

CENTRAL BANK OF NIGERIA

**REGULATION ON THE SCOPE OF BANKING ACTIVITIES & ANCILLARY
MATTERS, NO. 3, 2010**



ARRANGEMENT OF REGULATION

SECTIONS

1. Commencement
2. Repeal and Savings
3. Definition of Banking Business
4. Permitted Bank Types
5. General Prohibitions
6. Compliance Plan
7. Transition Provisions
8. Divestment From Related Enterprise
9. Banking Licence
10. Interpretation
11. Citation

WHEREAS,

Preamble

- A. The CBN in December 2000 vide the Universal Banking Guidelines, authorised banks to engage in non-core banking financial activities, either directly as part of banking operations, or indirectly through designated subsidiaries.
- B. The Universal Banking Guidelines aforesaid also expatiated the definition of *banking business* under BOFIA, and introduced a uniform licensing regime for banks which resulted in the fusion of the diverse and specialised banking model into the *uniform universal banking* model.
- C. The CBN, pursuant to its object to promote a sound financial system in Nigeria, has determined that the Universal Banking Model and the resultant expansion of banks into a broad range of financial services, has (a) exposed the banks to higher operating risks, (b) increased the propensity to put depositors' funds into risky non-banking business, and consequently heightened the risk of financial system instability.

And in exercise of the powers conferred upon the Governor of the CBN by *Section 57 of the Banks and Other Financial Institutions Act Cap. B3 Laws of the Federation of Nigeria 2004*, and other enabling powers in that regard, I, Sanusi Lamido Sanusi, Governor of the Central Bank of Nigeria, hereby make this Regulation.

1. Commencement

Save as otherwise herein provided, the provisions of this Regulation shall come into effect on the 15th day of November, 2010.

2. Repeal And Savings

- (1) The Universal Banking Guidelines are hereby repealed from the date hereof.
- (2) Notwithstanding the repeal aforesaid, nothing in this Regulation shall affect the legality, validity and/or the enforceability of any right, remedy or liability, which may accrue to any person in respect of any act validly undertaken pursuant to a Universal Banking Licence between the commencement date of the Universal Banking Guidelines and the Effective Date.
- (3) From the date hereof, all pending applications for any authorisation, approval and/or consent pursuant to the Universal Banking Guidelines, except those relating to core banking activities permitted under this Regulation, shall be deemed withdrawn.

3. Definition of Banking Business

From the Effective Date, the definition of *banking business* shall be as contained in Section 66 BOFIA.

4. Permitted Bank Types

- (1) From the Effective Date, the only types of banks that will be permitted to carry on banking business in Nigeria shall be limited to the following types as contemplated under BOFIA:

- (a) Commercial banks;
 - (b) Merchant banks; and
 - (c) Specialised banks, which include non-interest banks, microfinance banks, development banks and mortgage banks.
- (2) Accordingly, from the Effective Date, no bank in Nigeria shall be licensed to operate as a bank other than as one of the types specified in Section 4(1).
- (3) The commercial banks referred to in Section 4 (1) (a) may be authorised by the CBN to carry on banking business on a regional, national or international basis in accordance with rules, regulations, and guidelines on licensing, authorisation, operation and conduct of business that the CBN may issue from time to time.
- (4) The non-interest banks referred to in Section 4 (1) (c) may be authorised by the CBN to carry on banking business on a regional or national basis in accordance with rules, regulations, and guidelines on licensing, authorisation, operation and conduct of business that the CBN may issue from time to time.

5. General Prohibitions

- (1) From the Effective Date, no bank shall establish, maintain or permit to exist, any Related Enterprise except:
- (a) pursuant to Sections 21(1) and 22(1)(c) of BOFIA;
 - (b) such Related Enterprise is a banking institution incorporated outside Nigeria with the permission of the CBN;
 - (c) such Related Enterprise is a company jointly established by two or more banks with the approval of the CBN for

the purpose of promoting the development of the money market or improving the delivery of banking services in Nigeria; or

(d) such Related Enterprise is a Custodian.

(2) From the date hereof, no bank shall:

(a) acquire real estate or immovable property other than as business premises for its own use, as may be authorised by the CBN;

(b) grant or permit to subsist, any loan, donation, gifts or any form of financial accommodation to any political funds, political party, or for political purposes whether directly or indirectly;

(c) incur any Political Expenditure;

(d) grant or permit to subsist, any loan to any persons to invest in the primary issues of any stocks of any bank; or

(e) grant any loan or any form of financial accommodation to any person or Enterprise to facilitate the acquisition of any Related Entity from which the bank is divesting in compliance with this Regulation.

(3) Where a bank currently engages in any of the activities prohibited under Section 5 (1), and Section 5(2) (a), such bank shall forthwith take steps to:

(a) divest from all Related Enterprise (other than as permitted in Section 5 (1)) in accordance with Section 8; and

(b) ensure that not later than the Effective Date, all its interests in any real estate or immovable property

acquired other than as permitted in Section 5 (2) (a) are disposed of.

- (4) For the avoidance of doubt, no bank shall from the date hereof, enter into any contract, understanding or arrangement to undertake any of the activities prohibited under Section 5 (1).

6. Compliance Plan

- (1) Not later than 90 days from 15th November 2010, every bank currently operating under a Universal Banking Licence shall submit for the approval of the CBN, a Compliance Plan duly approved by the bank's board of directors.
- (2) The Compliance Plan shall contain such information as the CBN may prescribe from time to time, including:
 - (a) the type of banking licence that such bank proposes to operate pursuant to Section 4 ; and
 - (b) a detailed proposal on how the bank intends to comply with the provisions of this Regulation, and business justification for the approach proposed; and
 - (c) such information, document, and reports as the CBN may from time to time specify.
- (3) The CBN in reviewing the Compliance Plan shall consider the fairness of the proposal to all stakeholders, particularly, the depositors and shareholders, and may request for such additional information, documents, and reports, as it may consider necessary.
- (4) Where the CBN considers the Compliance Plan satisfactory, the CBN shall grant such bank an approval-in-principle,

pursuant to which the applicant bank shall forthwith commence the restructuring of its operations and affairs for the purposes of bringing same in conformity with the provisions of this Regulation and the Compliance Plan.

- (5) In the event that the CBN considers a Compliance Plan submitted by a bank unsatisfactory, the CBN shall issue the applicant bank a deficiency letter, stating the inadequacies identified in the relevant Compliance Plan.
- (6) Any bank that has been issued with a deficiency letter pursuant to Section 6 (5) shall be entitled to submit a revised Compliance Plan addressing the inadequacies identified in the relevant deficiency letter, provided that such revised Compliance Plan is submitted to the CBN for consideration and approval obtained not later than 120 days from 15th November 2010.
- (7) Where a bank refuses, neglects, and/or fails (a) to submit a Compliance Plan within 90 days from 15th November, 2010 in accordance with Section 6 (1) above; and/or (b) to secure an approval-in-principle within 120 days from 15th November, 2010 in accordance with Section 6 (4), the CBN shall be entitled to vary the conditions of the license of such bank to bring the licence in conformity with the provisions of this Regulation.

7. Transition Provisions

- (1) Every bank, which has been granted an approval-in-principle, shall ensure that from the date of such approval-in-principle, it shall conduct its business operations in accordance with the

terms of approval-in-principle and the approved Compliance Plan.

- (2) Every bank that has had the terms of its banking licence varied pursuant to Section 6 (7) above shall ensure that it conducts its operations and affairs in accordance with the varied conditions from the date of such variation.
- (3) Without prejudice to the foregoing, from the date of the approval-in-principle referred to in Section 7 (1), or from the date of variation referred to in Section 7 (2) above, whichever is applicable, to the Effective Date, every bank shall ensure that:
 - (a) it shall not enter into any contract or commitment or do anything which, in any such case, is either inconsistent with the terms of the approved Compliance Plan or out of the ordinary and usual course of its business;
 - (b) it promptly seeks the approval of the CBN in writing upon the occurrence of any event or circumstance which requires the bank to depart from the approved Compliance Plan;
 - (c) it does not advertise, or generally solicit, for any business which although consistent with the terms of the Universal Banking Licence which it presently holds, will be inconsistent with the operations of the type of bank for which it has been granted an approval-in-principle to operate as;
 - (d) it conducts its affairs in a manner which enables it to execute the approved Compliance Plan, and comply with this Regulation within the shortest time possible;

- (e) save with the prior written consent of the CBN, there will not be any increase in the remuneration payable by the bank to any employee, except where such increase is in the ordinary course of business and is consistent with the bank's human resources policy and annual budget for the relevant year;
- (f) save with the prior written consent of the CBN, there will not be any increase in the remuneration payable by the bank to any director or agent, nor any payment of any bonus, nor any profit sharing or other extraordinary remuneration payable to any such director or agent, or any change in, or adoption of any new bonus, profit sharing, or other similar plan, agreement or arrangement with respect to such director or agent;
- (g) save in accordance with the approved Compliance Plan, or in the ordinary course of business, it will not declare, make or pay any cash dividend or other distribution or allot, issue, grant any options over, redeem, purchase, consolidate, convert, sub-divide or reduce any share or loan capital or issue any share warrants or securities convertible into shares; and
- (h) not later than 5 days after the end of each month, submit to the CBN for its review, progress implementation report, setting out in detail, such information as the CBN may specify from time to time, including, confirmation of compliance with Section 7 (3), and the progress being made in the implementation of the Compliance Plan.

8. Divestment

- (1) Where a bank maintains a Related Enterprise other than as permitted in Section 5 (1), such bank shall take immediate steps to divest its interest therein completely not later than the Effective Date.
- (2) Where the bank resolves to divest its interest in a Related Enterprise in accordance with Section 8 (1) above, such bank shall ensure that (a) the divestment is transparent and carried out on an arm's length basis in accordance with all the relevant laws, and any rules made by the CBN, in that regard, (b) interests of all stakeholders, particularly that of the depositors and the shareholders of the bank are taken into account, and (c) more importantly, the long term financial viability and soundness of the bank is well protected and assured.
- (3) Where the shareholders of a bank resolve to acquire or hold the interest of the bank in the Related Enterprise, such bank shall ensure that (a) the acquisition, transfer, arrangement, scheme, reconstruction or reorganisation is transparent and carried out on an arms' length basis, and in accordance with all the relevant laws, and any guidelines or rules provided by the CBN in that regard, (b) interests of the depositors of the bank are taken into account, and (c) more importantly, the long term financial viability and soundness of the bank is well protected and assured.

In all cases, the consideration for the divestment of Related Enterprise in accordance with the provision of Section 8 (1)

above shall be on cash basis only or any other divestment arrangement proposed by the bank and approved by the CBN.

9. Banking Licence

- (1) Not later than 60 days before the Effective Date, every bank that: (a) has been granted an approval-in-principle by the CBN pursuant to Section 6 (4); or (b) has had the terms of its licence varied, by the CBN pursuant to Section 6 (7), shall apply to the CBN to have its Universal Banking Licence exchanged for an appropriate licence to conduct business as one of the types of banks permitted under Section 4 above.
- (2) In applying for such licence, every applicant bank shall provide such information, document, and reports as the CBN may from time to time specify, including evidence of compliance with the Compliance Plan, or the varied conditions of licence as the case may be.
- (3) Where the application for a licence pursuant to this Regulation is successful, the applicant bank shall surrender its existing Universal Banking Licence to the CBN in exchange for an appropriate licence to conduct business as one of the types of banks permitted under Section 4.
- (4) Where an application for a new licence pursuant to this Regulation is not successful, the applicant bank may apply for another type of banking licence before the Effective Date and if then successful, it shall surrender its existing universal banking licence to the CBN, in exchange for a new licence type permitted by Law as spelt out under this Regulation.
- (5) Where by the Effective Date any bank does not possess an appropriate banking licence under BOFIA, such bank shall deliver its existing Universal Banking Licence to the CBN, and

shall in any case, cease to carry on banking business in Nigeria.

10. Interpretation

In this Regulation, save as otherwise defined hereunder, terms defined in BOFIA shall have the same meaning here, and the following terms shall have the meanings ascribed to them thus:

Associate means an Enterprise in which a bank has Significant Influence but not control or joint control.

bank means an entity licensed to engage in banking business by the CBN pursuant to BOFIA.

BOFIA means the Banks and Other Financial Institutions Act, Cap B3, Laws of the Federation of Nigeria, 2004.

CBN means the Central Bank of Nigeria.

Compliance Plan means a detailed proposal to be submitted by every universal bank on how it intends to abide with the provisions of this Regulation pursuant to Section 6.

Custodian means an entity licensed as a custodian under the Pension Reform Act, 2004.

Effective Date means 14 May, 2012 or such date as the CBN may prescribe.

Enterprise means a non-natural person, including a company, a partnership, a joint venture, enterprise, firm, business name, trust, or such like juristic or juridical person.

Political Expenditure means any expenditure incurred by a bank on activities on the part of the bank that are capable of being reasonably regarded as intended to affect public support for a political candidate, political party or other political organisation.

Related Enterprise means:

- (a) an Associate;
- (b) a Subsidiary;
- (c) any Enterprise:
 - (i) that the bank controls directly or indirectly, by a trust or otherwise;
 - (ii) in which a majority of its directors constitute a majority of the persons holding any such office with the bank; or
 - (iii) in which the bank holds shares, stocks or any form of equity interest, except pursuant Section 20 (2) (d) (iii), BOFIA.

Significant Influence means the ability to exercise significant influence over the operating, financial, or accounting policies of another entity.

For the avoidance of doubt:

- (a) where there is a direct or indirect ownership of 20 percent or more of the voting stock of any entity, there shall be a rebuttable presumption of the existence of significant influence; and
- (b) where there is a direct or indirect ownership of less than 20 percent of the voting stock of any entity, the existence of significant influence may be considered based on factors such as representation on the board of directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel and technological dependency.

Subsidiary means a subsidiary within the meaning of the term under the Companies and Allied Matters Act Cap C20, Laws of the Federation of Nigeria, 2004.

Universal Banking Guidelines means the *Guidelines for the Practice of Universal Banking in Nigeria* issued by the CBN on 22 December 2000 with reference number BSD/DO/CIR/VOL.1/10/2000.

Universal Banking Licence means a banking licence issued by the CBN pursuant to the Universal Banking Guidelines.

11. Citation

This Regulation may be cited as the **REGULATION ON THE SCOPE OF BANKING ACTIVITIES& ANCILLARY MATTERS, No.3, 2010.**

Made at Abuja this 4th day of October, 2010.

Sanusi Lamido Sanusi
Governor, Central Bank of Nigeria