

SIM CAPITAL ALLIANCE VALUE FUND

SUPPLEMENTAL TRUST DEED

BETWEEN

1535
15/2/13

**SIM CAPITAL ALLIANCE LIMITED
(RC. 704280)**

AND

**LEADWAY CAPITAL & TRUSTS LIMITED
(RC. 268275)**

DATED THE 5TH DAY OF FEBRUARY 2013

Banwo & Ighodalo



98, AWOLowo ROAD
SOUTH-WEST IKOYI, LAGOS, NIGERIA

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THIS SUPPLEMENTAL TRUST DEED is made this **5th** day of **February 2013**

BETWEEN

SIM CAPITAL ALLIANCE LIMITED, a private limited liability company incorporated under the laws of the Federal Republic of Nigeria and having its principal place of business at 8th Floor, C&C Towers, Plot 1684, Sanusi Fafunwa Street, Victoria Island, Lagos (hereinafter referred to as the "**Fund Manager**" which expression shall, wherever the context so admits, include its successors-in-title and assigns), of the one part;

AND

LEADWAY CAPITAL & TRUSTS LIMITED, a private limited liability company incorporated under the laws of the Federal Republic of Nigeria and having its principal place of business at 121/123 Funso Williams Avenue, Iponri, Lagos (hereinafter referred to as the "**Trustee**" which expression shall, wherever the context so admits, include its successors-in-office and assigns), of the other part.

WHEREAS:

- (A) The Fund Manager, by a resolution of its Board of Directors, dated the 7th day of October 2008, established a close-ended collective investment scheme known as SIM CAPITAL ALLIANCE VALUE FUND (the "**Fund**") which deals and invests predominantly in listed Nigerian equities, fixed income investments and such other securities as may be approved by the Securities and Exchange Commission (the "**Commission**") from time to time, and resolved to serve as the manager of the Fund. A Trust Deed dated the 10th day of July, 2010 (the "**Trust Deed**") which constituted the Fund was entered into by the Fund Manager and the Trustee.
- (B) By virtue of the resolution referred to in recital A above, the Directors of the Fund Manager offered to the general public, Fifty Million (50,000,000) Units of One Hundred Naira (₦100.00) each (the "**Units**") at One Hundred and Three Naira, Fifty Kobo (₦103.50k) per Unit, by way of an initial public offering (the "**Initial Public Offering**").
- (C) Upon conclusion of the Initial Public Offering, the Units were admitted to listing on the Daily Official List of The Nigerian Stock Exchange.
- (D) The Fund Manager is duly registered with the Commission as a corporate investment adviser and portfolio manager.

- (E) The Trustee is registered with the Commission as a trustee and it agreed to act as trustee to the Fund for the benefit of the Unitholders, subject to the terms and conditions set forth in the Trust Deed.
- (F) The Trustee and the Fund Manager are distinct and separate corporate entities and are both duly incorporated under the Companies and Allied Matters Act, Cap. C20 Laws of the Federation of Nigeria 2004 and neither of them is a subsidiary or holding company of the other.
- (G) Clause 40 of the Trust Deed authorizes the Trustee and the Fund Manager, by supplemental deed, to consolidate, modify, alter or add to the provisions of the Trust Deed; provided that such consolidation, modification, alteration or addition shall not be made without the prior approval of the Commission and the sanction of a Special Resolution passed at an Annual General Meeting ("**AGM**") or Extraordinary General Meeting of the Unitholders, duly convened and held.
- (H) Further to recital G above and in accordance with Section 187 of the Investments and Securities Act, No. 29 of 2007 (the "**ISA**"), the Fund Manager presented certain amendments to the Trust Deed (the "**Amendments**") to the Commission, together with a Certificate of Compliance issued by the law firm of Banwo & Ighodalo, which acted as Solicitors to the Trustee in connection with the establishment of the Fund, confirming that the Amendments will not affect the compliance of the Trust Deed with the provisions of the Act and subsisting regulations issued by the SEC pursuant to Section 186 of the ISA.
- (I) The Commission, by a letter dated the 31st day of October 2012, conveyed its approvals of the Amendments.
- (J) The Unitholders, by a Special Resolution duly passed at the Fund's AGM held on the 5th day of February, 2013, subsequently sanctioned the Amendments.
- (K) The Parties consider it necessary and expedient to enter into this Supplemental Trust Deed to amend the Trust Deed by replacing certain provisions thereof with the Amendments, which are specified in clause 2 below.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

Unless expressly otherwise provided herein or as the context requires, terms and expressions used in this Supplemental Trust Deed shall have the same meanings ascribed thereto in the Trust Deed.

2. AMENDMENTS

This Supplemental Trust Deed hereby amends the Trust Deed as follows:

2.1 **Clause 5** is hereby deleted and replaced with the following clause:

5. **Financial Year**

The financial year of the Fund shall run from the 1st day of July to the 30th day of June every year.

2.2 **Clause 8.4** is hereby deleted and replaced with the following clause:

8.4 The Fund shall be invested by the Fund Manager, with the Trustee's consent, in all or any of the asset classes and in accordance with the maximum proportions specified in the table below:

Asset Class	Range
8.4.1 Quoted Equities	15% to 85%
8.4.2 Unquoted Equities	0% to 20%
8.4.3 Fixed Income	15% to 50%
8.4.4 Money Market	0% to 30%
8.4.5 Cash	0% to 5%
8.4.6 Other SEC-approved Collective Investment Schemes up to the maximum prescribed by the Commission	

The Fund may also be invested in any other securities as may be approved by the Commission from time to time, up to the maximum proportions prescribed by the Commission.

2.3 **Clause 21.25** is hereby amended by the insertion of the clauses in bold fonts, as follows:

21.25 The Trustee covenants that arrangements for the custody of the Deposited Property shall be pre-agreed with the Fund Manager; provided that such arrangements shall take cognizance of the dynamics of the operations of the Fund and shall in no way impair same. **The Fund Manager may, with the consent of the Trustee and approval of the Commission,** appoint such agent or custodian as it deems necessary for the safe custody of the Deposited

Property. **The Fund Manager shall pay such agent or custodian a fee, which fee shall not exceed 0.25% of the Net Asset Value of the Fund or such other fee as may be prescribed by the Commission from time to time.**

2.4 **Clause 23.4** is hereby amended by the insertion of the provisions in bold fonts, as follows:

23.4 The Fund Manager shall be entitled to charge:

23.4.1 an annual management fee of **1%** of the Net Asset Value of the Fund per annum, payable quarterly and in arrears, at a rate of **0.25%** of the Net Asset Value of the Fund; and

23.4.2 an incentive fee which shall not exceed 30% of the total returns in excess of 10% of the Scheme's net asset value per annum.

The Fund Manager's fee may be revised from time to time, subject to the approval of the Unitholders at a Meeting; provided that such revision shall not contravene any provision of the ISA or subsisting regulation made by the Commission.

2.5 A new **sub clause 28.4** is hereby inserted as follows:

28.4 Upon the removal of or retirement of the Fund Manager, the Fund Manager shall within fourteen (14) days return all properties and documents of the Fund in its possession to the Trustee.

2.6 A new **sub clause 29.5** is hereby inserted as follows:

29.5 Upon the removal of or retirement of the Trustee, the Trustee shall, within fourteen (14) days, return all properties and documents of the Fund in its possession to the Fund Manager.

2.7 The word "copy" appearing in **clause 38.2** set out below is hereby deleted:

"The Trustee shall keep the original(s) **copy** of the Trust Deed".

2.8 New **clauses 40.4** and **40.5** are hereby inserted as follows:

40.4 Without prejudice to the foregoing, the Trustee and the Fund Manager shall, with the approval of the Commission, by a deed supplemental to this Deed and without the sanction of a Special Resolution as stated in clause 40.2 above, be entitled to modify, alter or add to the provisions of this Deed in such manner and to such extent as they may consider necessary or expedient having regard to the provisions of the Companies Income Tax Act, Cap C21 LFN 2004 (as amended by Companies Income Tax (Amendment) Act No 11 of 2007 and any

further amendments thereof) and any applicable legislation and any arrangements approved by the relevant authorities in relation to authorised unit trust schemes as defined in Section 152 of the ISA; provided that:

40.4.1 unless the Trustee shall certify in writing that in its opinion such modification, alteration or addition does not operate to release the Trustee or the Fund Manager from any responsibility to the Unitholders, no such modification, alteration or addition shall be made without the sanction specified in clause 40.2; and

40.4.2 no such modification, alteration or addition shall impose upon any Unitholder any obligation to make any further payments in respect of the Unitholder's Units or to accept any liability in respect of them.

40.5 Without prejudice to the provisions of this Deed, the Trustee may agree with the Fund Manager without the sanction of the Unitholders but subject to the approval of the Commission and notification to the Unitholders, to any modification to this Deed of a minor nature or to correct a manifest error or any modification imposed by law or a regulation. The Trustee may also so agree to any modification to this Deed that is in its opinion not materially prejudicial to the interests of the Unitholders subject to the approval of the Commission.

2.9 A new clause 41 is hereby inserted, as follows:

41. **Liability Clause**

The Fund Manager shall act in utmost good faith and with due care in making the investments in unlisted securities. Where the Fund Manager acts fraudulently or negligently, the Fund Manager shall take full responsibility for any such investment and shall indemnify the Unitholders in the event of any loss arising from such investment."

2.10 A new **sub clause 41.7** is hereby inserted as follows:

41.7 A resolution in writing signed by all members of the Investment Committee entitled to receive notices of meetings shall be valid as if same had been passed at a meeting of the Investment Committee duly convened and held.

2.11 A new **sub clause 43.3** should be inserted as follows:

43.3 Any party aggrieved by the decision of the arbitrator reached in accordance with the foregoing clauses shall be referred to the Investments and Securities Tribunal in accordance with the provisions of Section 284 of the ISA.

2.12 The phrase in bold fonts should be inserted at the end of **Clause 9.1.1** of **Schedule One** as follows:

9.1 At any Meeting, a resolution put to the vote shall be decided on a show of hands unless a poll is (upon the declaration of the result of the show of hands) demanded by any of the following:

9.1.1 The Chairman of the Meeting (the "Chairman") **if he is a Unitholder...**"

3. **SAVINGS**

3.1 Except as expressly stated herein, all the provisions of the Trust Deed shall remain in full force and effect in accordance with its terms.

3.2 It is hereby agreed by the parties that the provisions of clause 42 (*Governing Law*) and clause 43 (*Arbitration*) of the Trust Deed shall apply to this Supplemental Trust Deed as though same were specifically and expressly set out herein.

4. **COUNTERPARTS**

This Supplemental Trust Deed may be executed in any number of counterparts each of which, when so executed, shall be deemed to be an original but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF this Supplemental Trust Deed has been executed the day and year first above written in the manner hereinafter appearing.

THE COMMON SEAL of the within-named
SIM CAPITAL ALLIANCE LIMITED was
hereunto affixed in the presence of:

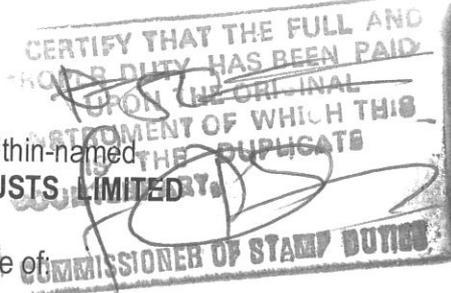


DIRECTOR



DIRECTOR / SECRETARY

THE COMMON SEAL of the within-named
LEADWAY CAPITAL & TRUSTS LIMITED
was
hereunto affixed in the presence of:



* 

DIRECTOR



DIRECTOR / SECRETARY