



G. ELIAS

**Highlights of the Key Events
in the Nigerian Capital Markets**

First Half of 2023

1. Introduction

In the paragraphs below, we set out some of the key developments in the Nigerian capital markets from January 2023 to June 2023.

2. Regulatory & Commercial

- 2.1 **Moody Downgrades Ratings of the Government of Nigeria and Nine Nigerian Commercial Banks.** On January 27, 2023, Moody's Investors Service ("**Moody**") initially downgraded the credit rating of the Government of Nigeria, as sovereign, from "B3" to "CAA1". Moody on January 31, 2023 further downgraded the 'long-term deposit ratings', 'issuer ratings', and 'senior unsecured debt ratings' of nine (9) Nigerian commercial banks viz; Zenith Bank Plc, First City Monument Bank Limited (FCMB), Access Bank Plc, Fidelity Bank Plc, Union Bank of Nigeria Plc, Guaranty Trust Bank Limited, First Bank of Nigeria Limited, Sterling Bank Plc and United Bank for Africa Plc from "B3" to "CAA1".
- 2.2 **Nigeria to launch Carbon Tax System to Reduce Emission and Raise Revenue.** In line with the Energy Transition Plan to be driven by the National Council on Climate Change ("**NCCC**") in accordance with the Climate Change Act, 2021, the Nigerian Government launched the Carbon Tax Policy. The Carbon Tax Policy is aimed at reducing carbon or greenhouse gas emissions and raising revenue generation.
- 2.3 **The Exemption of 5 per cent (5%) Excise duty for Digital Economy Sector.** The Federal Government excluded the digital economy sector from the contentious five per cent (5%) excise duty proposed earlier in the Finance Act, 2022.
- 2.4 **NGX Plans to Trade in Non-Depository Receipts to Boost Capital Market activities.** The Nigerian Exchange limited has echoed its intention to introduce Non-Depository Receipts to further deepen activities in the Nigerian Capital Markets.
- 2.5 **The Securities and Exchange Commission announces Notice of Acceptance of Applications for the Regulatory Incubation (RI) Program.** On April 28, 2023, the Nigerian Securities and Exchange Commission announced that it had commenced taking applications from interested fintech innovators for the RI program. This comes nearly two years after the establishment of the RI program in June 2021. The RI program is designed to provide a controlled environment that accommodates the innovation of fintechs in the Nigerian capital market.
- 2.6 **Agusto & Co. Voluntarily Aligns with the Guidelines for External Reviewers.** Agusto & Co. has aligned with the International Capital Market Association's (ICMA) Guidelines for External Reviewers covering Green Bonds, Social Bonds and Sustainability-Linked Bonds Principles.

3. Case Law

- 3.1 **The Supreme Court Re-affirmed the Exclusive Jurisdiction of the Investment and Securities Tribunal on Disputes in the Nigerian Capital Market.** On January 13, 2023, the Supreme Court of Nigeria in (Suit No.: SC/314/2007) – *Mufutau v. Securities and Exchange Commission* delivered a judgment which conferred exclusive jurisdiction on the Investments and Securities Tribunal (the "**IST**" or "**Tribunal**") regarding disputes in the capital market. The Supreme Court held that *inter alia* that "...[B]ased on the foregoing, it implies that any grievance, whether on denial of fair hearing by the Administrative Proceedings Committee as in the present case, rule of law, equity, facts or law, etc., should be instituted in the Investment and Securities Tribunal (IST). It is unequivocal that the proper forum with jurisdiction to hear and determine the case of the Appellant is the Tribunal and not the Federal High Court...".

- 3.2 **The Supreme Court Held that the Investments and Securities Tribunal has no Power to make Orders of Certiorari or Injunction.** The Supreme Court of Nigeria in *Mufutau v. Securities and Exchange Commission (Supra)* further held that there is nothing whatsoever in the Investments and Securities Act (1999 and 2007) that gives the Investments and Securities Tribunal judicial power to make orders of certiorari or injunction. Hence, if a Claimant had taken his claims for certiorari and injunction to that tribunal, the tribunal would have had no power to make the orders the Appellant was seeking, even if the tribunal had found merit in his claim.
4. **Legislative**
- 4.1 **Business Facilitation (Miscellaneous Provisions) Act, 2023.** On February 13, 2023, President Muhammadu Buhari gave his executive assent to the Business Facilitation (Miscellaneous Provisions) Act (the “BF Act”). The BF Act amends seeks to improve the ease of doing business in Nigeria, by amending statutes that have a direct impact on the Nigerian business environment.
- 4.1.1 **Allotment of Securities by Private Companies.** The BF Act amended the Investment and Securities Act, 2007, by providing, among others, that a private company can allot its securities to the public through any lawful means as the Securities and Exchange Commission may prescribe by regulation.
- 4.1.2 **The Eligibility of Pension Assets for Securities Lending.** Pursuant to the amendment of Section 89(1)(c) of the Pensions Reform Act by the BF Act, pension assets are eligible for securities lending.
- 4.2 **The National Insurance Commission releases Sandbox Guidelines.** The National Insurance Commission issued Regulatory Sandbox Guidelines which became effective May 1, 2023, to drive innovation of insurance products and services through digitalization of insurance operations in line with the International Best Practices.
- 4.3 **SEC approves amendments to NGX Rules.** SEC approved the following NGX Rules and Rule Amendments; (a) Amendments to Sponsored Access Rules; (b) Amendments to Rule 10.3(A): Chief Compliance Officer (Trading Licence Holders Rules); and (c) Rules for Fixed Income Dealers on NGX.

LOCATIONS

LAGOS OFFICE
6 Broad Street
Lagos, Nigeria

T: +234 (1) 460 7890
E: gelias@gelias.com

ABUJA OFFICE
2nd Floor, Abia House,
Plot 979, First Avenue,
Central Business District
F.C.T, Abuja.

T: +234 (1) 888 8881

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