



## Oando PLC's Position on the Securities and Exchange Commission's Alleged Findings

Lagos, October 24, 2017

The Securities and Exchange Commission's ("SEC" or "The Commission")'s alleged findings as outlined in their correspondence to the Company's ("the Company" or "Oando") Group Chief Executive (GCE) on October 17, 2017 have been presented below alongside the Company's position regarding each allegation.

### 1. The Commission's Alleged Finding: Breach of SEC Code of Corporate Governance

- i. The Commission finds from the Corporate Governance return submitted by the Company for the period ended December 31, 2016, that the remunerations of the Group Chief Executive Officer (GCEO) and the Deputy GCEO were approved by the Board, while the GCEO was responsible for fixing the remuneration of other Executive Directors which is in violation of Part B, 14.3 of the SEC Code of Corporate Governance.
- ii. The last Board evaluation of Oando Plc was done by KPMG in 2012. This is a violation of Part B, 15.1 of the SEC Code of Corporate Governance.

Oando is invited to note the violations and henceforth ensure compliance with the SEC Code of Corporate Governance.

### Company's Position

*The Company wrote to the SEC on July 21, 2017 updating them as follows:*

#### *On Executive Remuneration*

*The remuneration of all Executive Directors of the Company was last reviewed prior to May 2014 and before the SEC Code of Corporate Governance was made mandatory.*

*Furthermore, our 2016 Corporate Governance Report filing dated January 31, 2017 contained an error which can be seen when compared to our previous filings, including the H2 2015 Report sent to the SEC under cover dated August 31, 2016. Both Oando's Delegation of Authority Document and the Remuneration Policy, approved by the Board of Directors in October 2011 provide for the remuneration of all Executive Directors to be approved by the Board upon the recommendation of the Governance and Nominations Committee with input from the Group Chief Executive. The Company informed the SEC that the error in our 2016 filing would be rectified in subsequent filings.*



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*The foregoing notwithstanding, all employee remuneration, including those of all executive directors, goes through a process of approval by the Board of Directors during the annual budgeting process. It is important to note also that since May 2014, there has been no new executive director appointed to the Board of Oando PLC and accordingly there has been no requirement for the Board to approve the remuneration of the executive directors of the Company.*

### **On Board Evaluation**

*The Company's understanding was that the SEC Code of Corporate Governance was made mandatory on May 12, 2014. Prior to that date, the recommendation for an annual Board Evaluation was not mandatory.*

*The Company has always been above board and steadfast in its submissions to the SEC with respect to its Annual Corporate Governance Report filings regarding its compliance with the requirements of the Code prior to and post May 2014. The SEC has never until now communicated to the Company the specific areas of non-compliance with the Code from a review of our filed Annual Reports and the actions needed to remedy the non-compliance.*

*Although a formal annual Board Evaluation was not carried out for the 2015 and 2016 reporting years, the Board did carry out an internal appraisal of its effectiveness as part of the investigation initiated by the Nigeria Stock Exchange in 2015/2016 and prior to that, as part of its successful participation in the pilot of the NSE's Corporate Governance Rating System (CGRS) in 2014. The Company is now in the process of engaging a vendor for the conduct of a formal Board Evaluation exercise for 2017.*

### **Penalty for Failure to Comply with the SEC Code of Corporate Governance**

*The Company is of the position that even if it had breached provisions of the SEC Code, SEC is under obligation under s. 1.3 (d) of the said Code to notify the company "specifying the areas of non-compliance or non-observance and the specific action or actions needed to remedy the non-compliance or non-observance."*

The Company only received such formal notification from SEC requiring compliance with the SEC Code on these matters on October 18, 2017, five months after the commencement of its investigation. The Company has since put remedial actions in place to cure this breach.

## **2. The Commission Alleged Finding: Breach of ISA 2007 on Disposal of Oando Exploration & Production Limited (OEPL) by Oando PLC 2013**

That the disposal of Oando Exploration Production Limited (OEPL) to Green Park Management Limited was done without the prior approval of the Commission.





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## Company's Position

*No section of the ISA is referenced but the inference is that the disposal of OEPL to Green Park Management Limited was done without the prior approval of SEC. The practice is that SEC does not give consent unless and until the consent of the Minister concerned with that transaction has been sought and obtained. The transaction was one in which SEC's approval was a **condition subsequent** to the Sale.*

*The transaction closed and the accounting treatment accorded to the transaction at closing was in full compliance with IFRS. However, when it became obvious that certain conditions subsequent could not be satisfied within the period stipulated in the Sale and Purchase Agreement (SPA), namely Ministerial Consent, the transaction was terminated and reversed and reported accordingly in the 2015 Financial Statements. The 2013 and 2014 position had to be restated in the 2015 audited financial statements to show that the transaction, previously recorded as a sale had been reversed in line with IFRS. The treatment of the transaction in 2013 as a sale and its subsequent reversal in the 2015 financial statements were in full compliance with the accounting treatment under IFRS.*

### **3. The Commission Alleged Finding: Breach of ISA 2007: Misstatements in the 2013 and 2014 Audited Financial Statements of Oando PLC arising from the OEPL Transaction**

Following the structuring of the OEPL transaction in contravention of the ISA 2007, Oando Plc recorded a profit of about ₦6 Billion from the sale of OEPL that erased the operating loss of N4.68 Billion leading to a profit of N1.4 Billion for the year 2013. The company subsequently declared dividends from the profit. Having admitted that the action was in breach of the ISA 2007, Oando Plc restarted its 2013 & 2014 Audited Financial Statements which contained material false and misleading information contrary to Section 60(2) of the ISA 2007.

## Company's Position

*This alleged breach flows from the allegations regarding the accounting treatment on the disposal of OEPL. There was no misstatement of profits in the 2013 and 2014 Audited Financial Statements as the accounting treatment for the transaction was in full compliance with the IFRS standards both in the 2013 financial statement when the sale occurred and was recorded and in the 2015 financial statement when the reversal occurred.*

### **4. The Commission Alleged Finding: Breach of ISA on Misleading Information contained in Oando PLC's 2014 Rights Issue Circular**

That the 2014 Rights Issue Circular of Oando Plc contained information relating to the profit reported by Oando Plc in 2013 arising from the sale of OEPL. Consequently, the said Rights Issue circular contained material misleading information. This action amounts to a violation as contained in Section 85(1), 86(1) and 87(1) of the ISA 2007.





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## Company's Position

*Again, the SEC did not confirm what portion of the ISA was breached but we assume that this purported breach stems from its having alleged a breach of the ISA in the disposal of OEPL, referenced above. The Company acted appropriately in the way it reported the OEPL transaction, therefore there is no breach of the ISA in respect of providing misleading information in Oando PLC's 2014 Rights Issue Circular.*

### **5. The Commission Alleged Finding: Breach of SEC Rules and Regulations on Payment of Dividends**

That Oando Plc in 2014, remitted dividends to the Registrar in piecemeal in violation of Rule 44 (1) of the SEC Rules and Regulations.

SEC Rules and Regulations, Rule 44(1)

“Dividends declared shall be paid en-bloc by the issuance of a check or transfer of funds to the registrar not later than seven (7) working days after the annual general meeting where the dividend was declared”

## Company's Position

This is the first time that the SEC is making such an allegation to the Company and Oando was not given an opportunity to respond to this allegation. Nevertheless, even if this breach occurred, which Oando is currently investigating, the penalties for breach are as contained below:

*The penalties for breach of the provisions relating to payment of dividends are prescribed in Rule 44 (4) (a) and (b) of the SEC Rules and do not require a forensic audit.*

It is important to note that no shareholder or whistleblower, has petitioned SEC or complained about not having received dividends due to them from the Company.

### **6. The Commission Alleged Finding: Going Concern of Oando PLC**

The Commission notes the Report of the Independent Auditors of Oando Plc, Ernest & Young, which is contained on Pages 63-68 of the 2016 Annual Reports & Accounts of Oando Plc, more particularly in Paragraph 1 of Page 64 where the independent auditors reported going concern status of the Company.



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## Company's Position

*The SEC have noted the going concern opinion raised by the Auditors of the Company. However it is unclear how this issue of going concern is a SEC finding or how it amounts to a breach. The Auditors were clear in their opinion that they were raising the going concern issue as an emphasis of matter and that their opinion was not modified.*

## 7. The Commission Alleged Finding: Suspected Insider Dealing

The Commission observed that certain persons classified as insiders within the provisions of Section 315 of the Investment and Securities Act (ISA), 2007 and who were in possession of confidential price sensitive information not generally available to the public, had between January-October 2015 traded on Oando Plc shares prior to the release of the company's 2014 Financial Statement, where the company reported a loss of N183 Billion.

On the allegation of insider dealing made by Oando Plc against Alhaji Dahiru Mangal, although investigation was initiated by the Commission, the attention of the Commission was drawn to a letter dated September 21, 2017 from Oando Plc, informing it that a suit had been filed in court in that regard, and that the matter was now sub-judice.

## Company's Position

*The Company has clear and robust insider trading policies which it has communicated to all known Insiders of the Company. The Company also operates a well-defined and articulated Closed Period/Blackout process relating to trading in the securities of the Company by Insiders, in line with Corporate Governance best practice.*

*The question as to whether Insider Dealing occurred in the shares of the Company is a matter for the SEC to raise with any affected Insider; it is also important to note that the Company cannot be guilty of Insider Dealing since it only issues securities and is not involved in the trading of its own securities. Furthermore, as a public company with fully dematerialized shares, listed on both the Nigerian Stock Exchange and the Johannesburg Stock Exchange all trading in the securities of the Company takes place on the floor of both exchanges through the respective Depository, Clearing and Settlement Agencies.*

*Any investigation into whether or not there has been a breach of Insider trading rules is a question of fact which would be better addressed through an inspection of trading records of the Exchange rather than through a forensic audit of the Company.*

*The Company forwarded to the SEC, copies of the Company's Insider Trading and Closed Period policies during the process of its investigation.*



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*Penalties for Insider Dealing include the voiding of the affected transactions at the instance of the Commission. There are further penalties contained in the ISA which are stated below:*

*ISA –Section 115- Criminal liability for Dealing in securities by insiders (Section 111)*

*Any person who contravenes any of the provisions of this part of this Act commits an offence and is liable on conviction —*

- i. in the case of a person not being a body corporate, to-*
  - a. a fine of not less than N500,000 or an amount equivalent to double the amount of profit derived by him or loss averted by the use of the information obtained in contravention of any of the provisions of this part; or*
  - b. to imprisonment for a term not exceeding seven years; or*
- ii. in the case of a person being a body corporate, to a fine not less than N1,000,000 or an amount equivalent to twice the amount of profit derived by it or loss averted by the use of the information obtained in contravention of any of the provisions of this part.*

*ISA – Section 116 (1): A person who is liable under this part of this Act shall pay compensation at the order of the Commission or the Tribunal, as the case may be, to any aggrieved person who, in a transaction for the purchase or sale of securities entered into with the first-mentioned person or with a person acting for or on his behalf, suffers a loss by reason of the difference between the price at which the securities would have likely been dealt in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.*

*Again, the affected Insiders are best placed to fully respond to this issue and not the Company.*

## **8. The Commission Alleged Finding: Related Party Transactions**

The Commission identified certain Related Party Transactions and observed that they were not conducted on arm's length basis.

### **Company's Position**

*The Commission claimed that they have identified certain related party transactions that were not conducted at arm's length. All related party transactions are disclosed by the Company in accordance with the SEC Code of Corporate Governance, the NSE Listing Rules as applicable, IAS 24 under the IFRS accounting standards, and the Company itself has an extensive Related*





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*Party Policy which was made available to the SEC and is available on the Company's website. The related party procedure of the Company ensures the following:*

- 1. Related parties to a transaction with the Company declare their interest in the transaction and are not involved in the decision-making process;*
- 2. The Company is not subject to any duress or pressure from the related party to agree to the transaction;*
- 3. There is no collusion between the Company and the related party;*
- 4. The transaction is entered into on commercial terms at fair market value.*

*This is sufficient to make the disclosed related party transactions transparent, of value to the Company and in the best interests of the Company whether provided by a related party or not.*

*Again, we had reiterated to the SEC in several correspondence that related party transactions are not in themselves illegal or wrong. The only obligation imposed on the Company is to disclose all related party transactions entered into during the course of the year and this was properly disclosed. In fact the SEC have based their findings on the disclosures made by the Company in its Annual Financial Statements.*

*The SEC have not specified what aspects of the transactions were not at arms-length or the basis of their findings.*

*There is also no penalty under the SEC Code or Rules where a Company enters into related party transactions that are deemed not to be at arm's length except where those transactions are not disclosed in accordance with the disclosure provisions or are entered into in breach of the NSE Listing Rules which require shareholder approval to be obtained for all related party transactions that are in excess of 5% of the net asset value of the Company. None of the related party transactions disclosed by the Company or entered into meet such criteria.*

## **9. The Commission Alleged Finding: Declaration of Dividend**

The Committee noted that Oando Plc declared dividends in 2013 and 2014 from unrealized profits.

### **Company's Position**

*The claim is that Oando PLC declared dividends in 2013 and 2014 from unrealized profits. The Company has repeatedly denied this claim and provided evidence to the SEC in its defense.*





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*The interim dividend declared in September 2014 and paid by Oando PLC in November 2014 was paid from the H1 2014 profits of Oando PLC. At that point in time, the Company had sufficient distributable reserves and it is acceptable under the law to pay out dividends if reserves exist at the point of declaration. The restatement of the OEPL sale was done in 2015 and would not have affected the 2014 declaration of the interim dividend, which was declared from H1 current period profit in 2014. Thus, the declaration of the interim dividend on the basis of reserves available at the point of declaration, complied fully with the provisions of section 379 (2) of the Companies and Allied Matters Act. At all material times that dividends were declared, same were paid out of the available distributable reserves in the relevant period.*

*Again, even if there has been an infraction, the penalty is as laid down in Rule 44 (4) (a) and (b) of the SEC Rules as stated above.*

## **10. The Commission Alleged Finding: Shareholding Structure/Register of Members of Oando PLC**

The Commission observed discrepancies in the shareholding structure of Oando Plc. While Alhaji Mangal's status as a shareholder in Oando Plc is not in contention or dispute, the exact units of shares held by him requires reconciliation.

### **Company's Position**

*The SEC claims that the exact unit of shares held by Alhaji Mangal in Oando PLC requires reconciliation. However, Alhaji Mangal has not contested the contents of the Register of Members maintained by our Registrars, First Registrars & Investors Services Limited, or even made a request to the Registrars to reconcile the Register. We are therefore unclear as to what discrepancies SEC are referring to here. If Alhaji Mangal claims he holds more shares in the Company than is stated in the Register of Members, then it is for him, directly, or through his brokers to seek a reconciliation of the Register, providing evidence of the number of shares that he acquired in the Company and when he acquired those shares. We do not see how this "discrepancy" should therefore require a forensic audit to ascertain its veracity when the burden is on Alhaji Mangal to show that he acquired those shares.*

For more information, please contact:

**Ayotola Jagun**

Chief Compliance Officer & Company Secretary

[ajagun@oandopl.com](mailto:ajagun@oandopl.com)

**Alero Balogun**

Head, Corporate Communications

[albalogun@oandopl.com](mailto:albalogun@oandopl.com)





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For: Oando PLC

**Ayotola Jagun**  
Chief Compliance Officer & Company Secretary  
2, Ajoye Adeogun Street,  
Victoria Island Lagos, Nigeria