

INVESTMENTS AND SECURITIES ACT

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INVESTMENTS AND SECURITIES ACT

An Act to regulate investment and securities business in Nigeria and to provide for matters connected therewith.

[1999 No. 45.]

[26th May, 1999]

[Commencement.]

PART I

Establishment of the Securities and Exchange Commission

1. Establishment of the Securities and Exchange Commission

(1) There is hereby established a body to be known as the Securities and Exchange

Commission (in this Act referred to as "the Commission").

(2) The Commission–

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue and be sued in its corporate name; and
- (c) may acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out any of its functions under this Act.

(3) The headquarters of the Commission shall be situated in the Federal Capital Territory, Abuja, and the Commission may, with the approval of the Minister, establish zonal offices of the Commission in any State of the Federation.

2. Composition of the Commission

- (1) The Commission shall consist of–
 - (a) a chairman;
 - (b) one person not below the rank of Director to represent the Ministry;
 - (c) one person not below the rank of Director to represent the Central Bank of Nigeria;
 - (d) two full-time Commissioners who shall be persons with ability, experience and specialised knowledge in capital market matters;
 - (e) the Director-General of the Commission; and
 - (f) five other Commissioners who shall be persons with proven ability and expertise in corporate matters generally.

(2) The chairman and the Commissioners referred to in paragraphs (d) and (e) of subsection (1) shall be appointed by the President on the recommendation of the Minister.

(3) The members of the Commission, other than the Director-General and the two full-time Commissioners, shall be part-time members of the Commission.

(4) The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the proceedings of the Commission and the other matters contained therein.

[First Schedule.]

3. Tenure of office of full-time Commissioners

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

(2) The part-time Commissioners (other than the *ex-officio* Commissioners) shall each hold office for a term of three to five years and no more.

4. Cessation of membership

- (1) A Commissioner shall cease to hold office if–
 - (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 practising his profession in any part of Nigeria by the order of any competent authority made in respect of him personally.

5. Remuneration and allowance

Members of the Commission appointed under subsection (1) (a) and (e) of section 2 of this Act shall be paid such remuneration and allowances as the President may, after consultation with the Minister, from time to time, direct.

6. Disclosure of interest

- (1) A member of the Commission who is directly or indirectly interested in-
 - (a) the affairs of any company or enterprise, being deliberated upon by the Commission; or
 - (b) any contract made or proposed to be made by the Commission, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the Commission at a meeting of the Commission.
- (2) A disclosure made under subsection (1) of this section shall be recorded in the minutes of the Commission and the member shall-
 - (a) not, after the disclosure, take part in any deliberation or decision of the Commission with regard to the subject matter in respect of which his interest is so disclosed;
 - (b) be excluded for the purpose of constituting a quorum of the Commission for any deliberation or decision on the subject matter.

7. Code of ethics

The members of the Commission shall subscribe to and be bound by a code of ethics to be approved by the Minister for the Commission.

PART II

Functions and powers of the Commission

8. Functions and powers of the Commission

The Commission shall-

- (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 exchanges;
- (c) register securities to be offered for subscription or sale to the public;

- (d) render assistance in all aspects including funding as may be deemed necessary to promoters and investors wishing to establish Securities Exchanges and Capital Trade Points;
- (e) prepare adequate guidelines and organise training programmes and disseminate information necessary for the establishment of Securities Exchanges and Capital Trade Points;
- (f) register and regulate corporate and individual capital market operators as defined in section 30 of this Act;
- (g) register and regulate the workings of venture capital funds and collective investments schemes including mutual funds;
- (h) facilitate the establishment of a nation-wide system for securities trading in the Nigerian capital market in order to protect investors and maintain fair and orderly markets;
- (i) facilitate the linking of all markets in securities through modern communication and data processing facilities in order to foster efficiency, enhance competition, and increase the information available to brokers, dealers and investors;
- (j) act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end to establish a nation-wide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by Securities Exchanges and Capital Trade Points;
- (k) keep and maintain separate registers of foreign direct investments and foreign portfolio investments;
- (l) register and regulate central depository companies and clearing and settlement companies, custodians of securities, credit rating agencies and such other agencies and intermediaries;
- (m) protect the integrity of the securities market against abuses arising from the practice of insider trading;
- (n) act as a regulatory apex organisation for the Nigerian capital market including the promotion and registration of self-regulatory organisations and capital market trade associations to which it may delegate its powers;
- (o) review, approve and regulate mergers, acquisitions and all forms of business combinations;
- (P) promote investors' education and the training of all categories of intermediaries in the securities industry;
- (q) call for information from and undertake, inspect, conduct inquiries and audits of the Securities Exchanges, unit trusts, mutual funds, Capital Trade Points, futures, options and derivatives exchanges as well as other intermediaries and self-regulatory organisations in the securities industry;
- (r) call for or furnish to any agency such information as may be considered necessary by it for the efficient discharge of its functions;
- (s) levy fees or other charges on any person for carrying out investment and securities

- (t) business in Nigeria;
- (u) conduct research into all or any aspect of the securities industry;
- (v) prevent fraudulent and unfair trade practices relating to the securities industry;
- (w) advise the Minister on all matters relating to the securities industry;
- (x) disqualify unfit individuals from being employed anywhere in the securities industry;
- (y) liaise effectively with the regulators and supervisors of other financial institutions locally and overseas;
- (z) 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.

9. Powers to establish departments

The Commission shall establish specialised departments for the purpose of regulating-

- (a) Securities Exchanges, including Stock Exchanges, Capital Trade Points, futures, options and commodities exchanges and such other securities organisations;
- (b) capital market operators including corporate members, securities exchanges and individuals, professionals firms, that is, accountants, solicitors, surveyors, engineers and other professionals who undertake investment business either as investment advisers or consultants;
- (c) collective investments, including all collective investment schemes such as unit trusts, "esusu" schemes, pension funds and such other schemes; and
- (d) mergers, acquisitions, take-overs and other forms of business combinations under this Act.

PART III

Staff

10. Director-General of the Commission

(1) There shall be, for the Commission, a Director-General who shall-

- (a) be appointed by the President;
 - (b) hold office for a period of five years in the first instance and may be appointed for a further period of five years and no more, on such terms and conditions as are contained in his letter of appointment; and
 - (c) be the chief executive of the Commission.
- (2) The Director-General shall, subject to the general control of the Commission, be-
- (a) responsible for keeping proper records of the proceedings of the Commission; and
 - (b) the head of the secretariat and be responsible for-
 - (i) the day-to-day administration; and
 - (ii) the direction and control of all other employees, of the Commission.

11. Secretary and other staff of the Commission, etc.

(1) There shall be for the Commission a secretary and such other employees as the Commission may deem necessary for the efficient performance of its functions under or pursuant to this Act.

(2) The remuneration (including allowances) and terms and conditions of service of employees of the Commission shall be as may be determined by the Commission.

(3) For the purposes of the application of the Pensions Act, any power exercisable under the Act by the Minister or authority of the Federal Government (not being the power to make regulations under section 23 thereof) is hereby vested in the Commission and not in any other person or authority.

[Cap. P4.]

(4) Subject to subsection (2) of this section, the Pensions Act shall in its application by virtue of subsection (3) of this section to any office, have effect as if the office were in the civil service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria.

[Cap. C23.]

12. Service in the Commission to be pensionable

(1) Service in the Commission shall be approved service for the purpose of the Pensions Act, and accordingly, an officer and other persons employed in the Commission shall, in respect of their service in the Commission, be entitled to pensions, gratuities and other

retirement benefits enjoyed by persons holding equivalent grades in the public service of the Federation.

[Cap. P4.]

(2) Nothing in this section shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity in respect of that office.

PART IV

Financial provisions

13. Fund of the Commission

(1) The Commission shall establish and maintain a fund which shall be applied towards the discharge of its functions under this Act.

(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section, such sums as may be provided by the Federal Government for the Commission.

14. Powers to accept gifts

(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 person or organisation making the gift.

(2) The Commission shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Commission.

15. Fees, etc., to be paid into the Consolidated Revenue Fund of the Federation

(1) The Commission shall be entitled to charge, retain and utilise for its purposes, fees collected for the services rendered by the Commission under this Act.

(2) All cash gifts and such other dispositions accruing to the Commission under subsection (1) of section 14 of this Act shall be paid into the Consolidated Revenue Fund of the Federation quarterly in arrears on 15 April, July, October and January of each year.

16. Borrowing by the Commission

(1) The Commission may, with the consent or in accordance with any specific authority given by the Minister, borrow by way of loan or overdraft such specified amount of money as may be required by the Commission for meeting its obligations and discharging its functions under this Act.

(2) 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.

(3) The Commission may invest any of its surplus funds in securities prescribed by the Trustee Investments Act or in such other securities as may, from time to time, be approved by the Minister.

[Cap. T22.]

(4) Subject to the provisions of the Land Use Act, and any special or general direction which the Minister may give in that behalf, the Commission may acquire any land required for its purpose under this Act.

[Cap. L5.]

17. Application of the funds of the Commission

The Commission may, from time to time, apply the proceeds of the Fund established in pursuance of section 13 of this Act to—

- (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 in accordance with such rates as may be approved in that behalf by the Minister;
- (c) the payment of salaries, fees or other remuneration or allowances, pensions and gratuities payable to the employees of the Commission;
- (d) the maintenance of any property acquired by or vested in the Commission; and
- (e) all or any of the functions of the Commission under this Act or any matter connected with those functions.

18. Annual estimates, account and audit

(1) The Commission shall cause to be prepared not later than 30 September in each year an estimate of the expenditure and income of the Commission during the next succeeding

year and when prepared, they shall be submitted through the Minister to the President for approval.

(2) The Commission shall cause to be kept, proper accounts of the Commission and proper records in relation thereto and when certified by the Commission, the accounts shall be audited by auditors appointed by the Commission from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

19. Annual report

The Commission shall not later than three months before the end of each year, submit to the Minister a report on the activities and the administration of the Commission during the immediately preceding year and shall include in such reports, audited accounts of the Commission and the auditor's report on those accounts.

PART V

Registration of Securities Exchanges and Capital Trade Points

20. Registration of Securities Exchanges and Capital Trade Points

(1) No Securities Exchange or Capital Trade Point as defined in section 264 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.

(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 such manner as may be specified by the Commission, from time to time.

21. Conditions of registration

(1) 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 of 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 a 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 members;
- (e) with respect to the class or classes of securities which may be dealt in by members;
- (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 provide that one or more members of the Board shall be representative of listed companies and investors; and

(g) generally, for carrying on of the business of the Securities Exchange or Capital Trade Point in the interest of the public.

(2) The Commission in granting its approval under this section shall ensure that the interest of the public will be served by the granting of its approval.

(3) The Commission shall issue a certificate of registration to a body corporate registered by it under this section.

22. Revocation of certificate of a Securities Exchange or Capital Trade Point

The Commission may, with the approval of the Minister, revoke the certificate of registration granted under section 21 of this Act if-

- (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 undergoing a process of being wound up; or
- (c) the body corporate is operating in a manner detrimental to the public interest.

23. Approval of amendments to listing rules

(1) Where an amendment is made, whether by way of rescission, amendment, alteration or addition to the rules of a Securities Exchange or Capital Trade Point or the listing requirements of a Securities Exchange or Capital Trade Point, the Board of the Securities Exchange or Capital Trade Point shall forward a written notice of the amendment to the Commission for approval.

(2) The Commission shall give notice in writing to the Securities Exchange or Capital Trade Point concerned as to whether or not the Commission approves the whole or any specified part of the amendment in question, and until such notice is given, 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 or Capital Trade Point, from amending the rules or the listing requirements of the Securities Exchange or Capital Trade Point by a notice in writing specifying the amendments and the dates those amendments shall come into force and have effect, but the Commission may dispense with such consultation if it considers it necessary to do so for the protection of investors.

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

24. Securities Exchange or Capital Point to give notice of disciplinary actions, etc.

Where a Securities Exchange or Capital Trade Point reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the Securities Exchange or Capital Trade Point the Securities Exchange or Capital Trade Point shall, within seven days give to the Commission, in writing, the particulars and name of the member, the nature of and reason for the action taken, the amount of the fine, if any, and the period of the suspension, if any.

25. Disciplinary actions by a Securities Exchange, etc.

(1) The Commission may review any disciplinary action taken by a Securities Exchange or Capital Trade Point under subsection (1) of this section and may affirm or set aside a

Securities Exchange or Capital Trade Point decision after giving the member and the Securities Exchange or Capital Trade Point an opportunity of being heard.

(2) Nothing in this section shall preclude the Commission in any case where a Securities Exchange or Capital Trade Point fails to act against a member, from suspending, expelling or otherwise causing disciplinary action to be taken against a member of the Securities Exchange or Capital Trade Point provided that the Commission shall give the member and the Securities Exchange or the Capital Trade Point an opportunity of being heard.

(3) Any person who is aggrieved by the decision of a Securities Exchange or Capital Trade Point or the Commission under this section may, within one month after he is notified of the decision, appeal to the Investment and Securities Tribunal established under section 224 of this Act.

26. Powers to issue directives to Securities Exchanges or Capital Trade Points

(1) The Commission may, where it is in the public interest, issue directives to a Securities Exchange or Capital Trade Point-

- (a) with respect to trading on or through the facilities of that Securities Exchange or Capital Trade Point pertaining to any security listed on that Securities Exchange or Capital Trade Point; or
- (b) with respect to the manner in which a Securities Exchange or Capital Trade Point carries on its business including the manner of reporting off-market purchases; or
- (c) with respect to any other matter which the Commission considers necessary for the effective administration of this Act, and the Securities Exchange or Capital Trade Point shall comply with the directives.

(2) A Securities Exchange or Capital Trade Point which, without reasonable excuse, fails or refuses to comply with a directive given under subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than ₦100,000 and a further fine of ₦5,000 for every day during which the non-compliance continues.

(3) A Securities Exchange or Capital Trade Point which feels aggrieved by any directive of the Commission issued under subsection (1) of this section may appeal to the Investment and Securities Tribunal established under this Act within thirty days of the date of the Commission's directive.

(4) Where the Commission is satisfied that an executive officer of a Securities Exchange or Capital Trade Point-

- (a) has wilfully contravened; or
- (b) has without reasonable justification or excuse, failed to enforce compliance by a member of the Securities Exchange or Capital Trade Point with the provisions of this Act or any regulations made thereunder or the rules of the Securities Exchange or Capital Trade Point,

the Commission may remove that executive officer.

(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 in writing to remove the executive officer, and where the Securities Exchange or Capital Trade Point fails to comply with the direction of the Commission under subsection (4) of this section, the Commission may remove the executive officer from office.

27. Power of Commission to prohibit trading in particular securities

(1) Where the Commission thinks it is necessary for the protection of persons buying or selling particular securities or made available by a body corporate on a Securities Exchange or Capital Trade Point it shall in particular in the public interest prohibit trading in those securities and give notice in writing to the Securities Exchange or Capital Trade Point.

(2) If, after receiving the notice given under subsection (1) of this section, the Securities Exchange or Capital Trade Point fails to take action to prevent trading in the securities to which the notice relates and the Commission still thinks it is necessary to prohibit trading in those securities the Commission may, by notice in writing to the Securities Exchange or Capital Trade Point, prohibit trading in those securities during such period, not exceeding fourteen days, as may be specified in the notice.

(3) Where the Commission gives notice to a Securities Exchange or Capital Trade Point under subsection (2) of this section it shall-

- (a) at the same time, send a copy of the notice to the body corporate together with a statement setting out the reasons for giving the notice; and
- (b) as soon as practicable not later than thirty days after giving the notice, submit to the Minister a written report setting out the reasons for the notice and shall send a copy of the report to the Securities Exchange or Capital Trade Point, as the case may be.

(4) A body corporate affected by a notice given to a Securities Exchange or Capital Trade Point under subsection (2) of this section may request the Commission in writing to refer the matter to the Investment and Securities Tribunal established under this Act for determination.

(5) The Commission shall, on receiving a request under subsection (4) of this section, forthwith refer the matter to the Investment and Securities Tribunal which may vary or confirm the prohibition imposed by the Commission.

(6) A Securities Exchange or Capital Trade Point which permits trading in securities in contravention of a notice under subsection (2) of this section commits an offence and is liable on conviction to a fine of ₦50,000 and to a further fine of ₦5,000 for every day during which the contravention continues.

28. Interpretation under this Part

In this Part of this Act-

"Securities Exchange" includes a Stock Exchange or an approved securities organisation such as commodity exchange, an over the counter market, metal exchange, petroleum

exchange, options, futures and derivatives exchanges and such other forms of securities organisations within the meaning of this Act;

"**trading in securities**" means trading in securities on the floor of a Securities Exchange or Capital Trade Point.

PART VI

Registration of capital market operators

29. Registration of capital market operators

(1) Subject to the provisions of subsection (2) of this section, no securities dealer, stock-broker, sub-broker, jobber, share transfer agent, banker to an issue, market trustee of a trust deed, registrar to an issue, merchant banker, issuing houses, underwriter, operators portfolio manager, investment adviser and such other intermediaries associated with the securities industry shall buy, sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Act.

(2) A market operator who, immediately before the commencement of this Act, is associated with the securities industry for which no registration certificate was necessary prior to this Act, may continue to operate as such for a maximum period of three months from the commencement of this Act or if he has applied for registration under this Act, he shall continue to operate within that period till the disposal of the application and thereafter in accordance with the regulations made for registration under this Act.

(3) No depository, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market shall buy, sell or engage in any securities transaction except under and in accordance with the conditions of a certificate of registration obtained from the Commission upon compliance with the regulations made under this Act.

(4) Subject to subsection (5) of this section, no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme, including mutual funds, unless he obtains a certificate of registration from the Commission in accordance with regulations made under this Act.

(5) A person who, immediately before the commencement of this Act sponsored or caused to be sponsored, carried or caused to be carried on any venture capital funds or collective investment scheme, including mutual funds operating in the securities industry, may continue to operate within six months from the commencement of this Act and thereafter in accordance with the regulations made for registration under this Act.

(6) An application for registration under this Part of this Act shall be in such manner and upon payment of such fees as may be prescribed by the Commission from time to time.

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

30. Interpretation under this Part

In this Part of this Act-

"**capital market operator**" includes a securities dealer, a stock broker, sub-broker, jobber, share transfer agent, banker to an issue, trustee of a trust deed, registrar to an issue, merchant banker issuing houses, underwriter, portfolio manager, investment adviser and such other capital market intermediaries as may be licensed by the Commission in accordance with the regulations made under this Act.

PART VII

Registration of securities and registers of interests in securities

31. Application of this Part of this Act

This Part of this Act applies to a person who is-

- (a) a capital market operator as defined in section 30 of this Act;
- (b) a dealer;
- (c) a dealer's representative;
- (d) investment adviser;
- (e) an investment journalist;
- (f) a financial journalist;
- (g) an issuer;
- (h) a custodian;
- (i) a depository.

32. Electronic transfer of securities, etc., and prohibition of sale, etc., of securities without approval of the Commission

(1) No person shall transfer, issue, sell, offer for subscription or sale to the public, securities or investments as defined in this Act unless such securities or investments are registered by the Commission and prior approval for the transfer, issue, sale, offer for subscription or public offer for sale to the public has been granted by the Commission.

(2) Securities registered by the Commission including those issued by the bodies to which Part XIII of this Act applies, and any subdivision thereof, may be transferred electronically or by any other means or system approved by the Commission under such terms and conditions as the Commission may prescribe, to a Securities Exchange or Capital Trade Point or any other self regulatory organisation within the meaning of this Act.

(3) The Commission shall determine 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 by the public.

(4) A person who contravenes the provisions of this section of this Act commits an offence and is liable on conviction to a fine of ₦50,000 and to a further fine of ₦5,000 for every day during which the offence continues.

(5) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other similar officer, servant or agent of the body or any person purporting to act in any such capacity who knowingly and wilfully authorises the violation of this section, that director, manager, secretary or other similar officer, servant or agent of the body or other person is guilty of the offence and is liable on conviction to a fine of ₦50,000 or to imprisonment for a term not less than six months or to both such fine and imprisonment.

33. Register of securities

(1) A person to whom this Part of this Act applies shall keep a register in the prescribed form of the securities in which he has an interest.

(2) Particulars of the securities in which a person to whom this Part of this Act applies and particulars of his interest in those securities shall be entered in the register within seven 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 seven 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 security transactions.

34. Particulars of register

(1) A person to whom this Part of this Act applies shall give notice to the Commission in the prescribed form of such particulars relating to the register as may be prescribed including the location of the 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 licence, on his application for the licence; and
- (b) in any other case, within fourteen 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 fourteen 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 exceeding ₦100,000.

35. Production of register

(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 33 of this Act and the Commission or any person so authorised may take extracts therefrom.

(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 ₦10,000.

36. Excerpt of register

The Commission may supply a copy of the extract of a register obtained under subsection(1) of section 35 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.

37. Accounts to be kept by security dealers, etc.

(1) A security dealer shall keep or cause to be kept such accounting and other records-

- (a) as shall sufficiently explain the transactions and financial position of his business and enable true and fair profit and loss accounts and balance-sheets to be prepared, from time to time; and
- (b) in such a manner as to enable them to be conveniently and properly audited.

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

- (a) are kept in sufficient detail to show particulars of-
 - (i) all moneys received or paid by the security dealer, including moneys paid to or disbursed from a trust account;
 - (ii) all purchases and sales of securities made by the security dealer, 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 security dealer;
 - (iv) all the assets and liabilities (including contingent liabilities) of the security dealer;
 - (v) all securities which are the property of the security dealer 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 security against loans or advances;
 - (vi) all securities that are not the property of the security dealer 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 security for loans or advances made to the security dealer;

- (vii) all purchases and sales of options made by the security dealer and all fees (being options moneys) arising from them;
 - (viii) all arbitrage transactions entered into by the security dealer; and
 - (ix) all underwriting transactions entered into by the security dealer;
- (b) are kept in sufficient detail to show separately particulars of every transaction by the security dealer;
 - (c) specify the day on which or the period during which each transaction by the security dealer took place; and
 - (d) contain copies of acknowledgments of the receipt of securities or of documents of title to securities received by the security dealer 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 security dealer shall keep records in sufficient detail to show separately particulars of all transactions by the security dealer with or for the account of-

- (a) clients of the security dealer;
- (b) the security dealer himself; and
- (c) employees of the security dealer.

(4) A security dealer 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 ₦50,000.

38. Payment into certain trust accounts

(1) A security dealer 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 dealer shall pay-

- (a) all amounts (less any brokerage and other proper charges) received from or on account of any person (other than a security dealer) for the purchase of securities which are not attributable to securities delivered to the security dealer not later than the next banking business day following the day on which they were received by the security dealer; and
- (b) all amounts (less any brokerage and other proper charges) received for or on account of any person (other than a security dealer) 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 dealer.

(2) A security dealer who contravenes or fails to comply with any of the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than ₦50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

39. Purposes for which money may be withdrawn from trust account

- (1) A security dealer who withdraws any moneys from a trust account except for the pur-

pose of making a payment-

- (a) to the person entitled to the payment; or
- (b) defraying brokerage and other proper charges; or
- (c) which is otherwise authorised by law,

commits an offence and is liable on conviction to a fine not exceeding ₦100,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) A security dealer 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 ₦100,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

40. Money in trust account not available for payment of debt

(1) A security dealer shall not, except as otherwise provided in this Part of this Act, pay his debts with any money held in a trust account.

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

41. Claims and lien not affected

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 moneys held in a trust account or against or upon any moneys received for the purchase of securities or from the sale of securities before such moneys are paid into a trust account.

42. Client's money

(1) A portfolio or fund manager shall not deal in securities for or on behalf of a client to such extent as to receive a client's money or property unless-

- (a) for the purposes of application solely for specified purposes agreed on when or before he receives the money or property;
- (b) pending the application of the money, the money or property is paid or deposited by the next banking business day to a custodian with whom the trust account is maintained in accordance with this section; and
- (c) a separate book entry is recorded and maintained for each client by the portfolio or fund manager in accordance with the provisions of this Act or regulations made under this Act in relation to that client's money or property.

(2) In this section, "**client's money or property**" means money received or retained by a portfolio fund manager, or a security dealer, or property deposited with an investment adviser in the course of his business as such, for which he is liable to account to another person; or money received or property deposited and held on trust by a custodian for which he is liable to account or deliver to another person.

43. Rights to copies of book entries of transactions and to inspect contract notes

(1) A portfolio manager or fund manager 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 therefor.

(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 VIII

Public offer and sale of securities and invitations to the public

44. Control of public invitations

(1) No person shall make any invitation to the public-

- (a) to acquire or dispose of any securities of a body corporate; or
- (b) 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
 - (i) is a public company and the provisions of sections 50 to 63 of this Act are duly complied with; or
 - (ii) is a body corporate licensed under the Banks and Other Financial Institutions Act to carry on banking business,
[Cap. B3.]

so however that nothing in this subsection shall render unlawful the sale of any shares by or under the supervision of any court.

(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 commits an offence and is liable on conviction in the case of a body corporate, to a fine of not less than ₦100,000 and in any other case, to imprisonment for a term of not less than two years or to a fine of not less than ₦100,000 or to both such imprisonment and fine.

(3) If, as a result of any invitation to the public in breach of subsection (1) of this section, any person acquires or disposes of any securities or deposits money with any company, he shall be entitled to rescind such transactions and either in addition or instead of rescinding the same, to 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 company or to recover compensation from it unless he takes steps to rescind the transaction before the commencement of the winding up of the company, and the fact that it is too late to rescind the transaction shall not prejudice his right to recover compensation from any person other than the company.

45. Public invitation to deposit money with public companies

(1) Notwithstanding the provisions of section 44 of this Act, it shall be lawful to make an invitation to the public to deposit money with a public company, if prior to the making of

the invitation the written consent of the Commission has been obtained and the invitation is made in accordance with such conditions and restrictions as may have been imposed by the Commission.

(2) The Commission may in its absolute discretion grant or withhold such consent as is referred to in subsection (1) of this section, and without prejudice to the generality of the foregoing, may require the registration with and approval by it of any advertisement or circular to be used in connection with the invitation.

(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 that may have been 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 company, the person shall be entitled to require the 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.

46. Meaning of "invitation to the public"

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

- (a) published, advertised or disseminated by newspaper, broadcasting, cinematography 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 anyone 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

the 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 made 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) An invitation made by or on behalf of a private company exclusively to its existing shareholders (not being greater in number than is prescribed by subsection (3) of section 22 of the Companies and Allied Matters Act), and its existing employees, shall not be deemed to be an invitation to the public unless the invitation is of the type referred to in paragraph (c) or (d) of subsection (1) of this section.

[Cap. C20.]

(4) For the purpose of subsection (1) of this section, the issue of any form of application for securities or of any form 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.

47. Offers of sale deemed to be made by the company

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:

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 assumed, 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.

48. Form of application for shares to be issued with prospectus

(1) Subject to the provisions of section 53 of this Act it shall not be lawful to issue any form of application for securities in a public company unless the form is issued with a prospectus which complies with the requirements of section 56 of this Act.

(2) 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.

(3) If any person acts in contravention of the provisions of this section, he is guilty of an offence and liable on conviction to a fine of not less than fit ₦100,000.

49. Effective date of a prospectus

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.

50. Contents of prospectus

(1) Subject to the provisions of section 53 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 Act 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.

[Third 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) 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 Investments and Securities Tribunal established by this Act 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,

so however 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.

51. Application of provisions relating to prospectus in certain cases

The provisions of sections 48 and 50 of this Act shall not apply to the issue-

- (a) made to the existing members of a company or of 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,

but, subject as specified in paragraphs (a) and (b) of this section, sections 48 and 50 of this Act shall apply to a prospectus or a form of application issued on or with reference to the formation of a company or at any time thereafter.

52. Prohibition of issue, etc., of certain notices, circulars and advertisements

(1) Subject to this section, no person shall issue, circulate, publish, disseminate or distribute any notice, circular or advertisement which-

- (a) offers for subscription or purchase 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; or
 - (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 instalments, 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 occupations 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;
- (d) to a notice or circular which-
- (i) accompanies a notice or circular referred to in paragraph (a) or (c) of this subsection or would but for the inclusion in it of a statement referred to in sub-paragraph (iii) or (iv) of this paragraph, be a notice or circular so referred to;
 - (ii) is issued or circulated by a person whose ordinary business is, or 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 shares to which the notice or circular or accompanying document relates, contains a statement that the person making the recommendation is interested in the success of the issue as an underwriter or sub-underwriter, as the case may be.

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

(4) A person who contravenes the provision of this section or a person who 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 not less than ₦100,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(5) 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 commits an offence and is liable on conviction to a fine of not less than ₦100,000.

53. Exemption certificate and effect

- (1) Where-
- (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
 - (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,

there may, on request of the applicant, be given by or on behalf of that Securities Exchange or Capital Trade Point a certificate of exemption, that is, a certificate which having regard

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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 would be unduly cumbersome.

(2) If a certificate of exemption is given and the proposals 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 of this Act; and
[Third Schedule.]
- (b) sections 48 and 50 of this Act shall not apply to any issue after the permission applied for is granted of a prospectus or form of application relating to the securities.

54. Expert's statement on prospectus

(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-

- (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 it with the statement included in the form and context in which it is included; and
- (b) a statement that the expert has given and has not withdrawn his consent appears in the prospectus.

(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 not less than ₦100,000.

(3) In this section, "**expert**" includes every engineer, legal practitioner, accountant and any other person whose profession gives authority to a statement made by him.

55. Prospectus on invitation to the public to acquire or dispose of securities

(1) Notwithstanding the provisions of section 44 of this Act, it shall be lawful to make an invitation to the public to acquire or dispose of any securities of a public company if-

- (a) within six months prior to the making of the invitation, there has been delivered to the Commission and registered by it, in accordance with section 57 of this Act a prospectus relating to such securities complying in all respects with the relevant provisions of sections 52, 53 and 56 of this Act;
- (b) except as provided in subsection (2) of this section, every person to whom the invitation is made is supplied with a true copy of such prospectus; and

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

(2) The provisions of paragraph (b) of subsection (1) of this section shall 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.

56. General and restricted invitations to the public

(1) Except as provided in section 53 of this Act where the company invites the public to acquire any securities of a public company, the prospectus referred to in section 54 of this Act shall state the matters specified in Part I of the Third Schedule to this Act and set out the reports specified in Part II of that Schedule, but this subsection shall not apply to an invitation by a company in respect of shares of that company-

[Parts I and II. Third Schedule.]

- (a) to its associated company made solely to the existing shareholders of that company; or
- (b) which in all respects is uniform with the shares of that company previously issued and for the time being dealt in on an approved Securities Exchange or Capital Trade Point.

(2) 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 are 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 them 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.

(3) 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".

57. Registration of prospectus

(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 or proposed director of the company, or by his agent authorised in writing and having endorsed on it or attached to it-

- (a) any consent to the issue of the prospectus required by section 54 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; or [Third Schedule.]
- (c) in the case of a prospectus deemed by virtue of a certificate granted under section 53 of this Act to comply with the requirements of the Third Schedule to this Act, a contract or a copy of such contract or a memorandum of a contract shall be 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 that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons for them.

[Third Schedule.]

(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 copy of the prospectus shall, 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 in any other language, as the case may be, being a translation certified in any manner acceptable to the Commission to be a correct translation, and the reference to a copy of a contract required to be available for inspection shall include a reference to a copy of a translation of it or a copy embodying a translation of a part of it.

(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 documents 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,

and where the Commission refuses to register a prospectus on the ground that it fails to comply otherwise with the requirements of this Act an appeal shall lie thereon to the Invest-

ments and Securities Tribunal established by this Act within 21 days after notification of the refusal by the Commission.

(5) 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, commits an offence and is liable on conviction to a fine not exceeding ₦25,000 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.

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

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 subject to the approval of the statutory meeting.

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

(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 a prospectus or otherwise relating to a prospectus shall apply and have effect accordingly as if-

- (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, it 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 the securities or of any of them 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 not been so received.

(3) The provisions of section 50 of this Act as applied by 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-

- (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 57 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 or a firm, it shall be sufficient if the document is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

60. Interpretation as to prospectus statements

For the purposes of the foregoing provisions of this Part of this Act, a statement-

- (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.

61. Form of statement in lieu of prospectus

A statement in lieu of a 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.

[Fourth Schedule.]

62. Civil liability for mis-statements in prospectus

(1) Subject to the provisions of this section, 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 included in it.

- (2) A person liable to pay compensation under subsection (1) of this section-
 - (a) is a director of the company at the time of the issue of the prospectus;
 - (b) is a person who has authorised himself 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) is a promoter of the company; and
 - (d) is a person who has authorised the issue of the prospectus.

(3) Where under section 54 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 of his having given it be liable under this section as a person who has authorised the issue of a prospectus except in respect of an untrue statement purporting 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 before the issue of the prospectus, and that it was issued without his authority or consent; or

- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (c) that, after the issue of the prospectus and before allotment, he, on becoming aware of any untrue statement in it, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason for his withdrawal; or
- (d) that, as regards every untrue statement-
 - (i) not purporting to be made on the authority of an expert, or of a public official 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 54 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 or, to the defendant's knowledge, before allotment; 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 a public official 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 54 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 54 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 54 of this Act to the issue of the prospectus, he withdrew 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, 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 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 54 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 any without whose knowledge or consent the prospectus was issued and any other person who authorised such issue, is guilty of an offence and 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 section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 54 of this Act to the inclusion in it of a statement purporting to be made by him as an expert.

(9) For the purposes of this section-

- (a) "**promoter**" means a promoter who was a party to the preparation of the prospectus, or of the portion of it containing the untrue statement, 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
- (b) "**expert**" has the same meaning as in subsection (3) of section 54 of this Act.

63. Criminal liability for mis-statement in prospectus

(1) Where a prospectus includes any untrue statement, any officer who authorised the issue of the prospectus commits an offence and is liable-

- (a) on conviction on an indictment, to a fine of not less than ₦100,000 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 ₦50,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment,

unless he proves either that the 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 54 of this Act to the inclusion in it of a statement purporting to be made by him as an expert.

64. Criminal liability in respect of statements in lieu of prospectus

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

- (a) on conviction upon an indictment, to a fine of not less than ₦100,000 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 ₦100,000 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 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 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.

65. Allotment of securities

The issuer and the issuing house or any other capital market operator duly appointed by the issuer shall be responsible for the allotment of the securities of the company where a public offer of securities is made with or without quotation under such rules and regulations as may be laid down by the Commission.

66. Opening of subscription lists

(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 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, so however 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 officer of the company who is in default commits an offence and is liable on conviction to a fine 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 officer of the company who is in default, of 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 which is made in pursuance of a prospectus issued generally shall not be revocable until after expiration of the third day after the time of the opening of the subscription lists or the giving before the expiration of the said third day, by some person responsible under section 62 of this Act for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this section and section 72 of this Act, the third day after another day, 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 purposes be substituted the first day after which is none of them.

67. No allotment unless minimum subscription received

(1) No allotment shall be made of any securities of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, is required to be raised by the issue of share capital in order to provide for the matters specified in paragraph 2 of the Third Schedule to this Act, has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

[Third Schedule.]

(2) For the purposes of subsection (1) of this section, a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".

(4) The amount payable on each application shall not be less than five per cent of the nominal amount of the share.

(5) If the conditions specified in subsections (1), (2) and (3) of this section have not been complied with at the expiration of forty days after the first issue of the prospectus, all moneys received from applicants for shares shall forthwith be repaid to them without interest, and if

any such money is not repaid to them within 48 days after the issue of the prospectus, the directors of the company shall jointly and severally be liable to repay that money with interest at the current bank rate per annum from the expiration of the 48th day; but a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) The provisions of this section, to the exclusion of subsection (4) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

68. Application, etc., moneys to be held in trust until allotment

(1) Application and other moneys 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 on such terms and conditions as may be prescribed by the Commission.

(2) If any default is made in complying with this section, every officer of the company in default or, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorises or permits the default, commits an offence and is liable on conviction to pay a fine of not less than ₦50,000 or to imprisonment for a term of not less than six months or to both such fine and imprisonment.

69. Prohibition of allotment in certain cases

(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-

- (a) a statement in lieu of prospectus signed by every person who is named in it as a director or a proposed 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 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 it or attached to it a written statement signed by those persons setting out the adjustments and giving the reasons for the adjustments.

[Fourth Schedule.]

(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 wilfully authorises or permits the contravention commits an offence and is liable on conviction to 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.

70. Effect of irregular allotment

(1) An allotment made by a company to an applicant in contravention of the provisions of sections 67 and 69 of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or 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 67 and 69 of this Act with respect to an allotment, he is guilty of an offence and liable on conviction to compensate the company and the allottee respectively, for any loss, damages 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 until after the expiration of two years from the date of the allotment.

71. Action for rescission

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 either the prospectus-

- (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 52 and the Second Schedule to this Act.
[Second Schedule.]

72. Allotment of securities and dealing on Securities Exchange, etc.

(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 in 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-

- (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 forthwith repay, without interest, all moneys received from applicants in pursuance of the prospectus and if the money is 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 moneys 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 money was not due to any misconduct or negligence on his part.

(3) All moneys received by virtue of this section shall be kept in a separate bank account so long as the company may become liable to repay it under subsection (2) of this section; and if default is made in complying with this subsection, the company and every officer of the company who is in default commits an offence and is liable on conviction to a fine of not less than ₦100,000.

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

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present 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;
- (b) in relation to a prospectus offering securities for sale with the following modifications, that is-
 - (i) references to sale shall be substituted for references to allotment;
 - (ii) the persons by whom the offer is made and not the company, are liable under subsection (2) of this section to repay moneys 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.

73. Return of surplus moneys to subscribers, etc.

(1) The Commission shall have the power to prescribe the maximum period within which the issuing house shall return surplus moneys due to subscribers.

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

(3) The interest payable under subsections (1) and (2) of this section shall not be less than one per cent above the Central Bank of Nigeria minimum re-discount rate and the Commission may-

- (a) in addition, require a company which fails to honour its obligation under this section to pay a higher rate of interest on the surplus moneys; and
- (b) direct that such increased interest be paid into the Consolidated Revenue Fund of the Federation.

(4) A person who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine of ₦1,000,000 or to imprisonment for a term not exceeding three years.

PART IX

Conduct of securities business

74. Issues of contract notes

A securities dealer shall, in respect of a transaction of purchase of securities, forthwith give a contract note which complies with section 75 of this Act-

- (a) where the transaction took place in the ordinary course of business at a Securities Exchange or Capital Trade Point and the securities dealer entered into the transaction otherwise than as principal to the person for whom the securities dealer entered into the transaction;
- (b) where the transaction did not take place in the ordinary course of business at a Securities Exchange or Capital Trade Point and the securities dealer entered into the transaction otherwise than as principal to the person for whom the securities dealer entered into the transaction and the person with whom the securities dealer entered into the transaction;
- (c) where the transaction did not take place in the ordinary course of business at a Securities Exchange or Capital Trade Point and the securities dealer entered into the transaction as principal to the person with whom the securities dealer entered into the transaction.

75. Contents of contract note

A contract note given by a securities dealer under section 74 of this Act shall include-

- (a) the name or 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 business;
- (b) where the securities dealer is dealing as principal with a person who is not the holder of a securities dealer's licence, a statement that he is so acting;
- (c) the name and address of the person to whom the securities dealer gives the contract note;
- (d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a Securities Exchange or Capital Trade Point, a statement to that effect;

- (e) the number, amount and description of the securities which are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of the consideration;
- (h) the rate and amount of commission (if any) charged;
- (i) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
- (j) if an amount is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the first-mentioned amount and the nature of the benefit.

(3) A securities dealer shall not include in a contract note given under subsection (1) of this section as the name of the person with or for whom he has entered into the transaction, a name which he knows, or should reasonably be expected to know, is not the name by which that person is ordinarily known.

(4) 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; or
- (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 directors together constitute a controlling interest.

(5) 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.

(6) Notwithstanding the provisions of subsection (4) of this section, a person is not associated with another person for the purposes of this section 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.

76. Certain persons to disclose certain interests in securities

(1) Where a person who is a securities dealer, investment adviser, securities dealer's representative or investment representative, sends circulars or other similar written communica-

tions with respect to securities or a class of securities, he shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any interest in, or any interest in the acquisition or disposal of those securities or securities included in that class which he or a person associated with him has at the date on which the first-mentioned person last sends the circular or other communication.

(2) For the purposes of subsection (1) of this section-

- (a) the interest of a person in the disposal of securities includes any financial benefit or advantage which will, or is likely to, accrue directly or indirectly to the person on or arising out of the disposal of the securities; and
- (b) without limiting the generality of paragraph (a) of this subsection, a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities.

(3) Where a person-

- (a) has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and
- (b) offers any of those securities for purchase,

he shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for the purpose unless he has informed each person to whom the recommendation is made that he acquired 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 ninety 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 unless the offer or recommendation complies with the provisions of subsection (5) of this section.

(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, dealer's representative or investment representative shall not send 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-

- (a) if the first-mentioned person is a natural person, is signed by that person;

(b) if the first-mentioned person is a body corporate, is signed by a director, executive officer or secretary of the body corporate.

(7) Where a person who is a securities dealer, investment adviser, dealer's representative or investment representative, sends 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 a copy of the circular or other communication or of the written offer or recommendation, duly signed by the person concerned mentioned in subsection (5) for a period of seven years.

(8) Reference in this section to an offer of securities shall be construed as including 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) For the purposes of this section a circular or other communication or a written offer or recommendation signed by the secretary of a body corporate shall be deemed to have been signed by the body corporate.

(10) The Commission may, if it is in the public interest, exempt a security or any class of securities from the application of this section.

(11) Any person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not less than ~~N100,000~~ or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

77. Dealings as principal

(1) Subject to subsection (4) of this section, a securities dealer shall not as a principal deal in any securities with a person who is not a securities dealer unless he is acting in the transaction as principal and not as agent.

(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, 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 a securities dealer not later than thirty 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 that subsection.

(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.

78. Dealings by employees of holders of licences

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

- (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 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 (1) of this section 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 two years or to both such fine and imprisonment.

79. Dealers to give priority to client's orders

(1) A dealer shall not, except as permitted by subsection (3) of this section enter into, as principal or on behalf of a person associated with him, 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 dealer who is not associated with the dealer has instructed the dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

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

(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 instructions 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.

80. Margin requirements

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 on all or specified securities or transactions or class of securities and transactions and for matters connected therewith.

PART X

Trading in securities

81. False trading and market rigging transactions

(1) A person shall not create, or cause to be created, or do anything which may create a false or misleading appearance of active trading in any securities on a Securities Exchange or Capital Trade Point or a false or misleading appearance with respect to the market for or the price of any such securities.

(2) A person shall not, by means of purchases or sale of any securities that do not involve a change in the beneficial ownership of those securities, or 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, takes part in, is concerned in or carries out, either directly or indirectly, any transaction or sale or purchase of any securities, being a transaction 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 proposes to make or to 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 to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to 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 shall be 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.

82. Securities market manipulation

(1) A person shall not effect, take part in, be concerned in 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.

(2) A person shall not effect, take part in, be concerned in 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 stabilising 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 includes-

- (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.

83. False or misleading statements

No person shall make a statement or disseminate information which is false or misleading in a material particular and is likely to induce the sale or purchase of the securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when he makes the statement or disseminates the information-

- (a) he does not care whether the statement or information is true or false; or
- (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

84. Fraudulently inducing persons to deal in securities

(1) No person shall by-

- (a) making or publishing any statement, promise or forecast which he knows to be misleading, false or deceptive; or
- (b) any dishonest concealment of material facts;
- (c) the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast which is misleading, false or deceptive; or
- (d) recording or storing 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.

(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.

85. Dissemination of illegal information

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-

- (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.

86. Prohibition of fraudulent means

It shall be unlawful for any person directly or indirectly in connection with the purchase or sale of any securities to-

- (a) employ any device, scheme or artifice to defraud;
- (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (c) make any untrue statement of a material fact or to omit to state¹ a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading.

87. Penalties

Any person who contravenes the provisions of sections 81, 82, 83, 84 and 85 of this Act commits an offence and is liable on conviction to a fine of not less than ₦500,000 or to imprisonment of a term not exceeding three years or to both such fine and imprisonment.

88. Prohibition on dealing in securities by insiders

(1) Subject to section 90 of this Act, an individual 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.

(2) The provisions of subsection (3) of this section shall apply where-

- (a) an individual has information which he knowingly obtains (directly or indirectly) from another individual 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 individual knows or has reasonable cause to hold the information by virtue of being so connected; and
- (b) the former individual 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 individual 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 an individual is contemplating or has contemplated, making (with or without another person) a take-over offer for a company in a particular capacity, that individual 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 an individual 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 individual 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) An individual 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.

(7) An individual who is for the time being prohibited by the provisions of this section from dealing in any securities by reason of his having any information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that other person will make use of the information for the purpose of dealing or of counselling or procuring any other person to deal in those securities.

89. Abuse of information obtained in official capacity

(1) This section applies to any information which-

- (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 an individual (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 shall be reasonable to expect an individual 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 individual holding it knows it is unpublished price-sensitive information in relation to securities of a particular company (hereafter referred to as "relevant securities").

(2) This section applies to a public officer holding information to which this section applies and to any individual who knowingly obtained any such information (directly or indirectly) from a public officer or former public officer who that individual 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 90 of this Act an individual 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 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 Minister that the members, officers or employees of or persons otherwise connected with any body appearing to him to exercise public functions, may have access to unpublished price-sensitive information relating to securities, he may by order declare that those persons are public officers for the purposes of this section.

90. Actions not prohibited by sections 88 and 89: dealings in securities by insiders

(1) The provisions of sections 88 and 89 of this Act shall not prohibit an individual by reason of his having any information from-

- (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;
- (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;
 - (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.

(2) An individual shall not, by reason only of his having information relating to any particular transaction, be prohibited by-

- (a) subsection (2), (3) (b), (4) or (5) of section 88 of this Act from dealing on a Securities Exchange or Capital Trade Point in any securities; or
- (b) subsection (6) or (7) of section 88 of this Act from doing any other thing in relation to the provisions mentioned in paragraph (a) of this subsection; or
- (c) section 89 of this Act from doing anything if he does that thing in order to facilitate the completion or carrying out of the transaction.

91. Trustees and personal representatives

(1) Where a trustee or personal representative is a body corporate or an individual acting on behalf of that trustee or personal representative who, with the exception of subsection (1) (a) of section 90 of this Act would be prohibited by sections 88 and 89 of this Act from dealing or counselling or procuring any other person from dealing in any securities, deals in those securities or counsels or procures any other person from dealing in them, shall be presumed to have acted with propriety and accordingly exempted from the provisions of sections 87 and 88 of this Act:

Provided that he acted on the advice of a person who-

- (a) appears to him to be an appropriate person from whom to seek such service; and
- (b) did not appear to him to be prohibited by virtue of section 88 or 89 of this Act from dealing in those securities.

(2) In this section, the expression "with propriety" means 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 the information in question.

92. Effect of contravention

No transaction shall be void or voidable by reason only that it was entered into in contravention of the provisions of section 88 or 89 of this Act.

93. Civil liability of insider, etc.

An insider who contravenes any provision of section 88 of this Act or any person who contravenes any provision of section 89 of this Act is guilty of an offence and liable on conviction to-

- (a) compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or with the exercise of reasonable diligence could have been known to that person at the time of the transaction; and
- (b) be accountable to the company for the direct benefit or advantage received or receivable by the insider as a result of the transaction.

(2) An action to enforce a right created by subsection (1) of this section may be commenced only within two years after the date of completion of the transaction which gave rise to the cause of action.

94. Penalty for contravention

An individual who contravenes the provisions of section 88 or 89 of this Act commits an offence and is liable on conviction to a fine of ₦1,000,000 or to imprisonment for a term of two years or to both such fine and imprisonment.

95. Meaning of certain words used in this Part

In this Part-

"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.

(2) For the purpose of this Part-

- (a) an individual is an insider of a company if he is, or at any time in the preceding six months has been, knowingly connected with the company;
- (b) an individual is connected with a company if, but only if-
 - (i) he is a director of that company or a related company; or
 - (ii) he occupies a position as an officer (other than a director) or employee of that company or a related company or a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and the first company or a related company which in either case may reasonably be expected to give him access to information which, in relation to securities of either company, is unpublished price-sensitive information, and which, it would be reasonable to expect a person in his position not to disclose except for the proper performance of his functions;
- (c) any reference to unpublished price-sensitive information 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.

96. Criminal liability under this Part

Any person who contravenes any of the provisions of this Part of this Act commits an offence and is liable on conviction-

- (a) in the case of a person not being a body corporate, to a fine of not less than ₦500,000 or to imprisonment for a term of 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.

97. Compensation to be determined by Commission or Tribunal

(1) A person who is liable under this Part of this Act shall pay compensation at the order of the Commission or the Investment and Securities 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 been likely to have been dealt in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.

(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 Investment and Securities Tribunal.

98. Limitation to recovery

An action under this section of this Act for the recovery of a loss shall not be commenced until after the expiration of two years after the date of completion of the transaction in which the loss occurred.

(2) Nothing in subsection (1) of this section shall affect any liability that a person may incur under any other law or enactment.

PART XI

Mergers, take-overs and acquisitions

99. Meaning of certain words used in this Part

(1) In this Part-

"**bid**" means an invitation or an offer;

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

"**despatch**" means communicate in any manner;

"**directors' circular**" means a circular referred to in section 111 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 103 of this Act.

(2) 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.

(3) The Commission shall approve any application made under this section if and only if the Commission finds that-

- (a) such acquisition, whether directly or indirectly, of the whole or any part of the equity or other share capital or of the whole or any part of the assets of another company, is not likely to cause a substantial restraint of competition or tend to create a monopoly in any line of business enterprise; or
- (b) the use of such share by voting or granting of proxies or otherwise shall not cause a substantial restraint of competition or tend to create a monopoly in any line of business enterprise.

(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) Nothing in this section shall apply to transactions duly consummated pursuant to the authority given by any Federal Government owned agency under any statutory provision vesting such power in the agency.

(5) The Commission shall have the power to call for information from companies seeking its approval under this section in order to effectively carry out its functions under this Act.

100. Reconstruction and merger of companies

(1) Where under a scheme proposed for a compromise, arrangement or reconstruction between two or more companies or the merger of any two or more companies, the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "the transferor company") is to be transferred to another company, the

court may, on the application in summary of any of the companies to be affected, order separate meetings of the companies to be summoned in such manner as the court may direct.

(2) If a majority representing not less than three quarters in value of the share 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.

(3) If the scheme is approved by the Commission, an application may be made to the court by one or more of the companies, and the court shall sanction the scheme, and when so sanctioned, the same shall become binding on the companies and the court may, by the order sanctioning the scheme or by any subsequent order make provision for all or any 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 allotting 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;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger shall be fully and effectively carried out.

(4) An order under paragraph (d) of subsection (3) 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 has been made with respect to the employees of the company to be dissolved.

(5) Where an order under this section provides for the transfer of property or liabilities, such 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, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(6) 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 shall be liable to a fine of not less than ₦20,000.

(7) 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;
- (c) "**company**", where used in this section, does not include any company other than a company within the meaning of the Companies and Allied Matters Act.
[Cap. C20.]

101. Power to acquire shares of dissenting shareholder

(1) Where a scheme or contract (not being a take-over bid under this Part of this Act) 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 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, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, unless the court thinks fit to order otherwise, 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.

(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 contracts 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.

102. Dissenter's right to compel acquisition of his shares

(1) This section shall apply where, in pursuance of any such scheme or contract under section 98 of this Act, 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.

(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 or as the court hearing the application of either the transferee company or the shareholder thinks fit.

103. Take-over bids

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

(2) A take-over bid shall be deemed to be dated as of the date on which a bid under the take-over 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 Part of this Act, 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 anyone 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.

104. Person making a take-over bid

(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-

- (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 take-over bid, beneficially owned or controlled, directly or indirectly, by 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, as would exceed one third in number 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 one third of the voting power at any general meeting of the offeree company.

(2) Subject to this section, a take-over bid shall be deemed to be made by a company which either by itself or through its agent, 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 regulations, in order to purchase shares by way of separate agreements;
- (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 shareholder; 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.

105. Authority to proceed with take-over bid

(1) No person or no 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.

(2) An application for an authority to proceed with a take-over 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 to 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 (1) 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 take-over bid, the Commission shall have regard only to the likely effect of the take-over bid if successfully made-

- (a) on the economy of Nigeria;
- (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 so to do.

(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 the 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.

106. Registration of copy of proposed bid

(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.

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

- (a) if the Commission is satisfied that the proposed bid meets the requirements of subsection (1) or (2) of section 104 of this Act shall, subject to subsection (6) of this section, register the copy; and
- (b) if the Commission is not so satisfied, shall refuse to register the copy,

and in either event, 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 giving, in the latter case in the notice, 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 by notice in writing require the Commission to refer the fact of its refusal to register a copy of a proposed bid to the court, and the Commission shall do so; but only one reference shall be made notwithstanding that such a notice is served on more than one person and all or any of those persons require a reference to be made.

(4) The court may, after hearing a reference under subsection (3) of this section, either order the Commission to register the copy of the proposed bid and the Commission shall do so, 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 104 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 105 of this Act and is then in force.

107. Requirements as to bid under take-over bid

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

- (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 108 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 anyone 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 113 of this Act or paragraph (e) of section 115 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 subsections (1) (a) and (d) of this section;
 - (b) specifies the number and other particulars of the shares in the offered 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 113 of this Act or paragraph (e) of section 115 of this Act; and
 - (g) specifies or sets out such other matters as may be prescribed by regulations to be included in an offer.

108. Corporation making take-over bid

(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 directors of the corporation,

(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 ₦100,000 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

109. Despatch of bid to shareholders, etc.

A bid under a take-over bid, and any amendment of such a bid, shall be despatched by the offeror concurrently to--

- (a) each director of the offeree company;
- (b) each shareholder of the offeree company; and
- (c) the Commission.

110. Arrangement for funds

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 money payment for those shares.

111. Directors' circular

(1) Where, under section 109 of this Act, a bid under a take-over bid is despatched 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 terminates or before the sixtieth day after the date of the take-over bid, whichever is the earlier.

(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 required by subsection (1) of this section and if he indicates 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.

112. Experts' opinion

(1) A bid under a take-over bid or directors' circular shall not include a report, opinion or statement of a 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.

(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.

113. Bid for all shares

Where a bid under a take-over bid is for all the shares of a class in an offeree company-

- (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 114 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.

114. Bid for less than all shares

(1) Where a bid under a take-over bid is for less than all the shares of any class in the offeree company-

- (a) the offeror shall not take up shares deposited pursuant to the bid until 21 days after the date of the take-over bid;
- (b) the period of time within which shares may be deposited pursuant to the bid, or any extension thereof, shall not exceed 35 days from the date of the take-over 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.

115. Provisions applicable to every bid

Where a bid under a take-over bid is for all, or less than all the shares of any class in the offeree company-

- (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 less than 21 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-
- (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 107 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 114 of this Act.

116. Commission's duty in relation to certain instruments

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-

- (a) any bid or amendment received by it pursuant to section 109 of this Act; and
- (b) any directors' circular received by it pursuant to section 111 of this Act.

117. Acquisition of shares of dissenting shareholders

(1) For the purposes of this section-

- (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 of 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 118 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-

(i) pay the amount into a bank account established for the purpose; or

(ii) 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 under subsection (3) of this section to a dissenting offeree; 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 under subsection (4) by a dissenting offeree.

(8) An offeror shall send to the Commission a copy of every notice sent under subsection (2) of this section to a dissenting offeree, not later than one month after the date on which it is so sent.

118. Procedure where dissenting offeree makes election

This section shall apply where a dissenting offeree makes an election under paragraph (b) of subsection (3) of section 117 of this Act.

(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 the 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 security 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 117 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 117 of this Act.

(7) The court may, in its discretion, appoint one or more than one 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 117 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 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 117 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 117 of this Act 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 117 of this Act 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 117 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 117 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.

119. Duties of offeree company

(1) Where an offeree company is satisfied-

- (a) in the case of the dissenting offeree who makes an election under paragraph (a) of subsection (3) of section 117 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 117 of this Act; and
- (b) in the case of a dissenting offeree who made an election under paragraph (b) of subsection (3) of section 117 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 118 of this Act 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 117 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 118 of this Act, notify the other person holding the money or the property in trust that the dissenting offeree has complied with subsection (5) of section 117 of this Act; or
- (b) in the case of a dissenting offeree who has not complied with subsection (5) of section 117 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 117 of this Act or as the case may be, under subsection (6) of section 118 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 118 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 117 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 119 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.

120. General provisions as to payments

(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 118 of this Act.

(2) A trustee shall not be required to give money or other consideration to a person applying for it under section 119 of this Act unless he is satisfied that 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 119 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 119 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.

121. Rights of remaining shareholders

(1) The following subsections shall have effect when the aggregate number of-

- (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 shares last mentioned in that subsection, 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 117 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 terms 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.

122. Offences

- (1) Where a person or two or more persons makes or make a take-over bid-
- (a) to which section 105 of this Act applies and no authority to proceed with the take-over bid granted under that section is in force on the date of the take-over bid; or
- (b) to which section 106 of this Act applies and a copy of a bid under the take-over

bid has not been registered under that section, 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 such fine and imprisonment.

(2) Where a person or more than one person makes or make a take-over bid and a bid under the take-over bid does not comply-

- (a) in the case of an invitation, with requirements of subsection (1) of section 107 of this Act; or
- (b) in the case of an offer, with the requirements of subsection (2) of section 107 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 such fine and imprisonment.

(3) Where a report, an opinion or a statement referred to in subsection (1) of section 112 of this Act is included contrary to that subsection-

- (a) in a bid under a take-over bid, the offeror or each offeror commits an offence; or
- (b) in a directors' circular, each of the directors is guilty of an offence,

and 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 112 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 an 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.

PART XI

Collective investment schemes

123. Meaning of collective investment scheme, etc.

- (1) In this Act and subject to this section, a "collective investment scheme" means-
- (a) any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;

- (b) any arrangement described in paragraph (a) of this subsection in which the participants do not have day-to-day control over the management of the property underlying the arrangement notwithstanding that they have a right to be consulted or to give directives;
- (c) any arrangement as set out in paragraph (a) or (b) of this subsection in which participants pool their contributions for the purpose of sharing the profits or income arising from the management of their money or property solely from the efforts of a third party.

(2) Where any arrangement provides for such pooling as is mentioned in paragraph (c) of subsection (1) of this section in relation to separate parts of the property, the arrangement shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(3) The following are not collective investment schemes-

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business other than investment business and enters into the arrangements for commercial purpose related to that business;
- (c) arrangements where each of the participants is a body corporate in the same group as the operator.

124. Definitions of certain words used in this Part

In this Part-

"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 the 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;

"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 the unit trust scheme and trust deed, and is entitled to a *pro rata* share of dividends, interest or other income of the securities comprised in the unit;

"issuer" means the person performing the duties of a manager pursuant to the provisions of the trust under which the units are issued;

"manager" under a unit trust scheme means the person in whom are vested the powers of management relating to property for the time being subject to any trust created in pursuance of the scheme;

"prospectus" includes offer for sale, advertisement, circular, letter, notice, scheme of arrangement, or other equivalent document published or circulated relating to the unit trust scheme;

"register" means the register established and maintained for the purposes of this Part;

"trust deed" means the agreement drawn up between the trustees and the manager for regulating the operation of a unit trust scheme;

"trustee" under a unit trust scheme 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" or **"mutual fund"** 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.

125. Authorisation of unit trust scheme

(1) Notwithstanding anything contained in this Act, no person shall establish or operate a unit trust scheme or carry on or purport to carry on the business of dealing in units of a trust scheme (described whether as units or otherwise) unless such scheme is authorised by and registered with the Commission.

(2) An application for authorisation under this section shall be in the form prescribed by the Commission and shall be accompanied by such documents as may be specified, from time to time, by the Commission.

(3) Upon application to the Commission in accordance with this Act by the manager under a unit trust scheme, the Commission may authorise and register such scheme if but only if-

- (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 unit trust scheme and probity of the manager and trustee are such as to render them suitable to act as manager and trustee respectively under the scheme;
- (b) the manager under the scheme is a body corporate which is incorporated under the Companies and Allied Matters Act and having a minimum paid-up capital of ₦20,000,000;

[Cap. C20.]

- (c) the trustee under the scheme is a body corporate such as a bank or an insurance company licensed under the Insurance Act having a minimum paid up capital of ₦40,000,000;
[Cap. I17.]
- (d) the Commission is satisfied that the scheme is such that the effective control of the affairs of the scheme is vested in the manager and is exercised independently of the company which is the trustee under the scheme;
- (e) the Commission is satisfied that the trust deed is in compliance with the provisions of this Act and the rules and regulations for the time being in force thereunder; and a copy of the trust deed aforesaid is deposited with the Commission; and
- (f) the name of the scheme is not, in the opinion of the Commission, undesirable.

(4) The Commission may refuse to authorise a unit trust scheme if it fails to comply with the provisions of this Part of this Act and shall so notify the manager and the trustee under the scheme stating its reasons for refusal within thirty days of such refusal.

(5) Upon authorisation of a unit trust scheme, the Commission shall certify that the scheme is so authorised.

126. Registration of units

(1) It shall not be lawful for any person, directly or indirectly, to deal in units of a trust scheme (described whether as units or otherwise) unless such units have been duly registered with the Commission.

(2) A unit 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 filed pursuant to this section shall become effective on the sixtieth day after filing thereof 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 to the units specified therein as proposed to be offered.

(4) The Commission shall establish and maintain a register of units and unit trust schemes (in this Part of this Act referred to as the "register").

127. Approval by Commission of alteration of trusts deed or change of name of scheme

(1) It shall not be lawful for any manager or trustee under a unit trust scheme to make any alteration in the deed 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.

(2) Where the manager or trustee under a unit trust scheme fails to comply with subsection (1) of this section, he commits an offence and is liable on conviction to a fine of ₦50,000 and in addition to a penalty of ₦5,000 per day for the period during which the default subsists.

128. Revocation of authorisation of unit trust schemes

(1) Subject to the provisions of this section, the Commission may revoke the authorisation of a scheme if-

- (a) there is a contravention of any provision of this Part of this Act or of any rule or regulation made thereunder; or
- (b) there is a contravention of any of the conditions specified in subsection (3) (b), (c) and (e) of section 125 of this Act; or
- (c) the Commission is no longer satisfied in respect of the matter specified in subsection (3) (a), (d) and (f) of section 125 of this Act; or
- (d) the interest of the holders of units created under the scheme so requires.

(2) The Commission shall before such revocation-

- (a) notify the manager and the trustee under the scheme and the manager and trustee may within 21 days from the date of such notification make representations in writing to the Commission in respect of the proposed revocation;
- (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 unit trust 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 representations under this section.

129. Prospectus, documents on unit trust scheme

(1) Any letter, notice, circular or document prepared by the manager for the purpose of offering units of a unit trust scheme to the public shall be approved by the trustee and submitted to the Commission for approval before such letter, notice, circular or document is published.

(2) There shall be included in a document of the kind referred to in subsection (1) of this section, information in relation to such matters (if any) as may be specified, from time to time, by the Commission.

130. Civil liabilities arising from prospectus

(1) Any manager under a unit trust scheme who offers or sells units by means of a letter, notice, circular, document or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (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), is liable to the person purchasing such units who may bring an action before the Investments and Securities Tribunal established under this Act (in this Act referred to as "the Tribunal") to recover the consideration paid for such units, or for damages if he no longer owns the units.

(2) No action shall be maintained to enforce any liability under subsection (1) of this section, unless brought within two years after discovery of the untrue statement or after such discovery ought to have been made by the exercise of reasonable care.

131. Redemption of units

(1) Whenever the holder of units of an authorised unit trust scheme so requests, the manager under the scheme, shall, within the time specified by the Commission, buy from the holder such number of those units as the holder may specify at the price for the time being at which the manager buys units of the scheme.

(2) Whenever the authorisation of a unit trust scheme under this Act stands revoked, the manager under the unit trust scheme shall buy all the units under the scheme at the price for the time being at which the manager buys units of the scheme.

132. Prohibition of certain transactions and profits by managers under unit trust schemes

(1) No company that is a manager under a unit trust 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.

(2) A company that is a manager under a unit trust scheme 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 trust of the scheme to a person to enable him to purchase units of the scheme; or
- (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 transactions that are not in the interest of unit 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 not less than equal the amount of profits made from any such transaction or to a fine of ₦20,000 whichever is higher.

133. Liability of trustees under unit trust scheme

Any provision in the trust deed in which are expressed the trusts created in pursuance of an authorised unit trust scheme shall be void in so far as it would have the effect of exempting the trustee under the scheme from or indemnifying it against liability for breach of trust where, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretion, he fails to exercise the degree of care and diligence required of him as trustee.

134. Audit of accounts of unit trust schemes and annual general meetings

(1) The manager of an authorised unit trust 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 under the scheme with the consent of the trustee under the scheme.

(2) A copy of the auditors' report on the accounts and of such accounts 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, specify.

(3) The auditor shall certify that the unit trust scheme has been operated within the provisions of this Act and the regulations prescribed by the Commission.

(4) The manager under the scheme shall call an annual general meeting of unit holders with the consent of the trustee not later than four months after each year to consider the accounts and other matters affecting the scheme.

(5) An extraordinary general meeting of the unit holders may be convened-

- (a) by the manager with the consent of the trustee; or
- (b) at the request of the trustees; or
- (c) by a requisition of 25 per cent of the unit holders; or
- (d) by the court on application by a member where the court is satisfied that it is just and equitable so to do.

135. Price of units

The calculation of prices at which units of any unit trust scheme may be bought or sold shall be done in accordance with the formula laid down by the Commission in the rules and regulations made under this Act.

136. Investments

Every manager of an authorised unit trust scheme shall invest only in-

- (a) securities specified under the Trustee Investments Act; and
- [Cap. T22.]
- (b) such other investments as the Commission may, from time to time, approve.

137. Inspection and investigation

(1) The Commission shall have the power at any time to inspect documents in respect of any unit trust scheme.

(2) The Commission may investigate and report on the administration of any unit trust scheme, if it appears to it that it is in the interest of holders of units under the scheme to do so or the matter is in the public interest.

(3) If an officer or agent of the manager or trustee whose affairs are being investigated or inspected by virtue of this section refuses to produce to the Commission any document which it is his duty under this section so to produce or refuses to answer any question which is put to him by the Commission with respect to the unit trust scheme, he commits an offence and is liable on conviction to a fine of not less than ₦20,000.

138. Constitution and management of unit trust schemes

(1) The Commission may make regulations as to the constitution and management of authorised unit trust schemes, the powers and duties of the manager and trustee of any such scheme and the rights and obligations of persons participating in any such scheme.

(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 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, including provision requiring any of the matters mentioned in subsection (2) of this section to be dealt with in the trust deed;
- (b) shall be binding on the manager, trustee and participants independently of the contents of the trust deed 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;
- (d) may contain such incidental and transitional provisions as the Commission thinks necessary or expedient.

139. Alteration of schemes; changes of manager or trustee

(1) The manager of an authorised unit trust scheme shall give written notice to the Commission of-

- (a) any proposed alteration to the scheme; and
- (b) any proposal to replace the unit trustee of the scheme.

(2) Any notice given in respect of a proposed alteration involving a change in the trust deed shall be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the trust deed with the regulations made under section 138 of this Act.

(3) The trustee of an authorised unit trust scheme shall give written notice to the Commission of any proposal to replace the manager of the scheme.

(4) Effect shall not be given to any such proposal 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 (2) of this section without the Commission having notified the manager or trustee that the proposal is not approved.

(5) Neither the manager nor the trustee of an authorised unit trust scheme shall be replaced except by persons who satisfy the requirements of section 140 of this Act or regulations made thereunder.

140. Restriction on activities of managers

(1) The manager of an authorised unit trust scheme shall not engage in any activities other than those mentioned in subsection (2) of this section.

(2) The activities referred to in subsection (1) of this section are-

- (a) acting as manager of-
- (i) a unit trust scheme;
 - (ii) an open-ended investment company or any other 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;
- (b) activities for the purposes of or in connection with those activities mentioned in paragraph (a) of this subsection.

141. Publication of scheme particulars

(1) The Commission may make regulations requiring the manager of an authorised unit trust scheme to submit to him and publish or make particulars available to the public on request of a document ("scheme particulars") containing information about the scheme and complying with such requirements as are specified in the regulations.

(2) Regulations under this section may require the manager of an authorised unit trust scheme to submit and publish or make available revised or further scheme particulars if-

- (a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations; or
- (b) a significant new matter arises where the inclosing of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.

(3) Regulations under this section may provide for the payment by the person or persons who, in accordance with the regulations, are treated as responsible for any scheme particulars of compensation to any person who has become or agreed to become a participant in the

scheme and suffered a loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.

(4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.

142. Power of intervention

(1) If it appears to the Commission-

- (a) that any of the requirements for the making of an order declaring a scheme to be an authorised unit trust scheme are no longer satisfied;
- (b) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in the scheme; or
- (c) without prejudice to paragraph (b) of this subsection, that the manager or trustee of such a scheme has contravened any provision of this Act 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,
the Commission may give a directive-
- (d) requiring the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme on a date specified in the directive until such further date as is specified in that order or directive; or
- (e) requiring the manager and trustee 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.

(2) The revocation of the order declaring an authorised unit trust scheme to be such a 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 unit trust scheme has been revoked if a directive under that subsection was already in force at the time of revocation.

143. Representation against refusal or revocation

(1) Where the Commission proposes to-

- (a) refuse an application for an order under section 142 of this Act; or
- (b) revoke such an order otherwise than at the request of the manager or trustee of the scheme,

it shall give the applicants or, as the case may be, the manager and trustee 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 21 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.

144. Applications to the Tribunal

(1) In any case in which the Commission has power to give a direction under subsection (1) of section 139 of this Act in relation to an authorised unit trust scheme or, by virtue of subsection (2) of that section in relation to a scheme which has been such a scheme, it may apply to the Tribunal-

- (a) for an order removing the manager or trustee or both the manager and trustee of the scheme and replacing either or both of them with a person or persons nominated by it and appearing to it to satisfy the requirements of section 140 of this Act; or
- (b) if it appears to the Commission that no suitable person satisfying those requirements is available, for an order removing the manager or trustee, or both the manager and trustee, and appointing an authorised person to wind the scheme up.

(2) On an application under this section to the Tribunal it may make such order as it thinks fit; on the application of the Commission, rescind any such order as is mentioned in subsection (1) (b) of this section and substitute such an order as is mentioned in subsection (1) (a) of this section.

(3) The Commission shall give written notice of the making of an application under this section to the manager and trustee of the scheme concerned and take such steps as it considers appropriate for bringing the making of the application to the attention of the participants.

145. Investigations

(1) The Commission may appoint one or more competent inspectors to investigate and report on-

- (a) the affairs of, or of the manager or trustee of any authorised unit trust scheme;
- (b) the affairs of, or of the operator or trustee of any recognised 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 of, any other collective investment 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 of 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.

(5) 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 lawyer may be required to furnish the name and address of his client.

(6) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.

(7) 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.

(8) An inspector appointed under this section of this Act may, and if so directed by the Commission, shall make interim reports to the Commission and on the conclusion of his investigation shall make a final report to the Commission.

(9) A report made under subsection (8) 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.

146. Registration of community savings, "esusu" schemes, etc.

(1) As from the commencement of this Act the Commission shall register collective investment schemes falling within the category of community savings schemes which includes "esusu" schemes and such other similar schemes operating within Nigeria.

(2) The registration of the community savings schemes referred to in subsection (1) of this section shall be for statistical purposes only and such schemes shall not be subject to the other provisions of this Part of this Act regulating the activities and operations of other collective investment schemes registered under this Part of this Act.

(3) The Commission shall prescribe forms for the registration of the schemes referred to in subsection (1) of this section.

(4) The Commission shall not charge any registration fee for services rendered under this section of this Act.

147. Real estate investment schemes

(1) It shall be lawful for a body corporate incorporated for the sole purpose of acquiring intermediate or long-term interests in real estate or property development to raise funds from the capital market through the issuance of securities which shall have the following characteristics-

- (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) It shall be lawful under this Act for a trust to 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 of the asset-backed securities of the corporate body and trust referred to in subsections (1) and (2) of this section.

PART XII

Investors Protection Fund

148. Establishment of an Investors Protection Fund

(1) A Securities Exchange or Capital Trade Point shall establish and maintain a fund to be known as the Investors Protection Fund which shall be administered by its governing board (hereafter referred to as "the Board") on its behalf.

(2) The assets of the Investors Protection Fund shall be the property of the Securities Exchange or Capital Trade Point but shall be kept separate from all other property and shall be held in trust for the purpose set out in this Part of this Act.

149. Money constituting Investors Protection Fund

The Investors Protection Fund shall consist of-

- (a) all moneys paid to the Securities Exchange or Capital Trade Point by member companies in accordance with the provisions of this Part of this Act;
- (b) the interest and profits, from time to time, accruing from the investment of the Investors Protection Fund;
- (c) all moneys paid to the Investors Protection Fund by a Securities Exchange or Capital Trade Point;
- (d) all moneys recovered by or on behalf of the Securities Exchange or Capital Trade Point in the exercise of any right of action conferred by this Part of this Act;
- (e) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Board; and

- (f) all other moneys lawfully paid into the Investors Protection Fund.

150. Fund to be kept in separate bank account

All moneys forming a part of an Investors Protection Fund shall be paid or transferred into a separate bank account in Nigeria pending the investment or application of such moneys in accordance with the provisions of this Part of this Act.

151. Payments out of the Investors Protection Fund

Subject to the provisions of this Part of this Act, there shall, from time to time, be paid out of the Investors Protection Fund of a Securities Exchange or Capital Trade Point such amounts as the Board considers appropriate, which amount or amounts shall include-

- (a) the amount of all claims, including costs, allowed by the Board or established against the Securities Exchange or Capital Trade Point under this Part of this Act;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part of this Act or incurred in relation to the Investors Protection Fund or in the exercise by the Boards of the rights, powers and authorities vested in it by this Part of this Act in relation to the Investors Protection Fund;
- (c) all premiums payable in respect of contracts of insurance of indemnity entered into by the Board;
- (d) the expenses incurred or involved in the administration of the Investors Protection Fund including the salaries and wages of persons employed by the Board in relation thereto; and
- (e) all other moneys payable out of the Investors Protection Fund in accordance with the provisions of this Act.

152. Accounts of an Investors Protection Fund

(1) A Securities Exchange or Capital Trade Point shall establish and keep proper books of accounts in relation to its Investors Protection Fund and shall not later than 30 April in each year cause the income and expenditure for the year and a balance sheet to be made out as at the preceding 31 December in respect of such accounts.

(2) A Board of a Securities Exchange or Capital Trade Point shall appoint an auditor to audit the accounts of any Investors Protection Fund established by it.

(3) The auditor appointed by the Board shall regularly and fully audit the accounts of the Investors Protection Fund and shall complete the audit not later than 30 May to enable the audited accounts to be submitted by the Board to the Commission not later than 30 June of the calendar year following that to which the accounts relate.

153. Power of the Board to delegate functions to its management sub-committee

(1) The Board may for the purpose of management of the Investors Protection Fund appoint a management sub-committee of not less than three and not more than five persons.

(2) The Board may by resolution delegate to a sub-committee appointed under subsection (1) of this section all or any of its powers.

(3) Any power, authority or discretion so delegated by the Board 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 may at any time in like manner be rescinded or varied.

(5) The Board 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 shall be of no effect until it is confirmed or ratified by the Board.

154. Amount in the Investors Protection Fund

The Investors Protection Fund shall consist of such amount as may by regulation be approved by the Commission, from time to time, to be paid to the credit of the Investors Protection Fund on the establishment of a Securities Exchange or Capital Trade Point under this Act.

155. Protection of Investors Protection Fund in the event of any reduction

If for whatever reasons the Investors Protection Fund falls below the minimum amount approved for a Securities Exchange or Capital Trade Point the management sub-committee shall take steps to make up the deficiency-

- (a) by transferring to the Investors Protection Fund 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 member company shall contribute to the Fund.

156. Levy to meet liabilities

(1) If at any time the amount available in an Investors Protection Fund is not sufficient to satisfy the liabilities which are ascertained against a Securities Exchange or Capital Trade Point, the Board may impose on every member company a levy of such amount as it thinks fit; or if approved by the Commission, shall impose a levy of such sum which shall in the aggregate be the equivalent to the amount specified in the approval.

(2) The amount of such levy shall be paid within the time and in the manner specified by the Board either generally or in relation to any particular case.

157. Power of a Securities Exchange or Capital Trade Point to make advance to Fund

(1) A Securities Exchange or Capital Trade Point may, from time to time, from its general funds give or advance, on such terms as the Board thinks fit, any sums of money to its Investor Protection Fund.

(2) Any moneys advanced under subsection (1) of this section may, from time to time, be repaid from the Investors Protection Fund to the general funds of the Securities Exchange or Capital Trade Point.

158. Investment of Investors Protection Fund

Any moneys in an Investors Protection Fund which are not immediately required for its purposes may be invested by the Board in any manner in which trustees are for the time being authorised by the Trustee Investment Act to invest trust funds.

[Cap. I22.]

159. Application of Investors Protection Fund

(1) Subject to this Part of this Act, an Investors Protection Fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from 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 by a member company or any of its directors or employees, whether before or after the commencement of this Act, in the course of or in connection with the business of that company.

(2) If, after taking into account all ascertained or contingent liabilities of an Investors Protection Fund the Board considers that the assets of the Fund so permit, the Board may decide to increase the total amount which may be applied from an Investors Protection Fund and shall inform the Commission accordingly.

(3) Notwithstanding any provision in subsection (2) of this section the Commission may, by order, direct the Board to increase the total amount which shall be applied from an Investors Protection Fund to a particular member company in payment to persons who suffer loss through defalcations by that particular member company or any of its directors or by any of that member company's employees.

(4) For the purposes of this section, "a director of a member company" includes a person who has at the time of the defalcation in question 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.

160. Claims against an Investors Protection Fund

(1) Subject to this Part of this Act, every person who suffers pecuniary loss as provided in section 159 of this Act shall be entitled to claim compensation from the Investors Protection Fund and to take appropriate judicial proceedings as provided in this Act against a Securities Exchange or Capital Trade Point to establish the claim.

(2) Subject to subsection (3) of this section, a person shall not have any claim against an Investors 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 member company concerned.

(3) Subject to this Part of this Act, the amount which any claimant shall be entitled to claim as compensation from an Investors Protection Fund shall be the amount of the actual pecuniary loss suffered by him (including reasonable cost of disbursements incidental to the making and proving of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the Fund in reduction for the loss.

(4) In addition to any compensation payable under this Part of this Act, interest shall be payable out of the Investors 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 the defalcation was committed and continuing until the day upon which the claim is satisfied.

161. Notice calling for claims against Investors Protection Fund

(1) The Commission may cause to be published in a daily newspaper circulating generally in Nigeria a notice, in or to the effect of the form prescribed, specifying a date, not being earlier than three months after the said publication, on which claims for compensation from the Investors Protection Fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation from an Investors Protection Fund in respect of a defalcation shall be made in writing to the Board within six 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 or management sub-committee by reason of any notice published in good faith and without malice for the purposes of this section.

162. Power to settle claims

The Commission may, subject to this Part of this Act, allow and settle any claims for compensation from an Investors Protection Fund at any time after the commission of the defalcation in respect of which the claim arose.

163. Form of order of Tribunal

(1) Where in any proceedings brought to establish a claim the Tribunal is satisfied that the defalcation on which the claim is founded was actually committed and that otherwise the claimant has a valid claim, the Tribunal shall by order-

- (a) declare the fact and the date of the defalcation and the amount of the claim payable; and
- (b) direct that the Investors Protection Fund concerned allows 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.

164. Power of Board to require production of securities

The Commission may, from time to time, 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 either exercising its rights against a member company or the directors thereof or any other person concerned or of enabling criminal proceedings to be taken against any person in respect of a defalcation, and in default of delivery of any such securities, documents or statements of evidence by such first-mentioned person, the Commission may disallow any claim by him under this Part of this Act.

165. Subrogation

On payment out of an Investors Protection Fund of any moneys in respect of any claim under this Part of this Act, the Securities Exchange and Capital Trade Point shall be subrogated to the extent of payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the defalcation.

166. Payment of claim only from Investors Protection Fund

No moneys or other property belonging to a Securities Exchange or Capital Trade Point, other than the Investors Protection Fund, shall be available for the payment of any claim under this Part of this Act whether the claim is allowed by the Commission or is made the subject of an order of the Tribunal.

167. Provision where Investors Protection Fund is insufficient to meet claim

(1) Where the amount at credit in an Investors 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 credit in the Investors Protection Fund shall, subject to subsection (2) of this section, be apportioned between the claimants in such manner as the Commission thinks equitable, and any such claim so far as it then remains unpaid shall be charged against future receipts of the Investors Protection Fund and paid out of the Investors Protection Fund when moneys are available therein.

(2) Upon payment out of the Investors Protection Fund of the total amount, all the other claims against the Investors Protection Fund which may thereafter arise or be made in respect of defalcations by or in connection with the said member company shall be absolutely discharged.

168. Power of the Securities Exchange or Capital Trade Point to enter into contract of insurance

(1) A Securities Exchange or Capital Trade Point may in its discretion enter into any contract with any person carrying on fidelity or investor protection insurance business in Nigeria by which the Securities Exchange or Capital Trade Point shall be indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Part of this Act.

(2) A contract may be entered into in relation to member companies generally or in relation to any particular member company or member companies named therein or in relation to member companies with the exclusion of any particular member company or member companies named therein.

(3) No action 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 against any member of its management for injury alleged to have been suffered by any member company by reason of the publication in good faith of a statement that any contract entered into under this section does or does not apply with respect to it.

169. Application of insurance money

No claimant against an Investors Protection Fund shall have any rights 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.

170. Interpretation

In this Part of this Act-

"Board" means the management sub-committee, Council or a body responsible for the management of a Securities Exchange or Capital Trade Point;

"Investor Protection Fund" or **"Fund"** means an Investors Protection Fund established under this Part;

"Securities Exchange or Capital Trade Point" in relation 10 an Investors Protection Fund, means the Securities Exchange or Capital Trade Point which established the Fund.

PART XII

Borrowing by states, local governments and other government agencies, etc.

171. Bodies to which this Part applies

The bodies to which this Part of this Act applies are-

- (a) any State Government and the Federal Capital Territory, Abuja;
- (b) any local government;
- (c) any statutory body established by the Law of a State or local government; and
- (d) any company which is wholly or partly owned by a State or local government.

172. Issues of registered bonds or promissory notes

(1) Subject to the provisions of section 173 of this Act, 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 anyone or more of the following ways, that is-

- (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,

so however 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 years.

(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.

[Cap. T22.]

173. Restriction on raising of funds from the capital market

(1) A body to which this Part of this Act applies shall not raise sums of money or any part thereof by way of any internal loan directly from the capital market except in accordance with the provisions of this Act and rules and regulations made thereunder.

(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, amongst other documents, be accompanied by an original copy of an irrevocable letter of authority giving the Accountant-General of the Federation the authority to deduct at source from the statutory allocation due to the body, in the event of default by the body in meeting its payment obligations under the terms of the loan and the trust deed made pursuant to the provisions of this Part of this Act.

(4) Any amount deducted pursuant to the provisions of subsection (3) of this section shall be credited into the sinking fund established under section 200 of this Act for the purpose of redeeming the outstanding obligation.

(5) A copy of the irrevocable letter of authority issued pursuant to subsection (3) of this section shall also be lodged with the trustees appointed under section 195 of this Part of the Act.

174. Loans to be charged upon revenue

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.

175. Bodies to publish details of loans in the Gazette or other official document

(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-

- (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 25 years from the date of the issuance of the registered bond of 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.

176. Register of securities and appointment of Registrar

(1) A body shall keep a register in which all securities transactions 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.

(2) A body shall for the purpose of carrying out its functions under subsection (1) of this section appoint any government agency or competent person 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 contain, amongst other things, 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 to an independent audit of his books of account in connection with his functions under this Part of this Act.

177. Appointment of issuing house

Subject to the consent of its approving authority a body may appoint any reputable issuing house or financial institution 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.

178. Liability of a body in respect of issue of registered securities

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 175 of this Act or in pursuance of an option to redeem the bond.

179. Bond-holder to be registered

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.

180. Conditions for registration

No person shall be registered as a bond-holder at any time unless he had paid in full the purchase price of the bond.

181. Bond certificate

(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 of the bond, shall be entitled to receive a bond certificate unless he had paid the prescribed fee.

(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.

182. Transfer of registered bond

(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 183 of this Act.

(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.

183. Registration of transfer of bonds

(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.

(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.

184. Registration of liens on bonds

(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.

(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.

185. Closing of register

The register shall be closed for a period of 21 days immediately proceeding each date on which interest on that bond falls due and no transfer of that bond shall be registered during that period.

186. Register to be conclusive

(1) The entries in a bond register shall be conclusive evidence of the facts, matters, particulars and transactions to which those entries relate.

(2) Notwithstanding the provisions of any other law, or enactment, a copy of an entry in the register certified under the hand of the 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.

187. Promissory notes

(1) Every promissory note shall be signed by the 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 175 of this Act or in pursuance of an option to redeem the note reserved in the directives.

(2) Promissory notes shall be issued in such denominations as the Commissioner or chairman or such other appropriate officer of a body may, with the approval of the approving authority body, direct.

188. Manner and effects of endorsement

Notwithstanding the provisions of the Bills of Exchange Act to the contrary-

[Cap. B8.]

- (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, not 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.

189. Rights of survivorship

Notwithstanding anything to the contrary contained in any other law, or enactment contrary-

- (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.

190. Registered bonds

(1) Every registered bond shall be signed by the 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 Act at the rate and on the dates specified in the trust deed.

(2) Registered bonds shall be issued in such denominations as the Commission or chairman or such other appropriate officer of a body, with the consent of the Commission, may direct.

191. Appropriation of revenue

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.

192. Payment of interest

(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.

(2) Where any amount has become payable on any date as interest due on any registered bond or securities, no interest on that amount shall, after that date, be paid or payable by a body to any person in any circumstances.

193. Cessation of liabilities on interest

No person shall be entitled to claim interest on any registered bond or securities in respect of any period which has elapsed after the earliest date on which demand could lawfully have been made for the re-payment of the principal amount due on such bond or securities.

194. Payments

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 a body or at any other lawfully authorised place as may be specified within Nigeria for the payment of any such interest or principal amount.

195. Appointment of trustees

(1) The Commissioner, chairman or such other appropriate officer of a body, subject to the approval of the approving authority, may appoint a licensed trustee company or any reputable bank licensed under the Banks and Other Financial Institutions Act or a reputable insurance company licensed under the Insurance Act or both as trustees 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 section shall not have any fiduciary relationship with the issuer.

[Cap. B3. Cap. 117.]

(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.

196. Powers of trustees

The Trustees appointed under this Part of this Act shall have all the powers conferred upon trustees by the Trustees Investment Act and without prejudice to the provisions of that Act-

[Cap. T22.]

- (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 any time 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 hereby vested in them, have absolute discretion as to the exercise thereof and provided they have acted honestly and reasonably shall be in no way responsible for any loss or damage which may result from the exercise or non-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 notwithstanding any defect in the constitution of the meeting or in the proceedings there at;
- (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 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 therewith;
- (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 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 or company to which such powers are so delegated;
- (h) the trustees may in the discharge of their functions 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 Commissioner or chairman or the appropriate officer appointed in his place by a body to which this Part applies.

197. Trustee may be interested party

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 25 per cent 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.

198. New trustees

The power to appoint new trustees under this Part of this Act shall be vested in the Commissioner, chairman or any appropriate officer subject to the approval of the approving authority of that body but no person 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.

199. Waiver by trustees

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.

200. Appropriation of revenue for sinking fund

After the date specified in the particulars published pursuant to section 175 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 half year or quarterly ending with the interest payment dates specified in the particulars appropriate out of the general revenue and

assets of the body concerned 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.

201. Separate sinking fund

A separate sinking fund shall be established for each loan raised under this Part of this Act.

202. Investment of sinking fund

(1) All moneys appropriated under section 200 of this Act as contributions to the sinking fund established for any loan shall be paid to the trustees appointed under section 195 of this Act and may be invested in such securities as are specified in the Trustee Investments Act.

[Cap. T22.]

(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 200 of this Act as contributions to that sinking fund.

203. Cessation of contribution to sinking fund

(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 redemption, they shall inform the body accordingly, and the 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.

204. Expenses to be paid out of sinking fund

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 that fund was established.

205. Deficiency in fund to be charged upon revenue

In the event of the sinking fund established under this Part of this Act being found at the time fixed for the repayment of that loan to be insufficient for such redemption, the defi-

cience 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.

206. Payment into sinking fund in case of default by a body

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 (4) of section 173 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.

207. Issue of duplicate and renewal of bonds and promissory notes

(1) The Registrar may issue duplicate bond certificates and duplicate securities in such circumstances as may be specified.

(2) The Registrar may issue renewals of bond certificates and promissory notes in such circumstances as may be prescribed.

208. Right of Registrar to compel renewal of promissory notes

The Registrar may in such circumstances as may be specified-

- (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.

209. Consolidation and subdivision of bonds and securities

Subject to such conditions as the Commissioner, chairman or an appropriate officer of a body may specify, the Registrar may-

- (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.

210. Indemnity bond

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 subdivision 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 security or under the bond or securities so exchanged, so renewed, consolidated or sub-divided, as the case may be.

211. Immediate discharge in certain cases

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 212 of this Act on the consolidation or sub-division of a bond or securities under section 209 of this Act a body shall be discharged in the same way and to the same extent as if such bond or securities were a promissory note payable to the bearer.

212. Discharge in other cases

Save as otherwise provided in this Part of this Act the liability of a body shall-

- (a) in respect of any registered bond or security 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 security in place of which a duplicate is issued under section 207 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 security, whichever date is later;
- (c) in respect of a security for which a renewed security is issued under section 208 of the Act or upon a consolidation or subdivision under section 209 of the Act be discharged after the lapse of six years from the date of the issue of the renewed security or of the new bond or securities, as the case may be.

213. Summary procedure in special cases

(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 the person entitled to such bond or securities to administer the estate of the deceased and may-

- (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 repre-

sentative 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.

214. Signature to be printed on certificates

Every bond certificate or securities issued under this Part of this Act shall bear in a printed, stamped, engraved form-

- (a) the crest of the body concerned (if any);
- (b) the signature of the 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 security relates.

215. Notice of trust not receivable save as provided

(1) Save 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.

(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.

216. Exemption from stamp duties

Any provision in any other law or enactment to the contrary notwithstanding 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.

217. Delegation of power

A body may delegate to the 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 the Act as may be specified.

218. Inspection of register and documents, etc.

(1) No person shall be entitled to inspect, or to receive information in relation to registered bonds or securities, save on payment of such fee and in such circumstances and on such terms and conditions as may be prescribed from time to time.

(2) Nothing in this section shall apply to the Auditor-General for the Federation or 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 the course of his official capacity.

219. Power to make rules and regulations under this Part

(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-

- (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 Act;
- (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.

220. Requirements of Securities Exchanges, etc.

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.

221. Binding obligation on successive governments etc.

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 State or local government boards or supervising Ministries of corporate entities to which this Act 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.

222. Application of enactments

Nothing in this Part of this Act shall be construed as derogating from the provision 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.

223. Interpretation of certain words used in this Part

In this Part of this Act, the following expression shall have the meanings hereby assigned to them respectively-

"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 a State means the Executive Council of the State, in the case of 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 those bodies or body referred to under section 171 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 Executive Council of a State;

"issuing house" means the paying agent appointed under the provisions of this Part of this Act;

"loan" means an internal loan and includes 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;

"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;

"security holder" means a person holding a registered security 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 XIV

Establishment, jurisdiction, authority and procedure of the Investment and Securities Tribunal

224. Establishment of the Investments and Securities Tribunal

(1) There is hereby established a body to be known as the Investments and Securities Tribunal (hereafter referred to as "the Tribunal") to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

(2) The Minister shall specify the matters and places in relation to which the Tribunal may exercise jurisdiction.

225. Composition of the Tribunal

(1) The Tribunal shall consist of nine persons (hereafter referred to as "Capital Market Assessors") to be appointed by the Minister, one of whom shall be the chairman.

(2) The chairman shall be a legal practitioner who has been so qualified to practice for a period of not less than fifteen years with cognate experience in capital market matters.

(3) The chairman shall preside at every sitting of the Tribunal and in his absence the members shall appoint one of their number to be the chairman.

(4) The quorum at any sitting of the Tribunal shall be five.

226. Qualifications for appointment as a Capital Market Assessor

A person shall not be qualified for appointment as a Capital Market Assessor unless he is knowledgeable about the laws, regulations, norms, practices and operations of the capital market.

227. Term of office

A Capital Market Assessor shall hold office for a term of five years from the date on which he assumes his office or until he attains the age of seventy years, whichever is earlier.

228. Resignation and removal

(1) A Capital Market Assessor may, by notice in writing under his hand addressed to the Minister resign his office:

Provided that the Capital Market Assessor shall, unless he is permitted by the Minister to relinquish his office sooner, 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 Capital Market Assessor shall be removed from office by an order by the Minister on the grounds of proven charges of misbehaviour or incapacity after due inquiry has been made and the Capital Market Assessor concerned has been informed of the charges against him and given an opportunity of being heard in respect of these charges.

229. Salary allowances and conditions of Capital Market Assessor

The salary and allowances payable to and the terms and conditions of service of the Capital Market Assessors shall be such as may be prescribed in their letters of appointment:

Provided that neither the salary and allowances nor the other terms and conditions of service of a Capital Market Assessor shall be varied to his disadvantage after appointment.

230. Filling up of vacancies

If, for reason other than temporary absence, any vacancy occurs in the office of a Capital Market Assessor, then the Minister shall appoint another person in accordance with the provisions of this Act to fill the vacancy.

231. Order constituting a Tribunal to be final

The question as to the validity of the appointment of any person as a Capital Market Assessor shall not be the cause of any litigation in any Court or tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defect in the constitution of the Tribunal.

232. Secretary to the Tribunal

(1) There shall be for the Tribunal a secretary who shall-

- (a) be appointed by the Minister;
- (b) subject to the general control of the Capital Market Assessors, be responsible for keeping records of the proceedings of the Tribunal;
- (c) be the head of the secretariat and responsible for-
 - (i) the day-to-day administration; and
 - (ii) the direction and control of all other employees,

of the Tribunal.

233. Other staff of the Tribunal, etc.

(1) The Tribunal shall have power to appoint for the Tribunal such other employees as it may deem necessary for the efficient performance of its functions under or pursuant to this Act and shall have power to pay persons so employed such remuneration (including allowances) as the Tribunal may determine.

(2) The terms and conditions of service of employees of the Tribunal shall be as may be determined by the Tribunal.

(3) For the purposes of the application of the Pensions Act, any power exercisable under the Act by the Minister or authority of the Federal Government (not being the power to make regulations under section 23 thereof) is hereby vested in the Tribunal and not by any other person or authority.

[Cap. P4.]

(4) Subject to subsection (2) of this section, the Pensions Act shall in its application by virtue of subsection (3) of this section to any office, have effect as if the office were in the civil service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria.

[Cap. P4. Cap. C23.]

(5) Service in the Tribunal shall be approved service for the purpose of the Pensions Act, and accordingly, an officer and other persons employed in the Tribunal shall in respect of their service in the Tribunal be entitled to pensions, gratuity and other retirement benefits enjoyed by persons holding equivalent grades in the public service of the Federation.

[Cap. P4.]

(6) Nothing in this section shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity in respect of that office.

234. Jurisdiction of the Tribunal, etc.

(1) The Tribunal shall have power to adjudicate on disputes, and controversies arising under this Act and the rules and regulations made thereunder.

(2) The Tribunal shall in particular adjudicate on matters relating to-

- (a) the interpretation of any law, enactment or regulations to which this Act applies;
- (b) disputes between the Commission and a Securities Exchange or Capital Trade Point;
- (c) disputes between Capital Market Operators and the Securities Exchanges or Capital Trade Point;
- (d) disputes between Capital Market Operators;
- (e) disputes between Capital Market Operators and their clients; and
- (f) disputes between quoted companies and the regulators or the Securities Exchanges.

235. Criminal prosecution

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 and the Attorney-General of the State.

236. Appeals from decisions of Commission

(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.

(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 fee 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, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Tribunal shall cause a copy of every order so made to be sent 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; accordingly, the Tribunal shall dispose of any matter before it finally within three months from the date of the commencement of the action.

237. Powers and procedures of the Tribunal

(1) The Tribunal may make rules regulating its procedures.

(2) The Tribunal shall have, for the purposes of discharging its functions under this Act,

power tc--;

- (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 witnesses 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 passed 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 it is deemed appropriate by the chairman.

238. Right to legal representation

(1) A complainant or appellant, as the case may be, may either appear in person or authorise one or more legal practitioners or any of its officers to represent him or its case before the Tribunal.

(2) Every individual or company in a case before the Tribunal shall be entitled to be represented at the hearing of an appeal by a merchant bank, a stockbroker, a solicitor or chartered accountant or financial adviser: Provided that, if the person intended by the company to be its representative in any matter before the Tribunal is unable for good cause to attend the hearing thereof, the Tribunal may adjourn the hearing for such reasonable time as it thinks fit, or admit the appeal to be made by some other person or by way of a written statement.

239. Application of statute of limitation

The provisions of any statute of limitation shall as far as may be necessary apply to any appeal brought before the Tribunal.

240. Onus of proof

The onus of proving any complaint within the capital market shall be on the complainant or appellant as the case may be.

241. Judgment of the Tribunal

(1) The Tribunal may give its judgment in written orders by making or imposing sanctions such as but not limited to fines, suspensions, withdrawal of licences, specific performance, restitution, as it may deem appropriate in each case.

(2) A certified true copy of the decision of the Tribunal shall be supplied to the parties upon request made within thirty days of such decision.

(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 party seeking to enforce the award or judgment.

242. Exclusion of proceedings

Save as provided elsewhere in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred on the Tribunal by or under this Act.

243. Appeal to the Court of Appeal

(1) Any person dissatisfied with a decision of the Tribunal constituted under this Act may appeal against such decision on points of law to the Court of Appeal upon giving notice in writing to the secretary to the Tribunal within thirty days after the date on which such decision was given.

(2) A notice of appeal filed pursuant to subsection (1) of this section shall clear all the grounds of law on which the appellant's case is based.

(2) If the Commission is dissatisfied with the decision of the Tribunal, it may appeal against such decision to the Court of Appeal on points of law by giving notice in writing as specified in subsection (1) of this section to the secretary within thirty days after the date on which such decision was given.

(3) Upon receipt of a notice of appeal under subsection (1) or (2) of this section, the secretary to the Tribunal shall cause the notice to be given to the Chief Registrar of the Court of Appeal along with all the exhibits tendered at the hearing before the Tribunal.

244. Costs

Each party to an appeal shall bear its own cost.

245. Further appeals

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.

PART XV

Miscellaneous

246. Power of Minister to issue directives

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.

247. Power to supersede the Commission

(1) If at any time the Minister is of opinion-

- (a) that on account of grave emergency, the Commission is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or
- (b) that the Commission has persistently made default in complying with any directive issued by him under this Act; or
- (c) that the Commission has made default in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial status of the Commission or the administration of the Commission has deteriorated; or
- (d) that circumstances exist which render it necessary in the public interest so to do,

the President may, on the recommendation of the Minister, suspend the Commission for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification of suspension under subsection (1) of this section all the members of the Commission shall, as from the date of suspension, vacate their office.

(3) On the expiration of the suspension specified in the notification issued under subsection (1) of this section, the Minister, with the approval of the President, may re-constitute the Commission.

248. Reports on development of the securities industry

The Commission shall furnish to the President through the Minister reports pertaining to any proposed or existing programme for the promotion and development of the securities industry in Nigeria.

249. Delegation

The Commission may, by general or special order in writing, delegate to any member, 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.

250. Right to represent Commission before court or Tribunal

Notwithstanding the provisions of any other law or enactment to the contrary, any legal practitioner employed by the Commission shall be entitled to represent the Commission before any court or the Tribunal.

251. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Federal Government or any officer of the Federal Government or any member, officer 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 or regulations made thereunder.

252. Penalty

Save as otherwise specifically provided under the provisions of this Act, whosoever contravenes or attempts to contravene or aids or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, commits an offence and is liable on conviction to a fine not exceeding ₦100,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

253. Offences by companies

(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.

(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.

254. Interpretation

For the purposes of this section-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

255. Power to exempt

(1) If the Minister is of the opinion 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.

(2) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law or enactment for the time being in force.

256. Power to remove impediments

(1) If any difficulty arises in giving effect to the provisions of this Act, the Minister may, by order published in the *Gazette*, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the impediment:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

257. Transitional provisions

(1) The Minister may by order make such transitional provisions as appear to him necessary or expedient to give full effect to the provisions of this Act.

(2) All assets, funds, resources and other movable or immovable property which immediately before the commencement of this Act were vested in the Commission established by the Securities and Exchange Commission Act shall by virtue of this Act and without further assurances, be vested in the Commission established by this Act.

[Cap. 407 L.F.N. 1990.]

(3) Every employee holding any office under the Securities and Exchange Commission Act existing immediately before the commencement of this Act shall continue to hold his office in the Commission established by this Act on the same tenure and upon the same terms and conditions of service as respects remuneration, leave, pension fund, retirement and other terminal benefits in the Commission established by this Act.

258. Regulations

(1) The Commission may make regulations-

- (a) providing for anything requiring to be prescribed under this Act; and
- (b) generally for carrying out the principles and objectives of this Act.

(2) 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 other officer of the Commission as may be designated by him.

259. Committees of the Commission

(1) The Commission may appoint one or more committees to carry out on its behalf such of its functions as the Commission may determine.

(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.

260. Seal of the Commission

(1) The fixing of the seal of the Commission shall be authenticated by the signature of the Director-General or of any person specifically authorised by him to act in that capacity.

(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.

261. Relevance of other laws

(1) Notwithstanding the provisions of this Act the relevant provisions of all existing enactments, including the following-

- (a) the Trustees Investment Act;
[Cap. T22.]
- (b) the Borrowing by Public Bodies Act;
[Cap. B10.]
- (c) the Companies and Allied Matters Act;
[Cap. C20.]
- (d) the Insurance Act;
[Cap. I17.]
- (e) the Central Bank of Nigeria Act;
[Cap. C4.]
- (f) the Nigerian Social Insurance Trust Fund Act;
[Cap. N88.]
- (g) the Banks And Other Financial Institution Act;
[Cap. B3.]
- (h) the Nigerian Investment Promotion Commission Act;
[Cap. N117.]
- (i) the Foreign Exchange (Monitoring And Miscellaneous Provisions) Act 1995;
[Cap. F34.]
- (j) the Chartered Institute of Stockbrokers Act;
[Cap. C9.]

shall be read with such modification as to bring them into conformity with the provisions of this Act.

(2) If the provisions of any other law, 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.

262. Rules and regulations

(1) The Commission may, from time to time, make rules and regulations for the purpose of giving effect to the provisions of this Act and may in particular, without prejudice to the generality of the foregoing provisions, make regulations- -

- (a) determining, from time to time, in consultation with the Minister, what other business shall be included in the definition of investment and securities business;
- (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, acquisitions and business combinations under this Act;
- (f) prescribing any fees payable under this Act;
- (g) 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 security or class of securities or to any transaction;
- (h) prescribing the information to be contained in any prospectus or offer documents filed under this Act;
- (i) prescribing the procedure, criteria for approval and authorisation of unit trust schemes and the information and documents to be filed with any application for such approval and authorisation;
- (j) prescribing the activities which constitute "insider dealings" the rules governing dealings in securities by insiders and defining the term "insider dealings";
- (k) without prejudice to the provisions of the Companies and Allied Matters Act specifying for the protection of investors-

[Cap. C20.]

- (i) the matters to be disclosed relating to the public issue of capital, transfer of securities of public companies and other matters incidental thereto;
- (ii) the form, manner and procedure for obtaining proxies, including the information to be disclosed to investors before proxies are given by any person; and
- (iii) the manner in which such matters shall be disclosed by the companies;
- (l) prescribing the returns to be made by public companies in respect of unclaimed dividends;
- (m) providing for anything requiring to be prescribed under this Act; and
- (n) generally for carrying out the principles and objectives of this Act.

(2) Any instrument issued under subsection (1) of this section shall be under the signature of the Chief Executive of the Commission and the secretary or any other officer of the Commission as may be designated by him.

(3) Any regulation made under this Act shall come into force fifteen days after receipt by the Minister or on publication in the *Gazette* or other official document unless the Minister, before the effective date of any regulation, orders that it be modified, amended or rescinded.

(4) Notwithstanding the provisions of subsection (1) of this section the Commission may, from time to time, amend or revoke rules for purposes of giving effect to the provisions of this Act and regulations made thereunder.

(5) Any regulations or rules made pursuant to this Part of this Act may, where appropriate, prescribe penalties not exceeding a fine of ₦5,000 for every day of default or imprisonment for six months or both such fine and imprisonment for any violation of the regulation or rule.

263. Repeals and savings

(1) The following enactments are hereby repealed-

(a) the Lagos Stock Exchange Act;

[Cap. 200 L.F.N. 1990.]

(b) the Nigerian Enterprises Promotion Issue of Non-voting Equity Shares Act;

[Cap. 304 L.F.N. 1990.]

(c) the Securities and Exchange Commission Act; and

[Cap. 406 L.F.N. 1990.]

(d) Part XVII of the Companies and Allied Matters Act.

[Cap. 59 L.F.N. 1990.]

(2) The following enactments are amended to the extent provided-

(a) the Capital Gains Act: section 3 (d) is hereby repealed;

[Cap. C1.]

(b) the Venture Capital (Incentives) Act-

[Cap. V2.]

(i) sections 1 (2), (3) (a), (4) and (5) and 4 (b) are hereby repealed; and

(ii) substitute for the words "Risk Fund" in sections 2, 5 (1), (2) and 6, the words "Federal Inland Revenue Service";

(c) the Nigerian Investment Promotion Commission Act: section 21 (2) is hereby repealed.

[Cap. N117.]

(3) It is hereby declared that without limiting the provisions of the Interpretation Act, the repeal or amendment of these enactments shall not affect any document made or anything whatsoever done or purported to have been done under the enactments so repealed.

(4) Every order, requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under any 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.

Interpretation and short title

264. Interpretation

In this Act, unless the context otherwise requires-

"**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;

"**approved securities organisation**" means a body corporate which is approved by the Commission under this Act as a securities organisation;

"**associated persons**" means a subsidiary, affiliate or agent of a member of any self-regulatory organisation;

"**auditor**" means an approved company auditor within the meaning of the Companies and Allied Matters Act;

[Cap. C20.]

"**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 or electronic process or otherwise;

"**broker**" means any person engaged in the business of effecting transactions in securities for the account of others;

"**Capital Trade Point**" means an Exchange registered by the Commission pursuant to this Act, which constitutes, maintains or provides market place 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 licence issued by the Commission as a part of its registration functions under this Act;

"**clearing and settlement companies**" 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 transactions on or for the allocation of securities settlement responsibilities;

"**Commission**" means the Securities and Exchange Commission referred to in subsection (1) of section 1 of this Act;

"**company**" has the same meaning as is assigned to it in the Companies and Allied Matters Act;

[Cap. C20.]

"**dealer**" means a person engaged in the business of buying and of selling securities for his account through a broker, sub-broker or any person in so far as he buys or sells securities

for his own account either individually or in some fiduciary capacity but not as part of a regular business;

"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);

"defalcation" means the act of a defaulter, 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;

"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 for 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;

"depository or custodian company" means a company acting as a custodian of securities in connection with a system of central handling of securities whereby all securities of a particular class of an issuer deposited within the system are treated as fungible and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of certificates;

"director" has the same meaning as is assigned to it in the Companies and Allied Matters Act;

[Cap. C20.]

"esusu" means any community savings collection scheme;

"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 a stock exchange;

"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;

"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 trading**" occurs where a person or group of persons who are in possession of some confidential and price-sensitive information not generally available to the public, utilises such information to buy or sell securities for the benefit of himself, itself or any person;

"**investment adviser**" means a person who--

- (a) carries on a business of advising others concerning securities;
- (b) as part of a regular business, issues or promulgates analyses or makes reports concerning securities; or
- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise) the management of a portfolio of securities for the purpose of investment; so however that the term investment adviser shall not include--
 - (i) a bank as defined in section 2 of the Banks and Other Financial Institutions Act; [Cap. B3.]
 - (ii) a company or society registered under the Insurance Act; [Cap. I17.]
 - (iii) a solicitor and advocate or accountant in practice whose carrying on of that business is solely incidental to the practice of his profession;
 - (iv) a dealer or his employee or a dealer's representative or an exempt dealer whose carrying on of that business is solely incidental to the conduct of his business of dealing in securities; or
 - (v) the proprietor of a newspaper and holder of a permit issued under the Nigerian Press Council Act and where-
 - [Cap. N128.]

(a) insofar as the newspaper is distributed generally to the public it is distributed only to subscribers to, and purchasers of, the newspaper for value;

(b) the advice is given or the analysis or reports are issued or promulgated only through that newspaper;

(c) no person receives any commission or other consideration for giving the advice or for issuing or promulgating the analysis or reports; and

(d) the advice is given and the analysis and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor;

"**investment 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);

"jobbers" are persons who carry on the business of acquiring or disposing securities on behalf of others;

"licence" includes-

- (a) a dealer's licence;
- (b) an investment adviser's licence; or
- (c) a representative's licence;

"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, of bodies corporate, governments, unincorporated bodies or other persons for the purpose of the 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, unincorporated bodies 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;

"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 and **"Ministry"** shall be construed accordingly;

"portfolio investment" means an investment in shares or other securities traded on a Securities Exchange or Capital Trade Point;

"prospectus" has the meaning assigned to it in the Companies and Allied Matters Act;
[Cap. C20.]

"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;

"relevant authority"

- (a) in relation to a member company, means the Securities Exchange; or
(b) Capital Trade Point by which the company is recognised;

"representative" means a dealer's representative or an investment representative;

"rules", in relation to a Securities Exchange or Capital Trade Point, means the rules governing the members thereof 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 or unincorporated;
(c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or
(d) any interest as defined in section 106 of the Companies and Allied Matters Act;
[Cap. C20.]
(e) futures contracts;
(f) bills of exchange;
(g) promissory notes or certificates of deposit issued by a bank which has a tenure of not less than nine months,

and the term securities in this Act includes those securities in the category of the securities listed in (a)-(g) 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 Exchange" means a Stock Exchange or an approved securities organisation such as a commodity exchange, metal exchange, petroleum exchange, options, futures, over the counter market, and other derivatives exchanges;

"self-regulatory organisation" means any registered Securities Exchange, Capital Trade Point, an association of securities dealers, clearing corporation or any other self-regulatory body approved as such by the Commission;

"share" means a share in the share capital of a body corporate and includes stock, except where a distinction between stock and shares is express or implied;

"share certificate" means an instrument of a body corporate certifying that the person therein 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 Com-

mission, and kept, lodged or stored with a licensed depository or custodian company in accordance with the provisions of this Act;

"stockbroker" means a person who is a member of a Securities Exchange or Capital Trade Point and registered by the Commission as a market operator;

"stock market" means a market, or other place or facility at which or on which securities are traded;

"sub-broker" means a person who has satisfied the conditions laid down by a Securities Exchange or Capital Trade Point for such status and who is therefore authorised to deal in the securities listed on the Exchange under the control and supervision of a dealing member.

"transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself in-

- (a) countersigning securities upon issuance;
- (b) monitoring the issuance of securities with a view to preventing unauthorised issuance, a function commonly performed by a person called a registrar;
- (c) registering the transfer of securities;
- (d) exchanging or converting securities;
- (e) transferring, record ownership of securities by bookkeeping entry without physical issuance of securities certificates;
- (f) offers to sell, purchase or exchange securities regularly made or accepted;
- (g) 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 securities; or
- (h) information regularly provided concerning the prices 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 securities;

"trust account" means a trust account established under this Act;

"trust deed" means the agreement drawn up between the trustees and the manager for regulating the operation of a unit trust scheme;

"trustee" under a unit trust scheme 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;

"underwriter" means a person who has purchased from an issuer with a view to or offers or sells for an issuer in connection with the distributions of any security 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 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.

265. Short title

This Act may be cited as the Investments and Securities Act.

SCHEDULES

FIRST SCHEDULE [Section 2 (4).]

Proceedings 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.

[Cap. I23.]

(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) Where the Commission desires to obtain the advice of any person on a particular matter, the Commission may eo-opt him as a member for such period as it thinks fit; but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Commission and shall not count towards a quorum.

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 Commission shall be six.

(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

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, certificates of deposit 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) property 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 in Collective Investment Scheme

- 6.** Units in a collective investment scheme, including shares in or securities of an open-ended investment company.

Options

- 7.** Options to acquire or dispose of-

- (a) an investment falling within any other paragraph of this Part 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 investment falling within this paragraph by virtue of sub-paragraph (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.

Others

- 9.** 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.

Notes

(1) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.

(2) The arrangements in sub-paragraph (a) of paragraph 2 of this Schedule are arrangements which bring about or would bring about the transaction in question.

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 of an authorised unit trust scheme.

Others

6. Any other activity falling within the definition of activities constituting investment business.

THIRD SCHEDULE
[Section 50 (1), 53 (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 a 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 debentures 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; or
- (b) the purchase or acquisition of which has not been completed at the date of the issue of the prospectus.

(2) The two paragraphs referred to in sub-paragraph (1) of this paragraph 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 their 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) Sub-paragraphs (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 or partly out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment 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 expenses 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) Sub-paragraph (1) (b) 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) Sub-paragraph (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 sub-paragraph (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

[Section 50 (1), 53 (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 is-

sue 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 sub-paragraph (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) Sub-paragaphs (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 of 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 times 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 less 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 subparagraph, "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 61, 69 (1).]

Form of statement in lieu of prospectus to be delivered to the Commission by a company under sections 61, and 69 (1) of the Investments and Securities Act 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 sectionof the Investments and Securities Act.

Delivered for registration byshares of ₦the nominal share capital of theshares ofcompany divided intoshares of ₦

Amount (*if any*) of above capital which consists of redeemable share

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 elapsed since the date on which the company was entitled to commence business.

Amount of preliminary expensesnaira

By whom those expenses have been paid or are payable

Name of promoters

Amount paid or intended to be paid to promoter

Consideration for paymentamount (*naira*) paid

intended to be paidconsideration

Any other benefit given to any promoter

Name of promoter|

Nature and value of benefit

Consideration for giving of benefit

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 paidupon 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 exercisableuntil

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

.....Rat
es 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 shares 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 sub-paragraph (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, deal 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 sub-paragraph (1) (a) 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 other body corporate; or
 - (ii) 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 losses of the other body corporate, with the combined profits or losses of its subsidiaries; and
 - (b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-paragraph (1) 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 other body corporate's assets and liabilities, or
 - (ii) 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 III

Provisions applying to Parts 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 to 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, or 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.

INVESTMENT AND SECURITIES ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
