



**Nigeria's Securities and Exchange Commission
Provides Further Regulatory Clarity Over the
Issuance of Commercial Papers Through
Proposed New Rules**

strenandblan.com



Introduction

The Central Bank of Nigeria's (CBN) Circular of July 2016 (CBN Circular) approved the quotation rules of the FMDQ OTC Securities Exchange (FMDQ) and authorized the quotation of Commercial Papers in Nigeria. It also directed that deposit money banks and discount houses only deal in Commercial Papers that are registered, quoted, or intended for quotation on authorized securities exchanges, such as FMDQ and NASD, etc, when acting in any capacity in the Commercial Papers transaction.¹

From the CBN Circular, the apex regulator did not restrict the participation in Commercial Papers to banks and discount houses as other participants such as the Licensed Pension Fund Administrators (LPFAs) can invest in Commercial Papers. However, the lack of regulatory clarity

on the participation of LPFAs with the potential for exposure of their interest necessitated the sector's regulator, the National Pension Commission (PENCOP) to intervene in their investment appetite.

Commercial Papers transactions are largely arranged and placed by non-bank capital markets operators, (Issuing Placing Agents) such as Issuing Houses or Financial Advisers. Being a crucial financial instrument arranged by the Issuing Houses, guidance is needed from the securities and investment apex regulator, the Securities and Exchange Commission (the "SEC" or "Commission") considering that the Issuing Houses deal on securities and capital markets transactions and operators are traditionally regulated by the SEC.

¹Mandatory Registration and Listing of Commercial Papers.pdf

Despite the regulatory oversight of the SEC on the issuance of securities in Nigeria, through the Investments and Securities Act 2007 ("ISA")², the SEC did not provide a clear regulatory framework for companies that wish to invest in Commercial Papers arranged or placed by the Issuing Houses. On the backdrop of this, In October 2024, PENCOM, having noticed an increased investment by LPFA's in Commercial Papers organised by the Issuing Houses reportedly halted the investments of pension funds in Commercial Papers, in its words "until the Securities and Exchange Commission (SEC) establishes clear guidelines and regulations governing the issuance of Commercial Papers"³. In other words, LPFAs cannot invest in Commercial Papers arranged by Issuing Houses until guidance is provided by the SEC.

The Proposed Securities and Exchange Commission's New Rules on Commercial Paper Issuance

In response to this, the SEC,⁴ unveiled the proposed New Rules on Issuance of Commercial Papers and Amendment to Rule 8 (Exemptions) of the SEC Rules 2013 (the "Proposed New Rules") aimed at establishing a clear regulatory framework for the issuance of Commercial Papers in Nigeria. According to the Commission, introducing the Proposed New Rules is necessary to exercise adequate oversight over Commercial Papers, to ensure transparency and an orderly market, and to maintain the investor protection mandate of the Commission. The contents of the proposed new rules are:

A. The proposed new rules on the issuance of commercial papers and the amendment to Rule 8 (exemptions).

To address the regulatory gap in Commercial Papers transactions, the SEC proposed an amendment to Rule 8 of the SEC Rules 2013. The amendment

includes the deletion of Rule 8(1)(a) which previously exempted the application of the provisions of the Investments and Securities Act 2007 and the SEC Rules 2013 from investment and securities transactions with a maturity date of less than nine (9) months. As short-term securities, Commercial Papers have a maturity duration of 1-270 days, which appears to be the lacuna in the application of the SEC as most Commercial Papers mature within that period. The Proposed New Rules bring the activities of capital market operators in Commercial Papers transactions under the regulatory umbrella of the Commission. According to the Commission, this is necessary to set the pace for the regulation of Commercial Papers (and possibly other short-term debt instruments) with maturities even less than 364 days.

² Section 13 of the Investment and Securities Act 2007.

³ <https://businessday.ng/markets/article/pencom-halts-pfas-investments-in-limited-liability-companies-commercial-papers/>

⁴ [Rules-for-Exposure-Rule-8-and-Commercial-Papers.pdf](#)

B. Registration with SEC for all parties dealing in commercial papers

A review of the Proposed New Rules reveals that parties involved in a proposed Commercial Papers transaction, such as Issuing and Placing Agents (Issuing Houses) and Issuing, Placing, and Collecting Agents, must be SEC-registered capital market operators. Consequently, Issuing Houses are now mandated to register with the Commission before acting as Issuing and Placing Agents.

Notable Provisions of the Proposed New Rules include:

1. Eligibility⁵

A prospective issuer of Commercial Papers or promoter of an SPV created for the issuance of Commercial Papers (CP) must meet the following eligibility criteria:

- a. It shall be a company duly registered under the CAMA or other enabling law;
- b. It must have been in operation for a minimum of five (5) years;
- c. It shall have three (3) years audited financial statements, the most recent being not older than nine (9) months from the Issuer's last financial year end;
- d. The Issuer's shareholders' funds (unimpaired by losses) shall not be less than Five Hundred Million Naira (₦500,000,000.00) as certified by

its auditors and reflected in its latest audited financial statement, and shall be maintained at or above that level for the period any of its CPs remain outstanding;

- e. The Issuer's total indebtedness, including the new issue of CPs should not exceed Four Hundred percent (400%) of the Issuer's net worth (or gearing ratio of 4:1) as at the date of its latest audited accounts;
- f. Where the CP is guaranteed, the Issuer shall hold an approved credit or a comparable agreement with the guarantor;
- g. Issuers shall attain a credit rating of investment grade from a rating agency registered with the Commission;
- h. No Issuer shall offer CPs if it is currently in default of payment of interest or repayment of principal in respect of previous issuances;
- i. Where the Issuer does not meet the eligibility requirements stipulated above, the CP issuance shall be backed by a guarantor or such other credit enhancement provider that meets the eligibility requirements;
- j. Such other eligibility criteria as may be prescribed by the Commission from time to time.

⁵ Rule 3 of the Proposed New Rules on the Issuance of Commercial Papers

2. Conditions for Commercial Paper issuance⁶

- a. All CPs proposed to be issued shall first be registered with the Commission.⁷
- b. All CPs shall only be issued or sold to qualified institutional investors or high-net-worth individuals.⁸
- c. Offerings of CPs by way of a private placement shall not exceed five (5) working days from the date the issue opens for subscription. Any unsold portion of the issue after five (5) working days of its opening for subscription shall not be issued.⁹
- d. For a public offer, the offer period shall not exceed ten (10) working days.¹⁰

3. General

- a. A CP may be issued by way of public offer or private placement.¹¹
- b. The minimum size of a CP issue shall be One Hundred Million Naira (₦100,000,000) and in multiples of Fifty Million Naira (₦50,000,000) thereafter.¹²
- c. CPs shall be issued for tenors not less than thirty (30) days and not more than 364 days. Where a CP exceeds 364 days, it shall be regarded as a long-tenured debt instrument and be regulated under the relevant regulations of the Commission.¹³
- d. A CP shall not be rolled over more than two (2) times and the combined tenors of the initial CP issue, and any subsequent rollover(s) shall not exceed 364 days.¹⁴

Impact of the Proposed New Rules

Essentially, the introduction of the Proposed New Rules for Commercial Papers establishes a legal framework for Commercial Papers transactions in Nigeria, providing comfort to investors and bringing Issuing Houses under the regulatory purview of the SEC. Reacting to the Proposed New Rules, the PENCOT on December 03, 2024, through its circular,¹⁵ lifted the restriction that was previously placed on LPFAs from investing pension funds in commercial papers where Issuing

Houses acted as the Issuing and Paying House. Consequently, Issuing Houses must now be registered with the SEC before they can engage in Commercial Papers transactions as Issuing and Placing Agents. This further speaks to the concerns raised by various stakeholders such as the PENCOT regarding a regulatory gap in Commercial Papers transactions.

⁶ Rule 4 of the Proposed New Rules on Issuance of Commercial Paper

⁷ Rule 4(a) of the New Rules

⁸ Rule 4(d) of the New Rules

⁹ Rule 4(f) of the New Rules

¹⁰ Rule 4(g) of the New Rules

¹¹ Rule 5(a)iv of the New Rules

¹² Rule 5(a)vi of the New Rules

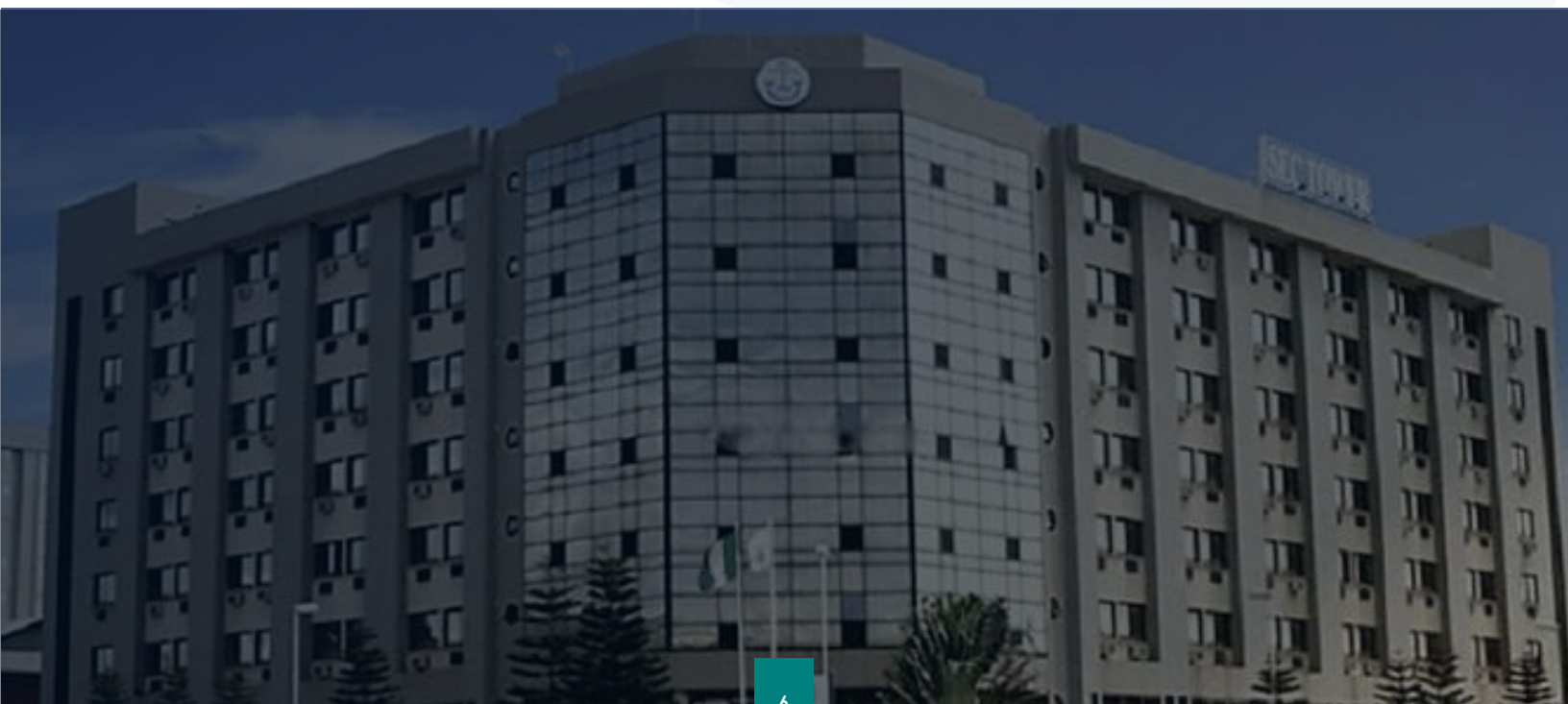
¹³ Rule 5(c)i of the New Rules

¹⁴ Rule 5(c)iv of the New Rules

¹⁵ pencom.gov.ng/wp-content/uploads/2024/12/Circular-on-Commercial-Paper.pdf

Conclusion

The SEC Proposed New Rules is an offshoot of the concerns raised by stakeholders regarding the absence of a regulatory framework guiding the operations of Issuing Houses in Commercial Paper transactions, especially the concerns of the PENCOP. It is expected that the proposed new rules will be codified which can help investment participants, such as the LPFAs to confidently invest in Commercial Papers thereby guaranteeing regulatory protection for their investment. This underscores the role of regulation on investments and securities in Nigeria which in turn encourages investors' confidence and the stability of the capital market.



About Stren & Blan Partners

Stren & Blan Partners is an innovative and dynamic Law Firm with a compelling blend of experienced lawyers and energetic talents. We are focused on providing solutions to our client's business problems and adding value to their businesses and commercial endeavours. This underpins our ethos as everything we do flows from these underlying principles.

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our client's business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

Authors



Noble Obasi

Team Lead

NobleObasi@strenandblan.com



Ibitola Akanbi

Associates

IbitolaAkanbi@strenandblan.com



Michael Afuye

Associates

MichaelAfuye@strenandblan.com



Stren & Blan Partners

www.strenandblan.com
contact@strenandblan.com
[@strenandblan](https://www.instagram.com/strenandblan)

+234 (0)702 558 0053
3 Theophilus Orji Street, Off Fola Osibo
Road, Lekki Phase 1, Lagos, Nigeria