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CIRCULAR TO ALL BANKS AND OTHER FINANCIAL INSTITUTIONS

THE NEW REGULATORY APPROACH FOR ENFORCING COMPLIANCE BY BANKS

1.0 Many financial institutions had in the recent past breached serious banking regulations thereby putting a lot of burden on the CBN in its effort to thoroughly investigate and ensure fairness in its decisions.

Such flagrant abuse and breach of the rules, procedures and laws governing financial activities, included foreign exchange malpractices over the past few years and, lately, the deliberate concealment of material information by some banks from both the regulators and their external auditors.

The attempt at using CBN resources in the necessary investigations had overstretched the limited number of field examiners and other resources in the CBN and NDIC thereby creating a dent in the capacity of the two institutions to cover adequately the primary responsibility of conducting the routine examination of the banks on annual basis. It has therefore become necessary to adopt a new approach which is essentially to get the financial institutions that breach the rules/regulations to bear the associated costs of engaging consultants to investigate their operations.

2.0 Although the various sanctions that were imposed on the banks in the past had some salutary effects on the system generally, the proposed approach of making the erring banks to pay for the cost of investigating their processes will have an additional positive effect on the affected banks in particular and the system as a whole.

2.1 The appointment of the consultants who must be one of the reputable bank auditors as approved by the CBN and the terms and conditions of the appointment shall be reviewed and approved by the CBN after preliminary discussion with the affected banks before the commencement of their work. However, the consultant shall not be the bank's external auditors. Their fees and other expenses in carrying out the assignment shall be borne by the affected bank. The consultant's report, which shall be strictly confidential, shall be submitted to the CBN for its consideration and final decision after a fair review of same with the affected bank. The following shall be covered in the consultant's work:

- i) Identification of any operational lapses or breaches that facilitate or contribute to the violation of the bank's internal rules and procedures and the rules and regulations of the CBN.
- ii) Determination of the extent of the breaches and their impact on the operations or transactions of the bank.
- iii) Determination of the gains or losses accrued to or suffered by the bank.
- iv) Identification of the major actors including the owners, directors and staff of the bank and their roles in perpetrating the malfeasance.

- v) Recommendations to be implemented for re-engineering the bank to forestall future occurrences.

2.2 The breach of the following and other very serious offences which pose serious regulatory concern to the CBN and are outside the scope of routine examinations and the "Ethics and Professionalism" sub-committee's investigations should trigger the appointment of consultants by the CBN.

- [a] Corporate crimes arising from deliberate actions and wilful negligence.
- [b] Gross misconduct bordering on deliberate violation of rules and regulations that can threaten the continued authorisation of the bank, such as:
- Foreign exchange malpractices (using spurious documents to support disbursement of foreign exchange, round-tripping of forex, operating undisclosed accounts, etc).
 - Money laundering offences (especially non-adherence to KYC principles e.g. opening of fictitious accounts, non-reporting of suspicious transactions, etc).
- [c] Any other offences as may be determined by the CBN from time to time.

3.0 It is noteworthy that apart from the application of the above approach in other jurisdictions that had found it useful and cost-effective, the initiative is

covered by the powers conferred on the CBN under Sections 1 (4) and 32(2)(4) of BOFIA 1991, as amended. The provisions authorise the CBN to appoint any official or consultant to carry out such investigations on behalf of the Bank, while the affected banks shall bear the associated costs.

A handwritten signature in blue ink, appearing to read 'O.I. Imala', is positioned above the typed name.

O.I. IMALA
Director of Banking Supervision Dept.