

RULEBOOK OF THE EXCHANGE, 2015
(DEALING MEMBERS' RULES)

RULE ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM¹

INTERPRETATIVE GUIDANCE

“Money laundering requires an underlying, primary, profit-making crime (such as corruption, drug trafficking, market manipulation, fraud, tax evasion), along with the intent to conceal the proceeds of the crime or to further the criminal enterprise. These activities generate financial flows that involve the diversion of resources away from economically and socially-productive uses - and these diversions can have negative impacts on the financial sector and external stability of member states. They also have a corrosive, corrupting effect on society and the economic system as a whole.”

- The International Monetary Fund.²

1.0 INTRODUCTION

- 1.1 Dealing Members are key operators in the capital market as they facilitate vital transactions that support the Nigerian capital market and economy. As such, they are major players in any initiative to prevent the capital market from being used by criminal enterprises. To this end, they must take positive steps aimed at ensuring that their services are not used to further criminal purposes. They must act with integrity and uphold all applicable laws, rules and regulations, including rules and regulations of The Exchange on Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT).
- 1.2 Money laundering and terrorism financing are serious threats to society, causing loss of revenue, endangering life, and fuelling other criminal activity. They also undermine the integrity of financial institutions and markets. In their quest to disguise the source of their ill-gotten proceeds, money launderers divert their investments from one economic venture to another without sound economic reasons, thus creating economic distortion and investment instability.

¹ Rule 9.13: Anti-Money Laundering and Combating the Financing of Terrorism, Rulebook of The Exchange, 2015 (Dealing Members' Rules)

² See “Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT)”, obtained from IMF website on 15 October 2014 - <https://www.imf.org/external/np/leg/amlcft/eng/>.



- 1.3 Rule 9.13, Rulebook of The Exchange, 2015 (Dealing Members' Rules), is titled "Anti-Money Laundering and Combating the Financing of Terrorism". The Rule addresses AML/CFT requirements. The text of the rule is set out below:

Rule 9.13: Anti-Money Laundering and Combating the Financing of Terrorism

Every Dealing Member shall comply with such other requirements for identification of clients as prescribed by the laws of the Federal Republic of Nigeria and such other Rules and Regulations as may be prescribed from time to time by regulatory agencies including the Securities and Exchange Commission, the Central Bank of Nigeria; and The Exchange on money laundering and combating the financing of terrorism or other related matters. Pursuant to the foregoing each Dealing Member shall:

- (a) Have an Anti-Money Laundering Policy and train its employees on the prevention and detection of money laundering and other related activities as may be prescribed by The Exchange from time to time.*
 - (b) Disclose to The Exchange on a quarterly basis and in a format to be prescribed by The Exchange all proprietary accounts held by it whether directly or indirectly and with other stockbroking firms.*
 - (c) Ensure that its Authorized Clerks shall disclose to their Senior Management, all personal securities accounts held whether directly or indirectly and to declare the nature of interest in the securities.*
- 1.4 Although Rule 9.13 does not set forth any specific requirements with respect to Combating the Financing of Terrorism (CFT), Rule 17.1, Rulebook of The Exchange, 2015 (Dealing Members' Rules) requires Dealing Members to transact their businesses in a just and equitable manner, and that all transactions must comply with or be fulfilled in accordance to all applicable laws, rules and regulations. The Exchange expects that Dealing Members will adopt relevant CFT measures in their operations and dealings in accordance with applicable laws and regulations such as the Money Laundering (Prohibition) Act, 2011, the Securities and Exchange Commission (Capital Market Operators Anti-Money Laundering and Combating the Financing of Terrorism) Regulations 2013³, the Central Bank of Nigerian (Anti-Money Laundering and Combating the Financing of Terrorism In Banks and Other Financial Institutions In Nigeria) Regulations, 2013, The Securities and Exchange Commission Rules on Three-Tiered Know-Your-Customer (KYC) Framework for Capital Market Operators and the Inclusion of BVN as a valid means of identification. In addition, references will be made in this interpretative guidance to CFT requirements where applicable.

³ Schedule XI, SEC Consolidated Rules and Regulations, 2013.



- 1.5 The Exchange adopts the above approach because similar methods are used for both money laundering and the financing of terrorism. In both cases, the perpetrator makes an illegitimate use of the financial sector. An effective AML/CFT framework must therefore address both risk issues; it must prevent the inflow of proceeds of illegal activity into the financial system by taking effective steps to detect such funds and sanction perpetrators.
- 1.6 In addition to the foregoing, AML and CFT strategies are aimed at disrupting the illegal undertakings of a criminal or terrorist organization through its financial activities; and using the financial trail to identify the various components of the criminal or terrorist network. This implies the need to put in place mechanisms to scrutinize all financial transactions, and to detect suspicious transactions.
- 1.7 Dealing Members are also required to report any suspicious transaction and put in place processes and procedures to identify Politically Exposed Persons (PEP) and their close associates and beneficial owners of assets/investments for the purpose of risk profiling and ensuring that money is not laundered through their operations.
- 1.8 Dealing members are enjoined to continuously treat compliance with AML/CFT laws as a process which should be enhanced from time to time in line with extant laws and regulations.

2.0 PURPOSE OF THIS INTERPRETATIVE GUIDANCE

- 2.1 This interpretative guidance is for Dealing Members of The Exchange and all persons or entities that have capital market dealings with them, to guide them in their transactions; and in implementing the legal requirements for measures designed to deter, detect and disrupt money laundering and terrorism financing activities.
- 2.2 The purpose of this interpretative guidance is to:
 - a. Outline good practice on complying with the framework;
 - b. Encourage the practice of developing systems and controls to prevent Dealing Members from being used to facilitate money laundering and financing of terrorism; and
 - c. Provide direction on applying the risk-based approach to compliance effectively.
- 2.3 The Exchange will take into account whether a Dealing Member has complied with this interpretative guidance and the Rules of The Exchange when undertaking its role as regulator of Dealing Members' conduct; and as a supervisory authority for the purposes of The Exchange's regulations. Compliance with this interpretative guidance is not

mandatory but a Dealing Member may be asked by The Exchange to justify a decision to deviate from it.

3.0 DESCRIPTION OF MONEY LAUNDERING

3.1 Money laundering is a process whereby the financial proceeds of crime are transformed into apparently legitimate money or other assets. Money laundering has traditionally been viewed as a three (3) stage process which is described below:

- a. Placement: at this stage, proceeds of crime are introduced into the financial system. Placement usually occurs by breaking up large amounts of cash into smaller sums that are then deposited into various accounts at financial institutions or used to purchase a series of monetary instruments (travelers' cheques, money orders, etc.). As banks and financial institutions have developed and keep updating their AML procedures, criminals devise other means of placing cash within the financial system.
- b. Layering: at this stage, money is converted (or moved) through a web of transactions to disguise it from its source and ownership. Money may be channeled through the purchase and sale of investment instruments, or wired through a series of accounts at various banks. Different entities like companies and trusts can be involved and layering can take place in multiple jurisdictions across the globe. An unsuspecting organization may be targeted at this stage and detection can be difficult.
- c. Integration: at this stage, the money is re-entered into the economy as apparently legitimate funds and may be used to purchase real estate or luxury assets or to invest in business ventures. Criminals will invest funds in legitimate businesses or other forms of investment, often using unsuspecting organizations to buy securities or property, establish a trust, acquire a company, or even settle litigation, among other activities. Detection of money laundering is very difficult at this stage.

3.2 Money laundering activities include:

- a) acquiring, using or possessing criminal property⁴;
- b) handling the proceeds of crimes such as theft, fraud and tax evasion;
- c) being knowingly involved in any way with criminal or terrorist property;
- d) entering into arrangements to facilitate laundering criminal or terrorist property;
- e) investing the proceeds of crimes in other financial products;
- f) investing the proceeds of crimes through the acquisition of property/assets; and
- g) transferring criminal property.

⁴ "Criminal Property" is property which is, or represents, a person's benefit from criminal conduct, where the alleged offender knows or suspects that it is such. – [Anti-Money Laundering: Guidance for the Legal Sector \(March 2018\)](#). See also the United Kingdom's Proceeds of Crime Act, 2002 - <https://www.legislation.gov.uk/ukpga/2002/29/section/340?view=plain>

4.0 DESCRIPTION OF TERRORISM FINANCING

- 4.1 Terrorist financing is the collection or the provision of funds for terrorism. In the case of money laundering, the funds are always of illicit origin, whereas in the case of terrorist financing, funds can stem from both legal and illicit sources. The primary goal of individuals or entities involved in the financing of terrorism is therefore not necessarily to conceal the sources of the money but to conceal both the funding activity and the nature of the funded activity.
- 4.2 Terrorism usually refers to violent acts that are intended to create fear (terror), are perpetrated for a religious, political, or ideological goal, and deliberately target at non-combatants (e.g., neutral military personnel or civilians), or disregard their safety.

5.0 LEGAL FRAMEWORK/SOURCES OF ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (AML/CFT) REGULATIONS

The Exchange's Rules prohibiting AML activities address requirements based on applicable Nigerian laws, the rules and regulations of relevant governmental agencies; and other requirements for preventing money laundering, terrorist financing or other related financial crimes. The Nigerian capital market's AML/CFT regulatory regime is based on the following laws, rules and regulations:

5.1 The Money Laundering (Prohibition) Act, 2011 (MLPA)

Some of the salient points in the MLPA include the following:

- 5.1.1 The MLPA repeals the Money Laundering (Prohibition) Act, 2004 and makes comprehensive provisions to ban the financing of terrorism, and the laundering of the proceeds of crime or illegal acts. On conviction, a person is liable to imprisonment for a term between seven (7) and fourteen (14) years. For a body corporate, it is liable to pay a penalty representing one hundred percent (100%) of the funds and properties acquired as a result of the offence committed, and withdrawal of its licence.
- 5.1.2 Section 1 of the MLPA sets out the thresholds for reporting, making or accepting cash payment in a transaction except such payments or acceptance of cash payments are made through a financial institution. The thresholds are Five Million Naira (₦5,000,000) for individuals, and Ten Million Naira (₦10,000,000) for corporate bodies.
- 5.1.3 The MLPA increased the scope of certain supervisory and regulatory authorities so as to address the challenges faced in the implementation of the AML regime in Nigeria. Some of these changes include the empowerment of the:



- Economic and Financial Crimes Commission (EFCC) to demand, obtain and inspect the books and records of Financial Institutions⁵ such as Dealing Members, and Designated Non-Financial Institutions, to confirm compliance with the MLPA as provided in Section 21 of the MLPA; and
 - National Drug Law Enforcement Agency (NDLEA), to identify or locate properties, objects or financial proceeds of trafficking in narcotic drugs or psychotropic substances and make a report of its findings to the EFCC.
- 5.1.4 Section 2 provides that where a person or corporate body transfers to or from a foreign country funds or securities exceeding Ten Thousand US Dollars (US\$10,000) or its equivalent, the transaction must be reported to the CBN or the Securities and Exchange Commission (SEC). A person involved in the transportation of cash or negotiable instruments in excess of Ten Thousand US Dollars (US\$10,000) or its equivalent, into or out of Nigeria must make a declaration to Nigeria Customs Service.
- 5.1.5 Section 3 requires verification of customer's identity, i.e. Know Your Customer (KYC). The section sets forth the requirements to be met by financial institutions and designated non-financial institutions in the identification and verification of their customers' identity. Dealing Members should establish and verify the identity and the nature of business of a person or entity, before entering into a business relationship with them.
- 5.1.6 Sections 6 and 10 address rendition of statutory reports such as Suspicious Transactions Report (STRs), and Currency Transaction Reports (CTRs), to the Nigerian Financial Intelligence Unit (NFIU) within seven (7) days of any transaction. Such reports include:
- i. The name of the reporting entity/accounting firm or accountant,
 - ii. Full details of transaction and customer(s),
 - iii. Comprehensive statement of the issue giving rise to the suspicion (STRs only).
- Contravention of the provisions would result in liability to pay a fine of not less than Two Hundred and Fifty Thousand Naira (₦250,000) and not more than One Million Naira (₦1,000,000) for each day during which the offence continues, upon conviction.
- 5.1.7 Sections 7 addresses records preservation, and requires Dealing Members to maintain records of a customer's identification for at least five (5) years after closure of the account; and records of all transactions for a period of at least five (5) years after carrying out the transaction. Section 8 provides that the records shall be provided to the following

⁵ The MLPA defines financial institutions as follows - "Financial Institution" means banks, body association or group of persons, whether corporate or incorporate which carries on the business of **investment and securities**, a discount house, insurance institutions, debt factorization and conversion firms, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, private ledger service, investment management, local purchase order financing export finance, project consultancy, financial consultancy, pension funds management and such other business as the Central Bank, or other appropriate regulatory authorities may from time to time designate.



on demand: the Central Bank of Nigeria (CBN), the NDLEA and such other regulatory or judicial authorities as may from time to time be specified by the EFCC.

- 5.1.8 Section 9(1) covers awareness and training. It requires Dealing Members to designate, at management level, chief compliance officers in their head offices and branches, who have the relevant competence, authority and independence to implement their institutions' AML/CFT compliance programmes. Section 9(2) empowers the CBN, to impose stiff penalties in the event of breach of sub-section 1.
- 5.1.9 Section 11 of the MLPA prohibits the opening or maintaining of numbered or anonymous accounts; operating a shell bank or entering into correspondence with such organization. Stiff penalties will be imposed in the event of breach.
- 5.1.10 Section 16(2) and (3) provide that any director or employee of a financial institution that refrains from making an STR will be liable on conviction to a fine of not more than Three Million Naira (₦3, 000,000), or a term of imprisonment of not more than three (3) years or both, or banned indefinitely for a period of not less than five (5) years from practicing his/her profession. In addition, Section 19(2) of the Act provides that where a body corporate is convicted of an offence under this Act, the court may order that the corporate entity be wound up and all its assets and properties forfeited to the Federal Government.
- 5.2 **The Securities and Exchange Commission's Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Regulations for Capital Market Operators, 2013**

Some salient points to be noted include the following:

- 5.2.1 The regulations provide protection against fraud, reputational and other financial risks, reduce the risk faced by Dealing Members market from the proceeds of crime, guide Dealing Members in the implementation of KYC and Customer Due Diligence (CDD) requirements.
- 5.2.2 A Dealing Member is required to implement policies stating its commitment to comply with AML/CFT obligations under the law, formulate and implement internal controls and procedures, designate a chief compliance officer at management level, etc. The duties of compliance officers are set forth in The Rulebook of The Exchange, Dealing Members' Rules 2015. Employee education and training is also made mandatory in the Act to make employees aware of their obligations. Specific subjects to be included in the training programme include, AML regulations and offences, nature of money laundering, money laundering "red flags" and suspicious transactions, including trade-based money laundering typologies, reporting requirements, clients due diligence, risk-based approach to AML/CFT, record keeping and retention policy.



5.2.3 Dealing Members are required to report suspicious transactions:

- a. derived from activities originating from or involving high-risk countries vulnerable to money laundering, subject to this being confirmed;
- b. involving shell companies;
- c. with correspondents that have been identified as higher risk;
- d. involving high-valued monetary instruments such as traveler's cheques, bank drafts, money order, particularly those that are serially numbered;
- e. involving amounts that are just below the stipulated reporting threshold or enquiries that appear to test an institution's own internal monitoring threshold or controls.

Special attention is to be given to business relationships and transactions with persons or legal entities from or in countries that insufficiently apply the Financial Action Task Force (FATF) recommendations.

5.2.4 The regulations also state that no secrecy or confidentiality laws regulating a CMO's relationship with the client will be allowed to inhibit implementation of the regulations. Additionally, the Regulations impose the following sanctions under Section 9(c):

Any Capital Market Operator or its officer that contravenes the provisions of these regulations shall be subject to applicable sanctions by the SEC as follows:

1. *Against the Operator*
 - (a) *Imposition of a penalty of not less than ₦1, 000,000 from the first to the fifth instances on each offence; and*
 - (b) *In addition, suspend any license issued to the CMOs for failure to comply with these Regulations.*

5.3 **The Central Bank of Nigeria (CBN) Anti Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria Regulations, 2013**

5.3.1 The regulations provide AML/CFT compliance guidelines for financial institutions under the regulatory purview of the CBN as required by the relevant provisions of the MLPA, the Terrorism Prevention Act, 2011 and other relevant laws and regulations.

5.3.2 The regulations also address key areas of an AML/CFT policy framework, the development of the compliance unit and function/compliance officer designation and duties, the conduct of CDD, monitoring and filing of suspicious transactions to the NFIU, reporting requirements, records keeping and AML/CFT training.

5.3.3 The regulations identify specific offences and set out measures and sanctions against them. Terrorism financing offences are described and the regulations make it mandatory to report to the NFIU any asset frozen, or actions taken in compliance with the prohibition

requirements of relevant United Nations' Security Council Resolutions on terrorism, financing of proliferation of weapons of mass destruction e.t.c.

5.4 **The Terrorism (Prevention) Act, 2011**

The Terrorism (Prevention) Act, 2011 established processes for the prevention, prohibition and combating of acts of terrorism and the financing of terrorism. In addition, it provides for the effective implementation of the Convention on the Prevention and Combating of Terrorism as well as the Convention on the Suppression of the Financing of Terrorism; and prescribes penalties for the violation of its provisions.

5.5 **The Economic and Financial Crimes Commission (Establishment) Act, 2004**

5.5.1 The Act establishes the Economic and Financial Crimes Commission (EFCC) which among other stated functions carries out:

- the investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.;
- the co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority;
- the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds; etc.

5.5.2 The Act also sets up the Nigerian Financial Intelligence Unit (NFIU) which is charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.

5.6 **Securities and Exchange Commission (SEC) Rules on the Three-Tiered Know-Your-Customer (KYC) Framework for Capital Market Operators and the Inclusion of BVN as a Valid means of Identification.**

5.6.1 The essence of the SEC Rules on the Three-Tiered Know-Your-Customer (KYC) Framework for Capital Market Operators (the 'SEC's KYC Rules') is for the purposes of financial inclusion and to ensure that CMOs satisfactorily identify all relevant parties prior transacting with these parties; by obtaining and confirming all identification evidence provided.

5.6.2 The SEC Rules mandate a CMO to:



- a. Apply the simplified Know-Your- Customer (KYC) requirements as provided for in the SEC KYC Rules;
- b. Record the reasons for doing so along with the account opening documents and render returns to the SEC on a quarterly basis;
- c. Maintain records of all domestic and cross border transactions including occasional transactions;
- d. Put in place additional monitoring for accounts opened under the SEC KYC Rules to ensure that such accounts are not misused; and
- e. Report all Suspicious Transactions (STRs) relating to these categories of clients to the Nigerian Financial Intelligence Unit/Centre (NFIU/NFIC) as required by the Money Laundering and Terrorism Financing Laws and Regulations.

5.6.3 To manage risk exposures, three (3) account types, categorized on the basis of each account type's level of risk, are identified in the SEC KYC Rules as follows:

- a. Level 1-Low-Risk Account, whose features include:
 - i. Can be opened through agents;
 - ii. No minimum investment amount required for the opening of these accounts;
 - iii. No foreign remittance can be credited to these accounts
 - iv. The account shall be limited to a maximum:
 - Single deposit amount of ₦20,000; maximum cumulative balance of ₦200,000 at any point in time; and daily redemption limit of ₦30,000.
- b. Level 2 - Medium-Risk Account, whose features include:
 - i. account may be opened face to face at the CMO's office or any of its representatives' or agents' offices;
 - ii. The account shall be limited to a maximum:
 - Single deposit of ₦40,000; cumulative balance of ₦400,000 at any point in time; and daily redemption limit of ₦50,000.
 - iii. Where verification of client's identification documents is not complete, the client will not be allowed to operate the account.
- c. Level 3 - High-Risk Account, whose features include:
 - i. A minimum investment amount may be required for the opening of High-Risk Accounts;
 - ii. There is no maximum limit on single deposits and cumulative balance.

Certain basic customer information are also required to be provided.

5.6.4 To curb money laundering activities, CMOs must be satisfied that a prospective client is who he/she claims to be. If the client is acting on behalf of another, i.e, the funds are supplied by someone else or the investment is to be held in the name of a third party, then the CMO must verify the identity of the clients and the third party.



5.6.5 To provide a wider scope for client verification and identification, SEC has amended its existing rules and regulations to create a sub Rule 46 (2) (b) which provides for the use of BVN (Bank Verification Number) as an acceptable means of identification in the capital market. The adoption of BVN was premised on the fact that the BVN gives each individual a unique identity that can be verified across the Nigerian banking industry. In combatting money laundering activities, the use of BVN helps to address issues of identity theft and reduce exposure to fraud while simultaneously promoting financial inclusion of unbanked clients.

6.0 ACTS/OMISSIONS WHICH ARE LIKELY TO CREATE AN ENABLING ENVIRONMENT FOR MONEY LAUNDERING AND TERRORIST FINANCING

- a. Lack of awareness/ignorance of relevant laws and regulations. This creates a weak link in the fight because the procedures for combating money laundering and terrorist financing are not put in place;
- b. Less scrutiny of transactions. This attracts criminals as they may not be subjected to stringent AML/CFT requirements;
- c. Lack of or inadequate AML/CFT program. Without a program, relevant personnel will lack training on AML and may not have the knowledge to implement adequate internal control measures;
- d. Excessive protection of client confidentiality. This promotes secrecy and anonymity which attracts criminals because it provides a perfect cover for illegal activity; and
- e. Collusion by unscrupulous professionals.

7.0 RED FLAGS/ACTS WHICH SHOULD BE CLOSELY SCRUTINIZED IN ORDER TO COMBAT MONEY LAUNDERING OR TERRORIST FINANCING

- a. Client is unwilling to provide complete information about himself or his business.
- b. Client regularly moves large sums of cash not consistent with client's business.
- c. Client always prefers to deal in cash instead of using a bank.
- d. Client is unwilling to reveal the identity of a third party on whose behalf he/she is acting.
- e. Client changes accountants or book keepers regularly without justifiable reasons.
- f. Client always pays unusual consultancy fees to companies located offshore (not related to it) or makes frequent payments to subsidiaries that are not within its normal course of business.
- g. Client frequently acquires assets which are not consistent with the ordinary business practice prevailing in the industry in which it operates.
- h. Client regularly deals with companies located in countries that have loose AML/CFT regulatory regimes.

NOTES:

1. The above information does not constitute professional investment or legal advice to anyone. Professional advice should be sought by stakeholders or potential investors where required.
2. Should you require further clarification, kindly contact the Broker Dealer Regulation Department of The Exchange at nsebdr@nse.com.ng.
3. The Rules of The Exchange are also available on its website (www.nse.com.ng), for additional reference.

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