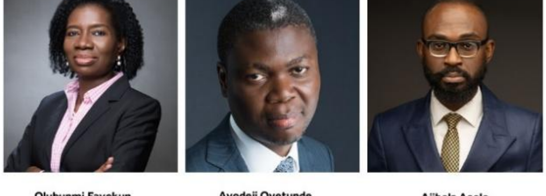
Capital Markets
Regulatory Updates

Q4 Edition



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INTRODUCTION

The ALN Nigeria | Aluko & Oyebode **Capital Markets Insight** is a quarterly report providing updates on laws, regulations, and other activities in the Nigerian capital markets.

This edition outlines updates from regulators of different capital market segments in Nigeria for the fourth quarter of 2024.

1. SEC RE-EXPOSES PROPOSED AMENDMENT TO RULES ON DIGITAL ASSETS

On 16 December 2024, the Securities and Exchange Commission (the "**SEC**" or the "**Commission**") re-exposed proposed amendments to the 2022 Rules on Digital Assets Issuance, Offering Platforms, Exchange and Custody (the "**Proposed Amendments**") further to the exposure of the initial amendments in March 2024.

Some of the provisions in the Proposed Amendments include an express prohibition of anonymity-enhanced cryptocurrencies. Anonymity-enhanced cryptocurrencies generally refer to cryptocurrencies with privacy-enhancing features designed to boost anonymity and reduce traceability.

Additionally, the Proposed Amendments provide that any advertisements, marketing, or promotional materials relating to digital asset offerings must receive the approval of the SEC before they are published. Similarly, Virtual Asset Service Providers (VASPs) must ensure that any testimonials or endorsements in their advertisements must be given by individuals who have either invested in the promoted product or used the advertised service, and such endorsements must disclose whether the endorsing individual has received compensation from the advertiser.

The Proposed Amendments include a new category of operators, Digital Assets Intermediaries.[1] The Proposed Amendments also provide that the functions of Digital Assets Offering Platforms[2] ("**DAOPs**") and those of Digital Assets Custodians[3] ("**DACs**") should not be carried out by a single entity.

The SEC has invited comments from the public on the re-exposure which must be sent to the SEC within two weeks from the date of the re-exposure.

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2. SEC RELEASES PROPOSED NEW RULES FOR SHORT-TERM COMMODITY-LINKED NOTES

On 16 December 2024, the SEC released its draft framework for Short-Term Commodity-Linked Notes ("**STCLN**") (the "**Draft Framework**").

STCLN are securities whose value are directly linked to the price of specific commodities, such as oil, natural gas, or gold, with maturities of up to three (3) years.

[1] Digital Assets Intermediaries are entities organised and registered as corporations to facilitate transactions involving virtual assets.
[2] An electronic platform operated for the purpose of offering digital assets.
[3] These are third-party companies that keep digital assets on behalf of their clients in a safe, secure, and auditable way.

The Draft Framework introduces such key provisions as a minimum issue size of ₦100 million (One Hundred Million Naira) for STCLNs and ₦5 billion (Five Billion Naira) for STCLNs issued under a programme. Additionally, all STCLNs must be sponsored by a SEC-registered issuing house and receive SEC approval before they are listed on a commodities exchange.

The introduction of STCLNs potentially expands the scope of investment opportunities in the Nigerian capital markets.

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3. SEC RELEASES PROPOSED AMMENDMENT TO RULES ON CORPORATE BONDS

The SEC has released proposed amendments to the rules on corporate bonds. The proposed amendments introduce key changes to the requirements for the issuance of bonds by corporate entities. Notably, all issuers of corporate bonds (except private placements) are required to be rated by a rating agency.

For a special purpose vehicle ("**SPV**") with no financial records, its offer must be supported by full credit enhancement. This credit enhancement must come from a registered guarantor with an investment-grade rating and must be supported by a guarantee agreement that includes a waiver of all defences against claims under the guarantee.

The amendments primarily address concerns relating to the issuance of corporate bonds through SPVs.

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4. SENATE PASSES INSURANCE REFORM BILL

The Nigerian Senate has approved the Nigerian Insurance Industry Reform Bill (the "**Bill**"), which aims to overhaul the legal framework for regulating and overseeing all types of insurance businesses in Nigeria. The Bill consolidates several existing laws, including the Insurance Act (2003), Marine Insurance Act (1961), Motor Vehicles (Third Party Insurance) Act (1950), National Insurance Corporation of Nigeria Act (1969), and the Nigerian Reinsurance Corporation Act (1977) into a single, comprehensive piece of legislation. The Act will therefore repeal these other statutes.

The Bill proposes ₦35 billion as the minimum capital requirement for reinsurance companies.

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5. PENCOM LIFTS RESTRICTION ON LICENSED PENSION FUND ADMINISTRATORS INVESTING IN COMMERCIAL PAPERS

On 23 October 2024, the Pension Commission (the "**PENCom**") issued a statement directing Licensed Pension Fund Administrators ("**LPFAs**") and Custodian Fund Managers to suspend further investments in commercial papers ("**CPs**") facilitated by non-bank capital market operators acting as Issuing and Placing Agents ("**IPAs**").

As an update, the PENCom *via* a statement issued on 3 December 2024, has lifted the investment restriction placed on LPFAs. This follows the release of SEC's draft rules on CPs.

The SEC rules, once approved, will bring IPAs within the regulatory ambit of the SEC, effectively addressing the concerns relating to pension fund investments.

In the statement of 3 December, the PENCom emphasised that LPFAs must conduct thorough legal and financial due diligence on all prospectus and offer documents of CPs before making any investments, as outlined in Section 2.9 of the Regulation on Investment of Pension Fund Assets.

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6. SEC ANNOUNCES NEW REQUIREMENT FOR CAPITAL MARKET OPERATORS

As part of the annual registration renewal process, the SEC has introduced a requirement mandating Capital Market Operators (“**CMOs**”) to provide evidence of registration with a capital market trade group. This requirement was issued by the Registration, Exchanges and Market Infrastructure Department of the SEC.

The annual renewal of registration for CMOs will commence 1 January 2025 and, in line with the SEC Rules, all CMOs are to complete the process of renewal of their registration on or before 31 January 2025. The SEC confirms that CMOs without valid registration will be penalised and may be excluded from carrying out capital market activities.

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7. NAICOM DIRECTS INSURERS TO CLEAR OUTSTANDING CLAIMS AND STRENGTHEN COMPLIANCE

The National Insurance Commission ("**NAICOM**") has mandated all insurance companies to settle outstanding claims by 31 December 2024, as part of initiatives to enhance the industry’s credibility. At the first Insurers Committee meeting after the swearing in of the new commissioner, Mr. Segun Omosehin, the commission highlighted the 10-year insurance strategic plan, which sets out key objectives to be achieved by 2027, including improving corporate governance and aligning with the proposed Insurance Bill 2024, encouraging insurers to invest in the National Credit Guarantee Scheme in order to diversify portfolios.

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8. NGX PROPOSES AMENDMENT TO TRADING LICENSE HOLDERS’ RULE

The Nigeria Exchange Limited ("**NGX**" or the "**Exchange**") has proposed amendments to its Trading License Holders’ Rules, which includes, the rules on block divestments in equities (the “**Rules**”).

Block investments involve the transfer of shares of up to 30% (thirty percent) or more of the company’s total listed shares wherein the transferee shareholder intends to take control of the listed company.[4]

[4] NGX, "Proposed Amendments to Trading Licence Holders’ Rules (Amendments -Part XIIIA), Block Divestments and Large Volume Trades".

According to the proposed amendments to the Rules, the definition of block investments would be revised to indicate a transfer of shares of up to 5% (five percent) or more of a company's total listed shares within 1 (one) year from the date of first transfer or acquisition of shares.

As part of the proposed changes, licensed NGX dealing members must seek approval from the Exchange before executing a block divestment, and where there is uncertainty about whether a transaction qualifies as a block divestment, traders are encouraged to consult the Exchange for guidance.

Additionally, fees for block divestments will be calculated based on a rate determined by the NGX which could be the higher of either the agreed transaction price or the prevailing market price. For transactions executed outside the market price, dealing members must provide a justification of the pricing methodology used.

These proposed amendments remain subject to the approval of the board of the NGX Regulation Limited and the SEC. In the meantime, relevant stakeholders are encouraged to provide feedback on these proposed amendments as part of the consultation process.

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9. CBN AND MOFI FLAG PROVISIONS RELATING TO REGULATORY OVERLAPS IN THE INVESTMENT AND SECURITIES BILL

At the senate committee hearing of the Investment and Securities Bill, 2024 (the "**Bill**") held on 14 November 2024, the Central Bank of Nigeria ("**CBN**") and the Ministry of Finance Incorporated ("**MOFI**") raised concerns over provisions of the Bill, such as section 3(4)(d) of the Bill which grants absolute regulatory powers to SEC over public companies in Nigeria.

The CBN pointed out that that the regulatory purview of SEC over financial market infrastructure in Part V of the Bill may include payments and settlement systems which are originally within the regulatory purview of CBN.

Other concerns raised by MOFI relate to the provisions allowing SEC board members, including the Director-General, to resign with a three-month notice directly to the President without consulting the Minister of Finance, who is responsible for recommending board appointments.

The senate committee on capital markets indicates that it will continue to consider feedback from relevant stakeholders as we anticipate the final draft of the Bill.

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10. NAICOM TO RELEASE DRAFT INSURTECH OPERATIONAL GUIDELINES

On 14 October 2024, the National Insurance Commission ("**NAICOM**") announced its plans to release draft Insurtech Operational Guidelines (the "**Guidelines**"). This was revealed by the Commissioner for Insurance, Olusegun Omosehin, during the 2024 Insurance Meets Tech conference held in Lagos. The Guidelines are to support the development of insurtech startups and encourage industry operators to leverage technology to improve efficiency within the insurance industry and stay competitive in an increasingly complex economic landscape.

Currently, the NAICOM Regulatory Sandbox Guidelines, which took effect 1 May 2023 establishes the operations of a sandbox regime, which provides a framework for driving the innovation of products and services, and ensures operators conduct their businesses in line with best practices. The framework for the interoperability of both the Insurtech Guidelines and the Regulatory Sandbox Guidelines is yet to be released by NAICOM.

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11. PROPOSED AMENDMENT TO THE RULES ON ANNUAL SUPERVISORY FEES FOR COLLECTIVE INVESTMENT SCHEMES

Supervisory fees are payable by Collective Investment Scheme ("**CIS**") fund managers and the fund/portfolio managers of all discretionary[5] and non-discretionary[6] funds and portfolios whether targeted at retail investors or qualified investors.

On 9 October 2024, the SEC released an exposure draft of proposed amendments to the SEC Rules and Regulations 2013 (as amended) (the "**SEC Rules**") on annual supervisory and regulatory fees relating to CIS (the "**Supervisory Fees**"). These fees are currently calculated as a percentage of the Net Asset Value ("**NAV**") of the CIS under management.

Some of the proposed amendments in the exposure draft include:

(a) Shifting the fee calculation basis from the NAV of the portfolio to the total Asset under Management (AUM) to prevent misclassification and potential fee avoidance.

(b) The fee for CIS fund managers will remain at 0.2% of NAV. However, for fund and portfolio managers, the revised fee structure will be 0.25% for retail clients and High Net-Worth Individuals and 0.2% for qualified institutional investors.

(c) For fund and portfolio managers, the fee structure will be 0.25% for retail-focused funds and 0.01% for qualified investors.

(d) The Supervisory Fees are due on or before 31 January every year and the penalties for late payments include not less than ₦100,000.00 (One Hundred Thousand Naira) fine and an additional ₦5,000.00 (Five Thousand Naira) for each day of default.

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12. INAUGURATION OF THE ECOWAS REGIONAL COMPETITION AUTHORITY

On 1 October 2024, the Inaugural Council of the Economic Community of West African States ("**ECOWAS**") Regional Competition Authority ("**ERCA**") was launched during a ceremony in Banjul, Gambia. The ERCA's key role is to oversee commercial activities, establish regional competition compliance standards, and promote fair competition and consumer protection across the ECOWAS region. The swearing-in ceremony marks an important step toward operationalising the ERCA,

[5] Discretionary fund management involves a fund manager independently managing and making investment decisions for a client's securities or pooled funds based on agreed investment objectives.
[6] Non-discretionary fund management requires the fund manager to execute investments and manage securities strictly following a client's instructions, without independent decision-making as outlined in an agreement.

allowing it to review mergers and acquisitions within member states. This development reflects a broader shift towards collaborative economic initiatives across Africa.

In Nigeria, the Federal Competition and Consumer Protection Commission (the "**FCCPC**") and the CBN (for CBN-licensed entities only) provides regulatory oversight for mergers and acquisitions (M&A) and assess their potential to inhibit competition.. It is unclear whether ERCA will have exclusive jurisdiction over mergers and competition-related transactions or how the ERCA jurisdiction will complement the regulatory authority exercisable by individual African countries in M&A transactions.

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Should you wish to discuss any of the foregoing, or should you have any questions, please do contact us at: **aocapitalmarkets@aluko-oyebode.com**

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