



REGULATORY OVERREACH OR NECESSARY REFORM? THE SEC'S EXPANDED ENFORCEMENT POWERS UNDER THE INVESTMENT AND SECURITIES ACT 2025.

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ABSTRACT

The extant Investment and Securities Act (ISA), 2025 inaugurates the most sweeping expansion of the regulatory and enforcement authority of the Securities and Exchange Commission in Nigeria since Nigeria's capital market regulation was formalized in 1979. ISA arms the SEC with an arsenal of intervention tools — including powers to remove company directors, appoint independent board members, impose administrative sanctions without judicial intervention, freeze assets, compel production of telecommunications data, and take direct enforcement action against prohibited investment schemes. This article undertakes a critical doctrinal and analytical examination of these enhanced powers, interrogating the constitutional and jurisprudential tensions they generate with due process, corporate autonomy, and the separation of powers. Drawing on ISA 2025, antecedent legislation, Nigerian constitutional provisions, case law, and comparative frameworks from the United States, United Kingdom, and South Africa, the article argues that while the expanded framework is a necessary and largely proportionate response to the chronic market integrity failures of the ISA 2007 era, certain features: notably the administrative sanction mechanism and digital surveillance powers – risk encroaching upon fundamental rights in ways demanding judicial scrutiny and legislative refinement. The article concludes with targeted reform recommendations.

KEYWORDS: ISA 2025, SEC Enforcement Powers, Corporate Autonomy, Capital Market Regulation, Nigeria and Investor Protection.

1. INTRODUCTION

The relationship between the regulatory state and the private corporation has always been characterized by tension: state imperatives to protect investor welfare and market integrity pulling against the corporation's claim to governance autonomy.¹ Navigating this tension is one of the most enduring challenges of capital market law.

In Nigeria, this tension historically tilted towards regulatory restraint. The Investment and Securities Act, 2007 (ISA 2007) vested the SEC with supervisory and enforcement powers that were limited in practical reach and plagued by enforcement gaps. Intervention authority over public companies was implied rather than express; asset freezes and director removals required court

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¹ B M Almeajel, 'The Role of Regulators and Impact of Corporate Governance on the Performance of Australian-Listed Companies: Legal Analysis.' [2024] 12(8) *Corporate Law & Governance Review*, 31.

orders; and the enforcement toolkit was chronically inadequate to respond swiftly to fast-moving market infractions. The consequences were manifest: Ponzi schemes, insider trading scandals, market manipulation, and the proliferation of unlicensed investment platforms caused substantial investor losses.² The rapid emergence of digital assets, fintech intermediaries, cryptocurrency exchanges, and online forex trading platforms created further regulatory blind spots that ISA 2007 was wholly unprepared to address.

It is against this backdrop that ISA 2025 was made. It reaffirms SEC as the primary capital market regulator; substantially expands the Commission's scope to encompass digital assets, commodities exchanges, and online platforms; and endows the SEC with an expansive suite of new enforcement and intervention powers designed to enable swift, decisive, and more autonomous regulatory action. These powers which include removing and replacing company directors, imposing administrative sanctions without awaiting judicial conviction, conducting digital surveillance through compelled access to telecommunications data, freezing accounts and assets *pendente lite*, and taking direct enforcement action against prohibited schemes raise profound questions about compatibility with constitutional guarantees, corporate governance norms, and the rule of law.

This article traces the historical and doctrinal context. Section 3 systematically analyses the six principal categories of expanded enforcement powers. Section 4 examines constitutional and due process dimensions. Section 5 assesses corporate autonomy implications. Section 6 draws comparative insights from the US, UK, and South Africa. Section 7 identifies gaps and advances reform recommendations. Section 8 concludes.

2. ORIGIN OF SEC AS A CAPITAL MARKET REGULATOR IN NIGERIA

Nigeria's securities regulatory journey began in 1962 with the creation of the Capital Issues Committee (CIC), an advisory body with no coercive enforcement authority. The Securities and Exchange Commission Decree No. 71 of 1979 established the SEC as a formal statutory body.³ Successive legislative interventions: the SEC Decree No. 29 of 1988, the Investment and Securities Act No. 45 of 1999, and ultimately ISA 2007 — progressively expanded the Commission's mandate. ⁴The ISA 1999 was particularly significant in creating the Investment and Securities Tribunal (IST) as a dedicated adjudicatory forum, separating the regulatory function of the SEC from adjudication and reducing the concentration of powers in a single institution.⁵

² O C Aduma and A Nwotite, 'An Analysis of the Expanded Powers of the Securities and Exchange Commission under the Investment and Securities Act 2025' [2025] 2(2) *Nnamdi Azikiwe University Journal of Law and Clinical Legal Education* 38, 39.

³ SEC, 'Who we Are.' <https://sec.gov.ng/about/our-role/who-we-are/> retrieved June 28, 2026.

⁴ *ibid.*

⁵ *ibid.*



Under ISA 2007, SEC enforcement was reactive and procedurally constrained.⁶ SEC was generally required to give prior notice before acting, asset freezes required court orders, and fines depended on conviction rather than administrative determination. ISA, 2007 had diverse observed deficiencies that necessitated its replacement. They include the following:

1. The ability of SEC to freeze, seize, or place liens on the assets of entities suspected of operating illegal investment schemes or Ponzi schemes was strictly limited. SEC generally had to rely on court orders or depend on external law enforcement agencies, causing critical delays.⁷
2. Investigators lacked the explicit, unfettered authority to compel the production of working papers and direct communications from external auditors of targeted firms.
3. The 2007 Act predated the modern boom in digital assets, crowdfunding platforms, and *fintechs*. Consequently, it lacked specific provisions to properly govern, monitor, or restrict virtual asset providers and online investment platforms. This left a glaring enforcement gap.⁸
4. Most, if not all the fines and administrative sanctions provided in the 2007 Act were often inadequate and failed to serve as a strong deterrent, particularly against large-scale market manipulations or unlicensed scheme.⁹

3. PRINCIPAL CATEGORIES OF EXPANDED ENFORCEMENT AND INTERVENTION POWERS OF SEC UNDER THE EXTANT ISA 2025

3.1 Expanded Regulatory Scope

Digital Assets, Commodities, and Online Platforms

The enactment of ISA 2025 expressly extends the jurisdiction of SEC with respect to digital and virtual assets; commodities exchanges and warehouse receipt systems; and online forex trading platforms. Interestingly, sections 1, 2, and 3 of the Act made more flexible the definition of ‘securities’ to include digital tokens, cryptocurrencies, blockchain instruments and smart contracts, subjecting virtual asset service providers and cryptocurrency exchanges to full SEC registration and conduct obligations.

Commodities infrastructure and online forex trading platforms are similarly brought within the SEC’s regulatory purview. The expansion of regulatory scope is a prerequisite for the exercise of enhanced enforcement powers, since enforcement authority is necessarily co-extensive with regulatory jurisdiction.

⁶ Udo Udoma and Belo-Osagie, ‘Nigeria Regulatory Update: The SEC’s Expanded Enforcement Powers Under ISA 2025: What You Need to Know’ <<https://www.mondaq.com/nigeria/securities/1665500>> accessed on June 28, 2026.

⁷ Udo Udoma and Belo-Osagie, *ibid*.

⁸ O C Aduma and A Nwotite.

⁹ Udo Udoma and Belo-Osagie .

3.2 Direct Intervention in Corporate Management

Under ISA 2007, the SEC's express intervention powers were primarily directed at capital market operators; authority to intervene in the governance of public companies was not clearly codified. ISA 2025 fundamentally transforms this position. The Act expressly empowers the SEC to intervene in the management of public companies and regulated entities that have failed or committed grave corporate governance violations. In such circumstances, the Commission may: (a) suspend or remove directors associated with misconduct; (b) appoint independent non-executive directors to affected boards; (c) place existing directors on probation; and (d) take such other management reorganization measures as deemed necessary.

Notably, these powers are exercisable with 'fewer procedural constraints' than under the prior regime a phrase that signals legislative intent to enable swifter intervention but creates significant uncertainty regarding applicable procedural safeguards.

3.3 Enhanced Investigative and Digital Surveillance Powers

ISA 2025 introduces a broader legal framework enabling technologically sophisticated scrutiny. Section 3(4)(t) expressly empowers the SEC to compel individuals to appear and provide testimony under oath. More significantly, the Act grants the Commission authority to obtain subscriber data, personal data, payment records, and the content of communications from telecommunications operators and internet service providers located within Nigeria, where such data is relevant to an investigation. This regulatory surveillance power reflects legislative recognition that sophisticated capital market infractions increasingly occur through digital and electronic channels that conventional document-production powers cannot effectively reach. It enables the SEC to trace transactional patterns, identify co-conspirators, and establish evidentiary chains of communication previously requiring formal court orders.

3.4 Administrative Sanctions Without Prior Judicial Intervention

Under ISA 2007, the imposition of fines and penalties was dependent on conviction following prosecution. ISA 2025 empowers SEC to impose fines and other administrative penalties in lieu of prosecution for various categories of non-compliance. The Act substantially increases penalty scales: promoters of prohibited schemes face fines of not less than ₦20,000,000 and/or imprisonment for up to ten years. SEC is additionally empowered to impose investigative cautions, liens, and to seek judicial orders freezing bank accounts and investment portfolios of persons under investigation pending the outcome of that investigation: a precautionary mechanism previously available only through substantive court applications.

3.5 Asset Seizure, Forfeiture, and Recovery Powers

Section 196 of ISA 2025 defines 'prohibited schemes' to include Ponzi and pyramid structures, unlicensed collective investment schemes, and other fraudulent investment operations. The SEC may take direct enforcement action against such schemes: including sealing off physical premises and obtain court or tribunal orders freezing and forfeiting assets to the Federal Government. A



particularly notable feature is the provision permitting recovery of enforcement costs from the personal assets of individuals involved, regardless of how those assets were acquired. This provision effectively pierces the corporate veil for enforcement purposes and creates personal liability extending beyond assets directly associated with the impugned scheme. The SEC may also recover investigation costs through the Attorney General's office.

3.6 Prohibition of Cash Transactions and Enhanced Audit Powers

ISA 2025 introduces a complete prohibition on cash transactions in the Nigerian capital market, mandating that all investments and redemptions be conducted through verifiable electronic payment channels. This serves both an anti-money laundering function and an investigative function, creating an electronic audit trail that substantially enhances the SEC's capacity to detect irregularities. The Act substantially expands audit and document-production powers, enabling the Commission to compel the production of records not only from capital market operators but from public companies and any entities suspected of violating securities laws. Combined with the digital surveillance capabilities in Section 3(3), this creates an extensive data-gathering infrastructure fundamentally transforming the SEC's investigative capacity.

4. CONSTITUTIONAL DIMENSIONS OF THE EXPANDED POWERS

4.1 The Constitutional Right to Fair Hearing

The most fundamental constitutional tension concerns the right to fair hearing guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which entitles a person, in the determination of civil rights and obligations, to a fair hearing within a reasonable time by an independent and impartial court or tribunal. The SEC's power to impose administrative sanctions without prior judicial intervention directly engages this guarantee. Nigerian courts have consistently held that administrative and regulatory bodies must observe natural justice requirements: including *audi alteram partem* the rule against bias — before taking decisions that adversely affect individual and corporate rights.

The Court of Appeal's decision in *NOSDRA v Mobil Producing Nigeria Unlimited* established that it is unconstitutional for regulatory bodies to act as both complainant and judge and impose sanctions without any judicial determination of guilt. The SEC's administrative sanction powers under ISA 2025 present precisely this structural problem: the Commission investigates, prosecutes, and itself imposes sanctions without mandatory interposition of judicial or independent adjudicatory oversight. TNP Legal has observed that this provision 'may very well run foul of the constitutional right to a fair hearing' and may be challenged in court.

4.2 Due Process in Director Removal and Corporate Intervention

The Companies and Allied Matters Act 2020 (CAMA) provide specific procedural safeguards for director removal by shareholders, including special notice, an opportunity for the director to make representations, and a resolution at a general meeting. The SEC's power to remove directors 'with

fewer procedural constraints' operates outside this framework and effectively displaces the shareholder-centric removal mechanism with a unilateral regulatory decision.

A director's contractual and property rights in their position, remuneration, and reputational standing engage the protection of section 44 of the Constitution (protecting the right to property from compulsory acquisition without prompt, fair, and adequate compensation) and the fair hearing guarantee of section 36(1). An unannounced or minimally procedurally-protected removal risks constitutional challenge even where the substantive grounds for removal are well-founded.

4.3 Digital Surveillance and Privacy Rights

The SEC's power to obtain subscriber data, personal data, payment records, and communications content from telecommunications providers raises serious concerns about the constitutional right to privacy under section 37 of the Nigerian Constitution, which protects the privacy of citizens' homes, correspondence, telephone conversations, and telegraphic communications. The Nigeria Data Protection Act 2023 further reinforces data protection rights and restricts processing without a lawful basis.¹⁰

While ISA 2025 provides that this power may be exercised where data is 'relevant to an investigation', this proportionality qualifier is broad and leaves considerable discretion with the Commission. The Act does not appear to require prior judicial authorization, raising questions about whether the SEC's ability to self-authorize surveillance is consistent with constitutional requirements. Comparative experience suggests that surveillance powers of this breadth are most constitutionally sustainable when accompanied by prior judicial authorization, statutory proportionality criteria, data minimization obligations, notification requirements, and independent oversight mechanisms.

5. CORPORATE AUTONOMY AND GOVERNANCE IMPLICATIONS

5.1 The Concept of Corporate Autonomy

Corporate autonomy the principle that companies have a right to organize their internal governance without undue external interference is a foundational concept of company law. In its classic formulation deriving from *Foss v Harbottle*,¹¹ the internal management of a company is a matter for its members, and external interference is permissible only in exceptional circumstances. CAMA 2020 broadly reflects this position. ISA 2025's intervention powers represent a significant qualification of this principle in the public company context: by arming the SEC with express statutory authority to remove directors, appoint new board members, and place directors on probation, the Act converts the SEC from an external regulator into an active participant in corporate governance.

¹⁰ NDPA 2023, s 24.

¹¹ [1843] 67 ER 189.



5.2 The Tension Between Market Integrity and Governance Independence

The case for expansive intervention powers rests on a market failure rationale: where governance failures cause or threaten material harm to investors, the regulator must have tools to act swiftly. This rationale has particular force in the Nigerian context. However, the existence of a legitimate regulatory objective does not necessarily justify the particular enforcement mechanism chosen. A regulator-appointed director serves simultaneously as a representative of shareholder interests and as an instrument of the regulator's agenda — roles that may conflict and compromise board independence. In June 2025, the SEC issued a circular expressing concern about the practice of converting independent non-executive directors to executive directors within the same corporate group, characterizing this as undermining the 'independence and objectivity expected of INEDs'. There is an irony in a regulator identifying compromised director independence as a governance threat while simultaneously arrogating to itself the power to appoint directors to company boards.

5.3 Risk of Regulatory Chilling Effects

The breadth of the SEC's new enforcement powers creates a systemic risk of regulatory chilling effects on capital market participation. When market participants perceive that the regulator has near-unfettered power to intervene in their affairs, freeze their assets, access their communications, and remove their leadership without robust procedural protections, rational actors will reduce their exposure to regulatory risk. This risk is particularly acute for foreign investors who compare the Nigerian regulatory environment against other jurisdictions. Overly aggressive enforcement regimes perceived as unpredictable or disproportionate can deter capital inflows and undermine the very market development objectives ISA 2025 purports to advance.

6. COMPARATIVE ANALYSIS: LESSONS FROM SELECTED JURISDICTIONS

6.1 United States: The SEC's Administrative Enforcement Model

The United States SEC provides the most extensively developed model of administrative enforcement in securities regulation. Under the Securities Exchange Act 1934 and the Dodd-Frank Act 2010, the US SEC is empowered to impose administrative sanctions — including disgorgement, civil monetary penalties, and cease-and-desist orders — through administrative proceedings before its own administrative law judges (ALJs).

The constitutional sustainability of this framework was tested in *Lucia v SEC* (2018), where the Supreme Court held that the SEC's ALJs were 'Officers of the United States' within the meaning of the Appointments Clause, and that their appointment through agency staff was unconstitutional. This required a comprehensive restructuring of the US SEC's administrative adjudication framework, underscoring the importance of constitutional grounding for regulatory enforcement mechanisms. The Nigerian experience with ISA 2025 may be expected to generate analogous constitutional challenges.

6.2 United Kingdom: The FCA's Enforcement Architecture

The UK's Financial Conduct Authority (FCA) represents a comprehensive model for the exercise of expansive regulatory enforcement powers within a rule-of-law framework. Under FSMA 2000 and its amendments, the FCA possesses broad powers to impose financial penalties, issue prohibition orders, cancel firm authorizations, and intervene directly in the management of regulated firms. The key distinguishing feature is the FCA's robust internal procedural architecture. Before imposing a significant penalty, the FCA must issue a warning notice, provide the subject with the opportunity to make representations to the independent Regulatory Decisions Committee (RDC), and issue a decision notice subject to appeal to the Upper Tribunal. This separation of investigative, prosecutorial, and adjudicatory functions provides the procedural legitimacy that ISA 2025's framework appears to lack.

6.3 South Africa: The FSCA Model and Proportionality

South Africa's Financial Sector Conduct Authority (FSCA), established under the Financial Sector Regulation Act 9 of 2017, provides a further instructive comparison. The FSCA exercises market conduct supervision and enforcement powers including the imposition of administrative penalties and supervisory interventions. The FSCA's framework is notable for its express statutory commitment to proportionality: all enforcement actions must be proportionate to the severity of the contravention, the degree of culpability, and the harm caused. This codified proportionality principle provides a legal constraint on enforcement discretion that reduces the risk of arbitrary action. ISA 2025 does not expressly articulate a proportionality principle governing the SEC's enforcement decisions: a gap that may generate challenges grounded in administrative law principles.

7. CONCLUSION

The expanded enforcement and intervention powers conferred upon the SEC by ISA 2025 represent a necessary and largely proportionate legislative response to the structural enforcement deficits that undermined Nigeria's capital market regulatory framework during the ISA 2007 era. The chronic inability to respond swiftly to market infractions, the proliferation of fraudulent investment schemes, the regulatory vacuum in the digital asset space, and the absence of effective governance intervention tools collectively justified a fundamental recalibration of the SEC's operational authority.

At the same time, this article has demonstrated that several features of the new framework — particularly the administrative sanction mechanism, the management intervention powers, the digital surveillance provisions, and the personal asset recovery regime — are attended by serious constitutional and governance concerns that cannot be dismissed as merely theoretical. The right to fair hearing guaranteed by section 36(1) of the Nigerian Constitution is not a bureaucratic inconvenience to be minimized in the interest of enforcement efficiency; it is a fundamental constitutional value that the SEC, like all public authorities, is bound to respect.



The tension between regulatory effectiveness and the rule of law is not one that can or should be resolved entirely in favour of either side. What is required as the experiences of the United States, United Kingdom, and South Africa illustrate — is a carefully engineered institutional architecture that provides the SEC with the enforcement agility needed to protect market integrity, while ensuring that the exercise of that authority is subject to meaningful procedural safeguards, independent oversight, and judicial accountability.

8. RECOMMENDATIONS

1. Strengthen Procedural Safeguards in SEC Enforcement Actions

The National Assembly should amend the Investment and Securities Act 2025 to expressly incorporate robust procedural safeguards governing the SEC's exercise of its enforcement and intervention powers. Every person or corporate entity subject to administrative sanctions, management intervention, or asset recovery measures should be guaranteed prior notice of allegations, access to relevant evidence, an opportunity to be heard, and a reasoned written decision. These safeguards would ensure compliance with section 36(1) of the Constitution while preserving regulatory effectiveness.

2. Establish Independent Oversight of Extraordinary Regulatory Powers

The exercise of exceptional powers such as the suspension of company management, appointment of interim administrators, freezing of assets, and digital surveillance should be subjected to independent judicial or quasi-judicial oversight. Requiring prompt judicial confirmation or review of these measures would reduce the risk of regulatory overreach, reinforce accountability, and enhance public confidence in the SEC's enforcement processes.

3. Develop Comprehensive Regulatory Guidelines for Digital Asset Supervision

The SEC should issue detailed regulations and operational guidelines governing digital asset supervision, blockchain-based investments, and technology-driven market surveillance. These guidelines should clearly define regulatory standards, compliance obligations, investigative procedures, and data protection safeguards to ensure that innovation in the capital market is effectively regulated without creating uncertainty or infringing constitutional rights.

4. Promote Institutional Capacity Building and Inter-Agency Collaboration

The effectiveness of the expanded enforcement framework will depend not only on broader statutory powers but also on the SEC's institutional capacity. The Commission should invest in continuous training of enforcement personnel, forensic technology, and digital investigative tools, while strengthening collaboration with agencies such as the Economic and Financial Crimes Commission (EFCC), the Nigerian Financial Intelligence Unit (NFIU), the Nigeria Police Force, and the judiciary. Enhanced inter-agency cooperation will improve enforcement efficiency, facilitate asset recovery, and ensure coordinated responses to increasingly sophisticated capital market offences.

9. IDENTIFIED GAPS

The following gaps in the ISA 2025 enforcement framework are identified.

1. The absence of a codified proportionality principle governing the exercise of enforcement discretion creates a legal vacuum that may enable arbitrary or disproportionate regulatory action, particularly in the exercise of the director-removal and administrative sanction powers.
2. The absence of a mandatory separation of functions within the SEC's enforcement process — analogous to the FCA's Regulatory Decisions Committee model — means that the same institutional actors may participate in both investigative and sanctioning decisions, creating a structural due process problem.
3. The digital surveillance provisions lack express requirements for prior judicial authorization, proportionality assessment, data minimization, notification of affected subjects, and independent oversight mechanisms. Evidence obtained in breach of constitutional rights may be excluded in enforcement proceedings.
4. The personal asset recovery provisions — which allow enforcement costs to be recovered from personal assets of individuals 'regardless of how those assets were acquired' — raise concerns about proportionality and the presumption of innocence, potentially enabling recovery actions against individuals whose connection to the prohibited scheme was peripheral or innocent.
5. The Act provides no express mechanism for periodic review of the SEC's exercise of expanded enforcement powers, no mandatory enforcement statistics reporting, and no independent audit function to assess consistency and proportionality of enforcement decisions.
6. The expanded enforcement and intervention powers conferred upon the SEC by ISA 2025 represent a necessary and largely proportionate legislative response to the structural enforcement deficits that undermined Nigeria's capital market regulatory framework during the ISA 2007 era. The chronic inability to respond swiftly to market infractions, the proliferation of fraudulent investment schemes, the regulatory vacuum in the digital asset space, and the absence of effective governance intervention tools collectively justified a fundamental recalibration of the SEC's operational authority.