



## THE INVESTMENTS AND SECURITIES ACT, 2007

### EXPLANATORY MEMORANDUM

The Act, amongst other things, provides for-

- (a) the establishment of Securities and Exchange Commission;
- (b) the repeal of the Investments and Securities Act 1999;
- (c) the enlarged powers and functions of the Commission over the capital market ; and
- (d) a set of new market infrastructures and wide-ranging system of regulation of investment and securities business in Nigeria, especially in the area of Mergers, Acquisitions and Take-Over, and collective Investment Schemes, where new provisions were made.

## **THE INVESTMENTS AND SECURITIES ACT, 2007**

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**THE INVESTMENTS AND SECURITIES ACT, 2007**

A BILL

FOR

AN ACT TO REPEAL THE INVESTMENTS AND SECURITIES ACT 1999 AND TO ESTABLISH THE SECURITIES AND EXCHANGE COMMISSION AS THE APEX REGULATORY AUTHORITY FOR THE NIGERIAN CAPITAL MARKET AS WELL AS REGULATION OF THE MARKET TO ENSURE THE PROTECTION OF INVESTORS, MAINTAIN FAIR, EFFICIENT AND TRANSPARENT MARKET AND REDUCTION OF SYSTEMIC RISK; AND FOR RELATED MATTERS,

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

**PART I: ESTABLISHMENT AND MANAGEMENT OF THE SECURITIES AND EXCHANGE COMMISSION**

- 1** (1) There is established a body to be known as the Securities and Exchange Commission (in this Act referred to as "the Commission") Establishment of the securities and exchange Commission.
- (2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Commission shall have power to acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Act.
- 2** The Commission shall have its head office in a location which is by law designated as the Capital of the Federal Republic of Nigeria and may establish zonal offices in any part of Nigeria in accordance with the decision of the Board of the Commission. Head office of the Commission.
- 3** (1) There shall be for the Commission a Board which shall consist of- Composition of the board of the Commission.
- (a) a part-time Chairman;
  - (b) the Director-General and Chief executive as Accounting officer;
  - (c) three full time Commissioners;
  - (d) a representative of the Federal Ministry of Finance;
  - (e) a representative of the Central Bank of Nigeria; and
  - (f) two part-time Commissioners one of whom shall be a legal practitioner qualified to practice in Nigeria with ten years post call experience.

(2) A person shall not be qualified for appointment to the Board of the Commission unless he is a fit and proper person and-

(a) in the case of the Chairman or Director-General of the Commission, he is a holder of a university degree or its equivalent with not less than 15 years cognate experience in capital market operations;

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

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

4 (1) The Board shall be responsible for the general administration of the Commission and, in particular, shall-

Duties of the board.

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

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

(c) appoint Auditors for the Commission;

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

(e) establish zonal offices of the Commission; and

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

(2) The Board shall, on the recommendation of the Director-General, approve the duties of the full time Commissioners.

(3) The Board shall also approve the reassignment of the full time Commissioners by the Director-General.

5 (1) The Director-General and the three full time Commissioners shall be appointed by the President upon the recommendation of the Minister and confirmation by the Senate.

Appointment and tenure of office of members of the board.

(2) The Director-General shall hold office for a period of 5 years in the first instance and may be reappointed for a further period of five years and no more.

(3) The three full time Commissioners shall hold office in the first instance for a period of four years and may be re-appointed for a further term of four years and no more.

(4) The Chairman and part-time Commissioners (other than the *ex-officio* Commissioners) shall each hold office for a term of four years and no more.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, the President may extend the tenure of office of the Director-General and any of the Commissioners whose term of office has expired until a successor to such Director-General or Commissioner is appointed.

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

Director-General and full time Commissioners to be fully devoted to the service of the Commission. Management of the Commission.

**7** The Director-General or, in his absence, one of the Commissioners nominated by the Director-General shall be responsible for the day to day management and administration of the Commission and shall be answerable to the Board of the Commission.

**8** (1) A member of the Board shall cease to hold office if he-

Disqualification and cessation of appointment.

(a) becomes of unsound mind;

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

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

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

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

(2) The President may at any time and upon the recommendation of the Minister remove a person to whom subsection (1) of this section applies:

Provided no full time member of the Board of the Commission shall be removed from office

without the approval of the Senate.

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

Remuneration and allowances of members of the board.

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

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

Meetings of the board of the Commission.

(2) The Chairman shall preside at every meeting of the Commission and in his absence, the

members present at such meeting shall appoint one of their members to preside.

(3) Five members of the Board shall form a quorum at any meeting, two of whom shall be non-executive members.

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

First Shedule

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

**11** (1) A member of the Board of the Commission who is directly or indirectly interested in-

Disclosure of interest.

- (a) the affairs of any company or enterprise being deliberated upon by the Board of the Commission; or
- (b) any contract made or proposed to be made by the Board of the Commission shall, as soon as possible after relevant facts have come to his knowledge, disclose the nature of his interest to the Commission at the meeting of the Board of the Commission.

(2) A disclosure made under subsection (1) of this section shall be recorded in the minutes of the meeting of the Board of the Commission and the member after the disclosure shall-

- (a) not participate or continue to participate in any deliberation or decision of the Board of the Commission with regard to the subject-matter in respect of which his interest is so disclosed; and
- (b) be excluded for the purpose of constituting a quorum of the Board of the Commission from any deliberation or decision on the subject matter.

**12** The members of the Board of the Commission shall subscribe to, and be bound by a code of ethics to be approved by the Minister.

Code of ethics for members of the Board.

## **PART II: FUNCTIONS AND POWERS OF THE COMMISSION**

**13** The Commission shall be the apex regulatory organisation for the Nigerian capital market and shall carry out the functions and exercise all the powers prescribed in this Act and, in particular, shall-

Functions and powers of the Commission.

- (a) regulate investments and securities business in Nigeria as defined in this Act;
- (b) register and regulate securities exchanges, capital trade points , futures, options and derivatives exchanges, commodity exchanges and any other recognised

investment exchange;

- (c) regulate all offers of securities by public companies and entities;
- (d) register securities of public companies;
- (e) render assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges and capital trade points;
- (f) prepare adequate guidelines and organise training programmes and disseminate information necessary for the establishment of securities exchanges and capital trade points;
- (g) register and regulate corporate and individual capital market operators as defined in this Act;
- (h) register and regulate the workings of venture capital funds and collective investments schemes in whatever form;
- (i) 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;
- (j) facilitate the linking of all markets in securities with information and communication technology facilities;
- (k) act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end 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;
- (l) keep and maintain a register of foreign portfolio investments;
- (m) register and regulate securities depository companies, clearing and settlement companies, custodians of assets and securities, credit rating agencies and such other agencies and intermediaries;
- (n) protect the integrity of the securities market against all forms of abuses including insider dealing;
- (o) promote and register self regulatory organisations including securities exchanges, capital trade points and capital market trade associations to which it may delegate its powers;
- (p) review, approve and regulate mergers, acquisitions, takeovers and all forms of business combinations and affected transactions of all companies as defined in this Act;

- (q) authorise and regulate cross-border securities transactions;
- (r) call for information from and inspect, conduct inquiries and audit of securities exchanges, capital market operators, collective investment schemes and all other regulated entities;
- (s) promote investors' education and the training of all categories of intermediaries in the securities industry;
- (t) call for, or furnish to any person, such information as may be considered necessary by it for the efficient discharge of its functions;
- (u) levy fees, penalties and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of this Act;
- (v) intervene in the management and control of capital market operators which it considers has failed, is failing or in crisis including entering into the premises and doing whatsoever the Commission deems necessary for the protection of investors;
- (w) enter and seal up the premises of persons illegally carrying on capital market operations;
- (x) in furtherance of its role of protecting the integrity of the securities market, seek judicial order to freeze the assets (including bank accounts) of any person whose assets were derived from the violation of this Act, or any securities law or regulation in Nigeria or other jurisdictions;
- (y) relate effectively with domestic and foreign regulators and supervisors of other financial institutions including entering into co-operative agreement on matters of common interest;
- (z) conduct research into all or any aspect of the securities industry;
- (aa) prevent fraudulent and unfair trade practices relating to the securities industry;
- (bb) disqualify persons considered unfit from being employed in any arm of the securities industry;
- (cc) advise the Minister on all matters relating to the securities industry; and
- (dd) perform such other functions and exercise such other powers not inconsistent with this Act as are necessary or expedient for giving full effect to the provisions of this Act.

**14** The Commission may establish specialised departments for the purpose of regulating and developing the Nigerian capital market.

Powers to establish departments.

**PART III: STAFF OF THE COMMISSION**

**15** (1) There shall be for the Commission a Secretary who shall be appointed by the Commission. Appointment of the Secretary and other staff of the Commission.

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

(3) The Secretary shall act as Secretary to the Board of the Commission and its committees and carry out other functions as may be prescribed by the Board.

(4) There shall also be appointed by the Commission other staff as the Commission may deem necessary for the efficient performance of its functions under this Act.

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

**17** (1) The Secretary shall- Duties of the Secretary.

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

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

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

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

**18** (1) Every staff of the Commission shall be entitled to pension and other retirement benefits as prescribed by law. Service in the Commission to be pensionable.

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

**PART IV: FINANCIAL PROVISIONS**

**19** (1) The Commission shall establish and maintain a fund (in this Act referred to as "the Fund") into which shall be paid the following- Funds of the Commission.

(a) funds provided to the Commission by the Federal Government;

(b) penalties, fees, charges and administrative cost of proceedings; and

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

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

**20** The Commission may apply the proceeds of the Fund established under section 19 of this Act to-

Application of the funds of the Commission.

(a) meet the cost of administration of the Commission;

(b) reimburse members of the Commission or any committee set up by the Commission for expenses authorised or approved by the Commission;

(c) pay the salaries, fees or other remuneration or allowances, pensions and gratuities payable to the employees of the Commission;

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

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

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

**21** (1) The Commission shall establish a reserve account into which all surpluses from the Fund shall be paid.

Reserve account.

(2) Disbursement from the reserve account shall be approved by the Board of the Commission.

(3) The Commission may invest funds in the reserve account in securities prescribed by the Trustee Investments Act and such other modifying or substituting legislation or in such other securities as may be approved by the Board of the Commission.

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**22** (1) The Commission may accept gifts of land, money or other testamentary dispositions, endowments and contributions on such terms and conditions, if any, as may be specified by the donor of the gift.

Power to accept gifts.

(2) The Commission shall not accept any gift if the conditions attached by the donor are inconsistent with the functions and objectives of the Commission.

**23** The Commission is entitled to charge, retain and utilise for its purposes-

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

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

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

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

**25** The Commission may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds as may be approved by the Board. Investment by the Commission.

**26** (1) The Board of the Commission shall cause to be prepared, not later than the thirtieth day of September in each year, an estimate of the income and expenditure of the Commission during the next succeeding year and when prepared, they shall be submitted to the Minister and the National Assembly. Annual estimates, account and audit.

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

**27** The Commission, shall not later than three months after the end of each year, submit to the Minister and the National Assembly, a report on the activities and administration of the Commission during the immediately preceding year and, shall include in such reports, audited accounts of the Commission and the report of the Auditor on the accounts. Annual report.

**PART V: REGISTRATION AND REGULATION OF SECURITIES EXCHANGES, CAPITAL TRADE POINTS AND OTHER SELF REGULATORY ORGANIZATIONS**

**28** (1) No securities exchange or capital trade point as defined in section 315 of this Act shall commence operation unless it is registered with the Commission in accordance with the provisions of this Act and the rules and regulations made thereunder. Registration of securities exchanges and capital trade points.

(2) An application for registration as a securities exchange or capital trade point shall be made to the Commission in the prescribed form and in the manner specified by the Commission.

**29** (1) Every securities exchange or capital trade point shall be a body corporate incorporated under the Companies and Allied Matters Act. Conditions for registration. No 1 of 1990.

(2) The Commission may register a body corporate as a securities exchange or capital trade

point if it is satisfied that the rules of the body corporate make satisfactory provisions-

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

(b) for the expulsion, suspension or discipline of members for conduct inconsistent with just and equitable principles in the transaction of securities business or for contravention of or failure to comply with the rules of the securities exchange or capital trade point or the provisions of this Act;

(c) with respect to the conditions under which securities may be listed for trading on that particular securities exchange or capital trade point;

- (d) with respect to the conditions governing dealings in securities by the members;
- (e) with respect to the class or classes of securities which may be dealt in by members; and
- (f) with respect to a fair representation of persons in the selection of members of the Board of the securities exchange or capital trade point and the administration of its affairs and provided that listed companies and investors shall each be represented by one or more members on its board.

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

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

**30** (1) The Commission may by order revoke the certificate of registration granted under section 29 of this Act, if-

Revocation of certificate of a securities exchange or capital trade point.

- (a) the body corporate ceases to operate as a securities exchange or capital trade point within the meaning of this Act;
- (b) the body corporate is wound up; or
- (c) the body corporate is operating in a manner detrimental to the interests of investors and the public.

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

**31** (1) Where an amendment is made to the rules or the listing requirements of a securities exchange, capital trade point or other self regulatory organisation, whether by way of rescission, amendment, alteration, deletion, substitution or addition, the Board of the securities exchange, capital trade point or other self regulatory organisation shall forward

Approval of amendments to listing rules

a written notice of the amendment to the Commission for approval.

(2) The Commission shall notify the securities exchange, capital trade point or other self regulatory organisation as to whether or not the Commission approves the whole or any specified part of the amendment in question, and until such notification is received, the amendment shall be of no effect.

(3) Nothing in this section shall preclude the Commission, after consultation with the board of a securities exchange, capital trade point or other self regulatory organisation from amending the rules or the listing requirements of the securities exchange, capital trade point

or other self regulatory organisation by a notice in writing specifying the amendment and the date the amendment shall come into effect.

(4) Any notice under this section may be served personally or by registered post.

**32** (1) Subject to the powers of the Commission under this Act, a securities exchange, capital trade point or any other self regulatory organisation shall, as part of its primary responsibility, call for information from, inspect and conduct inquiries and audit of its members.

Role of securities exchange, capital trade point and other self regulatory organisations.

(2) A securities exchange, capital trade point or self regulatory organisation, shall at the end of every quarter file a detailed report on its surveillance and enforcement activities with the Commission.

(3) Nothing in this section shall preclude the Commission from carrying out inspections, or conducting enquiries or audit of any member of a securities exchange, capital trade point or other self regulatory organisation.

**33** Where a securities exchange capital trade point or other self regulatory organisation reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the securities exchange, capital trade point or other self regulatory organisation, the securities exchange, capital trade point or self regulatory organisation shall, within 7 days notify the Commission in writing of the name and other particulars of the member, the nature of and reason for the action taken by the securities exchange, capital trade point or other self regulatory organisation against the affected member.

Securities exchange, capital trade point or self regulatory organisation to give notice of disciplinary actions, etc.

**34** (1) The Commission may review any disciplinary action taken by a securities exchange, capital trade point or other self regulatory organisation against its members and may affirm or set aside such decision after giving the member and the securities exchange, capital trade point or self regulatory organisation an opportunity of being heard.

Review of disciplinary actions taken by a securities exchange, capital trade point or self regulatory organisation.

(2) Nothing in this section shall preclude the Commission from suspending, expelling or otherwise imposing or causing disciplinary action to be taken against a member of a securities exchange, capital trade point or other self regulatory organisation where a securities exchange, capital trade point or other self regulatory organisation fails to act against a member:

Provided that, before exercising the power conferred upon it by this subsection, the Commission shall give the affected member and the securities exchange, capital trade point or self regulatory organisation an opportunity of being heard.

**35** (1) The Commission may, where it deems appropriate, issue directives to a securities exchange, capital trade point or any other self regulatory organisation with respect to-

Power to issue directives to a securities exchange,

(a) trading on or through the facilities of that securities exchange, capital trade point or self regulatory organisation or pertaining to any securities listed on the securities exchange, capital trade point or self regulatory organisation;

capital trade point or self regulatory organisation, etc.

(b) the manner in which a securities exchange, capital trade point or self regulatory organisation carries on its business including the manner of reporting off-market purchases; or

(c) any other matter which the Commission considers necessary for the effective administration of this Act, and the securities exchange, capital trade point or self regulatory organisation shall comply with the directives.

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

(3) A securities exchange, capital trade point or any other self regulatory organization which, without reasonable excuse, fails or refuses to comply with a directive given under subsection (1) of this section shall be liable to a penalty of ₦1,000,000 and a further penalty of not less than ₦50,000 for every day during which the non-compliance continues.

(4) Where the Commission, after giving an executive officer of a securities exchange, capital trade point or any other self regulatory organisation an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with the provisions of this Act or any regulations made thereunder or the rules of the securities exchange, capital trade point or self regulatory organisation, the Commission may suspend or remove the executive officer from office.

(5) The Commission may, in the public interest or for the protection of investors, and after giving the executive officer an opportunity of being heard, direct the securities exchange or capital trade point or any other self regulatory organisation in writing to remove the executive officer and where the securities exchange or capital trade point or self regulatory organisation fails to comply with the directive of the Commission under subsection (4) of this section, the Commission may suspend or remove the executive officer from office.

**36** (1) Where the Commission deems it necessary for the protection of persons buying or selling particular securities made available by a body corporate on a securities exchange, capital trade point or any other self regulatory organisation, it may suspend or prohibit further trading in the securities and give notice in writing to the securities exchange, capital trade point or self regulatory organisation.

Power of the Commission to prohibit trading in particular securities.

(2) If, after receiving the notice given under subsection (1) of this section, the securities exchange or capital trade point or self regulatory organisation fails to take action to prevent trading in the securities to which the notice relates, the Commission may, by notice in writing, to the securities exchange, capital trade point or other self regulatory organisation prohibit trading in the securities of the body corporate during such period,

not exceeding 14 days; provided that the Commission shall have the power by notice in writing to increase the period for a further period not exceeding 30 days at a time.

(3) A securities exchange, capital trade point or any other self regulatory organisation, which permits trading in securities in contravention of a notice under subsection (2) of this section is liable to a penalty of ₦1,000,000 and a further sum of ₦50,000 for every day during which the contravention continues.

(4) Where, after the expiration of the second period of suspension of trading in the securities of a body corporate, the body corporate, securities exchange, capital trade point or self regulatory organisation, still refuses to comply with the directives of the Commission given pursuant to the provisions of this section, the Commission may-

(a) revoke the registration of either or both the body corporate and securities exchange, capital trade point or self regulatory organisation;

(b) refuse to consider or process any further request or application for approval, registration or consent made or to be made to the Commission by the body corporate or securities exchange, capital trade point or self regulatory organisation;

(c) apply to the Court under the Companies and Allied Matters Act for-

(i) the winding up of the body corporate or securities exchange, capital trade point or self regulatory organisation;

(ii) an official receiver to take over management under supervision of the court in respect of the registered company or securities exchange, capital trade point or self regulatory organization as if the Commission were a creditor thereof

(d) after giving a hearing to serving officers, appoint competent person(s) nominated by the Commission in place of the serving chief executive officer and executive management and board of the registered company or securities exchange, capital trade point or self regulatory organisation;

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

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

**37** A securities exchange, capital trade point or any other self regulatory organisation shall maintain proper books of account and records relating to its operations which shall be made available for inspection by the Commission.

Securities exchange, etc. to maintain proper books of account.

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

Registration of capital market operators.

**38** (1). No persons shall-

(a) operate in the Nigerian capital market as an expert or professional or in any other capacity as may be determined by the Commission; or

(b) carry on investments and securities business unless the person is registered in accordance with this Act and the rules and regulations made thereunder.

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

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

(4) The Commission may by order suspend or cancel a certificate of registration in the manner prescribed but no order under this subsection shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(5) Where the Commission, after giving an officer of a capital market operator, an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with the provisions of this Act or any regulations made there under, the Commission may suspend or remove that officer from office.

(6) Where the Commission, after giving an officer of a capital market operator an opportunity of being heard, is satisfied that such officer has contravened, failed or refused to comply with any provision of this Act or any regulations made thereunder, the Commission may in the public interest or for the protection of investors, direct the capital market operator to suspend or remove the officer from office and where the capital market operator fails to comply with the directive of the Commission, the Commission may suspend or remove the officer from office.

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

Accounts to be kept by capital market operator.

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

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

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

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

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

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

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

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

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

(vi) all securities that are not the property of the capital market operator and for which the dealer or any nominee controlled by the security dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as securities for loans or advances made to the capital market operator,

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

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

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

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

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

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

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

(a) clients of the capital market operator;

(b) the capital market operator himself; and

(c) employees of the capital market operator.

(4) A capital market operator who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine of not less than ₦500,000 or to a term of imprisonment of not less than one year or to both such fine and imprisonment.

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

(4) of this section, sanction a capital market operator who violates the provisions of this section by imposing a penalty of not less than ₦500,000 and a further sum of not less than ₦5,000 for every day in which the violation continues.

**40** (1) A capital market operator shall maintain separate accounts for transactions carried out on behalf of different clients.

Maintenance of separate accounts and payment into certain trust accounts.

(2) No capital market operator shall mix the proceeds of the account of a client with other accounts whether belonging to the capital market operator or his clients.

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

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

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

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

(5) A capital market operator who contravenes or fails to comply with any of the provisions of this section is liable to a penalty of ₦100,000 and a further sum of ₦5,000 for every day the violation continues.

**41** (1) A capital market operator who withdraws money from a trust account without the requisite authority commits an offence and is liable on conviction to a fine of not less than ₦500,000 or to a term of imprisonment not less than one year or to both such fine and imprisonment.

Penalty for withdrawing money from trust account without authority.

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

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

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

(c) as may otherwise be authorised by law.

(3) The Commission may, in lieu of prosecution for the offence prescribed under subsection (1) of this section, sanction a capital market operator who violates the provisions of this section by imposing a penalty of not less than ₦500,000.

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

(5) A capital market operator who, withdraws money from a trust account with intent to defraud, commits an offence and is liable on conviction to a fine of not less than ₦500,000 or to imprisonment for a term of not less than one year or to both such fine and imprisonment.

**42** (1) A capital market operator shall not except as otherwise provided in this part of this Act pay his debts with any money held in a trust account.

Money in trust account not available for payment of debt.

(2) Monies held in a trust account shall be liable to be paid or taken in execution of an order of a court or tribunal.

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

Claims and lien not affected.

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

Right to copies of book entries of transactions and to inspect contract notes.

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

## **PART VII: INSPECTIONS AND INVESTIGATIONS**

**45** (1) The Commission shall conduct routine and special inspection and investigation of capital market operators.

Designation of officers of the Commission for supervision of certain capital market operators.

(2) There shall be an officer of the Commission who shall be assigned responsibility for the inspection and investigation of capital market operators to which this part applies.

(3) The officer shall carry on supervisory duties in respect of affected capital market operators and for that purpose shall-

(a) under conditions of confidentiality, examine periodically the books and affairs of each capital market operators;

(b) have a right of access at all times to the books, accounts and vouchers of capital market operators; and

(c) require from directors, managers and officers of capital market operators such information and explanation as he may deem necessary to the performance of his duties under this Act.

(4) The Commission shall where necessary, appoint other officers of the Commission to assist the officer designated under subsection (2) of this section.

(5) The officers may be designated examiners or have other titles as the Commission may specify.

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

(7) In examining the affairs of any capital market operator under this Act, an examiner shall at all times avoid unreasonable hindrance to the daily business of the capital market operator.

(8) Every capital market operator shall produce to the examiners at such times as the examiners may specify, all books, accounts, documents and information which they may require.

(9) This part of this Act applies to any capital market operator who is involved in the administration, management or custody of funds for or on behalf of clients including the management and operation of a collective investment scheme or the soliciting of investment in a collective investment scheme.

**46** The Commission shall, in the case of routine examination, forward a copy of the report arising from the examination together with the recommendations of the Commission, to the capital market operator concerned with instruction that it be placed before the meeting of the board of directors of the capital market operator specially convened for the purpose of considering the report and the recommendations thereon.

Routine examination and report.

**47** (1) The Commission shall order a special examination or investigation of the books and affairs of a capital market operator where it is satisfied that-

Special examination.

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

(b) the capital market operator has been carrying on its business in a manner detrimental to the interest of its clients, beneficiaries and creditors;

(c) the capital market operator has “insufficient” assets to cover its liabilities to the clients, beneficiaries and creditors;

(d) the capital market operator has been contravening the provisions of this Act; or

(e) an application is made therefore by-

(i) a director or shareholder of the capital market operator; or

(ii) a client, beneficiary or creditor of the capital market operator; Provided that in the case of paragraph (e) of this subsection, the Commission may not order a special examination or investigation of the books and affairs of a capital market operator if the Commission is satisfied that it is not necessary to do so.

(2) For the purpose of subsection (1) of this section, the Commission shall appoint one or more qualified persons other than the officers of the Commission to conduct special

examination or investigation, under conditions of confidentiality, of the books and affairs of the capital market operator.

(3) Nothing in this section or in any other section of this Act shall be construed as precluding the Commission from appointing one or more officers of the Commission as examiner apart from those mentioned under section 45 of this Act and ascribing to such officers such other designations as it deems fit, and from directing or requiring all or any of the officers to exercise all or any of the powers of the Commission under this Act.

**48** (1) Where, after an examination under section 49 of this Act or otherwise howsoever, the Commission is satisfied that the capital market operator is in a grave situation as regards the matters referred to under subsection (1) of section 49, or the capital market operator informs the Commission that-

Failing capital market operator.

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

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

(c) it is insolvent;

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

(2) The Commission may by order in writing pursuant to subsection (1) of this section-

(a) prohibit the capital market operator from receiving funds or other assets from the public for a period as may be set out in the order, and make the prohibition subject to such exceptions, and impose such conditions in relation to the exceptions as may be set out in the order, and from time to time, by further order similarly made, extend the period;

(b) require the capital market operator to take any steps or any action or to do or not to do any act or thing whatsoever, in relation to the capital market operator or its business or its directors or officers which the Commission may consider necessary and which is set out in the order, within such times as may be stipulated therein;

(c) remove for reasons to be recorded in writing, with effect from such date as may be set out in the order, any manager or officer of the capital market operator, notwithstanding anything in any written law, or any limitations contained in the memorandum and articles of association of the capital market operator;

(d) in respect of a capital market operator, notwithstanding anything in any written law or any limitations contained in the memorandum and articles of association of the capital market operator, and in particular, notwithstanding any limitation therein as to the minimum or maximum number of directors, and for reasons to be recorded in writing-

(i) remove from office, with effect from such date as may be set out in the order, any director of the capital market operator; or

(ii) appoint any person or persons to manage the affairs of the capital market operator in the interim, and provide in the order for the person or persons so appointed to be paid by the capital market operator such remuneration as may be set out in the order;

(e) appoint any person to advise the capital market operator in relation to the proper conduct of its business, and provide in the order for the person so appointed to be paid by the capital market operator such remuneration as may be set out in the order.

**49** (1) If, after taking steps under section 48 of this Act as in the opinion of the Commission may be appropriate in the circumstance, the state of affairs of the capital market operator concerned does not improve significantly, the Commission may assume control of the whole of the property and affairs of the capital market operator, carry on the whole of its business and affairs or assume control of such part of its property, business and affairs as the Commission considers necessary or appoint persons to do so on behalf of the Commission.

Control of failing capital market operator.

(2) Where the Commission or an appointed person has assumed control of the business of a capital market operator in pursuance of subsection (1) of this section, the capital market operator shall submit its capital market business to the control of the Commission and shall provide the Commission or appointed person with such facilities as the Commission or the appointed person may require to carry on the business of the capital market operator and notwithstanding the provisions of this section, all capital market operators shall cooperate with the Commission at all times.

**50** (1) Where the Commission or an appointed person has assumed control of the business of a capital market operator pursuant to section 49 of this Act, the Commission or an appointed person shall remain in control of and continue to carry on the business of the capital market operator in the name and on behalf of the capital market operator until such time as-

Management of failing capital market operator.

(a) the Commission is satisfied that adequate provision has been made for the repayment of investors; or

(b) in the opinion of the Commission, it is no longer necessary for the Commission to remain in control of the business of the capital market operator.

(2) The cost and expenses of the Commission or the remuneration of an appointed person, as the case may be, shall be payable from the funds and properties of the capital market operator as a first charge on the funds of the capital market operator.

**51** Notwithstanding anything contained in any law or memorandum and articles of association of a capital market operator, where the Commission or an appointed person has, pursuant to an order under section 49 of this Act, assumed control of a capital market operator whose paid-up capital is lost or unrepresented by available assets, the Commission may-

Power of the Commission to revoke registration or apply to Court.

(a) make an order revoking the capital market operator's registration; and

(b) apply to the Federal High Court for an order for the Commission or any person nominated by the Commission to purchase or acquire the capital market operator for a nominal fee for the purpose of its restructuring and subsequent sale.

**52** (1) No order under sections 48 and 51 of this Act shall be made unless the capital market operator in respect of which the order is to be made, and in the case of an order under paragraph (c) or (d) of subsection (2) of section 48 of this Act, the director, manager or officer who is to be removed from office, has been given a reasonable opportunity of making representations against or otherwise in respect of the proposed order.

Duty to notify capital market operator or person to be affected.

(2) The Commission, after due consideration of any representation made pursuant to subsection (1) of this section, may either confirm, modify, alter, vary or replace the earlier order in respect of which representation had been made.

**53** (1) Where the Commission makes an order revoking the registration of a capital market operator and requiring the business of that capital market operator to be wound up, the capital market operator shall, within fourteen days of the date of the order, apply to the Federal High Court for an order of winding up the affairs of that capital market operator and the Federal High Court shall hear the application in priority to all other matters.

Application to the Federal High Court for winding up.

(2) If the capital market operator fails to apply to the Federal High Court within the period specified in subsection (1) of this section the Commission may apply to the Federal High Court for the winding up of the capital market operator.

(3) The Commission, if satisfied that it is in the public interest to do so, may, without waiting for the period mentioned in subsection (1) of this section to elapse, appoint any person as the official receiver or provisional liquidator and the person so appointed shall have the power conferred by or under the Companies and Allied Matters Act 1990 and shall be deemed to have been appointed provisional liquidator by the Federal High Court for the purpose of that Act.

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(4) This section shall have effect and section 408 of the Companies and Allied Matters Act 1990 shall be construed as if the cancellation of the registration of a capital market operator under this Act had been included as a ground for winding up by the Federal High Court under this section.

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

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## **PART VIII: REGULATION OF SECURITIES**

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

**54** (1) All securities of a public company and all securities or investments of a collective investment scheme shall be registered with the Commission under the terms and conditions herein contained and as may be supplemented by regulations prescribed by the Commission from time to time.

Compulsory registration of securities and investments of public

(2) The issuer shall file with the Commission a registration statement which shall be signed by each issuer, its chief executive officer or officers, its principal financial officer and every person named as a member of the board of directors or persons performing similar functions and in case the issuer is a foreign person, by its duly authorised representative in Nigeria.

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

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

(5) No securities or investments of a public company or collective investment scheme shall be issued, transferred, sold or offered for subscription by or sale to the public without the prior registration of the securities or investment with the Commission.

(6) Any person who issues, transfers, sells, or offers for subscription or sale to the public, the securities or investments of a public company or collective investment scheme without the prior registration of the securities or investments with the Commission commits an offence and is liable on conviction to a fine of ₦1,000,000 or to a term of imprisonment of 3 years or to both such fine and imprisonment.

(7) The Commission may, in lieu of a prosecution under subsection (2) of this section, impose a penalty of ₦1,000,000 and a further sum of ₦5,000 for every day which the violation continues.

**55** (1) Securities registered by the Commission including securities issued pursuant to part XIII of this Act, may be issued or transferred electronically or by any other means or system approved by the Commission under such terms and conditions as the Commission may prescribe, through a securities exchange or capital trade point or any other self regulatory organisation.

Electronic and  
other means of  
issuing and  
transferring  
securities.

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

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

Register of  
securities.

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

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

(4) For the purposes of this subsection, an acquisition or disposal of securities, shall be

deemed to be a change in the interest of any person.

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

**57** (1) A capital market operator to whom this part of this Act applies shall, in the prescribed form, give notice to the Commission of such particulars relating to the register of securities as may be prescribed including the location of the register.

Particulars of register.

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

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

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

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

(4) A person who fails or neglects to give the notice required under this section commits an offence and is liable on conviction to a fine not less than ₦100,000 or to a term of imprisonment not less than six months or to such fine and imprisonment.

(5) The Commission may, in lieu of a prosecution under subsection (4) of this section, impose a penalty of not less than ₦100,000 and a further sum of not less than ₦5,000 for every day violation continues.

**58** (1) The Commission or any person authorised by it in that behalf may require any person to whom this part of this Act applies to produce for inspection, the register required to be kept pursuant to section 56 of this Act and the Commission or any person so authorised may take extracts there from.

Production of register.

(2) Any person who fails to produce a register for inspection or fails to allow any person authorised under subsection (1) of this section to make a copy of or take extracts from the register commits an offence and is liable on conviction to a fine of not less than ₦50,000 or for a term of imprisonment of not less than six months or to both fine or imprisonment.

(3) The Commission may, in lieu of a prosecution under subsection (2) of this section, impose a penalty of not less than ₦100,000 and a further sum of ₦5,000 for every day during which the violation continues.

**59** The Commission may supply a copy of the extract of a register obtained under subsection (1) of section 58 of this Act to any person who, in the opinion of the Commission, should in the public interest be informed of the dealings in securities disclosed in the register.

Extracts of register.

## B — CORPORATE RESPONSIBILITY OF PUBLIC COMPANIES

**60** (1) A public company whose securities are required to be registered under this Act shall file with the Commission on a periodic or annual basis, its audited financial statements and such other returns as may be prescribed by the Commission from time to time.

Filing of annual and periodic reports with the Commission.

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

- (a) the signing officer has reviewed the report;
- (b) based on the knowledge of the officer, the report does not contain
  - (i) any untrue statement of a material fact, or
  - (ii) omit to state a material fact, which would make the statement, misleading in the light of the circumstances under which such statement was made;
- (c) based on the knowledge of such officer, the financial statements and other financial information included in the report fairly present in all material respects the financial condition and results of operations of the company as of, and for the periods presented in the report.
- (d) the signing officers-
  - (i) are responsible for establishing and maintaining internal controls.
  - (ii) have designed such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities particularly during the period in which the periodic reports are being prepared;
  - (iii) have evaluated the effectiveness of the company's internal controls as of date within 90 days prior to the report;
  - (iv) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;
- (e) the signing officers have disclosed to the Auditors of the company and audit committee-
  - (i) all significant deficiencies in the design or operation of internal controls which would adversely affect the company's ability to record, process, summarise and report financial data and have identified for the company's Auditors any material weakness in internal controls, and
  - (ii) any fraud, whether or not material, that involves management or other employees who have significant role in the company's internal controls;

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

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

System of internal control of public companies.

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

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

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

Auditors of public companies to register with the Commission.

**63** An auditor of a public company shall, in his audit report to the company, issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the public company.

Duty of auditor to report on internal controls of public companies.

**64** A listed public company shall within 20 working days prior to the commencement of a quarter disclose to the relevant securities exchange its quarterly earning forecast.

Disclosure of quarterly earning forecasts by listed public companies.

**65** (1) A public company who contravenes the provisions of sections 60, 61, 62, 63 and 64 is liable to a penalty of not less than ₦1,000,000 and a further penalty of ₦25,000 per day for the period the violation continues.

Penalties for contravention of sections 60, 61, 62, 63 and 64.

(2) An Auditor who contravenes the provisions of sections 60, 61, 62, 63 and 64 is liable to a penalty of ₦100,000 and a further penalty of ₦5,000 per day for the period the violation continues.

## C — IN GENERAL

**66** (1) Where a contravention of any provision under this part is committed by a body corporate and it is proved that the contravention has been committed-

Contravention of part VIII by bodies corporate.

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

(b) as a result of a director, manager, secretary or other similar officer, servant or

agent of the body corporate or any person purporting to act in any such capacity knowingly or wilfully authorising the contravention, the director, manager, secretary or other similar officer, servant or agent of the body corporate or any person purporting to act in any such capacity shall be deemed liable to the same extent as the corporate body.

(2) The Commission may administratively apply any of the penalties prescribed for the contravention of any of the provisions of this part.

**PART IX: PUBLIC OFFER AND SALE OF SECURITIES AND INVITATIONS TO THE PUBLIC**

**67** (1) No person shall make any invitation to the public to acquire or dispose of any securities of a body corporate or to deposit money with any body corporate for a fixed period or payable at call, whether bearing or not bearing interest unless the body corporate concerned is-

Control of invitations to the public.

(a) a public company, whether quoted or unquoted, and the provisions of sections 73 to 87 of this Act are duly complied with; or

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

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

(2) If an invitation to the public is made in breach of subsection (1) of this section, all persons making the invitation and every officer who is in default or any body corporate making the invitation shall each be separately liable to a penalty of ₦500,000 in the case of a body corporate and ₦100,000 in the case of an individual.

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

(a) rescind such transactions; and

(b) either in addition to or in place of rescinding the transaction, recover compensation for any loss sustained by him from any person who is liable whether convicted or not, in respect of the breach.

(4) Where, in accordance with subsection (3) of this section, any person claims to rescind any transaction, he shall do so within a reasonable time and shall not be entitled to rescind any transaction with the body corporate or to recover compensation from it unless he takes steps to rescind the transaction before the commencement of the winding-up of the body corporate:

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

**68** (1) A public company making an invitation to the public to deposit money with it shall, prior to the making of the invitation, obtain the written consent of the Commission and shall only make the invitation in accordance with such conditions and restrictions as may be imposed by the Commission.

Invitation to the public to deposit money by public companies.

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

(3) If any advertisement or circular used in connection with the invitation contains any untrue statement then, subject to subsection (4) of this section, any person who made the invitation and every person who was a director of a company making the invitation at the time when the advertisement or circular was published commits an offence and is liable on conviction to pay compensation to any person who deposited money with the public company having relied on the advertisement or circular, for any loss they may have sustained by reason of such untrue statement.

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

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

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

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

**69** (1) For the purposes of this Act, an invitation shall be deemed to be an invitation to the public if it is an offer or invitation to make an offer which is -

Meaning of invitation to the public.

- (a) published, advertised or disseminated by newspaper, broadcasting, cinematograph or any other means whatsoever;
- (b) made to or circulated among any persons whether selected as members or as debenture holders of the company concerned or as clients of the persons making or circulating the invitation or in any other manner;
- (c) made to anyone or more persons upon the terms that the person or persons to

whom it is made may renounce or assign the benefit of the offer or invitation or any of the securities to be obtained under it in favour of any other person or persons;

(d) made to any one or more persons to acquire any securities dealt in by a securities exchange or capital trade point or in respect of which the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange or capital trade point.

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

(3) For the purpose of this section, the issuance of any form of application for securities or of any form whatsoever to be completed on the deposit of money with a company shall be deemed to be an invitation to acquire those shares or to deposit money.

**70** Where any company allots or agrees to allot any of its securities to any person with a view to the public being invited to acquire any of those securities then, for all the purposes of this Act, any invitation so made shall be deemed to be an invitation to the public made by the company as well as by the person actually making the invitation, and any person who acquires any such securities in response to the invitation shall be deemed to be an allottee from the company of those securities:

Offers for sale deemed to be made by the company.

Provided that where-

(a) an invitation to the public is made in respect of any such securities within six months after the allotment or agreement to allot; or

(b) at the date when the invitation to the public was made, the whole consideration to be received by the company in respect of those securities had not been so received, it shall be deemed, unless the contrary is proved, that the allotment or agreement to allot was made by the company with a view to an invitation to the public being made in respect of those securities.

**71** (1) Subject to the provisions of section 76 of this Act, no person shall issue any form of application to deposit money for the purpose of subscribing to, purchasing or in any way acquiring the securities of a public company unless the form is issued with a prospectus which complies with the requirements of section 79 of this Act:

Form of application for shares to be issued with prospectus.

(2) Where the form of application to deposit money referred to in subsection (1) of this section is issued in respect of debenture securities, the form shall in addition be accompanied with a trust deed.

(3) This section shall not apply if it is shown that the form of application was issued either -

(a) in connection with a bona fide invitation to a person to enter into an underwriting

agreement with respect to the shares; or

(b) in relation to shares which were not offered to the public.

(4) A person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of not less than ₦100,000.

**72** A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

Effective date of a prospectus.

**73** (1) Subject to the provisions of section 76 of this Act, every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state the matters specified in part I of the third Schedule to this Bill and set out the reports specified in part II of that Schedule and parts I and II shall have effect subject to the provisions contained in that Schedule.

Contents of a prospectus.

Schedule

(2) Any condition requiring or binding an applicant for shares in a company to waive compliance with any requirement of this section or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) Where there is non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if he proves that-

(a) as regards any matter not disclosed, he was not a party to it; or

(b) the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the Tribunal were immaterial or was otherwise such as should, in the opinion of the Tribunal, having regard to all the circumstances of the case, reasonably be excused, Provided that, where there is a failure to include in a prospectus a statement with respect to the matters specified by regulations, no director or other person shall incur any liability in respect of the failure, unless it is proved that he had knowledge of the matters not disclosed.

**74** The provisions of sections 71 and 73 of this Act shall not apply to the issue-

Exemption from application of provisions relating to prospectus in certain cases.

(a) made to the existing members of a company or to a prospectus or form of application relating to shares in the company whether or not an applicant for shares has the right to renounce in favour of other persons; or

(b) of a prospectus or form of application relating to securities which are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a securities exchange or capital trade point.

**75** (1) No person shall without the prior approval of the Commission issue, circulate, publish, disseminate or distribute any notice, circular or advertisement to the public which —

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

- (a) offers for subscription or purchase of securities in a company;
- (b) invites subscription for or purchase of securities; or
- (c) calls attention to-
  - (i) an offer or intended offer for subscription or purchase of securities in a company;
  - (ii) an invitation or intended invitation to subscribe for or purchase any such securities; or
  - (iii) a prospectus.

(2) This section shall not apply to-

- (a) a notice or circular which relates to an offer or invitation not made or issued to the public;
- (b) a registered prospectus;
- (c) a notice, circular or advertisement which calls attention to a registered prospectus and states that allotments of, or contracts with respect to the shares referred to in the prospectus shall be made only on the basis of one of the forms of application referred to in and attached to a copy of the prospectus and contains no other information or matter other than some or all of the following information, namely-
  - (i) the number and description of the securities in the company to which the prospectus relates,
  - (ii) the name of the company, the date of its incorporation and the number of the company's issued securities and where the issue price of any securities is to be paid by installments, the amounts paid and unpaid on those issued securities,
  - (iii) the general nature of its main business or the proposed main business of the company,
  - (iv) the names, addresses and occupation of the directors or proposed directors,
  - (v) the names and addresses of the brokers or underwriters (if any), to the issue,
  - (vi) the name of the securities exchange or capital trade point (if any) of which

the brokers or underwriters to the issue are members,

(vii) particulars of the time and place at which copies of the registered prospectus and form of application for the shares to which it relates may be obtained; and

(d) a notice or circular which-

(i) accompanies a notice or circular referred to in paragraphs (a) or (c) of this section;

(ii) is issued or circulated by a person whose ordinary business includes advising clients in connection with their investments and is issued or circulated only to clients so advised in the course of that business;

(iii) contains a statement that the investment to which it or the accompanying document relates is recommended by that person; and

(iv) where the person is an underwriter or sub-underwriter of an issue of securities to which the notice or circular relates, contains a statement that the person making the recommendation is an underwriter or sub-underwriter as the case may be.

(3) This section applies to notices, circulars and advertisements published or disseminated by a newspaper, radio or television broadcasting, cinematograph or any other means.

(4) A person who-

(a) contravenes the provisions of this section; or

(b) knowingly authorises or permits an act which constitutes a contravention of this section, commits an offence and is liable on conviction to a fine of ₦100,000 or to a term of imprisonment of not less than three years or to both such fine and imprisonment.

(5) The Commission may, in lieu of a prosecution pursuant to subsection (4) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than ₦100,000 and a further sum of not less than ₦5,000 for every day the violation continues.

(6) Where a notice, circular or advertisement relating to a company is issued, circulated, published, disseminated or distributed in contravention of this section by or with the authority or permission of an officer of the company, the company is liable to a penalty of ₦500,000 and a further sum of not less than ₦25,000 for every day the violation continues.

76 Where-

Exemption  
certificate and

(a) it is proposed to offer any securities in a company to the public by a prospectus issued generally (that is to say to persons who are not existing members of the company); and effect.

(b) the application is made to a securities exchange or capital trade point for permission for those securities to be dealt in or quoted on that securities exchange or capital trade point;

the securities exchange or capital trade point to which the application is made may, at the request of the applicant, grant a certificate of exemption that is, a certificate that, having regard to the proposal (as stated in the request) as to the size and other circumstances of the issue of securities and as to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Third Schedule to this Act will be unduly cumbersome.

Third Schedule

(2) If a certificate of exemption is given and the proposal mentioned in subsection (1) of this section are complied with and the particulars and information required to be published in connection with the application for permission made to the securities exchange or capital trade point are so published, then-

(a) a prospectus giving the relevant particulars and information, in the form in which they are so required to be published, shall be deemed to comply with the requirements of the Third schedule to this Act; and

Third Schedule

(b) after the permission applied for is granted, sections 71 and 73 of this Act shall not apply to any issue of a prospectus or form of application relating to the securities.

**77** (1) A prospectus inviting persons to subscribe for securities in a company and including a statement purporting to be made by an expert shall not be issued unless-

Expert's statement on prospectus.

(a) the expert has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his written consent to the issue of the statement included in the form and context in which it is; and

(b) a statement appears in the prospectus that the expert has given and has not withdrawn his consent.

(2) If any prospectus is issued in contravention of this section, the company and every person who is knowingly a party to the issue commits an offence and is liable on conviction to a fine of ~~₹~~100,000 or a term of imprisonment of not less than three years or to both such fine and imprisonment.

(3) The Commission may, in lieu of a prosecution for the offence prescribed in subsection two of this section, impose a penalty of not less than ~~₹~~100,000 and a further penalty of not less than ~~₹~~5,000 for every day the violation continues.

**78** (1) Notwithstanding the provisions of section 67 of this Act, no person shall make an invitation to the public to acquire or dispose of any securities of a public company if-

Prospectus on invitation to the

public to  
acquire or  
dispose of  
securities.

(a) within six months prior to the making of the invitation, a prospectus relating to such securities and complying in all respects with the relevant provisions of sections 75, 76 and 79 of this Act has been delivered to the Commission and registered by it, in accordance with section 80 of this Act;

(b) every person to whom the invitation is made is supplied with a true copy of such prospectus as filed with the Commission; and

(c) every copy of the prospectus states on its face that it has been registered with the Commission at the time when the invitation is first made and the date of registration is reflected thereon .

(2) The provisions of paragraph (b) of subsection (1) of this section does not apply to an invitation made by or through a member of a securities exchange or capital trade point to a client of that member or to an invitation made by or through an exempted dealer.

**79** (1) Except as provided in section 76 of this Act, where a public company invites the public to acquire its securities, the prospectus referred to in section 77 of this Act shall state the matters specified in Part 1 of the Third Schedule to this Act and set out the report specified in Part II of the same Shedule.

General and  
restricted  
invitations to the  
public.

(2) Subsection (1) of this section shall not apply to an invitation by a company in respect of its shares -

(a) made solely to the existing shareholders of that company; or

(b) which in all respects is uniform with its existing listed shares.

(3) A prospectus relating to any invitation to the public to acquire or dispose of any securities of a public company, being an invitation not falling within subsection (1) of this section, either because it does not invite the public to acquire any securities or because it is excluded from the ambit of that subsection, may not state all the matters or set out the reports specified in the Third Schedule to this Act but shall not contain any untrue statement, and if the securities to which it relates are dealt in on any securities exchange or capital trade point or if application has been, or is being made to a securities exchange or capital trade point for permission to deal in those securities the prospectus shall-

Third Schedule

(a) state that the securities to be dealt in on that securities exchange or capital trade point or, as the case may be, that application has been or is to be made for permission for the securities to be dealt in on that securities exchange or capital trade point;

(b) state whether or not that securities exchange or capital trade point is an approved securities organisation within the meaning of this Act; and

(c) contain the particulars and information required by that securities exchange or

capital trade point, and in any other case, shall state that the securities are not dealt in on any securities exchange or capital trade point.

(4) An invitation falling within subsection (1) of this section shall, hereafter in this Act be described as a "general invitation" and an invitation falling within subsection (2) of this section shall, hereafter in this Act be described as a "restricted invitation".

**80** (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Commission a copy of the prospectus for registration, signed by every person who is named in it as a director of the company, or by his agent authorised in writing and having endorsed on it or attached to it-

Registration of prospectus.

(a) any consent to the issue of the prospectus required by section 68 of this Act from any person as an expert; and

(b) in the case of a prospectus issued generally, a copy of any contract required by paragraph 11 of the Third Schedule to this Act to be stated in the prospectus; and

Third Schedule

(c) in the case of a prospectus deemed by virtue of a certificate granted under section 67 of this Act to comply with the requirements of the Third Schedule, a contract or a copy of such contract or a memorandum of a contract which was made available for inspection in connection with the application made under that section to the securities exchange or capital trade point; and

(d) where the persons making any report required by Part II of the Third Schedule to this Act have made in it or without giving the reasons have indicated in it any such adjustments as are mentioned in paragraph 21 of the Third Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.

(2) The references in paragraphs (b) and (c) of subsection (1) of this section to the copy of a contract required to be endorsed on or attached to a prospectus shall -

(a) in the case of a contract wholly or partly in any language other than English, be taken as references to a copy of a translation in English of the parts of the contract that are in any other languages other than English from the original language of the contract being a translation certified in any manner acceptable to the Commission to be a correct translation.

(b) in the case of a copy of a contract or memorandum of a contract required to be made available for inspection under paragraph (c) of subsection (1) of this section, and which is wholly or partly in any language other than English, shall include a reference to a copy of a translation of the contract or memorandum or a copy embodying a translation of a part of it and certified in a manner acceptable to the Commission.

(3) Every prospectus shall, on the face of it-

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify or refer to statements included in the prospectus which specify any document required by this section to be endorsed on or attached to the copy so delivered.

(4) The Commission shall not register a prospectus unless it is satisfied that -

(a) it is dated and signed as required by this section;

(b) it has endorsed on it or attached to it the documents (if any) specified; and

(c) the prospectus otherwise complies with the requirements of this Act.

(5) Where the Commission refuses to register a prospectus on the ground that it fails to comply with the requirements of this Act, an aggrieved person may appeal to the Tribunal established by this Act within twenty-one days after notification of the refusal by the Commission.

(6) If a prospectus is issued without a copy of it being delivered under this section to the Commission or without the copy so delivered having endorsed on it or attached to it the documents required under this Act the company and every person who is knowingly a party to the issue of the prospectus, shall be jointly and severally liable to a penalty of not less than ₦25,000 in the case of a company and not less than ₦5,000 in the case of other persons for every day from the date of issue of the prospectus until a copy of it is so delivered with the required documents endorsed on it or attached to it.

**81** A company limited by shares shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus or a statement in lieu of prospectus, except with the approval of the statutory meeting.

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

**82** (1) Where a company allots or agrees to allot any securities in the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the statements in and omissions from prospectus or otherwise relating to a prospectuses, shall apply and have effect accordingly as if-

Document with offer of securities for sale to be deemed a prospectus.

(a) the securities have been offered to the public for subscription; and

(b) persons accepting the offer in respect of any shares, are subscribers for those securities but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise.

(2) For the purposes of this Act shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot securities was made with a view to the shares being offered for sale to the public if it is shown-

(a) that an offer of all or any part of the securities for sale to the public was made within six months after the allotment or agreement to allot; or.

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the securities had been so received.

(3) The provisions of section 73 of this Act as applicable to this section shall have effect as if it requires a prospectus to state in addition to the matters required by that section to be stated in a prospectus, the following-

(a) the amount of the consideration received by the company in respect of the securities to which the offer relates; and

(b) the place and time at which the contract under which the said securities have been or are to be allotted may be inspected, and section 80 of this Act as applied by this section shall have effect as though the persons making the offer were named in a prospectus as directors of that company.

(4) Where a person making an offer to which this section relates is a company it shall be sufficient if the document is signed on behalf of the company by two directors of the company or by such other persons as may be authorised in writing by the company.

**83** For the purposes of the provisions of this Act, a statement -

Interpretation as to prospectus statements.

(a) included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) shall be deemed to be included in a prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated or issued with it.

**84** A statement in lieu of prospectus shall be in the form and contain the particulars set out in part I of the fourth schedule to this Act and, in the cases mentioned in Part II of that schedule, set out the reports specified therein, and the said parts I and II shall have effect subject to the provisions contained in part III of that schedule.

Form of statement in lieu of prospectus.

Fourth Schedule

**85** (1) Where a prospectus invites persons to subscribe for shares in a company, the persons referred to in subsection (2) of this section shall be liable to pay compensation to all persons who subscribe for shares or debentures relying on the prospectus for the loss or damage they may have sustained by reason of any untrue statement or mis-statement included in it.

Civil liability for mis-statements in prospectus.

(2) A person liable to pay compensation under subsection (1) of this section includes-

(a) any director of the company at the time of the issue of the prospectus;

(b) any person who consented to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) any employee of the company who participated in or facilitated the production of the prospectus; and

(d) the issuing house and its principal officers.

(3) Where under section 77 of this Act the consent of a person is required to the issue of a prospectus and he has given that consent he shall not by reason only of his having given the consent be liable under this section as a person who has authorised the issue of prospectus except in respect of an untrue statement or mis-statement purported to be made by him as an expert.

(4) No person shall be liable under subsection (1) of this section if he proves-

(a) that, having consented to become a director of the company, he withdrew his consent in writing before the issue of the prospectus, and that it was issued without his authority or consent;

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he immediately gave reasonable public notice that it was issued without his knowledge or consent;

(c) that, after the issue of the prospectus and before allotment, he, on becoming aware of any untrue statement or mis-statement in it, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or

(d) that, as regards every untrue statement or mis-statement-

(i) not purporting to be made on the authority of an expert, or of an official public document or statement, he had reasonable ground to believe and did up to the time of the allotment of the shares, as the case may be, believe that the statement was true,

(ii) purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 77 of this Act to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, and

(iii) purporting to be a statement made by an official person or contained in what purports to be a copy of or an extract from an official public document, it was a correct and fair representation of the statement or copy of or extract from the document.

(5) The provisions of subsection (4) of this section shall not apply in the case of a person liable by reason of his having given a consent required of him by section 77 of this Act

as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert.

(6) A person who, apart from this subsection, would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section 60 of this Act as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves that -

(a) having given his consent under section 77 of this Act to the issue of the prospectus, he withdraws it in writing before delivery of a copy of the prospectus for registration; or

(b) after delivery of a copy of the prospectus for registration and before allotment he, on becoming aware of the untrue statement or mis-statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or

(c) he was competent to make the statement and that he had reasonable ground to believe and did, up to the time of the allotment of the shares, believe that the statement was true.

(7) Where-

(a) the prospectus contains the name of a person as a director of the company or as having agreed to become a director of the company and he has not consented to become director, or has withdrawn his consent in writing before the issue of the prospectus, and has not authorised or consented to such issue; or

(b) the consent of a person is required under section 77 of this Act to the issue of the prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus;

the directors of the company, except a director without whose knowledge or consent the prospectus was issued, and any other person who authorised such issue, commits an offence and is liable to indemnify the person so named or whose consent was so required, as the case may be against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect of the issue of the prospectus or the inclusion in the prospectus of the statement.

(8) A person shall not be deemed for the purpose of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section 77 of this Act to the inclusion in it of a statement purporting to be made by him as an expert.

**86** (1) Where a prospectus includes any untrue statement or mis-statement, any director or Criminal

officer who authorised the issue of the prospectus commits an offence and is liable-

liability for mis-statement in prospectus.

(a) on conviction to a fine of not less than ~~₦~~1,000,000,000 or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment; or

(b) on summary conviction, to a fine of not less than ~~₦~~1,000,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 77 of this Act to the inclusion in it of a statement purporting to be made by him as an expert.

**87** (1) Where a statement in lieu of prospectus includes any untrue statement or mis-statement, any person who authorised the delivery of the statement in lieu of prospectus for registration commits an offence and is liable-

Criminal liability in respect of statements in lieu of prospectus.

(a) on conviction to a fine of not less than ₦1,000,000,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or

(b) on summary conviction, to a fine not exceeding ₦1,000,000,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, unless he proves either that the untrue statement or mis-statement was immaterial or that he had reasonable ground to believe and did, up to the time of the delivery for registration of the statement in lieu of prospectus, believe that the untrue statement or mis-statement was true.

(2) For the purposes of this section-

(a) any information included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form or context in which it is included; and

(b) an information shall be deemed to be included in a statement in lieu of prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of it or by reference incorporated in it.

**88** Where a public offer of securities is made, whether listed or not, under such rules and regulations as may be laid down by the Commission, the issuer and the issuing house shall be responsible for the allotment of the securities of the company, subject to the approval of such allotment by the Commission in accordance with the guidelines prescribed under the rules and regulations made hereunder.

Allotment of securities.

**89** (1) No allotment shall be made of any securities in a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the

Opening of subscription lists.

prospectus; and in this Act, the beginning of the said third day or such later time, as mentioned in this subsection, is hereafter referred to as "the time of the opening of the subscriptions lists."

(2) In subsection (1) of this section, the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement, provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the provisions of subsection (1) or (2) of this section but, in the event of any such contravention, the company and every director or officer is liable to a penalty of not less than ₦50,000.

(4) In the application of this section to a prospectus offering securities for sale, the provisions of subsections (1), (2) and (3) of this section shall have effect with the substitution of references to sale, for references to allotment, and with the substitution for reference to the company and every director or officer of the company who is in default, or reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for securities in a company made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day following the opening of the subscription lists, unless before the expiration of the said third day, a person responsible under section 86 of this Act for the prospectus, has given a public notice having the effect under that section of excluding or limiting the responsibility of the person giving the public notice.

(6) In reckoning for the purposes of this section and section 95 of this Act, the third day after another day or any intervening day which is a Saturday or Sunday or which is a public holiday in any part of Nigeria shall be disregarded, and if the third day (as so reckoned) is itself a Saturday or Sunday or such a public holiday there shall for the said purpose be substituted the first day after which is none of them.

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

No allotment unless minimum subscription received.

**91** (1) Application monies and other monies paid prior to allotment of shares by an applicant on account of shares or other securities shall, until the allotment of the shares or other securities, be held in a separate account as deposit by the issuing house on such terms and condition as may be prescribed by the Commission.

Application monies to be held in trust until allotment.

(2) If any default is made in complying with the provisions of subsection (1) of this section, the issuing house who knowingly and wilfully authorises or permits the default is liable on conviction to pay a fine of not less than ₦100,000 or to imprisonment for a term of not less than six months or to both such fine and imprisonment

(3) The Commission may, in lieu of a prosecution under subsection (2) of this section, also sanction a person who contravenes the provisions of subsection (1) of this section by imposing a penalty of not less than ₦500,000 and a further sum of not less than ₦5,000 for every day in which the violation continues.

**92** (1) A public company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares unless, at least three days before the first allotment of the shares, there has been delivered to the Commission for registration :-

Prohibition of allotment in certain cases.

(a) a statement in lieu of prospectus signed by every person who is named in it as a director of the company or by his agent authorised in writing in the form and the particulars set out in Part I of the Fourth Schedule to this Act; and

Fourth Schedule.

(b) in the cases mentioned in Part II of the Fourth Schedule, setting out the specified reports, and the said Parts I and II of the Fourth Schedule shall have effect subject to the provisions contained in Part III of that schedule.

Fourth Schedule

(2) Every statement in lieu of a prospectus delivered under subsection (1) of this section shall, where the persons making any such statement have made in it or have, without giving the reasons, indicated in it any such adjustments as are mentioned in paragraph 6 of the Fourth Schedule to this Act have endorsed on or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for the adjustments.

(3) If a company acts in contravention of subsection (1) or (2) of this section, the company and every director of the company who knowingly and willfully authorises or permits the contravention commits an offence and is liable on conviction to a fine of not less than ₦100,000 or to a term of imprisonment of not less than three years or to both such fine and imprisonment.

(4) The Commission may, in lieu of a prosecution under subsection (3) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty of not less than ₦500,000 and a further penalty of not less than ₦5,000 for every day the violation continues.

**93** (1) An allotment made by a company to an applicant in contravention of the provisions of sections 90 and 92 of this Act shall be voidable at the instance of the applicant-

Effect of irregular allotment.

(a) within one month after the holding of the statutory meeting of the company; or

(b) where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and the allotments shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of the provisions of sections 90 and 92 of this Act with respect to an

allotment, he shall be liable to compensate the company and the allottee respectively, for any loss, damage or costs which the company or the allottee may have sustained or incurred thereby but proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

**94** A shareholder may bring an action against a company which has allotted shares under a prospectus for the rescission of all allotments and the repayment to the holders of the shares of the whole or part of the issued price which has been paid in respect of them if the prospectus :-

Action for rescission.

(a) contained a material statement, promise or forecast which was false, deceptive or misleading; or

(b) did not contain a statement, report or account required to be contained in it by section 75 and the Third Schedule to this Bill.

**95** (1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the securities offered by it to be dealt with on any securities exchange or capital trade point, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has-

Allotment of securities and dealing on securities exchange, etc.

(a) not been applied for before the third day after the first issue of the prospectus; or

(b) been refused before the expiration of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the securities exchange or capital trade point.

(2) Where permission for a dealing referred to in subsection (1) of this section has been applied for or if applied for has been refused, the company shall immediately repay, without interest, all monies received from applicants in pursuance of the prospectus and if the monies are not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay the monies with interest at the current bank rate per annum from the expiration of the eight days, but a director shall not be liable if he proves that the default in the repayment of the monies was not due to any misconduct or negligence on his part.

(3) All monies received by virtue of this section shall be kept in a separate trust account on such terms and conditions as may be prescribed by the Commission so long as the issuing house may become liable to repay the monies specified under subsection (2) of this section; and if default is made in complying with this subsection, the issuing house and any of its officers, who is in default shall be jointly and severally liable to a penalty of ₦1,000,000 and a further sum of not less than ₦50,000 for everyday the violation continues.

(4) Any condition requiring or binding any applicant for securities to waive compliance with any requirement of this section is void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is

intimated that the application for permission, though not at the time granted, shall be given further consideration.

(6) This section shall have effect-

(a) in relation to any securities agreed to be taken by a person underwriting an offer by a prospectus as if he had applied for them in pursuance of the prospectus; and

(b) in relation to a prospectus offering securities for sale, with the following modifications -

(i) references to sale shall be substituted for references to allotment,

(ii) the persons by whom the offer is made and shall be liable under subsection (2) of this section to repay monies received from applicants, and references to the company's liability under that subsection shall be construed accordingly, and

(iii) for the references in subsection (3) of this section to the company and every officer of the company who is in default there shall be substituted references to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

**96** (1) The Commission shall have the power to prescribe the maximum period within which surplus monies due to subscribers shall be returned.

Return of surplus monies to subscribers, etc.

(2) The Commission may, subject to subsection (3) of this section, prescribe the rate of interest payable to subscribers whose surplus monies are held beyond the period prescribed pursuant to subsection (1) of this section.

(3) The interest due and payable under subsection (2) of this section shall not be less than one per cent above the Central Bank of Nigeria minimum rediscount rate and the Commission may, in addition, require a company which fails to honour its obligation under this subsection to pay a higher rate of interest on the surplus monies.

(4) A person who fails to comply with the provisions of this section is liable to a penalty of ₦1,000,000 and a further sum of not less than ₦50,000 for every day the violation continues.

## **PART X: CONDUCT OF SECURITIES BUSINESS**

**97** For the purpose of this Act, no cash transaction shall be carried out in the capital market in excess of an amount to be determined by the Commission from time to time.

Prohibition of certain cash transactions.

**98** A securities dealer shall, within the prescribed time and in respect of every securities transaction either as a principal or agent, issue a contract note which complies with section 99 of this Act.

Securities dealer to issue Contract notes.

**99** (1) A contract note given by a securities dealer under section 98 of this Act shall include-

Contents of contract notes.

(a) the name and style under which the securities dealer carries on his business as a securities dealer and the address of the principal place at which he so carries on his business;

(b) the name and address of the person to whom the securities dealer gives the contract note;

(c) the date on which the transaction took place and, if outside a securities exchange or capital trade point, a statement to that effect;

(d) the number, amount and description of the securities which are the subject of the contract;

(e) the price per unit of the securities;

(f) the amount of the consideration;

(g) the rate and amount of commission (if any) charged;

(h) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and

(i) if the settlement amount with or without benefit is to be added to or deducted from the settlement amount in respect of right to a benefit purchased or sold together with the securities, the first-mentioned amount and the nature of the benefit.

(2) A securities dealer shall not include in a contract note given under subsection (1) of this section the name and style which he knows, or is reasonably expected to know is not the name of the person with or for whom he has entered into the transaction.

(3) A reference in this section to a securities dealer dealing or entering into a transaction as principal includes a reference to a person-

(a) dealing or entering into a transaction on behalf of a person associated with him;

(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or

(c) where he carries on business as a securities dealer on behalf of a body corporate in which his interest and the interest of his director together constitute a controlling interest.

(4) For the purpose of this section-

(a) a securities dealer who is a member of a securities exchange or capital trade point shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a securities exchange or capital trade point; and

(b) a transaction takes place in the ordinary course of business at a securities exchange or capital trade point in the prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.

(5) For the purpose of this section, a person is not associated with another person by reason only that he is a director of a body corporate of which the other person is also a director whether or not the body corporate carries on a business of dealing in securities.

(6) A securities dealer who fails to issue a contract note is liable to a penalty of not less than ₦50,000 and not more than ₦100,000.

(7) Any securities dealer or its principal officer who issues a contract note containing false or misleading information commits an offence and is liable to a penalty of ₦100,000, or an amount equivalent to four times the amount involved in the transaction, whichever ever is higher or on to a term of imprisonment not exceeding 3 years.

(8) Where an investor suffers a loss as a result of the contravention of sections 98 and 99 of this Act, the securities dealer shall refund to the investor an amount equivalent to the loss, together with interest at a rate to be prescribed by the Commission from time to time.

**100** (1) Where a securities dealer, investment adviser, underwriter or an associated person of a securities dealer, investment adviser or underwriter, issues circulars or other similar written communications with respect to securities or a class of securities in which he has interest, he shall disclose in legible form, the nature of that interest.

Disclosure of certain interests in securities by securities dealers, etc.

(2) For the purposes of subsection (1) of this section, interest shall include any financial benefit or advantage which will, or is likely to, accrue directly or indirectly on or arising out of the disposal of the securities.

(3) Where a securities dealer, investment adviser, underwriter or an associated person of a securities dealer, investment adviser or underwriter-

(a) has purchased securities for the purpose of offering all or any of them to the public for purchase; and

(b) offers to sell any of those securities to any person, he shall not make a recommendation with respect to the securities offered for the purpose unless he has informed each person to whom the recommendation is made that he purchased the securities for that purpose.

(4) Where-

(a) securities have been offered for subscription or purchase; and

(b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been

subscribed for or purchased, he shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities, otherwise than in the ordinary course of trading on a securities exchange or capital trade point, or make a recommendation with respect to those securities within a period to be prescribed by the Commission from time to time, unless the offer or recommendation complies with the provisions of subsection (5).

(5) An offer or recommendation shall not be made under subsection (4) of this section unless it contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities which he has acquired, or is or will or may be required to acquire under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(6) A person who is a securities dealer, investment adviser, or the representative of a securities dealer or investment adviser shall not issue to any person any circular or other communication or written offer or recommendation to which subsection (1), (3) or (4) of this section applies unless the circular or other communication or the written offer or recommendation is signed by a director, executive officer or secretary in the case of a corporate body, and that individual in the case of a natural person.

(7) Where a person who is a securities dealer, investment adviser, or the representative of a securities dealer or investment adviser issues to any person a circular or other communication or a written offer or recommendation to which subsection (1), (3), (4) or (5) of this section applies, the first mentioned person shall preserve for a period of 7 years a copy of the circular or other communication or of the written offer or recommendation, duly signed by any of the persons mentioned in subsection (6) of this section.

(8) Reference in this section to an offer of securities shall be construed to include a reference to a statement that is not an offer but expressly or impliedly invites a person to whom it is made, to offer to acquire securities.

(9) Any person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not less than ₦100,000 and not more than ₦500,000, or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

**101** (1) A securities dealer shall not as a principal deal in any securities with a person who is not a securities dealer unless that other securities dealer is acting in the transaction as principal and not as agent.

Dealing as principal.

(2) A reference in this section to a securities dealer dealing or entering into a transaction as principal includes a reference to a person-

(a) dealing or entering into a transaction on behalf of a person associated with him;

(b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or

(c) where he carries on business as a dealer for a body corporate in which his interest and the interests of his directors together constitute a controlling interest.

(3) A securities dealer who, as a principal, enters into a transaction of sale or purchase of securities with a person who is not a securities dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.

(4) The provisions of subsection (1) of this section shall not apply in relation to a transaction entered into by a dealer who is a member of a securities exchange or capital trade point and specialises in transactions relating to odd lots of securities being a transaction of sale or purchase of an odd lot of securities.

(5) Where a securities dealer fails to comply with subsection (1) or (3) of this section in respect of a contract for sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the securities dealer not later than 30 days after the receipt of the contract note.

(6) Where a dealer fails to comply with subsection (1) or (3) of this section in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

(7) Nothing in subsections (5) and (6) of this section shall affect any right which a person has apart from the provisions of these subsections.

(8) A person who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine of not less than ₦20,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

**102** (1) A securities dealer shall not give an unsecured credit to an employee or to a person who is associated with the employee if-

Dealings by employees of securities dealers.

(a) the unsecured credit is given for the purpose of enabling or assisting the person to whom the unsecured credit is given to purchase or subscribe for any securities; or

(b) the person giving, authorising or approving the unsecured credit knows or has reason to believe that the unsecured credit will be used for the purpose of purchasing or subscribing for securities.

(2) A person who contravenes or fails to comply with any of the provisions of subsection one of this section commits an offence and is liable on conviction to a fine of not less than ₦100,000 and not more than ₦500,000, or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

**103** (1) A securities dealer shall not, except as permitted by subsection (3) of this section, whether as principal or on behalf of a person associated with him, enter into a transaction of purchase or sale of securities to be traded on the floor of a securities exchange or capital trade point if a client of the securities dealer who is not associated with the securities dealer has instructed the securities dealer to purchase or sell, respectively, securities of the same

Securities dealers to give priority to client's orders.

class and the dealer has not complied with the instruction.

(2) A securities dealer who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not less than ₦100,000 and not more than ₦500,000.

(3) The provisions of subsection (1) of this section shall not apply in relation to the entering into of a transaction by a securities dealer as principal or on behalf of a person associated with him if-

(a) the instruction from the client of the securities dealer requires the purchase or sale of securities on behalf of the client to be effected only on specified conditions at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities by reasons of those conditions; or

(b) the transaction is entered into in prescribed circumstances.

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

Securities lending and margin requirements.

(2) The Commission may also make regulations for securities lending transactions by securities dealers.

## **PART XI: TRADING IN SECURITIES**

**105** (1) A person shall not create, or cause to be created, or do anything which may create a false or misleading appearance —

False trading and market rigging transactions.

(a) of active trading in any securities on a securities exchange or capital trade point; or

(b) with respect to the market for the price of any such securities .

(2) A person shall not-

(a) by means of purchase or sale of any securities that do not involve a change in the beneficial ownership of those securities; or

(b) by any fictitious transactions or devices, maintain, inflate, depress, or cause fluctuations in the market price of any securities.

(3) Without prejudice to the generality of subsection (1) of this section, a person who-

(a) effects, participates in, is concerned with or carries out, either directly or indirectly, any transaction, sale or purchase of any securities, being a transaction, sale or purchase which does not involve any change in the beneficial ownership of the

securities; or

(b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposed to make or cause to be made, or knows that a person associated with him has made or caused to be made, an offer to purchase the same number, or substantially the same number of securities at a price which is substantially the same as the first mentioned price; or

(c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or cause to be made, an offer to sell the same number of securities at a price which is substantially the same as the first-mentioned price, shall be deemed to have created a false or misleading appearance of active trading in securities on a securities exchange or capital trade point.

(4) For an act referred to in subsection (3) of this section, it is a defence if a person establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a securities exchange or capital trade point.

**106** (1) A person shall not effect, take part in, be concerned with or carry out, either directly or indirectly, two or more transactions in securities of a body corporate being transactions which have, or are likely to have the effect of raising or lowering the price of securities of the body corporate on a securities exchange or capital trade point with intent to induce other persons to purchase, sell or subscribe for securities of the body corporate or of a related body corporate.

Securities  
market  
manipulation.

(2) A person shall not effect, take part in, be concerned with or carry out, either directly or indirectly, two or more transactions in securities of a body corporate, being transactions which have or are likely to have the effect of maintaining or stabilizing the price of securities of the body corporate on a securities exchange or capital trade point with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate.

(3) A reference in this section to a transaction in relation to securities of a body corporate include:

(a) a reference to the making of an offer to subscribe, sell or purchase such securities of the body corporate; and

(b) a reference to the making of an invitation however made which expressly or impliedly invites a person to offer to subscribe, sell or purchase such securities of the body corporate.

(4) No securities of a public company listed on any recognized securities exchange shall be bought or sold outside the facilities of a recognized exchange on which the securities are listed.

(5) Any person who contravenes the provisions of subsection (4) above shall be liable to a penalty of ₦500,000 in addition to a nullification of the said transaction.

**107** No person shall knowingly, recklessly or negligently make a statement, or disseminate information, which is false or misleading in any material particular and likely to induce the sale or purchase of the securities by other persons or likely to have the effect of raising, lowering, maintaining or establishing the market price of securities.

False or misleading statements.

**108** (1) No person shall-

Fraudulently inducing persons to deal in securities.

(a) make or publish any statement, promise or forecast which he knows to be misleading, false or deceptive; or

(b) dishonestly conceals material facts;

(c) recklessly make or publish, dishonestly or otherwise of any statement, promise or forecast which is misleading, false or deceptive; or

(d) record or store in, or by means of any mechanical, electronic or other device, create information which he knows to be false or misleading in a material particular with intent to induce or attempt to induce another person to deal in securities;

(e) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

(2) It is a defence to any liability under subsection (1) of this section if it is established that, at the time when the person so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

**109** A person shall not circulate or disseminate, or authorise or be concerned in the circulation or dissemination of any statement or illegal information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate which is related to that body corporate if —

Dissemination of illegal information.

(a) the person or a person associated with that person has entered into any such transaction or done any such act or thing; or

(b) the person has received or expects to receive directly or indirectly any consideration or benefit for circulating or disseminating or authorising or being concerned in the circulation or dissemination of the statement or information.

**110** No person shall directly or indirectly in connection with the purchase or sale of any securities to-

Prohibition of fraudulent means.

(a) employ any device, scheme or artifice to defraud; or

(b) engage in any act, practice or course of business which operate or would operate as a fraud or deceit upon any person.

**111** (1) Subject to section 104 of this Act, a person who is an insider of a company shall not buy or sell, or otherwise deal in the securities of the company which are offered to the public for sale or subscription if he has information which he knows is unpublished price sensitive information in relation to those securities

Prohibition of dealing in securities by insiders.

(2) The provisions of subsection (1) of this section applies where —

(a) a person has information which he knowingly obtains (directly or indirectly) from another person who-

(i) is connected with a particular company, or was at any time within the six months preceding the obtaining of the information, so connected,

(ii) the former person knows about, or has reasonable cause to know that the latter individual holds, the information by virtue of being so connected; and

(b) the former person knows or has reasonable cause to believe that, because of the latter's connection and position, it would be reasonable to expect him not to disclose the information except for the proper performance of the functions attached to that position.

(3) The former person mentioned in subsection (2) of this section-

(a) shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities; and

(b) shall not himself deal in securities of any other company if he knows that the information is unpublished price sensitive information in relation to those securities and it relates to any transaction (actual or contemplated) involving the first company and the other company, or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.

(4) Where a person is contemplating or has contemplated making (with or without another person) a take-over offer for a company in a particular capacity, that person shall not deal in securities of that company in another capacity if he knows that the offer is contemplated or is no longer contemplated and the offer is unpublished price sensitive information in relation to those securities.

(5) Where a person has knowingly obtained (directly or indirectly) from an individual to whom subsection (4) of this section applies, information that the offer referred to in that subsection is being contemplated or is no longer contemplated, the former person shall not himself deal in securities of that company if he knows that the information is unpublished price sensitive information in relation to those securities.

(6) A person who is for the time being prohibited by the provisions of this section from

dealing on an approved securities exchange or capital trade point in any securities shall not counsel or procure any other person to deal in those securities, knowing or having reasonable cause to believe that that person would deal in those securities.

**112** (1) This section applies to any information which-

Abuse of information obtained in official capacity.

(a) is held by a public officer or former public officer by virtue of his position or former position as a public officer, or is knowingly obtained by a person (directly or indirectly) from a public officer or former public officer who he knows or has reasonable cause to believe held the information by virtue of any such position;

(b) it is reasonable to expect a person in the position of a public officer or former position of a public officer not to disclose except for the proper performance of the functions attaching to that position; and

(c) the person holding it knows it is unpublished price sensitive information in relation to securities of a particular company (hereinafter referred to as "relevant securities").

(2) This section applies to a public officer holding information to which this section applies and to a person who knowingly obtained any such information (directly or indirectly) from a public officer or former public officer who that person knows or has reasonable cause to believe held the information by virtue of his position or former position as a public officer.

(3) Subject to section 113 of this Act a person to whom this section applies shall not-

(a) deal in any relevant securities;

(b) counsel or procure any other person to deal in any such securities, knowingly or having reasonable cause to believe that other person, would deal in those securities; or

(c) communicate to any other person the information held or (as the case may be) obtained as mentioned in subsection (2) of this section if he knows or has reasonable cause to believe that he or some other person shall make use of the information for the purpose of dealing or of counselling or procuring any other person to deal on a securities exchange or capital trade point in any such securities.

(4) If it appears to the Commission that the members, officers or employees of or persons otherwise connected with any body by appearing to it to exercise public functions may have access to unpublished price sensitive information relating to securities, the Commission may declare that those persons are public officers for the purposes of this section.

**113** The provisions of sections 111 and 112 of this Act do not prohibit a person by reason of his having any information from-

Actions not prohibited by sections 111 and 112 as dealings in securities by

(a) doing any particular thing otherwise than with a view to the making of a profit

or the avoidance of a loss (whether for himself or another person) by the use of that information; insiders.

(b) entering into a transaction in the course of the exercise in good faith of his functions as a liquidator, receiver or trustee in bankruptcy;

(c) doing any particular thing if the information-

(i) was obtained by him in the course of a business of a stockbroker in which he was engaged or employed, or

(ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business, and he does that thing in good faith in the course of that business; or

(d) doing any particular thing in relation to any particular securities, if the information was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business and he does that thing in good faith in the course of that business.

**114** Any transaction done in contravention of section 111 or 112 of this Act is avoidable at the instance of the Commission. Effect of contravention.

**115** Any person who contravenes any of the provisions of this part of this Act commits an offence and is liable on conviction — Criminal liability under this Part.

(a) in the case of a person not being a body corporate, to-

(i) a fine of not less than ₦500,000 or an amount equivalent to double the amount of profit derived by him or loss averted by the use of the information obtained in contravention of any of the provisions of this part; or

(ii) to imprisonment for a term not exceeding seven years; or

(b) in the case of a person being a body corporate, to a fine not less than ₦1,000,000 or an amount equivalent to twice the amount of profit derived by it or loss averted by the use of the information obtained in contravention of any of the provisions of this part.

**116** (1) A person who is liable under this part of this Act shall pay compensation at the order of the Commission or the Tribunal, as the case may be, to any aggrieved person who, in a transaction for the purchase or sale of securities entered into with the first-mentioned person or with a person acting for or on his behalf, suffers a loss by reason of the difference between the price at which the securities would have likely been dealt in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred. Compensation to be determined by the Commission or Tribunal.

(2) The amount of compensation for which a person is liable under subsection (1) of this section is the amount of the loss sustained by the person claiming the compensation or

any other amount as may be determined by the Commission or the Tribunal.

## **PART XII: MERGERS, TAKE-OVERS AND ACQUISITIONS**

**117** In this part-

Meaning of  
certain words  
used in this  
part.

"bid" means an invitation or an offer;

"company" without prejudice to the provisions of the Companies and Allied Matters Act, company as used in this Act means any body corporate and includes a firm or association of individuals";

"court" for the purpose of this Part means the Federal High Court;

"despatch" means communicate in any manner;

"director", in relation to a firm, means a partner in the firm.

"directors' circular" means a circular referred to in section 140 of this Act;

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

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

"offeree company" means a company whose shares are the subject of a take-over bid;

"offeror" means a person or two or more persons jointly or in concert who make a take-over bid;

"regulations" means regulations made by the Commission pursuant to this part of this Act;

"take over" means the acquisition by one company of sufficient shares in another company to give the acquiring company control over that other company;

"take-over bid" means a bid made for the purpose of a take-over as provided in section 132 of this Act.

**118** (1) Notwithstanding anything to the contrary contained in any other enactment, every merger, acquisition or business combination between or among companies shall be subject to the prior review and approval of the Commission.

Extent of  
application of  
this part.

(2) The provisions of this part of the Act shall apply to partnerships.

(3) Nothing in this section shall apply to holding companies acquiring shares solely for the purpose of investment and not using same by voting or otherwise to cause or attempt to cause a substantial restraint of competition or tend to create a monopoly in any line of business enterprise.

(4) Any transaction consummated pursuant to authority given by any Federal Government owned agency under any statutory provisions vesting such power in the agency, shall in addition be subject to the Commission's approval.

**119** (1) A merger means any amalgamation of the undertakings or any part of the undertakings or interest of two or more companies or the undertakings or part of the undertakings of one or more companies and one or more bodies corporate.

Meaning of merger.

(2) A merger contemplated in subsection (1) of this section may be achieved in any manner, including through-

(a) purchase or lease of the shares, interest or assets of the other company in question; or

(b) amalgamation or other combination with the other company in question.

(3) A person controls a company if that person-

(a) beneficially owns more than one half of the issued share capital of the company;

(b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;

(c) is able to appoint or to veto the appointment of a majority of the directors of the company;

(d) is a holding company, and the company is a subsidiary of that company as contemplated by the Companies and Allied Matters Act.

(e) in the case of a company that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e).

**120** (1) The Commission shall from time to time prescribe-

Thresholds and categories of mergers.

(a) a lower and an upper threshold of combined annual turnover or assets, or a lower and an upper threshold of combinations of turnover and assets in Nigeria, in general or in relation to specific industries, for purposes of determining categories of mergers;

(b) a method for the calculation of annual turnover or assets to be applied in relation to each of the prescribed thresholds.

(2) For the purpose of this part of this Act-

(a) "a small merger" means a merger or proposed merger with a value at or below the lower thresholds established in terms of subsection 1 (a);

(b) "an intermediate merger" means a merger or proposed merger with a value between the lower and upper thresholds established in terms of subsection 1 (a); and

(c) "a large merger" means a merger or proposed merger with a value at or above the upper threshold established in terms of subsection 1(a).

(4) Pending the time the Commission prescribes the thresholds referred to in subsection (1) of this section, the lower threshold shall be ~~₦~~500,000,000, while the upper threshold shall be ~~₦~~5,000,000,000.

**121** (1) Whenever required to consider a merger, the Commission shall-

Consideration of mergers.

(a) initially determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2) of this section; and

(b) if it appears that the merger is likely to substantially prevent or lessen competition, then determine -

(i) whether or not the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than, and off-set, the effects of any prevention or lessening of competition, that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented, and

(ii) whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3);

(c) otherwise, determine whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3);

(d) determine whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the merger.

(2) When determining whether or not a merger is likely to substantially prevent or lessen competition, the Commission shall assess the strength of competition in the relevant market, and the probability that the company, in the market after the merger, will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including —

(a) the actual and potential level of import competition in the market;

(b) the ease of entry into the market, including tariff and regulatory barriers;

(c) the level and trends of concentration, and history of collusion, in the market;

(d) the degree of countervailing power in the market;

(e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;

(f) the nature and extent of vertical integration in the market;

(g) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and

(h) whether the merger will result in the removal of an effective competitor.

(3) When determining whether a merger can or cannot be justified on public interest grounds, the Commission shall consider the effect that the merger will have on-

(a) a particular industrial sector or region;

(b) employment;

(c) the ability of small businesses to become competitive; and

(d) the ability of national industries to compete in international markets.

(4) After making the initial determination, the Commission may grant an approval in principle to the merger and direct the merging companies 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.

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

**122** (1) A party to a small merger-

(a) is not required to notify the Commission of that merger unless the Commission requires it to do so; and

(b) may implement the merger without approval unless required to notify the Commission.

(2) A party to a small merger may voluntarily notify the Commission of the merger at any time.

(3) Within 6 months after a small merger has commenced implementation, the Commission may require the parties to the merger to notify the Commission of the merger in the prescribed manner and form if, in the opinion of the Commission, having regard to the provisions of section 121 of this Act, the merger-

(a) may substantially prevent or lessen competition; or

Small merger  
notification and  
implementation.

(b) cannot be justified on public interest grounds.

(4) A party to a merger required to notify the Commission of a merger pursuant to subsection (3) of this section shall take no further steps to implement the merger until the merger has been approved or conditionally approved.

(5) Within 20 working days after all parties to a small merger have fulfilled all their notification requirements in the prescribed manner and form, the Commission-

(a) may extend the period in which it has to consider the proposed merger by a single period not exceeding 40 working days and, in that case, must issue an extension certificate to any party who notified it of the merger; or

(b) after having considered the merger in terms of section 121 of this Bill, shall notify the parties in the prescribed form of-

(i) its approval of the merger;

(ii) approval of the merger subject to any conditions;

(iii) the prohibition of the implementation of the merger, if it has not been implemented; or

(iv) if already implemented, a declaration that that merger is prohibited.

(6) 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 compromise or arrangement 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 from the compromise or arrangement; 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.

(7) An order under paragraph (d) of subsection (6) of this section shall not be made unless-

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

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

(8) 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 is by virtue of the compromise or arrangement cease to have effect.

(9) 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 ₦20,000.

(10) In this section-

(a) "property " includes property rights and powers of every description;

(b) "liabilities" includes rights, powers and duties of every description notwithstanding that such rights, powers and duties are of a personal character which could not generally be assigned or performed vicariously;

(11) If, upon the expiration of the 20 working days period provided for in subsection (5) or the extension contemplated in paragraph (a) thereof, the Commission has not notified the parties of its decision, the merger shall be deemed as having been approved, subject to section 127 of this Act.

(12) The Commission shall-

(a) publish a notice of the decision in the Gazette; and

(b) issue written reasons for the decision if-

(i) it prohibits or conditionally approves the merger; or

(ii) requested to do so by a party to the merger.

**123** (1) A party to an intermediate or a large merger shall notify the Commission of that merger in the prescribed manner and form.

(2) In the case of an intermediate or a large merger, the primary acquiring company

Notification and implementation of intermediate and large mergers.

and the primary target company shall each provide a copy of the notice contemplated in subsection (1) to-

(a) any registered trade union that represents a substantial number of its employees;  
or

(b) the employees concerned or representatives of the employees concerned, if there are no such registered trade unions.

(3) The parties to an intermediate or large merger shall not implement the merger until it has been approved, with or without conditions, by the Commission.

**124** (1) The Commission may investigate or appoint an inspector to investigate any merger, and may designate one or more persons to assist the inspector.

Merger investigations.

(2) The Commission may require any party to a merger to provide additional information in respect of the merger.

(3) Any person may voluntarily file any document, affidavit, statement or other relevant information in respect of a merger.

**125** (1) Within 20 working days after all parties to an intermediate merger have fulfilled all their notification requirements in the prescribed manner and form, the Commission after having considered the merger in terms of section 121 of this Act, may issue a certificate in the prescribed form-

Intermediate merger procedure before the Commission.

(a) approving the merger;

(b) approving the merger subject to any conditions; or

(c) prohibiting implementation of the merger.

(2) The Commission may extend the period in which it has to consider the proposed merger as provided by subsection (1) of this section by a single period not exceeding 40 working days and, in that case, shall issue an extension certificate to any party who notified it of the merger.

(3) If, upon the expiration of the 20 working days period provided for in subsection (1) of this section or of an extension contemplated in subsection (2) of this section, the Commission has not issued a certificate referred to in subsection (1) of this section, the merger shall be deemed as having been approved, subject to section 127 of this Act.

(4) The Commission shall-

(a) publish a notice of the decision referred to in subsection (2) of this section in the Gazette; and

(b) issue written reasons for the decision if -

(i) it prohibits or conditionally approves the merger, or

(ii) requested to do so by a party to the merger.

**126** After receiving notice of a large merger, the Commission shall-

Large merger procedure before the Commission.

(a) refer the notice to the court; and

(b) within 40 working days after all parties to a large merger have fulfilled all the prescribed notification requirements, forward to the Court a statement, whether or not implementation of the merger is-

(i) approved;

(ii) approved subject to any conditions; or

(iii) prohibited.

**127** (1) The Commission may revoke its own decision to approve or conditionally approve a small, intermediate or large merger if-

Revocation of merger approval.

(a) the decision was based on incorrect information for which a party to the merger is responsible;

(b) the approval was obtained by deceit; or

(c) a company concerned in the merger has breached an obligation attached to the decision.

(2) If the Commission revokes a decision to approve a merger under subsection (1) of this section, it may prohibit the merger even though a time limit prescribed in this part may have elapsed.

**128** (1) Where the Commission determines that the business practice of a company substantially prevents or lessens competition, the Commission may in the public interest order the break-up of the company into separate entities in such a way that its operations do not cause a substantial restraint of competition in its line of business or in the market.

Power to order the break-up of company.

(2) Before the break-up order becomes effective, the affected company shall have been notified by the Commission and given a specified time within which to make representation to the Commission.

(3) Thereafter the Commission shall refer the order to the Court for sanctioning.

**129** (1) Where a scheme or contract (not being a take-over bid under this part involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company") has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other

Power to acquire shares of dissenting shareholder.

than shares already held at the date of the offer by, or by a nominee for the transferee company or its subsidiary), the transferee company may at any time within two months after the expiration of the said four months give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(2) When a notice under subsection (1) of this section is given, the transferee company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks it fit to order otherwise.

(3) Where shares in the transferor company of the said class or classes as the shares whose transfer is involved are already held as specified in subsection (1) of this section to a value greater than one-tenth of the aggregate of their value and that of the share (other than those already held as specified in the said subsection) whose transfer is involved, the foregoing provisions of this section shall not apply unless-

(a) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved, or where those shares include shares, of different classes, of each class of them; and

(b) the holders who approve the scheme or contract besides holding not less than nine tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, shall not be less than three-quarters in number of the holders of those shares.

(4) Where a notice has been given by the transferee company under subsection (1) of this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall-

(a) on the expiration of one month from the date on which the notice has been given, or if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its behalf by the transferee company;

(b) pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(6) In this section, "dissenting shareholder" includes a shareholder who has not

assented to the scheme or contract and any shareholder who has failed or refused to transfer to the transferee company in accordance with the scheme or contract.

**130** (1) This section shall apply where, in pursuance of any such scheme of merger, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first- mentioned company held by, or by a nominee for the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares.

Right of a dissenting shareholder to compel acquisition of his shares.

(2) The transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holder of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract.

(3) Any such holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question.

(4) If a shareholder gives notice under subsection (3) of this section with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed on as the court hearing the application of either the transferee company or the shareholder thinks fit.

**131** (1) Where any person-

Take over.

(a) acquires 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 (or any lower or higher threshold as may be prescribed by the Commission from time to time) of the voting rights of a company; or

(b) together with persons acting in concert with him, holds not less than 30% but not more than 50 per cent (or a lower or higher threshold as may be prescribed by the Commission from time to time) of the voting rights and such person or any person acting in concert with him, acquires additional shares which increase his percentage of the voting rights, such person shall make a take over offer to the holder of any class of equity share capital in which such person or any person acting in concert with him holds shares.

(2) All shareholders of the same class of an offeree company shall be treated similarly by an offeror.

(3) During the course of an offer or when an offer is in contemplation, neither an offeror nor the offeree company nor any of the representatives and advisers of the offeror or offeree shall furnish information to some shareholders which is not made available to all shareholders.

**132** (1) Any bid which constitutes a take-over bid shall be referred to as a bid under the take-over bids.

Take-over bid.

(2) A take-over bid shall be deemed to be dated as of the date on which a bid under the takeover bid is despatched or if such a bid is despatched on more than one date, on the latest date on which such a bid is despatched and for this purpose, a bid despatched by post shall be deemed dated as of the date on which it is posted.

(3) For the purposes of this section, where two or more persons acting separately, or acting separately through one or more than one agent each despatching a bid at approximately the same time to shareholders of the same company they shall, unless the contrary is proved, be deemed to have despatched a bid in concert if those persons so acting are persons comprised in any one of the following groups, namely-

(a) a holding company and its subsidiary or subsidiaries;

(b) two or more subsidiaries of the same holding company;

(c) a company and any associate company or companies;

(d) a group of a kind referred to in paragraph (a) or (b) of this subsection together with one or more than one company which is an associate of any company or companies in the group;

(e) a subsidiary and one or more than one associate of the holding company of the subsidiary;

(f) the pension fund of two or more companies in any group of a kind referred to in paragraphs (a) to (e) of this subsection; or

(g) any combination of-

(i) officers of one or more than one company in any group of a kind referred to in paragraphs (a) to (e) of this subsection;

(ii) members of the family or families of any such officer or officers, or

(iii) any such officer or officers and any such member or members, and for this purpose, the family of an officer includes a person (not being an officer) who is the husband or wife (including the reputed husband or wife), a child or the parents, of the officer.

(4) Where the shares in a company are not divided into two or more classes those shares shall, for the purposes of this Act, be deemed to constitute a class.

**133** (1) Subject to this section, a take-over bid shall be deemed to be made by a person who, either himself or through his agent, despatches a bid; or by two or more persons jointly or in concert who either themselves, or through their agent despatch a bid to shareholders at approximately the same time in order to acquire-

Person making a take-over bid.

(a) shares of any class in an offeree company which-

(i) either alone; or

(ii) if combined with shares of that class in the offeree company already, on the date of the takeover bid, beneficially owned or controlled directly or indirectly, by that person or any of them or any company belonging to the same group as that person or, as the case may be, those persons or any of them, or any company belonging to the same group as that person or, as the case may be, those persons or any of them, would exceed 30 per cent (or any lower or higher threshold as determined by the Commission from time to time) of the issued shares included in that class; or

(b) sufficient shares in the offeree company to make that company the subsidiary of that person or, as the case may be, of any of those persons; or

(c) sufficient shares in the offeree company to enable that person or, as the case may be, those persons or any of them to exercise or to control the exercise of not less than 30 per cent (or any lower or higher threshold as determined by the Commission from time to time) of the voting power at any general meeting of offeree company.

(2) Subject to this section, a take-over bid shall be deemed to be made by a company either by itself or through its agent, when it despatches a bid to its shareholders at approximately the same time in order to re-purchase the company's own shares.

(3) A take-over bid shall not be made in any case where a bid is despatched-

(a) to fewer than twenty shareholders or such other number as may be prescribed by the Commission, in order to purchase shares by way of separate agreements; Provided that a take-over bid shall be made in any case where a bid is despatched to such number of shareholders holding in the aggregate a total of 51 per cent of the issued and paid up shares of the company.

(b) to purchase shares in a company which has fewer than twenty or such other number as may be prescribed in the regulations; two or more persons who are joint shareholders being counted as one share holder; or

(c) in circumstances or for a purpose prescribed by regulations.

(4) A take-over bid shall not be made in any case where the shares to be acquired under a bid are shares in a private company.

**134** (1) Subject to subsection (8) of this section, no person or two or more persons jointly or in concert, shall make a take-over bid unless an authority to proceed with the take-over bid has been granted under this section and is in force at the date of the take-over bid.

Authority to proceed with take-over bid.

(2) An application for an authority to proceed with a takeover bid shall-

(a) be made to the Commission by or on behalf of the person or persons proposing to make the bid;

(b) give the name and other particulars of that person or those persons; and

(c) give particulars of the proposed bid and contain such information and be accompanied by documents or reports of such a kind as may be prescribed by regulations.

(3) The Commission may require the person or persons making an application to furnish it with such further information as it reasonably considers necessary to enable it make a decision on the application and that person or those persons shall, if it is in their power to do so, give the information to the Commission.

(4) The Commission may consult with such persons as it deems necessary in order to make a decision on an application.

(5) Except as may be necessary for the purpose of any consultation pursuant to subsection (4) of this section, the Commission shall keep confidential the contents of an application, any document or report accompanying an application and any information given pursuant to subsection (3) of this section.

(6) For the purpose of deciding whether or not to grant an authority to proceed with a takeover bid, the Commission shall have regard only to the likely effect of the takeover bid if successfully made-

(a) on the economy of Nigeria; and

(b) on any policy of the Federal Government with respect to manpower and development, and if the Commission is satisfied that none of the matters referred to in paragraphs (a) and (b) of this subsection would be adversely affected, it shall grant an authority to proceed with the proposed take-over bid, but if not so satisfied it shall refuse to do so.

(7) An authority to proceed with a proposed take-over bid shall be-

(a) in writing signed by or on behalf of the Commission;

(b) dated and give sufficient particulars of the proposed take-over bid to enable it to be identified.

(8) An authority to proceed with a take-over bid shall remain in force-

(a) for the period of three months following the date of authority; or

(b) for such longer period as the Commission may, on application made to it before the expiration of the period referred to in paragraph (a) of this subsection, allow.

**135** (1) No person or two or more persons jointly or in concert shall make a take-over bid unless a copy of any bid which it is proposed to despatch under the take-over bid, signed by or on behalf of that person or as the case may be, each of those persons, has been registered under this section.

Registration of copy of proposed bid.

(2) A copy of a proposed bid required to be registered under subsection (1) of this section shall be lodged with the Commission and, if the Commission is-

(a) satisfied that the proposed bid meets the requirements of subsection (1) or (2) of section 133 of this Act, shall register the copy; and

(b) if the Commission is not so satisfied, shall refuse to register the copy, and the Commission shall inform the person, or each person who signed the copy or on whose behalf the copy was signed, by a notice served on him, at an address provided by the person when the copy was lodged, that it has registered or, as the case may be, not registered the copy and give, its reasons for not doing so.

(3) Within thirty days after the service on him of a notice under subsection (2) of this section, a person may appeal the fact of the Commission's refusal to register a copy of a proposed bid to the Tribunal.

(4) The Tribunal may, after hearing an appeal under subsection (3) of this section, either order the Commission to register a copy of the proposed bid or uphold the decision of the Commission in which case the copy of the proposed bid shall not be registered.

(5) The fact that the Commission registers a copy of a proposed bid may not be relied on in any proceedings by any person as a representation that the bid satisfies the requirements of subsection (1) or (2) of section 133 of this Act.

(6) The Commission shall not register a copy of a proposed bid unless, where required, an authority to proceed with the take-over bid has been granted under section 134 of this Act and is then in force.

**136** (1) A bid, being an invitation, under a take-over bid, shall be incorporated in a document that-

Requirements as to bid under take-over bid.

(a) states the name and address of the offeror or, where two or more persons constitute the offeror, each offeror, and in the case of an offeror that is a corporation, a statement of the date on which the approval of the directors of the corporation was given pursuant to subsection (1) of section 137 of this Act.

(b) specifies the maximum number and other particulars of the shares in the offeree company proposed to be acquired during a period specified in the invitation;

(c) specifies the terms on which those shares are proposed to be acquired;

(d) specifies the number and other particulars of the shares in the offeree company to which-

(i) the offeror; and

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

(e) states, if applicable, the matter required to be stated by paragraph (c) of section 142 of this Act or paragraph (e) of section 144 of this Act; and

(f) specifies or sets out such other matters as may be prescribed by regulations to be included in the invitation.

(2) A bid, being an offer, under a take-over bid shall be incorporated in a document that-

(a) states or specifies the matter referred to in subsection (1) (a) and (b) of this section;

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

(c) specifies the terms of the offer in respect of those shares;

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

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

(f) states, if applicable, the matter required to be stated by paragraph (c) of section 142 of this Act or paragraph (e) of section 144 of this Act; and

(g) specifies or sets out such other matters as may be prescribed by regulations to be included in an offer.

**137** (1) A corporation shall not make a take-over bid either alone or with any other person, unless the making of the take over bid has been approved by a resolution of the board of directors of the corporation.

Corporation making take-over bid.

(2) If default is made in complying with the provisions of subsection (1) of this section, each director in default commits an offence and is liable on conviction to a fine of not less than so ₦100,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

**138** A bid under a take-over bid, and any amendment of such a bid shall be despatched by the offeror concurrently to-

Despatch of bid to shareholders, etc.

(a) each director of the offeree company;

(b) each shareholder of the offeree company; and

(c) the Commission.

**139** Where a bid under a take-over bid states that the consideration for the shares deposited pursuant to the bid is to be paid in money or partly in money, the offeror shall make adequate arrangements to ensure that funds are available to make the required monetary payment for those shares.

Arrangement  
for funds.

**140** (1) Where, under section 138 of this Act, a bid under a take-over bid is dispatched to each of the directors of an offeree company, the directors shall send a directors' circular to each shareholder of the offeree company and to the Commission at least seven days before the date on which the take-over bid, whichever is the earlier is, to take effect.

Directors'  
circular.

(2) Unless the directors of an offeree company send a directors' circular as required by subsection (1) of this section within ten days of the date of a take-over bid, the directors shall forthwith notify the shareholders and the Commission that a directors' circular shall be sent to them, and may recommend that no shares be tendered pursuant to the take-over bid until the directors' circular is sent.

(3) The notice required by subsection (2) of this section shall be in the form prescribed by regulations.

(4) Where a director of an offeree company is of the opinion that a take-over bid is not advantageous to the shareholders of the offeree company, or where a director disagrees with any statement in a directors' circular, he shall be entitled to indicate his opinion or disagreement in the directors' circular requiring his opinion or disagreement, he shall include in the circular a statement setting out the reasons for his opinion or disagreement.

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

(6) 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.

**141** (1) A bid under a take-over bid or a directors' circular shall not include a report, opinion or statement of legal practitioner, auditor, accountant, engineer, appraiser or other expert unless that person has consented in writing to the inclusion of the report, opinion or statement in the bid or circular.

Inclusion of  
expert's opinion  
in a bid.

(2) Upon the demand of the Commission, a person referred to in subsection (1) of this section, shall forthwith send to the Commission a copy of any report, opinion or statement referred to in that subsection which is made by that person and included in a bid or directors' circular, together with his consent to its inclusion.

**142** Where a bid under a take-over bid is for all the shares of a class in an offeree company-

Bid for all  
shares.

(a) shares deposited pursuant to the bid, if not taken up by the offeror, may be withdrawn by or on behalf of a shareholder in the offeree company at any time after sixty days following the date of the take-over bid;

(b) the offeror shall not take up shares deposited pursuant to the bid until ten days after the date of the take-over bid; and

(c) the offeror, if he so intends, shall state in the bid that he intends to invoke the right under section 143 of this Act to acquire the shares of shareholders of the offeree company who do not accept the bid and that the shareholder is entitled to dissent and to demand the fair value of his shares.

**143** (1) Where a bid under a take-over bid is for less than all the shares of any class in the offeree company-

Bid for less than all shares.

(a) the offeror shall not take up shares deposited pursuant to the bid until twenty-one days after the date of the takeover bid;

(b) the period of time within which shares may be deposited pursuant to the bid, or any extension thereof, shall not exceed thirty-five days from the date of the takeover bid; and

(c) if a greater number of shares is deposited pursuant to the bid than the offeror is bound or willing to take up and pay for, the shares taken up by the offeror shall be taken up rateably, disregarding fractions, according to the number of shares deposited by each shareholder.

(2) Where a bid under a take-over bid for all the shares of any class in the offeree company is converted by amendment or otherwise to a bid for less than all those shares, the bid shall be deemed to be a bid to which subsection (1) of this section applies.

**144** Where a bid under a take-over bid is for all or less than all the shares of any class in the offeree company-

Provisions applicable to every bid.

(a) shares deposited pursuant to the bid may be withdrawn by or on behalf of a shareholder in the offeree company at any time within ten days after the date of the take-over bid;

(b) shares deposited pursuant to the bid shall, if the terms stipulated by the offeror and not subsequently waived by him have been complied with, be taken up and paid for within fourteen days after the last day within which shares may be deposited pursuant to the bid;

(c) the period of time within which shares may be deposited pursuant to a bid shall be at least twenty-one days after the date of the take-over bid;

(d) if the terms of the bid are amended by increasing the consideration offered for the shares, the offeror shall pay the increased consideration to each shareholder whose

shares are taken up pursuant to the bid, whether or not the shares have been taken up before the amendment;

(e) 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, the offeror shall so state in the bid; and

(f) if the offeror purchases shares to which a bid related otherwise than pursuant to the bid during the period of time within which shares may be deposited pursuant to the bid

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(i) the payment otherwise than pursuant to the bid of an amount for a share that is greater than the amount offered in the bid shall be deemed to be an amendment of the bid to which paragraph (d) of this subsection applies;

(ii) the offeror shall immediately notify the shareholders in the offeree company, as provided under section 136 of this Act as to the increased consideration being offered for the shares;

(iii) the shares acquired otherwise than pursuant to the bid shall be counted to determine whether a condition as to minimum acceptance has been fulfilled; and

(iv) the shares acquired otherwise than pursuant to the bid shall not be counted among the shares taken up rateably under paragraph (c) of subsection (1) of section 143 of this Act.

**145** Where a take-over bid is made in relation to any company, the Commission shall cause to be placed on the file of the offeree company-

Duty of the Commission in relation to certain instruments.

(a) any bid or amendment received by it pursuant to section 138 of this Act; and

(b) any directors' circular received by it pursuant to section 140 of this Act.

**146** (1) For the purposes of this section-

Acquisition of shares of dissenting shareholders.

(a) where a take-over bid has been made in respect of all the shares included in a class of shares (other than shares to which the offeror or, where two or more persons constitute the offeror, any of those persons, or any company belonging to the same group of companies as that person or any of those persons, is entitled), the shares in respect of which that take-over offer was made shall be "shares subject to acquisition";

(b) "outstanding shares" means shares subject to acquisition in respect of which a take-over bid was made but has not been accepted; and

(c) a "dissenting offeree" means a person who is, or is entitled to be registered as a holder of outstanding shares.

(2) Where a take-over bid in respect of shares included in the class of shares referred to

in paragraph (a) of subsection (1) of this section representing not less than ninety per cent in number of shares subject to acquisition has been accepted, the offeror may, within one month after the date on which acceptance of the shares representing not less than that per cent is completed, give notice as prescribed to a dissenting offeree —

(a) to the effect that the take-over bid has been accepted as mentioned in this section;

(b) that the offeror is bound to take up and pay for or has taken up and paid for, shares of the offerees who accepted the take-over bid;

(c) informing the dissenting offeree as to the election which he is required to make under subsection (3) of this section giving particulars of that election; and

(d) informing the dissenting offeree as to the effect subsection (4) of this section and as to the requirements of subsection (5) of this section, giving particulars in each case.

(3) A dissenting offeree may, within twenty days of receiving a notice under subsection (2) of this section, by notice sent to the offeror elect-

(a) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offeree who accepted the take-over bid; or

(b) to demand payment of the fair value of his shares in accordance with section 147 of this Act.

(4) A dissenting offeree to whom a notice is given under subsection (2) of this section, who does not make any election as required by subsection (3) of this section, shall be deemed to have made an election under paragraph (a) of that subsection.

(5) A dissenting offeree shall, within twenty days after receiving a notice sent under subsection (2) of this section, send to the offeree company his share certificate of the class of shares to which the take-over bid relates.

(6) An offeror shall, within twenty days after he sends a notice under subsection (2) of this section to a dissenting offeree, pay or transfer to the offeree company the amount of money or other consideration that the offeror would have to pay if the dissenting offeree made an election under paragraph (a) of subsection (3) of this section, and the offeree company —

(a) shall be deemed to hold that amount of money or consideration in trust for the dissenting offeree; and

(b) shall pay the amount into a bank account established for the purpose, or place the consideration in the custody of a bank.

(7) An offeror shall-

(a) send to the offeree company a copy of every notice sent to a dissenting offeree under subsection (3) of this section; and

(b) notify the offeree company of the election made by a dissenting offeree under subsection (3) of this section or deemed to have been made by him under subsection (4) of this section.

(8) An offeror shall send to the Commission a copy of every notice sent to a dissenting offeree under subsection (2) of this section not later than one month after the date on which it is so sent.

**147** (1) This section applies where a dissenting offeree makes an election under paragraph (b) of subsection (3) of section 146 of this Act.

Procedure where dissenting offeree makes election.

(2) The offeror may, within twenty days after he had paid the money or transferred the other consideration under subsection (6) of this section apply to the court to fix the fair value of shares of the dissenting offeree.

(3) If an offeror fails to apply to the court under subsection (2) of this section, a dissenting offeree may apply to the court for the same purpose within a further period of twenty days.

(4) A dissenting offeree shall not be required to give securities for costs in an application made under subsection (2) or (3) of this section.

(5) Where an application is made under subsection (2) or (3) of this section-

(a) all dissenting offerees who made an election under paragraph (b) of subsection (3) of section 146 of this Act shall be joined as parties and bound by the decision of the court; and

(b) the offeror shall notify each affected dissenting offeree of the date and place of the application and of his right to appear and be heard in person or by counsel.

(6) Upon an application to the court under subsection (2) or (3) of this section, the court shall fix a fair value for the shares of all dissenting offerees who made an election under paragraph (b) of subsection (3) of section 146 of this Act.

(7) The court may, in its discretion, appoint one or more than one independent valuer to assist the court in fixing a fair value for the shares of a dissenting offeree.

(8) The final order of the court shall be made against the offeror in favour of each dissenting offeree who made an election under paragraph (b) of subsection (3) of section 146 of this Act and for the amount for his shares as fixed by the court.

(9) The court may, in connection with proceedings under this section, make an order, if it thinks fit and, without limiting the generality of the foregoing may :-

(a) by order, fix the amount of money or other consideration that is required to be held

in trust under subsection (6) of section 146 of this Act;

(b) order that money or other consideration be held in trust by a person other than the offeree company; or

(c) allow interest at the current bank rate on the amount payable to each dissenting offeree from the date he sends to the offeree company his share certificates under subsection (5) of section 146 of this Bill until the date of payment.

(10) Where the amount of money or other consideration fixed by the court under paragraph (a) of subsection (9) of this section exceeds that held on trust pursuant to any payment or transfer already made under subsection (6) of section 146 of this Bill by the offeror, the offeror shall :-

(a) make to the offeree company any payment or transfer necessary to comply with the order, and subsection (6) of section 146 of this Act shall apply in relation to the amount so paid or transferred; or

(b) if the court made an order under paragraph (b) of subsection (9) of this section, make that payment or transfer to the other person by whom the money or consideration is to be held in trust.

(11) Where the court makes an order under paragraph (b) of subsection (9) of this section-

(a) the order of the court shall operate to divest the offeree company of the money or other consideration subject to the trust and to vest it in the person named in the order on the like trust; and

(b) Subsection (6) of section 146 of this Act shall apply to money or other consideration paid or transferred pursuant to paragraph (b) of subsection (1) of this section to that person.

**148** (1) Where an offeree company is satisfied-

Duties of  
offeree  
company.

(a) in the case of dissenting offeree who makes an election under paragraph (a) of subsection (3) of section 146 of this Act or is deemed to have made such an election, that the offeror has made the payment or transfer required by subsection (6) of section 146 of this Act; and

(b) in the case of a dissenting offeree who made an election under paragraph (b) of subsection (3) of section 146 of this Act that the offeror has, in addition to making that payment or transfer, made any payment or transfer required under subsection (1) of section 147 of this Bill to be made by the offeror, the offeree company shall issue to the offeror a share certificate in respect of the shares that were held by the dissenting offeree.

(2) Where an offeree company is satisfied as provided in paragraph (a) or (b) of subsection (1) of this section, it shall:-

(a) in the case of a dissenting offeree who has complied with subsection (5) of section 146 of this Act, give to the dissenting offeree the money or other consideration to which he is entitled on application being made by him for that purpose or, if an order is made under paragraph (b) of subsection (9) of section 147 of this Act, notify the person holding the money or the property in trust that the dissenting offeree has complied with subsection (5) of section 146 of this Act; or

(b) in the case of a dissenting offeree who has not complied with subsection (5) of section 146 of this Act, send to the dissenting offeree a notice stating that-

(i) his shares have been cancelled;

(ii) a payment or transfer has been made under subsection (6) of section 146 of this Act or as the case may be, under subsection (6) of section 147 of this Act and subsection (10) thereof, giving particulars; and

(iii) the offeree company shall give or, as the case may be, authorise any person holding money or property in trust pursuant to an order made under paragraph (b) of subsection (9) of section 147 of this Act to give to the dissenting offeree the money or other consideration, to which he is entitled, when he complies with subsection (6) of section 146 of this Act.

(3) A person holding money or property in trust pursuant to an order made under paragraph (b) of subsection (9) of section 147 of this Act shall, when he has been notified as provided in paragraph (a) of subsection (2) of this section or given authority as provided in subsection (2) (b) (iii) of this section, give to a dissenting offeree the money or other consideration to which he is entitled on application being made by him for that purpose.

**149** (1) In this section, "trustee" means an offeree company or any person who holds money or property in trust pursuant to an order made under paragraph (b) of subsection (9) of section 147 of this Act.

General provisions as to payment.

(2) A trustee shall not be required to give money or other consideration to a person applying for it under section 148 of this Act unless he is satisfied that person is entitled to it.

(3) The court may-

(a) on the application of any person, direct that the person is or is not a person entitled under section 148 of this Act to any money or other consideration; or

(b) on the application of a trustee, direct that any money or other consideration held by the trustee and in respect of which no application has been made under section 148 of this Act in the period of three years after the nomination of the take-over bid concerned, be paid or transferred to, and held by the Commission, and in that event a claim by a person claiming to be entitled to the money or consideration shall be made to the Commission for determination.

**150** (1) The following subsections shall have effect when the aggregate number of-

Rights of remaining shareholders.

(a) shares included in a class of shares in an offeree company to which the offeror or, where two or more persons constitute the offeror, any of those persons become entitled in consequence of a take-over bid; and

(b) any other shares included in that class to which the offeror or, where two or more persons constitute the offeror, any of those persons, or any company belonging to the same group of companies as that person or any of those persons, was entitled before any bid under the take-over bid was despatched, is not less than ninety per cent of the issued shares included in that class.

(2) The offeror shall, within two months after the date on which the aggregate number of shares referred to in paragraphs (a) and (b) of subsection (1) of this section becomes not less than ninety per cent of the issued shares, give notice of that fact to the holders of the remaining shares included in that class who when the notice is given had not been given notice under subsection (2) of section 146 of this Act.

(3) A holder of the remaining shares referred to in subsection (2) of this section may, within two months after the giving of notice to him under that subsection, require the offeror to acquire shares included in that class of which he is the holder.

(4) Where a shareholder gives notice under subsection (3) of this section with respect to his shares, the offeror shall be entitled and bound to acquire those shares-

(a) on the term on which shares were acquired under the take-over bid; or

(b) on such terms as are agreed or as the court, on the application of the offeror or the shareholder, thinks fit to order.

(5) In determining, for the purposes of paragraph (a) of subsection (4) of this section, the terms on which shares are acquired under a take-over bid, the terms on which the shares of any dissenting offeree were acquired shall be ignored.

**151** (1) Where a person makes a take-over bid-

Offences in relation to take-over bids.

(a) to which section 134 of this Act applies and no authority to proceed with the takeover bid granted under that section is in force on the date of the take-over bid; or

(b) to which section 135 of this Act applies and a copy of a bid under the take-over bid has not been registered under that section, that person commits an offence and is liable on conviction to a fine of not less than ₦100,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(2) Where a person makes a take-over bid and a bid under the take-over bid does not comply-

(a) in the case of an invitation, with the requirements of subsection (1) of section 136

of this Act; or

(b) in the case of an offer, with the requirements of subsection (2) of section 136 of this Act, that person or each of those persons commits an offence and is liable on conviction to a fine of not less than ₦100,000 or to imprisonment for a term not exceeding twelve months or to both fine and imprisonment.

(3) Where a report, an opinion or a statement referred to in subsection (1) of section 141 of this Act is included contrary to that subsection-

(a) in a bid under a take-over bid, the offeror commits an offence; or

(b) in a directors' circular, each of the directors commits an offence, and is liable on conviction to a fine of not less than ₦100,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(4) Any person who fails to comply with a demand made by the Commission under subsection (2) of section 141 of this Act as required by that subsection commits an offence and is liable on conviction to a fine of not less than ₦100,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(5) Where an offence under any provision of this section (except paragraph (b) of subsection (3) of this section) is committed by a body corporate, every director of the body corporate in default shall be deemed to have committed the offence and liable on conviction to a fine of not less than ₦100,000 or to imprisonment for a term not less than twelve months or to both such fine and imprisonment.

(6) The Commission may in addition impose administrative sanctions on any person or persons contravening any of the provisions of this part of this Act.

### **PART XIII: COLLECTIVE INVESTMENT SCHEMES**

#### **A — GENERAL**

**152** In this part-

Definition of certain words used in this part.

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

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

"custodian" means a person who has custody as a bailee of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register as the beneficial owner of the securities;

"dealing in securities" means doing any of the following things (whether as a principal or as

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

"filing" means delivery to the Commission through mails or otherwise of all papers or applications required to be filed with the Commission pursuant to this Act and regulations made thereunder, and the date on which the papers or applications are actually received by the Commission at its principal office shall be the date of filing the papers or applications;

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

"income accrual" means any dividend or interest or any other income for distribution received by the trustee, custodian or manager on behalf of investors in a portfolio in the course of any income distribution period or carried forward from any previous income distribution period or due to such investors in respect of dividends or interest or any income declaration made but not yet distributed;

"issuer" means the person performing the duties of a manager pursuant to the provisions of the trust deed or other agreement under which the units or securities are issued;

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

"open-ended investment company" means a company with an authorised share capital whose article of association authorises the acquisition of its own shares, structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of shares representing a separate portfolio with a distinct investment policy;

"participatory interest" means any interest, undivided share or shares whether called a participatory interest, unit or by any other name, and whether the value of such interest, unit, undivided share or shares remain constant or varies from time to time, which may be acquired by an investor in a portfolio;

"prospectus" includes offer for sale, advertisement, circular, letter, notice, scheme of arrangement, or other equivalent document published or circulated relating to the collective investment scheme;

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

"scheme" means collective investment scheme;

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

"trustee" under a unit trust scheme or such other arrangement, means the person in whom the property for the time being subject to any trust created in pursuance of the scheme is or

may be vested in accordance with the terms of the trust;

"units" in relation to a unit trust scheme, means any units (described whether as units or otherwise) into which are divided the beneficial interest in the assets subject to any trust created under the scheme;

"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever.

**153** (1) "Collective investment scheme", means a scheme in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which-

Meaning of collective investment scheme, etc.

(a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;

(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme authorised by any other Act.

**154** (1) The Commission may approve a collective investment scheme which is administered as-

Types of collective investment scheme. Cap 59.

(a) unit trust scheme;

(b) open-ended investment company; or

(c) real estate investment company or trust.

(2) The Commission may by notice published in the Gazette, designate a scheme as constituting a collective investment scheme.

(3) For the purpose of this part of this Act the provisions of sections 160 and 161 of the Companies and Allied Matters Act 1990 shall not apply to a scheme constituted as an open ended investment company or real estate investment company.

**155** (1) A manager shall administer a collective investment scheme:-

Principles for the administration of the scheme.

(a) honestly and fairly;

(b) with skill, care and diligence; and

(c) in the interest of investors and the securities industry.

(2) Every authorised scheme shall adhere to the principle of segregation and identification,

as may be prescribed by the Commission from time to time.

**156** Before the manager of a scheme enters into a transaction with an investor-

Disclosure of information.

(a) information about the investment objectives of the scheme, the calculation of the net asset value and dealing prices, charges, risk factors and distribution of income accruals shall be disclosed to the investor; and

(b) information that is necessary to enable the investor to make an informed decision shall be given to the investor timeously and in a comprehensible manner.

**157** (1) The manager of a scheme shall-

Duties of manager of a scheme.

(a) avoid conflict between the interests of the manager and the interests of an investor;

(b) disclose the interests of its directors and management to the investor;

(c) maintain adequate financial resources to meet its commitments and to manage the risks to which its collective investment scheme is exposed;

(d) organise and control the scheme in a responsible manner;

(e) keep proper records;

(f) employ adequately trained staff and ensure that they are properly supervised;

(g) have well-defined compliance procedures; and

(h) promote investor education.

**158** (1) No person shall perform any act or enter into any agreement or transaction for the purpose of administering a scheme, unless such person is-

Requirements for administration of collective investment schemes.

(a) incorporated under the Companies and Allied Matters Act; and

(b) registered as a fund or portfolio manager by the Commission.

(2) Any person who contravenes the provisions of this section is liable to a penalty of not less than ₦100,000 and a further sum of ₦5,000 per day during which the contravention continues.

**159** (1) No person may, unless registered as a manager under this Act, include in or have as part of the name of its business or in any description of his business any reference to a collective investment scheme, open ended investment company, unit trust or real estate investment and no person who is not registered as a manager or trustee or custodian under this Act may perform any act calculated to lead the public to believe that any business carried on by such person consists of or is connected with the administration of a collective investment scheme.

Prohibition of misleading names and acts.

(2) Any person who contravenes the provision of this section is liable to a fine of not less than ₦100,000 and a further sum of ₦5,000 per day during which the contravention continues.

**160** (1) No person shall establish or operate a collective investment scheme or carry on or purport to carry on the business of a collective investment scheme unless such scheme is authorised by and registered with the Commission.

Authorisation of collective investment scheme.

(2) An application for authorization under this section shall be in the form prescribed by the Commission and shall be accompanied by such documents as may be prescribed, from time to time, by the Commission.

(3) Upon application to the Commission in accordance with this Act by the manager of a scheme, the Commission may authorise and register the scheme where-

(a) the Commission is satisfied that the competence in respect of matters of the kind with which they would be concerned in relation to a scheme and probity of the manager and its directors and management as well as external auditors, trustee or custodian, as the case may be, are such as to render them suitable to act as manager, trustee or custodian in respect of the scheme;

(b) the manager, trustee or custodian, of the scheme is-

(i) a body corporate which is incorporated under the Companies and Allied Matters Act,

(ii) having capital and reserve as may be prescribed by the Commission from time to time, and

(iii) registered by the Commission;

(c) the Commission is satisfied that the scheme is such that the effective control of its affairs is vested in the manager and exercised independently of the trustee or custodian of the scheme;

(d) the Commission is satisfied that the trust deed or custodial agreement is in compliance with the provisions of this Act and the rules and regulations of the Commission for the time being in force; and

(e) the name of the scheme is not, in the opinion of the Commission, undesirable.

(4) The Commission may refuse to authorise a scheme if in the opinion of the Commission it fails to comply with the provisions of this part of this Act and shall so notify the manager, trustee or custodian under the scheme stating its reasons for refusal within sixty days of filing the application.

**161** (1) It shall not be lawful for any person, directly or indirectly to deal in units or securities of a scheme (described whether as units, securities or otherwise) unless such units

Registration of units or

or securities have been duly registered with the Commission.

securities of a scheme.

(2) A scheme, or any other arrangement may be registered pursuant to this Act by the issuer filing an application with the Commission in accordance with the provisions of this part of this Act and the rules and regulations thereunder.

(3) Any application for registration of units or securities of a scheme or any other arrangement, filed pursuant to this section shall become effective on the sixtieth day after filing or such earlier date as the Commission may determine having due regard to the adequacy of the information contained in such application and registration shall be deemed effective only as regards the units or securities specified therein as proposed to be offered.

(4) The Commission shall establish and maintain a register of units or securities and collective investments schemes (in this part of this Act referred to as the "register")

(5) Any person who contravenes the provisions of this section is liable to a fine of not less than ₦100,000 and a further sum of ₦5,000 for every day the contravention continues.

**162** (1) No manager, trustee or custodian under a scheme shall make any alteration in the trust deed or custodial agreement in which are expressed the trusts of an authorised scheme or to make any change in the name of an authorised scheme without prior approval of the Commission.

Alteration of trust deed, custodial agreement or change of name of scheme to be approved by the Commission.

(2) A manager or trustee under a scheme who contravenes the provision of subsection (1) of this section, is liable to a fine of ₦100,000 and a further sum of ₦5,000 for every day the contravention continues.

**163** (1) Subject to the provisions of this section, the Commission may revoke the authorisation of a scheme if-

Revocation of authorisation of scheme.

(a) there is a contravention of any provision of this part of this Act or of any rule or regulation made thereunder; or

(b) the Commission is no longer satisfied in respect of the matter specified in subsection (3) (a), (c) and (d) of section 160 of this Act; or

(c) the interest of the holders of units or securities created under the scheme so requires.

(2) The Commission shall before such revocation-

(a) notify the manager and the trustee or custodian under the scheme and the manager and trustee or custodian may within twenty-one days from the date of such notification make representations in writing to the Commission in respect of the proposed revocation; and

(b) consider any representation duly made by the manager and trustee under the

scheme.

(3) The Commission shall communicate its decision to revoke its authorisation of the scheme within thirty days after the making of the representations or if none are made within thirty days after the last day for making of the representation under this section.

(4) Whenever the authorisation of a scheme under this Act is revoked, the Commission shall appoint-

(a) the trustee for the scheme; or

(b) if the trustee was found negligent in the discharge of its duties, an administrator to take over the property or undertaking of the manager to the scheme and the trustee or administrator so appointed shall be an agent of the unit holders and observe the utmost good faith towards them in any transaction on their behalf.

(5) Whenever the trustee or an administrator is so appointed, notice shall be given to the unit holders by publication of the revocation of the scheme and the appointment of the trustee or administrator in three (3) daily newspapers.

(6) The manager shall within seven days after the revocation, file with the Commission, a statement of the affairs of the scheme including names, addresses of all creditors, the securities held and such other information as may be prescribed by the Commission.

(7) The manager shall also submit a copy of the statement of affairs filed with the Commission pursuant to subsection (6) of this section to the trustee or administrator as the case may be.

(8) If any manager makes default in complying with the requirements of subsection (c) above, he shall be guilty of an offence and shall be liable to a fine of not less than ₦50,000 for every day during which the default continues.

(9) The trustee or administrator shall realise all the property or undertaking and buy all the units of the scheme at the price at which, for the time being, the manager buys units of the scheme subject to deduction of costs of realisation as well as the remuneration for the appointment and other costs as shall be approved by the Commission.

(10) The trustee or administrator so appointed shall within one month after his ceasing to act as the administrator or trustee, deliver to the Commission a statement of his receipts and payments during the period.

(11) Any trustee or administrator who fails to comply with the provisions of subsection (10) of this section shall be liable to a fine of ₦50,000.00 for every day during which the contravention continues.

**164** (1) Any letter, notice, circular or document prepared by the manager for the purpose of offering units or securities of a scheme to the public, shall be approved by the trustee or custodian as the case may be and submitted to the Commission for approval before such letter, notice, circular or document is published.

Approval of prospectus and other offer documents on scheme.

(2) There shall be included in the document referred to in subsection (1) of this section, information in relation to such matters (if any) as may be prescribed, from time to time, by the Commission.

**165** Any manager under a scheme who buys or sells by means of a letter, notice, circular, document or oral communication which-

Civil liabilities arising from prospectus.

(a) includes an untrue statement of a material fact; or

(b) omits to state a material fact necessary in order to make the statement, in the light of the circumstances under which it was made, not misleading; is liable to the purchaser of such units or securities who may bring an action before the Tribunal to recover the consideration paid for such units or securities, or for damages if he no longer owns the units or securities; the purchaser not knowing of such untruth or omission and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

**166** (1) Whenever the holder of units or securities of an authorised scheme so requests, the manager under the scheme, shall, within the time prescribed by the Commission, buy from the holder such number of those units or securities as the holder may specify at the price for the time being at which the manager buys units or securities of the scheme.

Redemption of units or securities.

(2) No manager of a scheme shall suspend the right or postpone the date of redemption of units or securities by a holder provided that such suspension or postponement may be done during public holidays or emergencies or when the stock exchange is closed or whenever the Commission permits it.

(3) Any manager of a scheme who contravenes the provisions of this section is liable to a fine of ₦500,000 and in addition shall be liable to a penalty of ₦50,000 for everyday the contravention continues.

**167** (1) No company that is a manager under a scheme or is a subsidiary or holding company of the manager or a director or a person engaged in the management of such a company shall carry out transactions for itself or himself, or make a profit for itself or himself from a transaction in any assets held under the scheme.

Prohibition of certain transactions and profits by manager under a scheme.

(2) A company that is a manager of a scheme constituted under a trust or is a subsidiary or holding company of the manager shall not :-

(a) borrow money on behalf of the scheme for the purpose of acquiring securities or other property for the scheme;

(b) lend money that is subject to the trusts of the scheme to a person to enable him to purchase units or securities of the scheme;

(c) mortgage, or charge or impose any other encumbrance on any securities or other property subject to the trust of the scheme; or

(d) engage in any transaction that is not in the interest of unit or security holders and of the scheme.

(3) Any person who contravenes the provisions of this section, commits an offence and is liable on conviction to a fine of ₦100,000 or to a term of imprisonment of not less than three years or to both such fine and imprisonment.

(4) The Commission may, in addition to a prosecution under subsection (3) of this section, sanction a person who contravenes the provisions of this section by imposing a penalty in an amount that is equal to the profits made from any such transaction or an amount of ₦50,000 whichever is higher.

**168** Any provision in the trust deed or custodial agreement in which are expressed the trusts or agreement created in pursuance of an authorised scheme shall be void in so far as it would have the effect of exempting the trustee or custodian under the scheme from or indemnifying it against liability for breach of trust or the custodial agreement where, having regard to the provisions of the trust deed or the custodial agreement conferring on him any powers, authorities or discretion, he fails to exercise the degree of care and diligence required of him as trustee or custodian.

Liability of trustees and custodian under a scheme.

**169** (1) The manager of an authorised scheme shall cause proper books of account to be kept and annual accounts to be prepared which shall give a fair and true view of the affairs of the scheme during each year covered by the accounts and the accounts shall be audited by a person appointed as auditor by the manager of the scheme with the consent of the trustee or custodian for the scheme.

Audit of accounts of a scheme and annual general meetings.

(2) A copy of the Auditors' report on the accounts and of such account certified by an Auditor shall be sent by the manager to the Commission and also published in national newspapers within three months after the end of the period to which the accounts relate or as the Commission may, from time to time, prescribe.

(3) The Auditor shall certify that the scheme has been operated within the provisions of this Act and the regulations prescribed by the Commission.

(4) The manager of an open-ended investment company and real estate investment company shall call an annual general meeting of investors with the consent of the trustee or custodian not later than four months after each year end to consider the accounts and other matters affecting the scheme.

(5) An extraordinary general meeting of unit holders of a scheme may be convened-

(a) at the request of the trustees;

(b) by a requisition of twenty-five percent of unit holders; or

(c) by the court on application by a member where the court is satisfied that it is just and equitable to do so.

**170** (1) A unit or security shall be valued at its fair market price.

Determination

(2) The Commission may by regulation prescribe the mode and method of determining the fair market price. of market price of units or securities.

**171** (1) A scheme fund shall be invested by a manager in accordance with the provisions of the trust deed or custodial agreement with the objectives of safety and maintenance of fair returns on amounts invested. Investment of a collective investment scheme.

(2) Subject to guidelines issued by the Commission, from time to time, the funds and assets of a scheme shall be invested in any of the following-

(a) bonds, bills and other securities issued or guaranteed by the Federal Government and the Central Bank of Nigeria;

(b) bonds, debentures, redeemable preference shares and other debt instruments issued by corporate entities listed on a securities exchange and registered under this Act;

(c) ordinary shares of public limited companies listed on a securities exchange and registered under this Act with good track records having declared and paid dividends in the preceding five years;

(d) bank deposits and bank securities of which the banks shall be rated by rating agencies registered by the Commission;

(e) investment certificates of closed-end investment fund or hybrid investment funds listed on a securities exchange and registered under this Act with a good track records of earning;

(f) units sold by open-end investment funds or specialist open-end investment funds listed on the securities exchange recognised by the Commission;

(g) real estate investment; and

(h) such other instruments as the Commission may, from time to time, prescribe.

(3) A manager may invest the funds and assets of a scheme fund in units of any investment funds: Provided that such investment fund may only be invested in the categories of investments set out in subsection (2) of this section and in real estate.

(4) The Commission may, by regulation, impose additional restrictions on investments by a manager where such additional restrictions are imposed with the objects of protecting the interest of a scheme or its beneficiaries.

(5) For the purpose of complying with any guideline set by the Commission as to the quality of instruments and banks that scheme fund assets may be invested in, and to ensure the safety of scheme assets in general, a manager shall have due regard to the risk rating of instruments that has been undertaken by a rating company registered under this Act.

**172** (1) The Commission may conduct an investigation into the business of a person whether registered or authorised in pursuance to this Act or not, who is involved in the administration of a collective investment scheme or the soliciting of investment in a collective investment scheme.

Inspection and investigation.

(2) For the purposes of an investigation in terms of subsection (1) the Commission may in writing direct such person to-

(a) provide it with any information, document or record about such business;

(b) appear before it at a specified time and place if the Commission has reason to believe that such person is contravening or failing to comply with the provisions of this Act.

**173** (1) If the Commission, after an investigation or inspection under section 172, considers that the interests of the investors of a collective investment scheme or of members of the public so require, it may-

Powers of the Commission after an investigation.

(a) apply to the court under the Companies and Allied Matters Act for the winding-up of a manager of a collective investment scheme as if it were a creditor thereof;

(b) apply to the court, for the appointment of a receiver in respect of a manager of a collective investment scheme as if it were a creditor thereof;

(c) require a manager to appoint, in accordance with the Commission's directions, in place of the serving trustee or custodian, a competent person nominated by the Commission;

(d) require a manager to take steps, in accordance with the Commission's directions, for the winding-up of a portfolio of its collective investment scheme, and for the realisation of the assets and the distribution of the net proceeds thereof, together with any income accruals or other moneys available for distribution among the investors in proportion to their respective participatory interests;

(e) direct a manager or a trustee or custodian to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity or undesirable practice or state of affairs disclosed by an investigation or inspection;

(f) direct a manager to withdraw from the administration of a collective investment scheme, whereupon the trustee or custodian shall in accordance with the Commission's directions but subject to this Act arrange for another manager to take over the administration of the collective investment scheme; or

(g) in the case of a collective investment scheme being administered in contravention of this Act, apply to the court to have the collective investment scheme wound up, in which case the court may make any order it considers appropriate for the winding-up of the collective investment scheme.

(2) The Commission may oppose any application for-

(a) the winding-up of a manager;

(b) a judicial management order in respect of a manager; or

(c) the winding-up of a portfolio of a collective investment scheme.

(3) Any person who intends to make an application contemplated in subsection (2) must give timely notice of such application to the Commission.

(4) A person who refuses or fails to comply with a request or direction referred to in paragraphs (c), (d), (e), (f) or (g) of subsection (1) commits an offence and is liable on conviction to a fine of not less than ₦100,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

**174** (1) The Commission may cancel the registration of a manager under this Act if-

Cancellation or suspension of registration of a manager.

(a) the manager has contravened or failed to comply with any provision of this Act or any direction or requirement given or imposed under this Act, and that such contravention or failure has resulted or may result in serious prejudice to the interests of the public or of investors;

(b) upon completion of an investigation or inspection, the manner in which a manager carries on the business of a collective investment scheme is unsatisfactory or undesirable or not calculated to serve the best interests of its investors;

(c) the registration of the manager was obtained through misrepresentation; or

(d) the manager is wound up, either voluntarily or by the court.

(2) Whenever there is cause to cancel the registration of a manager on any of the grounds referred to in paragraph (a), (b) or (c) of subsection (1), the Commission may, in lieu of such cancellation, suspend the registration of the affected manager for a period not exceeding 12 months at a time subject to such conditions as the Commission may determine.

(3) The Commission may not cancel or suspend the registration of a manager on any ground contemplated in subsection (1) (a), (b) or (c) unless it has —

(a) notified the manager of its intention and of the grounds upon which it proposes to do so;

(b) allowed the manager to make representations to it in connection with the proposed cancellation or suspension; and

(c) afforded the manager a reasonable opportunity to rectify or eliminate the defect, irregularity or undesirable practice.

(4) An application for re-registration as a manager by a company whose registration has been cancelled under this section shall be dealt with as if it were its first application for registration.

(5) If the registration of a manager is cancelled in pursuance of subsection (1)(a), (b) or (c) the provisions of this Act with regard to the continuance or the winding-up of the portfolio of a collective investment scheme or the winding-up of the manager shall apply: Provided that the Commission may in any such case direct the former manager to defray, in whole or in part, the expenses incurred in continuing the administration of the collective investment scheme, or in realising any of its assets, and also any remuneration to which a trustee or custodian may be entitled.

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

**175** The Commission may object to the terms of any price list, advertisement, brochure or similar document relating to a scheme published or proposed to be published by a manager or any of its authorised agents, if the Commission considers the terms are calculated to mislead or are, for any other good and sufficient reason, objectionable or undesirable, and the Commission may direct the manager to discontinue or refrain from publishing or distributing any such document, or to amend its terms.

Commission may object to publication or distribution of misleading, objectionable, etc. documents.

**176** (1) The Commission may direct a manager to have all books of accounts and financial statements audited and to submit the results of such an audit to the Commission within the time specified by the Commission.

Power of Commission to request audit.

(2) Any person who, in respect of an audit contemplated in subsection (1), gives information, an explanation or access to records which he or she knows to be false or misleading commits an offence and is liable on conviction to a fine of ₦1,000,000 or imprisonment for one year or both such fine and imprisonment.

**177** (1) The Commission may, by notice declare a particular practice or manner of administration of schemes to be an "irregular or undesirable practice" or an "undesirable manner of administration".

Declaration of certain practices as irregular or undesirable.

(2) No person shall, after 21 days from the date of publication of the notice whereby a practice or manner of administration has been declared to be irregular or undesirable, employ such a practice or manner of administration otherwise than for the sole purpose of fulfilling any obligations entered into before the date of such notice or to comply with any directives by the Commission under subsection (3).

(3) The Commission may in writing direct any person who employed a practice or manner of administration which was declared to be irregular or undesirable (pursuant to subsection (1) of this section) to rectify anything which was caused by or arose out of the employment of that irregular or undesirable practice or manner of administration whether

or not it occurred before, during or after the date of the declaration referred to in subsection (1), of this section.

(4) A person who has been directed in terms of subsection (3) to rectify anything shall effect such rectification within seven days after being so directed or within such longer time as the Commission may approve.

(5) A person who-

(a) contravenes subsection (2);

(b) refuses or fails to comply with a direction referred to in subsection (3); or

(c) fails to comply with subsection (4); commits an offence and is liable on conviction to a fine of not less than ₦100,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

**178** (1) A manager shall appoint either a trustee or a custodian for any scheme managed by it having regard to the structure of the scheme.

Appointment and termination of appointment of trustee or custodian.

(2) A person may not become or act as a trustee or custodian unless that person is registered as such by the Commission.

(3) A trustee or custodian intending to retire from an appointment in terms of this section, shall give to the manager and the Commission not less than three months' notice of such intention, and during the said period of three months the manager concerned shall take steps to appoint another trustee or custodian competent to act as such.

(4) When the appointment of a trustee or custodian is terminated, that trustee or custodian shall within 7 days submit a report to the Commission stating-

(a) the assets and liabilities of the scheme;

(b) whether any irregularity or undesirable practice has taken place or is taking place in the conduct of the affairs of the scheme which has caused or is likely to cause financial loss to investors in a portfolio of the scheme;

(c) particulars of any such irregularity or undesirable practice; and

(d) the reason, if known, for the termination of the appointment.

(5) If a manager fails to take the steps specified in subsection (4) of this section within the said period of three months, the Commission may, after consultation with the manager, direct the manager to appoint as trustee or custodian a competent person nominated by the Commission.

(6) When it is impracticable for a trustee or custodian to perform any or all its duties, the trustee or custodian may with the approval of the Commission appoint a representative which is independent from the manager and any of its agents, to perform such duties.

(7) A trustee or custodian of a scheme who has appointed a representative under subsection (6) of this section, is not thereby relieved of any of its responsibilities or duties under the scheme.

**179** (1) The Commission may by regulation prescribe the qualification and conditions for any person or institution to become or act as a manager, trustee or custodian.

Qualification and registration of trustee or custodian.

(2) A company or institution referred to in subsection (1) of this section may not become or act as a manager, trustee or custodian unless it maintains capital and reserves as may be prescribed by the Commission from time to time.

(3) The Commission may not register a person as a trustee or custodian unless it is satisfied that-

(a) the person is not in relation to the manager, either a holding company or a subsidiary or fellow subsidiary company within the meaning of those terms as defined in the Companies and Allied Matters Act; and

(b) the general financial and commercial standing and independence of the person is such that it is fit for performing the functions of a trustee or custodian and that the person is by reason of the nature of its business sufficiently experienced and equipped to perform such functions.

**180** (1) The Commission may revoke or suspend the registration of a trustee or custodian, whenever the Commission is no longer satisfied that the requirements contained in subsection (3) of section 179 of this Act are met by the trustee or custodian.

Suspension or revocation of the registration of trustee or custodian.

(2) The Commission shall, before revoking or suspending a registration in terms of subsection (1), notify the trustee or custodian concerned of the grounds upon which such action is contemplated against it, and must give it a reasonable opportunity of showing cause why the proposed action should not be taken.

**181** (1) A trustee or custodian shall-

Duties of trustee or custodian.

(a) ensure that the basis on which the sale, issue, repurchase or cancellation, as the case may be, of participatory interests effected by or on behalf of a scheme is carried out in accordance with this Act and the trust deed or custodial agreement;

(b) ensure that the selling or repurchase price of participatory interests is calculated in accordance with this Act and the trust deed or custodial agreement;

(c) carry out the instructions of the manager unless they are inconsistent with this Act or the trust deed or custodial agreement;

(d) verify that, in transactions involving the assets of a scheme, any consideration is remitted to it within time limits which are acceptable market practice in the context of

a particular transaction;

(e) verify that the income accruals of a portfolio are applied in accordance with this Act and the trust deed or custodial agreement;

(f) enquire into and prepare a report on the administration of the scheme by the manager during each annual accounting period, in which it shall be stated whether the scheme has been administered in accordance with the provisions of this Act and the trust deed or custodial agreement;

(g) if the manager does not comply with the limitations and provisions referred to in paragraph (f) of this subsection, state the reason for the non-compliance and outline the steps taken by the manager to rectify the situation;

(h) send the report referred to in paragraph (f) of this subsection to the Commission and to the manager in good time to enable the manager include a copy of the report in its annual report; and

(i) ensure that-

(i) there is a legal separation of assets held under custody and that the legal entitlement of investors to such assets is assured; and

(ii) appropriate internal control systems are maintained and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where documents of title pertaining to each asset are kept.

(2) A trustee or custodian shall report to the manager any irregularity or undesirable practice, concerning the collective investment scheme of which it is aware and if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian, it shall as soon as possible report such irregularity or undesirable practice to the Commission.

(3) The trustee or custodian shall satisfy itself that every income statement, balance sheet or other return prepared by the manager in terms of section 169 fairly represents the assets and liabilities, as well as the income and distribution of income, of every portfolio of the scheme administered by the manager.

(4) At the request of the trustee or custodian, every director or employee of the manager shall submit to the trustee or custodian any book or document or information relating to the administration by the manager of its collective investment scheme which is in its possession or at its disposal, and which the trustee or custodian may consider necessary to perform its functions.

(5) No person shall interfere with the performance by a trustee or custodian of its functions under this Act.

(6) A trustee or custodian of a collective investment scheme which fails to perform any of its duties referred to in this section, is liable to a penalty of ₦500,000.

**182** For the purposes of this Act any-

Status of assets.

(a) money or other assets received from an investor; and

(b) asset of a portfolio, are regarded as being trust property for the purposes of the Trustee Investments Act.

**183** The trustee or custodian shall indemnify the manager and investors against any loss or damage suffered in respect of money or other assets in the custody of the trustee or custodian and which loss or damage is caused by a willful or negligent act or omission by the trustee or custodian.

Liability of trustee or custodian in respect of loss of assets.

**184** (1) A manager in consultation with the trustee or custodian, shall appoint an Auditor registered by the Commission for the purpose of auditing the whole of the business of the scheme administered by it.

Appointment and removal of auditor.

(2) No director or employee of a manager, trustee or custodian and no firm of which any such director or employee is a member may be appointed as an Auditor of a scheme;

(3) A manager shall within thirty days from the date of appointment of an Auditor apply to the Commission for the approval of such appointment;

(4) The Commission may withdraw a prior approval of the appointment of an Auditor;

(5) An Auditor may be removed by the manager in consultation with the trustee or custodian and the Commission shall accordingly be informed by the manager.

**185** (1) The auditor shall-

Duty of auditor to disclose irregularity or undesirable practice.

(a) report to the manager any irregularity or undesirable practice in the administration of the collective investment scheme which has come to his notice in the ordinary course of fulfilling his audit responsibilities or performing other functions in terms of this Act; and

(b) if there is reasonable cause to believe that such report is or might be of material significance to the Commission, submit a copy of such report to the Commission.

(2) For the purposes of this section, a report is of material significance to the Commission if it deals with a matter which, because of its nature or potential financial impact, has caused or is likely to cause financial loss to the scheme or any of its investors or creditors.

(3) An Auditor who fails to perform any of the duties referred to in this section, is liable to a penalty of ₦100,000.

**186** (1) The Commission may make regulations as to the constitution and management of collective investment schemes, the powers and duties of the manager and trustee or custodian of any such scheme, and the rights and obligations of persons participating in any such scheme.

Power to make regulations on the constitution and management of collective investment schemes.

(2) Without prejudice to the generality of subsection (1) of this section, the Commission may make regulations under this section-

- (a) as to the issue and redemption of the units or securities under the scheme;
- (b) as to the expenses of the scheme and the means of meeting them;
- (c) for the appointment, removal, powers and duties of an auditor for the scheme;
- (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
- (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;
- (f) requiring the preparation of periodic reports with respect to the scheme and the furnishing of those reports to the participants and the Commission; and
- (g) with respect to the amendment of the scheme.

(3) Regulations made under this section-

- (a) may make provision as to the contents of the trust deed or custodial agreement, including provision requiring any of the matters mentioned in subsection (2) of this section to be dealt with in the trust deed or custodial agreement;
- (b) shall be binding on the manager, trustee, custodian, participants independent of the contents of the trust deed or custodial agreement and, in the case of the participants, shall have effect as if contained in it;
- (c) shall not impose limits on the remuneration payable to the manager of a scheme; and
- (d) may contain such incidental and transitional provisions as the Commission thinks necessary or expedient.

**187** (1) The manager of an authorised scheme shall give written notice to the Commission of-

Alteration of schemes and change of manager, trustee or custodian.

- (a) any proposed alteration to the scheme; and
- (b) any proposal to replace the trustee or custodian of the scheme.

(2) Any notice given in respect of a proposed alteration involving a change in the trust deed or custodial agreement shall be accompanied by a certificate signed by a legal practitioner to the effect that the change will not affect the compliance of the trust deed

or custodial agreement with this Act and the regulations made under section 186 of this Act.

(3) The trustee or custodian of an authorised scheme shall give written notice to the Commission of any proposal to replace the manager of the scheme or in the case of an open ended investment company replace the board of directors or transfer the assets of the scheme to a new scheme or wind-up the scheme.

(4) No effect shall be given to any of the proposals referred to in subsections (1) and (3) of this section unless-

(a) the Commission has given its approval to the proposal; or

(b) one month has elapsed since the date on which the notice was given under subsection (1) or (3) of this section without the Commission having notified the manager or trustee that the proposal is not approved.

(5) The manager or the trustee or custodian of an authorised scheme shall not be replaced except by persons who satisfy the requirements of section 188 of this Act or regulations made thereunder: Provided that where any of them has been so replaced, the former manager or trustee or custodian, shall within 14 days, handover all properties and documents of the scheme in his possession to the trustee or custodian and, in the case of a trustee or custodian, to the manager.

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

Restriction on activities of managers.

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

(a) acting as manager of-

(i) a scheme;

(ii) an open-ended investment company or any body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the expert management of its funds by or on behalf of that body; or

(iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and

(b) activities for the purposes of or in connection with those activities mentioned in paragraph (a) of this subsection.

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

Publication of scheme particulars.

(2) Regulations made under this section may-

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

(i) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulation; or

(ii) a significant new matter has arisen, disclosure of which would have been required in previous particulars if it had arisen when those particulars were prepared.

(b) provide for the payment of compensation to any person who has become or agreed to become participant in the scheme and suffered loss as a result of-

(i) any untrue or misleading statement in the particulars;

(ii) or the omission from the particulars of any matter required by the regulations to be included by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars.

(4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.

**190** (1) If it appears to the Commission that-

Power of  
intervention.

(a) any of the requirements for the registration of a scheme as an authorised scheme are no longer satisfied; or

(b) the manager or trustee or custodian of such a scheme has contravened any provision of this Bill or any rules or regulations made thereunder or, in purported compliance with any such provisions has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act, or

(c) it is desirable in the interests of participants or potential participants in the scheme, the Commission may give directives in accordance with the provisions of subsection (2) of this section.

(2) The directives referred to in subsection (1) of this section may-

(a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption of units or securities under the scheme on a date specified in the directive until such further date as is specified in that order or directive; or

(b) require the manager and trustee or custodian of the scheme to wind it up by such date as is specified in the directive or if no date is specified, as soon as practicable;

(c) appoint any person to take over and perform the duties of the manager or trustee or custodian for such interim period as may be required pending the appointment of such manager, trustee or custodian pursuant to the provisions of the trust deed or custodial agreement.

(3) The revocation of the registration of an authorised scheme shall not affect the operation of any directive under subsection (1) of this section which is then in force; and a directive may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised scheme has been revoked if a directive under that subsection was already in force at the time of revocation.

**191** (1) Where the Commission proposes to-

Representation against directive or its revocation.

(a) give a directive under section 190 of this Act; or

(b) revoke such directive otherwise than at the request of the manager or trustee or custodian of the scheme, it shall give the applicants or, as the case may be, the manager and trustee or custodian of the scheme written notice of its intention to do so stating the reasons for which it proposes to act and giving particulars of the rights conferred by subsection (2) of this section.

(2) A person on whom a notice is served under subsection (1) of this section may, within twenty one days of the date of service, make written representations to the Commission and, if desired, oral representations to a person appointed for that purpose by the Commission.

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

**192** (1) An open-ended investment company shall be registered by the Commission if-

Open-ended investment company.

(a) it is a body corporate incorporated in accordance with the Companies and Allied Matters Act;

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

(c) its article of association provide that it may acquire its own shares; and

(d) it satisfies all other conditions which may be prescribed by the commission from time to time.

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

**193** (1) A body corporate incorporated for the sole purpose of acquiring intermediate or long term interests in real estate or property development may raise funds from the capital market through the issuance of securities which shall have the following characteristics-

Real estate investment companies or trusts.

(a) an income certificate giving the investor a right to a share of the income of any property or property development; and

(b) an ordinary share in the body corporate giving the investor voting rights in the management of that body corporate.

(2) Under this Act, a trust may be constituted for the sole purpose of acquiring a property on a "trust for sale" for the investors.

(3) The trust referred to in subsection (2) of this section shall have the following characteristics :-

(a) the investors shall acquire units in the trust through which they shall be entitled to receive periodic distribution of income and participate in any capital appreciation of the property concerned; and

(b) the investors shall also be entitled to retain control over their investments by investing directly in a particular property rather than in a portfolio of investments.

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

**194** A real estate investment company or trust may be registered by the Commission if it-

Registration of real estate investment company.

(a) is a body incorporated under the Companies and Allied Matters Act;

(b) has a capital and reserve as prescribed by the Commission from time to time;

(c) carries on business as a collective investment scheme solely in properties;

(d) complies with the requirement prescribed by the Commission through its rules and regulations made from time to time.

**195** (1) The Commission may approve an application by a manager or operator of a scheme administered in a foreign jurisdiction to solicit investment in such scheme from investors in Nigeria where-

Foreign collective investment schemes.

(a) the application complies with the conditions prescribed by the Commission;

(b) a copy of the approval or registration by the relevant foreign jurisdiction authorising the foreign collective investment scheme to act as such is filed with the Commission.

(2) Any person who solicits investment in a foreign collective investment scheme which is not approved by the Commission, is liable to a penalty of not less than ₦100,000 and a further penalty of ₦5,000 for every day the contravention continues.

**196** (1) The Commission may appoint one or more competent inspectors to investigate and report on-

Supplemental investigations.

(a) the affairs of, or of the manager or trustee or custodian of any authorised scheme;

(b) the affairs of, or of the operator or trustee or custodian of any recognised foreign scheme so far as relating to activities carried on in the Federal Republic of Nigeria; or

(c) the affairs of, or of the operator or trustee or custodian of, any other scheme if it appears to the Commission that it is in the interest of the participants to do so or that the matter is of public concern.

(2) Any inspector appointed under subsection (1) of this section to investigate the affairs of, or of the manager, trustee or operator of any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of or the manager, trustee or operator of, any other such scheme as is mentioned in that subsection whose manager, trustee or operator is the same person as the manager, trustee or operator of the first mentioned scheme.

(3) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in judicial proceedings or on grounds of confidentiality as between a client and professional legal adviser in proceedings in any court except that a legal practitioner may be required to furnish the name and address of his client.

(4) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.

(5) Nothing in this section shall require a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless-

(a) the customer is a person who the inspector has reason to believe may be able to give information relevant to the investigation; and

(b) the Commission is satisfied that the disclosure or production is necessary for the purposes of the investigation.

(6) An inspector appointed under this section may, and if so directed by the Commission, make interim reports to the Commission and on the conclusion of his investigation shall make a final report to the Commission.

(7) A report made under subsection (6) of this section shall be written or printed as the Commission may direct and the Commission may, if it thinks fit-

(a) furnish a copy, on request and on payment of the prescribed fee, to the manager, trustee or operator or any participant in a scheme under investigation or any other

person whose conduct is referred to in the report; and

(b) cause the report to be published.

#### **PART XIV: INVESTORS PROTECTION FUND**

**197** (1) A securities exchange or capital trade point shall establish and maintain a fund to be known as the investor protection fund.

Establishment of an investors protection fund.

(2) An investor protection fund shall be administered by a board of trustees subject to the regulatory supervision of the Commission.

(3) The assets of an investor protection fund shall be vested in the board of trustees and kept separate and applied for the purposes as set out in this part of this Act.

**198** The objectives of an investor protection fund shall be to compensate investors who suffer pecuniary loss arising from-

Objectives of an investor protection fund.

(a) the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange or capital trade point; and

(b) defalcation committed by a dealing member firm or any of its directors, officers, employees or representatives in relation to securities, money or any property entrusted to, or received or deemed received by the dealing member firm in the course of its business as a capital market operator.

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

Composition and tenure of the board of trustees.

(a) a representative from the dealing member firms;

(b) a representative from the securities exchange or capital trade point;

(c) a representative from the Central Securities Clearing System Limited;

(d) a representative from the Securities and Exchange Commission;

(e) one person representing the institutional investors;

(f) a representative of the Association of Capital Market Registrars;

(g) one person with proven integrity and knowledgeable in the capital market matters;

(h) one person representing registered shareholders association; and

(i) one person who shall be a legal practitioner knowledgeable in capital market matters.

(2) A member of the board of trustees shall be nominated by the board of a securities exchange or capital trade point for a period of four years on the recommendation of the body he represents: Provided that a member may be withdrawn at any time by the body on whose recommendation he was appointed.

**200** A member of the board of trustees shall cease to be a member if-

Removal from the board of trustees.

(a) before the expiration of his tenure, he ceases to be a member of the body he represents on the board of trustees; or

(b) his membership on the board of trustees is withdrawn by the body he represents; or

(c) he is guilty of any crime involving dishonesty or sanctioned for misconduct by any professional body or association; or

(d) on a resolution of the other members of the board of trustees supported by at least two-thirds of its membership, is adjudged to be engaged in activities prejudicial to or inconsistent with his position as a member of the board of trustees.

**201** Without prejudice to the provisions of the Trustees Investments Act, the board of trustees shall have power to-

Powers of the board of trustees.

(a) administer the investor protection fund as to engender investors confidence and promote general market development;

(b) prepare its own rules governing the operations and effective management of the investor protection fund subject to the approval of the securities exchanges or capital trade point and the Commission; and

(c) do anything or perform any act incidental to or in relation with the operation and management of the investor protection fund.

**202** An investor protection fund shall consist of-

Monies constituting the investor protection fund.

(a) all monies paid to the board of trustees by dealing members of the securities exchange or capital trade point in respect of which an investor protection fund has been established as may be prescribed by the securities exchange or capital trade point from time to time;

(b) the interest and profits, from time to time, accruing from the investment of an investor protection fund;

(c) all monies paid to an investor protection fund by a securities exchange or capital trade point in accordance with the provisions of this part of this Act;

(d) all monies recovered by or on behalf of the board of trustees in the exercise of any right of action conferred by this part of this Act;

(e) all monies paid by an insurer pursuant to any contract of insurance or indemnity

entered into by a dealing member or the board of trustees;

(f) all monies held by any investor protection fund or by whatever name so called, established by a securities exchange or capital trade point prior to the coming into force of this Act; and

(g) all other monies lawfully paid into an investor protection fund.

**203** All monies forming a part of an investor protection fund shall be paid or transferred into a separate bank account in Nigeria pending the investment or application of such monies in accordance with the provisions of this part of this Act.

Fund to be kept in separate bank account.

**204** The board of trustees may apply the funds of an investor protection fund for payment of-

Payments out of the investor protection fund.

(a) payment of claims by investors arising from the insolvency, bankruptcy or negligence of a failed dealing member firm as may be ascertained, determined or directed under the provisions of this Act;

(b) claims, including costs, of an investor allowed by the securities exchange or capital trade point arising from defalcation committed by a dealing member firm or any of its directors, officers, employees or representatives in relation to securities, money or any property entrusted to, or received or deemed received by the dealing member firm in the course of its business as a capital market operator;

(c) any amount ordered to be paid as compensation to an investor by the Commission or the Tribunal in respect of any claim or loss arising from defalcation as provided for in paragraph (b) of section 158 of this Act;

(d) all legal, professional and other expenses incurred in investigating or defending claims made under this part of the Act or incurred in relation to an investor protection fund or in the exercise by the board of trustees of the rights, powers and authority vested in it by this part of the Act in relation to an investor protection fund;

(e) all premiums payable in respect of contracts of insurance or indemnity entered into by the board of trustees;

(f) the expenses incurred or involved in the administration of the investor protection fund including the salaries and wages of persons employed by the board of trustees in relation thereto; and

(g) all other monies payable out of an investor protection fund in accordance with the provisions of this Act.

**205** (1) A board of trustees shall establish and keep proper books of accounts in relation to an investor protection fund and shall, not later than three months following the end of the financial year of the fund, cause the income and expenditure for the year and a balance sheet to be made out.

Accounts of an investor protection fund.

(2) A securities exchange or capital trade point shall, on the recommendation of the

board of trustees appoint an Auditor to audit the accounts of the investor protection fund established by it.

(3) The Auditor appointed pursuant to subsection (2) of this section shall regularly and fully audit the accounts of the investor protection fund and shall complete the audit not later than one month following the period referred to in subsection (1) of this section to enable the audited accounts to be submitted by the board of trustees to the Commission not later than two months following the period referred to in subsection (1) of this section.

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

Power of the board of trustees to delegate functions to its management subcommittee.

(2) The board of trustees may by resolution delegate to a subcommittee appointed under subsection (1) of this section all or any of its powers.

(3) Any power, authority or discretion so delegated by the board of trustees may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred on a majority of the members of the sub-committee.

(4) Any such delegation by the board of trustees may at any time in like manner be rescinded or varied.

(5) The board of trustees may at any time remove any member of a sub-committee appointed by it under this section and may fill any vacancy in the sub-committee howsoever arising.

(6) A decision of a sub-committee of the board of trustees shall be of no effect until it is confirmed or ratified by the board of trustees.

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

Minimum amount in the investor protection fund.

(2) The board of trustees shall have the discretion to determine the amount or minimum amounts to be contributed by each dealing member firm to the Fund subject to the approval of the securities exchange or capital trade point.

**208** If for whatever reason the investor protection fund falls below the minimum amount approved for a securities exchange or capital trade point the board of trustees shall take steps to make up the deficiency-

Protection of the investor protection fund in the event of any reduction.

(a) by direct transfer to the investor protection fund of an amount which is equal to the deficiency from other funds of the securities exchange or capital trade point; or

(b) in the event that there are insufficient funds to transfer under paragraph (a) of this section, by determining the amount which each dealing member shall contribute to the investor protection fund.

**209** (1) If at any time the amount available in an investor protection fund is not sufficient to satisfy the liabilities which are ascertained against any dealing member firm, the securities exchange or capital trade point on the recommendation of the board of trustees may impose on any or every dealing member firm a levy of such amount as it thinks fit to meet the deficiency.

Levy to meet liabilities.

(2) Where the amount available in the investor protection fund is insufficient to pay the whole amount of all claims against it which have been allowed or in respect of which orders have been made, then the amount at the credit of the investor protection fund shall, be apportioned between the claimants in such manner as the board of trustees thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the investor protection fund and paid out of its funds when monies are available therein.

(3) The amount of such levy shall be paid within the time and in the manner specified by the board of trustees either generally or in relation to any particular case.

**210** A securities exchange or capital trade point may, from time to time, from its general funds give or advance, any sums of money to an investor protection fund on such terms and conditions as it may deem fit.

Power of a securities exchange or capital trade point to make advance to an investor protection fund.

**211** Any monies in an investor protection fund which are not immediately required for its purposes may be invested by the board of trustees in any manner in which the trustees are for the time being authorised by the Trustee Investment Act to invest trust Funds.

Investment of the funds of an investor protection fund.

**212** (1) The funds of an investor protection fund shall be held and applied for the purpose of-

Application of the investor protection fund.

(a) compensating persons who suffer pecuniary loss from the revocation or cancellation of the registration of a capital market operator pursuant to the provisions of section 38 of this Act;

(b) the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange or capital trade point; and

(c) any defalcation committed by a member company or any of its directors or employees in relation to any money or other property which, was entrusted or received or deemed received by a member company or any of its directors or employees whether before or after commencement of this Act in the course of or in connection with the business of that company or any other occurrence in respect of which the claim arose.

(2) For the purposes of this section, "a director of a member company" includes a person who, as at the time of the defalcation in question has been or has ceased to be a director of a member company if, at the time of the defalcation the person claiming compensation has reasonable grounds for believing that person to be a director of a member company.

**213** (1) Subject to this part of this Act, every person who suffers pecuniary loss as provided in section 212 of this Act shall be entitled to claim compensation from the investor protection fund established for the securities exchange or capital trade point to which the defaulting member company belongs.

Claims against an investor protection fund.

(2) A claim for compensation under this part shall be made in the first instance to a securities exchange or capital trade point who shall within 30 days verify every claim and determine the amount or extent, if any, to which the claim shall be allowed.

(3) A verified claim shall be paid by the investor protection fund to an investor within 14 days of such verification by the securities exchange or capital trade point.

(4) The provisions of subsection (2) of this section shall be without prejudice to the power of the Commission or the Tribunal to direct or order the payment of compensation in accordance with the provisions of this Act.

(5) Subject to subsections (2) and (3) of this section, a person shall not have any claim against an investor protection fund in respect of a defalcation concerning money or other property which, prior to the commission of the defalcation, had in the due course of the administration of a trust ceased to be under the control of the director or directors of the dealing member firm concerned.

(6) Subject to this part of this Act and any limit that may be determined by the securities exchange or capital trade point and approved by the Commission from time to time, the amount which any claimant shall be entitled to claim as compensation from an investor protection fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable cost of disbursement incidental to the making and proving of his claim) less any amount or value of all monies or other benefits received or receivable by him from any source other than the investor protection fund in reduction of the loss.

(7) In addition to any compensation payable under this part of this Act, interest shall be payable out of the investor protection fund concerned on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of five per cent per annum calculated from the day upon which a claim arose and continuing until the day upon which the claim is satisfied.

**214** (1) The Commission, a securities exchange or capital trade point, as the case may be, may cause to be published in any two national daily newspapers circulating in Nigeria a notice, in or to the effect of a form prescribed by the Commission, specifying a date, not being earlier than one month after the said publication, on which claims for compensation from the investor protection fund, in relation to the person specified in the notice, may be made.

Notice calling for claims against the investor protection fund.

(2) A claim for compensation from an investor protection fund in respect of a defalcation shall be made in writing to the board of trustees within 6 months after the claimant became aware of the defalcation, and any claim which is not so made shall be barred unless the Commission otherwise determines.

(3) No action for damages shall lie against a securities exchange or capital trade point or against any member or employee of a securities exchange or capital trade point or of a board of trustees or management sub-committee by reason of any notice published in good faith and without malice for the purposes of this section.

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

Power to settle claims.

**216** (1) Where, in any proceedings brought before the Tribunal to establish a claim, the Tribunal is satisfied that the claimant has a valid claim, the Tribunal shall by order-

Form of order of the Tribunal.

(a) declare the fact and the date of the defalcation or other loss suffered by a claimant;

(b) the claim payable; and

(c) direct that the investor protection fund concerned settles the claim so declared and deal with the same in accordance with the provisions of this part of this Act.

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

(3) In any proceedings under this part of this Act all questions of costs shall be at the discretion of the Tribunal.

**217** The securities exchange, capital trade point, the Commission or the Tribunal, as the case may be, may require any person to produce and deliver any securities, documents or statements of evidence necessary to support any claim made or necessary for the purpose of determining a claim or for any other proceedings in connection with any matter pending before it.

Power to require production of evidence.

**218** On payment out of an investor protection fund of any monies in respect of any claim under this part of this Act, the board of trustees of an investor protection fund shall be subrogated, to the extent of the payment made out of the investor protection fund, to all the rights and remedies of the claimant in relation to the loss suffered by him.

Subrogation.

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

Application of insurance money.

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

Penalty for contravention.

**221** In this part of this Act -

Interpretation.

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

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

"securities exchange or capital trade point" in relation to a protection fund, means the securities exchange or capital trade point which established the fund.

**PART XV:                   BORROWING BY FEDERAL, STATE, AND LOCAL GOVERNMENTS AND THEIR AGENCIES.**

**222** This part applies to the following-

Bodies to which this part applies.

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

**223** (1) A body to which this part of this Act applies may raise, from time to time, internal loans for any specific project authorised by the approving authority of the body in any one or more of the following ways-

Issue of registered bonds or promissory notes.

- (a) by the issue of securities in the form of registered bonds; or
- (b) by the issue of securities in the form of promissory notes; Provided that the total amount of loans outstanding at any particular time including the proposed loan shall not exceed fifty per cent of the actual revenue of the body concerned for the preceding year.

(2) Every issue of a registered bond or other securities for the purpose of raising any specified sum of money shall be deemed to be by bond or securities issued in respect of a separate loan notwithstanding that the sum of money so raised is part only of a sum of money authorised by any other law to be raised by way of a loan.

(3) Securities created or issued under this part of this Act shall be securities to which the Trustee Investments Act applies.

**224** (1) A body to which this part of this Act applies shall not raise sums of money or any

Restriction on

part thereof by way of any internal loan directly from the capital market except in accordance with the provisions of this Act and the rules and regulations made thereunder.

raising of funds from the capital market.

(2) An application to raise a loan under this part of this Act shall be in such form as the Commission may direct.

(3) An application made under this section shall, be accompanied by such documents as may be prescribed by the Commission, from time to time, and shall include —

(a) in the case of a State Government and the Federal Capital Territory-

(i) a copy of the law authorising the issue of the bond specifying that a sinking fund to be fully funded from the consolidated revenue fund account of the issuer be established;

(ii) a copy of a rating report by an accredited rating agency registered by the Commission; and

(iii) an irrevocable letter of authority issued by the Accountant-General of the State or any person performing that function in the Federal Capital Territory, to the Accountant-General of the Federation, to deduct at source from the statutory allocation due to the issuer in the event of default by or failure of the issuer to meet its payment obligations.

(b) in the case of a local government-

(i) a copy of the law of the State to which it belongs authorising the issue of the bond by the local government and specifying that a sinking fund to be fully funded from funds accruing to the local government from the Federation Account be established;

(ii) a copy of a rating report by an accredited rating agency registered by the Commission; and

(iii) an irrevocable letter of authority issued by the Accountant-General of the State on behalf of the local government, guaranteeing the deduction at source from the statutory allocation due to the local government, in the event of default by or failure of the local government to meet its payment obligations; and

(c) in the case of a Federal or State Government agency or a company wholly owned by the Federal or State Government -

(i) a copy of the law or instrument establishing the agency or company authorising the agency or company to issue the bond; and

(ii) an irrevocable letter of guarantee of repayment of the loan issued by the Federal or State Government that owns the agency or company.

(4) The Commission may, in addition to conditions that may be prescribed in subsection (4) of this section, prescribe conditions or issue directives relating to any borrowing by

State Governments and their agencies concerning any of the following matters —

- (a) the funding of the sinking fund;
  - (b) underwriting;
  - (c) federal Irrevocable Standing Payment Order to the trustees of the sinking fund; and
  - (d) completion of the project, as would guarantee the repayment to the subscribers.
- (5) The fund shall be managed by a corporate trustee registered by the Commission.
- (6) The Commission may impose any penalty on a defaulting body and this may include —
- (i) reprimand;
  - (ii) publication in the national dailies; and
  - (iii) blacklisting or foreclosure from raising further facility in the capital market.
- (7) The trustee shall have the power to take legal action against the defaulting body failing which bondholders, holding at least 10 per cent of the value of the bond shall have the right to call a meeting to pass a resolution compelling the trustee to take legal action.
- (8) A bondholder who feels dissatisfied may personally initiate legal action to enforce his rights under the trust deed irrespective of the legal duty of the trustee to take such legal action.
- (9) Where the Commission is satisfied with the securities offered by the issuer, it shall on an application by the issuing house waive the requirement for an irrevocable letter of authority provided that the issuing house shall not revert to the use of the irrevocable letter of authority to the office of the Accountant-General of the Federation for the recovery of the loan.
- (10) Where the body raising funds is the Federal Government of Nigeria, the requirements for approval of primary issues shall not apply, provided that where the securities are to be traded on a securities exchange or capital trade point, they shall be subject to the regulatory requirements relating to secondary market transactions.
- (11) Any amount deducted pursuant to the provisions of this section shall be credited into the sinking fund established under section 251 of this part of this Act for purpose of redeeming the outstanding obligation.
- (12) A copy of the Irrevocable Letter of Authority issued pursuant to the provisions of this section shall also be lodged with the trustees appointed under section 245 of this part of this Act.

**225** The principal monies and interest represented or secured by any registered bond or securities issued under this Act shall be charged on and payable out of the general revenue and assets of the body concerned and of the assets of the appropriate authority or project which is the beneficiary of the proceeds of the loan.

Loans to be charged upon revenue:

**226** (1) The particulars of each loan to be raised pursuant to this Act shall be published in the Gazette or any other official document by the body raising the loan and shall include the following-

Bodies to publish details of loans in the Gazette or other official document.

(a) the beneficiary of the loan;

(b) the sum of money to be raised by the loan;

(c) the mode or modes of raising the loan;

(d) the rate of interest payable on the loan;

(e) the dates in each year on which the half-yearly or quarterly interest on the loan shall be payable;

(f) the time at which a half-yearly or quarterly appropriation out of the general reserve and assets of the body or project of the body shall be made as a contribution;

(g) the date of redemption of the registered bond or securities to be issued for the purpose of raising the loan; and

(h) any other information relating to the loan considered necessary to effectively raise the loan.

(2) The date of redemption of any registered bond or securities shall not be later than twenty five years from the date of the issuance of the registered bond or securities.

(3) Where it is deemed expedient by a body to reserve an option to redeem any registered bond or securities at any date earlier than the date of redemption specified for such bond or securities by the directions under subsection (1) of this section, the body shall by such directions further specify the terms and conditions upon which the bond or securities may be redeemed at such earlier date.

**227** (1) A body shall keep a register in which all transactions in securities entered into by the body are recorded and into which shall be entered all information which by this Act are required to be entered in the register.

Register of securities and appointment of registrar.

(2) A body shall for the purpose of carrying out its functions under subsection (1) of this section appoint any registrar registered with the Commission as registrar and the appointment shall be subject to such terms and conditions as may be deemed fit by the body concerned.

(3) A register kept under this section shall be kept in such place as may be approved on

behalf of the body and shall among other things, include the following:

(a) the names and addresses of the holders for the time being of the securities concerned and the persons deriving title therefrom;

(b) the amount of securities held by every holder; and

(c) the date on which the name of every holder is entered in respect of the securities held in his name.

(4) The registrar may be required to submit his books of account in connection with his functions under this part of this Act to an independent audit.

**228** Subject to the consent of its approving authority, a body may appoint any reputable issuing house registered with the Commission, for the purpose of undertaking on behalf of the body, the raising of any specific loan pursuant to the provisions of this part of this Act.

Appointment of issuing house.

**229** A body shall pay to the person registered for the time being as the bond holder of the principal sum represented by the body and the interest due on that sum at the rate and on the dates specified under section 226 of this Act or in pursuance of an option to redeem the bond.

Liability of a body in respect of issue of registered securities.

**230** For the purposes of this part of this Act, no person shall be entitled to any registered bond unless he is registered as a bond holder in respect of the bond.

Bond holders to be registered.

**231** No person shall be registered as a bond holder at any time unless he had paid in full the purchase price of the bond.

Condition for registration of bond holders.

**232** (1) Every bond holder shall be entitled to receive from the registrar a bond certificate covering the amount of his holding and no bond holder, other than the first bond holder shall be entitled to receive a bond certificate or any other duly authorised evidence of title to such bonds provided by a recognised securities exchange, capital trade point or clearing house unless he has paid the prescribed fee.

Bond certificate.

(2) The registrar may, with the approval of the approving authority of the body and on payment of the prescribed fee, issue more than one bond certificate in the aggregate covering any holding by one person.

**233** (1) For the purposes of this part of this Act, the title of any bond holder to a registered bond, shall not be deemed to be transferred to any other person except upon the execution of an approved instrument of transfer to the other person and upon the registration of the transferee as the bond holder as provided under section 234 of this Act.

Transfer of registered bond.

(2) Interest which is due in respect of a registered bond but which has not been paid to a bond holder for the time being shall not be deemed to be payable to a transferee of that bond unless the instrument of transfer expressly provides for the payment of that interest to the transferee.

**234** (1) No person shall be registered as the transferee of a registered bond except on surrender, to the body or the appointed registrar, of the bond certificate and the instrument of transfer relating to the bond and on the payment of the prescribed fees. Registration of transfer of bonds.

(2) The registrar shall effect the transfer of the title to a bond within the period stipulated by the securities exchange or capital trade point and he shall post a written notice of the receipt of an application for transfer to the registered holder in whose name the application is made.

**235** (1) The registrar may register a lien on any registered bond in accordance with such provisions as are prescribed by the rules and regulations of a securities exchange or capital trade point and on the payment of the prescribed fees. Registration of liens on bonds.

(2) As from the commencement of the Act, a lien which is registered under this section of this Act shall have priority over any lien not so registered or which is registered subsequent thereto.

**236** The register shall be closed for a period of twenty-one days immediately preceding each date on which interest on that bond falls due and no transfer of that bond shall be registered during that period. Closing of register.

**237** (1) The entries in a bond register shall be conclusive evidence of the facts, matters, particulars and transactions to which those entries relate. Register to be conclusive.

(2) A copy of an entry in the register certified under the hand of the Minister, Commissioner, Chairman or such other appropriate officer of a body or the appointed registrar, to be a true copy of the original entry shall be receivable in evidence in any judicial proceeding unless a judge shall otherwise direct.

**238** (1) Every promissory note shall be signed by the Minister, Commissioner or Chairman or such other appropriate officer of a body and shall, when issued, bind the relevant body to pay the principal sum mentioned in that note and the interest thereon in accordance with the provisions of this part of this Act at the rate and on the dates specified by the directions issued pursuant to section 226 of this Act or in pursuance of an option to redeem the note reserved in the directives. Promissory notes.

(2) Promissory notes shall be issued in such denominations as the Minister, Commissioner or Chairman or such other appropriate officer of a body may, with the approval of the approving authority of the body, direct.

**239** Notwithstanding the provisions of the Bills of Exchange Act to the contrary- Manner and effect of endorsement.

(a) no endorsement of a promissory note shall be valid unless made by the signature of the holder written on the back of the note in one of the spaces provided for that purpose; and

(b) no person shall, by reason only of his having endorsed a promissory note, be liable to pay any money due either as principal or as interest on the promissory note.

- 240** (1) Notwithstanding anything to the contrary contained in any other law, or enactment :- Rights of survivorship.
- (a) when a promissory note is payable to two or more persons jointly and either or any of them dies, the note shall be payable to the survivor or survivors of the deceased person or persons; and
- (b) where a promissory note is payable to two or more persons severally, and either or any of them dies, the note shall be payable to the survivor or survivors of the deceased person or persons or to the representative of the deceased or to any of them.
- (2) Nothing contained in this section shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any promissory note to which subsection (1) of this section applies.
- 241** (1) Every registered bond shall be signed by the Minister, Commissioner or Chairman or such other appropriate officer of a body and shall, when issued, bind the issuer to pay the principal sum and the interest on that sum in accordance with the provisions of this Bill at the rate and on the dates specified in the trust deed. Registered bonds.
- (2) Registered bonds shall be issued in such denominations as the Minister, Commissioner, Chairman or such other appropriate officer of a body with the consent of the Commission may direct.
- 242** Where any interest is payable under this Act in respect of any bond or securities, a body shall in each payment on the half year ending or quarterly ending with the date on which the interest on such bond or securities falls due, appropriate out of the general revenue and assets of the body and of the assets of the project or of the appropriate authority a sum sufficient to meet all interest payable on that date by the body and shall authorise payment of such interest out of the sum so appropriated. Appropriation of revenue.
- 243** (1) The interest due on a registered bond or securities shall be payable half yearly or quarterly on the dates specified in a trust deed made pursuant to this Act. Payment of interest.
- (2) Where any amount has become payable on any date as interest due on any registered bond or securities, interest on that amount shall, after that date, be paid or payable by a body or any other person responsible for the default in payment to any person.
- 244** All payments of interest and all payments of principal amount due on any registered bond or securities shall be made at the registered office of the issuer or at any other lawfully authorised place as may be specified within Nigeria for the payment of any such interest or principal amount. Payments.
- 245** (1) The Minister, Commissioner, Chairman or other appropriate officer of a body subject to the approval of the approving authority may appoint a registered trustee company or any reputable bank or a reputable insurance company licensed under the applicable laws for the time being in force as trustee for the purpose of acting on behalf of the bond holders with regard to every loan raised under this Act provided that a trustee appointed under this subsection shall not have any fiduciary relationship with the issuers. Appointment of trustees.

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

**246** The trustees appointed under this part of this Act shall have all the powers conferred upon trustees by the Trustees Investment Act and any other enforceable law for the time being in force, and without prejudice to the provisions of those laws-

Powers of trustees.

(a) the trustees may, at their discretion and upon request in writing of a majority of bond holders present and voting at a special meeting duly convened for that purpose, institute proceedings to obtain the repayment of a bond at anytime after such bond shall have become repayable under its terms of issue;

(b) the trustees may act on the advice or opinion of any solicitor, valuer, surveyor, broker, auctioneer, accountant or other expert whether obtained by a body to which this part applies or by the trustees or otherwise;

(c) save as herein otherwise expressly provided the trustees shall, as regards all trusts, powers, authorities and discretion vested in them, have absolute discretion as to the exercise, and provided they have acted honestly and reasonably shall be in no wise responsible for any loss or damage which may result from the exercise or none exercise thereof;

(d) the trustees shall not be responsible for acting upon any resolution purporting to have been passed at any meeting of the bond holders in respect whereof minutes have been made and signed, provided that the meeting was convened in accordance with the provisions of the trust deed;

(e) without prejudice to the right of indemnity conferred upon the trustees by law, the trustees and attorneys, agents or other persons appointed by the trustees under this section shall be indemnified by a body against all liabilities and expenses reasonably incurred by them in the execution of the powers of the trustees under this part of this Act;

(f) the Minister, Commissioner, Chairman or the appropriate officer of a body may in writing give the trustees such general or specific direction not inconsistent with the provisions of this part of this Act, on any matter relating to the trust and the trustees shall give effect to every such direction and shall not be liable on account of anything done or purported to be done by them in good faith in connection thereof;

(g) whenever in the interest of bond holders the trustees deem it expedient, the trustees may delegate by a power of attorney to any other person or body corporate with the consent of the Minister, Commissioner or Chairman or any appropriate officer, all or any of the powers vested in them under this part of this Act upon such terms and conditions as the trustees may deem fit and the trustee shall be responsible for all the acts and defaults of any person, company to which such powers are so delegated; and

(h) the trustees may in the discharge of their function under this part of this Act employ such agents and upon such conditions as they may think reasonable and appropriate, subject to the approval of the Minister, Commissioner or Chairman or the appropriate

officer appointed in his place by a body to which this part applies.

**247** A trustee or any director of the trustee shall not be precluded from underwriting or guaranteeing the subscription of or subscribing for or otherwise acquiring, holding or dealing with any part of the securities provided that such a trustee, director or officer is not thereby put in a position in which he holds more than twenty-five percent interest in the bond or securities and provided that such interest is disclosed to the approving authority of the body concerned before a person is so appointed.

Trustee may be interested party.

**248** The power to appoint new trustees under this part of this Act shall be vested in the Minister, Commissioner, Chairman or any appropriate officer subject to the approval of the approving authority of that body but no trustee shall be appointed who shall not previously have been approved by resolution passed by a majority of bond holders present at a meeting duly called for such purpose.

Power to appoint new trustees.

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

Waiver by trustees.

**250** After the date specified in the particulars published pursuant to section 226 of this Act as the date from which contributions to the sinking fund for any loan shall commence, and with the approval of the appropriate authority, in each quarter or half year ending with the interest payment dates specified in the particulars the body shall appropriate out of its general revenue and assets and of the project or of the appropriate authority, a sum determined as the contribution to the sinking fund established for the purpose of redeeming the loan.

Appropriation of revenue for sinking fund.

**251** A separate sinking fund shall be established for each loan raised under this part of this Act.

Separate sinking fund.

**252** (1) All monies appropriated under section 250 of this Act as contributions to the sinking fund established for any loan shall be paid to the trustees appointed under section 245 of this Act and may be invested in such securities as are specified in the Trustee Investments Act.

Investment of sinking fund.

(2) The trustees may, from time to time, with the approval of the appropriate authority vary any investment made pursuant to subsection (1) of this section or may realise and re-invest any moneys invested under that subsection.

(3) The dividends, interest, bonus and other profits of any investment of any part of any sinking fund shall be invested by the trustees so as to form a part of that sinking fund in like manner as moneys appropriated under section 250 of this Act as contributions to that sinking fund.

**253** (1) Notwithstanding anything to the contrary contained in this part of this Act, if at any time the trustees are satisfied that the sinking fund of any loan raised under the provisions of this part of this Act will be sufficient with further accumulations of interest, but without further payments of contributions, to enable the loan to be redeemed at the time fixed for its

Cessation of contribution to sinking fund.

redemption they shall inform the body accordingly, and the Minister, Commissioner, or Chairman or any appropriate officer shall be authorised in such event to suspend further payments of half-yearly or quarterly contributions to that sinking fund.

(2) The contributions to that sinking fund shall be recommenced if the trustees at any time thereafter inform the appropriate authority that they are no longer satisfied that the sinking fund without further accumulations of interest will be sufficient for the redemption of that loan.

**254** There shall be paid out of the sinking fund all expenses specifically incurred in, or incidental to, the investment and management of that fund and the re-payment of the loan for which the fund was established.

Expenses to be paid out of sinking fund.

**255** In the event of the sinking fund established by an issuer pursuant to the provisions of this part of this Act being found at the time fixed for the repayment of the loan to be insufficient for such redemption, the deficiency shall be made good out of the general revenue and assets of the body concerned and that of the project which is the beneficiary of the loan.

Deficiency in fund to be charged upon revenue.

**256** Upon default by a body to meet its payment obligations under the loan and after the expiration of six months therefrom the trustees shall present the copy of the irrevocable letter of authority referred to in subsection (3) of section 224 of this Act to the Accountant-General of the Federation who shall take immediate steps to deduct from the statutory allocation of the body concerned such amount or amounts as are specified by the trustees as required to be paid into the sinking fund for the purpose of redeeming any outstanding obligations under the loan.

Payment into sinking fund in case of default by a body.

**257** (1) The registrar may issue duplicate bond certificates and duplicate securities in such circumstances as may be prescribed.

Issue of duplicate and renewal of bonds certificate and promissory notes.

(2) The registrar may issue renewals of bond certificates and promissory notes in such circumstances as may be prescribed.

**258** The registrar may in such circumstances as may be prescribed-

Right of registrar to compel application to issue renewal of promissory notes.

(a) issue a notice to the holder of any promissory note directing him to apply for a renewal of the promissory note; and

(b) withhold payment of the interest or principal amount due in respect of that promissory note until the application for renewal has been made and determined.

**259** Subject to such condition as the Minister, Commissioner, Chairman or an appropriate officer of a body may specify, the registrar may-

Consolidation and subdivision of bonds and securities.

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

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

(c) on surrender of the bond certificate relating to such bond or of such securities

received in the specified manner; or

(d) on payment of the prescribed fee, consolidate or sub-divide such bond or securities and issue to the applicant one or more new bond certificates or securities as may be required.

**260** Where an application is made to the registrar under this part of this Act for the issue of a duplicate security or for the exchange, renewal, consolidation or sub-division of any bond or securities, the registrar may require the applicant as a condition precedent to the grant of the application, to execute a bond with or without sureties undertaking to indemnify the body concerned against the claims of all persons claiming under the original bond certificate or securities or under the bond or securities so exchanged, renewed, consolidated or subdivided, as the case may be. Indemnity bond.

**261** On payment by or on behalf of a body to the holder of a registered bond or securities of the amount expressed therein on or after the date when it becomes due or on the renewal of a promissory note under section 258 of this Act or on the consolidation or sub-division of a bond or securities under section 259 of this Act, a body shall be discharged in the same way to the same extent as if such bond or securities were a promissory note payable to the bearer. Immediate discharge in certain cases.

**262** Except as otherwise provided in this part of this Act the liability of a body shall- Discharge in other cases.

(a) in respect of any registered bond or securities redeemed on or after the date on which payment of the principal amount becomes due, be discharged after the lapse of six years from that date;

(b) in respect of any securities in place of which a duplicate is issued under section 257 of this Act be discharged after the lapse of six years from the date of the issue of such duplicate or from the date of the last payment of interest on such securities, whichever date is later;

(c) in respect of a securities for which a renewed securities is issued under section 258 of this Act upon a consolidation or subdivision under section 259 of this Act, be discharged after the lapse of six years from the date of the issue of the renewed securities or of the new bond or securities, as the case may be.

**263** (1) If within six months of the death of a person who was entitled to a registered bond or securities, the nominal or face value of which does not in the aggregate exceed ₦5,000, probate of the will or letters of administration of the estate of the deceased person is not produced to the registrar, the registrar may, after such inquiry as he may deem necessary, determine which person is entitled to such bond or securities and may- Summary procedure in special cases.

(a) where any such bond or securities relates to a loan due for payment, authorise the registration of the name of such survivor or survivors in substitution for the name of the deceased person in the register of bond and securities and the payment to such survivor or survivors of the amount due in respect of that bond;

(b) where any such bond or securities relates to a loan not due for repayment, authorise the registration of the name of such survivor or survivors in substitution for the name

of the deceased.

(2) Any creditor or claimant against the estate of the deceased person may recover his debt or claim out of money paid to any survivor or survivors under subsection (1) of this section and remaining in his hands unadministered in the same manner and to the same extent as if the said person had obtained letters of administration of the estate of the deceased, and nothing in this section shall affect any claim of an executor or administrator or other representative of the deceased against such person other than a claim to recover amounts lawfully paid by him in the course of the administration of the estate of the deceased.

**264** Every bond certificate or securities issued under this part of this Act shall bear in a printed, stamped, engraved form-

Signature to be printed on certificates.

(a) the crest of the body concerned (if any);

(b) the signature of the Minister, Commissioner, Chairman or such other appropriate officer of a body;

(c) the signature of the registrar; and

(d) where applicable, the signature of the appropriate authority in the case of a statutory corporation which is directly the beneficiary of the loan to which the bond certificate or securities relates.

**265** (1) Except as otherwise provided in or under this part of this Act, no notice of any trust in respect of any registered bond or securities shall be receivable by the registrar or a relevant body.

Notice of trust not receivable except as provided.

(2) The registrar shall not be deemed to have received notice of a trust by reason only of the fact that he has recognised an endorsement on a bond or securities by an executor or an administrator as such, nor shall he inquire into the terms of any will by which such executor or administrator may be bound.

**266** All documents or instruments made or used under the provisions of this part of this Act shall be in such form as may be prescribed and shall be exempted from stamp duty payable to the Federal or a State Government.

Exemption from stamp duties.

**267** A body may delegate to the Minister, Commissioner or Chairman or such other appropriate officer all or any of the powers conferred on it by the approving authority subject to such restriction, conditions and qualifications, not inconsistent with the provisions of this part of this Act as may be specified.

Delegation of power.

**268** (1) No person shall be entitled to inspect, or to receive information in relation to registered bonds or securities, except on payment of such fee and in such circumstances and on such terms and conditions as may be approved from time to time by the Commission.

Inspection of register and documents, etc.

(2) Nothing in this section shall apply to the Auditor-General of the Federation or of a

State, the Accountant-General of the Federation or of a State or such other appropriate officer of the Federal or State Government or any public officer acting in his official capacity.

**269** (1) The Commission may make such rules and regulations generally for the purpose of giving effect to the provisions of this part of this Act and the rules and the regulations may include —

Power to make rules and regulations under this Part.

(a) the manner in which payment of interest in respect of bonds or securities is to be made and acknowledged;

(b) the circumstance in which promissory notes shall be renewed before further payment of interest thereon may be claimed;

(c) the issue of duplicate bond certificates and duplicate securities;

(d) the renewal of bond certificates and securities;

(e) the manner of payment of interest to joint holders of bond or securities;

(f) the circumstances in which alterations may be made in the registration of bond or securities;

(g) the payment of principal sums or interest and transfer of bond and securities in the case of persons under a legal disability;

(h) the disposal of unclaimed interest;

(i) the fees to be paid in respect of anything to be issued or done under the provisions of this part of this Bill; and

(j) all matters required by this part of this Act to be prescribed and all matters incidental to or connected with the matters hereinbefore enumerated.

**270** A body to which this part of this Act applies in exercising the powers granted under this part of this Act shall comply with the listing requirements of the securities exchanges and capital trade points.

Requirements of securities exchanges, etc.

**271** Any loan raised by any of the bodies to which this part of this Act applies shall, until the loan is fully repaid, be a binding and continuing obligation on the Federal, State or Local Government, boards or supervising Ministries of corporate entities to which this Bill applies with regards to the repayment of all principal sums and interest payments due and outstanding under the loan including other terms and conditions arising therefrom.

Binding obligation on successive governments or bodies.

**272** Nothing in this part of this Act shall be construed as derogating from the provisions of any other enactment which restricts the borrowing of money by any body to which the provisions of this part of this Act applies or requires the consent of any authority to the raising of such money by any such body.

Application of enactments.

**273** In this part of this Act-

Interpretation of  
certain words  
used in this  
part.

"appropriate officer" means the chief executive or any other officer authorised by the board of a statutory or government agency;

"approving authority" in the case of the Federal Government means the Federal Executive Council, in the case of a state means the Executive Council of the State, in the case of a Local Government means the Local Government Council and in the case of a government agency or statutory body, the board or the supervisory Ministry of that body, as the case may be;

"body" or "bodies" means the body or bodies referred to under section 222 of this Act;

"bond" means an instrument of indebtedness issued by a body to which this part of this Act applies to secure the repayment of money borrowed by such body;

"bond holder" means a person holding a registered bond and whose name is entered as the owner thereof in the register;

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

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

"Executive Council" means the Federal Executive Council or the Executive Council of a State;

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

"loan" means internal and external loan and include any arrangement under which a body is to be afforded credit facilities and references to the making, acceptance, repayment or application for a loan or to any other form of transaction relating to a loan shall be construed accordingly;

"Minister" shall have the same meaning as contained in subsection 315 of this Act"

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

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

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

"registrar" means a registrar appointed by a body under this part of this Act;

"registered securities" includes bonds and promissory notes issued under the provisions of

this part of this Act;

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

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

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

**274** There is established a body to be known as the Investments and Securities Tribunal (in this Act referred to as "the Tribunal") to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Establishment of the Investments and Securities Tribunal.

**275** (1) The Tribunal shall consist of ten (10) persons to be appointed by the Minister as follows:

Composition of the Tribunal.

(a) a full time Chairman who shall be a legal practitioner of not less than fifteen years with cognate experience in capital market matters;

(b) four other full time Members, three of whom shall be Legal Practitioners of not less than 10 years experience and one person who shall be knowledgeable in Capital Market matters who shall devote themselves to issues relating to adjudication and shall not exercise any administrative function;

(c) five other part time members who shall be persons of proven ability and expertise in corporate and capital market matters.

(2) The Chairman shall be the Chief Executive and Accounting Officer and shall be responsible for the overall control, supervision and administration of the Tribunal.

**276** (1) For the purpose of exercising any jurisdiction conferred by this Act, the Tribunal shall be duly constituted if it consists of not less than 3 members of the Tribunal

Constitution of the Tribunal.

(2) The Chairman of the Tribunal may constitute a panel of three (3) from its membership whenever he deems it necessary for the purpose of exercising the jurisdiction vested in the Tribunal by this Act or any other Act provided that:

(a) a member presiding as chairman of any panel shall be a legal practitioner; and

(b) for the purpose of this Act, the sitting of any of such panel shall be deemed a sitting of the Tribunal.

**277** (1) The Chairman shall hold office for a term of 5 years renewable for another term of 5 years and no more.

Term of office.

(2) Other members shall hold office for a term of 4 years renewable for another term of 4 years and no more.

**278** (1) A member of the Tribunal shall cease to hold office if-

Disqualification of members of the Tribunal.

(a) he becomes of unsound mind; or

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

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

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

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

**279** (1) A member of the Tribunal may, by notice in writing under his hand addressed to the Minister resign his office:

Resignation and removal.

Provided that the member shall, unless he is permitted by the Minister to relinquish his office continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is the earlier.

(2) A member of the Tribunal shall be removed from office by an order made by the Minister on-

(a) any of the grounds referred to in section 278 of this Act; or

(b) the ground of proven charge of misbehaviour or incapacity after due inquiry has been made and the member concerned has been informed of the charge against him and given an opportunity of being heard in respect of the charge.

**280** The salaries and allowances of the Chairman, members and Chief Registrar of the Tribunal shall be equivalent to that of the Chief Judge, Judges and Chief Registrar of the Federal High Court respectively.

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

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

Filling up of vacancies.

**282** (1) The Minister may from time to time, appoint a fit and proper person to be Chief Registrar of the Tribunal, who shall perform such duties in exercise of powers and as may from time to time, be assigned to him by the rules of the Tribunal and subject thereto by any special order of the Chairman.

Chief Registrar to the Tribunal.

(2) The Chief Registrar, Deputy Chief Registrar and Registrar, shall have power to

administer oaths and perform such other duties with respect to any proceedings in the Tribunal as may be prescribed by the rules or by any special order of the Chairman.

**283** (1) The Tribunal shall employ the services of such staff as the Tribunal may deem necessary for the efficient performance of its functions under or pursuant to this part of this Act.

Other staff of the Tribunal, etc.

(2) The remuneration (including allowances) and terms and conditions of service of the staff of the Tribunal shall be as may be determined by the Tribunal provided that it is not less than what is obtainable in similar institutions in the Capital Market.

(3) All sums payable by virtue of this section and under section 280 of this Act shall be charged on and paid out of the Consolidated Revenue Fund of the Federation.

(4) All employees of the Tribunal shall be entitled to pensions and other retirement benefits.

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

**284** (1) The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving-

Jurisdiction of the Tribunal, etc.

(a) a decision or determination of the Commission in the operation and application of this Act, and in particular, relating to any dispute-

(i) between capital market operators;

(ii) between capital market operators and their clients;

(iii) between an investor and a securities exchange or capital trade point or clearing and settlement agency;

(iv) between capital market operators and self regulatory organisation;

(b) the Commission and self regulatory organisation;

(c) a capital market operator and the Commission;

(d) an investor and the Commission;

(e) an issuer of securities and the Commission; and

(f) disputes arising from the administration, management and operation of collective investment schemes.

(2) The Tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly.

(3) In the exercise of its jurisdiction the Tribunal shall have the power to interpret any law, rules or regulation as may be applicable.

**285** (1) The Tribunal shall establish and maintain a fund, which shall be applied towards the discharge of its functions under this Act.

Funds of the Tribunal.

(2) There shall be paid and credited to the Fund established under subsection (1) of this section-

(a) annual subventions from the Federal Government with respect to recurrent and capital expenditures;

(b) fees collected for the services rendered by the Tribunal under this Act; and

(c) such other sums of money as may be provided by the Federal Government for the Tribunal.

**286** The Tribunal may accept any grant of money or contributions on such terms and conditions, if any, as may be specified by the person or organisation making such grant or contribution provided that the terms and conditions are consistent with the functions and objectives of the Tribunal.

Power to accept gift.

**287** The Tribunal shall keep proper accounts of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor appointed from a list of Auditors and in accordance with the guidelines supplied by the Accountant-General of the Federation.

Account and audit.

**288** The Tribunal may from time to time apply the proceeds of the funds established in section 285 of this Act-

Application of the funds of the Tribunal.

(a) to meet the cost of administration of the Tribunal;

(b) to reimburse members of the Tribunal or any committee of the Tribunal for expenses authorised; and

(c) to meet the cost of capital projects.

**289** (1) A person aggrieved by any action or decision of the Commission under this Act, may institute an action in the Tribunal or appeal against such decision within the period stipulated under this Act:

Appeals from decisions of the Commission.

Provided that the aggrieved person shall give to the Commission 14 days notice in writing of his intention to institute an action or appeal against its decision.

(2) An appeal under this part of this Act shall be filed within a period of thirty days from the date on which a copy of the order which is being appealed against is made, or deemed to have been made by the Commission and it shall be in such form and be accompanied by such fees as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for the delay.

(3) On receipt of an appeal under subsection (2) of this section the Tribunal may, after giving the parties an opportunity of being heard, make such orders thereon as it deems fit, confirming, modifying or setting aside the order appealed against.

(4) The Tribunal shall cause a copy of every order so made to be forwarded to the parties to the appeal and to the Commission.

(5) The Tribunal, shall in the exercise of its powers under this Act, conduct its proceedings in such manners as to avoid undue delays and shall dispose of any matter before it finally within three months from the date of the commencement of the hearing of the substantive action.

**290** (1) The Tribunal may make rules regulating its procedures.

Powers and procedures of the Tribunal.

(2) The Tribunal shall have, for the purposes of discharging its functions under this Act, power to-

(a) summon and enforce the attendance of any person and examine him on oath;

(b) require the discovery and production of documents;

(c) receive evidence on affidavits;

(d) call for the examination of witness or documents;

(e) review its decisions;

(f) dismiss an application for default or deciding matters *ex-parte*;

(g) set aside any order or dismissal of any application for default or any order made by it *ex-parte*; and

(h) do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under this Act.

(3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes.

(4) Proceedings of the Tribunal may be held in camera as and when deemed appropriate in the interest of the public.

**291** A party may appear either in person or authorise one or more legal practitioners to represent it before the Tribunal.

Right to legal representation.

**292** The onus of proving any matter before the Tribunal shall be on the applicant or

Onus of proof.

appellant as the case may be.

**293** (1) The Tribunal shall give its judgment in writing and may make orders as to fines, suspensions, withdrawal of registration or licenses, specific performance, or restitution as it may deem appropriate in each case.

Judgment of the Tribunal.

(2) A certified true copy of the decision of the Tribunal shall be supplied to the parties upon request.

(3) An award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the Tribunal.

**294** The Tribunal shall have exclusive jurisdiction on matters specified in this Act.

Exclusion of proceedings.

**295** (1) Any person dissatisfied with a decision of the Tribunal may appeal against such decision to the Court of Appeal if-

Appeal to the Court of Appeal.

(a) the decision was taken in the exercise of its appellate jurisdiction, on points of law only; or

(b) it is a final decision taken in the exercise of its original jurisdiction, on points of law or mixed law and fact; or

(c) it is an interlocutory decision of the tribunal, on points of law only.

(2) Without prejudice to the power of the Tribunal to review its own decision, only persons who participated in the proceedings of the Tribunal may appeal against the decision of the Tribunal.

**296** Parties to an appeal shall bear their cost.

Costs.

**297** An appeal against the decision of the Court of Appeal at the instance of either party or the Commission shall lie to the Supreme Court.

Further appeals.

## **PART XVII: MISCELLANEOUS**

**298** Without prejudice to the foregoing provisions of this Act, the Minister may give to the Commission such directives as appear to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply.

Power of Minister to issue directives.

**299** Subject to any legislation governing the administration of oaths, the Commission shall have the powers to administer oath on any person.

Power to administer oath.

**300** The Commission may, by general or special order in writing delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.

Delegation.

- 301** Any legal practitioner employed by the Commission shall be entitled to represent the Commission before any court or the Tribunal. Right to represent Commission before court or Tribunal.
- 302** No suit, prosecution or other legal proceedings shall lie against any officer, member or other employee of the Commission for anything which is done in good faith or intended to be done under this Act or the rules and regulations made thereunder. Protection of action taken in good faith.
- 303** (1). Except as otherwise specifically provided under the provisions of this Act, any person who violates or contribute in the violation of the provisions of this Act or of any rule and regulation made thereunder is liable to a penalty of not less than ₦100,000 and a further sum of ₦5,000 per day for every day that the violation continues Penalty.
- (2) The Commission may in addition to any penalty that may be prescribed under this Act, direct any person who has contravened of any of the provisions of this Act and any regulation made thereunder, to compensate any person who may have suffered any direct loss as a result of the contravention.
- (3) In appropriate cases, the Commission may also direct the forfeiture to the victim, any direct benefit or advantage received or receivable by the person in contravention.
- (4) Notwithstanding the provisions of subsections (2) and (3), of this section the complainant of a contravention may seek by action, consequential or punitive damages or any other remedy that may be available under the law.
- (5) In the exercise of its powers to impose a penalty under this Bill, the Commission shall accord the person in violation a fair hearing.
- 304** Where in the course of its investigation, the Commission discovers evidence of possible criminality, the Commission shall be obliged to pass such information to the appropriate criminal prosecuting authorities, such as, the office of the Attorney-General of the Federation, the Attorney-General of a State and the Economic and Financial Crimes Commission. Criminal prosecution.
- 305** (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Offences by companies and market participants.
- (2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against.
- (3) If the Commission is satisfied that a person (corporate or individual)-

(a) is engaged or has engaged in any form of market abuse or other violations under this Act; or

(b) by taking or refraining from taking any action, has required or encouraged another person or persons to engage in behaviour which if engaged in by a market participant or company would amount to market abuse or violation under this Act, it may impose on the person a penalty of such amount or of such nature as it considers appropriate.

(c) where the Commission is entitled to impose a penalty on a person, it may impose a penalty on the person, or in addition, publish a statement to the effect that the person has engaged in market abuse or violation under this Act.

**306** (1) An employee of a capital market operator or public company shall have the right to disclose any information connected with the activities of his work place which tends to show one or more of the following-

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

(a) that a criminal offence has been, is being or is likely to be committed;

(b) that a person has failed, is failing, is likely to fail or otherwise omitted to comply with any legal obligation to which he is subject;

(c) that any disclosure tending to show any matter falling within (a) or (b) above has been, is being or is likely to be deliberately concealed.

(2) For the purpose of subsection (1) of this section, it shall be immaterial whether the relevant failure occurred, occurs or would occur in Nigeria or elsewhere, and whether the law applying to it is that of Nigeria or any other country or territory.

(3) A disclosure is made in accordance with subsection (1) of this section if the employee-

(a) makes the disclosure in good faith-

(i) to his employer;

(ii) where his employer fails, refuses or omits to act, to the Commission; or

(iii) where the relevant failure or omission relates solely or mainly to the conduct of a person other than his employer, or any other matter for which a person other than his employer has legal responsibility, to that other person.

(b) the employee reasonably believes that the information disclosed and any allegation contained in it, are substantially true; and

(c) in all the circumstances of the case, it is reasonable for the employee to make the disclosure.

(4) In determining whether it is reasonable for the employee to make the disclosure, regard shall be had to the following-

- (a) the identity of the person to whom the disclosure is made;
- (b) the seriousness of the relevant failure, or omission;
- (c) whether the relevant failure is continuing or is likely to occur in the future.

(5) No employer shall subject an employee to any detriment by any act or any deliberate failure to act on the ground that the employee has made a disclosure in accordance with the provisions of this Act.

(6) Where an employee has been subjected to any detriment in contravention of subsection (5) of this section, he may present a complaint to the Commission.

(7) Upon receipt by the Commission of such complaint, the Commission shall cause an investigation to be carried out and if satisfied that the provision of this section has been contravened, the Commission shall direct the affected capital market operator or public company to reinstate the affected employee or pay compensation in accordance with subsection (9) of this section within one (1) month of such directive.

(8) Where the detriment suffered is other than dismissal or termination, the Commission shall direct the capital market operator or public company to restore the affected employee to his appropriate position within one (1) month of such directive.

(9) Any employee relieved of his employment without any just cause other than for reason of disclosure made pursuant to the provision of this section shall be entitled to a compensation which shall be calculated as if he had attained the maximum age of retirement or had served the maximum period of service, in accordance with his conditions of service.

(10) Any capital market operator or public company which contravenes the provisions of this section is liable to a penalty not exceeding ₦5,000,000 in addition to the payment of compensation to the employee in accordance with subsection (9) of this section.

(11) For the purpose of this section, "detriment" includes dismissal, termination, redundancy, withholding of benefits and entitlements, suspension and any other act that has negative impact on the employee.

(12) Apart from the provisions of the Constitution of the Federal Republic of Nigeria, any provision in any other law or agreement that precludes the application of this section shall be void.

**307** (1) A capital market operator may not without the prior approval in writing of the Commission-

Change of name  
of capital

- (a) change the name under which it is registered under this Act or change its shareholding or directors;
- (b) use or refer to itself by a name other than the name under which it is so registered or a literal translation thereof;
- (c) use or refer to itself by an abbreviation or a derivative of such name.

market operators, managers, portfolio or collective investment scheme and change of shareholding or directors.

(2) Any change-

- (a) in the name of a capital market operator, manager, portfolio or scheme; or
- (b) of shareholding or directors, shall not be effective without the prior approval in writing of the Commission.

**308** (1) The Commission may by notice require a capital market operator to terminate the appointment of a director or officer of that capital market operator, if the director or officer is no longer a fit and proper person to hold the office in question.

Removal of appointees.

(2) When the Commission intends to act as in subsection (1) of this section, the Commission shall give notice to the capital market operator, and, unless it is impracticable to do so, the director or officer concerned, of the Commission's intention and the reasons therefor, and the director or officer shall thereupon cease to perform the functions of the office in question pending the final outcome of any appeal (if any) to the Tribunal under the provisions of this Act.

**309** If the Minister is of the opinion and after consultation with the Commission, that it is necessary or expedient so to do in the public interest, he may, by order published in the Gazette, exempt any person or class of persons buying or selling securities or otherwise dealing with the securities market from the operation of the provisions of this Act.

Power to exempt.

**310** (1) The Commission may appoint one or more committees to carry out, on its behalf such of its functions as the Commission may determine.

Committees of the Commission.

(2) A committee appointed under subsection (1) of this section shall consist of such number of persons as may be determined by the Commission; and a person other than a member of the Commission shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Commission shall be of no effect until it is confirmed by the Commission.

**311** (1) The fixing of the seal of the Commission shall be authenticated by the signature of the Director-General and the Secretary or any two members of the Commission duly authorised in that regard.

Seal of the Commission.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed by or on

behalf of the Commission by the Chairman or any person specially authorised to act for that purpose by the Commission.

(3) Any document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

(4) The validity of any proceedings of the Commission or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Commission or committee, or by any defect in the appointment of a member of the Commission or of a committee, or by reason that a person not entitled to do so took part in the proceedings of the Commission or committee.

**312** (1) Notwithstanding the provisions of this Act the relevant provisions of all existing enactments, including the following-

Application and relevance of other laws not barred.

(a) the Trustees Investments Act;

Cap T22, LFN 2004.

(b) the Borrowing by Public Bodies Act;

Cap B10, LFN 2004.

(c) the Companies and Allied Matters Act;

Cap C20, LFN 2004.

(d) the Insurance Act;

Cap I17, LFN 2004.

(e) the Central Bank of Nigeria Act;

(f) the Nigeria Social Insurance Trust Fund Act;

Cap C4, LFN 2004.

(g) the Banks and Other Financial Institutions Act;

Cap N88 LFN 2004.

(h) the Nigerian Investment Promotion Act;

Cap B3 LFN 2004.

(i) the Foreign Exchange (Monitoring and Miscellaneous Act);

Cap N117, LFN 2004.

(j) the Chartered Institute of Stockbrokers Act, shall be read with such modification as to bring them into conformity with the provisions of this Act in relation to capital market matters.

Cap F34, LFN 2004.

Cap C9, LFN 2004.

(2) Without prejudice to the generality of subsection (1) of this section, the provisions of this Act shall be in addition to the application of other laws not barred and not in derogation of the provisions of any other law or enactment for the time being in force.

(3) Apart from the Constitution of the Federal Republic of Nigeria, if the provisions of any other law, in relation to capital market matters including the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.

**313** (1) The Commission may, from time to time, make rules and regulations for the purpose

Rules and

of giving effect to the provisions of this Act and may in particular and without prejudice to the generality of the foregoing provisions, make rules and regulations- regulations.

- (a) to alter or modify, from time to time, in consultation with the Minister, the provisions of the Second Schedule to this Act;
- (b) prescribing the forms for returns and other information required under this Act;
- (c) prescribing the procedure for obtaining any information required under this Act;
- (d) requiring returns to be made within the period specified therein by any company or enterprise to which this Act applies;
- (e) prescribing the procedure and criteria for approval of mergers, take-overs, acquisitions and business combinations under this Act;
- (f) prescribing any fees payable under this Act;
- (g) prescribing the procedure and criteria for regulating cross border offerings, listing and trading of securities by foreign issuers;
- (h) prescribing that the provisions of this Act shall not apply or shall apply with such modifications (if any) as may be specified in the regulations to any person or class of persons or any securities or class of securities or to any transaction;
- (i) prescribing the information to be contained in any prospectus or offer documents filed under this Act;
- (j) prescribing the procedure, criteria for the authorisation, revocation and operation of collective investment schemes including prudential and product regulation;
- (k) prescribing the activities which constitute "insider dealings" the rules governing dealings in securities by insiders and defining the term "insider dealings";
- (l) without prejudice to the provisions of the Companies and Allied Matters Act specifying for the protection of investors-
  - (i) the matters to be disclosed relating to the public issue of securities, transfer of securities of public companies and other matters incidental thereto;
  - (ii) the returns that are required to be filed by all public companies;
  - (iii) the form, manner and procedure for obtaining proxies including the information to be disclosed to investors before proxies are given by any person; and
  - (iv) the manner in which such matters shall be disclosed by the companies.
- (m) prescribing the requirement for the identification of persons doing business with

capital market operators;

(n) prescribing as it deems appropriate, necessary rules for dealing with unclaimed dividends and unclaimed certificates by public companies and their agents;

(o) providing for anything requiring to be prescribed under this Act; and

(p) generally for carrying out the principles and objectives of this Act.

(2) The Commission shall in the exercise of powers to make rules in this section consult with stakeholders.

(3) Any instrument issued under subsection (1) of this section shall be under the signature of the Director-General of the Commission and the Secretary or any two members as may be authorised.

(4) Any regulation under this Act shall be deemed made fifteen days after receipt by the Minister unless the Minister, before the expiration of the fifteen days, directs that it be modified, amended or rescinded.

(5) Every regulation made by the Commission shall be published in the Gazette or any official document.

(6) Notwithstanding the provisions of subsection (1) of this section the Commission may, from time to time, amend or revoke rules or regulations for purposes of giving effect to the provisions of this Bill and the rules and regulations made thereunder.

(7) Any regulations or rules made under this Act may, where appropriate, prescribe penalties for default.

**314** (1) The Investments and Securities Act No 45, 1999 is repealed.

Repeals and savings.

(2) It is hereby declared that without limiting the provisions of the Interpretation Act, the repeal of the Act shall not affect any document made or anything whatsoever done or purported to have been done under the enactment so repealed.

(3) Every order, requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under the enactment repealed by this Act shall, if in force at the commencement of this Act, continue in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

## **PART XVIII: INTERPRETATION AND CITATION**

**315** In this Act-

"agent" means a person authorised by another to act for or in place of him and in relation to a securities dealer, includes a person who is, or has been a banker of the dealer at any given time;

Interpretation.

"approved securities organisation" means a body corporate which is approved by the Commission under this Act as a securities organisation;

"associated person" means a subsidiary, affiliate or agent of a member of any capital market operator;

"auditor" means a member of a body of accountants, from time to time, recognised by an Act or any other enactment and appointed as auditor of a company or trust by managers with the approval of the trustees;

"board" means the board or council, in relation to a securities exchange or capital trade point and includes the persons for the time being in whom the management of the securities exchange or capital trade point is vested;

"book" includes any register, document or other record of information and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or micro-film, electronic process or otherwise;

"capital market operator" means any persons (individual or corporate), duly registered by the Commission to perform specific functions in the capital market;

"capital trade point" means a mini exchange registered by the Commission pursuant to this Bill, which constitutes, maintains or provides market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing, with respect to securities, the functions commonly performed by a securities exchange;

"certificate of registration" means any certificate or license issued by the Commission as a part of its registration functions under this Act;

"clearing and settlement company" means any corporate body who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities and provides facilities for comparison of data regarding the terms of settlement of securities transaction on or for the allocation of securities settlement responsibilities;

"collective investment scheme" means a scheme in whatever form, including an open-ended investment company, in pursuance of which members of the public are invited or permitted to invest money or other assets in a portfolio, and in terms of which-

(a) two or more investors contribute money or other assets to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest;

(b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed, but not a collective investment scheme authorised by any other Act;

"Commission" means the Securities and Exchange Commission established in section 1 of this Act;

"company" has the same meaning as defined in the Companies and Allied Matters Act 1990;

"custodian" means a person who has custody as a bailee of securities or certificate issued in the investor's name with the investor's name appearing in the issuer's register as the beneficial owner of the securities;

"dealer" means a person engaged in the business of buying and selling of securities for his own account;

"dealer's representative" means a person, by whatever name described, in the direct employment of, or acting for, or by arrangement with, a dealer, who performs for that dealer any of the functions of a dealer (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission or otherwise; and includes any director or officer of a body corporate who performs for the body corporate any of those functions (whether or not his remuneration is as aforesaid);

"dealing member" means a body corporate that is a member of a recognised securities exchange and is licensed to engage in dealing in securities on that exchange;

"dealing in securities" means (whether as principal or agent) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into-

(a) any agreement for or with a view to acquiring, disposing or subscribing for, or underwriting of securities; or

(b) any agreement the purpose or pretended purpose of securing a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

"defalcation" means a default, act of embezzling, failure to meet an obligation, misappropriation of trust funds or money held in any fiduciary capacity and failure to properly account for such funds;

"director" has the same meaning as is assigned to it in the Companies and Allied Matters Act;

"depository" means a custodian who holds securities on behalf of known investors but whose name appears on the issuer's register as a fiduciary nominee for the benefit of the investors and who operates a system of central handling of securities of a particular class of an issuer deposited within its system and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of certificates;

"executive officer" in relation to a body corporate, means any person by whatever name called and whether or not he is a director of the body corporate who is concerned or takes part in the management of the body corporate;

"exchange" means any exchange registered by the Commission pursuant to this Act which constitutes, maintains or provides a market place for bringing together, purchasers and

sellers of securities or for otherwise performing with respect to securities the functions commonly performed by an exchange;

"expert" includes every engineer, legal practitioner, accountant and any other person whose profession gives authority to a statement made by him;

"fine" means monies imposed by a court or tribunal as prescribed by this Act;

"Government securities" means securities which are direct obligations of and guaranteed as to principal and interest repayment by the Federal Government of Nigeria, or a State or Local Government;

"insider" means-

(a) any person who is or is connected with the company in one or more of the following capacities-

(i) a director of the company or a related company;

(ii) an officer of the company or a related company;

(iii) an employer of the company or a related company;

(iv) an employee of the company, involved in a professional or business relationship to the company;

(v) any shareholder of the company who owns 5 per cent or more of any class of securities or any person who is or can be deemed to have any relationship with the company or member;

(vi) members of audit committee of a company; and

(b) any of the persons listed in paragraph (a), who by virtue of having been connected with any such person or connected with the company in any other way, possesses unpublished price sensitive information in relation to the securities of the company, and any reference to unpublished price sensitive information in relation to any securities of a company is a reference to information which-

(i) relates to specific matters relating or of concern (directly or indirectly) to that company, that is, is not of a general nature relating or of concern to that company; and

(ii) is not generally known to those persons who are accustomed to or would be likely to deal in those securities but which would, if it were generally known to them be likely materially to affect the price of those securities;

"insider dealing" includes insider trading and occurs when a person or group of persons who being in possession of some confidential and price sensitive information not generally available to the public, utilizes such information to buy or sell securities for the benefit of

himself, itself or any person;

"investment adviser means a person who carries on a business of advising others concerning securities or who as part of a regular business, issues or publishes analysis or makes reports concerning securities;

Provided that the term investment adviser shall not include-

- (a) a bank as defined in the Banks and Other Financial Institutions Act,
- (b) a company or society registered under the Insurance Act,
- (c) the proprietor of a newspaper and holder of a permit issued under the Newspapers Act and where-
  - (i) the newspaper is distributed generally to the public it is distributed only to subscribers to, and purchasers of, the newspaper for value;
  - (ii) the advice is given or the analysis or reports are issued or published only through that newspaper;
  - (iii) that no person receives any commission or other consideration for giving the advice or for issuing or publishing the analysis or reports; and
  - (iv) the advice is given and the analysis and reports are issued or published solely as incidental to the conduct of that person's business as a newspaper proprietor.

"investment adviser's representative" means a person, in the direct employment of or acting for or by arrangement with any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commission, or otherwise; and includes any director or officer of a body corporate who performs for such body corporate any of those functions (whether or not his remuneration is as aforesaid);

"listing rules or requirements", in relation to a body corporate which maintains or provides, or proposes to maintain or provide, a stock market for dealing in securities in a securities exchange or capital trade point means rules governing or relating to :-

- (a) the admission to the official list of the body corporate, or bodies corporate, governments, or other persons for the purpose of quotation on the stock market, or made available by bodies corporate, governments, unincorporated bodies or other persons or the removal from that official list and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, and other persons who are admitted to that list, whether those rules:-
  - (i) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or

(ii) are made by another person and adopted by the body corporate;

"market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis;

"market participant" means any person (individual or corporate) involved in any aspect of capital market transaction or operation under this Bill;

"member company" means a company which carries on business of dealing in securities and is recognised as a member company by a securities exchange or capital trade point;

"Minister" means the minister responsible for matters relating to finance;

"Ministry" means Ministry of Finance;

"open-ended investment company" means a company with an authorised share capital whose articles of association authorises the acquisition of its own shares structured in such a manner that it provides for the issuing of different classes of shares to investors, each class of shares representing a separate portfolio with a distinct investment policy;

"partnership" means a business association owned by two or more persons that is not organised as a company or corporation;

"penalty" means administrative or civil fines imposed by the Commission and payable to the Commission;

"portfolio" means a group of assets including any amount of cash;

"portfolio investment" means an investment in shares or other securities traded on a securities exchange or capital trade point;

"promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion of it, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

"prospectus" means any written or electronic information, notice, advertisement or other forms of invitation offering to the public for subscription or purchase, any shares, debentures or other approved and recognised securities of a company and other issues or scheme;

"public officer" means any person working in the public service of the Federation or of a State as defined in the Constitution of the Federal Republic of Nigeria;

"quotation", in relation to securities and in relation to a stock market of a securities exchange or capital trade point includes the displaying or providing, on a stock market of a securities exchange or capital trade point, information concerning :-

(a) prices or considerations; in a case where offers to sell, purchase or exchange the

securities at particular prices, or for particular consideration, are made or accepted on that stock market;

(b) offers or invitations; in a case where offers or invitations are made on that stock market, being offers or invitations which are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration, those prices or that consideration; or

(c) in any case, the price at which, or the consideration for which, particular persons or particular classes of persons, propose or may reasonably be expected to sell, purchase or exchange the securities;

"related company" in relation to a company, means any body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company;

"relevant authority" means-

(a) in relation to a member company, the securities exchange or capital trade point by which the company is recognized;

"rules", in relation to a securities exchange or capital trade point, means the rules governing the members by whatever name called and wherever contained and includes rules contained in the memorandum of association and the articles of association of the securities exchange or a capital trade point;

"securities" means-

(a) debentures, stocks or bonds issued or proposed to be issued by a government;

(b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate;

(c) any right or option in respect of any such debentures, stocks, shares, bonds or notes;  
or

(d) commodities futures, contracts, options and other derivatives, and the term securities in this Act includes those securities in the category of the securities listed in (a) - (d) above which may be transferred by means of any electronic mode approved by the Commission and which may be deposited, kept or stored with any licensed depository or custodian company as provided under this Act

"securities dealer" means a firm who is a member of a securities exchange or capital trade point or any other recognized place for securities transactions, engaged in the business of effecting transactions in securities for his own account, or on the account of others or both;

"securities exchange" means an exchange or approved trading facility such as a commodity exchange, metal exchange, petroleum exchange, options, futures exchanges, over the

counter market, and other derivatives exchanges;

"securities lending" means the temporary exchange of securities, generally for cash or other securities of at least an equivalent value, with an obligation to redeliver a like quantity of the same securities on a future date and includes securities loan, repurchase agreement (Repos) and self-buy back agreements;

"self regulatory organisation" means any registered securities exchange, capital trade point, an association of securities dealers, clearing house, capital market trade association or any other self regulatory body approved as such, by the Commission;

"share" means a proprietary interest in the share capital of a body corporate and except where a distinction between stock and shares is expressed or implied, includes stock;

"share certificate" means an instrument of a body corporate certifying that the person named is entitled to a certain number of shares and is prima facie evidence of his ownership whether electronically expressed or otherwise as may be approved by the Commission and kept, lodged or stored with a licensed depository or custodian company in accordance with the provisions of this Act;

"stockbroker" means a member of the Chartered Institute of Stockbrokers recognized by an Act, or any other enactment, registered by the Commission as a market operator or a dealing member of a securities exchange or capital trade point, or any other recognized mode of securities transaction and engaged in the business of effecting transactions in securities;

"stock market" or other place or facility at which or on which securities are traded;

"transfer agent or registrar" means any person engaged on behalf of an issuer of securities or on behalf of itself in-

- (a) creating and maintaining the register of members of an issuer;
- (b) counter-signing such securities upon issuance;
- (c) monitoring the issuance of such securities with a view to preventing unauthorised issuance, a function commonly performed by a person called a registrar;
- (d) registering the transfer of such securities;
- (e) exchanging or converting such securities;
- (f) transferring, record ownership of such securities by book-keeping entry without physical issuance of securities certificates;

"trust account" means:

- (a) an account established under a trust deed in relation to the provisions of this Bill; or
- (b) an account kept by a capital market operator on behalf of his client under the

provisions of this Act"

"trust deed" means the agreement drawn up between the trustees and the managers or between such persons approved by the Commission and in relation to the provisions of this Act for regulating the operations of a collective investment scheme or other approved schemes, funds, debentures, bonds or market operations;

"trustee" means, a person registered by the Commission to so act, and in whom the property for the time being, subject to any trust created in pursuance of an approved scheme or operation, is or may be vested, in accordance with the terms of the trust;

"underwriter" means a person registered by the Commission who has temporarily purchased securities from an issuer with a view to offering or selling the securities for the issuer in connection with the distribution of such securities or participates or has a direct or indirect participation in any such undertaking; but does not include a person whose interest is limited to a commission from an underwriter or a dealer not in excess of the usual and customary distributor's or seller's commission;

"unit trust scheme" means any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons as beneficiaries under a unit trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property;

"units" in relation to a unit trust scheme, means sub-divisions of beneficial interest in the assets of a unit trust scheme or of any other trust scheme created under this Bill.

**316** This Act may be cited as the Investments and Securities Act, 2007.

Citation.

## SCHEDULES

### FIRST SCHEDULE

#### *Section 2 (4)*

#### PROCEEDINGS OF THE BOARD OF THE COMMISSION

**1** (1) Subject to this Act and section 27 of the Interpretation Act, the Commission may make standing orders regulating its proceedings or those of any of its committees.

(2) At any meeting of the Commission the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of their number to preside at that meeting.

(3) The quorum for the meeting of the Board of the Commission shall be five (5), two (2) of whom must be non-executive members”.

(4) Where the Commission desires to obtain the advice of any person on a particular matter, the Commission may co-opt him as a member for such period as it thinks fit; but a person who is a member by virtue of this paragraph shall not be entitled to vote at any

meeting of the Commission and shall not count towards a quorum.

(5) The Chairman shall have a casting vote.

### *Committees*

**2** (1) The Commission may appoint one or more standing or *ad-hoc* committees to carry out on its behalf such of its functions as it may determine.

(2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Commission) as may be determined by the Commission; and a person other than a member of the Commission shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Commission shall be of no effect until it is confirmed by the Commission.

(4) The quorum of a meeting of the committee of the Commission shall be as determined by the Board.

(5) The Chairman shall have casting vote.

**3** Any member of the Commission and any person holding office on a committee of the Commission who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Commission or a committee thereof shall forthwith disclose his interest to the Commission and shall not vote on any question relating to the contract or arrangement.

## SECOND SCHEDULE

*Section 304*

### INVESTMENTS AND INVESTMENT BUSINESS

#### **PART I: TYPES OF INVESTMENTS**

Investments include-

*Shares, etc.*

**1** Shares and stock in the share capital of a company.

*Debentures*

**2** Debentures, including debenture stock, loan stock, bonds and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3 of this Schedule.

### *Government and Public Securities*

**3** Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.

### *Instruments Entitling to Shares or Securities*

**4** Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1, 2 or 3 of this Schedule.

### *Certificates Representing Securities*

**5** Certificates or other instruments which confer-

(a) proprietary rights in respect of any investment falling within paragraph 1, 2, 3 or 4 of this Schedule;

(b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or

(c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

### *Units or shares in Collective Investment Scheme*

**6** Units in a collective investment scheme, including shares in or securities of an open-ended investment company or real estate investment company or trust.

### *Options*

**7** Options to acquire or dispose of:-

(a) an investment falling within any other paragraph of this Schedule;

(b) currency of the Federal Republic of Nigeria or of any other currency traded on the exchanges and capital trade points;

(c) gold or silver; or

(d) an option to acquire or dispose of an investment falling within this paragraph by virtue of subparagraph (a), (b) or (c) of this Schedule.

### *Futures*

**8** Rights under contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date at a price agreed upon when the contract is made.

9 Or any other forms of investment or capital instrument within the meaning of investment generally.

**PART II: ACTIVITIES CONSTITUTING INVESTMENT BUSINESS**

*Dealing in Securities*

1 Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

*Arranging deals in Investments*

2. Making, or offering or agreeing to make-

(a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or

(b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

*Managing Investments*

3 Managing, or offering or agreeing to manage, assets belonging to another person if-

(a) those assets consist of or include investments; or

(b) the arrangements for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them.

*Investment Advice*

4 Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

*Establishing, etc, Collective Investment Schemes*

5 Establishing, operating or winding up a collective investment scheme, including acting as trustee or custodian of an authorised collective investment scheme.

6 Any other activity falling within the definition of activities constituting investment business.

**THIRD SCHEDULE**

*Sections 64 (1), 67 (1)]*

## MANDATORY CONTENTS OF PROSPECTUS

### **PART I: MATTERS TO BE STATED**

#### *The Company's Proprietorship, Management and its Capital Requirement*

#### **1** The prospectus shall state-

- (a) the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company;
- (b) the number of shares (if any) fixed by the company's articles as the qualification of a director, and any provision in the articles as to the remuneration of directors; and
- (c) the names, descriptions and addresses of the directors or proposed directors.

#### **2** Where shares are offered to the public for subscription, the prospectus shall give particulars as to-

(a) the minimum amount which in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following-

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring subscriptions for, any shares in the company,

(iii) the repayment of any money borrowed by the company in respect of any of the foregoing matters,

(iv) working capital; and

(b) the amounts to be provided in respect of the matters above mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

#### *Details Relating to the Offer*

#### **3** (1) The prospectus shall state:-

(a) the time of the opening of the subscription lists; and

(b) the amount payable on application and allotment on each (including the amount, if any, payable by way of premium).

(2) In the case of second or subsequent offer of shares, there shall also be stated the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted and the amount (if any) paid on the shares so allotted, including the amount (if any) paid by way of premium.

4 (1) There shall be stated the number, description and amount of any shares or debentures of the company which any person has, or is entitled to be given an option to subscribe for.

(2) The following particulars of the option shall be given-

(a) the period during which it is exercisable;

(b) the price to be paid for shares or debentures subscribed for under it;

(c) the consideration (if any) given or to be given for it or the right to it;

(d) the names and addresses of the persons to whom it or the right to it, was given or, if given to existing shareholders or debenture holders as such the relevant shares or debentures.

(3) References in this paragraph to subscribing for shares or debentures include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

5 The prospectus shall state the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash; and-

(a) in the latter case the extent to which they are so paid up; and

(b) in either case the consideration for which those shares or debenture have been issued or are proposed or intended to be issued.

*Property acquired or to be acquired by the Company*

6 (1) For purposes of paragraphs 8 and 9 of this Schedule relevant property is property purchased or acquired by the company, or proposed to be purchased or acquired:-

(a) which is to be paid wholly or partly out of the proceeds of the issue offered for subscription by the prospectus.

(b) the purchase or acquisition of which has not been completed at the date of the issue of the prospectus.

(2) Paragraphs 8 and 9 of this Schedule shall not apply to property-

(a) the contract for which purchase or acquisition was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(b) as respects which the amount of the purchase money is not material.

**7** As respects any relevant property, the prospectus shall state:-

(a) the names and addresses of the vendors;

(b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amounts so payable to each vendor; and

(c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.

**8** There shall be stated the amount (if any) paid or payable as purchase money in cash, shares or debentures for any relevant property, specifying the amount (if any) payable for goodwill.

**9** (1) Subparagraphs (2) to (4) of this paragraph shall apply with respect to the interpretation of paragraphs 6, 7 and 8 of this Schedule.

(2) Every person is deemed a vendor who has entered into any contract (absolute or conditional) for the sale or purchase, or for any option of purchase of any property to be acquired by the company, in any case where-

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly original paid out of the proceeds of the issue offered for subscription by the prospectus; or

(c) the contract depends for its validity or fulfillment on the result of that issue.

(3) Where any property to be acquired by the company is to be taken on lease, the provisions of paragraphs 6, 7 and 8 of this Schedule shall apply as if "the vendor" includes the lessor, 'purchase money' includes the consideration for the lease, and 'sub-purchaser' includes a sub-lessor.

(4) For the purposes of paragraph 8 of this Schedule, where the vendors or any of them are a firm, the members of the firm are not to be treated as separate vendors.

*Commissions, Preliminary Expenses, etc.*

**10** (1) The prospectus shall state-

(a) the amount (if any) paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for shares in or

debentures of the company, or the rate of any such commission;

(b) the amount or estimated amount of any preliminary expenses and the person by whom any of those expense have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable;

(c) any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration thereof.

(2) Subparagraph (1) of this paragraph, so far as it relates to preliminary expenses, does not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

#### *Contracts*

**11** (1) The prospectus shall give the date of parties to and general nature of every material contract.

(2) Subparagraph (1) of this paragraph does not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or a contract entered into more than two years before the date of issue of the prospectus.

#### *Auditors*

**12** The prospectus shall state the names and addresses of the company's auditors (if any).

#### *Interests of Directors*

**13.** (1) The prospectus shall give full particulars of-

(a) the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company;

(b) where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm.

(2) With the particulars under subparagraph (1) (b) of this paragraph must be provided a statement of all sums paid or agreed to be paid to the director or the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or the firm in connection with the promotion of the company.

(3) This paragraph does not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

#### *Other Matters*

**14** If the prospectus invites the public to subscribe for shares in the company and the company's share capital is divided into different classes of shares, the prospectus shall state the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

**15** In the case of a company which has been carrying on business or of a business which has been carried on for less than three years, the prospectus shall state the length of time during which the business of the company (or the business to be acquired, as the case may be) has been carried on.

**PART II: AUDITORS' AND ACCOUNTANTS' REPORTS TO BE SET OUT IN PROSPECTUS**

*Sections 64 (1), 67 (1)*

**16 (1)** The prospectus shall set out a report by the company's auditors with respect to :-

(a) profits and losses and assets and liabilities, in accordance with sub-paragraphs (2) and (3) of this paragraph, as the case requires; and

(b) the rates of the dividends (if any) paid by the company in respect of each class of shares in respect of each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and if no accounts have been made up in respect of any part of the five years ending on a date three months before the issue of the prospectus, the report shall contain a statement of that fact.

(2) If the company has no subsidiaries, the report shall-

(a) deal with profits and losses of the company in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) deal with the assets and liabilities of the company at the last date to which the company's accounts were made up.

(3) If the company has subsidiaries, the report shall-

(a) deal separately with the company's profits or losses, as provided by sub-paragraph (2) of this paragraph, and in addition deal either:-

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary so far as they concern members of the company, or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and (so far as they concern members of the company) with the combined profits and losses of its subsidiaries; and

(b) deal separately with the company's assets and liabilities as provided by subparagraph (2) of this paragraph, and in addition deal either-

(i) as a whole with the combined assets and liabilities of its subsidiaries with or without the company's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary, indicating, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

#### *Accountants' Report*

**17** If, the proceeds of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, or any part of the proceeds of the issue is to be so applied, there shall be set out in the prospectus a report made by accountants upon-

(a) the profits or losses of the business in respect of each of the five years immediately preceding the issue of the prospectus; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

**18** (1) Subparagraphs (2) and (3) of this paragraph apply if-

(a) the proceeds of the issue are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate, or any part of the proceeds is to be so applied; and

(b) by reason of that acquisition or anything to be done in consequence of or in connection with it, that body corporate will become a subsidiary of the company.

(2) There shall be set out in the prospectus a report made by accountants upon-

(a) the profits or losses of the other body corporate in respect of each of the five years immediately preceding the issue of the prospectus; and

(b) the assets and liabilities of the other body corporate at the last date to which its accounts were made up.

(3) The accountants' report required by this paragraph shall-

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material time held the shares, to be acquired; and

(b) where the other body corporate has subsidiaries, deal with the profit or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner

provided by sub-paragraph (3) of paragraph 16 of this Schedule in relation to the company and its subsidiaries.

*Provisions Interpreting Preceding Paragraphs and  
Modifying them in Certain Cases*

**19** If, in the case of a company which has been carrying on business, or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, the preceding paragraphs of this part have effect as if references to four years, three years, two years or one year (as the case may be) were substituted for references to five years.

**20** The expression financial year, in this part means the year in respect of which the accounts of the company or of the business (as the case may be) are made up; and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts have been made up for a period greater or less than one year, that greater or lesser period is for purposes of this part deemed to be a year.

**21** Any report required by this part shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary, or shall make those adjustments and indicate that adjustments have been made.

**22** (1) A report required by paragraph 17 or 18 of this Schedule shall be made by accountants qualified under this Act for appointments as auditors of a company.

(2) Such a report shall not be made by any accountant who is an officer or servant, or partner of or in the employment of an officer or servant, of the company or the company's subsidiary or holding company or of a subsidiary of the company's holding company; and in this sub-paragraph, "officer" includes a proposed director, but not an auditor.

(3) The accountant making any report for purposes of paragraph 17 or 18 of this Schedule shall be named in the prospectus.

FOURTH SCHEDULE

*Sections 75, 83 (1)*

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO THE COMMISSION BY A  
COMPANY UNDER SECTIONS 64, 56 OR 561 OF THE COMPANIES AND ALLIED MATTERS ACT  
1990 AND REPORTS TO BE SET OUT IN IT

**PART I: FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED IN IT**

Statement in lieu of prospectus delivered for registration by .....

Pursuant to section ..... of the Companies and Allied Matters Act 1990.

Delivered for registration by..... shares of ₦..... the nominal share capital of the.....shares of ₦ ..... company divided into .....shares of ₦ .....

Amount (if any) of above capital which consists of redeemable shares .....

The earliest date on which the company has power to redeem these shares.....

Names, descriptions and addresses of directors or proposed directors .....

Amount of shares issued .....

Amount of commissions paid in connection with the issue of the shares .....

Amount of discount, if any, allowed on the issue of Shares; or so much of them as has not been written off at the date of the statement .....

Amount (if any) paid or payable as commission for subscribing or agreeing to procure subscriptions for any shares or debentures in the company:

Amount paid .....

Payable .....

Rate of the commission.....

The number of shares (if any) which persons have agreed of a commission to subscribe absolutely.

Rate per cent .....

Unless more than one year has elapse since the date on which the company was entitled to commence business.

Amount of preliminary expenses .....Naira .....

By whom those expenses have been paid or are Payable.....

Name of Promoters .....

Amount paid or intended to be paid to promoter .....

Consideration for payment .....

Amount (Naira) paid..... intended to be paid.....

consideration

.....

Any other benefit given to any promoter .....

Name of promoter .....

Nature and value of benefit .....

Consideration for giving of benefit consideration .....

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Shares of Naira fully paid ..... upon which Naira per share credited as paid.....

Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.

Debenture

.....

.....

Consideration for the issue or intended issue of those shares or debenture.

Consideration

.....

.....

Number, description and amount of any shares or debentures which any persons has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted with a view to his offering them for sale.

Share of Naira of .....

Debentures

.....

.....

Period during which option is exercisable .....until

.....

.....

Price to be paid for shares or debentures subscribed for or acquired under option.

Consideration

.....

Consideration for option or right to option.

Persons to whom option or, right to option was given or, if given to exist in shareholders or

debenture holders as such the relevant shares or debentures .....

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material: or in the case of re-registration of a private company as public, names and addresses of vendors property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the contract and the company or where the amount of the purchase money is not material.

Name .....  
Address .....

Name .....  
Address .....  
Total purchase price..... ₹

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Cash ..... ₹  
Share ..... ₹  
Debenture ..... ₹  
Goodwill ..... ₹

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time of such transaction a promoter director or proposed director of the company had any interest direct or indirect.

Particulars—  
.....  
.....

Date of, parties to, and general nature of every material contract (other than contract entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

Date of ..... Parties to .....  
Nature of contract .....

Time and place at which the contracts or copies of them may be inspected and, in the case of a contract wholly or partly in a foreign language, a copy of a translation of it in English or embodying a translation in English or of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

Time .....  
Place .....

Name of Auditor.....

Address  
.....

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to come or to qualify him as a director or otherwise for services rendered or to be rendered to the company by him or by the firm.

Nature and extent, of interest of director .....

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Rates of dividends .....

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

Particulars (Signature of the persons named above as directors or proposed directors or of their agents authorised in writing) .....

Date .....

**PART II: REPORTS TO BE SET OUT**

1 Where it is proposed to acquire a business, there shall be set out a report made by accountants (who shall be named in the statement) upon:-

- (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Commission; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2 Where it is proposed to acquire share in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, there shall be set out a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (1) or (2) of paragraph (1) or (2) of paragraph 3 of this Schedule as the case requires indicating-

- (a) how the profits or losses of the other body corporate dealt with by the report would in respect of the shares to be acquired, have concerned members of the company; and
- (b) what allowance would have fallen, to be made in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the

shares to be acquired.

**3** (1) If, in the case mentioned in paragraph 2 of this part of this Schedule the other body corporate has no subsidiaries, the report referred to in that paragraph shall:-

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial statement years immediately preceding the delivery of the statement to the Commission; and

(b) so far as regards assets and liabilities, dealt with the assets and liabilities of the body corporate at the late date to which the accounts of the body corporate were made up.

(2) If the other body corporate has subsidiaries, the report shall:-

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by subparagraph (1) (a) of this paragraph; and in addition deal either;

(b) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(c) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate; instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate, with the combined profits or losses of its subsidiaries; and

(d) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by subparagraph (1) of this paragraph and, in addition, deal either-

(e) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(f) individually with the assets and liabilities of each subsidiary; and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

## **PART II: PROVISIONS APPLYING TO PART I AND II OF THIS SCHEDULE**

**4** In this Schedule the expression "vendor" includes a vendor as defined in paragraph 9 of the third Schedule of this Act.

**5** If, in the case of business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years, or one year, part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

6 Any report required by part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses of assets and liabilities dealt with by the report which appear to the persons making the report necessary, shall make those adjustments and indicate that adjustments have been made.

7 Any report by accountants required by part II of this Schedule shall be made by accountants qualified under this Act for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant of the company, or of the Company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.