

SEC SETS TO EXTEND ITS FRONTIER OF REGULATORY FRAMEWORK

The Nigerian Securities and Exchange Commission (SEC) is extending its regulatory scope to cover other securities of non public companies and unlisted companies. SEC now extends its frontier of protective and regulatory frameworks to Private Equity Funds "P.E Funds. **P. E Funds is a collective investment scheme** that invests primarily in private equity/unlisted companies, whether or not in an attempt to gain control of the company.

Traditionally, it was believed that the regulatory powers of SEC were only limited to public companies and those private companies that are listed on the Nigerian Stock Exchange (NSE), this is however no longer the position with Rule 550 of Consolidated Rules for SEC 2011 and SEC Proposed New Rule for Exposure November 2012.

P.E Funds are managed by investment professionals of a private equity firm and is typically structured as a Limited Partnerships. It is evident that SEC is squinting towards regulating the affairs of some targeted private firms/companies that their activities bear on pooling of stocks and investing in some sort of projects even when not listed on the Nigerian Stock Exchange.

To operate a P. E. Funds, the authorization of SEC must be secured and the Funds must be registered. The minimum threshold to be registered as P.E. Funds is N1Billion investors' funds. As opposed to the position in the 2011 Rules that the Fund Manager must have a minimum paid up capital of N500 million, the Proposed Rule of November 2012 now sets N20 million as the minimum paid up capital for the Fund Manager. This gives allowance to more private equity firms where the Fund Manager has a minimum paid up capital of N20 million to

be registered as P.E. Funds. P.E. Funds is restricted from soliciting funds from the general public but should privately source funds from qualified investors which are usually institutional investors. P.E. Funds shall not also invest more than 30% of the Funds assets in a single investment thus allowing portfolio investment to avoid risk concentrations.

The Information Memorandum (IM) to be issued to targeted investors shall be forwarded with the application for authorization and registration to the SEC. The IM provides the investors with the necessary details of the investment. SEC requires its prior submission so as to have a glimpse of how the P. E Funds will be utilized and determine whether an informed decision is contemplated.

Besides, SEC's regulatory role is ensured through reporting to the Commission and the investors. P.E. Funds is required to submit quarterly returns and annual accounts/report to SEC whilst a semi-annual report will be given to the investors. The quarterly returns to SEC should contain the total number of the investors, commitment received, commitment already drawn-down, current investment of the Fund, the current value of the assets of the Fund. The semi-annual reports to the investors on the other hand contain amongst others details of total commitments, draw-down and distributions, changes to investment strategy, current and new investment.

CONCLUSION

Where the November 2012 Proposed Rule is incorporated into the 2011 Consolidated Rules, the above shall represent the hallmark of P. E. Funds vis-à-vis its regulation by SEC in Nigeria.