

**EXPLORING INTIAL PUBLIC OFFERINGS
AND THE REGULATORY FRAMEWORK IN NIGERIA**



INTRODUCTION



Regulatory Framework

The principal statute governing securities offerings in Nigeria is the Investment and Securities Act 2007 (“ISA”), which establishes the Securities and Exchange Commission (“SEC”). The SEC is charged with regulating all offers of securities by public companies and entities, and registering securities of public companies. The principal regulation governing securities offerings is the SEC Consolidated Rules and Regulations as at 2013 (“SEC Rules”). The SEC continually issues new rules and sundry amendments to the Regulations.

Securities Exchange for IPOs in Nigeria


The major securities exchanges in Nigeria are the Nigerian Stock Exchange (“NSE”) and the FMDQ Securities Exchange Limited (“FMDQ Exchange”). We will examine the operations of both exchanges briefly in this article.

The NSE

The primary exchange for IPOs in Nigeria is the NSE, a registered company limited by guarantee (**LTD/GTE**) founded in 1960. The NSE is licensed under the ISA and is regulated by the SEC. The NSE regulates the admission of securities to trading on the Main Board and issued the Rulebook of the NSE in 2015 (“**NSE Rulebook**”), a compilation of all rules, regulations and guidelines for dealing members, issuers, investors and other stakeholders. The NSE offers listing and trading services, licensing services, market data solutions and ancillary technology services. The NSE lists companies on the Main Board, Premium Board and Growth Board, depending on its size, scope, and growth stage.

The Main Board is the NSE’s founding board targeted at well-established companies with a demonstrable track record of commitment to high disclosure standards and corporate governance. Listing on this board is based on profitability or market capitalisation criteria, which also determines whether an Issuer would be listed under Standard A, Standard B or Standard C. As of 30 September 2020, there were 141 equities listed on the Main Board with a market capitalisation of N7,268,180,185,351.90.

The Premium Board was introduced on 25 August 2015 as the listing segment for the elite group of issuers that meet the NSE’s most stringent corporate governance and listing standards. As of 30 September 2020, there were 8 equities listed on the Premium Board with a market capitalisation of N6,735,087,809,212.00.



The Growth Board was launched on 28 January 2020 to encourage Start-Ups, Small and Medium Enterprises, and Fintech companies with high growth potential to seize the opportunity of raising long-term capital and promote liquidity in the trading of their shares. The board is an improvement on the Alternative Securities Exchange Market (“ASeM”) which is being phased out by the NSE, due to consistent negative performance of the ASeM index and lack of traction in listings.

Thus, on 30 November 2020, the NSE announced the migration of Chellarams Plc, Living Trust Mortgage Plc, McNichols Plc, and The Initiates Plc from ASeM to the Growth Board and the launch of the associated Growth Board Index.

FMDQ

The FMDQ Exchange is the largest securities exchange in Nigeria, by trading volume, focusing on debt and derivative products. The FMDQ Exchange’s listing requirements are similar to those of the NSE, but it is different in its admission of commercial papers for listing and its current operation of a sole quotation list.


With the FMDQ Group restructuring in 2019, the Group obtained SEC’s approval to reflect the new status upgrade of the FMDQ Exchange from an OTC market to a securities exchange. Therefore, there is a possibility that with the new status, the FMDQ Exchange will provide a platform for the listing of equity securities.

IPO and Listing on the NSE

The Nigerian IPO market attracts issuers from a variety of sectors. The NSE lists equities under 11 sectors: Agriculture, Conglomerates, Construction/Real Estate, Consumer Goods, Financial Services, Healthcare, ICT, Industrial Goods, Natural Resources, Oil and Gas, and Services. Currently, there are 168 listed companies on the NSE[1].

In 2019, the NSE recorded its first IPO in four years as Skyway Aviation Handling Company (SAHCOL) Plc concluded its offer for sale of 406.1 million shares valued at N1.89 billion in April 2019, albeit undersubscribed by 35%. This was followed by the dual listing by Airtel Africa Plc on the London Stock Exchange (“LSE”) and the NSE in July 2019, raising \$750 million through those activities.

[1]The Nigerian Stock Exchange. Available at <http://www.nse.com.ng/issuers/listed-securities/listed-companies>. Accessed on 20th February 2021.



However, as at late 2020, no IPOs had been recorded for the year 2020, mainly due to the impacts of the COVID-19 pandemic and the macro-economic concerns of investors[2].

Nigerian issuers can also decide to list overseas. Foreign companies can list on the NSE having satisfied the general requirements for listing as contained in the NSE Rulebook and the additional requirements in the Cross Border Listing Rules.

Foreign companies currently listed on the NSE include Ecobank Transnational Incorporated and Airtel Africa Plc. Foreign companies seeking a dual listing are typically required to have an operating track record of at least two years and be incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are equivalent to those provided in Nigeria (as determined by the NSE). However, such a company is not required to have operations in Nigeria.


Issuers are required to register all securities of a public company before it can be issued, transferred, sold or offered for subscription by or sale to the public, with the SEC by filing a registration statement in respect of the securities proposed to be issued.


Listing under the Main Board

To qualify for listing on the Main Board of the NSE under Standards A, B, or C, an Issuer is required to submit an application in the prescribed form and satisfy the following conditions:

- Be registered as a public limited company under the provisions of the Companies and Allied Matters Act 2020 with no restrictions on the transfer of fully paid shares;
- Have a minimum of 3 years' operating track record (under Standards B and C, alternatively, the Issuer shall provide evidence of a core investor who has a minimum of 3 years' operating track record);

[2]The Nigerian Stock Exchange. Available at <http://www.nse.com.ng/mediacenter/pressreleases/Pages/Onyema-Highlights-NSE-Performance-in-2020-Provides-Outlook-for-2021.aspx>. Accessed on 20th February 2021.

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- Have a pre-tax profit from continuing operation of not less than N300million cumulatively for the last 3 fiscal years and a minimum of N100 million in 2 of these years (under Standard B, not less than N600million cumulatively for the last 1 or 2 fiscal years; no requirement for Standard C);
 - Have financial statements which shall be compliant with the applicable SEC Rules and covering the last 3 fiscal years, provided that the most recent statement at the time of submission of the application is not more than 9 months old (under Standards B and C, alternatively the Issuer shall provide evidence of a strong technical partner who has a minimum of 3 years' operating track record with substantial equity and involvement in management and the financial statements for the last 3 years of the technical partner);
 - Ensure that a minimum of 20% of the issued share capital is made available to the public and held by not less than 300 shareholders;

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- Have shareholders' equity of not less than N3 billion (Under Standard C, have a market capitalisation of not less than N4 billion at the time of the listing, calculated using the listing price and shareholders' equity);
 - Ensure that if the listing is in connection with an IPO, the promoters and directors will hold a minimum of 50% of their shares in the company for a minimum period of 12 months from the date of listing and will not directly or indirectly sell or offer to sell such securities during that period;
 - Ensure that the securities are fully paid-up at the time of allotment or registration in compliance with the applicable SEC Rules; and
 - Undertake to pay annual listing fees based on market capitalisation promptly.

Listing under the Premium Board


For admission to the Premium Board, a Company is required to satisfy one set of Listing Standards (i.e. Standard A or B or C) for the Main Board, as well as comply with the following:

- Meet the minimum market capitalisation requirement of at least N200 billion on the date the NSE receives its application (or at the time of listing - for new listings);
- Evaluation under the NSE's Corporate Governance Rating System ("CGRS") and achieve a minimum rating score of 70%;
- Satisfy either:
 - a minimum free float requirement of 20% of its issued share capital, or
 - the value of its free float shares is equal to or above N40 billion on the date the Exchange receives its application to list.

Listing under the Growth Board

For admission to the Growth Board (Entry or Standard), a Company is required to satisfy the following:

- Be registered as a public limited company under the provisions of the Companies and Allied Matters Act 2020 with no restrictions on the transfer of fully paid shares;
- Have a minimum of 2 years' operating track record or a new business that can provide evidence of investment in it by a core investor or a strong technical partner that has a minimum of two (2) years'(4 years for Standard) operating track record, or a majority shareholder who is either a High Net Worth individual or is a director of a listed company;
- Have financial statements which shall be compliant with the applicable SEC Rules and covering the last 2 fiscal years, provided that the most recent statement at the time of submission of the application is not more than 9 months old or evidence of a strong technical partner with substantial equity holding and involvement in the Issuers' management, who has a minimum of 2 years' operating track record and financial statements;


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- The public shall hold a minimum of 10% of each class of equity securities, and the number of shareholders shall not be less than 21;
 - Have a market capitalisation of not less than N50million (Entry) or N500 million (Standard) at the time of the listing, based on the issue price and issued share capital;
 - Ensure that if the listing is in connection with an IPO, the promoters and directors will hold a minimum of 50% of their shares in the company for a minimum period of 12 months from the date of listing and will not directly or indirectly sell or offer to sell such securities during that period;
 - Ensure that the securities are fully paid-up at the time of allotment or registration in compliance with the applicable SEC Rules; and
 - Undertake to promptly pay annual listing fees which is a fixed flat rate prescribed by the NSE for Entry (currently set at a total fee of N450,000) for a new listing, while Standard is based on market capitalisation.

Procedure for Listing on the NSE

Following a preliminary fact-finding process by a company desirous of being listed, the decision to go public is taken from the board and shareholders and mandate is given to the Issuing House or financial adviser to commence the listing process.

All parties to the issue are appointed, functions are allocated, timelines fixed, costs and fees are agreed upon, and all the parties proceed to prepare the application. The Issuing House applies to SEC to register the shares and receives approval. An application for listing is submitted to the NSE for evaluation, along with all required fees. The NSE communicates with the stockbroker about the outcome of the application.

The offer documents are signed, and the application list is usually kept open for 4 - 6 weeks in the case of a retail offer. Once the offer period has closed, an analysis of share requests is prepared, the allotment made, and the range analysis and allotment schedule sent to the SEC and the NSE for information purposes.



All monies sent by prospective buyers as part of unsuccessful or rejected applications are returned. If the issue is under-subscribed, all subscribers are allotted their full share request; the balance of the security is cancelled and, if there is no standby underwriting, it reverts to the authorised share capital of the Issuer. If the issue subscription is under 50%, the issue is aborted. After the allotment process, the Central Securities Clearing System Plc (“CSCS”) credits the accounts of successful shareholders. At the same time, payments of the proceeds are made to the Issuer and commissions paid to receiving agents (stockbrokers and banks).


The company prepares and delivers to the NSE on its letterhead, its General Undertaking (as set out in Appendix III of the Rules Governing Listing) and a Declaration of Compliance (as set out in Appendix XIV of the Rules Governing Listing, with amendments to suit the method of offer). On the day of the listing, a briefing on the importance of adhering to the post-listing requirements of the NSE is held for the company’s executives and registrar.

Following the briefing, the shares are listed, with a ‘facts behind the listing’ presentation at the close of the day’s trading.

Publication of Prospectus for IPO

An Issuer is required to publish a prospectus in connection with the IPO, which shall be filed with the SEC as part of the registration statement, either electronically or in printed form, in duplicate, and no larger in size than A4 paper. However, in the case of issuers of securities through a capital trade point, the prospectus may be abridged in terms of content and may not be in printed form.

The information required in a prospectus is mandated to follow the prescribed order in the SEC Rules. Any subsequent information included need not follow any particular order provided that the information is outlined in such a manner as not to obscure any of the required information necessary to keep the required information from being incomplete or misleading.




Any information outlined in a prospectus shall be presented in a clear, concise English language and under appropriate captions or headings reasonably indicative of the principal subject matter set forth below it. The SEC Rules, in addition to the provisions of the third schedule of the ISA, sets out detailed content requirements for a prospectus, including the front cover and detailed table of contents making up the forepart, a second section describing the offer and certain mandatory statements to be included in the prospectus, a third section disclosing the list of the directors of the Issuer and other parties to the issue, in addition to other information such as risk factors, other statutory and general information and historical financial information.

The NSE Rulebook also contains provisions on the contents of a prospectus and the NSE reserves the right to call for any further or additional information.

Restrictions on Publicity and Marketing during an IPO


The SEC Rules provide that any advertisement relating to a public offer is prohibited from publication by an Issuer or Issuing House without the SEC's prior approval. The information in any advertisement shall be restricted to the information in the offer documents. Any advertisement reproducing or purporting to reproduce any information in an offer document shall produce such information in full and disclose all relevant facts and shall not be restricted to select extracts relating to that item. The historical financial information and all other information to be incorporated in advertisement materials shall not exceed the period as contained in the approved offer documents. Evidence of any award received by the Issuer to be stated in the advertisements shall be forwarded to the SEC for clearance before the advertisements.

Advertisements shall be truthful and not misleading. An advertisement shall be considered to be misleading if it contains:

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- statements made about the performance or activities of the company in the absence of necessary explanatory or qualifying notes, which may give an exaggerated picture of the performance than what it really is;
 - an inaccurate portrayal of past performance or its portrayal in a manner which suggests that past gains or income will be repeated in future.

An advertisement shall avoid extensive technical legal terminology or complex language and the inclusion of excessive details that may distract the investor. The use of ambiguous and high-sounding words, slogans and terminologies that can mislead the investor such as “*invest and haul in the future*”, “*top offer*”, “*superior offer*”, “*brighter future*”, is curtailed by the law. An advertisement shall not contain statements which promise or guarantee a rapid increase in profits.

Also, no advertisement shall include any slogans or brand names for the issue except the company’s usual commercial name or brand names of its products already in use.



No slogans, expletives or non-factual and unsubstantiated titles shall appear in the advertisements. Models, celebrities, fictional characters, landmarks or caricatures or the likes shall not be displayed on or form part of the advertisements. Advertisements shall not appear in the form of crawlers (the advertisements that run simultaneously with the programme in a narrow strip at the bottom of the television screen).

All print and electronic media advertisements are required to publish the following advisory clause as a footnote: “*please read the Prospectus/Rights Circular and where in doubt, consult your stockbroker, fund/portfolio managers, accountant, banker, solicitor or any other professional adviser for guidance before subscribing*”.

Failure to comply with the legal requirements on advertising amounts to an offence attracting a term of imprisonment or financial sanctions instead of prosecution.

Enforcement of Sanctions for Breach of the Rules governing IPOs in Nigeria

The SEC may impose sanctions including the suspension of registration of securities and fines for late registration and non-compliance with the ISA and the SEC Rules. Where a person issues, transfers, sells or offers for subscription or sale to the public, the securities of a public company without the prior registration of the securities, such amounts to an offence which is punishable, upon conviction, with a fine of N1,000,000 or a term of imprisonment of 3 years or both fine and imprisonment. The SEC may impose financial penalties instead of prosecution for each day the default continues.

There are also civil and criminal liabilities imposed by the SEC for any misstatements in the prospectus.

Under the NSE Rulebook, a listing is always granted subject to the condition that where the NSE considers it necessary for the protection of investors or the maintenance of an orderly market, it may at any time

suspend dealings in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the Issuer or not. The NSE may do so in any of the following instances:

An Issuer fails, in a manner which the NSE considers material, to comply with the Listing Rules; or

The NSE considers that there are insufficient securities in the hands of the public; or

The NSE considers that the Issuer does not have sufficient level of operations or sufficient assets to warrant the continued listing of the Issuer's securities;
or

The NSE considers that the Issuer or its business is no longer suitable for listing.

Where an Issuer is delisted for non-compliance with the Listing Rules of the NSE, the Issuer and its promoters shall not seek listing for 3 years from the date of such delisting.

AELEX



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