AFRICAN JOURNAL OF SOCIAL SCIENCES (AJSS)
Volume 13 Number 1 (2023) 26 – 56
ISSN 2045-8452 (Print) ISSN 2045-8460 (Online)
Publishers: Top-Journals, London, England, United Kingdom
Website: www.topjournals.co.uk
AJSS is licensed to promote all areas of Law & Social Sciences

CIVIL LIABILITIES IN THE REGULATION OF SECURITIES AND CAPITAL MARKET IN NIGERIA

URANG, Atauwo Ogotute
PhD Research Student, Faculty of Law
University of Nigeria
Enugu Campus, Nigeria

ABSTRACT

The capital market is a complex institution that provides the means and mechanisms through which intermediate and long-term funds are made available to governments, businesses, and individuals. A national economy cannot grow without a robust capital market because it is the only institution that can attract investors to invest in the economic subsectors. However, several factors are said to be determinants for the success or failure of a capital market, and these include the legal regulations governing the capital market. The purpose of this study is to analyse the current legal regime of the Nigerian security and capital market and civil liabilities created under the regime. Specifically, the study seeks to (1) identify and analyses the legal framework regulating the Nigerian capital market, (2) evaluate the legal structure of the Nigerian capital market, and (3) identify and assess civil liabilities in the Nigerian securities and capital market regulations. The primary sources of data employed in this study are statutes, both international legal standards and national legislation as well as case laws and contained in law reports while the secondary sources of data include textbooks, journals, newspaper articles, internet materials, conference papers and seminar papers.. The study reveals that the Nigerian capital market is categorized as a weak market in terms of market efficiency and is not considered an investors' choice due to scandals/events that seem to have diminished the confidence of investors in the market. The study recommend reforms in the legal and institutional frameworks of the Nigerian capital market to enhance the protection of the interests of investors and other operators in the market.

Keywords: CSR, Public company, Public Service Missions, Cameroon.
JEL Classification: D24, E22, F21, K22.

1. INTRODUCTION

In a general outlook, a financial market is saddled with the responsibility of arranging institutions and facilities that preside over the intermediation of funds in an economy. The term financial intermediation means the coordination of financial resources from surplus spending units and the channelling of such to deficit spending units for production investment and the generation of assets or securities in the process.[1] Moreover, a financial market is said to be divided into two segments namely, the money market and the capital market. However, the capital market is given much attention as it forms the basis of the study the basis of this study.

The capital market can be said to be an institution that is complex and can be seen as a mechanism through which intermediate, and long-run funds are made available to government, businesses (firms), and individuals. It is therefore an institution that engineers the instrumental arrangement that performs the function of coordinating private and public savings from surplus spending units and channelling them to the deficit units to produce goods and services.[2] More so, the capital market serves as a means of transforming savings into long-term investment by using equity bonds, debentures, mortgages, and investment stocks to facilitate intermediation. Furthermore, the capital market is made up of the secondary market and primary market which exists for the sale of old and new securities respectively.

In modern society, a national economy cannot grow without a capital market because it is the only institution that can attract investors to invest in the economic subsectors. There is a clear positive relationship between capital accumulation and real economic growth. However, several factors are said to be determinants of the success of the capital market, and this includes the provision of legal regulations governing the capital market.[3] The capital market, therefore, exists mainly to deal with the securities of companies. This financial institution also has the capacity to help individuals, governments, and firms

[1] E A Arowole, 'The Development of Capital Market in Africa with particular reference to Kenya and Nigeria' (IMF Staff paper, Washington) 1997 (2).

[2] Research Clue, 'Capital Market in Nigeria, its Evolution, Function and Impact on the Economy' (2017) <https://nairaproject.com/m/projects/2804.html> accessed 19 October 2020.

[3] BBC, Contrast in development between different countries (2020) <http://www.bbc.co.uk/schools/gcsebitesize/geography/development/contrasts_development_rev1.shtml> accessed 12 September 2020.

grow economically. It also can make funds available for the development of infrastructure, for example, roads, water, and housing, and for developing industrial, agricultural, and other necessary facilities for economic development. However, for the capital market to grow it needs investors and these investors need to be confident to make more investments in the market. Their confidence that they are legally protected is what makes the capital market thrives.[4] In other words, the effectiveness of legal regulations and frameworks is instrumental in enhancing potent capital market activities. Concurrently, timely and adequate enforcement mechanisms are important to enhancing investor confidence. The institutions expected to undertake capital market activities are the Securities and Exchange Commission (SEC) and the Capital Trade Point.[5]

According to John Austin, '…laws without sanctions are mere words'[6] This implies that the activity of enforcement and its effectiveness as well as the importance of legal regulation is necessary. The purpose of this study is to identify and analyse the legal framework regulating the Nigerian capital market, evaluate the legal structure of the Nigerian capital market, and identify and assess civil liabilities in the Nigerian Securities and capital market regulations. The paper will propose reforms in the legal and institutional frameworks of the Nigerian capital market to enhance the protection of the interests of investors and other operators in the market.

The study adopts the doctrinal methodology involving the collection and review of relevant laws and literature on securities and the capital market. Both primary and secondary sources of data were used. The primary sources of data national and international statutes and case law while the secondary sources of data include textbooks, journals and newspaper articles, internet materials, conference papers and seminar papers. The paper is structured into five sections. This first section is the introduction. The second section briefly highlights the concept of capital market while the third section discusses the regulation and structure of the Nigerian capital market. The penultimate section appraises the law and civil liabilities in the Nigerian securities and

---

[4] Okiemute Akpomudje, 'Legal Regulation of the Capital Market in Nigeria: Analysis and Prospects for Reform' (Lancaster University, 2017).

[5] Ibid.

[6] J. Austin, *The Province of Jurisprudence Determined,* (London: John Murray, 1832).

capital markets. Finally, the last section provides the conclusion and recommendations of the paper.

THE CONCEPT OF CAPITAL MARKET

The capital market is the basic structure of institutions that organizes the purchase and sale of long-term financial assets, such as shares, government stocks, bonds, debentures, and other longterm investments.[7] It is seen as a part of the financial system that primarily takes care of raising capital by dealing in shares, bonds, and other long-term or short-term investments.[8] The capital market serves as a medium through which both large, medium, and small businesses access equity and debt capital directly, thus leading to a reduction in their reliance on bank-based financing.[9] This financial market is made up of that mechanism as well as institutions that help combine medium and lo9ng term funds and make them available to government, business owners, and individuals. As described by Chisholm in Akpomudje, "the market serves as the cornerstone of any financial system by providing funds needed for financing not only business and other economic institutions but also the programmes of government as a whole. It grants individuals and institutions the accessibility to corporate bodies and government parastatals that direct their savings towards capital intensive projects." [10]

Capital market is used to mean an investment of explicit and implicit claim to capital that happens over a long term. Long-term is used to refer to those investments that have a lock-in period of over one year. In this financial market, both equity and debt mechanisms such as equity shares, preference shares, dentures, zero-coupon bonds, secured premium notes as well as any financial documents that covers lending and borrowing are bought and sold. Adesiyan[11] while taking the concept of capital market from the angle of nature and the type of instrument traded that occur in the market, described capital market thus:

---

[7] A. Omojola, *Capital Market Operations*, (Nigeria: Credible Associates Limited, 2006) 16

[8] F. J Fabozzi, and F. Modigliani, *Capital Markets: Institutions and Instruments*, (4th edn, Pearson International Edition, 2009) 10

[9] E. Ferran and L. Chan Ho, *Principles of Corporate Finance Law*, (2nd edn, Oxford University Press, 2014) 59 [10] A. M Chisholm, *An Introduction to International Capital Markets*, (2nd edn, Wiley & Sons Ltd, 2009) 2 [11] S.O. Adesiyan, 'The Structure of the Nigerian Capital Market' (Workshop on Introduction to Capital Market for Students and others at the SEC Training, Abuja, 18 October 2004).

> The capital market is a system involving an inter-play of various part and participant carrying out different roles in what may be described as a continuous process during which financial instruments (securities) are issued and traded and funds mobilized and allocated. Such securities include those evidencing debt or ownership relationship, between the issuer and the subscriber/investor.

The above definition emphasized the basic differences that often occur between the bond and equity segment of the capital market. The bond market is said to make provision for facilities in raising long term debt funds, while on the other hand, the equity segment makes provision for the facility needed for long term funds raising long term which is basically through the issuance of securities which confer ownership right on the holders. Dougali[10] gives a more general definition of capital market while trying to include all the elements possible and opined as follows:

> The capital market is defined as the complex of institutions and mechanisms through which intermediate term funds and long-term funds are pooled and made available to business, government and individuals and instruments already outstanding are transferred.

Dougali's definition mirrored the entire structure of the capital market. Thus, the existence of self-regulating organization (SRO) as well as the market institutions of principal regulatory institutions is recognized. This definition also signifies the complexity involved in the transfer of funds, which is usually handled by trained operators in the market. It further recognizes that the funds in the market are available for business concerns, government and individuals who are the principal users of funds. It recognizes the secondary market for securities, which forms the greater ambit of the market.

The capital market is divided into two segments: the primary market and secondary market. The primary market which is referred to as new issue market deals with trading of new stocks and new bounds which comes directly from

[10] H.E. Dougali, *Capital Market and Institutions* (New Jersey: Prentice Hall Inc., 1975) 3. [13] R. Veil, *European Capital Markets Law*, (Hart publishing Ltd, 2013) 75. [14] ibid 76.

companies to investors, businesses and other institutions as well as trading of new securities.[13] The mobilization of fund in primary market takes place through prospectus, right issue and private placement of securities. The secondary market on the other hand is described as a market for older financial institutions. Here, trading takes place between investors that follow through the original issue in the primary market and private investors, investment banks as well as other firms where these firms resell their equity and debt securities to investors.[14] According to Al-Faki[15] , the capital market is a 'network of specialized financial institutions, series of mechanisms, processes and infrastructure that, in various ways, [11]facilitate the bringing together of suppliers and users of medium to long term capital for investment in socio-economic developmental projects'.

Capital market, which is different from regular trading therefore tends to increase the value of the information regarding investments made available to the investors. Capital market is important and essential while trying to attain sustainable increase in size, values, strength, and development. To attain this, the allocation of capital must be effective to ensure that human and resources are well managed for optimal output so as to enhance proper harnessing between businesses and economy.[16] As asserted by Osinubi in Akpomudje[12]

> When the capital market is thriving in an efficient manner, there is likelihood the economy will grow. If capital resources are not provided to economic areas especially industries where demand is growing and which are capable of increasing production and productivity, the rate of expansion of the economy often suffers.

This implies that the growth of a capital market will affect the growth of the economy which means that an increase in capital market will lead to increase in the economy and vice versa. Capital market is a gauge used to measure the strength of the economy. Mainly, economies that are developed ensure that their

---

[11] M. AL-faki, 'The Nigerian Capital Market and Socio-Economic Development' (4th Distinguished Faculty of Social Science, Public Lectures, University of Benin, 2009) 9-16. [16] E. O. Ogunleye and P. A Adeyemi, 'The impact of stock market development on economic growth in Nigeria', (2015) 6 *Journal of Economics and Sustainable Development* 21

[12] T. S. Osinubi, 'Does Stock Market Promote Economic Growth in Nigeria?' Department of Economics Faculty of Social Sciences, University of Lagos, Nigeria

resources are mobilized in order to ensure economic growth and development, and this is usually done through two channels; money and capital market.[13] On the other hand, developing economies place much emphasis on money market while placing little attention on capital market.[14] As described by Alile[15];

> This is particularly harmful because when economies develop, more capital is required to meet the rapid expansion and align with global innovations. The capital market in this instance serves as a viable tool to mobilise and allocate savings towards developmental resources that are critical to the growth of the economy.

Consequently, capital market has a role in the development and growth of a country's economy and thus cannot be waved aside because it can spike the economic growth. Economic growth hinges on an efficient and effective financial sector that pools domestic savings and mobilizes capital for productive projects.[16] However, when such a system is not visible, productive projects that carry developmental agenda will not be noticed because basically they are capital intensive.

Capital market is also important because it connects both the monetary sector and the sector that deals with production of goods and services otherwise known as the 'real sector'. This helps to provide sustainable capital for investors to buy and sell security in an efficient manner to facilitate growth in the real sector.[22]

This financial market also promotes savings over a long period to finance long-term investments.[17] This is usually achieved by 'enabling the contractual savings

---

[13] O A. Demirguic-Kunt and R. Levine, 'Stock market, corporate finance and economic growth: An overview' (1996) 10 *The World Bank Review* 229. Money market is different from capital market as it is a market where financial instruments with high liquidity and short maturities are traded. Essentially, it is used as a means for borrowing and lending in the short term.

[14] M. O. Nyong, 'Capital Market Development & Long-Run Economic Growth: Theory, Evidence and Analysis', (1997) *First Bank Review* 13.

[15] H. I. Alile, 'The Nigerian Stock Exchange: Historical Perspective, Operations and Contributions to Economic Development,' (1984) 2 *Central Bank of Nigeria Bullion*, 65.

[16] 'Importance of Capital Market as an Instrument of Economic Development', (2009) *CBL Economic Review* 2 [22] A. Omojola, *Capital Market Operations*, (Nigeria: Credible Associates Limited, 2006) 16

[17] C. A. Yartey, 'The determinants of stock market development in emerging economies: Is South Africa different', (2008) *IMF Working Paper* 5

industry such as companies, private pension funds and social pension insurance systems to mobilize long-term savings from small individual households. [18] Another importance of capital market is that it encourages infrastructural development by putting savings into use and investments which is carried out through the transfer of excess funds from governments, corporations, and individuals. As opined by Akpomudje:[19]

> Infrastructural development is important for sustainable growth and development as it generates competitiveness of domestic industries. With such competition, there is the chance for such industries to compete with their global counterparts, thus steering the momentum towards global integration. Furthermore, infrastructural development can lead to increased domestic productivity and subsequent upsurge in exportation.

Thus, capital market can improve the effectiveness of allocation of capitals with the assistance of competitive price mechanism. Capital markets also promote partnership between public sector and private sector by motivating the private sector in productive investments.[20] This would encourage ownership of assets that are productive thereby enhancing growth and development. However, in a situation where the economy that is dependent on the primary source is affected by the diminish of resources, the capital market can assist public sector by encouraging its performance in financing essential socio-economic development as well as closing the gap through raising long-term project-based

---

[18] D.S. Balami, 'The role of the capital market in the economy', (Proshare, 13 August 2015) <https://www.proshareng.com/news/Capital-Market/The-Role-of-the-Capital-Market-in-the-Economy/28259> accessed 4th July 2019. Contractual savings industries are savings institutions that obtain their funds through longterm contractual arrangements and invest these funds on the capital markets. It is inclusive of insurance companies and pension funds.

[19] Okiemute Akpomudje, 'Legal Regulation of the Capital Market in Nigeria: Analysis and Prospects for Reform' (Lancaster University, 2017)

[20] D.S. Balami, 'The role of the capital market in the economy', (Proshare, 13 August 2015) <https://www.proshareng.com/news/Capital-Market/The-Role-of-the-Capital-Market-in-the-Economy/28259> accessed 4th July 2019 Contractual savings industries are savings institutions that obtain their funds through longterm contractual arrangements and invest these funds on the capital markets. It is inclusive of insurance companies and pension funds.

capital. Smaller companies that need capital to carry out projects but do not have access to such capital market or bank finances can benefit from this.[21]

Another significance of capital market is that it has the potentials of attracting both foreign direct investors and foreign portfolio investment. This is very essential in 'supplementing domestic savings levels, thus facilitating the inflow of foreign financial resources into the domestic economy'. [22]

Capital market is concerned with creation of wealth. Any funding in securities and capital market as a business is expected to accrue reasonable returns. The returns on the funding which is seen as surplus in an economy do not relinquish their funds free of charge. They expect returns for the use of their funds by the deficit economy units. Alile[23] alludes to this fact when he states inter alia:

> In the process of transferring funds from savers to users, securities of various types come into existence. These become the main instruments (financial assets) that are traded in the capital market. The securities evidence the transfer of funds and the entitlement to the eventual repayment of the capital and to the resulting periodic income in the interim. From this assertion, the capital market can be seen as a medium of investment for wealth creation in an economy.

Capital market encourages business owners or government involved to save. As opined by Nwachukwu, "by the provisions of facilities for the transfer for fund between the surplus economic unit (savers) and the deficit economic unit (borrowers) the capital market encourages investment, trade and therefore production. It offers access to a variety of financial instrument that enables economic agents to pull, price and exchange risk. Using assets with attractive yields, liquidity and risk characteristic, the capital market encourages savings in financial form. This is very important for government and other institutions, in need of long-term funds and for suppliers of long-term funds, who because of

---

[21] An efficient capital market is defined as one where the prices fully reflect the available information. This concept serves as the bedrock for this work.

[22] Balami, op. cit.

[23] H.I. Alile, *The Nigerian Stock Market in Operation* (Lagos: Nigerian Stock Exchange Publication, 1986) 31.

the nature of their liabilities undertake to maintain part of their assets in a relatively liquid form.[24]

REGULATION AND STRUCTURE OF THE CAPITAL MARKET IN NIGERIA

(a) Regulation of Nigerian Capital Market

The capital market being a financial market that does assessments that are neither physical nor visible to human eyes, deals with subject matters that are based trade and investment decisions.[25] The subject matter in the market consists of treasury bills, shares, stocks, bonds, commercial papers and bankers' acceptance, and insurance instruments. To assist investors to invest and sellers to sell profitably, they require information which must be correct, complete, up-to-date, and not misleading. It is therefore necessary to regulate the market to ensure that the relevant institutions in the industry are properly established and monitored and that the operators in markets are "fit and proper" persons to operate the market. There is also a need to provide rules and regulations that will help to ensure fairness, efficiency, orderliness, transparency, stability, and confidence in the capital market.[26]

The regulatory apparatus of the capital market is made up of both statute and the statutory regulatory body. The first direct formal effort of regulating the capital market in Nigeria was the Capital Issue Committee set up in 1962 by the Central Bank of Nigeria (CBN) to assist it in the regulation of dealings in company securities.[27] In 1973, statutory support was given to this arrangement through the Capital Issue Commission Act, 1973. The Securities and Exchange Commission Act 1979 followed, the Securities and Exchange Commission Act 1988, the Companies and Allied Matters Act (Part VII) the Investment and Securities Act of 1999 replaced that of 1988 and in 2007 the Investment and Securities Act (No. 29) was introduced. The Investment and Securities Act is the current regulating statute in Nigeria.[28]

---

[24] O.C. Nwachukwu, 'The Role of Securities and Exchange Commission (S.E.C.) in Public Issue of Securities and the Structure of the Nigerian Capital Market' (2013) *NAUJILJ* 91 - 107.

[25] N. Sulaiman 'The new Investment and Securities Act' (Nigerian Law School, October 2001) 1 – 113.

[26] Ibid.

[27] R. V. O Media. *The Board*, (2015) Nigeria: The Securities and Exchange Commission.

[28] O. C. Nwachukwu, "The Role of Securities and Exchange Commission (S.E.C.) in Public Issue of Securities and the Structure of the Nigerian Capital Market", (2013). *NAUJILI*, p. 93.

The Capital Issue Commission Act of 1973 which was established by the Central of Nigeria was saddled with the responsibility of determining the price at which shares, or debentures of a company were to be sold to the public. The sales of the shares or debentures could be done either thronging h offer for sale or by direct issue. Equally, this ad hoc committee determined the timing and amount of any subsequent public issue of shares or debentures by the company; and undertakes such other incidental or supplementary functions as the Commission may determine. The Securities and Exchange Commission Act 1979 was amended and thus the defects of the previous Act such as the absence of any power to value securities to be offered to the public or in which aliens had an interest was removed. The Act dissolved the existence of Capital Issue Commission (CIC) and introduced Securities and Exchange Commission (SEC).

Under the Act, the SEC was charged with wider function than the CIC. Section 7 of the Act provided that a company or enterprise in which aliens participate shall not issue, transfer, or sell its securities unless with the prior approval of the SEC. In interpreting this provision, the Court of Appeal held, inter alia, in the case of Societe Generale Bank Nigeria Ltd v SEC[29] that the provision was not limited to public companies. only, but that a transfer of securities in a private company in which aliens participated also required the prior approval of the SEC. However, in 1988, the Securities and Exchange Commission Act was introduced to replace the amended SEC Act of 1979. The Securities and Exchange Commission Act absorbed to cover the regulation of mergers and acquisitions and other forms of business combinations as its function. In 1993, the SEC gave up its function of determining the price at which securities of a company are to be sold to the public. During this period, a government panel was set up to undertake a comprehensive review of the regulations of Nigeria capital market as well as the Investment and Securities Act (ISA) and was enacted in May, 1999.[30] This has been reported as "... a very extensive and comprehensive law on the securities market, covering every conceivable aspect of securities offering and trading." The Act therefore repealed and replaced the Securities and Exchange Commission Act 1988. It also repealed Lagos Stock Act, 1960. While stating his opinion about the objectives and impact of the Investment and Securities Act 1999, the Director General of the SEC, S.A Ndanusa, once said *inter alia*:

---

[29] [1995] 2 NWLR (Pt 380) 729.
[30] Cap 124 LFN 2004.

> The provisions of the ISA are meant not just to regulate the capital market but to serve as a springboard for its rapid development. It strengthened the path to both domestic and foreign investment through the Nigerian capital market by providing for the establishment of new securities exchange market facilities and instrument. It is also aimed at enhancing the efficiency, competitiveness, and transparency of the market in order to improve participation, liquidity and its international standing.[31]

Ndanusa also observed that:

> The enforcement machinery which is usually a major consideration by foreign and indeed, local investors and intermediaries in deciding on an investment or business location has also been strengthened through, inter alia, the creation of an Investment and Securities Tribunal (IST)

The Act also sought to harmonize all laws dealing with security matter under one statute all laws dealing with securities matters. To achieve this objective, Part xviii of the Companies and Allied Matters Act[32] that dealt with the subject matter of any dealings on securities administered by the SEC, had been deleted and included in the Investment and Securities Act 1999 as Part VII. The Investment and Securities Act 2007 (No 29) which was a new enactment during this period aimed to regulate investments and security better than the previous enactments. It repealed and replaced the Investment and Securities Act 1999. The ISA 2007 is the current statute dealing with the subject. It includes most of the provisions of the ISA 1999 and some new ones.

Under the SEC Act 1988 which replaced the SEC Act 1979, the Commission's functions were further widened. This Act was repealed by the Investment and Securities Act, 1999, which in turn, was repealed and is now replaced by the Investment and Securities Act 2007, which has further widened the scope of the function of the Commission. Section 13 of the Investment and Securities Act provides for the function and powers of the Commission as follows:

---

[31] N. Sulaiman, (n 16) 1 – 5.

[32] Cap C 20 LFN 2004.

The Commission shall be the apex regulatory organization for the Nigerian capital market and shall carry out the function and exercise all the powers prescribed in this Act and in particular shall.

(a) Regulate investment and securities business in Nigeria as defined in this Act.
(b) Register and regulate securities exchange, capital trade points, futures, options and derivatives exchanges, commodity exchange and any other recognized investment exchange.
(c) Regulate all offers of securities by public companies and entities.
(d) Register securities of public companies.
(e) Render assistance as may be deemed necessary to promoters and investors wishing to
establish securities exchanges and capital trade points.
(f) Prepare adequate guidelines and organize training programmers and disseminate information necessary for the establishment of securities exchange and capital trade point.
(g) Register and regulate corporate and individual capital market operator as defined in this Act:
(h) Register and regulate the workings of venture capital funds and collective investment scheme, in whatever form.
(i) Facilitate the establishment of a nationwide system for securities trading in the Nigerian capital market to protect investors and maintain fair and orderly market. (j) Facilitate the linking of all markets in securities with information and communication technology.

(k) Act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by securities exchange and capital trade point. (l) Keep and maintain a register of foreign portfolio investment.

(m) Register and regulate securities depository companies, clearing and settlement companies, custodian of assets and securities, credit rating agencies and such other agencies and intermediaries.

(n) Protect the integrity of the securities market against all forms of abuses including insider trading.

(o) Promote and register self-regulatory organizations including securities exchange capital trade point and capital market trade association to which it may delegate its powers.

(p) Review, approve and regulate mergers, acquisitions, takeovers and all forms of business combination and affected transactions of all companies as defined in this Act.

(q) Authorize and regulate cross border securities transaction.

(r) Call for information from and inspect, conduct inquiries and audits securities exchanges, capital market operators, collective investment schemes and all other regulated entities.

(s) promote investors' education and the training of all categories of intermediaries in the securities industry; (t) call for, or furnish to, any person such information as may be considered necessary by it for the efficient discharge of its functions.

(u) levy fees, penalties and administrative costs of proceedings or other charges on any person in relation to investments and securities business in Nigeria in accordance with the provisions of the Act.

(v) intervene in the management and control of capital market operators which it chatters has failed haves failing, or in crisis, including entering the premises and doing whatever the commission deems necessary for the protection of investors.

(w) Enter and seal up the premises of persons illegally carrying on capital market operations.

(x) In furtherance of its role of protecting the integrity of the securities market, seek judicial order to freeze the assets (including bank account) of any person whose assets were derived from the violation of this Act, or any securities law or regulation in Nigeria or other jurisdictions.

(y) relate effectively with domestic and foreign regulators and supervisors of other financial institutions including entering into-co-operative agreements on matters of common interest.

(z) conduct research into all or any aspect of the securities industry.

(aa) prevent fraudulent and unfair trade practices relating to the securities industry.

(bb) disqualify person considered unfit from being employed in any area of the securities industry.
(cc) advise the minister on all matters relating to the securities industry; and
(dd) perform such other functions and exercise such other powers, not inconsistent with this Act, as are necessary or expedient to give full effect to the provisions of the Act.

However, some authors while dissecting the functions of SEC have grouped them into two basic roles because every other function gear towards achieving this basic one[33]. The first basic function is to protect the investors' interest thereby enhance their confidence in the capital market. The second function is to ensure orderly and equitable dealings in securities business.[34] It should be noted that the SEC can no longer perform function in Section 13(q) in view of the repeal and re-enactment of relevant provisions of the ISA 2007 by the Federal Competition and Consumer Protection Act 2018.

Subsequently, the Securities and Exchange Commission Rules and Regulation, 2013 (SEC Rules), drawn up by the SEC pursuant to its powers, is considered the market's bible. In addition, the SEC releases its new and updated rules periodically to complement the SEC Rules.

From the above, it can be observed that the Act made a deliberate effort to ensure that the capital market caters for the regulation of not only the existing institutions and facilities alone but also made provision for those institutions and facilities that will emerge in the future with the growth of the economy and the capital markets. Such facilities include the capital trade point, option, futures, and commodities exchanges. Indeed, the Commission is saddled with the function to act as a regulatory apex organization for the Nigerian capital market.[35] In response to solving the identified problems above, the government put into effect the Securities and Exchange Commission Act 1988, which

[33] O.C. Nwachukwu, 99.
[34] Investment and Securities Act 2007 s 13.
[35] Investment and Securities Act Cap 124 LFN 2004 s 8(n).

established the Securities and Exchange Commission (SEC) as the apex regulatory organization for the capital market.[36]

This happened because of the recommendation from the Financial System Review Committee (FSRC) that was set up by the Federal Government to review the activities of capital market and as well as to proffer solutions and ways to develop the market in order to cope with challenges that might arise.[43] The SEC was saddled with the responsibility of developing and regulating the capital market in order to maintain proper ethical standards and professionalism. In addition to this, this committee was given the responsibility to review and approve mergers, acquisition, and combinations between or amongst companies. [37] Furthermore, the privatization and commercialization Decree No 25 was promulgated providing for the privatization of some enterprises in which the Federal Government of Nigeria has equity interest and the commercialization of Federal Government wholly owned enterprises. This exercise is credited with having attracted more companies to list their shares in the Nigerian Stock Exchange[38]. It is of key importance to know that although the origin of the SEC dates to the year 1962, however, its complete emergence and functioning was fully actualized in year 1980.

In 1999, the Investments and Securities Decree No. 45 became the Investment and Securities Act 1999 (ISA) by virtue of section 315 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999.[39] Afterwards, the 1999 ISA was canceled and replaced by the ISA 2007, which was the outcome of a long process of consultation and clamor for the reformation and modernization of

[36] O. Sunday, E. Ewah, E. Atim, E. Esang and J.U. Bassey, 'Appraisal of capital market efficiency on economic growth in Nigeria' (2009) 4 *International Journal of Business and Management* 221 [43] Okigbo Committee of 1976 16.

[37] Ibid.

[38] E.B Osaze, *Capital Markets: African and Global,* (Nigeria: Bookhouse Company 2007) 5516.

[39] (The CFRN 1999 by virtue of section 1(1) is the supreme law and its provisions have a binding force on the authorities and persons throughout the Federal Republic of Nigeria. Section 315 allows for modifications of an existing law as may be necessary. The principal effect of this is that it becomes an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by the constitution to make laws. Such modification becomes valid if the appropriate authority at any time by order makes such modifications in the text of the existing law as they deem necessary or expedient to bring that law into conformity with the provisions of the 16constitution).

the rules governing the capital market transactions.[40] Aside the provisions made for the ISA, there are traces of laws in other legal provisions that are said to have an impact on the capital market. Of such legal bindings include Central Bank of Nigeria Act 2007 as well as the Banking and other Financial Institutions Act 2004 (BOFIA), which oversees to the activities of banks, their investment in the capital market, as well as the use of the market to raise funds by these banks. Furthermore, the Federal Ministry of Finance is permitted to give supervisory roles by formulating periodical monetary policy guidelines. In year 2016, the ministry introduced the whistle blowing scheme with the aim of improving public and institutional governance.

The concept of Whistle blowing is defined as a "deliberate nonobligatory act of disclosure that gets into public by a person who has or had privileged access to data or information of an organisation about non-trivial illegality or wrongdoing whether actual, suspected or anticipated which implicates and is under the control of that organisation to an external entity having power to rectify the wrongdoing".[41] This operation led to the recovery of significant sums of money laundered, stolen as well as misappropriate funds by politicians and individual.[49]

Furthermore, a fund to cater for the protection of subscribers against loss and damage arising from the default of issuers and their agents was introduced by the ISA. This fund is known as the Investors Protection Fund (IPF).[42] It requires a securities exchange or capital trade point to establish and maintain a fund that shall be administered by a Board of Trustees on its behalf. The fund which consists of all monies paid to the Board of Trustees by the concerned members of the securities exchange and capital trade point, interest, profits accruing from the fund money recovered by the board and other monies lawfully paid into the fund.[43] These monies are kept in a different bank account in Nigeria for investment or application purpose. The fund is required to be audited with balance sheets kept and expected not to fall below the minimum amount

[40] The ISA 2007 is divided into 18 parts dealing with various issues in the capital market.
[41] P. B. Jubb, 'Whistleblowing: A restrictive definition and interpretation', (1994) 77 *Journal of Business Ethics*, 8317. [49] Y. Adegoke, 'Nigeria's anti-corruption unit finds $43 million cash in Lagos apartment', <http://edition.cnn.com/2017/04/13/africa/efcc-recovers-funds-nigeria/index.html> accessed 26 June 2019.
[42] ISA 2007, s.198 (17)
[43] Rules and Regulation of the SEC 2013, rule 203 (4) [52] ISA 2007, s. 205.

approved for a securities exchange or capital trade point.[52] And if it does, the Board of Trustees is required to take steps to make up the deficiency. This could be done by directing that an amount equal to the deficiency be transferred from other funds to the investor protection fund or determine the amount to be contributed by each dealing member if there are sufficient funds to be transferred to the fund. Persons that have suffered pecuniary loss can claim compensation from the fund and take appropriate judicial proceedings against the securities exchange or capital trade point to establish the claim. The claimant is usually entitled to the actual pecuniary loss suffered including reasonable costs of disbursements incidental to making and proving his claim less the amount or value of all monies or other benefits received or meant to be received by him from the source other than the fund in reduction of the loss.[44] Furthermore, interest is payable on the amount of compensation at 5% per annum commencing from the date of defalcation.[45] This is creditable, especially in situations where investors' compensation is proponed until a later time. Moreover, compensation claims are determined by a securities exchange, capital trade point, SEC or the Investment and Securities Tribunal (IST).

STRUCTURE OF THE NIGERIAN CAPITAL MARKET

The structure of capital market in Nigeria involves the following:

(a) The consideration of the segments.
(b) The type of financial instruments.
(c) The facilitator in the market (market operator)

The capital market is segmented into two: (i) the primary market and (ii) the secondary market The primary market is the new issue market that is focused on the offering of new issues or securities on the stock exchange. The secondary market concerned itself with the processing of selling and buying securities that is already owned and quoted on the exchange. This secondary market therefore is in charge of providing liquidity in the financial system which us done by providing facility for the easy conversion of investor's holdings into cash. This is different from primary market, where the proceeds from resale of securities do not go to the issuer of securities but to the last preceding investors. However, both the primary and secondary markets are interdependent. The state of being of the secondary market is dependent and

[44] ibid, s.213.
[45] ibid s.213 (7).

reliant on the primary market. This is permissible because no securities can be on the secondary market that has not been issued on the primary market. However, exchange or trading in the capital market is made easier by the manufacturing and use of financial instruments that are negotiable. These instruments in other words, are traditionally known as "securities" and can be transferred from one person to another. These securities therefore serve as the bond or contract between the investor and the issuer and stands as the evidence for investment. Moreover, securities that are traded in the capital market are grouped into three broad types depending on the type of capital required. According to Nwachukwu[46] These are:

(a) Equity instrument otherwise called common stock (ordinary share). It is the most popular means of raising long-term funds by public and private companies in the capital market. These instruments can be held in perpetuity except in cases of winding up.
(b) The debt instrument which connotes that the holder of such instrument is a creditor to the issuer and the issuer is liable to pay the holder at an agreed future date. Long term debt instruments in the capital market are debenture stock and bonds. Debt instruments have maturity ranging between five or thirty years.
(c) Hybrid instruments which have the feature of equity and debt instrument. This instrument attracts fixed dividend and sometimes the right to share in additional profit of the company in the future, depending on the type of stock. The preference of shares or stock fall under this category.

As observed, the term "capital market operators" was not defined by the Investment and Securities Act 1999 but the ISA 2007 defined it in Section 315 as '… any persons (individuals or corporation) duly registered by the Commission to perform specific function in the capital market.'[56]

Prior to its independence in 1960, Nigeria was controlled by British colonial masters. During this period, the funds to control local administration were sourced through agriculture and mining. The government of the day depended largely on agricultural produce.[47] Over the years these sources became

---

[46] O.C. Nwachukwu, 'The Role of Securities and Exchange Commission (S.E.C.) in Public Issue of Securities and the Structure of the Nigerian Capital Market' (2013) *NAUJILJ* 98. [56] ISA 2007.
[47] E.B Osaze, *Capital Markets: African and Global,* (Nigeria: Bookhouse Company 2007) 55.

inadequate as the increase in financial obligations could not be met and thus the need to source for fund outside agriculture and mining became expedient. Consequently, taxation and revenue were introduced into the system. The administration reformed the revenue mobilization system, taxation usage and other forms of payments. Moreover, there was a necessity to raise funds from the public to cover the shortfalls in availability of funds during this period. This need brought about the establishment of a financial system 'with infrastructure that would aid its take off pending the development of an organised private sector'.[48]

The government of the day began to develop the capital market in Nigeria. Of importance are the traces of some less formal market arrangements for the operation of a capital market. Examples include a 10-year Local Loan Ordinance for the floatation of the first three hundred-thousandnaira government stock with management vested on the accountant general in 1946. In the year 1957, the General Loan and Stock Act as well as the Local Loan (Registered Stock and Securities) Act were made public and thus promulgated. Additionally, to this, the Central Bank of Nigeria was established in 1958. These legislations were aimed at establishing a legal and infrastructural framework for the take-off of a viable securities market in Nigeria. In 1959, the Central Bank of Nigeria issued the first Nigerian Treasury Bills, which were meant to provide an avenue for the investment of short-term liquid funds in Nigeria and assist in providing the government with funds pending receipt of its own revenues.[59] The Nigeria capital market is a financial market that concerned itself with long term investments where corporate equities and long term debt securities are issued and traded.

On 15 September 1960, the Lagos stock exchange which began as a private limited liability company was incorporated and was limited by guarantee under the provisions of the Lagos Stock Exchange Act 1960. This Act made certain that the stock exchange had monopoly over business that had share dealings in Nigeria. The Act equally ensured that potential investors were protected by a self-regulatory organisation that proposed standards that would be adhered to by members. In addition to this, the Act also gave Central Bank the chance to deal directly in securities. It opened for business with 19 listed securities made

[48] Ibid

up of 3 equities, 6 Federal government bonds and 10 industrial loans. [49] With the growth in economy, there began to grow the need for more capitals and the only way to solve this urgent need was through the establishment of National stock exchange with the aim to expand its services to other corporations in other parts of the country as well as individuals.

The Lagos Stock Exchange Act was established with the primary aim of placing the stock exchange under some government control. However, the Lagos stock exchange was only operational in Lagos.[50] By the mid-1970s there aroused the need for a financial system that would cater for the entire country and not Lagos alone. To achieve this great task, the review of the operation of Lagos stock exchange was carried out. Some problems in connection with the market were documented during this review. The problems include the huge amount of currency in circulation that was held outside of the banking system, unsatisfactory demarcation between the operation of commercial banks and the emerging class of merchant banks as well as the extremely shallow depth of the capital market.[62] To find a lasting solution to the identified problems, the government during this period accepted the principle of decentralization but opted for a national stock exchange. With the need for further growth of the economy, there was constant demand for more capital and the only way to get this capital was through the establishment of a national stock exchange with its services expanded to individuals and corporations in other part of Nigeria.[51]

After the above, in 1979, the Lagos Stock Exchange Act was transformed and designed the basis for the creation of the Nigerian Stock Exchange. It was the foundation for trading in long-term securities needed for financing the industrial sector and the economy at large. This expansion established other branches of the stock exchange in Lagos, Kaduna (1978), Port Harcourt (1980), Yola (2002), Onitsha (1990) and Abuja (the current Federal Capital Territory), thus increasing the geographical scope of investment activity in the country.

[49] E.B Osaze, *Capital Markets: African and Global,* (Nigeria: Bookhouse Company 2007) 55.
[50] One of the largest city in Nigeria and the African continent. It is regarded as one of the most populous urban agglomerations in the world. It is the major financial center in Africa as well as houses one of the largest and busiest ports on the continent. It was one time the capital of Nigeria and often referred to as the commercial capital of Nigeria. [62] L. Olawoye, 'Impact of capital market on economic growth of Nigeria', (11 December 2011) <http://lekanolawoye.blogspot.co.uk/2011/12/impact-of-capital-market-on-economic.html> accessed 6 July 2019.
[51] Ibid.

The Nigerian Stock Exchange (NSE) is currently the centre point of the Nigerian capital market with the Securities Exchange Commission (SEC) serving as the apex regulatory body. The stock exchange currently has about 180 listed companies. Most of the listed companies at the exchange have foreign or multinational affiliations and represent a cross-section of the Nigerian economy, ranging from agriculture and manufacturing to services. Operations within the market are conducted on two levels, the primary and secondary level. The former is where securities are created. It is the market where firms sell new stocks and bonds for the first time. It is synonymous with initial public offerings (IPOs). The latter is what is referred to as the stock market. This is the market where investors trade amongst themselves. In this market investors trade on previously issued stocks.

Section 315 of the Investment and Securities Act [52] which forms the interpretation section defines securities to mean-

(a) Debentures, stock, or bond issued or proposed to be issued by a government.
(b) Debentures, stocks, shares, bonds, or notes issued or proposed to be issued by a body corporate.
(c) Any right or opinion in respect of any such debentures, stocks, shares, bonds or notes, or
(d) Commodities future, contracts, options and other derivatives, and the term securities in this Act include those securities in the category of the security listed in (a) – (d) above which may be transferred by means of any electronic mode approved by the commission and which may be deposited, kept or stored with any licensed depository or custodian company as provided under this Act.

However, for practical purposes, the capital market structure allows some organisations and persons to be generally admitted as capital market operators. These include the securities, exchange issuing houses, stockbrokers and dealers, investment advisers, jobbers, registrars, trustees, auditors, receiving agents and receiving banks. However, questions and, indeed objections have been raised against classifying some professionals that have interaction with the capital market as capital market operators who should be registered by the Commission before they can carry on their professional services to some

[52] No. 29 2007.

operators in the market.[53] The issue of security by the public is one means of raising great amounts as long term capitals by companies. Nevertheless, this means of raising long term finance is only made available to public company. This preserve of public companies has the statutory backing. Section 67 of the Investment and Securities Act provides as follows:

"No person shall make any invitation to the public to acquire or dispose of any securities of a body corporate or to deposit money with anybody corporate for a fixed period or payable at call, whether bearing or not bearing interest unless the body corporate concerned is –

(a) A public company, whether quoted or unquoted and the provision of sections 73-87 of this Act are duly complied with: or

(b) A statutory body or bank established by or pursuant to an Act of the National Assembly and is empowered to accept deposits and savings from the public or issue its own securities (as defined under this Act), promissory notes, bills of exchange and other instrument. Provided that nothing in this subsection shall render unlawful the sale of any shares by or under the supervision of any court or tribunal as may be authorized by law, if an invitation to the public is made in breach of subsection q of this section, all pe rson making the invitation and every officer who is in default or anybody corporate making the invitation shall each be separately liable to a penalty of N500, 000 in the case of a body corporate and N100,000 in the case of an individual. If any person acquires or disposes of any securities or deposits money with any company, as a result of any invitation to the public made in breach of subsection 1 of this section, he shall be entitled to : (a) Rescind such transactions; and (b) Either in addition to or in place of rescinding the transaction, recover compensation for any loss sustained by him from any person who is liable whether convicted or not, in respect of the breach. Where, in accordance with subsection 3 of this section, any person claims to rescind any transactions, he shall do so within a reasonable time and shall not be entitled to rescind any transaction with the body corporate or to recover compensation from it unless he takes steps to rescind the transaction before the commencement of the winding up of the body corporate. Provided that the application of the subsection to bar the right of a claimant to rescind

---

[53] O.C. Nwachukwu, 'The Role of Securities and Exchange Commission (S.E.C.) in PublicIssue of Securities and the Structure of the Nigerian Capital Market' (2013) *NAUJILJ* 98.

a transaction shall not prejudice his right to recover compensation from any person other than the body corporate.

CIVIL LIABILITIES IN THE NIGERIAN SECURITIES AND CAPITAL MARKET REGULATIONS

The concept of rule of law connotes the idea that there should be a law governing every facet of a nation (including its capital market) as opposed to being governed by arbitrary decisions of individual government officials.[54] It is described "as less formal and more substantive in the sense that rights should be recognised and enforced by courts or other judicial institutions as far as practicable as it is important in promoting the rights of individuals".[55] However, the idea of rule of law does not only require the government to rule through laws but also to be ruled by laws.[56][57][58] In view of this, the courts are embedded with statutory right to enforce the rights of citizens against the government and bodies that aim to breach these rights.[69]

The Rule of law is not only relevant for the legal development, but it is also crucial for the development of economic and political, which are also constitutive parts of national development as a whole. Of great importance is the rule of Law towards the development of capital markets, there is the vital requirement for regulation to avoid abuse of market, sharp practices, improper act and improprieties. In achieving a functional market, the importance of rule of law cannot be challenged as it guarantees the continued existence and operational efficiency of the capital market.[70]

Developing a capital market of solid structure depends on a complex network of legal and market institutions, which have to ensure that investors receive adequate and efficient information about the value of a company's business as well as make certain that investors are confident about managers and controlling shareholders will not misappropriate their investments or what is

[54] T. Bingham, *The Rule of Law*, (Penguin Books, 2011) 3.

[55] G. F. Gaus, 'Public reason and the rule of law', in I. Shapiro, The rule of law, (New York: University Press, 1994) 329.

[56] Ibid.

[57] J. R. Lucas, *The Principles of Politics*, (Oxford: Clarendon, 1966) 11324.

[58] R. La Porta, F. Lopez-De-Silanes, A. Shleifer and R. Vishny, 'Legal Determinants of External Finance', (1997) 52 *Journal of Finance* 114924.

due to them.[59] Furthermore, in developing a strong capital market, the operational efficiency of such market is an essential factor that can influence investors in the market. Operational efficiency in this instance includes the provision and regulation of a transparent system for disclosure coupled with practices that will deter market malpractices. Additionally, the enactment of impermeable laws and adequate enforcement mechanisms aimed at protecting the interests of investors as well as ensuring they get their money back is off paramount importance. Such laws can double as a guide for market operators in carrying out their operations. As opined by Shulman:[60]

> The Security Act does not seek to only secure the accuracy in any given information that is 'volunteered to investors', but of importance to it is to 'compel the disclosure of significant matters which were heretofore rarely, if ever, disclosed'. Civil liability therefore 'is imposed largely as one appropriate means of accomplishing these ends, not as the end itself'.

The civil liability provisions of the Act of security and capital market are found in sections 11 and 12[73]. The latter section is the lesser of the two and has not evoked much criticism. It provides that (1) "any person" who sells a security as to which a registration statement is not in effect, or who sells a security by the use of a prospectus which does not meet the requirements of Section 10, shall be liable "to the person purchasing such security from him, who may sue . . . to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security"; and (2) that the same liability shall be visited upon any person who sells a security "by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading," if the purchaser does not know of the untruth or omission and the seller does not "sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission."[61]

---

[59] B. S. Black, 'The Legal and Institutional Preconditions for Strong Securities Markets', (2001) 781 *UCLA Law Review*, 783.

[60] H. Shulman, 'Civil Liability and the Securities Act' (1933) *Yale Law Journal* .227. [73] The Securities Act of 1933, 15 U.S.C. § 77a et seq.

[61] H. Shulman, 227.

None of the parts in the section puts the seller under a novel, indeterminate, vague or harsh risk. The liability spelt out the favour imposed on the immediate vendee only. Once the registration is determined and prospectus is necessary, it cannot be unduly difficult to ascertain whether a registration statement is in effect and what prospectus satisfies the requirements of Section 10. The effective date of the registration is defined in Section 8; and the contents of the prospectus, as required in Section 10, are specific portions of the registration statement or such information as the Commission may specifically order.

The first part of Section 12 does not in any way deal with the truth or falsity of the representations in the registration statement or prospectus. However, It puts on those that are classified as the seller the burden of ascertaining the existence of the registration statement given and the uniformity of the prospectus with that statement. There is an absolute liability thus imposed for the sale of unregistered securities or for the use of nonconforming prospectuses.

The liability imposed by the second part of Section 12 is less stringent. The seller may avoid it by sustaining the burden of proof that he was excusably ignorant of the untruth or omission in the prospectus. In permitting such a defense to rescission, the Act seems also to be less stringent than the common law.[62]

Any person who permits or gives an issue of a prospectus containing statement which upon investigation turns out to be false, any person who acts upon such untrue statement and in the process suffers loss or damage can hold the issuer, or the person who permitted the issue, liable for such a loss or damage. The person who suffers the loss or damages has these remedies both at common law and under the Act. In *New Brunswich and Canada Railway Co v Maggeridge*[63] Kingdersley VC emphasized the duty of those who issued a prospectus as follows:

> Those who issue a prospectus, holding out to the public the great advantages which will accrue to persons who take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound

[62] Ibid 243.
[63] [1860] 1 Dr and Sun 365.

> to state everything with strict and scrupulous accuracy, and not only to abstain from stating as facts that which is not so, but to omit no one fact within their knowledge, the existence of which might, in any degree, affect the nature, or extent, of quality of the privilege and advantages which the prospectus holds out as inducement to take shares.[64]

Any statement that represents half-truth but presented has the whole truth is considered as a false statement [65]and Section 83 of the Investment and Securities Act now provides that a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included, thus giving statutory effect to the decision in *R v Kylsant.*[66]

The common law makes available the legal means to a person who has suffered loss as a result of misrepresentation in a prospectus to recover what has been lost. The persons against whom the remedies are available in appropriate cases are the company, the director or the experts.[67] Section 85 of the investment and Securities Act provides for civil liabilities for misstatement in prospectus thus:

> Where a prospectus invites persons to subscribe for shares in a company, the persons referred to in subsection (2) of this section shall be liable to pay compensation to all persons who subscribed for shares or debentures relying on the prospectus for the loss or damages they may have sustained by reasons of any untrue statement or misstatement included in it. A person liable to pay compensation under subsection (1) of this section includes
>
> (a) Any director of the company at the time of the issue of the prospectus.
> (b) Any person who consented to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time.
> (c) Any employee of the company who participated in or facilitated the production of the prospectus; and

[64] See also *Henderson v Lacon* [1867] LR 5 E.Q 249 at 252.
[65] *Aaron's Reefs Ltd v Twiss* [1896] AC 273. HL per Lord Halsbury.
[66] [1932] I KB 442.
[67] But see *Derry v Peek* [1889] 14 APP Cas 377.

(d) The issuing house and its principal officers" Section 85 (4) of the Investment and Securities Act provides for general exception as follows: No person shall be liable under subsection (1) of this section if he proved:

(a) That having consented to become a director of the company, he withdrew his consent in writing before the issue of the prospectus, and that it was issued without his authority or consent.

(b) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he immediately gave reasonable public notice that it was issued without his knowledge or consent.

(c) That after the issue of the prospectus and before allotment, he on becoming aware of any untrue statement or misstatement in it, withdrew his consent in writing and gave reasonable public notice of the withdrawal and the reason for his withdrawal; or

(d) That as regard every untrue statement or misstatement-

(i) Not purporting to be made on the authority of an expert, or of an official public document or statement, he had reasonable ground to believe and did up to the time of the allotment of the shares, believe that the statement was true.

(ii) Purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it fairly represented

the statement, or was a correct and fair copy of or extract from the report or valuation and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that persons had given the consent required by Section 77 of this Act to the issue of the prospectus and has not withdrawn that consent before delivery of copy of the prospectus, for registration, and

(iii) Purporting to be a statement made by an official person or contained in what purports to be a copy of or an extract from an official public document, it was a correct and fair representation of the statement or copy of or extract from the document." The provisions or subsection (4) of this section shall not apply in the case of a person liable by reason of his having given a consent required of him by Section 77 of this Act as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert.

Section 85(7) of the Investment and Securities Act therefore provides that where a prospectus contains the name of a person as a director and he has either not consented or as withdrawn his consent before the issue, or has not authorized or consented to the issue where his consent is required, such a person is entitled to be indemnified by the director of the company (except those who did not know of a consent to the issue) against all liabilities resulting from the issue, by the inclusion of his name in the prospectus as such director, and also in defending himself against any proceeding brought against him in respect of such prospectus. Section 94 of the Investment and Securities Act provides for action for rescission, while Sections 86 and 87 of the Investment and Securities Act provide for criminal liability for misstatement in prospectus and criminal liability in respect of statement in lieu of prospectus.[68]

CONCLUSION AND RECOMMENDATIONS

An efficient capital market of a country is of paramount importance as it is considered the bedrock of growth in modern economies. Based on the sensitive nature of capital market transactions, it is imperative that the operations are adequately regulated. The focal point of this paper was on the

[68] Ibid s 85(6).

regulation of the Nigerian securities and capital market. It analysed the legal regulations and enforcement mechanisms governing the Nigerian capital market. The findings of this paper identified and highlighted several exploitable loopholes in the substantive rules regulating the market.

The Nigerian capital market is categorized as a weak market in terms of market efficiency and is not considered an investors' choice due to scandals/events that seem to have diminished the confidence of investors in its capital market. This is not surprising as the laws and practices regulating the Nigerian securities and capital market are not totally capable of regulating the market to attain its full potential, as there are reports of unethical practices in the capital market. Furthermore, the legal regulations contain loopholes that can be used to evade liability. This arguably is accountable for the weak operational efficiency of the market as well as the presumed low confidence exuded by potential investors.

A dynamic capital market that fosters financial development and economic growth principally rests on a network of legal and institutional frameworks that are strong and efficient. Legal and institutional frameworks should be able to protect the interests of issuers, investors, markets and market intermediaries. The protection of interests should be consistent with the regulatory goals that seek to achieve and excel on the key benchmarks of fundamentals of securities regulation covering the legal requirements of adequate disclosure, investor protection including the protection of minority shareholders, market integrity and transparency and effective institutional oversight which together promote market confidence. Recasting Nigerian capital market for optimal performance will require a dynamic law and policy that responds to the changing needs of the regulators, the regulated communities and the market institution. Accordingly, constant appraisal of the market needs consistent with technological innovation, regulator-regulated engagement, diversification of listed products and market participants and cyber-security protocol and solution will contribute in no small measure to the competitiveness of the capital market. In view of the foregoing, this paper recommend as follows:

a) The securities and capital market should be adequately regulated, especially by provisions of the law that should be enacted by the government as well as ensuring the enforcement of the laws by the necessary regulatory bodies.

b) There is the need for the establishment of adequate and efficient disclosure regime, reform and enactment of rules regulating misconduct, and the need for enforcement of the rules and regulations, creating the possibility to institute derivative actions and private rights of action by individuals and the use of civil remedies.
c) For effective enforcement of the regulations governing the capital market, the SEC, courts, and law enforcement agencies must work efficiently and credibly to achieve the best results which further enhances investor confidence.
d) The SEC should collaborate with market operators for retail investor education campaign that focuses on communicating issues to consider when investing in the capital market as well as informing them of protection provided by the law.
e) There should be stricter enforcement and compliance with the provisions of corporate governance in the Nigerian corporate sphere. This will go a long way in bringing sanity to the securities and capital market of Nigeria.
f) SEC should work in harmony with other regulatory stakeholder to promote regulatory coordination, harmonization and equivalence. Also, their systems of surveillance, compliance and enforcement capabilities should be strengthened within and across these agencies.