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**Sundry Amendments to the Rules and Regulations of
the Securities and Exchange Commission on Mergers,
Takeovers and Acquisitions**

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Commission on Mergers, Takeovers and Acquisitions**

1. **Introduction**

- 1.1 The Securities and Exchange Commission (the “**Commission**”) on August 30, 2021 released amendments to its Rules and Regulations. The Rules amend existing provisions and introduce additional provisions on mergers, takeovers and acquisitions - (Review for Fairness of Mergers, Take-overs and Acquisitions) (the “**Merger Rules**”). Certain important changes introduced by the Merger Rules are set out below.

2. **The Merger Rules**

Amendments to the Merger Rules

- 2.1 The Merger Rules apply only to public companies and transactions involving the acquisition of shares, assets, business or subsidiaries of a public company. However, the Merger Rules do not apply to (i) acquisitions not involving the issuance of shares as consideration, subject to relevant disclosures to be made at the Company’s next general meeting and (ii) divestments constituting less than 15% of the company’s total assets, or which do not constitute a business line of the company.
- 2.2 The Commission’s prior approval is required before any scheme or transaction on securities relating to the: (a) conversion of a public company or reconstruction of shares; (b) a carve-out¹, split-off² or other form of restricting of operations of a public company; (c) the acquisition or disposal of the assets, business, subsidiaries, shares or other property which results in significant change; and (d) an amalgamation, merger or business combination involving a public company. The Commission will approve mergers, acquisitions or corporate restructuring if all the shareholders are equitably treated and sufficiently informed.
- 2.3 The notice of the court ordered meeting to approve the proposed merger (and the certified copy of the court order directing the convening of the meeting) are to be sent to the Commission not later than 21 days before the date of the meeting. The executed copy of the order of proceedings at the court-ordered meetings for a proposed merger³ will be part of the required documents to be filed at the Commission for formal approval of the proposed merger. The Commission’s formal

¹ Carve out is defined in the Merger Rules as the formation of a new entity from the parent company with some or all the shares of the new entity offered to the public through initial public offering.

² Split-off is defined in the Merger Rules as a scheme where a new entity is formed from the parent company with an option to existing shareholders to either hold the shares of the parent company or trade them for shares of the newly formed entity.

³ Where a majority representing at least three quarter (3/4) in value of the shares of the members present and voting in each meeting approved the merger.

approval of the merger is required before the parties can apply to the court to sanction the scheme of merger.

- 2.4 The post-approval requirements now include the filing of (i) a copy of the newspaper publication of the court-order sanctioning the scheme and (ii) evidence of increase in share capital to accommodate the share exchange (where applicable).

Divestments

- 2.5 Every public company is required to notify the Commission prior to the disposal of a controlling stake or material assets⁴ of a public company. The notification of the disposal now includes filing (i) a memorandum specifying the content in Schedule II of the Rules on divestments; and (ii) evidence of payment of ₦100,000 (per entity). Where the divestment is to be funded by the issue of securities, the rules on registration of securities must be complied with.

Corporate Restructuring

- 2.6 The Commission's "no objection" is required prior to the court order to convene a meeting to approve a corporate restructuring and the general meeting.

Take-overs

- 2.7 In relation to takeover bids, the following persons, amongst others, will be presumed to be persons acting in concert with other persons in the same category (i) a company, its parent, subsidiaries and associated companies (at least 20% ownership or control of the equity share capital of a company is the test of associated company status); (ii) a company with its directors (their close relatives and their related trusts); and (iii) the pension schemes of any company involved in the bid.
- 2.8 The Commission must consider the intent of the parties and trend of events and may decline the application if structured to avoid making a takeover bid. An application for an authority to proceed with a takeover bid must be filed with the Commission within three (3) business days of the triggering event.

Conclusion

It is pertinent for individuals, firms and corporate bodies embarking on mergers, takeovers, divestments, restructuring and other applicable transactions involving public companies to note these changes introduced by the Merger Rules.

G. Elias & Co. has been advising leading global and national clients on business structure, corporate restructuring reorganisation and ancillary regulations for more than 20 years. If you have any questions about business structure and ancillary regulations, please contact Segun Omoregie (segun.omoregie@gelias.com) or corporate@gelias.com.

⁴ 15% or more of the total assets or a business line

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