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Understanding Equity Public Offerings in Nigeria

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Introduction

On the 27th of February 2024, the Monetary Policy Committee ("MPC") of the Central Bank of Nigeria increased the Monetary Policy Rate ("MPR") from 18.75% to 22.75%¹. The MPC undertook subsequent reviews of the MPR on the 26th of March 2024, increasing the MPR from 22.75% to 24.75%² and on the 22nd of May 2024, increasing the MPR from 24.75% to 26.25%³.

In view of the current unfavorable interest rates, the cost of debt financing has risen, and companies are now required to explore other means of raising capital for business operations. Now more than ever, companies are considering an alternative to debt capital and the equities capital market offers a viable option to raise their much-needed capital.

The Nigerian equities capital market allows for capital raising via the issue and trading of a company's shares through exchanges or over-the-counter markets. Unlike debt financing, which creates an obligation for repayment of principal and interest over an agreed period of time, equity financing involves securing capital in exchange for a percentage of ownership in the business with returns in the form of dividends.

The equities capital market provides numerous capital-raising options to interested companies, including a public offering. Indeed, Nigeria has witnessed its fair share of initial public offers, with the market witnessing a boom in 2007-2008. While there has been a dearth in the transaction volume of public offers generally in Nigeria, the equities market in Nigeria is projected to reach a transaction value of \$1.46bn in 2024.⁴ This article will, therefore, examine the regulatory framework, procedure, and requirements involved in public offerings in Nigeria.

Public Offerings in Nigeria

A public offer is the sale of equity shares by a company to the public to raise capital; whilst an initial public offer ("IPO") **is the sale of a company's shares to the public in the stock market for the first time**. *Public offering of shares, whether initial or otherwise, can be undertaken as follows:*

a) Offer For Subscription

This is an invitation by or on behalf of a company to the public for subscription of securities at a fixed price. This method involves a company needing funds issuing part of its authorized share capital to the public. The proceeds from this mode of offering go to the company and are mainly used to expand business operations for greater profitability.

b) Offer For Sale

This is an offer to the public by or on behalf of a company's shareholder, and the proceeds goes to the owners of the shares being sold⁵. This mode of offer is used by private companies

¹ Monetary Policy Communique No. 150, Central Bank of Nigeria

² Monetary Policy Communique No. 151, Central Bank of Nigeria

³ Monetary Policy Communique No. 152, Central Bank of Nigeria

⁴ Statista. Available at <https://www.statista.com/outlook/fmo/corporate-finance/initial-public-offerings/nigeria> Accessed on 01/04/2024

⁵ An example of this is the Skyway Aviation Handling Company (SAHCO) Plc's Initial Public Offering by way of an offer for sale in 2018 on the Main Board of the Nigerian Stock Exchange.

intending to go public or public companies seeking listing on the exchange. A government authority could also make the sale in an attempt to divest its interest in the company.

c) Private Placement

This is the issue of securities by a company to select persons, not more than Fifty (50) subscribers. A private placement is a special kind of offer whereby a company's securities are sold to specific or pre-arranged buyer(s).

d) Rights Issue

A right issue is a method through which existing shareholders are given the opportunity to acquire more company shares in proportion to their existing holdings. It is usually offered at a discount to attract existing shareholders to prevent further dilution of company ownership.

REGULATORY FRAMEWORK FOR PUBLIC OFFERINGS IN NIGERIA

The principal legislation and regulations governing the offering of securities in Nigeria include:

- a) Investment and Securities Act, 2007 (“**ISA**”), under which authority is given to the Securities Exchange Commission (“**SEC**”) to regulate investments and securities business in Nigeria.
- b) SEC Rules and Regulations 2013 as amended (“**SEC Rules**”)
- c) Companies and Allied Matters Act, 2020
- d) Rules and regulations of the relevant securities exchange on which the security is listed or traded i.e. the Rulebook of the Nigerian Stock Exchange, 2015 as amended (“**Rulebook**”).

Securities Exchanges in Nigeria

In Nigeria, the SEC-registered stock exchanges that list and offer/trade equities of a company to the public include the Nigerian Exchange Ltd (“**NGX**”) (a wholly owned subsidiary of the Nigerian Exchange Group (NGX Group), NASD Plc (**NASD**) (an over the market securities exchange) and FMDQ Securities Exchange (“**FMDQ**”). Below is a review of public offerings and listing process on the listing boards of the NGX.

NGX Listing Boards

The NGX offers three (3) distinct listing boards for companies seeking to raise capital depending on the company’s size, scope and growth stage. The NGX Listing Boards are:

- a) **Growth Board:** This was launched in January 2020 and has two segments namely the Entry Segment and the Standard Segment. The Growth Board is designed to encourage small-cap and growth-oriented companies to leverage the capital market for long-term capital, stimulate growth, and promote liquidity. The Board targets fast-growth companies such as SMEs operating in various sectors including technology companies and connects them with an extensive pool of investors.⁶

⁶ The Nigerian Exchange Limited. Available at <https://ngxgroup.com/exchange/raise-capital/growth-board/>. Accessed on 01/04/2024

- b) **Main Board:** This is the NGX's founding board established in 1961 and requires a commitment to high disclosure and corporate governance standards.⁷ To qualify for listing on the Main Board of NGX, a company must meet the initial listing standards categorized into Standards A, B, and C in the NGX's Listing Rules.
- c) **Premium Board:** This is the listing segment for the elite group of issuers that meet the NGX's most stringent corporate **governance** and listing standards. The Premium Board features companies that adhere to international best practices on corporate governance and meet NGX's highest standards of capitalization and liquidity. Companies seeking admission to NGX Premium Board must satisfy one set of Listing Standards (i.e. Standard A, B or C) of the NGX Main Board and other requirements.⁸

Criteria	Growth Board		Main Board			Premium Board	Dual Listing	
	Entry	Standard	Standard A	Standard B	Standard C			
Pre-tax profits	No requirement	No requirement	Cumulative pre-tax profits from continuing operations of not less than NGN300 Million over the last 3 years, with at least NGN100 Million pre-tax profit in 2 of these years	Cumulative pre-tax profits from continuing operations of not less than NGN600 Million over the last 1 or 2 years	No requirement	Satisfy main board requirements	No specific requirement	
Market	Not less than NGN50 Million at the time of listing	Not less than NGN500 Million at the time of listing	No requirement			Not less than NGN4 billion	Market cap equal to or greater than NGN200 billion	At least NGN28 billion or

⁷ The Nigerian Exchange Limited. Available at <https://ngxgroup.com/exchange/raise-capital/main-board/>. Accessed on 01/04/2024

⁸ The Nigerian Exchange Limited. Available at <https://ngxgroup.com/exchange/raise-capital/premium-board/>. Accessed on 01/04/2024

Criteria	Growth Board		Main Board			Premium Board	Dual Listing
	Entry	Standard	Standard A	Standard B	Standard C		
capitalization	the time of listing (based on the issue price and issued share capital)	time of listing (based on the issue price and issued share capital)			Billion at the time of listing (based on the issue price and issued share capital)	Billion, at the date of application.	equivalent at the time of listing, based on the issue price and issued share capital
Operating track record	2 years minimum 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' operating track record, or A majority shareholder who is either a High Net Worth individual or is a director	2 years minimum operating track record OR; a new business that can provide evidence of investment in it by: A core investor or a strong technical partner who has a minimum of four (4) years' operating track record, or A majority shareholder who is a High Net Worth individual	3 years minimum operating track record	3 years minimum operating track record; or evidence of 3 years minimum operating track record of a core investor		Score a minimum of 70% under the NGX's Corporate Governance Ratings System (CGRS)	Company must have been in operation for at-least 2 years

Criteria	Growth Board		Main Board			Premium Board	Dual Listing
	Entry	Standard	Standard A	Standard B	Standard C		
	of a listed company						
Financials	2 years financials (date of last audited accounts must not be more than 9 months); 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	2 years financials (date of last audited accounts must not be more than 9 months); or evidence of a strong technical partner with substantial equity holding and involvement in the Issuers' management, who has a minimum of 4 years' operating track record and financial statements	3 years' financial statements; with the most recent of which must not be more than 9 months old at the time of submission of the listing application	3 years financials (date of last audited accounts must not be more than 9 months); or evidence of a strong technical partner with substantial equity holding and involvement in the Issuers' management, who has a minimum of 3 years' operating track record and financial statements		Satisfy other main board requirements	Minimum of 2 years financials (date of last audited accounts must not be more than 9 months)
Public float	The public shall hold a minimum of 10% of each class of equity securities	The public shall hold a minimum of 15% of each class of equity securities	The public shall hold a minimum of 20% of each class of equity securities			Free float greater or equal to N40bn	The public shall hold a minimum of 10% of each class

Criteria	Growth Board		Main Board			Premium Board	Dual Listing
	Entry	Standard	Standard A	Standard B	Standard C		
							of equity securities
Shareholders' equity	No specific requirement	No specific requirement	Not less than NGN3 billion.	No requirement		No specific requirement	No specific requirement
IPO Lock Up Period	Promoters and Directors to retain 50% of shares for 12 months from the date of listing	Promoters and Directors to retain 50% of shares for 12 months from the date of listing	Promoters and Directors to retain 50% of shares Pre-IPO for 12 months from the date of listing			Satisfy main board requirements	No specific requirement
Public shareholders	The number of the public shareholders shall not be less than 21 (for equity shares)	The number of the public shareholders shall not be less than 51 (for equity shares)	The number of the public shareholders shall not be less than 300 (for equity shares)			Satisfy main board requirements	The number of the public shareholders shall not be less than 51 (for equity shares)
Annual listing fees	Fixed flat rates as prescribed by the NGX (currently set at a total fee of NGN450 thousand for an	Based on market capitalization; subject to a maximum amount as prescribed by the NGX fee schedule (Application	Based on market capitalization; subject to a maximum amount as prescribed by the NGX fee schedule (currently NGN4.2 million)			Based on market capitalization; subject to a maximum amount as prescribed by the NGX fee schedule (currently NGN4.2 million)	Subject to applicable Listing Board fee schedule

Criteria	Growth Board		Main Board			Premium Board	Dual Listing
	Entry	Standard	Standard A	Standard B	Standard C		
	<p>ew listing (i.e. A pplication fee for a new or additional listing of NG N250,000(50% Discount on application fees for the first 24months from launch date of the board); and an Annual fee of NGN200,000)</p>	<p>n fee for a new or additional listing is 0.1% of value (50 % Discount on application fees for the first 24months from launch date of the board)</p>					
Business operations	<p>Company must be registered as a Public Limited Liability Company under the provisions of the Companies & Allied Matters Act</p>	<p>Company must be registered as a Public Limited Liability Company under the provisions of the Companies & Allied Matters Act</p>	<p>Company must be registered as a Public Limited Liability Company under the provisions of the Companies & Allied Matters Act</p>	<p>Company must be registered as a Public Limited Liability Company under the provisions of the Companies & Allied Matters Act</p>	<p>Company must be registered as a Public Limited Liability Company under the provisions of the Companies & Allied Matters Act</p>	<p>Company must be registered as a Public Limited Liability Company under the provisions of the Companies & Allied Matters Act</p>	<p>No requirement for operations in Nigeria</p>

Criteria	Growth Board		Main Board			Premium Board	Dual Listing
	Entry	Standard	Standard A	Standard B	Standard C		
Accounting standard	International Financial Reporting Standards (IFRS); in line with SEC regulations						

Procedure for Listings and Initial Public Offerings on the NGX Board

The process for listings and initial public offerings on the NGX Boards are summarized below.

I. Transaction Structuring & Preparation

- a) Engagement of the deal team consisting of legal advisers, issuing house / financial advisers, reporting accountants, auditors, registrar, receiving banks and stockbrokers. In collaboration, the professional advisers agree on the optimal structure for the issuance.
- b) Confirmation of compliance with regulatory requirements for IPO and listing process in Nigeria.
- c) Legal due diligence and completion of the preceding year's audit.
- d) Obtain certified true copies of corporate documents from the Corporate Affairs Commission (CAC).
- e) Registration of the company's shares at SEC.
- f) Board approval to proceed with the transaction.

II. Transaction Documentation

- a) Corporate (board and shareholders) resolutions required from the Company.
- b) Consent letters, declarations and relevant undertakings.
- c) IPO Prospectus.
- d) Vending Agreement.
- e) Underwriting Agreement (if applicable).
- f) Opinions on material contracts, claims and litigations.
- g) Any other relevant document required by regulatory authority.

III. Regulatory Approvals

Apply for and obtain clearance from SEC and NGX

IV. IPO Offer and Allotment

- a) Offer period opens and closes.
- b) Forward allotment proposal and draft newspaper announcement to SEC.
- c) Obtain SEC clearance of Allotment.
- d) Disburse net Offer proceeds to issuer.
- e) Publish allotment announcement.
- f) Return excess/rejected monies.
- g) Credit CSCS accounts of successful applicants.
- h) Admission of shares to NGX Board.
- i) File post offer completion/summary report with SEC.

Guidelines for Advertisement during an IPO

The SEC Rules mandate that no issuer or issuing house shall publish any advertisement relating to public offer without its approval. All advertisements must be truthful and not misleading. Any advertisement reproducing or purporting to reproduce any information contained 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. An advertisement is considered to be misleading if it contains:⁹

- i. 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; and
- ii. an inaccurate portrayal of past performance or its portrayal in a manner that suggests that past gains or income will be repeated in the future.

Advertisements should avoid using extensive, technical, legal terminology or complex language and not include excessive details which may distract the investor. No advertisement should include any slogans or brand names for the issue except the normal commercial name of the company or brand names of its products already in use. No slogans, expletives or non-factual and unsubstantiated titles should also appear in the advertisements. Additionally, evidence of any award received by the issuer to be stated in the advertisements shall be forwarded to SEC for clearance before the advertisements. The Rulebook also regulates the advertisement of public offers and imposes penalties on any person who violates its rules.¹⁰

The IPO Prospectus

Section 315 of the ISA defines a prospectus as any written or electronic information, notice, advertisement or other forms of invitation offering to the public for subscription or purchase, any shares, debentures or other recognized securities of a company and other issues or scheme. The information required in a prospectus is to be in the manner set out in Rule 285 to 292 of the SEC Rules and Rule 3.1 of the Rule Book.

Sanctions for Breach of the Rules Governing IPOS in Nigeria

The ISA and SEC Rules prohibits the offer and sale of the securities of a public company without the prior registration of the securities and approval of SEC¹¹. Anyone who does so commits an offence and is liable on conviction to a fine of ₦1,000,000 or to a term of imprisonment of 3 years or to both such fine and imprisonment. SEC may, in lieu of a prosecution, impose a penalty of ₦1,000,000 and a further sum of ₦5,000 for every day which the violation continues.¹² The SEC Rules also impose sanctions where a prospectus includes any untrue statement or mis-statement¹³.

Furthermore, under the Rulebook, an issuer that breaches the Rules will be subject to sanctions, including but not limited to fines, suspension from trading, delisting from the NGX Board, transfer to another board of the Exchange or public reprimand.¹⁴

Continuing Obligations of Listed and Quoted Companies

- a) Submission of quarterly, semi-annual and annual statements to the NGX and SEC¹⁵.

⁹ Rule 284 (4), SEC Rules

¹⁰ Rule 14.4 of the Rulebook

¹¹ Section 75, Investment Securities Act, 2007, and Rule 282, SEC Rules

¹² Section 54 (6) & (7), Investment Securities Act, 2007

¹³ Rule 292 and 293, SEC Rules

¹⁴ Rule 12.5 of the Rule Book

¹⁵ Rule 17.20 of the Rule Book, Section 60, ISA and Rule 39, 41 and 42 of the SEC Rules

- b) Annual certification on adherence to corporate governance requirement.
- c) Every issuer will have and maintain a publicly accessible website. It shall publish on their website all documents requiring publication on the NGX website, including announcements, circulars, annual and interim financial and other reports, listing documents etc.¹⁶
- d) Continuous disclosures on material information¹⁷.
- e) Mandatory use of the NGX's issuer's portal for the submission of information to the NGX.

Duration and Transaction Costs

The indicative timeline for listings and public offerings, initial public offerings is 6-9 months, subject to regulatory approvals. The total cost of issue shall not exceed 2.833% for equity of the total gross proceeds excluding underwriting commission and registrars' fees from the issue, or such percentage of the gross total proceeds as SEC may prescribe from time to time¹⁸.

Conclusion

Despite the capital market crash in 2008, the Nigerian equities market have since recovered and recorded positive growth since 2020 with the restoration of investor confidence in the market. The current growth is supported by fundamental factors that reflect the growth potential of the corporate sectors (i.e., trade, construction, telecoms, and financial services sectors), the resilience of the Nigerian economy, and investor activism. On 28 March 2024, the Central Bank of Nigeria issued a circular titled "**Review of Minimum Capital Requirements for Commercial, Merchant and Non-Interest Banks In Nigeria.**" The circular increases the minimum share capital of these financial institutions and provides specific options for the new capital raise¹⁹. These options are primarily within the capital market. It is therefore expected that the capital market will witness many activities and public offerings in the next two years.

¹⁶ Rule 17.25 and 17.2 Rule Book. See also Rule 42 as amended, SEC Rules for minimum disclosures by public companies on their websites.

¹⁷ Rule 18.2 Rule Book

¹⁸ Rule 314 as amended, SEC Rules

¹⁹ Private placement, rights issue, offer for subscription, mergers and acquisitions and downgrade of license category



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