



U.S.
SECURITIES
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COMMISSION

THE SECURITIES AND EXCHANGE COMMISSION UNVEILS STRINGENT RULES FOR PRIVATE COMPANIES' SECURITIES ISSUANCE

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INTRODUCTION

Historically, corporates across the globe have created a system of raising capital by offering securities such as stocks or bonds to investors through the financial and capital markets under a well-regulated system to prevent mismatch, fraud, and financial indiscipline. Nigeria is not an exception as funds are accessed through either the money market or the capital market and are regulated by regulators like the Securities and Exchange Commissions (“SEC” or the “Commission”), Nigeria Exchange Group.

The Securities and Exchange Commission is the main regulator for the capital market and as such, we will limit the scope of this discourse to the capital market and the implication of the SEC rules on private companies' issuance of securities through the recent directives.

Both private and public companies in Nigeria raise capital to fund various operations, expansions or investments through the capital market. The concept of securities issuance therefore allows companies to access funds beyond traditional bank loans. Securities issuance also provides investors with opportunities to invest in potentially profitable ventures and diversify their portfolios. As investors' interest in the capital markets grew, it became crucial to establish regulatory frameworks to safeguard investors whilst maintaining market integrity.

This explanatory note will consider the key regulatory frameworks regulating the capital markets in Nigeria and how they affect the proposed new rules governing private companies' issuance of securities which has been unveiled by the Securities and Exchange Commission.



AN OVERVIEW OF KEY REGULATORY FRAMEWORKS REGULATING THE CAPITAL MARKETS IN NIGERIA

The **Companies and Allied Matters Act (CAMA)**, 2020 which is the principal legislation for companies in Nigeria provides by virtue of Section 22(5)(a) that a private company shall not unless authorised by law, invite the public to subscribe for any share or debenture of the company. Furthermore, Section 67(1) of the **Investment and Securities Act (ISA)**, 2007 provides that no person shall make any invitation to the public to acquire or dispose of any securities of a body corporate or to deposit money with any body corporate for a fixed period or payable at call, whether bearing or not bearing interest unless the body corporate concerned is a public company, whether quoted or unquoted.

From the aforementioned provisions, it can be deduced that private companies are strictly prohibited from publicly offering their securities. This implies that private companies are of course, allowed to issue shares and have shareholders, but are prohibited from issuing their securities through public offerings or trading on public exchanges.

However, the **Business Facilitation Act (Miscellaneous Provisions) (BFA)** 2023, has made key amendments to these provisions. Section 43(1)(b) of the BFA which has amended Section 67 of the Investment and Securities Act provides that no allotment shall be made of any securities of a company offered to the public for subscription unless in the case of a private company, through any lawful means as the Commission may by regulation prescribe. As a result of this amendment, private companies are no longer prohibited from offering their securities to the public for subscription. This is however, subject to regulations prescribed by the Securities and Exchange Commission.

Consequently, the **Securities and Exchange Commission (SEC)**, has unveiled stringent rules to regulate the issuance of securities for private companies.



SECURITIES AND EXCHANGE COMMISSION UNVEILS PROPOSED NEW RULES FOR PRIVATE COMPANIES' SECURITIES ISSUANCE AND ALLOTMENT

The Securities and Exchange Commission had on the 7th of May, 2024 unveiled its proposed new rules on governing the issuance and allotment of securities by private companies, thus, imposing significant penalties for non-compliance.

Below are the **highlights** of the new rules:

- Private companies issuing or allotting securities must obtain approval from the commission.
- These rules only apply to debt securities issuances by private companies either by way of public offer, private placement or other methods as may be approved by the Commission.
- Private companies are strictly prohibited from offering equity securities to the public.
- The new rules mandates debt securities to be sold to only qualified investors.
- The new rules require private companies to list their securities on a registered securities exchange within 30 (Thirty) days after allotment.
- For private companies to be eligible for securities issuance, the companies must be duly incorporated under relevant laws and have a track record of at least three years.
- The regulations set a maximum fundraising limit of N15,000,000,000 (Fifteen Billion Naira) within a one-year period for private companies.

- Private companies intending to undertake further debt securities issuance must re-register as public companies.
- Only registered capital market operators are permitted to participate in debt securities issuances.
- The issuer is prohibited from using the proceeds of the issue for purposes other than those stated in the offer document without the prior approval of the Commission.
- The issuer shall file with the Commission not later than ninety (90) days after the conclusion of an issue on the appropriate SEC Form, detailed information on the utilisation of proceeds.
- Companies must file detailed reports on proceeds utilisation quarterly until fully utilised.

Essentially, private companies can now offer debt securities to the public but with the approval of the Commission. The fundraising limit private companies can target annually is N15,000,000,000 (Fifteen Billion Naira). By implication, private companies that intend to raise above the cap limit within the one-year period must re-register as public companies. It is also pertinent to state that while seeking the approval of the Commission to offer debt securities, private companies must state the use or purpose of such funds to be raised in the offer document which could be to scale its operations, fund its expansion plans or make certain investments. Upon subscription, the proceeds must be used for the purpose which was stated in its offer letter and not otherwise except the commission permits same.

CONCLUSION

Conclusively, this move by the Commission is an offshoot of the amended provisions of the BFA. As a result, of these new rules, private companies can now offer securities subject to the guidelines and rules imposed by the Commission. These rules and guidelines issued by the Commission are stringent and must be complied with to avoid penalties such as fines, suspension or withdrawal of the operating license of the defaulting capital market operators and disgorgement of transaction proceeds.

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