LEGAL AND INSTITUTIONAL FRAMEWORK REGULATING PUBLIC OFFERING OF SECURITIES IN THE NIGERIAN CAPITAL MARKET

BY

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AUGUST, 2008.

DECLARATION

This thesis research was solely undertaken by me, while registered for the Degree of Master of Laws (LLM) at the Ahmadu Bello University (ABU) Zaria, Nigeria. Opinions, assertions and criticisms are mine and represent my feelings and personal position regarding the law or practice regulating public offering of securities and by extension, the Nigerian Capital Market.

All contributions by other persons, research materials used and opinions sought, are duly acknowledged.

SIGNED: GEORGE ABANG EKPUNGU ESQ

CERTIFICATION

I certify that this Thesis research, entitled, **"Legal and Institutional Frame work Regulating Public Offering of Securities in the Nigerian Capital Market"** by George Abang Ekpungu Esq, meets the requirements/regulations governing the award of the Master of Laws (LLM) degree in the Ahmadu Bello University (ABU) Zaria, Nigeria it is approved for its contribution to knowledge and research.

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DEDICATION

This work is dedicated to God the Father Almighty, without whom I could have achieved nothing; physically, socially, politically or intellectually.

To my wife and children for their love;
To the memory of my great friends; Bar. Kennedy Ekpang Edward – Binang and Hon. Ignatius Owel Abang, two intellectuals, who departed this sinful world in their prime.
Finally, to my lovely Aunt, Ms. Paulina Mbua Ewor, who until her sudden and painful death, strove to better herself intellectually.

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George Abang Ekpungu Esq.

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ABSTRACT

A nation's financial system is made up of the Money Market, Capital Market and the Insurance Market. While Central Bank of Nigeria serves as the apex regulatory organization of the Nigerian Money Market, the Securities and Exchange Commission (SEC) is the apex regulatory body of the Nigerian Capital Market, while the National Insurance Commission (NAICOM) regulates the Insurance Sector. Capital Market, in simple terms, is a market for raising long-term funds. It is that segment of the financial market which represents the intricate intermediation functions and processes of a network of individuals, institutions and financial instruments between the users and providers of long-term funds are mobilized and channeled into productive investments by the issuance of equities and interest bearing securities. The market also provides a mechanism for the transfer of existing securities (secondary market), thus enabling those who wish to dispose or acquire secondary securities to do so.

Liquidity in the capital market is thus created and participation in primary issues enhanced.

By virtue of its vital functions of resource mobilization and allocation, the capital market facilitates capital formation and accelerates

economic development, which ultimately engenders societal well-being. It creates an avenue for the participation of the populace in the Corporate Sector of an economy through the ownership of Securities.

Owing to the potential benefits of the capital market to an economy, regulatory frameworks are usually put in place, in many countries including Nigeria, in an effort to develop an active and efficient capital market. Such regulatory framework could be self-imposed by the operators of the system or statutory, such as Acts of Parliament. The need for regulation, in one form or the other, arises from the fact that the lack of regulation could lead to chaos and anarchy in financial transaction and eventual collapse of the system. For instance, in response to the stock market crash of 1929, the United States of America created the Securities and Exchange Commission by the SEC Act of 1933.

In Nigeria, regulation of the Capital Market can be said to have started after the enactment of the Capital Issues Commission Act of 1962, which was a direct regulatory imperative of the establishment of the Lagos Stock Exchange two years earlier.

Public offering of securities in the Nigerian Capital Market is a fundamental step in accessing funds from the market and the resultant

transaction chain, is the fulcrum upon which Primary and Secondary Market activities revolve.

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TABLE OF ABBREVIATION

i.	ABU	-	Ahmadu Bello University.
ii.	BOFIA	-	Bank and Other Financial Institutions Act.
iii.	CAC	-	Corporate Affairs Commission.
iv.	CAMA	-	Companies and Allied Matters Act.
v.	CCCMOE	-	Code of Conduct for Capital Market Operators and their Employees.
vi.	CIC	-	Capital Issues Commission
vii.	EFCC	-	Economic and Financial Crimes Commission.
viii.	IPO	-	Initial Public Offer.
ix.	ISA	-	Investments and Securities Act.
x.	IST	-	Investment and Securities Tribunal.
xi.	LFN	-	Laws of the Federation of Nigeria.
xii.	MEMART	-	Memorandum and Articles of Association.
xiii.	NSE	-	Nigerian Stock Exchange.
xiv.	PLC	-	Public Liability Company.
xv.	SEC	-	Securities and Exchange Commission.
xvi.	SSM	-	Second – Tier – Securities Market.

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CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

Public offering of securities is no doubt a contemporary commercial issue. Most developed economies all over the world are private sector driven. Thus, a strong and virile private sector become the engine of growth and the fulcrum upon which the economic and industrial development of a nation is sustained. The private sector, i.e. companies and enterprises, raise capital from private sources for productive activities. The most viable of which is the capital market, by going public with the securities of their companies through the process of public offering.

However, most economies of developing nations are comatose because of the weak private sector foundation. The Economies are government driven and the private sector participants depend on government for funding. Given the competing demands for government resources, like the provision of infrastructure, servicing of external debts etc, they are hardly enough resources at the disposal of government to pump into the private sector and jump – start the economic growth and development of these countries. Most public companies and enterprises perform bellow optimum level, because of the lack of funds. As William Cowper (1872) state; *A business with an income at its heels furnishes always, oil for its own wheels"*.[1]

The above statement is attributed to Benjamin Franklin in 1783. No business can[1]

[1] Public Offering and Sale of Securities: A Securities and Exchange Commission (SEC Publication 2005, page 1)

grow without capital (money), which can be likened to a lubricant or fuel without which a mechanical object such as a motor vehicle, or an aeroplane cannot function. At every state of development of a business enterprise, capital is needed. Be it for start-up, for expansion or for its daily operations. The best way and place to raise such capital for a medium and long-term investment is the capital market through the medium of public offering of securities.

The Investment and Securities Act (ISA) 1999 provided in part viii, for the provisions governing public offering and sale of securities. It also extensively outlined forms of invitation to the public for subscriptions of shares. It must, however, be noted that the provisions of the ISA as shown in part viii are only applicable to equities (shares) of Public Limited Liabilities Companies (PLCs), whether quoted or unquoted. The law, therefore, specifically excludes the offering of equities of Private Limited Liability Companies to the public. Pursuant to the powers conferred on it,[2] the Securities and Exchange Commission (SEC) drew up rules and regulations governing application of matters generally provided for in part viii of the ISA. It also formulated a Code of Conduct for Capital Market Operators and their Employees (CCCMOE), for ease of its regulation of the market.

[2] Section 262 (1) of the ISA No. 45, 1999

The legal framework regulating public offering of securities as set out in the ISA also encompasses the provisions of:

1. Companies and Allied Matters Act (CAMA), regulating the formation of companies in Nigeria and also the division of companies into public and private limited companies, as well as limiting the transmission to the public of equities of private companies limited by shares.[3]
2. The Trustees (Investment) Act 1990 regulating the activities of Trustees in the Nigerian Capital Market.
3. The law/constitution establishing and regulating the Nigerian Stock Exchange (NSE) and operations on the floor of the exchange including the law (MEMART) regulating the activities of the Central Securities Clearing System (CSCS).
4. Privatization and Commercialization Act No. 25 of 1988 (as amended in 1999)
5. Central Bank of Nigeria Act 1991 and the Banks and Other Financial Institutions Decree 1991 (as amended)
6. The Nigeria Investment Promotion Act 1995 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995.
7. The Chartered Institute of Stockbrokers Act1995

   Apart from laying the legal framework, the above statutes also provided for the establishment of certain bodies (institutions) which regulate and facilitate transactions in the capital market.

[3] Sections 21, 22, 24 etc of CAMA 2004.

These institutions I shall consider in chapter four of the work as the "Institutional Framework Regulating Public Offering of Securities". I shall also consider the step by step procedure to an offer of securities to the public, the role of participants to a public offer and conclude by suggesting some improvements and making recommendations on the way forward.

1.1 OBJECTIVES OF THE RESEARCH

This research aims at achieving the following objectives:

(i) To appraise the concept of public offering of securities in Nigerian Capital Market.

(ii) To examine the legal framework regulating the public offering of securities in the Nigerian Capital Market.

(iii) To consider the role of institutions saddled with the responsibility of regulating public offering of securities in the Nigerian Capital Market.

(iv) To appraise the role of other capital market participants in the public offering of securities.

(v) To analyze the contributions to the Nigerian economy of funds raised in the capital market, through public offering.

(vi) To make useful suggestions and recommendations for ensuring successful public offers, especially the Initial Public Offer (IPO).

1.2 SCOPE OF THE RESEARCH

The scope of this work will be limited to its stated objectives and such matters as do not go to achieve its objective either directly or by necessary implications, will not be given emphasis in the research. In view of the forgoing, therefore, the work will dwell on the conceptual definition and nature of public offerings and all its perspective within the Nigerian Capital Market, definition of the Capital Market and Segments of the Market.

The work may make specific references to companies that have had successful public offers and the benefit of this to the Nigerian economy, especially with respect to funds being raise currently by banks in order to meet the twenty-five billion naira Bank Recapitalization Bench Mark as directed by Federal Government through the Central Bank of Nigeria.

The legal and institutional framework regulating public offering of securities will be comprehensively covered. Finally, where necessary, beneficial references will be made to other jurisdictions.

1.3 LITERATURE REVIEW

Not much research has been carried out in the area of Legal and Institutional Framework Regulating Public Offering of Securities in the Nigerian Capital Market or in Nigerian Company Securities Law generally. As Professor Taiwo Osipitan (SAN) stated in the forward he wrote for Dr. Joseph Abugu's book! "Company Securities; Law and

Practice; “is evidently the first comprehensive work in Nigerian Company Securities Law”.

Intellectually speaking, perhaps one of the most outstanding work on this area of research (Securities Law) is Dr. Josheph Abugu’s work noted above, which incidentally was published when this research was well underway. Though he was not specific with regards to the topic of this research, his work provides a solid foundation for subsequent discussion of issues, through a painstaking examination of the origin and growth of Companies and the Capital Market in Nigeria. The Author examined theoretical and practical issues concerning the Securities Market.

Other text writers like Oba Ekran (You and Your Capital Market 1999) and Dr. Rose Ako Mbatomon of La – Rose Limited, Abuja (Capital Market Manual 1999) wrote generally on very introductory issues in the Capital Market. Maybe because both of them are not lawyers, legislative or institutional regulation was not considered in any detail at all.

Barrister Charles A. Udora (quoted in the body of the thesis) made fundamental contributions to this area of research, than the above writers, in his paper “Legal Framework Governing Operations in the Nigerian Capital Market” delivered at the SEC Training School (Now Nigerian Capital Market Institute) on June 20, 2002.

The Securities and Exchange Commission (SEC) wrote a pamphlet on; “Public Offering and Sale of Securities” (2005). This pamphlet did not discuss legal and institutional framework. But perhaps because SEC is the

Apex Regulator in the Capital Market, the Research and Market Development Department of the Commission which published the pamphlet just gave a procedural or administrative narration of the process of offering and Sale of Securities.

It is the darth of literature in this area that activated my interest and curiosity to research on this topic.

1.4 RESEARCH METHODOLOGY

The research shall be mainly doctrinal and will entail consideration of source materials such as textbooks, journals, seminars / workshops / symposia papers and similar materials. This means that primary and secondary materials will be consulted and referred to accordingly. Furthermore, where necessary, the views of the Capital Market Operators and Regulators will be sought for, considered and analyzed to established contemporary trends in the Capital Market.

1.5 JUSTIFICATION OF THE RESEARCH

The research will be useful to a wide spectrum of industrial operators who require the medium of public offering of securities in the capital market to raise the much needed capital to enhance their businesses.

The research will be particularly beneficial to private companies seeking to raise funds from the public, the regulators of the capital market, including the Self Regulatory Organizations (SROs), and a host of other

capital market operations like, Solicitors, Reporting Accountants, Auditors, Investors, Consultants, Stockbrokers, Underwriters, Registrars, Trustees, and other Stakeholders in the market.

Finally, the research will serve an intellectual purpose as literature to teachers, researchers and students of law who may take interest in the public offering of securities, which is at the root of the activities in the Capital Market.

1.6 ORGANIZATIONAL FRAMEWORK

The thesis is divided into seven chapters. Chapter one lays foundation on which the research stands. It deals with the introduction, research objectives, scope of the research, research methodology, justification of the research, and the organization framework, which is the chapter-by-chapter analysis of the research.

Chapter two concerns itself with the conceptual meaning of capital market and segments of the market, its evolution and definition of terms such as securities, public offering of securities, (including its meaning and methods).

Chapter three deals, in some detail, with the legal framework regulating public offerings of securities. The Chapter therefore considers relevant aspect of the following laws:

1. (a) The Investment and Securities Act (ISA) No 45 of (1999/LFN

2004[4])

(b) SEC Rules and Regulations (2000) made pursuant to the ISA.

(c) Code of Conduct for Capital Market, Operators and their Employees (CCCMOE).

2. The Companies and Allied Matters Act CAP 59, (1990/LFN 2004[5]).
3. Privatization and Commercialization Act No 25 of 1988 (as amended in 1999).
4. The Trustees Investment Act (1990/LFN 2004[6]).
5. (a) Central Bank of Nigeria Act (1991 (As amended) /LFN 2004[7]).

   (b) Banks and Other Financial Institution Act (BOFIA) (1991 (with Amendments)/ /LFN 2004[8]).

6 (a) Nigerian Investments promotion Act (1995//LFN 2004[9])

(b) Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (1995/LFN 2004[10]).

7. The Chartered Institute of Stockbrokers Act (1995/LFN 2004[11]).

Chapter four considers the bodies (institutions) used in regulating public offering of securities in the Nigerian Capital Market and these include:

i. Securities and Exchange Commission (SEC)

ii. Nigerian Stock Exchange (NSE)

iii. Central Securities Clearing System (CSCS)

4. ISA No. 45 of 1999/LFN 2004
5. Cap 59, 1990 LFN 2004
6. 1990/LFN 2004
7. 1991 (as amended/LFN 2004)
8. 1991 (as amended/LFN 2004)
9. 1995/LFN 2004
10. Ibid
11. Ibid

IS)

v. Investments and Securities Tribunal (IST)

vi. Appellate Courts.

Chapter five considers extensively the role of the various parties to public offer such as the Issuer, Issuing House, Solicitors, Reporting Accountants, Receiving Bankers, Auditors, Underwriters, Registrars, Trustees and Stockbrokers.

Chapter six, tagged “Going Public, is a detail presentation of the various steps a company must take from when it decides to go public, when it goes public, when it receives the issue proceeds, up to the proposal of allotments and eventual approval or rejection by the Securities and Exchange Commission (SEC).

Chapter seven is the concluding chapter and shall consider the contributions of the Capital Market to the Nigerian economy, proffer suggestions and make recommendations on the way forward regarding the offer of company securities to the public.

CHAPTER TWO

2.0 DEFINITION OF CAPITAL MARKET

"Capital Market" is defined in Blacks Law Dictionary as "a securities market in which stocks and bonds with long-term maturity are traded.[1]

The Securities and Exchange Commission (SEC) in its "Capital Market Glossary[2], defines Capital Market" as "financial market which trades in medium to long term financial instrument (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". Capital Market can also be described as a regulated market. **It is a specialized and technical market, where the trade in medium and long-term financial instrument (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.** By definition the Capital Market is an integral part of the of the financial system in which capital is mobilized, and channeled from surplus economic units to deficit economic units for socio-economic development. The Capital Market is thus a market for long term funds and securities, whose tenor extends beyond one year. These securities include ordinary shares preference stocks, corporate debenture, federal government eligible development bonds, states and

[1] Bryan A. Garner, eight edition (Thompson West 2004 page 989)
[2] Page 10

local government's revenue bonds, mortgage bonds and long term loans. Whereas the money market is the market for short term funds and securities, including treasury bills, treasury certificates, negotiable certificates of deposits, commercial paper, short term bank loans and overdraft as well as other funds of less than one year duration. When juxtaposed with the money market, capital markets signifies the market through which medium and long term funds are raised by corporate entities and governments.

2.1 NATURE OF THE NIGERIAN CAPITAL MARKET

The Capital Market, as has been stated earlier, constitutes a major source of long-term low interest cheap source of funds for economic development. It also provides investment opportunities for interested persons, not withstanding 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 businesses and managing same with all the attendant problems.

The Nigerian Market principally consists of two broad segments. These are: The primary market and the secondary market.

2.1.1 The Primary Market [3]

The primary market is so called because it is a market for new issues, presented to raise capital afresh through the issue of new securities. It is a market for the original sale of securities by an issuer to the public. Primary markets are viewed or intended to be absolutely vital to capitalistic economies such as ours, if they are to function properly, since they serve to channel funds from savers to borrowers.

Furthermore, they provide an important allocative function by channeling the funds to those who can make the best use of them. The most frequently use instruments in the primary market include, ordinary shares or common stock,[4] preference shares, industrial loan stock or debentures and bonds e.g. Federal government stock, states and municipal bonds. The issues in the Primary Market can be by Initial Public Offering (IPO), offer for sales, often for subscription, script / bonus issues, private placement, issue by tender, issue on take over etc.

The main features of the primary market are:

i. The Issuer or Offer or creates entirely new securities.

ii. The Issuer receives fund direct from the investors, individual or corporate.

iii. The offer or Issue is made to the investing public at the same price and time.

iv. The Primary Market is not identifiable with any particular site or market place.[5]

[3] Dr. Rose Mbatomon Ako; *Capital Market Manual:* Published by; La-Rose Limited, Abuja (1999)
[4] Gower's *Principles of Modern Company Law*. Fourth Edition page 340 – 345
[5] Amos U. Okokon: *"The Primary Market"*. Being a paper presented at the SEC Training School, June 2002, p.9

2.1.2 The Secondary Market [6]

The secondary market is the market for existing securities. These securities earlier issued in the primary market in one of the forms discussed above are sold and resold to and by a chain of new investors in perpetuity. It can be said, therefore, that the business of the secondary market is triggered off, when investors in the primary market decide to dispose of their holdings after the Initial Public Offering of Securities by a corporate entity. The secondary market is further divided into the "First Tier" and "Second Tier" Securities market. Detail discussion of the first tier and second tier securities market is outside the scope of this work. Suffice it to say that the first and second tiers of the secondary market are to accommodate the different classes of stock that qualify for trading. It is also important to note that the money raised in the secondary market does not go back to the original issuers of securities but to the proceeding investors.

2.2 Evolution of the Nigerian Capital Market

The Nigerian Market is deepening by the day. From the market capitalization of about N86m in 1946 to the present day ₦5, 512 trillion,[7] It can be said that the Nigerian Capital Market, as an emerging market, is well on its way to the destination of being one of the most foremost markets in the world. Thus, as we set to consider the law and institutions that make this market thick and whose contributions are expected to take the market to its destination, it is only appropriate that we have an idea of

[6] Op.Cit.
[7] The Nigerian Stock Exchange; *(Daily Official List); March 6, 2007*

where the market is coming from. That is how did these potentially great market evolve?

Historically, Nigerian Capital Market is traceable to the colonial administration precisely, 1946, when the Ten Years Plan, Local Loan Ordinance was promulgated. The Ordinance, according to Dr. Olukonyinsola Ajayi, "allowed for the floatation of Local Loan to the tune of 300,000 pounds (N600, 000 then)". The units were in multiples of ten pounds (N20, then) as an interest rate of $3^{1/4}$% with a maturity of between ten and fifteen years.[8]

The issue was purportedly oversubscribed, albeit with little local participation. Not withstanding, this was recognized by some commentators as the first conscious effort by British government to give investment opportunities to Nigerians and revolutionized the indigenous capital market. Irrespective of the low level of local participation however, this floatation marked the beginning and formation of the nucleus of the Nigerian Capital Market. This is so because, prior to this period, the Colonial government had often raised funds for it operations in Nigeria, mainly from the home country.

However, in-spite of the events of 1946, a full fledged formal Nigerian Capital Market could not be said to have emerged as there were no facilities in place for dealing in securities at the time. Notwithstanding steps continued to be taken in the colonial government in the direction of an emerging capital market for Nigeria. For instance, a loan fund for

[8] Quoted by Pastor S. O. Adesiyan in his paper: *"Historical Development of the Nigerian Capital Market";* delivered at SEC'S Training School on Monday, June 17, 2002 at page 2

financing some public utilities was created in 1951. The fund which was to be financed by payments accruing from revenue, allowed for low interests rate and easy repayment terms and was to be advanced to public utilities,[9] Six years later, in 1957, the government and Other Securities (Local Trustees Powers) Act was promulgated. This was followed in 1958 with the setting up of a committee by the Federal Minister of Commerce and Industry.[10] Among the Committee's Recommendations accepted by government were:

i. The creation of facilities for dealing in shares;

ii. The establishment of rules regulating transfers;

iii. Measures to encourage savings and issue of Securities of government and other organizations [11]

Consequently, the Lagos Stock Exchange Act was formed in 1959, as a private company, limited by Guarantee. It was duly incorporated on September 17, 1960. The Seven original subscribers to the memorandum and Articles of Association of the Exchange were: Mr. R.S.V. Scott: representing C.T Bowring and Company Nigeria Limited; Alhaji Shehu Bukar; Senator. T.A Doherty; Mr. F.C.W. Howard, representing John Holt Nigeria Limited; Sir, Odumegwu Ojukwu; Mr. R.L. Powel, representing Investment Company of Nigeria Limited; and Mr. Akintola Williams K.

The take off of the Exchange was made possible not only by the active encouragement of ICON, which later became Nigeria Industrial

[9] Ibid
[10] Headed by Professor Barback, who was then Director of NISER
[11] S.O. Adesiyan: Op. cit.

Development Bank (NIDB), but also the Central Bank of Nigeria (CBN), which at various times, provided, financial assistance to the Exchange.

Thus, while the Exchange is no doubt a private organization, the circumstance surrounding its establishment necessitated that the Lagos Stock Exchange Act[12] be enacted. This Act[13] required the Exchange to submit quarterly reports of its activities to the Central Bank of Nigeria. The Exchange commenced operations in June 1961.[14] This in a sense, marks not just the beginning of the Nigerian Capital Market, but also the beginning of the regulation of the Market and the Exchange by a Government Agency.

2.3 Definition of the Term Securities

The term securities has been variously defined by learned writers. Black's Law Dictionary defines security as: "stocks, bonds, convertible debentures, warrantees, or other documents that represent a share in a company or a debt owed by a company or government entity. Evidences of obligations to pay money or of rights to participate in earnings and distribution of corporate assets. Instruments giving to their legal holders rights to money or other property; they are, therefore, instruments that have intrinsic value and are recognized and used as such in the regular channels of commerce"[15] See also US VS CANTON ANY.[16]

The Companies and Allied Matters Act, CAMA,[17] gave a descriptive

[12] No. 14 of 1961.
[13] Under section (5) subsection (1).
[14] Adesiyan: Op. Cit.
[15] Dr. Joseph E.O Abugu: *Compnay Securities: Law and Practice*, Unilag Press. 2005 at P.1
[16] Ibid.
[17] Cap 59 LFN 1990 (now 2004)

definition of securities as follows: That "Securities include; shares, debentures, debentures sock, bonds, notes (other than promissory notes) and unit trust under a unit trust scheme". It went further to define 'share' "as the interest in a company's share capital, of a member, who is entitled to share in the income of such company and except where a distinction between stock and shares is express or implied, shares include stock".

Another learned writer has stated that, securities readily connotes some form of collateral arrangement by which a thing or right is held consequent upon the satisfaction of a credit obligation. In Mortgages and other secured credit transactions, this definition is apt. On the other hand, company securities, which is our concern here, denotes a unit or share of investment in a corporate enterprise. Company securities are contributions to the trading capital of companies which are made with a view to obtaining some profitable returns. In England, the concept developed with the corporate form of business enterprise and by the end of the 17th century, a sophisticated system of trading in stocks and shares of joint stock companies had developed.[18] The Investments and Securities Act (ISA)[19], defines securities as "debentures, stocks or bonds issued or proposed to be issued by a government, debentures, stocks, share bonds or notes issued or proposed to be issued by a body corporate or union corporate, any right or option in respect of any such debentures, stock, shares bonds or notes or any interest as defined in section 106 of the Companies and Allied Matters Act, CAMA, future contracts: bill of

[18] Dr. Abugu: op. cit.
[19] No. 45 of 1999.

exchange, promising notes or certificate of deposit issued by a bank which has a tenure of not less than nine months".[20] The Securities and Exchange Commission in its Pamphlet; [21] defined securities as "income yielding financial instruments, signifying a buyer's legal claim or holding in specified property. Such a claim can be in debt as in stocks and bonds or in the form of ownership as in ordinary shares". Professor Gower in his book[22], did not define securities but gave analyses of the nature and classification of company securities. According to him, "frequent references have been made to the securities which a company can issue". He, therefore, decided to look a little more closer at the exact nature of these securities and to indicate the various forms they could take".

Although, detail analyses of the various classifications discussed by the learned author will not form part of this research, it suffices to state here that the learned author noted that "Securities fall into two primary classes, which legal theory tries to keep rigidly separated but which in economic reality merge into each other. The first of these classes, he stated is described as shares; and the second as debentures. He noted that the basic legal distinction between them is that a share constitute the holder a member of the company, whereas the debenture holder is a creditor of the company but not a member of it"[23] Securities could thus be said to be low risk, long term financial instruments with maturity period longer than one year, and they include equities, debenture, stocks and bonds. They are

[20] Section 264 ISA No. 45, 1999.
[21] "You and Securities Market". A pamphlet of the Securities and Exchange Commission (SEC) at page 1.
[22] Gower's *Principles of Modern Company Law (Supra)*
[23] Ibid.

channels through which funds are raise and put into productive investment for socio-economic development.

2.4 Meaning of Public Offering of Securities:

According to Black's Law Dictionary;[24] offering is an issue of securities for sale to the public or private groups stated that securities offering are generally of two types: Primary (where proceeds go to the company for some Lawful purpose) and secondary (where the funds go to a person other than the company i.e. selling stock holder).

Primary offers are also termed new issues", as they involve the issuance of securities not previously offered and sold. He defined public offering as the offering of securities at random and in general to anyone who will buy, and whether solicited or unsolicited. It also means sale of stock to the public in contrast to a "private offering or placement". He concluded by stating that public offerings are regulated by federal and state laws and regulations.

2.5 Methods of Offering Securities to the Public

Funds are raised in the primary segment of the capital market through public offering of securities to the public. This is done through many methods for a variety of reasons that include; need for expansion in fixed assets of the company, replacement of obsolete equipments, setting up of new lines of business, refinancing / replacement of temporary

[24] Sixth edition at page 1082.

borrowings, acquisition of new technologies procurement of raw materials, construction of houses, roads, bridges, airports, as well as increase in capital base by companies. Thus the methods of raising funds from the capital market are:

2.5.1 Offer for subscription

By this method, the company issues new shares for sales to the general public to raise additional cash for the company. This is usually effected through a document called prospectus. This prospectus contains information, about the company and the issue/offer, that would enable investors decide on whether or not to invest in the company as the document discloses all material information for such decision.

2.5.2 Rights issue

This is a method where a company invites the existing shareholders to subscribe for its new shares in proportion to their existing holdings. The offer is usually at a discount, often lower than the market price. The offer document is called Rights Circular.

2.5.3 Private placement

This is where the company invites a limited number of individuals or shareholders to subscribe to the offer; it is similar to a public offer but not to the general public. Advertisement is not allowed for

private placement since the intended investors are already known. The offer document is called Placement Memorandum.

2.5.4 Offer for sale

This is where a shareholder divests or sells off all or a portion of his or its shareholdings in a company to the public directly. A good example of this is the on-going privatization programme of the federal government where government is selling off its shareholding in some companies.

2.5.5 Offer by introduction

Public company selling part of its shares to the public on the floor of the stock exchange. Guarantee Trust Bank, 7UP, IBTC etc, used this method to get listed on the floor of the Nigerian Stock Exchange (NSE)

2.5.6 Scrip / Bonus Issues

This is similar to the rights issue, where new shares are offered to existing shareholders in proportion to their current shareholding, except that the shareholders are not required to pay for the new shares. However, the new shares have to be registered with the relevant regulatory bodies to qualify for trading in the Secondary Market.The bonus shares so issued are paid for from either the

company’s current earnings, accumulated earnings or reserves, a reason for which they are sometimes called share dividend.

This is because such earnings or reserves could have been paid out as cash dividend to the shareholders.

CHAPTER THREE

3.0 LEGAL FRAMEWORK REGULATING PUBLIC OFFERING OF SECURITIES IN THE NIGERIAN CAPITAL MARKET

The Capital Market has been variously described in this work as constituting a major source of long-term, low interest and cheap funds for socio-economic development. It provides investment opportunities for interested persons not withstanding their income bracket and managerial capacity.[1]

It has also been stated that "it is a market in which individuals and corporate bodies, participate in income yielding activities without the hassles of setting up a business and running it and this is done mainly through the offering of securities for sale to the public". For the kind of market that is capable of providing the opportunities described above to thrive, there must be rules and regulations, guiding participants. Such rules may be made by the participants themselves or by the National Assembly or government.[2] It is the aggregate of these rules and regulations guiding operations in the market, particularly in relation to public offering of securities to the public that constitute the **"legal framework regulating such public offering of securities and operations in the Nigerian Capital Market".**

[1] See Chapter two page 10, Supra

[2] Charles A. Udora Esq: "Legal Framework Governing Operations of IST in the Capital Market", being text of a paper delivered at a workshop on introduction to Capital Market for new Employers of SEC, June 20, 2002

This work will, therefore, highlight the laws, rules and regulations guiding the standard of behaviour of persons/companies who come to the Nigerian capital market to offer securities to the public. But before an analyses of the legal framework, I would like to briefly consider how regulation of the market came about, which encompasses regulation of public offering of securities.

3.1 Summary of the History of Capital Market Regulation in Nigeria

Historically, speaking, before 1933, the world did not know about any form of legal structure of what is today called the capital market. It was an all-comers affair. Companies were born under known company laws/statutes. However, issuance and trading in such companies' securities were not regulated. This let to the existence of all sorts of junk bonds/stocks into which unsuspecting investors threw in their savings hoping for valuable returns[3]. Unfortunately, there were greater losses than gains recorded by investors culminating into the great capital market crash[4] which took with it many lives via suicide and heart attacks. It can be stated that the crash resulted because there was no legal framework for issuing securities to the public, or within which participants operated except for normal criminal laws and enforcement machinery for common crimes.

[3] Charles A. Udora; op cit.
[4] The 1929 Market Crash in the U.S.A.

In any case, the crash exposed new forms of fraud and sophistication in white collar crimes. The trauma experienced by the U.S economy jolted the United States Government into action, hence the passing of apparently the first fundamental legislation on capital market operations[5]. The Act formalized the capital market in the U.S and a procedure for offering of securities to the public. It also gave relevant courts jurisdiction to adjudicate on disputes arising from capital market operations. In Nigeria the major enactments that go to the root of the Capital Market regulation are:

i. The Investment and Securities Act 1999; and

ii. The Companies and Allied Matters Act 1990

Other laws affecting the regulation of aspects of the Capital Market include:

(a) The Lagos Stock Exchange Act, 1961 – Repealed by the Capital Issues Commission (CIC) Act 1973.

(b) The Capital Issues Commission Act, 1973 – Repealed by the Securities and Exchange Commission (SEC) Act 1979.

(c) The Securities and Exchange Commission Act, 1979 – Repealed by the Securities and Exchange Commission (Amendment) Act 1988.

(d) The Securities and Exchange Commission (Amendment) Act, 1988 – Repealed by the Investment and Securities Act (ISA) No. 45, 1999.

[5] The U.S Securities Act of 1933.

(e) Public Enterprises (Privatization and Commercialization) Act, 1999 (As Amended)

(f) Trustees Investment Act 1995

(g) Central Bank of Nigeria Act and Bank and other Financial Institutions Act 1991 (As Amended)

(h) The Nigerian Investment Promotion Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995.

(i) The Chartered Institute of Stockbrokers Act 1995

(j) Money Laundering (Prohibition) Act, 2004

(k) The Economic and Financial Crimes Commission (Establishment) Act, 2004 etc.

3.2 The Lagos Stock Exchange Act[6]

In Nigeria, prior to 1960[7], there was neither a capital market nor a formal system of offering securities to the public. Earlier however, the colonial government of Nigeria floated the first public issue of stock of £300,000[8]. The entire packaging and transactions began and ended in London under the authority of her majesty, the Queen of England.

The success of that issue and the interest exhibited by a few rich Nigerians, then, awakened the interest of the colonial government in creating a conducive environment for capital formation and transactions in Nigeria, hence the Barback Committee of May 1958[9], which recommended a formal capital market for Nigeria.

[6] Lagos Stock Exchange (LSE) Act of 1961
[7] When Nigeria achieved Political Independence from the United Kingdom (UK).
[8] Issued in 1946 in unites of 10 pounds with an interest rate of $3^{1/4}$ with a maturity of between 10-15 years.
[9] The Barback Committee was set up by the colonial government to review the success of the first issue of the stocks in Nigeria and sundry matter and advise government on the way forward.

Subsequently the Lagos Stock Exchange (now Nigerian Stock Exchange) was established in 1960 but formalized in 1961[10]. **The Lagos Stock Exchange Act therefore became the first legal instrument regulating capital market operations in Nigeria.**

The Act[11] created the Lagos Stock Exchange (the market place) and gave it regulatory powers over market participants including particularly stockbrokers. The existence of the Exchange necessitated the need for the moderation of activities of the Exchange, *vis-à-vis* its relationship and control over, issues of securities i.e. registered public companies. The necessity for the establishment of an indigenous Capital Market deepened the imperativeness of the regulation of the emerging market became obvious. Hence the establishment of the capital issues Committee of the Central Bank in 1962, which metamorphosed into the Capital Issues Commission in 1973.[12]

3.3 The Capital Issues Commission Act, 1973

The Act established the Capital Issues Commission (CIC) had only four pages and gave unfettered authority to the Commission to regulate capital market operations including authorization of issuance of securities by companies, pricing and timing of issues and adjudication of disputes. The power given to the Commission by the Act therefore watered down the regulatory authority of the Exchange. The Commission was however

[10] Vide the Lagos Stock Exchange Act op. cit
[11] Ibid.
[12] No. 14 of 1973

subordinated to the Federal Commissioner for Finance, who excised the ultimate authority in the capital market.

Following the growth and expansion of activities in the Nigerian capital market, the Capital Issues Commission Act[13] became inadequate and was reviewed in line with the popular legal framework for capital market regulation and hence the Securities and Exchange Commission Act[14] was promulgated using the format of the U.S Securities and Exchange Commission Act.

3.4 The Securities and Exchange Commission Act 1979

The Act was promulgated following Government's acceptance of the recommendations of the Okigbo Committee[15]. The committee advised government on the need to establish an "apex" regulatory institution for the capital market to supervise the activities of all participants in the market. Under this Act[16], emphasis shifted from mere price control to areas of management of securities transactions and regulation of the Stock Exchange. The Stock Exchange was, however, on the board of the Commission. The Federal Commissioner for Finance remained the final arbiter in matters arising from the operation of the Act. After about nine years of operation and consequent upon a better understanding of the market, the 1979 Act was amended[17] to enlarge the powers of the Commission.

[13] Ibid.
[14] No. 71 of 1979.
[15] The Financial System Review Committee FSRC was set up by the Federal Government in 1976 under the chairmanship of Dr. Pius Okigbo (of blessed memory).
[16] Op. cit No. 71 of 1989
[17] Vide the Securities and Exchange Commission (Amendment) Act No. 29 of 1988.

3.5 Securities and Exchange Commission (Amendment) Act [18]

The Act empowered the Securities and Exchange Commission (SEC) to:

(a) Suspend or revoke the license of erring operators;

(b) Regulate transactions in securities of private companies with alien participation;

(c) Regulate mergers, acquisitions and all forms of business combinations;

In the main, the principal objectives of the Act were to:

(i) Protect investors in order to enhance their confidence in the market; and

(ii) Promote the growth and development of the Nigerian capital market so as to accelerate economic growth.

The Act[19] conferred on the Federal High Court (FHC), the jurisdiction over capital market matters, thereby terminating the overwhelming authority of the Federal Commissioner for Finance over the capital market.

This Act was a major turning point in capital market regulation in Nigeria, particularly public offering of company securities. Under this Act also, the Stock Exchange was dropped from the Board of Securities and Exchange Commission (SEC) and the Central Bank Governor ceased to be Chairman of the Board of the SEC.

[18] No. 29, 1988.
[19] Securities and Exchange Commission Act No. 29, 1988.

The ability of the capital market to resist and survive the distress experienced in the money market in Nigeria brought Government to the realization of the importance of the capital market.

The desire of Government to ensure a formidable and vibrant capital market under a transparent atmosphere and high level of integrity made Government to set up a panel in 1996 to review the Nigerian capital market[20]. The Panel produced a report which calumniated in the Promulgation of Investment and Securities Act[21], the most robust securities law ever operated in Nigeria which grants the SEC intimidating regulatory powers to the envy of other financial system regulators in Nigeria.

3.6 **A contextual overview of the Investments and Securities Act (ISA**)

The Act is a product of a major reform of the Nigerian Capital Market[22]. The main goals of the Act are:

i To make the Nigerian Capital Market the most important financial centre in Africa, comparable with the leading Capital Markets in the world;

ii To make the Nigerian Capital Market the engine of the envisioned growth and development of the nation's economy.[23]

[20] The Denis Odife Committee of 1996.
[21] No. 45 1999.
[22] Charles A. Udora: Legal Framework Op. cit.
[23] Ibid.

For the first goal to be achieved, the following factors amongst others must exist in the Nigerian Capital Market:

i. Depth and liquidity with a large variety of instruments for trading;
ii. Application of International Standards of fairness, equity and transparency in operations;
iii. Financial and other disclosures must be with the best practices in the world; and
iv. The Nigerian Capital Market must be attractive to Local and Foreign Investors.

For the Nigerian Capital Market to be an engine of growth and development, therefore, it must:

(a) Be attractive to Local Investors;
(b) Provide Venture Capital Funds;
(c) Provide Funds for States, Local governments and their Agencies; and
(d) Be able to provide funds for financing of infrastructure.

Thus, Government can lay a foundation for Capital Market development by establishing an effective policy framework. The elements of which may include:

i. Implementing the policies that encourage the use of long term financing by companies;
ii. Removing disincentives or establishing incentives to increase the demand for securities by institutional investors;

iii. Providing necessary protection for investors to increase investors' confidence in the markets;

iv. Organizing and improving the financial intermediation process in the primary and secondary markets;

v. Review legal barriers to market development.

The Investment and Securities Act, 1999 is a bold attempt at creating an enabling environment to achieve the above stated objectives.

The Federal Government established a policy framework, as manifested in the recent actions and programmes that will ensure an open, deregulated, developed and democratized economy in order to unlock the wealth of the nations as well as carry the foundation for an efficient Capital Market.

The Investments and Securities Act (ISA) was promulgated on May 26, 1999 by General Abdulsalami Abubakar (then Head of State).[24]It is a comprehensive legislation providing essential ingredients required for realizing government's policies and objectives.

The Act is made up of 16 parts and a total of 265 sections and 4 schedules. It repealed the SEC Act of 1988 and re-established the SEC of the apex regulatory body in the Nigerian capital market. The Act maintained the traditional functions of the SEC and provided new roles for it in investor protection and capital market Development.

[24] No. 45, 1999 (now LFN 2004), see the last page of the Act (ISA).

3.6.1 **Establishment of the Securities and Exchange Commission (SEC):**

Part 1, made up of sections 1-7, re-established the SEC as a full Corporate Body. Section 8 of the Act enumerates the functions of the SEC to include the registration and regulation of:

(a) Securities Exchanges, Capital Trade Points, Futures, Options and Derivatives Exchanges, Commodities Exchanges and any other recognized investment Exchange;

(b) Securities to be offered to the public;

(c) Operations in the Nigerian Capital market;

(d) Venture capital funds and collective investment schemes;

(e) Central Depository Companies etc (section 8);

(f) Mergers, acquisitions and business combinations; and

(g) Promotion of investors' education and training of market operators, et cetera.

The Commission is also empowered to establish specialized departments under section 9 for the purpose of regulating:

(a) Securities Exchanges;

(b) Capital market operators;

(c) Collective investments; and

(d) Mergers and acquisitions;

The four major operations departments of the Commission - Enforcement & Compliance, Registration, Monitoring & Investigation, and Securities Investment Services were established along these lines.

3.6.2 **Registration of Securities Exchanges and Capital Trade Points [25].**

Below is a detail consideration of some of the cardinal functions of the Commission as provided for in section 8 of the Act;

The Act provides that no Exchange or Capital Trade Point can operate with Registration by the Securities and Exchange Commission[26] Exchanges and Capital Trade Points are Market places where securities are traded, for-example the Nigerian Stock Exchange.

Section 21[27] provided the conditions to be fulfilled by the applicants foe registration, while section 22 makes provisions for revocation of the registration of Exchanges and Capital. Trade points by the securities and exchange change commission.

Section 23 of the Act provides that rules made by a registered exchange or capital trade point or amendments thereto must be cleared by the Securities and Exchange Commission before they become operational. Similarly, Exchange and Capital Trade Points must notify the SEC, which has power to review same, of any disciplinary action taken by such exchanges or capital trade points. Under this art[28] the SEC has full authority over exchanges, capital trade points, their staff and securities, traded on them. See Owena Bank Plc Vs Nigerian Stock Exchange (NSE) and Securities and Exchange Commission (SEC) [29]. By the provision of

25 Part V of the Investment and Securities Act of 1999.
26 Ibid at Section 20.
27 Ibid.
28 Op. cit.
29 1991 (5) SEC Law Reports at Page 1.

5.26 of the Act, SEC can even suspend any Principal Officer of an Exchange or a Capital Trade Point, who contravenes the directives of SEC.

3.6.3 Registration of Capital Market Operators[30]

As a means of properly regulating the activities of those who participates in all activities in the capital market and ensure competence, integrity and transparency, the Act provided that no person can operate in the capital market in Nigeria as an operator or intermediary and authorization by SEC. Section 29(1) provides as follows:

"Subject to the provisions of subsection (2) of this section, no securities dealer, stock-broker, sub-broker, jobber, share transfer agent, banker to an issue, market trustee of a trust died, registrar to an issue, merchant banker, issuing houses, underwriter, operators portfolio manager, investment adviser and such other intermediaries associated with the securities shall buy, sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the commission in accordance with the regulations made under this Act" Section 29 provides that;

"A market operator who, immediately before the commencement of this Act is associated with the securities industry for which no registration certificate was necessary priority to this Act, May combine to operate

[30] Part vi of the ISA No. 45 of 1999 (LFN 2004)

as such for a maximum period of three months from the commencement of this or if he was applied for registration under this Act shall continue to operate within that period till the disposal of the application and there after in accordance with the regulations made for registration under the Act".

Subsections 3, 4 and 5 of section 29 provided for other scenarios of permissible/restricted for capital market operators, including the initial offering of securities to the public. Subsection 6 of section 29 gave direction as to the modes for registration of market participants. It states that "An application for registration under this part of this Act shall be in such manner and upon payment of such fees as may be prescribed by the commission from time to time" In default of which subsection 7 of section 29 provides that:

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

3.6.4 **Public Offering and Sale of Securities and Invitation to the Public** [31]

Perhaps the must central provisions on this research as they relate to public offering of securities are the provisions of sections 44-80 of the Act[32], which deals copiously with the general requirements and control of public invitations. This part is the same with part xvii of the CAMA[33] the capital market. As noted earlier, important in this part as well as in the

[31] Part viii section 44-80 of the ISA op. cit.
[32] ISA No. 45 1999.
[33] Companies and Allied Matters Act CAP 59, LFN, 1990 (LFN 2004).

relevant schedule to the Act[34] for instance, the third scheduled deals with the mandatory contents of prospecting referred to in the Act[35] and consists of two parts Part one, thereof deals with matters to be stated in the prospectus to ensure full disclosure of the company proprietorship (Directors) management and capital requirement and all such details necessary to enable a prospective investor make a considered investment decision. Part two deals with the auditors and accountants' reports to be set out in the prospectus.

The fourth schedule refers to the requirements of sections 61 and 69 (1) [36] and is in three parts. Part one of the schedule deals with the form of statements and the particulars to be contained in the statement in lieu of prospectus, while part two deals with the reports to be set out in the statement in lieu of prospectus – part three explains provisions to be applied in certain ambiguous circumstances not existing in parts one and two.

3.6.5 **Conduct of Securities Business**

Apart from other provisions, the Act also empowers the Commission to introduce "margin requirement" in order to prevent the excessive use of credit for carrying on securities business. It allows the Securities and Exchange Commission (SEC) to make regulations to provide for the amount of credit, which may from time to time be extended and maintained in dealing with specific securities or transactions or class of

[34] Section 50 (1) and 53 (1).
[35] of the ISA op. Cit.
[36] Part ix Op. cit Sections 82-99.

This Part goes beyond the scope of this research, as to makes provisions fort the conduct of securities market transactions particularly the relationship between the broker and his client and the brokers conduct in business.

3.6.6 **Trading in Securities**[37]

Trading in securities refers to regulation of the conduct of market participants, in the whole chain of market transaction and the Act in this part[38] for bids the creation of false market in securities and insider dealing/manipulation of trading transactions. This part provide stiff penalties for any contravention, for example Five Hundred Thousand Naira (₦500, 000.00) fine for a person contravening provisions against manipulation[39]and imprisonment for not more than three years or both; while section 94 provides for penalty of ₦1million or two years imprisonment for insider dealing.[40] This provision is in addition to the payment of compensation to victim of the offence by the offender as the Investments and Securities Tribunal (IST) shall determine.

3.6.7 **Mergers, Take Overs, Acquisition** [41]

Mergers, take over and acquisition which in some cases ultimately result in the dispersal of company securities and public offering of securities of merged or acquired companies of those that are being taken over.

[37]Part C. Investment and Securities Act No 45, 1999.
[38] Op. Cit Sections 82-99.
[39] Ibid at Sections 81, 82, 84 and 85. See also Section 87.
[40] Section 94, ISA 1999.
[41] Op. Cit Part x, Sections 100-123

The Act thus makes comprehensive provisions in this part, regulating mergers, acquisitions and other forms of business combinations. It also provides the procedure to be adopted in each case and the conditions to be fulfilled before approval could be granted by the Commission.

3.6.8 **Collective Investment Schemes** [42]

This part [43] provided for the regulation of collective investment schemes, defined in section 123 (19) of the Act as:

"Any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profit or income" [44]

Subsection 3 of section 23 provided for what is not collective investment schemes the scope of the commission's powers in regulating these schemes was also highlighted, ranging from registration, to the operation of such schemes.

This part is one of such that enlarged the Commission's former scope of authority, and brought Esusu, Adashe, et cetera into its regulatory frame-work, in addition to the traditional unit trust schemes.

[42] Part xi sections 124 -148.
[43] Ibid.
[44] ISA No. 45 1999.

3.6.9 **Investors Protection Fund** [45]

This part[46] gives force of law to the formation of an investors protection fund, which the SEC have worked tirelessly in the past to establish without avail. The Act[47] makes it mandatory for security exchange or capital trade point to establish and maintain an investor protection fund to which members of the exchange or capital trade point will contribute.

Section 148 (1) of the Act provides to the effect that a securities exchange or capital trade point shall establish and maintain a fund to be known as the investors protection fund which shall be administered by its government board on its behalf. Subsection 2 provides that "The assets of the investors (protection fund shall be the property of the securities exchange or capital trade point but shall be kept separate from all other property and shall be held in trust for the purpose set out in this part of this Act".

Section 149 of the Act provides for money constituting investors protection fund, while section 159 of the Act provides for the application of the investors protection fund. It stated in subsection as follows:

" Subject to this part of this of this Act an investors protection fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from any defalcation committed by a member company or any of its directors or employees in relation to any money or other property which, was entrusted or received by a member company or any of its directors or employees whether before or after the commencement

[45] Part xii ISA No. 45 1999
[46] Ibid. Sections 149-171 particularly Section 148
[47] Ibid

of this Act in the course of or in connection with the business of that company".

3.6.10 **Borrowing by States, Local Governments and other Government Agencies, et cetera** [48]

It is well established that states, Local Governments and other Government Agencies can now access the capital market to raise funds. This part makes provisions to enable States, Local Governments and other Government Agencies to utilize the capital market to raise funds for their projects.

Section 173 (3)[49] provides for the State or Local Government raising money from the capital market to issue irrevocable letter of authority giving the Accountant General of the Federation the authority to deduct at source, specified amounts (from statutory allocations due to the Government or Agency in the event of default by that Government or Agency to meet its payment obligations under the terms of the loan raised.

3.6.11 **Establishment, Jurisdiction, Authority and Procedure of the Investment and Securities Tribunal** [50]

This part of the Act provides for the creation of a Tribunal of the same hierarchy with the Federal High Court. It is expected to operate in a manner very similar to the Body of Tax Appeal Commissioners. Appeals from the Tribunal lies to the Court of Appeal [51]

[48] Part xiii.
[49] ISA No. 45 1999.
[50] Part xiv ISA No. 45 1999
[51] See Section 243, op. Cit

The urgency attached to the securities transactions and disputes arising there from and the need to dispose of such disputes expeditiously, without undue interference with the operations of the Commission informed the establishment of this specialized Court.

Under the Investments and Securities Act,[52] the minister has power in five years from the commencement of the Act to cure inconsistencies, or impediments in the Act, by making requisite orders published in the gazette.

Furthermore, sections 258 and 262[53], give the Commission powers to make subsidiary legislations to give effect to the provisions and objectives of the investments and securities Act.

3.7 Rule Making Power of the Securities and Exchange Commission

By the combined effect of the provisions of sections 258 and 262, the Securities and Exchange Commission has powers to make subsidiary legislation in the form of Rules and Regulations to give effect to the provisions and objectives of the Investments and Securities Act. Section 258 provides as follows:

1. "The Commission May make regulations:

(a) Providing for anything requiring to be prescribed under this Act; and

[52] Sections 256 and 257.
[53] ISA No. 45 of 1999.

(b) Generally for carrying out the principles and objectives of this Act".

2. *"Any instrument issued under subsection (1) of this section shall be under the signature of the Director – General of the Commission and the Secretary or any other officer of the Commission as may be designated by him"* while section 262 provides inter-alia that:

(i) *"The Commission may from time to time, make rules and regulations for the purpose of giving effect to the provisions of this Act and may in particular, without prejudice to the generality of the foregoing provisions, make regulations ……..."*[54]

In exercise of its powers, [55] the Commissions in year 2000 came out with a set of comprehensive Rules and Regulations on various aspects of the Act in a bid to compliment as well as enhance its regulation of the market. The regulations cover several aspects of the securities business amongst which are:

(i) General rules on registration, registration requirements for Capital Market Operators registration of Securities Exchanges, capital Trade Points and Self Regulatory Organizations (SROs) [56]

(ii) Public offering of securities, allotments, underwriting etc [57]

(iii) Trading in securities

[54] Section 252 subsection 1(a)
[55] As contained in Section 258 and 262.
[56] Rules 10-41 SEC Rules and Regulations 2000.
[57] Rules 50-78 op. cit

(iv) Rules of procedure of SEC Administrative Proceedings Committee (APC) of the Securities and Exchange Commission, established pursuant to the Investments and Securities Act [58]

3.7.1 **Title: Amendments to Rules and Regulations Pursuant to investments and Securities Act N0. 45 1999.**

i. **PREAMBLE:** In exercise of the powers conferred by sections 258 and 262 of the Investments and securities Act, the Commission has overtime, made some amendments to the SEC Rules and Regulations 2000. There were amendments to the Rules made in 2002, 2003 and 2005. Some of these amendments can be expressed as follows:

3.7.2 **Year 2002 Amendment.**

Some of the rules amended in 2002 include;

a. Rule 16 (2) in order to cater for individuals who have been working in a Registrar's Department, Rule 16 (2) dealing with qualifications of person who are eligible to perform the function of Registrar was amended by adding the following:

"B.SC or HND or its equivalent or a higher degree with a minimum of 7 years in a Registrar's department, registered by the commission".

[58] Rules 96 - 105

b. **Creation of Rules 18A**

A new rule 18A was created in the 2002 amendment to provide for "effectiveness of registration or renewal of registration etc" thus the existing rule 18, now becomes rule 18A.

c. **Rule 64 (4)**

In order to harmonize the provisions of rule 64 (4) dealing with surplus monies within the provisions of Rule 201, rule 64 (4) was amended by substituting 7 days therein with 5 days i.e. the period within which surplus monies should be returned to affected subscribers, by the registrars.

d. **Creation of Rule 68 (1) On Allotment of Shares**

A new rule 68 (1) has been added to rule 68 on allotment of shares as follows: *"An application to the Commission for the clearance of any allotment proposal shall be accompanied by a joint letter of consent signed by both the issuer and issuing House and forwarded by the issuing House with other documents"*.

e. **Rule 70 dealing with under subscription rule 70 now reads:**

" under subscribed/under written securities shall be warehoused by the issuing houses or underwriters (and in the case of securities listed on the capital trade point, by the issuer or issuing house) and sold on the floors of the securities Exchange or Capital Trade Point within six months after allotment".

f. **While rule 75 (i) was amended thus:**

"Where an issue not underwritten is under subscribed, that is less than 25% subscription level and 50% in case of securities offered through the capital Trade Point, the issue shall be aborted by the issuer/issuing house".

g. **Rule 90 is amended to read as follows:**

"No issuer shall offer for sale or subscription or sell securities by way of private placement, without obtaining prior exemption from the Commission.

A private placement offering shall qualify for exemption when it meets the criteria and requirements as prescribed under rules 91-97".

h. Rule 91(3) is amended by substituting 35 purchasers with 50 purchasers the newly created 91(4) reads thus:

"The offer shall be for a period of 21days or such other number of days as may be approved by the commission".

Several other rules were amended in 2002 which touch directly or indirectly on public offering of securities which cannot be discussed here in detail.

These include rules 96, 97 and other meetings, 314 (on administrative proceedings committee) etc.

i. Another fundament amendment in the 2002 amendments to the SEC rules include:

Resolution of the conflict between section 73 of the ISA and Rule 201.

In order to harmonize Rule 201 with section 73 of the ISA (which of course takes precedence over the rule), Rule 201 was amended to read thus:

"Every issuing house through to the issue shall pursuant to the provisions of the Act return surplus monies due to subscribers or purchasers of securities within 5 working days of the approval of allotment of securities or at such other time as may be approved by the commission".

j. **Rules on Management Buy – Out**

A new rule 238A was created to provide for regulation of management buy-out.

3.7.3 **Year 2003 Amendment**

a. **Conditions for Granting Extension of Offer Period**

Rule 60 is amended by the creation of a new paragraph 60 (c) which reads thus: "the Commission may, on an application by the issuer, grant extension of time on the happening of any of the following events.

(i) Upheavals, which could be either religious political or social …

The existing rule 60C renumbered 60 (d)

b. **Rule 312 on Attendance of AGM of Public Companies And Completion Board Meeting**

A new rule 312 (B) (ii) is created and reads thus:

"(ii) The notice of such meetings shall reach the commission not later than three (3) working days before the rate of meeting".

Existing paragraphs (ii) – (iv) were renumbered (iii) – (v).

c. **Payment of Fees in Offer for Sale Issues**

Schedule 1 is amended by creating under C

SECURITIES, a new paragraph (iv) and designating it (iv) processing fees on offer for sale.

i. **First Tier Market**

For the first half a billion naira worth of securities offered for sale - 10%

Next half a billion naira	-	0.75%
Any sum thereafter	-	0.50%

ii. **Second Tier Market**

Flat rate for securities offered at - 0.50%

There were a few other amendments in 2003 which do not directly touch on public offering of securities in the Nigerian capital market and will not be given detail consideration here

3.7.4 **Year 2005 Amendment**

Some of the Rules amended in 2005 include;

a. Rule 3(4) – The rule relates to filing of materials with the Commission.

Rule 3 of the Securities and Exchange Commission (SEC) Rules and Regulations 2000 states as follows:

"All papers, documents and information required to be filed with the Commission pursuant to the provisions of the Act or any subsidiary legislation made there under shall be filed at the headquarters of the Commission".

The rule further states that:

"Such papers, documents and information may be filed by delivery to the Commission by hand, postal communication……or such other modes of communication as may be prescribed from time to time by the Commission".

The rule concluded thus:

"The date of filing of any paper……..shall be the date such paper……is received by the Commission……..and provided that it is forwarded to the Commission within 14days".

The amendment to Rule 3 was made vide the creation of sub rule (4) & (5) Rule 3 sub 4 (as amended) states thus;

"Any paper, document or information filed with the Commission that contains, false or misleading statements shall be subject to a penalty of N100, 000.00 in the first instance and N5, 000.00 per day for everyday the violation continues". This is the punishment meted out on Cadbury Plc in its notorious case of fraudulent accounting and misstatements.

Rule 3 sub 5 further states"

"All correspondence to the Commission by Securities Exchanges, other Self Regulatory Organizations (SROs) and Capital Market Operator (CMOs) shall be signed by the authorized signatories". *Furthermore, "All Securities Exchanges, other SROs and Capital Market Operators shall furnish the Commission the names and specimen signatures of the authorized signatories from time to time"etc.*

3.7.5 **Code of Conduct for Capital Market Operators and Their Employees**

The commission (i.e. SEC), in consultation with the Capital Market Committee published a Code of Conduct for Capital Market Operators of all categories and their employees. The Code being a mutual document is applied in sanctioning erring operators in the market. For instance Code 1 (1) provides as follows". *"All Operators shall abide, at all times, by all existing Securities Laws, Rules and Regulations made there under"*.

While 1(ix) Provides That: "All Operators shall have the duty to report in writing to the Securities and Exchange Commission (SEC) any actual or suspected breach or infringement or non-compliance of any regulations of the Securities and Exchange Commission (SEC). Operators will immediately notify the Commission in writing of any other events or matters that the Commission may from time to time specify;……"etc.

3.8 The Companies and Allied Matters Act

The CAMA as it is popularly known goes to the root of company formation administration and management in Nigeria. The CAMA also provides for the establishment of the Corporate Affairs Commission in place of the Registrar of Companies[59] and provides for the incorporation of companies and incidental matters, registration of business names et cetera, principles of limitation of liability in incorporated companies, procedure for conversion of private companies to public companies in Nigeria[60], capacity of individuals to form companies[61], types of companies[62], methods to be adopted by companies in raising capital, shareholders rights et cetera. The preamble of CAMA states as follows.

"An Act to establish the Corporate Affairs Commission, provide for the incorporation of companies and incidental matters, registration of business names and the incorporation of trustees of certain communities, bodies and Associations". It subsequently provides extensively for dealings in securities of public companies and vests its administration on the Securities and Exchange Commission (SEC).

Indeed CAMA until 1999 was a comprehensive securities law for the country as it dealt with a wide range of issues such as invitation of the public to a securities offer, registration of securities, prospectuses, allotments, unit trusts, mergers and take over as well as insider trading[63]

[59] Section 1, CAMA Cap 59 Laws of the Federation of Nigeria (LFN) 2004
[60] Section 50CAMA opp. Cit
[61] section 20 CAMA opp cit
[62] Section 22 & 24 Ibid. See also Shepherd v. Shepherd (1950) S.C. 60
[63] See the opening page of CAMA Ibid and Part xvii: Dealings in Company Securities

It would be concluded here by stating that practically speaking, part xvii of CAMA is now encapsulated in part viii, ix and x of the new Act[64].

3.9 PROVISIONS OF OTHER LAGISLATIONS/STATUTES REGULATING ASPECTS OF PUBLIC OFFERING OF SECURITIES IN THE NIGERIAN CAPITAL MARKET

Not withstanding the exercise of the principal legislation at various times in the history of the Nigerian Capital Market, there are other statutes that have impact on the capital market operations in Nigeria. These include the following.

3.9.1. Public Enterprises (Privatization and Commercialization) Act No. 25, 1999 (As Amended)

The Act provides for the privatization of some companies in which the Federal Government has equity interest, and commercialization of some federal government owned enterprises.

The Act provides the following as the mode of privatization[65]

(1) "subject to the provisions of section 11 (f) of this Act an offer for the sale of the shares of a 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 enterprises are not offered for sale by public issue of shares or private placement, the council may, approve that

[64] Section 541 – 623 (i.e. Part xviii see also the investments and Securities Act No 45 1999

[65] Section 2-5 of the Public Enterprises (Privatization and Commercialization) Act 1999 (as Amend). See also Section 6-8 of the same Act.

the shares be offered for sale through a willing seller and willing buyer basis or through any other means" etc.

A Technical Committee on Privatization and Commercialization (TCPC) now known as the Bureau for Public Enterprises (BPE) was established to carry out this responsibility[66]

In 1999, a new privatization law was enacted. The law provided as stated above for the use of the capital market facilities for the sale of shares of the privatized companies and created the National Council on Privatization (NCP) headed by the Vice President of Nigeria, to supervise the Bureau for Public Enterprises (BPE) [67].

3.9.2 **Trustees Investment Act LFN 2004[68]**

This is a re-enactment of the Trustees Investment Acts of 1957 and 1962. These laws specify the type of securities in which trust funds may be invested. Such securities include unit trust schemes, debentures and fully paid up shares of any public company quoted on the stock exchange. It also provides for the proportion of such investments that can be undertaken with trust funds. The Act further provides for the role of a Trustee in Capital Market transactions, especially as an intermediary during the issue of debt instruments in the market such as redeemable debenture stocks.

Aswani Textiles Industries Limited vs. Mba Securities Limited. This case relates to conspiracy and fraud against Aswani Industries Plc by the Board and Management of MBA Securities Limited and its erstwhile

[66] Part III Sections 12 – 26 Op.cit.
[67] Part II Sections 9 –11 Ibid.
[68] LFN (Cap. 1990) (now 2004).

Managing Director Mr. Arinze Nwobu, where millions of naira, entrusted on them as Trustee of the Redeemable Debenture Stock of Aswani Industries plc where diverted to their personal use. The facts of the case are as follows: Aswani Industries Plc in 1991, raised a ₦40million Redeemable Debenture Stock from the Capital Market. The sum of ₦ 79,941,001.12 was to be paid by it to the Debenture Holders under the 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 Debenture Stock, while First Registrars were the Registrars.

Aswani Industries plc (the issuer) alleged that between April 15, 1991 and February 2000, it paid a total sum of ₦80, 040,903.12 to MBA Securities Limited for onward transmission/disbursement to the Beneficiaries/Debenture Stockholders.

The Securities and Exchange Commission (SEC) stated further that evidence available to it, which is a written acknowledgement by First Registrars Limited, showed that MBA Securities Limited remitted only N16, 740, 903.13 to First Registrars Limited for disbursement to the Beneficiaries, leaving a balance of ₦33, 299,999.99. According to the SEC, until the time of its petition, there was no indication that the said balance of ₦33,299,999.99 was ever disbursed to the beneficiaries and the amount remained unaccounted for by MBA Securities Limited.

3.9.3 Central Bank of Nigeria Act and the Banks and Other Financial Institutions Act 1991 (As Amended)

These laws regulate the banking industry. They empower the Central Bank of Nigeria to make guidelines and regulations governing amongst other things, bank transactions and underwriting activities in the Capital Market. The laws also regulate the nature and level of banks involvement in capital market activities. For instance, Section 4 of the Banks and other Financial Institutions (Amendment) Act provides that:

"the Bank may invest any amount deposited with it pursuant to Section 3(2) of this Act in treasury bills or such other Securities……". From the foregoing, a decision by a bank to invest any amount in Securities in the Nigerian Capital Market will be guided not only by laws regulating the Capital Market, but also by this Act and other regulations made pursuant to the Act by the Governor of the Central Bank of Nigeria.

Although the universal banking requirement now in place allows banks to participate in all financial services, regulations are made under the Central Bank of Nigeria (CBN) Act and the Banks and Other Financial Institutions Act (BOFIA) to provide restrictions on banking operations *vis-à-vis* capital market activities. For example regulations are made regarding underwriting functions of banks in the Capital Market.

3.9.4 The Nigerian Investments Promotion Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act LFN 2004[69]

These Acts were promulgated to abrogate the Exchange Control Act of 1962 and the Nigerian Enterprises Promotion Act of 1989, in a bid to enhance the inflow of foreign investment into the country[70]. These laws liberalized the investment climate for foreigners and made it easier for the inflow of Foreign Direct Investments (FDI) and Portfolio Investment into the Nigerian economy through the Capital Market, as well as making it easier for the repatriation of profits to the home countries of the investing foreigners.

3.9.5 The Chartered Institute of Stock Brokers Act 1995

The Act established the Chartered Institute of Stockbroker (CIS), thereby institutionalizing stock-broking and making it chartered by an Act of parliament. It also vests the Institute with the responsibility, amongst others, for the training 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 Exchange Commission is represented on the Board of the Institute.

[69] No. 17 of 1995.
[70] Please refer to section 8(k) of the ISA. Op. cit.

3.9.6 The Money Laundering Prohibition Act, 2004

The Act provides among other things, safeguards for the prevention of money laundering in the Nigerian Capital Market. Section 1 of the Act limited the amount of cash that must be accepted in any transaction by any individual or company, above which limit, such transactions must be through a financial institution. Section 2 of the Act regulate or affect the Capital Market more directly. The section states that; "A transfer to or from a foreign country of funds or Securities of a sum exceeding US $10,000 or its equivalent by any person or body corporate shall be reported to the Central Bank of Nigeria (in this Act referred to as "the Central Bank") or Securities and Exchange Commission".

Section 2(2) provides further that "a report made under subsection (1) of this section shall indicate the nature and amount of the transfer, the names and addresses of the sender and the receiver of the Funds and Securities". This safeguards put in place by the Money Laundering (Prohibition) Act do not only prohibit the Laundering of proceeds of crime in the Capital Market, but also regulate international transfer of securities.

3.9.7 The Economics and Financial Crimes Establishment Act 2004

The Act affects the regulation of the Capital Market in several ways.

First, the Act established the Economic and Financial Crimes Commission in section 1.The provisions of section 2(9) of the Act name the Director General of the Securities and Exchange Commission (SEC)

or his representative as a member of the Board of the Commission. Furthermore, the Act provided for the investigation of futures market fraud as one of its basic functions.

By the provisions of section 235 of the ISA noted above, criminality in the Capital Market is to be referred to criminal prosecuting authorities by the Securities and Exchange Commission (SEC). The Economic and Financial Crimes Commission (EFCC), with its enormous enforcement powers have become the most active investigator of Capital Market Fraud.

Furthermore, a Capital Market Fraud Unit has also been created by the EFCC with experts from the Securities and Exchange Commission (SEC) as support staff. This has greatly influenced activities in the market, sending warning signals to fraudsters who may want to ply their trade in the Capital Market that it is not going to be business as usual.

CHAPTER FOUR

4.0 THE NIGERIAN REGULATORY REGIME GENERALLY

Whilst our indigenous customary law system had its own concept of "security" as in secured credit transactions, the concept of company securities is essentially of foreign origin, the evolution of which is directly tied to the development of the corporate form of business enterprise.

Consequently, the regulation of securities in Nigeria is traceable to the advent of companies in Nigeria. English law was introduced into the colony of Lagos in 1861. There followed the famous reception laws by which general application in force in England on the 24th day of July, 1874 were made automatically applicable in Nigeria.[1] After the Proclamation of the Northern and Southern Protectorates of Nigeria in 1900, the effective date for the reception of these laws were changed to the 1st day of January 1900.[2] Consequently, as at 1900, the applicable companies and securities laws in Nigeria were the received English Companies Act 1862. Interestingly, no Nigerian enterprise sought registration under the Act using the facilities available in England. In the words of a learned jurist, "although the Act was applicable as a pre-1900

[1] See section 14 Supreme Court Ordinance 1876.
[2] See Supreme Court Proclamation of Southern Nigeria 1900 and the Supreme Court Proclamation of Northern Nigeria, 1902.

English statue of general application, it could not be administered under local circumstance as the facilities for such administration were not available locally. The result was that the foreign companies brought their status of incorporation with them and this was duly recognized by Nigerian Law as part of the generally received law"[3].

The first Nigerian statue to give vent to the formation of the corporate form in Nigeria, was the Companies Ordinance of 1912. At its promulgation, the Act was made applicable only to the Colony of Lagos and was subsequently, in 1917, extended to the whole country.[4] The 1912 Ordinance as amended by the 1917 Ordinance, was repealed and replaced by the Companies Ordinance 1922,[5] which continued to regulate company formation and management until it was repealed by the Companies Act 1968. The 1968 Act held sway for 22 years until it was repealed and replaced by the Companies and Allied Matters Act 1990.

[3] Orojo, J.O, "Company Law and Practice in Nigeria", Lagos, 1992 at pages 17-18.
[4] See Companies Ordinance (Amendment and Extension) Ordinance 1917.
[5] It was Cap. 38 of the Laws of the Federation 1948 and Subsequently Cap. 37 Laws of the Federation 1958.

The need to regulate dealings in companies securities was slow in manifestation. The practice of stockholding was not readily imbibed by Nigerians. Those knowledgeable in the practice were too few to make the issue one of legislative importance. However, the first notable capital market event took place in 1946[6], when the Colonial government established a 10 year development Plan for Nigeria. Under the plan long-term funds were to be raised in the U.K and Nigeria to fund development projects in educational research, industrial and agricultural undertakings.

The enabling Local Loans Ordinance provided for the floatation of £300,000 at $3^{1/4}$% interest.

Furthermore, the late 1950s witnessed an upsurge of private industrial investments pursued mainly through the diversion of some of the profits earned from trading activities especially by foreigners. A number of other developments took place that prompted the government into taking initiative in establishing formal financial markets. Among these issues were:

a. the need for government to finance a growing budget deficit in the late fifties;
b. the deteriorating balance of payment deficits during the same period;
c. the need to mobilize finance to embark upon development programmes.

The task before the Government was therefore to actively encourage the emergence of capital market institutions[7], and thereby create a market in

[6] As noted in chapter three (supra)

[7] These include a network of several specialized financial institutions that in various ways bring together users of capital and suppliers of capital such as insurance companies and pension fund managers, leasing companies, ventures capital companies and the commercial and merchant banks.

corporate finance which will facilitate the resource allocative mechanism of a developing industrial economy[8].

In furtherance of the objective three notable statues were enacted in 1957. They were Government Stocks and Other Securities (Local Trustees Powers) Act; General Loan and Stock Act and the Local Loans (Registered Stock & Securities) Act. These were followed closely by the establishment of the Central Bank of Nigeria in 1958 as the apex financial institution.

In May 1958, the then Federal Minister of Commerce and Industry appointed a Committee under Professor Barback[9], to consider ways and means of fostering a securities market in Nigeria. The Report of the Barback Committee published in 1959 recommended among others:

The creation of facilities for dealings in shares; the establishment of rules regulating transfers; and measures to encourage savings and issue of Securities of Government and other organizations. Other than Government's acceptance of the report of the Committee, very little official action should be immediately credited to it[10]. Meanwhile, in May 1959, the Central Bank of Nigeria in pursuant of its role with respect to the development of a capital market, floated the first Federation of Nigeria Development Loan Stock of N4.Million on behalf of the Government. Since a formal stock market had not been established, the Central Bank had to ensure that the stocks carried with them reasonable

[8.] With regard to the historical development of Government loan securities, see Lionell Brett, "Review of Legislation – Nigeria, (1948) 30 Journal of Comparative and International Law, 148. For further readings, see Hammering A.G, 'History of the New York Stock Exchanges 850-1914'.

[9]. The then Director of the Nigerian Institute of Social and Economic Research (NISER).

[10.] The Capital Issues Committee was not created until 1962.

assurances of marketability by introducing a central register for matching buyers and sellers ad suggesting prices at which the deals took place.

The first step in regulating the Nigerian securities market was the establishment of a private self regulatory club owned by its members in the name of the Lagos Stock Exchange. It was established in 1960 to enthrone a formal market for dealings in company securities.[11] It subsequently sought and obtained Government approval in the form of an enabling Act, the Lagos Stock Exchange Act 1961.[12] The second step at regulation came in 1962 with the enactment of the Exchange Control Act, Trustee Investments Act, Savings Bonds and Certificates Act and the non-statutory establishment of a Capital Issues Committee as a department of the Central Bank of Nigeria, to regulate capital issues in the country. The main task of the Committee was, as the name connotes, that of regulating capital issues. Its powers did not include the regulation of the capital market or of institutions such as the Stock Exchange or of participants in that market. However, encouraged by the performance of the Committee, the Government provided legal backing through the Capital Issues Commission (CIC) Act 1973.

Under the Act, the functions of the erstwhile Committee were vested in the Commission. The CIC was later to be superseded by the Securities and Exchange Commission (SEC) set up by the Securities and Exchange Commission Act 1979.

[11] The original subscribers to its Memorandum of Association were Alhaji Shehu Bakar, Chief T.A. Doherty, Sir Odumegwu Ojukwu, Mr. Akintola Williams, Messrs C.T Bowring & Co, Investment Company of Nigeria (ICON) and John Holt Nigeria Limited.

[12] See section 2 Lagos Stock Exchange Act, Cap 37 1961 with effect from 15th September 1960.

That statute has been the subject of repeals in 1988[13] and recently in 1999 with the enactment of the Investments and Securities Act No. 45 of 1999, which is the current statute regulating the establishment and functions of the SEC, as well as the creation of the Investments and Securities Tribunal (IST).

Until recently Nigerian Companies Acts[14], were in many respects revised versions of English Company Statues. These Acts cannot be said to have established the most facilitative framework for the development of the market in the company securities[15]. The Companies and Allied Matters Act 1990[16], though innovative in codifying common law principles, retains the legislative structure and style of English Company Acts.

Legislative enactments dealing with Company securities were widely dispersed in various statues. Some of these include the Government and Other Securities (Local Trustees Powers) Act 1957; Trustee Investment Acts 1962; National Provident Act (1961 – 1976); Savings Bonds and Certificate Act 1962; Exchange Control Act 1962; Securities & Exchange Commission Act 1979; and Nigerian Enterprises Promotion Act 1990. In the past decade, effort has been made to streamline legal provisions and reduce bureaucracy in administration. Hence the enactment of the Companies and Allied Matters Act 1990, the Insurance Act 1991, Nigerian Investment Promotion Commission Act 1995, the Foreign Exchange

[13] Now Cap. 406 Laws of the Federation 1990.
[14] See Companies Ordinance 1917, Companies Act, 1922
[15] See Oladele, O. O. "An Assessment of the Legal Framework for the Nigerian Securities Market" (1989)
[16] Cap. 59 Laws of the Federation 1990

(Monitoring and Miscellaneous Provisions) Act 1995 and the Investments and Securities Act 1999. Yet, it is difficult to discern a composite legal framework with all the Robert Paddy attributes.[17]

4.1 Institutions Involved In Regulating Public Offering of Securities in the Nigerian Capital Market

Agencies are set up by law to ensure that activities, which do not comply with or which are in breach of rules and regulations are dealt with appropriately. In other words, governments set up institutions to see that their enacted laws are executed and enforced. In Nigeria, legislations, rules and regulations, especially in the Capital Market, have generally been directed at protecting the interest and confidence of the investors and the general security of the Capital Market. In order to achieve this aim, regulatory and enforcement agencies have been set up by the Investments and Securities Act to carryout such functions. These agencies include; the Securities and Exchange Commission (SEC) and the Investments and Securities Tribunal (IST). Other Institutions created by other legislations or instruments in aid of the Capital Market regulation (especially public offering of company Securities) include: the Nigerian Stock Exchange (NSE), the Central Securities Clearing System (CSCS) and the Chartered Institute of Stock brokers.

[17] See Edgardo Buscaglia et-al eds; (1997) at 15, 40-44 on the importance of a legal infrastructure to economic prosperity. See also Dr. Joseph Abugu Op. cit at page 55.

The offering of securities to the public in order to raised founds has several stages and involves several institutional organizations, each handling one aspect of the process of making securities available to investor either in the primary or secondary market.

The Nigerian Capital Market is the long term end of the Nigerian Financial System just as the money market is the short term end. It provides local opportunities for borrowing and lending for long term purposes. It also enables the Government mobilize long term Capital for economic development in the country.

a. In order to ensure investors' confidence and provide an efficient medium of sourcing long-term funds, the Nigerian capital market through effective oversight functioning ensures that instruments and capital market operations are routinely under surveillance.

4.2. THE SECURITIES AND EXCHANGE COMMISSION (SEC).[18]

The Nigerian Securities and Exchange Commission (SEC) established in 1979 is saddled with the responsibility of protecting the interest of the investing public by supervising and regulating the activities of other institutions and individuals operating in the capital market. It is instructive to note that regulation is only effective and efficient when the operators are subjected to registration by the Regulatory Authority. The Securities and Exchange Commission was established by the Investments and Securities Act (ISA)[19].

[18] ISA No. 45 of 1999.
[19] Ibid, see also SEC Act No.29 of 1988 and Sec Act No. 71 of 1979.

However, the historical development of the Securities and Exchange Commission dates back some twenty years before the enactment of the ISA, as one of the recommendations of the Okigbo panel, was the establishment of the Securities and Exchange Commission to replace and supercede the Capital Issues Commission[20].

The Federal Government accepted the recommendation of the committee to establish a Securities and Exchange Commission (SEC), but enlarge its functions beyond those recommended by the Committee[21]. The Securities and Exchange Commission consequently came into being in 1979. This legislation provided extensive powers for the Commission to regulate both the Primary and Secondary segments of the capital market**.**

In other words the SEC Act was much broader in Scope than the Capital Issues Committee (CIC) Act, covering the entire capital market, including public offering of Securities. Indeed this legislation marked a major update of the statutes governing the Capital Market in Nigeria and could be regarded as the beginning of real regulation of the Nigerian Capital Market.

In 1988, the Act was further updated through a re-enactment as the Securities and Exchange Commission (Amendment) Act[22].

It provided that "there is hereby established a body to be known as the Securities and Exchange Commission (hereafter in this Act referred to as "the Commission").

[20] Panel under the auspices of Dr. Pius Okigbo was set up by the FGN in 1976.
[21] Ibid.
[22] No. 29 of 1988.

The 1979 SEC Act was re-enacted in 1988 as a result of some observed defects in its enforcement capability and to strengthen the SEC and re-position it to better perform its functions. The Securities and Exchange Commission (Amendment) like the 1979 enactment had two main objectives. These were:

(a) To protect the interest of investors in order to enhance their confidence in the Capital Market; and

(b) To promote the growth and development of the Nigerian Capital Market so as to accelerate economic development.

It must be noted that the market is often deepened by the offering of fresh issues to investors through the initial Public Offering (IPO) etc.

To achieve the above two objectives, the Act re-established the SEC and gave it broad regulatory functions and powers, which encompassed regulation of offering of securities to the public either through the IPO, private placement, rights issue, offer for subscription or offer for sale. In its regulation of the Nigerian Capital Market, the SEC adopts the traditional securities market regulation tools of, registration, surveillance, investigation, enforcement, rule making, etc as provided for by the law setting up the SEC.[23]

Unlike the 1979 Act, the 1988 Amendment Act provided for civil and criminal liabilities for contravention of the Act. It also empowered the Commission to suspend or revoke the registration of erring market Operators. Furthermore, it stipulated certain direct responsibilities on

[23] op. cit

market operators while also vesting on the Commission the responsibilities for regulation of mergers, acquisition and all forms of business combination [24]. Section 6 of the Act[25] charged the Commission with following specific functions:

(a) Determination of the amount of, the price and time at which securities of a company are to be sold to the public either through IPO, offer for sale or offer for subscription;

(b) Registering all Securities proposed to be offered for sale to or for subscription by the public or to be offered privately with the intention that the Securities shall be held ultimately other than by those to whom the offers were made;

(c) Maintaining surveillance over the Securities market to ensure orderly, fair and equitable dealings in Securities;

(d) Registering stock exchanges or their branches, registrars, investment advisers, securities dealers and their agents and controlling and supervising their activities with a view to maintaining proper standards of conduct and professionalism in the Securities business;

(e) Protecting the integrity of the Securities market against any abuse arising from the practice of insider dealings;

(f) Acting as the apex regulatory organization for the Nigerian Capital market including the Nigerian Stock Exchange and its branches to which it would be at liberty to delegate powers;

[24] Pastor S.O. Adesiyan: Historical Development of The Nigerian Capital Market: Being a paper delivered at SEC Training School Abuja on June 17, 2002.
[25] No. 29 of 1988.

(g) Reviewing, approving and regulating mergers, acquisitions and all forms of business combinations;

(h) Creating the necessary atmosphere for the orderly growth and development of the Capital Market; and

(i) Undertake such activities as are necessary or expedient forgiving full effects to the provisions of the Act [26].

The functions were further expatiated by other sections of the Act. For instance under Section 9 (1)[27] all securities to be offered for sale or for subscription were expected to be registered with the Commission while section (1) [28] deals with effective date of registration.

Under Section 11, the Commission was empowered to prescribe the minimum period when the Registrar of a company or an Issuing House, as the case may be, was expected to return surplus monies to subscribers of an issue [29].

Section 12, required stock exchanges and National Association of Securities Dealers to register with the SEC, not-withstanding provisions of any other law to the contrary.

Section 13, mandated the Director General of the Nigeria Stock Exchange to forward, on a quarterly basis, a report on the Exchange's activities to the Chief Executive of the Commission for onward transmission to the Minister of Finance.

[26] Ibid page 9.
[27] SEC Act 1988.
[28] Ibid.
[29] Rule 64 (4) SEC and Regulations 2000.

The Commission was empowered under Section 14 to register and regulate all Stockbrokers, Securities Dealers and their agents, Investment Advisers and Registrars.

Under section 15, the Commission was vested with the powers to examine the records and affairs of, to call for information from and on any Company, Enterprise, Stock Exchange, Registrar, Issuing House, Stockbroker or any other person or institution that fall within this provision of the Act.

The Commission was expected under section 17 of the Act, to ensure that shares issued by banks, except by capitalization were by way of public offering. [30]

Furthermore, any person, aggrieved by any decision of the Commission relating to an application made by a company or enterprises pursuant to its enabling Act may under section 19 appeal to the Minister, whose decision was final.

Under section 23, the Commission could from time to time, with the approval of the Minister, make, amend or prescribe rules and regulations for the purpose of giving effect to the provisions of the Act [31].

The Commission had powers under section 24 to suspend or revoke registration. Section 25 provided for civil liability for false statement in

[30] Pastor S.O. Adesiyan op. cit at page 10.
[31] ₦100, 000.00 or imprisonment for five years or both.

an application while section 26 spelt out the penalties[32], ₦100, 000.00 or imprisonment for five years or both, for contravention of the provisions of the Act.

Under section 27, the Federal High Court had jurisdiction for the trial of offences and violations arising from the provisions of the Act [33].

However, in 1996, twenty years after a major review of the Nigerian Financial System under the Chairmanship of Dr. Pius Okigbo, the Federal Government Constituted another panel, to carry out another comprehensive review of the Capital Market. The seven (7) man panel on the review of the Nigerian Capital Market,[34] had the following broad terms of reference.

1. To review the history: structure, conduct and performance of the Nigeria capital market and its contributions to Nigeria's economic development;
2. To examine the objectives for the establishment of the Nigeria Capital Market and their continued relevance to Nigeria's contemporary and prospective needs and aspirations, and make appropriate recommendations;
3. To anticipate the likely direction of evolution of the Nigerian economy in the next century and project how the capital market should develop to expand adequately to the needs of the economy;
4. To analytically examine the present state of the Nigerian capital market and formulate a concise policy framework geared towards the creation

[32] Act No. 29 op cit.
[33] Ibid
[34] The Chief Dennis Odife Panel.

of a conducive atmosphere for the orderly growth and development of the market; and

5. To codify all laws and regulations prescribing the conduct of Capital Market activities, behaviour and institutions into one comprehensive law applicable to all.

The report of the panel culminated in several reforms in the market including, the enactment of the new enabling law for the Securities and Exchange Commission, i.e. the Investments and Securities Act (ISA), [35] which has not only strengthened the SEC as the apex regulator of the Nigerian capital market, but had also, provided the requisite legal, institutional and operational structure for best practices and effective corporate governance in the Capital Market and the Nigerian Securities Industry.

Section 8 of the Act provides as follows;

a. regulate investments and securities business in Nigeria as defined in the Act;

b. register and regulate Securities Exchanges, Capital Trade Points, Futures, Options and Derivatives Exchanges, Commodity Exchanges and any other recognized Investment Exchanges;

c. render all securities to be offered for subscription or sale to the public;

d. render assistance in all aspects including funding as may be deemed necessary to promoters and investors wishing to establish Securities Exchanges and Capital Trade Points;

[35] No. 45 of 1999.

e. prepare adequate guidelines and organize training programmes and disseminate information necessary for the establishment of Securities Exchanges and Capital Trade Points;

f. register and regulate corporate and individual capital market operators as defined in section 30 of the Act;

g. register and regulate the workings of venture capital funds and collective investment schemes including mutual funds;

h. 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 investors;

j. act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end, to establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by the Securities Exchanges and Capital Trade Point;

k. keep and maintain separates registers of foreign direct investments and foreign portfolio investments;

l. register and regulate central depository companies and clearing and settlement companies, custodians of securities, credit rating agencies and such other agencies and intermediaries;

m. protect the integrity of the securities market against abuses arising from the practice of insider trading;

n. act as a regulatory apex organization for the Nigerian capital market including the promotion and registration of self regulatory organizations and capital market trade associations to which it may delegate its powers;

o. review, approve and regulate mergers, acquisitions and all forms of business combinations;

p. promote investors education and the training of all categories of intermediaries in the securities industry;

q. call for information from and undertake, inspect, conduct inquiries and audits of the Securities Exchanges, Units Trusts, Mutual Funds, Capital Trade Points, Futures, Options and Derivatives Exchanges as well as other Intermediaries and Self Regulatory Organizations in the securities industry;

r. call for and furnish to any agency, such information as may be considered necessary by it for the efficient discharge of its functions;

s. levy fees or other charges on any person for carrying out investment and securities business in Nigeria;

t. conduct research into all or any aspect of the securities industry;

u. prevent fraudulent and unfair trade practices relating to the securities industry;

v. advice the Minister on all matters relating to the securities industry;

w. disqualify unfit individuals from being employed anywhere in the securities industry;

x. liaise effectively with the regulators and supervisors of other financial institutions locally or overseas;

y. perform such other functions and exercise such other powers not inconsistent with this Act as are necessary or expedient or giving full effect to the provisions of the Act.

Notably absent in the functions of the SEC under the ISA is its role in pricing and timing the issue of securities. The pricing of an issue is a complex process involving a balancing of various interests. These include the issuer company, its customers and suppliers, its management (and their friends and family), venture investors, as well as the needs of the retail and institutional customers of the issuing house involved. The ultimate goal is to assure good value to the issuer company while ensuring the success of the offer. While the issuer company is concerned about raising enough capital even if it involves over pricing the company, the issuing house is concerned with the profits of the transaction to itself and patronizing individual and institutional investors. Hence there may be need for regulatory intervention.

4.3. The Nigerian Stock Exchange

The History of the Nigerian Capital market has often been trace to the Colonial era, precisely 1946, when the (10 year plan) Local Loan Ordinance was promulgated. This Ordinance "allowed for the floating of Local Loan to the tune of 300,000 pounds (N600, 000.00)". The issue was reportedly oversubscribed, albeit with little local participation.

Notwithstanding that, it was recognized by some commentators as the first conscious effort by the British to give investment opportunities to Nigerians and revolutionize the Capital Market.

The low level of local participation was, however, not surprising because prior to this period, the colonial government had often raised funds for its operations mainly from the home country [36]. In spite of the event of 1946, full fledged formal Nigerian Capital Market could not be said to have emerged as there was no facilities in place for dealing in securities at the time [37].

However steps continued to be taken in the colonial government by colonial government, in the direction of an emerging Capital Market for Nigeria. For instance, a loan fund for financing some public utilities, was created in 1951,[38] The fund, which was to be financed by payments accruing from revenue, allowed for low interest rates and easy repayment terms and was to be advanced to public utilities. Six years later [39], the

Government and Other Securities (Local Trustees Powers) Act was promulgated.

This was followed by the setting up of a Committee, by the Federal Minister of Commerce and Industry to consider ways and means of fostering a shares market in the country.

[36] Pastor Adesiyan op. cit
[37] Ibid.
[38] Ibid.
[39] i.e. in 1957.

The Committee was headed by Professor Barback.[40] Among the Committee's recommendations accepted by Government were:

i. The creation of facilities for dealing in shares

ii. The establishment of rules regulating transfers

iii. Measures to encourage savings and issues of securities of government and other organizations.

Consequently, the Lagos Stock Exchange[41] was formed in 1960 as a private company quoted (limited) by guarantee and having a share capital. It was later incorporated on September 17, 1960[42].

The take off of the Exchange was made possible by the active encouragement of not only ICON which later became Nigerian Industrial Development Bank (NIDB), but also the Central Bank of Nigeria, which at various times provided financial assistance to the Exchange. *Thus while the Exchange is no doubt a private organization, the circumstances surrounding its establishment necessitated that the Lagos Stock Exchange Act be enacted.* The Act[43], in section 5 (1) requires the Exchange to submit quarterly reports of its activities to the Central Bank of Nigeria. This in a sense marks the beginning of the regulation of the Exchange by a government agency.

The Exchange commenced operations in June 1961. One year later,[44] the Capital Issues Committee was established by the Central Bank of Nigeria, which had responsibility over the entire financial system, especially in the

[40] who was then the Director, Nigerian Institute for Social and Economic Research (NISER).
[41] Now the Nigerian Stock Exchange (NSE)
[42] Pastor Adesinyan opp. Cit
[43] The Lagos Stock Exchange Act of 1961
[44] i.e. in 1962.

absence of any independent statutory regulator for the nascent Capital Market.

The year 1959 also witnessed the floatation of a ₦4Million (2 Million pounds) Federation of Nigeria Development Loan Stock by the Central Bank of Nigeria which, in the absence of a formal stock market, had to provide a secondary trading window for the issue.

The Capital Issues Committee (CIC) was an ad-hoc non statutory Committee charged basically with the primary responsibility of regulating the timing of public issues. This was obviously an attempt at ensuring that the absorptive capacity of the young market was not overstretched.

It must have been considered that a deluge of uncontrolled issues could cause glut resulting in subsequent failure of issues. Such could no doubt erode the issuer's confidence in the market. The Capital Issues Committee, however, evolved eleven years later, into the Capital Issues Commission, a formal body backed by statute.[45] This was in the face of increased economic activities and the promulgation of the Nigerian Enterprise Promotion Act[46]. The Commission was given wider responsibilities as its enabling law allowed it to determine:

i. The price at which shares or debentures of a company are to be sold to the public either through offer for sale or by direct issues, including Initial Public Offerings (IPOS).
ii. The timing and amount of any subsequent public issue of shares or debenture by the company; and

[45] Capital Issues Commission Act 1973.
[46] of 1972.

iii. Such other matters incidental or supplementary to the foregoing as the Commission may deem fit.

In 1985, the Nigerian Stock Exchange took a bold step towards making the Capital Market more accessible to indigenous companies by introducing the second tier securities market (SSM). The second Board for listing at the Exchange provides for less stringent listing requirements than the main Board. As at today, there are in all a total of about 340 equities on the main Board and over 28 on the SSM.

The primary function of the Nigerian Stock Exchange is to provide trading facilities and regulate trading in securities that are listed on it. The Exchange has a set of listing requirements which have to be met before a company is listed on it. Today, the Exchange has ten branches located at Lagos, Abuja, Kaduna, Port Harcourt, Kano, Onitsha, Ibadan, Benin, Yola and Uyo. Trading in the market is restricted to dealing members of the Exchange who are stockbrokers licensed by the Securities and Exchange Commission (SEC) to conduct business on the Exchange.

Being a membership organization, the operations of the Exchange are guided by Rules and Regulations formulated by it and the Statutory Regulatory Agency (SEC) pursuant to the Investment and Securities Act (ISA) [47]

[47] No. 45 of 1999.

4.3.1 LISTING REQUIREMENTS FOR THE FIRST-TIER MARKET[48]

In order to obtain quotation (listing) on the Nigerian Stock Exchange, every applicant Company must satisfy all of the following conditions:

i. Company must be registered as public limited liability company (Plc) under the provisions of the Companies and Allied Matters Acts (CAMA); [49]

ii. Must submit to the Exchange, financial statements/business records of the past five years;

iii. Date of last audited account must not be more than 9 months;

iv. Amount of capital that can be raised is unlimited, depending on the borrowing powers of the Directors/Company;

v. Pay annual quotations fees based on market capitalization;

vi. At least 25% nominal valued of share capital must be offered to the public;

vii. At the point of listing, the number of shareholders must not be less than 500;

viii. Securities must be fully paid up at the time of allotment;

ix. Unalloted securities must be sold on the NSE trading flours; and

x. Provision for issue of mergers, acquisitions, units trusts and mutual funds [50]

[48] Chapter one of the Nigerian Stock Exchange Listing Requirements (The Green Book)
[49] Section 50, Cap 59; LFN, 1990 (now 2004).
[50] NSE Listing Rules for Unit Trust etc.

4.3.2 Listing Requirements for State Government Bonds on the First-Tier Market [51]

In addition to the usual listing requirements for corporate equity, the Nigerian Stock Exchange (NSE) requires that all applications for State Government Bonds meet stated conditions[52].

4.3.3 Listing Requirement of the Second-Tier Securities Market (SSM)

For any company to seek listing on the SSM:

i. Company must be registered as public limited liability company under the provisions of the Companies and Allied Matters Act 1990; [53]

ii. It must submit to the Exchange Financial statements/records of the past three years;

iii. Date of last audited accounts must not be more than 9 months;

iv. Amount of money that can be raised may not exceed ₦10 Million;

v. Annual quotation fee is a flat rate of ₦5, 000.00;

vi. At least 10% or ₦100, 000 of the nominal value of share capital must be offered to the public;

vii. At the point of listing, the number of share holders must not be less than 100.

viii. No share holder can own more than 75% of the issued share capital of the company;

[51] The "Green Book" (NSE) chapter 8(2).
[52] Ibid.
[53] CAMA opp. cit at Section 24.

ix. After listing Company must submit half yearly and annual accounts;

x. Securities must be fully paid-up at the time of allotment; and

xi. Unalloted securities must be sold on the trading floors of the Nigeria Stock Exchange.

4.3.4 Documentary Requirement for listing on the Nigerian Stock Exchange

It should be noted that the main application to the Exchange shall be in compliance with the provisions of the Listing Requirements, depending on whether the applicant is already quoted or not. The following documents must be lodged with the Exchange at the same time with two copies of the main/detailed application and draft prospectus.

i. Ten (10) copies of the "Abridged Prospectus" for quotation and listing on the Nigerian Stock Exchange (NSE);

ii. Two (2) copies of the Certificate of Incorporation as an evidence of attaining a public limited company statues;

iii. Two (2) copies of the Memorandum and Articles of Association (or equivalent documents and any other amendment thereto) which are market in the margin to indicate where provisions of Appending vii) of the Listing Requirements have been met.

iv. In case of loan Stock or Debenture, a draft of the Trust Deed (or document security or constituting the stock) which must comply with Appending vii of the listing requirements.

v. A certified copy of the Resolution:

i. authorizing the issue of all securities for which listing is sought;

ii. of the Board authorizing or approving the issue of the prospectus; and

iii. increasing the share capital of the company in order to absorb the proposed issue.

vi. One copy of the Annual Report and Account for each of the five (or three) completed financial years of the applicant company immediately preceding the date of application;

vii. A copy of the Draft underwriting Agreement (where applicable) and commitment letters from the consortium of underwriters;

A signed copy must be submitted after execution of the Under Writing Agreement;

viii. A true copy of the Reporting Accountant's statement on:

a. The five (or three) year financial results (incorporating the statement of adjustments); and

b. The profit forecast and the cash-flow projection for the next two or five years.

ix. One copy of the financing proposal submitted to the Securities and Exchange Commission (SEC);

x. One copy of the draft prospectus;

xi. An estimated cost of the issue's final cost must be submitted letter;

xii. Offer time table;

xiii. A certified copy of every report, valuation, resolution or other document any part of which is extracted or referred to in the prospectus; and

xiv. Consent letters from all the parties to the issue.

Furthermore, it is mandatory that:

i. The letter introducing application must be signed by the Chief Executive of the Stockbroking firm to the issue;

ii. Letter requesting certificate of exemption must be signed by the Chief Executive of the Stockbroking firm to the issue;

iii. All Chief Executive Officers (CEO's) of stock broking firms must be dealing clerks (stockbrokers) otherwise such signatures are not recognized;

iv. All managing Directors/CEO's of Issuing Houses and Stock broking firms must be in attendance at "Council Quotations Committee" meeting during consideration of their clients applications.

v. *"This information is issued in compliance with the listing Requirements of the Nigerian Stock Exchange"; and it m*ust appear on top of each advertisement for new issues.

vi..An original copy of the prospectus signed by all parties at the completion Board meeting must be filed with the Exchange;

vii. An original copy of the signed Trust Deed must be filed with the Exchange;

vii. An original copy of the signed Underwriting Agreement must be filed with the Exchange;

ix . For distribution to council members of branches, 3 copies of printed prospectus and 50 copies of abridged particulars should be submitted, unstamped to the Exchange;

x. Allotment results must be filed with the Exchange;

xi. General undertaking must be signed and sealed by Managing Director and Company Secretary; and

xii. Declaration of compliance must be submitted with a request letter for listing date by the stock broker to the issue.

4.4. The Central Securities Depository (CSD) and Central Securities Clearing System (CSCS)

4.4.i. Central Securities Depository (CSD)

The Bank for International Settlements defines central Securities Depository (CSD) as:

".a facility for holding securities which enable securities transactions to be processed by book entry. Physical securities may be immobilized by the depository or securities may be immobilized by the depository or securities may be dematerialized (i.e.) so that they exist only as electronic records)" [54]

The Federation of International Stock Exchanges (FIBV) which the Nigerian Stock Exchange (NSE) is a member, endorsed the recommendations of a study Group of thirty (G.30), a Private Sector Organization, which studied the global capital market problems and made nine recommendations with a

[54] Asinobi C. Onyewuchi; "Understanding the Central Securities Clearing System (CSCS)" at the National Workshop for Financial Correspondent on June 13, 2001 (Organized by the Nigerian Stock Exchange) at page 1

view to solving them. Recommendation 3, related to the establishment of a Central Securities Depository (CSD).

In order to implement the recommendations of FIBV, the Nigerian Stock Exchange established the Central Securities Clearing System (CSCS) Limited and registered it with the Corporate Affairs Commission (CAC)[55]. The CSCS Ltd was registered to function as "An agency for Central Depository for all share certificate of quoted securities including government stocks for safe keeping (custodian services) as well as certificates for foreign investors, a sub-registry for all quoted securities in conjunction with registrars of quoted companies, the issuance of securities identification numbers to stockholders and clearing, settlement and custodian services for local and foreign instruments"[56] The CSCS was licensed by the Securities and Exchange Commission as a central depository, clearing and settlement agency.

The CSCS was commissioned on April 8, 1997 and commenced operations on April 14, 1997. It operates a computerized depository, clearing, settlement and delivery system for transaction in shares listed on the Nigeria Stock Exchange.

The CSCS, as an institution regulating the operations of the capital markets including public offers, performs the following functions;

i. Acts as central depository for share certificates of companies quoted on the Nigerian Stock Exchange;

[55] on July 29, 1992.
[56] Asinobi Onyewwuchi; op. cit.

ii. Acts as a sub-registry for all quoted securities (in conjunction with registrars of quoted companies);
iii. Acts as issuer of central securities identification numbers to stock brokers and investors;
iv. Perfects clearing and settlement of transactions in securities; and
v. Maintains the safe keeping/custodian (in conjunction with member (s) for local and foreign investments).

Before the emergence of the Central Securities Clearing System (CSCS), the stock market delivery and settlement process was afflicted with near intractable problems, some of which include:

i. Delay in settlement of transactions. In most cases, when CSCS was not in place, it took between 3 – 12 months to receive share certificates;
ii. Cancellation and high frequency (all the time) in the issuance and re-issuance of certificates when sales occur;
iii. Constant signature verification;
iv. Some dealing members sold what they did not have and there were numerous complaints on failed transactions;
v. Reports of loss or theft of certificates was rampant; and
vi. The risk was very high, constant and undue delays, transactions were manually operated, frequent cases of manipulations due to long transaction circle, transparency was minimal because of the clumsy nature of transactions which occasioned a general lack of

confidence in the system.

These problems were global and needed solution. The CSCS was, therefore, established not only to speed up delivery and settlement systems but also to regulate the process of transferring ownership rights in company securities from one investor to the other in the Nigerian Capital Market. The CSCS settlement duration is now T+3 i.e. **transaction day plus three other days as opposed to 3-12 months.**[57]

4.5 The Chartered Institute of Stock Brokers (CIS).

The Institute which regulates operations in the Nigerian Capital Market through the training and discipline of stock brokers was chartered by Act, in 1995[58].The Act established the institute and vests it with the responsibility of amongst others, to train and classify stock brokers as well as issued them licenses to trade. The SEC is represented on the Board of the Institute. As has been noted earlier, before the establishment of the Institute, Stockbrokers were trained by the Exchange, which also granted such brokers licenses to trade. This was not a need and transparent arrangement for making the standard of stockbroking and the training of stockbrokers high and competitive enough for the emerging Nigerian Capital Market. Any person could have been licensed as a broker by the Exchange, using its unregulated discretion on the matter. The CIS has, however, brought a higher standard of both training and discipline into the stockbroking profession in Nigeria.

[57] Asinobi op cit
[58] i.e. the Chartered Institute of Stockbrokers Act 1995 (LFN 2004).

4.6 The Investments and Securities Tribunal

The Investments and Securities Act provided for the establishment, jurisdiction, authority and procedure of the Investment and Securities Tribunal (IST). Section 224 subsection (1) provides as follows; "There is hereby established a body to be known as the investments and securities tribunal (hereafter referred to as "the tribunal") to exercise the jurisdiction, power and authority conferred on it by or under this Act".

The tribunal created by the above provision is of the same hierarchy with the Federal High Court. It is expected to operate in a manner similar to that of the Body of Tax Appeal Commissioners. Appeal from the tribunal lies to Court of Appeal[59]. The IST has been established as a shift from the traditional courts to the more flexible, time responsive alternative dispute resolution (ADR) systems as well as in conforming to the worldwide trend of providing independent and dedicated courts for specialized and technical areas like the investments and securities markets.

The IST is vested with the onerous responsibility of adjudicating on disputes and controversies in capital market transactions and operations.

The concept of IST, though novel, is not peculiar to Nigeria. In the UK there is the Financial Services and Markets Tribunal (FSMT), and in India, the Securities Appellate Tribunal (SAT), amongst others.[60]

[59] Section 244
[60] Asinobi, op cit

4.6.1 **Composition**

The IST is composed of an Executive Chairman and eight other members known as Capital Market Assessors, who must be either (1) A lawyer and or (2) Capital Market professionals, possessing vast knowledge and experience in securities law and capital market operations with a view to evolving a more transparent, fair and secure financial sector that is responsive to the rule of law. The quorum of the Tribunal at any sitting shall be five inclusive of a Chairman, as stipulated by the ISA.[61]

The IST is by virtue of section 237(3) of the Act deemed to be a civil court for all purposes. Section 6 (1) (a) – (i) of the Constitution,[62] listed 9 (nine) courts, which are vested with judicial powers of the federation.

However, paragraphs j and k of the section also include such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws.

By virtue of section 315(4) (b) of the Constitution,[63] the Investment and Security Act 1999 is an existing law. The section defines an existing law as:

[61] Section 225(4).
[62] of the Federal Republic of Nigeria 1999.
[63] Ibid.

"Any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date". As opined earlier, the Act is legally regarded as an act of the National Assembly. Consequently, the IST is inclusive of the Courts recognized by the Constitution. Though many have argued otherwise, which polemics are quite outside the scope of this research.

4.6.2 Special Features of the Investment and Securities Tribunals

i. It is a civil court:

Primarily, the IST is a Civil Court of Law. This is specified in section 237 (3)[64] which provides that "Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes".

From the foregoing, the IST has no powers to adjudicate on criminal matters. Section 235 of the Act provides that;

"Where in the course of its investigation, the Commission discovers evidence of possible criminality the Commission shall be obliged to pass such information to the appropriate criminal prosecuting authorities such as, as the office of the Attorney General of the Federation and Attorney General of the State".

[64] of the ISA No. 45 2999

In addition to being a Civil Court, the IST is also a technical and specialized Court. This is in view of the fact that the nature of operations and transactions in the Capital Market is highly technical, this requiring well trained hands that are specialized in this respect. As a result of this, the Tribunal is manned by experts in both legal matters and operations of the market.

"A person shall not be qualified for appointment as a Capital Market Assessor unless he is knowledgeable about the capital market laws, regulations, norms, practices and operations of the capital market"[65]

In addition to these, the IST has a crop of seasoned professionals, with diversified legal and vast technical operations experience in the capital market staffing its legal services as well as technical operations department.

iii. Timely and less expensive resolution process:

The Tribunal is mandated to dispose of any matter before it within three months from the date of commencement of the action.

This feature is also backed by the Act establishing it which states that:

"The Tribunal shall in the exercise of its power under this Act, conduct its proceedings in such manners as to avoid undue delays

[65] Ibid at Section 226.

accordingly, the Tribunal shall dispose of any matter before it finally within three months from the date of the commencement of the action". [66]

iv. Unique case management approach:

Pursuant to section 237(1), the Act confers on the Tribunal the powers to make rules regulating its procedures. Consequently, the Investments and Securities Tribunal (Procedure) Rules 2003 regulates the proceedings before the Tribunal. The rules are very liberal and devoid of technicalities and complexities associated with other rules of proceedings.

v. Representation: This is another special feature of the IST, the provision for self representation as well as representation by third parties other than legal practitioners. From the foregoing, parties have the right to independently choose their mode representation.

Section 238(1) of the Act allows parties to either appear in person or authorize legal practitioners or any of its officers to represent them at the Tribunal.

vi. Pre Hearing:

It has also fashioned out its rules to allow for "Pre Hearing", perhaps, to enable parties to identify the issues they agree on or dispute without being bogged down with legal processes while still adhering to the rule of law.[67]

[66] Ibid at Section 236(5).
[67] See, IST (Procedure) Rules 2003.

4.6.3 **Powers and Jurisdiction**

As earlier stated, the IST is empowered to adjudicate on civil disputes and controversies arising under capital market transactions especially:

i. Under the Securities and Investments Act and the Rules and Regulations made thereunder;

ii. Interpretation of any law, enactment or regulation to which the Act applies;

iii. Between the Securities and Exchange Commission (SEC) and any Self Regulatory Organization (SRO) in the capital market;

iv; Between Capital Market Operators and SROs;

v. Between Capital Market Operators

vi Between Capital Market Operators and Investors; and

vii Between quoted Companies and the Regulators or SROs, amongst others.

By the provision of section 234 of the Act, the Tribunal is empowered to hear all disputes in the capital market involving the Commission, Investors, Self-Regulatory Organizations as well as Operators and Issuers in the capital market.

Examples of cases that could be brought before the Tribunal include:

i. Misappropriation of client's money by market operators;

ii. Non-remittance of issue proceeds by an Issuing House to the issuer/company;

iii. Non-remittance of dividends by a Registrar/public company/stockbroker;

iv. Late transfer and/or registration of shares/stocks by any stockbroker;

v. Disputes over mergers and acquisition between the shareholders and the public quoted company, self regulatory organization, the Commission, etc;

vi. Disputes between operators and any SRO in the market (e.g. registrar and an exchange);

vii Disputes arising from the rules, regulations and such other guidelines made by the Commission, or any securities exchange;

Viii. Dispute arising from any decision, notice and or decision issued by the Commission;

ix. Appeals against disciplinary measures by the Commission such as suspension and or baring participants from the market;

x. Appeals against delisting of any security or company by an exchange; and

xi. Disputes/claims arising from misrepresentation or false statements in offer documents or in a securities transaction.

By virtue of section 242 of the Act,[68] the Tribunal has exclusive jurisdiction over capital market disputes. This section states that:

"Save as provided elsewhere in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter

[68] ISA op cit

which the Tribunal constituted under this decree is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred on the Tribunal by or under this Act".

In the exercise of its jurisdiction, the Act empowers the Tribunal, to among others:

Summon and enforce the attendance of any person and examine persons on oath;[69] a. Require the discovery and production of documents;

c. Call for the examination of witnesses or documents; c. Receive evidence on affidavits; d. Call for examination of witnessed; e. Review its decisions; f. dismiss an application for default or deciding matters exparte; g. set aside any order or dismissal of any application for default or any order passed by it exparte; h. do anything, which in the opinion of the Tribunal is incidental or ancillary to its function under the Act, etc.

4.6.4 **Status of the Tribunal**

An award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the party seeking to enforce the award[70].

By virtue of section 243(1) of the Act, appeals against the judgment or the award of the Tribunal may be made only on points of law to the Court of Appeal. This is because the Capital Market Assessors, who

[69] Ibid at Section 237 (2).
[70] Section 241(3).

have cognate experience in capital market operations, would have resolved all facts relating to the market issues at the sitting of first instance. In a way, the Tribunal is seen as a final court on issues of facts. The Tribunal strives as much as possible and always to resolve points of facts and laws succinctly and thoroughly.

4.6.5 **IST as an Enforcement Tool in the Capital Market**

The IST is a very important tool in the enforcement of the ISA regulating the Nigerian Capital Market. In the first place, the word "enforcement" simply means strictly compelling the obedience of enacted laws, rules and regulations. From the foregoing, it should be noted that for an organ to be able to enforce laws, rules and regulations, certain powers must be conferred on it to enable it function appropriately. This is also applicable to the IST. As earlier stated, the Act establishing the IST conferred on the Tribunal certain powers to enable it play the role of an "Enforcement Tool" in the Nigerian Capital Market.

4.6.6 **Enforcement Techniques of the IST**

The Investments and Securities Tribunal carries out this regulatory enforcement function in the following ways:

1. **Adjudicating on disputes and controversies arising in the Nigerian Capital Market**

Another way in which the IST carries out its regulatory/enforcement role

in the Nigerian Capital Market is through the adjudication of disputes and controversies emanating from the Capital Market. In fact, this is the major reason why the IST was set up by the Act [71] Section 234(1) expressly states that,

"The Tribunal shall have powers to adjudicate on disputes, and controversies arising under this Act and the rules and regulations made thereunder".

In addition, Pursuant to this section, in subsection (2), the Tribunal's adjudication covers amongst other matters relating to:

i. The interpretation of laws, enactments or regulations that applies to the operations of the Capital Market;
ii. Disputes between Capital Market Operators;
iii. Disputes between quoted companies and other regulators or the Securities Exchanges;
iv. Disputes between Capital Market Operators and their clients;
v. Disputes between Capital Market Operators and the Securities Exchanges or Capital Trade Point; and
vi. Disputes between the Commission and a Securities Exchange or Capital Trade Point.

2. **Directives**

The Tribunal issues directives in the course of justice dispensation. This is one of the regulatory enforcement techniques that the Tribunal

[71] Section 234 op. Cit

employs. These techniques could take any form depending on the situation at hand. Rule 34 of the IST (Procedure) Rules,[72] makes it clear that the Tribunal, at any state of the proceedings can either on its initiative or on application of a party, issue directives it considers necessary to further the overriding objective in the conduct of an appeal or application. These include;

a. directions to provide information, documents, particulars, or statements which may reasonably be required in the process of hearing;
b. summon any person to attend as a witness, at a specified place and time at an oral hearing or to produce any document in his/her possession relating to the matter at hand; and
c. directions specifying the persons who may be admitted to and restrictions on the reporting of the hearing amongst others.

From the foregoing, the Tribunal is in a comfortable position to act as an enforcement/regulatory tool in the Capital Market as failure to comply with any of its directives/directions attract sanctions by the Tribunal. For instance in Rule 37(1),[73] if any direction, including an order, given to a Party is not complied with by a party, the Tribunal may before or at the hearing, dismiss the whole or part of the appeal or application, or strike out the whole or part of a respondent's reply and, where appropriate, direct that a respondent be debarred from contesting the appeal or application altogether. Also, in subsection 2

[72] of 2003 op. cit
[73] IST Procedure Rules 2003.

of the same Rule,[74] an offending party may be committed for contempt of the Tribunal. Therefore, strict compliance with the directives of the Tribunal is required from all Operators in the Capital Market.

3. **Awards/Judgment**

Since the IST is a Tribunal, naturally, it has the power to award judgments on its cases. Section 241 (1) of the Act[75] gives it the power to do so and provides as follows:

"The Tribunal may give its judgment in written orders by making or imposing sanctions such as are not limited to fines, suspensions, withdrawal of licenses, specific performances, restitution as it may deem appropriate in each case".

In addition, section 241 (3), which specifies the status of the awards of the Tribunal, thus:

"An award or judgment of the Tribunal shall be enforce as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the part seeking to enforce the award or judgment"

The IST utilities this technique regularly in enforcement in the Capital Market. Operators are thus bound by law to abide by the awards or judgments of the Tribunal in adjudication in the Capital Market.

[74] Ibid
[75] op cit

Any person that is dissatisfied with the award or rulings of the Tribunal may appeal on **points of law** to the Court of Appeal[76]. While an appeal against the decision of the Court of Appeal shall lie to the Supreme Court.

As earlier on stated, it should be noted that no Civil Court has to entertain any suit or processes which are within the jurisdiction of the 1ST. This automatically takes care of situations where controversies arise in the process of adjudication because of injunction and counter injunctions by other civil courts of the same status, thereby resulting to delays in the executions of justice as it is being witnessed in our conventional courts today.

In addition, the IST being a specialized Court in Capital Market affairs is more capable to deal with the complexities that do emanate from the transactions in the Capital Market than other civil courts. This is due to the composition of the Tribunal with respect to its highly trained Members and Staff in its area of jurisdiction. Therefore, the average investor and the Act establishing it is rest assured that the IST is not only a regulatory enforcement tool, but also competent in its award of judgments, in settlement of grievances in the Capital Market, including those emanating from public offering of securities which is the cornerstone of the Market because of the philosophy behind its establishment, the urgency attached to Securities transactions and

[76] Ibid at Section 243(1&2).

disputes arising there from and the need to dispose of such disputes expeditiously, informed the establishment of this specialized Court.

The Court has done a great deal in resolving case between the regulator and stock brokers as well as between Stockbrokers intense. Some of these cases are illustrated below;

4.7. Judicial Enforcement of Securities Laws

An active judiciary versed in the interpretation and enforcement of securities law including subsidiary rules and regulations is the bulwark securities law including subsidiary rules and regulations is the bulwark of any capital market structure. Participants in the capital market should be able to sue for recompense when harm is suffered. In charging the judiciary with this function, jurisdiction may be conferred on the regular courts, or a special division of the courts. A special commercial or securities court may be constituted for the purpose. The objective is to provide effective avenues of judicial relief, producing reasonably speedy, consistent and transparent decisions. The capital market cannot operate efficiently if the rules of the market are not rigorously enforced.

Section 251 of the 1999 constitution confers exclusive jurisdiction on the Federal High Court with respect to several matters including *inter alia*, matters,[77] a……d……and matters;

(a) arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the

[77] See also section 635, 637(1) & (2) and 638 of the Companies and Allied Maters Act and sections 7 & 8 of the Federal High Court Act Cap. 134 Laws of the Federation 1990.

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

(b) any Federal enactment relating to ….. commercial and industrial monopolies, combines and trusts….;

(c) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision of the Federal Government or any of its agencies.

Notable decisions of the court in company securities and other aspects of company law have been very encouraging.[78] **In *Societe Generale Bank Nigeria Ltd v S.E.C.*[79], ** the Federal High Court had to explore the scope of the regulatory powers of the SEC over public and private companies. Two shareholders of the plaintiff bank transferred their shares constituting about 40% of the bank's holding without seeking SEC's 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 the 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 requirement extend even to private companies where there is alien participation in the sale or transfer of shares.[80]

[78] See *African Continental Seaways Ltd v. Nigeria Dredging Roads & General Works Ltd (1977) 3 FRCR 363*; Chief *T. Coker v. Paul Iro (1976) 2 FRCR 136; Yalaju-Amaye v. A.R.E.C Ltd (1990) 4 NWLR (Pt. 145) 422*. A serial report of the court's judgment are now available as "FEDERAL HIGH COURT OF NIGERIA REPORTS".
[79] FHC/L.M6/87.
[80] See the subsequent decision in *Faloughi v Faloughi (1995) 2 SEC L.R. 83*

In S.E.C v Nichemetex Nigeria Plc,[81] the Federal High Court had to interpret the provisions of section 6(b), 7 and 9 of the SEC Act 1988, particularly on the issue of bonus shares issued by a public company and whether such shares are registrable by the Commission, subject to the payment of a registration fee. The Court held that a public, though unquoted company, cannot issue bonus shares without registration by virtue of the provisions of section6 (b), 7 and 9 of the SEC Act 1988.[82]It is noteworthy, however, that the Investment and Securities Act by its section 224, established a Securities and Investment Tribunal. The Act purports to vest jurisdiction over all matters under the Act in the Tribunal. This is manifest inconsistency and creates an absurdity in the light of the constitutional jurisdiction of the Federal High Court. It is elementary that the ISA is protanto void to the extent of the inconsistency. The constitution is a superior law to statute. Moreover, the ISA is an existing law on the promulgation of the 1999 constitution and by section 315 of the Constitution, an existing law only has effect with such modifications as may be necessary to bring it into conformity with provisions of the Consitution.[83] It is, therefore, clear that the Federal High Court still retains exclusive jurisdiction, flowing from the provision of section 251 of the Constitution, over all such issues from the operation of companies to securities law regulation. The inconsistent provision in section 234 of the ISA is void and of no effect to the extent of the inconsistency.

[81] FHC/L/CS/83294; CA/L/434/98
[82] See also *Costain West Africa Ltd v SEC FHC/L/M32/90*
[83] See also Ogowewo, T, "The Market for Corporate Control and the Investments and Securities Act 1999" supra at p.62-64.

If what was intended by the legislators was to create an administrative agency to handle securities matters, that object has not been achieved as the tribunal created is indeed a court purporting to exercise co-ordinate with the Federal High Court.

It can be added, however, that irrespective of the manifest inconsistency of the jurisdiction of the Investments and Securities Tribunal (IST) vis-à-vis that of the Federal High Court, the intentment of the drafters of the legislation establishing the IST should be respected as the imperativeness of the wisdom behind that provision (timeous adjudication of disputes arising from the Capital Market) cannot be overemphasized.

Moreso, the IST can exercise its powers over disputes in the Capital Market without any conflict with the Federal High Court should conflict arise anyway, then as have been stated above, the powers of the IST and the enabling provisions of the ISA shall be void to the extent of such conflict or practical inconsistency with the provisions of the constitution.

The Tribunal has done a great deal in resolving cases between the regulator and stockbrokers as well as between stockbrokers interse. Some of these cases are illustrated below.

Although, only section 243 of the ISA made reference to appeals it is evident that the appellate Courts; Court of Appeal and the Supreme Court also play a relevant part in the regulation of the Nigerian Capital Market. This is to the extend that a decision of SEC or NSE can be appealed to the IST and from there to the Court of Appeal and eventually to the Supreme

Court. Thus, the Supreme Court may circumstantially become the final arbiter in an otherwise common issue of capital market breach.

Furthermore, more than anything else, the Economic and Financial Crimes Commission (EFCC) has taken up the challenge as provided for in section 235 prosecuting and other vices. These prosecutions also have the tendency to go up to the Court of Appeal or even the Supreme Court. A classical example of a Capital Market fraud case prosecuted by the EFCC is that of State vs. Thomas Kingsley Securities Ltd and Chief Kingsley Ikpe.[84] The convict, then the Managing Director of Thomas Kingsley Securities Limited, received the sum of one hundred and thirty five million naira (₦135,000,000.00) from an investor Mr. Tony Ezenna, Chairman of Orange Drugs Limited to invest for him in the stocks of Nigerian Breweries Plc, where he had interest in acquiring a substantial share holding as it turned out the man converted the money for his own use and did not perfect the client's mandate. In a suit against the man and his company by the EFCC, the man was convicted by the Lagos High Court for fraud and stealing and sentenced to several years imprisonment, as well as being ordered to refund to the investor unutilized sum of about seventy Million (₦ 70,000,000.00).

[84] Unreported; *State Vs. Thomas Kingsley Securities Ltd and Chief Kingsley Ikpe (High Court of Lagos 2005) ID/143C/2004 Ikeja High Court 40.*

CHAPTER FIVE

5.0 THE ROLE OF PARTIES TO A PUBLIC OFFERING OF SECURITIES

The Capital Market is one arm of the Nigerian Financial Market, the money market being the other. In every known market and indeed for any situation to be regarded as a market, there must be buyers and sellers.

In a typical market, sellers display their goods in such a manner that they can be easily noticeable and accessible to buyers. The buyers identify the goods and make their choices after physical examination and pricing of the goods they wish to purchase.

Although, they could be commissioned agents who could serve as intermediaries, in certain markets or cartel, the buyer has the opportunity to inspect the goods he wishes to buy in a typical market. The securities or capital market is in contrast, a specialized market, dealing in intangible goods, that do not lend themselves to physical examination before they can be purchased. The driving force in the securities market is basically, information, regarding investment opportunities, the returns derivable from investments etc. Herein lies the need for intermediaries or "Go-Between" to facilitate the process of providing investment information using their professional expertise and specialization.

In every society, there are individuals who have funds in excess of their needs, which they actually save. These set of individuals are referred to as

"surplus economic units". On the other hand, there are other groups who earn less than the expected income to carter for their needs and will, therefore, need to resort to borrowing to cover this gap. These groups are referred to as "deficit economic units"[1].

In developing economies or societies, these two groups of individuals would have to find themselves to exchange deficit for surplus. What a cumbersome and time consuming task this search will be. Society at large cannot benefit from an arrangement like this. In modern day business, borrowers (Deficit Economic Units) and Lenders (Surplus Economic Units) are brought together by a business network of institutions without necessarily having a face to face contact. This is how the financial market emerged to achieve the matching of savings with the investment needs of society. The Capital Market can be accessed by issuers through two basic ways: These are (i) through the floatation of shares (equities) and/or (ii) through the issuance of debt instruments such as debenture stocks or revenue bond[2].

Before going into the roles of the intermediaries in the capital market, it is necessary to identify the participants in the capital market whom they represent or bring together.

The surplus economic sector constitutes the supplies of funds to the capital market and the financial sector generally.

1. M.A. Isiaku; "Capital Market Intermediaries and their Roles"; Presented at an induction course for newly Recruited staff of SEC; on June 19, 2002, at SEC Training School Abuja.
2. Ibid.

This group of participants who are referred to as investors are the "life blood" of the capital market without which the capital market cannot exist not to talk of surviving. Investors include individuals and institutions that invest indirectly through investment schemes or directly through subscription to issues and purchase of debt instruments. Participants in the Capital Market include;

5.1 Issuer – The Company

The Issuer is the public company/government proposing to raise fund in the capital market through equity/bond. Its primary roles are:

(a) Appointment of the Issuing House to the offer;

(b) Providing and supplying all relevant information and documentations for the preparation of the prospectus as it becomes available (e.g. AGM Resolution, Audited Accounts) to the issuing house on request. It also does such things as may be reasonably required or necessary by regulatory authorities SEC and NSE for the issuing house to discharge its duties under vending agreement;

(c) Since each prospectus contains a statement affirming the directors' responsibility for all information contained in same, their responsibility is again expected to be affirmed at the completion board meeting where they answer question posed by the verification questionnaire;

(d) In extreme cases, the company may have to prepare a new set of audited accounts if their existing accounts had already gone stale (i.e. 9 months after the accounting year);

(e) The company indemnifies and keeps indemnified the Issuing House against any liabilities to any subscriber for the shares or other interested party who alleges that the prospectus did not contain all material information about the affairs of the company or that the statements therein contained were false or misleading and against any liabilities for cost damages and expenses incurred by the issuing house in defending any such allegation or claim provided that such liabilities do not arise as a result of errors of omission or commission or negligence on the part of the Issuing House;

(f) Designate an in-house team whose primary responsibility is to liaise with the Issuing House on all matters relating to the public issue;

(g) Manages the information flow with respect to the issue since the company, is more familiar with its stakeholders and will, therefore, probably have the best fell for when and how they should be approached;

(h) Intimates the largest shareholders and institutional investors first before the offer becomes public knowledge in order to give them ample notice to mobilize funds;

(i) Through facts behind the figures avail the Stock Exchange and the press about the offer (if it is an already quoted company).

(j) **Documents for Inspection:** The company causes to be delivered to the issuing house copies of all documents stated in the prospectus, as being available for inspection and the issuing house shall ensure that the said documents are made available for inspection at the places and for the period stated in the prospectus.

(k) **Registration of Shareholders:** After the clearance of the basis of allotment of the share by SEC, the company register as holders of the shares the respective approved allotees and issues certificates in the names of such shareholders in respect of such shares.

(l) **Cost and incidental expenses:** The Issuer bears all the cost and reimburses the Issuing House and other advisers and consultants in respect of all reasonable costs, and incidental expenses that may be incurred in respect of the offer including legal, printing registration fees etc.

5.2 Issuing House

An issuing house can be defined as a company (equally known as a financial adviser), which acts as the overall co-coordinator of the share issue. The following come under its purview.

5.2.1 Appointment of other parties

It is the duty of the Issuing House to appoint all the other parties to the offer e.g. stockbrokers registrars, auditors etc and therefore arranges for

all parties meeting. It also ensures that all the parties perform their tasks in a timely and cooperative fashion. Essentially it coordinates the roles of all the professional parties to the offer.

5.2.2 **Information requirement/documentation**

The Issuing House communicates to the company exactly what is required of them by the regulatory bodies e.g. Securities and Exchange Commission, the Stock Exchange and the Corporate Affairs Commission, in terms of documentation and filing of returns. Thereafter it prepares all the documentations such as prospectuses, abridged particulars, application form and the application required in connection to the offer and submits same to the regulatory authorities for approval/clearance.

5.2.3 **Structure**

The Issuing House provides a comprehensive advice on the structure of the issue in terms of the pricing and amount, both of which are of course, interrelated. The structure in most cases is dependent on the general market conditions and the strength of the company.

5.2.4 S**hare valuation**

The Issuing House carries out share price valuation and/or suggest appropriate discount to market prices judging from recent trends of similar companies coming to the market and how successful the offers were.

5.2.5 **Filling of application with SEC AND NSE**

The Issuing House applies to SEC and the NSE for the registration and listing of the shares being offered to the public, subject to paying on the account of the company the appropriate filling and registration fees and listing fees to SEC and NSE respectively.

5.2.6 **Underwriting**

The Issuing House by way of advice always come to some agreement with the Issuer about underwriting with a view to ensuring that the company makes a successful outing.

5.2.7. **Marketing**

The Issuing House should have its own network of major individual and institutional investors to which it can offer the issuing company's shares through its marketing effort.

5.2.8 **Registration of Securities**

The Issuing House it ensures that the necessary approvals, registration and clearance from SEC in respect of the offer are gotten, while documentation required for the registration of the Issuer's securities e.g. prospectus, vending agreements etc are perfected and filed with the Commission.

5.2.9 **Completion Board Meeting**

Sequel to the registration of the securities the Issue House arranges and organizes the completion board meeting which is a condition precedent for the opening of the issuer's offer to the investing public.

5.2.10 **Distribution of Prospectus**

The Issuing House it ensures the widespread distribution of the prospectus through designated agents (Banks and Stockbrokers).

5.2.11 **Advertisement**

After due approval and registration with SEC on the terms of the prospectus, the Issuing House usually cause an abridged version of the prospectus to be advertised in at least two national daily newspapers approved by the company.

5.2.12 **Allotment**

In consultation with the company the Issuing House determines the basis of allotment and prepare the allotment returns for clearance by SEC.

5.2.13 **Issue proceeds**

The Issuing House is expected to disburse to the Issuer the total net proceeds of the offer with 24 hours after clearance of the allotment by SEC.

5.2.14 Finally the Issuing House offers any other assistance ancillary or incidental to the main responsibilities mentioned above and as may be deemed necessary to ensure the success of the offer. Some popular

issuing house in the Nigerian Capital Market includes, BGL Securities Ltd, Vetita Securities Limited, IBTC Chartered Bank Plc etc.

5.3 The Stockbroker (Trader in Securities)

A Stockbroker is generally defined as one who sells and buys securities (stock and shares) on behalf of others and simply put, he is a trader in securities. The role of the stockbroker includes the following:

5.3.1 Advisory

In view of the Stockbroker's expertise and knowledge of the working of the secondary market in particular and the securities market in general, it also assists as financial adviser when it comes to the preparation of the offer document.

5.3.2 Pricing

In view of the fact that pricing of securities in the public offer is influenced at least as much by the quoted prices of other listed company which are considered to be comparable to the theoretical valuation exercise the Stockbroker views becomes paramount to the pricing of the offer because of his knowledge of the behaviour of securities prices in the market vis-à-vis investors reaction to such changes.

5.3.3 Timing

The Stockbroker advises on the timing of the offer using his expert knowledge of market condition. In most cases, the best timing for an issue should coincide with the period of an up swing in both the

company's fortunes and its industry as well as when the market in general is in a bullish phase.

5.3.4 **Sponsorship of the application to the stock exchange**

The Stockbroker during the issue is expected to sponsor the application to the Stock Exchange and thereafter act as the channel of communication between the Issuing House and the Quotations Committee of the Stock Exchange.

5.3.5 The Stockbroker ensures that documents prepared by the Issuing House meets the Stock Exchange's listing requirement and are submitted to the Exchange in good time and in line with the timetable already agreed on for the issue.

5.3.6 The Stockbroker ensures that after the allotment of the shares on offer, the securities are listed on the floor of the Exchange.

5.3.7 **Trading of the new listed security**

The Stockbroker ensures that information are being availed at all times to the Exchange and other stockbrokers that would assist in the trading of the newly listed security.

5.4 The Registrar

Registrars are institutions employed by companies to keep comprehensive records (register) of their shareholders (members) and creditors. They are relevant in both the primary and secondary markets.

5.4.1 The Role of a Registrar include the following;

Registrars attend every All Parties Meeting and make positive contribution on issues affecting share registration e.g. asses the expected volume of application.

They also attend Completion Board Meeting and append their signatures on the relevant documents.

Registrars monitor the distribution of the prospectus and abridged particulars nationwide until the application list closes.

Registrars receive returns from receiving agent (two weeks after the close of the offer).

Registrars accept the returns and check them, as regards proper designation of cheques, value of cheques, units of share being paid for, number of application forms returned etc. They aggregate the returns and pass them for recording. Acknowledge receipt of returns by stamping a copy of the covering letter.

Registrars examine thoroughly each application for any irregularities e.g. no signature/address, wrong multiples etc and reject accordingly. However details of rejected application should still be imputed into the computer.

Registrars attend to Issuing House's enquiries as to:

Progress of works,

Level of Subscription,

Allotment data e.g;,

Summary of all applications received,

Summary of all applications on state order basis,

List of application over say, 50,000 etc,

Range analysis,

List of corporate applicants,

List of institutional applications e.g. governments, organizations, universities, etc,

List of rejected applications and reason for the rejection.

i. **Allotment:** The Registrar provides data for the Issuing House to do the write-up of the allotment proposal.

ii. **Dispatch of Return Monies:** The Registrar dispatches return monies arising from rejected application and unalloted shares to subscribers after allotment clearance by SEC.

iii. **Shares Certificate:** The Registrar, within 30 days after the allotment clearance by SEC, dispatches share certificates to allottees.

iv. The Registrar prepares the following register which would be retained by itself, the Company Secretary and Corporate Affairs Commission.

(a) Issue/allotment register

(b) Share Certificate register

5.5 The Auditor

An auditor is a person licensed by a regulatory body in the case of Nigeria, the Institute of Chartered Accountants of Nigeria (ICAN) to operate as such, and who has been appointed by members of a company under section 357 of the Companies and Allied Matters Act to carry out an independent review of and express an opinion on the financial statements of the company on a year to year basis.

The Auditor is required on a year to year basis to express an opinion on a company's financial statement.

The primary role of the Auditor in public offering include the following:

i. Provides the reporting accountant with all information and support necessary to give him a basis to form and issue his opinion.
ii. Prepares and audit the company's account and balance sheet on a year to year basis on which his opinion is expected to be expressed upon.
iii. Ensures that the company's financial statement prepared are in line with laid down statutory accounting policies and in compliance with the International and Nigeria Accounting Standard.

5.6 The Reporting Accountants

The reporting accountant is equally a person licensed by ICAN, but usually appointed by the Board of Directors to carry out a review of the audited accounts of a company over a particular period of time (say 3 or 5

years) in respect of a public offer for securities. Following his review, he is expected to issue an opinion covering the whole period which may assist potential investors in making investment decisions regarding the company in question.

He may also be required to comment on a profit forecast included in the public offer document. A reporting accountant is needed ONLY when public offer of securities is to be made.

5.6.1 The Primary Roles of a Reporting Accountant in Public Offering of Securities include:

1. Review of the Issuer (Company's) previous year's audited accounts and all relevant background information. This entails the 5 years balance sheet and profit and loss accounts of the issuer preceding the offer (first tier) and 3 years for second tier securities market (SSM) offer. He is expected to:

a. Audit working papers/files of the period to be covered by his report.

b. Review financial statements by computing ratios, identifying significant trends and investigating unusual variations.

c. Discuss with the company's management and auditors all the significant issues e.g. changes in profit trends, company or group structure, subsidiaries and general organizations etc.

d. Ascertain the appropriateness of all the accounting policies utilized and compliance with international and Nigerian Accounting Standards as well as the consistency of their application.

e. Make adjustments or reclassifications as may be necessary to the financial statements as previously reported.

f. Consider and investigate post balance sheet events so that the significant ones are properly reflected in the financial information reported on.

g. Review the offer document to ensure internal consistency of financial information.

It is pertinent to mention here that in carrying out the above review, the reporting accountant is giving an opinion of his own and that the historic accounts give a true and fair view of relevant years at the date he signs off.

2. Review of future estimates of the performance of the company (i.e. 2 years profit forecast) to the extent of:

a. Examining and preparing a separate report on the accounting policies and calculations used for the forecast as well as the assumptions derived therein (SEC requirement).

b. Reviewing of the nature and background of the company's business (e.g. profile, activities, main products, market, customers, suppliers, divisions, management, workforce and performance) so

as to enable him ascertain the direction in which the company is going.

c. Reviewing the accounting polices normally followed by the company to ensure consistency with those normally adopted by the company.

d. Reviewing the assumption on which the forecast is based. So as to ensure that it has been prepared on the basis of assumptions stated in the report even though that he owes no duty/responsibility to choose the underlying assumption.

e. Reviewing the procedures followed in preparing the forecast by ascertaining the degree of accuracy of previous forecasts prepared by the company, if any.

f. Determine whether estimates and assumptions used are regularly and frequently reviewed and revised as necessary.

g. Determine whether forecast results are fairly representative of management's best estimate of achievable results, and

h. Determine working capital availability appears adequate for forecast requirements.

Suffice to say here that the reporting accountant is not giving any view or opinion on whether or not the forecast profit will be achieved rather he is just merely confirming that the profit forecast has been properly prepared according to the stated assumption.

However, this caveat does not give the reporting account a license to completely exonerate himself from any responsibility on the forecast's reasonableness.

3. Prepares his signed reports which should normally be addressed jointly to the directors and the sponsors (Issuing House) and thereafter disclose same in the prospectus.

The reports disclosed in the prospectus are:

a. The 3 or 5 years financial information based on the audited financial statements of the company. This include:

i. Profit and loss accounts dividends and retained earnings information.

ii. Full and summarized balance sheet

iii. Statement of source and application of funds

iv. Accounting policies

v. Notes to the profit and loss accounts, balance sheets and statements of sources and application of funds

b. 2 years profit forecast which would state *inter alia*

i. That the sole responsibility for the forecast and the underlying assumption lies with the directors.

ii. That the forecast has been properly prepared in accordance with the stated assumption and is consistent with the accounting policies normally adopted by the company.

5.7 The Solicitor

Solicitors are law firms who ensure that statutory provisions concerning an issue are complied with. They are relevant mainly in the primary market.

5.7.1 Solicitor to the Issuer (Company)

The Solicitor to the Issuer (Company) performs the following functions generally:

a. Prepares the issuer for quotation through the following steps:

i. amends the company's memart to reflect Public liability company status if it has to be converted from Private Limited Liability Company to a Public Limited Liability Company.

ii. Ensures that the necessary resolutions for an increase of share capital is passed at a convened AGM or Extra Ordinary General meetings and filed at the Corporate Affairs Commission (CAC)

iii. Ensure that the company as a corporate entity as well as its principal officers are in good legal standing. For example, the company solicitor must satisfy himself that the Chairman and other Directors of the company are of sound mind and not minors or persons above 70 years of age.

iv. Disclose material contracts which the company has concluded or is about to enter into e.g. Bridging Loan, Technology Transfer Agreements, Joint Venture Agreements, Vending and Underwriting Agreements.

v. Ensure that the necessary board resolutions offering the new shares in the company to the public are passed.

vi. Ensure that the contracts in which directors have interest are disclosed.

vii. Ensure that a Power of Attorney/Consent document is executed by the Chairman and all other Directors e.g. for absentee directors at completion Board Meeting.

b. To serve as a watchdog of his company's interests throughout the public issue exercise and the prospectus in the form and context in which it appears.

c. Finally, just prior to the completion Board Meeting, gives his own written consent to the mention of his name in the prospectus in the form and context in which it appears.

5.7.2 Solicitor to the Issue or Offer

1. He is to ensure that the issue exercise conforms with the provisions of the Companies' Act, and all the Securities Legislation and Regulations in Nigeria especially the listing requirements of the Nigerian Stock Exchange and the ISA and SEC Rules and Regulations.

2. Verifies the legal status of the company whose securities are about to be issued to the public e.g. whether duly incorporated and existing under the law of the Federal Republic of Nigeria and whether it has power to transact the business in which it is engaged.

3. Work in conjunction with the solicitors to the company with a view to examining all documents, contracts and correspondence made to same and advise the Issuing House accordingly.

4. Must attend every all parties meeting.

5.8 Receiving Agents/Bankers

They are so called because they receive proceeds of an issue on behalf of an Issuer/Issuing House.

5.8.1 Receiving Agents (Banks and Stockbrokers)

1. They act as the key channels of distribution of the offer documents e.g. prospectus, posters, application forms etc.
2. They receive applications from investors, starting from the time the offer opens.
3. At the close of the offer, they submit returns to the company's Registrar by filing particulars of subscribers and subscriptions on the returns sheet.
4. With the commencement of privatization they assumed the role of distribution of share certificates and return monies arising from floatation.

5.8.2 Receiving Bankers

1. They act as custodian to the issue proceeds through the opening of separate Issue Proceeds Accounts.

2. After allotment they issue cheque covering the net issue proceeds to the Issuing House for an onward delivery to the Issuer.

5.9 The Trustee

A trustee is person or company who is required by law to manage the property vested in him in a way that the consequential benefits and advantage will accrue not to him but the other person called castes que trust (beneficiary).

5.9.1 A trust creates a fiduciary relationship in which one person (trustee) is the holder of the title to the property subject to equitable obligation to keep or use the property for the benefit of another person (beneficiary).

5.9.2 Trustee comes into play when a company decides to raise money through the issue of debenture stock since it is necessary for the appointment of same to protect the interest of the debenture holders. Section 183 of CAMA makes it mandatory for a Trust Deed to be executed by the company/borrower in favour of the trustee. An example of this can be seen in trust relationship between Aswani Industries Limited and MBA Securities Limited created during the Aswani Debenture Stock of 1990.

5.9.3 The Trustee role in public offerings are

b. He holds the title deeds of any mortgaged property thereby precluding the company from creating any subsequent mortgage ranking in priority to the debenture holders.

c. Power to appoint a Receiver on behalf of the debenture holders without the aid of the court to sell the property mortgaged if the company defaults in its obligation. MBA Securities Limited appointed Udom & Udom (Legal Practitioners) Receivers in the above debenture stock when it became apparent Aswani had defaulted.

d. He ensures that the property mortgaged is kept insured and is maintained in proper condition.

e. He acts for the debenture holders by safeguarding their interest through the conduct of site visit on the mortgaged assets of the company.

CHAPTER SIX

6.0 GOING PUBLIC: PROCEDURE FOR PUBLIC OFFERING OF SECURITIES IN THE NIGERIAN CAPITAL MARKET

"Going Public" refers to the modalities by which a company becomes entitled to raise capital subscription from members of the public by publicly offering its securities to investors either through the Initial Public Offer (IPO), Offer for Subscription, Offer for sale or Private Placement. The process of going public with the Securities of a company by Public Offer is distinguished from the listing of issued securities on a Securities Exchange such as the Nigerian Stock Exchange. While the former (i.e. going public) refers to the Primary Market, the later (listing of issued securities in the Exchange Market) concerns the Secondary Market for securities. As stated earlier, a Private Company cannot make an open invitation to the public for the subscription of its securities[2]. It goes without argument, therefore, that if a private company desires to raise capital by way of public subscription, it must first be converted to a public company as provided for in the Companies and Allied Matters Act.[3]

1. Dr. Joseph E.O Abugu Company Securities; Law and Practice at page 153.
2. Ibid: see also Section 44: Investments & Securities Act, 1999.
3. 1990; Section 50.

The principal objective of the Securities and Exchange Commission (SEC) established by the Investments and Securities Act,[4] is investors' protection. Other objectives are to ensure orderly, fair and equitable dealings in Securities transactions and thirdly to promote the growth and development of the Capital Market.[5]

The purpose of the above Act, therefore, is in a way, is to protect the public from the issuance of fraudulent Securities.

The Law[6] requires that all Securities must be registered with SEC before being offered for sale or subscription. In order to put into effect the provisions of the law, the Commission requires the filling of a registration statement that makes disclosure of relevant information pertaining to a specific offer as provided for in the law. In other words, a public offering of securities requires filing a Registration Statement with SEC and as the SEC may determine, in accordance with the provision of the Investments and Securities, Act (ISA) [7] and the Rules and Regulations made pursuant thereto.

The Commission examines registration statement for at least ten working days to make sure that there are no obvious omissions or misrepresentations of material facts.

[4] No 45 of 1999 (LFN 2004).
[5] Uba, Sadiq Mohammed: "Mechanics of Public Offer of Securities", delivered at Gateway Hotel Ota, March 1995.
[6] Section 32, ISA No 45 1999 (LFN 2004).
[7] No. 45 of 1999 (Section 44 – 81) Part viii.

Any such deficiencies uncovered, are brought to the notice of the Issuer, through his agent, the Issuing House, vide a deficiency letter explaining the Commission's position on the matter for appropriate corrections or explanations.[8] The effective date of registration statement is delayed or postponed indefinitely, until such deficiencies have been corrected. Any distribution or trading on the Security prior to the effective date constitutes a violation of Section 544 CAMA 1990.[9]

In the absence of a deficiency letter, a registration statement becomes effective on the sixtieth day after the filling thereof.[10]

The purpose of registration is to provide disclosure of material financial and other information about the company, on the basis of which investors may make informed decisions on whether to buy securities on offer or not.

The reason behind the existing laws as they affect disclosure of material information and the need to review such information is not for fetched. The Securities and Exchange Commission (SEC) is the apex capital market regulatory body. In order to play this role effectively, the regulation has to take on a form and the form it takes is the review of offer documents and their subsequent registration in case of public offering.

[8] Rule 50, SEC Rules and Regulation 2000.
[9] Section 45 of the ISA: op cit.
[10] Section 10 SEC Decree 29 of 1988 (now repealed).

There is hardly a way the market can be regulated effectively without the means of offering being checked to ensure conformity with existing legal requirements. There is hardly a way accountability can be ensured on either the part of the Issuer or on other parties to the Issue, without such a regularized or regulated method of offering securities to the Public.[11]

6.1 Stages in Public Offering/Sale of Securities

As stated in the preceding paragraph, for any issue to be packaged and sold to the Public, the requirements of the Securities and Exchange Commission (SEC) as stipulated by the Investments and Securities Act, and the Rules and Regulations made pursuant to the ISA must be fully complied with. A company raises funds from the Capital Market for several reasons among which are:

i. Expansion of fixed assets;

ii Replacement of obsolate equipments;

iii. Setting up of a new line of business;

iv. Refinancing/replacement of temporary borrowings;

v. Acquisition of new technologies; and

vi. Procurement of raw materials.

[11] Section 45 (1&2) ISA No. 45 1999.

6.1.1 Board/Share Holders Approval

From the foregoing, having a public status is undoutably the pre-requisite for accessing the public issue Market for funds or divestment of Securities [12] Thus, as initial sources of funds become inadequate or inappropriate a company may have to open up the business to outside membership by changing its corporate status from a Private to a Public Company as provided for by the ISA. Therefore, a company or government contemplating a Public Offering must not only focus on the benefits derivable from doing so, but must ponder on the obligations posed by accessing the market, and decide whether or not it is prepared for the responsibilities which could be expected of it. For corporate entities, the approval of their Board of Directors and subsequently Shareholders at the AGM must be received by the Management before embarking on a Public Offering of Securities. The responsibilities are many and border largely on disclosure. Since capital is being sourced from the Public, public interest must be protected and confidence maintained by government through the enactment of securities laws and their administration by a specialized agency of government serving as the apex regulator and the Chief Superintendent of the Market.[13] The necessary Legal Framework will be put in place in the case of State or Local Government Bonds.

[12] Public Offering and Sale of Securities: A Publication of SEC 2005 at Page 7 (2nd Edition).
[13] Ibid

6.1.2 Assembling Advisers

Once the provisions of the law have been complied with and the company has ascertained the amount it intends to raise, its method of raising the funds will then be chosen. This may take the form of Public offer or Private placement. The Company will then chose the type of instrument to be offered e.g. Equity, Debt, Preference Shares etc. It will then chose the terms of offer, e.g. Initial Public Offer, Offer for Subscription, Offer for Sale, Rights Issue, Bonus/Script issue etc.

After all the above decisions have been taken, the company then appoints an Issuing House or Issuing Houses, with one as the Lead Issuing House which would establish the Public Offering Structure.[14] Marketing a Public Offering particularly an IPO, requires a lot of tidying up by the company, most importantly its accounts. The Issuing House(s) so appointed must be registered with SEC and such registration must be current at the time of appointment. The major function of the Issuing House is to advise on the most appropriate method and instrument(s) of accessing as well as the size of the issue desirable to meet the company's financial requirements.[15]

The Issuing House also has the responsibility of assembling other advisers on behalf of the Issuer and take the Issuer through the A to Z of the issuance process, including liaising within the regulatory agencies to obtain the necessary approvals. Other advisers, whose roles have been discussed extensively in the preceding chapter, would typically include;

[14] Example of Issuing Houses that have been involved in packaging the most successful Public Offers include: BGL Securities, FBN Capital, IBTC Chartered, Intercontinental Capital, etc.

[15] Op cit at page 8

the Company's Auditors, Reporting Accountants, Solicitors, Underwriters, Stockbroking Firms, Registrars and Trustees (in the case of a debt issue), Receiving Agents and a Receiving Banker.[16] All these advisers and consultants, whether Capital Market Operators, Solicitors, Accountants or Engineers must possess current registration of the SEC before they can participate in the Public Offering.[17]

6.2 PREPARATION OF OFFER DOCUMENTS (PROSPECTUS), OTHER APPROVALS AND REGISTRATION FORMALITIES.

6.3 Listing Requirements of the Nigerian Stock Exchange

To be listed on the Daily Official List of the Nigerian Stock Exchange, NSE, a company must, through its Stockbrokers, submit an application in the prescribed format to the Quotation Committee of Council of the Exchange. The Stock Exchange operates a two-tier listing:

a. The main Market or First-tier; and

b. The Second-tier Market.

The following are the respective requirements of the two-tiers, as well as the requirement for Government Bonds that must be met before the quotation Committee grants its approval.

[16] Ibid.
[17] Section 9(b) ISA No. 45 1999.

6.3.1 **First – Tier (or main) Market:**

i. The Company must be registered as a Public Limited Liability Company (Plc) as provided by the company and Allied Matters Act, 1990 and Section 44(1) (i) of the ISA.[18]

ii. The Company must expunge all restrictive clauses on transfer of shares in the Memorandum and Articles of Association of the company.

iii. The Company must submit to the Exchange audited Financial Statements of accounts and business records of the immediate past five years.

iv. The data contained in the last of such Statements of account must not exceed nine months from the time of submission to the Exchange.

v. The Company will be subject to payment of annual listing fees which is based on market capitalization.

vi. The amount of money that can be raised is unlimited, depending on the borrowing powers of the company.

vii. At least 25% of the nominal value of the shares of the company must be offered to the public.

viii. The number of shareholders of the Company must not be less than 300 at the time of listing at the Exchange.

[18] No. 45 1999.

ix. Upon listing, the Company must submit quarterly, half yearly and annual accounts to the Exchange for presentation to Market Operators.

x. Securities of the Company must be fully paid up at the time of allotment.

xi. Securities not allotted must be warehoused and sold on the floor of the Exchange.[19]

6.3.2 **Second-Tier Securities Market (SSM):**

i. The Company must be registered as provided for by the law.[20]

ii. The Company must expunge all restrictive clauses in the memorandum and Articles of Association of the Company.

iii. The Company must submit to the Exchange audited Financial Statements and business records of the immediate past three years.

iv. The date of the last of such financial statements must not exceed nine months.

v. The amount of money that can be raised is limited to twenty million naira, subject to the borrowing powers of the Company.

vi. Listing the Company will be subject to payment of a flat fifty thousand naira annual listing fee.

vii. At least 10% of the nominal value of shares of the Company must be offered to the public.

[19] Requirements for Listing on the NSE, being a paper by Alh. L.S. Stores at a workshop in SEC's Training School on Monday June 24, 2002.
[20] See requirement No. 1 above.

viii. The number of shareholders of the Company must not be less than two Hundred.

ix. After listing, the company must submit half yearly and annual accounts to the Exchange for presentation to market operators.

x. Securities of the Company must be fully paid up at the time of allotment.

ix. Securities not allotted must be warehoused and sold on the floor of the Exchange.[21]

6.3.3 **Government and Municipal Bonds**

i. The State or Local Government must enact the necessary legislation to empower the government to issue bonds for development projects.

ii. The Executive/Local Council must pass a resolution approving the issue of the Bond.

iii. The State/Local Government must create a Trust Deed to Constitute and Secure the Bond.

iv. The State/Local Government must submit to the Exchange, audited Financial Statements and Business records of the past five years.

v. The date of the last of such Financial Statement must not exceed nine months.

vi. A Feasibility study report on the proposed project must be submitted.

[21] Alh. L.S. Stores, Op cit.

vii. The State/Local Government must submit an Irrevocable Standing Order for deduction from the account of the government at source.

viii. An annual listing fee will be payable based on the market value of the Bond outstanding.

ix. Securities not allotted must be warehoused and sold on the floor of the Exchange.

6.3.4 THE PROSPECTUS

The prospectus is the selling document which must contain all material information which investors need to know about an issue and its issuer to make informed and rational investment decisions. Apart from being a selling document, the prospectus must be prepared in accordance with the law.[22] For instance, the ISA[23] makes it illegal for any person to issue any form of application for securities in a Public Company unless the form is issued with a prospectus which conforms with the provisions of section 56 of the ISA.[24] By the provisions of Rule 53, as to form, size, number etc of prospectus, [25] every prospectus filed with the Commission as part of the registration statement shall be in duplicate, not larger in size than A4 paper and must be printed. The information required in the prospectus shall follow the order required in Rules 53 and 54[26] and, thereafter, it need not follow any particular order, provided that the information is set forth in such a manner as not to obscure any of the required information necessary to keep the required information from being in-complete or misleading.

[22] That is the ISA and other regulatory requirements (SEC guidelines and the Stock Exchange Listing requirements).
[23] Section 48.
[24] No. 45, 1999.
[25] SEC RULES AND REGULATIONS 2000 made pursuant to the ISA.
[26] Ibid.

The information set out in the prospectus shall be presented in a clear, concise english language and under appropriate captions or headings, reasonably indicative of the principal subject matter set forth thereunder. Every prospectus shall be dated on the front cover and the date shall not be earlier than the date of the completion board meeting.[27]

i. There shall be set forth among other information on the front cover of every prospectus the following statement in red ink. That;

[27] Ibid Rule 54

THIS PROSPECTUS AND THE SECURITIES, WHICH IT OFFERS, HAVE BEEN REGISTERED BY THE SECURITIES AND EXCHANGE COMMISSION. The Investment and Securities Act 1999 provides for Civil and Criminal Liabilities for the Issue of a prospectus which contains false or misleading information. The Registration of this prospectus and the Securities which it offers does not relieve the parties of any liability arising under the act for false or misleading statements or for any omission of a material fact in any prospectus.

ii. Every prospectus shall set forth on the page describing the 'Offer' the following statements:

a. That a copy of the prospectus together with the documents specified herein has been delivered to the Securities and Exchange Commission for registration.

b. That the prospectus is issued under the provisions of the Investments and Securities Act 1999 and in compliance with the requirements of the Rules and Regulations of the Securities and Exchange Commission ("The Commission") and the listing requirements of the relevant Securities Exchange and Over-The-Counter market for the purpose of giving information to the public with regard to the shares of the company.

c. The Directors of the Company collectively and individually accept full responsibility for the accuracy of the information given and confirm,

having made all reasonable enquiries that to the best of their knowledge and belief, there are no facts, the omission of which would make any statement herein misleading or untrue.

iii. In addition to paragraph (2) above, state if the shares being issued will rank *pari passu* in all respects with the existing ordinary shares of the company.

iv. State if application has been made to a Securities Exchange/Over-The-Counter market for the listing of and dealing in the shares of the company and if upon admission of the shares to the official list whether the shares will qualify as a security in which Trustees may invest under the Trustee Investment Act (Cap 449) Laws of the Federation of Nigeria 1990.[28]

v. Every prospectus shall contain the information required by the third schedule to the Investment and Securities Act 1999 and shall in addition state the following information: [29]

(i) The front cover shall state the name of the issuer, the issuing house, their respective CAC registration certificate (RC) numbers, the type of offer, amount/number of shares being offered, the price and amount payable in full on application.

(ii) A detailed table of contents in the forepart of the prospectus showing the subject matter of the various sections or subsections of the Prospectus and the page number on which each such section or subsection begins.

[28] Rule 55.
[29] Rule 56.

(iii) A summary of the offer stating the amount/number of shares on offer, the offer price, purpose of the offer, minimum application and multiples thereafter, forecast earnings per share, forecast earnings yield at the offer price, forecast price earnings ratio, forecast dividend per share and forecast dividend yield: whether or not the offer is underwritten and if there would be any preferential allotment.

(iv) The offer stating the requirements of rules 52 (2) and 53, the times of opening and closing of the offer, the share capital of the company showing the authorized share capital, issued and fully paid and the indebtedness of the company, stating details of bridging loan if any.

(v) Names and addresses of the directors and their respective shareholding and names and addresses of other parties to the issue.

(vi) The Chairman's letter/statement which should disclose the history and business of the company, directors, management and staff, premises, purpose of the offer, profits, prospectus and dividends, working capital adequacy and future developments of the company, and any other material information.

(vii) Historical financial information stating the accountant's report, accounting policies, balance sheets, profit and loss accounts, statement of source and application of funds and notes on the accounts.

(viii) Letter from the reporting accountants reviewing the audited accounts for the period; profit forecast and the underlying assumptions.

(ix) Statutory and general information stating date of incorporation, registration number and share capital history of the company, the principal shareholders, directors' interests, subsidiaries and associated companies, extract from the articles of association, claims and litigations, material contracts, consents, documents available for inspection, underwriting and any other material information.

(x) Procedure for application and allotment

(xi) Collecting agents

(xii) The Receiving bank

(xiii) Application form

(xiv) Any other information required by the Commission from time to time.

6. **Abridged prospectus** [30]

I. An abridged prospectus filed as part of registration statement in accordance with this regulation shall be deemed to be a prospectus for the purpose of the Investments and Securities Act 1999 if it meets the requirements of the Commission under this regulation provided that:

(a) At the time the registration statement is filed, an application has been made to a recognized securities exchange for the securities to be listed.

[30] Rule 57

(b) The Issuer proposes to raise more than N10 Million where it intends to list its securities on the main market and not more than N10 Million where it intends to list its securities on the second-tier market.

II. Where it is not intended to list the securities on a recognized securities exchange, an application shall be made to the Commission for approval to use a statement in lieu of prospectus for the offering in compliance with the fourth schedule to the Act and the Rules and Regulations of the Commission.

7. **Contents of abridged prospectus**[31]

I. An abridged prospectus shall contain information, the substance of which is contained in the prospectus and or registration statement and shall contain the following statements and information:

"A copy of this abridged prospectus with the documents specified herein has been registered by the Securities and Exchange Commission (SEC). This abridged prospectus issued under the provisions of the Investments and Securities Act 1999 contains particulars in compliance with the requirements of the relevant Exchange for the purpose of giving information to the public with regard to the shares of the company. The Directors of the company collectively and individually accept full responsibility for the accuracy of the information given and confirm having made all reasonable enquiries that to the best of their knowledge and belief, there are no

[31] Rule 58(A)

facts, the omission of which would make any statement herein misleading or untrue"

a. The dates of opening and closing of the offer
b. Indebtedness of the company
c. History and Business of the company
d. Parties to the issue
e. Purpose of the offer
f. Summary of Financial Information
g. Claims and Litigation
e. Material contracts
h. Procedure for application and allotment (state if there would be preferential allotment)
i. Collecting agents and Receiving Banker
j. Application form
k. Any other information required by the Commission from time to time.

II. All information contained in an abridged prospectus may be expressed in such condensed or summarized form as may be appropriate in the light of the circumstances under which it is to be used.

6.3.5 The Underwriting Agreement[32]

Following the Federal Government Policy of deregulation of the Capital Market which transferred pricing of securities to Issuing Houses, the

[32] Rules 75-78 SEC Rules and Regulations 2000.

Commission made it mandatory on the Issuing Houses to underwrite all public issues except a Rights Issue and where the Issuer specifically requests for non underwriting.

The amount of the issue underwritten by any Issuing House is subject to review and amendment by the Commission if such action is in the interest of the capital market or the investing public.

The Commission in carrying out its duty of investors protection scrutinizes and approves all underwriting agreements. The Commission also specify some information which must be disclosed in an underwriting agreement, including:

i. The level of commitment of the underwriter(s).

ii. Time when amount underwritten is to be made available.

    For firm underwriting, the amount underwritten must be made available to the issuer on the day the offer opens, and in the case of standby underwriting the amount underwritten must be made available to the issuer the next working day after clearance of allotment and on which day the underwriting commission shall fall due and become payable.[33]

iii. **Underwriting Commission:** For Firm Commitment Underwriting, the commission is 4% of the amount underwritten, while the commission for Stand-by Underwriting is 10% of the amount underwritten.

iv. Amount of the issue offered for subscription or for sale

[33] Rules 77-78 Ibid.

v. Responsibility of parties in the event of default

vi. Sub-underwriting agreement where a consortium of underwriters is involved.

The contents of an underwriting agreement depend basically on the type of underwriting commitment. However the following must be stated:

1. The parties to the agreement;
2. Reference must be made to the company's resolution in respect of the issue and the appointment of the Issuing House and Underwriters for the issue.
3. Representation and Warranties;

a. That the company is duly incorporated and is empowered by its Memorandum and Articles of Association to conduct its business.

b. That the shares being offered conform with the description in the prospectus and are duly authorized and validly issued, where it is not a new issue, that the share have been fully paid for.

c. Where applicable, that application has been made to the NSE for listing and has complied with the listing requirements.

d. That application has been made to the SEC for registration of the securities and approval of the prospectus and that it has complied with all requirements of the SEC.

e. That information in the registration application and the prospectus are up to date, correct and has no material omissions or misrepresentation;

4. The Underwriting commitment should be stated in clear terms. If it is a “best effort” underwriting it must be stated that the underwriter has no obligation to purchase the unsold shares from the Issuer;

5. An underwriting agreement would usually contain a statement to the effect that, if any underwriter in a syndicate fails to take up its share of the issue, others will increase their respective commitment to cover the default up to a specified percentage of their original commitment. The maximum liability of each underwriter in the event that the syndicate breaks up and there are defaults in the underwriting commitments should be stated. Where the full share of a defaulting underwriter is not taken up by others, there should also be a provision stating a period within which the company and the lead underwriter are to make new arrangements, after which period the non-defaulting underwriters can get out of their commitment without any liability.

6. Time of closing the deal should be stated.

7. **The Underwriting Commission:** This is prescribed by SEC. It is currently fixed at 4% of the amount underwritten for firm commitment and 10% of the amount underwritten for stand by commitment.

8. The Issuer covenants to provide the Underwriter with all documents relating to the issue and to amend the registration if necessary.
9. The Issuer covenant to pay all costs, fees and expenses.
10. Exemption of liability clause in favour of the underwriter. This does not cover liability arising from information provided by the underwriters for which the underwriters indemnify the issuer.
11. The Underwriting agreement should also state that application has been made for approval from SEC and for listing on the Exchange.
12. Conditions for terminating the agreement should be stated.
13. Some underwriting agreements contain “Marketout” clause. This clause permits the underwriters at their option, to be released from their underwriting commitment if there are material adverse conditions affecting the securities market generally e.g. revolutions or war; trading suspensions on the Exchange and if the companies representations and warranties in the agreement prove to be untrue or inaccurate in any material respect.
14. The time for remitting the amount underwritten should be stated. For firm commitment, the underwriter must pay the issuer within 5 days after completion Board Meeting, for stand by, the underwriter must pay the issuer within 6 weeks from close of issue.
15. The agreement should also provide that an underwriter may subscribe in its own name as an investor in the securities being

offered provided that the amount of such subscription shall not be used to satisfy its share of the agreement.

16. There should be a clause on Arbitration and applicable law.

Where applicable, a duly executed sub-underwriting agreement should be filed with the Commission. The sub-underwriting agreement should state inter alia.

1. Authorization Clause: This expressly authorizes the representative or Managing Underwriter to act on behalf of all the underwriters and spell out what the representative should do in respect of the issue.
2. The Underwriters agrees to pay their proportionate share of he expenses and liabilities arising from any suit against the representative in connection with the underwriting and any other similar provision.
3. A provision that the underwriters acknowledge receiving and reading all the necessary documents in the transaction and that they are registered with the Commission as securities dealers.[34]

6.3.6 VENDING AGREEMENT[35]

The vending agreement is an agreement between the issuer and the Issuing House for the packaging and marketing of the issue. The Commission vets and approves vending agreements. A counterpart of an executed vending agreement is filed with the application for registration.

The agreement should disclose the following:

[34] See also Dr. (Mrs.) Nnena A. Orji: "Packaging of Public Issue: Registration and Accompanying Documents" being a paper delivered at Gateway Hotel, Otta, Ogun State, 29th -30th March, 1995.
[35] Ibid.

1. The names and addresses of parties
2. The Board Resolution authorizing the issue and the appointment of the Issuing House.
3. The obligations of the Issuing House include:

a. Marketing the Issue

b. Applying for and getting necessary approval for registering the securities with the Commission, and applying for listing on the official list of the Stock Exchange.

c. Preparing all documentation required

d. To cause the prospectus (or Abridged Particulars thereof) including the application form to be advertised and circulated.

e. To remit proceeds of the issue to the issuer as and when due.

f. Ensure that documents for inspection are available at the place and for the period stated in the prospectus.

4. The obligations of the Issuer are:

a. To furnish the Issuing House with all necessary information

b. Bear all costs, fees and expenses incidental to the issue.

c. Indemnify the Issuing House against any liability to any interested party for non disclosure of material fact or for false and misleading statement in the prospectus.

d. Deliver to the Issuing House all documents stated in the prospectus to be available for inspection.

5. Representations and Warranties by the company, That is.

a. It has the power under its Memorandum and Articles of Association to offer the securities to the public.

b. It has approved the prospectus by resolution of its Board.

c. It has no liability (contingent or otherwise) of an onerous or unusual nature except as disclosed.

d. All statements of fact in the prospectus are true and accurate in all respects.

e. Since the date of the last published accounts of the company, the business of the company has been carried out in the ordinary and usual manner.

f. The company is not engaged in and does not have any pending or threatened litigation or arbitration which is of material importance to the issue other than as stated in the prospectus and abridged particulars.

6. Payment of Vending fees where the issue is stalled or aborted.

i. Where the Issuing House has acted up to submission of application to SEC and the Exchange, 50% of the fee is payable.

ii. Where approval has been obtained, 75% is payable.

iii. Where the issue has been finalized, 100% is payable

7. Conditions for terminating the agreement and recovering all expenses incurred.

8. Others include:

Applicable Law

A schedule of estimated costs, fees and expenses of the issue should be attached.

6.4 DURATION OF OFFER, RIGHT OF EXTENSION AND ABORTION OF UNDERSUBSCRIBED ISSUE

6.4.1 Opening and Closing of Offer[36]

After reviewing the signed documents and finding them to be okay, the offer will be allowed to open by the Commission.

i. An Offer for subscription or for sale of securities to the public shall remain open for a period of 21 working days from the date of opening stated in the prospectus.

ii. In case of a Rights Issue, the offer shall remain open for a period of 28 working days.

iii. Any application for extension of time of offer period under (a) and (b) above, shall be made to the Commission at least 5 working days before the date of closure of the issue as stated in the offer document. No offer under (a) or (b) above shall continue beyond the closing date unless prior written approval of the Commission is obtained.

[36] Rule 60.

6.4.2 Distribution of Application Forms by Registered Agents.

Registered Agents refer to Market Operators that have current registration with the Commission. No institution can act as a Receiving Agent unless it is registered with The Commission.[37]

6.4.3 Offer closes

When an Offer closes, it is an offence to accept any application as valid. The moment the issue closes, no application should be accepted.

6.4.4 Abortion of Offer

If after the issue had closed, the level of subscription is less than 25%, the issue should be aborted.

6.4.5 Submission of the Basis of Allotment and Verification/Approval Of Allotment Proposal By SEC [38]

Under the Commission's Rules and Regulations[39], when an issue closes, the proposed basis of allotment must be submitted after six (6) weeks to the SEC. The only exception being, if the Commission on the application of an Issuing House considers it, in the interest of the public, necessary to grant an extension.

Furthermore, if the allotment proposal is submitted late, (that is after six weeks), penalties for the number of days delayed are computed against Issuer/Issuing House. A 15% rate is usually applied on the amounts reflected in the issue proceeds accounts for the number of days of the

[37] Section 29 (1) ISA No 45, 1999.
[38] Rule 68 – 71.
[39] Rule 68.

The proposed basis of allotment must be accompanied with a draft newspaper advert. The newspaper advert must reflect the exact summary of the allotment proposal which should be clear and unambiguous. The essence is to ensure that the investing public understood in simple language the basis used in allotting the shares or bonds.

6.4.6 Approval/Clearance of the Basis of Allotment by SEC.

When the SEC satisfies itself that the basis of allotment is fair and complies with the Commission's rules, such as full disclosure as to how the allotment was done a clearance letter is issued.

6.4.7 Publication of Basis of Allotment.

The basis of allotment must be published in at least two (2) national dailies to ensure wide coverage.

6.4.8 Issuance of Certificates[40]

Every Registrar shall issue Securities Certificates (where applicable) to:

a. Allottees of Securities within 15 working days of the allotment of Securities in case of public issues.
b. Transferees of Securities within 5 working days of the receipt of the lodgments in case of secondary market. Presently, it is T + 3**,** meaning transaction day plus three other working days as assisted by the NSE automation of transactions on the floor of the Exchange.

[40] Rule 200

6.5 Offer of Government Securities to the Public

Federal, State and Local Governments, like corporate entities, are also in continuous need of capital and can also float debt securities which are normally project tied, to meet both recurrent and capital expenditure.

For the Federal Government, funds are usually generated through taxes, duties and royalties. Where these are inadequate to meet planned developmental requirements, the short fall would often be sourced from local and or foreign borrowings.

Local borrowing is by means of financial instruments such as treasury bills and development stocks through the Central Bank, which also acts as the Issuing House, Underwriter and Registrar to the issue without recourse to the Securities and Exchange Commission (SEC) [41].

The development stocks are directed at institutional investors and the Central Bank of Nigeria mobs up any short fall in the event of undersubscription; and releases it gradually to the Capital Market through the Secondary Market Investment in Federal Government's Development Stock is "gilt-edged" because of the certainty of and consistency in payment of interest and ease of disposal since the Bank is ready to buy-back at any point in time[42].

[41] Mohammed U.S: Securities and Exchange Commission Workshop on public offering, otta, Ogun State, March 1995.
[42] Ibid at page 6.

Foreign borrowings by the Federal Government can also be by way of bonds floated in the International Capital Market or through multilateral or bilateral agencies and banks[43].

State and Local Government authorities are also saddled with developmental responsibilities. Unfortunately, the finances of States and Local Governments are inadequate to meet their needs. With little internally generated revenue, most States and Local Governments rely considerably on statutory allocation from the Federal Government. Until recently, the capital market, which is an avenue and provides facilities for State and Local Governments to raise capital for their developmental projects, has been grossly under utilized, irrespective of the opportunities it provides.

Municipalities can float two principal types of bonds; general obligation bonds and revenue bonds[44].

They have to approach the Capital Market like listed Companies with all conditions of appointing Issuing Houses, Brokers, Trustees and Registrars, as well as obtaining the approval of the Commission[45].

General obligation bonds are backed by full faith and credit of the municipality including its taxing power and other revenue sources. The

[43] SEC Publication op. cit
[44] Ibid, at page 21.
[45] Mohammed op. cit.

revenue base of the municipality is, therefore, very vital to the floatation of a general obligation bond. For instance, if a revenue bond is issued by a State government to finance a housing project, the revenue from the sale of the houses could be committed to offset the bond obligations.

The project to be financed by a revenue bond must therefore be viable and self financing [46].

To facilitate borrowing by municipal authorities and their agencies from the Capital Market, the ISA has established the legal framework for borrowing,[47] which is complemented by SEC rules and guidelines on Public Offerings.

Municipal authorities and their agents wishing to access the Capital Market must comply with the provisions of the ISA,[48] which specifically deals with borrowing by States and Local Government and other agencies.

[46] SEC Publication opp.cit at page 22
[47] Part viii, Sections 171 – 224
[48] Ibid

6.6 Definition of Debt Instruments (E.G. Debenture Stock/Bond)

Debt Securities are financial instruments of varied forms usually issue by companies for loans of medium or long term duration.

The medium to long term duration, 5 -10 years serves to distinguish them from money market instruments.

Within the life span of the securities, debt instruments are usually transferable without restriction. Debt Securities may embrace debentures, that is, secured and unsecured, debenture stock, credit notes (secured or unsecured), Real Estate notes etc.

Generally, a debenture is a document or other instrument, usually under seal, containing an acknowledgement of indebtedness on behalf of the company and is usually given as a charge on the assets of the company [49].

The CAMA defines a debenture as a written acknowledgement of indebtedness by the company setting out the terms and conditions of the indebtedness and includes, debenture stock, bonds and any other Securities of a company whether containing a charge on the assets of the company or not. [50] A bond, on the other hand, is an interest bearing certificate[51]. Black's Law dictionary also defined a bond as a written promise to pay money or do some acts of certain circumstances occur or a certain time

[49] Dr. Joseph E.O Abugu op. cit.
[50] Section 650 see also section 168 CAMA 1990.
[51] The New International Webster's Comprehensive Dictionary of English Language (Encyclopedic Edition).

elapses. A promise that is defeasible upon a condition subsequent. An instrument under seal.[52]

6.7 Registration of State, Local Government et cetera Bonds/Securities [53]

State/Local Government and other government agencies bonds or securities shall be registered with the Commission by the issuer filing an application on FORM SEC 6 as provided in schedule 3 to these Rules and Regulations.

6.7.1 Requirements for Registration[54]

a. A copy of the feasibility report on the specific project to be financed.

b. Counterpart copy of original of the irrevocable letter of authority from the Local Government/State Accountant – General or other government agencies authorizing the Accountant – General of the Federation to deduct the principal and interest amount directly from statutory allocation in case of default;

c. Letter of confirmation from the Accountant – General of the Federation of receipt of the irrevocable letter of authority to deduct the principal and interest from statutory allocation of the State/Local government in case of default;

[52] Black's Law Dictionary (Eight Edition) page 187.
[53] Rule 307.
[54] Rule 308.

d. Two copies of the resolution of the State/Local Government legislative Assembly authorizing the issue of the bond;
e. Audited account of the State/Local Government or other government agencies for preceding 5 years or such number of years in existence (if less than 5 years);
f. Two copies each of draft prospectus and abridged prospectus;
g. Two copies of the State government gazette or Local government bye laws containing the instrument authorizing the issue of the bond;
h. Two copies of underwriting agreement;
i. Two copies of Trust Deed;
j. Two copies of vending agreement;
k. The reporting accountant's report;
l. A write-up on the issue;
m. Schedule of claims and litigations;
n. Bridging loan agreement if any;
o. Material contracts;
p. Letters of consent of the parties to the issue;
q. Any other document or information required by the Commission from time to time.

2. The total loans outstanding including the proposed bond shall not exceed 50% of the actual revenue of the Issuer during the life of the bond.

3(a). In the event of default by the issuer the trustee shall, within six months of such default take necessary steps to ensure that the Accountant – General commences direct deduction from the Issuer's statutory allocation.

(b) The Trustee shall within 30 days of such default notify the Commission and file a copy of the letter to the Accountant General in (a) above with the Commission.

4. A copy of the irrevocable letter of authority shall be lodged with the Trustee not later than 5 days before the issue open to the public.

5. The Registrar to the issue shall issue bond certificates to the bondholders within 15 working days of the allotment of the securities in accordance with rule 200 of SEC rules and regulations.

6.8 Methods of Dispersal of Government Equities in Privatized Public Enterprises

6.8.1 Introduction

Nigeria after independence witnessed massive investment in State owned enterprises as part of government effort at promoting growth in the economy, considering the huge capital outlay required, particularly in key areas such as infrastructure, extractive industries among others, which have direct implications on the economy.

Over the years, many of these investments suffered from lack of commercial and financial viability leading to ineffectiveness and inefficiency in the national economy.

As at 1990, The Federal Government alone had about 600 public enterprises worth about ₦500 Billion ranging from heavy Iron and Steel Industries to Hotels and Abattoirs[55].

In order to put the national resources into more efficient and productive use, the Federal Government embarked on Privatization and Commercialization Programmes. Privatization and Divestment are often used interchangeably.

Available policy documents define privatization as divestment, either wholly or partly, by the Federal Government of its shareholding in designated enterprises. Commercialization on the other hand entails reforms and thus outside the scope of this research.

6.8.2 Methods of Divestment of Government Equities in Privatized Enterprises[56]

The organ of government saddled with the responsibility of privatizing the affected enterprises is the Bureau for Public Enterprises (BPE) formally known as the Technical Committee on Privatization and Commercialization (TCPC).

[55] According to a Survey carried out by the T.C.P.C.
[56] Privatization and Commercialization Act.

The Act establishing the BPE empowers it to evolve any method for privatizing the Companies. Public Offer of Shares has been the predominant method of privatization in Nigeria [57].

Public Offering of Securities means the sale of shares of affected enterprises through the Nigerian Capital Market or through Open Bidding, provided the enterprises fulfill the requirements for listing on the Stock Exchange.

Generally, as has been stated earlier, listing requirements include:

i. A track record or annual financial statements for 5 years.
ii. All Securities for which listing is sought shall first be registered with the Securities and Exchange Commission (SEC).
iii. Subscription list must remain open for a minimum of twenty-one consecutive days and may be extended from time to time subject to the approval of the SEC.
iv. There shall be no restriction on the transfer of fully paid up shares.[1]

Apart from meeting the requirements of the SEC for the distribution of Public Securities, the privatization offer must obey the rule on takeovers [58].

Under the first phase of the privatization of 1988 -1993, 88 enterprises were privatized partially or wholly, using various methods.[59] After the

[57] Rabiu A.M, "Privatization and its Impact on the Nigerian Capital Market": Delivered at a Workshop Introduction to the Capital Market for Staff At the SEC Training School, Wednesday June 26, 2002.
[58] As provided for in Part xi of the ISA.
[59] Rabiu A.M, op. cit.

emergence of the new dispensation, the Federal Government has continued the privatization policy albeit with certain modifications based on the lessons learnt from the earlier exercise.

The first Government divestment by way of Public Offer[60] took place in January 1989. For instance, Flour Mills Nigeria Plc's 7.8 million ordinary shares representing 10-62 percent of the company's paid – up capital was offered for public subscription. By the end of 1993 divestment in 34 companies had been concluded through the Stock Market [61].

Out of this number, 28 involved new listings while 6 were previously listed [62].

Beside the BPE executed divestment, the Federal Ministry of Defence divested part of its holding in Union Dicon Salt Plc.

After privatization of the 34 Companies, United Nigeria Insurance Company Plc and United Nigeria Life Insurance Company Plc (UNLIC) fused together to reap the benefits of synergy.

In February 2002, further government divestment by way of Public Offer under the Privatization and Commercialization Decree of 1999 began.

WAPCO'S 94.81Million shares representing 21.09% of the Federal Government divested shares were sold to the public.

[60] Under the Privatization and Commercialization Decree 1988
[61] Rabiu A.M, op. cit.
[62] Ibid at page 4.

By December, 2001, divestment in 9 companies out of the targeted 69 companies for privatization in the second phase had been effected. Cumulatively, 17,222 billion shares worth N18.779 billion were distributed among various income groups.[63]

[63] Ibid

CHAPTER SEVEN

7.0 CONCLUSION

The Legal and Institutional Framework that will support an efficient securities market is a complex network of rules, regulatory institutions and several categories of intermediaries, each playing distinct and somewhat separate roles.

In assessing the legal and institutional framework of Capital Market regulation, two trends, roll into focus. There is the institutional framework of statutory bodies and agencies such as the SEC, CAC etc, and there is a body of regulations on the financial operations of the market. While legal framework refers to all laws, bye – laws, and subsidiary legislation establishing regulatory institutions, bodies or agencies, setting out their functions and scope of responsibilities, institutional framework refers to these bodies so established like the SEC, CAC, NSE, CSCS, CIS etc.

In prescribing an ideal legal or regulatory framework and institutional framework for a Securities Market, it has been argued that corporate structures would depend substantially on the legal structures with which the economy started and that corporate rules will themselves depend on these initial structures.

An inductive analysis of the structure of the major Capital Markets of the world leads one to identify certain basic components of an ideal Securities Market regulatory structure[1]. Very often governments all over the world focus attention only on money market institutions and operations as a ready means of controlling liquidity in the economy. In most cases, where a Capital Market exists, it is a product of adhoc legislative evolution, lacking in co-ordination with other government policies. Nigeria is not excluded from this trend, even though there is a steady and systematic evolution of laws and rules of regulation in the Nigerian Capital Market.

7.1 Contributions of the Capital Market to the Nigerian Economy

The Capital Market in Nigeria has contributed in various ways to the development of the Nigerian Economy. These include:

7.1.1 **Mobilization of savings:** The Nigerian Capital Market has contributed significantly in savings mobilization as a source of funds for investors. The ingenuity of the Market has continued to grow in 1961, the shares traded in the Market rose from 0.3 million shares valued at N1.5million to 14.1 million shares valued at N4.00 billion in 1999[2]. The value of the shares traded in year 2003 was 13.1 billion shares valued N113.8 billion. This improved significantly to 10.4 billion during the half year ended June 2004 and today in 2007 we are talking of a market capitalization in

[1] Dr. Joseph E. O. Abugu, op. cit at page 95.
[2] Akinkwolie Basil: op; cit page 9.

excess of N5.512 trillion.[3] Most of the funds set aside as savings are attracted in the main stream financial system through the capital market to support long term investments by business firms and governments.

The Capital Market has not only provided a veritable source of funds for industries, but also encourages savings, through an array of investment opportunities. The role of the Capital Markets in channeling savings into investments is absolutely essential to the health and vitality of the economic system. Furthermore, the Capital Market through its diverse instruments such as, the Unit Trust Scheme for small savers, provide the vehicle for boosting national savings by providing a variety of outlets. The efficient mechanism of the capital market facilitates such savings to be channeled to productive investments, with consequent higher domestic income for investors and sustainable effect on the economy. The recent upsurge in IPO involving corporate entities, especially the banks, confirm the growing popularity of the stock market.

7.1.2 **Vehicle for Venture Capital and Small Scale Enterprises.[4]**

The venture capital as well as small scale enterprises are now special purpose vehicles that have created huge wealth in many countries.

It is in recognition of the important role which they place as the plant for the development of any country that this administration unfolded a pragmatic programme of economic sustenance through the Small Scale Enterprises ventures capital companies.

[3] Nigerian Stock Exchange (daily official list), op. cit.
[4] Akinwolie Basil: Op. cit.

In implementing this reform measure, government has mandated that 10% of banks profit before tax would be better channeled to the affected companies through venture capital vehicle.

The CBN and SEC would therefore, pursue the implementation of these critical growth tools in order to facilitate the growth of the real sector, provide employment and enhance the recovery of the economy.

The Capital Market offers an alternative source of financing small scale enterprises through equity participation. The Nigerian Stock Exchange has listed on its second tier securities market 16 indigenous companies of relatively small size.

The role of the Capital Market in the growth of small indigenous companies is expected to receive a boost with the expected take-off of the Capital Trade Points in various locations across the country.

7.1.3 **Attracting foreign investment** [5]

A number of studies have analyzed the impact of foreign Capital on domestic investment according to Field Stain (1994), he posited that a dollar of Capital inflows or outflows tends to be associated, respectively with a one-dollar rise or fall in domestic investment.

Other studies have analyzed the relationship between capital market inflows and domestic investment and concluded that capital flows have a strong impact on domestic investment.

[5] Ibid.

Capital market flows are seen to have strongly associated with higher domestic investment in sub-Saharan Africa. The impact has been stronger than in Asia or in Latin America and the Caribbean (World Bank). Gross Capital Market financing to developing countries rose by 28 percent to about $237 Billion in year 2000.

The Capital Market Continues to be an important vehicle for foreign investment in Nigeria. Foreign Capital flows usually come with increased efficiency of production and thus with higher growth rates. Productivity is increased, through transmission of ideas across national borders. This helps us to catch up! It also creates the ability for us to exploit the potentials created by other associated inflows. Such improvement in productivity can be to the enterprise receiving foreign capital or it may spill over more broadly to other domestic firms and even to the society as a whole.

In Nigeria, Foreign Capital flow has facilitated the transfer of technologies and skills to firms receiving it. Their workers become trained in the best techniques available from abroad, and have the potential to transfer their expertise to other domestic firms.

The Capital Market offers free entry and exit mechanism in addition to Capital appreciation of investment. Thus, as the Nigeria Capital Market provides modern Market infrastructures, it is expected that the Market would provide an important vehicle for attracting more investment funds into the country thereby building more confidence in the economy.

7.1.4 **Corporate governance**[6]

The importance of good corporate governance can be understood when you consider the following information:

Microsoft with Market Capitalization of US$636 at its peak qualified to join the G.7 being larger than the smallest of the G.7 economies.

The total market capitalization of the top Asian 100 companies is US$2.511 billion nearly twice as large as the Chinese GDP.

Nokia has a market Capitalization of US$126 billion at par with Finland's GDP of US$ 126 billion in 1999[7].

In the light of the above figures stupendous wealth are being created through the capital market. The capital market enforces a regime of rules and regulations which compels companies to have published audited accounts, make full disclosure and create a regulatory framework under which business corporation are directed and controlled.

In Nigeria a set of corporate governance codes have been launched by the SEC and key stakeholders. The principles are now obligatory for implementation as the public increasingly expect higher standard of behaviour from companies.

The stringent demand which the capital market makes on listed companies in terms of financial discipline made the World bank President, Mr. James Worlfanson when he said "The governance of the corporation is now as important in the world economy as the governance

[6] Ibid.
[7] Bloomberge; World Bank Statistics 2005.

of countries". States willing to raise fund in the capital market are obliged to have a five year audited account, in addition to other listing conditions.

The capital market through corporate governance promotes market integrity, a transparent and accountable regime as a measure of protecting the investors.

7.1.5 **Privatization**[8]

Privatizations are sales of substantial business or other properties owned by governments to purchasers from the private sector.

Privatization occurs through such methods as auction, stock-others, stock distribution, negotiated sales, management employee buyouts and vouchers or coupon exchanges, joint ventures, management contracts, Concessions etc.

Privatization sales can take place through public offerings of shares in reasonably viable joints stock companies created to own and operate the business, as such sales can be restricted to nationals only, or be permitted to include foreign investors.

Sales methods will of course vary across countries, for various reasons, including privatization strategy and market conditions.

Through Privatization a country continue to spur much foreign investment interest as demonstrated by the $8.265 billion proceeds reported in sub-Saharan Africa in 1999.

Privatization channels are employed by government to divest interest to private sector on infrastructure related enterprises, which include utilities,

[8] Ibid.

telecommunication, power. The majority of privatized State Owned Enterprises (SOEs) have been in the utility sectors, energy, telecommunication, oil and gas (petroleum) sector, Airlines, Hotels.

There has been market increase in the number of privatization transactions in developing countries. \Private participation in infrastructure projects in developing countries increased at an average annual rate of 34 percent and real terms from 1990-1997. Even after a downturn of infrastructure investment in 1988, as a result of the Asian Financial Crisis in 1997, the real growth rate was above 25 percent over the period from 1990 to 1998[9].

These high rates of demand growth compare with an average real GDP growth rate of 6.4 percent for developing countries over the 1990-1997 periods.

It is estimated that 10-20 of these infrastructure project costs was locally financed by debt instruments issued in developing countries through the capital market.

The burden of infrastructure project financing is thus passing from the public to the private sector. Securities financing for infrastructure projects can be arranged through debt securities by one of three routes.

i. Long-term loans extended by development banks or development finance companies that are founded through issuance of their own bonds.
ii. Bond issuance by project sponsors

[9] Akinkwolie Basic op. cit.

iii. Limited recourse financing e.g. build Own Transfer (BOT) or Build Own Operate Transfer (BOOT) which are innovative, are increasingly popular.

Although many infrastructure projects are financed through syndicated loans on commercial banks, given the large investment sizes, and long gestation periods of these projects, their financing through securities issuance (bond) in the capital market has been found more appropriate.

The shift from public to private financing of these infrastructure projects has therefore led policy marketers to assess, plan, and implement the development of an efficient bond segment of the capital market.

Reaching this advanced stages of market evolution, however, is demanding the requires having the appropriate legal and regulates infrastructural prerequisites in place.

Recent economic and sectoral reforms by the government indicate that privatization activity is one of the policy reforms initiatives of the Obasanjo administration.

7.2 Benefits Derivable from the Capital Market.

There are a lot of benefits derivable from the Capital Market. These include;

i. As an Issuer government or corporate body, the Capital Market provides the necessary economic development, fundamentally, through the medium of offering of securities to the public.

Public Companies (Corporate bodies) through the issue of securities are able to expand their operations or structure for optimum benefits. Governments on the other hand are able to channel funds raised in the capital, for compelling development needs of their people, in fulfillment of their electoral promises.

ii. To the investor, the Capital Market confers benefits through profits earned as a result of securities bought and sold in the Capital Market. Investors receive dividend or capital gained when profits are declared by companies or when shares are sold subsequently at a premium to the society at large. The Capital Market provides the much needed employment through the participants in public offers or through other programmes organize by the regulatory agencies.

The above benefits derivable from the Capital Market and more have been made possible because of the vibrant regulatory regime put in place to check abuses in the system as explified by the laws; such as ISA discussed above and the Institutions e.g. SEC, NSE etc also extensively considered in this work.

The current Legal and Institutional framework put in place to regulate the Capital Market is adequate for the development and deepening of the emerging Capital Market in Nigeria.

7.3 Suggestions to Improve Regulation in the Capital Market.

Although the system of laws and institutions regulating the Nigerian Capital Market has been stated in the preceding paragraph to be adequate, it is imperative to make the following suggestion/recommendations as a way forward towards attaining a perfect Capital Market environment for the Nation.

a. The Apex Regulator (The SEC) needs to be further strengthened with greater administrative powers to deal decisively with violations of Securities Laws e.g;

i. Power to replace the Board and Management of any failed or failing company operating in the market (i.e. registered Capital Market Operator (CMO)).

ii. Powers to freeze the assets of any CMO or individual involved in the violation of Capital Market Laws or Capital Market fraud.

b. The Investments and Securities Tribunal (IST) should be empowered, by way of amendment of the ISA, to handle criminal matters arising from Capital Market Operations in order to quicken dispensation of criminal justice in the market and sustain the integrity of the market.

c. The ISA 1999 did not give SEC the power to enter and seal up the premises of persons illegally carrying on Capital Market Operations or to enter the premises of Capital Market Operators which it considers failing or ailing to seal up the premises or to do

whatsoever it deems necessary for the protection of investors, including power to suspend or remove the Board or Management or both the Capital Market Operator and to appoint any competent persons(s) to take over and manage the affairs of the company for a period SEC deems appropriate.

In my view the above would enhance the Commission's statutory powers to protect the interest of Investors whose funds are held by the Capital Market Operators and prevent distress in the market. The Central Bank of Nigeria (CBN), Nigeria Postal Services, the National Insurance Commission and the Nigerian Deposit Insurance Corporation have similar powers. This will assist in curtailing the rate at which Investors are defrauded.

d. In the regulation of Mergers and Takeovers by SEC, section 99(4) of the ISA provides that "Nothing in this section shall apply to transactions duly consummated pursuant to the authority given by any Federal government owned agency under any statutory provision, vesting such power in the agency".

The operation of this provision has generated a lot of argument as to the role of SEC vis-à-vis other regulators in the economy. See Beta Consortium Ltd. vs. SEC[10] the company acquired Ikoyi Hotels Ltd. and SEC requested it to perfect the acquisition and pay 1% SEC fees. The company argued that it acquired Ikoyi Hotels through privatization and as such the government via BPE and

[10]Ibid.

NCP mandated the acquisition in accordance with S.99(4) of the ISA and SEC cannot compel them to pay SEC fee or perfect the acquisition, the IST upheld the company's argument. *Although SEC has appealed the decision of the IST to the Court of Appeal, it could not enforce or impose any fine/commission on Beta Consortium Limited in the face of the IST decision.* It is therefore suggested that to cure this ambiguity, a proviso should be inserted to read that provided that the evidence of such approval and any other document and information required by SEC shall be filed with the SEC not later than 14 days after the said approval.

e. Another issue to be considered is the issue of Commodity Exchange. There is no definition of a Commodity Exchange in the ISA[11] rather fleeting references are made to it as one of the exchanges to be registered and regulated by SEC. The ISA never contemplated how SEC should regulate Commodity Exchanges, Futures and Options Market.

   It is suggested that a part in the ISA 1999 should be created to cure this lacuna.

f. The ISA 1999 does not empower SEC to regulate issuing and trading of securities by foreign companies. It is deemed necessary that SEC should have such statutory powers. It is therefore suggested for creation of new subsection 262(1)(g)[12] to provide and

[11]No. 45 of 1999.
[12] of the ISA, op. cit.

enable SEC to prescribe the procedure for offering, listing and trading of securities by foreign issuers.

g. Furthermore, a major change made by ISA is that it denuded the SEC of its independent regulatory character. A defect of the 1988 Act was that the SEC was not in practice financially accountable and there was minimal political oversight. The best solution to this should have been to ensure that the SEC is operationally independent but accountable in the exercise of its functions and powers. Indeed ISA as it currently stands has made SEC subject of considerable political interference. The remarkable thing about this change is that it occurred without anyone noticing. Much comment has focused on the enlarge and wide range of powers given to SEC by ISA, even though it is a red herring once the potential for political interference is understood.[13] A consideration of a few provision of the ISA 1999 will attest to this. Section 246 provides: *"without prejudice to the foregoing provision of this Act, the Minister may give to the Commission such directives as appear to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply"*. The failure to comply with such directive may result in the temporary suspension or demise of SEC. This is because section 247(1) goes on to provide that *"if at any time the Minister is of opinion that the Commission has persistently*

[13] See The Market for Corporate Control and The Investment & Securities Act 1999 by Tunde Ogowewo published by the The British Institute of International and Comparative Law London 2002.

made default in complying with any directive issued to him under this Act; or (d) that circumstances exist which render it necessary in the public interest to do, the Head of State, Commander-in-Chief of the Armed Forces may on the recommendation of the Minister suspend the Commission for such period, not exceeding six months as may be specified in the notification". The obvious implication of this is that those market participants under the purview of SEC now have a powerful incentive to "politicize" their disputes with the SEC by seeking the intervention of the Minister of Finance. The decision of SEC as an expert regulatory body will therefore be liable to being overturned adhoc by the Minister and Office of the Presidency, who are non experts, on the basis of expediency. An extant example is the dispute between SEC and the NSE[14] on the failure of the NSE to comply with the SEC directive that the NSE reverts to its previous name, the Lagos Stock Exchange vis-à-vis SEC's recognition of the new Abuja Stock Exchange (as it then was), in a bid to break the NSE monopoly. The Federal Government intervened in the matter even when judicial resolution of the issue had been sought. However, the Federal Government imposed settlement of the dispute by directing that Abuja Stock Exchange should be a Commodity Exchange and the NSE retain its name as the NSE. Owing to political interference therefore, SEC's commitment to ensure a competitive market has been undermined

[14] See Editorial in the Guardian Newspaper entitled the Abuja Commodity Exchange in <http.//www.ngr.

and the NSE's aim to ensure that the SEC does not override it succeeded.

Indeed, it was to prevent such outcome that the International Organization of Securities Commissions (IOSCO) in its, *objective and principles of Securities Regulation, it was stated that "the regulator should be operationally independent from external political or commercial interference in the exercise of its functions and powers and accountable in the use of its powers and resources"*.

h. Again section 261(2) of the ISA 1999 provides that if the provision of any other law including the enactments specified in sub section 1 of this section are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void.

The section in express terms voided the Insurance Act 1997, the Companies and Allied Matter Act 1990, Banks and Other Financial Institution Act 1991 and all other such laws to the extent of their inconsistency with the ISA 1999.

In my view this section vests the ISA 1999 with superiority over every other law. It is not the trend in democratic jurisdiction to make one law superior to the others. Furthermore, in the interpretation of statues, where there is a general law on a matter and a specific law on the same, it is the rule that the specific

prevails. In the instant case, ISA is a specific law to regulate capital market. Therefore if any other law conflicts with the ISA on capital market matter, the court (whose duty it is to interpret the law) will expectedly give effect to the ISA over that other law, even without the exclusion clause of the ISA.

i. As was the case of conflict between SEC and the NSE, SEC has over the years been confronted with practical and operational difficulties in carrying out its regulatory role. The SEC is often criticized for both its actions and inactions. It must be appreciated however, that SEC faces an uphill task going forward. While the importance of an effective Capital Market regulator cannot be overemphasized, there is the compelling need for SEC to be perceived as a fair, just and impartial umpire in the market for it to instill both the required discipline and the necessary confidence investors require for the growth of the market, which has become one of the fastest growing sectors of the economy.

j. Furthermore, SEC as the apex regulator must be able to effectively stamp its authority on the Capital Market Operations, fight insider trading and collaborate more actively with the criminal investigating authorities in the fight against Capital Market fraud, not by occasional grand standing[15], but by reinventing itself as a capable organization that would be one step ahead of the

[15]See also Ayo Olesin: As SEC bares its Fangs: The Punch Newspaper; Friday April 28, 2008.

considerable number of crooks in suits operating in the Capital Market. This it can do through the following methods;

7.3.1 Strict observance of the registration requirement by SEC

Registration is considered the hallmark of regulation being the entry point to the capital market. In other words, it is regarded as the 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 it properly assess prospective registrants, SEC requires comprehensive personal and business data on applicants and reserves the right, following proper scrutiny of information supplied, to grant or deny registration. SEC has formulated minimum requirement for each type of registrable activity. These requirements are not static but dynamic and subject to review from time to time. Registrants are therefore subjected to continuous obligations by SEC. This instrument if effectively applied by the SEC, has the potential to check many registration related vices and instill sanity in the market.

Also Sec requires Issuers of securities to file prospectuses along with other registration document.

The fitness and propriety assessment are principally centered around the character, financial suitability and professionalism or competence of applicants for instance for character checks. SEC requires police clearance report, previous employers references, referee's report and bankers reports from a prospective registrants.

For financial propriety the registrant must have the prescribed minimum capital for the line of business he has chosen, while for professionalism or competence the applicant must have relevant qualifications and experience for the line of business and/or activity he is embarking on.

SEC drives and hinges its power to register Capital Market participants, market places and depositories and securities on S.8(c), 8(e), 8(f) and 8(g). The SEC must undertake all these aspects of registration with every amount of seriousness, commitment and transparency in order to reinforce her grip on regulation of the market. However, some Solicitors have challenged SEC on the issue of their registration. It is argued that since a Solicitor has passed Bar examination and had been called to the Nigerian Bar, he is competent to practice law in Nigeria without restrain, SEC cannot therefore subject them to accreditation or registration. In Prof. Kasum vs. SEC[16], Prof. Kasum took SEC to court challenging SEC's powers to subject him for registration based on sections 9, 29 & 30 of the ISA and Rule

[16] *Suit No. FHC/L/CS/70/2002.*

39 of SEC Rules and Regulations made pursuant to the ISA. The Federal High Court granted him the relief sought. SEC has appealed against the Federal High Court decision to the Court of Appeal. Also Afebabalola (SAN) instituted and challenged SEC's powers on the same issues. However, it is my opinion that because of the technical, sensitive, information driven and confidential nature of the Capital Market, it is imperative for the apex regulator to screen and regulate the practice of all comers into the market, be they Lawyers, Accountants, Auditors or any other Capital Market Operator especially Professional advisers and experts, irrespective of their membership of professional bodies.

The recent collapse of ENRON, the US energy giant, and the WorldCom and Adelphinea saga, Parmalat Company of Italy etc, underscores the need to regulate the activities of professionals such as Accountants and Lawyers in order to streamline the operation of the market vis-à-vis professional conduct[17]. The government of the United States of America (USA) enacted the Sarbanes-Oxley Act [18] to principally regulate the conduct of professionals, Issuers of securities and public company executives. This method could be adopted in Nigeria.

[17] Y. A.; Unethical practices in the Capital Market; Being a paper presented at a workshop on Investigative Techniques and Enforcement in the Capital Market, March 2005

[18] of July 2002 (Section 307)

7.3.2 Due diligence through surveillance

Surveillance of the Capital Market is imperative to ensure that rules, regulations and securities laws are fully complied with and all participants play by the rules of the game. Market surveillance is necessary for detection of rules observed in the breach and to institute appropriate sanction as well as to forestall manipulative and other illegal contrivances and practices in the market.

A fundamental objective of surveillance is to ensure transparency and the sustenance of confidence of the investing public[19]. Section 8(m) of ISA empowers SEC to protect the integrity of the securities market against abuses arising from the practice of insider trading. SEC performs this function in both secondary and primary markets. SEC surveillance in the primary market includes, but not limited to, focusing on the activities of issuing houses, registrars, trustees, receiving banks and other professionals with the objective of ensuring adequate information disclosure without which a problem may arise as was seen in the case of **SEC vs. AP Plc**[20] where Auditors misrepresented and concealed a debt of N26 billion in the prospectus. Prevention of any misuse of Investors Fund and Transparency. On utilization of offer proceeds other than for the purposes disclosed in the prospectus.

SEC's surveillance in secondary market covers trading on the floor of the Nigerian Stock Exchange in order to ensure fair and

[19] Usman M. Bala; Overview of the Investment and Securities Act 1999 (at SEC Training School Abuja, February 2004).

[20] *See SEC vs. Royal Exchange Assurance Plc APC/40/2001 and SEC vs. Cadbury Nig. Plc APC/1/2003*

equitable dealing in securities free from manipulative and other abusive devices and contrivances. While inspectorates undertake frequent on-the-spot checks of the books and operations of the registered Operators. This is to ensure that Operators keep adequate records and working within the norms of the market.

7.3.3 **Transparent investigation**

Section 8(q) and (v) of the ISA empowers SEC to investigate all reports of violations and suspected violators of the securities law. Information leading to investigation usually emanate from the surveillance reports and activities or from complaints by Investors Operators and other members of the public. Investigation can also arise from press publication on issues affecting the Capital Market, tips and indeed from rumuors. SEC has a Department that conducts and performs this function. SEC by the power conferred on it by S.8(q) of ISA normally calls for information pertinent to the case from any corporate body or individual under its regulatory purview suspected to be directly or indirectly connected with matter under investigation. Investigation of such matters helps the reformation and strengthening of the market.

7.3.4 **Aggressive enforcement**

SEC has the responsibility of ensuring that participants in the market comply with the securities law and directives issued by SEC. In carrying out its enforcement function SEC adopts any of

the following means; institution of penalties (sanctions) and remedial action, institution of legal action to enforce compliance with the provisions of the law, suspension of an Operator or revocation of registration, disgorgement of proceeds from illegal transaction, fines and reversal of transactions. Action which SEC can apply against violators depend on the severity of the offence and peculiar circumstances of the matter[21].

In extreme cases, matters are referred to the Administrative Proceeding Committee (APC), a quasi-judicial body set up to resolve serious Capital Market disputes administratively by SEC[22].

Between the year 2000 and 2004, the APC heard 117 Capital Market related disputes and violations bordering on fraudulent disposal of shares. ***In SEC vs. Prudential Securities Ltd[23],*** a non-purchase/lodgment of securities paid for by an Investor was an issue for resolution by the APC. Also in ***Dr. Banigo vs. Fidelity Finance Limited[24],*** the failure of an Underwriter to honour its underwriting obligation to the Issuer of Securities came to the APC for resolution. ***In EMPEE vs. Nigeria American Merchant Bank Ltd.,[25]*** non-compliance with the minimum paid up requirement for operating in the Capital Market became a dispute the subject of which was resolved by the APC.

[21] A paper presented by Reginald Karawusa on machinery for dealing with grievances as a tool for Investors Protection during the excursion to the Commission by the Attorneys and Equity Chambers, ABU Chapter on April 2005.
[22] As provided for by Section 262 etal of the ISA op. cit.
[23] APC/1/2001.
[24] APC/2/2003.

See also; *SEC vs. Molten Trust Limited*,[26] the alleged scam of N318million in Nestle Plc and Unilever Nigeria Plc shares[27], the criminal elements of which are still being investigated by EFCC and alleged scam of N13million in UAC shares through cloning of Certificates to mention but a few[28].

Furthermore, as has been noted elsewhere, where criminal element is perceived, in a violation of ISA or the Rules and Regulations made thereto, SEC refers the matter to Attorney General of the Federation or other Law Enforcement Agencies as provided for by S.235 of the ISA for further investigation and prosecution. The test case, also earlier mentioned is the case of the ***Federal Government of Nigeria vs. Sir Kingsley Ikpe & Thomas Kingsley Securities Ltd***[29]**.** The accused persons a stock broking firm and its Managing Director received the sum of N135million for purchasing of NBL shares for an Investor but did not carry out the purchases. The court found the accused persons guilty of fraudulent conversion and stealing. Also the case of ***COP vs. Eagle Stockbrokers Ltd.***

The matter is still on going at the Igbosere Magistrate Court Lagos. Alleged fraudulent sale of Investors shares worth about N8million.

[25] *APC/19/2001.*
[26] *APC/13/2001.*
[27] *SEC vs. Bonkolans Investment Company Limited, Ibid.*
[28] *APC/13/2001.*
[29] *ID/143C/2004 Ikeja High Court 40 (Unreported).*

However, some of the APC decisions and directives have been challenged by Operators in the Investment and Securities Tribunal (IST), since its establishment on issues like awarding of cost of proceedings etc. See for example the case of *Light House Asset Management Ltd. vs. SEC*[30]. In this case, the IST held that it is not proper, if not illegal, for SEC to award cost to itself. I agree with the decision of the IST on this issue of SEC awarding cost of proceeding to itself. Though it costs a lot of money to convene an APC sitting, SEC can levy or stipulate an Administrative charges but not cost of proceedings.

7.3.5 **Establishment of an investors protection fund**

Part II Section 8(j) empowers SEC, to act in the public interest having regard to the protection of Investors and the maintenance of fair and orderly market and to this end establish a nationwide trust scheme to compensate Investors whose losses are not covered under the Investors Protection Funds administered by Securities Exchanges and Capital Trade Points.

Beside the National Investors Protection Fund to be established and managed by SEC. The Act in Section 149 to section 171 empower Securities Exchanges and Capital Trade Points to establish and maintain a fund to be known as Investors Protection Fund to be administered by their governing boards on their behalf.

[30] *APC/21/2002, case No. IST/OA/01/2003. See also CSCS Ltd. & Or5. vs. SEC & Or5. Case No. IST/OA/02/2003.*

SEC till date has not been able to establish the National Investors Protection Fund as envisaged by section 8(j) of the ISA.

Moreover, the Nigeria Stock Exchange (NSE) as a Securities Exchange has been imposing levies on the Stockbroking Houses and yet it has not utilized the funds for the purpose contemplated by the Act. Unfortunately SEC has not invoke its enforcement powers on the NSE. The establishment of a National Investor Protection Fund, as provided for by the ISA[31] should be very high on the priority list of SEC and the Federal Government. This will enable investors who lose their investments through no fault of theirs, receive a measure of compensation from the fund in order to mitigate their loses. The SEC should direct the NSE to begin to apply its investor protection fund to compensate innocent investors adversely affected by actions of its members.

It should be noted that it is also on the shoulders of SEC, its vigilance and proactiveness, that the effectiveness of the Legal and institutional framework regulating all operations in the Nigerian Capital Market depend. Therefore, if the foregoing suggestions, observations and sundry other measures are taken, the Nigerian Capital Market will become the most sought after investor haven in Africa and the National economy will be the better for it.

[31] Section 8(j).

BIBLIOGRAPHY

Published Books:

Abugu, J. O. E.: Company Securities: Law and Practice, 2005, University of Lagos Press, Nigeria.

Ako, R. M: Capital Market Manual, Published by: La – Rose Ltd. P.O.Box 4685, Garki, Abuja.

Ayua, I. A.: Law and Research Methodology, 2001
Guobadia, D. A.: Nigerian Institute of Advance Legal Studies, Lagos.

Black's Law Dictionary: Eight Edition, Thomson West, 2004, Byran A. Garner, Editor in Chief.

Eleh, Z.M.N.: Know your Capital Market Inside out.

Gower L.C.B.: Principles of Modern Company Law, 4th Edition (1979) Stevens and Sons Ltd., London.

Securities and Exchange Commission: Public Offering and Sale of Securities, 2005, Second Edition.

Securities and Exchange Commission: 20 years of Securities Market Regulation in Nigeria, 2005 Second Edition.

Securities and Exchange Commission: Regulation of Distribution of Public Securities ISBN 978-2690-26-0.

Securities and Exchange Commission: Financing the States through the Capital Market, A publication of SEC, Abuja.

The New International Webster's Comprehensive Dictionary of English Language, Encyclopedic Edition 2004 (Trident Press International U.S.A).

Workshop Paper:

Adesiyan, S.O: Historical Development of the Nigerian Capital Market:

Akinkuolie, B: The Role of Capital Market in National Economy; SEC Abuja September 22, 2004.

Asinobi, O. C: Understanding the Central Securities Clearing System CSCS; being a paper delivered at the Nigerian Stock Exchange: National Workshop for Financial Correspondents, June 13, 2001.

Usman M. Bala Esq.: An overview of the Investment and Securities Act 1999 as it relates to surveillance and investigation.

Isiaku, M. A: Capital Market Intermediaries and their Roles: Presented at an induction course for newly recruited staff of SEC, June 2002.

Ladokun, Y. A.: On Unethical practices in the Capital Market at workshop on Investigative Techniques and Enforcement on the Capital Market March 2005.

Mohammed, U. S.: Mechanics of Public Offer of Securities: Delivered at SEC workshop on Public Offer, Gateway Hotel Ota, March 1995.

Orji, N. A: Packaging of Public Issue: Registration Statement and Accompanying Documents: Delivered at the 1st SEC workshop on public offer of Securities: Disclosure and other SEC Requirements,March 1995 at Gateway Hotel Ota, Ogun State.

Rabiu, A. M: Privatization and its impact on the Nigerian Capital Market, delivered at SEC Training School, June 26, 2002.

The Nigerian Stock Exchange Listing Requirements (The Green Book).

Stores L. S: Requirements for Listing on the

Udora C.A.: Legal Framework Governing Operations in the Capital Market. Being text of a paper delivered at a workshop on; Introduction to the capital market for new employees of SEC, June 20, 2002.