



RULES FOR EXPOSURE

1. **PROPOSED NEW RULES ON THE ISSUANCE AND ALLOTMENT OF PRIVATE COMPANIES**
2. **SUNDRY AMENDMENTS TO CIS RULES**
3. **PROPOSED AMENDMENT TO RULE 19 – RENEWAL OF REGISTRATION (REINSTATEMENT OF RULE 19)**

1. PROPOSED NEW RULES ON THE ISSUANCE AND ALLOTMENT OF PRIVATE COMPANIES

Definition of Terms

Plain Vanilla Bonds/Debentures are non-complex debt instruments with fixed rates and defined maturities, with the investor receiving periodic interest payments and amortized or bullet principal repayments at maturity;

Qualified Investor means an institutional investor or high net worth individual as defined in the Commission's rules;

Securities in these rules refers to fixed income securities including bonds, debentures and alternative asset classes such as sukuk.

1. Scope/Applicability

These rules shall apply to:

- a. Debt securities issuances by private companies either by way of public offer, or other methods as may be approved by the Commission.
- b. Registered exchanges and platforms which admit debt securities issued by private companies for trading, price discovery or information repository purposes.
- c. Registered capital market operators who are parties in issuances and allotment of debt securities of private companies

2. Eligibility

- a. A private entity seeking to issue securities under these rules shall:



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- i. be a company duly incorporated under Companies and Allied Matters Act (CAMA), or other enabling Laws;
- ii. have at least three (3) years track record of operation.

3. General

- a) These rules shall apply only to debt securities issued by a private company.
- b) Private companies may issue debt securities under a shelf programme in accordance with the Commission's rules on Shelf Registration.
- c) Any party that makes any misrepresentation to prospective investors or violates the provisions of these rules, shall be subject to sanctions/penalty as prescribed in these rules and the ISA.

4. Restrictions

- a) A private company shall not offer its equity securities (shares) to the public under any circumstance.
- b) Debt securities issued under these rules, shall be sold only to qualified investors.
- c) Only registered capital market operators shall be parties to debt securities issuances under these rules.
- d) No private company or any person acting on its behalf shall offer, sell or allot securities to the public without the prior approval of the Commission and registration of the securities.
- e) Securities purchased in a public offer pursuant to these rules shall only be traded on a registered securities exchange.

5. Conditions for Securities Issuance

- a. A private company may issue its securities under these Rules by way of an offer to the public, provided that: -
 - i. Only Plain Vanilla Bonds/Debentures and other debt instruments including sukuk and as may be determined by the Commission from time to time, shall be issued;
 - ii. The securities shall be offered to only qualified investors;



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- iii. A private company may undertake a maximum of three debt securities issuances within a one-year period, whether through a shelf program or one-off offering, the total amount to be raised not exceeding ₦15 billion, provided that where a private company intends to undertake any further debt securities issuance, it shall be required to re-register as a public company.

7. Registration Requirements

- a. All issuances of debt securities to the public by a private company shall comply with the general provisions on registration of fixed income securities (as applicable) set out in the Commission's Rules.
- b. An issuer intending to offer securities by way of an offer to the public under these rules, shall file with the Commission:
 - i. A draft offer document containing the required information, along with a duly completed SEC Form disclosing:
 - 1) Amount of securities offered;
 - 2) Basic terms of the securities to be offered;
 - 3) Offer open and close dates;
 - 4) Purpose of the offering/Use of proceeds;
 - 5) Risks of investment;
 - 6) Company's business;
 - 7) Management and Board;
 - 8) Extract of 3 years audited accounts;
 - 9) Financial projections of the company, where necessary;
 - 10) Such other information the Commission may require from time to time
- c. Subscription agreement, where necessary
- d. Evidence of payment of a non-refundable filing fee of ₦100,000 (One hundred thousand naira only) and appropriate registration fees as provided in the Commission's Rules and Regulations for fixed income securities. The fees chargeable by parties shall also be in line with the fees regime provided in the Commission's Rules and Regulations.

8. Allotment

Allotment of securities issued under these rules shall comply with the general provisions on allotment, as contained in the Rules made by the Commission from time to time.

9. Utilization of Proceeds

- a. The issuer is prohibited from using the proceeds of the issue for purposes other than those stated in the offer document without the prior approval of the Commission;



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- b. The issuer shall file with the Commission not later than ninety (90) days after the conclusion of an issue on the appropriate SEC Form, detailed information on the utilization of proceeds. Evidence of such utilization shall be provided as appendix to the report. The rendition shall be on a quarterly basis until issue proceeds are fully utilized.

10. Reporting

- a. The Issuer, Issuing House and the Trustee shall comply with the following continuous reporting and disclosure requirement as may be prescribed by the Commission from time to time: -
 - i. Quarterly report on utilization of proceeds
 - ii. Quarterly unaudited financial statements of the Issuer
 - iii. Annual audited financial statements of the Issuer
 - iv. Review of annual rating report
 - v. Annual Sharia certification (where applicable)
 - vi. Such other information that the Commission may from time-to-time request
- b. Failure to file the periodic report/returns with the Commission within the prescribed period shall attract a penalty of not less than ₦1,000,000 (One Million Naira) and a further sum of ₦50,000 (Fifty Thousand Naira) for every day the default continues.

11. Code of Conduct

Registered exchanges and capital market operators shall strictly abide by the Code of Conduct for Capital Market Operators and their Employees as set out in the Commission's Rules and Regulations.

12. Sanctions/Penalty

1. Any person who issues or allots securities without the prior approval of the Commission in violation of these rules shall be liable to any one or more of the following sanctions:
 - i. A penalty of not less than ₦10,000,000 (Ten million naira) and a further sum of ₦100,000 (Hundred Thousand Naira) for every day the violation continues
 - ii. Suspension, or withdrawal of registration of the securities/parties;
 - iii. Disgorgement of proceeds/income from the transactions; and
 - iv. Any other sanction the Commission deems fit in the circumstance.



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Justification

These rules are made pursuant to Section 43 (1) (b) of the Business Facilitation (Miscellaneous Provisions) Act 2022 which amends Section 67 (1) of the Investments and Securities Act and empowers the SEC to prescribe regulation for the issuance and allotment of private companies' securities



2. SUNDRY AMENDMENTS TO CIS RULES

(1) Rule 466. Filing Executed and Registered Trust Deed

Proposed Creation of New sub-rules as follows:

(4) A fund manager shall obtain the consent of the trustees and approval of the Commission prior to amending a trust deed.

(5) An executed copy of the amended trust deed shall be submitted to the Commission within 7 working days of obtaining approval. Where such amendments require the ratification of unitholders, the executed copy of the amended trust deed shall be filed with the Commission within 7 working days after the ratification by unitholders provided that the meeting of unitholders shall be convened not later than 2 months after the Commission's approval of the amended trust deed.

Justification –

To ensure that the fund manager obtains the consent of the trustees prior to amending a trust deed and that upon execution such amendments are filed with the Commission timeously.

(2) Rule 533. Filing Executed and Registered Trust Deed

Proposed creation of new sub-rules as follows:

(4) A fund manager shall obtain the approval of the Commission and consent of the trustees prior to amending a trust deed.

(5) An executed copy of the amended trust deed shall be submitted to the Commission within 7 working days of obtaining approval. Where such amendments require the ratification of unitholders, the executed copy of the amended trust deed shall be filed with the Commission within 7 working days after the ratification by unitholders provided that the meeting of unitholders shall be convened not later than 2 months after the Commission's approval of the amended trust deed.

Justification –

To ensure that the fund manager obtains the consent of the trustees prior to amending a REIT trust deed and that upon execution such amendments are filed with the Commission timeously.



3. Offer Process for Closed-Ended Collective Investment Schemes/ 450(B)

Existing Rule:

B. Executed Offer Documents

Convening of a completion board meeting for a closed-ended CIS offer shall be optional; however, executed Offer documents of a closed-ended CIS offer shall be submitted to the Commission within 5 working days of clearance by the Commission.

Proposed amendment:

Convening of a completion board meeting for a closed-ended CIS offer shall be optional; however, executed Offer documents of a closed-ended CIS offer shall be submitted to the Commission within 10 working days of clearance by the Commission.

Justification –

We have observed that many fund managers struggle to comply with this 5 working days' timeframe because the professional parties may not be located within close proximity to the Issuing House. Also some documents require the procurement of stamp duties from the FIRS e.g. agreements such as the trust deed, which may delay the execution of offer documents.

Existing Rule –

4. Offer Process for Closed-Ended Collective Investment Schemes/ 450(B)

D. Opening and Closing of Offer

a) An offer for a closed-ended scheme shall remain open for a period not exceeding 28 working days.

Proposed Amendment:

a) An offer for a closed-ended scheme shall remain open for a period not exceeding 28 working days; Provided that this shall not apply to Infrastructure Funds and other Alternative Investment Schemes targeted at qualified investors, which shall disclose the applicable offer period in their offering document.

Justification –

To exempt Infrastructure Funds and Alternative Investment Schemes from the 28-day offer period rule because this period is impractical. In practice, these types of funds are targeted at qualified investors and the capital raising phase is different and unique to each fund. The capital raising phase typically involves series of meetings with prospective investors who then conduct due diligence on the fund manager and the fund, after which the investors' respective



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investment/management committees and boards must approve the proposed investment before commitments are made. In our experience, the due diligence may extend up to 2 years before commitments are concluded.

6. Offer Process for Open-Ended Collective Investment Schemes/ 450(C)

Existing Rule:

B. Registration Requirements

- (2) The Registration Statement shall be accompanied by the following documents –
j. Such other relevant documents as may be required from time to time

Proposed Amendment:

- (2) The Registration Statement shall be accompanied by the following documents –
j. schedule of scheme set up costs
k. Such other relevant documents as may be required from time to time

Justification –

An open-ended fund does not require a vending agreement which is an agreement between the Issuing House and fund manager containing the terms of the offer and estimated offer costs. However, an open-ended fund incurs some expenses during registration/set up such as regulatory fees, legal fees and printing and distribution costs all of which are capped at 1% in total (0.2% regulatory and 0.8% professional parties). Therefore, there is need for a breakdown of these set up costs to ensure they do not exceed the regulatory cap.

7. Offer Process for Open-Ended Collective Investment Schemes/ 450(C)

C. Filing of Executed Scheme Document

Existing Rule:

Executed Scheme Documents shall be submitted to the Commission within 3 working days of their clearance.

Proposed Amendment:

Executed Scheme Documents shall be submitted to the Commission within 10 working days of their approval, before operations and marketing of fund can commence.

Justification –

We have observed that many fund managers struggle to comply with this 3 working days' timeframe because the professional parties may not be located within close proximity to the



fund manager. Also some documents require the procurement of stamp duties from the FIRS e.g. agreements such as the trust deed, which may delay the execution of offer documents.

8. Rule on Payment of Administrative Charges for Review of Supplemental Deeds, and Amendments to Sundry Other Agreements and Sundry Filings for CISs/Schedule I, Part D, Others

- (1) Every proposed alteration to any document or other filing submitted with respect to the administration of a scheme shall attract the following processing charges –

	NATURE OF ALTERATION	CHARGE
(a)	Supplemental trust deed	N100,000
(b)	Amended and Restated trust deed	N200,000
(c)	Where (b) above involves the merger of two or more funds	N50,000 (additional)
(d)	Amendments to any other	N100,000
(e)	New agreement/document not previously filed during the scheme offer or launch	N100,000
(f)	Request for legal opinion or advisory clarifications	Not less than N50,000
(g)	Advert materials	N50,000 (per submission)

Justification –

To charge a processing fee for approval of advert materials for CISs.

9. General Rules for Collective Investment Schemes (CIS)

Existing Rule:

- (3) (f) A supplementary shelf prospectus shall—
- (i) state such information as may be specified in these Rules and Regulations on contents of prospectus;
 - (ii) state the offer period which should not be longer than twenty-eight (28) working days from the date of the issue of the Supplementary Prospectus or such longer period as may be allowed by the Commission;

Proposed Amendment:

- (3) (f) A supplementary shelf prospectus shall—
- (i) state such information as may be specified in these Rules and Regulations on contents of prospectus;
 - (ii) state the offer period which should not be longer than twenty-eight (28) working days from the date of the issue of the Supplementary Prospectus or such longer period as may be allowed



by the Commission; Provided that this shall not apply to Infrastructure Funds and other Alternative Investment Schemes targeted at qualified investors, which shall disclose the applicable offer period in their offering document.

(iii) disclose for infrastructure funds or other alternative investment schemes targeted at qualified investors, that no subsequent series shall be issued until at least 50% of the proceeds of the previous issuance has been utilized according to the investment objective and policy of the fund.

Justification –

To exempt Infrastructure Funds and Alternative Investment Schemes from the 28-day offer period rule because this period is impractical. In practice, these types of funds are targeted at qualified investors and the capital raising phase is different and unique to each fund. The capital raising phase typically involves series of meetings with prospective investors who then conduct due diligence on the fund manager and the fund, after which the investors' respective investment/management committees and boards must approve the proposed investment before commitments are made. In our experience, the due diligence may extend up to 2 years before commitments are concluded.

Sub-rule (iii) was inserted to prevent such funds from raising additional capital until at least half of the previous proceeds have been utilized.

10. Annual supervisory Fees for Collective Investment Schemes

Existing Rule:

- (2) Every fund/portfolio manager shall pay the following annual regulatory fees not later than 31st January to the Commission -
- 0.25% of the total net asset value of all discretionary and non-discretionary funds/portfolios (other than CIS) under the management of the fund/portfolio manager targeted at retail investors
 - 0.01% of the total net asset value of all discretionary and non-discretionary funds/portfolios (other than CIS) under the management of the fund/portfolio manager targeted at qualified investors.

Proposed Amendment:

- (2) Every fund/portfolio manager shall pay the following annual regulatory fees not later than 31st January to the Commission -
- 0.25% of the total net asset value of all discretionary and non-discretionary funds products/portfolios (other than CIS) under the management of the fund/portfolio manager targeted at retail investors.
 - 0.01% of the total net asset value of all discretionary and non-discretionary funds products/portfolios (other than CIS) under the management of the fund/portfolio manager targeted at qualified investors.



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Justification –

To reverse the basis of computation of annual regulatory fees for portfolio products, from net asset value (NAV) to total asset under management (AuM). Currently, some fund managers recognize clients' assets on their statement of financial position but also reflect the corresponding clients' investments as client payables. This has a netting effect resulting in an insignificant or zero net asset value. These fund managers have relied on this computation to avoid paying the resulting annual regulatory fees. In view of this, the rules are being amended to reflect the previous provision of total AUM instead of NAV.

11. Part C. Securities, Registration Fees for Units/Securities and Others

Filing fee for application documents of portfolio products, flat rate of N100,000.00

Justification –

To charge filing fees for processing application documents of portfolio products.

12. Part D. SEC Fees On Market Deals

Existing Rule:

2. Filing fee for proxy materials N500,000

Proposed Amendment:

Part D. SEC Fees On Market Deals

2. (a) Filing fee for proxy materials (company) N500,000

(b) Filing fee for proxy materials (CIS) N50,000

Justification –

To differentiate between proxy materials fees for companies and CISs. CISs are relatively small compared to companies. A N500,000 charge as proxy materials fee for CISs is a significant sum especially given that CISs are required to maintain a total expense ratio of 3.5% of its NAV and some CISs hold EGMs multiple times a year to consider changes to a fund's trust deed. Recall previously that the fee for proxy materials was N5,000. The increase by 9,900% is therefore significant for CISs.



3. PROPOSED AMENDMENT TO RULE 19 – RENEWAL OF REGISTRATION (REINSTATEMENT OF RULE 19)

Full Text of Existing Rule –

19(1) (a) All Capital Market Operators shall file applications for renewal of their registration every year.

(b) Every Capital Market Operator shall renew its registration by filing the appropriate SEC form as contained in the Schedules to these Rules and Regulations.

(2) Every Capital Market Operator shall file an application for renewal of registration not later than 31st January of every year.

(3) The application for renewal shall be accompanied by a renewal fee as provided in the Schedule to this Rule as well as evidence of the following:

(a) renewal of valid fidelity bond/professional indemnity insurance (where applicable);

(b) proof of compliance with minimum paid-up capital requirement;

(c) details of current minimum number of sponsored individuals as prescribed by the Commission from time to time;

(d) Attendance by all sponsored individuals, of at least one course organized by the Commission or institutions recognized by the Commission prior to the renewal date;

(e) latest quarterly returns of the applicant.

(4) Any Capital Market Operator who fails to comply with the provisions of this Rule shall be liable to a late filing fee as specified in the Schedule to these Rules and Regulations and/or any other sanction as may be deemed appropriate by the Commission.

(5) Where a Capital Market Operator fails to meet the requirements for renewal of registration, the Commission shall give written notification of its intention to deny or refuse renewal of registration and such Capital Market Operator shall be given an opportunity to be heard.

(6)(a) Any Capital Market Operator subject to this Rule shall within 5 working days upon receipt of the notice required under sub-rule (5) above, file a sworn statement including any document that may be necessary, showing reasons why it should not be suspended.

(b) Upon receipt of the sworn statement and any accompanying document the Commission shall within 5 working days communicate its decision to the Capital Market Operator concerned.

(7) Where the certificate of registration of a Capital Market Operator is suspended or withdrawn, the Commission shall publish such suspension in two national daily newspapers and the Commission's website.



Proposed amendment to Rule 19 - Renewal of Registration (Reinstatement of Rule 19)

(1) (a) All Capital Market Operators shall file applications for renewal of their registration every year.

~~(b) Every Capital Market Operator shall renew its registration by filing the appropriate SEC form as contained in the Schedules to these Rules and Regulations.~~

(2) Every Capital Market Operator shall file an application for renewal of registration not later than 31st January of every year.

~~(3) The application for renewal shall be accompanied by a renewal fee as provided in the Schedule to this Rule as well as evidence of the following:~~

(a) renewal of valid fidelity bond/professional indemnity insurance (where applicable);

(b) proof of compliance with minimum paid-up capital requirement;

(c) details of current minimum number of sponsored individuals as prescribed by the Commission from time to time;

(d) Attendance by all sponsored individuals, of at least one course organized by the Commission or institutions recognized by the Commission prior to the renewal date;

(e) latest quarterly returns of the applicant;

(f) sworn undertaking, duly stamped by the Commissioner for Oaths or a notary public, attesting that –

_____ (i) there are no outstanding penalties or other compliance issues

_____ (ii) all regulatory periodic filings are up-to-date

_____ (iii) operations have commenced, at most, 2 years after initial registration with the Commission. For fund/portfolio managers, this includes attesting to the management of third-party assets or provision of advisory services to third parties.

(g) Where any of the attestations in (3)(f) above are found to be misleading, appropriate sanctions further to Rule 3 (4) of the SEC Rules and Regulations, shall apply

(4) Where a Capital Market Operator applies for renewal of registration within the time frame specified in (2) above but fails to meet the requirements for renewal of registration, the



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Commission shall give written notification of its intention to deny or refuse renewal of registration and such Capital Market Operator shall be given an opportunity to be heard;

~~(6)(5)~~(a) Any Capital Market Operator subject to this Rule shall within ~~14~~5 working days upon receipt of the notice required under sub-rule ~~(5)~~ (3) above, file a sworn statement including any document that may be necessary, showing reasons why it should not be suspended;

(b) Upon receipt of the sworn statement and any accompanying document the Commission shall within ~~5~~ fourteen ~~(14)~~ working days communicate its decision to the Capital Market Operator concerned;

~~(6)~~ Any Capital Market Operator who fails to comply with the provisions of this Rule shall be liable to a late filing fee as specified in the Schedule to these Rules and Regulations. Provided that any Capital Market Operator who fails to file for renewal of registration by 30th April of a particular year, would be automatically suspended from carrying out capital market activities, and/or any other sanction as may be deemed appropriate by the Commission. Such a Capital Market Operator shall comply with the terms and conditions of the suspension order prior to re-validation or re-instatement of registration in line with SEC Rule 35(5) and (6);

(a) In addition to the Schedule II of the Commission's Rules and Regulations and payment of all outstanding renewal fees, any Capital Market Operator that fails to renew their registration before January 31st shall be liable to pay a penalty of not less than ten (10) times the renewal fee payable per registered function(s) and any other sanction that may be prescribed by the Commission from time to time.

~~(7) Where the certificate of registration of a Capital Market Operator is suspended or withdrawn, The Commission shall notify the affected Capital Market Operator and/or publish the order of suspension or cancellation of registration on the Commission's website, or at least two national daily newspapers such suspension in two national daily newspapers and the Commission's website.~~

Justification

This amendment is proposed to:

- *enable the Commission update its records on registered Capital Market Operators and focus on monitoring only active and compliant CMOs;*
- *standardize the penalties for late or non-renewal of registration; and*
- *strengthen the Commission's enforcement mechanism, protect investors and protect the integrity of the capital market*



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