



RULES ON SECURITIZATION

A. Definition of terms

For purpose of these rules, the term:

- (i) **“Affiliate”** refers to an entity which is a party directly or indirectly, through one or more intermediaries, controls or is controlled by the entity.
- (ii) **“Asset-backed securities”** (ABS): refers to certificates, whether written or electronic in character, issued by an Special purpose vehicle (SPV), the repayment of which shall be derived from the cash flow of the pool of assets in accordance with the terms and conditions of the transaction.
- (iii) **“Assets”** whether used alone or in the term **“Asset-backed securities”** refers to loans receivable or other similar financial assets with an expected cash payment stream. The term **“Asset”** shall include, but shall not be limited to, receivables, mortgage loans and other debt instruments and receivables under non-financial contracts (e.g. service contracts)
- (iv) **“Asset pool”** means the group of identified assets underlying the ABS.
- (v) **“CBN”** refers to the Central Bank of Nigeria.
- (vi) **“Commission”** refers to the Securities and Exchange Commission (SEC).
- (vii) **“Control”** means an investor controls an investee when it is exposed or has rights to variable returns from the involvement with the investee and has the ability to affect those returns through its power over the investee.

- (viii) **“Credit Enhancement”** means one or more initiatives taken by the Originator in a securitization structure to enhance the security, credit or the rating of the securitized instrument, by providing cash collateral, profit retention, subordination, over collateralization, credit insurance and any combination of these measures and any other form of credit enhancement as may be approved by the Commission.
- (ix) **“Eligible Instruments”** means registered securities and such other readily marketable securities which the Commission may, from time to time, approve or authorize.
- (x) **“Investible Funds”** means proceeds of collections from the asset pool which are not yet due for distribution to holders of ABS.
- (xi) **“Issuer”** refers to an SPV that issues ABS.
- (xii) **“Liquidity Support”** means additional support to finance temporary shortfalls in collections or temporary disruptions.
- (xiii) **“Obligee”** means a person to whom an obligation is owed under a contract or legal procedure.
- (xiv) **“Originator”** means the person or entity that transfers assets from its own balance sheet to the SPV that was the original obligee of the assets, including but not limited to the financial institutions that grant loans in whose books the assets were created.
- (xv) **“Parent company”** is a person who has control over another person directly or indirectly through one or more subsidiaries.
- (xvi) **“Transaction”** means the securitization structure as approved by the Commission.
- (xvii) **“Securitization”** means an issuance of securities backed by a pool of assets.

- (xviii) **“Seller(s)”** means the person or entity who sells to the SPV the assets forming the asset pool in accordance with the terms of the transaction who may also be the Originator.
- (xix) **“Servicer”** refers to the entity or entities designated by the SPV to collect and record payments received on the pool of assets, to remit such collections to the SPV, and perform such other services as may be required.
- (xx) **“Special Purpose Vehicle”** (SPV) means a legal entity formed with the exclusive purpose of acquiring and holding certain assets for the sole benefit of noteholders in the ABS, such that the noteholders have acquired nothing but undivided interests in the asset pool.
- (xxi) **“Subsidiary”** means an entity that is controlled by another entity.

B. Registration Requirements

All applications in respect of securitization filed with the Commission shall comply with the general provisions on registration of securities as set out in these rules (where applicable).

In addition, the Applicant shall also file with the Commission all documents in relation to the transaction including, but not limited to the following (where applicable):-

(1) **Sale Agreement:-**

The Sale Agreement shall among other things provide for:-

- a. The transfer of assets from the originator to the Special Purpose Vehicle (SPV) for the beneficiaries.
- b. Quality of assets transferred and effect of breaches of representations and warranties.
- c. Establishment of a mechanism for the substitution and the effect of any breaches thereof (optional).
- d. A mechanism for substitution will be covered under the effect of breaches of representations and warranties.

(2) **Servicing/ Administration Agreement:-**

This agreement shall cover:-

- a. the servicing /on-going administration of the securitized assets;
- b. management of incoming cash flows;
- c. provision for actions to be taken to cater for shortfalls in interest payments arising from defaults;
- d. procedure to be followed in accelerating noteholders' interest in the pool of assets in the event of a default by the Issuer or performance of the assets below specified minimum.
- e. conditions under which the Servicer's/ Administrator's appointment may be terminated and the subsequent appointment of a substitute Servicer/ Administrator; and
- f. In the event that the Servicer's/ Administrator's appointment is terminated, proceeding against defaulting debtors in realizing the underlying collateral.

(3) **Liquidity Facility Agreement:-**

This shall set out the terms and conditions on which the Liquidity Facility (if provided) can be drawn.

Sources of liquidity facilities may include servicer advancements, bank facilities and cash reserves.

Provided that the Liquidity Agreement shall not provide protection against or assume risk for defaulted receivables.

Basic Requirements of the Liquidity agreement

The liquidity agreement shall include the following:-

- (i) the name of the liquidity provider;
- (ii) the nature and amount of the liquidity to be provided;
- (iii) terms of repayment;
- (iv) such other information as the Commission may require from time to time.
- (v) Terms/conditions for granting the liquidity facility provided it shall be based on market rates.

- (vi) Terms/conditions for termination/reduction where the quality of the securitized asset has deteriorated.
 - (vii) Asset cover ratio provided it shall not be below two times the value of the liquidity facility.
 - (viii) Maturity of the liquidity facility provided it shall not be more than 365 days. However, it could be renewed.
- (4) **Credit Enhancement Document:**
This document shall detail the protection provided to noteholders under the Asset Backed Securities (ABS).
- (5) **Rating Report:**
No ABS shall be issued to the public unless such ABS has been rated by a duly registered rating agency.
- (6) **Trust Deed** – the trust deed shall govern the relationship between the SPV, the trustees and the noteholders.
- (7) Any other document that may be required by the Commission.

C. Special Purpose Vehicle (SPV)

- (1) A Special Purpose Vehicle shall be incorporated as
 - a.) a public limited liability company; or
 - b.) A trust created by a written instrument or any other legal entity which the Commission may by regulation permit to be used for a securitization transaction;
- (2) When incorporated, the Special Purpose Vehicle shall bear in its name the acronym 'SPV'.
- (3) The objects of the SPV as stated in its Memorandum and Articles of Association/ Constitution shall be limited to matters related to the securitization transaction. Such matters shall include but shall not be limited to the acquisition, management and collection of assets, the assumption of risk, the issue of ABS to noteholders and the engagement of a servicer to administer the pool of assets.
- (4) The SPV shall only carry out activities related to or ancillary to the securitization transaction regardless of its legal form.
- (5) The SPV shall not have any employee and as such shall contract out all services to third parties and shall keep separate records, books of accounts, etc.

- (6) No more than 30% of the directors of the SPV shall be nominees of any Sponsor or associated in any manner with the Sponsor or any of the Sponsor's subsidiaries.
- (7) No person who has been convicted for any offence bordering on dishonesty by any court of competent jurisdiction, suspended or barred from capital market activities shall be eligible to be a Director of an SPV.
- (8) All Changes in the constitution of the SPV, its place of business or change of name shall not be effected without the prior approval of the Commission.
- (9) The securitization transaction filed by the SPV and approved by the Commission shall terminate, where:
 - (a.) within 6 months from the approval of the transaction there has neither been a transfer of assets nor the issuance of asset backed securities for sale to noteholders, unless the timeframe is specifically extended by the Commission on application by the Issuer. The Commission may grant an extension of an additional six (6) months on the transaction.

Provided that the extension shall not be granted where the initial period of six (6) months has lapsed before the application is made. In addition, all relevant documents shall be up-dated.

- (b.) it has paid in full monies owed to noteholders who invested in the asset backed securities issued by it.
- (c.) holders of 2/3 majority of the total number of outstanding asset backed securities resolve to dissolve the SPV, and the approval of the Commission has been obtained, and
- (d.) Such other conditions that the Commission may prescribe from time to time.

D. POWERS OF THE SPV

The SPV shall have the following powers:-

1. Accept the sale or transfer of assets from the Originator.
2. Issue Asset Backed Securities to the noteholders.
3. Enter into agreement with any person for the purpose of the securitization.
4. Invest/seek benefits from the transferred assets in accordance with the approval of the Commission.

5. Undertake all activities necessary to carry out the foregoing.

Provided, that the SPV shall not undertake any activity other than that permitted under these rules and its constitutional documents.

E. RESTRICTIONS

The SPV shall:-

1. not have any operational employee.
2. not have more than 30% of its Directors from the originator.
3. contract for all services with third parties, which may include the Originator.
4. maintain its accounts and records separate from any other person or entity.
5. hold assets out as separate and not co-mingle its assets with those of any other entity.

F. Additional Disclosure Requirements

Additional disclosure requirements shall include:-

1. Description of the proposed transaction to be registered which shall include:

- (a.) The nature and mechanics of the sale of assets from the Originator/ Seller to the SPV including the terms, conditions and circumstances specified in the transaction wherein the assets may be reverted to the originator / seller.
- (b.) Liquidity support arrangements
- (c.) Credit enhancements for the proposed transaction may be provided in the following manner:-
 - (i.) Guarantee issued by an entity other than the Originator / Seller or its subsidiary/ affiliate, its parent company or the Parent company's subsidiary/ affiliate, or the Trustee.
 - (ii.) Over-collateralization provided by the seller wherein the value of assets conveyed to the SPV exceeds the value of the securities to be issued.
 - (iii.) Subordinated securities issued by an SPV to any entity including those issued to Originator/ Seller(s) that are lower ranking, or junior to the other obligations and are paid after claims to holders of senior securities are satisfied; and
 - (iv.) Any other form of credit enhancements as may be approved by the Commission.

- (d.) The identities and qualifications of the directors of the Originator/Seller, Servicer (where applicable) and the description of any compensation the Issuer or any party has received or will receive in the future, in connection with the proposed transaction.
- (e.) The identity, qualification and compensation of the Trustee(s) that will administer or hold the assets of the ABS on behalf of the investors.
- (f.) The aggregate principal amount of the value of the securities to be issued, the principal amount of each class within the proposed transaction and the denominations thereof in which the ABS will be issued.
- (g.) The structure of the proposed transaction including the payment priorities of each class of securities within the ABS, anticipated payments and yields for each class and the circumstances under which the ABS may be redeemed.
- (h.) A full description of the assets contained, or to be contained, in the rating report for the ABS issued by the registered/recognised rating agency(ies), including the criteria used or to be used to rate the ABS and any limitations, qualifications or material risks not addressed in the rating report;
- (j.) A full description of how the Issuer/SPV will collect and maintain remittances from the Assets pending distribution to holders of the ABS, including the Issuer's/SPV's investment policy and the identity of the Issuer's/SPV's investment advisor, if any;
- (k.) The plan for the management and administration of the Assets, Asset pool and the ABS, including the process for the disposition of the foreclosed properties if any; and
 - (i.) The manner of disposal of any residual value or asset with the SPV after all obligations to holders of securities shall have been settled.
 - (ii.) Analysis of yields or investment returns from the proposed transaction.

2. Policy on redemption of securities and or substitution in case of a breach of warranty and liquidation of underlying assets.
3. Description of any relationship or interest of the selling institution's Parent, subsidiaries, affiliates or shareholders, directors or officers, with the SPV.
4. Letter of Authorization /'No Objection' from the Central Bank of Nigeria (CBN) where the Seller/Originator is a bank or NAICOM where the Originator/Sellers is an Insurance Company or such other regulatory approval as may be required.
5. The Originator/Seller of the pool of assets shall submit a certification signed under oath by its authorized officer(s) as to the accuracy of any part of the offering document, contributed to, by such Originator/Seller.
6. The Commission may conduct inspections/examination on the operation of the SPV.

G. Eligible Assets in Securitization Transactions

In a single securitization transaction, the underlying assets shall represent the debt obligation of a homogeneous pool of obligors. Subject to this condition, all on balance sheet standard assets may be securitized, except the following:

1. Revolving credit facilities (credit card receivables)
2. Encumbered Assets
3. Securitization exposures
4. Loans with bullet repayment of both principal and interest.

H. Transfer of Assets

1. The conveyance of the Assets to the SPV shall be absolute and on a "without recourse basis" and shall be deemed to be a 'true sale' when it results in the following:-

- a. The transferred Assets are legally isolated and put beyond the reach of the Originator or Seller and its creditors;
- b. The SPV has the right to pledge, mortgage or exchange the transferred Assets;
- c. The Seller relinquishes absolute control over the assets transferred;

- d. The transfer shall be effected by either a sale, assignment or exchange, in any event on a without recourse basis to the Seller;
- e. The SPV shall have the right to profits and disposition with respect to the Assets;
- f. The Seller shall not have the right to recover the assets and the transferee shall not have the right to reimbursement of the price or other consideration paid for the Assets; and
- g. The SPV shall undertake the risks associated with the Assets. This shall not, however, prevent the transferor from giving normal representations or warranties in respect of the Assets sold.

Provided however that nothing above shall prevent the Seller from:-

- i. Providing usual warranties or representations with respect to the quality of assets, and assuming the obligation to repurchase or replace assets which fail to meet quality standard (optional). The purchase price should be market related and confirmed by an independent Auditor.
 - ii. Providing a guarantee of payment on market terms;
 - iii. Providing a guarantee of liquidity other than guarantee of payment;
 - iv. Serving as Servicer on the transaction;
 - v. Holding a portion of asset-backed securities issued by the Issuer, including ABS subordinated to the rights of other asset-backed securities holders.
2. Where an asset is assigned to an SPV in accordance with these rules, such assignment shall be treated as final, absolute and binding on the Seller, the SPV and all third parties and shall not be:-
- a) Subject to annulment, rescission, revocation, termination, variation or abatement by any person and for any reason whatsoever except as provided in the applicable sale and purchase agreement;
 - b) Subject to any rights of the creditors of the Originator for any reason whatsoever;
 - c) Subject to any rights of a liquidator, receiver, originator or other similar officer of the Originator for any reason whatsoever.

3. The provision of this rule shall not apply:-
 - a) where there is fraud on the part of the SPV, or
 - b) in respect of an assignment entered into, at a time the SPV knew or ought to have known that an application for the dissolution, and winding up of the Seller by reason of insolvency was pending or that the Seller had taken formal steps under any applicable law, to bring about its dissolution and winding up by reason of insolvency.

I. Withdrawal/Cancellation of Registration

1. Procedure for the withdrawal or cancellation of registration of securities:
 - a. Where the Commission finds prima facie evidence that the originator or seller has undertaken the securitization so as to take undue advantage of these rules, the Commission shall immediately issue a directive to put the transaction on hold pending the outcome of investigation. The Commission may subsequently withdraw or cancel the transaction and registration of the securities.
 - b. The Commission shall publish a notice of withdrawal/cancellation of the transaction in two national newspapers and/or post it on its website and shall simultaneously furnish the SPV with a copy of the said notice. The SPV and all persons acting on its behalf in the distribution of the said securities shall immediately terminate the offering and return any and all subscription monies received from subscribers within 48 hours after the notice is published.
2. Effects of Withdrawal of Registration of ABS Transaction
The registration of the transaction shall automatically be terminated, cancelled or withdrawn in any of the cases provided for under these rules. The said withdrawal of registration shall have effects as the withdrawal by the Commission of the registration of the securities.

J. Appointment of an Interim Representative

If the Commission finds, upon verified information, that an SPV has no authorized representative to act on its behalf or such persons cannot act for any reason resulting in the interruption of its activities pursuant to the approved transaction, the Commission shall have the power (upon consultation with the Trustees of directors) to appoint any person or persons to act as an interim representative for

the Special Purpose Vehicle. The interim representative shall have full and exclusive authority to implement the approved Transaction.

In the event of the appointment of an interim representative, the Commission shall post a notice on its website and publish same in at least two (2) national newspapers.

K. Delivery of Property and Records to the Interim Representative

Where an interim representative has been appointed in accordance with these rules:-

1. The directors of the SPV shall take all appropriate steps to safeguard the property and the holders of the securities of the SPV and shall deliver the property, accounts, documents and seals of the SPV to the interim representative.
2. Any person who possesses property or documents of the SPV shall notify the representative of such possession.

L. Failure to Continue Business

The Commission shall after due notice and hearing, withdraw the registration of the securities of an SPV upon finding that the SPV cannot continue to undertake its business. The procedures to be taken shall be in accordance with the rules relating to withdrawal of registration of the ABS and the SPV.

M. The Servicer

The Servicer shall collect and record payments received on the assets, remit such collections to the SPV, and perform such other duties pursuant to the terms and conditions of the Servicing Agreement. Collections made by the Servicer shall be remitted promptly to the SPV or as may be agreed upon by the parties in the servicing agreement, but in no case shall the remittance period be longer than one (1) month.

N. Reports

1. The Servicer shall prepare periodic reports as may be required by the SPV, the trustee or its interim representative in advance of the interest payment date, including reports of any borrower or obligor who fails to pay its debt or obligation as at when due or any adverse development that may affect the collection of any loan account or receivable comprising the asset pool.
2. It shall make and keep books, records, and accounts in reasonable detail which accurately and fairly reflect the transactions.
3. Copies of such reports shall be forwarded to the Commission on quarterly basis.
4. The Commission may conduct examination on the operations of the servicer.
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O. Extent of Authority

1. The Servicer shall have such authority as is expressly stated in the servicing agreement and, unless otherwise specifically provided therein, such authority shall encompass the general powers of administration.
2. The Servicer shall have no authority to waive penalties and charges, agree to any subordination, release or impairment of the security interest or cause to be done, any act or thing that is likely to have an adverse impact on the receivables except with the written authority from the Board of the SPV, trustee or the interim representative, as the case may be.

P. Standard of Conduct

The Servicer shall be independent of the SPV and shall not share common ownership, officers, or directors with the SPV. The originator or any of the Sellers may act as the Servicer as may be approved by the Commission.