SEC NIGERIA
SECURITIES AND EXCHANGE COMMISSION, NIGERIA

NEW RULES, MAJOR AND SUNDRY AMENDMENTS TO THE RULES AND REGULATIONS OF THE COMMISSION

PREAMBLE

New Rules

1. Rule on Robo-Advisory Services

2. Rule on Trade Repositories

3. Rule for processing fees payable for the registration of Exchange-Traded Derivatives Products

Major Amendment

4. Amendment to the Rule on Mergers, Take-overs and Acquisitions - (Review for Fairness of Mergers, Take-overs and Acquisitions)

Sundry Amendment

5. Amendment to Rule 97 (1) – Functions

The details of the New Rules and Amendments are as follows:

1. RULE ON ROBO ADVISORY SERVICES

The following Rules shall be applicable to all Capital Market Operators and persons (Individual & Corporate) offering or seeking to offer Digital (Robo) Advisory Services in the Nigerian Capital Market.

1. **Definitions**

For the purposes of these Rules:

"**Digital Advisory Services**" means the provision of investment advice using automated, algorithm-based tools which are client-facing, with little or no human adviser interaction in the advisory process;

"Fully Automated Robo Advisers" means Robo Advisers with no human adviser intervention in the entire advisory process);

"Rebalancing" means the process of periodic buying or selling of assets in a portfolio to maintain an original or desired level of asset allocation;

"Recommended Portfolio" means the list of securities recommended for purchase by the Robo Adviser;

"Revised Portfolio" means the art of changing the mix of securities in a portfolio to maximize returns and minimize risks;

"**Robo Adviser**" means a person who provides digital advisory services.

The terms used in these Rules shall, except where expressly defined in the Rules or the context otherwise requires, have the same meanings as defined in the Investments and Securities Act (ISA), 2007.

2. **Registration Requirements**

The provisions of the Commission's Rule on Corporate and Individual Advisers shall, with all necessary modifications, apply.

3. **Additional Regulatory Requirements for Digital (Robo) Advisers**

(i) A Robo Adviser is required to comply, on an ongoing basis, with all the applicable business conduct requirements set out in the Investment and Securities Act (ISA) and the Rules and Regulations, Notices and Guidelines issued pursuant to the ISA.

(ii) Where a Robo Adviser outsources the development and maintenance of their client-facing tools to a third party provider, the third party provider is not required to be registered by the Commission.

(iii) A Robo Adviser shall nonetheless subject the third party provider to appropriate due diligence processes in order to assess the risks associated with the outsourcing arrangement.

(iv) Where a Robo Adviser also provides portfolio/fund management services to the client and the client decides on an alternative investment decision contrary to the recommendation of the Robo Adviser, the Robo Adviser shall rely on the client's order and obtain a written decision/mandate from the client, highlighting in writing that the client is aware of their responsibility of the investment outcome and suitability of his/her investment decision.

(v) A Robo Adviser who wishes to perform the function of portfolio management shall apply to the Commission to be registered as a Fund/Portfolio Manager and shall comply with the applicable Rules and Regulations governing Fund/Portfolio Management Function.

4. **Procedures for Providing Digital Advisory Services**

(a) A digital investment advisory process occurs where:

i. A client answers a series of questions on his risk tolerance, investment objectives, investment time horizon, inputs an investment amount and;

ii. The input of the client are analyzed using algorithms, and a portfolio is recommended thereto.

5. **Procedures for Revising and Rebalancing a Client's Investment Asset Allocation**

(a) Where a client accepts the recommended portfolio, the Robo Adviser shall relay the client's orders directly to the relevant CMO for execution; except the Robo Adviser is licensed to execute transactions on behalf of their clients.

(b) Where a client amends or rejects the recommended portfolio and seeks to revise his/her investment asset allocation at inception or anytime during the investment management and advisory relationship, the Robo Adviser shall seek the express consent of the client, to accept the client's revised portfolio where the Robo Adviser is responsible for executing the transactions on behalf of the client

(c) Where the client seeks to periodically rebalance his/her portfolio, the Robo Adviser shall:

i. obtain a prior written authorization from the client to rebalance the portfolio (for non-discretionary portfolio);

ii. establish a rebalancing policy for the investment portfolio as agreed with the client containing:

1. the scope of rebalancing activities, including frequency and methodology of rebalancing;

2. fees payable and any other material terms and conditions associated with rebalancing;

3. period for providing advance notice prior to carrying out any rebalancing activities; and

(d) Robo Advisers shall ensure that:

i. The Principal Officers (e.g. Chief Executive Officer, Directors, and Management staff responsible for the design, operation and/or oversight of the digital advisory platform) have relevant experience in fund management and technology;

ii. Portfolios offered to clients are within the regulatory purview of the Commission;

iii. They undergo a post-authorization technology audit conducted by an independent third party at the end of each operational year and file a report with the Commission within three (3) months of the date of the close of the audit.

6. **Governance and Supervision of Algorithms**

a. To safeguard the client-facing tools which are primarily algorithm-driven, a Robo Adviser shall put in place adequate governance and supervisory arrangements to effectively mitigate against fault or bias in the algorithms.

b. The Board and Senior Management of the Robo Adviser shall be responsible for maintaining effective oversight and governance of the client- facing tool and ensure that there are sufficient resources to monitor and supervise the performance of algorithms.

c. The Robo Adviser should be adequately staffed with persons who have the competency and expertise to develop and review the methodology of the algorithms. Adequate training should also be provided to all staff who use the client-facing tool.

d. The Board and Senior Management of the Robo Adviser shall also put in place systems and processes to ensure a sound risk management culture and environment in its firm, as well as compliance with the relevant rules and regulations. These shall include:

- i. approving the design and methodology development of the client-facing tool and ensuring its proper maintenance;
- ii. approving the policies and procedures that apply to the systems and processes of the client-facing tool;
- iii. maintaining oversight over the management of the client-facing tool, such as designating appropriate personnel to approve changes to the algorithms, and having security arrangements to identify and prevent unauthorized access to the algorithms;

iv. ensuring that the requirements set out in the Commission's Guidelines on Technology Risk Management are adhered to; and

v. maintaining proper documentation on the design and development of the algorithms.

e. While the Board and Senior Management may delegate the day-to-day operational oversight and governance of the client-facing tools to other personnel, they remain ultimately responsible and accountable for the proper development, monitoring and testing of the client-facing tools.

7. **Developing the Client-facing Tool**

In developing the client-facing tools, Robo Advisers shall:

a. ensure that the methodology of the algorithms behind the client-facing tool is sufficiently robust;

b. ensure that the tool collects all necessary information and sufficiently analyses same to make a suitable recommendation, including having proper mechanisms to identify and resolve contradictory or inconsistent responses from clients;

c. have controls in place (e.g. knock-out questions) to identify and eliminate clients who are unsuitable for investing;

d. perform sufficient testing, prior to the launch of the tool and when changes are made to the tool, to detect any error or bias in the algorithms and to consistently and reliably achieve the following key outcomes:

i. The algorithms correctly classify clients according to their risk profiles based on inputs provided by them. In particular, the Robo Adviser shall conduct back-testing using hypothetical inputs to ensure that the risk profiles generated by the algorithms are in line with its risk profiling methodology. The testing shall ensure that the algorithm scores and assigns risk profiles to clients correctly and consistently; and

ii. The algorithms produce the intended asset allocation and investment recommendation according to the Robo Adviser's risk profiling methodology.

8. **Monitoring and Testing of the Client-facing Tool**

a. Robo Advisers shall have policies, procedures and controls in place to monitor and test the algorithms on a regular basis to ensure that they are performing as intended. Robo Advisers shall at a minimum, have the following processes in place:

i. strict change management controls to manage changes to the algorithms whenever necessary;

ii. controls to detect any error or bias in the algorithms;

iii. controls to suspend the provision of advice if an error or bias within the algorithms is detected; and

iv. controls to provide clients with advanced notice of any scheduled maintenance or upgrade of its systems;

v. dedicated customer care help desks available during working hours on business days.

vi. compliance checks on the quality of advice provided by the client-facing tool. Such checks shall be conducted regularly and when there are changes to the algorithms. This shall include post-transaction sample testing, and shall be reviewed by an independent and qualified human adviser to ensure compliance with the requirements of the ISA and these Rules. The frequency of such review shall be commensurate with the size and complexity of the Robo Adviser's operations.

9. **Technology Risk Management**

a. Robo Advisers shall implement internal policies and procedures to address technology risks.

b. Robo Advisers shall meet the requirements set out in the Commission's Guidelines on Technology Risk Management (TRM), file quarterly report to the Commission on its Compliance and refer to the TRM Guidelines for industry best practice which they are expected to adopt and also file.

c. Robo Advisers shall perform a gap analysis against the requirements set out in the TRM Guidelines to ensure that all gaps are adequately mitigated prior to the launch of the client-facing tools and also when changes are made to these tools.

10. **Compliance with the Anti-Money Laundering and Combating the Financing of Terrorism Act**

a. Robo Advisers shall have in place adequate policies, procedures and controls to mitigate against money laundering and terrorism financing risks and comply with the Commission's Regulations on Anti-Money Laundering and Combating the Financing of Terrorism Act, 2013.

b. Robo Advisers shall take steps to address specific risks associated with Non-Face-To-Face ("NFTF") business relations with a client. In this regard, Robo Advisers shall employ additional checks to mitigate the risk of impersonation when on-boarding clients through a NFTF means.

11. **Disclosure of Material Information**

a. Robo Advisers shall provide sufficient information to their clients to enable them make informed investment decisions. Disclosures shall be presented in plain English and in clear simple language.

12. **Information on Algorithms**

Robo Advisers shall at a minimum disclose in writing, the following to their clients:

a. assumptions, limitations and risks of the algorithms;

b. circumstances under which the Robo Advisers may override the algorithms or temporarily halt the robo advisory service; and

c. any material adjustments to the algorithms.

13. **Conflicts of Interest**

a. Robo Advisers shall comply with the existing disclosure requirements on conflicts of interest set out in the Code of Conduct for Employees of Capital Market Operators set out in these Rules and Regulations.

b. In particular, Robo Advisers shall disclose in writing to their clients, any actual or potential conflict of interest arising from any connection to or association with any product provider, including any material information or facts that may compromise their objectivity or independence.

c. In the context of their business model, Robo Advisers shall disclose situations where their algorithms are designed to direct clients to invest in products managed by their affiliates.

14. **Risk Warning Statement for Overseas-listed Investment Products**

a. Robo Advisers shall provide a risk warning statement to their clients at the point of account opening and when advising them on overseas-listed investment products.

b. When advising on overseas-listed investment products, Robo Advisers shall assess the merits of the products, as well as the client's investment objectives, financial situation and particular needs. They shall also ensure that they are not in violation of any applicable laws and regulations.

15. **Suitability of Advice**

a. In addition to all applicable modification to the Rule on Investment Advisers, Robo Advisers shall have a reasonable basis for recommending any investment product to a person who may reasonably be expected to rely on the recommendation.

b. To ensure that a recommendation takes into account a client's investment objectives, financial situation and particular needs, Robo Advisers shall take reasonable steps to collect and document the under-listed information:

i. the financial objectives of the client;

ii. the risk tolerance of the client;

iii. the employment status of the client;

iv. the financial situation of the client, including assets, liabilities, cash flow and income;

v. the source and amount of the client's regular income;

vi. the financial commitments of the client;

vii. the current investment portfolio of the client, including any life insurance policy;

viii. whether the amount to be invested is a substantial portion of the client's assets; and

ix. any recommendation made in respect of life policies, the number of dependants of the client and the extent and duration of the financial support required for each of the dependants.

16. **Exemption to Collecting Full Information**

a. A Fully automated Robo Adviser may exempt the collection of full information on a client's financial circumstances as prescribed under paragraphs (iii) to (ix) in 15 above, provided that all of the under-listed conditions are met:

i. the advice is fully-automated, with no human adviser intervention in the advisory process. Human interactions shall be limited to providing technical assistance such as, assisting clients on IT-related issues or clarifying with clients on their responses when inconsistencies are noted;

ii. there are in-built "knock-out" or threshold questions to effectively identify and eliminate unsuitable clients (e.g. clients who cannot afford to lose their principal investment sums);

iii. there are controls in place to identify and follow up on inconsistent responses provided by clients;

iv. a risk disclosure statement is provided to clients to alert them that the recommendation does not take into consideration their financial circumstances, at the point when the recommendations are provided to them; and

v. the advice is limited to instruments within the regulation of the Commission.

b. Robo Advisers relying on the Exemption above shall still take reasonable steps to collect information on the client's financial objectives and risk tolerance to satisfy themselves that the investment recommendation is suitable.

17. **Assessing Clients' Knowledge and Experience**

a. Robo Advisers shall assess if a client possesses the relevant knowledge and experience to invest in complex instruments through the Customer Knowledge Assessment ("CKA") or Customer Account Review ("CAR"). This applies, regardless of whether the client is self-directed or not.

b. Robo Advisers shall have the relevant framework to collect information from clients to enable them to conduct CAR or CKA assessments for product suitability. If self-directed clients are assessed not to have the knowledge and experience to invest in complex instruments, Robo Advisers shall appropriately warn them and/or offer to provide advice to them.

18. **Advertisement**

Robo Advisers shall comply with the advertisement requirements of the Rules and Regulations of the Commission.

2. RULE ON TRADE REPOSITORY

Definition of Terms

1. **Trade Repository** - means an entity registered by the Commission to maintain a centralized electronic database of OTC transactions data;

2. **Principal Officers** – For the purpose of these rules, principal officers are members of staff that constitute the executive management team of a trade repository responsible for day to day running of the entity;

3. **OTC Transactions** - These are transactions in financial instruments or contracts that are executed outside of an exchange which include transactions that occur directly between participants and transactions executed on Alternative Trading System;

4. **Alternative Trading System** - This is a non-exchange trading venue that facilitates transactions in financial instruments between buyers and sellers. Unlike an exchange, an Alternative Trading System is not a self-regulatory organization;

5. **Financial services regulators** referred to in these rules are:
    a. Central Bank of Nigeria;
    b. National Insurance Commission;
    c. National Pension Commission.

Applicability

These rules shall apply to:

1. Registration and regulation of Trade Repositories in Nigeria;

2. Reporting of OTC transactions to Trade Repositories.

Functions

The functions of a Trade Repository are:

1. Collecting and maintaining data on OTC transactions
2. Making data available to the public and regulators

Registration Requirements

1. An application for registration of a Trade Repository shall be made on the appropriate SEC form and shall be accompanied by the following:
   a) Copy of certificate of incorporation certified by the company secretary;

   b) Copy of the Memorandum and Articles of Association certified by Corporate Affairs Commission, which shall include among others powers to act as a Trade Repository;

   c) Certified copy of Corporate Affairs Commission's Form showing names and particulars of directors of the company;

   d) Latest copy of audited accounts or statement of affairs signed by its auditors and management accounts that are not more than thirty (30) days old as at the time of filing with the Commission;

   e) Registration of minimum of 3 sponsored individuals one of whom shall be a compliance officer;

   f) A copy of operational manual specifying the operations of the trade repository;

   g) Information on the infrastructure and technology to be deployed by the Trade Repository;

   h) Fidelity bond of a value not less than 25% of paid up capital;

i) Sworn undertaking to keep such records and render such returns as may be specified by the Commission from time to time;

j) Information on the organization of the company including the organizational and shareholding structure, members of the board, principal officers as well as rules and procedures;

k) Evidence of minimum paid up capital of N100 million;

l) Filing fee of N50,000;

m) Processing fee of N200,000;

n) Registration fee of N1,000,000;

o) Registration fee of N50,000 for each of the sponsored individuals and the compliance officer;

p) Any other document or information that may be required by the Commission from time to time.

2. An Exchange that intends to set up a Trade Repository may apply for it as an additional function.

Additional Requirements

A Trade Repository shall:

1. Have robust governance arrangements, which include a clear organizational structure with well defined, transparent and consistent lines of responsibility;

2. Have adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent any disclosure of confidential information;

3. Have a dispute resolution mechanism in line with the Commission's rules on complaint management;

4. Maintain and operate effective written organizational and administrative arrangements to identify and manage any potential conflicts of interest.

Governance

1. A Trade Repository shall have:

    a) A charter for the Board and Management that clearly stipulates responsibility and accountability which should be made publicly available;
    b) Standard operating procedures that stipulate its entire business processes and operations and must be duly approved by the board;
    c) Processes to identify, assess, and manage potential conflicts of interest of members of the Board, principal officers, employees or any person directly or indirectly linked to the Board.

2. The Board and management of a Trade Repository shall have the required mix of skills and competence to discharge their duties;

3. The Board of a trade repository shall consider the interest of relevant stakeholders before making critical decisions.

Composition of the Board

1. A Trade Repository shall have a Board, which should be independent of management;

2. Appointment of Board members shall be subject to approval of the Commission;

3. The Board shall comprise of:

a. A Chairman
b. A Chief Executive Officer;
c. At least one Independent Director;

4. The majority of Board members shall be Non-Executive Directors;

5. The Board shall have a minimum of 5 members;

6. Board members other than the Chief Executive Officer shall hold office for a period of 4 years, subject to cumulative maximum of 2 terms;
7. The Board shall have all the relevant Board Committees.

Appointment of Chief Executive and Principal Officers

1. The Chief Executive Officer of a Trade Repository shall hold office for a period of five (5) years in the first instance and may be re-appointed for a further period of five (5) years and no more;

2. The appointment of a Chief Executive Officer and Principal Officers of a trade repository shall be subject to the prior approval of the Commission;

3. The Chief Executive Officer and the other Principal Officers of a Trade Repository shall be registered by the Commission as sponsored individuals;

4. The Chief Executive Officer and other Principal Officers of a Trade Repository shall:
   a. Be persons of proven integrity with no record of criminal conviction;
   b. Hold at least a university degree or its equivalent;
   c. Have at least ten (10) years cognate experience in financial markets for Chief Executive Officer and Principal Officers
   d. Not have been found complicit in the operation of an institution that has failed or been declared bankrupt or has had its operating license revoked as a result of mismanagement or corporate governance abuses;

e. Not have been found liable for financial impropriety or any other misdemeanor by any court, panel, regulatory agency or any professional body or previous employer;
f. Comply with any other criteria which the Commission may, in the public interest, determine from time to time.

Transaction Reporting

Capital market participants shall report or authorize others to report OTC transactions to a Trade Repository registered by the Commission on:

1. Fixed income and derivatives transactions;
2. Creation and redemption of Mutual Funds;
3. Securities lending and borrowing;
4. Repo transaction;
5. Any other OTC transaction.

Incidental Services

1. A Trade Repository shall seek the Commission's approval before carrying out any business apart from its core Trade Repository function of collecting and maintaining records of data and any other incidental services thereto;
2. Where a Trade Repository offers incidental services, it shall maintain those incidental services operationally separate from the Trade Repository's function of centrally collecting and maintaining data.

Access to Trade Repository Data

A Trade Repository shall provide:

1. The Commission with access to any portal or database maintained by it;
2. The Commission with any data upon request;
3. Financial services regulators with data reported by participants registered by such regulators upon request.

Non-Discriminatory Access

1. A Trade Repository shall grant non-discriminatory and equal access to its participants;
2. Where a Trade Repository categorizes its participation criteria, it may grant different access subject to the applicable category
3. The criteria for such access shall be fair, objective and publicly disclosed.

Operational Risks

A Trade Repository shall:

1. Identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures;

2. Establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the maintenance of its functions, the timely recovery of operations and the fulfilment of the Trade Repository's obligations. The business continuity policy must determine vulnerable areas of the business process, fortify and protect same and maintain essential services in the event of an emergency. Furthermore, the disaster recovery plan ("DRP") must include descriptions of emergency situations which warrant the implementation of the DRP and the use of backup facilities in the event of such emergencies; and

3. Make adequate arrangements to ensure confidentiality and data security.

Safeguarding and Recording

1. A Trade Repository shall:

   a) ensure the confidentiality, integrity and protection of the information received;

   b) have the discretion to use the data it receives for commercial purposes if the relevant counterparties have provided their consent;

   c) promptly record the information received and shall maintain it for at least 10 years following the termination of the relevant contracts;

d) employ timely and efficient record keeping procedures to document changes to recorded information;

e) allow the parties to a contract to access and correct the information supplied by them in a timely manner;

f) take all reasonable steps to prevent any misuse of the information maintained in its systems;
g) develop internal policies and procedures which focus on conflict of interest or potential conflict of interest and govern the identification, management and disclosure of same.

Transparency and Data Availability

1. A Trade Repository shall:

a) Publish data in line with these rules and in an easily accessible way;

b) Provide necessary information to the Commission in a timely and appropriate manner;

c) Maintain robust information systems that provide accurate, current and historical data.

Fees

1. A Trade Repository shall:

a) publicly disclose its applicable fees charged to participants;
b) not later than 90 days from the end of every financial year remit 10% of its annual fees to the Commission.

Filing of Reports

1. A Trade Repository shall file with the Commission:

a) Its operational report within 5 working days after the end of each calendar month;
b) Its quarterly financial statements and operational report separately within 1 month after the end of every quarter;
c) Its annual report and audited financial statement within 3 months after the end of each financial year;
d) Any other information which the Commission may require from time to time.

3. RULE FOR PROCESSING FEES PAYABLE FOR THE REGISTRATION OF EXCHANGE-TRADED DERIVATIVE PRODUCTS

1. Filing Fee per Contract	N100,000
2. Processing Fee per Contract	N500,000 flat fee

4. AMENDMENT TO THE RULES ON MERGERS, TAKE-OVERS, AND ACQUISITIONS (REVIEW FOR FAIRNESS OF MERGERS, TAKE-OVERS AND ACQUISITIONS)

LEGEND: Additions are underlined; Deletions are ~~struck through;~~

REVIEW FOR FAIRNESS OF MERGERS, TAKE-OVERS AND ACQUISITIONS

1. MERGERS
Definitions

(1) For the purposes of these rules and regulations: -

"Acting in concert" shall have the meaning assigned to it under this part;

"Affected transactions" means:

(1) any transaction which forms part of a series of transactions or scheme, whatever form it may take, which:

a. taking into account any securities held before such transaction or scheme, has or will have the effect of: -
    i. vesting control of any company in any person, or two or more persons acting in concert, in whom control did not vest prior to such transaction or scheme; or
    ii. any person, or two or more persons acting in concert, acquiring or becoming the sole holder or holders of, all the securities, of a particular class, of any company (excluding a private company); or

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

(2) a proposal, scheme, transaction, arrangement, or activity or issue securities or offer for subscription or purchase of securities in relation to:

a. The conversion of a public company or the reconstruction of its shares;

b. a carve-out, spin-off, split-off or other form of restructuring of its operations;

c. The acquisition or disposal of asset which results in a significant change in the business direction or policy of a public company or any other listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity;

"Bid" means an invitation or an offer;

"Carve out" means the formation of a new entity from the parent company with some or all the shares of the new entity offered to the public through initial public offering;

"Spin-off" means the creation of a new and separate entity from the parent company by distributing the shares of the spun-off entity to the existing shareholders of the parent entity on a pro rata basis;

"Split-off" means a scheme where a new entity is formed from the parent company with an option to existing shareholders to either hold the shares of the parent company or trade them for shares of the newly formed entity;

"**Holding company**" shall have the same meaning as provided in Companies and Allied Matters Act ~~1999 or as maybe amended from time to time;~~ No. 3 2020 as amended

"Merger" means any amalgamation of the undertakings or any part of the undertakings or interest of two or more companies and one or more corporate bodies;

"Offeree company" means a company whose shares or assets are subject to a take-over bid;

"Offeror" means a person or two or more persons jointly, or in concert, who makes, or make a take-over bid.

2. Scope of the Regulation

The provisions of this regulation shall apply to:

(1) public companies;

(2) every merger, acquisition, combination or other affected transactions between or among companies, involving acquisitions of shares, assets, business, or subsidiaries of a public company.

3. Approval by the Commission

(1) The approval of the Commission shall be obtained prior to undertaking a proposal, scheme, transaction, arrangement, or activity or issue of securities or offer for subscription or purchase of securities in relation to:

(a) the conversion of a public company or the reconstruction of its shares;

(b) a carve-out, spin-off, split-off or other form of restructuring of the operations of a public company;

(c) the acquisition or disposal of the assets, business, subsidiaries, shares or other significant property of a public company which results in a ~~material~~ significant change in the business direction or policy of a public company or any other listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity;

(d) an amalgamation, merger or business combination involving a public company.

(2) Approval for mergers, acquisition or corporate restructurings under this part shall be given if the Commission is satisfied that all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the transaction.

(3) The obligation to obtain the approval of the Commission lies with the public ~~company~~ companies (as the case may be) involved in the transaction.

4. Exemptions

1. The provisions of this regulation shall not apply to:

a. Acquisition by a public company of a business or asset(s) which does not involve the issuance of shares of the public company as consideration for the acquisition, subject however to a disclosure to shareholders at the next general meeting disclosing the following:

i. separate audited annual and unaudited interim pre-acquisition financial statements of that business covering the two most recent fiscal years. Provided that where this has been included in the post-acquisition financial statements for a complete fiscal year at the time of the meeting, it will not be required;

ii. unaudited pro forma financial information relating to the acquisition (This should be a pro forma balance sheet and pro forma income statements based on the historical financial statements of the company and the acquired business, including adjustments intended to show how the acquisition might have affected those financial statement);

iii. related party interests in the acquired business or assets and how any conflict of interest was managed.

b. divestments by public companies of assets which constitute less than 15% of the total assets, or which does not constitute a business line of the company. Provided however that:

i. A public company may voluntarily notify the Commission of the divestment at any time; and

ii. The Commission, having become aware of the proposed divestment, may require the public company to notify the Commission of the divestment.

5. Mergers by Amalgamation

(1) Where a merger involving a public company or public companies is achieved or to be achieved by amalgamation or other combination with the other undertaking in question; the public company shall file with the Commission, a draft Scheme document for evaluation;

(2) The Commission may grant an approval in principle to the company (ies) involved to make an application to the court to order separate meetings of shareholders of the merging companies in order to get their concurrence to the proposed merger.

(3) The Company shall file an application in the Federal High Court seeking an order to convene a court ordered meeting, Issue notice of court-ordered meeting to members and publish same in two national dailies and a copy filed with the Commission.

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

(5) If the merger is approved by the Commission, the parties shall apply to the court for the merger to be sanctioned and when so sanctioned, the same shall become binding on the companies and the court may by the order sanctioning the merger or by the subsequent order make provision for any or all of the following matters:

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

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the Scheme are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transferor company;

(e) the provision to be made for any persons who in such manner as the court may direct, dissent to the Scheme; and

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger shall be fully and effectively carried out.

(6) An order under paragraph (d) of sub-rule (5) of this Rule shall not be made unless-

(a) the whole of the undertaking and the property, assets and liabilities of the transferor company are being transferred into the transferee company; and

(b) the court is satisfied that adequate provision by way of compensation or otherwise have been made with respect to the employees of the company to be dissolved.

(7) Where an order under this section provides for the transfer of property or liabilities, that property or liabilities shall by virtue of the order, be transferred to and become the property or liabilities of the transferee company, and in the case of any property, if the order so directs, be freed from any charge which by virtue of the merger ceases to have effect.

(8) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the Commission for registration within seven days after the making of the order and a notice of the order shall be published in the Gazette and in at least one national newspaper and if in default is liable to a fine of not less than N250,000.

6. General Requirements for Mergers

(1) Every public company involved in a merger, acquisition, or other form of corporate restructuring as described in the Scope of Regulation above shall file a notice with the Commission accompanied by the following:

a) Extract of the board resolutions of the public company (ies) authorizing the transaction;

b) Extract of the shareholders' resolution of the public company (ies) authorizing the transaction; (where applicable);

c) Draft copy of the scheme document specifying the information prescribed in the appropriate Schedule (where applicable);

d) Copy of the valuation report relied on by the board of directors;

e) Copy of letter of no objection from the company's primary regulator (where applicable);

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

g) Copy of certificate of incorporation certified by the company secretary;

h) CAC certified true copy of particulars of directors and allotment of shares;

i) Summary of the claims and litigations of the company to acquired;

j) A copy of the letter appointing the Financial Adviser(s)/Solicitors making the filing on behalf of the Company;

k) Copy of the approval letter by the Federal Competition and Consumer Protection Commission (where applicable);

l) Evidence of reconciliation of the issued shares of the company with the Company's Registrars, Central Securities Depository and Securities Exchange where its shares are listed;

m) Where the merger involves the issue of shares or other securities of a public company, the provisions of these rules on registration of securities shall be complied with;

n) Evidence of payment of applicable notification fee of N100,000 (One Hundred thousand naira) (where applicable, this shall be paid per merging entity) and the relevant processing fees.

(2) Where corporate documents such as the Memorandum and Articles of Association (Memart), certificate of incorporation or certificate of increase in share capital, etc. have

been previously filed with the Commission, the parties shall, in lieu of providing such documents, provide an undertaking signed by the company secretary which confirms that there has been no change in the documents already filed with the Commission since the date of the previous filing.

7. Prescribed Fees

The merging entities shall pay the prescribed processing fee for the registration of the securities based on the value of shares to be issued by the resultant company, calculated as follows:

1st N500 million	0.3%
next N500 million	0.225%
any sum thereafter	0.15%

8. Court-Ordered Meetings

(1) The notice to shareholders of a public company of a meeting to approve, a scheme of merger, shall

(a) be published in at least two national daily newspapers; and

(b) be dispatched to shareholders accompanied by a copy of the scheme and explanatory statement providing full details regarding the proposed merger;

(2) Except as may be otherwise specified in these rules, the scheme, and explanatory statement shall provide shareholders with all relevant information regarding the proposed merger;

(3) The information required to be provided to shareholders in paragraph (2) above shall disclose whether the merger will involve the following:

i. Transfer of all or part of the assets, liabilities, undertakings, including real and intellectual property rights;

ii. Transfer of shares or other interests.

(4) All companies shall officially invite the Commission to their court-ordered meetings;

(5) The notice of such meeting shall reach the Commission not later than twenty (21) days before the date of the meeting;

(6) The notice of the meeting shall be accompanied by a certified copy of the court-order directing the holding of the shareholders' meeting.

9. Requirements for Formal Approval

Where at the Court-Ordered meeting for considering the proposed merger, the scheme is approved by a majority ~~of the shareholders present at the meeting, who hold shares~~ representing not less than three quarters in value of the shares of members being present and voting either in person or by proxy at each of the separate meetings, a formal application for approval of a proposed merger shall be filed with the Commission accompanied by the following documents:

1. Extract of the minutes of the court ordered meeting of the merging entities in support of the merger duly certified by a director and the company secretary. The extract shall capture the consideration as approved by majority shareholders, representing not less than three–quarters (3/4) in value of the shares of members being present and voting either in person or by proxy;

2. Copy of the scheme document duly signed by the parties to the merger;

3. Evidence of the executed resolutions passed at the separate court – ordered meetings;

4. Scrutineers report showing the result of voting and total number of votes casts;

5. Stamped Power of Attorney of directors who were absent at the separate court – ordered meetings (where applicable);

6. Executed copy of the order of proceedings at the meeting;

7. Report of reconciliation of the register of members with the company Registrar, CSD and Securities Exchange, where applicable.

8. Evidence of clearance letter from the Federal Inland Revenue Services regarding any tax liability (where applicable);

9. All executed contracts in respect of the merger (where applicable).

10. Post-approval requirements

Where the Commission grants a formal approval to the transaction, parties shall proceed to obtain the order of the Court sanctioning the Scheme and thereafter comply with the following:

1. file a copy of the court-order sanctioning the scheme within seven (7) days of the court making the order;

2. file a copy of the newspaper publication of the court-order sanctioning the scheme;

3. file an application for the registration of the securities to be issued as consideration for the scheme where applicable, accompanied by the following (where applicable);
   a. Evidence of payment of processing fee;

   b. Relevant SEC Form for the registration of securities (where applicable).

   c. Evidence of increase in share capital of the resultant company to accommodate the share exchange (where applicable)

   d. Amended copy of the Memorandum and Articles of Association of the resultant company (where applicable).

4. file summary reports of the scheme within three months of the court sanction in respect of the following: -

   a. arrangement relating to employees of the acquired company;

b. settlement of shareholders;

c. Treatment of dissenting shareholders;

d. Submission of gazetted copy of the court sanction;

e. Evidence of allotment of shares;

f. Evidence of settlement of severance benefits of employees (where applicable).

2. DIVESTMENTS

1. Scope of regulation

Every public company shall notify the Commission prior to the disposal of a controlling stake or material assets of the public company. An asset will be regarded as material if its value constitutes 15% or more of the total assets of the company or constitutes a business line.

a. The notification shall be accompanied by the following:

i. An Information Memorandum specifying the content as prescribed in Schedule II of this portion of the Rules on Divestments;
ii. Extracts of board resolutions of the public company approving the divestment signed by the company's secretary and a director. (where applicable);
iii. Extracts of the shareholders' resolution of the public company approving the divestment to be signed by a director and company secretary. (where applicable);
iv. Summary of the claims and litigations of the company to acquired;
v. A copy of "No Objection" letter from the relevant regulatory body (where applicable);
vi. Share/Asset purchase agreement and any other relevant agreement executed between the acquirer and the acquiree (where applicable);
vii. Source of fund to finance the acquisition must be clearly disclosed and backed by documentary evidence;
viii. Report of valuation shares/assets relied on by the board of directors;

ix. Evidence of payment of applicable notification fee of N100,000 (One Hundred Thousand naira) (where applicable, this shall be paid per entity);

b. Where an acquisition or divestment is to be funded by the issue of shares or other securities of a public company, the provisions of these rules on registration of securities shall be complied with.

2. Dissenting Shareholders

Treatment of dissenting shareholders shall be as contained in Sections 146 &147 of the ISA 2007 or as amended**.**

3. Post- Divestment

(a) There shall be an announcement of the divestment on the floor of any exchange on which the company is listed or has its securities trading, or a Publication in at least two national dailies for unlisted companies. The publication shall contain the following particulars: -

1. The stake, assets or business divested;
2. The total number and percentage of shares or assets (where applicable);
3. The price;
4. The identity of the acquirer;
5. The existing holding of the acquirer in the public company (if any);
6. Objective of the divestment and the future plans of the public company;
7. Such other information as may be required.

(b) The following documents shall be forwarded to the Commission within three months after consummation of the acquisition: -

(i) Executed share/asset purchase agreement;

(ii) Evidence of settlement purchase consideration;

(iii) Evidence of settlement of severance benefits of employees who may lose their jobs as a result of the acquisition (where applicable).

(iv) copy of the publication in at least two national dailies or evidence of announcement on the floor of the relevant exchange

4. Meetings

(1) The notice to shareholders of a public company of a meeting to approve, a divestment, shall:

(a) be published in at least two national daily newspapers;

<u>(b) disclose the identity and details of any related party interest in the proposed divestment;</u>

(c) be dispatched to shareholders accompanied by a scheme, information memorandum, or explanatory statement providing full details regarding the proposed sale, ~~restructuring~~, divestment ~~or merger~~;

(d) Except as may be otherwise specified in these rules, the scheme, information memorandum, or explanatory statement shall provide shareholders with all relevant information regarding the proposed ~~merger~~, acquisition, sale, ~~restructuring~~, divestment or other similar transaction;

(e) The information required to be provided to shareholders in paragraph (c) above shall disclose whether the merger, acquisition or other form of restructuring will involve the following:

i. Transfer of all or part of the assets, liabilities, undertakings, including real and intellectual property rights;

ii. Transfer of shares or other interests.

3. <u>CORPORATE RESTRUCTURING</u>

(a) **Scope**

The provisions of this part shall apply to <u>a carve-out, spin-off, split-off, or other form of restructuring of the operations of a public company</u>.

General Requirements

(1) Every public company shall notify the Commission prior to effecting a restructuring of its operations, structure, or shareholding in any manner. The notice shall be accompanied by the following:

a) Resolution of the directors authorizing the restructuring;

b) Draft Copy of the explanatory statement to be dispatched to shareholders on the proposed corporate restructuring;

c) Copy of the valuation report relied on by the board of directors where the transaction involves a disposal of assets, business, subsidiaries or other material property;

d) Letter of no objection from the company's primary regulator (where applicable);

e) Where the restructuring involves the issue of shares or other securities of a public company, the provisions of these rules on registration of securities shall be complied with;

f) Draft Scheme document (where applicable) containing the following information:

i. Directors of the companies;
ii. Profile/share capital history of the companies;
iii. Shareholding structure of the companies;
iv. Directors beneficial interest;
v. Status of the subsidiary (ies) after the external restructuring;
vi. Status of the shares of the combined company;
vii. Percentage or level of involvement of the combined companies (if they have similar products);

g) Any other information or document required by the Commission from time to time;

h) Evidence of payment of applicable notification fee of N100,000 (One Hundred thousand naira);

i) For transactions involving a carve-out, the following additional information shall be provided to the Commission and the Shareholders in the Explanatory Statement/Information Memorandum:

i. the value of the assets and liabilities to be transferred;

ii. a proforma financial statement for the company post transaction (This should be a pro forma balance sheet and pro forma income statements based on the historical financial statements of the company and the disposed business, including adjustments intended to show how the disposal might have affected those financial statements);

iii. A schedule of assets and liabilities) including material contracts (including the value) should be made available for inspection;

iv. Management Account for the company for the most recent interim date filed under oath;

v. Information on the composition of the new subsidiary (Board and Management);

vi. Fixed Assets Schedule of Company and the new subsidiary;

vii. Contingent Liability to new subsidiary from the contracts to be acquired;

viii. a proforma financial statement for new subsidiary post-restructuring;

ix. a summary of all contracts to be transferred provided in one composite document, and certified by the Company Secretary;

x. Memorandum and Articles of Association of the new subsidiary.

(b) **Meetings**

(1) The notice to shareholders of a public company of a meeting to approve, a restructuring, shall:

(a) be published in at least two national daily newspapers;

(b) be dispatched to shareholders accompanied by a scheme, information memorandum, or explanatory statement providing full details regarding the proposed sale, restructuring, divestment or merger.

(2) Except as may be otherwise specified in these rules, the scheme, information memorandum, or explanatory statement shall provide shareholders with all relevant information regarding the proposed merger, acquisition, sale, restructuring, divestment or other similar transaction;

(3) The information required to be provided to shareholders in paragraph (c) above shall disclose whether the merger, acquisition or other form of restructuring will involve the following:

a. Transfer of all or part of the assets, liabilities, undertakings, including real and intellectual property rights;

b. Transfer of shares or other interests.

(c) **<u>Requirements for Share Capital Reconstruction</u>**

i. All Public Companies proposing a share capital reconstruction pursuant to the Companies and Allied Matters Act shall obtain a No Objection statement from the Commission prior to approaching the shareholders and the court as applicable;

ii. The notification shall clearly state the relevant section of the CAMA pursuant to which the reconstruction is being proposed and shall be accompanied by:

a) a draft copy of the explanatory memorandum to be circulated to shareholders;
b) a letter of no objection from the primary regulator of the company (where applicable);
c) a letter of no objection from the Financial Reporting Council;
d) Certified copy of the Board Resolution recommending the reconstruction for the approval of the shareholders of the Company;
e) Evidence of payment of filing fees of N500,000 (Five Hundred Thousand Naira);
f) Such other document as may be required by the Commission.

iii. The explanatory memorandum shall clearly state:

a) the factors necessitating the reconstruction,
b) the effect on the current shareholding of existing shareholders,
c) the consideration (if any) to be paid to the shareholders;
d) the relevant Article or provision of the law pursuant to which the reconstruction is being proposed;
e) a proforma statement of the company's financial position post-reconstruction;
f) such other information as may be required by the Commission.

iv. Every share capital reconstruction shall comply with such conditions as may have been prescribed in the Articles of the company and conform with such standards as have been prescribed by all relevant and applicable laws;

v. Every share capital reconstruction involving a reduction through cancellation of share capital which is still represented by available assets shall comply with the requirements of the law on share buyback, cancellation of shares and return of capital;

vi. The following documents shall be filed with the Commission for the registration of the securities following the approval of the shareholders and the confirmation of the court (as applicable):

a) Duly completed Form SEC 6
b) Extract of the Shareholders Resolution authorizing the capital reconstruction;
c) Copy of the newspaper publication of the notice of the meeting;
d) Copy of the court order confirming the reconstruction where it involves a reduction;
e) Evidence of satisfaction or compliance with any condition specified in the Articles of the Company (where applicable)
f) Certified True Copy of the CAC Form reflecting the reconstructed shares of the company;

g) Certified True Copy of the amended Memorandum and Articles of Association of the Company reflecting the amendment to the company's share capital (as applicable);
h) A copy of the latest audited accounts of the company;
i) A declaration of No Change from the Company Secretary of the company on the specified Template, provided that where there have been changes the relevant documents should be filed along with the application for registration;
j) Such other documents as may be required by the Commission from time to time.

4. TAKE-OVER

(a) **Take-over bids**

(1) Where any person, directly or indirectly:

a. acquires shares or an interest in shares, whether by a series of transactions over a period of time or not, which (taken together with shares held or acquired by persons acting in concert with him) carry 30 per cent or more of the voting rights of a public company; or

b. together with persons acting in concert with him, holds not less than 30% but not more than 50 per cent of the voting rights and such person or any person acting in concert with him, acquires additional shares or an interest in shares, or is interested in additional shares which increase his percentage of the voting rights of a public quoted company,

   Such person shall make a takeover bid to the holders of any class of equity share capital in the target company through an agent who shall be a registered Capital Market Operator.

c. <u>The following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established:</u>

   i. <u>a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are</u>

associated companies, all with each other (for this purpose ownership or control of 20% or more of the equity share capital of a company is regarded as the test of associated company status);

ii. a company with its directors (together with their close relatives and the related trusts of any of them);

iii. a company with any of its pension schemes and the pension schemes of any company described in (1);

iv. a fund manager with any investment company, unit trust or other person whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;

v. a person, the person's close relatives, and the related trusts of any of them, all with each other;

vi. the close relatives of a founder of a company, their close relatives, and the related trusts of any of them, all with each other;

vii. a connected adviser with its client and, if its client is acting in concert with an offeror or the offeree company, with that offeror or offeree company respectively, in each case in respect of the interests in shares of that adviser and persons controlling#, controlled by or under the same control as that adviser (except in the capacity of an exempt fund manager or an exempt principal trader);

viii. directors of a company which is subject to an offer or where the directors have reason to believe a bona fide offer for their company may be imminent.; and

ix. shareholders in a private company who sell their shares in that company in consideration for the issue of new shares in a company, or who, following the re-registration of that company as a public company in connection with an initial public offering or otherwise, become shareholders in a company.

x. persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company;

xi. A person and each of its affiliated persons.

(2) Where a take-over bid is made by a corporate body, a resolution of the directors approving the bid shall accompany the bid. The resolution shall be signed by at least one director and the company secretary;

(3) A take-over bid shall not be made or required to be made: -

a) to fewer than 20 shareholders representing 60% of the members of the target company or such other members as may be prescribed by the Commission from time to time, or

b) Where the shares to be acquired under the bid are shares in a private company save where such private company within the immediate preceding twelve months converted from a public quoted company to a private company;

c) Where an ailing company undertakes a private placement approved by the Commission which results in the strategic investor acquiring more than 30% of the voting rights of the company;

d) An acquisition or holding of or entitlement to exercise or control the exercise of more than 30% voting shares of a company by an allotment made in accordance with a proposal, particulars of which were set out in a prospectus where:

i. The prospectus was the first prospectus for the initial public offer of voting shares issued by the company;

ii. The person who acquired the voting shares was a promoter in respect of the prospectus and the effect of the acquisition on the person's voting power in the company has been disclosed in the prospectus;

iii. The prospectus has been registered with the Commission.

e) Upon conversion of convertible securities issued with the approval of shareholders in a general meeting.

f) Where shares carrying 50% or more of the outstanding voting rights of the company are held directly or indirectly by one person;

g) Where holders of shares carrying 50% or more of the outstanding voting rights of the company state in writing that they would not accept a mandatory bid;

<u>Provided that in applying any of the exemptions, the Commission shall consider the intent of the parties and trend of events and may decline the application of an exemption where it is determined that the transaction has been deliberately structured to avoid making a takeover bid.</u>

(4) Where a mandatory bid is triggered in line with the provisions of the Rule on Requirements as to form, number, etc., of a Trust deed, an application for authority to

proceed with a takeover bid shall be filed with the Commission within three business days of the triggering event;

(5) The intention to make a takeover bid shall be advertised in at least two (2) national daily newspapers, the company's website and announced on the floor of the Exchange on which the shares are listed or its securities are traded;

(6) Where an announced offer has lapsed, failed or been withdrawn, a bidder or party acting in concert shall not, within the succeeding 12 months from the date of announcement of the offer:

a. Make a takeover bid for the voting shares or voting rights that had been the subject of the previous takeover bid;
b. Acquire any further voting shares or voting rights in the company except as may be authorized by the Commission;
c. Acquire any of the target's voting shares or voting rights if the bidder holds voting shares or voting rights carrying over 30% but not more than 50% of the class of voting shares or voting rights that had been the subject of a previous takeover bid;

d. Acquire any interest in the voting shares or voting rights on more favourable terms than those made available under its lapsed offer until any competing offers have been declared unconditional or have lapsed.

(7) Where an acquirer withdraws from making (or is unable to make) a bid having acquired such number of shares which has triggered the obligation to make a bid under this Rule, the Commission shall require the acquirer to dispose of sufficient shares in the Company within a six (6) months period to unrelated persons which shall bring the holding of the acquirer to below 30% or 50% as applicable;

(8) In the event of withdrawal of the open offer, the acquirer shall through the agent to the offer, within 48 hours:

(a) Make an announcement in the same newspapers in which the public announcement of the open offer was published, providing grounds and reasons for withdrawal of the offer;

(b) Simultaneously with announcement, inform the following in writing:

i. The Board of the target company;
ii. The Exchanges on which the shares of the target company are listed, and the exchanges shall forthwith disseminate such information to

the public; and
iii. The target company at its registered office.

(9) (a) Any acquisition made in breach of this Rule shall be void and the provisions of subsection (7) above shall apply.

(b) The Commission shall in addition to Subsection (a) above impose a penalty of not less than N1,000,000 on each culpable party and N5,000 for every day of continuing default.

(b) **Contents of a bid**

(1) A bid being an invitation under a take-over bid shall be incorporated in a document that specifies: -

(a) (i) the full names of the offeror;

(ii) the addresses which shall be a street address and post office box number (if any), where the offeror is a corporate body the current head office address and a statement of the date at which the approval of the directors of the company was given;

(b) the maximum number and offer particulars of the shares the company proposes to acquire during the period specified in the invitation to bid;

(c) the price and other terms on which those shares are proposed to be acquired;

(d) the number and offer particulars of the shares in the offeree company to which: -

(i) the offeror; or

(ii) any company in the same group of companies as the offeror, is or are entitled to immediately before the date of the take-over bid;

(e) the following matters (if applicable): -

(i) where the bid is for all the shares of a class in the offeree company, the offeror, if he so intends, shall state that he intends to invoke the right under the Act, to acquire the shares of shareholders of the offeree company who may not accept the bid and that the shareholders are entitled to dissent and to demand the fair value of their shares; or

(ii) if the offeror intends to purchase shares in the offeree company in the market during the period of time within which shares may be deposited pursuant to the bid;

(f) such other matter(s) as may be prescribed by regulation from time to time.

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

(2) A bid being also an offer under a take-over shall be incorporated in a document which shall:

(a) state or specify the matters referred to in paragraphs (a) to (d) of (1) above;

(b) specify the number and other particulars of the shares in the offeree company proposed to be acquired during the period specified in the offer;

(c) specify the price and offer terms of the offer in respect of those shares;

(d) set out how and by what date the obligations of the offeror are to be satisfied;

(e) set out all other particulars of the offer;

(f) state, if applicable, matters specified in paragraph (e) of (1) above;

(g) specify or set out such other matters as may be prescribed by regulation from time to time.

(3) Directors' circular

a) The directors of an Offeree company shall upon receipt of a bid dispatched to each of them, send a directors' circular to each shareholder of the company and to the Commission at least seven (7) days before the date on which the take-over bid is to take effect;

b) Where the directors do not send the circular as required under sub rule (1) above within ten (10) days of the date of a take-over bid, the directors shall forthwith notify the shareholders of the Offeree company and the Commission that a directors' circular shall be sent to them, and may recommend that no shares be tendered pursuant to the take-over bid until the directors' circular is sent;

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

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

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

f) The directors of an Offeree company shall approve a directors' circular which contains the recommendations of a majority of the directors, and the approval shall be evidenced by the signature of one or more directors;

g) A directors' circular shall include particulars of any payment made to an officer or former officer of an offeree company by way of compensation for loss of his office, or of any office in connection with the management of the company's affairs, or of any office in connection with the management of any subsidiary of the company, or as consideration for or in connection with his retirement from any office.

(c) **Authority to proceed with take-over bid**

(1) (a) A take-over bid shall not be made unless an authority to proceed with same had been obtained from the Commission.

(b) Subject to the provisions of the Rule on Take-over bids, an application for authority to proceed with a take-over bid shall be made to the Commission by or on behalf of the person proposing the bid before it is made.

(c) The application shall state: -

(i) the name and other particulars of the person making the bid;

(ii) the particulars of the proposed bid with supporting documents in compliance with the provisions of the Act and these rules and regulations;

(iii) any other information or documents that may be required by the Commission from time to time.

(2) (a) The authority to proceed with a bid granted by the Commission shall be for a period of three (3) months subject to renewal upon application by the person making the bid.

(b) An application for renewal of the authority to proceed with a bid shall be made within fourteen (14) days prior to the expiration of the subsisting authority to proceed and such renewal shall be for a period of not more than one (1) month.

(c) Where an authority to proceed with a bid is granted by the Commission and no bid is registered or made within the validity period including any extension granted, the provisions of the Rule on an acquirer withdrawing from making a bid having acquired such number of shares which has triggered the obligation to make a bid shall apply, to wit, the Commission shall require the acquirer to dispose of sufficient shares in the company within six (6) months to unrelated persons which shall bring the holding of the acquirer to below 30% or 50% as applicable and the offeror shall be prohibited from acquiring any new shares in the company for a period of 12 months immediately following the expiration of the authority to proceed.

(3) In addition to the take-over bid the following documents shall be filed with the Commission: -

a. A letter of application;

b. Two (2) copies of the information memorandum (where applicable);

c. A letter of "No objection" from relevant regulatory bodies (where applicable);

d. A copy of shareholders and board resolutions of the offeror certified by the company secretary approving the takeover (where applicable);

e. A copy of the certificate of incorporation certified by the company secretary;

f. Copies of the memorandum and article of association of the offeror certified by the Corporate Affairs Commission;

g. Copies of letters from the offeror appointing their financial adviser to the transaction.

(4) The Contents of an information memorandum shall include:

Background Information

A. Section I

i) Background to the transaction;

ii) Parties to the takeover;

iii) Statement of intention/objective;

iv) Statement of financial capability of offeror;

B. Section II

i) Brief History of the offeror;

ii) Share capital, ownership structure and directors of the offeror (where applicable);

iii) The percentage market shares of the offeror in the relevant industry;

iv) Current shareholding of the offeror in the target company;

v) Number of shares and percentage holding to be acquired;

vi) The post-takeover status of the target company;

vii) Likely effect of the take-over bid, if successful on: -

1. The economy of Nigeria;

2. The staff of the target company.

(d) **Registration of take-over bid**

(1) The persons making a take-over bid shall lodge with the Commission, a copy of the proposed bid for registration before it is dispatched.

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

i. On the date on which it is dispatched;

ii. On the latest date on which such bid is dispatched, where it is dispatched on more than one day; or

iii. On the date on which it is posted, where dispatched by post.

(2) The Commission shall register the bid if it is satisfied that it has complied with the provisions of the Act and these rules and regulations.

(3) Where the Commission is not satisfied, it shall refuse to register the bid and notify the applicant accordingly.

(4) Within thirty (30) days after the service of the notice in sub (3) above, the applicant may by notice in writing, request the Commission to refer the fact of its refusal to register a copy of the proposed bid to the tribunal for a review of the Commission's decision.

(5) Upon the receipt of authority to proceed with a takeover bid, the following documents shall be filed with the Commission: -

a. Two (2) draft copies of the takeover bid;

b. Consent letters of directors and other parties to the transaction;

c. CAC form containing particulars of directors of the offeror;

d. A copy of draft Financial Services Agreement between the financial adviser and the offeror, and any other agreement(s) entered into in the course of the transaction;

e. Annual report and accounts of the offeror for the preceding period of five (5) years or the number of years the company has been in existence;

f. Payment of N100,000 (One Hundred thousand naira) application fee and relevant SEC fee based on the value of shares to be taken over;

g. A draft newspaper publication of the proposed takeover bid;

h. Evidence of source of funds;

i. Any other documents the Commission may require from time to time.

(6) The offeror shall file with the Commission, within seven (7) working days of the conclusion of the offer, the following:

a. schedule of target company shareholders who accepted the offer containing the volume and value of the respective shares;
b. evidence of settlement of consideration.

(7) Post bid requirements

a) The number of days within which the Offeror may take up shares deposited pursuant to a bid shall be;
   (i) Ten (10) days after the date of the takeover bid where a takeover bid is for all of the shares of a class in an Offeree company;
   (ii) Twenty-one (21) days after the date of the takeover bid where a takeover bid is for less than all the shares of any class in the Offeree Company.

b) Shares may be deposited pursuant to the bid no later than thirty-five (35) days from the date of the takeover bid, provided that the Commission may grant an extension of time upon application;

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

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

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

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

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

~~468.Rules on Management Buy-Out~~

Schedule II

Divestments

Contents of the Information Memorandum

The information memorandum shall contain the following among others:

1. **Background Information**
   a. Background to the divestment;
   b. Statement of divestment objective;
   c. Parties to the transaction;
   d. The list of assets to be divested and their value (where applicable);

e. Statement of financial capability of the acquirer.

2. **The Offer**

a. The purchase consideration;
b. Comparison of purchase consideration with historical market price (where applicable)
c. Effect of the divestment on the management and employee of the public company;
d. Terms and conditions of the divestment;
e. Manner of acceptance;
f. Treatment of dissenting shareholders (if any);
g. Source of funding the acquisition.

3. **The Acquirer**

a. History and business;
b. Share capital & ownership structure;
c. Director's beneficial interest;
d. Three/five years financial summary.

4. **The Acquiree**

a. History and Business;
b. Share capital and ownership structure;
c. Director's beneficial interest;
d. Three/five years financial summary;
e. Summary of claims and Litigations and material contracts.

Securities & Exchange Commission

5. PROPOSED AMENDMENT TO RULE 97(1)- FUNCTIONS

Full Text of Existing Rule

Functions

(1) Investment advisers may perform the following functions:

(a) investment advisory services;

(b) making recommendations as to types of securities to buy or sell;

(c) publication of financial market periodicals.

Proposed Amendment to Rule 97 (1): Creation of New sub-rule (d) and (e) as follows:

(d) forward investors' request to Broker/Dealers or Fund/Portfolio Managers;

(e) offer advisory services on portfolio creation and re-balancing

MADE AT ABUJA THIS 30th DAY OF AUGUST 2021

ENO OTUNBA-PAYNE
Ag. Secretary to the Commission

LAMIDO A. YUGUDA
Director-General