

## POSITION PAPER ON UNCLAIMED DIVIDEND TRUST FUND BILL

The issue of unclaimed dividends assumed more importance in the last few years arising from the staggering and generally increasing amount involved.

A study by the Securities and Exchange Commission in 2004 confirms, It is believe that the amount involved is quite huge and growing over the years.

**Fact about unclaimed dividends in Nigeria includes the following:**

- i. A review of Dividend payment of 68 companies in 1998 showed that only 30 (or 44.1 percent) of the 68 companies had lodge 100 percent of the dividends. Also only 5 of the 25 registrars that made returns to SEC had fully disbursed the dividend monies, while 19 had over 50% of the dividend still outstanding.
- ii. The continued retention of such dividends by public companies most times distort their true financial position thereby misleading investors and government.
- iii. A recent study of the dividend records of 183 companies for the period 1999 to 2002 also revealed that over N7.2 billion was still outstanding as unclaimed dividend. Hence the need for legislative intervention.

**More up to date returns from registrar indicate as follows:**

2002 – N5.1billion  
2003 – N6.4 billion  
2004 – N6.0 billion

**The legal position in (CAMA section 383):**

- a) CAMA provides that unclaimed dividend will be forfeited after 12 years. The implication is that an orphan, whose parents have invested in his name or in their names, will not be able to reclaim the benefit of such investments when he becomes of age because it is statute barred after 12 years.
- b) Section 383 does not make provision for payment of interest whenever the shareholder emerges to claim his dividends within the 12years period. This is inequitable.
- c) There is no adequate provision for oversight to ensure dividend declared is kept outside the company as required by the law.

The inadequacies are exploited in the following manner

1. Whereas CAMA does not allow declaration of dividend where a company's profit does not translate to liquid cash, some companies resort to borrowing to pay dividends as doing so not only attracts new investors but also increase their share prices on the floor of the Nigerian Stock Exchange.
2. Companies also exploit the inadequacies of section 383 to declare large dividends but only pay out a small fraction mainly to institutional shareholders and other enlightened shareholders, while denying the small unenlightened investors who are often in the majority.

3. Most unclaimed dividends are being used as working capital by companies contrary to CAMA's provision that it should be invested outside the company. This tends to distort the company's actual financial position as it is difficult to forecast their performance without such free funds. Moreover, whenever such companies go under, the unclaimed dividend will also be lost.

The effect of these on the investor when dividend cannot be claimed is that they are deprived of their rightful earnings. This could dampen their enthusiasm about investing in the capital market with severe implication for the economy.

The Securities and Exchange Commission, motivated by the imperative of effectively addressing this menace, set up a Committee on Unclaimed Dividends which was inaugurated on June 15, 2001. The Committee was mandated to study the phenomenon of unclaimed dividends in the country and proffer solutions. This broad-based Committee had members from the Corporate Affairs Commission, the Nigerian and Abuja Stock Exchanges, Committee of Bankers, Trustees, Chartered Stockbrokers, Public Companies and Shareholders Association.

**The Committees Terms of Reference are as follows:**

1. To determine how much is currently outstanding as unpaid dividends in the Nigerian Capital Market;
2. To examine and make recommendations on the smooth transition of Unclaimed Dividends held by companies and /or registrars to the proposed trust Fund;
3. To examine all laws governing declaration and payment of dividends and make recommendations on amendments of such laws where necessary;
4. To study and make recommendations on how the Trust Fund should be structured and managed to the best interest of investors;
5. To examine and recommend on how best the Trust Fund could be used as a vehicle for deepening the capital Market;
6. To make recommendations on how to ensure maximum protection of the interest of investor/ shareholders who may make claims on the fund;
7. To make recommendations on all other things required to be done for the smooth take-off and running of the UDTF

The report of the National Committee on unclaimed dividends was submitted to the Director-General of SEC who later led members to pay a courtesy visit to the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo. It was during the visit that the president accepted in principle the formation of an Unclaimed Dividend trust Fund. The President then directed the Commission to form a committee to prepare a draft bill for the purpose to be forwarded to the National Assembly.

Membership of the committee was to comprise of representative of SEC, Ministry of Justice, Ministry of Finance and representatives of Shareholders Association.

Consequently, besides SEC staff, the following served as members of the Presidential Committee:

- Mr. Sola Ephraim Oluwanuga – Chairman, Shareholders Association, Ibadan Zone

- Mr. U. A. Agbaroji – Ministry of Justice

- Mr. S. S. Liman – Ministry of Finance

In the course of its assignment, the Committee received some copies of the relevant laws from the United States of America and United Kingdom.

These laws revealed that:

a) In the United States of America, Unclaimed Dividends after a certain number of years (between 3 to 7 years) go to the state of the shareholder's last known address for safekeeping until the shareholder claims the fund.

b) In the United Kingdom there are provisions for special public Accounts (e.g Investment Accounts and Insolvency Account) into which unclaimed dividends are kept, for the benefit of the public.

## REACTION FROM SHAREHOLDERS

As is to be expected of such a novel idea, the reaction from shareholders to the proposed Trust Fund has been mixed with some stakeholders vehemently opposing the initiative (just like there were initial opposition to the on-going reform in the banking sector).

There are however many stakeholders including shareholders who are in support of the initiative. The objections to the bill have however been mainly centered on the following arguments:

I. That the Securities and Exchange Commission and the government was seeking the control of the fund for their use.

II. That any fund that government initiates or is in anyway involved in must be misappropriated.

III. That SEC has no business getting involved in addressing the problem.

IV. That SEC had not exploited other options to address the problem.

V. That CAMA has already made adequate provision for the treatment of unclaimed dividends.

VI. That the volume of unclaimed dividend is insignificant with most of these already statute barred.

These objections are generally based on either misinformation and/or unfounded fear as:

a) Proposed trust Fund is not designed for either The Securities and Exchange Commission or even the government to have control of the funds of the Trust Fund. Section 6 on the establishment and composition of the Board of the fund is clear on this. This is reproduced below for the sake of emphasis.

6 (1) There is hereby established for the management of the FUND a Board of Trustees (herein referred to as the Board) which shall comprise of 15 persons representing:

i. Eight Shareholders' Association duly registered by the Commission representing the six geo political zones, Lagos and Abuja.

ii. Nigerian Employers Consultative Association, which shall be represented on the Board by one of its members who must be a public, quoted company;

iii. Registrars of public companies, which shall be represented on the Board by one of its members;

iv. National Association of Small and Medium Scale Enterprises;

v. Corporate Affairs Commission;

vi. Chartered Institute of Stockbrokers (CIS) which shall provide one representative who shall be a practicing stockbroking company and

vii. The Chief Executive Officer and Managing Director of the FUND who shall be a person with 15 years managerial experience in the financial sector and have a minimum of first degree.

2 (I) The Chairman and members of the Board shall be persons of proven integrity

(II) The Board shall appoint:

- i) The Chairman from its members who must possess vast experience in business and financial management from the private or public sector and have a minimum of first degree or its equivalent.
- ii) The Chief Executive Officer of the FUND who shall possess experience and qualification as stated in paragraph (vii) of sub section (1) above.

b) It is not true that any fund that the government initiate or is involved in must be misappropriated. The Education Trust Fund for instance has performed creditably well over the years without any reported case of misappropriation known to us.

c) SEC as the apex regulator of the Nigerian Capital Market saddled with the primary responsibility of investor protection has every duty to ensure that investors are not denied their dues from investing in the market. Section 8 (j) of the Investment and Securities Act gives SEC power to;

“act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end, to 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 Points”

Similarly Section 8 (y) empowers the Commission to;

“perform such other function and exercise such other powers not inconsistent with this Decree as are necessary or expedient for giving full effect to the provisions of this Decree”

d) It is not true that SEC has not taken other steps to address the problem of unclaimed dividends before the Trust Funds initiative. The Commission held meeting with registrars, the Corporate Affairs Commission and the Committee of Chief Inspectors of Banks. The deliberation led to the adoption of short and long term measures to reduce/eliminate the incidence of unclaimed dividends, by way of improving share-ownership documentation.

a) The Commission re-designed the existence share application form in respect of public offering of securities to include additional information. Application forms for securities are now to provide for information on next of kin and bank account number;

b) There would no longer be a need for payee signature before dividend warrants are lodged in bank accounts;

e) In response to objection (v) above, we have earlier in this presentation clearly spelt out the inadequacies of the current legal provisions which is being exploited by companies. A major problem area is that whereas section 382 (2) of CAMA provides that unclaimed dividends should after three months be invested by the company in any business outside its operation, this is hardly the case.

f) Contrary to the misinformation that the volume of unclaimed dividend is insignificant, the Commission's records based on returns from registrars indicate not only that the level is high but that most if not all the amount involved are not statute barred. For instance the study by the Commission in 2004 covering the period 1999 to 2002 which indicated a level of 7.2 billion naira did not include any dividend declared over five years. Thus, none of this could have been statute barred, having not been declared up to 12 years ago.

## QUESTIONS TO PONDER

How can a market that is not efficient/effective in this era of globalization and liberalization attract the much needed foreign portfolio and deficit investments?

How many of these j public companies publish the names of people entitled to unclaimed dividends and the amounts outstanding in their favour and send it along with the notice of the next Annual General Meeting to the shareholders of their company as required by the CAMA? Indeed, how many shareholders even receive such notices before the AGMs?

How many of these companies can show proof that they have always invested the total amount of unclaimed dividend outside the companies as require by CAMA?

How many of the Annual Report and Account of public companies actually show the opening balance of unclaimed dividends that these companies have invested?

If we were to do a random checking of the companies concerned, how many will be found to have dispatched their dividend warrants at the right time with evidence from the relevant courier company of postal service to that effect?

Why has it proved so difficult, if not impossible for companies to furnish the regulatory body with figures of unclaimed dividends in their accounts and their age-structure?

Can the quoted companies show how the establishment of the UDTF will make the investors any worse off than they (the Companies) have made them so far?

