

Investments Regulation in the Nigerian Capital Market

Introduction

Capital Market is a financial market that provides facilities for mobilising and dealings in medium and long term funds. The players on the capital market are the operators who act as intermediaries between the providers of the funds and the fund users. They include, Securities Exchanges, Brokers/Dealers, Issuing Houses, Registrars and Investment Advisors. In pursuance of making funds available for economic development and growth; the Securities and Exchange Commission was established in 1979 by the Securities and Exchange Commission Decree (this decree was re-enacted in 1988 as Securities and Exchange Commission Decree no. 29 of 1988, for the purpose of protecting the investors as well developing the capital market. A detailed review of the Nigerian Capital Market was carried out in 1996. This led to the enactment of the "Investment Securities Act (ISA) No.45 of 1999 (and the regulations made thereunder). This Act replaced the Securities and Exchange Commission Decree No.29 of 1988. It aimed at providing a more efficient and viable capital market positioned to meet the country's economic and Developmental needs.

The Securities and Exchange Commission (SEC)

(FOR MORE DETAILS ON SEC SEE: www.sec.ngr.org & Section 1 of ISA)

a) The Investment and Securities Act of 1999 established the Securities and Exchange Commission (called the "Commission or"SEC") as a body corporate with perpetual succession and a common seal. The Commission can sue and be sued in its corporate name, and may acquire, hold or dispose any property, movable or immovable for the purpose of Carrying out any of its functions under the Act.

b) Composition of the Commission

(FOR MORE DETAILS SEE Section 2(1), (2), (3) and 8 of ISA)

For purposes of carrying out its responsibilities under the Act, the Commission consists of:

- i) A Chairman;
- ii) One person not below the rank of Director to represent the Central Bank of Nigeria;
- iii) One person not below the rank of Director to represent the Ministry of Finance;
- iv) Two full time Commissioners who must be persons with ability, experience and specialised knowledge in capital market matters
- v) The Director-General of the Commission; and

vi) *Five other Commissioners who must be persons with proven ability and expertise in corporate matters generally.*

The Chairman and the Commissioners are appointed by the Head of State, Commander in Chief of the Armed Forces on the recommendation of the Minister. Apart from the Director-General and the two full - time Commissioner, the other members of the Commission are part-time members.

Duties and Functions of SEC

The Commission is charged with the following duties and functions under the Act:

- a) Regulating investments and securities in Nigeria as defined in the Act;*
- b) Registration and regulation of Securities Exchange, Capital Trade Points, Futures, Options and Derivative Exchanges and any other recognised Investment Exchange;*
- c) Registration of securities to be offered for subscription or sale to the public;*
- d) rendering assistance to all aspects including funding as may be deemed necessary to promoters and investors wishing to establish Securities Exchange and Capital Trade Points;*
- e) Preparing adequate guidelines and organising training programmes and disseminating information necessary for the establishment of Securities Exchange and Capital Trade Points;*
- f) Registering and regulating corporate and individual capital market operators as defined in section 30 of the Decree*
- g) Register and regulate the workings of Venture Capital Funds and collective investment scheme including mutual funds;*
- h) Facilitate the establishment of a nationwide system for securities trading in the Nigerian Capital Market in order to protect investors and maintain fair and orderly markets;*
- i) Facilitate the linking of all markets in securities through modern communication and data processing facilities in order to foster efficiency, enhance competition, and increase the information available to brokers, dealers and investors.*
- j) Act in the public interest having regard to the protection of investors and the maintenance of fair and orderly market and to this end, to establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors' protection funds administered by Securities Exchanges and Capital trade Points.*
- k) Keep and maintain separate registers for foreign direct investments foreign portfolio investments;*
- l) Register and regulate central depository companies and clearing all settlement companies, custodians of Securities, credit rating agencies and such other agencies and intermediaries;*
- m) protect the integrity of the securities market against abuse arising from the practice of insider trading;*

- n) act as a regulatory apex organisation for the Nigeria capital market including the promotion and registration of self-regulatory organisations and capital market trade associations to which it may delegate its powers;
- o) review, approve and regulate mergers, acquisitions and all forms of business combinations;
- p) promote investors' education and the training of all categories of intermediaries in the securities industry;
- q) call for information from and undertake, inspect, conduct inquires and audits of the Securities Exchanges, Unit Trusts, Mutual Funds, Capital Trade Points, Futures, Options and Derivatives Exchanges as well as other intermediaries and self-regulatory organisations in the securities industries;
- r) call for or furnish to any agency such information as may be considered necessary by it for the efficient discharge of its function;
- s) levy fees or any other charges on any person for carrying out investment and securities business in Nigeria;
- t) conduct research into all or any aspect of the securities industry;
- u) prevent fraudulent and unfair trade practices relating to the securities industry;
- v) advice the Minister on all matters relating to the securities industry
- w) disqualifying unfit individual from being employed anywhere in the securities industry
- x) liaise effectively with the regulators and supervisors of other financial institutions locally and overseas;
- y) perform such other functions and exercise such other powers not inconsistent with the Decree as are necessary or expedient for giving full effect to the provisions of the Decree.

The Commission's functions could be summarised thus: to protect the investor's interest and thereby enhance their confidence in the capital market, and ensuring orderly and equitable dealings in securities business. Also SEC is to promote capital market development and growth, and may order the certificate of a capital market operator to be withdrawn and such market operator to be disallowed from carrying on any capital market functions, if it is in the interest of the public to do so.

SEC and Development of the Capital Market

a) Price Determination Role

SEC retains substantial part of its price fixing role though some of this role has been transferred under the SEC guidelines to the capital market operators. However it still retains the role of fixing price of securities of newly established private companies with alien participation.

b) Market Development Role

The ISA contains various provisions aimed at accelerating the development of the Nigeria capital market, they include:

i) Encouraging Market Linkages

The commission is expected to establish market linkages within the various segments and divisions of the capital the commission is expected to establish market linkages within the various segments and divisions of the capital market. The Commission is expected to adopt automated approach linking the various segments of the markets as well as the operators. The intendment of the Act under such system is to allow the Commission to put in place self regulated and uniform standards of operation and practice within the capital market.

ii) Creation of New Exchanges

New exchanges such as commodities and metal exchange provide the investors with additional investment opportunities outside the traditional securities market while the capital market operators could also benefit by way of improving business opportunities. Commodities exchanges would amongst others providing hedging opportunities and strengthen planning.

iii) Introduction of Capital Trade Points

The Investment and Securities Decree make provisions for the establishment of trade points and these are to be promoted by SEC as it is hoped that in the long run, it will facilitate capital mobilisation for the development of industries in their (Capital Trade Points) areas of domicile.

iv) Regulation of Collective Investment Schemes

SEC is empowered to register collective investment schemes falling within the category of community savings schemes which includes "Esusu" schemes and such other similar schemes operating within Nigeria.

v) Protection of Investors Scheme

By Part IV of the ISA, Securities Exchange and Capital Trade Points are required to maintain compensation funds. Points are required to maintain compensation funds. This is designed to protect investors from unhealthy activities or collapse of dealing members. The compensation fund is sole use of the public's interest having regard to the protection of investors and the maintenance of fair and orderly markets.

vi) Building capacity in the market

The ISA enjoins the Commission to promote investors education and the training of all categories of intermediaries in the securities industry.

vii) Margin Transactions

For the purpose of preventing the excessive use of credit for the purchase of securities by dealers or member companies, the Commission may make regulation to provide for margin requirements, for the amount of credit which may from time to time be existing on all or specified securities or transactions and for matters connected therewith.

Other Statutory Functions of SEC

(FOR MORE DETAILS SEE Rule 165 of the Rules & Regulations made under ISA, Rule 168, 169 & 170 of SEC & Section 29 of ISA)

a) Regulation of the Operators on the Nigerian Capital Market

SEC in line with its regulatory role regulates the activities of its operators on the Nigerian Capital Market to guide against abuse. These regulations are broadly divided into two: general and specific regulations.

General regulations

i) Compromise with Creditors

Under ISA, any registered capital market operator who wishes to compromise with his creditor must notify the Commission within three months before such action.

ii) Maintenance of Adequate Records of Affairs and Transactions

All registered SRO's and market operators must maintain correct and adequate records of their transactions. Failure to comply with above, attracts a fine of one thousand naira (N1, 000) daily for every such contravention.

iii) Examination by Self Regulatory Organisation

Every market operator must give all necessary facilities to aid authorised SRO officers to examine the activities of such operator. Reports of such examination must be sent to the Commission within 30 days from the date of the inspection.

iv) Reports to be filed with SEC

Registered operators on the Nigerian Capital Market must every calendar year, cause its account to be audited. Report of such audits must be sent to the Commission within three months after the end of the accounting year.

v) Registration of Capital Market Operators

An unregistered market operator who before the coming into force of the Act, operates as such, may continue to operate in the securities industries for a maximum period of 3 months or where such unregistered has filed an application for registration with the commission, he will continue to operate in the market until when his application has been disposed of.

Specific Regulation

Registration of Securities Exchange and Capital Trade Points

Securities Exchange Trade Point that seeks to operate in the Nigerian Capital Market must be registered with the Commission in accordance with the provision of the Act. The Commission may with the approval of the minister revoke such certificate if-

- a) the body corporate ceases to operate as Securities Exchanges or Capital Trade Points;
- b) the body corporate is being wound up

Registration Requirements for Securities Exchange

The promoters of SEC must file an application on SEC Form 5. Such application will be accompanied by:

- i) copy of the certificate of incorporation certified by Corporate Affairs Commission (CAC);*
- ii) 2 copies of the Memorandum and Articles of Association certified by CAC;*
- iii) the latest copy of Auditor Accounts or Statement of Affairs signed by its auditor;*
- iv) 2 copies of existing or proposed by-laws or rules, code of conduct, code of dealing, etc. which are referred to as "Rule of Exchange";*
- v) 2 copies of the listing requirements of the Exchange;*
- vi) Sworn undertaking to promptly furnish the Commission with copies of any amendments to the rules of the Exchange and the listing requirements;*
- vii) information relating to market facilities including;*
 - a) trading floors/facilities*
 - b) quotation board*
 - c) information board/ ticket tape*
- viii) detailed information about the trading system to be adopted*
- ix) information as to its organisation including structure and profile of members of its council/board as well as rules and procedures.*
- x) instruction and inspection manual of members activities;*
- xi) detailed information about the promoters and principal officers of the Exchange;*
- xii) sworn undertaking to comply with and to enforce compliance by its members with the provisions of the Acts and Rules and Regulations made thereunder;*
- xiii) such undertaking to keep such records and render such returns as may be specified by the Commission from time to time;*
- xiv) an application for registration of at least three (3) principal officers of the exchange on Form SEC 2;*
- xv) minimum paid up capital requirement of N500million;*
- xvi) any other document required by the commission from time to time for the protection of investors.*

Regulatory Tools of SEC

(FOR MORE DETAILS SEE Rule 40 of SEC's Regulation of Public Securities, Section 27,88 and96 of ISA,Section 37 of ISA and Rules 170-173 of SEC's Rules and regulations, Section 99 of the Act, Rules 232,233, and 237,section 125 of SEC, Section 132,137 and 174 of ISA)

Regulatory Tools of SEC

In order to effectively carry out its duties of monitoring and regulating the Nigerian Capital Market, SEC uses various tools to ensure that the integrity and confidence of the market is maintained and that the investors are protected. These tools include amongst others:

- a) Registration;*
- b) Surveillance;*
- c) Investigation*
- d) Enforcement*
- e) Rule Making*
- f) Timing of Issues*
- g) Review of Accounts*
- h) Approval of Mergers, Acquisition and Business Combination;*
- i) Authorisation of Unit Trust Schemes;*
- j) Approval of State and Local Government Bonds.*

