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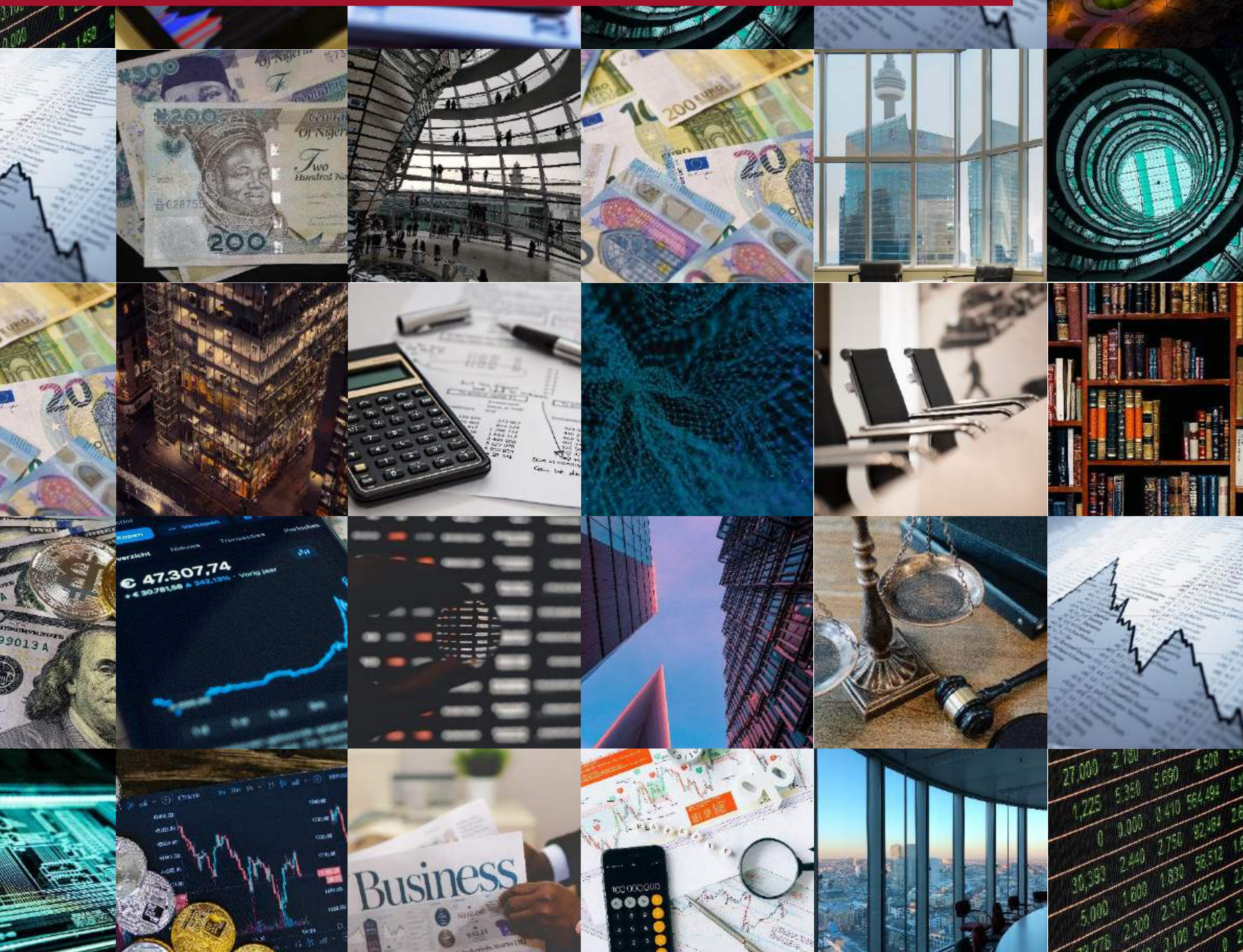
2021 in Review

Some Significant Events in Nigeria’s Capital Markets



Some Significant Events in Nigeria's Capital Markets in 2021

1. The Finance Act 2020 dispels all perplexities on exemption of securities (debt, equity, derivative, and hybrid securities) from value added tax (VAT). Issuance and transfers of securities in Nigeria are exempt from VAT. The special VAT exemption for securities in the Value Added Tax (Exemption of Proceeds of the Disposal of Government and Corporate Securities) Order, 2011 is no longer relevant as the Finance Act 2020 amends the Value Added Tax Act, CAP V1, Laws of the Federation 2004 itself.

2. Nigerian issuers at the International Debt Capital Markets. In 2021, Ecobank Nigeria Ltd. (US$300 million, 7.125%, 5-year tenor)*, Access Bank Plc (US$300 million, 10.5%, 5-year tenor), Fidelity Bank Plc (US$400 million, 7.765%) and United Bank for Africa Plc, (US$300 million, 6.75%, 5-year tenor)* issued Eurobonds. The Federal Government of Nigeria, through the Debt Management Office, also successfully issued Eurobonds in September 2021 (US$4 billion at 6.13% (7-yr tenor), 7.38% (12-yr tenor) and 8.25% (30-yr tenor)).

3. Additional Tier 1 Basel III Compliant Eurobonds Issuance. CBN's issuance of the Guidelines on Regulatory Capital in September 2021 for BASEL III implementation, triggered the issuance in the international debt capital markets of perpetual notes (Eurobonds) on terms constituting such notes as Additional Tier 1 capital. In addition to the Eurobonds issuance in September 2021, Access Bank Plc in October 2021 successfully issued the very first (by a Nigerian bank) Basel-III compliant non-callable 5.25-year benchmark USD-denominated Additional Tier 1 bonds. Other Additional Tier 1 Eurobond Issuances by Nigerian banks are in the pipeline for early 2022. It is interesting to note that the criteria for including securities as Additional Tier 1 capital make it of a similar character as non-participating equity – a concept that is foreign to Nigerian corporate law. Additionally, it would be interesting to see how the tax authorities will tax income or capital gains on perpetual bonds, bearing in mind that it is a nascent development.[1]

4. Private Offers by Private Companies. Private companies began issuing notes/bonds on FMDQ Group's Private Market platform. It is a platform for private companies to privately issue securities to a target group of investors. Ultimately, it seeks to serve as an information repository for the recording of activities of private companies in the Nigerian debt and equity capital markets. The offerings on the Private Market Platform are strictly targeted at select investors and are not the subject of public offerings. This is because all public offerings of securities in Nigeria or securities offerings by public companies registered in Nigeria require the authorisation or "no objection" of the Securities and Exchange Commission ("**SEC**") and must be carried out in strict compliance with extant SEC rules and regulations.

5. Nigerian Stock Exchange (NSE) Becomes Nigerian Exchange Limited (NGX). The demutualization of the NSE culminated in the listing of the Nigerian Exchange Group Plc on Nigerian Exchange Limited on October 15, 2021. The entire process involved a restructuring of the NSE into a holding company with three (3) wholly-owned

[1] Subsequent publications will provide fuller analysis.

subsidiaries (the securities exchange, a regulatory body, and a real estate business), apart from NGX's other subsidiaries.

6. Approval of Derivative Contracts. NGX has received approval for 7 (Seven) derivatives contracts from the SEC. The approved contracts are Access Bank Plc Stock Futures, Dangote Cement Plc Stock Futures, Guaranty Trust Bank Plc Stock Futures, MTN Nigeria Communications Plc Stock Futures, Zenith Bank Plc Stock Futures, NGX 30 Index Futures and NGX Pension Index Futures. This approval took the NGX a step closer to the planned launch of West Africa's first Exchange Traded Derivatives.

7. NG Clearing Limited Launches Operations as a Central Counterparty Clearing House. NG Clearing Limited, following the approval of the SEC, launched operations as a central counterparty clearing house (first of its kind in West Africa) for the clearing and settlement of exchange-traded derivative products in December 2021. This means that the NGX's proposed West Africa's first Exchange Traded Derivatives is set to become a reality in the near future.

8. Warehousing and Collateral Management Rules for Commodities Exchanges. The SEC issued the Rule on Warehousing and Collateral Management in March 2021 for commodities exchanges. Commodities exchange are required to abide by these rules for the regulations of the rights, rules and responsibilities of all their participants as it relates to (a) the operations of warehouses that store commodities traded on the exchanges, (b) collateral managers and (c) issuance of warehouse receipts.

9. Regulatory Fintech Sandbox. In June 2021, the SEC via a circular announced the establishment of a regulatory incubation program for FinTech companies – specifically those fintech companies using innovative technology to offer a new type of financial product or service, or applying innovative technology to an existing financial product or service. The program was received with mixed reactions from fintech players in Nigeria. For some, the sandbox is an opportunity for operational FinTech companies to roll out products and services whose development had been stalled due to absence of clear regulations. For others, it is a case of regulations chasing after innovations.

10. New Charges on Bond Transactions: Effective from January 1, 2022, certain regulatory fees on bond transactions at the secondary market will apply as follows: (a) a fee of 0.025% on the total value of all secondary market transactions on bonds payable to the SEC; (b) a fee **not exceeding** 0.025% payable to the relevant securities exchange on which the transactions occurred and (c) a single regulatory fee of 0.0001% of the total value of secondary market transactions on bonds if executed by a dealing member(these transactions are exempt from the 0.025% fees in (a) and (b) above)[2].

11. Custody requirements for Mutual Funds and other Collective Investment Schemes (CISs). The SEC announced that it would enforce compliance by all CISs in Nigeria of 100% custody requirements and commenced policies to implement the extant

[2] Subsequent publications will provide fuller analysis.

applicable rules. Thus, all clients' assets via the CISs were to be held under an independent custodial agreement.

12. SEC's New Annual Supervision and Regulatory Fees for CISs and Discretionary and Non-discretionary Funds/Portfolio: The SEC introduced annual supervision fees for CISs and regulatory fees for discretionary and non-discretionary funds/portfolio in January 2021 and revised it upward in December 2021. This is quite remarkable bearing in mind that there is a cap on the operating expenses a CIS can incur under the SEC Rules.

13. SEC Establishes a FinTech Division. In September 2021, SEC announced that it has set up a Fintech division to study cryptocurrency investments and products to help it initiate policies that will help regulate the sector.

14. SEC issued the Crowdfunding Rules. Nigeria's investment crowdfunding rules came into effect on January 21, 2021. The rules, which regulate crowdfunding business in Nigeria to ensure protection of investors and foster innovation in the conduct of securities business, sets out the obligations and limitations of regulated players in the crowdfunding process. All investment crowdfunding portals and digital commodities investment platforms were mandated to, latest by June 2021, register with the SEC and comply with the eligibility and operational requirements for capital raising on, or operating, a crowdfunding portal.

15. Public Offer Targeted at Retail Investors. For the first time in the last decade or so, a public offer of shares was made specifically targeting retail investors in Nigeria. In December 2021, MTN Nigeria Communications Limited ("**MTN**") made an offer for sale of shares*, 90% of the shares on offer available for retail investments (as distinct from investments by High Networth Individuals and Qualified Institutional Investors). Interested retail investors could directly select a stockbroker, open a CSCS account, subscribe for the MTN shares on offer, and pay for the subscription all on a mobile application (i.e., the Primary Offer app). The minimum investment amount was low enough to make the offer an attractive deal for individuals with modest earnings.

16. The Expiration of the Companies Income Tax Exemption Order 2011 ("**CIT Exemption Order**"). Bonds issued to companies and remaining outstanding after January 2, 2022, will not enjoy the exemption on withholding taxes provided by the CIT Exemption Order. The CIT Exemption Order is effective for a period of ten years from January 2, 2012. There have been various conversations regarding renewing the Exemption Order as well as on restructuring of outstanding bonds in order to avoid companies income tax exposure on interest payments. This conversation will remain relevant in 2022 considering that the published version of the Finance Bill, 2022 is silent on the issue.

17. The Possibility of the Application of Capital Gains Tax obligation on the Disposal of Shares. Since 1998, capital gains on disposal of shares have been exempt from capital gains tax in Nigeria. However, the Finance Bill, 2022 proposes to tax capital gains at the rate of 5% on the disposal of shares in a company registered under Nigeria's Companies and Allied Matters Act, 2020. The obligation is triggered where the disposal proceeds, in aggregate, is more than ₦500,000,000.00 in any twelve consecutive months. Interestingly, the disposal proceeds are exempted from tax where it is reinvested in the

shares of any Nigerian company within the same year of assessment. In the case of a partial re-investment, only the non-invested portion will attract capital gains tax.

* G. Elias & Co. advised on these transactions.

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

www.africanlegalnetwork.com/nigeria | www.gelias.com