AN APPRAISAL OF THE LEGAL FRAMEWORK FOR DISPUTE RESOLUTION IN THE NIGERIAN CAPITAL MARKET

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ZARIA

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A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY IN LAW, Ph.D

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ZARIA

FEBRUARY, 2018

DECLARATION

I hereby declare that the work in this thesis entitled "AN APPRAISAL OF THE LEGAL FRAMEWORK FOR DISPUTE RESOLUTION IN THE NIGERIAN CAPITAL MARKET'' has been performed by me in the Department of Commercial Law, Faculty of Law, Ahmadu Bello University, Zaria. The information derived from the literature has been dully acknowledged in the text and a list of references provided. No part of this Thesis was previously presented to my knowledge for another degree or diploma at this or any other institution.

_____ _____

George Abang, EKPUNGU **DATE**

CERTIFICATION

This Thesis entitled: "AN APPRAISAL OF THE LEGAL FRAMEWORK FOR DISPUTE RESOLUTION IN THE NIGERIAN CAPITAL MARKET" by George AbangEKPUNGU meets the regulations governing the award of the degree of Doctor of Philosophy in Law (PhD) of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This research is dedicated to my darling wife, Mrs. Agnes AbangEkpungu, who remains a great support and a true friend.

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All thanks, praise, glory, honour and worship to God Almighty my help, my strengthener, my creator, my all, who made it possible for me to complete my studies successfully and enabled me to write this dissertation. I cannot worship him enough.

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ABBREVIATIONS

A D R	-	Alternative Dispute Resolution
A G	-	Attorney General
A G F	-	Attorney General of the Federation
AGM	-	Annual General Meeting
A P C	-	Administrative Proceedings Committee.
A S E C	-	Abuja Securities and Exchange Commission.
B O F I A	-	Bank and Other Financial Institutions Act.
B P E	-	Bureau for Public Enterprises.
C A C	-	Corporate Affairs Commission.
C A M A	-	Companies and Allied Matters Act.
C B N	-	Central Bank of Nigeria.
C CC M O E		Code of Conduct for Capital Market Operators and their Employees.
C D C	-	Customer Due Deligence.
C I C	-	Capital Issues Commission.
CIS	-	Chartered Institute of Stockbrokers.
C J	-	Chief Justice.
C S C S	-	Central Securities Clearing System.
D G	-	Director General.
D P P	-	Director of Public Prosecution.
D S S	-	Department of State Securities Service.
E F C C	-	Economic and Financial Crime Control.
F D I	-	Foreign Direct Investment.

F G N	-	Federal Government of Nigeria.
F H C	-	Federal High Court.
FPI	-	Foreign Portfolio Investment.
F S T	-	Financial Services Tribunal.
ICM	-	International Capital Market.
IOCC	-	Industrial Development Coordination Committee.
I O S C O	-	International Organisation of Securities Commission.
I S A	-	Investment and Securities Act.
I S T	-	Investment and Securities Tribunal.
J C A	-	Justice of the Court of Appeal.
K Y C	-	Know Your Customer.
L S M J	-	Lagos State Ministry of Justice.
M O U	-	Memorandum of Understanding.
N A A	-	Nigeria Airways Authority.
N A I C O M	-	National Insurance Commission.
N C P	-	National Council on Privatisation.
N D I C	-	National Deposit Insurance Corporation.
N G O	-	Non- Governmental Organisation.
NIPC	-	Nigerian Investment Promotion Commission.
NISLR	-	Nigerian Investment and Securities Law Report
N P C	-	National Pension Commission.
N S E	-	Nigerian Stock Exchange.
N I C O N	-	National Insurance Corporation of Nigeria.

Ors	-	Others.
PENCOM	-	Pension Commission.
P F C	-	Pension Fund Custodian.
PLC	-	Public Liability Company
S A N	-	Senior Advocate of Nigeria.
S A T	-	Securities Appellate Tribunal.
S E C	-	Securities Exchange Commission.
S M S	-	Short Message System
S R O	-	Self Regulatory Organisation.
T C P C	-	Technical Committee on Privatisation and Commercialisation.
U A C	-	United Africa Company.
U K	-	United Kingdom.
U S A	-	United States of America.
V A T	-	Value Added Tax.

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ABSTRACT

The capital market is the long arm of the financial market through which resources in the form of savings are pooled and channeled to the production of goods and services. Disputes often arise in capital market transactions, which must be resolved speedily, fairly and efficiently in the interest of stability of the market. Notwithstanding the various processes for dispute resolution in the Nigerian capital market, the jurisdiction to adjudicate over capital market disputes has been a source of contention among stakeholders. In the event of disagreement, the forum to ventilate grouses is not now firmly and squarely settled.The Investments and Securities Tribunal, which was created by the ISA as a solution, to this near intractable dispute resolution crisis, has been mired in constitutional and jurisdictional controversies. The Appellate Courts have not been unanimous on its jurisdiction. Furthermore, the exclusive jurisdiction of the Federal High Court on matters arising from the Companies and Allied Matters Act, 2004 has also been called to question. As things stand presently, the following research questions seek urgent answers; is the legal framework for dispute resolution in the Nigerian Capital Market adequate to resolve the current controversies in the system; does the framework for dispute resolution in the Nigerian capital market in conformity with international best practices and standards;and finally, are there special needs or peculiarities in the operationsand emerging disputes in the Nigerian capital market, requiring aspecialised dispute resolution system.The aim of this research is the attainment of a robust dispute resolution system in the Nigerian Capital Market,that will meet the aspirations of stakeholders. To this end, the objectives of this research are; to critically evaluate the extant legal framework for dispute resolution in the Nigerian Capital Market and advance recommendations, that will resolve the current challenges in the system; to examine in detail the statutory and administrative procedures for the resolution of disputes in the Nigerian Capital Market, such as the SEC Administrative Proceedings Committee and other internal enforcement processes and the disciplinary/dispute resolution of the SROs. This is with a view to making suggestions for reform, that will make same accord with global standards and international best practices.Investors' confidence can be buoyed by an assurance of a fair and efficient dispute resolution system that is not hamstrung with teething challenges of competence. The controversies surrounding the constitutional place and jurisdiction of the Investments and Securities Tribunal has led to conflicting decisions by superior courts in Nigeria. These do not portend encouraging signs for domestic and foreign investors.Stripping the Investments and Securities Tribunal the jurisdiction in criminal matters has weakened its role as a fast-track dispute resolution mechanism in Nigeria. The facts giving rise to disputes in the market are often intertwined such that separating the fact that give rise to civil disputes from those that give rise to criminal liabilities can be quite challenging. Therefore, since capital market disputes are time sensitive, the problems arising therefrom become even more worrisome. This uncertainty is certainly not a good sign for domestic and foreign investors in the Nigerian economy. The ISA permits the SEC to constitute committees and under this power the SEC has over the years constituted the Administrative Proceedings Committee, a quasi-judicial body, to resolve disputes in the capital market. With the complement of primary and secondary data (statute,case law and existing jurisprudence) on this subject, this study finds that the absence of a formal structure for the APC or retaining it as an ad hoc committee convened at the pleasure of SEC has introduce so much uncertainty into its existence To properly situate the Investments and Securities Tribunal and address the controversies surrounding its status and jurisdiction, it is recommended that section 6 (5) of the Constitution of the Federal Republic of Nigeria, 1999 be

amended to include the IST as a superior court of record. This will streamline the approach of the Nigerian courts and assure investors that their grievances would receive fair, firm and timeous hearing. Section 284 and 294 of the Investments and Securities Act require amendment to confer civil and criminal jurisdiction on the Investments and Securities Tribunal. Section 310 of the ISA should also be amended to clearly establish the Administrative Proceedings Committee.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The capital market is the major engine of growth and development for the economy. It is the financial market through which resources in the form of savings are marshal for the purpose of the production of goods and services. Without doubt, a virile and dependable market, reflects the degree of investing public confidence in the mechanism. Therefore, the importance of the capital market as a vital element of national economic development, cannot be over emphasised. It is the barometer for measuring a nation's economic development. The Nigerian capital market has provided the financial environment for the marketing of government economic policies from nationalization, indigenisation, privatisation, the national economic and empowerment development strategy, the seven point agenda[1], the transformation and change agenda have all leveraged on the facilities of the capital market for their realization.

Inevitably, in any market, institution, relationship or transaction, disputes arise between parties. In the Nigeria capital market, disputes also arise, which must be resolved in the interest of the sustainability and stability of such transactions and of the market.

Capital markets, all over the world, are regulated by laws, rules, regulations and practices peculiar to each jurisdiction. The provisions of these legislations are usually guided by international best practices and the principles of market regulation as enunciated by the International Organization of Securities Commissions (IOSCO)[2].Essentially, the thirtyprinciples[3]

[1]Economic policies of the various Governments of the Federal Republic of Nigeria, 1999-2011.
[2]IOSCO Objectives and Principles of Securities Regulations – www.iosco.org/library/pubdocs accessed on the 7/7/2017. See Also: Udora C. A: The Role of the Nigeria Securities and Exchange Commission in the Resolution of Capital Market Disputes. Being the next of a paper delivered at the Capital Market Solicitors Association Forum, Lagos, September, 2010.
[3]IOSCO,Opcit.

of IOSCO are largely driven by the three objectives of securities regulation of the protection of investors, ensuring that market are fair efficient and transparent and the reduction of systemic risks.

In view of the vital role of the capital market and the disastrous consequences of an unregulated market, governments all over the world cannot risk allowing this market operate without some form of control. It is therefore necessary to regulate the market including provision of a framework for dispute resolution, to ensure that the relevant institutions in the industry are properly established and monitored and that the operators in the market are fit and proper persons to operate in the market. There is also the need to provide rules and regulations that would ensure fairness, efficiency, orderliness, transparency, stability and confidence in the capital market.[4]

The overall objective of the legal framework for the capital market or securities regulation is the protection of the general investing public and the national economy. The corporate collapses experienced in some countries (Enron in the USA, Parmalat in Italy, Oceanic Bank in Nigeria), show that the promoters, officers, directors of companies and market professionals, were not faithful in discharging their fiduciary responsibilities to investors. The need to protect stakeholders against this can never be overemphasized.

There has always been the need for a well-defined and properly articulated legal framework for dispute resolution in the Nigeria capital market. The recognition of the need for an appropriate formal structure or procedure for resolution of violations and malpractices in Nigeria's capital market prompted the setting up of different strategies for dispute resolution

[4]Orojo,O (2008) Company Law and Practice in Nigeria, Fifth Edition, Lexis NexisButterworths, page 362.

system under the Lagos Stock Exchange Act[5], 1961, the Capital Issues Commission Act[6], 1973, Securities and Exchange Commission Decree[7], 1979, Securities and Exchange Commission Decree[8], 1988, Investments and Securities Decree[9], 1999 and the Investments and Securities Act[10], 2007. These strategies are complemented by the regular courts in the justice administration system. The legal framework has thrown up fresh challenges requiring proactive response. This study is an answer to this challenge.

1.2. Statement of the Research Problem

A dispute resolution system must be cost effective and timeous as justice delayed is justice denied. There are many problems associated with the Nigerian legal system. Delays caused by unnecessary adjournments and objections mostly based on technicalities, lack of sufficient judicial officers to man the courts, poor and inadequate infrastructure in our courts, un-conducive working conditions for judges, especially in the rural and semi-urban areas, government interference, corruption and similar vices[11] are some of the challenges encountered by the justice administration system.

These problems greatly affect the justice dispensation and delivery in Nigeria generally and particularly, dispute resolution in the Nigerian capital market. Therefore, since capital market disputes are time sensitive, the problems arising there from become even more worrisome.

[5]No.14,1961 retained as CAP 200, Laws of the Federation,1991.
[6]No.14,1973
[7]No.79,1979.
[8]No.29,1988.
[9]No.45,1999.
[10]No.29,2007.
[11] Orji, N.,(2010) The Role of the IST in the Resolution of Capital Market Disputes in Nigeria; Being a paper delivered at a Seminar organized by Association of Capital Market Solicitors held at the Nigerian Institute of International Affairs, NIIA, Lagos Nigeria, on September 15, 2010.

In the Nigerian capital market, the existing framework is faced with its own peculiar challenges. There is still no consensus on the fundamental issue of the proper forum for the ventilation of capital market disputes. The problem now is that The Investments and Securities Tribunal which was created by the ISA as a solution to this near intractable dispute resolution crisis has been mired in constitutional/jurisdictional controversies[12]. The appellate courts have not been unanimous on its jurisdiction. The exclusive jurisdiction of the Federal High Court on matters arising from the Companies and Allied Matters Act, 2004 has also been called to question[13]. The disputes related to huge investible funds whose faiths were tied to these disputes. This uncertainty is certainly not a good sign for domestic and foreign investors in the Nigerian economy.

The sum total of these problems is that the dispute resolution system in the Nigerian capital market is in dire need of reforms to meet the expectation of stakeholders and global financial system. As things presently stand, the following research questions seek urgent answers;

i. Is the legal framework for dispute resolution in the Nigerian Capital Market adequate to resolve the current controversies in the system?

ii. Does the framework for dispute resolution in the Nigerian capital market conform to international best practices and standards?

iii. Are the peculiarities of the disputes in the Nigerian capital market such that require specialised dispute resolution system?

[12]Yekini A, (2015) The Exclusive Jurisdiction of the Investments and Securities Tribunal (IST) A Constitutional Perspective, The Gravitas Review of Business & Property Law, Vol.6,No.2,June 2015, p47

[13]**MuftauAjayi v. SEC** (2009) 13, NWLR,pt.1157,1

iv. Does the present legal framework have the wherewithal to resolve the inherent conflict presently constituted in the system and enable the capital market play its financial intermediation role effectively?

1.3. Aim and Objectives of the Research

The aim of this research is the attainment of a robust dispute resolution system in the Nigerian Capital Market that will meet the aspiration of stakeholders and contribute immensely to the growth of the Nigerian economy. To this end the objectives of this research include;

1. To critically evaluate the extant legal framework for dispute settlement in the Nigerian Capital Market and advance recommendations that will resolve the current challenges in the system.
2. To examine in detail the statutory and administrative procedures for the resolution of disputes in the Nigerian Capital Market with the view to making suggestion that will make same accord with global standards and international best practices.
3. To stimulate academic and intellectual research in this area of law, grow the jurisprudence, show the peculiarities of the Nigerian capital market which underlies the need for a specialized dispute resolution system and thus widen the horizon of law in the process.

1.4. Scope and Limitation of the Research.

The emphasis of this study is the Nigerian capital market with emphasis on legal framework for dispute resolution. While the emphasis is Nigeria, references shall be made to other jurisdictions where necessary to share experience and learn from other countries in the process. This enables countries to leverage on international best practices in the process. The

main law in focus is the Investments and Securities Act[14], 2007. Other laws bearing directly or indirectly are also considered. Companies and Allied Matters Act[15], 2004,, Chartered Institute of Stockbrokers Act[16], 2004, Banks and Other Financial Institutions Act[17], 2004, Central Bank of Nigeria Act[18], 2007, Foreign Exchange (Monitoring & Miscellaneous Provisions) Act[19], 2004, Nigerian Investments Promotion Commission Act[20], 2004 are appropriately considered. This enables a robust discussion on the subject of regulation and dispute resolution.

Literatures on dispute resolution on Nigerian Capital Market are quite few. This is not unconnected with the fact that until the enactment of the Investments and Securities Decree[21] in 1999, the subject was treated as an integral part of company law. It is usual to see a general discussion on the subject of company securities without an incisive consideration of the germane issueof grievance redress in the capital market. Furthermore, the challenges of a developing capital market, throw up nascent issues that existing literature have not addressed or adequately addressed. These are wary issues that a research in this field must grapple with.

1.5. Research Methodology

The focus of this study is the law and institutions saddled with dispute resolution in the capital market.Consequently, the methodology of this research is mainly doctrinal. We applied the ordering analysis of the legal structure, legal framework and case law to establish our objective. This we did by extensive survey of legal literature, even when we did not undertake any form of field work. We however undertook descriptive analysis, interpretation and systemization of legal norms or doctrines. We gave commentaries on the philosophical questions

[14]No 29, 2007 (ISA)
[15]CAP C20, Laws of the Federation of Nigeria, 2004.
[16]Cap C9, Laws of the Federation of Nigeria, 2004.
[17]CAP B3 Laws of the Federation of Nigeria, 2004
[18]No7, 2007.
[19]CAP F17, Laws of the Federation of Nigeria,2004.
[20]CAP N117, Laws of the Federation of Nigeria, 2004.
[21]No.45,1999.

underpinning the research, including the nature or characteristics of the laws themselves. The materials used are sourced from primary and secondary sources. The primary resource materials used in this research include relevant legislation on the subject matter, rules and regulations made pursuant to the relevant legislation. The Investments and Securities Act[22], 2007, is the main law in this respect. Judicial pronouncements of competent courts and tribunals on capital market disputes and related matters, are relied upon in the study.

It will be impossible to undertake a study of this nature, without the complement of previous research works in this field. The secondary source of data used in this research, includes relevant published text books on the subject. Articles, periodicals, magazines, journals, seminar/workshop papers and sundry national and international written materials are utilized in coming to some of the conclusions in this research. We engaged books or other written source materials on the research. Basically, we looked for available source materials in the subject area of research and examined, appraised, critiqued, evaluated, analysed, and used the information thereof as a basis for our recommendations for decision making, enactment of laws and rules and regulations. Other relevant materials, including those from the internet and electronic sources are deployed in the research.

1.6. Justification for the Research

This research will be very useful to the securities industry and a wide spectrum of industry operators, lawyers and students. It will particularly avail Investors who are in *dire* need of more information on the process of protecting their investments or channeling their grievances in a simpler and more cost effective manner.Capital Market Operators, including Stockbrokers, investment Advisers, Issuing Houses, Registrars, Consultants and Reporting Accountant who are

[22]No.29,2007

involved in the day to day market activities, are usually involved in market disputes. This research will be of immense benefit to the operators of the market.

The Self-Regulatory Organizations (SROs), like the Nigerian Stock Exchange, Chartered Institute of Stockbrokers, Association of Issuing Houses and other groups in the capital market, will find this work, handy. The discussion in this dissertation makes clear some of the untidy areas of dispute resolution in the capital market. The Securities and Exchange Commission (SEC), is the apex regulator of the securities industry in Nigeria. The SEC, will find the exposition in this research, very useful for a proper coordination of their own processes of resolving disputes in the market and reforming same for greater effectiveness.

The National Assembly is an indispensable partner for the growth of the Nigerian Capital Market through their primary task of law making. The reforms suggested in this research, can only be successfully carried through if the necessary laws are in place. This study will enable the National Assembly understand the dynamics of the capital market and the current challenges in the dispute resolution mechanism in the Nigerian Capital market. This ultimately would put them in the position to make the relevant laws to enable the capital market perform maximally.

Legal Practitioners generally stand to derive benefits from this work, many of whom are not very versed in the operations and practices of the capital market. To equip them for a proper and more effective representation of their clients in transactions, arbitration, courts and tribunals over capital disputes. The research will also provide lawyers with adequate information on the various levels of dispute resolution in the market and provide them with innovative but infrequently used alternatives like the alternative dispute resolution options.

Law teachers and students would be further educated by the discussions in this research in the developing jurisprudence of the capital market. This is more so as the literature in this area is evolving.

1.7 Literature Review

A number of distinguished writers have written on one aspect or the other of corporate law generally. Relatively, few have written on regulation and disputes resolution in the capital market or the procedure for dispute resolution in the capital market. In any case, there has not been any incisive discourse on the challenges currently faced by the dispute resolution system of the Nigerian capital market. An examination of some of the invaluable contribution is undertaken to properly situate this thesis.

Abugu'sbook,[23] is one of the rich text books on the subject of company securities. In the work, the author dealt,tersely, with the issue of dispute resolutions in the capital market. Although the learned author discussed themes such as: Administrative Proceedings Committee, Investments and Securities Tribunal, Judicial Enforcement and Interpretation of Securities Law,the invaluable text did not deal with the current challenge in the Nigerian capital matter on the subject of conflict in the jurisdiction of institutions charged with dispute resolution. This thesis covers this important area left out by this author.

Orojo,[24] wrote comprehensively on company law and specifically dealt with areas of interest to this research topic. In chapter 32 of his book[25], the learned author discussed legal proceedings in respect of companies, but did not mention anything on capital market disputes, or the methods or legal framework for dispute resolution in the Nigerian Capital Market.

[23]Abugu,J.,(2005) Company Securities: Law and Practice, University of Lagos Press, Nigeria,pp. 38-55.
[24]Orojo,O.,(2008) Company Law and Practice in Nigeria, Fifth Edition, Lexis Nexis, Butterworths,.
[25]Ibid at pp521-526

Osaze, in his book,[26] wrote on dispute resolution mechanism in the capital market as a sub topic, giving a narration of dispute resolution mechanism in Nigerian capital market. He discussed Self-Regulatory Organizations, the Administrative Proceedings Committee and Investments and Securities Tribunal. The author, however, omitted the contributions of the Securities and Exchange Commission in the resolution of disputes through other internal processes, like written correspondences and the all parties meetings in resolving a good number of disagreements before they snowballed into large conflicts. Osaze, did not contemplate the importance of the role of regular courts to the resolution of disputes in the Nigerian Capital market, nor did he consider the imperativeness of Alternative Dispute Resolution (ADR), mechanism to dispute resolution in the Nigerian Capital Market. This work provides what was left out in Osaze's book, as it has presented a comprehensive, coordinated and in some parts, diagrammatic framework for dispute resolution in the Nigerian capital market. It can therefore be said that it is these critical omissions, that this research work set out to add to the existing literature in the field.

Igwe's work,[27] discussed the topic; Investment and Securities Fraud, SEC and the Courts. The author makes a clear case for the need to meet the sophistication of capital markets frauds with greater awareness and empowerment of regulators and judicial officers in appreciating the dynamics of capital market fraud and facilitate recovery of stolen funds. He discussed the issue of false trading in securities and market manipulation, the contribution of APC, IST and Courts, especially the Supreme Court. While the authors' efforts are commendable, his analyses were not incisive and fully critical of the dispute resolution mechanism in the Nigerian Capital Market. The literature did not examine in detail the legal framework for resolving disputes in the

[26]Osaze,B.,(2007) Capital Markets: African and Global, The Book House Company Lagos, Nigeria, p 83.
[27]Igwe, JUK, 'Globalization Law and Ethnical Issues in Business Relations' (Volume 1) Chapter 5, p. 107 – 129

Nigerian Capital Market. This is understandable because the author did not set out to write on that topic. The mention of the topic was therefore an intellectual bye-pass in the literature. This research mainstreams dispute resolution in the Nigerian Capital Market, and covers the issues that escaped the learned author's analysis.

Ndanusa,[28] writing as the then Director General of SEC, was interested in showing how the courts have used technicalities in their judgments to frustrate efforts of the SEC at dispute resolution, in the Nigerian Capital market. He examined the case of *Owena Bank Nigeria Plc vs. SEC &Anor*,[29] to buttress his point. It was one of the most notable cases which lasted for up to three years and went as far as to the Supreme Court. Ndanusa gave an account of the grave implications of judicial interventions on the process and effectiveness of disputes resolution in the Nigerian capital Market, without investors protection concerns. However, the literature did not advance any alternative view nor did it cover other areas or processes of dealing with grievances in the market. The article was written under the now repealed Investment and Securities Act, 1999. This alternative view is espoused by this work conducted under the Invesment and Securities Act, 2007.

The arguments of Agom[30] on the case of *Owena Bank Nigeria Plc vs. SEC &Anor*, are instructive.The learned author puts up a fierce defence of the Supreme Court's decision contrary to the several criticisms against the case. This research goes beyond the issues canvassed by Agom and Ndanusa. This thesis presents a legal framework for the resolution of capital market disputes in Nigeria from diverse angles and presents a broader approach than the works of the two.

[28]Ndanusa, S.,(2001) Implications of Judicial Decisions on Capital Market in the Nigerian Economy Being a Paper Delivered At the Seminar On Securities Laws and the Capital Market By SEC, Abuja, December 5-6, 2001.
[29] (1999)5SLR 1
[30]Agom,A.R.(2009) Much Ado About Nothing: Comments on Owena Bank Plc Vs. NSE; In Re: SEC (1999) 5 SLR 1, Published in Kogi State University; Bi-Annal Journal of Public Law, KSU-BJPL Vol. 2, 2009.

Idigbe's[31]"Legal Issues in Capital Market Operations in Nigeria," is a relatively recent work on Nigerian capital market worthy of mention. The work makes clear that; disputes are inevitable part of human interaction, hence the need for dispute resolution. The author noted that the right to dispute resolution is a constitutional right and justice delivery is a fundamental function of government.[32] He also observed the gradual shift from tradition dispute resolution (court) to private justice system (ADR). While the learned SAN touched on several issues of interest to this research, one will be quick to add that he did not deal with the issue of resolution of disputes by the SEC, the SROs or the IST, nor did he suggest any order or legal framework for the resolution of capital market dispute. It is this order, that this research seeks to provide.

Udora, in his "The Role of the Nigerian Securities and Exchange Commission[33] presents the regulator's perspective on the resolution of capital market disputes. The paper exposed a lot of procedural inadequacies of SEC like: time lag in handling of grievances as well as the clumsy proceedings of the APC. The author views appear one sided only as a regulator. This has led in recent years, to the upturning of some decisions of the APC by the Investments and SecuritiesTribunal and regular courts[34]. This research offers suggestions that will tackle the inadequacies inherent in the management of capital market disputes by the apex regulator of the Nigerian Capital Market. These suggestions are not contained in the author's work.

Orji,[35] dealt extensively with the reasons for the establishment of the investment and securities tribunal. Considering the indispensable role of this institution in the administration of justice in the capital market, Orji's contribution is quite limited.This work was concentrates on

[31]Idigbe,A.I.(2015) Legal Issues in Capital Market Operations In Nigeria, Distinct Universal Limited, Lagos, p.81-135.
[32] Constitution of the Federal Republic of Nigeria, 1999, section 6
[33]Udora, C (2010) The Role of the Nigerian Securities and Exchange Commission in the Resolution of Capital Market Dispute. Being a Paper presented to the CMSA Forum September 2010.
[34]Owena Bank case,(1997) 8, NWLR,(Pt.515) 1: SEC Vs. Prof Kasunmu (CA/L/451/2004, .
[35] Orji N. in her paper delivered on September 15, 2010 at the Seminar organized by the Capital Market Solicitors Association, SEC Training School, Abuja.

the role of the Tribunal and did not extend to other stakeholders like the regular courts, SEC and the SROs This study provides for these gaps in Orji's work.

Ogbuanya's book,[36]discussed in some details, issues such as jurisdiction of courts and tribunals on corporate matters in Nigeria, the concept of jurisdiction and the basis of the jurisdiction of ths Federal High Court on corporate matters. He briefly discussed the Investment and Securities Tribunal and the issue of jurisdictional conflict between the FHC and the IST[37]. It is not only that the literature did not treat the issues with the deserved depth but no suggestions were advanced to resolve the challenge facing the institutions concern. This research provides for these gaps.

Alubo and Agom,[38] critically assessed the regime of dispute resolution in Nigeria by the Investments and Securities Tribunal. Some of the challenges relating to jurisdiction over capital market disputes, were raised in the contribution. As commendable as the contribution is, the role of other institutions in the capital market on the subject of dispute resolution was not covered by the contribution. This thesis considers the role of the apex regulator and self-regulatory organization in the dispute resolution in the Nigerian capital market.

Idigbe's recent work,[39] on the Nigerian capital market has not dealt with the issue of dispute resolution in sufficient details. The author gave a general overview of the dispute resolution mechanism in the securities industry without a serious analysis of the controversies. This thesis fills up that gap.

[36]Ogbuinya, N (2014) Essentials of Corporate Law Practice in Nigeria; 2nd Edition, 2014, Novena Publishers Limited, Chapter 16, p. 672-684
[37] Ibid, p.675-681
[38]Alubo A, &Agom, A.R, Blue Chip Acquisition v Zenith Bank, Benson Idahosa University Law Journal, Vol.2,No.1,October, 2015, p.1
[39]Idigbe,I.A, (2015) Legal Issues in Capital Market Operations in Nigeria, Distinct Universal Limited, Lagos,p139

There is so much to learn from the advancement in securities regulation in the Asian countries of Singapore, Malaysia and the United States of America. In this respect,Tjio's 'Principles and Practice of Securities Regulation in Singapore'[40],Geoffrey's Capital Market Laws in Malaysia[41] and Steinberg's Securities Regulation[42] focusing on the subject in the United States of America are indeed very valuable. These literatures are very rich resources on the subject under consideration. Notwithstanding their immense worth, the contexts of these books are foreign. To the extent that they were not written with Nigeria in view, there is a need for contribution that will clearly have Nigeria in focus. This thesis is an effort in this regard.

1.8 Organizational Layout

This work is divided into seven chapters. The chapters are interrelated with each chapter providing the link to the next.

Chapter one gives a general introduction to the entire work. The statement of research problem, aim and objectives, scope of the research topic, methodology justification for the research review of the literature around the research topic are considered in this chapter and organizational layout.

Chapter two provides conceptual clarification of terms and processes, description of the dispute resolution process and the nature and type of disputes common to the market. The chapter also deals with the broad meaning of the capital market, types or components of the market, market institutions and participants in the capital market.

Chapter three provides a general introduction and background to the discussion on the legal framework for the Nigerian capital market. The chapter highlights the salient features of the Investments and Securities Act, 2007 and the Companies and Allied Matters Act, 2004 amongst

[40]Tjio,H.,(2011) Principles and Practice of Securities Regulation in Singapore, Lexis Nexis,Singapore,2nd Edn.
[41] Geoffrey S.,(2009) Capital Market Laws of Malaysia, Lexis Nexis, Malaysia.
[42]Steinberg,M.I.,(2013) Securities Regulation, Lexis Nexis,6th Edn.

other very important enactments against the background of dispute resolution in the securities industry in Nigeria.

Chapter four is on the apex institutional regulator of the capital market in Nigeria, the Securities and Exchange Commission (SEC). The regulatory tools of the SEC especially in the context of dispute resolution are examined. The regulatory tools of registration, inspection, investigation, rule-making and enforcement are critically assessed. The chapter also deals with the Administrative Proceedings Committee of the Securities and Exchange Commission. The establishment, powers and jurisdiction of the Committee are dealt with in details. Some of the landmark decisions of the Administrative Proceedings Committee and implication for the capital market are examined

Chapter fiveis on self-regulatory organisations in the Nigerian capital market. In this chapter the Nigerian Stock Exchange, Central Securities Clearing System and the Chartered Institute of Stock brokers are in focus. These self-regulatory organisations play very important roles in the area of dispute resolution in the securities industry.

Chapter six is on Investments and Securities Tribunal (IST). The discussion examines the establishment, powers and jurisdiction of the IST. Some of the landmark cases resolved by the Tribunal and the vexing issue of the jurisdiction of the IST are discussed. The challenges faced by the Tribunal are also considered.

Chapter sevendraws the curtain on the entire discussion. The chapter gives a summary of the whole work, stating the findings and recommendations for reform.

CHAPTER TWO

CONCEPTUAL CLARIFICATION OF TERMS

2.1 Introduction

A typical capital market has the basic features of securities, market and market intermediaries. The interactions of these features of the capital market generate disputes when rights are asserted and liabilities apportioned which must be efficiently resolved for the efficiency and effectiveness of the market.

The key components of this research topic are legal framework, dispute resolution and capital market. It is important to provide some clarification on them to enable an effective resolution of the research questions raised in this thesis. The appraisal of these consists in an elucidation of their interplay in the capital market environment. An appraisal for this purpose consists of an evaluation of the word and content of the key diction in the title of this thesis.

2.2 Legal Framework

According to Oxford Advanced Learners Dictionary,[1] the adjective "legal" refers to something 'connected with the law, allowed or required by law'. In its common understanding, the word has a relationship with the law or what is lawful. Framework on the other hand is defined as 'the parts of a building or an object that supports its weight and give it shape; a set of beliefs, ideas or rules that is used as the basis for making judgment, decisions ; the structure of a particular system[2].

The legal framework for dispute resolution in the Nigerian Capital Market therefore, refers to the legal architecture; infrastructure or fulcrum upon which the dispute resolution

[1] Hornby A S., *Oxford Advanced Learners Dictionary*, (Oxford University Press, 2010) p. 849.
[2] Ibid, p594

processes in the Nigerian Capital Market revolves. It encompasses the legislative, administrative, operational, judicial and non-judicial processes available and applicable to the resolution of infractions in the Nigeria Capital Market. The Constitution of the Federal Republic of Nigeria, 1999[3] and the Investments and Securities Act, 2007 provide the basic framework for the resolution of disputes in the Nigerian capital market.

2.3 Dispute

Black's Law Dictionary[4] defines dispute as "a conflict or controversy, especially one that has given rise to a particular law suit for resolving grievances". Explaining the meaning of the word, the Court in *United States vs. Alaska SS*[5] held that Dispute means debate, being argued about, heated contention, the act of arguing against, controversy, debate, an argumentative contention, a difference of opinion, a heated contention. A controversy in the constitutional sense must be one that is appropriate for judicial determination. A justiceable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character, from one that is academic or moot

The Nigerian Supreme Court, in *Attorney-General of the Federation vs. Attorney-General, Abia State & 35 Ors*[6] held that "dispute is synonymous with controversy, quarrel, argument, disagreement and contention…The controversy must be definite and concrete touching on legal relations of parties having adverse interests[7]" In this research therefore, grievance giving rise to disputes relates to wrongs, unjust treatment, injury and complaints arising from capital market operations in Nigeria. These include disputes, that are both criminal

[3] As altered,2010.
[4] Garner, B.A.,(2004) Black's Law Dictionary, eight edition, Tompson West Minnesota, p505
[5] 60253 US,113,116: 405Ct.448,449: 64L.ED.808
[6] (2001) 7 SCNJ,1.
[7]Ibid, p.20& 60.

and civil in nature, regardless of the fact that the extant primary legislation regulating operation in the Nigerian capital market, the ISA, excluded the resolution of criminal matters by regulatory institutions established under it, including the SEC and the IST.[8] The law[9] however empowers the SEC and IST to deal with all civil infractions between;

1. Operators in the capital market interse, and the stock exchanges
2. Operators and investors
3. Operators and the Commission
4. Investor and the Commission

It specifically includes[10] such complaints as:

a. Non-receipt of dividends and bonus shares
b. Non-purchase of securities paid for
c. Trade manipulation
d. Insider-dealings, etc.

Nature of Disputes in the Nigerian Capital Market provides an interesting scenario.Disputes or infractions in Nigerian capital market can be categorized and discussed under various subheadings. Depending on the market in which they occur.

[8]See Section 304, ISA,2007.
[9] Ibid
[10] Ibid

Primary Market Disputes[11] primary dispute will include:

a. Failure by an issuing House, or Receiving Agent 2 remit the process of a public offer to the issuer

b. Failure of a receiving agent to submit application forms of an investor within time in respect of an offer or misappropriation of all or part of the proceeds of an offer.

c. Irregularities in allotment of securities, late or non-submission of allotment proposal to the regulator for approval.

d. Non-payment of fees to parties to an offer and to the regulator or non-receipt of share certificates or dividends by shareholder

e. Failure of an under writer or issuer of an underwriting agreement

f. Failure to return surplus monies[12]

Secondary Market Disputes[13] will include:

a. Failure or delay by stockbroker to execute client's mandate or unauthorized sale of clients' securities by stock brokers[14]

b. Misappropriation of clients' funds or securities by an operator[15]

[11]UdoraC.A,(2010) The Role of the Securities and Exchange Commission in the Resolution of Capital Market Dispute been text of a paper presented at the seminar on the resolution of the Capital Market Solicitors Association (CMSA) in Lagos, September 15, 2010.
[12]*NAL Bank Plc vs. IMB PLC* in SEC Records of proceedings of the APC 2000-2002 vol. 4 2004 (i)
[13]UdoraC.A, Opcit.
[14]*IduOkwesa Doherty vs. BGL Securities Limited***.** SEC Records of proceedings of the APCAPC/2/2002:.
[15] Ibid at p. 5

c. Misrepresentation of the true position of the client's account in the register of a public company[16]

General infractions or disputes that may arise in capital market transaction may include:

a. Offering of securities to the public without registration of the prospectus and the securities on offer[17].

b. Irregularities in Right issues fraudulent disposal of shares/bonuses.

c. Noncompliance with minimum capital requirement

d. Breach of contractual agreements between parties and failure to carry out the commissions lawful directives

e. Non utilization of offer proceeds in accordance with the prospectus.

Infractions in the capital market may be criminal in nature and the ISA has provided generally for the SEC and IST to refer the criminal elements of the infractions to the criminal prosecuting authorities like the Attorney General of the Federation, Attorney General of a State or the Economic and Financial Crimes Commission, (EFCC)[18]. There are provisions of the Act which criminalizes certain infractions in the market and provided clear sanctions and prison terms for such contraventions.[19] The interesting part of these sections is the power granted the

[16] Sections 39 and 61-65 ISA .
[17] SEC records of proceedings of APC op. cit. at p. 4. ISA sections 54-68(1): section 75 (1)(2)(4) section 78 (1)(a)(c) and section 80
[18] SEC records of proceedings ibid at p. 4
[19] Part XI SS 105-116. See Section 30 of the ISA No. 29, 2007, 35(3) generally. See also 55:51, 53, 65, 13(u) (3 & 4), 40 (5) 154(7), 67(2) 71 (4), 75(6), 77(3) 80(6), 89(3) 91(3), 92(4), 95(3), 96(4), 99(6&7), 99(6&7), 103(2), 106(5), 115(b), 158(2), 161(5), 162(2), 163(8&11), 166(8&11), 166(3), 167(3&4), 181(b) 185(3), 195(2), 220,303(1), 305(3b&c), 306(10) and Rule 16(1-n) see Rules 2011, op. cit.

Commission to compound offences[20] and the further power given to the commission and the tribunal to determine compensation to be paid by persons liable under "this part of the Act".[21]

The question here is; can the determination of compensation and the compounding of offences by the commission and the tribunal and the commission respectively foreclose the right of a dissatisfied investor or the state from prosecuting operators for criminal breaches in the market". The response here is unequivocally no: this is because criminal offences are offences against the state and the IST has no powers to determine criminal elements of capital markets infractions.[22]

2.4 Dispute Resolution

The process of resolving differences between two or more parties or groups in business practice, the resolution seeks to achieve fairness for all the participants, and is often moderated by a third party. As discussed here, there is often a dispute resolution clause in contracts that defines how a disagreement is to be resolved. "Dispute resolution generally refers to one of several different processes used to resolve disputes between parties, including negotiation, mediation, arbitration, collaboration law and litigation."[23]

2.5 Capital Market

The capital market is the fixed variable in this discussion and the venue for disagreements and disputes. Consequently, considerable attention is devoted to the clarification of the scope of the capital market. The term 'Capital Market' refers to "a securities market in which stocks and

[20] Section 114
[21] Section 116(1)(2)
[22] Sections 284, 290(3) and 304
[23] www.pon.harvard.edu>daily accessed 18/02/18.

bonds with long-term maturity are traded"[24].The Securities and Exchange Commission (SEC),[25] defines capital market as financial markets which trade in medium to long-term financial instruments stocks and bonds with maturity period in excess of one year. It is a network of participants, instruments and facilities, which function basically to facilitate efficiently the flow of savings into long-term investments for socio-economic development". According to Orojo[26], "the capital market is a specialised market dealing in an intangible subject matter which is not visible to the human eyes and so not given to physical assessment but based on information for investment decisions requiring some knowledge to do so".[27] The capital market is a specialized and technical market, where the trade in medium and long-term financial instruments (securities) is carried out in a special way, in specific and specialized places known as exchanges or trading floors, under the superintendence of the private and public regulators.[28]

In its nature, the Capital market constitutes a major source of long-term, low interest, cheap source of funds for economic development. It also provides investment opportunities for interested persons, notwithstanding their income bracket or business acumen. It is a market in which individuals and corporate bodies (including governments) participate in income yielding activities without going through the rigorous process of setting up business and managing same with all the attendant problems.

[24]. Garner B.A., OPcit p. 1385
[25] SEC Capital Market Glossary p. 10
[26]Orojo,O (2008) Company Law and Practice in Nigeria, Fifth Edition, Lexis NexisButterworths, London.
[27]Ibid, p. 362.
[28]Ekpungu, G. A.(2008); Legal and Institutional Framework Regulating Public Offering of Securities in the Nigerian Capital Market, unpublished LLM Thesis submitted to the Postgraduate School, Ahmadu Bello University, Zaria, August, 2008 at p. 11.

2.5.1 Segments of the Nigerian Capital Market

The Nigerian Capital Market, principally consists of two broad segments. These are the secondary and primary markets.[29]The primary or issues market, is so called because it is a market for new issues. It is available to raise capital afresh through the issue of new securities by an issuer to the public. Primary markets are viewed or intended to be absolutely vital to developing economies like Nigeria if the economy is to function properly, since the market serves to channel funds from savers to borrowers.[30]

The primary market is the first section or the original point of call in the capital market. It is regarded as primary, first or original market because; it involves the creation and marketing of completely new securities by the issuer; a particular security is offered at the same price and time to the public; except on rare occasions where there are more than one call, the offer is made once; the proceeds of the offer go to the issuer; this market is not identifiable with any particular location; and efforts to dispose of purchases in this market facilitates activities in the secondary market.

The primary market essentially is an economic framework embodying a network of financial institutions at work to transmit economic resources from savers to users. Of the key financial institutions in the capital market, the issuing house is the hub of the primary market. A consideration of the activities of the issuing house is inevitable at this point.

[29]Sections 55, 67 to 96 ISA, 2007. Issues Market Rules 5-78 SEC Rules and Regulations 2002. Resale market Sections 94-116
[30]Ako, R.M. Capital Market Manual Published by La-Rose Limited p. 16.

2.5.2 Issuing Houses

Issuing Houses are firms of professionals and specialists registered by the Securities and Exchange Commission as capital market operators. The business of issuing house is mostly dominated by investment banks involved in capital restructuring of companies for good financial leverage. They assist corporate and government bodies to access long term funds by packaging issues for subscription on their behalf. It is the responsibility of these operators to inform prospective issuers on the most appropriate instruments and the best method to raise funds depending on the verified needs of their clients.

The issuing house assembles and coordinates the functions of all other operators whose services are usually required in the issuing process. These operators are usually referred to as "parties to issue". In coordinating the parties to the issue, the issuing houses ensure that statutory requirements are met.The issuing house undertakes the preparation of the draft prospectus, markets the securities and undertakes allotment of issued securities. The issuing house on behalf of the issuer undertakes the onerous obligation of fixing appropriate price for the securities.

However no issuing house deal in securities except under and in accordance with the conditions of a certificate of registration granted by the SEC. The most crucial function of issuing houses is the packaging of securities. Securities to be offered to the public must be properly structured to meet the essence of the issue. Packaging of securities involves various stages[31]. A peculiar feature of securities packaging in the primary market is the fact that every stage is time tied[32].

[31]Ako, M.R., *Capital Market Manual* (La Rose Ltd, Abuja, 1999) P.45.
[32]*Blue-Chip Acquisition Investment Company* Ltd v*Zenith Bank &Ors* (2005) 3 ISLR 72,94.

i. Consultation Stage

The Consultation stage involves preliminary discussions between potential issuing house and potential issuer to consider a potential issue of securities in the capital market. Here various options and their implications are discussed. Various strategies and scenarios are tabled and considered, as ways and means of meeting the potential issuer's financing needs through the capital market. Once these teething issues are sorted out, the parties will move on to the next stage of mandate.

ii. Mandate Stage

At the Mandate stage, the issuer officially appoints the issuing house and mandates it to package the issue for sale in the market. The other market intermediaries will also be appointed and handed their briefs in the public issue. The Issuing house, acting as interface, co-ordinates the activities of all the market intermediaries to ensure a successful issue.

iii. Documentation Stage

The Documentation stage is very crucial for the issuer and the regulators. All necessary documents and reports are prepared by the parties to the issue. These documents are collated by the issuing house. Put together, these documents and reports which now constitute the offer documents are transmitted by the issuing house to the relevant regulatory bodies for vetting, registration, approvals and authentication.

iv. Approval Stage

At the Approval stage, the SEC will determine whether the issue is fit for public participation. If the documentation is complete and in order, registration and approval are

obtained from the apex regulator to allow the issue come to the market. Registration is the hallmark of regulation as securities can only make their debut if this stage is crossed. Once the issue is approved, for companies that are already quoted, the Stock Exchange issues a Certificate of Exemption. This certificate allows the publication of abridged prospectus and particulars of the issue by the company. Approval of the SEC is then sought for a completion board meeting.

v. Completion Board Meeting

At the Completion board meeting stage, meeting of the board of directors of the issuer is convened to ratify all information given on various aspects of the issue. This is done by going through the offer documents. The regulatory authorities and all parties to the issue are invited to witness this ratification. Within forty eight hours after the completion board meeting, signed copies of the offer documents must be submitted to the SEC for registration. Next is the marketing stage.

vi. Marketing Stage

At the Marketing/distribution stage, the issue is opened to the public for participation usually for about four weeks. Application Forms are distributed by the Issuing House through receiving agents, through whom subscription proceeds are collected and lodged with the receiving banker. The proceeds of the issue do not belong to the issuer until after the allotment had been done and cleared by the Commission.

Once the offer period expires, the parties to the issue must close the offer to the public and decide how the securities on offer will be allotted. Usually, the Issuing House within six weeks of closure of the issue, collates and analysis the subscription pattern. Based on the subscription pattern, allotment pattern is proposed and submitted to the Securities and Exchange

Commission for approval. To obtain the SEC's clearance, this allotment pattern must be fair and seen to promote investors' confidence. The Issuer may then proceed to publish the allotment pattern and allot the securities accordingly. Once an allotment has been cleared and the Investor's money not returned, the allottee is imbued with equitable interest in the shares of the company. In other words, there exists a constructive trust between the company who has possession of the share certificate and the investor who has beneficial interest in the certificate.

vii. Certificate Stage

The Certificate stage is the last stage. Usually within a week after allotment, the issuer gets the net subscription proceeds, return monies on unallotted subscription are sent out[33], and all parties to the issue are paid. The Registrar[34] to the Issue ensures that the investors are properly documented on its records. Certificates evidencing holdings are issued and dispatched to the investors not later than eight weeks after allotment[35]. The share certificate must be dispatched to the investors within the time frame agreed upon. Failure to do so, investors who by reason thereof could not take advantage of capital appreciation may sue for the difference as damages[36].

2.5.3.1 The Prospectus

Companies can only make offers of their securities to raise funds in the primary market and no other place. The prospectus is a constant feature of the primary market and is the main instrument of regulation of public issue. It must accompany any invitation to the public to subscribe or purchase securities of any company. According to Section 67 ISA, 2007 it shall not be lawful to issue any form of application for securities in a public company unless the form is

[33]Ibid, P.48.
[34]CAMA, Section 84(1)(b)
[35] Ibid, Section 146(1)
[36]*Blue-Chip Acquisition* v. *Zenith Bank &Or*sop. cit. p. 72 & 94

issued with a prospectus. The prospectus shall state the matters specified in Part I of the Third schedule and set out the report specified in Part II, Third schedule to the Act.

A prospectus means notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any share or debentures of a company. Furthermore, any document which offers securities for consideration other than cash is a prospectus[37].

The general aim of a prospectus is to ensure that the company, at least gives the public the essential minimum information about its position. It also ensures that whenever a company offers its securities to the public it fairly and fully discloses the relevant facts to enable the investing public assess the risk of their investment. Even where the company does not make an immediate public offering of its securities or contemplate one; the company nevertheless must file a Statement in lieu of prospectus in the form and contain the particulars set out in part I and II of the Fourth Schedule to the ISA, 2007[38]. The reason for this requirement is that since the securities of a public company are freely transferable, they may become widely held even though no public offer is made. Hence it is still vital that as much information as possible is available to the public.

The prospectus requirement applies to all invitations to the public whether by way of direct offer by prospectus or by an offer for sale. It is immaterial that the invitation is in a notice, circular, advertisement or otherwise. However where the invitation is made by a company to existing members of the company or its associated companies; where the securities offered are in all respect uniform with those already listed and dealt in on a stock exchange and application is being made for quotation of the securities, the provisions on prospectus may not apply.

[37]CAMA, Section 567.
[38] Ibid, Section 73

A prospectus is required to give the person to whom it is addressed a full, accurate and fair picture of the state and prospect of the company. Therefore it must not contain any ambiguous statement which is not true in every sense in which it might reasonably be understood. It must disclose every material fact[39].

Non-compliance with these requirements may give an allottee of shares the right to rescind the contract and repudiate the allotment[40]. In some cases he may sue for damages or compensation against those directly responsible[41]. Criminal sanctions are also available against the directors and other persons in respect of any untrue or misleading prospectuses[42].

In the primary market, the terminologies "public offer", "invitation to acquire or dispose" are, in strict law misnomers. This is because companies do not make public offers or invitations to the public to acquire shares. At best, what companies do when they advertise securities for sale is merely invitation to treat. Prospective investors may apply for such securities by completing a subscription Application Form.

The particulars required in this Form relate to the names, address and signature of the applicant, the number of shares applied for and the consideration for such securities. The declarations in the form are very fundamental aspects of the contract. In effect, they compel the applicant to attach full payment for the securities applied for; accept the same or smaller number of units allotted; receive correspondences at the address supplied by the applicant; and admit that the applicant has fully read the prospectus issued on the securities. Further terms on the mode of application are stipulated behind the Application Form.

[39] *Blue-Chip Acquisition* v. *Zenith Bank &Ors*(Supra)
[40] ISA, 2007.Section 94
[41] Ibid, Section 85
[42] Ibid, Section 86

The applicant cannot vary or add any term to these conditions. In fact, it is stipulated clearly that applications must be made in accordance with the instructions set out on the Form as non-compliance may lead to rejection of application. Aside from the number of units and the amount for the securities applied for, the applicant has no material contribution to the terms of the contract. Like standard form contracts, the applicant is at the mercy of the issuer. This vulnerability of the investor compels regulators to place investors' protection on their front burners. The completed subscription Form constitutes an offer. Allocation of securities constitutes acceptance and eventually the contract for acquisition of securities.

Secondly, the arrangement of the items for disclosure in the Third Schedule and the nature of the information required therein show that the particular items specified in the Schedule have been haphazardly built over the years in response to particular form of malpractice. The law did not set out to specify the full range of information which a prospective investor would ideally like. Consequently we are saddled with a list of unconnected and complex items of information, often unrelated to each other or to any overall pattern of disclosure. Thus a prospectus which contains only these statutory details is not likely to give a complete or coherent view of the nature of the enterprise or of the prospects and risk for investors. In fact, a formally perfect statutory prospectus may do no more than confuse the people it is intended to protect.

Furthermore the underlying assumption that an investor who is given full and accurate information about an offer can take steps to protect himself may be a pious hope, for "those needing investment guidance will receive little comfort from the balance sheets, contracts or

compilation of other data… They either lack the training or intelligence to assimilate them and find them useful, or are so concerned with speculative profit as to consider them irrelevant[43]".

2.6 The Secondary Market

This is the second or latter section of the securities market. It is a consequential market where securities as evidence by share certificates are exchanged for funds. In this market, holders of the instruments from the primary market sell their securities to other holders or to completely new investors in the secondary market. It is regarded as secondary market because it cannot exist without the primary market. Here, different investors sell their holdings of the same or different securities art different times and possibly at different prices; the proceeds of sale go to the holder of the instrument and not the company; the instruments traded in this market are not new; and the market is largely identifiable with a particular site popularly called trading floor of the stock exchange. There are two broad classifications of the secondary market; the centralized auction market and the dealers market.

2.6.1 The Stock Exchange

The stock exchange is a centralized auction market with regulations and procedures for the buying and selling of securities. It is called a Stock Exchange not because an investor can exchange one security for another, but because investors can exchange securities for cash or vice-versa.

The Stock Exchange regulates its own market as well as its members. For the purpose of accessing the market, the Stock Exchange has listing requirement which a company seeking quotation must meet. Once the stock exchange is satisfied that all its requirements have been

[43] Per Douglas, J.,Justice of the U.S. Supreme Court.(1934) 23 Yale Review (New Series) P.521.

met, it grants listing to the security and the stage is then set for secondary transaction on the securities.

A stock exchange may have a single board or classes of markets. It may, in addition to its main market, maintain another market for small companies finding it difficult to meet the listing requirements for the main market. Where another exchange cannot be established, the existing exchange may consider setting up a lower tier shop for such companies. Depending on the level of growth, the trading mechanism of the exchange may be manual, partially automated or fully automated.

2.6.2 The Dealers Market

The dealers market is not centralized. Unlisted securities account for the overwhelming majority of securities traded in the dealers market. These are securities that are variously traded largely, at the counters/screens of issuing houses or by brokers appointed by the issuer[44].

The dealers market developed over the period from simple telephone communication to sophisticated linkages through complex electronic communication machines linking up investors and finance houses. Prices in the market are determined through negotiation between buyer and seller. In developed markets, an association of securities dealers may obtain incorporation to operate and regulate an Over The Counter (OTC) market and any other sub markets in the dealers market.

The National Association of Securities Dealers Automated Quotation (NASDAQ) was established by the National Association of Securities Dealers (NASD) in the United Stated of America. It is the largest self regulatory organization in the United States securities market. This

[44]Ekiran, O., *Basic Understanding of Capital Market Operations*.(Deacon Oba Ekiran,Lagos,1999) P.34

is a dealers' market where transactions are carried out through routing of orders using computers supported by telephones for negotiations. Only equities of companies are listed on NASDAQ.

The securities dealer is actively involved in this market as principal-buying securities for his own account. He buys as wholesaler, puts his own margin and resells as a retailer to his client thereby making profit thereon. The dealer is highly susceptible to volatility in prices in the sense that he could incur a colossal loss if prices fall but he could reap bountifully if prices appreciate. Dealers market could be over the counter market or an automated quotations market.

2.6.3 The Over The Counter (OTC) Market

OTC market has no central meeting point, transactions are done through telephones and computer screens. Deals are made from the comfort of the dealers' offices and once concluded, they are deemed to have been so done across the table or counter on the dealer's office; hence the "over the counter" market. Securities of companies are not listed the way they are on exchanges or automated quotations. Over the years the Central Bank of Nigeria operated an over the counter unlisted market through its public debt management office[45].

2.7 The Stockbroker and Broker/Dealer

The gateway into the secondary market is the stock broker. This is the main intermediary in the secondary market. Stockbrokers are capital market operators licensed by Stock Exchanges and registered by the apex regulatory agency of the capital market. They buy and sell securities quoted on the Exchange on behalf of their client as agents and at times on their own account as dealers. They are the major players in the secondary market and offer for the secondary market

[45] Ibid.

what the issuing houses facilitate for the primary market. As a secondary market intermediary, stockbrokers transact business on the floor of the Stock Exchange or in the OTC market.

The stockbroker manages the price risk and monitors information about a stock for their clients. An important role of a stock broker is the intermediation between the seller and buyer of registered securities, facilitating the liquidity process of the market. A stock broker is also a dealer when he buys and sells shares on his own account, in addition to maintaining and dealing in the account of his clients. The role of the stockbroker/dealer include serving as auxiliary investment adviser in the pricing, timing and marketing strategy for an issue; acting as portfolio manager to individuals and corporate organizations; sponsoring applications of companies seeking quotation for the purpose of public offer or just to be listed on the exchange; facilitating the listing of securities after an issue; acting as receiving agent by distribution and collection of application forms from investors; and keeping in safe custody the share certificates of their clients.

A broker is a person whose job is to buy and sell financial assets for his client. He is an agent of the investor; he takes orders from the investor and goes to the market to perfect his brief. In *Summit Finance Co Ltd v Iron Baba & Sons Ltd*[46]*;* the Court of Appeal held that a stockbroker is

> *"…by virtue of his trade or profession "an agent" who under the relationship or transaction acts on behalf of the owner of the shares offered to him for sale and such an owner or holder is bound by the action of the stockbroker in the disposal of the shares*[47]*".*

[46](2004) 11 SLR, 98.
[47] Ibid, P.128

A broker/dealer on the other hand is a person or an institution that performs the same job wearing two different caps. The dealer stakes his own capital. He buys from the dealers market with his own funds and goes back to his office to sell to clients who had placed orders with him. He does not earn commission but rather adds a margin to the purchase price and that margin is his earning. The margin is regulated by the regulatory authorities.

The stockbroker is the prime mover of the secondary market. He is on the floor of the exchange or by the screen in the screen based market. He is a member of the exchange or other recognized markets. Specifically, because the broker is charged with the introduction of primary market security to the exchange for listing, he is a nominal party to primary market offer for the purpose of introduction in the secondary market. The broker provides advisory services to his client and engages in portfolio and fund management.

The broker is tasked on a continuous basis to develop new products and techniques in the market. In the case of under subscription of primary market offer, the broker may be relied upon to take the shortfall to the floor of the stock exchange or other markets for sale. He is relied upon to engage effectively in regular interactions with relevant functionaries of the capital market and keep his client current.

On the whole, the stockbroker is expected to display a high degree of professionalism and probity in his operation so as to retain the confidence of the investors in the capital market and indeed in the financial industry as a whole. The stock broker's motto is "my word is my bond". The relationship between a broker and a client is deeply rooted in trust and confidence. It is a fiduciary relationship of *uberrimaefidei* firmly entrenched in Law and Equity.

The stockbroker is bound to exhibit reasonable care, skill and judgment in executing his client's mandate. He must bring to bear on his task the qualification and expertise he professes to have. The degree of care and skill required of him is as is usual, customary or necessary for the proper conduct of securities trading.

The stockbroker is also obliged to personally perform his duties to the client. This duty stems from the fiduciary character of the stockbroker – client relationship. Because of the trust and confidence reposed on the broker by his client, the former cannot entrust to another person the exercise of such authority without the client's express or implied authorization.Furthermore, since the client reposes trust and confidence on the broker and desires the latter's personal service, the law imposes on the broker the duty to show good faith in his dealings with third parties on behalf of the client. Flowing from this, the stockbroker must avoid any situation of conflict between his personal interest and the interest of his client.

The stockbroker is also obliged to keep proper and accurate accounts of all transactions[48] entered into on behalf of the client. He must be available to render proper account of clients` money in his possession.Conversely the stockbroker has a right to be remunerated for his services and to be indemnified for all liabilities and expenses reasonably incurred by him in the execution of his duty. This right can be enforced by the exercise of the right of lien or set off in appropriate cases.

No person shall practice the profession of stock brokerage unless registered by the apex regulatory body and licensed by the Stock Exchange where he shall ply his trade. He can only practice his trade under a stockbrokerage firm.

[48]Rules 137 and 138.

To qualify to practice as a chartered stockbroker, an applicant must satisfy requirements of the Chartered Institute of Stockbrokers (CIS) set up by the Chartered Institute of Stockbrokers Act[49]. This Institute has the general duty of determining from time to time what standards of knowledge and skill are to be attained by persons seeking to become chartered members of the profession. The CIS is a corporate body with perpetual succession and common seal. Administration and general management of the institute is vested on the Governing Council[50].

A person shall be entitled to be registered as a member of the profession if he passes the qualifying examination for registration recognized or conducted by the Governing Council and completes the prescribed practical training. A person who holds a qualification for the time being accepted by the Institute and satisfies the council that he has had sufficient practical experience as a member of the profession may also obtain registration. An applicant who holds a qualification granted outside Nigeria and for the time being accepted by the Institute and is entitled to practice for all purposes as professional stockbroker in the country in which the qualification was granted, may also be admitted into the profession.

In addition, the applicant must be of good character attained the age of twenty-one and has not been convicted in Nigeria or elsewhere of an offence involving fraud or dishonesty. Members admitted into the profession by the Institute shall be enrolled as members in any of the categories of Fellow, Member, Associate, Honorary Member or Honorary Fellow.

2.7.1 The CIS Disciplinary Tribunal

The CIS is statutorily charged with the powers of discipline and even expulsion of erring members. Section 10 of the CIS Act establishes the Chartered Institute of Stockbrokers

[49] Chapter 105, Laws of the Federation of Nigeria, 2004.
[50] Ibid, Section 3.

Disciplinary Tribunal. The Tribunal is charged with the duty of considering and determining any case referred to it by the Chartered Institute of Stockbrokers Investigating Panel and any case which the Tribunal can take cognizance of under the Act. The Tribunal consists of the President of the council and six other members appointed by the council.. The Investigating Panel conducts preliminary investigation into any case of alleged misbehavior by a member or should for any other reason be the subject of proceedings before the Tribunal. The Panel shall report its findings to the Tribunal.

Where a member is adjudged by the Tribunal to be guilty of infamous conduct in any professional respect; or convicted by any Court of law for an offence, which in the opinion of the Tribunal is incompatible with the status of a member of the profession, such a member may be sanctioned .Where the Tribunal is satisfied that the name of any person has been fraudulently registered, such person may also be sanctioned. The Tribunal may give directions to the Registrar to reprimand the person or ordering the Registrar to strike his name off the relevant part of the register. The person to whom such direction relates can appeal against the direction to the Federal High Court within twenty eight days[51].

2.8 Capital Trade Point

A novel concept in the Nigerian Capital Market is the Capital Trade Point (CTP). It was conceived to provide market facilities for bringing together purchasers and sellers of securities or for performing functions commonly performed by a securities exchange.

Concerned about the illiquidity and the inefficiency of the Nigerian stock market the Panel on Review of the Nigerian Capital Market was charged to:

[51] Ibid,Section 11(7)

> *analytically examined the present state of the Nigerian Capital Market and formulate concise policy framework geared towards the creation of a conducive atmosphere for the orderly growth and development of the market…to recommend in the light of its findings above, precautionary measures to be put in place and appropriates steps to be taken to ensure that the Nigerian Capital Market functions optimally henceforth and that it becomes alive to the needs of both local and foreign investors…*[52]

The Panel, in addition to the existing structures, recommended the concept of Capital Trade Point. This Institution combines the features of a Stock Exchange with those of Over-The-Counter market. A total of twelve such mini exchanges were proposed to be established initially and located in the commercial centres of Ibadan, Calabar, Warri, Onitsha, Aba, Porthrcourt, kaduna, katsina, Kano, Jos, Maiduguri and Yola[53].

Each trade point is to be addressed in relation to its location i.e. Capital Trade Point of Kaduna limited. The twelve CTPs will belong to a National Federation of Capital Trade Points. Each CTP will list only local securities in accordance with a uniform set of listing requirements.

The twelve CTPs were to be established at different time. Each of the scheduled cities which is able to arrange for twelve companies or securities for listing will immediately be granted license by the SEC and shall receive financial assistance from the Federal Government through the Federal Ministry of Finance for the take-off of their trading facilities. Each CTP is expected to be self-financing after few years.

Securities listed on one CTP can only be traded on other CTPs on which they have concurrent listing. Companies seeking quotation on the stock exchange will be obliged to seek and obtain listing on the CTP nearest to it before seeking listing on any other one. It was thought

[52]Panel on the Review of the Nigerian Capital Market.Term of Reference Nos.4&7.
[53]Final Report of the Panel on the Review of the Nigerian Capital Market (Federal Ministry of Finance, Abuja, 1996) P.166.

with this arrangement the CTP will be kept busy right from inception.Securities of companies to be privatized are to be concurrently listed on all the CTPs and certain percentages of such securities will be made available for sale exclusively on each CTP. Each CTP will maintain clearing and settlement system for transactions undertaken on its floor, such that it becomes the counter-party to every transaction which it guarantees.

Each trade point will ensure that its members contribute to an investors` protection fund. This fund will provide for an amount to be paid to investors who may have suffered from defalcation of stockbrokers on the CTPs.This institution would not affect the operations of the Nigerian stock exchange and its branches as the two will be dealing in different securities. The CTPs, to all intent and purpose, was conceived as mini stock exchange deliberately chosen to develop and adapt to local environment free from inhibitions and without necessarily trying to emulate the Nigerian Stock Exchange. The grass root advantage is a major lure for the establishment of the CTP.

According to Section 28(1) ISA, 2007, no Capital Trade Point shall commence operation unless it is registered with the SEC. This provision re-enforces Section 13(b) ISA, 2007 which obligates the SEC to register and regulate CTPs.The SEC may register a body corporate as CTP if it is satisfied that the rules of the proposed CTP make satisfactory provisions for the exclusion from its members persons who are not of good character and do not posses high degree of business integrity[54]. Such a body must also make satisfactory provisions 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

[54]ISA, 2007. Section 29(2)(a)

rules of the Securities Exchange or CTP or the provisions of the ISA, 2007[55]. The provisions must also cover conditions under which securities may be listed, conditions governing dealings in securities by members and the class or classes of securities to be dealt in. The rules must contain provisions with respect to a fair representation of persons in the selection of members of the board of the CTP and the administration of its affairs. It must also provide that one or more members of the board shall be representative of listed companies and investors. The SEC shall ensure that granting approval shall be in the interest of the public[56].

Where the CTP amends its listing requirements, it shall forward a written notice of the proposed amendment to the SEC which shall not become effective until the SEC gives approval to the intended amendment. Where a CTP takes disciplinary actions against a member, it shall, within seven days in writing furnish the particulars of such actions to the SEC[57].The SEC in granting approval shall ensure that the interest of the public will be served by the granting of its approval and on registration shall issue a Certificate of registration. Where the body is undergoing a winding up process; ceases to operate as a CTP or operate in a manner detrimental to the public interest, the SEC may, with the approval of the Minister for Finance revoke its certificate of registration.

The provisions of the ISA, 2007 on CTPs itself necessitate some serious comments. The provisions have no doubt, aside from the names, blurred the difference between a CTP and a Securities Exchange creating some confusion thereby[58].There is a blanket regulation of the

[55] Ibid. Section 29(2)(b)
[56] Ibid, Section 29(2)(c)(f)(3)
[57] Ibid, Sections 31,33.
[58] "As seen in the definitions of the two expressions given under Section 315 of the ISA, 2007 a "Securities Exchange" is synonymous with a "Capital Trade Point" " Per Hon.Chukwuyere, S.N.(Member, Investment and Securities Tribunal) *Investor Protection Funds; When Can It Succeed*?Fast-Tract Justice, Quarterly Journal of the Investment and Securities Tribunal, Nigeria, 01,2007. P.15.

registration and operations requirement for the two as if they are equals and in fact competitors. This negates the very essence of the CTPs as mini exchanges to provide nurturing grounds for new and small firms to grow and finally graduate to the Stock Exchanges. An applicant for the registration of a CTP may as well proceed straight to register a Securities Exchange.

The Nigerian Stock Exchange presently has three tiers of market; the First-tier market, the Second tier-market (also called the emerging market) and the Third-tier market. While the first-tier is the main market, the second-tier and third-tier markets accommodate firms that cannot immediately meet the stringent requirements of the first tier market but are nurtured for subsequent listing in the main market. The Nigerian Stock Exchange has trading floors in nine commercial cities in various parts of Nigeria, many of which are, in truth, dormant owing to paucity of quoted companies. The survival in our shallow market of the CTPs alongside the Nigerian Stock Exchange in the cities contemplated would be very difficult. Rather than complement each other, there will be contention for the few companies that may be willing to go public and or be quoted. At this level of development in the capital market, stiff competition may not be very helpful. The fact that years after the promulgation of Investment and Services Act, the CTPs have not taken off in any of the locations is an indication of the practical difficulty on the ground.

Furthermore, the recommendation for government funding assistance for takeoff of the CTPs is no doubt outmoded in this era of deregulation. Globally, stock markets are consciously pursuing the trendy policy of demutualization. This conceptual misdirection is fundamental.Notwithstanding the challenges, the potentials for capital market development in

Nigeria isimmense. Nigeria is Africa's largest country,[59] with a population of not less than 168 million people,[60] constituting a large market for goods and services. The country occupies a landmass of 923, 678 square metres, it is approximately 1500 kilometres from North to south and 1,400 kilometres from East to west and within one time zone. Nigeria is blessed with rich natural resources. Its oil reserves are about 37.2 billion barrels, making it the tenth largest oil reserves holder in the world. Nigeria also has about 5,110 billion cubic meters of natural gas reserves which is the ninth largest in the world. The country has considerable undeveloped deposits of more than thirty six solid minerals including a very generous quantity of bitumen and tantalite[61].

An appraisal of the legal framework for dispute resolution in the Nigerian capital market is concerned with interrogating the legal rules and institutions erected to settle grievances in the Nigerian capital market. The bodies are set up by relevant laws and administrative actions. These laws are considered in the next chapter.

[59]The country Nigeria is bothered in the north by Niger Republic, Chad in the Northeast, Cameroon in the east and Benin in the west

[60]With over 350 ethnic groups. Eight largest of the world's population

[61]Okonjo-Iweala,N.,(2012) Reforming the Unreformable Lessons from Nigeria, MIT Press, England

CHAPTER THREE

OVERVIEW OF THE LEGAL FRAMEWORK FOR THE REGULATION OF THE NIGERIAN CAPITAL MARKET

3.1 Introduction

Human interaction naturally generates friction and disputes. Therefore in every relationship, social or commercial there are bound to be dispute. In the capital market worldwide, dispute resolution mechanism has been an integral part of the market regulation whether within the formal hierarchy of courts or through specialized dispute settling bodies. The United States of America had provided a model for securities regulation from which countries have drawn inspiration.

In the United States of America (USA), prior to the enactment of the Securities Act 1933, the United States Capital Market was largely unregulated and operated by norms and practice generated by the private sector. Disputes arising from transactions under the system were largely settled by peer groups; associations and powerful individuals whose decisions became binding on the disputing parties either by practice, agreement or by fear of sanction to be imposed against the offending party by members of his group or associations, or by the might of the powerful statutory regulator. Beyond this, State courts handled capital market dispute just like other disputes without any special expertise in capital market matters. Disputes or grievances were then resolved in the ordinary course of life of the people. With the capital market crash of 1929 in the United States, the need for a formal federal regulation of capital market became imperative. The said crash had the effect of depriving both small and big savers of large sums of their savings, which vanished as a result of mismanagement of investments by both joint stock

companies, investment advertisers and agents alike. The crash led to the down turn in the United States economy thereby attracting the attention of Washington and the crave for regulation. The Securities Act of the United States, 1933 gave the United States District Court concurrent jurisdiction with state and territorial courts in resolving disputes arising from the Act. This is because the federal constitution in the United States gave the federating states concurrent jurisdiction with the federal district courts in securities regulation.

Disputes were therefore settled in either Federal District Courts, State District Courts or other Territorial Courts depending on the nature of the dispute and the existence or otherwise of state regulation concerning the issues under dispute. The Act also provides for quasi-judicial resolution of disputes by administrative hearing at United States Securities and Exchange Commission. This hearing must be in public, presided over by the Commission or an officer or officers designated by the Commission.

The United States Securities Exchange Act, 1934 amended the Securities Act, 1933 but retained the dispute resolution mechanism already existing. Sections 21, 22, 25 and 27 of the 1934 Act dealt in great detail with the jurisdiction of District Courts in dispute resolutions in the United States. District Courts are the equivalent of our Federal and State High Courts. The United States Securities laws also permit arbitration and meditation in line with the disputing parties' desire and agreement.

3.1.1 Historical Evolution of the Nigeria Capital Market

In Nigeria, the securities regulation before 1999 was tailored along the lines of the United States laws. However, the Nigerian capital market is relatively very young in comparison with the United States Market. Prior to 1960, Nigeria had no capital market. However, in 1946, the

colonial government of Nigeria floated the first issue of stock of £300. The entire packaging and transaction began and ended in London. Thereafter, the colonial government realized the need for capital formation and transactions in Nigeria. Hence, the Barback Committee of May 1958, recommended a formal capital market regulation in Nigeria.[1] Before 1973, any capital market related transaction and/or dispute in Nigeria were dealt with within the confines of the existing colonial judicial system.[2]

The reason behind statutory regulation is its compelling nature. There is usually inclination for compliance with statutory regulation than non-statutory regulation. Self regulation is often non statutory and merely persuasive by peer group influence. Statutory regulation has wider reach and universal bench mark. The legislative framework for the regulation of the Nigerian capital market is provided by several laws; some of the principal enactments re considered in this chapter.

Interestingly, the first formal attempt at regulating the Nigerian capital market was by the Capital Issues Decree,[3] 1973. The Decree was only four pages, and absolutely ousted the jurisdiction of any court of law in Nigeria in capital market matters[4] and made the Capital Issues Commission established by it, the ultimate disputes resolution agency in the Nigerian capital market. Appeal by any aggrieved person or company from the Commission laid to the Federal

[1] Agom, A.R. (2002) History of Capital Market Regulation in Nigeria, Ahmadu Bello University Journal of Commercial Law, Vol. No. 1, p. 86.
[2] Ibid
[3] Decree No. 14, 1973.
[4] Sections 6 and 7 of the CIC of 1973

Commissioner of Finance, whose decision was final on all issues concerning the operations of the commission.[5]

The Securities and Exchange Commission Decree[6] of 1979 re-enacted the dispute resolution mechanism under the 1973 Decree and retained the Federal Commissioner for Finance as the ultimate authority on dispute resolution under the decree in civil matter. No court or tribunal or agency had jurisdiction of adjudication over capital market matters except the Commission.

The 1979 Decree went a step further to empower the commission to compound offences by accepting financial payment as it thinks fit but not exceeding the maximum fines fixed for such offences under the Decree.[7] This provision enabled the commission to accept money in settlement for an offence committed under the Decree. There was however, the option of prosecuting the offender under the criminal laws of the federation. However, dispute parties could exercise their right to institute civil actions against themselves once the commission and the government were not parties and would not be affected by the decision of the relevant courts.[8]

The Securities and Exchange Commission Decree[9] No. 29 of 1988 replaced the Securities and Exchange Commission Decree, 1979. The New law specially vested the Federal High Court with jurisdiction over "offences and violations arising under this Decree and under the rules and regulations made there-under and of all suits brought to enforce any liability or duty created by

[5] Decree No. 14 of 1973 actually went on to state that "no action or proceedings shall lie or be instituted in any court to challenge any act done by the capital issues committee of the Central Bank of Nigeria (then precursor of the commission) or by the commission; and that any pending action or proceedings shall albeit be discharged, and be void.
[6] No. 71, 1979.
[7] Section 10 SEC Act of 1979.
[8] Section 15 of SEC Act of 1988.
[9] No. 29, 1988

the provisions of this Decree.[10]The Act made an obvious departure from the previous regime by subordinating the commission's actions to the jurisdiction of the Federal High Court. The Decree therefore vested both criminal and civil jurisdictions on the Federal High Court.[11]

Under this regime therefore, operators, investors, regulators and all capital market participants became subject to the jurisdiction of the Federal High Court. Curiously, notwithstanding the sharp departure from the era of the absolute authority by the commission and government, the 1988 Decree still remained the provisions allowing the commission to compound offences under the Decree subject to the federal Attorney-General's constitutional authority to prosecute criminal matters.[12] It gave room for the Commission to embark on a formal administrative hearing process though not as clear as provided for in the United States laws.[13]

The section was however the first attempt at making fair-hearing before market. A test case on this provision was the matter between *Securities and Exchange Commission vs.Owena Bank Plc*[14]. The case originated at the SEC Administrative Hearing Committee to the Federal High Court, Court of Appeal and the Supreme Court. The case recognized the role of administrative hearing in capital market dispute resolution process but insisted that fair hearing must be observed.

[10]Section 27 Ibid.
[11] Section 28(2) Ibid
[12]Section 16 of SEC Act of 1988.
[13] Section 16 of SEC Act of 1988
[14] Section 24 Ibid

3.1.2 Reference to Arbitration

All previous capital market legislation's now repealed allowed the relevant Commission to make rules and regulations governing capital market operations. These rules gave room form parties to agree on various modes of dispute resolution beyond litigation. In addition, the Arbitration and Conciliation Act of 1988 (still subsisting), provided a unified legal framework for the fair and efficient settlement of commercial (including capital market) disputes by arbitration and conciliation and also recognized the New York International Convention on the recognition and enforcement of Arbitration Awards of which Nigeria is a signatory.

3.2 The Investment and Securities Act, 2007

The Investments and Securities Act,[15] 2007 repealed the Investments and Securities Act, 1999.[16] When the latter was passed in 1999, it completely changed the formal dispute resolution mechanism terrain of the Nigerian capital market. The Act[17] established the Investment and Securities Tribunal with jurisdiction to adjudicate on disputes, and controversies arising under the Decree and rules and regulations made there under. Subsection 2 itemized various levels of disputes envisaged under the Act and over which the Tribunal shall exercise jurisdiction.[18]

Generally, the ISDA 2007, regulates all the basic features of a capital market specially, the three features of every capital market; operators, markets and instruments are clearly regulated.

[15] No. 29, 2007 (ISA)
[16] No. 45, 1999
[17] Ibid, sections 234(1)
[18] Part XIV Section 224, Investment and Securities Decree No. 45, 1999

All securities[19] to be offered to the public through the medium of offer for subscription, offer for sale,[20] rights offer,[21] bonus issue,[22] offer by introduction,[23] private placement[24] by public companies must first be registered with the SEC. debenture/loan stock, State and Local Government bond must also be registered with the SEC[25] before being made available for public participation.

Securities are registered with the SEC by the registrant filing an application on form SEC 6 for registration.[26] The application shall contain information on the character of the securities and must state the nominal value, rate of dividend and brief description of preference shares if any.[27] In the case of debt instruments, the rate of interests and date of maturity must be clearly indicated. The application must provide information on the organization, financial structure and nature of business of the company including any risk factor. Information must be provided on directors, officers and underwriters if any, and each security holders of record, holding more than five percent of any class of equity or fifty thousand naira in value whichever is higher. The bonus and profit sharing arrangements, the management and service contracts, any write up from the issuing house on the issue, schedule of claim and litigation; binding loan agreement and schedule of other maturing contract are material facts that the application must disclose. Evidence of property ownership or transfer, and any other document or information required by the SEC must also be furnished from time to time.[28]

[19]ISA, 2007.Section 54.
[20]Investment and Securities Act, Rules and Regulation, 2000 (Rules) Rule 51.
[21] Rule 80
[22] Rule 107
[23] Rule 125
[24] Rule 89
[25] Rule 307
[26] Rule 40
[27] Ibid
[28] Ibid.

A person who contravenes these requirements commits an offence and liable on conviction to a fine of one million naira or to a term of imprisonment of three years or to both such fines and imprisonment. The Commission may, in lieu of prosecution, impose a penalty of one million naira and a further fine of five thousand naira for everyday of the violation.[29] If as a result of any such contravention, any person acquires or disposes of any securities, he shall be entitled to proceed against the defaulter. He may rescind such transaction and or recover compensation for any loss sustained by him from any person who is liable.[30] This can give rise to dispute resolution challenge in the capital market.

No Securities Exchange or Capital Trace Point shall commence operation unless it is registered with the SEC.[31] The Securities Exchange may be a Stock Exchange, Commodity Exchange, Over The Counter Market, Metal Exchange, Petroleum Exchange Option, Futures and Derivatives Exchange or Capital Trade Point. These are usually regulatory organizations providing market facilities for stakeholders.[32]

What constitutes a forum a Securities Exchange, is registration with the SEC. an application for registration shall be made to the Commission in Dorm SEC 5[33]. The SEC shall within sixty days after the filing of the application grant or refuse the application. In granting approval it shall ensure that the interest of the public will be served by the grant. Where the SEC declines registration, it must before such denial of registration, serve notice of the intention to

[29]ISA, 2007. Section 54(6) and (7)
[30]ISA, 2007. Section 67(3)
[31]ISA, 2007. Section 28(1)
[32]ISA, 2007. Section 315
[33]Rules 22.

deny registration on the applicant. It must then afford opportunity of being heard to the registrant.[34]

The prospective registrant must make provisions for conditions governing dealings in securities by members and lass of securities to be dealt with by members. There must be 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. One or more members of the board shall be representatives of listed companies and investors.[35]Section 30 ISA, 2007 empowers the SEC to revoke the certificate of registration of a Securities Exchange when the need arises. This will necessarily arise if the body ceases to operate as Securities Exchange or Capital Trade Point; or is undergoing process of winding up or operating in a manner detrimental to public interest.

The SEC is at liberty in the public interest to issue directives with respect to trading on or pertaining to any listed security or with respect to the manner in which the Securities Exchange carries on business or any other matter necessary for the effective administration of the law. The Securities Exchange shall comply with any such directives. Failure to comply with such directives attracts a penalty of one million naira and to a further penalty of fifty thousand naira for every day of default. Where an executive officer of a Securities Exchange willfully contravenes or without reasonable justification filed to enforce compliance with directives issued by the SEC, the Commission may remove such officer or direct the exchange in writing to remove such officer.[36] No action before any Court of law with regard to any such directive by the SEC shall be competent unless the SEC is joined as a party to such action.[37]

[34] Rule 22(3)(4)
[35] Ibid. section 29(2)(f)
[36]ISA, 2007. Section 35
[37] This is a legislatve response to the case of **Owena Bank (Nig.) Plc vs. NSE (1999)** 5 SEC LAW REPORT, p.1

Furthermore, Section 36 ISA, 2007 authorizes the SEC to prohibit trading on the securities of a company where it thinks it is necessary for the protection of the public. This section is an improvement over the contentious and now repealed section 24 Securities and Exchange Commission Decree.[38]Section 36 ISA, 2007 has tidied up the situation under the old regime. It has vested power on the SEC to prohibit trading on certain securities if the intrest of the public so demand. The exercise of this power is not tied to any time framework. The section provides:

> *Where the Commission deems it necessary for the protection of persons buying or selling particular securities made available by a body corporate on a Securities Exchange or Capital Trade Point or any other self-regulatory organization, it may suspend or prohibit further trading on the securities and give notice in writing to the Securities Exchange, Capital Trade Point or self-regulatory organization.*

The operators of the market are also subject to a regime of strict regulation. Securities dealer, stockbrokers, share transfer agents, bankers to issue, make trustee(s) of a trust deed, registrars to an issue, merchant bankers, issuing houses, underwriters, portfolio managers, investment advisers are intermediaries in the securities industry. These are the experts in the capital market that facilitate the search, mobilization and allocation of resources between the surplus and deficit ends in the economy.

According to section 38(1) ISA, 2007, no person shall operate in the Nigerian Capital Market as an expert or professional or in any other capacity As may be determined by the Commission; or carry on investment and securities business unless the person is registered in

[38]No. 29, 1988.

accordance with the Act. Specifically, the SEC shall register and regulate corporate and individual capital market operator as defined by the Act.[39]

The reason for supervising the activities of these persons is not far-fetched. In reaching investment decisions, investors usually rely on information about an issuer supplied by its management. The information provided are verified by professionals such as auditors, reporting accountants, registrars, issuing houses, stock brokers, trustees, solicitors to the issuer and to the issue. It is necessary that those saddled with verification, dutifully and responsibly ensure that the information supplied to the investing public is true and accurate, free from any material misstatement, concealment of facts or deliberate misrepresentation of facts about the issuer.

Furthermore, pursuant to the provisions of Sections 13(g) and 313 ISA, 2007 the SEC made Regulation 39 to regulate capital market consultants. Thus a capital market operator may be an intermediary or a capital market consultant. The legal issue that has arisen in relation to the above provisions is the status of professionals involved with public offer of securities.[40] Primarily, in a public offer of securities, legal practitioners are required to act as solicitors to the issuer or solicitors to issue. In the case of debt instrument, the arrangement will accommodate a solicitor to the trustee. The solicitor to the issuer acts for the company while the solicitor to the issue represents the interest of the investing public. Because of the latter's perceived independence, investors are likely to place more premium on his report, or association with the offer than on that of the solicitor to the issuer.

Where a legal practitioner proffers advice to an issuer but is not listed on the offer document as a party to the issue, he does not require registration with the SEC. This may amount

[39]ISA. 2007. Section 13(g)
[40] Prof. A.B. Kasumu SAN v. SEC &Anor.FHC/L/CS/70/2001: Chief Ade Babalola SAN v. SEC &AnorFHC/ABJ/CS/416/2002

to no more than the professional contractual relationship of solicitor/client. However, where the legal practitioner is to fully participate in the offer process and to be mentioned as an expert in the offer document, he falls within the contemplation of ISA, 2007 and must register with the SEC.[41] Here, he is involved in the preparation and verification of facts in the offer documents, and has lent his name to the sale efforts. He is therefore subject to regulation and must obtain due registration.

These requirements apply to prospective stockbrokers. Furthermore, a copy of the dealership certificate of the authorized dealing clerk sponsored by the applicant shall also be submitted to the SEC.[42] to ensure that dishonest people are kept at bay, a police clearance certificate alongside his application for registration shall be forwarded by the applicant. A professional indemnity insurance policy, shall also be forwarded by the applicant. The applicant must attach a copy of evidence of payment of professional annual practicing fee.[43] Generally, all operators are required to obtain a fidelity bond against fraud or defalcation by their personnel.[44]

Surprisingly, the entire Part VI ISA, 2007 does not give any indication of who a capital market operator is. To leave the specification of intermediaries to the SEC, is certainly not enough. For any guidance on this, reference must be made to the ISA.[45] This is certainly a weakness of the ISA, 2007. In brief, securities market, operators and market facilities are prime targets of securities regulation. This is achieved by a system of registration which compels disclosure of material information by registrants. It is for this reason that registration is the hallmark of regulation. Disputes can and do arise from these requirements for registration.

[41] This is the practice in other capital markets – see Financial Services and market Act, 2000. Section 19(1)
[42] Rules 31(ix)
[43] Rule 39(B)(5)
[44]Rule 152.
[45] Section 29

The interactions between these components of the capital market generate transactions and are the sources of conflicts and disputations in the market. For efficiency in the financial; system, disputes arising in the market must be speedily, and efficiently resolved.

3.3 Companies and Allied Matters Act,[46] 2004

All companies in the Nigerian Capital Market have undergone the process of incorporation, management, and possibly winding up of companies. These are issues covered under the Companies and Allied Matters Act. This law is made up of three parts. Part A deals with incorporated companies; Part B deals with business names; and Party C deals with incorporated trustees. In a landmark achievement, the CAMA established the Corporate Affairs Commission[47] as an *enslegis* and charged it with the administration of the Act. All public companies in Nigeria, quoted or unquoted, have gone through the process of incorporation. The privilege of incorporation is granted by the CAMA.[48] All the securities issuing companies in Nigeria have met the requirement of this law or its predecessor to be called a company in the first place. Under Section 18 CAMA any two or more persons, may form and incorporate a company by complying with the requirements of registration. Section 35 CAMA lists the necessary incorporation documents that an applicant must file with the CAC. This includes:

i. The memorandum and articles of association

ii. The notice of the address of the registered office of the company and the head office if different from the registered office. A postal box or private bag address will not satisfy this requirement.

[46] Chapter C20, Laws of the Federation of Nigeria, 2004 (CAMA)
[47] Ibid. section 1.
[48] Sections 35,36,37CAMA Cap 20 LFN, 2004.

iii. Statement in the prescribed form containing the list and particulars together with the consent of the persons who are to be the first directors.

iv. A statement of the authorized share capital signed by at least one director.

v. Any other document required by the commission to satisfy the requirement of any law relating to the formation of a company

vi. A statutory declaration by a legal practitioner that the requirements of the law for the registrant of a company have been complied with.

The memorandum of association provides the charter between the company and third parties. This enables creditors dealing with the company glean the nature of the person with whom they deal. The articles of association provide the internal working regulation. These two are considered the fundamental documents of incorporation.

The memorandum of association of every company shall state the name of the company, the fact that the registered office of the company shall be situated in Nigeria, the nature of business or the object for which the company is established. It shall also state restrictions, of any, on the powers of the company, whether the company is a private or public company, whether the liability of its members is limited by shares, guarantee or unlimited as the case may be. The memorandum shall also state the amount of authorized share capital, not less than ten thousand naira in the case of private company an five hundred thousand naira in the case of public company and the division into shares of fixed amount. The memorandum of association shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.[49]

[49] Ibid. Section 27(5)

This provision is very important for only such subscribers and every other person who agrees in writing to become a member of the company and whose names are entered in the register of members shall be treated as members of the company.[50] In the case of a company having a share capital, each member shall be a shareholder of the company and shall hold atleast one share. This is particularly important to investors because the *locus standi* to enforce rights appurtenant to a member would depend on the status of the claimant.

The memorandum of association shall be stamped as a deed. The form and content of the articles of association of a company shall be as in Part I, II, III and IV respectively of Table A in Schedule I to the Act. Upon incorporation, this fundamentals document creates a tripartite statutory contract between the company, officers and members to observe and perform the stipulations in these documents.Upon registration of the memorandum and articles of association, the company stands incorporated. The CAC shall certify under its seal that the company is incorporated and the certificate of incorporation shall be prima facie evidence that requirements of the CAMA in respect of registration have been complied with. From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum and articles of association shall be a body corporate by the name contained in the memorandum of association. The body shall be capable forthwith of exercising all the powers and functions of an incorporated company.[51]

The privilege of limited liability is the most pervasive incident of incorporation. This has made the corporate form of enterprise the functionally dominant mode of carrying on business in Nigeria, and indeed the capitalist commercial system. It is this limitation of liability that has

[50]Starcola v. Adeniji (1972)1 SC 202.
[51]CAMA.Section 37.

encouraged the phenomenal growth of the modern company.The advantages of incorporation can be negatively stretched to midwife calamitous consequences.[52] The sharp focus of Company Law is to provide safeguards, against such negative inclinations. These safeguards find expression in legal prescriptions of incorporation processes, supervised regime of corporate governance and a statutory regime of checks and balances. These circumscribing factors, publicised as much as possible, the activities of the company. It is at this juncture that securities law dovetails into company law.

Capital market investment is all about resource mobilization and deployment. Investment involves the taking of risk, where the owner of invested property oversees the investment, though the possibility of failure cannot be totally overruled, there is greater assurance that he is only subject to the restricted vagaries of business. However, it is not often the case that investors oversee their investments. The emergence of professional; technocrats; complexities of production, distribution and management processes associated with growth in the enterprise and the economy of time, have all worked together to necessitate in many instances, that investors invest in ventures controlled and managed by others.

This constant divorce of ownership from management and control have on its own, geared up concerns on ho companies are run, the relative position of the investor to the company, the role of directors and the place of workers in the firm. These issues and the major concern of how investors can realize their legitimate expectation are sought to be addressed under the rubric of corporate governance.

[52] Report on the Reform of the Nigerian Company Law, op cit. p. 366: Kahn-Frueund, O., *Some Reflection on Company Law Reform (*1943-44*)*MLR 54.

Directors are chosen representatives of the members of the company to give directions to the enterprise. A director shall act at all times in what he believes to be the best interest of the company as a whole, so as to preserve its assets, further its business and promote the purpose for which it was formed, and in such manner as a faithful, diligent, careful and ordinary skillful director would act in the circumstances.[53] Clearly departing from the subjective standard of Common Law[54] and setting an objective standard, Section 282(1) CAMA stipulates:

> *Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interest of the company, and shall exercise that degree of care, diligence and skill which reasonably prudent director would exercise in comparable circumstances.*

Failure to observe this deity of care may ground an action in negligence and breach of duty. This is a likely cause for disputation in the capital market.In the course of managing the enterprise, directors stand in fiduciary relationship with the company and shall observe utmost good faith towards the company in any transaction with or on its behalf. According to Section 279(2) CAMA, a director owes fiduciary relationship to the company where a director is acting as agent of particular shareholders or where such a shareholder or other persons are dealing with the company's securities.

Legally, directors are trustees of the company's moneys, properties and powers and as such, must account for all the moneys over which they exercise control and shall refund any moneys improperly paid away. They shall exercise their powers honestly in the interest of the company and all the shareholders, and not in their own sectional interest.[55]

[53]CAMA, Section 279(3)
[54] Re-city Equitable Fire Insurance Co. Ltd. (1925) Ch. 407.
[55] Ibid, Section 283.

A director may, when acting within his authority and the powers of the company, be regarded as agent of the company. In these legal capacities, directors owe the company duties of diligence, care and accountability. This is necessary to ensure the realization of the legitimate expectations of investors. CAMA has provided for a, by which investors can come together to supervise and extract accountability from the managers of their enterprise. The general meetings of companies have been devised as avenue for investors to meet and demand explanations on how their concerns are being managed. CAMA specifically provide for Statutory Meetings,[56] Annual General Meetings (AGM)[57], Extra Ordinary General Meetings[58] and Class Meetings,[59] to give investors a voice in how their fortunes are managed. In some instances, the general meetings of companies may assume management of the company.

In reality however, directors effective control of the mechanics of meetings, dispersal of shareholders, apathy of investors and comp may law itself have all rendered the company's general meeting as an interventionist tool in the hands of investors, a mere pious hope.The law itself has not helped matters. Section 220(2) CAMA provides that where notice of meeting is sent by post, service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice of meeting and to have been effected at the expiration of seven days after the letter containing the notice is posted. Consequently, in the context of Nigeria's sow postal service notices of meetings are not received until months after the meetings have held, disentitling members from attending or resorting to the meeting for any practical use. It is recommended that the above provision be amended or reformed by regulation to make it more dynamic, by providing for electronic or digital means of sending notices of meetings. This

[56] Ibid, Section 211.
[57] Ibid, Section 213
[58] Ibid, Section 215
[59] Ibid, section 243

will obviate the problem of delay and the challenge of members receiving Notices after meetings have been held.The Extra ordinary general meeting is one of the meetings provided for by CAMA. Where directors have not called company meeting in the face of a need for it, the members may proceed to call one, and this they can do by requisition. While directors upon requisition are obliged to convene this meeting within twenty one days from the date of the deposit of the requisition, there is no time limit within which this meeting must be held. Consequently, erring directors may well be in order, fixing a meeting at a far flung date to defeat the essence for which the meeting was requisitioned. This result could hardly have been intended. However, as it stands, the effect of this legislative inadvertence could negate the benevolent spirit behind the entire section, unless the courts invoke the spirit rather than the letter of the law in ordering a specific date for meeting.

In handling corporate governance, section 63 CAMA distributes corporate power thus:

1. A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from the members in general meeting or the board of directors.
2. Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.
3. Except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Act or the articles required to be exercised by the members in general meeting.
4. Unless the articles shall otherwise provide, the board of directors, when acting within the powers conferred upon them by this Act or the articles shall (not) be bound to obey the

directions or instructions of the members in general meeting provided that the directors acted in good faith and with due diligence.

At first glance, this provision will appear to have settled the controversy as to who controls the company since the board of directors is now to manage the business of the company in the absence of contrary provisions in the articles. Only an alteration of the articles of association can affect the director's exercise of powers.Some critical comments can be made on these provisions. Firstly, the board's role in practice is usually, at best, supervisory, rather than managerial. The day to day management of the company is the exclusive preserve of the management team to whom extensive powers are delegated. The law has largely ignored this body.

By the provisions of Section 359(4) of the CAMA, the Audit Committee shall be comprised of equal number of directors and representatives of the shareholders subject to a maximum of six members. In practice, it is often the executive directors that are members of the Committee and thus the Audit Committee appears, like an extension of the board of directors, whose activities the Committee is supposed to scrutinize. This membership structure does not give the necessary autonomy to the Committee to execute independent checks on the board of directors and management. The CAMAremaisn mute on the qualification of members of the Audit Committee. It is therefore, possible to have as members or even chairman of the Committee, persons who neither understands nor can analyse a company's financial statements. This tends to defeat the very essence of this institution.

The CAMA, with some amendments,[60] remains the principal legislation on company maters in Nigeria. Notwithstanding its weaknesses,[61] it contains welcome innovations and far reaching provisions in the area of corporate governance.In addition to the corporate governance structure in the CAMA, the SEC and the Central bank of Nigeria have crafted Codes of Corporate Governance[62] for companies in Nigeria. Basically, these Codes strengthen the constitution of boards of directors, separate the offices of the Chairman of the board of directors and the chief executive of the company and empower corporate Audit Committees.

The importance of effective corporate governance in today's corporate world cannot be overemphasis. Companies adopting international best governance practices are very likely to attract local and international investors. Consequently, the global community,[63] has shown increasing concern on the issues of corporate governance. There is a growing consensus that corporate governance, has a direct link with the performance of capital markets, economic growth and national development.

3.4 Nigerian Investment Promotion Commission Act,[64] 2004

With the advancement in information technology and transportation facilities, global competition has arguably shifted from arms race to development finance. The attraction of

[60] Companies and Allied Matters (Amendment) Decrees Nos. 46, 1991; 40, 1992

[61] In some cases the CAC would have to seek the consent of other authorities before discharging its functions. Under CAMA, section 26(5), the memorandum of a company limited by guarantee shall not be registered unless with the previous authority of the Attorney-General of the federation.

[62] See Code of Corporate Governance in Nigeria, October, 2003 (SEC); Code of Corporate Governance for Banks in Nigeria Post Consolidation, March 1, 2006 (CBN)

[63] See for instance the South Korea's Code of Best Practice, South Africa's kings Report; Romani'a's Corporate; Governance Code; India's Confederation Code; Malaysia's Report on Corporate Governance; Hong Kong's Exchange Code/Guide; OECD Principles of Corporate Governance revised in 2004. The 2003 Coe of Corporate Governance by the Nigeria's Banker's Committee and the Code of Corporate Governance in Nigeria by the Securities and Exchange Commission in collaboration with the Corporate Affairs Commission. These codes seek to enthrone virile boards of directors for companies, separation of the roles of Chairman and Chief Executive Officer in Companies, vibrant Audit Committee and shareholders' activism.

[64] Chapter N117, Laws of the Federation of Nigeria, 2004 (NIPC Act)

foreign investment into national economies has become for so many countries, a national priority.

Foreign investment can be in the nature of foreign portfolio investment (FPI) or foreign direct investment (FDI). FDI are investments by foreign capitalists in securities of companies in a domestic market. Such investments boost capital market activities and the economy. FPIs are however unstable and prone to capital flight at the slightest sign of economic down turn. FDI, on the other hand, are investment by foreign capitalist by way of establishing domestic enterprises in which they may participate directly. Usually, FDIs are more stable and likely to contribute to economic growth and transfer of expertise. Because of these advantages, government consciously provides incentives to lure them.The incentives include lowering or dismantling protective barriers of economic nationalization and indigenization. A step in this direction in 1995, was the enactment of the NIPC Act.[65] In the main, this law established the Nigerian Investment Promotion Commission (NIPC). This agency is empowered *inter alia* to coordinate, monitor, encourage and provide necessary assistance and guidance for the establishment and operation of enterprises in Nigeria. It is to create a conducive environment for foreign and local investment in Nigeria.

Specifically, Section 1 established the NIPC. Ot is a body corporate with perpetual succession and a common seal and many sue and be sued ion its corporate name. According to Section 4, the Commission shall encourage, promote and coordinate investment in the Nigerian economy and accordingly, shall

[65] Ibid.

a. Be the agency of the Federal Government to coordinate and monitor all investment promotion activities to which the Act applies;
b. Initiate and support measures which shall enhance the investment climate in Nigeria for both Nigerians and non-Nigerians
c. Promote investments in and outside Nigeria through effective promotional means.
d. Collect, collate, analyse and disseminate information about investment opportunities and sources of investment capital and advise on request, the availability, choice of sustainability of partners in joint ventures projects.
e. Register and keep records of all enterprises to which the Act applies.
f. Identify specific projects and invite interested investors for participation in those projects.
g. Initiate, organize and participate in promotional activities, such as exhibitions, conferences and seminars for the stimulations of investment.
h. Maintain liaison between investors and ministries, government departments and agencies, institutional lenders and other authorities concerned with investment.
i. Provide and disseminate up to date information on incentives available to investors.
j. Assists incoming and existing investors by providing support services.
k. Evaluate the impact of the commission in investment in Nigeria and recommend appropriate recommendation,
l. Advice the Federal Government on policy matters, including fiscal measures designed to promote the industrialization of Nigeria or the general development of the economy, and
m. Perform such other functions as are supplementary or incidental to the attainment of the objectives of the Act.

For the purpose of promoting identified strategic or major investment the Commission shall in consultation with appropriate government agencies negotiate specific incentive packages for the promotion of investment as the Commission may specify. The NIPC may issue guidelines and procedure specifying priority areas of investment and prescribe applicable incentives and benefit, which are in conformity with government policy.[66]

Specifically, Section 7 of the Act, permits Non-Nigerians to invest and participate in the operation of any enterprise in Nigeria except for those generally prohibited. The prohibited sectors include production of arms and ammunition; production of and dealing in narcotic drugs and psychotropic substances; production of military and para-military wears and accoutrement including those of the Police and Customs, Immigration and Prison Services; and such other items as the Federal Executive Council may from time to time determine. This Section is investment friendly and receptive to Foreign Direct Investment and Foreign Portfolio Investment.

A person who intends to establish an enterprise subject to regulation by the NIPC, shall incorporate the enterprise under CAMA and apply to teNIPC for registration. The NIPC shall after fourteen working days from date of the receipt of completed registration form, register the enterprise. No such enterprise shall commence business unless duly incorporated at the CAC and registered with the NIPC.[67]The combined effect of Sections 19 and 20 NIPC Act dispenses with the need to incorporate first with CAC before seeking registration with the NIPC as was hitherto the case. It is now possible to apply to both bodies simultaneously.

[66]NIPC Act, Section 23.
[67] Ibid, section 19.

A foreign enterprise, may buy the share of any Nigerian enterprise in any convertible foreign currency.[68] A foreign investor in an enterprise to which this Act applies, shall be guaranteed unconditional transferability of funds through an authorized dealer in freely convertible currency of:

a. Dividend or profit (net of taxes) attributable to the investment
b. Payments in respect of loan servicing where a foreign loan has been attributable to the investment.[69]

These provisions adequately rectify the bottleneck created in the past by the need for a foreign enterprise to obtain approval status before repatriation of funds could be authorized by the Central Bank of Nigeria.[70] Holding up of transmission funds by the CBN for unduly long period, bred corruption and advance fee fraud as fraudsters ripped off foreigners, on the pretext that they could facilitate remittance of such funds. Under this enactment, repatriation of funds outside Nigeria by foreign investors should no longer be hindered by any undue bureaucracy.

By section 25(1) NIPC Act, no enterprise shall be nationalized or expropriated by any government of the federation. No person shall be compelled by law, to surrender his interest in any concern to any other person. There shall be no acquisition of any such enterprise by the Federal Government unless in the national interest or for a public purpose and under an enabling law. Such law shall make provision for payment of fair and adequate compensation; and a right of access to the Courts for the determination of investors' interest or right and the amount of compensation to which he is entitled. Any compensation payable shall be paid without undue delay and authorization for its repatriation in convertible currency shall be issued.

[68] Ibid, section 21
[69] Ibid, section 24.
[70] Exchange Control Act, No. 16, 1962. Sections 7 and 8.

Section 26 NIPC Act provides dispute settlement procedure in the event of disputes between an investor and any government of the federation. Firstly, parties are enjoined to reach amicable settlement of the dispute through mutual discussion. If this fails, the matter shall be submitted, at the option of the aggrieved party, to arbitration. Where parties disagree as to the method of dispute settlement to be adopted, the rules of International Centre for Settlement of Investment Disputes shall apply, because e it is domesticated as an act of the National Assembly. It must also be noted further that Nigeria has its own robust Arbitration and Conciliation Act.

No doubt there are grey areas in the NIPC Act requiring legislative attention if the purposes of the Act are to be realized. The membership[71] of the NIPC Governing Council needs to be revisited. The non-inclusion of a representative of the CACV is a serious omission or oversight. This is in view of the vital role of the CAC in the regulation and supervision of the formation, operation and winding up of companies and enterprises in Nigeria. The interlocking nature of the functions of CAC and the NIPC makes membership of CAC in the governing council of NIPC invaluable.

The SEC is the apex regulator of the Nigerian Capital Market. Its day to day functions impact directly on investments. Its membership of the NIPC governing council will be invaluable. The membership advocated here, will ensure complementarily in the relationship between the two bodies. Moreover, the overall objective of the SEC is to protect investors, foreign or local. Consequently, the SEC gives from time to time, directives affecting investments generally in the economy.[72]

[71]NIPC Act, section 2
[72]Rules. Rule 208-226

Section 19(1) NIPC Act prohibits any enterprise in which foreign participation is permitted from commencing business except it is incorporated under the CAMA. However, under section 54 CAMA certain foreign companies are exempted from incorporation. Section 56(1) (a)-(d) CAMA enumerates foreign companies which qualify to apply for exemption from incorporation. The NIPC Act does not make any reference to these foreign companies in relation to the registration with the NIPC. It is unclear whether the exemption from registration or incorporation under CAMA also dispenses with the registration with the NIPC. This position urgently needs clarification. It is recommenced that notwithstanding the exemption under the CAMA, such companies should register with the NIPC at least for statistical purposes.

The NIPC, to all intents and purposes is intended to be a one-stop agency for pre and post investment approvals. According to Section 4 NIPC Act, the body shall encourage, promote and coordinate and monitor all investment promotion activities to which the Act relates. However, the law is yet to give the NIPC that full legal backing.

Comparing the role of the NIPC and its predecessor (the Industrial Development Coordination Committee (IDCC),[73] the NIPC Act is not as specific as the IDCC Act which unambiguously conferred all pre-investment approval functions on the IDCC. In particular, section 3(1) IDCC Act, states that it shall be duty of the IDCC to serve as a coordinating and approving centre for all government approvals with respect to the establishment of new industries or business undertakings and with respect to the operation of governmental measure and schemes aimed at promoting industrialization of the country. Section 4(2) of the same Act confirmed this function by conferring on the IDCC the responsibility for matters relating to pre-investment approvals contained in the enactment.

[73] See the Industrial Development Coordination Committee Decree No. 36, 1988 (IDCC Act)

It is surprising that notwithstanding the importance of section 19(1) and 20(1) NIPC Act providing for incorporation with CAC and registration with the NIPC, nothing by way of consequence for non-compliance with these provisions is stated. This is a serious omission in need of urgent correction. The definition of portfolio investment in section 31 of the NIPC Act gives cause for concern. Portfolio investment is defined to mean investment in shares or other securities traded on the Nigerian Stock Exchange. The now repealed section 21(2) NIPC Act required the purchase of shares of any Nigerian enterprise by a foreign enterprise to be completed through the Nigerian Stock Exchange. With the repeal of this section, securities of any Nigerian enterprise can be acquired by any foreign enterprise through the secondary market, primary market or even over the counter. To limit portfolio investment to securities purchased on the Nigerian Stock Exchange is not only restrictive but unmindful of the amendment by Section 263 ISA. This restriction may give rise to disputation in the capital market.

3.5 Foreign Exchange (Monitoring and Miscellaneous) Provisions Act,[74] 2004

The FOREX Act, permit any person resident in our outside Nigeria, whether a citizen of Nigeria or not, to deal in, invest in, acquire or dispose of securities traded in the Nigerian Capital Market. Any person may invest in any enterprise or security with foreign currency or capital imported into Nigeria through an authorized dealer either by telegraphic transfer, cheques or other negotiable instruments and converted into naira in the market.

The authorize dealer through whom the foreign currency or capital for the investment is imported, shall within twenty four hours of the importation, issue certificate of capital importation to the investor. The authorized dealer shall within forty eight hours, thereafter make

[74] Chapter 17 Laws of the Federation of Nigeria, Chapter F34, 2004 (FOREX Act)

necessary returns thereof to the CBN which shall in turn, furnish detailed report of the returns to the Minister of Finance.Foreign currency imported into Nigeria, invested in any enterprise shall be guaranteed unconditional transferability of funds through an authorized dealer in freely convertible currency relating to:

a. Dividend or profits attributable to the investment.
b. Payments in respect of the loan servicing where foreign loan has been obtained.
c. The remittance of proceeds and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

Any repatriation of funds shall be communicated by authorized dealers to the CBN within fourteen days. The CBN shall furnish the same information to the Minister on a monthly basis, not only for information, but also for statistical purposes.[75] As regards importation and exportation of foreign currencies, no persons shall be required to declare at any port of entry an amount of five thousand dollars or less. In excess of that, shall be declared in the prescribed form for statistical reasons only.[76] A person who imports foreign currency in excess of ten thousand dollars or its equivalent in cash and not by means of a bank draft, mail or electronic transfer and deposit same in a domiciliary account with an authorized dealer shall only make cash withdrawal from the account. If any foreign currency has been imported into Nigeria in cash, the exportation shall also be by cash no authorized dealer shall permit the withdrawal of such foreign currency by cash.[77]

Subject to any other enactment, no person shall make or accept cash payment dominated in foreign currency for the purpose of acquisition of landed property, securities including stocks,

[75] Ibid, section 15(5)
[76] Ibid, section 12.
[77] Ibid, section 21.

shares, debentures and all forms of negotiable instruments and motor cars, including other vehicles of any description whatsoever. Payments for these items shall be made by means of bank transfers or cheques drawn on banks in Nigeria only.[78] For the purpose of determining and monitoring the flow of foreign exchange into Nigeria, an authorized dealer shall notify the CBN of any cash transfer to or from a foreign country, of a sum greater than ten thousand dollars or its equivalent. The CBN shall similarly furnish such returns to the Minister of Finance on a quarterly basis.[79]

No doubt this law is in tandem with the vision of the ISA, 2007, to open up the Nigerian economy to FDI and FPI. However, law alone, will certainly not achieve the desired target. Plain dealing and honesty and improvement in physical infrastructure and political stability will drive the commendable spirit of this enactment to some practical results.The legal framework of the Nigerian Capital Market, is no doubt, a very dynamic one. It is continuously adjusted to match the pace of advancement in the economy. It does not only regulate the domestic market but opens it up to foreign investment flow. The growth in the capitalization of the Nigerian Capital Market[80] shortly after the passage of some of these laws is a testimony to their positive effects.

3.6 The Banks and Other Financial Institutions Act,[81] 2004

The banking sector in the secondary market segment of the Nigerian Capital Market, is the most visible and active. Banks and financial institutions, no doubt constitute the engine room, for economic growth in modern economy, through their ability on short term to, *inter-alia*

[78] Ibid, section 22.
[79] Ibid, section 25.
[80] Net purchase of securities by investors on the Nigerian Stock Exchange were in excess of N. 1 billion in year 2003, N7.5 billion in 2004 and N10 billion in 2005. See Okereke-Onyuike, N. The Nigerian Stock Exchange. The Stock Market in 2003, p. 5. Okereke-Onyuike, N., *The Nigerian Stock Exchange. The Stock Market in 2004*. P. 6 Okereke-Onyuike, N., *The Nigerian Stock Exchange. The Stock Market in 2005* p. 9.
[81] Cap. B3 Laws of the Federation of Nigeria, 2004 (BOFIA)

channel savings into investments. As such, banks and financial institutions, play a unique role in an economy, a role which is crucial to both economic and indeed political stability. The stability of the financial system, is therefore considered paramount, and must be safeguarded.[82]

The BOFIA, provides the regulatory framework for the establishment and management of banks and other related financial institutions. Section 2(1) of the Act, provides *inter alia* that "no person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking license issued under this Act. Subsection (2) provides, "any person who transacts banking business without a valid license under this Act, is guilty of an offence and liable on conviction for a term of imprisonment not exceeding 10 years or a fine not exceeding ₦2,000,000.00 or both such imprisonment and fine." Any person desiring to undertake banking business in Nigeria shall apply in writing to the Governor of CBN for the grant of banking license. The application shall be accompanied with the following:

a. A feasibility report of the proposed bank;
b. A draft copy of the memorandum and articles of association of the proposed banks;
c. A list of the shareholders, directors and principal officers of the proposed bank and their particulars;
d. The prescribed application fee; and
e. Such other information, documents and reports as the bank may from time to time specify.[83]

The shareholders of the proposed bank shall deposit with CBN, a sum equal to the minimum paid up share capital. If satisfied, the CBN Governor may issue a license conditionally

[82]Legal Framework for Banks and Financial Institutions in Nigeria.AdenijiO.A., Lawyers Biannual Journal (Lagos Federal Ministry of Justice, 19993) pp. 48-61 at p. 48.
[83]BOFIA, section 3.

or unconditionally or may refuse to grant the license and need not adduce any reason for such refusal. If the application is granted, a written notice of the approval shall be made to the applicant and thereon the license fee shall be paid. The Governor may vary the conditions subject to which a license was granted or may impose fresh condition.[84] The Central Bank of Nigeria shall, from time to time determine, the minimum paid up share capital of each category of banks licensed under the Act.[85] Failure to comply with any such requirement within such period, as may be required by the bank, from, time to time, shall be a ground for the revocation of the company's banking license.

A remarkable aspect of this law is the provisions of section 21. According to section 21;

1. A bank may acquire or hold party of the share capital of any agricultural, industrial or venture capital company subject to the following conditions, that is
    a. The venture capital company is set up for the purpose of promoting the development of indigenous technology or a new venture in Nigeria;
    b. The shareholding of the bank in small or medium scale industry, And agricultural enterprise as defined by the Bank (Central Bank of Nigeria)
    c. The shareholding by the bank in any medium scale industry, agricultural enterprise or venture capital company or any other business approved by the Bank (CBN), shall not be more than ten percent of the bank's shareholders fund unimpaired by losses and shall not exceed forty percent of the paid up share capital of the company, the shares of which are required or held;

[84] Ibid, section 4
[85] Ibid, section 9

d. The aggregate value of the equity participation of the bank in all enterprises pursuant to this section, does not at any time exceed, in the case of a commercial bank, twenty percent of its shareholders fund unimpaired by losses or, in the case of a merchant bank, not more than fifty percent of its shareholders fund unimpaired by losses;

Provided that a bank may hold shares acquired in the course of the satisfaction of any debt owed to it.

2. Without prejudice to the provision of subsection (1) of this section, a bank may hold or acquire share capital of any other business, subject to the approval of the bank (CBN)

These provisions allow the banking sector to invest in small and medium scale enterprises in Nigeria. In the long run, the opportunities would enhance the availability of some fund from the banking sector in the capital market and engineer growth and development of local industries and foster indigenous entrepreneurship in Nigeria.[86] The bank may also seek to be quoted on the Nigerian Stock Exchange. This status, it may acquire by meeting the requirements of listing on the Nigerian Stock Exchange. According to Section I, Listing Requirements, Rules Governing Listing on the Nigerian Stock Exchange,[87] to obtain admission to the daily official list of the first-tier market every applicant must satisfy all of the following conditions:

i. The applicant must be a registered public limited liability company under the provision so the Companies and Allied Matters Act.

ii. The applicant must submit to the Exchange financial statements/business records of the preceding five years.

iii. The date of last audited accounts must not be more than nine months.

[86] Ibid.
[87] Also called the Green Book.

iv. The amount of capital that can be raised is unlimited, depending on the borrowing power of the directors/company.

v. The applicant must pay an annual quotation fee based on market capitalization.

vi. At least twenty-five percent or N250,000.00 nominal value of the applicant's share capital must be offered to the public.

vii. At the point of listing, the number of shareholders in the applicant must not be less than three hundred.

viii. After listing the company must submit quarterly, half and annual accounts to the Exchange.

ix. All securities of the applicant must be fully paid up at the time of allotment.

x. Unallotted securities of the applicant must be sold on the trading floors of the Stock Exchange.

For admission to the daily official list of the Emerging Market, the following conditions must be satisfied:

i. The applicant must be a registered public limited liability company under the provisions of the Companies and Allied Matters Act.

ii. It must submit to the Exchange financial statements/business records of the proceedings three years.

iii. The date of the last audited accounts of the applicant must not be more than nine months.

iv. The amount of capital that can be raised may not exceed N100 million.

v. The applicant must pay an annual quotation fee of N30,000.00

vi. At least ten percent of N100,000.00 of the applicant's nominal value of share capital must be offered to the public.

vii. At the point of listing, the number of shareholders in the applicant must not be less than one hundred.

viii. No shareholder shall own more than 75% of the issued share capital of the applicant.

ix. After listing, the applicant must submit half yearly and annual accounts to the Exchange.

x. All securities issued by the applicant must be fully paid-up at time of allotment.

xi. Unalloted securities must be sold on the trading floors of the NSE.

The Central Bank of Nigeria established by the Central Bank Act,[88] 2007, is the apex regulator of the money market in Nigeria and oversees the banking industry. The Central Bank of Nigeria is empowered to make guidelines and regulations governing amongst other things, bank transactions and underwriting activities in the capital market. The CBN by Section 4 of the BOFIA may invest any amount deposited with it by banks and other financial institutions on treasury bills or such other securities.

3.7 The Chartered Institute of Stock Brokers Act,[89] 2004

The Act established the Chartered Institute of Stockbroker (CIS), thereby institutionalizing stock-broking and making it chartered by an Act of the NASS. It also vests the institute with the responsibility, amongst others, for the training, discipline, dispute resolution and classification of stockbrokers. Before the Act, it was the Nigerian Stock Exchange (NSE) that trained and examined stockbrokers as well as issue them licenses to trade. The Securities and

[88] No. 7,. 2007
[89] Chapter C9 Laws of the Federation of Nigeria, 2004

Exchange Commission is represented on the Board of the Institute. The Act has elaborate provisions on complaint management and dispute resolution between members interse, as shall be seen in chapter three below.

To qualify to practice as a chartered stockbroker, an applicant must satisfy requirements of the Chartered Institute of Stockbrokers (CIS) set up by the Chartered Institute of Stockbrokers Act.[90] This institute has the general duty of determining from time to time what standards of knowledge and skill are to be attained by persons seeking to become chartered members of the profession. The CIS, is a corporate body with perpetual succession and common seal. Administration and general management of the institute is vested on the Governing Council.[91]

A person shall be entitled to be registered as a member of the profession, if he passes the qualifying examination for registration recognized or conducted by the Governing Council and completes the prescribed practical training. A person who holds a qualification for the time being, accepted by the Institute and satisfies the Council that he had had sufficient practical experience as a member of the profession may also obtain registration. An applicant who holds a qualification granted outside Nigeria and for the time being accepted by the Institute and is entitled to practice for all purposes as professional stockbroker in the country in which the qualification was granted, may also be admitted into the profession.

In Addition, the applicant must be of good character, attained the age of twenty-one and has not been convicted in Nigeria or elsewhere of an offense involving fraud or dishonesty. Members admitted into the profession by the Institute, shall be enrolled as members in any of the categories of Fellow, Member, Associate, Honorary Member or Honorary Fellow.

[90] Chapter 105, Laws of the Federation of Nigeria, 2004.
[91] Ibid, Section 3.

The CIS is statutorily charged with the powers of discipline and even expulsion of erring members. Section 10 of the CIS Act, establishes the Chartered Institute of Stockbrokers Disciplinary Tribunal. The Tribunal is charged with the duty of considering and determining any case referred to it by the Chartered Institute of Stockbrokers Investigating Panel and any case which the Tribunal can take cognizance of under the Act. The Tribunal consists of the President of the Council and six other members appointed by the Council. The Investigating Panel conducts preliminary investigation into any case of alleged misbehavior by a member or should for any other reason be the subject of proceedings before the Tribunal. The Panel shall report its findings to the Tribunal.

Where a member is adjudged by the Tribunal to be guilty of infamous conduct in any professional respect; or convicted by any Court of law for an offence, which in the opinion of the Tribunal is incompatible with the status of a member of the profession, such a member may be sanctioned. Where the Tribunal is satisfied that the name of any person has been fraudulently registered, such person may also be sanctioned. The Tribunal may give directions to the Registrar to reprimand the person or ordering the Registrar to strike his name off the relevant part of the registrar. The person to whom such direction relates can appeal against the direction to the Federal High Court within twenty eight days.[92]

3.8 Public Enterprise (Privatization and Commercialization) Act,[93] 2004

The first formal structure for privatization and commercialization in Nigeria was the Privatization and Commercialization Act[94], 1988 which created the Technical Committee on Privatization and Commercialization. This Act was subsequently repealed by the Bureau of

[92] Ibid, section 11(7)
[93] Chapter P. 38, Laws of the Federation of Nigeria, 2004.
[94] No. 256, 1988

Public Enterprise Act,[95] 1993. The Public Enterprise (Privatization and Commercialization) Act, 2004, replaced the 1993 Act and is the current law on the subject.

This law provides for privatization and commercialization of certain public enterprises mentioned in Parts I and II of the First Schedule to the Act. Under this law, the Federal Government may divest its holdings in the affected companies in accordance with the policy guidelines and decisions of the National Council on Privatization through the local or international capital market.

The Act established the National Council of Privatization and the Bureau of Public Enterprise, as a policy formulation and implementation bodies respectively. The Act provides the following as the mode of privatization:[96]

1. Subject to the provision of section 11(f) of the Act, an offer for the sale of the shares of public enterprise shall be by public issue or private placement, as the case may be.
2. An offer for the sale of shares by public issue to Nigerians may be made at the capital market.
3. Where the shares of an enterprise are not offered for sale by public issue of shares or private placement, the Council may, approve that the share be offered for sale through a willing seller and willing buyer basis or through any other means.

An account is maintained in the Central Bank of Nigeria called the Privatization Proceeds Account, into which shall be paid all proceeds realized from the privatization of public enterprises in Nigeria. The funds in the account shall be utilized for such purposes as may be

[95] No. 78, 1993
[96] Section 2-5 of the Public Enterprises (Privatization and Commercialization) Act, 1999 (as amended)

determined by the Government of the Federation from time to time.[97] This wholesome latitude, given to the executive in expending the realization from the common patrimony of the peoples' heritage without any form of check or balances, leaves so much to be desired. There is no reason why these funds cannot be tied to critical infrastructural needs in the polity or yet that the discretion be hedged in by the requirement of Senate approval for such expenditure.

3.9 Trustee Investment Act,[98] 2004

This law is to facilitate the investment of trust and other funds in Nigeria in locally issued securities. It is essentially a re-enactment of the Trustees Investment Act of 1957. It specifies the type of securities in which trust funds maya be invested. Such securities include securities issued by Federal and State Governments, Government Companies or Companies or Corporations, as may be specified by Government, debentures and fully paid up share of any public company. No such investment in the said securities shall be undertaken unless the nominal value of the fully paid up shares issued by the company is not less than one million naira; the securities in question is quoted on the Nigerian Stock Exchange and return on investment shall have been paid in each of the proceedings three calendar years of an amount not less than 5% of the nominal value of the shares.

It also provides for the proportion of such investments that can be undertaken with trust funds. In appropriate cases, the value of part of the funds to be invested, shall not exceed one third of the total value of the fund or the investment in a particular company exceed one tenth of the total value of the fund or the total investment in the shares of a particular company to exceed

[97] Ibid, section 19.
[98] Chapter T22, Laws of the Federation of Nigeria, 2004

one twentieth of the total value of the fund.[99] The power of the trustee shall be exercised according to the discretion of the trustee and the trust deed. The strict conditions for investment of trust funds are reminiscent of the strict duties of trustee under trust law. They essentially target a regime of protection for the *cestuique trust* in this case, the investors.

In *Aswani Textiles Industries Limited vs. MBA Securities Limited,*[100] Aswani industries Plc in 1991 raised N40 million Redeemable Debenture Stock from the capital market. The sum of N79,941,001.12 was to be paid by it to the debenture holders under repayment schedule from April 1991 to March 1998 to cover the principal sum and the interest elements of the debenture stock. MBA Securities Limited acted as trustees to the debentures stock, while First Registrars Limited was the registrar. Aswani Industries Plc (the issuer) paid a total sum of N80,040,903.12 to MBA Securities Limited for onward disbursement to the debentures stockholders. Evidence available to the Securities and Exchange Commission showed that MBA Securities Limited remitted only N16,740,903.13 to First Registrars Limited for disbursement to the beneficiaries leaving a balance of N33,299,999.99. There was no indication that the said balance of N33,2999,999.99 was ever disbursed to the beneficiaries and the amount remained unaccounted for by MBA Securities Limited. The APC of the Securities and Exchange Commission held that MBA Securities Limited must account for the balance for the benefit of the investors for whom the trustees act.

The capital market is regulated by several laws and the principal concern is investors' protection. Violations of these laws, often give rise to grievance and the activation of the grievance redress machinery of the capital market. The law in this area, is fairly robust.

[99] Ibid, section 2(2)(3)
[100]Report in SEC Law/APC reports 2000.

CHAPTER FOUR

SECURITIES AND EXCHANGE COMMISSION

4.1 Introduction

The Securities and Exchange Commission is the government agency charged with monitoring and supervising the Nigerian capital market. It is legal body that oversees and develops the industry. It occupies a very unique place in securities and capital market regulation. It is at the top of institutional regulation of the capital market.This chapter examines the unique role of the apex statutory regulator of the Nigerian capital market, the Securities and Exchange Commission (SEC).

The SEC came into existence through the Securities and Exchange Commission Act[1]1979. The Act retained the dispute resolution arrangement under the Capital Issues Decree, 1973 Act with the Federal Commissioner of Finance as the final authority on dispute resolution. Under that regime, only the Commission and the Federal Commissioner of Finance could determine capital market disputes.

The Securities and Exchange Commission Decree, 1979 was subsequently repealed by the Securities and Exchange Commission Decree[2] of 1988. This Act, unlike the 1973 and 1979 enactments, vested in the Federal High Court, the jurisdiction over offences and violations arising from capital market transactions. The actions and decisions of the Commission even in respect of dispute resolution were made subject to judicial review by the Federal High Court. The Act[3] made it mandatory that persons under the Commission's regulatory purview shall be given fair hearing before being sanctioned. This gave rise to the establishment of the

[1] No. 79 of 1979
[2]No. 29 of 1988.
[3]Section 24 of the 1988 Act.

Administrative Proceeding Committee (APC) as a formal mechanism for implementing those provisions without prejudice to other methods of ensuring fair hearing in SEC dispute resolution process.In 1995, the Federal Government set up the Chief Dennis Odife Panel on the review of the Nigerian capital market. The Panel, found[4] among others the need to strengthen the capacity of SEC in order to reposition it to perform the task of investor protection. Consequently, the Investments and Securities Ac,[5] was enacted. This law was subsequently repealed and replaced with the Investments and Securities Act[6], 2007.

4.2 Establishment of the Securities and Exchange Commission.

Under section 1 of the Investments and Securities Act,[7] the Securities and Exchange Commission, shall be a body corporate with perpetual succession and a common seal. It may sue and be sued in its corporate name,[8] and may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under the Act.[9] The Commission shall be situated in the Federal Capital Territory, Abuja and the commission may, with the approval of the Minister for Finance, establish Zonal offices in any state of the federation.

Section 3 of the ISA,[10] provides for the membership of the Commission, it shall consist of a part-time chairman, one representative of the Ministry of Finance who shall not be below the rank of a Director, one representative of the Central Bank of Nigeria who shall not be below the rank of a Director, three full time commissioners who shall be persons with ability, experience and specialized knowledge in a capital market matters. The Director-General of the Commission,

[4]Chaired by Chief Dennis Odife (Odife's Panel). See Federal Ministry of Finance, Final Report of the Panel on the Review of the Nigerian Capital Market, September 1996. P.21.
[5] No 45 of 1999
[6]No.29,2007.
[7] Ibid
[8] Ibid at subsection 2
[9] Ibid at subsection 3
[10] Ibid section 3(1)

and two part-time commissioners, one of whom shall be a legal practitioner qualified to practice in Nigeria with ten years post call experience.

However, the chairman and the commissioners mentioned above shall be appointed by the President as the case may be on the recommendation of the Minister and confirmation of the Senate.[11] The members of the Commission other than the Director-General and the three full time Commissioners, shall be part-time members of the commission.

Moreover, section 5 of the ISA, provides that the three 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. The Chairman and part-time Commissioners (other than the ex-officio Commissioners) shall each old office for a term of four years and no more.

Section 8 of the ISA,[12] provides that commissioner shall cease to hold office if he becomes of unsound mind, he becomes bankrupt or he makes a compromise with his creditors. Also, he will cease to hold office if he is guilty of serious misconduct in relation to his duties or in the case of a person who has a professional qualifications, he is disqualified or suspended other than at his own request- from practicing his profession in any part of Nigeria by the order of any competent authority made in respect of him, personally.

Section 5 of the ISA[13] provides for the appointment of a Director-General by the President who shall hold office for a period of five (5) years and may be appointed for a further periods of 5 years and shall be the chief executive of the commission. The Director-General shall, subject to general control of the Commission, keep proper records of the proceedings of

[11] Section 5(1) of ISA, No.29 of 2007
[12] Ibid
[13] Ibid at subsection 2

the commission and be the head of the secretariat and see to the day to day administration of the commission.

4.3 Functions and Powers of the Securities and Exchange Commission.

Under section 13,[14] the Commission shall be the apex regulatory organization for the Nigerian capital market and shall carry out the functions and exercises all the powers prescribed in this Act and, in particular, shall regulate investments and securities business in Nigeria as defined in this Act. The commission also has the responsibility to register and regulate securities exchanges, capital trade points, futures, options and derivatives exchanges, commodity exchange and any other recognized investment exchanges and regulate all offers of securities by public companies and entities including the registration. The Commission is also empowered to render assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges and capital trade points. The Commission is also responsible for preparation of adequate guidelines and organize training programmes and disseminate information necessary for the establishment of securities exchange and capital trade points. By the section, it is also within the limits of the Commission's responsibilities to register and regulate corporate and individual capital market operators as defined in section 30 of this Act; register and regulate the workings of venture capital funds and collective investments scheme including mutual funds. The law expects the Commission to facilitate the establishment of a nationwide system for securities trading in the Nigerian capital market in order to protect investors and maintain fair and orderly markets; and facilitate the linking of all markets in securities through modern communication and data processing facilities in order to foster efficiency, enhances competition and increase the information available to brokers, dealer and investors.

[14] ISA No. 29, 2007

The Commission must at all times 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 nationwide trust scheme to compensate investors whose losses are not covered under the Investors Protection Funds administered by Securities Exchange and Capital Trade Points.

It is part of the Commission's responsibilities to promote and register self-regulatory organizations including securities exchanges, capital trade points and capital market trade associations to which it may delegate its powers and call for information from and undertake, inspect, conduct inquiries and audits of the securities exchanges, unit trust, mutual funds, capital trade points, options and derivatives exchanges as well as other intermediaries and self-regulatory organization in the securities industry; and promote investors' education and the training of all categories of intermediaries in the securities industry;

Under section 14 of the Act, the Commission has powers to establish specialized departments for the purpose of regulating: Securities exchanges, including stock exchanges, capital trade point, futures, options and commodities exchanges and such other securities organization. It can also regulate capital market operators including corporate members, securities exchange and individuals, professional firms, that is, accountants, solicitors, surveyors, engineers and other professionals who undertake investment business either as investment advisers or consultants.

The Commission has statutory power to regulate securities and investment companies. Section 13 (a) of the ISA 2007 provides that the Commission shall regulate investments and securities business in Nigeria. The purpose of regulation of securities and investment companies

which underlying reason is to protect potential investors and investors and to protect the market from unscrupulous persons.

To offer capital market services in Nigeria, capital market operators are, by law required to register with the Commission before they can legitimately offer their services. Section 30 of the ISA prohibits unregistered persons from carrying on business as capital market operators or investment advisers. Pursuant to these powers the Commission has made rules requiring registration by specified professionals. The process of registration of Capital Market Operators is tedious. It involves obtaining police clearance, inspection of offices, interviews and provision of insurance bond as well as acceptable guarantor. The requirement for registration of Capital Market Solicitors has generated controversy at a time; it is now a fairly settled matter[15].

4.4 The Securities and Exchange Commission and Investor Protection.

The Nigerian capital market has a three layer operational structure targeted at investor protection. These are:

i) The apex regulator i.e. Securities & exchange Commission (SEC;

ii) Self-Regulatory Organizations (SROs) such as the Nigerian Stock Exchange; and

iii) Capital Market Trade Groups such as Chartered Institute of Stockbrokers, Association of Capital Market registrars, the Association of Issuing Houses of Nigeria, etc.

This operational structure is accommodated by the ISA [16] and SEC Rules and Regulations, [17] as well as other legislation guiding capital market operations in

[15]Prof AB Kasunmu SAN V. SEC and Anor (2009) 10 NWLR (Pt. 1150) 509.
[16]No.45 of 1999 (as amended No.29, 2007)
[17] SEC Rules & Regulations 2000, as amended

Nigeria.[18]Globally, the onus of investor protection, falls largely on Securities Commissions and it is one of their core functions as required by IOSCO basic principles. In Nigeria, Securities and Exchange Commission (SEC) as "protector" of the investors and the capital market, has the greater responsibility in protecting investors and all market participants in order to maintain confidence in the system, uphold integrity, stability and professionalism as provided by the ISA.[19]

The SEC operates in conformity with the standards set by the International Organization of Securities Commission (IOSCO),[20] which prescribes rules for the Securities Commission to follow. These rules are the rules for "Know Your Customer" (KYC), "Customer Due Diligence" (CDC), record keeping, inspection, integrity standards, financial reporting standards, disclosures internal control, compliance and audit, enforcement powers, sanctions and co-operation with other supervisory bodies both local and international.

In order to enable the SEC to achieve the basic objectives of investor protection and capital market development, the ISA,[21] in Section 13, spelt out the functions and powers of SEC. The Securities and Exchange Commission, as an instrument of investor protection, is charged with registration of Securities Exchanges and Capital Trade Points,[22] revocation of their certificates,[23] approval of amendments to their listing rules,[24] and powers of disciplinary actions over Securities Exchange or Capital Trade Points.[25] The Commission also has power to issue

[18] Companies and Allied Matters Act, 1990, Cap. C20LFN, 2004, Trustees Investment Act, Cap. T22LFN, 2004, Chartered Institute of Stockbrokers Act, Cap. L9LFN, 2004 and many others
[19] ISA, 1999
[20] International Organizations of Securities Exchange (IOSCO) Rules and Regulations, 2000
[21]No.29 of 2007 Op.Cit.
[22]S.28(1) of the ISA, No.29 of 2007
[23] Ibid at S.30
[24] Ibid, Section 31
[25] Ibid section 34. See also Owena Bank Nigeria Plc. Vs. The NSE.

directives to Securities Exchange or Capital Trade Points[26] and prohibits trading in particular securities.[27] The SEC as unbiased umpire employs a number of tools towards the protection of investors and all market participants with a view to ensuring professionalism, integrity, confidence and stability of the market. These tools are; registration, surveillance, investigation, rule-making and enforcement action.

4.4.1 Registration

By virtue of S. 38 (a)&(b) and 54 of the ISA,[28] all capital market operators and securities, offered to the public must be registered by the SEC. Registration is considered the hallmark of regulation being the entry point to the capital market. In other words, registration is regarded as most potent investor protection instrument. The essence of registration is to ensure that only fit and proper persons are permitted to operate in the capital market and to ensure that full and accurate disclosure is made by issuers of securities about themselves and the securities being offered to the public. To enable its assessment of prospective registrants, SEC requires comprehensive personal and business data on applicants and reserves the right, following the proper scrutiny of information supplied to it, to grant or deny registration.

The fitness and propriety assessment, are principally centered on character, financial stability and professionalism or competence of applicants. For instance, for character checks, SEC requires police clearance report,[29] previous employers report, referees report and bankers reports from a prospective registrants.

[26]Op.Cit. Section 35
[27] Ibid Section 36
[28] Ibid
[29] Rule 44 of SEC Rules and Regulations

It is an offence for an individual to operate in the capital market without registration or for an operator to offer securities to the public which have not been registered to offer securities to the public which have not been registered with the SEC. As an important disclosure and thus investor protection document, a prospectus approved by the SEC must accompany all public offers of securities. The process of clearing the prospectus enables the SEC to ensure the fullness, adequacy and clarity of information contained in the document.Also, SEC derives and hinges its power to register capital market participants, securities, market places and depositories on sections 13(d), 13(e), 13(g) and 13(o) of the ISA.[30]However, in recent times, some legal practitioners have challenged the SEC on the issue of subjecting them to interview for the purpose of registration as capital market solicitors. It is argued that since a legal practitioner has passed Bar exam and had been called to the Nigerian Bar, he is competent to practice law in Nigeria without restraint, accredited or registered with SEC.

In *Kasum vs. SEC,*[31] the plaintiff challenged SEC's powers to subject him to registration based on section 29 and section 30 of the ISA 1999 and Rule 39 of SEC rules and regulation made pursuant to the ISA. The Federal High Court granted him the relief sought which judgement was confirmed on appeal. This judgment was rendered under the now repealed section 28, ISA, 1999. Section 38 is now very clear that in whatever capacity a market operator operates in the market, the operator must register.The capital market is highly technical and information driven, it is imperative for SEC to register and regulate the practice of all capital market operators, especially professional advisers and experts, irrespective of their membership of professional bodies.

[30] Ibid
[31] (2009) 10 NWLR (Pt. 1150) 509

The collapse of ENRON, the US energy giant and distressed Parlamartcompany of Italy underscores the need to regulate the activities of professionals such as Accountants, Auditors and Lawyers, in order to streamline the operations of the market vis-à-vis the conduct of professionals in the market.[32] The government of the United States of America (USA) in July, 2002, enacted the Sarbanes-Oxley Act, 2002, [33] to principally regulate the conduct of professionals, issuers of securities and public company executives. This method of registration could also be adopted in Nigeria.

The SEC registers the following categories of operators pursuant to sections 13(g), 29, 30, 38 and 54 of the ISA[34] and Rule 28 of the SEC Rules and Regulations, 2000 Issuing Houses, Underwriters, Broker/Dealers, Share Transfer Agents/Registrars, Receiving Bankers, Trustees, Investment Advisers, Fund/Portfolio Managers, Rating Agencies, Capital Market Consultants such as Solicitors, Reporting Accountants, Auditors, Estate Valuers, etc.

By and large, registration as a tool for investor protection, assists SEC in controlling the behaviour of registered operators and issuers of securities because where an operator or issuer of securities does an act or causes an omission thereby causing pain to an investor such operator or issuer of securities run the risk of having its registration suspended or revoked. This tool has been effective way of checking the excesses of capital market operators.

4.4.2. Surveillance

The Commission conducts continuous surveillance on the operators, market place and product in the market to ensure that all transactions are carried out in fair and orderly manner and

[32]Orojo; op cit at page 362
[33] Full text of the Act is available at www.sec.gov/about/laws/soa2002
[34]Op.Cit.

in accordance with laid down laws, rules and regulations by all participants. Apart from helping to detect abnormal trading/abuse, surveillance ensures that the transparency of the market is not compromised and that there is a level-playing filed for all participants in the market.

A fundamental objective of surveillance is to ensure transparency and the sustenance of confidence of the investing public.[35] Section 8(m)[36] of the ISA empowers SEC to protect the integrity of the securities market against abuses arising from the practice of insider trading. The surveillance activities of SEC cover both the primary and secondary segments of the market. In the primary market, it focuses on the activities of issuing houses, trustees and other professionals operating in the market with the objective of ensuring adequate information disclosure, prevention of any misuse of investors' funds and transparency as in the case of *SEC vs. AP Plc.*[37] Where the Board of Directors of ApPlc and auditors misrepresented and concealed debt of N26 billion in prospectus offered to the public. See also, in *SEC vs. Royal Exchange Assurance Plc.*[38]and *SEC vs. Cadbury Nigeria Plc*.[39] on utilization of offer proceeds other than those items disclosed in the prospectus.

SEC's surveillance in secondary market covers trading on the stock exchange and brokers/dealers in order to ensure fair and equitable dealing in securities. Surveillance is also carried out on registrars who verify share certificates. Public companies are not left out as SEC carries out its surveillance to ensure that good corporate governance is maintained.Also, SEC attends Annual General Meetings of Public Companies to ensure that proceedings at such

[35]UsmabBala (2004), An overview of the Investment & Securities Act, 1999. A paper presented at a workshops on "Investment Technique of Enforcement in Capital Market" February 12.
[36]No.45 of 1999 (Op.Cit)
[37]APC/22/2002
[38]APC/40/2001
[39]APC/1/2003

meetings are conducted in line with the Companies and Allied Matters Act, 1990[40] and in the best interest of shareholders.

In addition to this, SEC conducts random and regular inspection of the books of market operators. Also operators are required to make regular returns of their operations to SEC for proper scrutiny.The surveillance activities, as tool of investor protection, help in the quick detection of violation in the market and enable the Commission to respond immediately to such violations.

4.4.3 Investigation

Sections 13(r & t), 45, 46 and 47 of ISA[41] empowers SEC to call for necessary information and conduct/carry out investigations, as it deems necessary in the course of its regulating the capital market in Nigeria. These investigations and request for information can be made through letter writing, faxes, e-mails and physical on-site visits to the person investigated for interview and examination of book and records. SEC investigates complaints or reports of alleged violations and suspected/alleged violations of any/all securities law. Information leading to investigations usually emanates from the surveillance actions of SEC or from complaints by investors or operators, rumours, news reports and from members of the public generally.[42]

To further buttress the SEC's powers to conduct investigations, Rule 9(i) of SEC Rules and Regulations made pursuant to section 313(1)(i) of the ISA makes it an offence for any party from whom information is demanded or requested to fail, refuse or neglect to respond to SEC request/demand. It is important to note that investigation of complaints by SEC is fact finding

[40] Cap. C20LFN, ibid
[41] Op.Cit.
[42] See SEC Rules & Regulations

and does not amount to prosecution or determination of guilt or liability of the party investigated. The investigation process is also not made public to avoid jeopardizing the investigation and the party being investigated.

At the end of investigation, if it is found out that the person investigated, has violated any of the laws regulating the capital market, SEC may apart from administrative actions, take the following actions:

i) Report the matter to the Inspector-General of Police, the Chairman of Economic and Financial crimes Commission and/or Attorney general of the Federation, if it is found the violation has a criminal element for further investigation and prosecution in accordance with Section 304 of the ISA, No.29 of 2007.

ii) Institute a civil action against such a party for a particular remedy at the Investment and Securities Tribunal established under Section 274(i) of the ISA.

4.4.4 Rule-Making

By the powers conferred on SEC by ISA[43] and to keep the market in check and enhance its growth and development, and also enhancing investor protection and confidence, rule-making has become an important activity of SEC. Rule-making is the formulation and review of rules and regulations for the market as circumstances may demand. SEC is guided in formulating or reviewing of its rules and regulations, among others, by experience and emergency developments in the market and the financial system and lacunas in existing rules. SEC calls for the opinion/input of other stakeholders and capital market operators including the public (investors) in formulating and reviewing its rules and regulations.

[43] Section 313, No.29 of 2007

4.4.5. Enforcement Action

It is obvious that resolving the number and types of disputes arising regularly from market activities, require several approaches (both formal and informal), at different levels. The Commission, therefore, put in place several internal processes for enforcing capital market laws, rules and regulations are as follows:

a. Written correspondences

b. All Parties Meetings

c. Administrative Proceedings Committee (APC)

d. Civil Actions

e. Criminal Acts

The SEC has established procedures of dealing with complaints in the capital market. In the case of complaints against SRO's by its members, listed companies or the investing public should first be lodged with the SRO. The SRO should resolve the complaint within 10 working days of receipt. Where the SRO is unable to resolve, the SRO should forward a report to the commission within 5 working days, stating reasons why it was unable to resolve. The commission shall review the report within 5 working days of receipt of report and shall direct further.

All complaints arising from market related activities of members of an SRO, should first be resolved by the operator complained against within 10 working days of receipt of complaint. Where the operator cannot resolve the matter, it should refer the matter to its SRO. The SRO has 60 working days to deal with it. Where the SRO cannot resolve the matter, it should forward a report to the complaint to the commission within 5 working days, stating reasons why it was

unable to resolve. The commission shall review the report within 5 working days of receipt of report and shall direct further.

Complaints against operators that do not belong to an SRO should first be resolved by the Operator complained against within 10 working days of the receipt of the complaint. Similarly, complaints against an issuer/public company should first be resolved by the issuer/public company within 10 working days of the receipt to the complaint. Where the operator or Issuer/Public Company is unable to resolve the complaint, it should forward a report of the complaint to the Commission within 3 working days stating reasons why it was unable to achieve resolution. The commission shall review the report within 5 working days of receipt of report and shall direct further.

Complaints in respect of the following strategic areas, shall be lodged with the commission:

a. Insider trading
b. Market manipulation
c. Corporate accounting fraud
d. Securities fraud (pyramid schemes and the likes)
e. Appeals against decisions of SROs, SRO members, Issuers/public Companies.

Upon receipt, the commission has 5 working days to review the complaint and direct as appropriate. Complaints handled by the commission shall be dealt with, within 60 working days. Where the relevant department is unable to resolve, it shall within 48 hours forward a report to management stating why it was unable to resolve the matter and shall recommend further action. Where resolution by SROs, market operators, and issuers/public companies fail, mediation shall

be the next option. Where mediation fails, parties shall be advised to go to Arbitration or Investments and Securities Tribunal (IST).

Generally, there are processes applied at various levels by different institutions to resolve disputes arising from the market. These include judicial or adjudication based and administrative or non-judicial based dispute resolution processes. The administrative processencompasses all the processes adopted by the Securities and Exchange Commission (including the APC), the Nigerian Stock Exchange and other self-regulatory organizations (SROs).

It should be noted that while SEC given vast powers as the apex regulator of the capital market and the IST empowered to speedily and deal with more contentious issues, none of these institutions is empowered to deal with criminal matters arising from the capital market. By the provision of the Act, any criminal breach of the ISA must be referred to the criminal prosecuting authorities like the AGF, AG of a state and EFCC.[44] The Investment and Securities Tribunal is also statutorily established to be a civil court only.[45]

Although these is no statutory obligation under ISA to resolve capital market dispute through non-court based disputes resolution such as arbitration, the ADR processes (place such as; collective bargaining or negotiation, medication, conciliations and arbitration) have become common place and very attractive options for the resolution of investments disputes generally. The Nigerian Investment Promotion Commission Act[46] requires that disputes arising between an investor and any government or agency[47] of the Federation should be settled by arbitration, where mutual discussions between the parties fails to resolve such disputes. Such arbitration may

[44]ISA No. 29, 2007 S. 304.
[45] Ibid
[46] Cap. N117, LFN 2004 at section 26(1)
[47] Emphasis mine

in accordance with the Arbitration and Conciliation Act[48] or any bilateral or multilateral agreement or investment protection agreement between the Federal government and a foreign country[49] or in accordance with any natural or international machinery for the settlement of investment disputes as may be agreed on by the Federal government and the investor[50] or referred to the International Centre for Settlement of Investment Disputes[51] where an investor and the Federal government disagree on the method of dispute settlement to be adopted.

4.4.6 Arbitration Agreement

It should be noted that arbitration agreements are written agreements which state that the parties to a transaction agree that disputes which arises between them in the course of the transaction shall be decided by one or more persons of the choice, in a judicial manner and that any decisions taken by such person(s) shall be legally binding on the disputing parties.[52]

Instead of an arbitration agreement, parties can provide for an arbitration clause in the principal document governing their transaction Arbitration clauses are usually provided for in capital market related agreement such as Under-writing Agreement, Custodian Agreement etc.[53]Usually, complaints are received by the Commission in written form. On receipt of any complaint, it is forwarded to the relevant department, usually the Monitoring and Investigation Department to verify the claims, allegations or assertions of the Complainant and thereafter launch an investigation where necessary. In investigating such complaints, the department writes to the person complained against to respond to the complaint. Through the process of exchanging

[48] Cap. LFN, 2004 where the investor is a Nigerian
[49] Where the investor is a non-Nigerian and a national of a foreign country
[50] Where the investor is a non-Nigerian
[51] In line with the International Centre for the Settlement of Investment Disputes Enforcement Act Cap 120, LFN, 2004
[52] In line with the Arbitration and Conciliation Act Cap A18, LFN, 2004
[53]Detail discussion of these processes is the subject matter of chapter six

correspondences with both the Complainant and the Respondents, issues are joined and ensuing contentions are usually resolved by the Commission applying the Act and/or the Rules to established set of facts. In this scenario, the Complainant and the Respondents need not meet physically before the dispute is resolved. However, where such a meeting is inevitable, the Commission invites the parties and plays a mediating or conciliatory role, subject to the provisions of the relevant statutes and rules.

4.4.7 All Parties Meeting

The Commission could through an All Parties Meeting, attempt to resolve a dispute between capital market participants. This is usually when the option of written correspondences has been explored and a determination made that there is a need to use mediation or conciliation with the parties physically meeting each other and the Commission. When that situation arises, the parties are invited to the Commission for an all-parties meeting. Parties are requested in the letter of invitation to come along with all the documents they would require for proving or defending their cases. Parties are also free to invite witnesses if they desire them; and they are so advised. The Department in the Commission at whose instance the meeting was called usually chairs the meeting. In some high profile matters, any Executive Commissioner in the Commission or indeed the DG could be called upon to chair the meeting.

At the meeting, parties are allowed to state their cases in whatever manner they choose and they are encouraged to reach an amicable settlement. At such meetings, the Commission's benchmarks for resolving any case are subsisting laws, rules and regulations inclusive of guidelines. The Commission mandatorily applies the principles of fair hearing in conducting such meetings. The outcomes of such meetings are usually presented by the Department to

Management for its decision and enforcement directives. Such decisions are subject to appeal to the Management and subsequently the Board. Parties may also appeal to the IST.

4.4.8 The Administrative Proceedings Committee (APC)

The Administrative Proceeding Committee (APC) is a quasi-judicial committee of SEC set up pursuant to the ISA.[54] To resolve conflicts, disputes, grievances and violations requiring enforcement in the capital market. The Committee is made up of the Non-Executive Commissioners of SEC (who presides) some members of the Board of SEC, Directors in the operations departments of SEC. The Committee also allows observers who represent capital market operators and capital market trade associations to attend its sittings and advise it on issues. The jurisdictions of the APC[55] covers all disputes in the capital market between capital market operators and their clients, the SEC and capital market operators and the SEC and Stock or Commodity Exchanges or Capital Trade Points.

Parties invited to the APC may attend the proceedings in person, send in their representations by sworn testimony or retain a counsel to represent them at the proceedings.[56] The proceedings of the APC may be in writing or electronic form.[57] The records of proceedings are available for purchase by interested party or the public. At the end of the proceedings the decision of the committee is dispatched to affected parties not later than five days of the

[54] Section 310(1) ISA Op.Cit. See also Rule 599 and Schedule VIII of SEC Rules and Regulations of June, 2013
[55]Rules 15, Op.Cit.
[56] Rule 11(5) Ibid
[57] Rule 13, Ibid

confirmation of the decision by the Commission.[58] The decisions of the APC are subject to the confirmation of the Board of SEC.[59]

Enforcement actions are geared towards ensuring compliance by market participants with the provisions of all the statutes, rules and codes governing the market. SEC has the responsibility to ensuring that participants in the market comply with the securities laws, rules and directives issued by SEC. The mark of a truly successful enforcement strategy is the effectiveness, not only in apprehending those who violate the law, but also in preventing others from committing future acts of fraud and market malpractices. Administrative actions may be taken summarily by the Commission,[60] through Administrative Proceedings Committee of SEC (APC), where a hearing is necessary to establish a violation.

4.5 Administrative Proceedings Committee

The Securities and Exchange Commission, deploys several dispute resolution options in the supervision of the Nigerian capital market. Of all the tools for resolving differences and sustaining investors' confidence in the market, the Administrative Proceedings Committee is at the summit. The robust nature of the mechanism, has enabled the committee to deliver substantial justice in matters handled by it. Proceedings at the APC conserves time, leverage on pool of expertise of professionals and stakeholders who are co-opted into the Committee and its fair, firm and incisive analysis of issues before it endears it to disputants. The Committee has an array of options to resort to in dealing with any matter and its setting and determination are very friendly. This chapter focuses on the role of the APC in resolving disputes in the Nigerian Capital market.

[58] Rule 17(b) ibid
[59] Rule 17(a) ibid
[60] See UdoraC.A, Op.Cit.

4.5.1 Establishment of the Administrative Proceedings Committee[61]

The origin of the APC can be traced to section 24, Securities and Exchange Commission Decree,[62]1988. The section provided:

> *The Commission may, if in its opinion the public interest and the protection of investors so require and after notice and opportunity for hearing have been given to the affected person, suspend for a period not exceeding twelve months or with the approval of the Minister, revoke the registration of a security or any person registered under this Act, if the Commission finds that the issuer of such a security of (SEC) a person registered by the Commission has failed to comply with any provision of this Act or the rules and regulations made there under.*

Acting under this provision the SEC proceeded to set up an in house quasi adjudicatory panel called the Administrative Hearing Committee to hear, determine and prescribe administrative penalties for capital market violations.

The establishment of the Committee was justified under sections 29(7) and 259, ISA, 1999. Section 29(7) provided:

> *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.*

Section 259 provides:

> *(1) The Commission may appoint one or more committee 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 person as may be determined by the commission; and a person other than a member of the commission*

[61]Sections 310, 313 and Rule 599(4) Op.Cit.
[62]No.29,1988.

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.

In trying to make clean situation of the entire setting, the SEC Rules and Regulations (Amendment) 2002, provided for the establishment of the Administrative Proceeding Committee. According to Rule 313

> *Pursuant to Section 29(7) and 259 of the Act, it is hereby established an Administrative body to be known as the Administrative Proceedings Committee(the Committee) for the purpose of hearing capital market operators and institutions in the market who are perceived to have violated or have actually violated or threatened to violate the provisions of the Act and the Rules and Regulations made there under and such operators or persons against whom complaints/allegations have been made to the commission.*

The entire Schedule VII of the SEC Rules and Regulations pursuant to ISA, 1999 were devoted to rules of procedure of the SEC administrative proceedings Committee. Issues covered included definition[63], parties[64], forms of action[65], commencement of hearing[66], Amendment to brief[67], Counter-claim, set off and similar claim[68];venue[69], Inter party settlement[70], appearance before the committee[71], jurisdiction of the committee[72], sanctions[73], decision of the committee[74], appeals[75] and citation[76].

[63] Rule 1
[64] Rule 2
[65] Rule 3
[66] Rule 4
[67] Rule 5
[68] Rule 6
[69] Rule 7
[70] Rule 8
[71] Rule 9
[72]Rule 10.

The provisions justifying the establishment of the APC is retained under section 310 of the ISA, 2007 which is a verbatim re-enactment of section 259 of the now repealed ISA, 1999. It is a committee of the Board of the Commission; and chaired by a non-executive commissioner on the Board of the Commission[77]. It is the highest internal dispute resolution organ of the Commission in relation to capital market transactions. The Committee is made up of Non-Executive Commissioners on the Board of the Commission (except the board chairman), heads of Departments in the operations, legal and enforcement directorates of the Commission as well as observers from the market representing a variety of trade groups and Self-Regulatory Organizations (SROs) e.g. representatives of the Capital Market Solicitors Association, Association of Issuing Houses of Nigeria, Chartered Institute of Stockbrokers, Association of Corporate Trustees, Institute of Capital Market Registrars, the Nigerian Stock Exchange, Central Securities Clearing System Ltd, etc. Trade Groups or SROs are co-opted as observes if the need arises i.e. where their views are necessary in resolving any dispute under consideration.

4.5.2. Proceedings of the Administrative Proceedings Committee

Complaints are received and investigated by the Commission and if the investigation report raises a prima facie case of violation of securities laws or rules and regulations made pursuant thereto and parties fail to reconcile via other options as stated in (i) and (ii) above, the matter is referred to the APC. Matters referred to the APC are usually very contentious and portend serious consequences to the integrity of the market or considered as a capable of having a systematic impact on the market.

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[73]Rule 11.
[74]Rule 12.
[75]Rule 13.
[76] Rule 14
[77] Section 310 of ISA, 2007

Before the date fixed for hearing, parties are served with the relevant documents concerning the hearing together with the hearing notice. Parties are given the opportunity to appear at the hearing in persons, represented by legal practitioner(s) and to file an affidavit supporting any written submissions in response to uses before the panel. At the hearing, the alleged violations are read out to the respondent and testimonies of parties are recorded. A comprehensive record of proceedings is produced and decision becomes necessary. The APC offers all parties the opportunity to state their cases before a reasonably unbiased panel, which takes decisions based on facts before it. Such decisions do not become effective until confirmed by the Board of the Commission and by implication served on the parties, except interim/interlocutory decisions/directives which become effective in pronouncement[78].

Decisions of the APC are enforced except and until reversed, amended or otherwise as directed by a competent court or the Investment Securities Tribunal upon appeal by a party dissatisfied with the decision.

The Commission has used these methods of dispute resolution in enforcing its laws, rule and regulations as well as practices in the securities market. The process is cost effective and time saving from the point of view of the Commission, Operators and Investors. The APC has greatly enhanced investor confidence in the market through unbiased resolution of several market disputes.[79] Details of the rules governing the APC procedures can be found in Schedule Eight of the SEC Rules and Regulations made pursuant to the ISA.[80]

[78] Section 310(3) of ISA, 2007
[79] SEC vsOwena Bank Plc; SEC vs Cadbury Nigeria Plc; Central Securities Clearing System Ltd vs.SEC(2004) 2 ISLR 1
[80]Op.Cit.

The ISA 2007[81] empowers the Commission to review decisions taken by SROs against their members with a view to confirming, modifying or annulling same as it deems appropriate. Under the Act the SEC should be notified of such decisions by SROs within days. This power gives SEC an appellate jurisdiction over decisions of SROs.

In *Doherty vs. BGL Securities Ltd*[82], a complaint was lodged against BGL Securities Ltd before the APC for non-purchase of shares paid for by its clients valued at N3.3m. The APC directed BGL securities Limited to pay to the complainant the sum of N5.1 million as full and final settlement and also pay a penalty of N4.3 million to the SEC as penalty. But in *SEC vs. Bankolans, Re*: *N380 million scam*[83], the complaint against BGL Securities Ltd and others was on fraudulent sale of shares. The operators were suspended for one month effective from January 30, 2003 and ordered to pay N475,000 as penalty. The company was also ordered to pay back 402,129 units of Unilever Plc shares.

Similarly, in *SEC vs. Light House Assets Management Limited*[84], the capital market operator was accused amongst other things of failing to notify the SEC of fraudulent acts of its staff and execution of an order which did not emanate from the beneficial owner of the account. The operator was ordered to buy back the 100 million units of Nestle Plc shares involved. Also in *SEC vs. AAA Stockbrokers Ltd*[85], it was alleged that the capital market operator traded in the Nigerian Stock Market without a valid registration and also employed manipulative and deceptive contrivances on securities transactions against the letter and spirit of the Code of Conduct for Capital Market Operators. Also, that the company engaged in acts capable of adversely affecting

[81]Section 34(1) of ISA, 2007.
[82]APC/4/2002
[83]APC/18/2002
[84]APC/2/2002
[85]APC/21/2002. A similar decision was reached in SEC v. Viva Securities Ltd. APC/21/2002; see also Sec v. Gossard Securities Ltd APC/21/2002

the investing public's image of and confidence in the capital market.[86] The company also failed to notify the SEC of the fraudulent acts of its staff and executed an order which did not emanate from the beneficial owner of the account. The APC upheld the allegations against the company and imposed a penalty of N5,000 per day from February 5, 2001 to May 20, 2001 for the period the company failed to notify the SEC of the Scam after being alerted by the Nigerian Stock Exchange. The APC also awarded a penalty of N5000 per day from February 15, 2001 to May 20, 2001 for the period the company's Brokers traded on the floor of the Nigerian Stock Exchange without valid registration. The staff was suspended from the stock market for a period of 3 months.

SEC vs.Bankolans Investment Limited,[87] provided greater insight on how the N318 Million Scam was perpetrated. It was alleged that the company traded without valid registration and employed manipulative and deceptive contrivances in securities transactions. The company was also alleged to have altered or forged share/stock certificates/transaction records and other related documents. The operator was alleged to have engaged in acts capable of adversely affecting the confidence of the investing public and image of the capital market. In upholding, the allegations against the company, the APC ordered the withdrawal of the license of the company's promoter, while two of its staff were banned from the capital market.

APC strives to be fair to all concerned and have in some cases, discharged some operators where it was shown that the operator was innocent of the charges. A case in point is *SEC vs. Valmont Securities Limited (No. 1)*[88]. On 12th June 2002, Valmont Securities Limited received a notice of hearing before the SEC APC and the memorandum of facts which alleged

[86] Section 1(III) of the Code of Conduct for Capital Market Operations and their Employees
[87] APC/21/2002
[88] APC/14/2000: The Operator was represented by J.U.K. SAN Igwe before the APC. Perhaps, a detailed discussion of this case may be important in dispelling fears about SEC's influence over the APC.

that the company failed to meet the minimum capital requirements stipulated by the SEC Rules and Regulations since the Respondent's registration with the SEC was said to have expired on 8th September, 2000.

At the hearing, counsel to the Respondent showed that the respondents had, prior to the date of the allegation renewed registration up to September 8, 2002. On the issue of compliance with SEC capital requirements, Learned Counsel challenged SEC to produce any evidence to the contrary. Learned counsel further tendered certified true copies of the documents filed before the Corporate Affairs Commission, which showed increase of the required share capital of Twenty Million Naira (N20,000,000) as far back as 30th July, 1997.

Learned counsel further urged the APC to reject the post compliance audit report by Dele Abdulraheem& Co. relied upon by SEC which on one hand claimed that share capital balances agreed with audited accounts and in another breath claimed that he fully paid up capital of the respondent was only Sixteen Million Naira (N16,000,000). Learned counsel therefore urged the APC to discountenance and dismiss with substantial costs the allegations against the respondent. Based on Rule 6 Schedule VII of the Rules and Regulations made pursuant to the Investments and Securities Act 1999, learned counsel asked SEC to pay to the respondent costs incurred by the respondents in defending the action.

The APC upheld all submission of the Learned Counsel to the respondents and awarded to Respondents cost as requested in line with Rule 6 Schedule VII of the Rules and Regulations made pursuant to the Investment and Securities Act, 1999. Administrative Proceedings Committee has proved to be a vital tool in the enforcement of capital market laws and regulations

and for dealing with malpractices in the market. It has also greatly enhanced investors' confidence in the market through prompt and satisfactory resolution of capital market disputes.

Although APC cannot punish for fraud or criminal cases, it can exercise its fact finding powers to gather evidence in order to refer the matter to Attorney General of Federation or Attorney General of a State or the police, Economic and Financial Crimes Commission (EFCC)[89], etc., for further investigation and prosecution. In *FGN vs. Sir Kingsley Ikpe and Thomas Kingsley Securities Ltd*[90] the accused persons (stock broking firm and its managing director) were found guilty of fraudulent conversion and stealing N135 million received from one Tony Ezenna (an investor) for the purpose of purchasing Nigerian Breweries Plc. shares.

In the five years of its recent existence (2000 – 2006) the APC has heard 159 cases[91] on capital market related disputes and violations bordering on fraudulent sale of client's securities notable are *SEC vs. Prudential Securities Ltd*,[92] on non-purchase/lodgment of securities paid for by investors *Dr. Bamingo vs. Fidelity Finance Ltd*,[93] on failure of an underwriter to honour its underwriting obligation to the issuer of securities *ENPEE vs. Nigerian American Merchant Bank Ltd*,[94] on non-compliance with the minimum paid up capital requirements for operating in the capital market *SEC vs. Molten Trust Ltd*.[95] cloning of shares certificates *SEC vs. Bonkolans Ltd. &Ors*,[96]*SEC vs. UAC Plc. &Ors*,[97] non-utilization of offer proceeds other than as disclosed in the

[89] Section 304, ISA op cit
[90] ID/143c/2004 Ikeja High Court 40 (unreported)
[91] Report of Head of Investigation & Enforcement Department of SEC to SEC Executive Management, December, 2007.
[92]APC/2-9/2001
[93]APC/2/2003
[94]APC/13/2001
[95]APC/19/2001
[96]APC/21/2002
[97]APC/4/2003

prospectus *SEC vs. Royal Exchange Assurance Plc*,[98]*SEC vs. Cadbury Nigeria Plc.*[99] Non-refund of application monies, multiple application in a public offer, offering of unregistered security to the public and concealment of material facts in the prospectus.

These decisions provide very useful lessons for operators and precedent for regulatory authorities in the Nigerian capital market. Parties who are not satisfied with the decisions of the APC, can appeal to the Investment and Securities Tribunal (IST).Civil actions are meant to protect the interest of investors as well as the integrity of the market. SEC normally institute civil action against market participants for a particular remedy (claims, interpretation, declaration, injunction, etc.) In recent times, SEC had had cause to seek court injunctions to stop unregistered operators from operating illegally in the market in order not to defraud unsuspecting investors[100].

In *SEC vs. Thomas Kingsley Securities Ltd. & Sir Kingsley Ikpe,*[101] SEC applied to Investment and Securities Tribunal for an order to freeze the accounts of the two defendants as well as order to appoint an interim management team for the defendant firm. Also, SEC defends suits brought against it by public companies and capital market operators, where it perceives misinterpretation of law or miscarriage of justice. In *Owena bank (Nig.) Plc. vs. the Nigerian Stock Exchange in Re-Securities and Exchange Commission,*[102] the issue was whether or not SEC can exercise power to suspend registration of securities. The facts of the case was that a complaint was lodged with SEC by Dominion Trust Ltd. against Owena Bank Nig. Plc. that the bank has failed to consent and honour the transfer of 23.7 million shares of the bank inspite of the fact that the deal in respect of the shares was duly transacted on the floors of the Nigerian Stock exchange

[98]APC/40/2001
[99]APC/1/2003
[100] See *SEC vs. Prudential Securities Ltd. &Ords.*FHC/L/158/90
[101] Suit No/IST/OA/01/2005
[102] 1999 5 SEC Law Report

and approved by SEC. Following the complaint, the then SEC Administrative Hearing Committee, considered the matter and on December 9, 1994, directed inter alia, the suspension of the registration of Securities of Owena Bank Nigeria Plc and suspension of trading of the bank's securities in the floor of the Nigerian Stock Exchange until the transfer aforesaid was effected by the bank.

Consequent upon that, the bank instituted certiorari proceedings to quash the respondent's direction aforesaid. Judgment was entered in favour of the bank and the proceedings and orders/directives of SEC were quashed as void *ab initio*. Also a motion *exparte* for an interim injunction to restrain SEC from preventing the trading in the bank's securities on the floor of the Nigerian Stock Exchange or its branches was simultaneously granted by the court. Thereafter, SEC applied to Court of Appeal as interested party against the ex-parte order of injunction made in the said application which was filed after the time limited to appeal, the respondents did not include a prayer for extension of time to appeal. However, the Court of Appeal granted the application and gave SEC extension of time to appeal. Owena Bank Nig. Plc. was aggrieved and it appealed to the Supreme Court. In allowing the appeal, it was held that SEC by virtue of section 2(1) of SEC Decree No. 29 of 1988, has power to suspend the registration of any person's security for a period of twelve months and no more or to obtain the approval of the minister in order to revoke the registration of a person's securities therefore in the instant case SEC has no power after the limited period has elapsed. Also, in *SocieteGenerale Bank of Nigeria Ltd. vs. SEC*[103] the Federal High Court had to explore the scope of the regulatory powers of SEC over public and private companies. Two shareholders of the bank transferred their shares constituting

[103]FHC/4M6/87

[43b] See also SEC vs. Nichemtex Nigeria Plc. FHC/L/CS/832/94; CA/434/98; Costain West Africa Ltd. vs. SEC FHC/L/M32/90

about 40% of the bank's holding without seeking SEC approval under section 7 of the SEC Act. It was contended on behalf of the bank that being a private company it need not seek SEC approval under this section. The Federal High Court in a reasoned judgment upheld the bank's contention but was reversed at the Court of Appeal on the ground that SEC's approval requirements extends even to private companies where there is alien participation in the sale or transfer of shares.[43b]

4.5.3. Enforcement of the Decision of the Administrative Proceedings Committee

Once the decision of the APC is rendered, it must be confirmed by the board of the SEC within 15 days. Once confirmation is received, the enforcement and compliance department will take up the enforcement of the decision, unless the commission is served with notice of appeal against the decision to the Investments and Securities Tribunal. The parties may on their own decide to comply with the decision and directives of the APC. The decision may give rise to other remedial action including referral to State prosecuting authorities. In the 2007 report, Head of Investigation and Enforcement Department of SEC,[104] analysis referred to law enforcement agencies of cases thus:

> *One (1) was referred to State Security Service in 2003 which bordered on fraudulent conversion and sale of investors' securities and the operator that perpetrated the act attempted to escape from Nigeria.[105] Twenty one (21) cases were referred to the Nigerian Police which bordered on unregistered and illegal capital market operators, unauthorized sale of investors' securities and case involving other fraudulent acts.*
>
> *Nine (9) cases were referred to Economic and Financial Crimes Commission during the period for further investigation and prosecution. These cases border on unauthorized sale of shares, cloning of share certificates, non-remittance of debenture monies by the Trustee and fraudulent conversion of investors' monies meant for purchase of securities. The ability*

[104]UdoraC.A (2007), Head Investigation and Enforcement, end of the year report for 2007
[105]Mr. Victor Akinmoluwa, Managing Director, Akitorch Securities Ltd.

> *of the Commission to run a consistent, fair, just and transparent enforcement regime is one of the greatest mechanisms of protection of investors.*

No doubt, the establishment of the APC has added immense value to operations of the Nigerian capital market. From the analysis of decided cases, the determination by the APC has not only helped in filtering disputes in the market so that only in very few cases do some of the disputes proceed to the regular courts. Notwithstanding, the establishment and jurisdiction of the committee continue to be questioned from time to time. This may not be unconnected with the manner of its creation. The Investments and Securities Act does not mention the APC in any of its sections. It is only conceived as a committee of the SEC. This passing reference is certainly not adequate.

CHAPTER FIVE

SELF-REGULATORY ORGANIZATIONS IN THE NIGERIA CAPITAL MARKET

5.1 Introduction

Most financial systems display a combination of the various regulatory choices available in their countries. Both the private and public sectors, have specific roles to play in the effective governance of the financial sector. Consequently regulatory framework, permit private sector participation. Thus regulation may be statutory or non-statutory. The non-statutory regulation model, is offered by self regulatoryorganisations. Prominent in this respect, are the stock exchanges, the Central Securities Clearing system and the Chartered Institute of Stockbrokers. These self regulatorybodies, provide mechanisms for dispute resolution in the capital market.

A Self Regulatory Organization (SRO), is an organization of operators that regulates the activities of its members. The Investments and Securities Act (ISA), defines an SRO as "any registered securities exchange, capital trade point, an association of securities dealers, clearing house capital market trade association or any other self-regulatory body approved as such by the Commission"[1].

The US Securities Exchange Act defines SRO as any national securities exchange, registered securities association, registered clearing agency, or Municipal Securities Rule Making Board[2]. The Act defines an exchange as any organization, association or group of person which provide a market place or facility for bringing together purchasers and sellers of securities[3].

[1] Section 315 of ISA, No.29, 2007
[2] Section 3(26) of the US Securities Exchange Act,1934
[3] Section 3(a)(i) ibid

5.2 The Nigerian Stock Exchange.

The Nigerian Stock Exchange, like any other stock exchange elsewhere, is an organized auction market where buyers and sellers meet, through their brokers, to effect transactions in securities that have been listed.

The Nigerian Stock Exchange, was first incorporated as the Lagos Stock Exchange on 15th September, 1960 as a private limited liability company[4]. In 1977, the Lagos Stock Exchange was designated the Nigerian Stock Exchange, with branches established in Kaduna in 1978 and Port Harcourt in 1980, along with the original Lagos branch[5]. All the branches of the Exchange, have trading floors where securities are physically traded by licensed dealing members and brokers on behalf of their client/investors. Presently, there are over 200 licensed dealing members on the Nigerian Stock Exchange[6].

The Nigerian Stock Exchange performs eight major functions:

1. It creates a continuous market for immediate sales or purchase of securities at prices determined by their values and supply and demand forces, through 'buy' and 'sell' orders from investors. This enables investors who have such marketable securities to maintain continuous liquidity situations since they are no obligated to hold them indefinitely (conduct/channel for secondary market).
2. It provides a service to industry and the economy by indirectly channeling funds through new issues to finance industrial investments.

[4]Omojola, A.O. (2006) Teach Yourself – Lecture Series on Capital Market Operations Credible Associates Ltd, Lagos p. 18.
[5]Ibid. 18.
[6] Ibid

3. Activity on the stock exchange, often shows the public's perception of the future of the country's economy and is often regarded as a leading economic indicator.
4. Public confidence in financing and investments is encouraged through safeguards - rules and regulations on the Stock Exchange.
5. It provides a fair market value and appraisal of securities.
6. By reference to the Exchange, companies intending to obtain funds through new issue may readily ascertain the general range of prices they may reasonably expect to receive for them.
7. The existence of an Exchange enables a wider distribution of primary securities issues.
8. Companies whose securities are traded on the Exchange, become well known through the publicity given to quotations, annual reports and other news to investors. Such publicity constitutes a valuable promotion for the company's products, services and general activities.

To be admitted to the Daily Official List of the Nigerian Stock Exchange, a company must through its stockbroker, submit an application in the prescribed format to the quotations Committee of Council of the Exchange[7]. The Stock Exchange operates a two-tier market; the main board or first-tier and the second tier[8]. The second tier was introduced in 1985 as a medium for encouraging small and medium scale indigenous enterprises to obtain public quotation and enjoy the attendant benefits[9]. This was done by relaxing some of the stringent listing requirements.

The listing requirements ensure that only viable and responsible companies are listed on the exchange. The listing requirements are in themselves regulations to keep quoted companies on the exchange. Furthermore, the Nigerian Stock Exchange, has rules and regulation to guide

[7]Omojola, A.O. (2006) Teach Yourself – Lecture Series on Capital Market Operations Credible Associates Ltd, Lagos p. 18.
[8] Ibid
[9] Ibid

members conduct in carrying on of business in the capital market. These Rules and Regulations are made pursuant to the Memorandum and the Articles of Association of the Nigerian Stock Exchange and are subject to the provisions of the Investments and Securities Act.[10] These rules cover issues of discipline, conduct of members and dispute resolution.

5.3 Capital Market Associations.

Capital market operators have adopted the means of having a common front for achieving their respective common purposes. They represent and protect the interest of their members in the market. In the Nigerian Capital Market there are the Association of Capital Market Solicitors, Association of Stockbrokers, Association of Issuing Houses of Nigeria and Association of Capital Market Registrars. These associations, are established among other objectives, to enhance the contribution of their members in capital market issues in Nigeria; influence policies that affect their member in capital market issues in Nigeria; influence policies that affect their members operating in the Nigerian Capital Market;[11] to regulate the activities of their members in the Nigerian Capital Market; to set and maintain standards of conducts and best practice for their members thereby providing code of conduct for members; and to train members of their associations and enhance their professional skills.

These associations cater for the benefits of their members in the market and also keep in check, the activities of their members in the market. They wade into disputes involving their members which arise from capital market activities. Also, they entertain complaints from investors in the capital market against their members which they investigate and punish

[10] See Appendix A..
[11] See Constitution & Bye Laws of Capital Market Solicitors Association

whenever liability is established. This is one of the ways these associations, assist the statutory regulatory authorities to protect investors and the capital market generally.

In recent time,[12] SEC has given these associations certain level of recognition by liaising and co-opting them in into its activities. It is a welcome initiative, as the association, assists SEC in its regulatory role by ensuring that the activities of their members conform to the directive of SEC. This is an easy and cost effective method of regulation of the capital market.

5.4. The Central Securities Clearing System

The Central Securities Clearing System (CSCS) Ltd is the Clearing House of the Nigerian Stock Exchange[13]. The CSCS was established to implement a clearing, depository, settlement at registry system of stock transactions that is efficient and effective with minimum risk. CSCS facilitates the delivery (transfer of shares from seller to buyer) and settlement (payment for bought securities) of securities transacted in an organized stock market. It assembles in the same place, most of the activities done at various spots in the capital market to substantially reduce the period it takes a transaction to commence and its conclusion.

CSCS commenced operation, with immobilization of the share certificates in a central location, thus enabling stocks to be processed in an electronic book entry for physical delivery of share certificates. This process enables securities transacted on the Nigerian Stock Exchange to be processed and concluded within four (4) working days, that is (T+3) in electronic book entry for instead of an average 6 months prior to the establishment CSCS. Investors who want to sell all or part of their shares can sell and get value within four days. Also, those who want

[12] The Associations are recognized at the quarterly Capital Market Committee (CMC) meetings. Also in all the stakeholders meetings of the capital market. These Associations are invited to maker input.
[13]Omojola, A.O. Opcit p. 58

certificates for their holding can request for certificate and CSCS will update the relevant registrars who have update their registers and issue certificate accordingly.

The CSCS provides central depository for share certificates of companies quoted on the Nigerian Stock Exchange, sub-registry for all quoted securities (in conjunction with registrars of quoted companies), issue central securities identification numbers to shareholders; and provide custodial services in conjunction with custodian member(s) of local and foreign instruments

The CSCS Ltd has enabled:

i) T+3 (4 days) settlement cycle for stock transactions
ii) Investors statements of stock position are issued every quarter free of charge
iii) Use of stockholding in CSCS as collateral for loan facility after 6 working days
iv) Risk of loss of certificates is minimized as fewer certificates are requested for.
v) Cost of production of share certificates for transactions through the secondary market has been greatly reduced.

The CSCS limited was licensed by the Securities and Exchange Commission as Central Depository, Clearing and Settlement Agency. It was commissioned on April 8, 1997 and commenced operations on April 14, 1997.It operates a computerized depository, clearing, settlement and delivery system for transactions in shares listed on the Nigerian Stock Exchange.

Before the commencement of Central Securities Clearing System (CSCS) Limited, the Nigerian Stock Exchange, conscious of the provisions of section 146 of the Companies and Allied Matters Act, 1990 applied to the Corporate Affairs Commission (CAC) and the Securities and Exchange Commission (SEC) for the former to initiate amendments to the said provisions such that certificates will not be the only evidence of share ownership in companies and the latter

for administrative waiver under it[14]. Administrative powers under the Securities and Exchange Commission (SEC) 1988,[15] and Securities and Exchange Commission Regulation, 1989.[16]

CAMA makes it obligatory for a shareholder who has invested in a company to be entitled to a certificate[17]. The shareholder could enforce his rights so granted. However, in order to take advantage of the T+5 settlement cycle at inception of CSCS Ltd and later T+3 settlement cycle, it was necessary for the shareholder to waive his right to a certificate and elect to accept a statement of stockholding issued by the CSCS Ltd. Thus SEC recognized CSCS statement of stockholding as evidence of stockholding in CSCS system with a provision for those who want certificates to be so entitled. The CSCS procedure, which emphasizes dematerialization of share certificate is recognized by SEC, the apex regulatory authority. The Investments and Securities Act,[18] recognizes the depository function of CSCS and Electronic transfer of stocks/securities through the secondary market.

The CSCS is one of the major operators in the capital market. Aside its depository and clearing house functions in the market, it also makes rules and regulations, which ensures compliance by every user of its facilities. The company has the facility for the clearing and settlement of securities traded between brokers on the floors of Nigerian Stock Exchange. The Commission through the CSCS, enforce compliance with capital market laws, rules and regulations by directing it to penalize operators, investors and other participants who contravene laid down market rules.

[14]Sections 146, 147, 151 and of Companies and Allied matters Act, 1990.
[15]No.29 of 1979
[16] Of 1989
[17]Section, 146 Ibid.
[18] No. 29 of 2007

Moreover, as a subsidiary of the Nigerian Stock Exchange, the CSCS is subject to the operation, implementation and enforcement of the rules and regulations guiding Dealing Members of the Exchange. The CSCS is also represented on the Investigative Panel of the Nigerian Stock Exchange.

5.5 The Chartered Institute of Stockbrokers

The Chartered Institute of Stockbrokers was first established by the Chartered Institute of Stockbrokers Decree[19], 1992. The CIS prescribes standards and benchmarks for capital market operators as licensed stockbrokers and to check the incidences of unprofessional conduct in of the business of stock broking.The Act established the Chartered Institute of Stockbrokers Disciplinary Tribunal, with the mandate to consider and determine any case referred to it by the Investigating Panel established under the Act,[20] and any other case of which the Tribunal has cognizance under the following provisions of the Act:

The Tribunal consists of the President of the Council and six other members of the Council appointed by the Council. There is also a body known as the Chartered Institute of Stockbrokers Investigating Panel, charged with the duty of:

(a) Conducting a preliminary investigation into any case where it is alleged that a member of the profession has misbehaved in his capacity as such a member or should for any other reason be the subject of proceedings before the Tribunal: or

(b) Deciding whether the case should be referred to the Tribunal; or

(c) Submitting a report on any action taken in the past to the Tribunal.

[19]No.105,1992.

[20] Section 10(1) of Chartered Institute of Stockbrokers Act, No.105, Cap. C9 of 1992

The Panel is appointed by the Council and consists of four members of the Council and one member who is not a member of the Council. The provisions of the Second Schedule to this Act, shall have effect with respect to those bodies.

In handling issues of discipline, the Act provides that:[21]

(1) Where: -

(a) A person registered under this Act is adjudged by the tribunal to be guilty of infamous conduct in any professional respect; or

(b) A person registered under this Act is convicted, by any court in Nigeria or elsewhere by any court or tribunal having power to award punishment for an offence (whether or not such offence is punishable with imprisonment) which in the opinion of the Tribunal is incompatible with the status of a member of the profession; or

(c) The Tribunal is satisfied that the name of any person has been fraudulently registered, the Tribunal may, if it thinks fit, give a direction reprimanding that person or ordering the Registrar to strike his name off the relevant part of the register.

(2) The Tribunal may, if it thinks fit, defer its decision as to the giving of a direction under subsection (1) of this section until a subsequent meeting of the Tribunal.

(3) No decision of the Tribunal shall be deferred under subsection (2) of this section for periods exceeding one year in the aggregate.

(4) As far as possible no person shall be a member of the Tribunal for the purpose of reaching a decision which has been deferred or further deferred, unless he was present as a member of the Tribunal when the decision was deferred.

[21] Section 11(a),(b),(c) (2), (3), (4), (5), (6) & (7) of Chartered Institute of Stockbrokers Act, No.105, Cap. C9 of 1992

(5) For the purpose of subsection (1) of this section, a person shall not be treated as convicted unless the conviction stands at a time when no appeal or further appeal is pending or may (without extension of time) be brought in connection with the conviction.

(6) When the Tribunal gives a direction under subsection (1) of this section, the Tribunal shall cause notice of the direction to be served on the person to whom it relates.

(7) The person to whom such a direction relates may, at any time within twenty-eight days from the date of service on him of the direction, appeal against the direction to the Federal High Court and the Tribunal may appear as respondents to the appeal and, for the purpose of enabling directions to be given as to the costs of the appeal and of proceeding before the Tribunal, the Tribunal shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.

The capital market is information driven. Consequently the Act prescribes stiff penalties for false and reckless statement and falsification of documents. According to the Act[22]:

1) If any person, for the purpose of procuring the registration of any name, qualification or other matter: -

   (a) Makes a statement which he believes to be false in a material particular; or

   (b) Recklessly makes a statement which is false in a material particular, he is guilty of an offence.

2) If, on or after the coming into force of this Act, any person who is not a member of the Institute practices as a member or uses any name, title, addition or description implying that he is a member of the Institute, he is guilty of an offence.

3) In the case of a person referred to in section 12 of this Act –

[22]Section 16(1), (2), (3), (4), (5) & (6) of Chartered Institute of Stockbrokers Act, No.105, Cap.C9 of 1992

(a) The provisions of subsection (2) of this section shall not apply in respect of anything done by him during the period of three months mentioned in that section; and

(b) If within that period he duly applies for membership of the Institute, then unless within that period he is notified that his application has not been approved, the provision of subsection (2) of this section shall not apply in respect of anything done by him between the end of that period and the date which he is registered or is noticed as aforesaid.

4) If the Registrar or any other person employed by or on behalf of the Institute willfully makes any falsification in any matters relating to the registrar, he commits an offence.

5) A person guilty of an offence under this section is liable –

(a) On summary conviction, to a fine of an amount not exceeding ₦1,000: or

(b) On conviction on indictment, to a fine of an amount not exceeding ₦5,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

6) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer the body corporate or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER SIX

INVESTMENTS AND SECURITIES TRIBUNAL

6.1 Introduction

The Nigerian capital market constitutes the life blood of the nation's financial system. It is the major engine for growth and development in the economy. The capital market is the financial mechanism through which capital resource in the form of savings are marshaled for the purpose of the production of goods and services. Without doubt, a virile and dependable market reflects the degree of investing public confidence in the mechanism. Therefore, the importance of the capital market as a vital element of national economic development cannot be over emphasised. It is one of the barometers for measuring a nation's economic development.

In view of the vital role of the capital market and the susceptibility to abuses in unregulated or underegulated markets, governments all over the world cannot risk allowing this market to operate without some form of control including a framework for dispute resolution, to ensure that the relevant institutions in the industry are properly established and monitored and that the operators in the market are fit and proper persons to handle public wealth. For this exalted purpose rules and regulations are crafted to ensure fairness, efficiency, orderliness, transparency, stability and confidence in the capital market.

Disputes are inherent in every human interaction. In the Nigeria capital market, disputes often arise, which must be resolved speedily, fairly and efficiently in the interest of the sustainability and stability of the market. Notwithstanding the various processes for dispute resolution in the Nigerian capital market, the jurisdiction to adjudicate over capital market disputes has been a source of contention among stakeholders of the Nigerian capital market. Not

only do scholars[1] dispute on the vexing issue of which court has jurisdiction to preside over capital market disputes, the courts have been drawn into the imbroglio. The effect of this on investors' confidence cannot be overemphasized. In the Case of *MuftauAjayi vs. Securities and Exchange Commission*[2], the issue of jurisdiction overshadowed the more vexing issue of culpability for Cadbury Nigeria PLC overstating its account to the tune of over ₦13 billion, which till this day has been lost. This is certainly inimical to the Nigerian capital market and the larger economy that is seeking to be among the twenty largest economies in the world by the year 2020.

Furthermore, the dwindling fortune of the Nigerian Capital Market is a source of worry. From an all-time high of N13 trillion capitalisation in 2008 to N8trillion in 2016[3], genuine concern must be shown to return the market to path of profitability to reflect the immense wealth of the Nigerian state. Investors' confidence can be buoyed by an assurance of a fair and efficient dispute resolution system that is not hamstrung with teething challenges of jurisdictional competence.

This chapter focuses on the Investments and securities Tribunal. The Challenges of constitutional status and exclusivity of jurisdiction are incisively considered.

6.2 Establishment of the Investment and Securities Tribunal

Dating back to the 17th century, it was common for the UK government to vest on Commissioners of Customs and Excise judicial powers by statute to adjudicate on certain

[1]Agom, A.(2009) "An Expose on the Investments and Securities Tribunal"*Ahmadu Bello University Journal of Private and Comparative Law*, A publication of the Department of Private Law, Faculty of Law, Ahmadu Bello University, Zaria, p,57 ; John,D.C.,(2011) 'A Critical Appraisal of the Investments and Securities Tribunal in Nigeria' *University of Ibadan Law Journal*, Vol.1, No.2, p.101

[2](2009) 13 NWLR,(pt.1157) p.1

[3] The Welcome Address by the Honourable Chairman Investments and Securities Tribunal (IST) Dr.NgoziChianakwalam at the IST Stakeholders Workshop, 2015 Held at Oriental Hotel Lagos On 8/12/2015

defined matters relating to custom and excise. Over the centuries more administrative bodies such as Land Tax Commissioners, Board of Railway Commissioners and the Railway and Canal Commission were given judicial powers. Wade, writing about the history of tribunal in Britain stated that "tribunals are mainly a twentieth century phenomenon, for it was long part of the Britain conception of the rule of law that the determination of questions of law – that is to say, questions which require the finding of facts and the application of definite legal rules of principles – belonged to the courts exclusively".[4]

In the US, apart from the regular courts, there are administrative courts and special courts. In the administrative courts, Administrative law Judges are appointed to oversee the adjudicatory functions of the court. The Administrative Law Judges are assigned to State Department Agencies such as the US Securities and Exchange Commission, Federal Communication Commission where court room space is made available for hearing and determination of cases. Their decisions are not final and may be subject to ratification by the department or agency to which such administrative law judge is assigned.[5]

In Nigeria, following the accident of history, Nigeria imported the English legal system of tribunal administration. Tribunals are subjects to the general law, its enabling statute, and the rules of natural justice and fair hearing. Prior to the 21st century, it was common to align tribunals with the militarywho set them up with defined mandate and special rules of procedure with scant regard for rules of evidence. The tribunals by their enabling instrument barred appeals from decisions of such tribunals; and ousted the jurisdiction of courts to inquire into validity of

[4] www.nigeriainfonet.com/nigeriahistory accessed on 12/01/2016, 6:20am
[5] Ibid

its establishment or activities.[6] The perceptive connection with the military affected its acceptance by professionals and the public.[7]

Tribunals are established with the main objective of timely and efficient resolution of particular disputes with fairness, flexibility and transparency. They are usually set up to prevent undue delay in settling disputes. They provide dedicated adjudicatory process forspecialised and technical matters that are not allowed to pass through the convention judicial mechanism. Importantly, tribunals must be distinguished from statutory agencies or professional bodies with powers to discipline members of its profession or professional body, and operators in its sectors.

In addition, it is distinct from commissions of inquiry which are fact finding bodies set up for particular issues with deadlines as they do not hear and determine the rights and obligations of persons but merely gather facts, make findings and submit a report to the appointing body/authority. Tribunals can be described as special courts established to hear and determine specific matters or disputes arising from transactions in particular economic/industry sector. By virtue of their specific adjudicatory function, tribunals have limited jurisdiction. They are established to adjudicate in only one particular area of law with specifically defined powers. This makes tribunals courts of specialized jurisdiction.

They are creatures of statutes, set up pursuant to enabling statutes. Tribunals are subject to the provisions of the statute that created them as well as the rules of natural justice and fair hearing. Procedures in the tribunals, though flexible, are formal and adhere to the rule of law. Legal representation of parties is permitted in tribunals. The Constitution of the Federal Republic

[6] Ibid

[7] Orji Nnenna A: "The Role of Investments and Securities Tribunal (IST) in the Resolution of Capital Market Disputes in Nigeria" being a paper Delivered by Nnenna A. Orji (Hon. Chairman, IST) at a Seminar on "The Resolution of Capital Market Disputes in Nigeria" organized by Capital Market Solicitors Association on Wednesday 15th September 2010 at the Nigerian Institute of International Affairs (NIIA), Lagos.

of Nigeria[8] in section 36(1) and (3) contemplates the existence of tribunal and set certain parameters for their creation and operations.

> *36 (1)* *In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.*
>
> *...*
>
> *(3)* *The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in sub-section (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.*

The concept of a tribunal is not peculiar to Nigeria. The Financial Services Tribunal, established under Chapter IX of the Financial Services Act of the U.K exist in Britain; Securities Appellate Tribunal exist in India; Securities Industry Council established under the Securities Industry Act[9] of the Statutes of Singapore; Enforcement Committee established in South Africa by the Securities Services Act[10]of 2004; Market Misconduct Tribunal exist in Hong Kong;there is the Canada, Financial Services Tribunal; The Tax and Chancery of the Upper Tribunal in the UK.

Before 1999, the Securities and Exchange Commission, Nigerian Stock Exchange and the Chartered Institute of Stockbrokers, were inundated with complaints of abuses in the Nigerian capital market. As theses bodies were not courts, they were limited in their enforcement abilities. The IST came as an answer to the challenges.

[8]1999 (as amended)
[9] CAP 289
[10] No. 36 of 2004

The IST is a specialized judicial body, established under section 274 of the Investments and Securities Act (ISA) to interpret and adjudicate on all capital market and investments matters. The Tribunal is composed of ten persons to *wit*:

> *(a) A full time Chairman who shall be a legal practitioner of not less than fifteen years with cognate experience in capital market matters;*
> *(b) Four other full time members three of whom shall be legal; practitioners of not less than ten years experience and one person who shall be knowledgeable in capital market matters who shall devote themselves to issues relating to adjudication and shall not exercise any administrative functions;*
> *(c) Five other part time members who shall be persons of proven ability and expertise in corporate and capital market matters with cognate experience in capital market matters.*

The Tribunal is also a technical and specialized court. The nature of operation and transactions in the Capital Market is highly technical and this requires well trained hands, specialists in these respects. To meet these obligations, the Tribunals' various departments are manned by experts in both laws and market operations. The personnel manning the IST are no doubt experts in capital market activities with requisite knowledge and expertise for the purpose of exercising the jurisdiction conferred by the Act.The quorum for the sitting of the Tribunal is at least three members[11]and the chairman of the tribunal may also constitute a panel of three from its membership, as and when necessary for the purpose of exercising jurisdiction vested on the Tribunal by the Act[12]

[11] Section 276,ISA,2007
[12]Section 276(2), ISA, 2007.

On jurisdiction, section 284(1)[13]provides:

> *The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving:*
>
> *a) A decision or determination of the Commission in the operation and application of this Act, and in particular relating to any dispute:*
> *(i) Between capital market operators;*
> *(ii) Between capital market operators and their clients;*
> *(iii) Between an investor and a securities exchange or capital trade point or clearing and settlement agencies;*
> *(iv) Between capital market operators and self-regulatory organization.*
> *b) The Commission and Self-regulatory organization*
> *c) A capital market operator and the Commission*
> *d) An Investor and the Commission*
> *e) An Issuer of securities and the Commission; and*
> *f) Disputes arising from the administration, management and operation of collective investment schemes*

Section 284(2)[14] provides that the Tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly. In the exercise of its jurisdiction, the Tribunal shall have the power to interpret any law, rules and regulations as may be applicable. Section 294 of the ISA,[15]reemphasizes the exclusive jurisdiction of the IST when it provides that "The Tribunal shall have exclusive jurisdiction on matters specified in this Act".

The jurisdiction of the tribunal is further expanded by the enactment of the Pensions Reform Act 2004. According to this Act, the Tribunal is empowered by virtue of Section 93 to adjudicate over actions challenging the decisions of the National Pension Commission. The disputes that can arise may be between Pensions Fund Administrators(PFA) and their clients; the

[13]ISA 2007.
[14] Ibid
[15] Ibid

beneficiaries of the pension funds; Pension Fund Custodians and PFA and their clients or any of these parties against the National Pension Commission.

Any person aggrieved by the action or decision of the SEC may institute an action at the Tribunal or appeal against such decision within the period stipulated under this Act, provided 14 days' notice is given to the Commission. The ISA empowers the IST to give judicial interpretation of any law, enactment or regulations to which the Act applies. Specifically, section 261 ISA provides:

> *Notwithstanding the provision of this Act the relevant provisions of all existing enactments including the following*[16]*:*
>
> *a. The Trustees Investment Act;*
> *b. The Borrowing by Public Bodies Act;*
> *c. The Companies and Allied Matter Act, 1990;*
> *d. The Insurance Act, 1997;*
> *e. The Central Bank of Nigeria Act;*
> *f. The Nigerian Social Insurance Trust Fund Act;*
> *g. The Banks and other Financial Institution Act;*
> *h. The Nigerian Investment Promotion Commission Act;*
> *i. The Foreign Exchange (Monitoring and Miscellaneous Provision) Act, 1995;*
> *j. The Chattered Institute of Stockbrokers Act;*
>
> *shall be read with such modification as to bring them into conformity with the provisions of this Act. In the case of inconsistency, the ISA shall prevail over any such enactment.*

The above provisions therefore veston the Tribunal wide judicial powers to interpret enactments or regulations that relate or are incidental to transactions and disputes in the capital market. In interpreting these enactments or regulations, the Tribunal necessarily considers the

[16]Sections 284(2) and 312, ISA, 2007.

intention of the legislation, the reasonable construction of the enactment or regulation; and the dynamics of the capital market *vis-a-vis* the economy.

In the exercise of its adjudicatory powers, the Tribunal would consider questions of law and facts and assess the reasonableness of the claim or allegation before it. The overriding objective of the Tribunal assures that it will adjudicate on matters with a great deal of care taking into cognizance the technical and specialized nature as well as the dynamics of the capital market.The Act empowers the Tribunal to give its judgment in writing and may impose sanctions such as fines, suspensions, withdrawal of licensees, specific performance, restitution as it may deem appropriate in each case. This is to ensure forceful observance of the provisions of the Act[17]. From the provision of section 293(1) and (3) the IST is empowered to make such orders as tracing, declaration and or verification of accounts, security deposits, attachment of property to achieve its overriding objective

Section 293(3)[18] further provides that the award of 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 Registrar of the Federal High Court by the party seeking to enforce the award or judgment. Thus, by virtue of this provision, the Tribunal is seized of all the machinery of enforcement available to the Federal High Court, thus ensuring compliance with its judgment and/or award.[19]From the foregoing, the IST has no power to adjudicate on criminal matters. Consequently, such matters or evidence of possible criminality in matters before the Tribunal are referred to the appropriate criminal prosecuting authorities such as the office of the Attorney-General of the Federation and Attorney-General of the State.

[17] Section 290(3) of ISA, 2007
[18] ibid
[19] Section 293(3) Ibid

The Tribunal is mandated by the Act, which provides that "The tribunal shall in the exercise of its power conduct its proceedings in such manners as to avoid undue delays[20]. The Act confers on the Tribunal, the powers to make rules regulating its procedures[21]. Consequently, it has made the Investments and Securities Tribunal (Procedure) Rules, 2014.[22] These rules regulate practice and procedures before the Tribunal. The rules are quite liberal and devoid of technicalities and complexities usually associated with rules of proceedings of the conventional courts. The overriding objective of the rules is to enable the tribunal deal with a matter before it fairly, justly and timeously.

The Tribunal has an Alternative Dispute Resolution (ADR) Centre as another window for dispute resolution. The Centre is designed to provide session for various Alternative Dispute Resolution Options such as mediation, Conciliation or Early Neutral Evaluation. The veritable ADR processes are negotiation, mediation, arbitration and other hybrid processes.[23] The ADRCentre, was established to enable quick access to justice. Pursuant to Order 1 Rule 4 of Investments and Securities Tribunal (Procedure) Rules,[24] the IST issued directive for the effective management and resolution of dispute brought before it. By Rule 4, the IST is empowered to promote reconciliation among parties to an action and encourage and facilitate the amicable settlement of disputes which the Tribunal does through the application of ADR principles, the objective is to assist disputing parties using a structured process to dedicate more time and attention to the creation of a voluntary, functional and durable agreement tailored to meet the needs of the particular parties. This ADR facility **s**aves time and money, ensures

[20]Rules 27(1)(2)(3) of IST Procedure Rules, 2003
[21] Section 290(1) of ISA 2007
[22] This superseded the Investments and Securities Tribunal Rules, 2003.
[23] Nelson O,.(2010) Mediation- A Veritable ADR process", a paper presented at the ADR and Management Training Course by the Nigerian Institute of Management and NOCS Consults held at Lagos on 18th June, 2010
[24]IST Procedure Rules 2014

confidentiality, improves communication between parties, preserves relationship and reduces stress for capital market litigants.

The decision of the Tribunal is enforced as a Judgment of the Federal High Court. The IST is deemed to be a civil court. As a fast track court, it is required to conclude any proceedings before it within ninety days of commencement of the trial. Any appeal against its judgment lies directly to the Court of Appeal only on points of law. The reason for allowing appeals on points of law only is because it is presumed that the members as experts have resolved all facts relating to capital market issues at the trial stage. Thus, the tribunal is obviously a final court on issues of facts in capital market adjudication.[25] The Tribunal's main objective is timely and efficient resolution of investments and capital market disputes with fairness, flexibility and transparency.

The IST has recorded modest achievements since inception. To date it has recovered for investors, funds not less than N370 million. The tribunal has delivered some landmark cases[26] that have deepened the jurisprudence of the Nigerian capital market with effective reach on the subject of banking and pension. It currently has its own law report called the Nigerian Investments and securities Law Report (NISLR)[27].

The importance of the IST is acknowledged by stakeholders of the capital market. The greatest challenge to its existence and operation is with regard to its jurisdiction. The issue of jurisdiction in the capital market is now considered.

[25]Chukwunyere, N.S.(2005)"IST and Adjudication on Capital Market and Pension Disputes" *Fast-Track Justice,* The Quarterly Journal of the Investments and Securities tribunal, Nigeria, Q4, p.21.
[26]DVCF Oil & Gas PLC v. SEC IST/LA/APP/02/14; SEC v All Green (2012) 4 NISLR 25
[27] The Welcome Address by the Honourable Chairman, Investments and Securities Tribunal (IST) Dr.NgoziChianakwalam at the IST Stakeholders Workshop, 2015 Held at Oriental Hotel Lagos On 8/12/2015.

6.3 Jurisdiction of the Investments and Securities Tribunal

The word "jurisdiction" is very important in law generally and justice dispensation in particular. By jurisdiction, is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute or charter or commission under which the court is constituted and may be rescinded or restricted by similar means. If no restriction is imposed, the jurisdiction is said to be unlimited.

The limitation may be either as to kind and nature of the actions and the matters of which the particular court has cognizance or as to the area of which jurisdiction extends or it may partake of both these characteristics[28].Thus, jurisdiction is a radical and crucial question of competence for if the court has no jurisdiction to hear the case, the proceedings are and remain a nullity, however well conducted and brilliantly decided they might otherwise have been as defect in competence is not intrinsic to but rather extrinsic in the adjudication[29]. In *Nashtex Int'l Ltd. vs. Habib (Nig.) Bank Ltd,*[30] dealing with jurisdiction of the Federal High Court vis-à-vis State High Court for appointment or receiver/manager in enforcement of debenture, the Court restated the imperative of jurisdiction as follows: "the issue of jurisdiction or competence of the court goes to the root of an action to sustain or nullify it. Therefore, where a Court embarks on a trial when it has no jurisdiction to do so, the entire proceedings and decision arrived at and given are nullify".

[28]National Bank of Nigeria Ltd and Anor.vShoyoye and Anor.(1977) 5 S.C. 181; A.G., Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552.
[29] See: Madukolu v. Nkemdilim (2001) 46 WRN 1; (1962) 1 All NLR (Pt. 4) 587 at 595.
[30] [2007] 17 NWLR [PT. 1063] CA308@ 332, paraD.F

What is considered in determining the jurisdiction or competence of Court is the claim of the plaintiff and the parties thereto[31].The endorsement on the writ of summons and statement of claims in an action begun by writ of summons; in an action commenced by originating summons, the relief sought and affidavit provide the means of determining jurisdiction.In other words, the jurisdiction of a trial court is determined by the subject matter of the action, the parties and the claim before the court.[32] However, where a court's jurisdiction is challenged, the court still has jurisdiction to enquire into the question whether it has jurisdiction to hear the case.[33] Thus, when the court's jurisdiction is challenged, if the court is not satisfied with the objection, it should take arguments from both Counsel and deliver a Ruling expressing its decision one way or the other.

Jurisdiction of courts and tribunal on corporate matters has been a subject of controversy between the High Court, Federal High Court and the IST for quite a while in Nigeria. A brief explanation of their jurisdictions is undertaken to put the matter in perspective.

6.4 The High Court

Every state in the Federal Republic of Nigeria and Abuja, has a High Court. The High Court is a creation of the Constitution[34] and the laws of the various states in Nigeria. For its jurisdiction, section 272 provides:

> *(1) Subject to the provisions of section 251 and other provisions of this constitution, the high court of a state shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal*

[31]Apostle Peter Ekweozor v. The Reg. Trustees of Saviour's Apostolic Church of Nigeria [2014]16 NWLR,(pt.1434) 433,462
[32]Nashtex International Ltd v .Habib Bank Nig. Ltd (2007) 17 NWLR, (pt. 1063) 308,332.
[33] Barclays bank of Nigeria Ltd. v. Central bank of Nigeria (1976) 6 S.C 175; (1976) 1 all NLR 409 at 421; Okafor v. A.G. Anambra State (1991) 6 NWLR (Pt. 200) 659..
[34]Sections 6(5) and 270, Constitution of Federal Republic of Nigeria, 1999.

proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person

(2) The reference to civil or criminal proceeding in this section include a reference to the proceedings which originate in the high court of a state and those which are brought before the high court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.

Acting under this wide jurisdiction, the High Court has adjudicated over corporate matters that are in their nature capital market disputes. In *STB vs.Olusola*[35], the Court of Appeal sitting in Ilorin in a majority of two to one, endorsed the jurisdiction of a High Court on a matter relating to default of a company to deliver share certificate to an investor. Also in *Securities and Exchange Commission vs.MuftauAjayi*[36] the High Court entertained a capital market dispute involving the extent of the powers of the Securities and Exchange Commission in regulating the capital market. The court of Appeal did not question the exercise of jurisdiction by the High Court in the case.

6.5 The Federal High Court

The Federal High Court, is a creation of the Constitution[37] and an Act of the National Assembly[38]. According to section 251 of the Constitution

(1) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

...

(e) arising from the operations of the Companies and Allied matters Act or any other enactment replacing that Act

[35][2008]1NWLR, pt. 1069,561.
[36] Supra
[37]Sections 6(5) and 249.
[38] Federal High Court Act, 2004

or regulating the operation of companies incorporated under the Companies and Allied Matters Act;

(p) the administration or the management and control of the Federal Government or any of its agencies;

(q) subject to the provision of this constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(r) any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies;

Under this enabling law the Federal High Court has adjudicated over some capital market dispute. In *Securities and Exchange Commission vs.Kasunmu SAN & 1 ORS*[39]The Federal High Court held that its jurisdiction was not excluded by the provisions of the Investment and Securities Act. The Court proceeded to adjudicated on the powers of the Securities and Exchange Commission to regulate capital market operators. The Court of Appeal upheld this decision. In *Nospecto Oil & Gas Ltd vs.Oloruninbe*[40], the Court of Appeal held that by virtue of the provision of section 251(1)(p)(q) and (r) only the Federal High Court had jurisdiction where a party to the matter is a Federal Government agency notwithstanding the provision of the Investments and Securities Act.

The state of case law on this matter is a thing of serious concern. There is no gainsaying the fact that there is conflict over the subject of capital market disputes adjudication by the Investments and Securities Tribunal, High Court and the Federal High Court[41]. While the Investments and Securities Tribunal asserts jurisdiction over capital market disputes to the exclusion of all other court in Nigeria, the Federal High Court lays claim to exclusive jurisdiction

[39] [2009]10 NWLR(pt.1150) 509

[40] [2012] 10 NWLR,pt. 1307,CA 115

[41]Yekini, A.(2015) "The Exclusive Jurisdiction of the Investments and Securities Tribunal (IST): A Constitutional Perspective" *The Gravitas Review of Business of Business & Property Law*,Vol. .6,No.2, p.47.

over the same subject. The High Court does not reach out for exclusive jurisdiction on the subject matter of capital market but claims concurrent jurisdiction on securities matter. Regrettably, these exercises of jurisdiction have statutory backings as the laws setting up the bodies amply vest jurisdiction on them.

The issue has been further exacerbated by the recent decision in the case of *Nospecto Oil and Gas Ltd vs. Oloruninbe*[42].Although the Court of Appeal confirmed the strategic importance of the Investments and Securities Tribunal, on the existing legal framework, the court with exclusive jurisdiction in matters involving federal government agency where declaratory and injunctive reliefs are sought is the Federal High Court. The implication of this decision is that in any matter in which the Securities and Exchange Commission is a party, neither IST nor the High court can adjudicate over such matter. Bulk of the cases in the capital market is instituted to challenge the decisions of SEC in regulating the market; thus SEC is invariably a party to almost all the cases. The effect of this case is to render the IST redundant. The unspoken loss to investors and the economy by this decision is immense. While the challenge to the Jurisdiction of the IST was successful, the underlying *ponzi* scheme which gave rise to SEC's intervention and adjudication by the IST laid unattended with investors fund gone down the drain.

This conflict in jurisdiction, if allowed to continue, will promote forum shopping by litigants. With the discordant tunes, flowing from the decision of the Courts, this may embarrass the judiciary. The quality of certainty of prescriptive norm which law professes, is also put on trial as this conflict rages on. Another twist was added in November, 2015, when the Secretary to the Federal Government disbanded the membership of the IST in the course of disbanding the

[42](2012) op. cit p. 222.

boards of all Federal government agencies[43]. This is contrary to the clear provisions of the Investments and Securities Act.

The need for legislative reform in this area, cannot be overemphasized. Considering the integrated nature of financial products and global market, stakeholders of the Nigerian economy are unanimous on the strategic importance of the IST in the Nigerian economy. The report[44] of the Financial System Strategy recommended a more centralised role for the IST, as a one stop shop of financial dispute resolution. The need to properly situate the IST in the Nigerian legal system cannot be overemphasized. The need for comprehensive law reform on this subject, is worthy of advocacy. A piece meal approach will exacerbate the conflict rather than solve it.

The Investments and Securities Tribunal has contributed in no small measure to the development of a new regime of capital market jurisprudence. This has been particularly facilitated via the periodic reports published by the Tribunal embodying its judgments and decisions. The composition of the Tribunal's membership meets the required expertise necessary to meet the obvious challenges in this specialized field of jurisprudence. This is more apposite considering the inherent danger an ineffective dispute resolution mechanism could engender in the capital market. The Tribunal has been able to successfully and substantially address the need for expeditious resolution of disputes with some measure of predictability considering the time value of money. There is no doubt that investments are bolstered when there is confidence in the judicial system. Its decisions have constantly served to enforce compliance with the rules and practice of the market, engender transparency and market integrity thereby fostering investors' confidence.

[43] Federal Government Official Letter dated 5/11/2015 reference IST/OHC/320/001
[44]Financial System Strategy 2020, FSS 2020 International Conference Legal Framework. 2015

IST as an enforcement tool is the best structure to ensure that capital market participant adhere to the enactments and regulations relating and incidental to capital market operations; and that they also receive fair and even-handed treatment in the implementation of the enactments and regulations relating and incidental thereto.

CHAPTER SEVEN

SUMMARY AND CONCLUSION

7.1. Summary

The capital market constitutes the life blood of a nation's wellbeing. Inevitably, in any market, institution, relationship or transaction, disputes arise between parties. In the Nigeria capital market, disputes also arise, which must be resolved in the interest of the sustainability and stability of such transactions and of the market.

In view of the vital role of the capital market and the disastrous consequences of an unregulated market, governments all over the world cannot risk allowing this market, operates without some form of control. It is therefore necessary to regulate the market including provision of a framework for dispute resolution, to ensure that the relevant institutions in the industry are properly established and monitored and that the operators in the market are fit and proper persons to operate in the market. There is also the need to provide rules and regulations that would ensure fairness, efficiency, orderliness, transparency, stability and confidence in the capital market.

The overall objective of the legal framework for the capital market or securities regulation is the protection of the general investing public and the national economy. The corporate collapses experienced in some countries proved that the promoters, officers, directors of companies and market professionals were not faithful in discharging their fiduciary responsibilities to investors. The need to protect stakeholders against this can never be overemphasized.

There has always been the need for a well-defined and properly articulated legal framework for dispute resolution in the Nigeria capital market. The recognition of the need for an appropriate formal structure or procedure for resolution of violations and malpractices in Nigeria's capital market prompted the setting up of different mechanisms for dispute resolution under the various Nigerian legislations bearing on the capital market. Institutions were established over time to regulate the market. These special institutions are complemented by the regular courts in the administration of justice system.

In the Nigerian capital market, the existing framework is faced with its own peculiar challenges. There is still no consensus on the fundamental issue of the proper forum for the ventilation of capital market disputes. The Investments and Securities Tribunal has been mired in constitutional controversy. The appellate courts have not been unanimous on its jurisdiction. The exclusive jurisdiction of the Federal High Court on matters arising from the Companies and Allied Matters Act, 2004 has also been called to question. The disputes related to huge investible funds whose faiths were tied to these disputes. This uncertainty is certainly not a good sign for domestic and foreign investors in the Nigerian economy. The sum total of these problems is that the dispute resolution system in the Nigerian capital market is in dire need of reforms to meet the expectation of stakeholders and global financial system.

The Securities and Exchange Commission is the government agency charged with monitoring and supervising the Nigerian capital market. It is legal body that oversees and develops the industry. It occupies a very unique place in securities and capital market regulation. It is at the top of institutional regulation of the capital market. The regulatory tools of registration, surveillance, investigation, enforcement and rule making are means by which the SEC has maintained discipline in the capital market. The ISA permits the SEC to constitute

committees and under this power the SEC has over the years constituted the Administrative proceedings committee, a quasi judicial body to resolve disputes in the capital market. The activities of the APC has assisted in the area of dispute resolution in the market but has left in its trail wave of controversies.

Most financial systems display a combination of the various regulatory choices available in their countries. Both the private public sectors have specific roles to play in the effective governance of the financial sector. Consequently regulatory framework permit private sector participation; thus regulation may be statutory or non statutory. The non statutory regulation model is offered by self regulatoryorganisations. Prominent in this respect are the stock exchanges, the Central Securities Clearing system and the Chartered Institute of Stockbrokers. These self regulatory bodies provide mechanisms for dispute resolution in the capital market. A self regulatory organization (SRO) is an organization of operators that regulates the activities of its members. They include registered securities exchange, capital trade point, an association of securities dealers, clearing house capital market trade association or any other self-regulatory body approved as such by the Commission.

Disputes are inherent in every human interaction. In the Nigeria capital market, disputes often arise, which must be resolved speedily, fairly and efficiently in the interest of the sustainability and stability of the market. Notwithstanding the various processes for dispute resolution in the Nigerian capital market, the jurisdiction to adjudicate over capital market disputes has been a source of contention among stakeholders of the Nigerian capital market. Not only do scholars dispute on the vexing issue of which court has jurisdiction to preside over capital market disputes, the courts have been drawn into the controversy. The effect of this on investors' confidence cannot be overemphasized.

Investors' confidence can be buoyed by an assurance of a fair and efficient dispute resolution system that is not hamstrung with teething challenges of jurisdictional competence.

7.2. Findings

The legal and institutional framework for the resolution of disputes in the capital market fairly accords with international best practices as contemplated by the international organisation of securities commission (IOSCO). Consequently regulators and stakeholders in Nigeria must develop the political will to ensure the rule of law by a faithful implementation of the current legal framework. Considering the population size of Nigeria, the structure of the Nigerian capital market is fairly robust. There is a disconnect between the contributions from the capital market and the size of the market. The primary market and the secondary market have potentials to contribute more to the Nigerian economy than they currently are doing. Furthermore these markets have a fairly adequate dispute handling structure enough to sustain confidence in the market. This study found:

i. that the controversies surrounding the constitutional place and jurisdiction of the Investments and Securities Tribunal have led to conflicting decisions by superior courts in Nigeria. These do not portend encouraging signs for domestic and foreign investors. In the event of disagreement, the locus to ventilate grouses is not now firmly and squarely settled.

ii. that stripping the Investments and Securities Tribunal of the jurisdiction in criminal matters has weakened its role as a fast-track dispute resolution mechanism in Nigeria. The facts giving rise to disputes in the market are often intertwined, such that separating the fact that give rise to civil disputes from those that give rise to criminal liabilities can be quite challenging. It will surely serve

the interest of justice if the issues are trashed out in one forum instead of separating them to different fora and necessary moving material and evidence in the process, some of which may be compromised or even lost.

iii. the Administrative Proceedings Committee of the SEC, no doubt, has contributed immensely to growth of the capital market and building investors' confidence. The absence of a formal structure for the APC or retaining it as an ad hoc committee, convened at the pleasure of SEC, has introduced so much uncertainty into its existence. This has also laid it bare to accusations of bias and breach of the rule of natural justice.

7.3. Recommendations

Dispute resolution in Nigeria, has come a long way especially in the financial system. Nigeria's *grund norm* has ample provisions on the mechanisms for settling grievances. Inevitably to make the Nigerian capital market more efficient in resource mobilization and allocation, a viable dispute resolution system is a *sine qua non*. The Nigeria's fundamental law must lead the way for reform in this sector. Section 6(5) of the Constitution of the Federal Republic of Nigeria, 1999 sets out superior courts of record in Nigeria. As the subsection presently stand, the Investments and Securities Tribunal is not one of the courts neither is it contemplated. To properly situate the Investments and Securities Tribunal and address the controversies surrounding its status and jurisdiction, it is recommended that:

i. section 6 (5) of the Constitution of the Federal Republic of Nigeria, 1999 be amended to include the IST as a superior court of record. This will streamline the approach of the Nigerian courts and assure investors that their grievances would receive fair, firm and timeous hearing.

ii. the main law on the Nigerian capital market must be reformed to enthrone a virile system that would meet the expectations of all. Section 284 and 294 of the Investments and Securities Act, require amendment. These sections describe the jurisdiction of the Investments and Securities Tribunal, in absolute terms. The sections only confer civil jurisdiction on the Tribunal. In these sections, civil and criminal jurisdiction of the Investments and Securities Tribunal, should be clearly stated and vested on the Tribunal. This will relieve the regular court a great deal and help to decongest the courts. Furthermore, the officers of the SEC should be allowed to prosecute criminal matters before the IST or the regular courts. Over the years the SEC has developed competence to effectively discharge this. Reference to the Attorney-General of the Federation or the state may cause tardiness and unwanted delays.

iii. section 310 of the ISA should also be amended to clearly establish the Administrative proceedings Committee. An important body as the Administrative Proceedings Committee should be clearly established in the Investments and Securities Act and not to be merely contemplated in the Act as a committee of SEC and surreptitiously established as quasi-judicial body in the Rules and Regulations made pursuant to the ISA. This will obviate the challenges of superior courts of record in Nigeria, properly situating the APC

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APPENDIX A

NIGERIAN STOCK EXCHANGE RULES AND REGULATIONS GUIDING DEALING MEMBERS

(a) Application

These Rules and Regulations shall be binding upon Dealing Members in their relationship with The Exchange, as between themselves as Dealing Members, and Regulating the business which they conduct as Dealing Members of The Exchange with the general public.

(b) Duty to Observe and Report Breaches

It is the duty of every Dealing Members of The Exchange to observe these Rules and Regulations and to report forthwith any breach of the Articles or Rules and Regulations by any other Dealing Member in writing to the National Council of The Exchange, or through the Breach Council to the National Council of The Exchange. Any Dealing Member, being aware of any breach on the part of another Dealing Member and falling to report same to Council as aforesaid, shall himself/itself be guilty of a breach of these Rules and Regulations.

(c) Qualifications for Legal Actions/Redress[1]

i) No Dealing Member shall institute legal proceedings to enforce a claim against another Dealing Member or a Member arising out of any stockbroking transaction without first exhausting all procedures set out for dispute resolution in accordance with these Rules and Regulation.

[1] Article 11, Ibid

ii) No Dealing Member shall institute legal proceedings against The Exchange without first exhausting all procedures set out for dispute in accordance with these Rules and Regulations.

(d) Powers of Council in the Event of Default[2]

In all cases of default, the council shall meet and appoint a Committee which shall have the following powers:

i) To engage technical and professional assistance;

ii) To call from the defaulter its original Books of Account relating to, and statement of sums owing to, and by him in connection with stocking transactions;

iii) To call meeting of Members who are creditors or defaulters;

iv) To summon the defaulter to appear before such meeting of the committee and to afford the defaulter full right to defend himself before the committee throughout the investigation;

v) To make detailed examinations of all relevant accounts;

vi) To report to the council any entry, transaction or matter which have been or appear to be irregular;

vii) To recommend to council the appointment of an interim management to manage and deal with the stockbroking business of the defaulter and the assets subject to the approval of the Commission

viii) Any other matter incidental to the investigation.

[2] Article 21, Ibid

(e) Exposing Defaulters[3]

The Committee set up under the article 21 shall cause a notice to be sent all dealing members and the Commission advising them of the name of the defaulting dealing members and requiring all those having claims against such defaulters to file such claims with the Committee by a date to be stated in the notice.

(f) Appearance before Council[4]

Dealing members and their accredited representatives and clerks shall appear before the Committee when called upon to do so and shall give such information and produce such Books, accounts and documents as may be in their possession or under their control and relevant to the matter under investigation.

(g) Suspension of Rights and Privileges[5]

Any dealing member that is under suspension shall have its rights and privileges of membership suspended.

(h) Disputed Title[6]

When an official certificate of registration of such securities has been issued, the Council will not, unless bad faith is alleged against the seller, take cognizance of any subsequent dispute as to title, until the legal issue has been decided, reasonable expenses of which legal proceedings shall be borne as the Council may direct.

(i) Powers of Council to Discipline Members[7]

The Council shall have powers to take disciplinary action against its members for any violation of its Rules.

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[3] Article 23
[4] Article 24
[5] Article 30 Op.Cit.
[6] Article 37, Ibid
[7] Article 43, Ibid

(j) Power to Hear and Adjudicate[8]

i. The Council may convene a meeting at any time to hear and adjudicate upon disciplinary matters brought before it. If at such meeting it is satisfied that a prime facie case has been established against a Dealing Member, Council shall request the Dealing Member or any of its Accredited Representatives or any of its employees to attend a meeting and explain its or his conduct in regard to the matter.

ii. Notice to appear before the Council shall be deemed to be effected by The Exchange if:

a. Such notice is served on the person to whom it is addressed; failing which

b. Such notice is pasted at the last known address of the Dealing Member failing which

c. Such notice is published in two National daily newspapers.

(k) Imposition of Sanctions[9]

Council may exercise any of the following disciplinary powers against a Member:

i) Fine;

ii) Public censure;

iii) Suspension on such terms and for such period as Council may think fit;

iv) Call upon a member, by written notice, to resign. Failing the receipt of notice of such resignation from the Member within seven clear days of the date of notice, exercise the power of expulsion;

v) Revocation of registration of its Authorized clerks or Accredited Representatives;

vi) Expulsion.

[8] Article 44, Ibid
[9] Article 45

(l) Delegation of Powers to Committee of Council[10]

Council may delegate any of its disciplinary powers to a committee to known as the Disciplinary Committee of Council. Provided that the Chief Executive shall be entitled to exercise the power referred to in Article 45c in cases where a serious misconduct or breach of any of these Rules has been committed by a Dealing Member and shall within the next 24hrs immediately refer such cases to the Disciplinary Committee of Council.

(m) Right of Redress by the Exchange[11]

The disciplinary powers above may be exercised separately or concurrently and in no circumstance shall the exercise of such powers prejudice any right that may be vested in The Exchange to seek redress against a Dealing Member.

(n) Council Discretion to Sanction[12]

Council may exercise any of its disciplinary powers against a Dealing Member accredited representatives or any of its employees if, at such meeting or any adjournment thereof, it is of the opinion that considering the explanation, if any tendered by the member, that the case against the member is substantiated. Council shall also be entitled to exercise any of its disciplinary powers against the Dealing Member concerned should it or its accredited representatives or any of its employees fail to attend the hearing called by council.

(o) Notification of Disciplinary Action[13]

Council shall notify the commission and any other relevant agency whenever it takes any disciplinary action against Dealing or its Accredited Representatives.

[10]Article 46, Op.Cit.
[11] Article 47, Ibid
[12] Article 48, Ibid
[13] Article 49, Ibid

(p) Record of Proceedings[14]

Any resolution shall specify full details of the disciplinary action taken against a Member and when recorded in the Minute Book of the Council or the Disciplinary Committee and signed by the Chairman of the meeting deciding on the disciplinary action at a following meeting, the record of proceedings shall be conclusive evidence thereof.

(q) Suspensions of Dealing Members[15]

The Council shall have power to suspend any Dealing Member with or without conditions as it deems appropriate, where the conduct of the Dealing Member is under investigation; provided that the suspension shall not exceed a period of thirty (30) days or such further period as the Council shall deem appropriate based upon the report of the investigations.

(r) Expulsion of Dealing Member[16]

At any meeting called to consider any question of expulsion, the voting shall be by a show of hands unless a vote by ballot is demanded by no less than three members of council in which event the voting shall be by ballot.

(s) **Publication of Disciplinary Action**[17]

Council shall have power to publish in the local newspapers or circular to Dealing Members and other Members of The Exchange, the name of any Member expelled or suspended by Exchange and also to publish such expulsion or suspension in any other way it may deem fit.

[14] Article 50, Ibid
[15] Article 51, Ibid
[16] Article 52, Ibid
[17] Article 53, Ibid

(t) Cessation of Membership[18]

No Dealing Member who has been expelled from The Exchange shall be eligible for re-admission except where such expulsion is reversed by the Commission and/or the Investments and Securities Tribunal (IST).

(u) Representation before Council[19]

No Dealing Member shall have the right to be represented at any meeting of Council held for disciplinary purpose(s) by a solicitor or counsel but he or it may if he or it so desires solicit the assistance of another Dealing Member to represent him or it or to make submission on his or its behalf.

(v) **Appeal to Council[20]**

Where disciplinary measures are taken against a Dealing Member by the Disciplinary Committee under Article 46:

i) The Dealing Member shall be entitled as of right to appeal to the Council within Seven days of being notified of the Disciplinary Committee decision;

ii) Council shall deal with and decide on the appeal in the same manner as if it were considering exercise of its disciplinary powers afresh;

iii) No right of action shall ensure to a Dealing Member (whether against the Chairman of the Disciplinary Committee or the Chief Executive) and the Dealing Member shall not institute any legal action in respect of any loss that the Dealing Member ay have suffered (including any loss of profit) by reason of a suspension or any damage to reputation by reason of the fact that a Dealing Members appeal is upheld by the Council in whole or in part.

[18] Article 54, Ibid
[19] Article 55, Ibid
[20] Article 56

(w) Effects of Suspension[21]

Where a Dealing Member is suspended for any reason whatever:

i) All monies due to The Exchange, including amounts for the replenishment of the Investor Protection Fund, Trade Guarantee Fund and any fees prescribed under these Rules shall nevertheless remain due and payable by the Dealing Member as if he or it had not been suspended;

ii) The Dealing Members right to a seat shall also be suspended and it shall not be permitted to trade either directly or indirectly during such suspension except as approved by The Exchange for the purpose of making restitution for an unauthorized sales.

iii) The suspension shall not operate so as to avoid or affect the validity or enforceability of any agreement, transaction or arrangement in relation to the Dealing Members transactions prior to suspension;

iv) The Dealing Member shall be under a duty to instruct and appoint another Dealing Member to carry out any instructions already received by it on behalf of its clients prior to suspension and shall immediately notify the Exchange in writing of such appointment;

v) The Dealing Member shall do everything possible to ensure that its innocent clients do not suffer any loss or embarrassment as a result of the suspension.

(x) Termination of Trading Right[22]

Where a Dealing Member is expelled from The Exchange it shall forthwith lose all trading rights on The Exchange.

[21] Article 57, Ibid
[22] Article 58, Ibid

(y) Specific Powers of Council[23]

The Council and (subject to Article 46 hereof) the Committee may exercise their disciplinary powers against a Dealing Member in such manner as prescribed by these Rules and Regulation:

i) Is or has been in breach of these Rules or any Regulations made here under disobeys or challenges any lawful exercise of any power pursuant or incidental thereto; or has shielded or assisted or omitted to report or has dealt with any Dealing Member with the knowledge that such Dealing Member has acted contrary to these Rules;

ii) Is or has been in breach of the Articles;

iii) Is or has been in breach of clearing & settlement Rules;

iv) Is or has been in breach of any of the terms and condition of its licence as council shall from time to time determine;

v) Fails to submit any periodic reporting statements or annual audited accounts required by these Rules and Regulations within the time prescribed for submission;

vi) Appears to have been admitted under any misrepresentation or by the suppression of any information which may be required of him or it or his or its proposer or seconder and which in the opinion of the Council is material;

vii) Has been charged with and convicted of a criminal offence necessarily involving a finding of fraud or dishonesty;

viii) Has failed or is unable to carry out any legal obligation relating to transaction in securities;

ix) Engages in any conducts which is likely to be injurious to the integrity of The Exchange or prejudicial to the objectives of The Exchange;

[23] Article 59, Ibid

x) Deals with any person, body, firm, corporation or company who or which may have been announced or declared by The Exchange or otherwise notified to the Dealing Members as one who or which has defaulted in carrying out its engagements or obligations relating to securities;

xi) Is or has been guilty of any misconduct as defined in the investments and securities Act, 1999, Rules and Regulations and Code of Conduct of the Commission and any other relevant legislation;

xii) Fails to report a transaction or knowingly makes or reports a false or fictitious transaction;

xiii) Makes a material misstatement to council, any Committee, the Chief Executive or other employees of The Exchange;

xiv) Knowingly disseminates false, misleading or inaccurate reports concerning market information or condition that affects or tend to affect the price of any issue of securities;

xv) Trades or deals after becoming insolvent;

xvi) Refuses to appear before the Council, any Committee or the Chief Executive of The Exchange when being called upon, provided he or it has been given notice;

xvii) Refuses to answer fully all questions or refuses to produce all books and records at any disciplinary hearing or investigation when required to do so or testifies falsely;

xviii) Refuses to make available all information, books and records as may be required by authorized employees of The Exchange in the course of any spot check provided by these Rules and Regulations;

xix) Except as may be otherwise provided by any law in force in Nigeria, makes use of or reveals any confidential information obtained by reason of participating in any

investigative proceedings or hearing or revealed to him confidentially by council, any Committee, the Chief Executive or officer of The Exchange;

xx) Induces or attempts to induce another person to buy or sell securities:

a. By dishonestly concealing any materials fact;

b. By making or publishing or causing to be made or published whether recklessly, dishonestly or otherwise, any statement, promise or forecast that is misleading, false or deceptive;

c. By recording or storing in or by means of any mechanical, electronic or other device, information that he or it knows to be false or misleading in any material report.

xxi) Accepts an order from a client for the sale or purchase of securities without causing such order to be executed on the floors of The Exchange;

xxii) Sells without clients mandate or authorization;

xxiii) Defaults in payment of his or its subscription or any fine imposed on him or it;

xxiv) Fails to pay any monies including the subscription due to The Exchange after the expiry of notice in writing calling up on him or it to pay; or

xxv) Shield or assists, or omits to report, or deals with, any Member who it knows has acted contrary to these Rules;

xxvi) Becomes bankrupt as defined in the investments and securities Act, 1999 or enters into other relevant statutory arrangements with his creditors for the payment of debts or is otherwise insolvent;

xxvii) Breaches any of the conditions for the grant of its Dealing Membership.

(z) **Effect of Legal Action by Members against the Exchange**[24]

A Member that institutes an action against The Exchange shall have its or his membership suspended until the determination of the matter.

4.3.2 Fees and Charges

(a) Powers to Impose Fees and Charges[25]

Council shall have the power to impose charges in relation to such matters or things and in such amount as council may from time to time deem fit in addition to any fees and charges specifically required to be paid by or imposed on Dealing Members and to require the payment of such fees and charges by Dealing Members or other person and to prescribe the time and method of payment thereof.

(b) Notification of Fees and Charges[26]

The amount of any fees and charges which the Council may impose shall be notified to the Dealing Members by means of circulars.

(c) Review of Fees and Charges[27]

The amount of any fees and charges imposed by the council pursuant to these Rules may from time to time be revised by the council as it shall in its absolute discretion deem fit.

(d) Mode of Payment[28]

Council shall also prescribe the time and method of payment of any fees and charges imposed pursuant to these Rules by means of circulars to Dealing Members and they shall comply with the requirements, instructions or directives contained in such circulars, including the payment of interest, penalty or fine for late payment of such fees and charges.

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[24] Article 60, Op.Cit.
[25] Article 61, Ibid
[26] Article 62, Ibid
[27] Article 63, Ibid
[28] Article 64, Ibid

(e) Transaction Fees[29]

A Transaction Fee as prescribed by Council and approved by the Commission shall be payable to the Exchange on every sale of securities listed on The Exchange carried out by a Dealing Member whether as principal or agent on the trading floor, and whether the transaction is arranged or concluded in Nigeria or elsewhere.

4.3.3 Dispute Resolution Mechanisms

(a) Power of Adjudication by Council[30]

Council shall have power to adjudicate on disputes between Members inter se, Members and clients, and Members and Management.

(b) Zero-Tolerance Policy[31]

The Exchange shall operate a zero-tolerance policy on proven professional misconduct.

(c) Adjustments on Dealing Members Records[32]

Any adjustments to a Dealing Members trading records kept by the Exchange can only be made after a dispute has been reported and a decision made by the Exchange. Any such decision shall be final and conclusive and binding on the parties involved.

(d) Admissibility of Computer Records[33]

The Computer records of transactions maintained by The Exchange are admissible evidence of transactions of Dealing Members.

[29] Article 65, Ibid
[30] Article 125
[31] Article 126
[32] Article 127
[33] Article 128

(e) Professional Misconduct[34]

Where a prime facie case of professional misconduct has been established against a Dealing Member, such a member shall be immediately suspended.

(f) Investigation Panel[35]

The Exchange shall constitute an investigation panel and appoint officers or employees to make investigations against Dealing Members in respect of a breach of any provisions of these Rules and Regulations and any other relevant legislation.

(g) Production of Relevant Documents[36]

A Dealing Member shall make available to The Exchange all relevant documents and information required for the investigation.

(h) Obligation to Appeal before an Investigation Panel[37]

The Dealing Member and any of its employees shall appear before the investigation panel when called upon to do so and shall give such information and produce such books, accounts and documents as may be in their possession or under their control and relevant to the matter under investigation.

(i) Recommendation to the Disciplinary Committee[38]

Where in the opinion of the investigation panel, a Dealing Member is found to have breached the Rules and Regulations;

A recommendation shall be made to the Disciplinary Committee of Council for appropriate sanctions.

[34] Article 129
[35] Article 130
[36] Article 131
[37] Article 132
[38] Article 133, Ibid

(j) Right to Request for Investigation Report[39]

If any investigation is carried out and a written report is produced to the Council, the Dealing Member concerned shall have the right to request a copy of such report.

(k) Right to Appeal against Council Decision[40]

If dissatisfied with the decision of Council, a party to the dispute may seek leave of the Exchange to appeal to the Securities & Exchange Commission (SEC) and the party shall pay the fees to be prescribed by Council from time to time for copies of the record of proceedings.

(l) Notification[41]

Any dispute between Dealing Members arising from a breach of these Rules shall be immediately reported to The Exchange.

(m) Cost of Investigation[42]

Expenses incidental to or consequential upon an investigation ordered by Council shall be borne by the Dealing Member concerned.

(n) Exclusion of Claims against the Exchange[43]

In the events of council exercising its discretion in ordering an investigation, the Dealing Member concerned shall not be entitled to claim against The Exchange, Council, the officers and employees of The Exchange or any other authorized person for any loss or damage whatsoever.

4.3.4 Code of Conduct for Dealing Members

(a) Observance of Rules and Regulations[44]

Dealing Member shall:

[39] Article 134, Ibid
[40] Article 135, Ibid
[41] Article 136, Ibid
[42] Article 137, Ibid
[43] Article 138, Ibid
[44] Article 139, Ibid

i) Operate strictly within the provisions of the investments and Securities Act, 1999 and the Rules and Regulations made there under, the Rules and Regulations of The Nigerian Stock Exchange, the Central Securities Clearing system practices, conventions, usages and other related statutory regulations as may be applicable from time to time;

ii) Render regularly and promptly, quarterly Statements of Accounts and CSCS Statements to clients to give the true position of each Account;

iii) Not enter into any business relationship with a clients premised on a guaranteed return to the client;

iv) Prohibition Against Guarantees;

v) No Dealing Member shall guarantee, directly or indirectly, a customer against loss in any account or in any securities transaction executed by the Dealing Member for such customer, or previously agreed with the customer on a profit margin;

vi) Indemnify The Exchange against legal proceedings arising from Dealing Members professional misconduct;

vii) Not use the name of The Exchange or the privilege of membership of The Exchange in activities that have no bearing with the activities of The Exchange.

(b) Councils Decisions and Directives[45]

All Dealing Members shall abide by all decisions, rulings and directives of council and any other person or body of persons authorized by council in the lawful execution of its powers pursuant to the provisions of these Rules and Regulations.

[45] Article 140, Ibid

(c) General Conduct[46]

A Dealing Member shall not do or cause to be done any act, matter or thing, which would adversely affect the goodwill or public image of The Exchange or its Members.

(d) Acting in the Best Interest of Clients[47]

A Dealing Member shall at all times act and procure or ensure that its authorized clerks and employees act in the best interest of its clients.

(e) Prohibited Practices[48]

Members are prohibited from conducting the Following:

i) Opening of clients account without observing the know-Your-Client procedures.
ii) The unauthorized use of customer's funds or commingling the firms cash accounts with that of customers.
iii) Use or borrowing of a customer's physical accounts without a contract or his written authorization.
iv) Use of customers name without a contract or his written authorization.
v) Giving preference to any customers accounts over other customers including the assignment of more favourable transactions thereto without regard to the priority in which the executions were made.
vi) Establishing fictitious account to execute some transactions.
vii) Providing incomplete, inaccurate or misleading information to a customer.

[46] Article 141, Ibid
[47] Article 142, Ibid
[48] Article 143, Ibid

viii) Giving recommendations or information to customers leading to excessive transactions on a customer's account for personal interest or to obtain commissions.

ix) Disclosing customer's information or acting in a way that would harm the customer or any other party.

(f) **Specifications Requiring Prior Consent of the Exchange**[49]

A dealing member shall not be allowed to do any of the following without the consent of The Exchange:

i) Establish or maintain any branch office;

ii) Allow or agree to any change in the control or shareholding structure of the Company;

iii) Employ Directors, Authorized clerks or other persons who have been indicated by The Exchange or the Commission.

iv) Publish, circulate or distribute by any means whatsoever any invitation or advertisement;

(g) Communication with the Public[50]

All advertisements, circulars and publications shall be:

i) Made in good faith and shall not confuse, mislead or offend;

ii) Free from inaccuracies and be capable of substantiation. Description, claims or comparisons which are misleading about expertise or service shall not be included;

iii) Drafted to clearly describe the Dealing Member with the words Member of The Nigeria Stock Exchange;

iv) Of such a character as would be unlikely to bring The Exchange or its Members to disrepute:

[49] Article 144, Ibid
[50] Article 145, Ibid

v) Written in such a way as not to prejudice the interest of investors.

(h) Application for Consent of Council[51]

In respect of Article 150, a Dealing Member shall apply for the consent of the council by submitting to the council an application in such form as may be prescribed by Council from time to time.

(i) Regulations of Publications[52]

The Exchange may disallow any invitation or advertisement proposed to be published, circulated or distributed by a Dealing Member without specifying the reason or allows the same on such modifications as Council may deem fit.

(j) Unauthorized Dissemination of Information[53]

Where information has been disseminated by a Dealing Member without prior approval of The Exchange pursuant to Article 6, the Dealing Member shall be liable to such disciplinary action as Council may impose.

4.4.1 The Nigerian Stock Exchange Investigation Panel

By virtue of the Rules and Regulations Governing Dealing Members ("Rules") the Investigation Panel is a body vested with authority to investigate allegations of breaches of the Rules and other applicable rules and laws against dealing members. In line with the foregoing provisions of the relevant Article[54], the panel is hereby constituted as follows:

[51] Article 146, Ibid
[52] Article 147, Ibid
[53] Article 148, Ibid
[54] Article 30

4.4.2 Membership:

The Exchange shall have sole discretion to nominate and appoint persons of high integrity as members of the Investigation Panel.

4.4.3 Membership Composition:

The Investigation Panel shall consist of seven (7) members which shall be made up of the following:

i. Two Dealing Members Firms

ii. One representative who carries on business as a capital market register

iii. The Head of Operations of the Central Securities Clearing System Limited

iv. Staff of The Exchange:

   a) Head, Regulation and Risk Management (RRM) Directorate or representative.

   b) Head, Market Operations and Information Technology Directorate or representative.

v. One representative of investors

vi. The Dealing Member Firms shall be represented on the Panel by their Chief Executive Officers.

4.4.4 Secretary to Panel:

The Secretary to the Panel shall be the Head of Complaint Unit of the RRM Directorate or any other person appointed to act in such capacity by the RRM Department.

4.4.5 Tenure

Membership of the Panel by the Non-staff members of the Panel shall be for a term of (2) two years, which upon expiration may be extended by The Exchange for a term of two years.

4.4.6 Number of Sittings of the Panel

The Panel shall sit once every quarter.

The Panel is however not precluded from sitting more often as required provided always that the composition of the Panel is not affected.

The Secretary shall circulate the date of sitting to all members of the Panel by January 15 of each year.

4.4.7: Sitting Allowance:

Members of the Panel who are not staff of The Exchange shall be entitled to a sitting allowance for each sitting, which allowance shall be set by The exchange.

4.4.8: Eligibility of Members:

i. Eligibility of Dealing Member Firms:

Eligibility of Dealing Member Firms to be members of The Investigation Panel shall be based on the firms satisfying the following criteria:

a. Firm must be of good reputational standing and integrity;
b. Firm must meet the minimum capital requirement prescribed by the Securities and Exchange Commission for its functions;
c. Firms shall not have any outstanding or unresolved complaint against it;

d. Firms must be in compliance with the Investment and Securities Act (ISA), Securities and Exchange Commission Rules and Regulations (SEC Rules), Rules and Regulations Governing Dealing Members (The Rules), and any other relevant laws;

e. The Chief Executive Officers of the firms must be persons with market and personal reputation for ethical conduct and integrity.

ii. Eligibility of Registrar:

Eligibility of Registrar to be a member of the Investigation Panel shall be based on satisfying the following criterion:

a. Registrar shall not have any outstanding or unresolved complaint made against it;

b. Registrar must be in compliance with the ISA and SEC Rules;

c. The Chief Executive Officer must be a person with market and personal reputation for ethical conduct and integrity;

iii. Eligibility of Investor:

The Panel shall include a neutral person who is not an operator but must be an investor in the capital market. Nomination of this Member shall be based upon satisfying the following conditions:

a. Person shall be an investor in the market;

b. Person shall display sound understanding of the capital market and its operation;

c. Person shall be of good reputational standing, integrity and sound mind. The person must be one who has not been declared bankrupt or convicted of any offence including fraud or dishonesty by any court of competent jurisdiction.

4.4.9: Chairman of the Panel

The Panel shall be headed by a Dealing Member Firm nominated by The Exchange as Chairman of the Panel.

4.4.10: Quorum:

I. Quorum shall be formed at the sitting of The Investigation Panel when there are at least five members including the Chairman of the Panel present;

II. Where the Chairman will be absent from a hearing; the Chairman shall give prior notice of his absence and nominate a Member to chair the meeting;

III. Where the Chairman has identified a conflict of interest in a matter before the Panel, another Dealing Member firm shall chair the Hearing.

4.4.11: Cessation of Membership

A member shall cease to be a member of the Panel under the following grounds:

i. If within one year of becoming a member, he absents himself from sittings on three consecutive occasions;

ii. In the case of a Dealing Member firm, where the firm's capital requirement falls below the minimum requirement;

iii. In the case of a Dealing Member firm or Registrar, where there are more than two unresolved complaints against the firm;

iv. Where the firm is found to be in violation of the Rules, ISA, or other relevant laws;

v. Where the firm is suspended by The Exchange and/or SEC for an infringement of the Rules and/or ISA or where the firm is under investigation for a market infraction;

vi. Breach of the Code of Conduct for members of the Panel.

4.5 Code of Conduct

4.5.1 Duty of Fairness and Fullness:

I. Members shall conduct themselves in such a way as to endeavour to ensure that those persons appearing before them receive full and fair hearing and the knowledgeable and unbiased application of the Rules, ISA and other applicable laws;

II. Members shall approach every hearing with an open mind with respect to every issue and shall avoid doing or saying anything that could cause any one to think otherwise;

III. Members shall endeavour to conduct all hearings expeditiously, preventing unnecessary delay, appearing before them and the hearing process through their demeanor, timeliness, dress and conduct throughout any hearing.

4.5.2 Confidentiality:

I. Members may acquire confidential information during the course of their duties or in any hearing and are under an obligation to maintain such confidentiality;

II. Such information shall not be used for unauthorized purposes or personal gain and it shall be improper to disclose it or cause or allow it to be disclosed.

4.5.3: Conflict of Interest:

I. Members shall avoid any activity or interest that might reflect unfavorably upon the integrity or good name of The Exchange, Panel or themselves;

II. Members must declare his or her conflict of interest and the nature of the interest giving rise to the conflict publicly prior to any hearing and same shall be entered upon the record of the proceeding;

III. Members must abstain from deliberating and deciding on a matter in which a conflict of interest has been established and may not discuss the matter either publicly or privately with other members participating in the hearing;

IV. Members shall not attempt to influence the outcome of any Hearing in which the member has a personal interest by discussing the matter with other Members outside the Hearing.

4.5.4: Ethics:

I. Members shall conduct their services honestly and honourably, taking proper account of all ethical considerations, and together shall strive to protect and enhance the integrity and values of The Exchange and Panel.

II. Members shall act at all times in a manner that shall reflect credibility on the Panel.

III. Members shall adhere to the spirit and letter of the ISA, SEC Rules, Rules, and other applicable laws.

4.5.5: Duty of Care:

Members' action and advice shall always conform to the Rules, ISA and other applicable laws. Members shall not give preferential treatment to any person or communicate directly or indirectly with any person with an interest in a Hearing except in the presence of the Panel and the parties appearing at the hearing.

4.5.6: Quality of Assurance:

Members shall continue to uphold the quality of the Investigation Panel through constant on-going reviews of all activities and outcome of every sitting. Members are encouraged to have regular review meetings and provide regular progress reports.

4.5.7: Equality and Discrimination:

Members shall always strive to be fair and objective in their actions, rulings and/or decisions, and shall not be influenced in their decisions, actions and/or recommendations by issues of gender, race, creed, colour, age or personal disability.

4.5.8: Declaration:

The above provisions are comprised in the Nigeria Stock Exchange Investigation Panel, Terms of Reference and Code of Conduct (2011) circulated to the panelists each of whom was obliged to sign the following declaration:

I declare that I have read and understand the above Terms of Reference and Code of Conduct.[55] I further declare that I shall, as a member of the Investigation Panel, apply, abide and be guided by the Terms and Code at all times.

Name:

Signature:

Date:

The Exchange as the mother or umbrella SRO leveraged on its mandate by Article 130, of the Rules and Regulations of the Exchange Governing Dealing Members, to constitute the Investigation Panel. The Panel is the most fundamental medium of dispute resolution by the SROs in the Nigerian Capital Market.

[55]Op .Cit Article 30