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TEMPLARS Transcripts: Capital Markets Digest

Regulatory Update

A. The Securities and Exchange Commission (“SEC”) Issues Framework on Banking Sector Recapitalization Programme

Following the Central Bank of Nigeria’s (“**CBN**”) circular on the Minimum Capital Requirement for Commercial, Merchant and Non-Interest Banks dated 28 March 2024 (the “**CBN Recapitalization Circular**”)¹, the SEC issued an external memorandum establishing a framework for all banks seeking to raise capital pursuant to the CBN Recapitalization Circular (the “**Framework**”). The Framework is aimed at ensuring an efficient and transparent capital raise process for all banks and is a significant demonstration of regulators working in sync with each other to ensure that a clear compliance framework is in place.

The Framework provides a checklist of the documentation and requirements for each approved recapitalization method in the CBN Recapitalization Circular, and sets out the applicable costs as well as the timelines for the SEC’s approval for each recapitalization method. The Framework must however be read with other rules and regulations of the SEC.

In anticipation of the increased activity in the capital markets due to the CBN recapitalization requirements, the Framework provides welcome clarity, and some degree of regulatory certainty to banks raising capital in the market. This will ensure that all capital raising exercises are transparent, and compliance will go a long way in boosting investor confidence.

B. SEC Issues Exposure Draft for Rules for Private Companies Securities Listing and Allotment

In May 2024, the Securities Exchange Commission (the “**SEC**”) circulated an exposure draft for its proposed rules to regulate the issuance, allotment and registration of debt securities by private companies (the “**Private Companies’ Securities Rules**”). Until the enactment of the Business Facilitation (Miscellaneous Provisions) Act, 2022 in 2023 (the “**BFA**”), private companies were prohibited from offering their securities to the public for subscription. The BFA empowered the SEC to issue the Private Companies’ Securities Rules.

¹ Templars’ detailed analysis of the CBN Recapitalization Circular can be found in a recent client alert – [Client-Alert-CBN-New-Minimum-Capital-Requirements-for-Banks.pdf \(templars-law.com\)](#)

By the Private Companies' Securities Rules, the SEC is proposing certain criteria for private companies who intend to issue securities by a public offer. A private company may undertake public offerings: (a) if they are registered in Nigeria and have at least three years of operational track record, (b) for the issuance of specified debt securities particularly plain vanilla bonds and sukuk, (c) targeted at qualified investors, and (d) subject to a maximum of three issuances to raise an amount not exceeding ₦15bn in a one-year period. Any further issuances would require the company to re-register as a public company. Thus, while private companies are still prohibited from offering equity securities to the public, the Private Companies' Securities Rules will, if finalized and issued by the SEC, permit private companies to offer debt securities to the public subject to the prior clearance and registration with the SEC.

The Private Companies' Securities Rules further aim to regulate various aspects of the issuance/allotment by private companies and stakeholders' roles within the securities market, focusing on debt securities issuances, registered exchanges and platforms, and registered capital market operators.

Additionally, it would appear that the SEC is looking to provide avenues for private companies (and delisted public companies that have now converted into private companies) attempting to restructure and adapt to the current macro-economic environment to raise capital through debt instruments where there is deep investor appetite flowing from the recent high interest rates.

By setting out a framework for transparency, compliance, and proper use of funds under these rules, it is clear that the SEC, is seeking to ensure that securities issued in the Nigerian capital markets meet the highest standards, in order to increase investor involvement.

We therefore expect that if the Private Companies' Securities Rules are issued, this move will stimulate significant activity in the debt capital markets as we anticipate private companies taking advantage of this framework in their capital raising efforts.

C. SEC Press Releases, Circulars and Directives

Mandatory Audit Firm Rotation for Public Companies

Further to the SEC's observation that public companies ("PCs") and capital market operators ("CMOs") have been largely non-compliant with section 9.3 of the Audit Regulation 2020 issued by the Financial Reporting Council of Nigeria (the "**Audit Regulation 2020**"), the SEC has indicated its intention to enforce compliance by CMOs and PCs going forward. Specifically, section 9.3 of the Audit Regulation 2020 addresses a lacuna in the extant Nigerian Code of Corporate Governance 2018 ("**NCCG**"). The NCCG provides for a 10-year period for the rotation of auditors to public companies but is silent on the rotation period for public companies with joint auditors. Section 9.3 of the Audit Regulation 2020, however, provides for a maximum period of fifteen (15) years for the rotation of joint auditors. Consequently, the SEC requires all PCs and CMOs to fully comply with the Audit Regulation 2020.

The SEC's approach to compliance is commendable. Rather than penalize PCs and CMOs for non-compliance, it has taken a more market-friendly approach to enforcing compliance with the Audit Regulation 2020. PCs and CMOs must take advantage of the SEC's softer approach to ensure full compliance with section 9.3 of the Audit Regulation, 2020 in the coming months.

This directive is poised to encourage a cohesive application of the NCCG and Audit Regulation 2020 within the Nigerian capital market, and is indeed a positive signal to stakeholders in the Nigerian capital markets, that the primary regulator understands that the enforcement of rules and regulations transcends the generation of revenues.

Framework on Accelerated Regulatory Incubation Program (ARIP) for the Onboarding of Virtual Assets Providers (VASPs) (the "ARIP Framework")

The SEC introduced the ARIP Framework as a solution to the regulatory deficiency within the digital assets ecosystem i.e. the delay in issuing the definitive SEC rules on digital assets. On 21 June 2024, the SEC issued a circular informing the public of its onboarding of Virtual Assets Service Providers (**VASPs**) through the Accelerated Regulatory Incubation Programme (**ARIP**).

The ARIP Framework has a wide scope, applying to all operating and prospective VASPs that carry on business in Nigeria or offer services to Nigerian consumers. It also proposes eligibility requirements focusing on incorporation status, location of its principal officer and physical office, nature of business and pending registration with the SEC. The application stages are divided into an initial assessment phase and an application phase resulting in the issuance of an approval in principle (AIP).

Pending the issuance of the SEC's proposed amendments to the SEC Rules on Issuance, Offering Platforms and Custody of Digital Assets dated 11 May 2022, the ARIP Framework creates the opportunity for key players in the ecosystem to once again find their footing and gain market traction that comes from regulatory stability.

Templars' detailed analysis of the ARIP Framework can be found in this recent [Client Alert](#).

Compliance of Public Companies with the Investments and Securities Act

In its efforts to ease compliance for the first-time adoption of the guidance issued on 8 November 2021 by the SEC on Internal Control over Financial Reporting (ICFR) by public companies, the SEC directed that the Directors and External Auditors' reports on ICFR reports (the "**ICFR Reports**") be filed separately with the SEC alongside annual reports and accounts for the financial year 2023 to address potential first-time adoption challenges. The guidance was in relation to compliance with sections 60-63 Investments and Securities Act 2007.

The SEC noted that the ICFR Reports for subsequent years are required to be included as part of the companies' annual reports and accounts.

This is another noteworthy step by the SEC geared towards ensuring that public companies comply with their yearly corporate governance filing requirements. Clearly, the SEC's approach is to deepen compliance by taking a stance that encourages an increase in the rate of compliance and number of compliant entities, as opposed to pursuing strict enforcement of regulatory provisions by way of penalties and fines.

Implementation of Enterprise Risk Management

All CMOs are now required to adopt Enterprise Risk Management (**ERM**) frameworks that conform to internationally recognized risk management standards, such as the Committee of Sponsoring Organizations of the Treadway Commission, International Organisation for Standardization and the Financial Action Task Force Recommendations from 16 June 2024 following a directive from the SEC.

The ERM frameworks adopted by CMOs in compliance with the SEC's directive must address; (i) risk governance structures setting out clear roles and responsibilities; (ii) systematic process for identifying and prioritizing risks; (iii) manage and mitigate identified risks; (iv) risk appetite and tolerance statement; (v) monitoring risk factors and regular reporting procedures to senior management and board of directors and (vi) organizational risk awareness programmes. Additionally, such frameworks should consider the relevant CMO's operational structure, business activities, clients' demography, products and services including delivery mechanism among others.

The SEC further that directed that all CMOs should submit:

- (a) a board-approved risk management policy (selectable and searchable PDF format) on or before September 30, 2024 via the e-mail rbs@sec.gov.ng to obtain a "No Objection";
- (b) an annual risk profile not later than January 31²;
- (c) a report for the SEC's review setting out assessment of emerging threats and mitigating measures upon the occurrence of the following events: (i) development and introduction of new products, business practices, delivery mechanisms and technology, (ii) new vulnerabilities and ML/TF/PF³ typologies, (iii) significant changes in beneficial ownership, business strategy and other institutional factors, (iv) expansion to new geographic areas and (v) changes in clients' classification.

This is generally a commendable move. While CMOs (especially their compliance units) may view this as an additional regulatory requirement to fulfil, if properly leveraged, it is an opportunity for CMOs to bring their operations up to global standards and strengthen their internal risk management and mitigation processes. This will inevitably strengthen the market and increase investor confidence.

Deals Alert

The Nigerian alcoholic beverages market has welcomed new entrants while bidding farewell to erstwhile long standing international stakeholders like Guinness and Heineken. The end of the second quarter, and the beginning of the third quarter, were marked by the opening of the equity capital raises by a number of commercial banks, following the issuance of the CBN Recapitalization Circular. The firm advised on three, out of the five deals.

A. Tolaram Group Acquires stake in Guinness Nigeria plc

Leading Singaporean conglomerate, Tolaram group, has acquired Diageo's 58.02% equity stake in Nigerian Exchange list Guinness Nigeria plc. This acquisition marks Tolaram's entry into the Nigerian alcoholic beverages market, following its previous investments in infrastructure through its Lekki Deep Sea Port and Lagos Free Zone Company projects.

As part of this transaction, under Tolaram control, Guinness Nigeria plc will enter into long term licence and royalty agreements with the exiting Diageo, under which Guinness Nigeria plc will continue to manufacture and distribute Guinness and other Diageo brands across Nigeria.

Deal completion is subject to Federal Competition and Consumer Protection Commission and SEC clearance.

B. Enjoycorp Limited Acquires Raysun Nigeria Limited

In a significant addition to Enjoycorp Limited's food and beverages portfolio, EnjoyCorp has concluded the acquisition of Raysun Nigeria Limited (a subsidiary of Heineken International B.V and parent company of Nigerian exchange listed, Champions Breweries plc). The transaction resulted in the indirect acquisition of a controlling stake in the leading Nigerian brewery company, Champion Breweries plc.

² It is not clear from the circular if it is an annual report due every January 31 or if it is a one-off report due January 31, 2025. Enquiries can be made via rbs@sec.gov.ng.

³ Money Laundering/Financing of Terrorism/Proliferation Financing

The transaction signifies Enjoycorp Limited's entrance into the food & beverage section and signifies the growing trend of local participation and acquisition across the Nigerian food and beverage value chain.

C. Fidelity Bank Commences Capital Raise Exercise

Fidelity Bank plc commenced its recapitalization programme on 20 June 2024. Fidelity Bank plc has structured its capital raise as a joint rights issue and public offering, offering 10 billion ordinary shares of 50 kobo each at ₦ 9.75 per share on the Nigerian Exchange and a rights issue of 3.2 billion ordinary shares of 50 kobo each at ₦ 9.25 per share.

This marks the first bank recapitalization open to the public following the CBN Recapitalization Circular, with Fidelity Bank plc seeking to raise ₦ 125 billion Naira via its public offering and rights issue. Given the 24-month compliance timeline under the CBN Circular, this capital raise will likely shape Fidelity Bank plc's approach to recapitalization and act as a measure of investor appetite for other banks as they prepare for their respective capital raises.

D. Access Holdings Announces Rights Issue

On 08 July 2024, Access Holdings plc ("**Access Holdings**") opened its rights issue for subscription by existing shareholders in the company. By the rights issue, Access Holdings seeks to raise ₦ 351 billion Naira by offering 17.7 billion ordinary shares of ₦ 0.50 each at ₦ 19.75 per share for one new ordinary share for every two existing ordinary shares.

The general market sentiment is that the rights issue is a safe but strategic route for Access Holdings' recapitalization given its strong shareholder base. We anticipate that existing shareholders will be eager to exercise their rights.

E. Guaranty Trust Holdings Company's Public Offer

Guaranty Trust Holdings Company (GTCO) plc announced its recapitalization programme which opened on 15 July 2024. By way of a public offer, GTCO is seeking to raise ₦ 400.5 billion naira on the Nigerian Exchange through newly issued 9 billion ordinary shares of 50 kobo each at ₦ 44.50 per share.

GTCO projects that proceeds from the issue, which it expects to be about ₦ 370 billion, will enable it to comply with the the CBN Recapitalization Circular. For investors who have an eye on the Nigerian banking sector, this is expected to be another significant offering.