

The SEC's New Framework For Private Company Debt Securities

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The SEC's April 2025 rules update represent a significant recalibration of Nigeria's capital markets architecture. They permit private companies to access institutional debt capital through regulated channels while preserving the distinction between public and private enterprise.

The framework's significance lies not in revolutionary change, but in careful expansion. The SEC has constructed a regulated conduit for private companies that is based on their acceptance of governance standards traditionally associated with public market participation. The regulatory quid pro quo is explicit. If you have sophisticated capital demands, expect a sophisticated compliance regime.

The Structural Framework

Rule 7 establishes the framework's boundaries through three provisions that together define how private companies may enter the market. Rule 7(a) maintains an absolute prohibition on equity securities offerings to the public by private companies. The provision is a deliberate policy choice that allows private companies to access institutional debt capital without compromising on their private status. Rule 7(b) restricts debt securities distribution exclusively to "*qualified investors*" yet provides no definition of qualification criteria. The regulatory gap forces market participants to develop qualification frameworks in the absence of official guidance, creating potential retrospective compliance risks for transactions completed under self-imposed standards.

Rule 7(c) mandates professional intermediation through registered capital market operators. This requirement professionalizes the market while significantly increasing transaction costs. This will particularly impact smaller issuers who previously relied on relationship-driven capital formation.

The Trustee Mandate

Rule 9's mandatory trustee requirement represents the framework's most sophisticated innovation. It has transplanted public market governance mechanisms directly into private transactions. The trustee serves three critical functions: preventing destructive creditor races through consolidated security holding, providing covenant surveillance and early warning systems, and serving as the collective action hub for distressed workout negotiations.

While Rule 101 prescribes general trustee functions that include protecting investor interests, holding and enforcing securities, and administering sinking funds, the regulations remain conspicuously silent on enforcement triggers and decision-making mechanisms. The rule requires trustees to *"protect investor interests"* and *"enforce securities where necessary,"* but provides no guidance on when enforcement becomes *"necessary"* or whether such decisions require investor consultation.

This transforms critical protection mechanisms into negotiable variables within trust deed documentation. The battleground is the enforcement triggers. The determination of when the trustees *"must"* act and when they *"may"* are key. A trustee with automatic obligations on covenant breach is fundamentally different from one who must first consult investors. Without clear thresholds, protection depends entirely on documentation quality and negotiating power.

The Disclosure Transformation

Rule 9 transforms private company offerings into disclosure-intensive exercises approaching public company level. The documentation requirements include board resolutions, shareholder approvals, CAC filings, audited accounts, draft prospectus, trust deed, underwriting agreements, regulatory consents, solicitor's opinions, and comprehensive litigation schedules.

In practice, the SEC's role is administrative rather than evaluative. It confirms that documentation is complete but does not assess merit to credit quality. This represents a conscious delegation of protection responsibility from regulator to market participants, requiring sophisticated investors to conduct enhanced due diligence while potentially exposing less experienced participants who

may conflate regulatory approval with investment endorsement.

The Rating Regime

The framework's treatment of credit ratings operates as a boundary-setting mechanism in the SEC's design. Ratings mark the line between medium and maximum regulation because once a private company seeks capital above a certain threshold, it must graduate into the full glare of the public market.

The rules create a clear ladder:

1. **True Private Placements:** No ratings required. Small, relationship-driven raises remain rating-free.
2. **Hybrid Private Debt (under the April 2025 Rules):** Ratings are optional. Issuers can raise substantial sums (up to ₦15 billion) without the cost and scrutiny of a credit rating.
3. **Public Offerings:** Ratings of "not less than investment grade" are mandatory. Yet the rules provide no definition of "*investment grade*" and no accredited list of agencies. The requirement is a hollow formality, essentially a standard with no content.

The ₦15 billion cap is basically two sides of a coin. On one side, companies can avoid ratings entirely. On the other, they must submit to the undefined "*investment grade*" test and the full suite of public-company disclosure.

This structure produces predictable behavior. The Sophisticated arrangers will advise issuers to structure successive private placements just under the ₦15 billion ceiling, maximizing capital access while postponing ratings and ongoing reporting. Strategic planning becomes central because the arranger's role is not only to raise funds today but also to chart the client's path once the ceiling is reached, whether through an IPO or a transition into the public bond market. The less experienced investors may wrongly assume that a label of "*investment grade*" carries regulatory endorsement, overlooking the fact that the SEC itself requires agencies to disclaim that their ratings are investment advice.

At the heart of the framework lies a paradox. The SEC regulates rating agencies and insists their opinions are non-advisory, yet simultaneously elevates those same opinions into statutory gatekeepers for public offerings.

The rating regime creates a tiered ecosystem where ratings form the dividing wall between private flexibility and public scrutiny. Companies can now raise significant sums without ratings, preserving flexibility and privacy. But once they breach the \$15 billion cap or go public, ratings become unavoidable. Yet without definitional clarity, the requirement risks being symbolic rather than substantive.

Thus, the arbitrage is not about avoiding ratings forever but about delaying the regulatory graduation ceremony for as long as possible. The SEC has built a contained sandbox with high walls, inside it lies flexibility while outside it you become susceptible to public exposure.

Critical Regulatory Gaps

The Undefined Gatekeeper: “Qualified Investor” and “The Hollow Trustee”

The framework is clear: private companies are permanently barred from offering equity to the public. Their only permissible access to the capital markets is through the issuance of debt securities under these rules. Yet Rule 7(b) stipulates that such debt may be sold only to “*Qualified Investors*.”

At this point the regime collapses. The rules provide no functional definition of “*Qualified Investor*” or “*Qualified Institutional Investor*.” The only text offered “*a purchaser of securities that is financially sophisticated and as defined by the Commission*” is circular, deferring to a standard that does not exist. The very gatekeeping mechanism designed to protect the market is legally void. This violates the principle of legal certainty that underpins both constitutional governance and market regulation. A regime that conditions access on an undefined category is, in effect, a prohibition masquerading as permission.

For private companies, the restriction in Rule 7(b) makes the undefined “*Qualified Investor*” concept the sole gateway to lawful fundraising. Without

objective criteria that may or may not include income thresholds, asset levels, professional credentials, issuers and their advisers cannot know who they may approach. Any placement is exposed to the risk of being unwound if the SEC or a court later concludes that an investor was not, in fact, “qualified.” That is not a marginal compliance issue; it is an existential threat to enforceability.

Cautious counsel will advise clients to postpone transactions rather than expose them to unquantifiable liability. The innovation the rules were intended to promote is therefore stifled by the absence of a basic definitional foundation. This is not a gap that practice can bridge. It is a regulatory failure that only the Commission can cure. Until the Commission issues a binding circular or amendment providing a workable definition, the framework remains in suspended animation — a rule that prohibits activity without setting out the conditions under which it may lawfully proceed.

The framework insists on the presence of a trustee but is silent on what powers that trustee must hold. This silence allows issuers to satisfy the formal requirement with a nominal appointment while stripping the trustee of meaningful enforcement authority. The result is an illusion of protection. Minimum trustee powers should be prescribed to prevent documentation from becoming a vehicle for regulatory arbitrage.

Rating Agency Standards

The insistence on an “*investment grade*” rating, without defining the term or accrediting agencies, generates uncertainty at the very point where certainty is most needed. The Commission has, in effect, outsourced credit assessment to private entities without setting the parameters of that delegation. The consequence is a rule that demands compliance but leaves the content of that compliance undefined, inviting both disputes and opportunistic structuring.

Implications For Market Practice

What has emerged is a hybrid regime where private companies are granted access to institutional capital markets, but only on terms that import elements of public-market discipline. For issuers, this means lower potential funding costs compared to bank finance, but at the price of continuous disclosure and

governance obligations previously reserved for listed entities. For investors, it means entry into a regulated channel that offers transparency but no guarantee of credit quality. Protection will turn on contractual negotiation, trustee strength, and diligence, not regulatory intervention.

Conclusion: A Foundation of Promise, Compromised by Paralysis

The April 2025 Rules represent an ambitious attempt to make a viable market for private company debt securities in Nigeria. Structurally, they are a significant step forward. They have extended institutional capital access and preserved the legal distinction between public and private corporate status. The potential to catalyze a genuine institutional debt market for private companies is undeniable.

However, this considerable promise is critically compromised by a few self-inflicted omissions that threaten paralysis at the point of execution. The absence of a functional definition for “*qualified investor*,” the lack of prescribed minimum trustee powers, and the undefined standards for “*investment grade*” credit ratings collectively create a regime of unquantifiable risk. For sophisticated participants, the gaps present arbitrage opportunities. For cautious investors, the uncertainties may outweigh the promise thereby deterring the very capital the rules were designed to attract.

The Commission therefore stands at a crossroads. It must move with urgency to supply the necessary clarity through definitive circulars or amendments. Without this, a framework designed to unlock capital formation risks achieving the opposite, by potentially inviting litigation, perpetuating market ambiguity, and remaining a theoretical construct rather than a functioning market. The foundation has been poured; the SEC must now complete the structure.