

THE NIGERIAN CAPITAL MARKET REGULATION

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Introduction

The capital market is a vital instrument of economic growth. It is a market where capital funds (equity and debt) are traded. Thus, it offers corporate business organizations and governments the forum and means to raise long-term funds at a cheaper cost than that of the money market. The Nigerian Capital Market is an important market in Africa, second only to the South African market in terms of sophistication and market capitalization. Government and self-regulatory organizations regulate the capital market because of its importance to the economic growth of the country. The regulation seeks to ensure that the market is fair, efficient and transparent to such an extent as to adequately protect investors and the economy, the latter from systemic effect of market failure.

This article presents an overview of the Nigerian Capital Market and its regulatory structure. It defines a capital market and discusses the functions of a capital market as well as the objectives for the establishment of the Nigerian Capital Market. It traces the evolution of the capital market as well as its regulation, and evaluates the current structure for regulating the market as well as for settling disputes among the market participants. In conclusion, it offers suggestions for a more effective regulation of the market so as to enable it cope with new challenges.

The Capital Market

A capital market is a market for trading capital funds (debt and equity). It is a forum for corporate business organizations and governments to raise long-term capital, and it traditionally exists in contra distinction to the money market in which short-term debt

instruments are traded.¹ The cost of capital in the capital market is lower than that of the money market.²

A capital market also is "...the complex of institutions and mechanisms through which intermediate-term funds and long-term funds are pooled and made available to business, government... and instruments already outstanding are transferred."³

The Functions of Capital Market

The capital market is an instrument of economic growth that performs the functions of capital formation, provision of liquidity and risk management. In the process of capital formation, the market brings together "capital laden investors and capital needy businesses" for equity (common stock and preferred stock) or debt securities (debentures, notes, bonds, commercial paper) transactions.⁴ The capital raiser issues the securities that the investors subscribe for their money. The market provides liquidity,

¹ Remi R. Bakare, *Financial Market Glossary* (Lagos, Nigeria: Prince of Prints Ltd.) s.v. "Capital Markets."

It is important to keep in mind that the recently introduced universal banking has opened the capital market door to commercial banks that were money market institutions only. Hitherto, these banks participated in capital market activities indirectly through their subsidiaries, but they can now do not only through those subsidiaries but also directly through the designated departments. The Guidelines on Universal Banking have enhanced the definition of "banking business" in section 61 of the Banks and Other Financial Institutions Decree (BOFID) No. 25 of 1991. It added "...consultancy and advisory services relating to corporate and investment matters; making or managing investment on behalf of any person; and the provision of insurance marketing service and capital market business..." Thus the strict compartmentalization of financial institutions into money market and capital market institutions respectively is losing most of its significance. However, universal banking raises regulatory concern. Traditionally, the Central Bank of Nigeria regulates banking; the Securities and Exchange Commission regulates the Capital market; while the National Insurance Commission regulates insurance business. To the extent that these agencies will share regulatory functions, there must be cooperation, coordination and a regular exchange of information. The government may need the Finance System Regulatory Coordinating Committee (FSRCC) to effectively do these.

² In the year 2000, more than twenty Nigerian companies and two state governments (Edo and Delta) raised over N17 billion from the Nigerian Capital Market.

³ H.E. Dougall & J.E. Gaumnitz, *Capital Markets and Institutions* (Englewood Cliffs, New Jersey: Prentice Hall Inc., 1975), p.3.

⁴ Allan R. Palmiter, *Securities Regulation* (New York, NY: Aspen Law and Business, 1998), p. 3.

that is, ready marketability of investment instruments, by bringing in contact those who wish to sell and those who wish to buy those instruments. It also offers investors the means to minimize their investment risk through diversification and hedging.⁵ The Nigerian capital market performs all of these important functions.

The Objectives for the Establishment of the Nigerian Capital Market

The objectives for the establishment of the Nigerian Capital Market are largely similar to those for establishing such markets elsewhere in the world; the only addition being the taking into account of our peculiar domestic needs at the time the market was established. In its memorandum to The Panel on the Review of the Nigerian Capital Market (1996), the Securities and Exchange Commission ("SEC"), the apex regulatory agency for the capital market stated the objectives, *inter alia*, as to:

mobilize savings from the surplus economic units for on-lending to deficit units to ensure efficient and effective allocation of scarce financial resources;

create an avenue for the populace to participate in the economy;

reduce over-reliance on the money market for industrial financing;

provide seed money for venture capital development;

promote solvency, efficiency and a competitive financial sector;

encourage corporate financial discipline and accountability;

provide long-term financial sector requirements without increasing the tax burden on the citizens (of Nigeria);

promote Stock Market culture.

⁵ *Id.* Hedging is a means of offsetting investment risk. The manager of a large pool of funds such as a pension fund may hedge his or her exposure to interest rate or currency risk by buying or selling derivatives (futures or options contracts).

Added to the above was the need to provide Governments an avenue to raise long-term capital.⁶

In 1961, at the inception of the Lagos Stock Exchange (now Nigerian Stock Exchange), a foundation council member and the managing director of one of its promoters, the Nigeria Industrial Development Bank Limited ("NIDB") stated the objectives of the Nigerian capital market as follows:

the mobilization of savings for economic growth;

diversion of capital from less productive sectors such as real estate to more productive sectors such as industries;

to augment the banking system and reduce the dependence of Government on taxation for economic development;

to decentralize the ownership of assets and create a healthy private sector;

avoidance of excessive concentration of economic power in the hands of Government;

avoidance of excessive concentration of economic power in the hands of a small private group;

to encourage more even distribution of wealth;

to facilitate co-operation between indigenes and aliens in fostering economic development.

The Panel on the Review of the Nigerian Capital Market affirmed the validity of these objectives, and reported that most of the problems the market set out to solve still remain unsolved. Scarce financial resources flow to properties still; economic power is yet largely in the hands of Government; the economy still over-depend on the banking sector; the private sector is yet unhealthy;

⁶ The first Federal Government of Nigeria Loan Stock was floated in London long before the Lagos Stock Exchange was established.

there are still not enough foreign investors and the problems of distribution and concentration of wealth persist.⁷

When the Lagos Stock Exchange was incorporated, its memorandum of association stated the objectives of the market, *inter alia*, as follows:

- (a) To provide facilities to the public, in Nigeria for the purchase and sale of funds, stocks and shares of any kind and for the investment of money....;
- (e) To correlate the stock-broking activities of its members and facilitate the exchange of information for their mutual advantage and for the benefit of their clients and to offer facilities whereby the public can be informed of prices dealt in by members....;
- (f) To co-operate with the Association of Stockbrokers and Stock Exchanges in other countries and to obtain and make available to members information and facilities likely to be of advantage to them or their clients....

The Evolution of Nigerian Capital Market Regulation

The principal statute that regulates the Nigerian Capital Market is the Investment and Securities of 1999 ("ISA").⁸ The ISA has re-established the Securities and Exchange Commission ("SEC")⁹ as the regulatory apex organisation for the capital market. It also makes extensive provisions to regulate dealings in securities and market participants. It empowers the SEC to make rules and regulations for the capital market, pursuant to which the SEC has made extensive rules following the pattern of those that regulate the major capital markets of the world.¹⁰

⁷ See the *Report of the Panel on the Review of the Nigerian Capital Market*.

⁸ 1999, No.45.

⁹ Decree No. 71 of 1979 (now repealed) originally established the SEC.

¹⁰ See Securities and Exchange Commission, *Rules and Regulations Pursuant to Investments and Securities Act (ISA) of 1999* cf. The United States Securities Act of 1933 – General Rules and Regulations 17 CFR 230 and Rules and Regulations Under the Securities Exchange Act 1934 17 CFR 240. For a compendium of the U.S. securities statutes, rules and forms, see R.W. Jennings, *et al.*, *Federal Securities Laws – Selected Statutes, Rules and Forms 1999 Edition* (New York, New York: Foundation Press,

The Stock Exchange, a major institution of the capital market and a Self-Regulatory Organization ("SRO") also regulates the market and is in turn regulated by the SEC. A self-regulatory organization is "...an exchange or organization of market professionals that performs certain rulemaking, inspection, investigative, and disciplinary functions with respect to its members and their personnel."¹¹ SROs also offer alternative and expeditious dispute resolution avenues for participants in the capital market. They stand to perform useful regulatory roles because they are more familiar with the market and participants than SEC the government regulator.¹² Importantly, however, their actions are subject to review by the SEC under the ISA that also charges SEC with the responsibility for the registration, regulation and disciplining of the SROs.

The ISA and SEC Rules and Regulations of 1999 recognise as well as regulate other SROs such as National Association of Securities Dealers, Capital Trade Points and Securities Clearing and Settlement Agencies. No national association of securities dealers has secured registration but the existence of such an association will enhance coordination of self-regulation. An association of securities dealers must in addition to its memorandum and articles of incorporation have by-laws or rules, code of conduct or code of dealing for members. Likewise, a capital trade point must have listing requirements in addition to its memorandum and articles of association.¹³ The practice of self-regulation is expected to develop with the capital market.

The Central Bank of Nigeria facilitated the development of the Nigerian Capital Market and cooperates with the SEC to regulate the market and the SROs. In 1959, it floated the first Federation of Nigeria Development Loan of N4 million and worked out the arrangement for its marketability. Its representative is on the SEC

1999). The U.S. rules are wider and more advanced, bearing suitable relevance to the age and sophistication of her capital market and legal system.

¹¹ Susan Nash, Robert D. Strahota and Anne H. Sullivan, *Building an Effective Regulatory Structure for an Emerging Securities Market* 7 *Securities Market Journal* (Nigeria), 37, 50.

¹² *Id.*

¹³ See Rules 23 - 25.

and was the chairman of the defunct Capital Issues Commission of 1973.

Securities Exchange

The ISA defines a "Securities Exchange" as including "a Stock Exchange or an approved securities organisation such as a Commodity Exchange, an Over the Counter Market, a Metal Exchange, Petroleum Exchange, Option, Futures and Derivatives Exchanges and such other forms of securities organisation within the meaning of [the] Act."¹⁴ The Stock Exchange is a major capital market institution. The Nigerian Stock Exchange ("NSE") and the Abuja Stock Exchange Plc. ("ASE") dominate the Nigerian Capital Market.

The Lagos Stock Exchange

The Lagos Stock Exchange ("LSE") was established in 1959, although events towards the establishment of the Nigerian Capital Market could be traced to the 1940s.¹⁵ In 1958, House of Parliament appointed a committee under Professor Barback, the Director of the Nigerian Institute for Social and Economic Research to find ways and means of establishing a shares' market in Nigeria. In 1960, following the report of that committee, the Central Bank of Nigeria collaborated with the Investment Company of Nigeria Limited (later known as the Nigerian Industrial Development Bank) and the business community to set up the LSE. It was a private company limited by guarantee but having a share capital. One of the reasons for the establishment of the LSE was to provide avenue for Nigerians with surplus funds to invest locally. Hitherto, they

¹⁴ S. 264.

¹⁵ In 1946, the Colonial Government promulgated the 10-year Plan Local Loan Ordinance that provided for the floatation in London of 300,000 Pound Sterling 3% first Government Stock. In 1957, the Government and Other Securities (Local Trustee Powers) Ordinance came into force, allowing Trustees to invest in the securities of public corporations such as the Coal Corporation, the Electricity Corporation, the Railway Corporation and the Ports Authority. None of these corporations has raised capital from the domestic Capital Market.

invested their surplus funds in London. Another reason was to give Nigerians the opportunity to participate in their economy.¹⁶

The LSE set out to be a purely self-regulatory organization on the terms of its memorandum and articles of association. However, in 1961, because the Government desired to give it statutory protection and exercise some form of control over it, it enacted the Lagos Stock Exchange Act¹⁷ (repealed by the ISA in 1999) granting the Lagos Stock Exchange the monopoly to

restrict the practice of stockbroking, including stockjobbing, in the securities granted quotation by the Exchange, to its members;

admit members, regulate them and report its activities quarterly to the Minister of Finance through the Governor of the Central Bank of Nigeria, and

report to the Minister through the Governor whenever the Council of the Exchange rejected an application for membership.¹⁸

Section 7 of the Lagos Stock Exchange Act gave the Central Bank of Nigeria the right "...either on its own behalf or on behalf of another person, to sell or offer for sale or purchase or offer to purchase stocks and other securities of the Government of the Federation, whether or not they are for the time being granted a quotation by The Exchange." That section recognized the Central Bank of Nigeria ("CBN") as a regulatory agency for the capital market.

The Nigerian Stock Exchange

The Lagos Stock Exchange metamorphosed into the Nigerian Stock Exchange ("NSE") on December 2, 1977,¹⁹ with branches in some

¹⁶ See Research Department of the Central Bank of Nigeria, *Twenty Years of Central Banking in Nigeria*, (1979).

¹⁷ 1961, No. 14

¹⁸ *Id.* ss.3-6.

¹⁹ Following the White Paper on the report of the Pius Okigbo's *Financial System Review Panel* (1976). The Federal Government set up that panel in April of that year to study

major cities of Nigeria. The Exchange has three categories of members, namely council members, ordinary members and dealing members. The members of Council are drawn from dealing and ordinary members. The National Council of the Exchange is the governing and the highest policy-making authority, and it functions through committees charged with various responsibilities that include listing and delisting of securities, admission of new members and discipline. The powers and functions of the Council include

Enforcement of the Articles as well as the Rules and Regulations of the Exchange;

Investigating complaints from investors and members as well as settling disputes investors and brokers or members *inter se*;

Policing the market, and taking disciplinary measures against erring members;

Making, amending or revoking regulations and prescribing fees for the effective operation of the Exchange;

Granting quotation to companies, and deciding to delist, suspend or withdraw quotation from a quoted company when it deems it necessary;

Appointing committees suitable to the smooth functioning of the Exchange.²⁰

Dealing members combine the functions of stockbrokers and jobbers. The Exchange requires dealers to deposit a sum of money

the structure and operations of the Nigerian financial system and to make recommendations for improvement.

²⁰ For the mode of constituting the Council and its functions, see the Stock Exchange Articles of Association (as amended). See also H.I. Alile and A.R. Anao, *The Nigerian Stock Exchange in Operation*, (Lagos: Jeromelaiho & Associates for the Nigerian Stock Exchange, 1986), pp.29-30. The branches of the Stock Exchange also have branch councils. Although they are not autonomous, they may make by-laws for effective functioning of their respective trading floors. They do initial vetting of application for membership and make recommendations to the National Council.

with, pay annual dealership fee and maintain an effective presence in at least two floors of the Exchange.²¹

The NSE has General Listing Requirements. These are a set of rules and regulations on companies that may be admitted to listing on the Exchange and the conditions for quotation of securities. They also specify payment of listing fee, the rights attached to the shares quoted on the Exchange and other obligations of the listed companies.²²

On April 30, 1985, the Federal Government established the Second-tier Securities Market ("SSM") for businesses that could not meet the Listing Requirements of the NSE. The SEC gave the purpose for which the SSM came into operation as "...providing stock market access to small businesses at less demanding admission rules/costs than full quote as a means of creating opportunities for economic growth and employment through the growth of small businesses."²³ The SSM provides "a wider and cheaper source of funding for small/medium...enterprises."²⁴

The Central Securities Clearing System

In 1992, the NSE incorporated the Central Securities Clearing System Limited ("CSCS") as a part of its effort to modernise and make the Stock Exchange more efficient following the recommendation of the International Finance Corporation. The CSCS is a subsidiary of the Stock Exchange, its clearinghouse and depository. As a clearinghouse it facilitates the validation, delivery and settlement of securities transactions, and as a depository, it facilitates the exchange of stock and bond certificates as well as

²¹ For further reading on membership and governance of the Exchange. see H.I. Alile and A.R. Anao, *supra*, 19-33.

²² Generally the Listing Requirements permit free transferability of fully paid-up shares. All listed companies must advertise a proposed Annual General Meeting conspicuously in at least two widely read newspapers at least 7 days before the meeting. The subscription monies pending allotment and return of funds to the subscribers must be deposited in a designated bank account appointed by the Issuing House and the Company. All accrued interests must be paid to the Company to offset part of the cost of the Issue. The Council of the Exchange, its policy-making organ may at its discretion add to or subtract from the Listing Requirements at anytime.

²³ *Securities Exchange Commission Quarterly* Vol. 2, No. 1 (March 1985), p.1.

²⁴ *Id.*

offers custodian services. The NSE owns 51 per cent of its shares while stock registrars, stockbrokers, investment banks and other nominees hold the remaining 49 per cent.

Because of an apprehension that the CSCS will not be able to efficiently cope with the volume of transactions on the securities market, the SEC and the National Council on Privatisation ("NCP") have considered the establishment of another clearinghouse. However, the NSE, in a preemptive move to forestall the establishment, is willing not only to reduce its shareholding in the CSCS by admitting more shareholders, but also to change the name of the clearinghouse for a more national one.²⁵

The Abuja Stock Exchange

The Abuja Stock Exchange Plc. ("ASE") was incorporated on 17 June 1998. Its promoters include the CBN, the Nigeria Reinsurance Corporation, the Nigeria Bank for Commerce and Industry, the Nigeria Industrial Development Bank and the National Insurance Corporation Plc. The ASE is an automated market as it has a trading system called the Abuja Stock Exchange Automated Trading System ("ASEATS"). The system has software module for Initial Public Offering ("IPO") of securities and an order-driven, screen-based facility for the secondary market as well as security clearing and depository facility. Thus, the market is accessible on-line and efficient. With these facilities, the Nigerian Capital Market is set to join the modern major markets of the world. The ASE has three subsidiaries, namely Securities Clearing and Depository Limited ("SCDL"), ASE Properties Limited and ASE Publications Limited.

The SEC registered the ASE to create a level ground and an environment conducive for competition by qualified capital market institutions. The monopoly to deal in shares and stocks that the Lagos Stock Exchange Act granted the LSE and, albeit, the NSE, was contrary to free market enterprise. Therefore, in 1999, the ISA repealed the Act. The repealed CIC Decree and successive SEC Acts provided for the licensing of multiple stock exchanges but

²⁵ Williams Ekanem, "NSE Opens Up CSCS for New Shareholders" *Punch*, 19 January 2002, p.24.

only the NSE was registered up till 1998. The Federal Government permitted the establishment of the ASE following the recommendation of the Odife Panel on the review of the Nigerian Capital Market in October 1996 that a national stock exchange of an international standard be established in Abuja. The ASE has added to the number of SROs on the capital market.

The ASE with its automated trading system is one of the most remarkable innovations by the SEC. In consonance with that, the SEC has issued comprehensive guidelines on dual listing and multiple trading of securities in the Nigerian Capital Market.²⁶ Rule 109 (c) of the SEC Rules and Regulations²⁷ made pursuant to the ISA permits issuers to list their securities on more than one exchange since the listing is a business decision of the issuer. Rule 119 (A) provides that "...a Securities Exchange shall by its rules permit the trading of a security not listed on it provided that such security has been registered and listed on any recognised Securities Exchange." The Securities Exchange has the discretion to "impose conditions for granting such "permitted trading status" and file it with the [SEC]."

By virtue of Rule 42 (1), once it has registered with the SEC, a broker or dealer may be a member of more than one Exchange. "Where the broker effects transactions on any Exchange and over-the-counter Market, the appropriate Self Regulatory Organization shall be the Exchange and the Association of Securities Dealers."²⁸ In order to preserve the sanctity of dual listing, Rule 136 (8) prohibits Securities Exchanges from preventing their dealing members from trading on any other recognised Exchange or penalising them if they did. However, the Rule recognises that the Exchanges involved may have a Memorandum of Understanding ("MOU") on the subject matter that they must file with the SEC. Rule 122 (4) (iii) prohibits arbitraging by stipulating that the "highest closing price of a security on any of the exchanges shall be the opening price on all the other exchanges."

²⁶ *SEC Guidelines on Dual Listing and Multiple Trading of Securities* (2000).

²⁷ *Securities and Exchange Commission (SEC) Rules and Regulations Pursuant to Investments and Securities Act (ISA) of 1999* (hereinafter referred to as the SEC Rules).

²⁸ *Id.*, Rule 42 (4).

The Federal Government curiously and unilaterally converted the ASE into a Commodities Exchange on 8 August 2001 thereby creating another monopoly in share trading. This action has raised a number of questions – Why should the Government sacrifice competition for monopoly? Should the establishment of a Stock Exchange be a political decision rather than an economic decision? Could the Government validly convert the ASE to a Commodities Exchange? What will the ASE really be?²⁹ One may add, why take so much trouble making rules for multiple stock exchanges? How do we optimise the gains of the facilities on the ASE? How do we truly internationalise our capital market?

The Central Bank of Nigeria

The Central Bank of Nigeria ("CBN") came into operation in 1958, not only as banker's bank, but also to regulate the Nigerian Capital Market in some areas of operation. The debates in the House of Representatives on the desirability of establishing the bank revealed the nexus between it and the capital market. When the Dr. K.O. Mbadiwe proposed a private member's motion for the establishment of the bank, the expatriate Financial Secretary to the Government opposed the motion because he was of the opinion that:

[y]ou must have institutions, such as banks, insurance companies, building societies, mortgage societies, finance houses and the like, who are prepared to buy and sell securities at short notice. You must have a highly organised stock exchange through which these security (sic) can be marketed.³⁰

Though the Government established the CBN before the Lagos Stock Exchange, the bank came to regulate the capital market. Section 4 of the Central Bank Act, 1958³¹ charged the CBN "to promote monetary stability and sound financial structure in Nigeria." Sections 39 of the same Act enjoins the CBN to cooperate

²⁹ See Ahmed Abdulai, *supra.*, 30

³⁰ See Research Department of the Central Bank of Nigeria, *Twenty Years of Central Banking in Nigeria*, (1979), p.38, quoting from the *House of Representatives Debates*, First Session, March/April 1952, Vol.2.

³¹ Cap.30, Laws of the Federation of Nigeria and Lagos, 1958.

with other banks in Nigeria to promote and maintain adequate and suitable banking services as well as maintain management ethics in the banking system and to pursue other policies that are in the national interest. Pursuant to its powers,³² the CBN through its credit guidelines regulate the volume of money in the economy, and albeit the money available for investment in the capital market.³³

It also is significant to keep in mind that the fact that the CBN was germane to capital market regulation prompted the Government to make its representative the chairman of the Capital Issues Commission of 1973 and a member of the Securities and Exchange Commission ("SEC") of 1979. These Commissions successively have been at the apex of capital market regulation.³⁴

The repealed Lagos Stock Exchange Act³⁵ required the Stock Exchange to submit quarterly reports of its activities to the Minister of Finance through the Central Bank whose governor must comment on the writing so as to enable the Government to monitor and regulate the capital market.³⁶ The Federal Government policy guidelines have revealed that the CBN has been able to assist it in the realisation of its economic objectives.³⁷

The Capital Issues Committee/Commission

In 1962, the Government set up the Capital Issues Committee as an "...ad-hoc committee...with the basic understanding that, if

³² Under the Central Bank of Nigeria (Amendment) Decree No. 3 of 1968, s.2.

³³ *The Central Bank of Nigeria Monetary, Credit, Foreign Trade and Exchange Policy Guidelines for Fiscal 2002/2003 (Monetary Policy Circular No. 36)* seeks "to subdue inflation to a single digit over the two year-period. Consequently, the central focus [included] effective control of anticipated liquidity injection...in order to ..." enhance "...greater access to credit for the real sector" of the economy – p.9.

³⁴ Curiously, the Securities and Exchange Act, No. 29 of 1988 reenacted as a chapter of the Laws of the Federation of Nigeria, 1990 (which Act has been repealed by the Investment and Securities Act, No.45 of 1999) left out the CBN from the then re-established SEC. It also left out representatives of the Federal Ministries of Finance and Trade (Corporate Affairs Commission from 1990) – see section 2.

³⁵ S.5 (1).

³⁶ *Id.* s.5 (2).

³⁷ See G.A. Olawoyin, *The Nigerian Capital Market*, University of Ife Nigeria Inaugural Lecture Series 46 (Ife-Ife: University of Ife Press, 1980), p.8.

experience and market development justified it, a more formal structure would be established with a fundamental objective of providing the mechanism of regulating the capital market."³⁸ This step was consistent with the fact that as a private company, the Stock Exchange began as a self-regulatory organization. Even the 1961 Stock Exchange Act was terse in content. The Committee was purely advisory, and although the Stock Market respected its decisions, they lacked legal force and sanction. It operated as a department of the CBN. Its ad-hoc status made it idle on the capital market to the extent that it handled only twenty issues in the fourteen years of its existence.³⁹

In 1973, the Federal Government enacted the Capital Issues Decree⁴⁰ (now repealed) creating the Capital Issues Commission ("CIC") that replaced the Capital Issues Committee.⁴¹ Under the Second National Development Plan, the Government had promulgated the Nigerian Enterprises Promotion Decree in 1972 to pursue the first phase of indigenisation of foreign enterprises doing business in Nigeria. It envisaged that capital market activities would increase and raise more than ever the need to protect investors. It found the Capital Issues Committee incompetent for that important role.⁴² The Capital Issues Decree charged the CIC with the duty of determining:

the price at which the shares or debentures of a company are to be sold to the public either through offer for sale or by direct issue;

the timing and amount of any subsequent public issue of shares or debentures by that company; and

³⁸ J.O. Sanusi, "Capital Market in Nigeria" in *Nigerian Commercial Laws: Problems and Perspectives*, ed. I.A. Ayua. (Kaduna: Layon Security and Colour Printers), p. 136.

³⁹ Olawoyin, *supra*.

⁴⁰ 1973, No.14.

⁴¹ The CIC comprised the Chairman who was a representative of the CBN and one representative each of the Federal Ministries of Finance, Trade, Economic Development and Reconstruction and Industries as well as a representative of the Stock Exchange, and three other persons appointed by the Minister of Finance. The enabling Decree clearly gave the leadership role to the CBN.

⁴² Olawoyin, *supra* p.17.

such other matters incidental or supplementary to the foregoing as the Commission may at its discretion determine.⁴³

The Capital Issues Decree also penalized companies that issued a prospectus inviting members of the public to subscribe to their shares or debentures without the prior approval of the CIC as regards the price at which the shares or debentures were to be sold and the timing as well as amount of the sale. The fine payable by the company that contravened the law was ten thousand naira (or about twelve thousand US dollars then). Any of its officers found guilty paid a fine in like sum or went to jail for at least three years in the alternative.⁴⁴ Any person with grievances relating to the decision of the CIC could appeal not to the courts but to the Commissioner (Minister) for Finance whose decision on the matter was final.⁴⁵ The Capital Issues Decree never intended to regulate the Stock Exchange, and the CIC never did, but it had statutory powers and performed more functions than the Committee it replaced. It approved fifteen issues in its lifetime.⁴⁶

The Capital Issues Decree limited the jurisdiction of the CIC to public companies only.⁴⁷ Because of that many of the companies affected by the first phase of indigenisation escaped its regulatory oversight. Only 28 of the 430 of the companies were public companies. Therefore, to rectify the situation at the second phase in 1977, the Federal Government empowered the CIC to determine the prices of the shares of all enterprises that were indigenised whether public or private.⁴⁸

The volume of securities transactions during the second phase of indigenisation sensitised the Federal Government to the

⁴³ *Id.* s.1 (2).

⁴⁴ *Id.* s.4.

⁴⁵ *Id.* s.6.

⁴⁶ See Alile and Anao, *supra.* . 39.

⁴⁷ By section 4(1) these are companies which by their articles of association are "not precluded among other things, from issuing invitation to members of the public to subscribe for shares or debentures" whether or not such shares were to be dealt in on a Stock Exchange.

⁴⁸ See the Nigerian Enterprises Promotion Decree Act, No. 3 of 1977 (since repealed), s.9.

inadequacy of the CIC and led to the establishment of the Securities and Exchange Commission.

*The Securities and Exchange Commission*⁴⁹

The Securities and Exchange Commission ("SEC") is the regulatory apex organisation of the Nigerian Capital Market. The Federal Government established it informally in 1977 following the report of the Committee on the Review of the Nigerian Financial System (1976).⁵⁰ That Committee recommended that the SEC be established to, *inter alia*, "register all securities, proposed for offer or sale to the Nigerian public or for private offer if they are to be kept ultimately by persons other than those to whom the offers were made, register stock exchanges and securities dealers and their agents...."⁵¹ The Government gave SEC legal status in 1979 through the Securities and Exchange Commission (SEC) Act of that year.⁵² In 1988, the Government repealed that Act and re-enacted it as the Securities Exchange Commission Act of 1988 (later 1990).⁵³

The 1988 Act re-established the SEC with following functions:

determining the amount of, the price and the time at which securities of a company are to be sold to the public either through offer for sale or subscription;

registering all securities proposed to be offered for sale to, or for subscription by, the public or to be offered privately with the intention that the securities shall be held ultimately other than by those to whom the offers were made;

maintaining surveillance over the securities market to ensure orderly, fair and equitable dealing in securities;

⁴⁹ For more reading on the Securities and Exchange Commission up till 1995, see *SEC Evolution and Functions*, (Lagos, Nigeria: Securities and Exchange Commission)

⁵⁰ Otherwise known as the Okigbo Committee.

⁵¹ P.N.C. Okigbo, *Nigeria's Financial System, Structure and Growth*, (Essex: Longman Group, 1981), p.212.

⁵² 1979, No. 71.

⁵³ 1988, No.29 (re-enacted in 1990 as a chapter of the Laws of the Federation of Nigeria, now repealed by the Investment and Securities Act, No 45 of 1999 that has re-established the SEC with modified and expanded functions.)

registering stock exchanges or their branches, registrars, investment advisers, securities dealers and their agents and controlling and supervising their activities with a view to maintaining proper standards of conduct and professionalism in the securities business;⁵⁴

protecting the integrity of the securities market against any abuses arising from the practice of insider trading;

acting as regulatory apex organisation for the Nigerian capital market including the Nigerian Stock Exchange and its branches to which it would be at liberty to delegate powers;

reviewing, approving and regulating mergers, acquisitions and all forms of business combination;

creating the necessary atmosphere for the orderly growth and development of the capital market; and

undertaking such other activities as are necessary or expedient for giving full effect to the provisions of this Act.⁵⁵

The functions of the SEC were a remarkable expansion of those of the Capital Issues Commission that it replaced. The Act clearly for the first time made SEC the apex regulatory organisation of the capital market with powers to register Stock Exchanges and market participants as well as promote capital market development. SEC could with the approval of the Federal Executive Council make regulations for the purpose of giving effect

⁵⁴ Section 12 of the Act stipulated the procedure for the registration of Stock Exchanges and National association of Securities Dealers. An application for registration "shall be accompanied by the rules of the Stock exchange and such other information and documents as the Commission may...prescribe...in the public interest or for the protection of investors." The SEC must be satisfied that the rules of a proposed Stock Exchange "include provisions for the expulsion, suspension or discipline of a member for conduct or procedure inconsistent with the just and equitable principles of the trade. It was clear then that the Act permitted self-regulation under the oversight of the SEC. Section 19 permitted any person aggrieved by any decision of the SEC on an application made to it to apply to the Minister of Finance for redress. The Minister's decision was final.

⁵⁵ S.6

to the provisions of its enabling Act.⁵⁶ In addition, the act created civil liabilities and offences as well as gave the Federal High Court jurisdiction not only over them but also over violation of the rules and regulations made under that Act.⁵⁷

One important function of the SEC that a good number of market operators and scholars found inappropriate was its determination of issue and offer price of securities, a role that its predecessor the CIC also performed. That role contradicted the tenets of free market and opposed a healthy development of the capital market. The regulatory organisation ought to have ensured an orderly and transparent market, and left the market to efficiently determine securities prices.⁵⁸ In response to the observations, the SEC ceased in 1993 to determine prices of securities, and transferred the function to issuing houses under prescribed guidelines. The issuing houses also inherited its allotment functions. This initiated the deregulation of the capital market as announced in the federal budget speech of that year.⁵⁹

In 1990, the Companies and Allied Matters Act ("CAMA")⁶⁰ came into effect. Part XVII of it covered dealings in the company securities and charged the SEC with its administration. Issues covered by the Part included public offer of securities, registration of securities, prospectuses, allotment, unit trusts, reconstruction, mergers and takeovers as well as insider trading. The Investment and Securities Act ("ISA")⁶¹ has repealed Part XVII of the CAMA and the Securities and Exchange Commission Act of 1990. All of the repealed part is now Part XVIII of the ISA.

The SEC has been re-established and recomposed by Part I of the ISA. That part also prescribes a Code of Conduct for its members. It

⁵⁶ S.23. The SEC in 1989 made *SEC Regulations, 1989* pursuant to its rule-making power, laying the foundation for securities regulation in Nigeria.

⁵⁷ See ss.25-27.

⁵⁸ See Alile and Anao, *supra.* . 43-44. See also Ahmed Abdulai, "History of the Nigerian Capital Market: The Legal Perspective" (paper presented at the seminar on The Securities Laws and the Capital Market organised by the Securities and Exchange Commission, Abuja, Nigeria, 5-6 December 2001.)

⁵⁹ See *SEC Evolution and Functions, supra.* . 32.

⁶⁰ Cap.59, Laws of the Federation of Nigeria, 1990.

⁶¹ 1999, No.45

is expected that the SEC will play a vital role in the making and implementation national development and poverty alleviation policies. According to a learned solicitor and capital market consultant, "...the new SEC is designed to be pro-active by taking the Capital Market to the grassroots with a clearly defined twin objective, that is, ensuring nationwide participation in stock market activities as well as the mobilisation of savings at the grassroots."⁴²

In order to enable the SEC to effectively protect investors and superintend capital market development, section 8 of the ISA charges, *inter alia*, to:

regulate investments and securities business in Nigeria;

register and regulate Securities Exchanges, Capital Trade Points, Futures, Options and Derivatives Exchanges and any other recognised Investment Exchanges;

register securities to be offered for subscription or sale to the public;

render assistance in all aspects including funding as may be deemed necessary to promoters and investors wishing to establish Securities Exchanges and Capital Trade Points;

prepare adequate guidelines and organise training programmes and disseminate information necessary for the establishment of Securities Exchanges and Capital Trade Points;

register and regulate corporate and individual capital market operators as well as well as capital market advisers and consultants such as solicitors, accountants engineers and surveyors;

register and regulate the workings of venture capital funds and collective investments schemes including mutual funds;

register rotating savings schemes such as *esusus* and *adashes* for statistical purposes.

⁴² Ahmed Abdulai, *supra* . . . 27

facilitate the establishment of nationwide system for securities trading in the Nigerian capital market in order to protect investors and maintain fair and orderly markets;

facilitate the linking of markets in securities through modern communication and data processing facilities in order to foster efficiency, enhance competition and increase information available to brokers, dealers and investors;

act in the public interest having regard to the protection of investors and maintenance of fair and orderly markets, and to this end to establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by Securities Exchanges and Capital Trade Points;

keep and maintain separate registers of foreign direct investments and foreign portfolio investments;

register and regulate central depository companies, clearing and settlement companies, custodians of securities, credit rating agencies and such other agencies and intermediaries;

protect the integrity of the securities market against the abuses arising from the practice of insider trading;

act as regulatory apex organization of the Nigerian capital market including the promotion and registration of self-regulatory organizations and capital market and trade associations to which it may delegate its powers;

review, approve and regulate mergers, acquisition and all forms of business combinations;

conduct research into all, or any aspect of the securities industry;

prevent fraudulent and unfair trade practice relating to the securities industry;

perform such other functions and exercise such other powers not inconsistent with the Act as are necessary or expedient for giving full effect to the provisions of the Act:

Pursuant to its powers under the ISA, the SEC has established four specialized departments to regulate securities exchanges, capital market operators including investment advisers and consultants, collective investment schemes, and business combinations respectively. In addition, it has upgraded the Research and Market Development Division to a full department and established a Compliance and Enforcement Department. It has also created the Department of Human Resources out of the Administrative Department.

The Investment and Securities Act

The Federal Government enacted the Investment and Securities Act ("ISA")⁶³ in 1999 following its acceptance of most of the recommendations of the Panel on the Review of the Nigerian Capital Market of 1996 (Odife Panel). For the first time, Nigeria has a comprehensive statute for the regulation of its Capital Market. The Act focuses, not only on the market institutions, but also the trade in securities. Its overall objective is to ensure a fair, orderly and transparent market. Hitherto, Capital Market statutes and rules were scattered in several statute books and were outdated. The Act has repealed the Lagos Stock Exchange Act, 1961 and the Securities and Exchange Commission Act, 1990 as unsuitable to a modern market.. In addition, it repealed the provisions of Part XVII of the Companies and Allied Matters Act, 1990 and incorporates it verbatim as its Part VIII.⁶⁴

The ISA has two hundred and sixty-five Sections divided into Sixteen Parts as well as Four Schedules. Part I reestablishes the SEC and stipulates its membership as well as their code of conduct. Part II provides the functions and powers of the SEC. These functions and powers are broader than the rather restrictive one under the repealed SEC Act. Part IV gives SEC financial autonomy to

⁶³ 1999. No.45.

⁶⁴ Cap.59. Laws of the Federation of Nigeria, 1990.

"charge, retain, and utilise for its purposes fees collected for the services rendered by it" under the Act.⁶⁵

Part V empowers the SEC to register Securities Exchanges and Capital Trade Points. By virtue of this Part and other provisions of the Act, the SEC could register and regulate more Stock Exchanges in Nigeria. Part VI regulates the registration of capital market operators. The latter include securities dealers, stockbrokers, sub-brokers, jobbers to issues of trust deeds, registrars to issues investment bankers, issuing houses, underwriters, portfolio managers, investment advisers, and such other intermediaries as the SEC may licence in accordance with the Regulations made under the Act. Under this Part, the SEC for the first time in Nigeria has been registering solicitors, engineers, surveyors and other professionals before they could be consultants in the capital market.⁶⁶ However, the Federal High court recently decided that the SEC has no power to register solicitors whose participation in the capital market is merely incidental to their practice of their profession.

In *Prof. A.B. Kasunmu SAN v. Securities and Exchange Commission & Anor.*,⁶⁷ the plaintiff asked, *inter alia*, for:

3. A declaration that the [SEC] has no rights or powers under the provision of the ISA or under any other law to demand, direct and/or insist that the plaintiff must be accredited and registered with the [SEC] before the plaintiff can act or be appointed as a Solicitor to any capital market transaction and more particularly before it (the Plaintiff) can act as Solicitor to a company in a public issue.
4. A declaration that any regulation made by the [SEC] requiring a Solicitor to be accredited and registered with the [SEC] before the Solicitor can act in a capital market transaction is illegal and ultra vires and inconsistent with the provision of [the ISA].

⁶⁵ ISA, s.15 (1).

⁶⁶ SEC Rule 39 elaborates on who should register as well as the requirements and method of registration.

⁶⁷ Suit No. FHC/L/CS/70/2002 (Unreported).

The plaintiff has been, at all material times, the Solicitor to Chartered Bank Plc. The bank intended to publicly issue securities so as to raise fund on the Nigerian Capital Market, and it informed the plaintiff to be the solicitor to the issue. The SEC refused to permit the plaintiff to act in that capacity unless the SEC accredited and registered it under sections 8(f), 9(b), 29, 30, 258(1) and 264 of the ISA as well as Rule 39 of the SEC Rules and Regulations made pursuant to section 258 of the ISA. The SEC contended *inter alia* that the phrase "... and such other intermediaries associated with the securities Industry..." in section 29(1) of the ISA included Auditors, Reporting Accountants, Valuers and Legal Practitioners in the Market Operators registrable by the SEC. Consequently, the plaintiff sought the above declarations, arguing successfully that the phrase excluded Legal Practitioners to the extent that section 29(1) of the ISA specifically mentions those that the SEC must register. The plaintiff persuaded the court further that only such other intermediaries that buy, sell or deal in securities on the capital market must be registered with the SEC, and the plaintiff does not deal in securities within the meaning of section 264 of the ISA. In addition, the preparation by the plaintiff of the offer documents, confirmation of the facts in the documents and like matters is incidental to the profession of a Legal Practitioner.

The court held that:

Beside the fact that a Legal Practitioner is not specifically mentioned in sections 29(1) and 30 of the [ISA], section 264 of the same Act goes on to expressly enact that an Investment Adviser does not include a Solicitor and Advocate or Accountant in practice whose carrying out of the business is solely incidental to the practice of his profession. It is therefore my view ...that it is not the necessary intendment of the Act to include Legal Practitioners amongst those to be registered by the Securities and Exchange Commission.⁶⁸

If only a Capital Market Operator is required to be registered in view of Section 8(f) of the act which confers powers on the [SEC] to register and regulate Corporate and Individual Capital Market Operators and if by the combined effect of 29(1), 30 and 264 of

⁶⁸ Id., p.22.

the act, a Legal Practitioner whose carrying out of business is solely incidental to the practice of his profession is not a Capital Market Operator and is not to be registered, then Rule 39 of the Rules and Regulations which provides that Legal Practitioners and other professionals whose opinion directly impact on Capital Market transactions are also subject to registration by the [SEC], is at variance with the necessary intendment of the Act, and is inconsistent with the express provisions...of the principle (sic) Act and so it is invalid

Parts VII and VIII of the ISA deal with the duties of SEC to register securities⁶⁹ and to maintain registers of interest in securities as well as public offer of securities and invitation to the public to subscribe securities respectively. These Parts require extensive disclosure of material information, and information is the means by which securities regulation is enforced and investors are protected. The items of information in filings with the SEC reflect what investors will consider material to their decisions. The latter Part contains anti-fraud provisions and penal sanctions for the violation those provisions. Part X penalises the creation of "false market in securities" and "insider trading abuses".⁷⁰

Part IX deals with the conduct of securities business,⁷¹ and empowers the SEC to prescribe "margin requirements"⁷² so as to discourage excessive use of credit in securities transactions. Part XI regulates mergers, take-overs and acquisitions,⁷³ while Part XII (inadvertently numbered Part XI) deals with the regulation of collective investments⁷⁴ such as unit trust, investment trust, pension fund, community savings and venture capital.

⁶⁹ SEC Rules 40 and 107 elaborate on registrable securities, the registration requirements and the method of registration. The registration provisions are very important because it is not always clear what instrument is registrable, and a failure to register a registrable instrument has dire legal consequences, including imprisonment.

⁷⁰ See also SEC Rules 106-118 (Ss.81-89 of the ISA for Rules 111-118). Rule 110 prohibits the use by securities traders of manipulative and deceptive devices and contrivances to defraud any person. It also defines "insider"

⁷¹ See generally sections 74-80 of the ISA for SEC Rules 98-104.

⁷² "Margin" is the amount a customer deposits with the broker when he borrows from the broker to buy securities.

⁷³ See also SEC Rules 228-238

⁷⁴ See also SEC Rules 239-284

Part XIII (wrongly numbered Part XII) provides for the setting up of Investors Protection Fund (IPF), while Part XIV (also wrongly numbered) regulates borrowing by States, Local Governments and other Government agencies. The latter Part is an encouragement to the Governments and their agencies to raise funds on the Capital Market for their capital projects.

The Securities and Exchange Commission Rules and Regulations

In 1999 the SEC made extensive Rules and Regulations pursuant to the ISA.⁷⁵ These Rules and Regulations replaced the SEC Regulations of 1989. The SEC prescribed them "...to effectively and efficiently carry out the objectives of securities regulation as embedded in the Investment and Securities Act...." SEC expects also that they will "...provide participants (regulated persons) in the capital market with more precise notice of what is expected of them, what conduct will be sanctioned and also [promote] fairness and equality of treatment...."⁷⁶

The SEC Rules are in twelve parts (A to L) with seven schedules, and are of "general and specific applications."⁷⁷ They regulate "securities exchanges; capital market operators; securities offered for sale or subscription; mergers, acquisitions and combinations, collective investment schemes, investors protection fund borrowing by states, local government and other government agencies amongst other things."⁷⁸ SEC recognises that rule making is a continuous process, and the existing rules may be amended and more made, especially to regulate areas of the capital market that are not existent in Nigeria presently.⁷⁹

Resolution of Disputes in the Capital Market

The defunct SEC, acting ostensibly under section 24 (1) of the repealed SEC Act of 1990, set up and operated an Administrative Hearing Committee ("AHC") to handle matters of alleged violation

⁷⁵ See note 25 above.

⁷⁶ SEC Rules, p.2.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*, pp. 2-3.

of The SEC Act and Regulations. If it set up the AHC as a model after the American SEC Administrative Committee, a *quasi-judicial* forum for resolving capital market disputes in the United States ("US"), the former differed from the latter. The American AHC is properly integrated into the US judicial system. It follows the due process of the law, and is headed by a Federal judge of the High Court level who also is a full-time employee of the SEC. Appeals from it go to the US Court of Appeals. The Nigerian AHC differed in all these regard. The Odife Panel recommended that a judicial forum be set up with the Nigerian Capital Market in place of the AHC to curtail the latter's "...usurpation of judicial powers... and the pretences at the dispensation of justice by SEC...."⁸⁰

Section 224 (1) of the ISA establishes the Investments and Securities Tribunal ("IST") to interpret securities regulation and resolve disputes that may arise in the capital market.⁸¹ Section 224 (2) empowers the Minister of Finance to specify the matters and places in relation to which the IST may exercise jurisdiction. However, section 234 of the Act empowers the IST to adjudicate on matters relating to

the interpretation of any law, enactment or regulations to which this Act applies;

disputes between the Commission (SEC) and a Securities Exchange or Capital Trade Point;

disputes between capital market operators and the Securities Exchanges or Capital Trade Point;

disputes between capital market operators;

disputes between capital market operators and their clients; and

⁸⁰ See Ahmed Abdulai, *supra.*, 24 quoting the observation of the Odife Panel.

⁸¹ See also section 234 (1). For more reading on resolution of disputes in the Nigerian Capital Market, see J.T. Agbadu-Fishim, "Dispute Resolution Under the Investment and Securities Act of 1999" *The Nigerian Stockbroker* Vol.1 no.4 (October-December 2000): 19-25; Ahmed Abdulai, *supra.*, 19-24; and Linus O. Okeke, "One Step Forward, Two Steps Backward: An Examination of the Fate of the Investments and Securities Tribunal under Nigeria Legal Order" *Journal of International Financial Markets* vol. 1, issue 7 (December 1999): 308-318.

disputes between quoted companies and the regulators or the Securities Exchanges.

While the Minister of Finance may delimit the territorial jurisdiction of the IST, I submit that he cannot reduce the matters under section 234 that the IST may adjudicate on but could only add to them.

The IST consists of nine members who are known as Capital Market Assessors to be appointed by the Minister of Finance, and one of whom shall be the chairman. The chairman must have been a legal practitioner for not less than fifteen years with experience in capital market matters. An Assessor must be knowledgeable in the laws, regulations, norms, practices and operations of the capital market. He may hold office for a term of five years.⁸² The Minister of Finance shall appoint a secretary for the IST, but it is not clear if the secretary shall be one of the Assessors and what his qualification should be if he is not an Assessor.⁸³

Any person who is aggrieved by any action or decision of the SEC under the ISA may institute an action before the IST or appeal to it within thirty days of the decision or as the IST may permit.⁸⁴ The IST must dispose of any matter before it with finality within three months of the date the action commenced.⁸⁵ No civil court shall have jurisdiction over any matter that the ISA empowered the IST to determine.⁸⁶ If any person, including the SEC, is dissatisfied with a decision of the IST, he (it) may appeal to the Court of Appeal on points of law, and notify the Secretary to the IST, within thirty days of the decision.⁸⁷

The decision of the IST must be in writing and its orders or sanctions may include, but are not limited to, fines, suspension, withdrawal of licences, orders for specific performance and restitution.⁸⁸ On an

⁸² ISA, ss.225-227.

⁸³ *Id.*, s.232.

⁸⁴ S.236 (1).

⁸⁵ S.236 (5). It cannot extend the period. See *Falae v. Obasanjo* [1999] 6 N.W.L.R. (pt. 606) 283.

⁸⁶ S.242. The IST co-exists with civil courts by virtue of section 315 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

⁸⁷ S.243.

⁸⁸ S.241 (1).

appeal to it, it may confirm, modify or set aside any order or decision of the SEC.⁸⁹

It appears that the IST has no jurisdiction over criminal matters. Section 235 provides that where in the course of its investigation of any matter, the SEC discovers evidence of possible commission of crime, it shall pass the information to the appropriate criminal prosecution authority for prosecution in the courts of law.

Conclusion

Capital market regulation has evolved with the development of the Nigerian Capital Market. From the overview here presented, the legislative authority has responded to the developmental challenges the market has posed from time to time. As the market develops regulation and regulators will have to respond to specialised areas of the market, for instance derivative and commodities trade. The introduction of universal banking raises regulatory concern also. Who of the CBN, the SEC and other regulators will regulate what? The Federal Government will have to revitalise the Finance System Regulatory Coordinating Committee to coordinate the regulators and facilitate the exchange of information among them.

In addition to the above, the Federal Military Government may have to reconsider its decision on the ASE so that we can have an automated Stock Exchange, and not only Commodity Exchange, suitable to the internationalisation of the Nigerian Capital Market. One expects that such an Exchange will spur the NSE to take up the challenges of efficiency suited to the modern day market.

The current SEC Rules and Regulations are quite elaborate, and they ought to give impetus to the growth and sophistication of the market. Unlike Rule 39, most of the SEC Rules and Regulations are yet to be judicially interpreted. While it is yet unclear which professionals the SEC must register in the light of the Decision in *Kasunmu's* case, there is the need for the SEC to, among other things, register a national association of securities dealers to enable

⁸⁹ S.236 (3).

the association play self-regulatory role on the capital market. It will enhance coordination in self-regulation.