

# RULES AND REGULATIONS OF THE NASD OTC MARKET

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# 1) GENERAL PROVISIONS

## 1. SCOPE OF APPLICATION

- (1) These Rules and Regulations are made pursuant to the Memorandum and Articles of Association of NASD PLC ("*NASD*") and are subject to the provisions of the Investments and Securities Act (ISA) 2007 and the Rules and Regulations made pursuant thereto.
- (2) These Rules shall regulate all securities exchange activities conducted on the NASD OTC market (*the "Market"*) and are applicable to activities relating to the conduct and disclosure requirements of the securities listed in Rule 7 below.
- (3) Any entity that wishes to participate or conduct any transaction on the Market shall be licensed with NASD ("*Participating Institution*") under any or all of the following functions: Broker/Dealer, Accredited Issuing House and Broker.
- (4) The Participating Institution shall nominate persons to represent them on the Market and conduct transactions on their behalf ("*Authorised Representatives*"). Any entity licensed under the function of Broker/Dealer or Broker shall nominate as part of its Authorised Representatives, a person who shall conduct trades for the participant on the Market ("*Authorised Traders*"). Such Authorised Traders shall be accredited by NASD.
- (5) These rules shall apply to all Participating Institutions and shall be binding on all Authorised Representatives in their relationship with NASD as well as between themselves whenever they act on behalf of the general public.
- (6) The rules governing activities on the Market and trading of securities together with any other rules and regulations issued by the NASD shall constitute the rules of the NASD OTC market ("*Rules of the Market or the Rules*") and shall be approved by the Commission.
- (7) The Board may, subject to the approval of the Commission, issue supplemental rules and regulations, and any other regulations relating to the activities of the Market. Such rules and regulations shall be binding on all parties in the same manner as these Rules.
- (8) Every Participating Institution shall observe the Rules of the Market and report any breach by any other Participating Institution in writing to NASD. Any Participating Institution being aware of any breach by another Participating Institution and failing to report the same to NASD, shall itself be liable of a breach of these Rules.

## 2. DEFINITIONS

The terms used in these Rules shall have the meaning as defined in the Investments and Securities Act, 2007, unless the context otherwise requires.

- (1) "**Admitted Company**" means any entity that has been categorized and admitted on the NASD Market tiers;
- (2) "**Admitted Security**" means any security introduced by a Participating Institution and admitted by NASD to be traded on the Market. Trading constitutes public trading within the meaning of the Investments and Securities Act ("*ISA*");

- (3) **“Authorized Representative”** means any person nominated by a Participating Institution to act on its behalf in its dealings with NASD;
- (4) **“Authorized Trader”** means an accredited person who, on behalf of a Participating Institution is granted access to the Market and is authorized to enter bid and offer orders;
- (5) **“Block Trade”** means a transaction in an Admitted Security that is equal to or exceeds 5% of the shares in issue;
- (6) **“Board”** means the Board of Directors of NASD;
- (7) **“Broker”** means an entity registered with the Commission and licensed by NASD to buy and sell securities on behalf of a third party but not on its own account;
- (8) **“Broker/Dealer”** means an entity registered with the Commission and licensed by NASD to buy and sell securities on the Market for the General Public and also trade for its own account or make market.
- (9) **“Central Securities Depository (CSD)”** means any CSD approved by the Commission for NASD transactions;
- (10) **“Code of Conduct”** means the procedural rules of conduct contained in Schedule I of these Rules;
- (11) **“Completion of the Transaction”** has the same meaning as defined in the rules and regulations of the Commission;
- (12) **“Customer”** means any member of the general public who transacts securities business with a Participating Institution;
- (13) **“Defaulting Member”** means any Participating Institution whose name is included in the defaulter’s list;
- (14) **“Disciplinary Committee”** means the committee appointed by the Board to hear complaints and determine disciplinary actions against erring members and their employees;
- (15) **“Accredited Issuing House”** means any entity registered by Commission and recognized by NASD to provide advise about participation on the Market;
- (16) **“Investment and Securities Act”** means the Investments and Securities Act 2007;
- (17) **“Issuer”** means any entity or investment vehicle allowed by law to raise capital or issue securities to the general public;
- (18) **“Leased trading engine”** means the trading capacity leased from a third party trading engine.
- (19) **“Participating Institution”** means any entity duly registered with the Commission and licensed with NASD to participate in the Market;

- (20) **“Market”** means the securities exchange licensed by the Commission to establish and manage Over the Counter transactions in the Nigerian Capital Market;
- (21) **“Market Maker”** means a Broker/Dealer registered with the Commission and licensed with NASD to make market under its Rules;
- (22) **“Market tier”** means the Pink and Blue tiers where Admitted Companies are ranked and placed;
- (23) **“NASD”** means NASD PLC, a company incorporated under the laws of the Federal Republic of Nigeria;
- (24) **“Notice”** means any circular or written communication labeled “Notice”, issued and delivered by registered mail, email or facsimile to a Participating Institution or posted on the NASD website;
- (25) **“Order”** means a request for the purchase or sale of securities by an Authorised Trader;
- (26) **“Order Book”** means a component of the trading system that holds all the bids and offers consummated by Authorised Traders;
- (27) **“OTC Bulletin Board or OTCBB”** means a web based application with multiple user access that allows trades to be conducted and consummated between Authorised Traders. It is located on a secure internet portal and can be accessed through a unique web address;
- (28) **“Rules”** means the Rules and Regulations of the Market as approved by the Commission;
- (29) **“Security”** means types of securities registered with the Commission that can be traded on the Market;
- (30) **“SEC or the Commission”** means the Securities & Exchange Commission of Nigeria;
- (31) **“Trader Identification Code”** means specific log-in protocols and password assigned to Authorised Traders to access the Trading Network;
- (32) **“Trading Network”** means the trading platforms comprising of the OTC Bulletin Board, access to the Leased trading engine and software provided by NASD to facilitate transactions on the Market;
- (33) **“Working Day”** means any day other than a public holiday and weekends in Nigeria on which NASD is open for trading.

### 3. AUTHORITY

- (1) NASD is a company incorporated under the laws of the Federal Republic of Nigeria and registered by the Commission to establish an Over the Counter (OTC) market in Nigeria. NASD shall provide a transparent securities trading environment where OTC transactions can be conducted with utmost commercial honour and integrity.
- (2) Participation on the Market shall require ethical behaviour. All Participating Institutions shall abide by the Rules and regulations governing activities in the Market, both in letter

and spirit. No provisions shall be circumvented through the use of intermediaries or by any other device.

#### **4. NON-AGENCY RELATIONSHIP**

No Participating Institution or any of its Authorised Representative shall hold itself out to any person as being an agent of or otherwise representing, or having the power in any way to act for or bind NASD unless the said Participating Institution or Authorised Representative has been so expressly authorised.

Each Participating Institution shall act as a principal in all activities with NASD (without limitation when trading, clearing or settlement) and be responsible to NASD as principal not agent.

#### **5. MANAGEMENT OF THE MARKET**

- (1) The Market shall be an independent and neutral platform where OTC transactions shall take place in a fair and transparent manner to generate liquidity for investors.
- (2) The actions of NASD shall promote an open, impartial and informative marketplace.
- (3) The overall management of the OTC securities exchange and its departments shall be performed by the Board. The Board shall appoint senior executives to manage the operation and administration of the Market.
- (4) The Board shall establish a Rules & Membership Committee to make Rules for the Market. The Committee shall have following duties:
  - (a) To license and regulate participants in the market;
  - (b) Accreditation of Authorised Traders;
  - (c) Enforcement of provisions necessary for the operation of the Market;
  - (d) Implementation and enforcement of provisions necessary for market transparency;
  - (e) Review of applications to participate on the Market.

#### **6. MEMBERSHIP**

Any Participating Institution authorised to transact securities business in Nigeria shall be eligible for registration with NASD provided their status with SEC has not been suspended or revoked. Membership shall not be transferable.

##### **(1) Qualification**

An applicant shall, prior to being licensed as a participant on the Market:

- (a) Be registered with the Commission;

- (b) Be incorporated as a limited liability company and shall employ competent and suitable personnel with the requisite knowledge and qualification to carry out activities in the securities business;
- (c) Satisfy NASD that it has the appropriate technical infrastructure; professional and organizational capabilities that would allow it discharge its obligations as a Participating Institution;
- (d) Satisfy NASD that it has in place documented policies, procedures and controls (including risk management standards, controls for the prevention of money laundering and terrorist financing) to ensure that it shall comply on a continuous basis with all requirements imposed by the Rules;
- (e) Be sponsored by at least two (2) NASD Directors or Participating Institutions;
- (f) Have the minimum capital adequacy required by the Commission to absorb risks and the economic capital for OTC transactions.

## **(2) Application**

- (a) An application for license to participate on the Market shall be made in writing to NASD and accompanied by the following documents:
  - i) A sworn undertaking to abide by and comply with the Rules of the Market as may be amended from time to time, the decisions of the Board and the provisions of any relevant legislation.
  - ii) Duly completed NASD form;
  - iii) Evidence of SEC registration;
  - iv) Applicable fees and charges as may be fixed by the Board;
  - v) Company profile;
  - vi) Copy of the Certificate of Incorporation;
  - vii) Particulars of Directors;
  - viii) Particulars of Shareholding;
  - ix) Memorandum and Articles of Association;
  - x) Copy of the agreement with any of the appointed settlement banks; and
  - xi) Copy of business continuity plan and technical infrastructure.
- (b) The application shall be referred to the Rules & Membership Committee for consideration, where the application is satisfactory, the applicant shall be issued with a license to participate on the Market.
- (c) Where the application is unsatisfactory, the applicant shall have the right to appeal the decision to the Board in writing within thirty (30) days.

(d) The application may be processed within four (4) weeks from the date of submission.

### **(3) Authorised Representatives**

- (a) Each Participating Institution shall nominate a minimum of two (2) persons who shall act on its behalf and represent them with NASD. The Participating Institution shall be accountable for the actions of its Authorised Representatives.
- (b) Any Participating Institution applying for the function of a Broker/Dealer or a Broker must appoint and register at least one Authorised Trader as part of its Authorised Representatives.
- (c) Persons nominated to act as Authorised Traders shall be given NASD accreditation after they have met all the requirements for such registration that may be set from time to time.
- (d) Other than the Authorised Trader, a Participating Institution shall communicate in writing the name and capacity of all other persons who shall act as their Authorised Representatives.
- (e) Authorised Representatives may be required to demonstrate their competency in the capacity they intend to act.
- (f) NASD may decline to recognize a person as an Authorised Representative or terminate the status if that person has acted in an unethical manner or it considers that the person is no longer fit and proper to act as a representative.

### **(4) Continuing Obligations**

A Participating Institution shall at all times:

- (a) Maintain the minimum capital adequacy requirement as prescribed by the Commission from time to time;
- (b) Comply with these Rules and the rules and regulations of the Commission;
- (c) Participate only in the asset classes covered by its subscription;
- (d) Maintain its arrangement with the settlement banks appointed by NASD;
- (e) Maintain at least two (2) Authorised Representatives;
- (f) Pay all fees and charges that may be prescribed by NASD from time to time as approved by the Commission;
- (g) Maintain appropriate technical infrastructure that may be required to connect to the Trading Network;
- (h) Engage in a course of dealings that shall promote a fair and orderly Market.

## **(5) Register of Participating Institutions**

The Secretary of the NASD shall keep a register, containing the name, address and applied function of each Participating Institution and the names of their Authorised Representatives. Where membership has ceased, such fact shall be recorded in the Register together with the date the membership ceased. The Register shall at all times be available for inspection by any interested Participating Institution or regulatory authority.

## **(6) Trade Guarantee Fund**

NASD shall establish and maintain a Trade Guarantee Fund ("the Fund") where claims up to an amount to be determined by the Board shall be paid in respect of liabilities arising out of a payment default event.

- (a) The objective of the Fund is to:
  - i) Protect the investor's interest and that of other stakeholders in the event of a settlement default;
  - ii) Ensure timely execution and settlement of transactions on the Market;
  - iii) Provide compensation to investors in the case of a cancelled Order or loss due to an Operator's error;
  - iv) Promote the development and regulation of the Market and ensure that market equilibrium is not disturbed in the event of payment defaults by Operators.
  - v) It will act as insurance for Operators and investors if settlement is aborted due to unforeseen circumstances
- (b) NASD shall appoint Trustees to manage, acquire and administer the assets and liabilities of the Fund for the benefit of the Market.
- (c) Each Operator shall contribute an amount as may be determined by NASD towards the Fund and such other sums as may be specified from time to time.
- (d) A pre-condition for invoking the provisions of the Fund is that any Operator who is unable to meet his settlement obligations must be declared a defaulter.

## **7. TRADABLE INSTRUMENTS**

- (1) NASD shall admit to trade all registered Securities within the meaning of the Investments and Securities Act, 2007.
- (2) The following Securities may be admitted to trade on the Market:
  - (a) Equity type securities or interests on either a primary or secondary basis, including but not limited to ordinary shares, Preference shares, Rights issues and Warrants to subscribe for other Securities issued by the same issuer;
  - (b) Fixed Income Instruments including but not limited to Treasury bills, Commercial Paper, Collateralized Debt Obligations, Public Bonds or Debentures, Convertibles, Local and Foreign Currency Bonds, Asset Backed Securities, Index Linked and Medium Term Notes, whether issued by sovereign nations or corporations;

- (c) Derivatives, Options, Futures, Commodities, Fixed Income Instruments and related Depository Receipts, as well as related rights to dividends, interest or other income, or subscription rights;
- (d) Combinations of rights listed in (a) and (b) above;
- (e) Rights to purchase and sell any of the rights listed in (a) through (c) above;
- (f) Units issued by Funds including but not limited to Investment Funds, Unit Trusts, Limited Partnerships, REITs, Hedge Funds and comparable interests in foreign undertakings for Collective Investment in Transferable Securities (UCITS); and
- (g) Rights not referenced in (a) through (e) above that are based on a contract or other firm commitment.

## **8. ADMISSION /RANKING OF ADMITTED COMPANIES**

A Company may apply to be admitted on the NASD Market tiers. Subject to its fulfillment of the criteria outlined in Schedule II, the applicant company may be placed in either the Pink tier or the Blue tier.

### **(1) Application Process**

- (a) The applicant company shall be introduced to the Market by a Participating Institution who is on the approved list maintained by NASD.
- (b) The Participating Institution shall ensure that the applicant company has complied with the requirements for Admitted Companies.
- (c) The Participating Institution shall, on behalf of the applicant company, submit an application in writing to NASD accompanied by the following documents:
  - i) A duly completed NASD Form 2 – Admitted Companies
  - ii) Resolution authorizing the application to admit the company
  - iii) Company profile
  - iv) A sworn undertaking by the applicant company to comply with the applicable Rules and the SEC Code of Corporate Governance;
  - v) Copy of the Certificate of Incorporation of the applicant company;
  - vi) Memorandum and Articles of Association;
  - vii) Particulars of Directors;
  - viii) Particulars of Shareholders;
  - ix) Applicable fees and charges as may be fixed by NASD from time to time as approved by the Commission;

- x) Evidence of registration of securities with the Commission;
  - xi) Copy of the approved prospectus;
  - xii) If it is a Debt Instrument, copy of Trust Deed or Conditions governing the instrument;
  - xiii) Copies of the audited financial statement or audited accounts for the past three (3) years.
- (d) Every company shall appoint an Accredited Issuing House from the register maintained by NASD to assist and advice with the admission process outlined in Schedule II.

## **(2) Approval**

- (a) The Board shall approve an application to be admitted on the Market tier if the applicant company satisfies the requirements and applicable rules.
- (b) Upon approval, the applicant company shall be granted the status of an Admitted Company, ranked and placed in a tier on the Market.
- (c) The Admitted Company shall undertake to provide NASD with updates and information about the company and its operations and maintain the admission requirements as outlined in Schedule II.
- (d) When required for investor protection or proper operation of the Market, the Board shall ask the Admitted Company to publish such information as it considers appropriate. If the Admitted Company fails to comply with this requirement, the Board may publish such information at the Issuer's expense.
- (e) The Admitted Company shall promptly disseminate to the public the occurrence of the following and such other events as may be determined from time to time.
  - i) Information on any new developments or changes within its sphere of activity which is not in the public domain and which may by their impact on its assets or financial position lead to substantial movement in the share price.
  - ii) Any approved amendments to the rights attached to the different class of shares.
  - iii) Any changes in the shareholding structure particularly the acquisition of a number of shares higher than 5%.

## **(3) Exemptions and Refusals**

- (a) The Board may, for good cause, waive or grant an exemption from any of the admission requirements provided that such waiver or exemption shall be applicable to other applicant companies under similar circumstances. A pre-condition for such waiver or exemption is that the applicant companies must satisfy the overall requirements for admission and that the waiver or exemption would not compromise the position of investors or act against public interest.

- (b) The Board may refuse or reject an application where all the admission requirements have been satisfied, if in its opinion such admission would be detrimental to investor's interest or the Market.

#### **(4) Procedure for delisting an Admitted Company**

##### **(a) Regulatory delisting**

- i) NASD may delist or remove an Admitted Company from the Market tier if it falls below the minimum admission requirements outlined in Schedule II.
- ii) Where the Admitted Company has fallen below the requirement; NASD shall issue a warning of non-compliance in writing and request that it rectifies the issue within seven (7) days. If the Admitted Company fails to rectify the issue, then NASD shall remove the name of the Admitted Company from the published list.
- iii) NASD shall issue a Notice and publish on its website that the company has been delisted from the Market tier.

##### **(b) Voluntary delisting**

An Admitted Company may initiate the procedure for delisting its admitted security by obtaining the prior approval of shareholders of the company. The approval shall be by a special resolution passed at its AGM/EGM.

- i) The Admitted Company shall make an application in writing with reasons to delist from the market tier.
- ii) The Admitted Company shall pay any fees outstanding prior to its application for delisting and comply with any condition on the admission requirement that may be material to the interest of the shareholder.

NASD shall review the application and grant approval to delist within 30 days from the date of receipt of the application ("Delisting order"). Upon receipt of the Delisting Order, the Company shall publish the delisting order in at least two national newspapers.

## **9. ADMISSION TO TRADE**

Any security registered with the Commission can be traded on the Market. A security may be admitted to trade where it has fulfilled specific criteria. Once approval is given, it would be classified as an Admitted Security.

### **(1) Eligibility to trade**

It must be the security of a public company that has been in operation for a year. The security shall:

- (a) Be registered with the Commission as a publicly held security;
- (b) Be held by more than 50 (fifty) beneficial owners;
- (c) Be freely transferable;

- (d) Not have any legal or regulatory restriction that prevents it from being traded on the Market.
  - (e) NASD may, from time to time, determine any other criteria it deems fit for eligible securities.
- (2) NASD may create different classes of Admitted Securities based on the risk nature of the Security. All Participating Institutions shall ensure that in disposing of or acquiring any security, all advisories required by NASD in respect of each Admitted Security class are made available to non-professional potential investors.

### **(3) Application Process**

An application shall be made in writing to NASD and accompanied by the following documents:

- (a) A duly completed NASD Form 3 – Admission to trade a new security;
  - (b) For physical certificates, evidence of verification from Registrars;
  - (c) Company profile;
  - (e) Copy of latest audited financial statement;
  - (f) Copy of quarterly accounts, if any; and
  - (g) Any other document as may be determined by NASD from time to time.
- (4) NASD may grant an admission to trade a security subject to conditions or restrictions.
- (5) NASD has the discretion to refuse an application if it considers that:
- (a) The application may be detrimental to the orderly operation of the Market;
  - (b) The applicant did not comply with the Rules;
  - (c) The application is not in the best interest of the public; or
  - (d) Any other reason as may be determined by the NASD from time to time.

## **2) MARKET OPERATIONS**

### **1) TRADING DAY AND HOURS**

- (1) NASD shall open for Trading on all days except Saturdays, Sundays and on such National public holidays as may be declared from time to time. Deviation from the indicated days may occur in special circumstances following a decision by NASD and after due Notice has been given.
- (2) Trading shall be conducted between the hours of 9.30am to 4pm on the OTC Bulletin Board and 9.30am to 3.30pm on the Leased trading engine. NASD may extend, advance or reduce trading hours on its Market by notifying Authorised Representatives, when necessary.

## **2) ACCESS RIGHTS TO THE TRADING NETWORK**

- (1) The equal treatment principle shall apply to the use of the Trading Network. Access to the Trading Network functions is identical for all Participating Institutions.
- (2) Trading on the Market shall be by remote access through a web based, encrypted internet connection to the secure trading platform and a virtual private network. NASD shall grant a Participating Institution access to the Trading Network provided it complies with the following requirements. A Participating Institution shall:
  - (a) Meet the technical requirements as prescribed by NASD and acquire the appropriate technical infrastructure required to gain access to the Trading Network,
  - (b) Register person(s) responsible for trading on the Market, and
  - (c) Conform and comply with any market access rules as may be prescribed by NASD from time to time.
- (3) Access to the Market can be either through the OTC Bulletin Board or the Leased trading engine.
- (4) A Participating Institution shall maintain the required electronic linked facilities with the Central Securities Depository appointed by NASD. They shall also maintain an off-site back-up system for data in its electronic systems.
- (5) Participating Institutions are prohibited from engaging in practices which may cause degradation of the service or give rise to a disorderly Market, when using the Trading Network and associated facilities.

## **3) TRADER IDENTIFICATION CODE**

- (1) NASD shall assign Trader Identification Codes to Participating Institutions to enable access to the Trading Network. All data entered by means of this code shall be assigned to the Authorised Trader of a Participating Institution.
- (2) Access to the Market shall be forbidden to anyone not on the Register of Members and each Participating Institution shall be responsible and liable for the misuse of its Trader Identification Code.

## **4) RESTRICTIONS**

- (1) A Participating Institution shall not permit itself or any other person(s) to:
  - (a) Use its Trader Identification Codes, access the Trading Network or the software provided by NASD for any illegal purpose;
  - (b) Copy, alter, modify or make available to any third party other than the Participating Institution the software provided by NASD;
  - (c) Connect additional software or hardware to the approved data connectivity service approved by NASD.

- (d) Allow the intrusion of any virus or malware through its trading terminal into the Trading Network.
- (2) A Participating Institution shall be responsible for the illegal use of its trading terminal or the intrusion of any virus or malware. NASD reserves the right to immediately disconnect such terminal from the Trading Network and/or suspend trading access or membership.

## 5) TRADING RULES

- (1) A transaction is created and binding between Authorised Traders when an Order is consummated and confirmed on the Trading Network. Every Participating Institution shall fulfill its obligation on every transaction created.
- (2) No Participating Institution shall make commercial use of the published prices and any related information on the Trading Network in any manner without the written approval of NASD and in the form and context approved by NASD in the ordinary course of business.
- (3) Each Authorised Trader shall be solely responsible for the accuracy of Orders entered in the Trading Network.
- (4) NASD may charge a fee on each Order made by a Participating Institution. The fee shall be determined by the Board.
- (5) In executing transactions on the Market, a Participating Institution shall:
  - (a) Act honestly and fairly in conducting their activities in the best interest of the Market;
  - (b) Act with due skill, care and diligence in its operations;
  - (c) Comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the transparency and integrity of the Market.
- (6) In dealing with NASD, its directors, officers and representatives, a Participating Institution shall:
  - (a) Act in an open and cooperative manner;
  - (b) Be honest and truthful; and
  - (c) Not mislead or conceal any matter of importance or material information.
- (7) A Participating Institution shall keep records of all transactions even where they are dealing on their own account. They shall maintain such records including data, Customer information, financial statements, complaints, reports and filings relating to activities on the Market for a period of five (5) years.
- (8) A Participating Institution shall maintain records and documents of transactions which shall contain the following:
  - (a) The Customer's name, telephone number and address;
  - (b) The name of the Authorised Trader;

- (c) Transaction date and time;
- (d) Type of security, quantity to be bought or sold and the address of the principal place at which the Authorised Trader carries on business;
- (e) The description and price at which the transaction was executed;
- (f) The amount of consideration payable under the contract;
- (g) Terms and validity of the order/transaction; and
- (h) The brokerage commission payable in respect of the contract.

## **6) SUSPENSION ON TRADING IN ADMITTED SECURITIES**

- (1) NASD may, at its discretion, decide to remove, reclassify or suspend trading in a particular Security if continuous trading will have an adverse effect on the Market.
- (2) Where the general public does not have access to information regarding an Admitted Security or does not have access to sufficient information regarding the issuer of a security or if the issuer's situation is such that trading would be detrimental to the investor's interests, NASD may suspend trading in that security.
- (3) A suspension of trading shall cease when the reasons for the suspension no longer exist.
- (4) An announcement shall be made when a security has been suspended and when the suspension has been lifted.
- (5) An Issuer shall be given an opportunity to be heard before a decision to remove, reclassify or suspend a Security from trading is made.

## **7) CANCELLATION OF ORDERS**

- (1) Authorised Traders may cancel or modify an existing Order pending in the Trading Network provided the deal has not been consummated.
- (2) NASD may cancel Orders or transactions where fraud has been established or any other situation that NASD considers will adversely affect the market.

## **8) CLEARING AND SETTLEMENT**

- (1) Transfer instruments shall be cleared and delivered in such manner as may be prescribed by NASD from time to time.
- (2) It is the duty of the selling Participating Institution to ascertain that:
  - (a) the instrument of verification is correctly authorised;
  - (b) the client's signature is duly witnessed and the transferor's name, the number of shares and the numbers on the share certificates being verified are correctly stated on the instrument of the prescribed form.

- (3) In the event of a defective transfer whereby a transferee, due to no fault of his, is unable to take delivery of the securities transferred by a transferor:
  - (a) then the selling Participating Institution shall take all steps necessary to correct such defective transfer within seven (7) days of the receipt of notice from the buying Participating Institution.
  - (b) The selling Participating Institution shall also be responsible for any and all costs and expenses associated therewith including any losses suffered by a transferee.
  - (c) Delivery and settlement shall be based on Delivery-versus-Payment and done within the time frame prescribed by NASD.
- (4) Where a buying Participating Institution fail to take delivery or the selling Participating Institution fail to deliver on the due date, the party not in default shall report the default to NASD as soon as it becomes aware of the matter.
- (5) Transactions shall be cleared and settled through the approved settlement process and the Central Securities Depository appointed by NASD depending on the nature of instrument.
- (6) A Participating Institution shall enter into an arrangement with any of the settlement banks appointed by NASD. All trades shall have a 3-day settlement schedule (T+3) except for Trades in Federal and State Bonds which is a T+2 trade cycle.
- (7) NASD may modify the settlement schedule where special circumstances exist in consultation with the party and maintain a register in respect of the security in question.

#### **9) LIMITATION OF LIABILITY**

NASD shall provide its services on a best effort basis and shall have no liability or obligation to any Participating Institution, without limitation for;

- (1) the use or inability to use the Trading Network;
- (2) any loss or damage which may be suffered or which may arise directly or indirectly as a result of activities in the Market;
- (3) any act, error, failure or omission on the part of NASD including any loss or damage in respect of:
  - (a) The suspension, cancellation, interruption or closure of the Market; or
  - (b) Any inoperability or malfunction of software or any other equipment supplied to a Participating Institution.
- (4) the originality, accuracy or completeness of any company information or market data;
- (5) its decision to suspend or terminate a Participating Institution or any decision of the Board in the exercise of its powers.

## **10) INDEMNITY**

Every Participating Institution shall indemnify NASD against any claim or loss arising from its dealing activities on the Market.

## **3) SUPERVISION OF THE MARKET**

- 1) NASD shall ensure that Participating Institutions comply with the Rules and all legal and regulatory provisions applicable to the securities business. The Board may delegate part of its supervisory powers to the senior executives of NASD. NASD shall notify the Commission of any infringement of the law within 24 hours of the occurrence of such infringement.
- 2) A Participating Institution shall promptly notify NASD of any event preventing them from accessing the Market. In the event that the access to the Trading Network is not feasible, NASD shall take the necessary precautionary measures and make available alternative systems.
- 3) Any claim relating to transactions which have been concluded on the Market must be reported to NASD with proof. NASD shall verify the validity of the information supplied and conduct the necessary investigation and checks.
- 4) A Participating Institution shall provide NASD with all the information required for the purpose of investigating an infringement of the Rules. Any refusal/failure to provide such information required shall be punished by a fine, suspension, termination of membership or such other punishment as may be determined by the Disciplinary Committee from time to time.
- 5) A Participating Institution shall submit quarterly reports reviewing all or part of their procedures or transactions in connection with their activities on the Market. Such review shall be conducted by the internal audit or external audit function of the firm to ensure compliance with the procedures and measures taken to enforce these provisions.
- 6) NASD shall conduct periodic inspections to the offices of a Participating Institution to ensure compliance with the Rules of the Market.

## **7) INTERNAL CONTROLS**

- (1) Every Participating Institution shall set up and maintain an appropriate system of internal controls which ensures that they continuously comply with all requirements as stipulated by the Rules.
- (2) The Internal Control procedures shall include pre- and post-risk management systems which are appropriate to the nature, scale and complexity of a Participating Institution's business on the Market.
- (3) These procedures shall be documented and updated on a regular basis. Where a Participating Institution executes a transaction on behalf of its Customer, it must have adequate controls to ensure that it complies with the Rules.

## **8) MISLEADING CONDUCT**

In conducting business for itself and on behalf of its Customers, a Participating Institution shall not:

- (1) engage in any action that has the effect of abnormally moving the price or value of any Admitted Security;
- (2) enter artificial Orders into the Trading Network thereby causing any artificial transaction;
- (3) enter a fictitious transaction or any false data into the Trading Network;
- (4) take any action that may damage the integrity and transparency of the Market;
- (5) participate in any dealings or practices that may mislead or deceive investors to affect or artificially control the price of a security;
- (6) enter Orders into the Trading Network with the purpose of creating a misleading or a false appearance of the volume or liquidity of an Admitted Security;
- (7) Any other conduct that would be detrimental to the efficient working of the Market.

## **4) DUTY TO NOTIFY NASD**

### **1) INFORMATION REGARDING TRANSACTIONS**

- (1) An Admitted Company shall give NASD written notice of any information regarding its Securities or transactions that may abnormally affect the Market. Such information shall be made available to the Market through the Trading Network and the website.
- (2) An Admitted Company shall provide all available information about its Security and company during application and whenever there is a change in such information particularly if it can no longer satisfy one or more of the admission requirements.

### **2) INFORMATION TO NASD**

A Participating Institution shall immediately give NASD written notice of:

- (1) a change in the name under which it does business;
- (2) a change of business address or closure of office (fourteen (14) Working days before closure) or opening of a new branch office. A Participating Institution shall also notify the Public at least fourteen (14) Working days prior to the closure of office and such notification shall be published in two (2) National daily newspapers;
- (3) a change in its Board and shareholding structure;
- (4) any event that may adversely affect the Market;
- (5) any material change of information provided in a Participating Institution's application or any fact concerning a Participating Institution which may significantly affect the performance of its obligations under the Rules;
- (6) any investigation, sanction, enforcement proceeding or injunction against it;

- (7) any event outside a Participating Institution control which may impair its ability to comply with the Rules;
- (8) the appointment or resignation of its Authorised Representatives.

### **3) DISCLOSURE BY ADMITTED COMPANIES**

Admitted Companies shall:

- (1) submit their audited financial statements/accounts and disclose any other information required under the Rules.
- (2) ensure that any facts, change or decisions relating to its Securities are disclosed.
- (3) disclose any proposed dividends payable on its securities and any decisions regarding the payment of dividends and the time of payment.
- (4) Admitted companies who are Issuers of debt instruments shall disclose in full any decisions on amendments to the rules regarding the instrument or the Trust Deed. Approval of such amendment by the Commission must also be disclosed.

### **4) TRADING BY A LISTED COMPANY IN ITS OWN SHARES**

- (1) Any repurchase or disposal of its own shares by an Admitted Company shall be made in accordance with the applicable provisions of the Companies and Allied Matters Act, 1990 as amended and the Investments and Securities Act, 2007 and the rules and regulations made pursuant thereto.
- (2) Subject to Rule 4 (4)(1) above, an Admitted Company shall not repurchase or dispose of its own shares or securities on the Market, within five (5) working days of the disclosure of its decision to repurchase or dispose of its own shares.
- (3) NASD may issue further guidelines regarding the repurchase of securities by an Admitted Company and the execution of share repurchase programs.

### **5) RULES OF CONDUCT**

- 1) A Participating Institution shall comply with the provisions of the Code of conduct for Capital Market Operators issued by the Commission and as outlined in Schedule I below.
- 2) A Participating Institution shall be liable to expulsion, suspension or payment of a fine for any misconduct or unprofessional conduct on the Market.

### **3) MISCONDUCT**

A Participating Institution shall be deemed guilty of misconduct, if it:

- (1) is alleged to have committed fraud which renders it unfit to trade on the Market;
- (2) has violated provisions of any law governing its business activities or the Rules or it breaches or assists any Participating Institution who is known to have breached any Rule;

- (3) is alleged to have acted in a disorderly, disgraceful or improper manner on the Market or willfully obstruct the business of the Market;
- (4) refuses or fails to comply with any resolution, notice or decision of the Board or any other person authorised on its behalf;
- (5) fails or refuses to submit such books, audited accounts, documents or papers as may be required by NASD;
- (6) fails to pay such fees and charges when due and as may be prescribed by NASD from time to time;
- (7) commits any other wrongful act or omission.

#### **4) UNPROFESSIONAL CONDUCT**

A Participating Institution shall be deemed guilty of unprofessional conduct if it is involved in:

- (1) dealing with defaulting Participating Institutions;
- (2) dealing in securities not permitted to be traded; and
- (3) Any other unprofessional conduct as may be determined by NASD.

#### **5) SUSPENSION AND TERMINATION**

##### **(1) SUSPENSION**

- (a) NASD shall suspend a Participating Institution when it fails to meet the capital adequacy requirements. The suspension shall continue until it is lifted by the NASD.
- (b) Where a violation of the Rules constitutes a threat to the integrity or safety of the Market, NASD may take immediate measures by suspending, all or some, of the Participating Institution's trading rights, who were involved in the act or omission.
- (c) A Participating Institution may be suspended if there is proof of unethical behaviour or continued failure by a Participating Institution to deal in a fair and orderly manner

##### **EFFECTS OF SUSPENSION**

Where a Participating Institution is suspended for any reason whatsoever:

- (a) All monies due to NASD and any fees prescribed under these Rules shall nevertheless remain due and payable by a Participating Institution;
- (b) The suspension shall not operate so as to avoid or affect the validity or enforceability of any agreement, transaction or arrangement in relation to a Participating Institution's transactions prior to suspension.
- (c) A Participating Institution shall be under a duty to instruct and appoint another Participating Institution to carry out any instructions already received by it on behalf of its Customers prior to suspension and shall immediately notify NASD in writing of such appointment.

- (d) A Participating Institution shall do everything possible to ensure that its Customers do not suffer any loss or embarrassment as a result of the suspension.
- (e) Where any Participating Institution is suspended, such Participating Institution shall continue to file returns to NASD.

## **(2) TERMINATION**

- (a) A Participating Institution shall cease to be a member of the NASD Market, if:
  - i) It gives NASD 60 days' notice in writing of its intention to terminate its membership. Such membership shall terminate at the expiration of the 60 days' notice and all trades to which the Participating Institution is a party shall be delivered, settled, cleared and all outstanding Orders shall be cancelled at the date of notice of intention to terminate membership.
  - ii) By notice have resolved to wind up;
  - iii) The Commission has revoked its registration;
  - iv) It is unable to meet or has defaulted in their obligations to its Customers and NASD;
  - v) It is proven that it has acted in an unprofessional and unethical manner on the Market.
- (b) NASD reserves the right to freeze the assets of a terminated Participating Institution including any security deposit made or securities deposited in its custody with a depository or such like institution and take all necessary steps to protect the investor until such a time that all reported claims have been settled.
- (c) Termination of membership does not prevent NASD from collecting fees or charges due or arising from the violation of the Rules by the Participating Institution.

## **6) DISCIPLINARY MEASURES AND PROCEEDINGS**

- 1) The Board shall establish a Disciplinary Committee with the power to take disciplinary action against any Participating Institution for violation of the Rules or any other related legislation. Any alleged violation of the Rules shall be dealt with in accordance with the provisions herein.

### **2) Power to adjudicate**

- (1) The Disciplinary Committee shall have the power to adjudicate on all disputes between Participating Institutions, and Participating Institutions and its Customers.
- (2) A record of all transactions maintained by NASD shall be admissible as evidence of transactions of a Participating Institution.
- (3) The Disciplinary Committee may meet at any time to hear and adjudicate upon disciplinary matters brought before it. If, at such meeting, it is satisfied that a case has been established against a Participating Institution, the Disciplinary Committee shall request a Participating Institution or any of its employees to appear before it.

### 3) Investigation Team

- (1) NASD shall constitute an Investigation team and appoint officers to investigate violations and complaints made against a Participating Institution in respect of a breach of any provisions of these Rules.
- (2) Where there is an alleged violation or complaint, the Investigation team shall conduct an investigation. It:
  - (a) may require a Participating Institution to provide any information, records or documents that may be relevant to the investigation;
  - (b) may require a Participating Institution to procure the attendance of any of its directors, officers or representatives at a specified time and place to answer questions or provide explanations that may be relevant for the investigation;
  - (c) shall use any information obtained exclusively for the investigation and proceedings. This information shall be held in the strictest confidence and shall not be disclosed except to a competent authority as may be required by applicable law.
- (3) Where in the opinion of the Investigation team, a Participating Institution is found to have breached the Rules; it shall submit a written report to the Disciplinary Committee which shall contain its findings and reference to the Rule breached by the Participating Institution.
- (4) The Disciplinary Committee shall forward the report to the Participating Institution and give it an opportunity to present its response in writing within two (2) weeks of receiving the report. Any comments made by the Participating Institution shall be attached to the report.
- (5) After receiving the comments of a Participating Institution, the Disciplinary Committee shall organise a meeting to allow the Participating Institution ask further questions and respond to the report.
- (6) Notice to appear before the Disciplinary Committee shall be effected by NASD if such notice is:
  - (a) served personally at the registered address of a Participating Institution; failing which;
  - (b) pasted outside the last known address of a Participating Institution; failing which;
  - (c) published in two (2) National daily newspapers.
- (7) At this meeting, either party may bring a representative or other person. Each party shall ensure confidentiality of the non-public information unless those attending have an obligation to disclose.
- (8) In the course of the meeting, the Disciplinary Committee shall have the powers to:
  - (a) engage technical and professional assistance in determining the matter;
  - (b) call for a Participating Institution's original books of account relating to, and a statement of sums owing to, and in connection with all securities dealing transactions relating to securities traded in the Market and/or transactions relating to any other party relevant to the case being reviewed;

- (c) call meetings of a Participating Institution who are creditors or defaulters;
  - (d) summon a Participating Institution to appear before such meetings of the Disciplinary Committee and to give him the right to be heard throughout the investigation;
  - (e) make detailed examinations of all relevant accounts;
  - (f) report any entry, transaction or matter which have been or appear to be irregular;
  - (g) Any other thing incidental to the investigation.
- (9) A Participating Institution shall have the right to request a copy of the proceedings.
- (10) If it is proven that a Rule has been breached, the Disciplinary Committee:
- (a) shall promptly notify the Participating Institution of the details of the its decision in writing and duration of the action;
  - (b) shall require the Participating Institution fulfill its obligation under the Rules;
  - (c) may require the Participating Institution to pay a fine/penalty for the violation;
  - (d) may suspend the Participating Institution from trading on the Market for a period not longer than six (6) months;
  - (e) may terminate the Participating Institution's membership;
  - (f) shall publish details of the violation, the disciplinary action taken and duration of the action either in a National newspaper or by circular Notice to all Participating Institutions;
- (11) Full details of the disciplinary action taken against a Participating Institution shall be recorded in the minutes of the Disciplinary Committee meeting and signed by the Chairman of the committee. The record of proceedings shall be deemed conclusive evidence thereof.
- (12) Upon completion of the investigation, NASD shall notify the Commission of the violation and disciplinary action taken within seven (7) days.
- (13) The Disciplinary Committee shall have power to suspend if it deems fit, any Participating Institution whose conduct is under investigation until it has fully enquired into the matter within thirty (30) days. The Disciplinary Committee shall be under no obligation whatsoever to compensate any Participating Institution suspended under these Rules even if the investigation subsequently vindicates the conduct of such Participating Institution.

#### **4) Specific Powers of the Disciplinary Committee**

The Disciplinary Committee may exercise its powers against a Participating Institution who:

- (1) Is or has been in breach of these Rules or any Regulations made hereunder, disobeys or challenges any lawful exercise of any power pursuant or incidental thereto; or has shielded or assisted or omitted to report or has dealt with any Participating Institution with the knowledge that such a Participating Institution has acted contrary to these Rules;

- (2) Is or has been in breach of the Clearing and Settlement Rules;
- (3) Is or has been in breach of any of the terms and conditions of its License;
- (4) Fails to submit any periodic reporting or audited accounts as required by these Rules within the time prescribed for submission;
- (5) Appears to have misrepresented or suppressed any information which may be required of it or its Authorised Representative and which in the opinion of the Disciplinary Committee is material;
- (6) Has been charged with and convicted of a criminal offence involving fraud or dishonesty;
- (7) Has failed or is unable to carry out its legal obligation relating to transactions in securities traded;
- (8) Engages in any conduct which is likely to be injurious to the integrity of the Market or prejudicial to the objectives of NASD;
- (9) Deals with any person, body, firm, corporation or company who or which may have been announced or declared by NASD or otherwise notified to the Participating Institution as one who has defaulted in carrying out its obligations relating to a securities transaction;
- (10) Is or has been guilty of any misconduct as defined in the Investments and Securities Act, 2007, Rules and Regulations and Code of Conduct of the Securities and Exchange Commission and any other relevant legislation;
- (11) Fails to report a transaction or knowingly makes or reports a false transaction;
- (12) Makes a material misstatement to the Disciplinary Committee, any other Committee or employee of NASD;
- (13) Knowingly disseminates false, misleading or inaccurate reports concerning market information or condition that affect or tend to affect the price of any issue of securities;
- (14) trades or deals with Customers or Participating Institution after becoming insolvent or bankrupt as defined in the Companies and Allied Matters Act or enters into other relevant statutory arrangements with his creditors for the payment of debts;
- (15) Refuses to appear before the Disciplinary Committee or any other Committee when being called upon provided it has been given notice;
- (16) Refuses to answer fully all questions or refuses to produce all books and records at any disciplinary hearing or investigation when required to do so or testifies falsely;
- (17) Refuses to make available all information, books and records as may be required by NASD in the course of any spot check provided by these Rules and Regulations;
- (18) Except as may be otherwise provided by any law in force in Nigeria, makes use or reveals any confidential information obtained by reason of participating in any investigative proceedings or hearing or revealed to it confidentially by the Disciplinary Committee;

- (19) Induces or attempts to induce another person to buy or sell traded securities:
- (a) By dishonestly concealing any material fact;
  - (b) By making or publishing or causing to be made or published whether recklessly, dishonestly or otherwise, any statement, promise or forecast that is misleading, false or deceptive;
  - (c) By recording or storing in or by means of any mechanical, electronic or other device, information that it knows to be false or misleading in any material report.
- (20) Accepts an Order from a Customer for the sale or purchase of securities without causing such Order to be executed on the Market;
- (21) Sells security without Customers' mandate or authorization;
- (22) Fails to pay any monies including fees and charges due to NASD after the expiry of a notice in writing calling upon it to pay or any fine imposed on it;
- (23) Shields or assists, or omits to report, or deals with, any Participating Institution who it knows has acted contrary to these Rules;
- (24) Breaches any of the conditions for the grant of license.

#### **5) Exclusion of claims against NASD**

In the event that the Disciplinary Committee exercises its discretion in ordering an investigation, a Participating Institution shall not be entitled to any claim against NASD, the Disciplinary Committee, the officers and employees of NASD or any other authorised person for any loss or damage whatsoever.

### **7. RIGHT OF APPEAL**

Where a Participating Institution is dissatisfied with the decision of the Disciplinary Committee, it may within five (5) working days appeal to the Commission. The Participating Institution shall pay the fees to be prescribed by the Disciplinary Committee from time to time for copies of the record of proceedings.

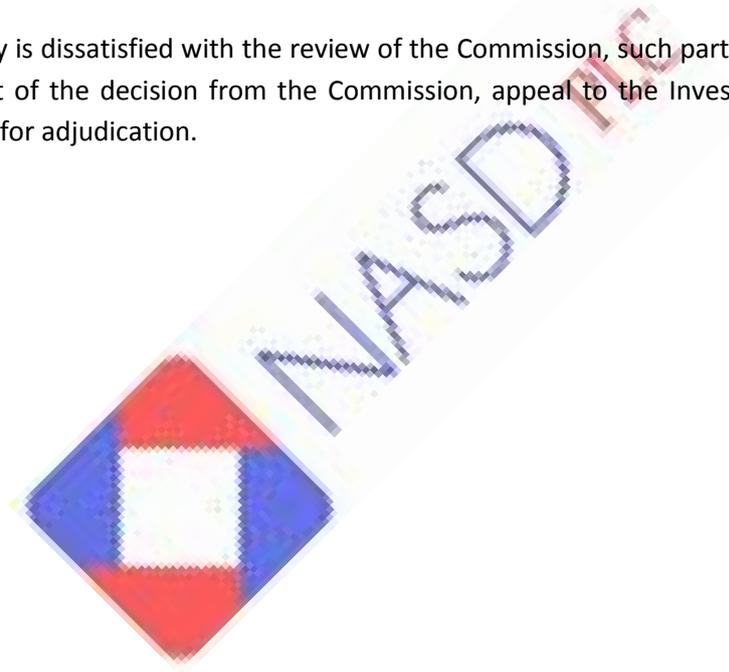
### **8. EXEMPTIONS FOR RIGHT OF APPEAL**

- 1) No Participating Institution shall have a right of action against the Chairman of the Disciplinary Committee or the management of NASD.
- 2) No Participating Institution shall institute any legal action in respect of any loss that it may have suffered (including any loss of profit) as a result of a disciplinary action taken or any damage to reputation by reason of the fact that the Participating Institution's appeal is upheld by the Commission in whole or in part.
- 3) Any Participating Institution who has been barred from trading on the Trading Network shall not be eligible for re-admission except where such expulsion is overturned by the Commission and/or the Investments and Securities Tribunal (IST).

## 9. ALTERNATIVE DISPUTE RESOLUTION

The aim of the pre-action conduct is to enable parties resolve and settle disputes between themselves by using a form of Alternative Dispute Resolution.

- 1) No Participating Institution shall institute any legal proceedings against NASD without first giving thirty (30) days pre-action notice in writing.
- 2) The pre-action notice shall contain information about the matter.
- 3) NASD shall invite the aggrieved Participating Institution to a meeting to discuss and resolve the matter amicably.
- 4) Where a party is not satisfied with the decision of the NASD, it may refer the matter for Arbitration in accordance with the Arbitration and Conciliation Act Cap. A18, Laws of the Federation of Nigeria, 2004.
- 5) Any party, who is not satisfied with the decision from the Arbitration panel, may within 30 days of receipt of the decision appeal to the Commission for review.
- 6) Where a party is dissatisfied with the review of the Commission, such party shall within 30 days of the receipt of the decision from the Commission, appeal to the Investment and Securities Tribunal (IST) for adjudication.



## **SCHEDULES**

### **Schedule I**

#### **CODE OF CONDUCT FOR CAPITAL MARKET OPERATORS AND THEIR EMPLOYEE AS OUTLINED BY THE SECURITIES AND EXCHANGE COMMISSION**

##### **PREAMBLE:**

The Nigerian capital market has experienced considerable growth and development in recent years. The number and range of Issuing Houses and Stockbrokers have expanded significantly. Similarly, there has been considerable growth in the number of other market operators such as Registrars, Trustees and Financial Advisers.

A natural consequence of this growth has been the increased complexity of transactions. In such an environment, there is a paramount need to ensure that high standards are maintained in order to protect the integrity of the capital market. In essence, this code of ethics is necessitated by the need to ensure discipline, enhance professionalism, integrity and protect the interest of clients of market operators and indeed the reputation of their institutions.

It should be borne in mind that the unethical activities of one member of a registered institution could jeopardise the reputation of the entire institution and the securities market. The following code of ethics is merely a guide as each institution is free to add to it, in line with observed practices.

##### **Definitions:**

|                                   |  |
|-----------------------------------|--|
| SEC or Commission                 | – Securities and Exchange Commission;  |
| APC                               | – Administrative Proceedings Committee of SEC;   |
| Operators/Registered Institutions | – All capital market operators and Individuals registered with the Securities and Exchange Commission; |
| SRO                               | – Self-Regulatory Organisation;  |
| His                               | – Refers to both genders;  |
| Director                          | – Refers to Executive or non-executive directors.  |

##### **Scope:**

All operators and their employees are bound by this code. When in doubt about any of the provisions of this code, clarification should be sought from the S.E.C.

Persons having business interest with these institutions such as auditors, accountants, lawyers etc., who in the course of such business relationship might have access to price-sensitive, non-public information about clients of registered institutions, must enter into an undertaking (oath of secrecy) to keep such information confidential.

It is obligatory for employees to bring to the notice of management, suspected breaches of the securities laws or other unethical behaviour by other employees. Such reports should be treated in

strict confidence. In essence, the identity of the reporting officer must under no circumstance be disclosed to other members of staff.

## 1. Code of Conduct for Capital Market (Institutions)

All Operators—

- (i) Shall strictly abide, at all times, by all existing Securities Laws, Rules and Regulations made thereunder;
- (ii) Shall ensure that any dispute between them will initially be referred to the relevant SRO or other organisation established for the resolution of dispute between members. If this body is not able to settle a dispute to the satisfaction of the parties involved, such dispute will then be referred to the Administrative Proceedings Committee of SEC. Under normal circumstances, it is only where the APC is also unable to resolve such dispute to the satisfaction of all the parties involved that a court action can be instituted in respect of such dispute;
- (iii) Shall not engage in any act that would adversely affect the general investing public's image of, and confidence in, the capital market;
- (iv) Shall ensure that their employees act in a manner that is consistent with the best interest of their clients. To this end, operators shall preserve the confidentiality of all clients' information;
- (v) Shall operate securities trading accounts strictly according to clients' instructions;
- (vi) Shall segregate clients' monies and keep such funds in a separate account;
- (vii) Shall ensure that employees maintain their securities trading accounts with their employers, where practicable, or provide full disclosure of such accounts and all activities therein to their employers;
- (viii) Shall monitor the transactions in securities by all directors, employees and their spouses, dependent children and relatives;
- (ix) Shall have a duty to report in writing to the S.E.C. any actual or suspected breach or infringement or non-compliance with any of the regulations of the SEC. Operators will immediately notify the Commission in writing of any other events or matters that the Commission may from time to time specify;
- (x) Shall not recommend or connive in the employment of any person who has been employed by another operator and has had his employment terminated or who was dismissed for reasons relating to fraud, dishonesty or any such dishonourable behaviour, or who has been convicted of an offence involving same;
- (xi) Shall communicate to the S.E.C. and SROs the names of staff dismissed for any fraudulent act, dishonesty, misbehaviour or, any other acts of misconduct;
- (xii) May pay or be paid for services provided free of charge with respect to financial products and services. For example, research material may be provided to investment companies in return for commission income from securities trading orders. However, in such cases the

volume/amount of financial products and services must be reasonable and commensurate with the services provided; and

- (xiii) Shall not discriminate or give preferential treatment to any customer, including members of the general public, in the conduct of their professional business.

## **2. Code of Conduct for Employees of Capital Market Institutions (Operators)**

### **A. An employee shall—**

- (i) at all times conduct himself with integrity and display high level of professionalism expected of the industry;
- (ii) not engage in any act that would adversely affect the general investing public's image of, and confidence in, the capital market;
- (iii) not discriminate or give preferential treatment to any client, in the conduct of his professional business;
- (iv) comply with all existing securities laws, rules and regulations thereunder.

### **B. Disclosure of Information by Employees—**

- (i) To prevent possible conflict of interest, insider dealings and impropriety, an employee must disclose to his employer, transaction in securities by himself, spouse, dependent children and relatives;
- (ii) Periodically, (as may be determined by the institution) employees must submit to management, statement of their personal securities investment portfolio in the securities market;
- (iii) All new employees must at the time of assumption of duty lodge details of their holdings in long term securities of government and public companies with their employers;
- (iv) Although employees may be allowed to invest in securities of private companies, such investment shall be disclosed to the employer when the affected company is about going public.

### **C. Avoidance of Conflict of Interest-**

- (i) An employee shall ensure that his personal interest does not at any time conflict with his duty to his employer's clients. In this regard, all personal interests beneficial or not, in any company assigned to him must be disclosed to his employer. He must also ensure that his advice to clients or his employer on investment decision on behalf of clients is not beclouded by any conflict of interest which might exist. In other words, in the performance of his duty, his client's best interest must be given priority over his personal interest.
- (ii) An employee shall not engage in any activity which might directly or indirectly influence his judgment prior to or during a business transaction.

### **D. Trading with Insider Information-**

- (i) An employee shall not trade in securities either for himself or on behalf of others based on non-public price-sensitive information. Such information shall under no circumstance be

disclosed to a third party for the purpose of trading. Employees of Broker/Dealer firms must pay particular attention to substantial orders from clients in companies in which such clients are directors, employees, or have business relationship, e.g. auditors, reporting accountants and lawyers. Furthermore, all orders which are out of tune with established trading pattern should be investigated.

- (ii) All suspected cases of insider dealings including those involving employees should be promptly brought to the notice of management which should in turn lodge a formal report with the S.E.C. for necessary action.

#### E. Market Manipulation

An employee must not, on his own or in connivance with others engage in activities aimed at manipulating the market. Unverified information which might impact on the market must not be circulated or form the basis of advice to clients.

#### F. Staff Employment

An employee shall not recommend or connive in the employment of any person who has been employed by another operator and has had his employment terminated or who was dismissed for reasons relating to fraud, dishonesty or any such dishonourable behaviour, or who has been convicted of any offence involving same.

#### G. Clients' Account

An employee shall uphold the confidentiality of clients' accounts. No information in a clients' account must therefore be disclosed to other employees who have no *bona-fide* reasons to know.

#### H. Deposits/Credit Arrangements and Gifts

An employee shall not—

- deposit clients' funds in his personal account or accounts of others or vice versa;
- act as trustee or executor for clients;
- enter into direct or indirect undisclosed arrangements, before or subsequent to transactions, to share in profits or losses;
- enter into a credit arrangement on behalf of clients unless through the institution.

#### I. Duty to Employer

An employee shall not, except with the approval of his employer, engage in any activity whether or not for compensation, which is in direct competition with his employer.

### **3. Code of Conduct Peculiar to Employees of Broker/Dealer Firms**

A. An employee of a broker/dealer firm shall—

- (i) operate strictly within the Rules and Regulations of the Stock Exchange or other licensing authority with which he is registered;

- (ii) willingly and promptly disclose to his superior officer mistakes or errors that may lead to monetary loss to clients;
- (iii) not under any circumstance utilise a client's funds other than in strict compliance with the client's instructions and requirements;
- (iv) keep proper records and books of account of clients;
- (v) fully disclose any dealing in securities to the firm's management;
- (vi) maintain personal trading accounts with his firm of employment. No account should be held with another broker/dealer firm without the prior approval of the management;
- (vii) operate securities dealing account in accordance with client's instruction.

B. An employee of a broker/dealer firm shall not—

- (i) manipulate the demand for or supply of securities in the market in order to influence prices of securities. In this regard, a broker/dealer must not falsify orders thereby creating artificial supply or demand in the market;
- (ii) act in concert with others without reasonable justification to influence price movements of securities in the market;
- (iii) on his own or in connivance with others alter or forge share/stock certificates, transaction records and other related documents;
- (iv) accept or execute any order not emanating from the beneficial owner of an account or certificate;
- (v) accept or execute any order in which the true identity of the beneficial owner is concealed;
- (vi) take advantage of a client's order by first buying into or selling from his own or the institution's account or advise others to do same. This could amount to market manipulation;
- (vii) transact business for his account or advise others to do same based on an order by a client perceived to have insider knowledge about the security.

**4. Code of Ethics Peculiar to Employees of Issuing Houses**

Once an issue is before an issuing house for sponsorship, an employee with unpublished price-sensitive information shall not:

- (i) effect transaction on the security for his own account;
- (ii) disclose such information about the issue to other members of staff or professionals who have no reason to access the information.

A. An employee shall not:

- (i) lodge proceeds from an issue in his account or in the accounts of others;
- (ii) engage in fraud, bribery, or attempt to engage in fraud, extortion, fronting for ineligible investors and other dishonourable conduct or behaviour inconsistent with equitable principles of business;

- (iii) engage in market conduct aimed at creating a false market or unduly affecting the value of securities such as the provision of false information to the market and circulation of unsubstantiated or false rumours;
- (iv) knowingly submit false information to management or regulatory authorities;
- (v) engage in unbusiness-like conduct or any acts detrimental to the interest and progress of the capital market;
- (vi) knowingly connive or recommend persons of dubious character and record for employment by any firm in the securities industry;
- (vii) engage in any alliances or arrangements with a view to interfering with the market, in order to increase profits or limit losses arising from underwriting activities.

B. An employee shall:

- (i) be careful and diligent in giving advice to prospective issuers of securities;
- (ii) exhibit care, objectivity and competence in the valuation of securities and general handling of issues before him;
- (iii) separate all application monies that come into his possession and promptly lodge all such funds into the designated accounts;
- (iv) hold for a minimum period of six months subsequent to the issue any holding in security packaged by his employer before sale may be effected. Unit Trust Schemes are however exempted from this restriction.

## 5. Code of Ethics for Investment Advisers/Portfolio Managers

A. An investment adviser shall:

- (i) exhibit diligence, thoroughness and competence in his investment advice to clients and in managing investors' funds where he also acts as a portfolio manager. The clients' best interest must influence his investment decision at all times;
- (ii) maintain proper records of all investment decisions made on behalf of clients;
- (iii) send at the end of every quarter statements to clients showing their investment positions during the period;
- (iv) disclose to clients when giving investment advice whether the advice is based on facts or opinion;
- (v) bear in mind at all times, that investment is a risk. In advising his clients therefore, no guarantee as to the future performance of the investment must be given;
- (vi) be compensated (i.e. charge fees) for advisory services and investment management in accordance with industrial standards as approved by the Securities and Exchange Commission from time to time;
- (vii) take adequate care and display integrity in the management of investors' funds. A portfolio manager must avoid the mismatch of term commitments;
- (viii) not deposit investors' funds in his personal account or the accounts of other persons;
- (ix) not employ investors' funds to acquire assets for himself, his companies or others' or otherwise employ the funds in violation of his mandate;
- (x) display impartiality and objectivity in his relationship with his clients;

- (xi) not invest his clients' funds in his business or businesses controlled by him, his associates, relations and subsidiaries of those companies without a prior disclosure of his relationship with the companies to the clients.

## **6. Code of Ethics Peculiar to Employees of Registrars' Departments**

A. An employee of a Registrar's Department shall:

- (i) in all cases of transfer of securities, carefully and properly verify all signatories with specimens lodged with the department;
- (ii) properly reflect all changes in address and/or signature in the register;
- (iii) act honestly and in good faith in the ordinary course of business and in a manner that is consistent with the best interest of the investing public and growth of the capital market;
- (vi) not delay without reasonable cause and authorisation, the dispatch to any share-holder of his dividend warrant, return money, share/stock certificate and notices of annual and extra-ordinary general meetings. In addition, care must be exercised in addressing mails for dispatch to share/stock holders;
- (vii) not on his own or in concert with others, forge, deface, alter or convert any security document;
- (viii) not lodge in his own account or in the account of others or in any manner, misappropriate funds meant for share/stock holders.

## **7. Sanctions for Violations**

1. A registered capital market operator who shall be found guilty under a disciplinary proceeding of a registered SRO or of S.E.C. for a violation of any provision of this code of conduct shall be suspended or expelled from the capital market and may in addition be liable for any other penalty prescribed by law.
2. (a) Any violation of this code of conduct by a member of an SRO or registered individual or an employee of a market operator shall be cause for appropriate disciplinary and/or remedial action by the market operator or for disqualification from membership of an SRO which action may be in addition to any other penalty prescribed by law.
  - (b) Remedial action by a market operator may include:
    - (i) Changes in assigned duties;
    - (ii) Divestment by sponsored individual or an employee of his conflicting interests;
    - (iii) Disciplinary action; or
    - (iv) Disqualification for a particular assignment.
  - (c) Any disciplinary or remedial action taken by a registered market operator shall be reported in writing to the appropriate SRO and to the Commission.
  - (d) Any suspension or expulsion of a member by an SRO for violation of this code shall be notified and communicated in writing to the Commission.

## Schedule II

### Categorization and ranking of Admitted Companies

|  |    | <b>DESCRIPTION</b>  |  | <b>Entry</b>     |     | <b>Full</b>                                   |
|--|----|---|--|------------------|-----|---|
|  |    |   |  | <b>Pink</b>      |     | <b>Blue</b>                                   |
|  | 1  | Company's registration status                                   |  | PLC              |     | PLC   |
|  | 2  | Securities must be SEC registered or exempt from registration   |  | Yes              |     | Yes   |
|  | 3  | Security must be dematerialized and freely transferable         |  | Yes              |     | Yes   |
|  | 4  | NASD Sponsor  |  | Required         |     | Required                                      |
|  | 5  | Security must be traded through NASD registered brokers/dealers |  | Yes              |     | Yes   |
|  | 6  | Obtain ISIN and open CSCS account                               |  | Yes              |     | Yes   |
|  | 7  | Number of years in operation                                    |  | 1-3 years        |     | Minimum 5 years                               |
|  | 8  | Company's business profile and trading history                  |  | Yes              |     | Yes   |
|  | 9  | Information on net income/profit and growth prospect            |  | Yes              |     | Yes   |
|  | 10 | Financial reporting   |  | Audited Accounts |     | Annual audited accounts/Quarterly information |
|  | 11 | Continuous disclosure of new and any change in information      |  | Yes              |     | Yes   |
|  | 12 | Annual General Meetings and other meetings                      |  | Yes              |     | Yes   |
|  | 13 | AGM held within 9 months of year end                            |  | Yes              |     | Yes   |
|  | 14 | # of shares issued  |  | 50,000,000       |     | 250,000,000                                   |
|  | 15 | Minimum total Shareholders                                      |  | 7                |     | 150   |
|  | 16 | Minimum Shareholder's Equity                                    |  | Nil              |     | 50% of the company's paid up share capital    |
|  | 17 | # shares public float   |  | 5,000,000        | 10% | 25,000,000<br>10%                             |

|  |    |                           |  |                                   |  |                                   |  |
|--|----|---------------------------|--|-----------------------------------|--|-----------------------------------|--|
|  | 18 | Average daily trade       |  | Nil                               |  | 25,000                            |  |
|  | 19 | Minimum Revenue per annum |  | 20% of<br>shareholder's<br>equity |  | 20% of<br>shareholder's<br>equity |  |

