

## COMPARATIVE ANALYSIS OF THE REMEDIES FOR VICTIMS OF INVESTMENT FRAUD IN NIGERIA

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### Abstract

*Investment fraud has emerged as one of the most pervasive financial crimes in Nigeria, particularly with the proliferation of Ponzi schemes, fraudulent investment platforms, and unregulated capital market operations. Victims of these schemes frequently suffer substantial financial losses and often encounter significant challenges in recovering their investments due to the insolvency of scheme operators among others. This article examines the legal remedies available to victims of investment fraud in Nigeria through a comparative analysis of common law and statutory frameworks. It explores remedies such as negligence, negligent misrepresentation, breach of fiduciary duty, among others. The article also analyses the role of regulatory agencies such as the Securities and Exchange Commission (SEC), the Economic and Financial Crimes Commission (EFCC), and other law enforcement agencies in addressing investment fraud. Using a doctrinal research methodology, the study evaluates relevant statutes, case law, and academic literature. The findings reveal that although Nigeria possesses an extensive legal framework for addressing investment fraud, enforcement challenges, weak regulatory coordination, and other factors undermine the effectiveness of these remedies. The article concludes by recommending stronger regulatory enforcement, legislative reforms targeting Ponzi schemes, and enhanced investor education to protect investors and strengthen Nigeria's financial system.*

**Keywords:** Investment, Remedies, Victims, Institutional framework

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## 1.0 INTRODUCTION

Investment fraud has become a serious concern within Nigeria's financial system. The rapid expansion of digital financial services, combined with inadequate investor education and weak regulatory enforcement, has created opportunities for fraudulent investment schemes to flourish. In recent years, several Ponzi schemes have collapsed in Nigeria, leaving thousands of investors with substantial financial losses.<sup>1</sup>

Fraudulent investment schemes typically promise extraordinarily high returns with little or no risk. Such promises attract unsuspecting investors who are unaware of the underlying fraudulent nature of the scheme. When the scheme inevitably collapses, the operators often disappear or become insolvent, leaving victims with little possibility of recovering their funds.<sup>2</sup>

Between 2007 and 2009, Ponzi schemes represented 3.5% of all federal class action filings in the United States, up from 0.2% in the previous two years, illustrating the widespread nature of such schemes globally.<sup>3</sup> Several class actions have alleged violations including breach of fiduciary duty, negligent misrepresentation, unjust enrichment, and aiding and abetting fraud.<sup>4</sup>

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<sup>1</sup> S Plancich and S Starykh, *Recent Trends in Class Action Litigation: 2009 Mid-Year Update* (NERA Economic Consulting, July 2009) 11  
[http://www.nera.com/image/Recent\\_Trends\\_Report\\_0709.pdf](http://www.nera.com/image/Recent_Trends_Report_0709.pdf) accessed 9 March 2026

<sup>2</sup> *Inversiones Mar Octava Limitada v Banco Santander SA*, Class Action Complaint 58–90, No 09-20215 (SD Fla, filed 26 January 2009).

<sup>3</sup> *Fine v Sovereign Bank*, Amended Complaint 35–84, No 06-11450-NG (D Mass, filed 7 December 2006).

<sup>4</sup> *Grossbard v Security America Inc*, Class Action Complaint and Jury Demand 47–57, No 8:09-cv-00350-JFB-TDT (D Neb, filed 1 October 2009).

The collapse of these schemes frequently triggers complex litigation. Investors often seek remedies not only against the scheme operators but also against financial institutions, agents, and other intermediaries who may have facilitated the transactions. Consequently, courts are increasingly confronted with claims involving negligence, negligent misrepresentation, breach of fiduciary duty, aiding and abetting fraud, and unjust enrichment.<sup>5</sup>

In Nigeria, several statutes provide legal mechanisms for addressing investment fraud. These include the Investment and Securities Act 2025, the Economic and Financial Crimes Commission (Establishment) Act 2004, and the Advance Fee Fraud and Other Fraud Related Offences Act 2006.<sup>6</sup> These statutes empower regulatory authorities to investigate financial crimes, freeze assets, prosecute offenders, and protect investors.

Despite these legal frameworks, victims of investment fraud continue to face significant difficulties in recovering their funds. This article therefore examines the remedies available to victims of investment fraud in Nigeria and evaluates the effectiveness of the existing legal and regulatory framework.

## **2.0 LITERATURE REVIEW**

Investment fraud has attracted considerable scholarly attention due to its widespread economic and social consequences. Scholars have examined the causes of Ponzi schemes, the legal liabilities of financial institutions, and the role of regulatory agencies in preventing financial fraud.

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<sup>5</sup> *Rozsa v May Davis Group Inc* 187 F Supp 2d 123, 131 (SDNY 2002).

<sup>6</sup> *Investment and Securities Act 2025* (Nigeria).

Frankel observes that Ponzi schemes operate by paying earlier investors with funds contributed by later investors, thereby creating the illusion of profitability.<sup>7</sup> As long as new investors continue to join the scheme, the fraud remains undetected.<sup>8</sup> Similarly, Coffee notes that financial fraud often thrives in environments where regulatory oversight is weak and investor protection mechanisms are inadequate.<sup>9</sup>

Several US and Caribbean studies highlight the role of informal investment schemes in fostering Ponzi schemes.<sup>10</sup> In Nigeria, scholars have argued that the proliferation of Ponzi schemes is partly attributable to weak enforcement of securities laws and limited public awareness of financial risks.<sup>11</sup>

Judicial decisions have also played an important role in shaping the legal framework governing fraud. In *Solomon v Monday*<sup>12</sup>, the court defined fraud as a deliberate act aimed at depriving another person of property through unlawful or inequitable means. The Supreme Court has similarly emphasised that fraudulent conduct undermines commercial trust and must be discouraged through strict legal sanctions.<sup>13</sup>

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<sup>7</sup> Tamar Frankel, *The Ponzi Scheme Puzzle* (Oxford University Press 2012).

<sup>8</sup> *ibid.*

<sup>9</sup> John C Coffee Jr, *Gatekeepers: The Professions and Corporate Governance* (Oxford University Press 2006).

<sup>10</sup> Caribbean Policy Research Institute (CaPRI), *Investigating Informal Investment Schemes in Jamaica* (2008); Carlos Carvajal and others, 'Ponzi Schemes in the Caribbean' (2009) IMF Working Paper No 09/95.

<sup>11</sup> Chinedu Okafor, 'Regulatory Challenges in Combating Investment Fraud in Nigeria' (2020) 15 *Nigerian Journal of Commercial Law* 87.

<sup>12</sup> [2008] 12 NWLR (Pt 1102) 33.

<sup>13</sup> *ibid.*

Despite these legal developments, the literature suggests that victims of investment fraud often encounter significant obstacles when seeking compensation, particularly where the scheme operator has dissipated the funds or become insolvent.

### **3. METHODOLOGY**

This article adopts a doctrinal legal research methodology, which involves the systematic analysis of legal rules derived from statutes, case law, and academic literature.

Primary sources consulted include Nigerian statutes governing financial crimes and securities regulation, such as the Investment and Securities Act 2025, the EFCC Act 2004, and the Advance Fee Fraud Act 2006. Judicial decisions from Nigerian courts relating to fraud, negligence, fiduciary duties, and financial crimes were also examined.

Secondary sources such as textbooks, academic journal articles, regulatory reports, and international financial law literature were used to provide analytical and contextual perspectives, including detailed analyses of aiding and abetting fraud in Ponzi schemes.<sup>14</sup>

The doctrinal method is particularly appropriate for this study because it allows a comprehensive examination of the legal principles governing remedies for victims of investment fraud.

### **4. RESULTS / FINDINGS**

#### **4.1 Rationale for Seeking Remedies for Investment Fraud Victims**

The collapse of fraudulent investment schemes often results in the insolvency of the scheme operator and the disappearance of investors' funds. As a result, victims frequently pursue recovery efforts against all

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<sup>14</sup> *Musalli Factory for Gold & Jewellery v JP Morgan Chase Bank NA* 261 FRD 13 (SDNY 2009).

parties who may have facilitated the scheme, including financial institutions and intermediaries.<sup>15</sup>

Financial institutions that process transactions or hold accounts for fraudulent investment operators may face litigation risks. Plaintiffs often bring claims based on negligence, negligent misrepresentation, breach of fiduciary duty, aiding and abetting fraud, and fraudulent transfers.<sup>16</sup>

In many cases, victims attempt to recover funds through civil litigation, regulatory enforcement, or criminal prosecution. International cases demonstrate that courts often struggle with establishing the scope of fiduciary duty for banks in Ponzi schemes, frequently dismissing claims where the bank lacked actual knowledge of fraud.<sup>17</sup>

## 4.2 Common Law Remedies

### 4.2.1 Claim for Negligence

To succeed in a negligence claim, the plaintiff must establish the existence of a duty of care, breach of that duty, and resulting damage.<sup>18</sup> US and Texas courts have developed nuanced tests considering foreseeability, social utility, and the burden of guarding against injury.<sup>19</sup> In Nigerian law, the principle of negligence derives from *Donoghue v Stevenson*<sup>20</sup>, which established the neighbour's principle.<sup>21</sup> Nigerian courts have adopted this principle in cases including *Nigerian Bottling*

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<sup>15</sup> *ibid.*

<sup>16</sup> *Mazzaro de Abreu v Bank of America Corp* 525 F Supp 2d 381, 387 (SDNY 2007).

<sup>17</sup> *ibid.*

<sup>18</sup> [1932] AC 562 (HL).

<sup>19</sup> *Graff v Beard* 858 SW 2d 918, 920 (Tex 1993); *Greater Houston Transportation Co v Phillips* 801 SW 2d 523, 525 (Tex 1990).

<sup>20</sup> *Supra*

<sup>21</sup> *ibid.*

*Co Ltd v Ngonadi*.<sup>22</sup> Where a financial institution fails to exercise reasonable care in dealing with suspicious financial transactions, it may be liable for negligence if its conduct facilitates investment fraud.

#### **4.2.2 Claim for Negligent Misrepresentation**

A claim for negligent misrepresentation arises where a party makes a false statement that induces another person to enter into a transaction.<sup>23</sup> The House of Lords decision in *Hedley Byrne v Heller*<sup>24</sup> established that liability may arise where a party relies on professional advice given negligently.<sup>25</sup> Nigerian courts have recognised similar principles in cases involving financial transactions.

Where financial institutions provide inaccurate information that investors rely upon when making investment decisions, liability may arise. International case law demonstrates that a bank's suggestion ignored by the scheme operator does not constitute substantial assistance to the fraud.<sup>26</sup>

#### **4.2.3 Breach of Fiduciary Duty**

A fiduciary relationship arises where one party places trust and confidence in another who is expected to act in good faith.<sup>27</sup>

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<sup>22</sup> [1985] 1 NWLR (Pt 4) 739.

<sup>23</sup> *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 (HL).

<sup>24</sup> *supra*

<sup>25</sup> *Musalli Factory for Gold & Jewellery v JP Morgan Chase Bank NA* 261 FRD 13, 24–26 (SDNY 2009).

<sup>26</sup> *Mazzaro de Abreu v Bank of America Corp* 525 F Supp 2d 381, 392 (SDNY 2007).

<sup>27</sup> American Law Institute, *Restatement (Third) of Restitution and Unjust Enrichment* (2011) §10 illustration 27 ('Mistaken Improvements').

*Musalli Factory for Gold & Jewellery v JP Morgan Chase Bank, N.A.*, held that a lender is not a fiduciary of a debtor and therefore owes no fiduciary duties.<sup>28</sup>

The relationship between a bank and its customer is generally regarded as that of debtor and creditor rather than fiduciary.<sup>29</sup> Nonetheless, courts may recognise a fiduciary duty where the bank assumes advisory responsibilities or exercises control over an investor's funds.<sup>30</sup>

#### **4.2.4 Aiding and Abetting Fraud**

To establish liability for aiding and abetting fraud, a plaintiff must prove:

1. The existence of a primary fraud;
2. Actual knowledge of the fraud; and
3. Substantial assistance provided by the defendant.<sup>31</sup>

Courts require clear evidence that the defendant knowingly participated in the fraudulent scheme.<sup>32</sup> Numerous US cases have dismissed aiding and abetting claims against banks that merely performed routine banking operations.<sup>33</sup>

### **4.3 Statutory Remedies**

#### **4.3.1 Securities Regulation**

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<sup>28</sup> *Musalli Factory for Gold & Jewellery v JP Morgan Chase Bank NA* 261 FRD 13, 26 (SDNY 2009).

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> *Pension Committee of the University of Montreal Pension Plan v Banc of America Securities LLC* 446 F Supp 2d 163, 202–203 (SDNY 2006).

<sup>32</sup> *Mazzaro de Abreu v Bank of America Corp* 525 F Supp 2d 381, 388–389 (SDNY 2007).

<sup>33</sup> *Mazzaro de Abreu v Bank of America Corp* 525 F Supp 2d 381, 383–384 (SDNY 2007).

The **Investment and Securities Act 2025** empowers the Securities and Exchange Commission to regulate capital market activities and protect investors.<sup>34</sup> The Commission may investigate fraudulent investment schemes, impose sanctions, suspend market operators, and prosecute offenders.<sup>35</sup>

#### **4.3.2 Criminal Prosecution**

Investment fraud may also constitute a criminal offence under the **EFCC Act** and the **Advance Fee Fraud Act**.<sup>36</sup> The EFCC has prosecuted several Ponzi scheme operators in Nigeria.<sup>37</sup> Criminal prosecution may lead to imprisonment, fines, and confiscation of assets.<sup>38</sup>

#### **4.3.3 Unjust Enrichment**

The doctrine of unjust enrichment requires a person who has been enriched at another's expense to make restitution where retaining the benefit would be unjust.<sup>39</sup>

This principle is particularly relevant in liquidation proceedings where funds must be redistributed among victims of a Ponzi scheme.<sup>40</sup>

### **5. DISCUSSION**

The analysis reveals that Nigerian law provides multiple avenues for victims of investment fraud to seek redress. However, the effectiveness

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<sup>34</sup> *Investment and Securities Act 2025*.

<sup>35</sup> RI Alvarez and MJ Astarita, *Introduction to the Blue-Sky Laws* (SECLaw.com) <https://www.seclaw.com> accessed 9 March 2026.

<sup>36</sup> *Economic and Financial Crimes Commission (Establishment) Act 2004; Advance Fee Fraud and Other Fraud Related Offences Act 2006*.

<sup>37</sup> *SEC v Madison Real Estate Group LLC* 647 F Supp 2d 1271, 1279 (D Utah 2009).

<sup>38</sup> *ibid*.

<sup>39</sup> Warren A Seavey and Austin W Scott, 'Restitution' (1938) 54 *Law Quarterly Review* 29, 32

<sup>40</sup> *In re Evergreen Security Ltd* 319 BR 245, 253 (Bankr MD Fla 2003).

of these remedies depends largely on regulatory enforcement and judicial interpretation.

One major challenge is the insolvency of fraudulent scheme operators. By the time the fraud is discovered, most of the funds have already been dissipated. Consequently, victims often rely on litigation against financial intermediaries or recovery through regulatory enforcement.<sup>41</sup> Regulatory agencies such as the SEC and EFCC play a crucial role in combating investment fraud. Their powers to investigate, freeze assets, and prosecute offenders are essential to protecting investors.<sup>42</sup> Nevertheless, enforcement challenges persist due to limited resources, bureaucratic delays, and weak inter-agency coordination.<sup>43</sup>

## 6.0 CONCLUSION

Investment fraud remains a significant threat to Nigeria's financial system and investor confidence. Although Nigerian law provides several remedies through both common law and statutory frameworks, the practical recovery of lost funds remains difficult.

Strengthening regulatory enforcement, improving investor education, and enhancing cooperation among financial regulators are essential steps toward combating fraudulent investment schemes. Legislative reforms may also be required to introduce clearer provisions targeting Ponzi schemes and other fraudulent investment activities.

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<sup>41</sup> *SEC v Credit Bancorp Ltd* 194 FRD 457, 463–464 (SDNY 2000).

<sup>42</sup> *ibid.*

<sup>43</sup> *Okojie v Federal Republic of Nigeria* LPELR-22811(CA) (2014), cited in E Okojie, 'Corporate Fraud in Nigeria' (2015) 38 *Journal of Policy and Globalization* 105.