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Overview of The New Rules of The Nigeria Stock Exchange (NSE)

Introduction

1. The Nigerian Stock Exchange (**NSE** or the **Exchange**) recently released amendments to some sections of the Rulebook of the NSE (the **New Rules**). Although approved earlier in the year, these amendments only came into effect on 01 November 2017.

2. At its core, most of the amendments relate to the dealing members rules. Specifically, the New Rules address the provisions relating to classification of registration of dealing members, prohibition of market manipulation and illegal market dealings, advertising and communicating with the public, order handling and best execution and block divestments. The New Rules also amend some of the issuer and investor provisions in the previous rules.

3. The focus of this article is the major changes brought about by the New Rules which impacts listed companies on the Exchange.

Key Changes - Delisting

4. The NSE Rulebook provides two methods for delisting the securities of a company from the Exchange: voluntary and regulatory. Delisting is the removal of listed securities of a company from the daily official list of the Exchange (Exchange's Daily Official List), such that the securities can no longer be traded on the Exchange.

5. Although the New Rules do not alter or modify these methods for delisting, the New Rules introduce transparency and clarity on the procedure for delisting.

6. With regard to voluntary delisting, the new process involves a three step approach. First, the Board of Directors must meet to pass a resolution, recommending to the shareholders that the company be delisted. Second, the company notifies the Exchange of the recommendation by the Board and submits a copy of the board resolution, together with a request for approval to publish a notice of AGM/ EGM and a copy of the draft notice of the AGM/EGM. Once the approval of the Exchange is received, the company is then required to hold an AGM/ EGM, where the shareholders approve the delisting through a resolution of at least 75% of members present and voting either in person or by proxy.

7. It is also important to note that where the delisting is further to a merger or other reconstruction, the company is also required to apply for a court-ordered meeting, where the shareholders will consider and if thought fit, approve such scheme. It should be noted however, that matters relating to mergers are covered by the Investment and Securities Act 2007 (**ISA**) and the Rules and Regulations of the SEC (**SEC Rules**) while reconstructions, which are typically by way of a scheme, are provided for by the Companies and Allied Matters Act (**CAMA**). Although the New Rules do not reference the provisions of the aforementioned laws and regulations, it is our view that the introduction of this provision seeks to bring the delisting rules in line with extant Nigerian law provisions on corporate restructuring.

8. Furthermore, the company is obligated to appoint professional advisers to provide

support throughout the delisting process. These include lawyers and financial advisers who would assist the company in ensuring that all the key requirements are complied with. Although the New Rules do not proscribe a penalty for failing to appoint professional advisers, it is important to ensure that professional advisers are engaged, to prevent any delay in the the timeline for review prescribed under the New Rules for dealing with delisting applications.

6. Another interesting inclusion in the New Rules is the protection of the interest of minority shareholders. This is a important requirement to a voluntary delisting and without it the company would be unable to complete the delisting process. Under the New Rules, the Quotations Committee of the National Council of the Exchange (**QCN**) is required to ensure that the interests of minority shareholders are sufficiently protected. To achieve this, the company is required to escrow funds for the purpose of purchasing the interest of all shareholders who dissent to the resolution to delist, enabling the shareholders exit a company whose securities are no longer traded on the Exchange and thus not subject to the strict regulatory regime of the Exchange. At first blush the requirement to escrow funds seems to conflict with the restriction under CAMA prohibiting a company from buying back its shares. However on further reflection, it appears that this requirement would fall under the exception in section 160(2)(d) of CAMA, which permit a company to buyback its shares in satisfaction of a claim of a dissenting shareholder.

7. The list of such dissenting shareholders is to be kept by the registrar or custodian and published by the company on its website for a period of 3 years. Where the company fails to provide evidence that the interest of dissenting shareholders have been purchased, the company will not be delisted from the Exchange's Daily Official List.

8. In addition to greater transparency brought about by the New Rules, the New Rules also abridge the timing for applications, as applications are now to be dealt with within 10 business days from the receipt of such applications. This ensures that the value of the securities of a delisting company, which must be suspended from trading during a delisting, does not unnecessarily suffer from a decline in value or liquidity.

9. Unlike voluntary delisting, regulatory delisting is at the instance of the Exchange and is aimed at punishing a company for non-compliance with the rules of the Exchange. The New Rules introduce a remedial period of 12 weeks, within which the company would be required to regularise any infraction or meet its obligation to the Exchange, failing which a notice of delisting will be published in national newspapers. The company would also be given a further 3-month period after the publishing of the notice of de-listing to regularize its listing status. Where the company fails to regularise its listing status, the Exchange would delist the company from the Exchange's Daily Official List, and notify the market and publish the delisting in a number of national daily newspapers. The Exchange would also notify the SEC 7 days before the de-listing. Where the company has been delisted, SEC must be notified within 24 hours after.

10. Given the implication of de-listing a company, (that is the company would be unable to relist its securities on the Exchange for a period of three years), it is a welcome development that listed companies are given an opportunity to regularise and rectify their infractions of the NSE rules or non-compliance with their listing obligations.

Investor Protection Fund

11. Under the Rulebook of the NSE, there is a requirement for the Exchange to maintain and operate an Investors' Protection Fund (IPF or the Fund) to be administered in accordance with the Investments and Securities Act 2007. The main objective of the fund is to compensate investors who suffer pecuniary losses arising from insolvency, bankruptcy, negligence or defalcation of/ by a dealing member.

12. Under the extant rules, the Fund is funded by dealing member firms, interests and profits accruing from the investment, monies paid in accordance with the ISA, grants, donations, subventions, etc. Interestingly, unlike the extant rules which allowed the Exchange to place a moratorium on funding from dealing members, the New Rules give the Exchange a wider power to waive funding from dealing member firms accruing from interests and profits accruing from the investment, monies paid in accordance with the ISA, grants, donations, subventions, etc. The amendment is intended to imbue the Exchange with more discretion in dealing with funding of the Investor Protection Fund.

Block Divestments

12. It is important to note that the rules relating to the information to be provided by an issuer in a block divestment have been expunged from the Rulebook of the NSE. In its stead, new rules relating to block divestment have been introduced under the dealing members rules section. Under the new rules, a dealing member is defined as "a Member company of The Exchange that has been granted a licence by The Exchange to deal in stocks, shares and other securities listed on The Exchange", and every such dealing member who receives a mandate to execute a block divestment shall apply to the Exchange for approval to effect the mandate and shall not execute such a mandate without the said approval.

13. Notably, the New Rules impose penalties for failing to obtain the Exchange's prior approval. Dealing Members in breach shall be liable to suspension for a period of ten (10) business days and payment of a fine of not less than five per cent (5%) of the value of the block divestment. Unlike the old rules, the new Rule 15.31A incorporates the details for the application (including electronic application) and requirements for the approval of block divestments and provides for the method of application, which is to be submitted with the mandate letter. Although the total fees payable for a block divestment remain 0.5% of the value of the transaction, this has been broken down under the new rules to include (x) processing fee of 0.2% of the value of the transaction; and (y) divestment fee of 0.3% of the value of the transaction.

Conclusion

14. In conclusion, it is believed that the new amendments are intended to introduce flexibility to the dealing members and to boost investor confidence in the Nigerian stock market, whilst ensuring that the NSE rules comply with international best practice.

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