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A REVIEW OF THE SEC'S NEW RULES ON ISSUANCE AND ALLOTMENT OF DEBT SECURITIES BY PRIVATE COMPANIES


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Introduction

1.1 The Securities and Exchange Commission ("**SEC**") recently released the *Rules on the Issuance and Allotment of Private Companies' Securities* (the "**Rules**"). This marked a significant regulatory development in Nigeria's private capital markets on the issuance of securities (which refer to fixed income securities (bonds, debentures and alternative asset classes such as sukuk) by private companies. The Rules, which became effective on 24th April 2025, aim to formalise procedures for debt securities issuance by private companies and introduce regulatory oversight on debt capital-raising activities, which have historically taken place outside the SEC's regulatory scope.

1.2 The SEC and the Rules derive their authority and validity from section 308 of the Investments and Securities Act 2025 (the "**ISA 2025**") which provides that any "company", local or foreign, supranational body or other approved entity shall not issue debt securities to the public without the prior review and approval of the SEC. Section 357 of the ISA 2025 adopts the definition of the term "company" as defined in the Companies and Allied Matters Act, 2020 (as amended) ("CAMA"), which defines a company to include companies (both public and private) registered under the CAMA. Under the repealed Investments and Securities Act 2007 (as amended) (the "**ISA 2007**"), specifically sections 54 and 67, only securities issued by public companies and securities of collective investment schemes were subject to registration with the SEC. Private companies were neither previously required to register offerings, nor were they permitted to offer securities through public offers. Section 308 of the ISA 2025 has now expanded the SEC's regulatory oversight to include public offerings of debt securities by private companies. This development is important for private equity, venture capital and other investors whose investee companies may seek to raise funds through the issuance of debt securities to qualified investors through public offering and intend to have such securities noted or listed on a securities exchange. Such investee companies intending to do that now have one more hurdle to cross – register the debt securities with the SEC.

2. Scope and Applicability of the Rules

2.1 The Rules apply to the issuance of debt securities by private companies through public offers or other modes of issuance that may be approved by the SEC[56]. In addition, the Rules apply to all exchanges and platforms and capital market operators involved in the trading, quotation, or admission of a private company debt securities[57]. The public issuance of equity securities by private companies remains expressly prohibited under Section 22(5)(a) of the Companies and Allied Matters Act 2020 (as amended) (which provides that a private company shall not, unless authorised by law, invite the public to subscribe for any share or debenture of the company) and the Rules[58].

2.2 Furthermore, the Rules apply where the 'public offer' by a private company is: (a) published, advertised or disseminated in a newspaper, broadcast, cinematograph, internet media or any other means by which the public is made aware of the offer; (b) made to anyone or circulated among persons on the terms that the person or persons to whom it is made may renounce or assign the benefit of the securities to be obtained in favour of any other person or persons; (c) made to or circulated among members or debenture holders of the

[56] Rule 2(a)
[57] Rule 2(b) and (c)
[58] Rule 7(a)

company concerned or clients of the person circulating information on the offer or in any other manner; or (d) made to one or more persons to acquire securities dealt in by a securities exchange or the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange.

3. Key Requirements Under the Rules

The Rules contain the following key requirements for the issuance of debt securities by a private company:

3.1 SEC Registration

Private companies are now required to register proposed debt securities offerings, which fall within the definition of a public offer under the Rules, with the SEC by filing a completed registration Form SEC 6. The form will be filed alongside the relevant draft prospectus, trust deed, vending agreement, corporate authorisations, constitutional documents, financial accounts, evidence of payment of applicable fees and other documents as may be required by the SEC.[59]

3.2 Issuer Eligibility and Offer Limits

To be eligible to issue debt securities, a private company must (a) be duly incorporated in Nigeria and not in default of any existing debt obligation; and (b) have a minimum of 3 (three) years of operational history (where the company has been in existence for less than 3 (three) years, a guarantor who is eligible under the Rules must guarantee the issuance). The only stated exception to this rule on eligibility is a private company which was set up by a state or municipal government for the express purpose of issuing bonds.[60]

Furthermore, private company issuers can undertake up to 3 (three) separate debt issuances within a year, provided that the total amount raised does not exceed ₦15 billion for that year. Where a private company intends to issue any further debt securities, it shall be required to re-register with the Corporate Affairs Commission as a public company.[61]

3.3 Other Obligations

In addition to registration and eligibility requirements, the Rules impose several ongoing obligations on private company issuers. Such obligations include the filing of allotment reports, quarterly and annual reporting on financials and use of proceeds, compliance with a prescribed code of conduct, and obtaining SEC approval for listing (if applicable).[62]

3.4 Restrictions

Asides the requirements that private companies cannot issue their shares to the public and only qualified investors (that is, an institutional investor or high net worth individual as defined in the SEC's rules) may participate in the debt issuances, the Rules also provide that only registered capital market operators shall be parties to debt issuances by private companies[63], and the securities purchased in a public offer may only be traded on a recognised securities exchange[64]. Furthermore, in relation to the allotment of the securities, any previous offer by the issuer must have been concluded or aborted before a fresh issuance of securities is done[65]. Where any offer of debt securities

[59] Rule 9
[60] Rule 5(a)
[61] Rule 8(d)
[62] Rules 11,12, 15 and 16
[63] Rule 7(c)
[64] Rule 7(e)
[65] Rule 11(a)(i)

by a private company under the Rules has less than 50% subscription from qualified investors, the offer shall be aborted and the SEC notified[66]. This means that for an offer to be deemed successful, it must have at least 50% subscription by qualified investors. The issuer is also restricted from using the issuance proceeds for any other purpose aside that which is stated on the offer documents, except where it has obtained the prior approval of SEC to do so[67].

4. Penalties for Non-Compliance with the Rules

Failure to comply with the requirements under the Rules may attract the imposition of significant sanctions on the defaulting parties by the SEC.

These sanctions include monetary penalties of at least ₦10 million and an additional ₦100,000 for each day that the violation continues[68]; suspension or withdrawal of the registration of any capital market operator involved[69]; disgorgement of proceeds or income from the transaction[70]; or rescission of the transaction. Where it is deemed by the SEC to be in the public interest, the SEC could ratify the transaction[71]. The SEC may also impose any other sanction that it considers appropriate in the circumstances[72].

5. Implications for Private Companies

The introduction of the Rules fundamentally changes the regulatory landscape for private companies seeking to raise debt capital from qualified investors. The key implications of the Rules are as follows:

5.1 Retrospective Registration of Existing Debt

Private companies with existing unregistered debt securities which are held by qualified investors and fall within the scope of the applicability of the Rules as outlined in paragraph 2.2 above, are required to apply to the SEC for registration within 3 (three) months of the Rules' commencement. This means that by 24th July 2025, unless the SEC extends the period, non-compliant issuers may be subject to applicable penalties.

While such existing securities were legally issued under the former regime of ISA 2007, the new requirement raises practical and legal concerns, especially considering the extensive documentation and procedural demands for registration. A more nuanced approach may be needed to avoid undue regulatory burden being imposed on affected private companies.

5.2 Increased Regulatory Compliance

If they intend to issue debt securities through public offers, private companies must now operate within a formal and rigorous regulatory framework, with substantial requirements for registration, disclosure obligations, and ongoing compliance.

This marks a significant shift from the previous regime under the ISA 2007, where private companies were largely exempt from SEC oversight, a flexibility that was once considered as one of the key advantages of remaining private. With the new Rules, this regulatory exemption no longer applies, and private companies will face increased compliance costs, extended timelines for capital raising, and enhanced internal governance obligations when seeking to issue debt securities through public offers.

[66] Rule 11(a)(iii)
[67] Rule 14(a)
[68] Rule 17(a)(i)
[69] Rule 17(a)(ii)
[70] Rule 17(a)(iii)
[71] Rule 17(a)(iv)
[72] Rule 17(a)(v)

5.3 Issuance Cap and Public Company Conversion

The Rules introduce a cap of ₦15 billion on total annual debt to be raised by private companies[73], thereby limiting the scale of capital that can be accessed annually. Private companies with larger financing needs will then need to either convert to public company, which has a significant governance and disclosure implications, or raise capital through the issuance of equity which could result in the dilution of the interest of existing shareholders.

5.4 Uncertainty Around Public Offers

Although the Rules refer to "public offers" as a permissible mode by which private companies may issue debt securities, they ultimately limit participation in such securities issuances to qualified investors. This internal inconsistency introduces interpretive uncertainty that could affect the legal structuring of transactions that will be offered to qualified investors through "public offers". Until the SEC provides further clarification, issuers and their advisers may need to adopt a conservative approach in designing the structure of offerings and identifying qualified investors and ensuring that the offering is only made to them.

5.5 Enforcement Mechanisms

The penalty provisions in the Rules are robust and significant. Non-compliance could trigger the imposition of steep monetary fines, reputational risk, suspension, and even SEC-imposed reversal of transactions. This makes full compliance with the Rules essential for all stakeholders involved in the issuance of debt securities by a private company through public offers.

6. Private Placement of Debt Securities by Private Companies

6.1 Private Placement of Debt Securities

We have set out above the instances that the Rules regard as public offer of the issuance of debt securities. One of the instances is where the offer is made to one or more persons to acquire securities dealt in by a securities exchange or the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange. Based on the provisions of Rules 9 and 2(a), private placement of debt securities by private companies will only fall within the scope of the Rules and be subject to the SEC registration requirements where the debt securities involved (a) are renounceable or assignable; (b) are advertised, etc; (c) are circulated to clients or debenture holders; or (d) will be traded on a registered securities exchange. Consequently, other private placement transactions which do not contemplate that the securities will be renounceable, advertised, circulated to clients/debenture holders or traded on a registered securities exchange will not, in our view based on the existing Rules, be registrable with the SEC as they would not qualify as a 'public offer' under the Rules.

6.2 Relevance to Private Equity, Venture Capital and other Investors Investee Companies

The above changes in the legal regime will not be relevant to investee companies (of private equity or venture capital investors) that will only seek to raise funds by issuing debt securities on a private placement basis. They will still be able to do that without registration. Where such investee companies, however, seek to raise funds through the

[73] Rule 8(d)

issuance of debt securities to qualified investors through public offering and intend to have such securities noted or listed on a securities exchange, the securities will need to be registered with the SEC.

7. Conclusion

The introduction of the Rules underscores the SEC's intent to enhance regulatory oversight and investor protection, even in relation to private companies issuing debt securities through public offers. While the move aligns with international trends toward increased transparency for issuances of debt securities by private companies, it also places considerable responsibilities on private company issuers and their advisers. As the SEC begins the process to implement the Rules, we would expect continued clarity and possible adjustments, will be critical to address any ambiguities and to provide clear guidance to affected persons. These efforts will ensure that private companies can effectively engage with the evolving market framework while maintaining regulatory compliance and fostering investor confidence. Lastly, the Rules may not apply to the private placement of debt securities by private companies if the offering of such securities does not satisfy any of the requirements to be deemed a 'public offer'.