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CIRCULAR

New Rule And Sundry Amendments To The Rules And Regulations Of The Commission

19/10/2018

SUMMARY OF CHANGES

New rule

(1) Rules on Green Bonds

Sundry Amendments

(1) Inclusion of BVN as a valid means of identification of individual clients in the Capital Market

(2) Rule on Investment Advisory Services

(3) Amendment to Rule 61- Nominee Accounts

(4) Amendment to Rule 96 & 97- Investment Advisers

GREEN BONDS

1.0 Name/Citation of the Rule: Green Bonds

1.1 Definition of Terms

“Green Bond” A Green Bond is any type of debt instrument, the proceeds of which would be exclusively applied to finance or re-finance in part or in full new and/or existing projects that have positive environmental impact.

“Look-Back” Look-back refers to a maximum period in the past that an issuer will ‘look back’ to in order to identify

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assets/earlier disbursements to such 'eligible green projects' that will be included in the green bond reporting.

2.0 Qualification

To qualify as a green project, the monies shall be invested in one or more of the following:

- a) Renewable and sustainable energy
- b) Clean transportation
- c) Sustainable water management
- d) Climate change adaptation
- e) Energy efficiency
- f) Sustainable waste management
- g) Sustainable land use
- h) Biodiversity conservation
- i) Green buildings (Commercial Real Estate Development)
- j) Any other categories as may be approved by the Commission from time to time.

3.0 Conditions for approval of a Green Bond

In addition to the general registration requirements for debt issuances as stated in the Rules and Regulations of the Commission for States, Local Governments, Government, Corporate and Supra-national agencies, an issuer of a Green Bond shall file:

- i. A letter from the issuer committing to invest all the proceeds of the bond in projects that qualify as green project(s) or assets in line with this rule
- ii. A feasibility Study and Report stating clearly, the measurable benefits of the proposed Green project or Assets such as Green House Gas reduction, reduction of water use and reduction of harmful emissions.
- iii. A prospectus which shall include project categories, project selection criteria, decision-making procedures, environmental benefits, use and management of the proceeds.
- iv. An independent assessment or certification issued by a professional certification authority or person approved or recognized by the Commission.
- v. Any other documents that may be required by the Commission

4.0 Utilization and Management of Proceeds

- i. The net proceeds shall only be utilized for the purpose stated in the approved offer documents and shall be tracked as stated in the approved internal policy of the Issuer which shall be disclosed in the offer documents.
- ii. An escrow account shall be opened specifically for the net proceeds of the offer.

- iii. The proceeds shall be domiciled with the Custodian and the Trustees shall ensure that the proceeds are used for the purpose stated in the prospectus.
- iv. The issuer and the Trustees shall be the signatories to the escrow account.
- v. The issuer shall invest proceeds in green projects within the given timeframe prescribed in the prospectus.
- vi. Unallocated proceeds shall be invested by the Trustees in money market instruments with investment grade rating that do not include greenhouse gas intensive projects which are inconsistent with the delivery of a low carbon and climate resilient economy.

5.0 Reporting

i. The issuer shall provide to the Commission and Stock Exchange (where listed), at least annually, a Green Bond Report containing the list of the projects and assets to which proceeds have been allocated, for the duration of the bond. The reporting process and authority shall be documented and maintained as part of the issuer's Green Bond Framework. The Green Bond Report shall include:

A. A brief description of the projects and the amounts disbursed, including (where possible) the percentage of proceeds that have been allocated to different eligible sectors and project types and to financing and refinancing. Where confidentiality agreements or competition considerations limit the amount of detail that can be disclosed, the information may be presented in generic terms.

B. The expected impact of the project and assets

C. Qualitative performance indicators and, where feasible, quantitative performance measures of the impact of the projects

D. The methodology and underlying assumptions used to prepare performance indicators and metrics shall be disclosed.

ii. The issuer shall publish an assessment report issued by an independent professional assessment or certification agency on its website or other media and conduct and report annual follow-up assessments of the green projects and associated environmental benefits throughout the tenor of the bond and publish same in its annual report and on its website or other media, a copy of which should be filed with SEC.

6.0 Refinancing

Where the issuer proposes to utilise a proportion of the issue proceeds of the issue of Green Bonds, towards refinancing of existing green assets, the Issuer shall

clearly provide in the offer document the details of the portfolio/assets/projects which are identified for such refinancing, and, to the extent relevant, the expected look-back period for refinanced projects.

SUNDRY AMENDMENTS

A. INCLUSION OF BVN AS A VALID MEANS OF IDENTIFICATION OF INDIVIDUAL CLIENTS IN THE CAPITAL MARKET

Amendment (Creation of a new sub-rule: Section 46(2)(b):

The Capital Market Operator may use the Bank Verification Number (BVN) as a means of verifying information provided by the clients.

B. RULES ON INVESTMENT ADVISORY SERVICES

The following guidelines shall be applicable to Capital Market Operators registered as Investment Advisers and any Capital Market Operator that provides investment advice as defined in the Investments and Securities Act, (ISA) 2007.

1. General

An investment adviser shall:

- i) abide by the Code of Ethics for Investment Advisers and the general code for all CMOs and their employees as stipulated in the Schedule IX of the SEC Rules and Regulations;
- ii) keep information about its client confidential and shall only divulge such information after obtaining the prior consent of that client except in cases where such disclosures are necessary in complying with a law or statutory order;
- iii) not enter into proprietary transactions that are contrary to advice given to clients for a period of fifteen days from the day of giving the advice provided that during the period, if the investment adviser is convinced that the circumstances have changed, it may then enter into such transactions after communicating a revised assessment to the client at least twenty four hours before entering into such transactions;
- iv) document and comply with internal policies and procedures that are consistent with these regulations;

2. Fiduciary Duties to Clients

An Investment Adviser shall:

- i) avoid conflicts of interest with clients and is prohibited from taking unfair advantage of a client's trust
- ii) be sensitive to the conscious and subconscious possibility of providing less than disinterested advice, and may be faulted even when it does not intend to injure a client and even if the client does not suffer a monetary loss

iii) have procedures in place that ensure that all clients are treated fairly and equitably

3. Client's Risk Assessment

i) The Investment Adviser shall assess the client in order to determine the client's risk profile. In assessing the risk profile of a client, the investment adviser must consider the client's;

- a) age;
- b) financial status;
- c) investment objectives;
- d) risk appetite;
- e) unique circumstances (if any);
- f) constraints (legal or otherwise)
- g) time horizon and;
- h) any other factor that needs to be assessed

ii) The Investment Adviser shall develop a questionnaire and other tools as deemed necessary in risk profiling the client. The questionnaire shall;

- a) be separate and distinct from the account opening form;
- b) be written in clear and understandable language; and
- c) not be structured in a way that it contains leading questions

iii) An Investment Policy Statement (IPS) shall be documented for each client at the conclusion of the risk assessment exercise.

iv) Information provided by the client and the IPS shall be updated at a minimum of once a year.

4. Suitability

An Investment Adviser shall ensure that:

- i) Investment advice given is consistent with the client's IPS.
- ii) It has an adequate and reasonable basis for making recommendations to clients. It therefore has an obligation to investigate and research on any investment it is recommending.
- iii) It understands the nature and risks of asset classes or investment products selected for clients.

5. Disclosure to Clients

In making written disclosures to clients, an Investment Adviser shall ensure that disclosures are not less legible than the remainder of the content of such documents.

An Investment Adviser shall disclose to clients;

- i) and prospective clients, all material information about itself including its business, related parties, regulatory history, terms and conditions on which it offers advisory services and other material facts necessary to guide them in making

- an informed decision as to entering into or continuing an advisory relationship with it;
- ii) any consideration or compensation (monetary or otherwise) received or receivable by it or any related party for trading services in respect of the products or securities for which investment advice is provided to clients;
 - iii) all compensation earned in any form from referrals with respect to investment advice given
 - iv) its holding or position in investment products or securities which are the underlying subject of investment advice;
 - v) all facts regarding conflicts of interest or potential conflict relating to any connection with any issuer of securities or other material facts that may compromise its independence in providing investment advisory services; and
 - vi) warnings and disclaimers contained in prospectuses, advertising material and any other relevant document relating to investments being recommended

6. Record Keeping

An Investment Adviser shall maintain the following records;

- i) Know-Your-Customer (KYC) records of the client;
- ii) Risk assessment and IPS report of the client
- iii) Suitability assessment of the advice being provided
- iv) Copies of agreements with clients, if any;
- v) Investment advice provided, whether written or oral;
- vi) Rationale for arriving at investment advice, duly signed and dated; and
- vii) Register containing list of clients, date of advice, nature of advice, investment class and any related fees charged.

Provided that they shall be maintained and preserved in a readily accessible place for a period of not less than five (5) years from the end of the year during which the last entry was made on such record, provided that in the first two (2) years such documents maintained shall be in an appropriate office of the registered person.

C. AMENDMENT TO RULE 61-NOMINEE ACCOUNTS

1. Amendment to Rule 61:

(1) Definition of terms

Addition of the following to the definition of terms:

Nominee means any capital market operator (CMO) authorized by the Commission to hold clients' assets in its own name on behalf of its client and who holds such assets in a nominee account.

Such CMOs include Custodians, Trustees, Funds/Portfolio Managers, Brokers and Broker/Dealers, and such other CMO as may be authorized by the Commission from time to time.

Nominee account means a securities account opened and maintained by an authorized nominee in accordance with these Rules.

Client means a person who is the beneficial owner of securities and the financial benefits and who authorizes the CMO to hold such securities in a nominee account.

2. Amendment to Rule 61 (2) :

Regulation of Nominee Account

(a) Application

A CMO authorized by the Commission to hold securities on behalf of its clients and who seeks to hold such securities in a nominee account shall apply to the Commission for approval.

(b) Eligibility Requirements for a Capital Market Operator seeking to Operate Nominee Account

The capital market operator shall:

- i. at all times maintain current assets sufficient to meet its current liabilities;
- ii. maintain documented policies, procedures and internal control measures that ensure the effective management of the Nominee and clients' assets are safeguarded and segregated;
- iii. put in place appropriate risk management controls and procedures that provide substantial assurance of continuity of its nominee business for the foreseeable future;
- iv. indemnify every client of the Nominee against any loss sustained in consequence of a breach by the Nominee of its agreement with its client;
- v. file quarterly returns on the activities of its Nominee to the Commission in the prescribed format on a quarterly basis.

(c) Client's approval

- i. A client's securities shall not be registered in a nominee account without the client's consent. The CMO shall inform the client in writing of the legal effects of registering securities in a nominee account.
- ii. A standard agreement shall be executed between the CMO and the client. The agreement shall specify, amongst other things, the client's specific instruction as well as duties, rights and obligations of the CMO and the client.

(d) Record of clients and financial instruments

- i. A CMO holding securities in a nominee account shall maintain a record of the

securities of each individual client. The record shall always include the names and numbers of clients associated with the securities registered in the nominee account, as well as the number of securities covered by each nominee agreement. The record shall be prepared in such a way that there is no doubt regarding the ownership of financial instruments.

ii. The CMO shall immediately provide a client with any information reasonably required by the client concerning assets held on his behalf.

iii. The CMO shall preserve information on nominee accounts, for 5 years from the end of the business relationship.

(e) Identification of financial instruments registered in nominee accounts

The registrar of securities shall identify securities registered in nominee accounts separately in its records, so that there is no doubt as to which securities are held in nominee accounts.

(f) Bankruptcy of a CMO

In the event that a CMO's estate is subjected to bankruptcy proceedings or a moratorium is granted on its debts, or the CMO is wound up or comparable measures are taken, the client may, on the basis of the record provided, withdraw its securities from the nominee account, provided that their ownership is not disputed.

(g) Rights conferred by securities

No other rights conferred by securities besides the rights provided herein are attached to a nominee account. Voting rights at shareholders' meetings are not attached to nominee accounts (except expressly required to do so in writing).

(h) Permission to accept payments, etc

A CMO is permitted to accept payments on behalf of its clients from individual issuers of securities, including rights to dividends or other payment and rights to new shares in the event of an increase in share capital. The CMO shall keep these payments separate from its other assets.

(i) Supervision and provision of information

i. The CMO shall inform the client of the obligation to provide information to the Commission under this regulation.

ii. The Commission reserves the right to demand from a CMO the disclosure of the identity of the clients registered as owners of securities held in a nominee account at any specific point in time.

iii. Where a nominee holds up to 10% stake in a single company, details of all beneficial owners and their holdings shall

be forwarded to the Commission immediately and thereafter quarterly.

iv. A CMO shall provide the Commission with the information required under this section in the form and within the time limit as specified by the Commission.

(j) Revocation of registration

i. The Commission may revoke the approval of a CMO to operate a nominee account:

(a) If the CMO violates the provision of the rules and regulations of the Commission regarding the provision of information to the Commission on nominee accounts.

(b) If the CMO commits serious or repeated violations of the legal provisions to which its activities are subject.

ii. Before any revocation pursuant to (i) (b) above, the CMO may be given a period of one (1) month to rectify the situation, if rectification is possible in the estimation of the Commission.

iii. Revocation of the CMO's approval to operate a nominee account shall be notified to the board of directors of the CMO in writing.

iv. Where the approval of a CMO is revoked the nominee accounts shall be transferred to another CMO which shall only be operated as a nominee account where the nominee enters into a new agreement with the new CMO.

D. AMENDMENT TO RULES 96 & 97- INVESTMENT ADVISERS

1. Creation/addition of new sub-rule (3) and (4) to Rule 96:

(3) Exemptions to Registration

The following categories of institutions or professionals shall be exempted from registration as Investment Advisers:

(a) The institutions and entities listed in Section 315 of the Investments and Securities Act (ISA) 2007;

(b) A pension advisor who offers investment advice solely on pension products and is registered under the Pensions Act for such activity;

(c) Persons who give general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product;

(d) Members of professional bodies recognized by law who provide investment advice to their clients, provided that such investment advice is solely incidental to the practice of their profession;

(e) Broker/dealers, Fund/Portfolio Managers, Credit Rating Agencies, Issuing Houses and any other registered function

as may be determined by the Commission from time to time, who provides investment advice to its clients solely incidental to the conduct of its registered capital market activity and does not receive any special compensation for providing investment advice; Provided that such Capital Market Operator shall comply with the provisions specified in these guidelines.

(4) Investment Adviser's Representative
All investment advisory functions must be carried out by registered representatives (including undertaking of Investment research and financial planning and shall not be delegated. In addition to the requirements on registration, all investment adviser representatives must be qualified and certified to carry out this function as specified below:

(a) Qualification and Experience

An individual registered as an investment advisers' representative shall have the following minimum qualifications, at all times:

- i. A professional qualification or post-graduate degree in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a recognized degree awarding institution or association; or
- ii. A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.

(b) Certification

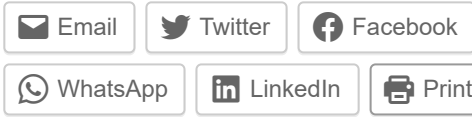
An individual registered as an investment advisers' representative shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

- i. from the Nigerian Capital Market Institute; or
 - ii. from any other organization or institution provided that such certification is accredited by the Nigerian Capital Market Institute.
- c. All existing investment advisers shall comply with these certification requirements within one year of commencement of these guidelines.

2. Creation/addition of new sub-rule (5) to Rule 97:

(5) An investment adviser shall comply with the Rules issued by the Commission on investment advisory services.

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