvency proceedings in respect of a member of a financial  
19 market infrastructure; or

20 (c) insolvency proceedings in respect of a party to a market  
21 contract begun after a financial market infrastructure has commenced an  
22 action as defined under its default rules in relation to a person that is a party  
23 to the contract as principal, but not in relation to any other insolvency  
24 proceedings, notwithstanding that rights or liabilities arising from market  
25 contracts are to be dealt with in the proceedings.

26 (3) A debt or other liability arising out of a market contract which is  
27 the subject of default proceedings may not be proved in a winding up or  
28 other arrangement until completion of the financial market infrastructure's  
29 default proceedings and a debt or other liability which may not be proved or

1 claimed will not be taken into account for the purpose of set-off until such  
2 completion.

3 (4) Subject to subsection 3 of this section, in an Insolvency  
4 Proceeding, the Insolvency Office holder appointed is not allowed to select,  
5 affirm or avoid individual market contract

Proceedings  
of a financial  
market  
infrastructure  
take precedence  
over insolvency  
procedures

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

12 (a) a market contract;

13 (b) the default rules of a financial market infrastructure;

14 (c) the rules of a financial market infrastructure relating to the  
15 settlement of a market contract not dealt with under its default rules;

16 (d) the transfer of any clearing member client contract or the  
17 settlement of any cleared contract in accordance with the default rules of a  
18 financial market infrastructure;

19 (e) clearing member client contract transferred in accordance with the  
20 default rules of a financial market infrastructure, the transfer of any client trade  
21 between a participant and its client, or group of client trades, that corresponds  
22 to that clearing member client contract;

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

26 (g) a qualifying property transfer; and

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

29 Provided that nothing in this section shall be construed to limit the  
30 exercise of any right of a financial market infrastructure under insolvency laws

1 or as specified in the rules of the financial market infrastructure.

2 47.-(1) No conflicting order shall be made pursuant to the  
3 Bankruptcy Act and the Companies and Allied Matters Act (as may be  
4 amended or re-enacted from time to time), or any other law dealing with  
5 bankruptcy or insolvency in relation to any matter under subsection (2) of  
6 this section and none of those matters shall be regarded as invalid,  
7 revocable, or subject to challenge by an insolvency office-holder.

Disapplication  
of conflicting  
orders under  
General Insolvency  
Laws

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

9 (a) a market contract;

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

11 (c) the provision of market collateral;

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

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

17 (f) a market charge;

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

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

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

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

26 48.-(1) Subject to section 46 of this Bill, where a net sum has been  
27 certified by a financial market infrastructure under its default rules as  
28 payable by or to a defaulter, then such sum is provable in the winding up or  
29 administration or, as the case may be, is payable to the relevant office-  
30 holder of an Insolvency Proceeding, and will be taken into account, where

Net sum payable  
upon compliance  
with default  
proceedings

1 appropriate, for set-off applicable in the case of winding up or administration  
2 or other Insolvency Proceeding, in the same way as a debt due before the  
3 commencement of the said Insolvency Proceeding.

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

Duty to provide  
assistance

13 49.-(1) A person who has control of any asset of a defaulter has a duty  
14 to provide the financial market infrastructure such assistance as the financial  
15 market infrastructure may reasonably require for the purpose of its default  
16 proceedings.

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

Disapplication  
of avoidances,  
fraudulent  
preference, and  
priority of  
payments

22 50.-(1). The avoidance of, or the principle in relation to property  
23 dispositions, fraudulent preferences and the priority of payments under any  
24 law of insolvency does not apply to:

25 (a) a market contract;

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

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

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

1 (e) any disposition of property in accordance with the rules of the  
2 financial market infrastructure as to the application of property provided as  
3 margin or as default fund contribution;

4 (f) a collateral arrangement under which collateral is provided by a  
5 clearing member to a financial market infrastructure;

6 (g) a transfer of a clearing member client contract, a client trade or a  
7 collateral arrangement;

8 (h) a qualifying property transfer;  
9 provided that, where the non-defaulter had notice of a winding up petition  
10 when entering into a market contract or taking margin or contribution, any  
11 resulting profit is recoverable from the non-defaulter unless the court  
12 otherwise directs. This proviso does not apply to market contracts where the  
13 person entering into the contract is a financial market infrastructure acting in  
14 accordance with its rules, or where the contract is effected under the default  
15 rules of a financial market infrastructure;

16 (2) None of the following may be challenged as a transaction at an  
17 undervalue, a preference or a transaction defrauding the general body of  
18 creditors:

19 (a) a market contract to which a securities exchange or financial  
20 market infrastructure is a party or which is entered into under its default  
21 rules; or

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

23 (c) margin provided in relation to a market contract, a collateral  
24 arrangement, any contract effected by a financial market infrastructure for  
25 the purpose of realizing the property provided as margin, or any disposition  
26 of property in accordance with the rules of the financial market  
27 infrastructure as to the application of property provided as margin; or

28 (d) a default fund contribution made to a financial market  
29 infrastructure, any contract effected by a financial market infrastructure for  
30 the purpose of realizing the property provided as a default fund contribution,

1 or any disposition of property in accordance with the rules of the financial  
2 market infrastructure as to the application of property provided as default fund  
3 contribution; or

4 (e) a transfer of a clearing member client contract, a client trade or a  
5 collateral arrangement; or

6 (f) a qualifying property transfer.

7 (3) The power to disclaim onerous property or to rescind contracts is  
8 dis-applied in relation to:

9 (a) a market contract;

10 (b) a collateral arrangement;

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

13 (d) a qualifying property transfer; or

14 (e) a contract effected by the financial market infrastructure for the  
15 purpose of realizing property provided as margin in relation to a market  
16 contract or as default fund contribution;

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

19 (a) the property may be applied in accordance with the financial  
20 market infrastructure's rules notwithstanding any prior equitable interest or  
21 right, or any right or remedy arising from a breach of fiduciary duty, unless the  
22 financial market infrastructure had notice of the interest, right or breach of duty  
23 at the time the property was provided as margin or default fund contribution;

24 (b) no execution or other legal process for the enforcement of a  
25 judgment or court order may be commenced or continued, and no distress may  
26 be levied against the property by a third party, except (in the case of margin or  
27 default fund contribution) with the financial market infrastructure's written  
28 consent.

29 51. Without prejudice to any specific provision of this Segment, the  
30 rules of a financial market infrastructure as to:

- 1 (a) the settlement of market contracts and transfer orders;
- 2 (b) the netting of any rights and obligations of clearing member or  
3 participant in the financial market infrastructure under the rules of the  
4 financial market infrastructure or one or more market contracts;
- 5 (c) the set-off of any obligations between the financial market  
6 infrastructure and a clearing member or participant or between clearing  
7 members/participants in the financial market infrastructure;
- 8 (d) the termination, close out or cancellation of any market  
9 contract;
- 10 (e) the transfer of any market contract and any associated  
11 collateral;
- 12 (f) the enforcement of any security interest of a financial market  
13 infrastructure in respect of any collateral provided by a clearing member /  
14 participant in respect of any market contract;
- 15 (g) the appropriation of any collateral held by a financial market  
16 infrastructure pursuant to its default rules, in set off against any obligations  
17 of a clearing member / participant that has become a defaulter pursuant to  
18 such default rules;
- 19 (h) any qualifying collateral transfer;
- 20 (i) the certification by a financial market infrastructure as to the  
21 final net sum representing any sums from a clearing member or participant  
22 to a financial market infrastructure, or from a financial market infrastructure  
23 to a clearing member or participant, following the completion of the  
24 financial market infrastructure's default proceedings, and any actions taken  
25 by a financial market infrastructure pursuant to such rules;  
26 shall be protected and shall not be subject to challenge under the laws of  
27 contract or insolvency or any other provision of law in Nigeria, by any  
28 person, clearing member or participant or any insolvency office-holder  
29 pursuant to any insolvency proceedings.

Definition of  
certain words  
used in this part

- 1           52. In this Part:
- 2   "cleared contract" means a clearing member contract or a clearing member
- 3   client contract;
- 4   "clearing member" means an authorised user of a central counter party or
- 5   central clearing houses, authorised to perform clearing services and which has
- 6   entered into a clearing house agreement with the central counter parties or
- 7   central clearing houses;
- 8   "central clearing house" means an entity responsible for settling trading
- 9   accounts, clearing trades, regulating delivery, and reporting trading data. It is a
- 10   central location or central processing mechanism through which payment
- 11   system participants agree to exchange payments;
- 12   "central counterparty" means a central clearing house that interposes itself
- 13   between counterparties to contracts traded in one or more financial markets,
- 14   becoming the buyer to every seller and the seller to every buyer and thereby
- 15   ensuring the performance of open contracts.;
- 16   "central securities depository" means an entity that enables securities
- 17   transactions to be processed and settled by book entry, provides securities
- 18   accounts, central safekeeping services, asset services, which may include
- 19   (among other things) the administration of corporate actions and redemptions,
- 20   and plays an important role in helping to ensure the integrity of securities
- 21   issues;
- 22   "default proceeding" means actions taken by a financial market infrastructure
- 23   pursuant to its default rules;
- 24   "default rules" means the rules of a registered securities exchange or registered
- 25   financial market infrastructure which provide for the taking of action in the
- 26   event of a person appearing to be unable, or likely to be unable, to meet his
- 27   obligations under the rules of the registered securities exchange or registered
- 28   financial market infrastructure or otherwise in respect of one or more market
- 29   contracts connected with the registered securities exchange or registered
- 30   financial market infrastructure;



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

7 "Insolvency Proceeding", where referred to in this Segment or elsewhere in  
8 this Bill, refers to any collective judicial or administrative proceeding  
9 against a juristic person or unregistered entity in Nigeria pursuant to a law  
10 relating to bankruptcy or insolvency, in which proceeding the assets and  
11 affairs of the concerned debtor are subject to the control or the supervision of  
12 a court, tribunal or judicial body for the purpose of reorganization or  
13 liquidation. This extends where appropriate to an administrative and  
14 business rescue oriented receivership where the interests of various  
15 categories of creditors and collective insolvency priority and preference  
16 rules are acknowledged whether based on a special statute or otherwise;

17 "market charge" means a charge, whether fixed or floating, granted in favour  
18 of a financial market infrastructure for the purpose of securing debts or  
19 liabilities arising in connection with ensuring the performance of market  
20 contracts;

21 "market collateral" means one or more of the forms of security accepted by a  
22 financial market infrastructure.

23 "market contract" means:

24 (1) in relation to a securities exchange:

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

27 (i) contracts made on the securities exchange; or

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

30 (b) contracts entered into by the securities exchange, with a

1 member of the securities exchange, or with a financial market infrastructure or  
2 with another securities exchange, for the purpose of enabling the rights and  
3 liabilities of that member or financial market infrastructure or other securities  
4 exchange under a transaction to be settled;

5 (c) contracts entered into by a securities exchange with a member of  
6 the securities exchange or with a financial market infrastructure or with  
7 another securities exchange for the purpose of providing central counterparty  
8 services to that member or financial market infrastructure or other securities  
9 exchange;

10 (2) in relation to a financial market infrastructure:

11 (a) contracts entered into by the financial market infrastructure, with a  
12 member of the financial market infrastructure, or with another financial market  
13 infrastructure, for the purpose of enabling the rights and liabilities of that  
14 member or other financial market infrastructure under a transaction to be  
15 settled;

16 (b) contracts entered into by the financial market infrastructure with a  
17 member of the financial market infrastructure or with another financial market  
18 infrastructure for the purpose of providing central counterparty services to that  
19 member or other financial market infrastructure;

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

22 (a) a 'clearing member house contract' being a contract between a  
23 financial market infrastructure and a clearing member recorded in the accounts  
24 of the financial market infrastructure as a position held for the account of a  
25 clearing member itself;

26 (b) a 'clearing member client contract' being a contract between a  
27 financial market infrastructure and one or more clearing members' clients or  
28 indirect clients which is recorded in the accounts of the financial market  
29 infrastructure as a position held for the account of a client, an indirect client or a  
30 group of clients or indirect clients;

1 (c) a 'client trade' being a contract between two or more clearing  
2 members 'clients or indirect clients which corresponds to a clearing member  
3 client contract, other than any excluded trades;

4 (d) contracts entered into by a financial market infrastructure with  
5 another financial market infrastructure for the purpose of providing central  
6 counterparty services to a securities exchange or clearing house.

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

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

15 "trade repositories" means an entity that maintains a centralized electronic  
16 record (database) of transaction data.

17 D - SETTLEMENT FINALITY OF TRANSFER ORDERS

18 53.-(1) The general insolvency law shall have no effect in relation  
19 to:

Modification  
of insolvency laws

20 (a) transfer orders effected through a system and action taken under  
21 the rules of a system with respect to such orders; and

22 (b) collateral security;

23 (2) The provisions of this Segment apply to:

24 (a) insolvency proceedings in respect of a participant in a system;

25 (b) insolvency proceedings in respect of a system operator of a  
26 system; but not in relation to any other insolvency proceedings,  
27 notwithstanding that rights or liabilities arising from transfer orders or  
28 collateral security fail to be dealt with in the proceedings.

29 54.-(1) None of the following shall be regarded as invalid on the  
30 ground of inconsistency with the law relating to the distribution of the assets

Protection of  
transfer orders  
and systems

1 of a person on bankruptcy, winding up, administration, receivership, or any  
2 other arrangement, or in the administration of an insolvent estate or with the  
3 law relating to other insolvency proceedings of a country or territory outside

4. Nigeria:

5 (a) a transfer order;

6 (b) the default arrangements of a system;

7 (c) the rules of a system as to the settlement of transfer orders not dealt  
8 with under its default arrangements; or

9 (d) a contract for the purpose of realizing collateral security in  
10 connection with participation in a system otherwise than pursuant to its default  
11 arrangements.

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

16 (a) the settlement in accordance with the rules of a system of a transfer  
17 order not dealt with under its default arrangements;

18 (b) any action taken under the default arrangements of a system; or

19 (c) any action taken to realize collateral security in connection with  
20 participation in a system otherwise than pursuant to its default arrangements.

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

26 (4) Without prejudice to the foregoing, no provision of any  
27 insolvency law in Nigeria shall have the effect to:

28 (a) invalidate dispositions made after the commencement of  
29 insolvency proceedings;

30 (b) enable an insolvency office-holder to disclaim onerous contracts;

-1 (c) invalidate pre-insolvency transactions in particular  
2 circumstances, such as transfers made at an undervalue or preferences; or

3 (d) suspend the enforcement of security, such as in the moratorium  
4 applicable in an administration of an insolvent company, or by reason of  
5 rights claimed by third parties in property provided as margin, shall be  
6 applied so as to frustrate the operation of the provisions or actions specified  
7 in section 53 above.

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

16 55.-(1) This Segment does not apply in relation to any transfer - Limitation of  
17 order given by a participant which is entered into a system after: protection

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

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

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

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

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

29 (3) For the purposes of subsection (2)(b) of this section, the  
30 relevant system operator shall be taken to have notice of an event specified

1 in subsection (1)(a) or (b) of this section if it deliberately failed to make  
2 enquiries as to that matter in circumstances in which a reasonable person would  
3 have done so.

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

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

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

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

No retroactive  
effects of  
proceedings

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

Definition of  
certain words  
used in this part

19 57.-(1) Any financial market infrastructure registered by the  
20 Commission to discharge clearing and related functions such as a central  
21 counterparty, a settlement agent or a clearing house shall be treated as the  
22 system operator for the purpose of this Part.

23 (2) In this Part:

24 "collateral security" means any realizable asset provided under a charge or  
25 repurchase or similar agreement, or otherwise (including credit claims and  
26 money provided under a charge) for the purpose of securing rights and  
27 obligations potentially arising in connection with a system

28 "collateral security charge" means collateral security that consists of realizable  
29 assets (including money) provided under a charge;

30 "default arrangements" means the arrangements put in place by a system to

1 limit systemic and other types of risk which arise in the event of a participant  
2 appearing to be unable, or likely to become unable, to meet its obligations in  
3 respect of a transfer order, including, any default rules within the meaning of  
4 Part C or any other arrangements for-

- 5 (a) netting;
- 6 (b) the closing out of open positions;
- 7 (c) the application or transfer of collateral security; or
- 8 (d) the transfer of assets or positions on the default of a participant  
9 in the system;

10 "defaulter" means a person in respect of whom action has been taken by a  
11 system under its default arrangements;

12 "indirect participant" means an institution, central counterparty, settlement  
13 agent, clearing house, or system operator:

14 (a) which has a contractual relationship with a participant in a  
15 system that enables the indirect participant to effect transfer orders through  
16 that system, and

17 (b) the identity of which is known to the system operator

18 "institution" means-

- 19 (a) relevant capital market operator;
- 20 (b) a public authority or publicly guaranteed undertaking;
- 21 (c) any undertaking whose head office is outside Nigeria and  
22 whose functions correspond to those of a relevant capital market operator as  
23 specified in (a) and (b) above; or

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

29 "participant" means-

- 30 (a) an institution;

1 (b) a system operator;

2 (c) a body corporate or unincorporated association which carries out  
3 any combination of the functions of a financial market infrastructure which is  
4 registered by the Commission to discharge clearing and related functions such  
5 as a central counterparty, a settlement agent or a clearing house, with respect to  
6 a system, or

7 (d) an indirect participant which is treated as a participant, or is a  
8 member of a class of indirect participants which are treated as participants, in  
9 accordance with this section.

10 "settlement account" means an account used to hold funds or securities (or  
11 both) or other assets and to settle transactions between participants in a system;

12 "settlement agent" means a body corporate providing settlement accounts to  
13 the institutions and any financial market infrastructure which is registered by  
14 the Commission to discharge clearing and related functions such as a central  
15 counterparty, a settlement agent or a clearing house in a system for the  
16 settlement of transfer orders within the system and, for extending credit to such  
17 institutions and any such entity for settlement purposes;

18 "system" means a formal arrangement operated by any financial market  
19 infrastructure which is registered by the Commission for the purposes of  
20 recording, clearing or settling payments, securities, derivatives or other  
21 financial transactions, through which transfer orders may be executed, cleared  
22 and/or settled in accordance with common rules and standardized  
23 arrangements;

24 "system operator" means the entity or entities legally responsible for the  
25 operation of a system;

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



1 and transactions of Financial Market Infrastructures and the identified  
2 participants.

3 E - MATTERS RELATING TO SEGMENTS (C) AND (D).

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

Insolvency laws  
in other jurisdictions

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

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

10 insofar as the making of the order or the doing of the act would be prohibited  
11 in the case of a court within Nigeria or an official receiver or liquidator by  
12 provisions made by or under Parts C and D of Part V of this Bill.

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

14 F - SELF-REGULATORY ORGANISATIONS AND TRADE ASSOCIATIONS

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

Registration and  
Recognition of  
a self-regulatory  
organisation

18 60. A self-regulatory and Trade Association organisation shall:

Duties registered  
self-regulatory  
organisation

19 (a) at all times act in the public interest to ensure the integrity of the  
20 market and the protection of investors;

21 (b) supervise the conduct of its members to ensure a fair, orderly  
22 and efficient market;

23 (c) immediately notify the Commission if it becomes aware of any  
24 matter which adversely affects or is likely to adversely affect the interests of  
25 the market or the investing public,

26 (d) immediately notify the Commission if it becomes aware of any  
27 contravention of this Bill or the rules and regulations made thereunder by its  
28 members;

29 (e) not make a decision under its rules that adversely affects the  
30 rights of its members unless it has given the affected member an opportunity

1 to make representations to it about the matter.

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

5 PART VI - REGISTRATION AND REGULATION OF CAPITAL

6 MARKET OPERATORS

Registration  
of capital market  
operators

7 61.-(1) No person shall operate in the Nigerian capital market or carry  
8 on investments and securities business unless the person is registered in  
9 accordance with this Bill and the rules and regulations made thereunder;

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

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

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

19 (5) In lieu of prosecution, the Commission may consider an  
20 application from any entity which has violated the provisions of this section,  
21 and upon payment of an appropriate penalty as may be determined by the  
22 Commission, and fulfilment of other conditions of registration, register such  
23 entity.

24 (6) The Commission may suspend or revoke a certificate of  
25 registration issued under this section for a violation of any provision of this Bill  
26 or regulations made pursuant thereto, provided that the person concerned has  
27 been given a reasonable opportunity of being heard.

28 *Comments*

29 (i) Subsections (4) and (5) of this section are new provisions that  
30 stipulate penalties for operating as a capital market operator without prior

1 registration with the Commission.

2 (ii) Subsection (6) is an amendment to Section 38(4) of the 2007  
3 Act to provide greater clarity on the need for fair hearing before the  
4 suspension or revocation of the registration of a capital market operator.

5 62.-(1) A capital market operator shall keep or cause to be kept such  
6 accounting and other records:

Accounts to be  
kept by capital  
market operator

7 (a) as shall sufficiently show and explain the transactions and  
8 financial position of his business and enable true and fair profit and loss  
9 accounts and balance sheets to be prepared, regularly; and

10 (b) in a manner that will enable them to be conveniently and  
11 properly audited.

12 (2) A capital market operator shall be deemed not to have complied  
13 with subsection (1) of this section in relation to records unless the  
14 accounting and other records of the capital market operator:

15 (a) are kept in sufficient detail to show particulars of:

16 (i) all monies received or paid by the capital market operator,  
17 including monies paid to or disbursed from a trust account,

18 (ii) all purchases and sales of securities made by the capital market  
19 operator, the charges and credits arising from them, and the names of the  
20 buyers and sellers, respectively of each of those securities,

21 (iii) all income received from commissions, interest, and other  
22 sources, and all expenses, commissions, and interest paid by the capital  
23 market operator,

24 (iv) all the assets and liabilities (including contingent liabilities) of  
25 the capital market operator,

26 (v) all securities which are the property of the capital market  
27 operator showing by whom the securities or the documents of title to the  
28 securities are held and, where they are held by some other person, whether or  
29 not they are held as securities against loans or advances,

30 (vi) all securities that are not the property of the capital market

1 operator and for which the dealer or any nominee controlled by the security  
2 dealer is accountable, showing by whom, and for whom, the securities or the  
3 documents of title to the securities are held and the extent to which they are  
4 either held for safe custody or deposited with a third party as securities for loans  
5 or advances made to the capital market operator,

6 (vii) all purchases and sales of options made by the capital market  
7 operator and all fees (being options monies) arising from them,

8 (viii) all arbitrage transactions entered into by the capital market  
9 operator; and

10 (ix) all underwriting transactions entered into by the capital market  
11 operator.

12 (b) are kept in sufficient detail to show particulars of every transaction  
13 by the capital market operator;

14 (c) specify the day on which or the period during which each  
15 transaction by the capital market operator took place; and

16 (d) contain copies of acknowledgements of the receipt of securities or  
17 of documents of title to securities received by the capital market operator from  
18 clients for sale or safe custody clearly showing the name or names in which the  
19 particular securities are registered.

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

23 (a) clients of the capital market operator;

24 (b) the capital market operator himself; and

25 (c) employees of the capital market operator.

26 (4) A capital market operator who contravenes or fails to comply with  
27 any of the provisions of this section commits an offence and is liable on  
28 conviction to a fine of not less than N2,000,000 or to a term of imprisonment of  
29 not less than one year or to both such fine and imprisonment.

30 (5) The Commission may, in lieu of prosecution for the offence

1 prescribed in subsection (4) of this section, sanction a capital market  
 2 operator who violates the provisions of this section by imposing a penalty of  
 3 not less than N2,000,000, and a further sum of not less than N5,000 for every  
 4 day in which the violation continues.

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

8 .63.-(1) A capital market operator shall maintain separate accounts  
 9 for transactions carried out on behalf of different clients.

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

13 (3) A capital market operator shall establish and keep in a bank or  
 14 banks one or more trust accounts to be designated or evidenced as trust  
 15 accounts, into which the capital market operator shall pay:

16 (a) all amounts (less any brokerage and other proper charges)  
 17 received from or on account of any person (other than a capital market  
 18 operator) for the purchase of securities which are not attributable to  
 19 securities delivered to the capital market operator; and

20 (b) all amounts (less any brokerage and other proper charges)  
 21 received for or on account of any person (other than a capital market  
 22 operator) from the sale of securities which are not paid to that person or as  
 23 that person directs not later than the next banking business day following the  
 24 day on which they were received by the capital market operator.

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

29 (5) A capital market operator who contravenes or fails to comply  
 30 with any of the provisions of this section is liable to a penalty of not less than

Maintenance  
 of separate accounts  
 and payment into  
 certain trust  
 accounts

1 N2,000,000 and a further sum of N5,000 for every day the violation continues.

2 *Comments:*

3 (i) The highlighted portion of subsection (2) is an amendment to  
4 Section 40(2) of the 2007 Act by the introduction of a preamble that  
5 contextualises the prohibition on commingling of proceeds of accounts of  
6 clients;

7 (ii) Subsection (5) amends Section 40 (5) of the 2007 Act by  
8 stipulating a higher lump sum penalty to serve as a deterrent for non-  
9 compliance with the requirement to maintain separate accounts and bank  
10 accounts for client transactions.

Penalty for  
withdrawing  
money from trust  
account without  
authority

11 64.-(1) A capital market operator who withdraws money from a trust  
12 account without the requisite authority commits an offence and is liable on  
13 conviction to a fine of not less than N5,000,000 or to a term of imprisonment  
14 not less than one year or to both such fine and imprisonment.

15 (2) For the purpose of subsection (1) of this section, a withdrawal  
16 from a trust account shall be deemed to be without requisite authority where the  
17 withdrawal is made for a purpose other than:

18 (a) to pay the person entitled to the payment;

19 (b) to defray brokerage and other proper charges; or

20 (c) as may otherwise be authorised by law.

21 (3) The Commission may, in lieu of prosecution for the offence  
22 prescribed under subsection (1) of this section, sanction a capital market  
23 operator who violates the provisions of this section by imposing a penalty of  
24 not less than N5,000,000.

25 (4) In addition to the penalty prescribed under subsection (3) of this  
26 section, the Commission shall direct the capital market operator to refund the  
27 monies received together with the interest thereon at a rate to be determined by  
28 the Commission.

29 (5) A capital market operator who withdraws money from a trust  
30 account with the intent to defraud, commits an offence and is liable on

1 conviction to a fine of not less than N5,000,000 or to imprisonment for a  
2 term of not less than three years or to both such fine and imprisonment

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

7 65. A capital market operator shall not except as otherwise  
8 provided in this part of this Bill utilize any money held in a trust account for  
9 purposes other than the purpose of the trust.

Money in trust  
account not  
available for  
personal use

10 66. Nothing in this section shall be construed as taking away or  
11 affecting any lawful claim or lien which a person may have against or upon  
12 any monies held in a trust account or against or upon any monies received  
13 for the purchase of securities or from the sale of securities before such  
14 monies are paid into a trust account.

Claims and lien  
not affected

15 67.-(1) A capital market operator or depository shall supply on  
16 demand to his client copies of all entries in his books relating to any  
17 transaction carried out on behalf of that client, and he shall be entitled to levy  
18 a reasonable charge thereof.

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

19 (2) A client or any person authorised by the client shall be entitled  
20 at any time, free of charge either personally or by his agent, to inspect any  
21 contract notes and vouchers relating to the said transaction.

22 68.-(1) A capital market operator shall keep a register, in the  
23 prescribed form, of the securities in which he has an interest.

Register of  
securities

24 (2) Particulars of the securities in which a capital market operator  
25 has an interest shall be entered in the register within 7 days of the acquisition  
26 of the interest.

27 (3) Where a change in securities (not being a prescribed change)  
28 occurs in the interest of a person to whom this part of this Bill applies, he  
29 shall, within 7 days after the change, enter in the register full particulars of  
30 the change, including the date of the change and the reason for the change.

1 (4) For the purposes of this subsection, an acquisition or disposal of  
2 securities shall be deemed to be a change in the interest of any person.

3 (5) The Commission may extend the provisions of subsection (1) of  
4 this section to include any other person whose activities are connected with  
5 securities transactions.

Particular of  
register

6 69.-(1) A capital market operator to whom this part of this Bill applies  
7 shall in the prescribed form, give notice to the Commission of such particulars  
8 relating to the register of securities as may be prescribed including the location  
9 of the register.

10 (2) The notice required to be given under subsection (1) of this section  
11 shall be given:

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

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

17 (3) A person to whom this part of this Bill applies shall, within 14 days  
18 of his ceasing to be such a person give to the Commission the notice required  
19 under subsection (1) of this section and the notice of the cessation.

20 (4) A person who fails or neglects to give the notice required under  
21 this section commits an offence and is liable on conviction to a fine not less  
22 than N1,000,000 or to a term of imprisonment not less than six months or to  
23 both such fine and imprisonment.

24 (5) The Commission may, in lieu of prosecution under subsection (4)  
25 of this section, impose a penalty of not less than N1,000,000 and a further sum  
26 of not less than N5,000 for every day violation continues.

Production of  
register

27 70.-(1) The Commission or any person authorised by it may require  
28 any person to whom this part of this Bill applies to produce for inspection, the  
29 register required to be kept pursuant to section 62 of this Bill and the  
30 Commission or any person so authorised may take extracts therefrom.



1 (2) Any person who fails to produce a register for inspection or fails  
 2 to allow any person authorised under subsection (1) of this section to make a  
 3 copy of or take extracts from the register commits an offence and is liable on  
 4 conviction to a fine of not less than N500,000 or for a term of imprisonment  
 5 of not less than six months or to both fine or imprisonment.

6 (3) The Commission may, in lieu of prosecution under subsection  
 7 (2) of this section, impose a penalty of not less than N500,000 and a further  
 8 sum of N5,000 for every day during which the violation continues.

9 *Comment*

10 The highlighted portions in the two preceding sections enhance the penalties  
 11 contained in Sections 57 and 58 of the 2007 Act dealing with violation of  
 12 requirements in respect of the creation and preservation of a register  
 13 containing securities in which a capital market operator has interest.

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

18 PART VII - INSPECTIONS AND INVESTIGATIONS

19 72.-(1) The Commission shall conduct routine and special  
 20 inspection and investigation of regulated entities. Designation of  
staff of the  
Commission for  
supervision of  
all regulated  
entities and  
securities exchanges

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

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

25 (a) have a right of access at all times to the books, accounts and  
 26 vouchers of regulated entities;

27 (b) examine periodically the books and affairs of regulated entities;  
 28 c.require from directors, managers and employees of regulated entities such  
 29 information and explanation as may be deemed necessary to the  
 30 performance of his duties under this Bill.

1. (4) Regulated entities shall produce to the examiners at such times as  
2 the examiners may specify, all books, accounts, documents and information  
3 which they may require.

4 (5) For the purpose of this part, references to examiners are references to the  
5 Staff referred to in subsections (2) of this section.

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

7 *Comments:*

8 (i) The highlighted portions in Subsections (1) to (3) of this section are  
9 minor amendments to Section 45 of the 2007 Act through the insertion of the  
10 words "regulated entities" and "staff".

11 (ii) Subsections (5) and (6) are new provisions which enhance the  
12 powers of the Commission to conduct inspections.

Routine  
examination  
and report

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

19 *Comments:*

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

Special  
examination

22 74.-(1) The Commission shall order a special examination or  
23 investigation of the books and affairs of a regulated entity where it is satisfied  
24 that:

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

26 (b) the regulated entity has been carrying on its business in a manner  
27 detrimental to the interest of its clients, beneficiaries and creditors;

28 (c) the regulated entity has "insufficient" assets to cover its liabilities  
29 to the clients, beneficiaries and creditors;

30 (d) the regulated entity has been contravening the provisions of this

1 Bill or the rules and regulations made thereunder; or

2 (e) an application is made therefore by:

3 (i) a director or shareholder of the regulated entity; or

4 (ii) a client, beneficiary or creditor of the regulated entity; Provided

5 that in the case of paragraph (e) of this subsection, the Commission may not

6 order a special examination or investigation of the books and affairs of a

7 regulated entity if the Commission is satisfied that it is not necessary to do

8 so.

9 (2) For the purpose of subsection (1) of this section, the

10 Commission may appoint one or more qualified persons other than or in

11 addition to its staff to conduct special examination or investigation, under

12 conditions of confidentiality, of the books and affairs of the regulated entity.

13 *Comments:*

14 The highlighted portions in this section are minor amendments to Section 47

15 of the 2007 Act through the insertion of the word "regulated entities".

16 75.-(1) Where, after an examination under section 74 of this Bill or

17 otherwise, the Commission is satisfied that the regulated entity is in a grave

18 situation as regards the matters referred to under subsection (1) of section

19 74, or the regulated entity informs the Commission that:

20 (a) it is likely to become unable to meet its obligations under this

21 Bill;

22 (b) it is about to suspend its obligations to any extent; or

23 (c) it is insolvent;

24 the Commission may exercise any one or more of the powers specified in

25 subsection (2) of this section.

26 (2) Pursuant to subsection (1) of this section, the Commission may

27 in addition to all other powers under this Bill:

28 (a) prohibit the regulated entity from receiving funds or other

29 assets from the public for a period as may be set by the Commission, and

30 make the prohibition subject to such exceptions, and impose such conditions

Failing regulated  
entity

1 in relation to the exceptions as may be prescribed by the Commission,

2 (b) require the regulated entity to take any step or action or to refrain  
3 from taking any step or action, in relation to its operations, directors, or officers  
4 as may be stipulated by the Commission;

5 (c) remove for reasons to be recorded in writing, with effect from such  
6 date as may be set out in the notice, any manager or officer of the regulated  
7 entity notwithstanding any written law, or any limitations contained in the  
8 memorandum and articles of association of the regulated entity;

9 (d) in respect of a regulated entity notwithstanding any written law or  
10 any limitations contained in the memorandum and articles of association of the  
11 regulated entity and in particular, notwithstanding any limitation therein as to  
12 the minimum or maximum number of directors, and for reasons to be recorded  
13 in writing:

14 (i) remove from office, with effect from such date as may be specified  
15 by the Commission, any director or officer of the regulated entity; or

16 (ii) appoint any person to manage the affairs of the regulated entity in  
17 the interim, and provide for the person so appointed to be paid by the regulated  
18 entity such remuneration as may be determined by the Commission;

19 *Comment:*

20 (e) appoint any person to advise the regulated entity in relation to the  
21 proper conduct of its business, and provide for the person so appointed to be  
22 paid by the regulated entity, such remuneration as may be determined by the  
23 Commission.

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

Control of failing  
regulated entity

27 76.-(1) If, after taking steps under section 75 of this Bill, the  
28 Commission is of the opinion that the state of affairs of the regulated entity  
29 concerned has not improved significantly, the Commission may assume  
30 control of the regulated entity or appoint persons to do so on its behalf.

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

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

9 *Comments:*

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

13 77.-(1) The Commission or an appointed person that assumes  
 14 control of the business of a regulated entity, shall remain in control until the  
 15 Commission is satisfied that:

Management of  
 failing regulated  
 entity.

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

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

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

23 *Comment:*

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

26 78. Notwithstanding anything contained in any law or  
 27 memorandum and articles of association of a regulated entity, where the  
 28 Commission or an appointed person has assumed control of a regulated  
 29 entity whose paid-up capital is lost, the Commission may-revoke the

Control of regulated  
 entity with lost  
 paid up capital

1 registration of the regulated entity; and take reasonable steps to protect the  
2 assets of investors.

3 *Comment:*

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

Powers of  
Examiners in  
relation to  
regulated entity

6 79.-(1) In carrying out an inspection or investigation of the affairs of a  
7 regulated entity, the examiner may:

8 (a) summon any person, or director, employee, agent, partner or  
9 member, of the regulated entity, who is believed to be in possession or control,  
10 of any document relating to the affairs of the regulated entity, to lodge or  
11 produce such document with the examiner or produce such document, to retain  
12 any such document for as long as it may be required for purposes of the  
13 inspection or any legal or regulatory proceedings;

14 (b) administer an oath or affirmation or otherwise examine any  
15 person, or a director, employee, agent or partner, of the regulated entity.

16 (c) at any time within normal working hours:

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

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

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

28 (d) retain any seized document as may be required for any legal  
29 proceedings.

30 (2) Any regulated entity or its authorised representative, whose

1 documents have been removed or retained, or from whom a document has  
2 been seized, under paragraph (a) or (c) of subsection (1), may copy such  
3 document and make extracts therefrom under the supervision of the  
4 examiner.

5 80.-(1) In relation to the inspection and investigation of the affairs  
6 of a regulated entity an examiner may:

Power of  
Examiners in  
relation to other persons

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

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

13 (iii) Administer an oath or affirmation or otherwise examine any  
14 person referred to in subparagraph (a)(i);

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

17 (i) enter any premises and require the production of any document  
18 relating to the affairs of the regulated entity;

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

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

24 (iv) seize any document relating to the affairs of the regulated  
25 entity as the examiner may consider necessary;

26 (v) retain any seized document for as long as it may be required for  
27 criminal or other proceedings, provided that an examiner may proceed  
28 without the order, if the person in control of any premises consents to the  
29 actions contemplated in this paragraph.

30 (2) (a) an order contemplated in subsection (1) (b) shall be issued,

1 on application by the Commission to the Investments and Securities Tribunal;

2 (b) Such an order may only be issued if it appears from information  
3 under oath that there is reason to believe that a document relating to the affairs  
4 of the regulated entity being inspected is kept at the premises or in the custody  
5 of the person concerned.

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

10 *Comment:*

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

Application to  
the Federal High  
Court for winding  
up

13 81.-(1) Where the Commission makes an order revoking the  
14 registration of a regulated entity and requiring the business of that regulated  
15 entity to be wound up, the regulated entity shall, within fourteen days of the  
16 date of the order, apply to the Federal High Court for an order of winding up of  
17 its affairs and the Federal High Court shall hear the application in priority to all  
18 other matters.

19 (2) If the regulated entity fails to apply to the Federal High Court  
20 within the period specified in subsection (1) of this section, the Commission  
21 may apply to the Federal High Court for the winding up of the regulated entity.

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

29 (4) This section shall have effect and the provisions of the Companies  
30 and Allied Matters Act on winding up shall be construed as if the cancellation



1 of the registration of a regulated entity under this Bill had been included as a  
2 ground for winding up by the Federal High Court under this section.

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

6 *Comment:*

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

9 PART VIII - MANAGEMENT OF SYSTEMIC RISK

10 82.-(1) Notwithstanding the provisions of any other law, the  
11 Commission may, by notice in writing, request any capital market  
12 participant to submit any information or document:

Request for  
information in  
respect of systemic  
risk

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

15 (ii) where the Commission receives a request from a financial  
16 sector regulator.

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

22 (3) Where a notice is issued to a capital market participant pursuant  
23 to subsection (1) of this section, the capital market participant shall provide  
24 the required information or document notwithstanding any obligation under  
25 any contract, agreement or arrangement whether express or implied to the  
26 contrary.

27 (4) A capital market participant who fails to comply with a notice  
28 issued under subsection (1) of this section is liable to a penalty of not less  
29 than N5,000,000 and a further penalty of not less than N10000 for every day  
30 that the infraction continues.

Power of  
Commission to  
issue directive  
for management  
of systemic risk

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

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

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

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

15           (3) In exercising its power under this section, the Commission shall  
16 also take into consideration the financial stability of the capital market, and the  
17 directive shall take effect immediately.

18           (4) For the purpose of issuing a directive under subsection (1) of this  
19 section, where the primary business operations of the capital market  
20 participant concerned is under the regulatory purview of another financial  
21 sector regulator, the Commission may liaise and cooperate with such regulator;

22           (5) Where a directive has been issued pursuant to subsection (2)  
23 above, the capital market participant or any person directly affected by the  
24 order and who consider themselves aggrieved by it, shall nonetheless be given  
25 an opportunity to be heard within 14 working days after making oral or written  
26 representations to the Commission.

27           (6) A directive issued pursuant to subsection (2) above may be  
28 amended or modified after the capital market participant or aggrieved person  
29 has been given an opportunity to be heard pursuant to the provisions of  
30 subsection (5) above.

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

5 84.-(1) Notwithstanding the provisions of any other law, the  
 6 Commission may for the purpose of monitoring, mitigating and managing  
 7 systemic risk in the capital market or contributing towards financial  
 8 stability:

Arrangements  
with other  
supervisory  
authorities

9 (a) provide assistance to any financial sector regulator;

10 (b) obtain any information or document from, or share any  
 11 information or document with, any financial sector regulator if the  
 12 Commission considers it necessary that such information or document be so  
 13 obtained or shared in managing systemic risk in the capital market or  
 14 promoting financial stability; or

15 (c) enter into arrangements to cooperate with any financial sector  
 16 regulator to co-ordinate stability measures.

17 (2) Where the Commission shares any information or documents  
 18 with any financial sector regulator, such financial sector regulator shall give  
 19 an appropriate undertaking for protecting the confidentiality of such  
 20 information or document and the purpose for which the information or  
 21 document may be used.

22 85. In this Part:

23 "capital market participant" includes an investor, issuer, capital market  
 24 operator, securities exchanges, financial market infrastructures;

25 "financial sector regulator" means any Government authority, body, agency  
 26 or entity within or outside Nigeria responsible for:

Definition of  
certain words  
used in this part

27 (a) monitoring, mitigating and managing systemic risk for  
 28 promoting financial stability; or

29 (b) the supervision or oversight of capital market intermediaries or  
 30 participants.

1 "systemic risk" means a situation where one or more of the following events  
2 occur or is likely to occur in the capital market:

3 (a) financial distress in a significant market participant or in a number  
4 of market participants;

5 (b) an impairment in the orderly functioning of the capital market; or

6 (c) an erosion of public confidence in the integrity of the capital  
7 market.

8 (d) a major market disturbance characterized by or constituting  
9 sudden fluctuations of securities prices that threaten fair and orderly dealing in  
10 the capital market

11 (a) a major market disturbance characterized by or constituting a  
12 substantial disruption in the system for clearance and settlement of  
13 transactions;

14 (b) a major disruption in the functioning of the capital market or of a  
15 significant segment of the market, including a major disruption in the  
16 availability of capital to market participants;

17 (c) a major disruption in the transmission, execution or processing of  
18 securities transactions;

19 (d) a substantial threat of such a major market disturbance or major  
20 disruption;

21 (e) any other event as may be determined by the Commission.

22 "significant market participant" means a registered market operator:

23 (a) Whose market activities directly or indirectly, as measured by its  
24 gross revenue, operating assets, assets under management, mean value of  
25 securities traded, account for not less than 25% of aggregate revenue arising  
26 from activities in the sector or market, aggregate operating assets in the sector  
27 or market, aggregate assets under management in the sector or market or  
28 aggregate securities traded in a sector or market;

29 (b) Whose consolidated revenue of subsidiaries or associates or  
30 related parties under a group structure generated from their activities constitute

1 not less than 25% of the aggregate revenue arising from activities of the  
2 sector or the market; or whose consolidated operating assets; assets under  
3 management account for not less than 25% of the aggregate operating assets  
4 or assets under management of the sector or market. or

5 (c) Any other entity as the Commission may from time to time  
6 determine.

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

10 PART IX - REGULATION OF SECURITIES

11 A - REGISTRATION OF SECURITIES

12 86.-(1) All securities of a public company and all securities to be  
13 issued under this Bill shall be registered with the Commission under the  
14 terms and conditions herein contained and as may be supplemented by  
15 regulations prescribed by the Commission from time to time.

Registration of  
securities to be  
issued under this  
Bill

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

19 (3) A registration statement shall be deemed effective only as to the  
20 securities specified therein as proposed to be issued.

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

23 (5) No securities shall be issued, transferred, sold, or offered for  
24 subscription by or sale to the public without the prior registration of the  
25 securities with the Commission.

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

1 applicable, report same to a securities exchange registered with the  
2 Commission;

3 (7) Any person who issues, transfers, sells, or offers securities for  
4 subscription or sale to the public, without the prior registration of the securities  
5 with the Commission commits an offence and is liable on conviction to a fine of  
6 not less than N5,000,000 or to a term of imprisonment of 3 years or to both such  
7 fine and imprisonment.

8 (8) The Commission may, in lieu of a prosecution under subsection  
9 (7) of this section, impose a penalty of not less than N5,000,000 and a further  
10 sum of not less than N20,000 for every day which the violation continues.

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

Electronic and  
other means of  
issuing and  
transferring  
securities

15 87.-(1) Securities registered by the Commission, may be issued or  
16 transferred electronically or by any other means or system approved by the  
17 Commission under such terms and conditions as the Commission may  
18 prescribe.

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

#### 23 B - CORPORATE RESPONSIBILITY OF PUBLIC COMPANIES

Filing of annual  
and periodic reports  
with the  
Commission

24 88.-(1) A public company whose securities are required to be  
25 registered under this Bill shall file with the Commission on an annual basis, its  
26 audited financial statements and such other periodic returns as may be  
27 prescribed by the Commission from time to time.

28 (2) The chief executive officer and the chief financial officer or  
29 officers or persons performing similar functions in a public company filing  
30 periodic or annual reports under subsection (1) of this section, shall certify in

1 each annual or periodic report filed, that:

2 (a) the signing officer has reviewed the report;

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

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

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

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

12 (d) the signing officers:

13 (i) are responsible for establishing and maintaining internal  
14 controls.

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

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

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

24 (e) the signing officers have disclosed to the Auditors of the  
25 company and audit committee:

26 (i) all significant deficiencies in the design or operation of internal  
27 controls which would adversely affect the company's ability to record,  
28 process, summarize and report financial data and have identified for the  
29 company's Auditors any material weakness in internal controls, and

30 (ii) any fraud, whether or not material, that involves management

1 or other employees who have significant role in the company's internal  
2 controls;

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

System of internal  
control of public  
companies

8 89.-(1) A public company shall establish a system of internal controls  
9 over its financial reporting and security of its assets and it shall be the  
10 responsibility of the board of directors to ensure the integrity of the company's  
11 internal controls and reporting.

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

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

19 (4) A public company which contravenes the provisions of sections 88  
20 or this section, is liable to a penalty of not less than N5,000,000 and a further  
21 penalty of N25,000 per day for every day the violation continues.

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

Auditors of public  
companies to  
register with the  
Commission

26 90. No person shall carry on the business of auditing of a public  
27 company unless that person is registered by the Commission on such terms and  
28 conditions as may be prescribed from time to time.

Duty of auditor  
to report on internal  
controls of public  
companies

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



1 otherwise of the internal control system of the public company.

2 92.-(1) A public company which appoints an auditor that is not  
3 registered with the Commission is liable to a penalty of not less than  
4 N5,000,000. and a further penalty of N25,000 per day for the period the  
5 violation continues.

Penalties for non-compliance with Section 90 and 91

6 (2) An Auditor who contravenes the provisions of sections 90 and  
7 91 is liable to a penalty of not less than N1,000,000 and a further penalty of  
8 N5,000 per day for the period the violation continues.

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

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

13 93.-(1) Unclaimed Dividends of public companies under the  
14 regulatory purview of the Commission shall be treated as prescribed under  
15 the Rules and Regulations made pursuant to this Bill.

Unclaimed dividends of public companies

16 (2) It shall be unlawful for any person to treat unclaimed dividend  
17 as described in subsection (1) of this section in a manner other than as  
18 prescribed under the rules and regulations made pursuant to this Bill.

19 (3) Any person who contravenes this section or the rules and  
20 regulations made pursuant to this Bill commits an offence and is liable upon  
21 conviction to a fine of not less than N10,000,000 or to imprisonment for a  
22 term not less than 5 years or to both such fine and imprisonment.

23 (4) In lieu of prosecution, the Commission may sanction a person  
24 who violates the provisions of this section and the rules and regulations  
25 made thereunder to a penalty of not less than N10,000,000 and N50,000 per  
26 day for every day the violation continues.

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

## 1 D - GENERAL

Contravention  
of this Part by  
a body corporate

2 94. Where a contravention of any provision under this part is  
3 committed by a body corporate and it is proved that the contravention has been  
4 committed:

5 (a) with the connivance of or as a result of any neglect on the part of a  
6 director, manager, secretary or other similar officer, servant or agent of the  
7 body corporate or any person purporting to act in any such capacity; or

8 (b) as a result of a director, manager, secretary or other similar officer,  
9 servant or agent of the body corporate or any person purporting to act in any  
10 such capacity, knowingly or willfully authorising the contravention,  
11 the director, manager, secretary or other similar officer, servant or agent of the  
12 body corporate or any person purporting to act in any such capacity shall be  
13 deemed liable to the same extent as the corporate body.

## 14 PART X - PUBLIC OFFERS, SALE OF SECURITIES AND

## 15 INVITATIONS TO THE PUBLIC

Control of  
invitations to  
the public

16 95.-(1) No person shall make any invitation to the public to acquire or  
17 dispose of any securities or to deposit money with anybody corporate for a  
18 fixed period or payable at call, whether bearing or not bearing interest unless  
19 the person or body corporate concerned is:

20 (1) a public company and the securities it seeks to offer to the public  
21 have been registered with the Commission;

22 (2) a statutory body or bank established by or pursuant to an Act of the  
23 National Assembly and is empowered to accept deposits and savings from the  
24 public or issue its own securities (as defined under this Bill), promissory notes,  
25 bills of exchange and other instruments:

26 (3) an entity licensed by the Central Bank of Nigeria and empowered  
27 to accept deposits and savings from the public;

28 (4) a collective investment scheme, government body or an agency of  
29 a government body, supranational body or such other entity approved by the  
30 Commission to issue securities under this Bill;

1 (5) an economic Free Trade Zone whose capital raising exercise  
2 has been approved by the Commission; or

3 (6) such other entity other than an entity described in (a) - (d) above  
4 seeking to solicit funds or other assets from the public for a commercial or  
5 investment related business activity under terms and conditions as may be  
6 prescribed by the Commission from time to time.

7 Provided that nothing in this subsection shall render unlawful the sale of any  
8 shares by or under the supervision of any court or tribunal as may be  
9 authorised by law.

10 (2) The term "commercial or investment business activities"  
11 referred to in subsection (1) of this section means any activity relating to  
12 micro, small and medium scale enterprise, venture capital and private equity  
13 funding or such other commercial or investment business activities as the  
14 Commission may determine from time to time.

15 (3) The provisions of section 142 of Companies and Allied Matters  
16 Act 2020 shall not be applicable to issuers of securities under this bill.

17 (4) If an invitation to the public is made in breach of subsection (1)  
18 of this section, all persons making the invitation and every officer who is in  
19 default or anybody corporate making the invitation shall each be separately  
20 liable to a penalty of not less than 10% of the gross value of the securities or  
21 deposits received in the case of a body corporate and N2,000,000 in the case  
22 of an individual.

23 (5) If, any person acquires or disposes of any securities, or deposits  
24 money with any company, as a result of any invitation to the public made in  
25 breach of subsection (1) of this section, he shall be entitled to:

26 (a) rescind such transactions; and

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

30 (6) Where, in accordance with subsection (3) of this section, any

1 person claims to rescind any transaction, he shall do so within a reasonable  
2 time and shall not be entitled to rescind any transaction with the body corporate  
3 or to recover compensation from it unless he takes steps to rescind the  
4 transaction before the commencement of the winding-up of the body  
5 corporate:

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

9 *Comment:* This is an amendment to Section 67 of the 2007 Act. New categories  
10 of issuers are recognized, as a key step towards the introduction of new  
11 innovations and offerings such as crowd funding as well as the facilitation of  
12 "commercial and investment business activities", subject to the approval of the  
13 Commission and other controls stipulated in the Bill.

14           96.-(1) Any person making an invitation to the public to deposit  
15 money with it shall, prior to the making of the invitation, obtain the written  
16 consent of the Commission and shall only make the invitation in accordance  
17 with such conditions and restrictions as may be imposed by the Commission.

18           (2) The Commission may in its absolute discretion grant or withhold  
19 the consent referred to in subsection (1) of this section, and without prejudice to  
20 the generality of the foregoing, may require that any advertisement or circular  
21 to be used in connection with the invitation shall be registered with or approved  
22 by the Commission.

23           (3) If any advertisement or circular used in connection with the  
24 invitation contains any untrue statement then, subject to subsection (4) of this  
25 section, any person who made the invitation and every person who was a  
26 director of a company making the invitation at the time when the advertisement  
27 or circular was published is liable to pay compensation within one month to  
28 any person who deposited money with the body corporate having relied on the  
29 advertisement or circular, for any loss they may have sustained by reason of  
30 such untrue statement.

Invitation to  
the public to  
deposit money

1 (4) No person shall be liable under subsection (3) of this section, if  
2 he proves that:

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

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

9 (5) If any person or body corporate deposits any money with a body  
10 corporate as a result of an untrue statement of a material fact made, whether  
11 innocently or fraudulently, in any advertisement or circular published in  
12 connection with any invitation to the public made by or on behalf of that  
13 body corporate, the person shall be entitled to require that person or the body  
14 corporate immediately to repay such money with interest at the current  
15 interbank rate per annum or such higher rate as may have been agreed to be  
16 paid on the deposit.

17 97.-(1) For the purposes of this Bill, an invitation shall be deemed  
18 to be an invitation to the public if it is an offer or invitation to make an offer  
19 which is:

Meaning of  
invitation to the  
public

20 (a) published, advertised or disseminated by newspaper,  
21 broadcasting, cinematograph, electronic or any other means whatsoever; or

22 (b) made to or circulated among any persons whether selected as  
23 members or as debenture holders of the company concerned or as clients of  
24 the persons making or circulating the invitation or in any other manner; or

25 (c) made to anyone or more persons upon the terms that the person  
26 or persons to whom it is made may renounce or assign the benefit of the offer  
27 or invitation or any of the securities to be obtained under it in favour of any  
28 other person or persons; or

29 (d) made to any one or more persons to acquire any securities dealt  
30 in by a securities exchange or in respect of which the invitation states that an

1 application has been or shall be made for permission to deal in those securities  
2 on a securities exchange.

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

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

Offers for sale  
deemed to be  
made by an  
issuer

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

20 Provided that where:

21 (a) an invitation to the public is made in respect of any such securities  
22 within six months after the allotment or agreement to allot; or

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

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

Form of application  
for shares to be  
issued with  
prospectus

29 99.-(1) Subject to the provisions of Section 104 of this Bill, no person  
30 shall issue any form of application to deposit money for the purpose of

1 subscribing to, purchasing or in any way acquiring the securities of a body  
2 corporate unless the form is issued with a prospectus which complies with  
3 the requirements of section 107 of this Bill.

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

8 (3) This section shall not apply if it is shown that the form of  
9 application was issued either:

10 (a) in connection with a bona fide invitation to a person to enter into  
11 an underwriting agreement with respect to the securities; or

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

13 (4) A person who contravenes the provisions of this section,  
14 commits an offence and is liable on conviction to a fine of not less than N5,  
15 000,000 or imprisonment for a period not less than two years.

16 (5) The Commission may, in lieu of a prosecution under subsection  
17 (4) of this section, impose a penalty of not less than N10,000,000 and a  
18 further sum of not less than N20,000 for every day which the violation  
19 continues.

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

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

Effective date  
of prospectus

26 101.-(1) Subject to the provisions of Section 104 of this Bill, every  
27 prospectus issued by or on behalf of a company, or by or on behalf of any  
28 person or body corporate who is or has been engaged or interested in the  
29 formation of the company, shall state the matters specified in part I of the  
30 third Schedule to this Bill and set out the reports specified in part II of that

Contents of a  
prospectus

1 Schedule and parts I and II shall have effect subject to the provisions contained  
2 in that Schedule.

3 (2) Any condition requiring or binding an applicant for securities to  
4 waive compliance with any requirement of this section or purporting to affect  
5 him with notice of any contract, document or matter not specifically referred to  
6 in the prospectus, shall be void.

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

11 (a) as regards any matter not disclosed, he was not a party to it; or

12 (b) the non-compliance or contravention arose from an honest  
13 mistake of fact on his part; or

14 (c) the non-compliance or contravention was in respect of matters  
15 which in the opinion of the Tribunal, were immaterial or was otherwise such as  
16 should, in the opinion of the Tribunal, having regard to all the circumstances of  
17 the case, reasonably be excused, provided that, where there is a failure to  
18 include in a prospectus a statement with respect to the matters specified by  
19 regulations, no director or other person shall incur any liability in respect of the  
20 failure, unless it is proved that he had knowledge of the matters not disclosed.

Exemption from  
application of  
provisions relating  
to prospectus  
in certain cases

21 102. The provisions of Sections 99 and 101 of this Bill shall not apply  
22 to an issue:

23 (a) made to the existing members of a company or to a prospectus or  
24 form of application relating to shares in the company whether or not an  
25 applicant for shares has the right to renounce in favour of other persons; or

26 (b) of a prospectus or form of application relating to securities which  
27 are to be in all respects uniform with securities previously issued and for the  
28 time being dealt in or quoted on a securities exchange.

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

29 103.-(1) No person shall without the prior approval of the  
30 Commission issue, circulate, publish, disseminate or distribute any notice,



1 circular or advertisement to the public which:

2 (a) offers for subscription or purchase of securities in a company;

3 (b) invites subscription for or purchase of securities; or

4 (c) calls attention to:

5 (i) an offer or intended offer for subscription or purchase of  
6 securities in a company;

7 (ii) an invitation or intended invitation to subscribe for or purchase  
8 any such securities; or

9 (iii) a prospectus.

10 (2) This section shall not apply to:

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

13 (b) a registered prospectus;

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

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

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

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

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

- 1 (v) the names and addresses of capital market operators to the issue,
- 2 (vi) the name of the securities exchange (if any) of which the brokers  
3 and issuing houses to the issue are members or participants,
- 4 (vii) particulars of the time and place at which copies of the registered  
5 prospectus and form of application for the shares to which it relates may be  
6 obtained; and
- 7 (d) a notice or circular which:
- 8 (i) accompanies a notice or circular referred to in paragraphs (a) or  
9 (c) of this section;
- 10 (ii) is issued or circulated by a person whose ordinary business  
11 includes advising clients in connection with their investments and is issued or  
12 circulated only to clients so advised in the course of that business;
- 13 (iii) contains a statement that person recommends the investment to  
14 which it or the accompanying document relates; and
- 15 (iv) where the person is an underwriter or sub-underwriter of an issue  
16 of securities to which the notice or circular relates, contains a statement that the  
17 person making the recommendation is an underwriter or sub-underwriter as the  
18 case may be.
- 19 (3) This section applies to notices, circulars and advertisements  
20 published or disseminated by a newspaper, radio or television broadcasting,  
21 cinematograph, electronic media platforms, or any other means.
- 22 (4) This section applies to notices, circulars and advertisements  
23 published or disseminated by a newspaper, radio or television broadcasting,  
24 cinematograph, electronic media platforms, or any other means.
- 25 (5) A person who:
- 26 (a) contravenes the provisions of this section; or
- 27 (b) authorizes or permits an act which constitutes a contravention of  
28 this section, commits an offence and is liable on conviction to a fine of not less  
29 than N5,000,000 or to a term of imprisonment of not less than three years or to  
30 both such fine and imprisonment.

1 (6) The Commission may, in lieu of prosecution pursuant to  
2 subsection (4) of this section, sanction a person who contravenes the  
3 provisions of this section by imposing a penalty of not less than N5,000,000  
4 and a further sum of not less than N5,000 for every day the violation  
5 continues.

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

11 104.-(1) Where it is proposed to offer any securities to the public by  
12 a prospectus issued generally and the application is made to a securities  
13 exchange for permission for those securities to be dealt in or quoted on that  
14 securities exchange;  
15 the securities exchange to which the application is made may, at the request  
16 of the applicant, grant a certificate of exemption that is, a certificate that,  
17 having regard to the proposal (as stated in the request) as to the size and other  
18 circumstances of the issue of securities and as to any limitations on the  
19 number and class of persons to whom the offer is to be made, compliance  
20 with the requirements of the Third Schedule to this Bill will be unduly  
21 cumbersome.

Exemption  
certificate and  
effect

22 (2) If a certificate of exemption is given and the proposal  
23 mentioned in subsection (1) of this section are complied with and the  
24 particulars and information required to be published in connection with the  
25 application for permission made to the securities exchange are so published,  
26 then:

27 (a) a prospectus giving the relevant particulars and information, in  
28 the form in which they are so required to be published, shall be deemed to  
29 comply with the requirements of the Third schedule to this Bill; and

30 (b) after the permission applied for is granted, Sections 99 and 101

1 of this Bill shall not apply to any issue of a prospectus or form of application  
2 relating to the securities.

Expert's statement  
on prospectus

3 105.-(1) A prospectus inviting persons to subscribe for securities of a  
4 company and including a statement purportedly made by an expert shall not be  
5 issued unless:

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

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

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

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

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

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

23 (a) within six months prior to the making of the invitation, a  
24 prospectus relating to such securities and complying in all respects with the  
25 relevant provisions of Sections 103, 104 and 107 of this Bill has been delivered  
26 to the Commission and registered by it, in accordance with Section 108 of this  
27 Bill;

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

30 (c) every copy of the prospectus states on its face that it has been

1 registered with the Commission at the time when the invitation is first made  
2 and the date of registration is reflected thereon.

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

6 107.-(1) Except as provided in Section 104 of this Bill, where an  
7 issuer invites the public to acquire its securities, the prospectus referred to in  
8 section 105 of this Bill shall state the matters specified in Part I of the Third  
9 Schedule to this Bill and set out the report specified in Part II of the same  
10 Schedule.

General and  
restricted invitations  
to the public

11 (2) Subsection (1) of this section shall not apply to an invitation by  
12 an issuer in respect of its shares:

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

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

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

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

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

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

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

Registration of  
prospectus

5 108.-(1) No prospectus shall be issued by or on behalf of an issuer or  
6 in relation to an intended issuer unless, on or before the date of its publication,  
7 there has been delivered to the Commission a copy of the prospectus for  
8 registration, signed by every person who is named in it as a director of the  
9 issuer, or by his agent authorised in writing and having endorsed on it or  
10 attached to it:

11 (a) any consent to the issue of the prospectus required by Section 105  
12 of this Bill from any person as an expert; and

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

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

21 (d) where the persons making any report required by Part II of the  
22 Third Schedule to this Bill have made in it or without giving the reasons have  
23 indicated in it any such adjustments as are mentioned in paragraph 21 of the  
24 Third Schedule, a written statement signed by those persons setting out the  
25 adjustments and giving the reasons for them.

26 (2) The references in paragraphs (b) and (c) of subsection (1) of this  
27 section to the copy of a contract required to be endorsed on or attached to a  
28 prospectus shall:

29 (a) in the case of a contract wholly or partly in any language other than  
30 English, be taken as references to a copy of a translation in English of the parts

1 of the contract that are in any other languages other than English from the  
2 original language of the contract being a translation certified in any manner  
3 acceptable to the Commission to be a correct translation;

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

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

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

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

16 (4) The Commission shall not register a prospectus unless it is  
17 satisfied that:

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

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

21 (c) the prospectus otherwise complies with the requirements of this  
22 Bill.

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

27 (6) If a prospectus is issued without a copy of it being registered  
28 under this section by the Commission or without the copy so registered  
29 having endorsed on it or attached to it the documents required under this  
30 Bill, the issuer and every person who is a party to the issue of the prospectus,

1 shall be jointly and severally liable:

2 (a) in the case of an issuer, a penalty of not less than N5,000,000 and a  
3 further sum of N25,000 for every day the violation continues from the date of  
4 issue of the prospectus; or such other sum as the Commission may deem  
5 necessary in the circumstance;

6 (b) in the case of any other person, not less than N2,000,000 and a  
7 further sum of N5,000 for every day the violation continues from the date of  
8 issue of the prospectus.

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

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

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

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

Document of  
offer of securities  
to be deemed  
a prospectus

17 110.-(1) Where an issuer offers or agrees to offer securities with a  
18 view to offering those securities to the public; any document by which the offer  
19 is made shall be deemed to be a prospectus so issued, and shall have effect as if:

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

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

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

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

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

30 (3) Any prospectus issued under this section shall comply with a



1 prospectus issued pursuant to Section 101 of this Bill and provide the  
2 following information:

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

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

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

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

13 *Comment:* Amendments are proposed above to section 82 (3) of the ISA  
14 2007 for clarity.

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

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

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

21 112. A statement in lieu of prospectus shall be in the form and  
22 contain the particulars set out in part I of the fourth schedule to this Bill and,  
23 in the cases mentioned in Part II of that schedule, set out the reports specified  
24 therein, and the said parts I and II shall have effect subject to the provisions  
25 contained in part III of that schedule.

26 113.-(1) Where a prospectus invites persons to subscribe for  
27 securities, the persons referred to in subsection (2) of this section shall be  
28 liable to pay compensation to all persons who subscribe for such securities  
29 relying on the prospectus for the loss or damage they may have sustained by  
30 reason of any untrue statement or misstatement included in it.

Interpretation  
as to prospectus

Form of statement  
lieu of prospectus

Civil liability for  
misstatements in  
prospectus

1 (2) A person liable to pay compensation under subsection (1) of this  
2 section includes:

3 (a) any director of the issuer or the equivalent at the time of the issue  
4 of the prospectus;

5 (b) any person who consented to be named and is named in the  
6 prospectus as a director of the issuer or the equivalent or as having agreed to  
7 become a director or the equivalent either immediately or after an interval of  
8 time;

9 (c) any employee of the issuer who participated in or facilitated the  
10 production of the prospectus; and

11 (d) the Issuing House and its principal officers;

12 (e) a person named in the prospectus as stockbroker, underwriter,  
13 auditor, banker or solicitor of the issuer or other expert in relation to the offer;

14 (f) a promoter, for any loss or damage arising from the prospectus or  
15 any relevant portion of the prospectus in respect of which he was a party to the  
16 preparation thereof;

17 (g) a person named in the prospectus with his consent as having made  
18 a statement that is included in the prospectus or on which a statement made in  
19 the prospectus is based, for any loss or damage caused by the inclusion of the  
20 statement in the prospectus;

21 (3) Where under Section 105 of this Bill the consent of a person is  
22 required to the issue of a prospectus and he has given that consent, he shall not  
23 by reason only of his having given the consent be liable under this section as a  
24 person who has authorised the issue of prospectus except in respect of an untrue  
25 statement or misstatement purported to be made by him as an expert.

26 (4) No person shall be liable under subsection (1) of this section if he  
27 proves:

28 (a) that, having consented to become a director of the issuer or the  
29 equivalent, he withdrew his consent in writing before the issue of the  
30 prospectus, and that it was issued without his authority or consent;

1 (b) that the prospectus was issued without his knowledge or  
2 consent, and that on becoming aware, he immediately gave reasonable  
3 public notice that it was issued without his knowledge or consent;

4 (c) that, after the issue of the prospectus and before allotment, he,  
5 on becoming aware of any untrue statement or misstatement, withdrew his  
6 consent in writing and gave reasonable public notice of the withdrawal and  
7 of the reason for his withdrawal; or

8 (d) that, as regards every untrue statement or misstatement:

9 (i) not purporting to be made on the authority of an expert, or of an  
10 official public document or statement, he had reasonable ground to believe  
11 and did up to the time of the allotment of the securities, as the case may be,  
12 believe that the statement was true,

13 (ii) purporting to be a statement by an expert and he had reasonable  
14 ground to believe that the person making the statement was competent to  
15 make it and that person had given the consent required by Section 105 of this  
16 Bill to the issue of the prospectus and had not withdrawn that consent before  
17 delivery of a copy of the prospectus for registration, and

18 (iii) purporting to be a statement made by an official person or  
19 contained in what purports to be a copy of or an extract from an official  
20 public document, it was a correct and fair representation of the statement or  
21 copy of or extract from the document.

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

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

1 purporting to be made by him as an expert, shall not be so liable if he proves  
2 that:

3 (a) having given his consent under Section 105 of this Bill to the issue  
4 of the prospectus, he withdraws it in writing before registration of the  
5 prospectus; or

6 (b) after registration of the prospectus and before allotment he, on  
7 becoming aware of the untrue statement or misstatement, withdrew his consent  
8 in writing and gave reasonable public notice of the withdrawal and of the  
9 reason for his withdrawal; or

10 (c) he was competent to make the statement and that he had  
11 reasonable ground to believe that the statement was true.

Criminal liability  
for misstatement  
in prospectus

12 114. Where a prospectus includes any untrue statement or  
13 misstatement, any director or the equivalent, or officer who authorised the  
14 issue of a prospectus or statement in lieu of a prospectus commits an offence  
15 and is liable on conviction to a fine of not less than N1,000,000 or to  
16 imprisonment for a term not exceeding three years, or to both such fine and  
17 imprisonment.

Allotment of  
securities

18 115.-(1) Where a public offer of securities is made, whether listed or  
19 not, under such rules and regulations as may be laid down by the Commission,  
20 the issuer and the issuing house shall be responsible for the allotment of such  
21 securities, subject to the approval of the allotment by the Commission in  
22 accordance with the rules and regulations made hereunder.

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

27 *Comment:* This is an introduction to the bill amending to section 88 of the ISA  
28 2007.

No allotment  
below minimum  
subscription

29 116. No allotment shall be made of any securities offered to the public  
30 for subscription unless the subscription level meets the minimum percentage

1 prescribed by the Commission from time to time.

2 117.-(1) Application monies and other monies paid prior to  
3 allotment of securities by an applicant on account of securities shall, until  
4 the allotment of the securities, be held in a separate trust account as deposit  
5 by the Issuing House on such terms and condition as may be prescribed by  
6 the Commission.

Application monies  
to be held in trust  
until allotment

7 (2) If any default is made in complying with the provisions of  
8 subsection (1) of this section, the Issuing House who authorizes or permits  
9 the default is liable on conviction to pay a fine of not less than N5,000,000 or  
10 to imprisonment for a term of not less than one year or to both such fine and  
11 imprisonment.

12 (3) The Commission may, in lieu of prosecution under subsection  
13 (2) of this section, impose a penalty of not less than N5,000,000 and a further  
14 sum of not less than N5,000 for every day in which the violation continues.

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

21 (5) In the event of liquidation of a bank or financial institution in  
22 whose custody application monies are kept prior to allotment, the monies  
23 held in the trust account mentioned in subsection (4) of this section shall be  
24 treated as priority to any other claim and the liquidator shall within 48 hours  
25 after assumption of duty transfer such monies to the issuing house in respect  
26 of the offer for which the monies were deposited with the bank or financial  
27 institution.

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

29 118. A shareholder may bring an action against an issuer which has  
30 allotted securities under a prospectus for the rescission of all allotments and

Action for  
rescission

1 the repayment to the holders of the securities of the whole or part of the issued  
2 price which has been paid in respect of them if the prospectus:

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

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

Allotment of  
securities and  
dealing on  
securities exchange  
etc.

7 119.-(1) Where a prospectus, whether issued generally or not, states  
8 that application has been or will be made for permission for the securities  
9 offered by it to be dealt with on any securities exchange any allotment made on  
10 an application in pursuance of the prospectus shall, whenever made, be void if  
11 the permission has:

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

14 (b) been refused before the expiration of the offer period or such  
15 longer period as may be notified to the applicant by the Securities Exchange.

16 (2) Where application or permission for a dealing referred to in  
17 subsection (1) of this section has not been made or applied for or if made or  
18 applied for has been refused, the issuer or sponsor shall repay, with accrued  
19 interest, all monies received from applicants in pursuance of the prospectus.  
20 However, if the monies are not repaid within a period stipulated by the  
21 Commission, the issuer or sponsor and its directors shall be jointly and  
22 severally liable to repay the monies with interest at the current interbank rate  
23 per annum from the expiration of the period stipulated by the Commission.

24 (3) All monies received by virtue of this section shall be kept in a  
25 separate trust account on such terms and conditions as may be prescribed by the  
26 Commission, and the Issuing House shall be liable to repay the monies  
27 specified under subsection (2) of this section.

28 (4) The Issuing House and any of its officers, who violates the  
29 provisions of subsection (2) above shall be jointly and severally liable to a  
30 penalty of not less than N5,000,000 and a further sum of not less than N50,000

1 for every day the violation continues.

2 (5) Any condition requiring or binding any applicant for securities  
3 to waive compliance with any requirement of this section is void.

4 (6) For the purposes of this section, permission shall not be deemed  
5 to be refused if it is intimated that the application for permission, though not  
6 at the time granted, shall be given further consideration.

7 (7) This section shall have effect:

8 (a) in relation to any securities agreed to be taken by a person  
9 underwriting an offer by a prospectus as if he had applied for them in  
10 pursuance of the prospectus; and

11 (b) in relation to a prospectus offering securities for sale, with the  
12 following modifications:

13 (i) references to sale shall be substituted for references to  
14 allotment,

15 (ii) the persons by whom the offer is made shall be liable under  
16 subsection (2) of this section to repay monies received from applicants, and  
17 references to the issuer's liability under that subsection shall be construed  
18 accordingly, and

19 (iii) for the references in subsection (3) of this section to the issuer  
20 and every officer of the issuer who is in default there shall be substituted  
21 references to any person by or through whom the offer is made and who  
22 authorizes or permits the default.

23 *Comment:* An amendment is proposed to section 95 of the ISA 2007 to  
24 increase civil penalties for violation amongst others.

25 120.-(1) The Commission shall have the power to prescribe the  
26 maximum period within which surplus monies due to subscribers shall be  
27 returned.

28 (2) The Commission may, subject to subsection (3) of this section,  
29 prescribe the rate of interest payable to subscribers whose surplus monies

Return of surplus  
monies to  
subscribers, etc.

1 are held beyond the period prescribed pursuant to subsection (1) of this section.

2 (3) The interest due and payable under subsection (2) of this section  
3 shall not be less than the Central Bank of Nigeria Monetary Policy Rate plus  
4 five per cent and the Commission may, in addition, require a company which  
5 fails to honour its obligation under this subsection to pay a higher rate of  
6 interest on the surplus monies.

7 (4) A person who fails to comply with the provisions of this section is  
8 liable to a penalty of not less than N5,000,000 and a further sum of not less than  
9 N50,000 for every day the violation continues.

10 *Comment:* An amendment is proposed to section 96 of the ISA 2007 to increase  
11 civil penalties for violation.

12 PART XI - CONDUCT OF SECURITIES BUSINESS

Prohibition of  
certain cash  
transaction

13 121. For the purpose of this Bill, no cash transaction shall be carried  
14 out in the capital market in excess of an amount to be determined by the  
15 Commission from time to time.

Prohibition of  
transactions in  
non-dematerialized  
securities

16 122. All Securities to be transacted in the secondary market shall be  
17 deposited with a Central Securities Depository.

18 *Comment:* This provision was inserted to ensure that only dematerialized  
19 securities are traded in the secondary market.

Legal entity  
identifier

20 123.-(1) There shall be a Legal Entity Identifier for any entity  
21 involved directly or indirectly in securities transactions in Nigeria to ensure  
22 proper monitoring and minimization of systemic risks arising from parties and  
23 counter-parties' activities.

24 (2) All participants in securities transactions shall obtain the Legal  
25 Entity Identifier from an authorized issuer.

26 (3) For the purpose of this section, a "Legal Entity Identifier" means a  
27 code that uniquely identifies every distinct entity or structure that is a party to a  
28 financial transaction.

29 *Comment:* This provision makes it mandatory for every party in a financial  
30 transaction to own a Legal Entity Identifier (LEI) and disclose same in every



1 securities transaction it is involved in. This is proposed for accuracy of  
2 financial data and risk management.

3 124. A securities dealer shall, where applicable, within the  
4 prescribed time and in respect of every securities transaction either as a  
5 principal or agent, issue a contract note or other form of transaction  
6 confirmation which complies with this part of this Bill.

Securities dealer  
to issue contract  
note/transaction  
confirmation

7 *Comment:* An amendment is proposed to section 98 of the 2007 Act with the  
8 introduction of the highlighted words.

9 125.-(1) A contract note or other form of transaction confirmation  
10 given by a securities dealer under this part shall include:

Contents of contract  
note/transaction  
confirmation

11 (a) the name and style under which the securities dealer carries on  
12 his business as a securities dealer and the address of the principal place at  
13 which he so carries on his business;

14 (b) the name and address of the person in whose favour the  
15 securities dealer issues the contract note or other form of transaction  
16 confirmation;

17 (c) the date on which the transaction took place;

18 (d) the number, amount and description of the securities which are  
19 the subject of the contract or transaction;

20 (e) the price per unit of the securities;

21 (f) the amount of the consideration;

22 (g) the rate and amount of commission (if any) charged;

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

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

29 (2) A securities dealer who fails to issue a contract note or other  
30 form of transaction confirmation in accordance with this Bill is liable to a

1 penalty of not less than N200,000.

2 (3) Any securities dealer or its principal officer who issues a contract  
3 note or other form of transaction confirmation containing false or misleading  
4 information is liable to a penalty of N1,000,000, or an amount equivalent to  
5 four times the amount involved in the transaction, whichever is higher or on  
6 conviction to a term of imprisonment not exceeding 3 years or to both such fine  
7 and imprisonment.

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

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

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

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

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

19 126.-(1) Where a securities dealer, fund manager, investment adviser,  
20 underwriter or an associated person of any of them, issues circulars or other  
21 similar written communications with respect to securities or a class of  
22 securities in which he has interest, he shall disclose in legible form, the nature  
23 of that interest.

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

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

29 (a) has purchased securities for the purpose of offering all or any of  
30 the securities to the public; and

1 (b) offers to sell any of the securities to any person, he shall not  
2 make a recommendation with respect to the securities offered for the  
3 purpose unless he has informed each person to whom the recommendation is  
4 made that he purchased the securities for that purpose.

5 (4) Where:

6 (a) securities have been offered for subscription or purchase; and

7 (b) a person has subscribed for or purchased or is or will or may be  
8 required to subscribe for or purchase, any of those securities under an  
9 underwriting or sub-underwriting agreement by reason that some or all of  
10 the securities have not been subscribed for or purchased,  
11 he shall not, during the period of 90 days after the close of the offer, make an  
12 offer to sell those securities, other than in the ordinary course of trading on a  
13 securities exchange, or make a recommendation with respect to those  
14 securities within a period to be prescribed by the Commission from time to  
15 time, unless the offer or recommendation complies with the provisions of  
16 subsection (5).

17 (5) An offer or recommendation shall not be made under  
18 subsection (4) of this section unless it contains or is accompanied by a  
19 statement to the effect that the offer or recommendation relates to securities  
20 which he has acquired, or is or will or may be required to acquire under an  
21 underwriting or sub-underwriting agreement by reason that some or all of  
22 the securities have not been subscribed for or purchased.

23 (6) A person who is a securities dealer, fund manager, investment  
24 adviser, or any of their representative shall not issue to any person any  
25 circular or other communication or written offer or recommendation to  
26 which subsection (1), (3) or (4) of this section applies unless the circular or  
27 other communication or the written offer or recommendation is signed by a  
28 director, executive officer or secretary in the case of a body corporate, and  
29 that individual in the case of a natural person.

30 (7) Where a person who is a securities dealer, fund manager,

1 investment adviser, or any of their representative issues to any person a circular  
2 or other communication or a written offer or recommendation to which  
3 subsection (1), (3), (4) or (5) of this section applies, the first mentioned person  
4 shall preserve for a period of 7 years a copy of the circular or other  
5 communication or of the written offer or recommendation, duly signed by any  
6 of the persons mentioned in subsection (6) of this section.

7 (8) Reference in this section to an offer of securities shall be construed  
8 to include a reference to a statement that is not an offer but expressly or  
9 impliedly invites a person to whom it is made, to offer or acquire securities,

10 (9) Any person who contravenes the provisions of this section  
11 commits an offence and is liable on conviction to a fine of not less than  
12 N500,000, or to imprisonment for a term not exceeding three years or to both  
13 such fine and imprisonment.

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

Dealing as  
principal

18 127.-(1) A securities dealer shall not as a principal deal in any  
19 securities with a person who is not a securities dealer.

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

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

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

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

29 (3) A securities dealer who, as a principal, enters into a transaction of  
30 sale or purchase of securities with a person who is not a securities dealer shall

1 state in the contract note or transaction confirmation that he is acting in the  
2 transaction as principal and not as agent.

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

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

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

13 (7) A person who contravenes or fails to comply with any of the  
14 provisions of this section is liable to a fine of not less than N1,000,000, or an  
15 amount equivalent to four times the amount involved in the transaction, or to  
16 imprisonment for a term not exceeding six months or to both such fine and  
17 imprisonment.

18 (8) In lieu of prosecution under subsection (2) of this section, the  
19 Commission may impose a penalty of not less than N5,000,000 and a further  
20 sum of not less than N10,000 for every day the violation continues.

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

26 **128.-(1)** A securities dealer shall not give an unsecured credit to an  
27 associated person, an employee, or a person who is associated with the  
28 employee of the securities dealer, if:

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

Dealing by  
employees and  
associated persons  
of securities dealers

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

4 (2) A person who fails to comply with any of the provisions of  
5 subsection (1) of this section commits an offence and is liable upon conviction  
6 to a fine of not less than N2,000,000 or a term of imprisonment not exceeding  
7 two years or to both such fine and imprisonment.

8 (3) In lieu of prosecution under subsection (2) of this section, the  
9 Commission may impose a penalty of not less than N5,000,000 and a further  
10 sum of not less than N10,000 for every day the violation continues.

11 (4) Notwithstanding the provisions of subsection (3), a person who  
12 contravenes the provisions of this section shall be liable to forfeit to the  
13 Commission, the profit made or to be made from the contravention.

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

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

25 **129.-(1)** A securities dealer shall not, except as permitted by  
26 subsection (4) of this section, whether as principal or on behalf of a person  
27 associated with him, enter into a transaction of purchase or sale of securities to  
28 be traded on a securities exchange if a client of the securities dealer who is not  
29 associated with the securities dealer has instructed the securities dealer to  
30 purchase or sell, respectively, securities of the same class and the dealer has not

Securities dealers  
to give priority  
to client's orders

1 complied with the instruction.

2 (2) A securities dealer who contravenes the provisions of this  
3 section shall be liable to a penalty of not less than N500,000.

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

8 (4) The provisions of subsection (1) of this section shall not apply  
9 in relation to the entering into of a transaction by a securities dealer as  
10 principal or on behalf of a person associated with him if:

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

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

16 (c) the transaction is entered into in prescribed circumstances.

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

21 130-(1) For the purpose of preventing the excessive use of credit  
22 for the purchase or transacting in securities by dealers or member  
23 companies, the Commission may make regulations to provide for margin  
24 requirements, for the amount of credit which may, from time to time, be  
25 extended and maintained by securities dealers on all or specified securities  
26 or transactions or class of securities and transactions and for matters  
27 connected.

28 (2) The Commission may also make regulations for securities  
29 lending transactions by securities dealers.

Securities lending  
and margin  
requirements

1 *Comments:* The word "transacting in" replaced "carrying of" in section 104 (1)  
2 of the 2007 Act.

3 PART XII - TRADING IN SECURITIES

False trading  
and market rigging  
transactions

4 131.-(1) No person shall create, or cause to be created, or do anything  
5 which may create a false or misleading appearance of active trading in any  
6 securities on a securities exchange or in relation to the market for the price of  
7 any such securities.

8 (2) No person shall:

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

11 (b) by any fictitious transactions or devices;  
12 maintain, inflate, depress, or cause fluctuations in the market price of any  
13 securities.

14 (3) Without prejudice to subsection (1) of this section, a person shall  
15 be deemed to have created a false or misleading appearance of active trading in  
16 securities on a securities exchange or financial market infrastructure if such  
17 person:

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

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

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

29 (4) A person shall not be deemed to have violated the provisions of  
30 this section if it is established that the purpose or purposes for which he did the



1 . . . act was not, or did not include, the purpose of creating a false or misleading  
2 appearance of active trading in securities on a securities exchange or  
3 Financial Market Infrastructure.

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

7 **132.** No person shall make a statement, or disseminate  
8 information, which is false or misleading and likely to induce the sale or  
9 purchase of securities by other persons or likely to have the effect of raising,  
10 lowering, maintaining or establishing the market price of securities.

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

13 **133.-(1)** No person shall:

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

16 (b) dishonestly conceals material facts;

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

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

22 (2) It is a defense to any liability under Section 132 and subsection  
23 (1) of this section if it is established that, at the time when the person made,  
24 published, recorded or stored the information/material facts, he had no  
25 reasonable grounds to believe that the information was false, misleading or  
26 would be available to any other person.

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

False or misleading  
statements

Fraudulently  
inducing persons  
to deal in securities

Dissemination  
of illegal  
information

1 134. No person shall disseminate, or authorize or participate in the  
2 dissemination of any statement or illegal information which is likely to  
3 increase, reduce or maintain the price of any securities by reason of any  
4 transaction entered into or things done in relation to the securities if:

5 (a) the person or a person associated with that person has entered into  
6 any such transaction or done any such act or thing; or

7 (b) the person has received or expects to receive directly or indirectly  
8 any consideration or benefit for disseminating or authorizing or being  
9 concerned in the circulation or dissemination of the statement or information.

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

Prohibition of  
fraudulent means

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

15 (a) employ any device, scheme or artifice to defraud; or

16 (b) engage in any act, practice or course of business which operates or  
17 would operate as a fraud or deceit upon any person.

Prohibition of  
dealing in securities  
by insiders

18 136.-(1) A person who is an insider shall not buy or sell, or otherwise  
19 deal, directly or indirectly in any securities if he has material non-public  
20 information in relation to those securities.

21 (2) No person in a relationship with an issuer shall with the  
22 knowledge of a material fact of the issuer that has not been publicly disclosed,  
23 inform, recommend or encourage another person to purchase or sell securities  
24 of the issuer.

25 (3) A person who becomes an insider in a public company or any other  
26 issuer, other than a mutual fund, shall within 14 days of becoming an insider or  
27 of carrying out an insider transaction or within such other period as may be  
28 prescribed by regulation, file a report disclosing, in the prescribed manner and  
29 form, any direct or indirect beneficial ownership of or control or direction over  
30 securities of the public company or other issuer and any interest in, or right or

1 obligation associated with, a related financial instrument and the insider  
2 shall make such other disclosure as may be required by the regulations.

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

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

Actions not  
prohibited under  
section 136

11 (a) doing any particular thing otherwise than with a view to the  
12 making of a profit or the avoidance of a loss (whether for himself or another  
13 person) by the use of that information; or

14 (b) entering into a transaction in the course of the exercise in good  
15 faith of his functions as a liquidator, receiver or trustee in bankruptcy.

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

18 **138.-(1)** Where it appears to the Commission that a person has  
19 violated any Part of this Bill by failing, omitting or refusing to file an insider  
20 report, fraudulently inducing, rigging, issuing misleading information, or  
21 manipulating the market or by buying, selling, or otherwise dealing, directly  
22 or indirectly in the securities of a body corporate while in possession of  
23 material, non-public information or communicating such information in  
24 connection with a transaction on or through the facilities of a securities  
25 exchange or financial market infrastructure or from or through a broker or  
26 dealer, the Commission may sanction:

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

27 (a) the person who committed such violation; and

28 (b) a person who:

29 (i) had knowledge of the violation and benefited therefrom or  
30 failed to report such violation,

1 (ii) directly or indirectly influenced the person who committed such  
2 violation, or

3 (iii) facilitated any part of the activity which led to the violation.

4 (2) Any person sanctioned under the provisions of subsection (1) of  
5 this section shall on conviction be liable:

6 (a) in the case of a person not being a body corporate, to:

7 (i) a fine of not less than N10,000,000 or an amount equivalent to four  
8 times the amount of profit derived or loss avoided in the transaction as a result  
9 of such unlawful manipulation, purchase, sale, or communication or  
10 whichever is higher; and

11 (ii) to imprisonment for a term of not less than five years.

12 (b) in the case of a body corporate, to a fine of not less than  
13 N50,000,000 or an amount equivalent to four times the amount of profit  
14 derived by it or loss avoided in the transaction as a result of such unlawful  
15 manipulation, purchase, sale, or communication.

16 (3) The Commission may in lieu of criminal prosecution of a person  
17 who violates any Part of this Bill impose a penalty of not less than  
18 N20,000,000, or four times the profit gained or loss avoided in the transaction  
19 as a result of such unlawful manipulation, purchase, sale, or communication.

20 (4) In addition to subsection (3) above, the Commission may suspend  
21 or withdraw the registration of such person if the person is a registered capital  
22 market operator, or member of a Securities Exchange or Financial Market  
23 Infrastructure.

24 (5) There shall be paid from amounts imposed as a penalty under this  
25 section and recovered by the Commission, such sums, not exceeding 10  
26 percent of such amount as the Commission deems appropriate, to the person or  
27 persons who provide information leading to the successful prosecution of the  
28 matter or imposition of such penalty.

29 (6) No person shall directly or indirectly take reprisal or subject an  
30 employee to detriment because the employee has:

1 (a) sought advice about providing information, expressed an  
2 intention to provide information, or provided information to the  
3 Commission, a self-regulatory organisation or a law enforcement agency  
4 about an act of the person that has occurred, is ongoing or is about to occur,  
5 and that the employee reasonably believes is contrary to this Bill or the  
6 Rules and Regulations made thereunder or other regulatory instrument of a  
7 securities exchange or self-regulatory organisation; or

8 (b) in relation to information provided under clause (a),  
9 cooperated, testified or otherwise assisted in:

10 (i) an investigation by the Commission, a securities exchange, self-  
11 regulatory organisation or a law enforcement agency, or

12 (ii) a proceeding of the Commission, securities exchange, a self-  
13 regulatory organisation, or a judicial proceeding.

14 (7) For the purposes of subsection (6), a reprisal is any measure  
15 taken against an employee that adversely affects his or her employment and  
16 includes but is not limited to:

17 (a) ending or threatening to end the employee's employment;

18 (b) demoting, disciplining, suspending, or threatening to demote,  
19 discipline or suspend an employee;

20 (c) imposing or threatening to impose a penalty related to the  
21 employment of the employee,

22 (d) intimidating or coercing an employee in relation to his or her  
23 employment.

24 (8) A provision in an agreement, including a confidentiality  
25 agreement, between a person or company and an employee of the person or  
26 company is void to the extent that it precludes or purports to preclude the  
27 employee from:

28 (a) providing information described in subsection (6) (a) to the  
29 Commission, a self-regulatory organisation or a law enforcement agency; or

30 (b) in relation to information provided under subsection (6) (a),

1 cooperating, testifying or otherwise assisting, or expressing an intention to  
2 cooperate, testify or otherwise assist in:

3 (i) an investigation by the Commission, a self-regulatory organisation  
4 or a law enforcement agency, or

5 (ii) a proceeding of the Commission or a self-regulatory organisation,  
6 or a judicial proceeding.

7 (9) Where a person has directly or indirectly taken a reprisal against  
8 an employee or subjected an employee to any detriment in contravention of  
9 subsection (6), without limiting the actions the employee may otherwise take,  
10 the employee may:

11 (a) make a complaint to be dealt with by final and binding settlement  
12 by arbitration under a collective agreement; or

13 (b) if final and binding settlement by arbitration under a collective  
14 agreement is not available, make a complaint to the Commission or

15 (c) bring an action before a court of competent jurisdiction.

16 (10) The Commission, an arbitrator or the court hearing a complaint  
17 or action under subsection (9) may order one or more of the following  
18 remedies:

19 (a) The employee's reinstatement, with the same seniority status that  
20 the employee would have had if the contravention had not occurred

21 (b) Payment to the employee of two times the amount of remuneration  
22 the employee would have been paid by the employer if the contravention had  
23 not taken place between the date of the contravention and the date of the order

24 In this subsection, "remuneration" includes all payments, benefits, bonuses,  
25 entitlements and allowances.

26 (11) The Commission may in addition to any other penalty imposed  
27 under this part direct a person who is liable under this part to pay compensation  
28 to any aggrieved person or persons, who suffered a loss by reason of the  
29 difference between the price at which the securities would have been dealt with  
30 if the contravention had not occurred.

1 Comment: This amendment proposes major amendments to the existing  
2 regulatory framework on insider trading and market manipulation by  
3 redefining the punishment regime for such actions, and creates adequate  
4 protection for whistle blowers who cooperate with the Commission. It  
5 replaces the provisions of sections 114, 115, and 116 of the 2007 Act.

6 PART XIII - MERGERS, TAKE OVERS AND

7 CORPORATE RESTRUCTURING

8 139.-(1) No public company shall, without the prior approval of  
9 the Commission, undertake a proposal, scheme, transaction, arrangement,  
10 or activity or issue securities or offer for subscription or purchase of  
11 securities in relation to:

Control of  
restructuring of  
public companies

12 (a) The conversion of a public company or the reconstruction of its  
13 shares;

14 (b) A carve-out, spin-off, split-off or other form of restructuring of  
15 its operations;

16 (c) The acquisition or disposal of asset which results in a  
17 significant change in the business direction or policy of a public company or  
18 any other listed entity whether or not in relation to any proposal, scheme,  
19 transaction, arrangement or activity;

20 (2) Any person who proposes to effect a compromise, arrangement  
21 or scheme by way of issue of securities for the amalgamation of two or more  
22 listed companies, shall seek the approval of the Commission;

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

26 140.-(1) Where a merger involving a public company or public  
27 companies is achieved or to be achieved by amalgamation or other  
28 combination with the other undertaking in question:

Merger by  
amalgamation  
and other  
combination

29 (a) The Commission may grant an approval in principle to the  
30 company (ies) involved to make an application to the court to order separate

1 meetings of shareholders of the merging companies in order to get their  
2 concurrence to the proposed merger.

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

7 (2) If the merger is approved by the Commission, the parties shall  
8 apply to the court for the merger to be sanctioned and when so sanctioned, the  
9 same shall become binding on the companies and the court may by the order  
10 sanctioning the merger or by the subsequent order make provision for any or all  
11 of the following matters:

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

14 (b) the allotment or appropriation by the transferee company of any  
15 shares, debentures, policies or other like interests in that company which under  
16 the Scheme are to be allotted or appropriated by that company to or for any  
17 person;

18 (c) the continuation by or against the transferee company of any legal  
19 proceedings pending by or against any transferor company;

20 (d) the dissolution, without winding up, of any transferor company;

21 (e) the provision to be made for any persons who in such manner as  
22 the court may direct, dissent to the Scheme; and

23 (f) such incidental, consequential and supplemental matters as are  
24 necessary to secure that the reconstruction or merger shall be fully and  
25 effectively carried out

26 (3) An order under paragraph (d) of subsection (2) of this section shall  
27 not be made unless:

28 (a) the whole of the undertaking and the property, assets and liabilities  
29 of the transferor company are being transferred into the transferee company;  
30 and



1 (b) the court is satisfied that adequate provision by way of  
2 compensation or otherwise have been made with respect to the employees of  
3 the company to be dissolved.

4 (4) Where an order under this section provides for the transfer of  
5 property or liabilities, that property or liabilities shall by virtue of the order,  
6 be transferred to and become the property or liabilities of the transferee  
7 company, and in the case of any property, if the order so directs, be freed  
8 from any charge which by virtue of the merger ceases to have effect.

9 (5) Where an order is made under this section, every company in  
10 relation to which the order is made shall cause an office copy thereof to be  
11 delivered to the Commission for registration within seven days after the  
12 making of the order and a notice of the order shall be published in the  
13 Gazette and in at least one national newspaper and if in default is liable to a  
14 fine of not less than N250,000 and N1000 for every day the default  
15 continues.

16 (6) In this section:

17 (a) "property" includes property rights and powers of every  
18 description;

19 (b) "liabilities" includes rights, powers and duties of every  
20 description notwithstanding that such rights, powers and duties are of a  
21 personal character which could not generally be assigned or performed  
22 vicariously;

23 *Comment:* Following the establishment of the Federal Competition and  
24 Consumer Protection Commission (FCCPC) and the ceding of certain  
25 aspects of merger control to FCCPC, some amendments as highlighted  
26 above, have been made to the provisions regulating mergers and  
27 acquisitions as contained in the ISA 2007.

28 141.-(1) The Commission shall regulate and govern the conduct of  
29 all persons involved in take-overs, mergers or compulsory acquisition,  
30 including an acquirer, offeror, offeree and their officers and associates.

1 (2) (a) No person shall acquire shares, whether by a series of  
2 transactions or not, which carry 30 per cent or more (or any lower or higher  
3 threshold as may be prescribed by the Commission from time to time) of the  
4 voting rights of a company;

5 (b) No persons, whether by a series of transactions or not, acting in  
6 concert with another, shall acquire shares which taken together with the shares  
7 held or acquired by them, carry 30 per cent or more (or any lower or higher  
8 threshold as may be prescribed by the Commission from time to time),

9 (c) A person or persons intending to acquire 30% or more of the shares  
10 specified in (a) and (b) above shall make a take-over bid to other shareholders.

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

14 (4) The Commission shall ensure that shareholders and directors of an  
15 offeree and the market for the shares that are the subject of the take-over offer:

16 (i) are aware of the identity of the acquirer and offeror;

17 (ii) have reasonable time in which to consider a take-over offer; and

18 (iii) are supplied with sufficient information necessary to enable them  
19 assess the merits or otherwise of any take-over offer;

20 (5) All shareholders of an offeree shall have equal opportunities to  
21 participate in the benefits accruing from the take-over offer, including in the  
22 premium payable for control;

23 (6) The acquirer and the target company shall ensure that there is fair  
24 and equal treatment of all shareholders, in particular, minority shareholders, in  
25 relation to the take-over offer, or compulsory acquisition;

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

30 *Comment:* with of certain aspects of competition law to FCCPC, these

1 amendments have been made to create standards for the segments of  
2 competition law still under the Commission's regulatory purview.

3 142.-(1) Save as otherwise provided in this part, any person who  
4 makes a take-over offer shall do so in accordance with the provisions of the  
5 rules and regulations made pursuant to this Bill;

Compliance with  
Code and Rules

6 (2) Subject to exemptions, an acquirer who has obtained control in  
7 a public company or seeks to obtain control in a public company shall make  
8 a take-over offer, in accordance with the provisions of the rules and  
9 regulations made pursuant to this Bill.

10 (3) Subject to exemptions, an acquirer who has obtained control  
11 shall not acquire any additional voting shares in that company or voting  
12 rights, as the case may be, except in accordance with the provisions of the  
13 rules and regulations made pursuant to this Bill.

14 (4) Where an acquirer fails to comply with the provisions of  
15 subsection (2) or with the directives of the Commission, the acquirer shall be  
16 liable to a penalty of not less than N10,000,000 and N25,000 for every day  
17 the violation continues, and shall in addition sell down his holdings in the  
18 target company under a supervised process and relinquish control as the  
19 Commission may deem necessary;

20 (5) Any other person who contravenes the provisions of this  
21 section shall be liable to a penalty of not less than N10,000,000 and a further  
22 sum of N25,000 for every day which the violation continues and such other  
23 punishment as may be deemed appropriate.

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

27 143.-(1) Except as may be specified in the rules and regulations, no  
28 person or two or more persons jointly or in concert, shall make a takeover  
29 bid unless an authority to proceed with the takeover bid has been granted by

Authority to  
proceed with  
takeover

1 the Commission under this section and is in force at the date of the takeover bid.

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

3 (a) be made to the Commission by or on behalf of the person or  
4 persons proposing to make the bid;

5 (b) give the name and other particulars of that person or those persons;  
6 and

7 (c) give particulars of the proposed bid and contain such information  
8 and be accompanied by documents or reports of such a kind as may be  
9 prescribed by regulations.

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

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

16 (5) Except as may be necessary for the purpose of any consultation  
17 pursuant to subsection (4) of this section, the Commission shall keep  
18 confidential the contents of an application, any document, or report  
19 accompanying an application and any information given pursuant to  
20 subsection (3) of this section.

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

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

25 (i) on the economy of Nigeria; and

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

28 (b) determine whether all shareholders are fairly, equitably and  
29 similarly treated and given sufficient information regarding the takeover.

30 (7) Where the Commission is satisfied that none of the matters

1 referred to in subsection (6) above would be adversely affected, it shall grant  
2 an authority to proceed with the proposed take-over bid.

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

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

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

7 (9) An authority to proceed with a take-over bid shall remain in  
8 force:

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

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

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

16 144.-(1) Where the consideration for the shares deposited pursuant  
17 to a take-over bid, merger or other arrangements is to be paid in cash or  
18 partly in cash, the offeror shall make adequate arrangements to ensure that  
19 funds are available to make the required monetary payment for those  
20 shares.

Arrangement  
for Funds

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

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

No payment  
for loss of office

1           145.-(1) No payment for loss of office may be made by any person to a  
2     director of a company in connection with a transfer of shares in the company, or  
3     in a subsidiary of the company, resulting from a merger, takeover, or other form  
4     of corporate restructuring unless the payment has been approved by a  
5     resolution of the relevant shareholders.

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

9           (3) A resolution approving a payment to which this section applies  
10    must not be passed unless a memorandum setting out particulars of the  
11    proposed payment (including its amount) is made available for inspection by  
12    the members of the company whose approval is sought:

13           (i) at the company's registered office for not less than 15 days ending  
14    with the date of the meeting, and

15           (ii) at the meeting itself.

16           (4) Neither the person making the offer, nor any related party of such  
17    person shall be entitled to vote on the resolution. Provided however that at any  
18    meeting to consider the resolution, such persons shall be entitled to be given  
19    notice of the meeting, to attend and speak and if present (in person or by proxy)  
20    to count towards the quorum.

21           (5) A payment made in pursuance of an arrangement:

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

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

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

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

1 146.-(1) Where any document or information is required to be  
 2 submitted to the Commission under this Part or the rules and regulations in  
 3 relation to a take-over offer, merger or restructuring:

Liability for false  
 or misleading  
 statement

4 (a) an acquirer, an offeror or a person making a compulsory  
 5 acquisition or effecting a merger or restructuring, its officers or associates;

6 (b) an offeree, its officers or associates;

7 (c) a financial adviser or an expert; or

8 (d) such other person as the Commission may determine from time  
 9 to time, shall not:

10 (i) submit or cause to be submitted any document or information  
 11 that is false or misleading;

12 (ii) provide or cause to be provided any document or information  
 13 from which there is a material omission; or

14 (iii) engage in conduct that he knows to be misleading or deceptive  
 15 or is likely to mislead or deceive.

16 (2) A person who contravenes subsection (1) commits an offence  
 17 and shall, on conviction, be liable to a fine of not less than N5,000,000 or to  
 18 imprisonment for a term not exceeding ten years or to both;

19 (3) The Commission may in lieu of prosecution, impose a penalty  
 20 of not less than N10,000,000 in addition to any of the actions specified in  
 21 Section 147 of this Bill.

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

25 147.-(1) Where any person who is under an obligation to comply  
 26 with the provisions of this Part, or the rules and regulations made pursuant to  
 27 this part, contravenes or fails to comply with any such provision or rule, the  
 28 Commission may in addition to the penalties specified in this part, take one  
 29 or more of the following actions:

Action by  
 Commission in  
 cases of non-  
 compliance

30 (a) direct the person in breach to comply with any such provision of

1 this Part, or rules and regulations made hereunder;

2 (b) direct a securities exchange to deprive the person in breach access  
3 to the facilities of the securities exchange;

4 (c) where the person in breach is a listed company, direct the securities  
5 exchange:

6 (i) to suspend trading in the securities of the company;

7 (ii) to suspend the listing of the company; or

8 (iii) to remove from the official list, the company or the class of  
9 securities of the company;

10 (d) where the entity in breach is a company that is not listed, direct any  
11 securities exchange to prohibit the listing of any of its securities;

12 (e) direct a securities exchange to prohibit the person in breach from  
13 engaging in transactions to be executed through the use of the facilities of the  
14 securities exchange; or

15 (f) require the person in breach to take such steps as the Commission  
16 may direct to remedy the breach or mitigate the effect of such breach, including  
17 making restitution to any other person aggrieved by such breach.

18 (2) Prior to taking any action under subsection (1), the Commission  
19 shall:

20 (a) notify the person in breach of its intention to take action; and

21 (b) call upon the person to show cause within a specified period why  
22 action should not be taken by the Commission.

23 (3) In determining whether or not restitution is to be made by a person  
24 in breach under paragraph (f) of subsection (1), the Commission shall have  
25 regard to:

26 (a) the profits that have accrued to such person in breach; or

27 (b) whether one or more persons have suffered loss or been otherwise  
28 adversely affected as a result of the breach.

29 (4) Where a person has failed to comply with a penalty imposed by the  
30 Commission under paragraph (b) of subsection (1), the Commission may sue



1 and recover the penalty as a civil debt.

2 (5) Without prejudice to any other remedy, where the Commission  
3 has directed a person in breach to make restitution in the form of monetary  
4 payment, and the person in breach fails to pay the restitution, the  
5 Commission may sue and recover the restitution as a civil debt due to the  
6 persons aggrieved by the breach.

7 (6) Nothing in this section shall preclude the Commission from  
8 taking any of the actions that it is empowered to take under this Bill or other  
9 applicable securities laws against the person in breach.

10 (7) For the purposes of this section:

11 "breach" means a failure to comply with directive(s) of the Commission,  
12 observe or give effect to the provisions of this Part or any rules made  
13 pursuant to this part, in circumstances where there is an obligation to do so.

14 "person in breach" means a person who contravenes or fails to comply with  
15 directive(s) of the Commission, observe or give effect to the provisions of  
16 this Part or any rule made pursuant to this part, in circumstances where the  
17 person is under an obligation to do so.

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

20 148. In this Part:

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

24 "Bid" means an invitation or an offer;

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

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

30 "control", as used in this part means the acquisition or holding of, or

Definition of  
terms in this part

1 entitlement to exercise or control the exercise of, voting shares or voting rights  
2 of more than thirty per cent, or such other threshold, as may be prescribed by  
3 the Commission from time to time;

4 "court" means the Federal High Court;

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

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

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

14 "offeree company" means a company whose shares are the subject of a take-  
15 over bid;

16 "offeror" means a person or two or more persons jointly or in concert who make  
17 a take-over bid;

18 "take over" except as maybe otherwise defined in the code, means the  
19 acquisition by one company of sufficient shares in another company to give the  
20 acquiring company control over that other company;

21 "take-over bid" means an offer made to acquire all or part of the voting shares  
22 or voting rights, or any class or classes of voting shares or voting rights, in a  
23 company and includes:

24 (a) a take-over or merger transaction howsoever effected which has  
25 the effect or potential effect of obtaining or consolidating control in the  
26 company;

27 (b) a partial offer as defined in the Code;

28 (c) a take-over offer by a parent company for the voting shares or  
29 voting rights in its subsidiary; or

30 (d) an arrangement or reorganization that involves the voting shares

1 or voting rights of a listed company;  
2 Comment: New definitions under this part have been introduced for words  
3 such as asset, code, control and mergers, while the definition of take-over  
4 bid was modified.

5 PART XIV - COLLECTIVE INVESTMENTS SCHEMES

6 149. Collective investment scheme", means a scheme or Meaning of  
Collective  
Investment Scheme  
7 arrangement in whatever form, including an open-ended and close-ended  
8 investment scheme, in pursuance of which members of the public or  
9 qualified investors are invited or permitted to invest money or other assets in  
10 a portfolio, and in terms of which:

11 (a) two or more investors contribute money or other assets to and  
12 hold a participatory interest in a portfolio of the scheme through shares,  
13 units or any other form of participatory interest;

14 (b) such contributions are pooled and such portfolio of the scheme  
15 is managed as a whole;

16 (c) such contributions entitle such investors to hold a participatory  
17 interest in the portfolio of the scheme through shares, units or any other form  
18 of participatory interest;

19 (d) such investors share the risk and the benefit of investment in  
20 proportion to their participatory interest in a portfolio of a scheme or on any  
21 other basis determined in the deed, but not a collective investment scheme  
22 authorised by any other Act.

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

27 150.-(1) The Commission may approve a collective investment Types of Collective  
Investment Scheme  
28 scheme which is administered as:

29 (a) unit trust scheme;

30 (b) open-ended or close-ended investment company;

1 (c) real estate investment company or trust;  
2 (d) specialized or alternative schemes; or  
3 (e) such other scheme as may be approved by the Commission from  
4 time to time.

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

8 (3) For the purpose of this part of this Bill the provisions of sections  
9 184, 185 and 187 of the Companies and Allied Matters Act 2020 shall not apply  
10 to a scheme constituted as an open-ended investment company or real estate  
11 investment company.

12 *Comment:* This amendment expands the types of collective Investment  
13 Scheme that can be administered in the Nigerian capital market, and empowers  
14 the Commission to create more should the need arise. The amendment also  
15 takes into consideration appropriate reference to the provisions of the CAMA  
16 2020.

Principled for  
the administration  
of the scheme

17 **151.**-(1) A manager shall administer a collective investment scheme  
18 honestly and fairly:

- 19 (a) with skill, care and diligence; and  
20 (b) in the interest of investors and the securities industry.

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

Disclosure of  
information

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

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

30 (b) information that is necessary to enable the investor to make an

1 informed decision shall be given to the investor timeously and in a  
2 comprehensible manner.

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

5 **153.** The manager of a scheme shall:

Duties of  
Management of  
a Scheme

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

8 (b) disclose the interests of its directors, owners and of  
9 management to the investor;

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

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

14 (e) keep proper records;

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

17 (g) have well-defined compliance procedures; and

18 (h) promote investor education.

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

21 **154.-(1)** No person shall perform any act or enter into any  
22 agreement or transaction for the purpose of administering a scheme, unless  
23 such person is:

Requirements  
for administration  
of a Collective  
Investment Scheme

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

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

26 (2) Any person who contravenes the provisions of this section is  
27 liable to a penalty of not less than N1,000,000 and a further sum of N50,000  
28 per day during which the violation continues.

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

Prohibition of  
misleading names  
and actions

1           155.-(1) No person may, unless registered as a manager under this  
2 Bill, include in or have as part of the name of its business or in any description  
3 of his business any reference to a collective investment scheme, open ended  
4 investment company, unit trust or real estate investment and no person who is  
5 not registered as a manager or trustee or custodian under this Bill may perform  
6 any act calculated to lead the public to believe that any business carried on by  
7 such person consists of or is connected with the administration of a collective  
8 investment scheme.

9           (2) Any person who contravenes the provision of this section is liable  
10 to a penalty of not less than N1,000,000 and a further sum of N50,000 for every  
11 day that the violation continues.

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

Authorization  
of Collective  
Investment  
Schemes

14           156.-(1) No person shall establish or operate a collective investment  
15 scheme or carry on or purport to carry on the business of a collective  
16 investment scheme without the prior review and approval of the Commission.

17           (2) An application for authorization under this section shall be in the  
18 form prescribed by the Commission and shall be accompanied by such  
19 documents as may be prescribed, from time to time, by the Commission.

20           (3) Upon application to the Commission in accordance with this Bill  
21 by the manager of a scheme, the Commission may authorize the scheme where:

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

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

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

30           (ii) having funds, capital and reserve as may be prescribed by the

1 Commission from time to time, and

2 (iii) registered by the Commission;

3 (c) the Commission is satisfied that the scheme is such that the  
4 effective control of its affairs is vested in the trustee and exercised  
5 independently of the manager on behalf of the unit-holders of the scheme;

6 (d) the Commission is satisfied that the trust deed or custodial  
7 agreement is in compliance with the provisions of this Bill and the rules and  
8 regulations of the Commission for the time being in force; and

9 (e) the name of the Scheme is not, in the opinion of the  
10 Commission, undesirable.

11 (4) The Commission may refuse to authorize a Scheme if it fails to  
12 comply with the provisions of this part of this Bill and shall so notify the  
13 Manager, Trustee or Custodian under the Scheme stating its reasons for  
14 refusal within sixty days of filing the application.

15 157.-(1) It shall be unlawful for any person, directly or indirectly to  
16 deal in units or securities of a Scheme (described as units, securities or  
17 otherwise) unless such units or securities have been duly registered with the  
18 Commission.

Registration of  
units and securities  
of a scheme

19 (2) A Scheme, or any other arrangement may be registered  
20 pursuant to this Bill by the issuer filing an application with the Commission  
21 in accordance with the provisions of this part of this Bill and the rules and  
22 regulations made thereunder.

23 (3) Any application for registration of units or securities of a  
24 Scheme or any other arrangement, filed pursuant to this section shall  
25 become effective on the sixtieth day after filing or such earlier date as the  
26 Commission may determine having due regard to the adequacy of the  
27 information contained in such application and registration shall be deemed  
28 effective only as regards the units or securities specified therein as proposed  
29 to be offered.

30 (4) The Commission shall establish and maintain a register of units

1 or securities and collective investments schemes (in this part of this Bill  
2 referred to as the "register").

3 (5) Any person who contravenes the provisions of this section is liable  
4 to a penalty of not less than N1,000,000 and a further sum of N50,000 for every  
5 day the contravention continues.

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

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

9 158.-(1) No Manager, Trustee or Custodian under a Scheme shall  
10 make any alteration in the trust deed or custodial agreement in which are  
11 expressed the trusts of an authorised scheme or to make any change in the name  
12 of an authorised scheme without the prior approval of the Commission.

13 (2) A manager or trustee under a scheme who contravenes the  
14 provision of subsection (1) of this section, is liable to a penalty of N1,000,000  
15 and a further sum of N50,000 for every day the contravention continues.

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

Revocation of  
Authorization of  
a Scheme

20 159.-(1) Subject to the provisions of this section, the Commission  
21 may revoke the authorization of a scheme if:

22 (a) there is a contravention of any provision of this part of this Bill or  
23 of any rule or regulation made thereunder; or

24 (b) the Commission is no longer satisfied in respect of the matter  
25 specified in subsection (3) (a), (c) and (d) of section 156 of this Bill; or

26 (c) the interest of the holders of units or securities created under the  
27 scheme so requires.

28 (2) The Commission shall before such revocation:

29 (a) notify the manager and the trustee or custodian under the scheme,  
30 who may within 21 days from the date of such notification make



1 representations in writing to the Commission in respect of the proposed  
2 revocation; and

3 (b) consider any representation duly made by the manager and  
4 trustee under the scheme.

5 (3) The Commission shall communicate its decision to revoke its  
6 authorization of the scheme within thirty days after the making of the  
7 representations or if none are made within thirty days (30) after the last day  
8 for making of the representation under this section.

9 (4) Whenever the authorization of a scheme under this Bill is  
10 revoked, the Commission shall appoint a trustee or an independent  
11 administrator as it deems fit, who shall be an agent of the unit holders and  
12 observe the utmost good faith in the discharge of its responsibilities.

13 (5) Whenever the trustee or an administrator is so appointed, notice  
14 shall be given to the unit holders by publication of the revocation of the  
15 Scheme and the appointment of the trustee or administrator in three (3)  
16 national daily newspapers.

17 (6) The Manager shall within fourteen days after the revocation,  
18 file with the Commission, a statement of the affairs of the Scheme including  
19 names, addresses of all creditors, unit holders, the securities held and such  
20 other information as may be prescribed by the Commission.

21 (7) The Manager shall also submit a copy of the statement of affairs  
22 filed with the Commission pursuant to subsection (6) of this section to the  
23 trustee or administrator as the case may be.

24 (8) If any manager defaults in complying with the requirements of  
25 subsection (6) above, he shall be guilty of an offence and shall be liable to a  
26 fine of not less than N50,000 for every day that the default continues.

27 (9) The Trustee or Administrator shall realize all the property or  
28 undertaking and buy all the units of the Scheme at the prevailing price  
29 subject to deduction of costs of realization as well as the remuneration for  
30 the appointment and other costs as shall be approved by the Commission.

1 (10) The Trustee or Administrator so appointed shall within one  
2 month after his ceasing to act as the Administrator or Trustee, deliver to the  
3 Commission a statement of his receipts and payments during the period.

4 (11) Any Trustee or Administrator who fails to comply with the  
5 provisions of subsection (10) of this section shall be liable to a fine of  
6 N50,000.00 for every day during which the contravention continues.

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

8 (i) Subsection (1) the proper section of the Bill has been referenced.

9 (ii) Subsection (4) of the section was redrafted for clarity.

10 (iii) In subsection (6) the timeframe for filing a statement of affairs of  
11 the scheme after revocation was increased to 14 days.

Approval of  
prospectus and  
other offer  
documents

12 **160.**-(1) Any letter, notice, circular or document prepared by the  
13 manager for the purpose of offering units or securities of a Scheme to the  
14 public, shall be approved by the Trustee or Custodian as the case may be and  
15 submitted to the Commission for approval before such letter, notice, circular or  
16 document is published.

17 (2) There shall be included in the document referred to in subsection  
18 (1) of this section, information in relation to such matters (if any) as may be  
19 prescribed, from time to time, by the Commission.

Liability for  
material  
misstatement

20 **161.** Any Manager of a Scheme who offers or sells by means of a  
21 letter, notice, circular, document or oral communication which:

22 (a) includes an untrue statement of a material fact; or

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

26 is liable to refund to the purchaser the consideration paid for such units or  
27 securities with interest at the prevailing MPR plus 2%, and in addition the  
28 manager shall be liable to a penalty of not less than N5,000,000 and in addition  
29 shall be liable to a penalty of N50,000 for every day the violation continues.

30 *Comment:* This amendment revised the civil liability of a manager of a scheme

1 who offers or sells units or securities with an untrue statement or omits to  
2 state a material fact. It dispenses the need for an investor to seek restitution  
3 from the tribunal as provided by section 165 of the 2007 Act.

4 162.-(1) Whenever the holder of units or securities of an authorized  
5 open-ended scheme so requests, the manager under the scheme, shall,  
6 within the time prescribed by the Commission, buy from the holder such  
7 number of those units or securities as the holder may specify at the price for  
8 the time being at which the manager buys units or securities of the scheme.

Redemption of  
Units or Securities

9 (2) No Manager of a Scheme shall suspend the right or postpone  
10 the date of redemption of units or securities by a holder provided that such  
11 suspension or postponement may be done during public holidays or  
12 emergencies or when the securities exchange is closed or whenever the  
13 Commission permits it.

14 (3) Any manager of a scheme who contravenes the provisions of  
15 this section is liable to a penalty of not less than N1,000,000 and in addition  
16 shall be liable to a penalty of N50,000 for every day the violation continues.

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

20 163.-(1) No company that is a manager under a scheme or is a  
21 subsidiary or holding company of the manager or a director or a person  
22 engaged in the management of such a company shall carry out transactions  
23 for itself or himself, or make a profit for itself or himself from a transaction  
24 in any assets held under the Scheme.

Prohibition of  
certain transactions  
and profits

25 (2) A company that is a manager of a Scheme constituted under a  
26 trust or is a subsidiary or holding company of the manager shall not:

27 (a) borrow money on behalf of the Scheme for the purpose of  
28 acquiring securities or other property for the Scheme save as provided for by  
29 the Trust Deed, Articles of the Company or Partnership deed as is relevant  
30 for the Investment activities of the Scheme with consent of the Trustees and

1 approval of the Commission;

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

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

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

9 (3) Any person who contravenes the provisions of this section,  
10 commits an offence and is liable upon conviction to a fine of N1,000,000 or to a  
11 term of imprisonment of not less than three years or to both such fine and  
12 imprisonment.

13 (4) The Commission may, in lieu of prosecution under subsection (3)  
14 of this section, sanction a person who contravenes the provisions of this section  
15 by imposing a penalty of an amount that is equal to the profits made from any  
16 such transaction or an amount not less than N1,000,000 whichever is higher.

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

Liabilities of  
Trustees and  
Custodians under  
a scheme

20 164. Any provision in the trust deed or custodial agreement in which  
21 are expressed the trusts or agreement created in pursuance of an authorised  
22 scheme shall be void in so far as it would have the effect of exempting the  
23 Trustee or Custodian under the Scheme from or indemnifying it against  
24 liability for breach of trust or the custodial agreement where, having regard to  
25 the provisions of the trust deed or the custodial agreement conferring on him  
26 any powers, authorities or discretion, he fails to exercise the degree of care and  
27 diligence required of him as trustee or custodian.

Audit of accounts  
of a scheme and  
annual general  
meeting

28 165.--(1) The manager of an authorised scheme shall cause proper  
29 books of account to be kept and annual accounts to be prepared which shall  
30 give a fair and true view of the affairs of the scheme during each year covered

1 by the accounts and the accounts shall be audited by a person appointed as  
 2 auditor by the Manager of the Scheme with the consent of the Trustee for the  
 3 Scheme.

4 (2) A copy of the Auditors' report on the accounts and of such  
 5 account certified by an Auditor shall be sent by the manager to the  
 6 Commission and published within three months after the end of the period to  
 7 which the accounts relate as the Commission shall prescribe.

8 (3) The Auditor shall certify that the Scheme has been operated  
 9 within the provisions of this Bill and the regulations prescribed by the  
 10 Commission.

11 (4) The manager of an Open-ended Investment company and Real  
 12 estate investment company shall call an annual general meeting of investors  
 13 with the consent of the Trustee not later than four months after each year end  
 14 to consider the accounts and other matters affecting the Scheme.

15 (5) An extraordinary general meeting of unit holders of a scheme  
 16 may be convened:

17 (a) at the request of the trustees;

18 (b) by a requisition of 25 percent of unit holders; or

19 (c) by the court on application by a member where the court is  
 20 satisfied that it is just and equitable to do so.

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

24 **166.** A unit or security shall be valued at its fair market price and Fair market price  
 25 the Commission may by regulation prescribe the mode and method of  
 26 determining the fair market price.

27 **167.-(1)** A Scheme fund shall be invested by a manager in Investment of a  
 28 accordance with the provisions of the trust deed, custodial agreement or scheme fund  
 29 partnership agreement and other governing legal instruments with the  
 30 objectives of safety and maintenance of fair returns on amounts invested.

- 1 (2) Subject to guidelines issued by the Commission, from time to  
2 time, the funds and assets of a Scheme shall be invested in any of the following:
- 3 (a) bonds, bills and other securities issued or guaranteed by the  
4 Federal Government and the Central Bank of Nigeria;
- 5 (b) Securities of sub-nationals and supra-nationals;
- 6 (c) bonds, Sukuk, redeemable preference shares and other debt  
7 instruments issued by corporate entities listed on a securities exchange and  
8 registered under this Bill;
- 9 (d) ordinary shares of public limited companies listed or traded on a  
10 securities exchange and registered under this Bill with good track records;
- 11 (e) created indices comprising basket of securities, commodities or  
12 derivatives listed or traded or to be traded on a recognized Exchange or  
13 platform;
- 14 (f) Money market instruments, bank deposits and securities of Issuers  
15 which shall be rated by rating agencies registered by the Commission;
- 16 (g) Securities of an authorized closed-end fund or listed on a  
17 securities exchange and registered under this Bill with a good track-record of  
18 earning;
- 19 (h) units of an open-end investment funds registered by the  
20 Commission;
- 21 (i) real estate investment, private equity investment, private debt  
22 registered with the Commission, infrastructure investments, commodities  
23 traded on an exchange registered by the Commission, derivatives traded on an  
24 exchange;
- 25 (j) Securities listed or traded on a regulated exchange in a jurisdiction  
26 which is a member of the international organisation of securities commissions;  
27 provided that investments in foreign securities shall not exceed 20% of the  
28 assets under management or such percentage as may be prescribed by the  
29 Commission from time to time;
- 30 (k) equity and debt securities of Private Companies, Small and

1 medium enterprises, infrastructure projects, infrastructure Companies, real  
2 estate investment projects, real estate investment Companies, or other  
3 alternative asset classes specified in the deed or agreements governing the  
4 Scheme where such Scheme is restricted strictly to qualified investors as an  
5 Alternative Asset Collective Investment Scheme; and

6 (1) such other instruments as the Commission may, from time to  
7 time, prescribe.

8 (3) A manager may invest the funds and assets of a scheme fund in  
9 units of any investment funds: Provided that such investment fund may only  
10 be invested in the categories of investments set out in subsection (2) of this  
11 section and in real estate.

12 (4) The Commission may, by regulation, impose additional  
13 restrictions on investments by a manager where such additional restrictions  
14 are imposed with the objects of protecting the interest of a scheme or its  
15 beneficiaries.

16 (5) For the purpose of complying with any guideline set by the  
17 Commission as to the quality of financial instruments, debt securities, and  
18 issuers that Scheme assets may be invested in, and to ensure the safety of  
19 Scheme assets in general, a manager shall have due regard to the risk rating  
20 of instruments and Issuers that has been undertaken by a rating company  
21 registered under this Bill.

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

26 **168.-(1)** The Commission may:

27 (a) undertake continuous inspection of the business operations as it  
28 relates to a Collective Investment Scheme's authorized parties involved in  
29 the management, administration and custody of assets of the collective  
30 investment scheme.

Investigation and  
inspection

1 (b) investigate the business of a person whether registered or not who  
2 is involved in the unauthorized administration of a Scheme or soliciting for  
3 investment in a Scheme.

4 (2) For the purposes of an investigation in terms of subsection (1) of  
5 this section, the Commission may in writing direct such person to:

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

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

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

Powers of the  
Commission  
after investigation

13 169.-(1) If the Commission, after an investigation or inspection under  
14 section 168, considers that the interests of the investors of a collective  
15 investment scheme or of members of the public so require, it may:

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

20 (b) remove any party and replace same in a manner as the  
21 Commission may deem appropriate. Where the manager is removed, the  
22 trustee or custodian shall in accordance with the Commission's directions but  
23 subject to this Bill arrange for another manager to take over the administration  
24 of the collective investment scheme; or

25 (c) require the Trustee or Manager to take steps, in accordance with  
26 the Commission's directives for the winding-up of a portfolio of its collective  
27 investment scheme, and for the realization of the assets and the distribution of  
28 the net proceeds thereof, together with any income accruals or other moneys  
29 available for distribution among the investors in proportion to their respective  
30 participatory interests;



1 (d) in the case of a collective investment scheme being  
 2 administered by a capital market operator in contravention of this Bill, take  
 3 steps in line with relevant provisions of the Rules and Regulations to have  
 4 the collective investment scheme wound up.

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

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

10 (i) a modification to paragraphs (b), (c), and (d) of subsection (1).

11 (ii) deletion of Subsections (2) and (3) of the original provision.

12 (iii) revision of subsection (4) of the original provision, now  
 13 subsection (2) above to increase the penalty for failure to comply with the  
 14 Commission's directive.

15 170.-(1) The Commission may cancel the registration of a manager  
 16 if:

17 (a) the manager has contravened or failed to comply with any  
 18 provision of this Bill or Rules and Regulations, and that such contravention  
 19 or failure has resulted or may result in serious prejudice to the interests of the  
 20 public or of investors;

21 (b) upon completion of an investigation or inspection, the manner  
 22 in which a manager carries on the business of a Collective Investment  
 23 Scheme is consistently unsatisfactory or undesirable or not calculated to  
 24 serve the best interests of its investors;

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

26 (2) Whenever there is cause to cancel the registration of a manager  
 27 on any of the grounds referred to in subsection (1) above, the Commission  
 28 may, in lieu of such cancellation, suspend the registration of the affected  
 29 manager for a period not exceeding 12 months at a time subject to such  
 30 conditions as the Commission may determine.

Cancellation  
 or suspension  
 of registration  
 of a manager

1           (3) The Commission may not cancel or suspend the registration of a  
2 manager on any ground contemplated in subsection (1) above unless it has:

3           (a) notified the manager of its intention and of the grounds upon  
4 which it proposes to do so;

5           (b) allowed the manager to make representations to it in connection  
6 with the proposed cancellation or suspension; and

7           (c) afforded the manager a reasonable opportunity to rectify or  
8 eliminate the defect, irregularity or undesirable practice.

9           (4) If the registration of a manager is cancelled in pursuance of  
10 subsection (1) above, the provisions of this Bill with regard to the continuance  
11 or the winding-up of the portfolio of a collective investment scheme or the  
12 winding-up of the manager, shall apply:

13           Provided that the Commission may in any such case direct the former  
14 manager to defray, in whole or in part, the expenses incurred in continuing the  
15 administration of the collective investment scheme, or in realizing any of its  
16 assets, and also any remuneration to which a trustee or custodian may be  
17 entitled.

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

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

25           (i) modifications have been made to paragraphs (a) and (b) of  
26 subsection 1;

27           (ii) paragraph (c), subsection 1 of the original provision has been  
28 deleted;

29           (iii) modifications made to subsections (2) and (3) by expunging  
30 certain portions of the subsection.

1 (iv) deletion of subsection (4) of the original provision.

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

Objection to  
misleading terms  
in a publication

9 172.-(1) The Commission may direct a manager to have all books  
10 of accounts and financial statements audited and to submit the results of  
11 such an audit to the Commission within the time specified by the  
12 Commission.

Power of the  
Commission to  
request Audit

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

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

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

24 173.-(1) The Commission may, by notice declare a particular  
25 practice or manner of administration of schemes to be an "irregular or  
26 undesirable practice" or an "undesirable manner of administration".

Irregular or  
undesirable  
practices

27 (2) No person shall, after 21 days from the date of publication of the  
28 notice whereby a practice or manner of administration has been declared to  
29 be irregular or undesirable, employ such a practice or manner of  
30 administration otherwise than for the sole purpose of fulfilling any

1 obligations entered into before the date of such notice or to comply with any  
2 directives by the Commission under subsection (3).

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

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

13 (5) A person who:

14 (a) contravenes subsection (2);

15 (b) refuses or fails to comply with a direction referred to in subsection  
16 (3); or

17 (c) fails to comply with subsection (4);

18 commits an offence and is liable on conviction to a fine of not less than  
19 N1,000,000 or to imprisonment for a period not exceeding two years or to both  
20 such fine and imprisonment.

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

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

29 174.-(1) A manager shall appoint either a trustee or a custodian for any  
30 scheme managed by it having regard to the structure of the scheme.

1 (2) A person may not become or act as a trustee or custodian unless  
2 that person is registered as such by the Commission.

3 (3) A Trustee or Custodian intending to resign from an appointment  
4 in terms of this section, shall give to the manager and the Commission not  
5 less than three months' notice of such intention, and during the said period of  
6 three months the manager concerned shall take steps to appoint another  
7 trustee or custodian competent to act as such.

8 (4) The appointment of a Trustee or Custodian shall not be  
9 terminated except with prior approval of the Commission. The Manager  
10 shall give not less than 30 days' notice to the Commission, the Trustee or  
11 Custodian of its intention to terminate such appointment stating reasons for  
12 the termination.

13 (5) Where the appointment of a Trustee or Custodian is terminated,  
14 the Trustee or Custodian shall within 7 days submit a report to the  
15 Commission stating-

16 (a) the assets and liabilities of the scheme;

17 (b) whether any irregularity or undesirable practice has taken place  
18 or is taking place in the conduct of the affairs of the scheme which has  
19 caused or is likely to cause financial loss to investors in a portfolio of the  
20 scheme;

21 (c) particulars of any such irregularity or undesirable practice; and

22 (d) the reason, if known, for the termination of the appointment.

23 (6) If a Trustee or Custodian fails to take the steps specified in  
24 subsection (3) of this section within the said period of three months, the  
25 Commission shall direct the manager to appoint as trustee or custodian a  
26 competent person approved by the Commission.

27 (7) Where it is impracticable for a Trustee or Custodian to perform  
28 any or all its duties, the trustee or custodian may with the approval of the  
29 Commission appoint a representative which is independent from the  
30 manager and any of its agents, to perform such duties.

1 (8) A trustee or custodian of a scheme who has appointed a  
2 representative under subsection (7) of this section, is not thereby relieved of  
3 any of its responsibilities or duties under the scheme.

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

Qualification  
and registration  
of trustee of  
custodian

8 175.-(1) The Commission may by regulation prescribe the  
9 qualification and conditions for any person or institution to become or act as a  
10 manager, trustee or custodian to a Collective Investment Scheme.

11 (2) A company or institution referred to in subsection (1) of this  
12 section may not become or act as a manager, trustee or custodian unless it  
13 maintains capital and reserves as may be prescribed by the Commission from  
14 time to time.

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

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

20 (b) the person or a related party does not have significant  
21 shareholdings with the Manager, or hold Board appointment with the Manager,  
22 and

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

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

1 highlighted above.

2 176.-(1) The Commission may revoke or suspend the registration  
3 of a Trustee or Custodian, when the Commission is no longer satisfied that  
4 the requirements contained in section 175 of this Bill are met by the trustee  
5 or custodian.

Suspension of  
revocation of  
registration of a  
trustee or custodian

6 (2) The Commission shall, before revoking or suspending a  
7 registration in terms of subsection (1), notify the trustee or custodian  
8 concerned of the grounds upon which such action is contemplated against it,  
9 and must give it a reasonable opportunity of showing cause why the  
10 proposed action should not be taken.

11 177.-(1) A trustee or custodian shall:

Duties of trustees  
or custodians

12 (a) ensure that the basis on which the sale, issue, repurchase or  
13 cancellation, as the case may be, of participatory interests effected by or on  
14 behalf of a scheme is carried out in accordance with this Bill, Rules and  
15 Regulations of the Commission;

16 (b) ensure that the selling or repurchase price of participatory  
17 interests is calculated in accordance with the Rules and Regulations made  
18 pursuant to this Bill, the trust deed or custodial agreement;

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

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

24 (e) enquire into and prepare a report on the administration of the  
25 Scheme by the Manager during each annual accounting period, in which it  
26 shall be stated whether the scheme has been administered in accordance  
27 with the provisions of this Bill, the Rules and Regulations pursuant and the  
28 trust deed or custodial agreement;

29 (f) if the manager does not comply with the limitations and  
30 provisions referred to in paragraph (e) of this subsection, state the reason for

1 the non-compliance and outline the steps taken by the manager to rectify the  
2 situation;

3 (g) send the report referred to in paragraph (e) of this subsection to the  
4 Commission and to the manager to enable the manager include a copy of the  
5 report in its annual report; and

6 (h) ensure that:

7 (i) there is a legal separation of assets held under custody and that the  
8 legal entitlement of investors to such assets is assured; and

9 (ii) appropriate internal control systems are maintained and that  
10 records clearly identify the nature and value of all assets under custody, the  
11 ownership of each asset and the place where documents of title pertaining to  
12 each asset are kept.

13 (2) A trustee or custodian shall report to the manager any irregularity  
14 or undesirable practice, concerning the collective investment scheme of which  
15 it is aware and if steps to rectify the irregularity or practice in question are not  
16 taken to the satisfaction of the trustee or custodian, it shall report such  
17 irregularity or undesirable practice to the Commission within the period  
18 prescribed in the Rules and Regulations made pursuant to this Bill.

19 (3) The trustee or custodian shall satisfy itself that every income  
20 statement, balance sheet or other return prepared by the manager in terms of  
21 section 165 fairly represents the assets and liabilities, as well as the income and  
22 distribution of income, of every portfolio of the scheme administered by the  
23 manager.

24 (4) At the request of the trustee or custodian, every director or  
25 employee of the manager shall submit to the trustee or custodian any book or  
26 document or information relating to the administration by the manager of its  
27 collective investment scheme which is in its possession or at its disposal, and  
28 which the trustee or custodian may consider necessary to perform its functions.

29 (5) In addition to the duties contained in this Section, the Trustee or  
30 Custodian shall perform such other duties as prescribed under the Rules and



1 Regulations made pursuant to this Bill.

2 (6) No person shall interfere with the performance by a trustee or  
3 custodian of its functions under this Bill and Rules and Regulations made  
4 pursuant to this Bill

5 (7) A trustee or custodian of a collective investment scheme which  
6 fails to perform any of its duties referred to in this section, is liable to a  
7 penalty of not less than N5,000,000.

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

9 (i) modifications in subsections (1), (2) and (6) as highlighted  
10 above.

11 (ii) introduction of a new subsection (5) to empower the  
12 Commission expand the duties of a trustee or a custodian where necessary.

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

15 178. For the purposes of this Bill any:

16 (a) money or other assets received from an investor; and

17 (b) asset of a portfolio,

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

20 179. The custodian shall indemnify the investors against any loss  
21 or damage suffered in respect of money or other assets in the custody of the  
22 custodian and which loss or damage is caused by a willful or negligent act or  
23 omission by the custodian.

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

26 180.-(1) A Manager in consultation with the Trustee or Custodian  
27 shall appoint an Auditor registered by the Commission for the purpose of  
28 auditing the whole of the business of the scheme administered by it.

29 (2) No director or employee of a manager, trustee or custodian and  
30 no firm of which any such director or employee is a member shall be

Status of Assets

Liability of  
Custodian for  
loss of assets

Appointment  
and Removal of  
Auditor

1 appointed as an Auditor of a Scheme.

2 (3) A Manager shall within thirty days from the date of appointment of  
3 an Auditor apply to the Commission for the approval of such appointment.

4 (4) The Commission may withdraw a prior approval of the  
5 appointment of an Auditor;

6 (5) An Auditor may be removed by the Manager in consultation with  
7 the Trustee or Custodian and the Commission shall accordingly be informed by  
8 the Manager.

9 *Comment:* Section 184 (2) of the 2007 Act is amended with the replacement of  
10 "may" with "shall"

Duty of Auditor  
to disclose  
irregularity or  
undesirable  
practice

11 181.-(1) The auditor shall:

12 (a) report to the manager and trustee any irregularity or undesirable  
13 practice in the administration of the collective investment scheme which has  
14 come to his notice in the ordinary course of fulfilling his audit responsibilities  
15 or performing other functions in terms of this Bill; and

16 (b) submit a copy of such report to the Commission, where there is  
17 reasonable cause to believe that such report is or might be of material  
18 significance to the Commission, within a period not exceeding ten working  
19 days from the day the irregularity was observed.

20 (2) For the purposes of this section, a report is of material significance  
21 to the Commission if it deals with a matter which, because of its nature or  
22 potential financial impact, has caused or is likely to cause financial loss to the  
23 Scheme or any of its investors or creditors.

24 (3) An Auditor who fails to perform any of the duties referred to in this  
25 section, is liable to a penalty of not less than N1,000,000.

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

27 (i) inserting "trustee or custodian" in subsection (1) (a).

28 (ii) creating a timeframe for submission of a report by an auditor in  
29 subsection (1) (b) above.

1           182.-(1) The Commission may make regulations as to the  
2           constitution and management of collective investment schemes, the powers  
3           and duties of the manager and trustee or custodian of any such scheme, and  
4           the rights and obligations of persons participating in any such scheme.

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

5           (2) Without prejudice to the generality of subsection (1) of this  
6           section, the Commission may make regulations under this section:

7           (a) as to the issue and redemption of the units or securities under the  
8           scheme;

9           (b) as to the expenses of the scheme and the means of meeting  
10          them;

11          (c) for the appointment, removal, powers and duties of an auditor  
12          for the scheme;

13          (d) for restricting or regulating the investment and borrowing  
14          powers exercisable in relation to Schemes.

15          (e) requiring the keeping of records with respect to the transactions  
16          and financial position of the scheme and for the inspection of those records;

17          (f) requiring the preparation of periodic reports with respect to the  
18          scheme and the furnishing of those reports to the participants and the  
19          Commission; and

20          (g) with respect to the amendment of the scheme.

21          (3) Regulations made under this section:

22          (a) may make provision as to the contents of the trust deed or  
23          custodial agreement, including provision requiring any of the matters  
24          mentioned in subsection (2) of this section to be dealt with in the trust deed  
25          or custodial agreement;

26          (b) shall be binding on the manager, trustee, custodian, participants  
27          independent of the contents of the trust deed or custodial agreement and, in  
28          the case of the participants, shall have effect as if contained in it;

29          (c) may impose limits on the remuneration payable to the manager  
30          of a scheme;

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

3 (e) may exempt any Scheme designated as Qualified Investors  
4 Schemes by the Commission from the applicability of any provision of this part  
5 of the Bill;

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

Alteration of  
schemes and  
replacement of  
manager, trustee  
or custodian

9 183.-(1) The manager of an authorised scheme shall give written  
10 notice to the Commission of:

11 (a) any proposed alteration to the Scheme; and

12 (b) any proposal to replace the Trustee or Custodian of the scheme.

13 (2) Any notice given in respect of a proposed alteration involving a  
14 change in the trust deed or custodial agreement shall be accompanied by a  
15 certificate signed by a legal practitioner to the effect that the change will not  
16 affect the compliance of the Trust deed or custodial agreement with this Bill  
17 and rules and regulations made pursuant to this Bill.

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

22 (4) No effect shall be given to any of the proposals referred to in  
23 subsections (1) and (3) of this section unless:

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

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

28 (5) The manager or the trustee or custodian of an authorised scheme  
29 shall not be replaced except by persons who satisfy the requirements of section  
30 186 of this Bill or rules and regulations made thereunder: Provided that where

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

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

8 184.-(1) The manager of an authorised scheme shall not engage in  
 9 any activities other than those mentioned in subsection (2) of this section.

Restriction of  
 activities of  
 managers

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

11 (a) acting as manager of:

12 (i) a scheme;

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

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

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

22 185.-(1) The manager of an authorised scheme shall publish  
 23 particulars of the scheme ("scheme particulars") or make available to the  
 24 public, upon request, any document containing information about the  
 25 scheme in a manner prescribed by the Commission from time to time.

Publication of  
 Scheme particulars

26 (2) Regulations made under this section may:

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

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

1 was required by the regulation; or

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

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

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

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

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

Power of  
intervention

14 186.-(1) If it appears to the Commission that:

15 (a) any of the requirements for the registration of a scheme as an  
16 authorised scheme are no longer satisfied; or

17 (b) the manager or trustee or custodian of such a scheme has  
18 contravened any provision of this Bill or any rules or regulations made  
19 thereunder or, in purported compliance with any such provisions has furnished  
20 the Commission with false, inaccurate or misleading information or has  
21 contravened any prohibition or requirement imposed under this Bill, or

22 (c) it is desirable in the interests of participants or potential  
23 participants in the scheme, the Commission may give directives in accordance  
24 with the provisions of subsection (2) of this section.

25 (2) The directives referred to in subsection (1) of this section may:

26 (a) require the manager of the scheme to cease the issue or  
27 redemption, or both the issue and redemption of units or securities under the  
28 scheme on a date specified in the directive until such further date as is specified  
29 in that order or directive; or

30 (b) require the manager and trustee or custodian of the scheme to wind

1 it up by such date as is specified in the directive or if no date is specified, as  
2 soon as practicable;

3 (c) appoint any person to take over and perform the duties of the  
4 manager or trustee or custodian for such interim period as may be required  
5 pending the appointment of such manager, trustee or custodian pursuant to  
6 the provisions of the trust deed or custodial agreement.

7 (3) The revocation of the registration of an authorised scheme shall  
8 not affect the operation of any directive under subsection (1) of this section  
9 which is then in force; and a directive may be given under that subsection in  
10 relation to a scheme in the case of which the order declaring it to be an  
11 authorised scheme has been revoked if a directive under that subsection was  
12 already in force at the time of revocation.

13 187.-(1) Where the Commission proposes to:

14 (a) give a directive under section 186 of this Bill; or

15 (b) revoke such directive otherwise than at the request of the  
16 manager or trustee or custodian of the scheme, it shall give the applicants or,  
17 as the case may be, the manager and trustee or custodian of the scheme  
18 written notice of its intention to do so stating the reasons for which it  
19 proposes to act and giving particulars of the rights conferred by subsection  
20 (2) of this section.

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

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

28 188.-(1) An open-ended investment company shall be registered  
29 by the Commission if:

30 (a) it is a body incorporated in accordance with the Companies and

Issuance of  
directive or its  
revocation

Investment  
company

1 Allied Matters Act;

2 (b) it has capital and reserve as prescribed by the Commission from  
3 time to time;

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

6 (d) it satisfies all other conditions which may be prescribed by the  
7 commission from time to time.

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

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

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

14 (b) it has the minimum capital prescribed by the Commission; and

15 (c) it satisfies all other conditions which may be prescribed by the  
16 Commission from time to time.

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

Real Estate  
Investment

19 189.-(1) A body corporate incorporated for the sole purpose of  
20 acquiring intermediate or long term interests in real estate or property  
21 development may raise funds from the capital market through the issuance of  
22 securities which shall have the following characteristics:

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

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

27 (c) such other feature as the Commission may prescribe from time to  
28 time.

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



1 (3) In the trust referred to in subsection (2) of this section, investors  
2 shall be entitled to:

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

5 (b) retain control over their investments by investing directly in a  
6 particular property rather than in a portfolio of investments.

7 (4) The Commission shall, from time to time, make rules and  
8 regulations regulating the activities and securities (whether the securities  
9 are described as asset backed-securities or otherwise) of real estate  
10 investment companies or trusts referred to in subsections (1) and (2) of this  
11 section.

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

14 190. A real estate investment company or trust may be registered  
15 by the Commission if it:

Registration of  
real estate  
investment  
company

16 (a) is a body incorporated under the Companies and Allied Matters  
17 Act (as may be amended or re-enacted from time to time);

18 (b) has a capital and reserve as prescribed by the Commission from  
19 time to time;

20 (c) carries on business as a collective investment scheme solely in  
21 properties;

22 (d) complies with the requirement prescribed by the Commission  
23 through its rules and regulations made from time to time.

24 191.-(1) The Commission may approve an application by a  
25 manager or operator of a scheme administered in a foreign jurisdiction to  
26 solicit investment in such scheme from investors in Nigeria where:

Foreign collective  
investment schemes

27 (a) the application complies with the conditions prescribed by the  
28 Commission;

29 (b) a copy of the approval or registration by the relevant foreign  
30 jurisdiction authorizing the foreign collective investment scheme to act as

1 such is filed with the Commission.

2 (2) Any person who invites the public to invest in a foreign collective  
3 investment scheme which is not approved by the Commission shall be liable to  
4 a penalty of not less than 10% of the gross value of the securities or units of the  
5 scheme or deposits received in the case of a body corporate and not less than  
6 N2,000,000 in the case of an individual.

7 (3) If any person acquires or disposes of any securities or units in a  
8 scheme, or deposits money with any company as a result of an invitation to the  
9 public made in breach of subsection (2) of this section, he shall be entitled to:

10 (a) rescind such transactions; and

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

14 (4) Where any person seeks to rescind a transaction in accordance  
15 with subsection (3) of this section, he shall do so within a reasonable time and  
16 shall not be entitled to rescind any transaction with the body corporate or to  
17 recover compensation from it unless he takes steps to rescind the transaction  
18 before the commencement of the winding-up of the body corporate;

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

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

27 192.-(1) The Commission may appoint one or more competent  
28 inspectors to investigate and report on:

29 (a) the affairs of, or of the manager or trustee or custodian of any  
30 authorised scheme;

1 (b) the affairs of, or of the operator or trustee or custodian of any  
2 recognized foreign scheme so far as relating to activities carried on in the  
3 Federal Republic of Nigeria; or

4 (c) the affairs of, or of the operator or trustee or custodian of, any  
5 other scheme if it appears to the Commission that it is in the interest of the  
6 participants to do so or that the matter is of public concern.

7 (2) Any inspector appointed under subsection (1) of this section to  
8 investigate the affairs of, or of the manager, trustee or operator of any  
9 scheme may also if he thinks it necessary for the purposes of that  
10 investigation, investigate the affairs of or the manager, trustee or operator of,  
11 any other such scheme as is mentioned in that subsection whose manager,  
12 trustee or operator is the same person as the manager, trustee or operator of  
13 the first-mentioned scheme.

14 (3) A person shall not under this section be required to disclose any  
15 information or produce any document which he would be entitled to refuse  
16 to disclose or produce on grounds of legal professional privilege in judicial  
17 proceedings or on grounds of confidentiality as between a client and  
18 professional legal adviser in proceedings in any court except that a legal  
19 practitioner may be required to furnish the name and address of his client.

20 (4) Where a person claims a lien on a document its production  
21 under this section shall be without prejudice to the lien.

22 (5) Nothing in this section shall require a person carrying on the  
23 business of banking to disclose any information or produce any document  
24 relating to the affairs of a customer unless:

25 (a) the customer is a person whom the inspector has reason to  
26 believe may be able to give information relevant to the investigation; and

27 (b) the Commission is satisfied that the disclosure or production is  
28 necessary for the purposes of the investigation.

29 (6) An inspector appointed under this section may, and if so  
30 directed by the Commission, make interim reports to the Commission and

1 on the conclusion of his investigation shall make a final report to the  
2 Commission.

3 (7) A report made under subsection (6) of this section shall be written  
4 or printed as the Commission may direct and the Commission may, if it thinks  
5 fit:

6 (a) furnish a copy, on request and on payment of the prescribed fee, to  
7 the manager, trustee or operator or any participant in a scheme under  
8 investigation or any other person whose conduct is referred to in the report; and

9 (b) cause the report to be published.

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

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

Registration of  
community

14 194.

Prohibited schemes

15 195.-(1) The Commission shall have the power to enter and seal up all  
16 prohibited schemes and shall obtain an Order of court to freeze and forfeit all  
17 assets of such schemes to the Federal Government of Nigeria.

18 (2) The cost and expenses incurred under subsection (1) above shall  
19 be a first charge from the funds and properties of the illegal scheme including  
20 assets of its owners, promoters and or managers, whether acquired legitimately  
21 or otherwise.

22 (3) For the purposes of this Bill, "prohibited scheme" including those  
23 commonly known as a "Ponzi or Pyramid scheme" means:

24 (a) Any investment scheme that pays existing contributors with funds  
25 collected from new contributors to the scheme promising high returns with  
26 little or no risk:

27 (i) Whether or not the scheme limits the number of persons who may  
28 participate therein, either expressly or by the application of conditions  
29 affecting the eligibility of a person to enter into, or receive compensation under  
30 the scheme; or

1 (ii) Whether the scheme is operated at a physical address or  
2 through the internet or other electronic means.

3 (b) Any scheme where participants attempt to make money by  
4 recruiting new participants usually where:

5 (i) the promoter promises a high return in a short period of time,  
6 and

7 (ii) no genuine product or service is actually sold; or

8 (iii) the primary emphasis is on recruiting new participants

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

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

16 196. In this part:

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

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

23 "close-ended investment scheme" means a pooled investment fund in  
24 whatever legal form which raises a fixed and irredeemable amount of  
25 Capital for investment into a portfolio of assets and securities in line with a  
26 specified investment objective for purposes such as capital preservation and  
27 income generation, and can be listed and traded on a recognized Exchange;

28 "custodian" means a corporate entity who has custody as a bailee of assets in  
29 the name of the Scheme and the Trustee with the name of the

Definition of  
words used in  
this Part

1 Trustee/Scheme appearing in the issuer's register as the legal owner of the  
2 securities;

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

10 "filing" means delivery to the Commission through mails, electronically or  
11 otherwise of all papers or applications required to be filed with the  
12 Commission pursuant to this Bill and regulations made thereunder, and the  
13 date on which the papers or applications are actually received by the  
14 Commission at its principal office shall be the date of filing the papers or  
15 applications;

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

20 "income accrual" means any dividend or interest or profit or any other income  
21 for distribution received by the trustee, custodian or manager on behalf of  
22 investors in a portfolio in the course of any income distribution period or  
23 carried forward from any previous income distribution period or due to such  
24 investors in respect of dividends or interest or any income declaration made but  
25 not yet distributed;

26 "issuer" means any person or company performing the duties of a manager  
27 pursuant to the provisions of the trust deed or other agreement under which the  
28 units or securities are issued or such other person as may be determined by the  
29 Commission from time to time;

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

1 "open-ended investment company" means a Collective Investment Scheme  
2 incorporated as a Company with variable capital permitting realization or  
3 redemption of shares of representative investment value in the underlying  
4 portfolio of assets or securities of the Company;

5 "participatory interest" means any interest, undivided unit or share whether  
6 called a participatory interest, unit or by any other name, and whether the  
7 value of such interest, unit, undivided share or shares remain constant or  
8 varies from time to time, which may be acquired by an investor in a  
9 portfolio;

10 "prospectus" includes offer for sale, advertisement, circular, letter, notice,  
11 electronic website or app or other equivalent statement (s) or document  
12 published or circulated electronically, via print media or otherwise relating  
13 to the collective investment scheme and inviting prospective investors to  
14 register into the scheme by reason of the representation made;

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

17 "scheme" means the collective investment scheme;

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

21 "trustee":

22 (i) under a unit trust scheme or such other arrangement, means the  
23 corporate entity in whom the property for the time being subject to any trust  
24 created in pursuance of the scheme is or may be vested in accordance with  
25 the terms of the trust;

26 (ii) with respect to revocation of registration of the scheme, such  
27 qualified person and professional appointed by the Commission to take over  
28 the role of a trustee of the scheme and administer same in the best interest  
29 and protection of the investing public;

30 "units" in relation to a unit trust scheme, means any units (described whether

1 as units or otherwise) into which are divided the beneficial interest in the assets  
2 subject to any trust created under the scheme;

3 "unit trust scheme" means any arrangement made for the purpose, or having the  
4 effect, of providing facilities for the participation of the public as beneficiaries  
5 under a trust in profits or income arising from acquisition, holding,  
6 management or disposal of securities or any other property whatsoever.

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

#### 11 PART XV - INVESTOR PROTECTION FUND

Establishment  
of an Investor  
Protection Fund

12 197.-(1) A securities exchange shall establish and maintain a fund to  
13 be known as the Investor Protection Fund.

14 (2) An Investor Protection Fund shall be administered by a board of  
15 trustees' subject to the regulatory supervision of the Commission.

16 (3) The assets of an Investor Protection Fund shall be vested in the  
17 board of trustees and kept separate and applied for the purposes as set out in this  
18 part of this Bill.

Objectives of  
investor protection  
fund

19 198. The objectives of an Investor Protection Fund shall be to  
20 compensate investors who suffer pecuniary loss arising from:

21 (a) the insolvency, bankruptcy or negligence of a dealing member  
22 firm of a securities exchange; and

23 (b) defalcation committed by a dealing member firm or any of its  
24 directors, officers, employees or representatives in relation to securities,  
25 money or any property entrusted to, or received or deemed received by the  
26 dealing member firm in the course of its business as a capital market operator;

27 (c) revocation or cancellation of the registration of a dealing member  
28 firm pursuant to the provisions of section 61 (6) of this Bill.

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



Composition  
and tenure of  
board of trustees

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

3 (a) a representative from the dealing member firms;

4 (b) a representative from the securities exchange;

5 (c) a representative from one of the financial market  
6 infrastructures;

7 (d) a representative of the Securities and Exchange Commission;

8 (e) one person representing the institutional investors;

9 (f) a representative of association of capital market Registrars or  
10 Custodians;

11 (g) one person with proven integrity, who is knowledgeable in  
12 capital market matters;

13 (h) one person representing a registered association of the relevant  
14 investor class; and

15 (i) one person who shall be a legal practitioner knowledgeable in  
16 capital market matters.

17 (2) A member of the board of trustees shall:

18 (a) be appointed by the board of a securities exchange on the  
19 recommendation of the body he represents;

20 (b) hold office for a period of three years and may be re-appointed  
21 for a further period of three years and no more on the recommendation of the  
22 body he represents;

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

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

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

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

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

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

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

Removal from  
the board of  
trustees

11 200. A member of the board of trustees shall cease to be a member  
12 if:

13 (a) before the expiration of his tenure, he ceases to be a member of the  
14 body he represents on the board of trustees; or

15 (b) his membership on the board of trustees is withdrawn by the body  
16 he represents and on whose recommendation he was appointed; or

17 (c) he is guilty of any crime involving dishonesty or sanctioned for  
18 misconduct by any professional body or association; or

19 (d) on a resolution of the other members of the board of trustees  
20 supported by at least two-thirds of its membership, is adjudged to be engaged in  
21 activities prejudicial to or inconsistent with his position as a member of the  
22 board of trustees.

Powers of the  
board of trustees

23 201. Without prejudice to the provisions of the Trustees Investments  
24 Act, the board of trustees shall have power to:

25 (a) administer the investor protection fund as to engender investors'  
26 confidence and promote general market development;

27 (b) prepare its own rules governing the operations and effective  
28 management of the investor protection fund subject to the approval of the  
29 securities exchange and the Commission; and

30 (c) do anything or perform any act incidental to or in relation with the

1 operation and management of the investor protection fund.

2 202. An investor protection fund shall consist of:

3 (a) all monies paid to the board of trustees by dealing members of  
4 the securities exchange in respect of which an investor protection fund has  
5 been established as may be prescribed by the securities exchange from time  
6 to time;

Monies accruing  
to the investor  
protection fund

7 (b) the interest and profits, from time to time, accruing from the  
8 investment of an investor protection fund;

9 (c) all monies paid to an investor protection fund by the securities  
10 exchange in accordance with the provisions of this part of this Bill;

11 (d) all monies recovered by or on behalf of the board of trustees in  
12 the exercise of any right of action conferred by this part of this Bill;

13 (e) all monies paid by an insurer pursuant to any contract of  
14 insurance or indemnity entered into by a dealing member or the board of  
15 trustees;

16 (f) all monies held by any investor protection fund or by whatever  
17 name so called, established by the securities exchange prior to the coming  
18 into force of this Bill; and

19 (g) all other monies lawfully paid into an investor protection fund.

20 203. All monies forming a part of an investor protection fund shall  
21 be paid or transferred into a separate bank account in Nigeria pending the  
22 investment or application of such monies in accordance with the provisions  
23 of this part of this Bill.

Fund to be kept  
in separate bank  
account

24 204.-(1) The board of trustees may apply the funds of an investor  
25 protection fund for payment of:

Payment out of  
investor protection  
fund

26 (a) claims by investors arising from the insolvency, bankruptcy or  
27 negligence of a failed dealing member firm as may be ascertained,  
28 determined or directed under the provisions of this Bill;

29 (b) claims, including costs, of an investor allowed by the securities  
30 exchange, arising from defalcation committed by a dealing member firm or

1 any of its directors, officers, employees or representatives in relation to  
2 securities, money or any property entrusted to, or received or deemed received  
3 by the dealing member firm in the course of its business as a capital market  
4 operator;

5 (c) any amount ordered to be paid as compensation to an investor by  
6 the Commission or the Tribunal in respect of any claim or loss arising from  
7 defalcation as provided for in subsection (5) of section 213 of this Bill;

8 (d) claims arising from losses incurred by revocation or cancellation  
9 of the registration of a dealing member firm pursuant to the provisions of  
10 section 61 (6) of this Bill.

11 (e) all legal, professional and other expenses incurred in investigating  
12 or defending claims made under this part of the Bill or incurred in relation to an  
13 investor protection fund or in the exercise by the board of trustees of the rights,  
14 powers and authority vested in it by this part of the Bill in relation to an investor  
15 protection fund;

16 (f) all premiums payable in respect of contracts of insurance or  
17 indemnity entered into by the board of trustees;

18 (g) the expenses incurred or involved in the administration of the  
19 investor protection fund including the salaries and wages of persons employed  
20 by the board of trustees in relation thereto; and

21 (h) all other monies payable out of an investor protection fund in  
22 accordance with the provisions of this Bill.

23 (2) Payment of any claim, award, or order for compensation under  
24 paragraph (a) to (d) of subsection (1) of this section, shall be made subject to  
25 such limitations on the amount that may be claimed as determined by the Board  
26 of Trustees and approved by the Commission from time to time.

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

1                   205.-(1) A board of trustees shall establish and keep proper books  
2                   of accounts in relation to an investor protection fund and shall, not later than  
3                   three months following the end of the financial year of the fund, cause the  
4                   income and expenditure for the year and a balance sheet to be made out.

Accounts of  
investor protection  
fund

5                   (2) A securities exchange shall, on the recommendation of the  
6                   board of trustees, appoint an Auditor to audit the accounts of the investor  
7                   protection fund established by it.

8                   (3) The Auditor appointed pursuant to subsection (2) of this section  
9                   shall regularly and thoroughly audit the accounts of the investor protection  
10                  fund and shall complete the audit not later than one month following the  
11                  period referred to in subsection (1) of this section to enable the audited  
12                  accounts to be submitted by the board of trustees to the Commission not later  
13                  than two months following the period referred to in subsection (1) of this  
14                  section.

15                  206.-(1) The board of trustees may for the purpose of management  
16                  of the investor protection fund appoint a management subcommittee of not  
17                  less than 3 and not more than 5 persons.

Board of trustees  
may delegate  
functions

18                  (2) The board of trustees may by resolution delegate to a  
19                  subcommittee appointed under subsection (1) of this section all or any of its  
20                  powers.

21                  (3) Any power, authority or discretion so delegated by the board of  
22                  trustees may be exercised by members forming a majority of the sub-  
23                  committee as if that power, authority or discretion had been conferred on a  
24                  majority of the members of the sub-committee.

25                  (4) Any such delegation by the board of trustees may at any time in  
26                  like manner be rescinded or varied.

27                  (5) The board of trustees may at any time remove any member of a  
28                  sub-committee appointed by it under this section and may fill any vacancy  
29                  in the sub-committee howsoever arising.

30                  (6) A decision of a sub-committee of the board of trustees shall be

1 of no effect until it is confirmed or ratified by the board of trustees.

Minimum amount  
in investor  
protection fund

2 207.-(1) An investor protection fund shall consist of such minimum  
3 amount as may by regulation be approved by the Commission, from time to  
4 time, to be paid to the credit of the investor protection fund on the  
5 establishment of a securities exchange

6 (2) The board of trustees shall have the discretion to determine the  
7 amount or minimum amounts to be contributed by each dealing member firm  
8 to the Fund subject to the approval of the securities exchange.

Protection of  
the investor  
protection fund

9 208. If for whatever reason the investor protection fund falls below  
10 the minimum amount approved for a securities exchange the board of trustees  
11 shall take steps to make up the deficiency:

12 (a) by direct transfer to the investor protection fund of an amount  
13 which is equal to the deficiency from other funds of the securities exchange; or

14 (b) in the event that there are insufficient funds to transfer under  
15 paragraph (a) of this section, by determining the amount which each dealing  
16 member shall contribute to the investor protection fund.

Levy to meet  
liabilities

17 209.-(1) If at any time the amount available in an investor protection  
18 fund is not sufficient to satisfy the liabilities which are ascertained against any  
19 dealing member firm, the securities exchange on the recommendation of the  
20 board of trustees may impose on any or every dealing member firm a levy of  
21 such amount as it thinks fit to meet the deficiency.

22 (2) The amount of such levy shall be paid within the time and in the  
23 manner specified by the board of trustees either generally or in relation to any  
24 particular case.

Power of a  
securities exchange  
to make an advance  
to an

25 210. A securities exchange may, from time to time, from its general  
26 funds give or advance, any sums of money to an investor protection fund on  
27 such terms and conditions as it may deem fit.

Investment of  
the funds of an  
investor protection  
fund

28 211. The Board of Trustees of an investor protection fund shall  
29 determine the manner of investing the monies accruing to the fund as  
30 authorised by the Trustee Investment Act.

1 *Comment:* This provision is an amendment to section 211 of the 2007 Act  
2 and was redrafted for clarity

3 **212.-(1)** The funds of an investor protection fund shall be held and  
4 applied for compensating persons who suffer pecuniary loss from:

Application of  
the funds of an  
investor protection  
fund

5 (a) the revocation or cancellation of the registration of a capital  
6 market operator pursuant to the provisions of section 61(6) of this Bill;

7 (b) the insolvency, bankruptcy or negligence of a dealing member  
8 firm, or member company of a securities exchange; and

9 (c) any defalcation committed by a member company or any of its  
10 directors or employees in relation to any money or other property which,  
11 was entrusted or received or deemed received by a member company or any  
12 of its directors or employees whether before or after commencement of this  
13 Bill in the course of or in connection with the business of that company or  
14 any other occurrence in respect of which the claim arose.

15 (2) For the purposes of this section, "a director of a member  
16 company or dealing member firm" includes a person who, as at the time of  
17 the defalcation in question has been or has ceased to be a director of a  
18 member company or dealing member firm if, at the time of the defalcation  
19 the person claiming compensation has reasonable grounds for believing that  
20 person to be a director of a member company or dealing member firm.

21 **213.-(1)** Subject to the provisions of this Part, every person who  
22 suffers pecuniary loss as provided in section 212 of this Bill shall be entitled  
23 to claim compensation from the investor protection fund established for the  
24 securities exchange to which the defaulting member company or dealing  
25 member firm belongs.

Claims against  
an investor  
protection fund

26 (2) A claim for compensation shall first be made to the defaulting  
27 capital market operator who committed the defalcation;

28 (3) Where the capital market operator is unable to satisfy the claim,  
29 a claim for compensation under this part shall be made to a securities  
30 exchange who shall within 90 days verify every claim and determine the

1 amount or extent, if any, to which the claim shall be allowed.

2 (4) Subject to fulfilling such preconditions for compensation as may  
3 have been prescribed by the Board of Trustees, a verified claim shall be paid by  
4 the investor protection fund to an investor within 14 days of such verification  
5 by the securities exchange.

6 (5) The provisions of subsection (3) of this section shall be without  
7 prejudice to the power of the Commission or the Tribunal to direct or order the  
8 payment of compensation in accordance with the provisions of this Bill.

9 (6) Subject to subsections (3) and (4) of this section, a person shall not  
10 have any claim against an investor protection fund in respect of a defalcation  
11 concerning money or other property which, prior to the commission of the  
12 defalcation, had in the due course of the administration of a trust ceased to be  
13 under the control of the director or directors of the dealing member firm  
14 concerned.

15 (7) Subject to this part of this Bill and any limit that may be  
16 determined by the securities exchange and approved by the Commission from  
17 time to time, the amount which any claimant shall be entitled to claim as  
18 compensation from an investor protection fund shall be the amount of the  
19 actual pecuniary loss suffered by him (including the reasonable cost of  
20 disbursement incidental to the making and proving of his claim) less any  
21 amount or value of all monies or other benefits received or receivable by him  
22 from any source other than the investor protection fund in reduction of the loss.

23 (8) In addition to any compensation payable under this part of this  
24 Bill, interest shall be payable out of the investor protection fund concerned on  
25 the amount of the compensation, less any amount attributable to costs and  
26 disbursements, at the rate of five per cent per annum calculated from the day  
27 upon which a claim arose and continuing until the day upon which the claim is  
28 satisfied.

29 *Comment:* New subsections (2) & (3) have been introduced to complement the  
30 existing provisions on the manner in which a claim to the investor protection



1 fund can be made. This is a departure from Section 213 (2) of the 2007 Act,  
2 which requires a claim for compensation to be made in the first instance to  
3 the securities exchange. In addition, subsection (4) has been modified as  
4 highlighted above.

5 214.-(1) The Commission or a securities exchange, as the case may  
6 be, may cause to be published in any two national daily newspapers  
7 circulating in Nigeria, a notice, in or to the effect of a form prescribed by the  
8 Commission, specifying a date, not being earlier than one month after the  
9 said publication, on which claims for compensation from the investor  
10 protection fund, in relation to the person specified in the notice, may be  
11 made.

Notice calling  
for claims against  
the investor  
protection fund

12 (2) A claim for compensation under this part of the Bill shall be  
13 made in writing to the board of trustees within 6 years from the date of  
14 occurrence of the defalcation, revocation or cancellation of the registration  
15 of the dealing member firm and insolvency or bankruptcy of the dealing  
16 member firm, and any claim which is not so made shall be barred unless the  
17 Commission otherwise determines.

18 (3) No action for damages shall lie against a securities exchange or  
19 against any member or employee of a securities exchange or of a board of  
20 trustees or management sub-committee by reason of any notice published in  
21 good faith and without malice for the purposes of this section.

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

29 215. The board of trustees may, subject to this part of this Bill,  
30 settle any claims for compensation from an investor protection fund as may

Power to settle  
claims

1 be determined, from time to time and as the case may be, by a securities  
2 exchange, the Commission or the Tribunal.

Form of order  
of the tribunal

3 216.-(1) Where, in any proceedings brought before the Tribunal to  
4 establish a claim, the Tribunal is satisfied that the claimant has a valid claim,  
5 the Tribunal shall by order:

6 (a) declare the fact and the date of the defalcation or other loss  
7 suffered by a claimant;

8 (b) the claim payable; and

9 (c) direct that the investor protection fund concerned settles the claim  
10 so declared and deal with the same in accordance with the provisions of this  
11 part of this Bill.

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

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

Power to require  
production of  
evidence

16 217. The securities exchange, the Commission or the Tribunal, as the  
17 case may be, may require any person to produce and deliver any securities,  
18 documents or statements of evidence necessary to support any claim made or  
19 necessary for the purpose of determining a claim or for any other proceedings  
20 in connection with any matter pending before it.

Subrogation

21 218. On payment out of an investor protection fund of any monies in  
22 respect of any claim under this part of this Bill, the board of trustees of an  
23 investor protection fund shall be subrogated, to the extent of the payment made  
24 out of the investor protection fund, to all the rights and remedies of the claimant  
25 in relation to the loss suffered by him.

Application of  
insurance money

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

1                   220. Any securities exchange, director, official or employees of the  
2 securities exchange, who contravenes any of the provisions of this part of  
3 this Bill, shall be liable to a penalty of N1,000,000 and a further sum of  
4 N25,000 for every day during which the contravention continues.

Penalty for  
contravention

5                   221. In this part of this Bill:

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

Definition of  
words used in  
this part

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

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

13                   PART XVI.- COMMODITY EXCHANGE AND WAREHOUSE RECEIPTS

14                   A. COMMODITY EXCHANGE

15                   222.-(1) No person shall establish or maintain or hold himself out  
16 as providing or maintaining a commodity exchange unless such exchange  
17 has been registered by the Commission.

Establishment  
of commodities  
exchanges

18                   (2) Any person who contravenes this provision commits an offence  
19 and is liable on conviction to a fine of not less than N10,000,000 or to  
20 imprisonment for a term not more than 5 years or to both such fine and  
21 imprisonment.

22                   (3) In lieu of prosecution under subsection (2) of this section, the  
23 Commission may impose a penalty not less than the prescribed paid-up  
24 share capital of the relevant securities exchange as specified by the  
25 Commission and a further sum of not less than N100,000 for every day the  
26 violation continues

27                   223.-(1) The Commission may revoke any registration granted if  
28 the body corporate ceases to operate as a commodity exchange, is being  
29 wound up, operating in a manner detrimental to public interest, or has  
30 provided to the Commission any information that was false or misleading in

Revocation of  
registration

1 a material particular.

2 (2) A body corporate shall be deemed to have ceased to operate as a  
3 commodity exchange if it has ceased to operate for more than 180 days unless it  
4 has obtained the approval of the Commission to do so, or by virtue of any  
5 direction issued by the Commission.

Registration of  
clearing house

6 **224.**-(1) No person shall establish, maintain or provide or assist in  
7 establishing, maintaining or providing, or hold himself out as maintaining or  
8 providing a clearing house for a commodity exchange unless the person is a  
9 body corporate registered as a clearing house.

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

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

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

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

Right of action  
against commodity  
exchange and  
clearing house

21 **225.**-(1) Any person, who is aggrieved by the failure of a commodity  
22 exchange or a clearing house or any of the directors or employees of the  
23 commodity exchange or clearing house to enforce its business rules or by the  
24 contravention of this Bill or any regulations made thereunder in the  
25 enforcement of the business rules, has a right of action in damages for the  
26 actual amount of damages suffered by that person;

27 (a) in any transaction that he has entered into on or subject to the  
28 business rules of a commodity exchange; and

29 (b) that is directly attributable to the failure to enforce the business  
30 rules, or the contravention of this Bill or any regulations made thereunder in the

1 enforcement of the business rules.

2 (2) No action for damages shall lie against a commodity exchange  
3 or a clearing house, or any of its directors or employees under subsection (1)  
4 unless the aggrieved person can show that, in failing to take action or in  
5 taking such action as was taken resulting in loss to him, the commodity  
6 exchange or the clearing house, or any of the directors or employees, acted  
7 in bad faith.

8 (3) The right of action conferred by this section shall be the  
9 exclusive remedy available to any person who suffers loss as a result of an  
10 alleged failure of a commodity exchange or a clearing house, or any of its  
11 directors or employees, to enforce its business rules, or the contravention of  
12 this Act or any regulations made thereunder in the enforcement of the  
13 business rules.

14 226.-(1) No person shall, whether as principal or agent, carry on  
15 business of or hold himself out as:

16 (a) a commodity broker;

17 (b) a commodity broker's representative;

18 (c) a commodity trading adviser; or

19 (d) a commodity pool operator;

20 (e) a spot commodity broker;

21 (f) a spot commodity pool operator; or

22 (e) any other professional or entity as may be determined by the  
23 Commission unless such person is registered by the Commission in  
24 accordance with the provisions of this Bill or any rules and regulations made  
25 pursuant thereto.

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

29 227.-(1) Whenever the Commission has reason to believe that an  
30 emergency exists, it may direct a commodity exchange or a clearing house to

Registration of  
Commodity broker,  
etc.

Emergency  
powers

1 take such action as it considers necessary to maintain or restore  
2 orderly trading.

3 (2) Where a commodity exchange or a clearing house fails to comply  
4 with the direction of the Commission under subsection (1) within such time as  
5 is specified by the Commission, the Commission may take any action it deems  
6 necessary to restore orderly trading.

7 (3) In this section, "emergency" includes, in addition to threatened or  
8 actual market manipulations, any act of government affecting a commodity or  
9 any other major market disturbance which prevents the market from accurately  
10 reflecting the forces of supply and demand for such commodity or any other  
11 undesirable situations or practices which in the opinion of the Commission  
12 constitutes an emergency.

13 (4) Without prejudice to subsection (1) where a commodity exchange  
14 or a clearing house exercises its powers under its rules to take emergency  
15 action, the Commission may modify such emergency action, including but not  
16 limited to the setting aside such emergency action.

Prohibition of  
use of certain  
titles

17 228.-(1) No person other than a clearing house, a commodities  
18 exchange, a commodity broker, a commodity trading adviser or commodity  
19 pool operator shall:

20 (a) take or use the title or description "clearing house" "commodity  
21 exchange" "commodity broker", "spot commodity broker", "commodity  
22 trading adviser", "commodity pool operator", or "spot commodity pool  
23 operator"; or

24 (b) take or use, or have attached to or exhibited at any place, any title  
25 or description that resembles the titles specified in paragraph (a) or so closely  
26 resembles such titles as to be calculated to deceive.

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

1 229. No person shall:

2 (1) create or cause to be created or do anything that is calculated to  
3 create a false or misleading appearance of active trading in a commodity  
4 exchange; or a false or misleading appearance with respect to the market for,  
5 or the price of trading in, commodity contracts.

6 (2) execute; or hold himself out as having executed, an order for the  
7 purchase or sale of a commodity contract on a commodity exchange without  
8 having effected a bona fide purchase or sale of the commodity contract in  
9 accordance with the business rules and practices of the commodity  
10 exchange.

11 (3) circulate, disseminate, authorise the circulation or  
12 dissemination of, any statement or information to the effect that the price of  
13 trading in any class of commodity contracts will, or is likely to, rise or fall  
14 because of the market operations of one or more persons knowing such  
15 information to be about false trading.

16 (4) directly or indirectly:

17 (a) manipulate, or attempt to manipulate, the price of a commodity  
18 contract that may be dealt in on a commodity exchange; or

19 (b) corner, or attempt to corner, any commodity which is the  
20 subject of any commodity contract.

21 (5) directly or indirectly, in connection with any transaction with  
22 any other person involving trading in a commodity contract:

23 (a) employ any device, scheme or artifice to defraud that other  
24 person;

25 (b) engage in any act, practice or course of business which operates  
26 as a fraud or deception, or is likely to operate as a fraud or deception, of that  
27 other person; or

28 (c) make any untrue statement of a material fact or omit to state a  
29 material fact necessary in order to make the statements made, in the light of  
30 the circumstances under which they were made, not misleading.

1 (6) directly or indirectly, for the purposes of inducing or attempting to  
2 induce another person to trade in a commodity contract or class of commodity  
3 contracts, make or publish:

4 (a) any statement which is, at the time and in the light of the  
5 circumstances in which it is made, false, misleading or deceptive with respect  
6 to any material fact and which he knows, or has reasonable grounds for  
7 believing, is false, misleading or deceptive; or

8 (b) any statement which is, by reason of the omission of a material fact  
9 rendered false, misleading or deceptive and which he knows, or has reasonable  
10 grounds for believing, is rendered false, misleading or deceptive by reason of  
11 the omission of that fact.

12 (7) any person who contravenes any provision of this section is guilty  
13 of an offence and shall be liable on conviction:

14 (a) in the case of an individual, to a fine not less than N5,000,000 or to  
15 imprisonment for a term not less than 5 years or to both such fine and  
16 imprisonment; or

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

#### 19 B. WAREHOUSE RECEIPTS

Registration of  
warehouses

20 230.-(1) No person shall operate a warehouse storing commodities  
21 linked to an exchange or issuing warehouse receipts tradable on an exchange  
22 without registration of the warehouse by the Commission.

23 (2) The Commission may, upon application in the prescribed form,  
24 register a warehouse operator for the operation of a warehouse in accordance  
25 with the provisions of this Bill.

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

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

30 (b) the Warehouse operator meets the conditions for eligibility to



1 operate a registered warehouse of the kind applied for as may be prescribed  
2 in the rules and regulations made pursuant to this Bill; and

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

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

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

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

19 231.-(1) The Commission may revoke or suspend the registration  
20 of a warehouse for any violation of the provisions of this Bill after granting  
21 to the warehouse operator the opportunity of being heard.

Revocation and  
suspension of  
warehouse  
registration

22 (2) Where the registration of a warehouse is revoked or suspended,  
23 the warehouse operator shall take such steps as prescribed in the rules and  
24 regulations made pursuant to this Bill.

25 (3) The revocation or suspension of a registration pursuant to the  
26 provisions of this Bill or regulations made thereunder shall not affect the  
27 validity of receipts issued by an issuer of warehouse receipts.

28 232. A registered warehouse operator shall insure its warehouse  
29 structures and facilities as well as the commodities stored in the warehouse  
30 as prescribed by the rules and regulations made pursuant to this Bill.

Insurance of  
warehouse,  
commodities, etc.

Inspection of  
Warehouses by  
the Commission

1           233.-(1) The Commission or its appointed agent may inspect any  
2 registered warehouse.

3           (2) A person who obstructs a warehouse inspector or any other  
4 authorized person in the exercise of the power conferred upon him by this Bill  
5 or who neglects or refuses to produce to a warehouse inspector or any other  
6 authorized person, any goods, documents, book of accounts or other such  
7 records on demand, commits an offence and is liable on conviction to  
8 imprisonment for three months or to a fine not exceeding N500,000.00.

9           (3) In lieu of criminal prosecution in subsection (2) above, the  
10 Commission may impose a penalty of not less than N1, 000,000 and a further  
11 sum of N5, 000 for every day the violation continues.

Registration of  
Collateral  
Management  
Company

12           234.-(1) No person shall operate a collateral management company  
13 without registration by the Commission. A collateral management company  
14 shall provide the services stipulated in the rules and regulations made pursuant  
15 to this Bill

16           (2) The collateral management company shall make necessary  
17 arrangements for provision of pledging against a warehouse receipt and the  
18 activities of eligible pledgees.

Issuance of  
Warehouse  
Receipt

19           235.-(1) A warehouse receipt as defined in this Bill shall only be  
20 issued by an entity duly registered by the Commission and in a manner  
21 prescribed by the Commission.

22           (2) A goods received note may be issued by a Warehouse Operator or  
23 any entity so authorised for a maximum period of two days or such period as  
24 may be determined by the Commission, to a Depositor of commodities until the  
25 issuance of the warehouse receipt to the Depositor.

26           (3) A Warehouse Receipt shall be issued by an entity duly registered  
27 by the Commission and in a manner prescribed by the Commission.

28           (4) Any person who violates the provisions of this Section commits an  
29 offence and shall be liable upon conviction to imprisonment for a term of not

1 less than 6 months or a fine of N1,000,000 or to both such fine and  
2 imprisonment.

3 (5) In lieu of Criminal prosecution, any person who issues a  
4 warehouse receipt in contravention of the provisions of this section is liable  
5 to a penalty of not less than N2,000,000 and a further sum of N5,000 for  
6 everyday the violation continues.

7 236.-(1) A Warehouse Receipt drawn and issued shall be prima  
8 facie proof of the holder having proprietary rights in the goods.

Warehouse  
Receipt as evidence  
of proprietary  
rights

9 (2) A person acquires proprietary rights in the goods, in relation to a  
10 Warehouse Receipt, if he is entitled to the ownership of the goods:

11 (a) in return for a binding commitment to extend credit or for  
12 extension of an immediately available credit, whether or not drawn;

13 (b) as security for or in total or partial satisfaction of a pre - existing  
14 claim;

15 (c) by accepting delivery under a pre - existing contract for  
16 purchase; or

17 (d) in return for any consideration sufficient to support a pre -  
18 existing contract.

19 237.-(1) A warehouse receipt shall be in the prescribed form and  
20 comply with standardization rules, and have such content as prescribed in  
21 rules and regulation made by the Commission pursuant to this Bill.

Form,  
Standardization  
and contents of  
Warehouse Receipt

22 (2) the issuer of a warehouse receipt shall be liable to the person  
23 who suffers loss as a result of false or inaccurate information contained in a  
24 warehouse receipt, or for omission of any term required to be included in the  
25 warehouse receipt under this Bill.

26 238.-(1) Where a warehouse receipt is issued on commodities it  
27 shall be traded on a commodity exchange where such commodities are listed  
28 on the exchange for trading.

Trading in  
Warehouse  
Receipts

29 (2) For the purpose of settlement of a warehouse receipt, a  
30 Commodity Exchange and its Depository shall establish connectivity with

1 the electronic warehouse receipt system of the issuer.

Negotiable  
Warehouse  
Receipts

2 239.-(1) A warehouse receipt issued to the bearer or to the order of a  
3 named person shall be transferable by endorsement and delivery.

4 (2) Words capable of rendering any warehouse receipts non-  
5 negotiable shall not be inserted into such warehouse receipts.

Obligation of  
a Warehouse  
Operator to deliver

6 240.-(1) Delivery of a commodity which is the subject of a warehouse  
7 receipt shall be done in accordance with the rules and regulations made by the  
8 Commission pursuant to this Bill.

9 (2) Except as provided under this Bill or any regulations made from  
10 time to time by the Commission, an issuer of warehouse receipt shall deliver  
11 stored goods upon demand by the holder of the Warehouse Receipt, if the  
12 holder:

13 (a) (i) makes full payments for the Warehouse Operator's charges for  
14 storage and other services relating to the goods either through the clearing  
15 house if the stored commodities are traded on the exchange or directly through  
16 a medium as may be approved by the Commission if the commodities are not  
17 traded on the exchange; or

18 (ii) does not make full payment and a lien is placed on the  
19 commodities, after deducting the exact quantity of the goods at open market  
20 value as at that date, plus ancillary cost if any; and

21 (b) signs relevant documents acknowledging the delivery of the  
22 goods; and

23 (c) satisfies the Warehouse Operator of the identity of the person  
24 taking possession of goods;

25 (3) Except as may be permitted by regulations made by the  
26 Commission an issuer of a Warehouse receipt shall not:

27 (a) issue Warehouse Receipts for goods in respect of which the issuer,  
28 its directors or staff have interest;

29 (b) trade in goods which it is registered to store.

30 (4) Where an issuer of a warehouse receipt is permitted by regulation

1 to trade in its own goods, and in fulfilling any additional condition for grant  
2 of the registration, it must ensure that:

3 (a) there is a clear separation of the goods owned by it from other  
4 goods it is authorized to store;

5 (b) there are clear and transparent records available to show the  
6 demarcation of the goods;

7 (c) it issues receipt in respect of its goods indicating that the goods  
8 belong to it;

9 241.-(1) A Warehouse Operator shall take all necessary  
10 precautions to ensure that the delivery of goods is made to a person who has  
11 lawfully obtained a Warehouse Receipt.

Obligation to  
deliver goods to  
persons with valid  
titles or right

12 (2) a Warehouse Operator's title or right to the possession of goods  
13 shall only be derived:

14 (a) directly or indirectly from a transfer made by a depositor at the  
15 time of or subsequent to deposit of goods; or

16 (b) by a Warehouse Operator's lien on the goods.

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

22 242.-(1) Subject to regulations made from time to time by the  
23 Commission, a Warehouse Operator's lien on goods deposited or the  
24 proceed of such goods shall derive from all:

Warehouse  
Operator's right  
to lien

25 (a) lawful charges for storage and preservation of goods;

26 (b) lawful claims for money advanced, interest, insurance,  
27 transportation, labour, weighing, and other charges and expenses in relation  
28 to such goods;

29 (c) reasonable charges and expenses incurred for notice and  
30 advertisements of sale; and

1 (d) sale of the goods where there is default in satisfying the  
2 Warehouse Operator's lien.

3 (2) The term "Warehouse Operator's Lien" used in subsection (1) of  
4 this section is the right of a Warehouse Operator to recoup fees and charges for  
5 services rendered or supplied or repayment of sums advanced in accordance  
6 with the provisions of subsection (1) of this section and the term "right of lien"  
7 shall be construed accordingly.

Enforcement  
of lien

8 243.-(1) A Warehouse Operator's Lien may be enforced subject to the  
9 provisions of this Bill and rules and regulations made thereunder against:

10 (a) all goods, whenever deposited, belonging to the person who is  
11 liable as debtor for the claims in regard to which the lien is asserted; and

12 (b) the established interest of the depositor in any other goods  
13 deposited with the Warehouse Operator, whether or not deposited by the debtor  
14 himself, provided that such exercise of lien shall only be to the extent and value  
15 of the established debtors interest in these other goods.

16 (2) A Warehouse Operator's lien may be satisfied by:

17 (a) the sale of a portion of the deposited goods in satisfaction of the  
18 lien and any costs associated with the sale at the prevailing market price;

19 (b) other remedies allowed by law for the enforcement of a lien  
20 against personal property; or

21 (c) any other action for recovery of the Warehouse Operator's claim.

22 (3) A Warehouse Operator who has a valid lien against the person  
23 demanding the goods may refuse to deliver the goods until the lien is satisfied.

24 (4) Other remedies available under the law that a creditor may have  
25 against a debtor for the collection from a depositor of all charges and advances  
26 which the depositor has expressly or impliedly contracted with a creditor, shall  
27 also be available to a Warehouse Operator notwithstanding the Warehouse  
28 Operator's Lien on the goods.

Loss of right  
of lien

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

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

4 245.-(1) Except as otherwise provided in this Bill or rules and  
 5 regulations made thereunder, where a Warehouse Operator delivers goods  
 6 for which a warehouse receipt had been issued, the issuer shall cancel the  
 7 receipt.

Cancellation of  
Warehouse Receipt  
after the delivery  
of goods

8 (2) Where an issuer of a warehouse receipt, fails to cancel the  
 9 receipt as provided for under subsection (1) of this section, and a third party  
 10 purchaser without notice acquires title to the receipt, the issuer of the  
 11 warehouse receipt shall remain liable for the market value of the goods.

12 (3) where an issuer of a warehouse receipt, fraudulently fails to  
 13 cancel a receipt upon which delivery has been made, the issuer commits an  
 14 offence and is liable on conviction to imprisonment for a term of 2 years and  
 15 shall, in addition pay the prevailing market value of the goods.

16 246.-(1) Except as otherwise provided in this Bill, where a  
 17 Warehouse Operator delivers part of the goods for which a warehouse  
 18 receipt had been issued, the issuer of the warehouse receipt shall cancel the  
 19 receipt and issue a new receipt for the remaining goods.

Delivery of goods  
in parts

20 (2) An issuer of a warehouse receipt who fraudulently fails to  
 21 comply with the provisions of subsection (1) of this section, commits an  
 22 offence and is liable on conviction to imprisonment for a term of one year  
 23 and in addition liable to pay the market value of the goods not delivered.

24 (3) Where a receipt is not cancelled as provided under subsection  
 25 (1) of this section and the purchaser acquires title to the receipt before or  
 26 after the delivery of any portion of the goods, the issuer of the Warehouse  
 27 receipt shall remain liable to the purchaser.

28 247.-(1) No person shall alter a warehouse receipt in a manner that  
 29 conveys a false information or misrepresentation of information contained  
 30 in the receipt.

Altered warehouse  
receipts

1 (2) An alteration to a warehouse receipt shall be regarded as  
2 immaterial, if the alteration does not affect the prior proprietary rights of the  
3 holder or convey a false information or misrepresentation;

4 (3) Any person who acquired an interest or relied on an altered  
5 warehouse receipt shall be entitled to the remedies provided in section 250 of  
6 this Bill.

7 (4) Any person who violates the provisions of subsection (1) of this  
8 Section commits an offence and shall be liable upon conviction to  
9 imprisonment for a term of not less than 2 years and a fine of N5,000,000 or to  
10 both.

11 (5) In lieu of criminal prosecution for a violation of subsection (1), the  
12 Commission may impose a penalty of not less than N10,000,000.

Rights of  
purchasers of  
altered receipts

13 248.-(1) A purchaser of an altered warehouse receipt for value  
14 without notice of the alteration shall acquire the same proprietary rights against  
15 the issuer which the purchaser would have acquired if the receipt had not been  
16 altered at the time of purchase.

17 (2) A purchaser of a Warehouse Receipt shall be regarded to have had  
18 notice of alteration, if before the purchase of the Warehouse receipt, the  
19 purchaser or his agent took part or influenced the alteration of the Warehouse  
20 Receipt and shall be liable to be proceeded against under this Bill in the same  
21 way and manner as the issuer of the warehouse receipt.

22 (3) Where an issuer of a warehouse receipt is unable to satisfy the  
23 requirements of subsection (1) above, the purchaser shall be entitled to proceed  
24 against the issuer to claim damages for the loss suffered as a result of the  
25 alteration.

Rights derived  
from negotiation

26 249.-(1) A Warehouse Receipt holder acquires after negotiation as  
27 provided under this Bill:

28 (a) title to the Warehouse Receipt;

29 (b) title to the goods, including, to the extent that such activities are  
30 authorized by the depositor and noted on the Warehouse Receipt, the packed,



1 processed, substituted or otherwise transformed goods of the depositor;

2 (c) all rights accruing under the law, including rights to goods  
3 delivered to the Warehouse Operator after the Warehouse Receipt was  
4 issued;

5 (d) the obligation of the Warehouse Operator to hold or deliver the  
6 goods according to the terms of the Warehouse Receipt and any related  
7 storage agreement fee; and

8 (e) liability to pay outstanding storage charges, advances and other  
9 fees endorsed on the Warehouse Receipt.

10 (2) Title and rights acquired under subsection (1) of this section are  
11 not defeated by the surrender of the goods by the Warehouse Operator.

12 (3) Where a Warehouse Receipt is negotiable, no person shall have  
13 a lien by virtue of any judicial process to goods in the possession of a  
14 Warehouse Operator except where:

15 (a) a Warehouse Receipt is originally issued upon delivery of the  
16 goods by a person who had no power to deposit the goods

17 (b) the receipt is first surrendered to the Warehouse Operator or its  
18 negotiation is ordered by court, and the Warehouse Operator shall not be  
19 compelled to deliver the goods in accordance with any judicial process until  
20 the receipt is surrendered to the Warehouse Operator or made a subject of  
21 litigation before the court.

22 (4) A person who purchases a Warehouse Receipt for value without  
23 notice of the judicial or arbitral process takes the goods free of the lien  
24 imposed by the judicial or arbitral process without removing the liability of  
25 the transferor to any claim against him in that respect.

26 250.-(1) A Warehouse Operator shall not deliver the goods if, prior  
27 to delivery, he receives information or otherwise becomes aware that a  
28 person to whom delivery is about to be made is not legally entitled to the  
29 delivery.

Liability for  
wrongful delivery  
of goods

30 (2) A Warehouse Operator who proceeds to deliver the goods in its

1 custody in violation of subsection (1) of this section above, shall be liable to all  
2 persons having proprietary rights in or in the possession of the goods in the  
3 exact market value of the goods wrongfully delivered.

Liability for  
wrongful  
description of  
goods

4 **Liability for wrongful description of goods**

5 **251.** Except as otherwise provided in this Bill or rules and regulation  
6 made pursuant thereto, an issuer of a warehouse receipt shall be liable to the  
7 holder of a warehouse receipt for the goods named in the receipt not being in  
8 existence, or by the goods delivered not corresponding with the description in  
9 the warehouse receipt subject only to changes that may occur in the goods, over  
10 time when stored in accordance with the conditions specified in this Bill or by  
11 regulations made pursuant to this Bill.

Liability for loss  
or injury to goods

12 **252.** Except for unavoidable damages or deterioration associated with  
13 the nature and type of the goods and mode of storage, and other exemptions  
14 provided under this Bill and rules and regulations made thereunder, a  
15 Warehouse Operator is liable in damages for loss of, or injury to the goods  
16 caused by the Warehouse Operator's failure to exercise due and reasonable care  
17 as circumstances may demand.

Liability for  
issuance of receipts  
for goods not  
received

18 **253.** An issuer of a warehouse receipt, its employee, agent, or servant  
19 who issues or aids in the issuance of a receipt knowing that the goods for which  
20 such receipt is issued have not been received by the warehouse operator, or are  
21 not under his direct control at the time of issuing such receipt, commits an  
22 offence and is liable on conviction:

23 (a) for an individual to a term of imprisonment not exceeding two  
24 years or to a fine not less than N2,000,000.00 or to both fine and imprisonment.

25 (b) for a corporate body to a fine of N10,000,000.00.

Liability for false  
statement in a  
warehouse receipt

26 **254.** An issuer of a warehouse receipt, its employee, agent or servant  
27 who fraudulently issues or aids in the fraudulent issuance of a receipt for goods  
28 knowing that the receipt contains a false statement, commits an offence and is  
29 liable upon conviction to imprisonment for a term not exceeding three years or  
30 to a fine of not less than N1,000,000.00 or to both fine and imprisonment.



1 circumstances other than identity preserved;

2 "commodity" means any produce, item, goods or article that is the subject of

3 any commodity forward contract, leveraged commodity trading, contract

4 made pursuant to trading in differences or spot commodity trading, and

5 includes an index, a right or an interest in such commodity, and such other

6 index, right or interest of any nature as the Commission may, prescribe to be a

7 commodity; but does not include any produce, item, goods or article that is the

8 subject of a commodity futures contract and any index, right or interest in such

9 produce, item, goods or article;

10 "commodity broker" means a person who, whether as principal or agent,

11 carries on the business of soliciting, or accepting orders, for the purchase or

12 sale of any commodity or in relation to any commodity contract whether or not

13 the business is carried on in conjunction with any other business;

14 "commodity contract" means any contract in relation to commodity as defined

15 under this Bill not being a commodity futures contract or any contract made

16 pursuant to a transaction in leveraged commodity trading;

17 "commodity forward contract" means a contract the effect of which is that one

18 party agrees to deliver a specified commodity, or a specified quantity of a

19 specified commodity, to another party at a specified future time and at a

20 specified price payable at that time, but does not include a commodity futures

21 contract;

22 "commodity futures contract" means:

23 (a) a contract in which one party agrees to deliver a specified

24 commodity, or a specified quantity of a specified commodity, to another party

25 at a specified future time and at a specified price payable at that time pursuant

26 to the terms and conditions set out in the business rules of a futures market or

27 pursuant to the business practices of a futures market; or the parties will

28 discharge their obligations under the contract by settling the difference

29 between the value of a specified quantity of a specified commodity agreed at

30 the time of the making of the contract and at a specified future time, such

1 difference being determined in accordance with the business rules or  
2 practices of the futures market at which the contract is made; or

3 (b) such other contract or class of contracts as the Commission may  
4 prescribe, and includes a futures option transaction;

5 "commodity exchange" means:

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

9 (b) an electronic system, whether operating in Nigeria or  
10 elsewhere, through which trading in commodity contracts is carried out, but  
11 excludes an electronic facility which merely provides price or other  
12 information relating to commodity contract (whether that facility is part of  
13 or carried on in conjunction with the provision of any other information not  
14 related to commodity contracts) and which does not permit users of the  
15 facility to channel orders for, execute transactions in, or make markets in,  
16 commodity contracts;

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

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

26 "commodity pool operator's representative" means a person in the direct  
27 employment of, or acting for, or by arrangement with, a commodity pool  
28 operator, who performs for that commodity pool operator any of the  
29 functions of a commodity pool operator;

30 "commodity trading adviser" means any person who-

1 (a) carries on the business of advising others (directly or indirectly,  
2 through publications or writings, or by whatever means or media) on the  
3 making of commodity contracts, including the advisability of trading in any  
4 commodity contract made or to be made on, or subject to the business rules of, a  
5 commodity exchange;

6 (b) as part of a regular business, issues or promulgates analyses or  
7 reports concerning the making of commodity contracts; or

8 (c) pursuant to a contract or an arrangement with a customer or other  
9 person, undertakes on behalf of that customer or other person (whether on a  
10 discretionary authority or otherwise granted by the customer or other person)  
11 to make any commodity contract for the purposes of managing the client's  
12 funds, but does not include:

13 (i) a bank; a commodity broker, commodity broker's representative,  
14 commodity pool operator or commodity pool operator's representative;

15 (ii) a person who carries on the business of printing or publishing a  
16 newspaper where in so far as the newspaper is distributed generally to the  
17 public it is distributed only to subscribers to, and purchasers of, the newspaper  
18 for value and the advice is given or the analyses or reports are issued or  
19 promulgated only through that newspaper; and that person receives no  
20 commission or other consideration for giving the advice or for issuing or  
21 promulgating the analyses or reports; and

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

25 "conditioning" include the process of drying and cleaning of commodities;

26 "tribunal" means the Investment and Securities Tribunal

27 "customer" means a person on whose account a commodity broker carries on  
28 trading in commodity contracts;

29 "depositor" means any person who deposits a commodity in a Warehouse for  
30 storage, handling, or shipment, or who is the owner or legal holder of an

1 outstanding Warehouse Receipt or who is lawfully entitled to possession of  
2 the commodity;

3 "delivery" means voluntary transfer of possession or legal title from one  
4 person to another;

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

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

14 'fungible goods' means goods or commodities whose individual units are  
15 capable of mutual substitution;

16 'goods' as used in this Part means commodities as defined in this Bill;

17 'holder' in this Part means a person who is in possession of a Warehouse  
18 Receipt who has proprietary interest in the goods;

19 'identity preserved' means the handling of a commodity in such a manner  
20 that guarantees the return of the actual quality and quantity of the  
21 commodity to the depositor;

22 "leveraged commodity trading" means:

23 (a) the act of entering into or offering to enter into, or inducing or  
24 attempting to induce a person to enter into or offer to enter into, a contract or  
25 an arrangement on a margin basis (other than a commodity futures contract)  
26 whereby a person undertakes as determined by the terms and conditions of  
27 the contract or arrangement to:

28 (i) make an adjustment between himself and another person  
29 according to whether a commodity is worth more or less, at a specified point  
30 in time;

- 1           (ii) pay an amount of money determined or to be determined by  
2 reference to the change in value of a commodity over a specified period of time;
- 3           (iii) deliver to another person at an agreed future time an agreed  
4 amount of commodities at an agreed price;
- 5           (b) the provision by any person referred to in paragraph (a) of any  
6 advance, credit facility or loan, directly or indirectly, to facilitate an act of the  
7 description referred to in that paragraph; or
- 8           (c) the act of entering into or offering to enter into, or inducing or  
9 attempting to induce a person to enter into an arrangement with another person  
10 (whether on a discretionary basis or otherwise) or any contract to facilitate an  
11 act of the description referred to in paragraph (a) or (b) above;
- 12 "non-clearing member" is an individual or institution that is part of an  
13 exchange, without a clearing license and does not possess the ability to settle or  
14 clear transactions but take part in clearing as clients of a Clearing Member on  
15 the markets for which it provides clearing services;
- 16 "person" means any individual, corporation, two or more persons having a joint  
17 or common interest, or other legal or commercial entity;
- 18 "spot commodity broker" means a person whether as principal or agent who  
19 carries on the business of soliciting or accepting orders, for the purchase or sale  
20 of any commodity by way of spot commodity trading, whether or not the  
21 business is part of, or is carried on in conjunction with, any other business, but  
22 does not include a commodity broker;
- 23 "spot commodity pool operator" means any person who carries on a business in  
24 the nature of a collective investment scheme within the meaning of this Bill and  
25 who, in connection therewith, accepts or receives from other persons funds,  
26 security or property, either directly or through capital contributions, the sale of  
27 shares or other forms of security or otherwise for the purpose of spot  
28 commodity trading, but does not include a commodity pool operator;
- 29 "spot commodity trading" means the purchase or sale of a commodity at its  
30 current market or spot price, where it is intended that such transaction results in



1 the physical delivery of the commodity.

2 'warehouse' mean any building, silo, tank or compressed tank, structure or  
3 other protected enclosure approved by the Commission to be used or  
4 useable, for the storage or conditioning of commodities or buildings used for  
5 storage purposes or including operation of a Warehouse which issue  
6 Warehouse receipt in relation to commodities to be traded on a registered  
7 Exchange;

8 "warehouse operator" means a person registered under this Bill engaged in  
9 the business of operating or controlling a Warehouse for receiving, storing,  
10 shipping or handling of commodities for a fee and includes its agent or  
11 employee.

12 'warehouse receipt' means an electronic receipt of title to specific goods of a  
13 certain quality and quantity stored in a registered, and named Warehouse.

14 PART XVII - ISSUANCE OF SECURITIES

15 A. FEDERAL GOVERNMENT AGENCIES, STATE, LOCAL GOVERNMENTS

16 AND THEIR RESPECTIVE AGENCIES.

17 259. This part applies to the following:

18 (a) Federal Government agencies;

19 (b) State Governments and their agencies;

20 (c) The Federal Capital Territory and its agencies; and

21 (d) Local Governments;

22 (e) any company which is wholly owned by the Federal, State,  
23 Federal Capital Territory and Local Governments;

24 (f) any company whose borrowing is guaranteed or sponsored by  
25 the Federal, State, Federal Capital Territory and Local Governments.

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

29 260.-(1) Subject to subsections (2), (3) and (4) of this section, a  
30 body to which this part of this Bill applies may issue to the public, debt

Bodies to which  
this part applies

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

- 1 securities in the form of:
- 2 (a) Bonds;
- 3 (b) promissory notes;
- 4 (c) non-interest financial instruments; or
- 5 (d) Such other instruments as may be approved by the Commission
- 6 from time to time
- 7 (2) Debt securities issued in pursuance of paragraph (1) (a) above,
- 8 may be-
- 9 (a) general obligation debt securities issued on the full faith and credit
- 10 of the issuing body charged upon and payable out of the consolidated revenue
- 11 fund or other statutory fund of such body; or
- 12 (b) project-tied debt securities issued for a specific project(s) charged
- 13 upon and payable out of;
- 14 (i) the revenue from the project;
- 15 (ii) a specific asset or assets; or
- 16 (iii) a guarantee from the relevant Federal, State or Local government
- 17 or other acceptable third party.
- 18 (3) A body to which this Part applies shall be entitled to issue general
- 19 obligation debt securities only where:
- 20 (a) its total annual debt service obligations, including the debt service
- 21 obligation arising from the proposed issuance, shall not at any time exceed
- 22 40% of the actual revenue that accrued to its consolidated revenue fund or other
- 23 statutory fund in the twelve-month period immediately preceding the proposed
- 24 new issuance; or
- 25 (b) it complies with such other debt sustainability ratio as may be
- 26 specified by the Commission or other relevant authority from time to time
- 27 which takes account of the total current and future debt service obligations,
- 28 other contractual obligations, and the variability of the future revenue of the
- 29 issuing body.
- 30 (4) A body to which this Part applies shall be entitled to issue Project

1 Tied Debt Securities only where:

2 (a) the asset(s) of, and revenues from the project to which Project  
3 Tied Debt Securities relate are "ring-fenced"; and

4 (b) the project(s) or asset(s) to be funded or acquired as the case  
5 may be from the proceeds of the issue has the minimum investment grade  
6 rating from at least two rating agencies recognized by the Commission or  
7 such other rating as the Commission may from time to time specify.

8 (c) the Project Tied Debt Securities are guaranteed by:

9 (i) a body to which this Part applies, (the provisions as specified in  
10 subsection (3) of this section and Section 262 would apply to the guarantor);

11 (ii) a bank, insurance company or other third party acceptable to  
12 the Commission, Provided that such a guarantor must have the minimum  
13 investment grade rating and satisfy any other conditions as may be specified  
14 by the Commission from time to time.

15 (d) it meets such other requirements as may be determined by the  
16 Commission from time to time.

17 (5) Any issue of bonds or other securities issued under this Part for  
18 the purpose of raising any specified sum of money shall be deemed to be  
19 separate, notwithstanding that the sum of money so raised is part only of a  
20 sum of money authorised by any other law to be raised.

21 (6) Securities created or issued under this part of this Bill shall be  
22 securities to which the Trustee Investments Act applies.

23 (7) The proceeds of securities issued under this part of the Bill shall  
24 be utilized solely for the purpose for which the securities were issued.

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

26 261.-(1) Subject to the consent of its approving authority a body to  
27 which this part of the Bill applies shall appoint any financial institution  
28 registered with the Commission as custodians, for the purpose of  
29 warehousing proceeds of the bond for the duration of the execution of  
30 projects or purpose of issue as stated in the prospectus of such bond.

Appointment of  
Custodians

1 (2) For the purpose of giving effect to this section, the custodians  
2 appointed pursuant to subsection (1) shall have the power to:

3 (a) receive and hold monies accruing from the issue of bonds;

4 (b) carry out the duties of a custodian as stipulated in this Bill and any  
5 rules and regulations made thereunder;

6 (c) make payments in relation to the purpose of issue of the bond in  
7 accordance with such conditions as may be specified by the Commission; and

8 (d) refuse the execution of any payment that may be in contravention  
9 of the content of the trust deed of a bond.

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

Restriction on  
raising of funds  
from the capital  
market

13 **262.-(1)** A body to which this part of the Bill applies shall not issue  
14 securities to the public except in accordance with the provisions of this Bill and  
15 the rules and regulations made thereunder.

16 (2) An application to issue securities under this part of this Bill shall  
17 be in such form as the Commission may direct.

18 (3) An application made under this section shall be accompanied by  
19 such documents as may be prescribed by the Commission, from time to time,  
20 and shall include:

21 (a) in the case of a State Government and the Federal Capital  
22 Territory:

23 (i) a copy of the law authorising the issue of the securities specifying  
24 (in the case of general obligation debt securities) that a sinking fund to be fully  
25 funded from the consolidated revenue fund account of the issuer be established  
26 and that funding required for the sinking fund shall constitute a charge on the  
27 consolidated revenue fund of the issuer;

28 (ii) a copy of a rating report by a rating agency registered or  
29 recognized by the Commission; and

30 (iii) in the case of general obligation debt securities, an irrevocable

1 letter of authority issued by the Accountant-General of the State or any  
2 person performing that function in the Federal Capital Territory, to the  
3 Accountant-General of the Federation, to deduct at source from the statutory  
4 allocation due to the issuer.

5 (iv) an irrevocable letter of guarantee issued by the bank or  
6 acceptable third party with no less than the minimum investment grade  
7 rating, committing to provide such funds as may be required to meet the  
8 principal and interest obligations in favour of the Trustees where a general  
9 obligation bond is not backed or partly backed by an irrevocable letter of  
10 authority as specified in paragraph (a) (iii) of this subsection.

11 (b) in the case of a local government:

12 (i) a copy of the law of the State to which it belongs authorising the  
13 issue of the bond by the local government and specifying that a sinking fund  
14 to be fully funded from funds accruing to the local government from the  
15 Federation Account be established and that funding required for the sinking  
16 fund shall constitute a charge on the consolidated revenue fund of the State;

17 (ii) a copy of a rating report by a rating agency registered or  
18 recognized by the Commission;

19 (iii) an irrevocable letter of authority issued by the Accountant  
20 General of the State on behalf of the local government, guaranteeing the  
21 deduction at source from the statutory allocation due to the local  
22 government, as the first line charge to meet its payment obligations; and

23 (iv) in the case of the Federal Capital Territory, an irrevocable letter  
24 of authority issued by the relevant authority in the Federal Capital Territory,  
25 to the Accountant-General of the Federation, to deduct at source from the  
26 statutory allocation due to the issuer such sums sufficient to cover the  
27 principal repayment and interest payment obligations to the credit of the  
28 sinking fund established in favour of the Trustees;

29 (c) in the case of a Federal or State Government agency:

30 (i) a copy of the law or instrument establishing the agency and

1 authorising the agency to issue the securities;

2 (ii) an irrevocable letter of guarantee of repayment of the obligation,  
3 issued by the Federal or State Government that owns the agency or company  
4 provided that the provisions of Section 260 (3) would apply in the case of a  
5 State Government; and

6 (iii) Where applicable, an irrevocable letter of guarantee of  
7 repayment of the obligation, issued by an acceptable third party committing to  
8 be liable for the repayment of the principal and interest in the event of default;

9 (d) In the case of Project tied debt securities:

10 (i) irrevocable letter of consent by the Banker to the project on the  
11 funding of the debt service reserve account or sinking fund to be established to  
12 meet maturing principal and interest obligations from the accruing project cash  
13 flows;

14 (ii) a copy of a rating report by a rating agency registered or  
15 recognized by the Commission;

16 (iii) an irrevocable letter of guarantee of repayment of the loan issued  
17 by an acceptable third party committing to be liable for the repayment of the  
18 principal and interest in the event of default;

19 (4) The Commission may, in addition to conditions that may be  
20 prescribed in subsection (3) of this section, prescribe conditions or issue  
21 directives relating to any borrowing by State Governments and their agencies  
22 concerning any of the following matters:

23 (a) the funding of the sinking fund;

24 (b) underwriting;

25 (c) federal Irrevocable Standing Payment Order to the trustees of the  
26 sinking fund; and

27 (d) completion of the project, as would guarantee the repayment to the  
28 subscribers.

29 (5) The sinking fund shall be managed by a corporate trustee  
30 registered by the Commission.

1 (6) The Commission may impose any penalty on a defaulting body  
2 and this may include:

3 (i) reprimand;

4 (ii) publication in the national dailies; and

5 (iii) blacklisting or foreclosure from raising further facility in the  
6 capital market.

7 (7) The trustee shall have the power to take legal action against the  
8 defaulting body failing which bondholders, holding at least 10 per cent of  
9 the value of the bond shall have the right to call a meeting to pass a resolution  
10 compelling the trustee to take legal action.

11 (8) A bondholder who feels dissatisfied may personally initiate  
12 legal action to enforce his rights under the trust deed irrespective of the legal  
13 duty of the trustee to take such legal action.

14 (9) Where the body raising funds is the Federal Government of  
15 Nigeria, the requirements for approval of primary issues shall not apply,  
16 provided that where the securities are to be traded on a securities exchange;  
17 they shall be subject to the regulatory requirements relating to secondary  
18 market transactions.

19 (10) Any amount deducted pursuant to the provisions of this  
20 section shall be credited into the sinking fund established under section 281  
21 of this part of this Bill for purpose of redeeming the outstanding obligation.

22 (11) A copy of any Irrevocable Letter of Authority issued pursuant  
23 to the provisions of this section shall also be lodged with the trustees  
24 appointed under section 275 of this part of this Bill.

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

27 (i) In Section 224 (1), the words "raise sums of money or any part  
28 thereof by way of any internal loan directly from the capital market" is  
29 deleted and replaced with "issue securities to the public"

30 (ii) Section 224 (3) (a) (i) of the principal act is redrafted as

1 highlighted in 231 (3) (a) (i) above.

2 (iii) In Section 224 (3) (a) (iii) of the principal Act, the words "in the  
3 event of default by or failure of the issuer to meet its payment obligations" is  
4 deleted in 231 (3) (a) (iii) above;

5 (iv) A new section 231 (3) (a) (iv) is introduced as highlighted above;

6 (v) The highlighted part of 231 (3) (b) (i) is added to the provision of  
7 Section 224 (3) (b) (i) in the principal Act;

8 (vi) In Section 224 (3) (b) (iii) of the principal Act, the words "in the  
9 event of default by or failure of the local government" is replaced with the  
10 phrase "as first line charge" in 231 (3) (b) (iii) above;

11 (vii) A new section 231 (3) (b) (iv) is introduced as highlighted above;

12 (viii) Section 224 (3) (c) of the principal Act is redrafted as  
13 highlighted in 231 (3) (c) above;

14 (ix) A new section 231 (3) (d) is introduced as highlighted above;

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

Loans to be  
charged upon  
revenue

17 263. The principal monies and interest represented or secured by any  
18 bond or securities issued under this Bill shall be charged on and payable out of  
19 the general revenue and assets of the body concerned and of the assets of the  
20 appropriate authority or project which is the beneficiary of the proceeds of the  
21 issue.

Bodies to publish  
details of funds  
in the Gazette  
or other official  
document

22 264. (1) The particulars of funds raised pursuant to this Bill shall be  
23 published in the Gazette or any other official document by the body raising the  
24 funds and shall include the following:

25 (a) the beneficiary;

26 (b) the sum of money to be raised;

27 (c) the mode or modes of raising;

28 (d) the rate of interest payable;

29 (e) the dates in each year on which the half-yearly or quarterly interest  
30 on the funds shall be payable;



1 (f) the time at which a half-yearly or quarterly appropriation out of  
2 the general reserve and assets of the body or project of the body shall be  
3 made as a contribution;

4 (g) the date of redemption of the bond or securities to be issued for  
5 the purpose of raising the funds; and

6 (h) any other information relating to the funds considered  
7 necessary.

8 (2) The date of redemption of any bond or securities shall not be  
9 later than 25 years from the date of the issuance provided that the  
10 Commission may on application grant such other longer period as it deems  
11 necessary.

12 (3) Where it is deemed expedient by a body to reserve an option to  
13 redeem any bond or securities at any date earlier than the date of redemption  
14 specified for such bond or securities further to subsection (1) of this section,  
15 the body shall specify the terms and conditions upon which the bond or  
16 securities may be redeemed at such earlier date.

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

19 265.-(1) A body shall keep a register of all information of  
20 transactions in securities and other information as required by this Bill.

Register of securities  
and appointment  
of registrar

21 (2) A body shall for the purpose of carrying out its obligations  
22 under subsection (1) of this section appoint any registrar registered with the  
23 Commission as registrar and the appointment shall be subject to such terms  
24 and conditions as may be deemed fit by the body concerned.

25 (3) A register kept under this section shall be kept in such place as  
26 may be approved on behalf of the body and shall among other things, include  
27 the following:

28 (a) the names and addresses of the holders for the time being of the  
29 securities concerned and the persons deriving title therefrom;

30 (b) the amount of securities held by every holder; and

1 (c) the date on which the name of every holder is entered in respect of  
2 the securities held in his name.

3 (4) The registrar may be required to submit his books of account in  
4 connection with his functions under this part of this Bill to an independent  
5 audit.

Appointment  
of issuing house

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

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

Bond certificate

11 267.-(1) Securities shall be allotted in dematerialized form and shall  
12 be electronically registered (if applicable) on the account of the holder of the  
13 securities with any recognized depository, clearing or settlement platform.

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

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

Closing of register

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

Entries in a  
Bond register

22 269. The entries in a bond register shall be presumed to be a correct  
23 representation of the facts, matters, particulars and transactions to which those  
24 entries relate.

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

Promissory  
notes

27 270.-(1) Every promissory note shall be signed by the issuer and shall,  
28 when issued, bind the relevant body to pay the principal sum mentioned in that  
29 note and the interest thereon in accordance with the provisions of this part of  
30 this Bill at the rate and on the dates specified pursuant to section 264 of this Bill

1 or in pursuance of an option to redeem the note reserved in the directives.

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

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

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

Manner and effect  
of enforcement

9 (a) no endorsement of a promissory note shall be valid unless made  
10 by the signature of the holder written on the back of the note in a space  
11 provided for that purpose; and

12 (b) no person shall, by reason only of his having endorsed a  
13 promissory note, be liable to pay any money due either as principal or as  
14 interest on the promissory note.

15 272.-(1) Notwithstanding anything to the contrary contained in  
16 any other law, or enactment:

Rights of  
survivorship

17 (a) when a promissory note is payable to two or more persons  
18 jointly and any or all die, the note shall be payable to the survivor or  
19 survivors of the deceased person or persons; and

20 (b) where a promissory note is payable to two or more persons  
21 severally, and any or all die, the note shall be payable to the survivor or  
22 survivors of the deceased person or persons or to the representative of the  
23 deceased or to any of them.

24 (2) Nothing contained in this section shall affect any claim which  
25 any representative of a deceased person may have against the survivor or  
26 survivors under or in respect of any promissory note to which subsection (1)  
27 of this section applies.

28 273.-(1) Every bond shall be signed by the issuer and shall, when  
29 issued, bind the issuer to pay the principal sum and the interest on that sum in  
30 accordance with the provisions of this Bill at the rate and on the dates

Bonds

1 specified in the trust deed.

2 (2) Bonds shall be issued in such denominations as the issuer may  
3 direct. Comment: Section 241 of the 2007 Act is redrafted for clarity as  
4 highlighted above.

Appointment  
and payment  
of interest

5 274.-(1) Where any interest is payable in respect of securities, the  
6 issuer shall appropriate a sum sufficient to meet all interest payable on the date  
7 prescribed.

8 (2) The interest due on securities shall be payable on the dates  
9 specified in the issuing documents or trust deed.

10 (3) Save as otherwise provided in the issuing documents, where any  
11 interest has become payable on any date, interest on that amount shall, after that  
12 date, be paid or payable by a body or any other person responsible for the  
13 default in payment to any person.

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

Appointment  
of trustees

16 275.-(1) The issuer may appoint a registered trustee company as  
17 trustee for the purpose of acting on behalf of bond holders of debt securities in  
18 registered form with regard to every debt security issued under this Bill  
19 provided that a trustee appointed under this subsection shall not have any  
20 fiduciary relationship with the issuers.

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

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

Powers of  
trustees

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

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

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

Trustee as  
underwriter

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

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

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

Power to appoint  
new trustees

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

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

Waiver by trustees

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

23           280. After the date specified in the particulars published pursuant  
24 to section 264 of this Bill as the date from which contributions to the sinking  
25 fund for debt securities shall commence, and with the approval of the  
26 appropriate authority, in each quarter or half year ending with the interest  
27 payment dates specified in the particulars the body shall appropriate out of  
28 its general revenue and assets, of the project, or such other verifiable source  
29 of revenue of the appropriate authority, a sum determined as the contribution

Appropriation  
of revenue for  
sinking fund

1 to the sinking fund established for the purpose of redeeming the debt securities.

Separate sinking  
fund

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

Investment of  
sinking fund

4 282.-(1) All monies appropriated under section 280 of this Bill as  
5 contributions to the sinking fund shall be paid to the trustees appointed under  
6 section 275 of this Bill and may be invested in such securities as are specified in  
7 the Trustee Investments Act.

8 (2) The trustees may, from time to time, with the approval of the  
9 appropriate authority vary any investment made pursuant to subsection (1) of  
10 this section or may realize and re-invest any moneys invested under that  
11 subsection.

12 (3) The dividends, interest, bonus and other profits of any investment  
13 of any part of any sinking fund shall be invested by the trustees so as to form a  
14 part of that sinking fund in like manner as moneys appropriated under section  
15 280 of this Bill as contributions to that sinking fund.

Cessation of  
contribution to  
sinking fund

16 283.-(1) Notwithstanding anything to the contrary contained in this  
17 part of this Bill, if at any time the trustees are satisfied that the sinking fund of  
18 any debt securities issued under the provisions of this part will be sufficient  
19 with further accumulations of interest, but without further payments of  
20 contributions, to enable the debt securities to be redeemed at the time fixed for  
21 its redemption they shall inform the body accordingly, and the issuer shall be  
22 authorised in such event to suspend further payments of half- yearly or  
23 quarterly contributions to that sinking fund.

24 (2) The contributions to that sinking fund shall be recommenced if the  
25 trustees at any time thereafter inform the appropriate authority that they are no  
26 longer satisfied that the sinking fund without further accumulations of interest  
27 will be sufficient for the redemption of the debt securities.

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

1           284. There shall be paid out of the sinking fund all expenses  
2 specifically incurred in, or incidental to, the investment and management of  
3 that fund and the re-payment of the debt securities for which the fund was  
4 established.

Expenses to be  
paid out of sinking  
fund

5           285. In the event of the sinking fund established by an issuer  
6 pursuant to the provisions of this part being found at the time fixed for the  
7 repayment of the debt securities to be insufficient for such redemption, the  
8 deficiency shall be made good out of the general revenue and assets of the  
9 body concerned and (or) the project or assets funded by the proceeds of the  
10 debt securities.

Deficiency in  
fund to be charged  
upon revenue

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

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

Consolidation  
and subdivision

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

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

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

21           (d) on payment of the prescribed fee.

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

23           287. Where an application is made to the Registrar under this part  
24 for the issue of a duplicate certificate or for the exchange, renewal,  
25 consolidation or sub-division of any certificate, the Registrar may require  
26 the applicant to execute a bond with or without sureties to indemnify the  
27 body concerned against the claims of all persons claiming under the original  
28 certificate or under the certificate so exchanged, renewed, consolidated or  
29 subdivided, as the case may be.

Indemnity bond

Immediate  
discharge in certain  
cases

1           288. On payment by or on behalf of a body to the holder of a security  
2           of the amount expressed therein on or after the date when it becomes due or on  
3           the consolidation or sub-division of a security under this Bill, a body shall be  
4           discharged in the same way to the same extent as if the security were a  
5           promissory note payable to the bearer.

Limitation of  
legal action

6           289. Except as otherwise provided in this part, no action shall lie  
7           against the issuer in respect of any securities-

8           (a) redeemed on or after the date on which payment of the principal  
9           amount becomes due, after the lapse of six years from that date;

10          (b) for which a duplicate certificate is issued after the lapse of six  
11          years from the date of the issue of such duplicate or from the date of the last  
12          payment of interest on such securities, whichever date is later;

13          (c) for which a renewed certificate is issued or consolidated or  
14          subdivided under this Bill, after the lapse of six years from the date of the  
15          issuance.

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

Summary  
procedure in  
special cases

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

24          (a) where the securities relate to a loan due for payment, authorise the  
25          registration of the name of such survivor or survivors in substitution for the  
26          name of the deceased person in the register of securities and the payment to  
27          such survivor or survivors of the amount due in respect of that bond;

28          (b) where the securities relate to a loan not due for repayment;  
29          authorise the registration of the name of such survivor or survivors in  
30          substitution for the name of the deceased.



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

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

Signature to be  
printed on certificates

4 (a) the crest of the body concerned (if any);

5 (b) the signature of the issuer;

6 (c) the signature of the Registrar; and

7 (d) where applicable, the signature of the appropriate authority in  
8 the case of a statutory corporation which is directly the beneficiary of the  
9 debt securities to which the bond certificate or securities relates.

10 292.-(1) Except as otherwise provided in this part, no notice of any  
11 trust in respect of any securities shall be receivable by the Registrar or a  
12 relevant body.

Notice of trust  
not receivable  
except as provided

13 (2) The Registrar shall not be deemed to have received notice of a  
14 trust by reason only of the fact that he has recognized an endorsement on a  
15 security by an executor or an administrator as such, nor shall he inquire into  
16 the terms of any will by which such executor or administrator may be bound.

17 293. All documents or instruments made or used under the  
18 provisions of this part of this Bill shall be in such form as may be prescribed  
19 and shall be exempted from stamp duty payable to the Federal or a State  
20 Government.

Exemption from  
stamp duty

21 294. An issuer may delegate to the Minister, Commissioner or  
22 Chairman or such other appropriate officer all or any of the powers  
23 conferred on it by the approving authority subject to such restriction,  
24 conditions and qualifications, not inconsistent with the provisions of this  
25 part and regulations as may be prescribed by the Commission from time to  
26 time.

Delegation of  
power

27 295.-(1) No person shall be entitled to inspect, or to receive  
28 information in relation to securities, except on payment of such fee and in  
29 such circumstances and on such terms and conditions as may be approved  
30 from time to time by the Commission.

Inspection of  
register and  
documents, etc.

1 (2) Nothing in this section shall apply to the Auditor-General of the  
2 Federation or of a State, the Accountant-General of the Federation or of a State  
3 or such other appropriate officer of the Federal or State Government or any  
4 public officer acting in his official capacity.

Power to make  
rules and regulations  
under this part

5 296.-(1) The Commission may make such rules and regulations  
6 generally for the purpose of giving effect to the provisions of this part and the  
7 rules and the regulations may include:

8 (a) the manner in which payment of interest is to be made and  
9 acknowledged in respect of securities;

10 (b) the circumstance in which promissory notes shall be renewed  
11 before further payment of interest thereon may be claimed;

12 (c) the issue of duplicate certificates;

13 (d) the renewal of certificates;

14 (e) the manner of payment of interest to joint holders of securities;

15 (f) the circumstances in which alterations may be made in the  
16 registration of securities;

17 (g) the payment of principal sums or interest and transfer of securities  
18 in the case of persons under a legal disability;

19 (h) the disposal of unclaimed interest;

20 (i) the fees to be paid in respect of anything to be issued or done under  
21 the provisions of this part;

22 (j) matters that must at the minimum be provided for and covered in a  
23 trust deed or other like instrument;

24 (k) debt sustainability guidelines and ratios that issuers of securities  
25 under this part must comply with;

26 (l) factors to be considered by custodians in disbursing proceeds of  
27 securities issued under this part; and

28 (m) all matters required by this part to be prescribed and all matters  
29 incidental to or connected with the matters hereinbefore enumerated.

1           297. A body to which this part applies in exercising the powers  
2 granted under this part shall comply with the listing requirements of the  
3 relevant securities exchange. Requirements of securities exchanges, etc.

4           298. Any amount raised or guaranteed by any of the bodies to  
5 which this part applies shall, until such amount is fully repaid, be a binding  
6 and continuing obligation on the Federal, State or Local Government,  
7 boards or supervising Ministries of corporate entities to which this Bill  
8 applies with regards to the repayment of all principal sums and interest  
9 payments due and outstanding under the issue including other terms and  
10 conditions arising therefrom. Binding obligation on successive government or bodies

11           299. Nothing in this part shall be construed as derogating from the  
12 provisions of any other enactment which restricts the borrowing of money  
13 by anybody to which the provisions of this part applies or requires the  
14 consent of any authority to the raising of such money by any such body. Application of enactments

15           300.-(1) It shall be an offence to divert or mismanage the proceeds  
16 of any bond issued under this Part. Offences, remedies and penalties

17           (2) Where an appropriate officer of a body which has issued debt  
18 securities under this part is found guilty of having diverted or mismanaged  
19 or played a role in the diversion or mismanagement of any bond proceed:

20           (a) (i) the appropriate officer of an issuer shall:

21           (i) retribute to the issuer the total amount diverted or mismanaged;

22           and

23           (ii) pay a penalty amounting to five hundred per cent (500%) of the  
24 total amount diverted or mismanaged to the Commission; and

25           (b) shall be liable on conviction to a term of imprisonment not  
26 exceeding fifteen years each

27           (3) The provisions of subsection (2) shall apply notwithstanding  
28 that the relevant officer has ceased to hold office.

29           (4) Where a custodian appointed in accordance with the provisions  
30 of this Part is found guilty of having diverted or mismanaged or played a role

1 in the diversion or mismanagement of any bond proceed:

2 (a) the custodian shall:

3 (i) retribute to the issuer the total amount diverted or mismanaged; and

4 (ii) pay a penalty amounting to five hundred per cent (500%) of the  
5 total amount diverted or mismanaged to the Commission; and

6 (b) every director and staff of the custodian involved in the diversion  
7 or mismanagement commits an offence and shall be liable on conviction to  
8 imprisonment for a term not exceeding fifteen years each.

9 (5) Without prejudice to the provisions of Section 262 (6) and  
10 subsections (2) (3) (4) and (5) of this section, where any person who is under an  
11 obligation to comply with, observe or give effect to the provisions of this part,  
12 or any rules made pursuant to this part, fails to do so, the Commission may take  
13 one or more of the following actions:

14 (a) direct the person in breach to comply with, observe or give effect  
15 to any such provision of this part or rules and regulations made thereunder;

16 (b) where the person in breach of the provisions of this part is an  
17 appropriate officer of the issuer, the Commission shall require the person(s) to  
18 take such steps as it may direct to remedy or mitigate the effect of the breach;  
19 this provision shall apply notwithstanding that the appropriate officer has  
20 ceased to hold office

21 (c) Where the person in breach is the Registrar, Trustee, Issuing  
22 House, Custodian or other professional party to the issue under this part, the  
23 Commission may:

24 (i) impose a penalty of not less than N5,000,000 on each defaulting  
25 party and N25,000 for every day of continuing default;

26 (ii) require the person(s) in breach to take such steps as it may direct to  
27 remedy the breach or mitigate the effect of such breach;

28 (iii) prohibit the defaulting party from participating in other capital  
29 market transactions until the breach is remedied and the penalty paid; and

30 (iv) direct the Securities Exchange to prevent the defaulting party

1 from carrying out any services or transactions on the Exchange

2 (6) Where a person has failed to comply with a penalty imposed by  
3 the Commission under this section, the Commission may sue for and  
4 recover the penalty as a civil debt.

5 B - ISSUANCE OF DEBT SECURITIES BY BODY CORPORATE AND  
6 SUPRANATIONAL BODIES

7 301.-(1) No company whether local or foreign, supranational body,  
8 or other approved entity shall issue debt securities to the public without the  
9 prior review and approval of the Commission;

Issuance of Debt  
securities subject  
to prior review  
and approval

10 (2) The Commission may make rules and regulations for the  
11 purpose of giving effect to the provisions of subsection (1) of this section  
12 from time to time which shall include -

- 13 (a) the eligibility criteria for the issuance of debt securities;  
14 (b) the mode of issue;  
15 (c) the minimum rating requirements;  
16 (d) the disclosure and reporting requirements;  
17 (e) the fees to be paid in respect of anything to be issued or done  
18 under the provisions of this part;  
19 (f) matters that must at the minimum be provided for and covered  
20 in a trust deed or other like instrument; and  
21 (g) all matters required, prescribed, incidental or connected to this  
22 section.

23 (3) No entity referred to in subsection (1) may issue debt securities  
24 if it is in default of payment of interest or repayment of principal in respect of  
25 previous debts issuances for a period of more than six months.

26 302. A person who diverts or mismanages the proceeds of any debt  
27 issuance under this Part commits an offence and shall be liable on conviction  
28 to a term of imprisonment not exceeding fifteen years.

Mismanagement  
or diversion of  
proceeds

29 303. In lieu of criminal prosecution, any person who diverts or  
30 mismanages the proceeds of any debt issuance under this Part shall;

Administrative  
sanctions

- 1 (i) restate to the issuer the total amount diverted or mismanaged; and  
 2 (ii) pay a penalty amounting to five hundred per cent (500%) of the  
 3 total amount diverted or mismanaged to the Commission.

Cessation of  
office

4 304. The provisions of sections 303 shall apply notwithstanding that  
 5 the relevant officer has ceased to hold office.

The Commission  
may take action

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

9 (a) direct the person in breach to comply with, observe or give effect  
 10 to any such provision of this part or rules and regulations made thereunder;

11 (b) where the person in breach of the provisions of this part is an  
 12 appropriate officer of the issuer, the Commission shall require the person(s) to  
 13 take such steps as it may direct to remedy or mitigate the effect of the breach;  
 14 this provision shall apply notwithstanding that the appropriate officer has  
 15 ceased to hold office

The Commission  
may sue for  
penalty

16 306. Where a person has failed to comply with a penalty imposed by  
 17 the Commission under this section, the Commission may sue for and recover  
 18 the penalty as a civil debt.

#### 19 C - INTERPRETATION

Interpretation  
of certain words  
used in this part

20 307. In this part-  
 21 "appropriate officer" means the chief executive or any other officer(s)  
 22 authorised by the council of a state Government, Local Government, or board  
 23 of a statutory or government agency;  
 24 "approving authority" in the case of the Federal Government means the Federal  
 25 Executive Council, in the case of a state means the Executive Council of the  
 26 State, in the case of a Local Government means the Local Government Council  
 27 and in the case of a government agency or statutory body means the board or  
 28 the supervisory Ministry of that body, as the case may be;  
 29 "bond" means an instrument of indebtedness issued by a body to which this part  
 30 applies to secure the repayment of money borrowed by such body;

- 1 "bond holder" means a person holding a bond and whose name is entered as  
2 the owner thereof in the register;
- 3 "chairman" means the Chairman of a Local Government Council;
- 4 "commissioner" means the Commissioner in a State responsible for matters  
5 relating to finance;
- 6 "executive council" means the Federal Executive Council or the Executive  
7 Council of a State;
- 8 "general obligation debt securities" means debt securities issued to finance  
9 the various projects of the government and repayable out of the general  
10 revenue and assets of the body concerned;
- 11 "issuer" means the body or bodies referred to under section 295 of this Bill;
- 12 "issuing house" means the paying agent appointed under the provisions of  
13 this part of this Bill;
- 14 "loan" means internal loan and include any arrangement under which a body  
15 is to be afforded credit facilities and references to the making, acceptance,  
16 repayment or application for a loan or to any other form of transaction  
17 relating to a loan shall be construed accordingly;
- 18 "minister" shall have the same meaning as contained in section 350 of this  
19 Bill "paying agent" means the paying agent appointed under the provisions  
20 of this part of this Bill;
- 21 "project-tied debt securities" means debt securities issued to fund specific  
22 capital projects and backed by the asset or income of the specific project for  
23 which the bond was issued and may also mean a Revenue Bond"
- 24 "promissory note" means a promissory note issued by a body under the  
25 provisions of this part;
- 26 "register" means the register of securities and of the holders of such  
27 securities kept by the Registrar for purposes of this part;
- 28 "registrar" means a Registrar appointed by a body under this part of this Bill;
- 29 "securities" includes bonds and promissory notes issued under the  
30 provisions of this part;

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

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

4 PART XVIII - ESTABLISHMENT, JURISDICTION, AUTHORITY AND  
5 PROCEDURE OF THE INVESTMENTS AND SECURITIES TRIBUNAL

Establishment  
of the Investments  
and Securities  
Tribunal

6 308.-(1) There is hereby established a body to be known as the  
7 Investments and Securities Tribunal (in this Bill referred to as "the Tribunal")-

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

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

Composition  
of the Tribunal

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

15 (a) a Chairman who shall be a legal practitioner with not less than  
16 fifteen (15) years post-call experience in capital market matters;

17 (b) five full time members who shall all be legal practitioners with not  
18 less than ten (10) years post-call experience in capital market matters

19 (c) six part-time members, two (2) of whom shall be legal  
20 practitioners with not less than ten (10) years' post-call experience in capital  
21 market matters, and four (4) other persons who are knowledgeable in capital  
22 market matters.

23 (2) A person appointed as a member of the Tribunal shall not be  
24 removed from office except in accordance with the provisions of this Bill.

25 (3) The Chairman shall be the Chief Executive and Accounting  
26 Officer and shall be responsible for the overall control, supervision and  
27 administration of the Tribunal.

28 (4) No member of the Tribunal shall exercise any administrative  
29 function except as otherwise delegated by the Chairman.

30 *Comment:* The number of members has been increased from 10 to 12. Being a



1 specialized court, the IST needs to retain non-lawyers who are seasoned  
 2 capital market experts, as their expertise is cited as part of the uniqueness of  
 3 the IST. At the same time, the number of legal practitioners to be appointed  
 4 into the Tribunal has been increased from the minimum of 4 to 8.

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

10 310.-(1) The Minister shall recommend to the President eligible  
 11 candidates for appointment as Chairman and Members of the Tribunal.

Functions of the  
 Minister

12 (2) The Minister shall have the power to recommend to the  
 13 President any disciplinary action against the Chairman or any member(s) of  
 14 the Tribunal including the removal of the Chairman or a member of the  
 15 Tribunal on any or all of the grounds provided for in this Bill.

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

18 311. In the absence of the Chairman, the most senior full-time  
 19 member of the Tribunal by virtue of date of appointment shall act in his stead  
 20 pending the return of the Chairman or appointment of a new Chairman.

Vacancy in the  
 office of the  
 Tribunal

21 Provided that where all such members have the same date of  
 22 appointment, the date of call-to-Bar shall be used.

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

25 312.-(1) The Tribunal shall have and exercise jurisdiction  
 26 throughout the Federation, and for that purpose, the Chairman shall, for  
 27 administrative purposes, divide the entire Federation into such number of  
 28 divisions as may be deemed appropriate.

Constitution of  
 the Tribunal

29 (2) For the purpose of exercising any jurisdiction conferred on it by  
 30 this Bill, the Tribunal shall be duly constituted if it consists of not less than 3

1 members of the Tribunal;

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

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

Term of office

6 313.-(1) The Chairman shall hold office for a term of five years  
7 renewable for another term of five years and no more.

8 (2) Other members of the Tribunal shall hold office for a term of four  
9 years renewable for another term of four years and no more.

Disqualification  
of members of  
the Tribunal

10 314. A member of the Tribunal shall cease to hold office if he-

11 (a) becomes of unsound mind or owing to ill health is incapable of  
12 carrying out his duties; or

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

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

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

18 (e) is disqualified or suspended from practising his profession in any  
19 part of Nigeria or outside Nigeria by the order of any competent authority made  
20 in respect of him personally.

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

Resignation  
and removal

24 315.-(1) A member of the Tribunal may, by notice in writing under his  
25 hand addressed to the President through the Minister resign his office:

26 Provided that the member shall, unless he is permitted by the President to  
27 relinquish his office continue to hold office until the expiry of three months  
28 from the date of receipt of such notice or until a person duly appointed as his  
29 successor assumes his office or until the expiry of his term of office, whichever  
30 is earlier.

1 (2) A member of the Tribunal may be removed from office by an  
 2 order made by the President on the recommendation of the Minister based  
 3 on-

4 (a) any of the grounds referred to in section 304 of this Bill and after  
 5 he has been given an opportunity of being heard in respect of the charge.; or

6 (b) the ground of proven charge of misbehaviour or incapacity after  
 7 due inquiry has been made and the member concerned has been informed of  
 8 the charge against him and given an opportunity of being heard in respect of  
 9 the charge.

10 316.-(1) The salaries and allowances of the Chairman, full-time  
 11 members and Chief Registrar of the Tribunal shall be equivalent to the  
 12 remuneration of the Chief Judge, Judges and Chief Registrar of the Federal  
 13 High Court respectively.

Salaries, allowances  
and conditions  
of service of  
members of the  
Tribunal

14 (2) Without prejudice to the provision of subsection (1) above, the  
 15 Tribunal may, from time to time, pay such allowances to the Chairman,  
 16 Members, and the Chief Registrar, as exigencies of duties may require  
 17 towards the discharge of their functions.

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

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

Filling up of  
vacancies

25 318.-(1) The Chief Registrar of the Tribunal shall be appointed by  
 26 the Tribunal.

Chief Registrar  
of the Tribunal

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

30 (b) He shall perform such duties in exercise of the powers and

1 authority of the Tribunal as may, from time to time, be assigned to him by the  
2 Tribunal, Rules of the Tribunal, and the Chairman.

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

7 *Comment:* it is considered more efficient for the Chief Registrar to be  
8 appointed by the Tribunal instead of the Minister. It is also considered more  
9 professional to appoint a qualified Legal Practitioner rather than "any fit and  
10 proper" person as stated in Section 282 of the 2007 Act.

Other staff of  
the Tribunal, etc.

11 319.-(1) The Tribunal shall employ the services of such staff as it may  
12 deem necessary for the efficient performance of its functions pursuant to this  
13 Bill.

14 (2) The remuneration (including allowances) and terms and  
15 conditions of service of the staff of the Tribunal shall be as may be determined  
16 by the Tribunal.

17 (3) All employees of the Tribunal shall be entitled to pensions and  
18 other retirement benefits.

19 (4) Nothing in this section shall prevent the appointment of a person  
20 to any office, on terms which preclude the grant of pension and other retirement  
21 benefits.

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

Jurisdiction of  
the Tribunal, etc.

29 320.-(1) The Tribunal shall have exclusive jurisdiction to adjudicate  
30 on disputes arising from investments and securities transactions in Nigeria.

1 (2) Subject to the provisions of subsection (2) of Section 302, the  
2 Tribunal shall exercise exclusive original jurisdiction, where:

3 (i) the complaint is against a direct action of the Commission; or

4 (ii) a matter had been referred to the Commission and the  
5 Commission failed to act within sixty days.

6 (3) Subject to the provisions of subsection (2) of this section, the  
7 Tribunal shall exercise appellate jurisdiction on matters:

8 (a) relating to disputes between:

9 (i) the Commission and any person (individual or corporate) in  
10 respect of any capital market matter;

11 (ii) capital market operators and securities exchanges or financial  
12 market infrastructure;

13 (iii) capital market operators inter se;

14 (iv) capital market operators and their clients;

15 (v) public companies and the Commission or the securities  
16 exchanges or investors;

17 (vi) an investor and a securities exchange or financial market  
18 infrastructure;

19 (vii) capital market operators and self-regulatory organisations;

20 (viii) a capital market operator and the Commission;

21 (ix) an investor and the Commission;

22 (x) an issuer of securities and the Commission;

23 (b) arising from the administration, management and operation of  
24 collective investment schemes;

25 (c) relating to the review, approval and regulation of mergers,  
26 takeovers and restructuring of public companies.

27 (4) The Tribunal shall also exercise jurisdiction on any other matter  
28 as may be prescribed by an act of the national assembly.

29 (5) In the exercise of its jurisdiction under this Bill, the Tribunal  
30 shall have the power to interpret this Bill, any other enactment, rules or

1 regulation as may be applicable.

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

Funds of the  
Tribunal

5 321.-(1) The Tribunal shall establish and maintain a fund, which shall  
6 be applied towards the discharge of its functions under this Bill.

7 (2) There shall be paid and credited to the Fund established under  
8 subsection (1):

9 (a) annual subventions from the Federal Government with respect to  
10 recurrent and capital expenditures;

11 (b) Such other sums of money as may be provided by the Federal  
12 Government;

13 (c) Such other monies as may accrue to the Tribunal from the Nigerian  
14 capital market.

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

Power to accept  
gift

19 322. The Tribunal may accept any grant of money or contributions on  
20 such terms and conditions, if any, as may be specified by the person or  
21 organisation making such grant or contribution provided that the terms and  
22 conditions are consistent with the functions and objectives of the Tribunal.

Account and  
audit

23 323.-(1) The Tribunal shall keep proper accounts of its receipts,  
24 payments, assets and liabilities and shall submit the accounts annually for  
25 auditing by a qualified auditor appointed from a list of auditors and in  
26 accordance with the guidelines supplied by the Auditor-General of the  
27 Federation.

28 (2) The Tribunal shall cause to be prepared, not later than the thirtieth  
29 day of September in each year, an estimate of its income and expenditure  
30 during the next succeeding year and when prepared, they shall be submitted to

1 the Minister and the National Assembly.

2 (3) Tribunal shall prepare and submit to the Minister, a report in  
3 such form as the Minister may direct on the activities of the Tribunal during  
4 the immediately preceding year and shall include in the report, a copy of the  
5 audited accounts of the Tribunal for that year and the auditors' report  
6 thereon.

7 Comments: These provisions are introduced to strengthen financial  
8 oversight.

9 324. The Tribunal may apply the proceeds of the fund established  
10 in sections 321 and 366 of this Bill to-

Application of  
the funds of the  
Tribunal

11 (a) meet the cost of administration of the Tribunal;

12 (b) reimburse members of the Tribunal and staff or any committee  
13 of the Tribunal for expenses authorised;

14 (c) pay the salaries, remuneration or allowances, pensions and  
15 gratuities as applicable to the Members of the Tribunal and staff of the  
16 Tribunal;

17 (d) finance staff promotion, training, internships, scholarships,  
18 research and similar activities;

19 (e) maintain any property acquired by or vested in the Tribunal;

20 (f) meet any capital expenditure approved by the Tribunal; and

21 (g) Implement all or any of the functions of the Tribunal under this  
22 Bill or any matter connected with those functions.

23 Comment: the scope of authorized expenses for the Tribunal has been  
24 increased as highlighted above.

25 325.-(1) A person aggrieved by any action or decision of the  
26 Commission under this Bill, may institute an action in the Tribunal or appeal  
27 against such decision within the period stipulated under this Bill;

Actions against  
and Appeals from  
decisions of the  
Commission

28 (2) No action or appeal shall be commenced at the Tribunal (or in  
29 any other court in respect of anything covered under this Bill) unless the  
30 aggrieved party has given to the Commission at least 14 days written notice

1 of its intention to commence same. The notice shall state the cause of action,  
2 the name and address of the aggrieved party and the relief which he claims.

3 (3) An appeal under this part shall be filed within a period of thirty  
4 days from the date on which a copy of the order which is being appealed against  
5 is made, or deemed to have been made by the Commission and it shall be in  
6 such form and be accompanied by such fees as may be prescribed.

7 Provided that the Tribunal may entertain an appeal after the expiry of the said  
8 period of thirty days if it is satisfied that there was sufficient cause for the delay.

9 (4) On receipt of an appeal under subsection (3) of this section the  
10 Tribunal may, after giving the parties an opportunity of being heard, make such  
11 orders thereon as it deems fit, confirming, modifying or setting aside the order  
12 appealed against.

13 (5) The Tribunal, shall in the exercise of its powers under this Bill,  
14 conduct its proceedings in such manners as to avoid undue delays and shall  
15 dispose of any matter before it finally within three months from the date of the  
16 commencement of the hearing of the substantive action.

17 Provided that no judgment shall be rendered void by virtue of a delay in  
18 delivering same except where it is established that the delay occasioned a  
19 miscarriage of justice.

Powers and  
procedures of  
the Tribunal

20 326.-(1) The Tribunal may make rules regulating its procedures.

21 (2) The Tribunal shall have, for the purposes of discharging its  
22 functions under this Bill, power to-

23 (a) summon and enforce the attendance of any person and examine  
24 him on oath;

25 (b) require the discovery and production of documents;

26 (c) receive evidence on affidavits;

27 (d) call for the examination of witness or documents;

28 (e) review its decisions;

29 (f) dismiss an application for default;

30 (g) decide matters ex-parte;



- 1 (h) enforce its judgment;
- 2 (i) commit any person for contempt;
- 3 (j) set aside or vary any of its orders; and
- 4 (k) do anything which in the opinion of the Tribunal is incidental or
- 5 ancillary to its functions under this Bill.

6 (3) Any proceeding before the Tribunal shall be a judicial

7 proceeding and the Tribunal shall be a civil court for all purposes.

8 (4) Proceedings of the Tribunal may be held in camera as and when

9 deemed appropriate in the circumstances of the case.

10 327. A party may appear in person or authorise one or more legal

11 practitioners to represent it before the Tribunal.

Right to legal  
representation

12 328.-(1) The Tribunal shall give its judgment in writing and may

13 make or impose sanctions including but not limited to penalties,

14 suspensions, withdrawal of registration or licenses, specific performance, or

15 restitution, and such other sanctions as it may deem appropriate in each case.

Judgment of the  
Tribunal

16 (2) A certified true copy of the decision of the Tribunal shall be

17 supplied to the parties upon request subject to payment of the prescribed

18 fees.

19 *Comment:* Section 293 (3) of the 2007 Act which requires the judgment of

20 the Tribunal to be registered at the Federal High Court before its

21 enforcement has been deleted. This is why the power to enforce its decisions

22 and judgments and the power to cite for contempt has been added to the

23 powers of the Tribunal.

24 329. The Tribunal shall have exclusive jurisdiction on all the

25 matters specified in this Bill.

Exclusion of  
proceedings

26 330. Any person dissatisfied with a decision of the Tribunal may

27 appeal against such decision to the Court of Appeal if-

Appeal to the  
Court of Appeal

28 (a) the decision was taken in the exercise of its appellate

29 jurisdiction, on points of law only; or

30 (b) it is a final decision taken in the exercise of its original

1 jurisdiction, on points of law or mixed law and fact; or

2 (c) it is an interlocutory decision of the tribunal, on points of law only.

Further appeals

3 331. An appeal against the decision of the Court of Appeal at the  
4 instance of any party shall lie to the Supreme Court.

Legal  
Representation

5 332. Any legal practitioner employed by the Tribunal shall be entitled  
6 to represent the Tribunal before any court of law in Nigeria.

Protection for  
actions taken  
in good faith

7 333. No suit, prosecution or other legal proceedings shall lie against  
8 any member or staff or officer of the Tribunal for anything which is done in  
9 good faith or intended to be done under this Act or the Rules and Regulations  
10 made thereunder.

11 PART XIX - MISCELLANEOUS

Delegation

12 334. The Commission may, by general or special order in writing  
13 delegate to any member or officer of the Commission or any other person  
14 subject to such conditions, if any, as may be specified in the order, such of its  
15 powers and functions under this Bill as it may deem necessary.

Legal proceedings,  
Pre-action notice  
and right to  
represent  
Commission  
before court or  
Tribunal

16 335.-(1) No suit shall be commenced against the Commission before  
17 the expiration of a period of 14 days after written notice of intention to  
18 commence the suit shall have been served upon the Commission by the  
19 intending plaintiff or his agent; and the notice shall clearly and explicitly state  
20 the cause of action, the particulars of the claim, the name and address of the  
21 intending plaintiff and the relief which he claims.

22 (2) Any legal practitioner employed by the Commission shall be  
23 entitled to represent the Commission before any court or the Tribunal.

Protection of  
action taken in  
good faith

24 336. No suit, prosecution or other legal proceedings shall lie against  
25 any officer, member or other employee of the Commission for anything which  
26 is done in good faith or intended to be done under this Bill or the rules and  
27 regulations made thereunder.

Exemption of  
Commission from  
the payment of taxes

28 337.

Penalty

29 338.-(1). Except as otherwise specifically provided under the  
30 provisions of this Bill, any person who violates or contributes in the violation

1 of the provisions of this Bill or of any rule and regulation made thereunder  
2 shall be liable to a penalty of not less than N1,000,000 and a further sum of  
3 N20,000 per day for every day the violation continues;

4 (2) The Commission may in addition to any penalty that may be  
5 prescribed under this Bill, direct any person who has contravened any of the  
6 provisions of this Bill and any regulation made thereunder, to compensate  
7 any person who may have suffered any direct loss as a result of the  
8 contravention.

9 (3) In appropriate cases, the Commission may also direct the  
10 forfeiture to the victim, of any direct benefit or advantage received or  
11 receivable by the person in contravention.

12 (4) Notwithstanding the provisions of subsections (2) and (3), of  
13 this section the complainant of a contravention may seek by action,  
14 consequential or punitive damages or any other remedy that may be  
15 available under the law.

16 (5) In the exercise of its powers to impose a penalty or sanction  
17 under this Bill, the Commission shall accord the person in breach a fair  
18 hearing.

19 (6) Where no specific penalty has been prescribed for any criminal  
20 offence under this Bill, a person who commits an offence shall upon  
21 conviction be liable to a fine of not less than N1,000,000 or imprisonment  
22 for a period of 2 years or to both such fine and imprisonment.

23 339. Except as otherwise specifically provided under the  
24 provisions of this Bill-

General offences

25 (1) A person who wilfully obstructs, interferes with or interrupts  
26 the Commission in the discharge of its functions or exercise of its powers  
27 under this Bill commits an offence and is liable on conviction to a term of  
28 imprisonment of not less than two years or to a fine not less than N5,000,000  
29 or to both such fine and imprisonment.

30 (2) A person who destroys any record which may be required by the

1 Commission for the discharge of any of its functions under this Bill, with intent  
2 to mislead the Commission or to prevent or impede any investigation or inquiry  
3 under this Bill, commits an offence and is liable on conviction to a term of  
4 imprisonment of not less than three years or to a fine not less than N5,000,000  
5 or to both such fine and imprisonment.

6 (3) Any person who provides any information or furnishes any  
7 document which is false, misleading, or from which there is a material  
8 omission, commits an offence and is liable on conviction to a term of  
9 imprisonment of not less than three years or to a fine of not less than  
10 N5,000,000 or to both such fine and imprisonment;

11 (4) Any person who fails to comply with any directive of the  
12 Commission made in pursuance of its powers, functions or objectives under  
13 this Bill shall be liable to a penalty of not less than N5,000,000 in the first  
14 instance and N20,000 for every day the disobedience continues.

15 (5) Any person who uses any device, scheme, or artifice to defraud; or  
16 engages in any act, practice or course of business which operates or would  
17 operate as a fraud on any person; commits an offence and shall be liable on  
18 conviction to a term of imprisonment of not less than three years or a fine of not  
19 less than N5,000,000 in addition to such other penalty as may be prescribed  
20 under this Bill and the rules and regulations made thereunder.

Criminal  
prosecution

21 340.-(1) Subject to the provisions of the Constitution of the Federal  
22 Republic of Nigeria relating to the power of prosecution by the Attorney  
23 General of the Federation, any legal practitioner in the employment of the  
24 Commission may with the consent of the Attorney General of the Federation,  
25 prosecute or defend criminal matters, in the name of and on behalf of the  
26 Commission in respect of matters relating to the Nigerian capital market in  
27 accordance with the objectives of this Bill.

28 (2) Notwithstanding the provisions of any enactment to the contrary, a  
29 person appointed under this provision, who is a legal practitioner shall, while  
30 so appointed be entitled to represent the Commission as legal practitioner for

1 the purpose and in the course of his employment, without prejudice to the  
2 power of the Commission to engage private legal practitioners in any  
3 proceedings.

4 341.-(1) Where an offence under this Bill has been committed by a  
5 company, issuer of securities, or market participant, every person who at the  
6 time the offence was committed was in charge of, and was responsible to, the  
7 company, issuer of securities or market participant for the conduct of the  
8 business of the company, as well as the company, issuer of securities or  
9 market participant, shall be deemed to be guilty of the offence and shall be  
10 liable to be proceeded against.

Offences by  
companies and  
market participants

11 (2) Notwithstanding the provision of subsection (1), where an  
12 offence under this Bill has been committed by a company, issuer of  
13 securities or market participant and it is proved that the offence has been  
14 committed with the consent or connivance of, or is attributable to any  
15 neglect on the part of, any director, manager, secretary or other officer of the  
16 company, issuer of securities or market participant, such director, manager,  
17 secretary or other officer shall also be deemed to be guilty of the offence and  
18 shall be liable to be proceeded against.

19 (3) Where the Commission is satisfied that a person (corporate or  
20 individual) is engaged or has engaged in any form of market abuse or other  
21 violations under this Bill; or by taking or refraining from taking any action,  
22 has required or encouraged another person or persons to engage in  
23 behaviour which if engaged in by a market participant or company would  
24 amount to market abuse or violation under this Bill, it may impose on the  
25 person a penalty of such amount or of such nature as it considers appropriate.

26 (4) Where the Commission is entitled to impose a penalty on a  
27 person or an entity, it may impose a penalty and in addition, may publish a  
28 statement to the effect that the person or entity has engaged in market abuse  
29 or violation under this Bill.

Obligation of  
persons to disclose  
information  
connected with  
activities of their  
employer

1           342.-(1) An employee of a capital market operator, market  
2 participant, public company or other issuer of securities shall have the right to  
3 disclose any information connected with the activities of his work place which  
4 tends to show that-

5           (a) a criminal offence has been, is being or is likely to be committed;

6           (b) a person has failed, is failing, is likely to fail or otherwise omitted  
7 to comply with any legal obligation to which he is subject; or

8           (c) any disclosure tending to show any matter falling within (a) or (b)  
9 above has been, is being or is likely to be deliberately concealed.

10           (2) For the purpose of subsection (1) of this section, it shall be  
11 immaterial whether the relevant failure occurred, occurs or would occur in  
12 Nigeria or elsewhere, and whether the law applying to it is that of Nigeria or  
13 any other country or territory.

14           (3) A disclosure is made in accordance with subsection (1) of this  
15 section if the employee makes the disclosure in good faith to his employer, and  
16 where his employer fails, refuses or omits to act, to the Commission; or where  
17 the relevant failure or omission relates solely or mainly to the conduct of a  
18 person other than his employer, or any other matter for which a person other  
19 than his employer has legal responsibility, to that other person.

20           Provided that the employee reasonably believes that the information  
21 disclosed and any allegation contained in it, are substantially true; and in all the  
22 circumstances that it is reasonable for the employee to make the disclosure.

23           (4) In determining whether it is reasonable for the employee to make  
24 the disclosure, regard shall be had to:

25           (a) the identity of the person to whom the disclosure is made;

26           (b) the seriousness of the relevant failure, or omission;

27           (c) whether the relevant failure is continuing or is likely to occur in the  
28 future.

29           (5) No employer shall subject an employee to any detriment by any  
30 act or any deliberate failure to act on the ground that the employee has made a

1 disclosure in accordance with the provisions of this Bill.

2 (6) Where an employee has been subjected to any detriment in  
3 contravention of subsection (5) of this section, he may present a complaint  
4 to the Commission.

5 (7) Upon receipt by the Commission of such complaint, the  
6 Commission shall cause an investigation to be carried out and if satisfied  
7 that the provision of this section has been contravened, the Commission  
8 shall direct the affected capital market operator, market participant, public  
9 company or other issuer of securities to reinstate the affected employee or  
10 pay compensation in accordance with subsection (9) of this section within  
11 one (1) month of such directive.

12 (8) Where the detriment suffered is other than dismissal or  
13 termination, the Commission shall direct the capital market operator, market  
14 participant, public company or other issuer of securities to restore the  
15 affected employee to his appropriate position within one (1) month of such  
16 directive.

17 (9) Any employee relieved of his employment without any just  
18 cause other than for reason of disclosure made pursuant to the provision of  
19 this section shall be entitled to a compensation which shall be calculated as if  
20 he had attained the maximum age of retirement or had served the maximum  
21 period of service, in accordance with his conditions of service.

22 (10) Any capital market operator, market participant, public  
23 company or other issuer of securities which contravenes the provisions of  
24 this section is liable to a penalty not exceeding N5,000,000 in addition to the  
25 payment of compensation to the employee in accordance with subsection  
26 (9) of this section.

27 (11) For the purpose of this section, "detriment" includes  
28 dismissal, termination, redundancy, withholding of benefits and  
29 entitlements, suspension and any other act that has negative impact on the  
30 employee.

1 (12) Apart from the provisions of the Constitution of the Federal  
 2 Republic of Nigeria, any provision in any other law or agreement that  
 3 precludes the application of this section shall be void.

Change of name  
 of capital market  
 operators, manager,  
 portfolio or collective  
 investment scheme  
 and change of  
 shareholding  
 or directors

4 343.-(1) A capital market operator shall not, without the prior  
 5 approval in writing of the Commission:

6 (a) change the name under which it is registered under this Bill or  
 7 change its shareholding or directors;

8 (b) use or refer to itself by a name other than the name under which it is  
 9 so registered or a literal translation thereof;

10 (c) use or refer to itself by an abbreviation or a derivative of such  
 11 name.

12 (2) Any change in the name of a capital market operator, manager,  
 13 portfolio or scheme or of shareholding or directors, shall not be effective  
 14 without the prior approval in writing of the Commission.

15 (3) An exchange holding company shall not effect a change in its  
 16 controlling shareholding without the prior consent of the Commission.

Removal of  
 Appointees and  
 cancellation of  
 registration

17 344.-(1) The Commission may in the interest of investor protection or  
 18 public interest, by notice suspend or terminate the appointment of the director  
 19 or officer a capital market operator or public company, if the director or officer  
 20 has failed or refused to comply with the provisions of this Bill or is no longer a  
 21 fit and proper person to hold the office in question.

22 (2) The Commission may suspend or cancel a certificate of  
 23 registration granted to a capital market operator who violates the provisions of  
 24 this Bill provided no cancellation shall be made unless the person concerned  
 25 has been given an opportunity of being heard.

Committees of  
 the Commission

26 345.-(1) The Commission may appoint one or more committees, to  
 27 carry out on its behalf such of its functions as it may determine and a person  
 28 other than a member of the Commission shall hold office on the committee in  
 29 accordance with the terms of his appointment

30 (2) A decision of a committee of the Commission shall be of no effect



1 until it is confirmed by the Commission.

2 346.-(1) The fixing of the seal of the Commission shall be  
3 authenticated by the signature of the Director-General and the Secretary or  
4 any two members of the Board duly authorised.

Seal of the  
Commission

5 (2) Any contract or instrument which, if made or executed by a  
6 person not being a body corporate, would not be required to be under seal  
7 shall be made or executed by or on behalf of the Commission by the Director  
8 General or any person specially authorised to act for that purpose by the  
9 Board.

10 347.-(1) Notwithstanding the provisions of this Bill the relevant  
11 provisions of all existing enactments, including the following-

Application and  
relevance of other  
laws not barred  
Cap T22, LFN, 2004  
Cap B10, LFN, 2004  
Cap C20, LFN, 2004  
Cap 117, LFN, 2004  
Cap C4, LFN, 2004  
Cap N88, LFN, 2004  
Cap B3, LFN, 2004  
Cap N117, LFN, 2004  
Cap F34, LFN, 2004  
Cap C9, LFN, 2004

- 12 (a) the Trustees Investments Act;
- 13 (b) the Borrowing by Public Bodies Act;
- 14 (c) the Companies and Allied Matters Act;
- 15 (d) the Insurance Act;
- 16 (e) the Central Bank of Nigeria Act;
- 17 (f) the Nigeria Social Insurance Trust Fund Act;
- 18 (g) the Banks and Other Financial Institutions Act;
- 19 (h) the Nigerian Investment Promotion Act;
- 20 (i) the Foreign Exchange (Monitoring and Miscellaneous  
21 Provisions) Act;
- 22 (j) Pension Reform Act;
- 23 (k) Nigeria Sovereign Investment Authority Act;
- 24 (l) the Chartered Institute of Stockbrokers Act;
- 25 (m) the Bankruptcy Act;
- 26 (n) the Federal Competition and Consumer Protection Act;
- 27 (o) Federal Mortgage Bank of Nigeria Act, and all other laws  
28 regulating Mortgage practices in Nigeria;
- 29 (p) the Money Laundering Prohibitions Act;
- 30 (q) the Companies Income Tax Act;

- 1 (r) the Stamp Duties Act;  
2 (s) the Capital Gains Tax Act; and  
3 (t) the Value Added Tax Act;  
4 (u) Financial Reporting Council of Nigeria Act.

5 shall be read with such modification as to bring them into conformity with the  
6 provisions of this Bill in relation to capital market matters.

7 (2) Without prejudice to the generality of subsection (1) of this  
8 section, the provisions of this Bill shall be in addition to the application of other  
9 laws and not be in derogation of the provisions of any other law or enactment  
10 for the time being in force.

11 (3) Apart from the Constitution of the Federal Republic of Nigeria, if  
12 the provisions of any other law, in relation to capital market matters including  
13 the enactments specified in subsection (1) of this section, are inconsistent with  
14 the provisions of this Bill, the provisions of this Bill shall prevail and the  
15 provisions of that other law shall, to the extent of the inconsistency, be void.

Rules and  
Regulations

16 348.-(1) The Commission shall, from time to time, make rules and  
17 regulations for the purpose of giving effect to the provisions of this Bill and  
18 shall in particular and without prejudice to the generality of the foregoing  
19 provisions, make rules and regulations which may include the underlisted and  
20 other incidental matters:

21 (a) to alter or modify, from time to time, the provisions of the Second  
22 Schedule to this Bill;

23 (b) prescribing the forms for returns and other information required  
24 under this Bill;

25 (c) prescribing the procedure for obtaining any information required  
26 under this Bill;

27 (d) requiring returns to be made within the period specified therein by  
28 any entity to which this Bill applies;

29 (e) prescribing the procedure and criteria for approval of mergers,  
30 take-overs, acquisitions and business combinations under this Bill;

- 1 (f) prescribing any fees payable under this Bill;
- 2 (g) prescribing the manner for regulating securitization  
3 transactions in Nigeria;
- 4 (h) prescribing the procedure and criteria for regulating cross  
5 border offerings, listing and trading of securities by foreign issuers;
- 6 (i) prescribing that the provisions of this Bill shall not apply or shall  
7 apply with such modifications (if any) as may be specified in the regulations  
8 to any person or class of persons or any securities or class of securities or to  
9 any transaction;
- 10 (j) prescribing the information to be contained in any prospectus or  
11 offer documents filed under this Bill;
- 12 (k) prescribing the procedure, criteria for the authorisation,  
13 revocation and operation of collective investment schemes including  
14 prudential and product regulation;
- 15 (l) prescribing the activities which constitute "insider dealings" the  
16 rules governing dealings in securities by insiders and defining the term  
17 "insider dealings";
- 18 (m) concerning derivatives, derivatives markets or business,  
19 derivatives exchanges, derivatives market infrastructure, derivatives  
20 business operators, trade association of derivatives business operators, and  
21 prevent unfair derivatives trading practices;
- 22 (n) Prescribing the treatment of unclaimed monies that remain  
23 unpaid after twenty-four months or other prescribed period, after their  
24 payment date;
- 25 (o) without prejudice to the provisions of the Companies and  
26 Allied Matters Act specifying for the protection of investors:
- 27 (i) the returns that are required to be filed by all public companies;
- 28 (ii) the form, manner and procedure for obtaining proxies  
29 including the information to be disclosed to investors before proxies are  
30 given by any person; and

1 (iii) the manner in which such matters shall be disclosed by the  
2 companies;

3 (iv) the matters to be disclosed relating to the issue of securities,  
4 transfer of securities and matters incidental thereto;

5 (n) prescribing the requirement for the identification of persons doing  
6 business with capital market operators;

7 (o) prescribing as it deems fit, appropriate rules on treatment of  
8 dividends, unclaimed securities and certificates, and other matters incidental  
9 thereto;

10 (p) providing for anything requiring to be prescribed under this Bill;  
11 and (q) for carrying out the principles and objectives of this Bill.

12 (2) The Commission shall in the exercise of powers to make rules in  
13 this section consult with stakeholders.

14 (3) Any instrument issued under subsection (1) of this section shall be  
15 under the signature of the Director-General of the Commission and the  
16 Secretary or any two members of the Board as may be authorised.

17 (4) Notwithstanding the provisions of subsection (1) of this section  
18 the Commission may, from time to time, amend or revoke rules or regulations  
19 for purposes of giving effect to the provisions of this Bill and the rules and  
20 regulations made thereunder.

21 (5) Any regulations or rules made under this Bill may where  
22 appropriate prescribe penalties for default.

Repeals and  
Savings

23 349.-(1) The Investments and Securities Act No 29, 2007 is hereby  
24 repealed.

25 (2) It is hereby declared that without limiting the provisions of the  
26 Interpretation Act, the repeal of the Act shall not affect any document made or  
27 anything whatsoever done or purported to have been done under the enactment  
28 so repealed.

29 (3) Every order, requirement, certificate, notice, direction, decision,  
30 authorisation, consent, application, request or thing made, issued, given or

1 done under the enactment repealed by this Bill shall, if in force at the  
2 commencement of this Bill, continue in force and have effect as if made,  
3 issued, given or done under the corresponding provisions of this Bill.

4 PART XX - INTERPRETATION AND CITATION

5 350. In this Bill:

Interpretation

6 "agent" means a person authorised by another to act for or in place of him  
7 and in relation to a securities dealer, includes a person who is, or has been a  
8 banker of the dealer at any given time;

9 "associated person" means a subsidiary, affiliate or agent of a member of any  
10 regulated entity;

11 "auditor" means a member of a body of accountants, recognized by an Act or  
12 any other enactment and appointed as auditor of a company or collective  
13 investment scheme by managers with the approval of the trustees;

14 "book" includes any register, document or other record of information and  
15 any account or accounting record, however compiled, recorded or stored,  
16 whether in written or printed form or micro-film, electronic process or  
17 otherwise;

18 "capital market operator" means any persons (individual or corporate), duly  
19 registered by the Commission to perform specific functions in the capital  
20 market;

21 "certificate of registration" means any certificate or license issued by the  
22 Commission as a part of its registration functions under this Bill;

23 "clearing and settlement company" means any corporate body who acts as  
24 an intermediary in making payments or deliveries or both in connection with  
25 transactions in securities and provides facilities for comparison of data  
26 regarding the terms of settlement of securities transaction or for the  
27 allocation of securities settlement responsibilities;

28 "collective investment scheme" means a scheme in whatever form,  
29 including an open-ended investment company, in pursuance of which  
30 members of the public are invited or permitted to invest money or other

1 assets in a portfolio, and in terms of which-

2 (a) two or more investors contribute money or other assets to and hold  
3 a participatory interest in a portfolio of the scheme through shares, units or any  
4 other form of participatory interest;

5 (b) the investors share the risk and the benefit of investment in  
6 proportion to their participatory interest in a portfolio of a scheme or on any  
7 other basis determined in the deed, but not a collective investment scheme  
8 authorised by any other Act;

9 "Commission" means the Securities and Exchange Commission;

10 "Commodity" means-

11 (a) any produce, item, goods or article as prescribed in the rules, and  
12 regulations made pursuant to this Bill,

13 (b) any index, right or interest in any produce, item, goods or article;

14 (c) any index, right, interest, tangible property or intangible property  
15 of any nature that is, or belongs to a class of indices, rights, interests, tangible  
16 properties or intangible properties.

17 "company" has the same meaning as defined in the Companies and Allied  
18 Matters Act 1990 or as amended;

19 "control" means control of an entity by a Person(s) who-

20 (a) beneficially owns more than one half of the issued share capital or  
21 assets of the undertaking;

22 (b) is entitled to vote a majority of the votes that may be cast at a  
23 general meeting of the company, or has the ability to control the voting of a  
24 majority of those votes, either directly or through a controlled entity of that  
25 person;

26 (c) is able to appoint or to veto the appointment of a majority of the  
27 directors of the company;

28 (d) is a holding company, and the company is a subsidiary of that  
29 company as contemplated by the Companies and Allied Matters Act.

30 (e) in the case of an undertaking that is a trust, has the ability to control

1 the majority of the votes of the trustees, to appoint the majority of the  
2 trustees or to appoint or change the majority of the beneficiaries of the trust;

3 (f) in the case of the undertaking which is a nominee undertaking,  
4 owns the majority of the members' interest or controls directly or has the  
5 right to control the majority of members' votes in the nominee undertaking;

6 (g) has the ability to materially influence the policy of the  
7 undertaking in a manner comparable to a person who, in ordinary  
8 commercial practice, can exercise an element of control referred to in  
9 paragraphs (a) to (f).

10 "corner a market" means to acquire enough units of a security or to hold a  
11 significant commodity position to be able to manipulate its price;

12 "custodian" means a person who has custody as a Bailee of securities or  
13 certificate issued in the investor's name with the investor's name appearing  
14 in the issuer's register as the beneficial owner of the securities;

15 "dealer" means a person engaged in the business of buying and selling of  
16 securities for his own account;

17 "dealing member" means a body corporate that is a member of a recognized  
18 securities exchange and is licensed to engage in dealing in securities on that  
19 exchange;

20 "dealing in securities" means (whether as principal or agent) making or  
21 offering to make with any person, or inducing or attempting to induce any  
22 person to enter into or to offer to enter into-

23 (a) any agreement for or with a view to acquiring, disposing or  
24 subscribing for, or underwriting of securities; or

25 (b) any agreement the purpose of securing a profit to any of the  
26 parties from the proceeds of securities or by reference to fluctuations in the  
27 price of securities;

28 "director" has the same meaning as is assigned to it in the Companies and  
29 Allied Matters Act;

30 "depository" means a custodian who holds securities on behalf of known

1 investors but whose name appears on the issuer's register as a fiduciary  
2 nominee for the benefit of the investors and who operates a system of central  
3 handling of securities of a particular class of an issuer deposited within its  
4 system and may be transferred, loaned or pledged by bookkeeping entry  
5 without physical delivery of certificates;

6 "derivative" means an option, swap, futures contract, contract for difference or  
7 any other contract or instrument whose market price, value, or delivery or  
8 payment obligations are derived from, referenced to or based on an underlying  
9 interest, or any other contract or instrument designated by regulation or  
10 considered equivalent to a derivative on the basis of criteria determined by  
11 regulation;

12 "executive officer" in relation to a body corporate, means any person by  
13 whatever name called, and whether a director or not who participates in the  
14 management of the body corporate;

15 "exchange holding company" means a parent company of any entity approved  
16 as a securities exchange, derivatives exchange, or other entity that has been  
17 approved as an exchange holding company by the Commission;

18 "expert" includes every engineer, legal practitioner, accountant and any other  
19 person whose profession gives authority to a statement made by him;

20 "facility" when used with respect to an exchange includes its premises, tangible  
21 or intangible property whether on the premises or not, any right to the use of  
22 such premises or property or any service thereof for the purpose of effecting or  
23 reporting a transaction on an exchange (including, among other things, any  
24 system of communication to or from the exchange, by ticker or otherwise,  
25 maintained by or with the consent of the exchange), and any right of the  
26 exchange to the use of any property or service;

27 "financial market infrastructure" means any entity set up to carry out  
28 centralized, clearing, settlement, caching or recording activities, or provide a  
29 platform for trading securities, and, includes trade repositories, securities  
30 exchanges, central counterparties, central clearing houses, central securities



1 depositories, and securities settlements systems;

2 "Government securities" means securities which are direct obligations of  
3 and guaranteed as to principal and interest repayment by the Federal  
4 Government of Nigeria, or a State or Local Government;

5 "insider" includes:

6 (a) any person who is or is connected with the company in one or  
7 more of the following capacities:

8 (i) a director of the company or a related company;

9 (ii) an employee or officer of the company or a related company;

10 (iii) an employer of the company or a related company;

11 (iv) any person, involved in a professional or business relationship  
12 to the company;

13 (v) any shareholder of the company who owns 5 per cent or more of  
14 any class of securities or any person who is or can be deemed to have any  
15 relationship with the company or member;

16 (vi) members of Audit Committee of a company;

17 (b) any of the person(s) not listed in paragraph (a), who by virtue of  
18 having been connected with any such person or connected with the company  
19 in whatever way, possesses unpublished price sensitive information in  
20 relation to the securities of the company,

21 (c) Any person holding unpublished price sensitive information in  
22 relation to securities of a particular body corporate, and

23 (d) Other persons who misappropriated, and took advantage of,  
24 confidential information from their employers.

25 "insider dealing" includes insider trading (buying or selling of securities by  
26 an insider) and occurs when a person or group of persons who being in  
27 possession of confidential and price sensitive information not generally  
28 available to the public, utilizes such information to buy or sell securities for  
29 the benefit of himself, itself or any person;

30 "investment adviser" means a person who carries on a business of advising

1 others concerning securities of who as part of a regular business, issues or  
2 publishes analysis or makes reports concerning securities;

3 Provided that the term investment adviser shall not include:

4 (a) a bank as defined in the Banks and Other Financial Institutions  
5 Act;

6 (b) a company or society registered under the Insurance Act,

7 (c) the proprietor of a newspaper and holder of a permit issued under  
8 the Newspapers Act and where-

9 (i) the newspaper is distributed generally to the public it is distributed  
10 only to subscribers to, and purchasers of, the newspaper for value;

11 (ii) the advice is given or the analysis or reports are issued or  
12 published only through that newspaper;

13 (iii) that no person receives any commission or other consideration  
14 for giving the advice or for issuing or publishing the analysis or reports; and

15 (iv) the advice is given and the analysis and reports are issued or  
16 published solely as incidental to the conduct of that person's business as a  
17 newspaper proprietor.

18 "listing" means the admission of securities, commodities and/or financial  
19 products/instruments of an issuer into the official list of a registered exchange  
20 for the purpose of, amongst others, the quotation, trading of, and dealing in, the  
21 securities, commodities, and/or financial products/instruments of the issuer on  
22 the facility/platform of a registered exchange; such that the issuer shall be  
23 subject to the exchange's regulatory oversight;

24 "listing rules" are regulations applicable to any company listed on a Registered  
25 Exchange, subject to the oversight and approval of the Commission;

26 "market participant" means any person (individual or corporate) involved in  
27 any aspect of capital market transaction or operation under this Bill;

28 "member company" means a company which carries on business of dealing in  
29 securities and is recognized as a member company by a securities exchange;

30 "minister" means the minister responsible for matters relating to finance;

1 "penalty" means administrative or civil fines imposed by the Commission  
2 and payable to the Commission;

3 "portfolio" is a group of assets including any amount of cash;

4 "portfolio investment" are investments in the form of a group (portfolio) of  
5 assets, including transactions in equity securities, such as common stock,  
6 and debt securities, such as banknotes, bonds, and debentures;

7 "promoter" means a party to the preparation of the prospectus, or of the  
8 portion of it, but does not include any person by reason of his acting in a  
9 professional capacity for persons engaged in procuring the formation of the  
10 company; and

11 "prospectus" means any written or electronic information, notice,  
12 advertisement or other forms of invitation offering to the public for  
13 subscription or purchase, any shares, debentures or other approved and  
14 recognized securities of a company and other issues or scheme;

15 "public officer" means any person working in the public service of the  
16 Federation, States and Local Governments as defined in the Constitution of  
17 the Federal Republic of Nigeria;

18 "quotation" means the provision of information on the bid and offer prices  
19 on securities, commodities, and/or financial products/instruments for the  
20 purpose of facilitating the trading of, and dealing in such securities,  
21 commodities, and/or financial products/instruments;

22 "registrar" means any person engaged in-

- 23 (a) creating and maintaining the register of members of an issuer;
- 24 (b) counter-signing such securities upon issuance;
- 25 (c) monitoring the issuance of such securities with a view to  
26 preventing unauthorized issuance,
- 27 (d) registering the transfer of such securities;
- 28 (e) exchanging or converting such securities;
- 29 (f) transferring, record ownership of such securities by book-  
30 keeping entry without physical issuance of securities certificates;

1 "regulated entity" means an entity or institution that is registered, regulated  
2 and/or recognised by the Commission to perform functions, carry out activities  
3 or act in any other manner as may be prescribed under this bill or the  
4 regulations made thereunder;

5 "related company" in relation to a company, means any body corporate which  
6 is that company's subsidiary or holding company or a subsidiary of that  
7 company's holding company;

8 "rules", in relation to a registered exchange, means the rules governing the  
9 members by whatever name called and wherever contained and includes rules  
10 contained in the memorandum of association and the articles of association of  
11 the securities exchange;

12 "securities" means-

13 (a) debentures, stocks or bonds issued by a government;

14 (b) debentures, stocks, shares, bonds, notes issued by a body  
15 corporate;

16 (c) any right or option in respect of any such debentures, stocks,  
17 shares, bonds or notes; or

18 (d) virtual assets;

19 (e) Investment Contracts;

20 (f) commodities futures, contracts, options and other derivatives, and  
21 the term securities in this Bill includes those securities in the category of the  
22 securities listed in (a) - (d) above which may be transferred by means of any  
23 electronic mode approved by the Commission and which may be deposited,  
24 kept or stored with any licensed depository or custodian company as provided  
25 under this Bill;

26 "securities dealer" means a firm who is a member of a securities exchange or  
27 any other recognized place for securities transactions, engaged in the business  
28 of transacting in securities on his own account, or on the account of others or  
29 both;

30 "securities exchange or registered exchange" means an organised facility

1 which maintains and provides an infrastructure-

2 (a) for bringing together buyers and sellers of securities, virtual  
3 Assets, commodities, and/or financial products/instruments;

4 (b) for matching bids and offers for securities, virtual assets,  
5 commodities, and/or financial products/instruments of multiple buyers and  
6 sellers; and

7 (c) whereby a matched bid and offer for securities, virtual assets,  
8 commodities, and/or financial products/instruments constitutes a  
9 transaction;

10 "securities lending" means the temporary exchange of securities, generally  
11 for cash or other securities of at least an equivalent value, with an obligation  
12 to redeliver a like quantity of the same securities on a future date and  
13 includes securities loan, repurchase agreement (Repos) and self-buy back  
14 agreements;

15 "self-regulatory organisation" means any entity registered or recognized by  
16 the Commission as such.

17 "share" means a proprietary interest in the share capital of a body corporate  
18 and except where a distinction between stock and shares is expressed or  
19 implied, includes stock;

20 "stockbroker" means a member of an Institute or professional body of  
21 Stockbrokers recognized by an Act, or any other enactment, registered by  
22 the Commission as a market operator or a dealing member of a securities  
23 exchange, or any other recognized mode of securities transaction and  
24 engaged in the business of effecting transactions in securities;

25 "surplus monies" means monies payable to subscribers resulting from over  
26 subscription of an offer,

27 "tradable instrument" refers to tradable assets, or negotiable items, such as  
28 securities, commodities, warehouse receipts, financing contracts,  
29 derivative, or index, or any item that underlies a derivative;

30 "trust account" means:

1 (a) an account established under a trust deed; or

2 (b) an account kept by a capital market operator on behalf of his client

3 "trust deed" means the agreement drawn up between the trustees and the  
4 managers or between such persons approved by the Commission;

5 "trustee" means, a person registered by the Commission to so act, and in whom  
6 the property for the time being, subject to any trust created in pursuance of an  
7 approved scheme or operation, is or may be vested, in accordance with the  
8 terms of the trust;

9 "unclaimed monies" mean monies due to investors or shareholders as a result  
10 of an aborted offer, rejected application, over subscription, buy-out, squeeze-  
11 out, take-over, reconstruction or other related transactions;

12 "underwriter" means a person registered by the Commission who has  
13 temporarily purchased securities from an issuer with a view to offering or  
14 selling the securities in connection with the distribution of such securities;

15 "units" in relation to a unit trust scheme, means sub-divisions of beneficial  
16 interest in the assets of a unit trust scheme or of any other trust scheme created  
17 under this Bill;

18 "unpublished price sensitive information" shall include information which-

19 (i) relates to matters of concern (directly or indirectly) to that  
20 company, which is not of a general nature of that company; and

21 (ii) is not generally known to persons who are accustomed or would  
22 be likely to deal in those securities but would materially affect the price of the  
23 securities;

Citation

24 **351.** This Bill may be cited as the Investments and Securities Bill,  
25 2021.

## 1 SCHEDULES

## 2 FIRST SCHEDULE

## 3 PROCEEDINGS OF THE BOARD OF THE COMMISSION

4 1.-(1) Pursuant to this Bill the Commission may make standing  
5 orders regulating its proceedings or those of any of its committees:

6 (2) At any meeting of the Board of the Commission the Chairman  
7 shall preside and in his absence, the members present at the meeting shall  
8 appoint one of the member to preside.

9 (3) The quorum for the meeting of the Board of the Commission  
10 shall be five (5), two (2) of whom must be non-executive members".

11 (4) Where the Board of the Commission desires to obtain the  
12 advice of any person on a matter, the Board may invite such person for such  
13 period as it deems necessary provided that such person(s) shall not be  
14 entitled to vote at any meeting of the Commission and shall not count in  
15 forming a quorum.

16 (5) The Chairman shall have a casting vote.

17 *Committees*

18 2.-(1) The Commission may appoint one or more standing or ad-  
19 hoc committees to carry out on its behalf such of its functions as it may  
20 determine.

21 (2) A committee appointed under this paragraph shall consist of  
22 such number of persons (which may include non-members of the  
23 Commission) as may be determined by the Commission; and a person other  
24 than a member of the Commission shall hold office on the committee in  
25 accordance with the terms of his appointment.

26 (3) A decision of a committee of the Commission shall be of no  
27 effect until it is sanctioned by the Commission.

28 (4) The quorum of a meeting of the committee of the Commission shall be as  
29 determined by the Board.

30 (5) The Chairman shall have casting vote.

1 3. Any member of the Commission and any person holding office on  
2 a committee of the Commission who has a personal interest in any contract or  
3 arrangement entered into or proposed to be considered by the Commission or a  
4 committee thereof shall disclose his interest, recuse himself and not vote on  
5 any question relating to the contract or arrangement.

6 SECOND SCHEDULE

7 INVESTMENTS AND INVESTMENT BUSINESS

8 PART I - TYPES OF INVESTMENTS

9 Investments include-

10 *Shares, etc.*

11 1. Shares and stock in the share capital of a company.

12 *Debentures*

13 2. Debentures, including debenture stock, loan stock, bonds and other  
14 instruments creating or acknowledging indebtedness, not being instruments  
15 falling within paragraph 3 of this Schedule.

16 *Government and Public Securities*

17 3. Loan stock, bonds and other instruments creating\* or  
18 acknowledging indebtedness issued by or on behalf of a supranational,  
19 government, local or public authorities.

20 *Instruments Entitling to Shares or Securities*

21 4. Warrants or other instruments entitling the holder to subscribe for  
22 investments falling within paragraph 1, 2 or 3 of this Schedule.

23 *Certificates Representing Securities*

24 5. Certificates or other instruments which confer-

25 (a) proprietary rights in respect of any investment falling within  
26 paragraph 1, 2, 3 or 4 of this Schedule;

27 (b) any right to acquire, dispose of, underwrite or convert an  
28 investment, being a right to which the holder would be entitled if he held any  
29 such investment to which the certificate or instrument relates; or

30 (c) a contractual right (other than an option) to acquire any such



1 investment otherwise than by subscription.

2 *Units or shares in Collective Investment Scheme*

3 6. Units or shares in a collective investment scheme shall include  
4 shares in a closed ended investment company or units in an open-ended  
5 investment company or real estate investment company or trust etc.

6 *Options*

7 7. Options to acquire or dispose of-

8 (a) an investment falling within any other paragraph of this  
9 Schedule:

10 (b) currency of the Federal Republic of Nigeria or of any other  
11 currency traded on the securities exchange;

12 (c) gold or silver; or

13 (d) an option to acquire or dispose of an investments falling within  
14 this paragraph by virtue of subparagraph (a), (b) or (c) of this Schedule;

15 (e) and such other investments as may be deemed by the  
16 Commission as an Option.

17 *Futures*

18 8. Rights under contract for the sale of a commodity or property of  
19 any other description under which delivery is to be made at a future date at a  
20 price agreed upon when the contract is made.

21 9. Or any other forms of investment or capital instrument within  
22 the meaning of investment generally and such other investments as may be  
23 deemed by the Commission as an Option

24 PART II - INVESTMENT BUSINESS

25 *Dealing in Securities*

26 1. Buying, selling, subscribing for or underwriting investments or  
27 offering or agreeing to do so, either as principal or as an agent.

28 *Arranging deals in Investments*

29 2. Making, or offering or agreeing to make-

30 (a) arrangements with a view to another person buying, selling,

- 1 subscribing for or underwriting a particular investment; or  
2 (b) arrangements with a view to a person who participates in the  
3 arrangements buying, selling, subscribing for or underwriting investments.

4 *Managing Investments*

- 5 3. Managing, or offering or agreeing to manage, assets belonging to  
6 another person if-

- 7 (a) those assets consist of or include investments; or  
8 (b) the arrangements for their management are such that those assets  
9 may consist of or include investments at the discretion of the person managing  
10 or offering or agreeing to manage them.

11 *Investment Advice*

- 12 4. Giving, or offering or agreeing to give, to persons in their capacity  
13 as investors or potential investors advice on the merits of their purchasing,  
14 selling, subscribing for or underwriting an investment, or exercising any right  
15 conferred by an investment to acquire, dispose of, underwrite or convert an  
16 investment.

17 *Establishing, etc., Collective Investment Schemes*

- 18 5. Establishing, operating or winding up a collective investment  
19 scheme, including acting as trustee or custodian of an authorised collective  
20 investment scheme.

- 21 6. Any other activity falling within the definition of activities  
22 constituting investment business.

23 *Investment Contracts*

- 24 7. Establishing a contract or scheme for the placing of capital or  
25 laying out of money in a way intended to secure income or profit from its  
26 employment by the promoter.

## 1 THIRD SCHEDULE

## 2 MANDATORY CONTENTS OF A PROSPECTUS

## 3 PART I - MATTERS TO BE STATED

4 *The Company's Proprietorship, Management and its Capital Requirement*

5 1. The prospectus shall state-

6 (a) the number of founders or management of deferred shares (if  
7 any) and the nature and extent of the interest of the holders in the property  
8 and profits of the issuer;9 (b) the number of shares (if any) fixed by the issuer's articles as the  
10 qualification of a director or its equivalent, and any provision in the articles  
11 as to the remuneration of directors or its equivalent; and12 (c) the names, descriptions and addresses of the directors or its  
13 equivalent or proposed directors or its equivalent.14 2. Where shares are offered to the public for subscription, the  
15 prospectus shall give particulars of-16 (a) the minimum quantum which in the opinion of the directors or  
17 its equivalent, must be raised by the issue of those securities in order to  
18 provide the sums (or, if any part of them is to be defrayed in any other  
19 manner, the balance of the sums) required to be provided in respect of each  
20 of the following-21 (i) the purchase price of any property purchased or to be purchased  
22 which is to be defrayed in whole or in part out of the proceeds of the issue,23 (ii) any preliminary expenses payable by the issuer, and any  
24 commission so payable to any person in consideration of his agreeing to  
25 subscribe for, or of his procuring subscriptions for, any securities in the  
26 entity,27 (iii) the repayment of any money borrowed by the issuer in respect  
28 of any of the foregoing matters,

29 (iv) working capital; and

30 (b) the amounts to be provided in respect of the matters above

1 mentioned otherwise than out of the proceeds of the issue and the sources out of  
2 which those amounts are to be provided.

3 *Details Relating to the Offer*

4 3.-(1) The prospectus shall state,

5 (a) the time of the opening of the subscription lists; and

6 (b) the amount payable on application and allotment on each  
7 (including the amount, if any, payable by way of premium).

8 (2) In the case of second or subsequent offer of securities, there shall  
9 also be stated the amount offered for subscription on each previous allotment  
10 made within the two preceding years, the amount actually allotted and the  
11 amount (if any) paid on the securities so allotted, including the amount (if any)  
12 paid by way of premium.

13 4.-(1) There shall be stated the number, description and amount of any  
14 shares or debentures of the issuer company which any person has, or is entitled  
15 to be given an option to subscribe for.

16 (2) The following particulars of the option shall be given-

17 (a) the period during which it is exercisable;

18 (b) the price to be paid for shares or debentures subscribed for under  
19 it;

20 (c) the consideration (if any) given or to be given for it or the right to it;

21 (d) the names and addresses of the persons to whom it or the right to it,  
22 was given or, if given to existing shareholders or debenture holders as such the  
23 relevant shares or debentures.

24 (3) References in this paragraph to subscribing for shares or  
25 debentures include acquiring them from a person to whom they have been  
26 allotted or agreed to be allotted with a view to his offering them for sale.

27 5. The prospectus shall state the number and amount of shares and  
28 debentures which within the two preceding years have been issued, or agreed to  
29 be issued, as fully or partly paid up otherwise than in cash; and-

30 (a) in the latter case the extent to which they are so paid up; and

1 (b) in either case the consideration for which those shares or  
2 debenture have been issued or are proposed or intended to be issued.

3 *Property acquired or to be acquired by the Company*

4 6.-(1) For purposes of paragraphs 8 and 9 of this Schedule relevant  
5 property is property purchased or acquired by the issuer, or proposed to be  
6 purchased or acquired:

7 (a) which is to be paid wholly or partly out of the proceeds of the  
8 issue offered for subscription by the prospectus;

9 (b) the purchase or acquisition of which has not been completed at  
10 the date of the issue of the prospectus.

11 (2) Paragraphs 8 and 9 of this Schedule shall not apply to property-

12 (a) the contract for which purchase or acquisition was entered into  
13 in the ordinary course of the issuer's business, the contract not being made in  
14 contemplation of the issue nor the issue in consequence of the contract; or

15 (b) in respect of which the amount of the purchase money is not  
16 material.

17 7. In respect of any relevant property, the prospectus shall state-

18 (a) the names and addresses of the vendor(s);

19 (b) the amount payable in cash, shares or debentures to the vendor  
20 and, where there is more than one separate vendor, or the issuer is a sub-  
21 purchaser, the amounts so payable to each vendor; and

22 (c) short particulars of any transaction relating to the property  
23 completed within the two preceding years in which any vendor of the  
24 property to the issuer or any person who is, or was at the time of the  
25 transaction, a promoter or a director or his equivalent or proposed director or  
26 his equivalent of the issuer had any interest direct or indirect.

27 8. There shall be stated the amount (if any) paid or payable as  
28 purchase money in cash, shares or debentures for any relevant property,  
29 specifying the amount (if any) payable for goodwill.

30 9.-(1) Subparagraphs (2) to (4) of this paragraph shall apply with

1 respect to the interpretation of paragraphs 6, 7 and 8 of this Schedule.

2 (2) Every person is deemed a vendor who has entered into any  
3 contract (absolute or conditional) for the sale or purchase, or for any option of  
4 purchase of any property to be acquired by the company, in any case where-

5 (a) the purchase money is not fully paid at the date of the issue of the  
6 prospectus;

7 (b) the purchase money is to be paid or satisfied wholly original paid  
8 out of the proceeds of the issue offered for subscription by the prospectus; or

9 (c) the contract depends for its validity or fulfillment on the result of  
10 that issue.

11 (3) Where any property to be acquired by the issuer is to be taken on  
12 lease, the provisions of paragraphs 6, 7 and 8 of this Schedule shall apply as if  
13 "the vendor" includes the lessor, 'purchase money' includes the consideration  
14 for the lease, and 'sub-purchaser' includes a sub-lessor.

15 For the purposes of paragraph 8 of this Schedule, where the vendors or any of  
16 them are a firm, the members of the firm are not to be treated as separate  
17 vendors.

18 *Commissions, Preliminary Expenses, etc.*

19 10.-(1) The prospectus shall state-

20 (a) the amount (if any) paid within the two preceding years, or  
21 payable, as commission (but not including commission to sub-underwriters)  
22 for subscribing or agreeing to subscribe, or procuring or agreeing to procure  
23 subscriptions, for shares in or debentures of the company, or the rate of any  
24 such commission;

25 (b) the amount or estimated amount of any preliminary expenses and  
26 the person by whom any of those expenses have been paid or are payable, and  
27 the amount or estimated amount of the expenses of the issue and the persons by  
28 whom any of those expenses have been paid or are payable;

29 (c) any amount or benefit paid or given within the two preceding years  
30 or intended to be paid or given to any promoter, and the consideration thereof.



*Other Matters*

14. where any prospectus inviting the public for subscription of shares for which the company's share capital is divided into different classes of shares, the prospectus shall state the voting right at meetings of the company as conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

15. Any prospectus shall state the length of operation of the issuer.

## PART II - AUDITORS' AND ACCOUNTANTS' REPORTS TO BE SET

## OUT IN PROSPECTUS

16.-(1) The prospectus shall set out a report by the issuer's auditors with respect to-

(a) profits and losses and assets and liabilities, in accordance with sub-paragraphs (2) and (3) of this paragraph, as the case requires; and

(b) the rates of the dividends (if any) paid by the company in respect of each class of shares in the respective five financial years immediately preceding the issue of the prospectus, detailing such class of shares for which such dividends were paid and of which dividends was not paid.

Provided that where no Account(s) was made in respect of any part of the five (5) years, ending on a date three months before the issue of the prospectus, the report shall contain a statement of that fact.

(2) If the issuer has no subsidiaries, the report shall-

(a) deal with profits and losses of the issuer in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) deal with the assets and liabilities of the issuer at the last date to which the issuer's accounts were made up.

(3) If the issuer has subsidiaries, the report shall-

(a) deal separately with the issuer's profits or losses, as provided by sub-paragraph (2) of this paragraph, and in addition deal either-

(i) as a whole with the combined profits or losses of its subsidiaries, so



1 far as it concerns members of the issuer; or

2 (ii) individually with the profits or losses of each subsidiary so far  
3 as it concerns members of the issuer, or, instead of dealing separately with  
4 the issuer's profits or losses, deal as a whole with the profits or losses of the  
5 issuer and (so far as they concern members of the issuer) with the combined  
6 profits and losses of its subsidiaries; and

7 (b) deal separately with the issuer's assets and liabilities as  
8 provided by subparagraph (2) of this paragraph, and in addition deal either-

9 (i) as a whole with the combined assets and liabilities of its  
10 subsidiaries with or without the issuer's assets and liabilities; or

11 (ii) individually with the assets and liabilities of each subsidiary,  
12 indicating the assets and liabilities of the subsidiaries, the allowance to be  
13 made for persons other than members of the issuer.

14 *Accountants' Report*

15 17. If the proceeds of the issue of the shares or debentures are to be  
16 applied directly or indirectly in the purchase of any business, there shall be  
17 set out in the prospectus a report by accountants on-

18 (a) the profits or losses of the business in respect of each of the five  
19 years immediately preceding the issue of the prospectus; and

20 (b) the assets and liabilities of the business at the last date to which  
21 the accounts of the business were made up.

22 18.-(1) Subparagraphs (2) and (3) of this paragraph apply if-

23 (a) any proceeds of the issue are to be applied directly or indirectly  
24 in any manner resulting in the acquisition of shares in any other body  
25 corporate.

26 (b) by reason of that acquisition or in consequence of or in  
27 connection with it, that body corporate shall become a subsidiary of the  
28 issuer.

29 (2) There shall be set out in the prospectus a report by accountants  
30 upon-

1 (a) the profits or losses of the other body corporate in respect of each  
2 of the five years immediately preceding the issue of the prospectus; and

3 (b) the assets and liabilities of the other body corporate at the last  
4 date to which its accounts were made.

5 (3) The accountants' report required by this paragraph shall-

6 (a) indicate how accounting treatment of profits or losses of the  
7 acquired body shall affect the issuer's assets and liabilities and whether there  
8 exist allowances to be made in relation to such assets and liabilities of the  
9 acquiring company; and

10 (b) where the other body corporate has subsidiaries, deal with the  
11 profit or losses and the assets and liabilities of the body corporate and its  
12 subsidiaries in the manner provided by sub-paragraph (3) of paragraph 16 of  
13 this Schedule in relation to the company and its subsidiaries.

14 *Provisions Interpreting Preceding Paragraphs and*  
15 *Modifying them in Certain Cases*

16 19. If, in the case of an issuer which has been carrying on business,  
17 or of a business which has been carried on for less than five years, the  
18 accounts of the issuer or business have only been made up in respect of four  
19 years, three years, two years or one year, the preceding paragraphs of this part  
20 have effect as if references to four years, three years, two years or one year (as  
21 the case may be) were substituted for references to five years.

22 20. The expression financial year, in this part means the year in  
23 respect of which the accounts of the issuer or of the business (as the case may  
24 be) are made up; and where by reason of any alteration of the date on which  
25 the financial year of the issuer or business terminates the accounts have been  
26 made up for a period greater or lesser than one year, that greater or lesser  
27 period is for purposes of this part deemed to be a year.

28 21. Any report required by this part shall either indicate by way of  
29 note any adjustments in respect of the figures of any profits or losses or assets  
30 and liabilities dealt with by the report which appear to the persons making the

1 report necessary, of shall make those adjustments and indicate that-  
2 adjustments have been made.

3 22.-(1) A report required by paragraph 17 or 18 of this Schedule  
4 shall be made by accountants qualified under this Bill for appointments as  
5 auditors of an issuer.

6 (2) Such a report shall not be made by any accountant who is an  
7 officer or servant, or partner of or in the employment of an officer or servant,  
8 of the issuer or the issuer's subsidiary or holding company or of a subsidiary  
9 of the issuer's holding company; and in this sub- paragraph, "officer"  
10 includes a proposed director or his equivalent,

11 (3) The accountant making any report for purposes of paragraph 17  
12 or 18 of this Schedule shall be named in the prospectus.

13 FOURTH SCHEDULE

14 FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO THE  
15 COMMISSION BY A COMPANY AND REPORTS TO BE SET OUT IN IT

16 PART I: FORM OF STATEMENT AND PARTICULARS TO BE  
17 CONTAINED IN IT

18 Statement in lieu of prospectus delivered for registration by .....  
19 Pursuant to section.....of the Companies and Allied Matters Act 1990.  
20 Delivered for registration by..... shares of x the nominal share  
21 capital of the..... shares of x ..... issuer divided into shares of x  
22 Amount (if any) of above capital which consists of redeemable shares .....  
23 The earliest date on which the issuer has power to redeem these shares .....  
24 Names, descriptions and addresses of directors or his equivalent or proposed  
25 directors .....  
26 .....  
27 Amount of.....Shares.....issued.....  
28 .....  
29 Amount.....of commissions paid in connection with the issue of the  
30 shares

- 1 Amount of discount, if any, allowed on the issue of Shares; or so much of them
- 2 as has not been written off at the date of the statement
- 3 .....
- 4 .....
- 5 Amount (if any) paid or payable as commission for subscribing or agreeing to
- 6 procure subscriptions for any shares or debentures in the issuer:
- 7 Amount paid
- 8 .....
- 9 Payable
- 10 .....
- 11 Rate of the commission.....
- 12 The number of shares (if any) which persons have agreed of a commission to
- 13 subscribe absolutely.
- 14 Rate/percentage .....
- 15 Unless more than one year has elapsed since the date on which the issuer was
- 16 entitled to commence business.
- 17 Amount of preliminary expenses ..... Naira .....
- 18 By whom those expenses have been paid or are Payable.....
- 19 Name.....of.....Promoters
- 20 Amount paid or intended to be paid to promoter.....
- 21 Consideration.....for.....payment
- 22 .
- 23 Amount (Naira) paid..... intended to be paid.....
- 24 consideration.....
- 25 Any other benefit given to any promoter.....
- 26 Name.....of promoter
- 27 Nature and value of benefit.....
- 28 Consideration for giving of benefit consideration .....
- 29 If the share capital of the company is divided into different classes of shares, the
- 30 right of voting at meetings of the rights in respect of capital and dividends

1 attached to, the several classes of shares respectively.

2 Shares of Naira fully paid.....upon which Naira per share credited as  
3 paid.....

4 Number and amount of shares and debentures issued within the two years  
5 preceding the date of this statement as fully or partly paid up otherwise than  
for cash or agreed to be so issued at the date of this statement.

6 Debenture

7 .....  
8 .....  
9 .....

10 Consideration for the issue or intended issue of those shares or debenture.

11 Consideration

12 .....  
13 .....  
14 .....

15 Number, description and amount of any shares or debentures which any  
16 persons has or is entitled to be given an option to subscribe for, or to acquire  
17 from a person to whom they have been allotted with a view to his offering  
18 them for sale.

19  
20 Share of Naira of.....

21 .....  
22 Debentures

23 .....  
24 .....  
25 .....  
26 .....

27  
28 Period during which option is exercisable .....

29 .....  
30 .....

1 Price to be paid for shares or debentures subscribed for or acquired under  
2 option.  
3 Consideration  
4  
5 .....  
6 .....  
7  
8 Consideration for option or right to option.  
9  
10 Persons to whom option or, right to option was given or, if given to exist in  
11 shareholders or debenture holders as such the relevant shares or debentures  
12 .....  
13 Names and addresses of vendors of property purchased or acquired, or  
14 proposed to be purchased or acquired, or proposed to be purchased or acquired  
15 by the company except where the contract for its purchase or acquisition was  
16 entered into in the ordinary course of the business intended to be carried on by  
17 the company or the amount of the purchase money is not material: or in the case  
18 or re-registration of a private company as public, names and addresses of  
19 vendors property (1) purchased or acquired by the company within the two  
20 years preceding the date of this statement or  
21 (2) agreed or proposed to be purchased or acquired by the company, except  
22 where the contract for its purchase or acquisition was entered into in the  
23 ordinary course of business and there is no connection between the contract  
24 and the company or where the amount of the purchase money is not material.  
25 Name.....  
26 Address.....  
27 Name .....  
28 Address.....  
29 Total purchase price..... x  
30 Amount paid or payable in cash, shares or debentures for any such property,

1 specifying the amount paid or payable for goodwill

2 Cash

3 ..... X

4 Share

5 ..... X

6 Debenture..... X

7 Goodwill..... X

8 Short particulars of any transaction relating to any such property which was  
9 completed within the two preceding years and in which any vendor to the  
10 company or any person who is, or was at the time of such transaction a  
11 promoter director or proposed director of the company had any interest  
12 direct or indirect.

13 Particulars-

14 .....

15 .....

16 Date of, parties to, and general nature of every material contract (other than  
17 contract entered into in the ordinary course of business or entered into more  
18 than two years before the delivery of this statement).

19 Date of.....Parties to.....

20 Nature of contract .....

21 Time and place at which the contracts or copies of them may be inspected  
22 and, in the case of a contract wholly or partly in a foreign language, a copy of  
23 a translation of it in English or embodying a translation in English or of the  
24 parts in a foreign language, as the case may be, being a translation certified  
25 in the prescribed manner to be a correct translation.

26 Time .....

27 Place.....

28 Name of Auditor.....

29 Address.....

30 Full particulars of the nature and extent of the interest of every director in

1 any property purchased or acquired by the company within the two years  
 2 preceding the date of this statement or proposed to be purchased or acquired by  
 3 the company or, where the interest of such a director consists in being a partner  
 4 in a firm, the nature and extent of the interest of the firm with a statement of all  
 5 sums paid or agreed to be paid to him or to the firm in cash or shares, or  
 6 otherwise, by any person either to induce him to come or to qualify him as a  
 7 director or otherwise for services rendered or to be rendered to the company by  
 8 him or by the firm.

9  
 10 Nature and extent, of interest of director .....

11 .....

12 .....

13 Rates of the dividends (if any) paid by the company in respect of each class of  
 14 shares in the company in each of the five years immediately preceding the date  
 15 of this statement or since the incorporation of the company whichever period is  
 16 the shorter.

17 Rates of dividends .....

18 Particulars of the cases in which no dividends have been paid in respect of any  
 19 class of.....

20 shares in any of these years.

21 Particulars (Signature of the persons named above as directors or proposed  
 22 directors or of their agents authorised in writing)  
 23 .....

24 Date .....

25 PART II - REPORTS TO BE SET OUT

- 26 1. Where it is proposed to acquire a business, there shall be set out a  
 27 report made by accountants (who shall be named in the statement) upon-
- 28 (a) the profits or losses of the business in respect of each of the five
  - 29 financial years immediately preceding the delivery of the statement to the
  - 30 Commission; and



1 (b) the assets and liabilities of the business at the last date to which  
2 the accounts of the business were made up.

3 2. Where it is proposed to acquire share in a body corporate which  
4 by reason of the acquisition or anything to be done in consequence thereof or  
5 in connection therewith will become a subsidiary of the company, there shall  
6 be set out a report made by accountants (who shall be named in the  
7 statement) with respect to the profits and losses and assets and liabilities of  
8 the other body corporate in accordance with subparagraph (1) or (2) of  
9 paragraph (1) or (2) of paragraph 3 of this Schedule as the case requires  
10 indicating-

11 (a) how the profits or losses of the other body corporate dealt with  
12 by the report would in respect of the shares to be acquired, have concerned  
13 members of the company; and

14 (b) what allowance would have fallen, to be made in relation to  
15 assets and liabilities so dealt with, for holders of other shares, if the company  
16 had at all material times held the shares to be acquired.

17 3.-(1) If, in the case mentioned in paragraph 2 of this part of this  
18 Schedule the other body corporate has no subsidiaries, the report referred to  
19 in that paragraph shall-

20 (a) so far as regards profits and losses, deal with the profits or losses  
21 of the body corporate in respect of each of the five financial statement years  
22 immediately preceding the delivery of the statement to the Commission; and

23 (b) so far as regards assets and liabilities, deal with the assets and  
24 liabilities of the body corporate at the late date to which the accounts of the  
25 body corporate were made up.

26 (2) If the other body corporate has subsidiaries, the report shall-

27 (a) so far as regards profits and losses, deal separately with the  
28 other body corporate's profits or losses as provided by subparagraph (1) (a)  
29 of this paragraph; and in addition deal either

30 (b) as a whole with the combined profits or losses of its

1 subsidiaries, so far as they concern members of the other body corporate; or

2 (c) individually with the profits or losses of each subsidiary, so far as  
3 they concern members of the other body corporate; instead of dealing  
4 separately with the other body corporate's profits or losses, deal as a whole with  
5 the profits or losses of the other body corporate, with the combined profits or  
6 losses of its subsidiaries; and

7 (d) so far as regards assets and liabilities, deal separately with the  
8 other body corporate's assets and liabilities as provided by subparagraph (1) of  
9 this paragraph and, in addition, deal either-

10 (e) as a whole with the combined assets and liabilities of its  
11 subsidiaries, with or without the other body corporate's assets and liabilities; or

12 (f) individually with the assets and liabilities of each subsidiary; and  
13 shall indicate as respects the assets and liabilities of the subsidiaries the  
14 allowance to be made for persons other than members of the company.

15 PART II - PROVISIONS APPLYING TO PART I AND II OF THIS SCHEDULE

16 4. In this Schedule the expression "vendor" includes a vendor as  
17 defined in paragraph 9 of the third Schedule of this Bill.

18 5. If, in the case of business which has been carried on, or of a body  
19 corporate which has been carrying on business, for less than five years, the  
20 accounts of the business or body corporate have only been made up in respect  
21 of four years, three years, two years, or one year, part II of this Schedule shall  
22 have effect as if references to four years, three years, two years or one year, as  
23 the case may be, were substituted for references to five years.

24 6. Any report required by part II of this Schedule shall either indicate  
25 by way of note any adjustments as respects the figures of any profits or losses of  
26 assets and liabilities dealt with by the report which appear to the persons  
27 making the report necessary, shall make those adjustments and indicate that  
28 adjustments have been made.

29 7. Any report by accountants required by part II of this Schedule shall  
30 be made by accountants qualified under this Bill for appointment as auditors of

1 a company and shall not be made by any accountant who is an officer or  
2 servant, or a partner of or in the employment of an officer or servant of the  
3 company, or of the Company's subsidiary or holding company or of a  
4 subsidiary of the company's holding company; and for the purposes of this  
5 paragraph the expression "officer" shall include a proposed director but not  
6 an auditor.

EXPLANATORY MEMORANDUM

The Bill, amongst other things, provides for-

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

