

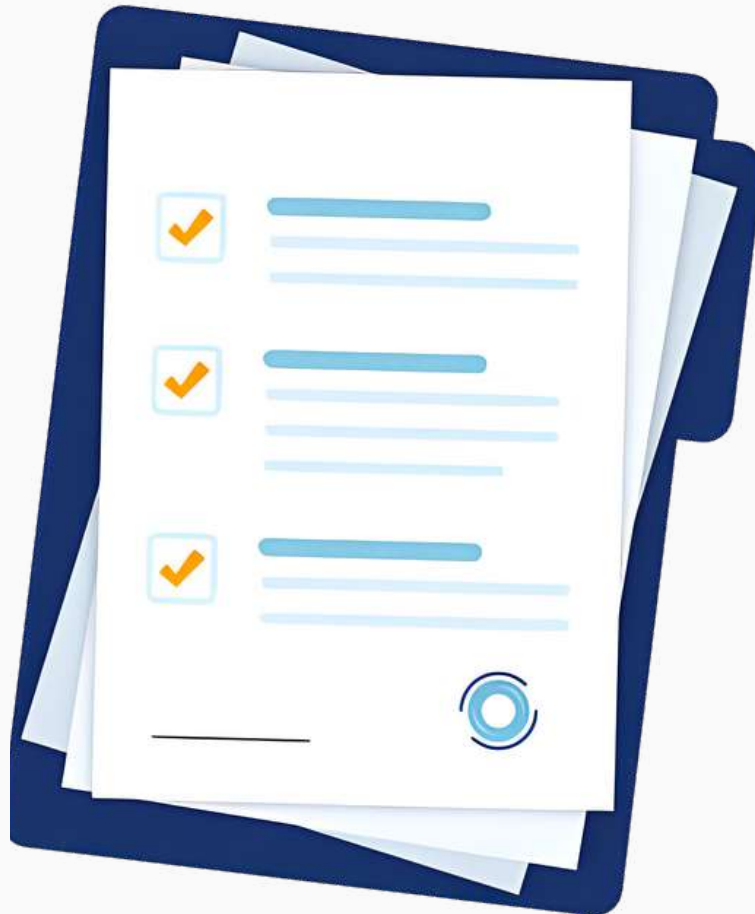
Basics of Issuing Commercial Papers in Nigeria

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■ Introduction

In the dynamic realm of business financing, enterprises often find themselves in need of immediate capital to support short-term operational needs. This necessity for prompt funds has led many business owners to explore the avenue of commercial paper. This article highlights the basics of issuing commercial papers in Nigeria.



■ What are Commercial Papers?

Commercial papers are short-term debt interest bearing or discounted money market instruments, issued in the form of promissory notes by corporates to fund working capital requirement!

Commercial papers may have a tenor of between 15 and 270 days, including rollovers from the date of issue. Anything above this will become a Note Issuance. Commercial paper programme can be upsized by enlarging the programme size² before the issuance of any particular series.

¹ FMDQ. What are Commercial Papers. <https://fmdqgroup.com/faqs/what-are-commercial-papers/> accessed 5 December 2023.

² This is usually done by a resolution of the Board of Directors of the issuer to revise the programme upward.

■ **Why do business owners opt for Commercial Papers?**

Business owners opt for commercial papers for short-term financing without having to resort to long-term debt options. The primary issue faced by business owners that drives them towards commercial papers is the pressing requirement for immediate liquidity to sustain and propel their operations effectively.

■ **Differences between Commercial Papers and other Financial Instruments**

Commercial papers are different from other forms of debt and equity instruments in many ways. The table below highlights some of the fundamental differences

Aspect	Commercial Paper	Notes/Bonds/Sukuk	Notes/Bonds/Sukuk
Nature of Instrument	Short-term	Medium/Long-term	Medium/Long-term
Tenor	Typically, 15 to 270 days, including rollovers from the date of issue.	Typically, a minimum of 1 year for Notes, 3 years and above for Bonds	Indefinite ownership
Yield	Generally low due to short-term nature	Generally low due to short-term nature	Dividend distributions dependent on declared profits of the company
Engagement with the SEC	Not required.	Required for issuance to the public	Required for public quoted companies

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■ Commercial Paper Ecosystem

Commercial papers are issued within a structured ecosystem which involves several entities and diligent structuring. They may be issued privately to identified investors or to the public. Issuance of commercial papers to the public is generally regulated by the Central Bank of Nigeria and the FMDQ Securities Exchange Limited.

Key players include issuers, dealers, arrangers, issuing and placing agent, collecting, and paying agent, guarantors, rating agencies, etc. Entity acting in these capacities play crucial roles in the issuance and redemption of commercial papers, thus ensuring the smooth utilisation of this financial instrument.

Below are the roles and functions of the parties involved in a commercial paper issuance

i Issuer

The issuer is the entity issuing the commercial paper to raise funds. The issuer will usually be a limited liability company. It is not common to see a state entity issue commercial papers.

ii Dealers

The dealers facilitate the buying and selling of commercial papers in the secondary market. The dealers are typically financial institutions.

iii Arrangers

The arrangers assist in structuring and arranging the issuance of commercial paper. The arrangers are typically investment banks or financial advisors.

iv Issuing and Placing Agent (IPA)

The IPA is a non-bank financial institution sponsoring the registration/quotation of the commercial paper programme. It guides the issuer through the commercial paper issuance and supervises and coordinates the entire process to ensure a smooth execution. The IPA also facilitates the issuance and placement of commercial paper with investors in accordance with the offer documents. It also obtains necessary approvals from FMDQ.

v Collecting and Paying Agent (CPA)

The CPA handles the collection of funds from investors and disburses payments to holders of commercial paper upon maturity.

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vi Guarantor

The guarantor provides a guarantee to investors regarding the repayment of the principal sum and payment of interest due under the commercial paper in the event that the issuer defaults.

vii Rating Agencies

The rating agencies evaluate the creditworthiness of the issuer and risks associated with the commercial paper by assigning credit ratings. These ratings provide an indication to investors about the issuer's ability to repay its debts and the level of risk associated with investing in the commercial paper.

viii Reporting Accountants

The reporting accountants conduct financial assessments and prepare reports on issuers' financial condition for investors. These reports aim at providing investors with insights into the issuers' financial health.

ix Auditors

The auditors review and verify the accuracy of issuer's financial records. They also issue a letter/report confirming that the financial information reported in the programme memorandum reflects the audited accounts of the issuer.

x Transaction Solicitors

The transaction solicitors conduct legal due diligence on the issuer, provide legal advice and opinions, assist with drafting, reviewing, and negotiating the principal transaction documents, and advise on the compliance of the commercial paper transaction with all existing legal and regulatory requirements.

xi Trustees

This can be notes trustees and/or security trustees. Notes trustees act to represent the interests of commercial paper holders by ensuring compliance with the terms and conditions of the programme. Security trustees, on the other hand, hold the secured assets in trust for the commercial paper holders.

xii Depository

The depository is a platform facilitating the registration, listing, and trading of commercial papers, thus ensuring transparency and regulatory compliance. An example is the FMDQ Depository.



▪ **Relevant transaction documents in a Commercial Paper transaction**

The documentation governing the issuance of commercial paper transactions include:

i Programme Memorandum/ Information Memorandum

Programme Memorandum is used when the commercial paper is to be issued in various series or tranches, while Information Memorandum is used for a one-time issuance. Either document provides detailed information about the issuer, the terms of the commercial paper, risks involved, and other essential information relevant to the commercial paper issuance. It is made available to potential investors to ensure transparency and compliance with regulatory requirements.

ii Pricing Supplement

This document applies where the commercial paper will be issued in series/tranches. It specifies additional or supplemental details for each series or tranche of the issuance which are not included in the programme memorandum (such as the specific terms of each series of issuance, interest rates, maturity dates, and other unique features of the particular series).

iii Issuing and Placing Agent Agreement

This document outlines the responsibilities of the issuer and the issuing and placing agents, including the sale to investors.

iv Collecting and Paying Agent Agreement

This agreement specifies the roles and responsibilities of the agent responsible for collecting funds from investors during the issuance and making payments to commercial paper holders upon maturity.

v Dealer Agreement

The Dealer Agreement outlines the terms between the issuer and authorised dealers who facilitate secondary market trading of the commercial paper, specifying their rights and obligations.

vi Deed of Covenant

This legal document, which is a deed poll, contains promises and commitments made by the issuer to present and future commercial paper holders to ensure compliance with the terms of the commercial paper.

vii Legal Opinion

This includes both the transaction and litigation opinions prepared by the solicitors to the issuer. The transaction opinion typically outlines the legal status of the issuer, the extent of the issuer's compliance with the extant laws and regulations, tax matters and any restrictions on the issuance in addition to any other important relevant legal information. The litigation opinion, on the other hand, outlines the existence or otherwise of claims which would have a material effect on the financial position or operations of the issuer.

viii Security Documents

These documents, which may vary depending on the circumstance and structure of the transaction, may include collateral or security agreements transferring the legal and/or equitable rights of the issuer in specific assets to a trustee. It may also be in the form of guarantees from another entity to secure the commercial paper, in order to ensure investors' protection in the event of default. Examples include Deed of All Assets Debenture, Security Trust Deed, Deed of Legal Mortgage, Bank Guarantee, etc.

▪ Recent legislation on Commercial Papers in Nigeria

In October 2023, desirous of building a sustainable and credible CP/NICP⁴ market in the Nigerian financial market landscape, FMDQ Exchange updated its registration and quotation process for commercial papers in line with global standards⁵ by amending the Commercial Paper Registration and Quotation Rules. These Rules, which have been adopted from the Guidelines⁶, other Applicable Law⁷ and international regulations relating to the issuance of CPs and NICPs, aim to aid price formation in the money market and foster the emergence of a corporate money market benchmark. Issuers/Promoters who wish to register and quote their CPs/NICPs on the FMDQ Exchange Platform must, in addition to complying with these Rules, execute a written undertaking accepting to comply with the post-Quotation requirements of FMDQ Exchange as well as the declaration of compliance in the manner prescribed in Templates II, III, and IV of the Templates Guide. These Rules are to be read in conjunction with the relevant FMDQ Rules and such other relevant Applicable Law.

▪ Conclusion

Understanding, harnessing, and leveraging the potentials of commercial papers could be strategic to the success of many enterprises aspiring to achieve financial breakthrough and operational excellence. Given that commercial papers are debt instruments, businesses should consider the effect of this form of debt on its overall business strategy before deciding on its issuance to the targeted investors.

⁴ CP means Commercial Paper; NICP means Non-Interest Commercial Paper.

⁵ FMDQ Exchange Commercial Paper Registration and Quotation Rules 2013.

⁶ means the CBN Guidelines on the Issuance and Treatment of Bankers Acceptances and Commercial Papers – September 2019, Guidelines for the Registration and Supervision of Institutions offering Non-Interest Financial Services in Nigeria, AAOIFI Standards, as may be amended or supplemented from time to time.

⁷ means any law, code, ordinance, decree, rules, or regulation (including rules and regulations of self-regulatory organisations) as may relate to activities within the FMDQ markets (as may be revised, updated, and/or amended from time to time).

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