



## Oando PLC's Official Statement on the Securities and Exchange Commission's Commencement of a Forensic Audit into the Affairs of the Company

Lagos, December 15, 2017

Oando PLC, as a responsible company recognizes and respects the authority of the Securities and Exchange Commission (SEC) to regulate the market as it deems fit. The Company would like to categorically state that no action taken thus far has been to undermine the authority of the SEC, but to protect the Company and its shareholders against the actions taken under the leadership of Mounir Gwarzo, the erstwhile Director General (DG) of the SEC.

On Tuesday, December 5, 2017, the Securities and Exchange Commission (SEC) officially notified the Company that a forensic audit into the affairs of Oando PLC (the Company) would commence on Wednesday, December 6, 2017. However, the external auditors appointed by the SEC are yet to approach the Company to commence the audit.

On Friday, December 8, 2017, new evidence emerged in the media corroborating the Company's position that under the leadership of Mounir Gwarzo actions taken by the Commission were illegal, invalid and calculated to prejudice the business of the Company.

The evidence, a signed report presented on September 18, 2017 by the Technical Committee set up by Mounir Gwarzo ("the Report"), was of the opinion that Oando PLC had satisfactorily responded to all the issues raised by the Petitioners and had further recommended that the responses provided by the Company and its independent external auditors should be forwarded to the Petitioners for their information and further escalation if they deemed it necessary.

The Report makes no recommendation for the shares of the Company to be suspended or for a forensic audit of the Company to be conducted; instead the Committee recommended that certain unresolved issues regarding *the treatment of certain corporate transactions and other matters arising therefrom* be forwarded to the Securities and Investment Services (SIS) department of the Commission to determine whether there was in fact a breach of the ISA or the SEC Rules.

The current state of affairs indicates that Mounir Gwarzo chose to ignore the report of the Committee but instead used the minority report of the Chairman of the Committee, who in the report called for a forensic audit to be carried out solely on the allegations of related party transactions that were claimed not to have been carried out on an arms-length basis, as the foundation for his damaging actions against the Company and its shareholders.





# Oando

*...the energy to inspire*

Following the Federal High Court's (FHC) ruling on November 23, 2017, that it did not have the jurisdiction to entertain the Company's complaint against the actions of the SEC, the Company has since appealed the FHC ruling and applied for an injunction to preserve the res pending the hearing and determination of the appeal. The said application has been served and duly acknowledged by the SEC officials and their lawyers and a hearing of the application took place on Wednesday, December 13, 2017.

The FHC in verbal remarks made by the presiding Judge also directed the parties to refrain from any action which would overreach the pending application for injunction until it is determined, thus a commencement of the proposed forensic audit by the SEC would be in defiance of the application for an injunction. On Friday, December 15 2017 the FHC dismissed the application for lack of subject matter jurisdiction. We have immediately filed an application at the Court of Appeal for an injunction pending the determination of our appeal.

To date all actions taken by the Company have been predicated on our belief of bias and a lack of due process and fairness in the way in which the SEC, under the leadership and direction of Mounir Gwarzo, had carried out this investigation. The recommendations contained in the leaked Report and the subsequent penalties imposed by the Commission on Oando is further proof that the suspended DG of SEC was working to his own conclusions rather than looking at the facts before him and acting in the best interests of the Company and its minority shareholders.

In addition to the legal action taken, the Company has gone on to seek redress via petitions to the Legislature and pursuant to Section 298 of the Investment and Securities Act 2007 (ISA) the Executive on the following grounds:

## **1. The SEC has shown bias and a lack of due process**

- a. The legality of the SEC investigating a petition brought by an indirect shareholder
- b. The SEC's jurisdiction to consider the petition of Ansbury Inc.
- c. Under the SEC's rules relating to its 'Complaints Management Framework' it will not consider any complaints regarding matters that are already the subject of arbitration or court proceedings as such matters are 'sub-judice'. The Company, brought to the attention of the SEC, that in addition to on-going arbitration proceedings involving one of the petitioners, Ansbury, in respect of its indirect investment in Oando PLC a high court injunction had been granted
- d. The Company is also aware that when the SEC investigated a complaint brought by a foreign shareholder, Petroci Holdings against MRS Oil and Gas PLC ("MRS") and ordered a forensic audit of MRS, it was brought to the SEC's attention that there were ongoing arbitration proceedings in France between Petroci Holdings and MRS, and SEC suspended the forensic audit pending the finalization of the arbitration proceedings. Despite all of the above the SEC chose to still consider the petition brought by Ansbury
- e. The SEC ignored the wrong doing and illegal conduct of Alhaji Dahiru Mangal in not disclosing his full shareholding interest in the Company, a proportion of which was acquired as a result of market manipulation and Insider Trading activities





# Oando

*...the energy to inspire*

- f. The non-utilization of the Administrative Proceedings Committee (APC), the standing committee of the Commission empowered under the SEC rules to look into matters of the nature of which the petitioners alleged
- g. In place of using the standing committee - the APC - the setup of a Technical Committee and later a Special Task Force, all outside the express provisions of the SEC enabling laws and outside Gwarzo's legal and administrative authority as under the Investment and Securities Act 2007 only the Board of the Commission can setup committees
- h. The public nature of the enquiry and disturbing leaks of sensitive information which could only have emanated from the SEC given the timing/details of same
- i. The SEC attempted, at the request of one of the Petitioner's Ansbury, to order a postponement of the Company's Annual General Meeting to the detriment of the Company and its shareholders. The SEC does not have the power to order the postponement of an AGM and the DG subsequently retracted the action
- j. Despite the Company's request for a formal physical meeting the DG never met with any Oando executives but instead afforded the Petitioners a series of physical meetings and advise
- k. The SEC's unilateral reclassification of one of the petitioners, Ansbury Inc. as a Whistleblower despite the fact that Ansbury brought its petition to the SEC as an indirect "shareholder" of the Company
- l. The copying of the two petitioners, Alhaji Dahiru Mangal and Ansbury Inc. on SEC's official correspondence to the Company's GCE on October 17, 2017
- m. There is precedence in the cases of Ikeja Hotels PLC and MRS PLC that the SEC does not suspend the shares of a Company when it embarks on a forensic audit
- n. The SEC has acted to all intents and purposes as a sole administrator, without any checks and balances such as a Board would have provided
- o. Legality of the actions taken by the DG of SEC without a Board or the approval of the supervising Minister in lieu of a Board

## 2. Penalties that outweigh the alleged infractions

- a. Each of the alleged infractions has a penalty as prescribed by the respective provisions of the ISA, SEC Code, SEC Rules and Regulations, NSE Listing Rules and CAMA; none of them whether singularly or together warrants the suspension of free trading in the securities of the Company or the institution of a forensic audit
- b. The penalties are not fair and objective measures in the circumstances nor would they be the appropriate cure even if the allegations contained in the Petitions were to be true
- c. The powers of SEC under the ISA offer alternative and less disruptive remedies to address any of the issues raised by the allegations in the Petitions

## 3. No basis for the institution of a forensic audit

- a. SEC claims that the actions it has taken are based on specific "**findings**" it has made against the Company. Yet, in a totally self-contradictory manner, SEC wants to embark on a forensic audit of the Company to confirm the veracity or otherwise of its findings. This begs the question as to how definite **findings** (in its' own words) could have been made when SEC itself admits that its investigation has not been concluded. If it has made reliable findings why then is there a need





# Oando

*...the energy to inspire*

for further investigation in respect of the same petitions? The Company believes that we have the right to a fair hearing before judgment can be made. We have been denied this right but instead have been judged guilty and penalized; now evidence is being sought to justify actions taken by the Commission

Despite our objections to the forensic audit the Company would like to reiterate that we recognize and respect the authority of the Commission and in the spirit of cooperation, transparency and full disclosure, the Company will comply with the directives of the Commission whilst reserving our legal rights in this matter. Accordingly we welcome the appointment of Dr. Abdul Zubair as the Acting Director-General (ADG) of the SEC and see this as an opportunity for the regulator to act independently and for a new and enduring relationship to be established. We trust that he will investigate the matters raised in an independent and transparent manner and look forward to his support in ensuring due process is indeed followed.

**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)

For: Oando PLC

**Ayotola Jagun**

Chief Compliance Officer & Company Secretary

The Wings Complex, 17a Ozumba Mbadiwe Avenue

Victoria Island Lagos, Nigeria

