

## **RULEBOOK OF NIGERIAN EXCHANGE LIMITED (ISSUERS' RULES)**

### **AMENDMENTS TO CHAPTER 20: RULES GOVERNING TRANSACTIONS WITH RELATED PARTIES OR INTERESTED PERSONS<sup>1</sup>**

**Legend:** additions **underlined**, deletions **struck through**

#### **Rule 20.1 Preamble**

The objective of these Rules is to guard against the risk that interested persons could influence the Issuer, its subsidiaries or associated companies, to enter into transactions with such interested persons that may adversely **impact** the interests of the Issuer or its securities holders.

In applying these Rules, regard must be given to:

- (a) the objective of the Rules; and
- (b) the economic and commercial substance of the interested person transaction, instead of legal forms and technicality; and
- (c) **the overall interest of the Issuer.**

#### **Rule 20.2: Definitions**

For the purposes of these Rules, the following definitions apply:

**"Connected persons" include an individual's spouse, relative or the spouse of a relative and other close dependants.**

"Entity at risk" means:

- (a) the Issuer; or

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**1 Rule Making History**

1. The draft Rule amendments were presented to the Regulation Committee (RegCom), and were approved at the RegCom Meeting of 12 March 2020, for exposure to stakeholders for comments;
2. The draft Rules were exposed for stakeholders' comments from 19 March to 17 April 2020;
3. At its meeting of 2 July 2020, the RegCom considered the revised draft Rule amendment (further to stakeholders' comments), and approved for submission to Council for approval;
4. The Council approved the draft Rule amendment at its meeting of 10 August 2020 for submission to the Securities and Exchange Commission (SEC);
5. The Council approved draft Rules were submitted to the SEC for approval on 11 November 2020;
6. The draft Amendments to Rule 20.5 (A) were presented to the Regulation Committee of Council (RegCom) at the RegCom meeting of 27 January 2021, and approved for exposure to stakeholders for comments;
7. The draft Amendments to Rule 20.5(A) were exposed for stakeholders' comments from 10 February to 24 February 2021;
8. The Regulation and New Business Committee of NGX Regulation Limited (RNBC) considered the draft Rule Amendments, and stakeholders' comments thereon at its meeting of 3 August 2021 and approved the draft Amendments for submission to the Board of NGX Regulation Limited (NGXRegCo);
9. The Board of NGXRegCo approved the draft Rule Amendments at its meeting of 31 August 2021 for submission to the Securities and Exchange Commission (SEC);
10. The Board-approved Rule Amendments were submitted to the SEC for approval on 14 September 2021; and
11. The SEC approved the Amendments on 21 September 2022, and the amendments to Rule 20.5(A) on 3 November 2022.

- (b) a subsidiary of the Issuer that is not listed on The Exchange; or
- (c) an associated company of the Issuer that is not listed on The Exchange provided that the listed group, or the listed group and its interested person(s), has control **significant influence** over the associated company.

"Financial assistance" includes:

- (a) the lending or borrowing of money, guaranteeing or providing security for a debt incurred or the indemnifying of a guarantor for guaranteeing or providing security; or
- (b) the forgiving of a debt, the releasing of or neglect in enforcing a financial obligation of another, or assumption of the financial obligations of another.

"Interested person" means

- (a) In the case of a company: —
  - (1) a director (**including a shadow director**), chief executive officer, or controlling shareholder (**either directly or indirectly**) of the Issuer; or
  - (2) any person connected to such director, chief executive officer, or controlling shareholder; or
  - (3) **any member of its management, or executive body charged with the day to day running of the business.**
- (b) In the case of a Real Estate Investment Trust (REIT), the meaning ascribed to it in the Securities and Exchange Commission's Rules and Regulations.
- (c) In the case of an investment fund which is not a REIT, —
  - (1) a director, chief executive officer or controlling shareholder of the investment manager(s) (or any equivalent) of the investment fund;
  - (2) the investment manager(s) (or any equivalent), the trustee or controlling unit holder of the investment fund; or
  - (3) any associate of any of the persons or entities in (1) or (2) above.

"Interested person transaction" ~~or~~ means a transaction between an entity at risk and an interested person.

**"Net Tangible Assets" means total assets minus intangible assets minus total liabilities minus non-controlling interest. Assets, intangible assets, liabilities, and non-controlling interest are as defined under the International Financial Reporting Standards (IFRS).**

**"Significant influence over an Issuer" means 'significant influence over an enterprise' as described in the Rules and Regulations of the Securities and Exchange Commission 2013 (Consolidated); and as may be amended from time to time.**

"Transaction" includes the:—

- (a) provision or receipt of financial assistance; or
- (b) acquisition, disposal or leasing of assets; or
- (c) provision or receipt of services; or
- (d) issuance or subscription of securities; or
- (e) granting of or being granted options; and
- (f) establishment of joint ventures or joint investments;

whether or not in the ordinary course of business, and whether or not entered into directly or indirectly (for example, through one or more interposed entities).

### Rule 20.3: General Requirements

- (a) An Issuer shall make an immediate announcement, by way of disclosure in the accounts and formal disclosure to The Exchange, of any interested person transaction of a value equal to, or more than, five per-cent (5%) of the group's latest audited net tangible assets.
- (b) Where the aggregate value of all transactions entered into with the same interested person during the same financial year amounts to five per-cent (5%) or more of the group's latest audited net tangible assets, the Issuer shall immediately make an announcement of the latest transaction and all proposed transactions to be entered into with that same interested person during that financial year.
- (c) An Issuer shall obtain securities holders approval for any interested person transaction or of a value equal to, or more than:
  - (1) five per-cent (5%) of the Issuer or its group's latest audited net tangible assets; or
  - (2) five per-cent (5%) of the Issuer or its group's latest audited net tangible assets, when aggregated with other transactions entered into with the same interested person during the same financial year. However, a transaction which has been approved by securities holders, or is the subject of aggregation with another transaction that has been approved by securities holders, need not be included in any subsequent aggregation; or
  - (3) five per-cent (5%) of the ~~issued share capital~~ **Issuer's total market value as at the date of the transaction.**
- (d) In interpreting the term "same interested person" for the purpose of aggregation as in above, the following applies:
  - (1) Transactions between an entity at risk and interested persons who are members of the same group are deemed to be transactions between the entity at risk with the same interested person.
  - (2) The value of a transaction is the amount at risk to the Issuer. This is illustrated by the following examples:
    - (A) In the case of a partly owned subsidiary or associated company, the value of the transaction is the Issuer's effective interest in that transaction;
    - (B) In the case of a joint venture, the value of the transaction includes the equity participation, shareholders' loans and guarantees given by the entity at risk; and
    - (C) In the case of borrowing of funds from an interested person, the value of the transaction is the interest payable on the borrowing. In the case of lending of funds to an interested person, the value of the transaction is the interest payable on the loan and the value of the loan.

### Rule 20.4: Sale of Property Units Under Real Estate Investment Trusts (REITs)

- (a) An Issuer shall announce a sale or proposed sale of any units of its property projects

or those of its entity at risk to an interested person within two (2) weeks of the sale or proposed sale.

- (b) An announcement relating to any sale or proposed sale of units of the Issuer or of its entity at risk's property projects shall state the name of the project, the name of each purchaser, the unit number, the sale price and the percentage discount given.
- (c) In deciding on any sale of units of its property projects to an Issuer's interested persons or a relative of its director, its chief executive officer or controlling shareholder, an Issuer's board of directors must be satisfied that the terms of the sale(s) are not prejudicial to the interests of the Issuer and its minority shareholders.
- (d) The audit committee shall review and approve the sale(s) and satisfy itself that the number and terms of the sale(s) are fair and reasonable and are not prejudicial to the interests of the Issuer and its minority shareholders.
- (e) Where a sale or proposed sale to an Issuer's interested person requires the securities holders' approval, the Issuer must obtain the approval not later than six (6) weeks prior to the date of the sale or proposed sale.
- (f) An interested person and any nominee of the interested person must abstain from voting on all resolutions to approve the sales or proposed sales to the interested persons.

#### **Rule 20.5: Consultation with The Exchange**

- (a) When an Issuer is considering a transaction with any of the parties referred to in the above definitions, the Issuer shall may notify and discuss the transaction with The Exchange at an early stage if it requires any clarification, and not later than thirty (30) calendar days before the execution of the transaction in order for The Exchange to determine whether it will classify the transaction as an interested party transaction and any parties as interested parties in terms of the transaction concerned.
- (b) The Exchange may in its sole discretion upon discussing the transaction with the Issuer, require the Issuer to provide it with a written declaration that, to the best of its Directors' knowledge and belief, there are no nominees holding securities of the Issuer who are acting in concert with any other person with regard to the related party transaction.

#### **Rule 20.6: Transactions not Regarded as Related Party Transactions**

These rules shall not apply where the Issuer:

- (a) does not have any equity securities listed on The Exchange;
- (b) is a foreign company with a secondary listing on The Exchange.

#### **Rule 20.7: Contents of Scheme of Transaction Circular**

A Circular containing the Scheme of Transaction in respect of a related party transaction shall be issued by the Issuer within twenty-eight (28) days of its approval by Securities and Exchange Commission and shall include:

- (a) details of the interested party transacting with the Issuer, and the nature of that party's interest in the transaction.
- (b) details of the transaction including relevant terms of the transaction, and the bases on which the terms were arrived at.
- (c) the rationale for, and benefit to, the entity at risk.
- (d)
  - (i) an opinion in a separate letter from an independent financial adviser who is acceptable to The Exchange stating whether the transaction:—
    - (A) is executed on normal commercial terms, and
    - (B) is prejudicial to the interests of the Issuer and its minority shareholders.
  - (ii) an opinion from the audit committee shall be required for the following transactions:
    - (A) the issue of shares or the issue of other securities of a class that is already listed, for cash.
    - (B) purchase or sale of any real property where:—
      - (i) the consideration for the purchase or sale is in cash;
      - (ii) an independent professional valuation has been obtained for the purpose of the purchase or sale of such property; and
      - (iii) the valuation of such property is disclosed in the circular.
- (e) an opinion from the **Statutory** Audit Committee, if it takes a different view to **that of** the independent financial adviser.
- (f) all other information known to the Issuer or any of its directors that is material to **securityies** holders in deciding whether it is in the interests of the Issuer to approve the transaction. Such information shall include the true potential costs and detriments of, or resulting from, the transaction, including opportunity costs, taxation consequences, and benefits forgone by the entity at risk.

**Rule 20.8: Disclosures Where Securities Holders' Approval is Required **General Mandate****

- (1a) Where in the course of any financial year, an Issuer has received securities holders' approval on related party transactions as defined in these Rules, such Issuer shall: ~~An Issuer may seek a general mandate from securities holders for recurrent transactions of revenue or trading nature or those necessary for its day-to-day operations such as the purchase and sale of supplies and materials, but not in respect of the purchase or sale of assets, undertakings, or businesses. A general mandate is subject to annual renewal.~~
- (b) An Issuer shall:
  - (a) disclose the general mandate in the annual report, **all such approvals received** giving **together with** details of the aggregate value of transactions conducted pursuant to the **approvals received** general mandate during the financial year; and
  - (b) announce the aggregate value of transactions conducted pursuant to the **approvals received** general mandate for the financial periods, which it is required to report on within the time required for the announcement of such report.

(2) Any circular to securities holders shareholders seeking their approval on related party transactions a general mandate shall include:

- (a4) the details and class of interested persons with which the entity at risk will be transacting;
- (b2) the nature of the transactions contemplated under the mandate approval received;
- (c3) the rationale for, and benefit of the transactions to, the entity at risk;
- (d4) the methods or procedures for determining transaction prices;
- (e5) the independent financial adviser's opinion on whether the methods or procedures in (d4) are sufficient to ensure that the transactions shall be carried out on normal standard commercial terms and shall not be prejudicial to the interests of the Issuer and its minority securities holders;
- (f6) an opinion from the audit committee if it takes a different view to that of the independent financial adviser;
- (g7) a statement from the Issuer that it shall obtain a fresh mandate approval from shareholders if the methods or procedures in (d4) become inappropriate; and
- (h8) a statement that the interested person has or shall abstain, and has undertaken to ensure that its proxies, representatives or associates shall abstain, from voting on the resolution approving the transaction at the Board and General Meetings of the Issuer.

(d) ~~An independent financial adviser's opinion shall not be required for the renewal of a general mandate provided that the audit committee confirms that:~~

- (1) ~~the methods or procedures for determining the transaction prices have not changed since last shareholder approval; and~~
- (2) ~~the methods or procedures are sufficient to ensure that the transactions shall be carried out on normal commercial terms and shall not be prejudicial to the interests of the Issuer and its minority shareholders.~~

(3e) Where the information in Rule 20.8(1) (a) and (b) above is included in a prospectus issued in connection with a listing of an Issuer, the Issuer may treat the issuance of the prospectus as securities holders' approval a general mandate having been given. The approval mandate shall be effective until the earlier of the following:

- (1) The first annual general meeting of the Issuer following its listing; or
- (2) The first anniversary of the listing date.

#### **Rule 20.9: No-Waivers and Exemptions**

The Exchange shall may not entertain any written application for waiver of any of the provisions of these Rules, provided that the application is received not later than thirty (30) calendar days before the execution of the transaction in question; and is supported by compelling reasons and evidence in support of its position. In addition, The Exchange may mediate in the event of disagreement between the Issuer and its shareholders on any related party transaction.

#### **Rule 20.10: Penalties**

Any Issuer that violates these Rules by its failure where required to:

- (a) make an immediate announcement, or
- (b) make a disclosure to The Exchange, or
- (c) obtain securities holders' approval, or
- (d) issue a circular containing the relevant scheme of transaction and information stipulated under these Rules,

shall be liable to public censure, and any, or a combination of the following penalties for each instance of non-compliance with the provisions of these Rules or any directives of The Exchange issued pursuant to these Rules:

- i. a fine of up to a maximum of fifty percent (50%) of its annual listing fee;
- ii. a fine of Twenty-Five Thousand Naira (₦25,000) for every day the Issuer remains in default;
- iii. a fine which shall not exceed fifty percent (50%) of the value of the transaction.