

SEC GUIDANCE NOTE TO CAPITAL MARKET OPERATORS AND PUBLIC COMPANIES ON THE CIRCULAR

REGARDING BOARD APPOINTMENTS AND DIRECTOR TENURE

The Guidance Note was issued by the Security and Exchange Commission (“**SEC**”) to Capital Market Operators (“**CMOs**”) and Public Companies following SEC’s recent circular on the “*Transmutation of Independent Non-Executive Directors and Tenure of Directors*”, which addresses the governance and tenure of directors in capital market operators and public companies. The purpose of the Guidance note is to interpret the circular and reflect SEC’s commitments to promoting sound governance, effective oversight and long-term market stability. The Guidance notes apply to CMOs that operate Financial Market Infrastructures (“**FMI**s”) and have been determined by SEC to be Significant Public Interest Entities (“**SPIEs**”). It should be noted that the circular does not apply to private companies.

The Circular was introduced as a result of the prevailing practice of rotation and cross-appointment among board members within the same entity or Group of companies, particularly, the concerns around the transmutation or conversion of Independent Non-Executive Directors (“**INEDs**”) to Executive Directors (“**ED**”), including the elevation of the role of Chief Executive Officer (“**CEO**”) to the position of Chairman of the Board. This practice raises significant concerns regarding the independence of the Board as INEDs play a crucial role in upholding the independence and integrity of the Board.

The restrictions placed on board appointments and tenure of directors of CMOs classified as SPIEs, and public companies are as follows:

1. **Prohibition of Transmutation of INEDs:** In aligning with international best practices, INEDs can no longer be appointed as EDs within the same company or Group structure. This prohibition applies to both CMOs and public companies.

2. **Tenure Limits:** The tenure of directors of all CMOs that are considered SPIEs, as determined by SEC, would be limited to 10 consecutive years in the same company and a combined 12 consecutive years within the same group structure. All years already spent before this directive also count towards the limit. Public companies are directed to comply with the Nigerian Code of Corporate Governance (“**NCCG**”) 2018.

3. **Restriction on the profile of the Chairman of the Board:** Former CEOs or EDs who have reached their tenure limit, cannot be appointed as Chairman until the expiration of a 3-year cool-off period. Appointment as Chairman of the Board following the cool-off period shall not exceed a tenure more than 4 years.

Going forward, FMIs classified as SPIEs are expected to review current and proposed board structures for compliance; update board succession plans in line with the 10/12-year limits and cool-off periods; and maintain records and notify SEC where significant governance changes are being planned or implemented.

COMMENTARY

This directive demonstrates SEC's commitment to improved governance, accountability, orderly and transparent board succession planning, ensuring continuity and independence in the oversight of FMIs and investor confidence in the leadership of Nigeria's capital markets and FMIs. The release of the Guidance Note and Circular mandates FMIs determined as significant public interest entities and public companies to review current and proposed board structures for compliance, update board succession plans in line with the 10/12-year limits and cool-off periods and maintain records and notify the Commission of any significant governance changes that are being proposed or implemented. It would also ensure diverse and independent board composition in line with corporate governance standards and refrain companies from utilising the position of INED as a transitional or strategic role.

While other CMOs that are not classified as SPIEs and private companies are not required to comply, they are encouraged to adopt these standards as a matter of best practice and as an indicator of evolving regulatory expectations.

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