

LISTING NIGERIAN DEPOSITARY RECEIPTS

The Nigerian Stock Exchange (the **Exchange**) on 10 February, 2015 obtained the approval of the Securities and Exchange Commission (**SEC**) to the Rules for Listing of Nigerian Depositary Receipts on the Exchange (**Listing Rules**). The Listing Rules govern, amongst others, the process for application for listing and general eligibility, disclosure and continuing obligation requirements in connection with Nigerian depositary receipts.

Under the existing rules of the Exchange, listed companies are able to list and trade their securities on foreign exchanges, whether in the form of equity, debt or depositary receipts. Examples of such foreign listed companies include: GTBank, SEPLAT Petroleum Development Company Plc., etc.

In a bid to expand the Nigerian Capital Market and provide the investing public with an opportunity to invest in securities of foreign entities and also give foreign companies the opportunity to expand their investor base; the Exchange has introduced Nigerian depositary receipts to increase the Exchange's attractiveness and to provide best returns for both local and foreign investors.

Depositary receipts are negotiable instruments typically in the form of certificates that represent ownership of a specified number of a company's securities. These depositary receipts can be listed and traded on exchanges independently of the underlying securities. This mechanism provides investors with the opportunity to effectively own foreign securities while benefitting from the advantages associated with the ownership of securities issued by domestic issuers.

Below are highlights of some of the provisions of the Listing Rules.

Nigerian Depositary Receipts (NDRs)

NDRs represent the Securities (equity or debt securities) of an Underlying Entity, (a foreign company which has its primary listing on a foreign exchange), which have been issued and listed, or which is concurrently listed, on a foreign stock exchange as well as the Exchange.

By the provisions of the Listing Rules, the NDRs are required to conform, in relation to their issuance and listing, with Nigerian law and the laws of the place of incorporation of the foreign company whose Securities are represented by the NDRs (**Underlying Entity**). In addition, the Securities represented by NDRs must be free from all liens and from any restriction on the right to transfer. This requirement that the Securities are free from any lien removes the risk of possible third party enforcement over the Securities in the foreign jurisdiction, which would be detrimental to the interest of the NDR holder in Nigeria.

Also worthy of note is the provisions of the Listing Rules which not only recognizes the right of NDR holders to receive distributions made on the Securities; but also recognizes the right of NDR holders to exercise the voting rights attached to the Securities.

The Depositary & Underlying Entity

Pursuant to the Listing Rules, NDRs may be issued by a Depositary (in the case of unsponsored depositary receipts) or the Underlying Entity (in the case of sponsored depositary receipts).

The Listing Rules define the Depositary is as a bank or institution that issues NDRs representing the securities of an issuer which are held by the depositary as a bare trustee. The Depositary may also act as a registrar, transfer agent and corporate actions agent. According to the Listing Rules, the Depositary must be, either a company duly incorporated in Nigeria or validly established under the laws of the jurisdiction in which it is incorporated or established.

The Underlying Entity on the other hand is defined as the issuer of Securities represented by a depositary receipt. The Underlying Entity must be a company duly established under its jurisdiction, who must also be primarily listed on a foreign exchange that is acceptable to the Exchange.

Types of Depositary Receipt Issues

The Listing Rules contains copious provisions as to the registration and listing requirements of two types of NDRs on the Exchange; the sponsored NDR issue and the unsponsored NDR issue.

Sponsored depositary receipt programs are created jointly by a depositary and the Underlying Entity by way of a Deposit Agreement. Under this structure, the Underlying Entity takes an active role in the promotion of the depositary receipts. In practice the sponsored depositary receipt issue is typically utilized when a company intends to carry out a capital raising exercise and seeks to broaden its investor market. In developed markets, sponsored form of depositary receipts are more attractive and marketable than unsponsored depositary receipts, this is because it attracts a higher yield on dividends; as the depositary generally does not deduct a fee from dividends before paying them out to depositary receipt holders, which is usually the case in an unsponsored depositary receipts issue.

An Unsponsored Depositary Receipt on the other hand is created and issued by the Depositary based on market demand without the participation of the Underlying Entity. The unsponsored depositary receipt issue is not common in a number of jurisdictions, and even in jurisdictions where they are traded, unsponsored depositary receipts are mostly limited to OTC markets. It is thus significant that both types of depositary receipts may be listed and traded on the Exchange.

The Deposit Agreement & Terms and Conditions

The Deposit Agreement is the agreement between the Depositary and the Issuer, regulating the terms of a sponsored depositary receipt issue; while Terms & Conditions refers to the document regulating the terms of the

unsponsored depositary receipt issue. The deposit agreement and terms & conditions must contain the following information amongst others:

- (a) the status of the depositary receipts as instruments representing ownership interests in the Securities;
- (b) the status of registered depositary receipt holders as the legal owners of the receipts;
- (c) the right of depositary receipt holders to surrender the depositary receipts to be cancelled in exchange for the delivery of the Securities;
- (d) the right of the depositary receipt holders to exercise voting rights attached to the Securities represented by the depositary receipts;
- and
- (e) the right of depositary receipt holders to corporate actions

Application for Listing

In order to list NDRs on the Exchange, the Depositary is to submit an application for listing depositary receipts together with applicable listing fees and specified documents to the Exchange which include:

- (a) Two copies of the Listing Document;
- (b) A copy of the Depositary Agreement or the Terms and Conditions as applicable;
- (c) An undertaking by the Depositary to comply with all obligations imposed by the Listing Rules and the Exchange; and
- (d) Such other documents as may be required by the Exchange.

Liquidity Provider

Another notable inclusion in the Listing Rules is the requirement for a liquidity provider for every NDR issue. The Listing Rules provide that NDRs must be introduced to the Exchange by a Sponsoring Broker (who is a Dealing Member of the Exchange and in good standing with the Exchange's Rules and Regulations), who may choose to be the primary liquidity provider or nominate another broker to perform the role of primary liquidity provider. A liquidity provider is described as a Dealing Member of the Exchange that commits to provide liquidity on an NDR

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issue to protect against variations in volatility on the market, guarantee transactions at all times, at the best price and support the volume of transactions in a specific NDR issuance.

CONCLUSION

The introduction of the Listing Rules is a laudable initiative of the Exchange to create a regulatory platform for the introduction of varied instruments to be traded on the Exchange and it is suitably timed, bearing in mind the upheavals which the Exchange has witnessed in recent times. It is anticipated that the introduction of NDRs on the Exchange will satisfy the investment needs of individuals and institutional investors seeking an efficient diversification of their investment portfolio.

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