

THE INTERNATIONAL
CAPITAL MARKETS
REVIEW

EIGHTH EDITION

Editor
Jeffrey Golden

THE LAWREVIEWS

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CAPITAL MARKETS
REVIEW

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PREFACE

This book serves two purposes – one obvious, but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital markets (ICM) workload and equips them with a reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based, no longer enjoys the luxury – if ever it did – of focusing solely at home within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and technology more and more permits a practitioner to tackle international issues.

Moreover, the client certainly may have multi-jurisdictional ambitions or, even if unintended, its activities often may risk multi-jurisdictional impact. In such cases, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

Ironically, the second purpose this book aims to serve is to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local, but, from the standpoint of the reader, foreign scene, the comparative perspectives presented by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory frameworks, thereby also giving lawyers, in-house compliance officers, regulators, law students and law teachers an opportunity to create a checklist of relevant considerations both in light of what is or may currently be required in their own jurisdiction but also as to where things there could, or should, best be headed (based on best practices of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist practitioners to revise concepts, practices and advice in both our domestic and international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

Not long ago, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, on the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the more theoretical

aspects of our discussion and ground them in the specific example of capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited, that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), even when traditional approaches to contract construction as between courts in different jurisdictions may have differed.

In such cases, with so much at stake given the volumes of financial market trading on standard terms and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges to know at least how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners are any differently situated in this regard, or less in need of or less benefited by a comparative view when facing up to the often technical and complex problems confronting them, than are judges. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual and direct exchanges of information between lawyers from different jurisdictions. Ours should be an interdependent professional world. A world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the appendices to this book may help to identify local counterparts in potentially relevant jurisdictions (three new jurisdictions – China, the Netherlands and Switzerland – having been added this year). And, in that case, I hope that reading the content of this book may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. My admiration for our contributing experts, as I wrote in the preface to the last edition, continues. It remains, too, a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amid the growing interdependence of our professional world.

Jeffrey Golden

P.R.I.M.E. Finance Foundation

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NIGERIA

*Fred Onuobia, Ukamaka Okoli and Ayodele Ashiata Kadiri*¹

I INTRODUCTION

i The Investments and Securities Act, 2007

The Nigerian capital market is regulated by a panoply of laws, chief among them being the Investments and Securities Act, 2007 (ISA). Divided into 18 parts, the ISA makes provision for the establishment of the Securities and Exchange Commission (SEC). The SEC is the main regulatory organ of the Nigerian capital market, and has the power, *inter alia*, to:

- a* make rules and regulations for the market;²
- b* register and regulate securities exchanges and other self-regulatory organisations;
- c* register and regulate the issuance of securities;³
- d* intervene in the management and control of failing capital market operators;⁴ and
- e* in appropriate circumstances, impose penalties and levies on defaulting capital market operators.

Consequently, the Securities and Exchange Commission Rules and Regulation, 2013 (the SEC Rules) drawn up by the SEC pursuant to its powers, is considered the market's 'bible'. The SEC periodically releases new rules to complement the SEC Rules.

Two other key bodies established by the ISA are the Administrative Proceedings Committee (APC) and the Investments and Securities Tribunal (IST). The APC is a committee of the SEC established as a quasi-judicial fact-finding body. Essentially, it provides the avenue for market operators against whom complaints have been made (by investors and

1 Fred Onuobia is the managing partner, Ukamaka Okoli is a senior associate and Ayodele Ashiata Kadiri is an associate at G. Elias & Co.

2 The Securities and Exchange Commission (SEC) has issued the SEC Rules, 2013 (as amended), available at sec.gov.ng/regulation/rules-codes.

3 The Investments and Securities Act, 2007 (ISA), Section 315, defines 'securities' as: (1) debentures, stocks or bonds issued or proposed to be issued by a government; (2) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate; (3) any right or option in respect of any such debentures, stocks, shares, bonds, notes; or (4) commodities futures, contracts, options and other derivatives, and the term securities in this Act includes those securities in the category of the securities listed in points (1) to (4), which may be transferred by means of any electronic mode approved by the Commission and which may be deposited, kept or stored with any licensed depository or custodian company as provided under this Act.

4 ISA, Section 315 defines 'capital market operators' as 'any persons (individual or corporate) duly registered by the Commission to perform specific functions in the capital market', which covers brokers, underwriters, solicitors and their respective firms.

the SEC alike) to be heard prior to the determination of the complaint by the SEC.⁵ It goes without saying that a decision of the APC will be regarded as a decision of the SEC, and an appeal can therefore be made to the IST.

The IST is established under the ISA to adjudicate on any question of law or dispute involving:

- a* a decision or determination of the SEC in the operation and application of the ISA, and, in particular, relating to any dispute between:
 - capital market operators;
 - capital market operators and their clients;
 - an investor and a securities exchange or capital trade point or clearing and settlement agency; or
 - capital market operators and self-regulatory organisations;
- b* the SEC and a self-regulatory organisation;
- c* a capital market operator and the SEC;
- d* an investor and the SEC;
- e* an issuer of securities and the SEC; and
- f* disputes arising from the administration, management and operation of collective investment schemes.⁶

Decisions of the IST are to be enforced in the same manner as a decision of the Federal High Court (FHC). Appeals arising from decisions of the IST lie at the first instance to the Court of Appeal.

ii The Companies and Allied Matters Act

The Companies and Allied Matters Act (CAMA)⁷ is secondary in its applicability to the capital market. It governs most aspects of the incorporation and operations of companies and other corporate bodies requiring incorporation or registration with the Corporate Affairs Commission (CAC).⁸ To the extent that these companies and corporate bodies are participants in Nigeria's capital market, CAMA provisions are significant and apply also to the capital market. For instance, Parts VI and VII of the CAMA make provisions on the nature and types of shares and bonds to be issued by companies. These securities end up being offered and traded in the Nigerian capital market.

5 Under an SEC circular dated 16 February 2015 on complaints management, most complaints are now to be initially lodged and resolved at trade group level or by self-regulatory organisations, such as the Nigerian Stock Exchange. Complaints not resolved at this level are to be referred to the SEC. Consequently, market operators must register as members of their respective SEC-recognised trade groups. The objective of this arrangement is to secure speedy resolution of complaints.

6 See ISA, Section 274.

7 The Companies and Allied Matters Act, Cap C20, LFN 2004 (CAMA).

8 The Corporate Affairs Commission is established by the CAMA, Section 1. It is Nigeria's equivalent of the UK Companies House.

iii Other relevant statutes

Undoubtedly, other sector-specific legislation has a certain degree of relevance to the capital market. Arguably, the most important is that relating to banks⁹ (Banks and Other Financial Institutions Act, 1991), pension fund administrators¹⁰ (Pension Reform Act, 2014) and the Central Bank of Nigeria (CBN)¹¹ (Central Bank of Nigeria (Establishment) Act, 2007).

iv Regulation of foreign investment

There is no difference in the regulatory treatment of foreign investment in the capital market as compared with the regulation of local investment in the market. Dealings in foreign exchange are regulated by both statute and the CBN through regulations, circulars and directives. A key piece of legislation is the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act¹² (the FEMM Act).¹³ Foreign exchange (FX) transactions are also regulated by the Foreign Exchange Manual (the FX Manual), which was recently revised so that it conforms with the foreign exchange practices implemented by the CBN in the past two years.

There are no regulatory restrictions on foreign investment in the capital market. Pursuant to Section 26 of the FEMM Act:

A person, whether (a) resident in or outside Nigeria, or (b) a citizen of Nigeria or not, may deal in, invest in, acquire or dispose of, create or transfer any interest in securities and other money market instruments whether denominated in foreign currencies in Nigeria or not. A person may invest in securities traded on the Nigerian capital market or by private placement in Nigeria.

Nevertheless, a foreign investor seeking to invest in the market must ensure that any foreign currency to be invested in the market is imported into Nigeria through an authorised dealer.¹⁴ The FX Manual now permits authorised dealers to issue an electronic certificate of capital importation (eCCI) to the investor. The eCCI guarantees 'unconditional transferability of funds, through an authorised dealer in freely convertible currency, relating to dividends or profits (net of taxes) attributable to the investment'.¹⁵ Similarly, foreign exchange purchased

9 Banks are significant issuers of securities traded in the Nigerian capital market.

10 Pension fund administrators are influential investors in the market. Regulations made pursuant to the Pension Reform Act on assets that qualify for investments by pension fund administrators invariably dictate products that make their way to the capital market.

11 The Central Bank of Nigeria (CBN) regulates banks and dealings in foreign exchange in the Nigerian economy.

12 The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34, LFN 2004.

13 The Foreign Exchange Manual issued by the CBN is in furtherance of the regulatory duty imposed by the FEMM Act. The CBN also regularly issues circulars on the regulation of the use of foreign exchange in the economy. For example, the CBN, by a Circular on the 'Inclusion of some Imported Goods and Services on the List of Items not valid for Foreign Exchange in the Nigerian Foreign Exchange Markets' dated 23 June 2015, barred access to the foreign exchange market for the purchase of foreign exchange for investment in Eurobonds, foreign currency bonds and shares.

14 An 'authorised dealer' is a bank licensed under the Banks and Other Financial Institutions Act, 1991 and such other specialised bank issued with a licence to deal in foreign exchange. The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (the FEMM Act), Section 41.

15 FEMM Act, Section 15(4). See also Section II.iv of this chapter.

from the Nigerian Autonomous Foreign Exchange Market¹⁶ can be freely repatriated from Nigeria without any further approval. The freedom to repatriate must be exercised in accordance with the provisions of the FEMM Act and the FX Manual to avoid running foul of the forex repatriation regime.¹⁷

The SEC Rules also require portfolio investors to appoint a custodian and to file a copy of the letter of appointment of the custodian with the SEC within 10 working days of making the appointment.¹⁸

Nigerian law requires a foreign company seeking to operate in the Nigerian capital market to first incorporate and register a Nigerian company with the CAC.¹⁹ Subsequently, the company must register with and obtain the relevant licences or authorisations from the SEC before it can commence operations as a capital market operator in the market.²⁰

Similarly, a foreign company can only apply and be registered as a dealing member of the Nigerian Stock Exchange (NSE) upon registering and incorporating a separate Nigerian entity with the CAC.

v Cross-border securities transactions

Much like foreign investments, foreign issuers can issue, sell or offer for sale or subscription, securities to the public through the Nigerian capital market. Securities may be denominated in naira or any convertible foreign currency.²¹ The SEC Rules require foreign issuers to file an application for the registration of their securities with the SEC, and the application must be accompanied by a draft prospectus.²² Importantly, under new NSE Rules, foreign issuers may apply for the listing of their *sukuk* and debt securities on the NSE.

16 Defined in the FEMM Act as ‘a market which the authorised dealers, authorised buyers, foreign exchange end-users and the Central Bank are participants and may include other participants that the Government of the Federation may, from time to time, recognise’.

17 The South African telecommunications company, MTN, was directed by the CBN to refund the sum of US\$8.13 billion, which the CBN said was illegally repatriated from Nigeria. Fines were also imposed on several authorised dealers for forex repatriation infractions the CBN found them to have committed. See <https://guardian.ng/news/nigeria-orders-south-africas-mtn-to-refund-8-13-bln/> (accessed on 1 October 2018).

18 SEC Rules, Rule 409.

19 CAMA, Section 54 makes it a general requirement for all foreign companies intent on carrying on business in any sector of the Nigerian economy to obtain incorporation as a separate Nigerian entity before commencing business. The CAC certificate of incorporation issued to a foreign company pursuant to this provision is one of the documents required for registration with the SEC as a market operator.

20 SEC Rules, Rule 407. Other registration requirements include a certified true copy of the certificate of incorporation in the company’s country of domicile; proof of registration with the securities regulator or any other regulatory authority in the foreign entity’s country of domicile; and the shareholding structure of the foreign company.

21 SEC Rules, Rule 414.

22 Extensive provisions are made for the content of the draft prospectus in Rule 419 of the SEC Rules. The registration obligations placed on foreign issuers are the same as those placed on Nigerian public companies, trust companies, collective investment schemes, governments and government agencies, and supranational bodies.

Foreign issuers may, at the discretion of the SEC, be exempted from certain securities registration obligations under the SEC Rules if it is ‘in the public interest and where reciprocal agreement exists between Nigeria and the country of the issuer, or the issuer’s country is a member of the International Organization of Securities Commissions’.²³

vi The court system

Nigeria operates a common law system, but with a federal written Constitution²⁴ as the basic law. The Supreme Court of Nigeria sits atop the hierarchy of courts, with the Court of Appeal on the next rung. The high courts and National Industrial Court are on the next rung; these courts are referred to as superior courts of record. Of importance to the Nigerian capital market is the Federal High Court (FHC), which has 36 divisions across the country.

The FHC has exclusive jurisdiction over matters:

- a ‘arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act’;
- b ‘the administration or the management and control of the federal government or any of its agencies’; and
- c ‘any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the federal government or any of its agencies’.²⁵

Most operators in the capital market are limited liability companies incorporated under and regulated by the CAMA. It is arguable that the FHC has jurisdiction over matters that touch on the operation of these ‘CAMA companies’, even if such matters occur in the capital market. Points (b) and (c) above are also relevant to capital market disputes because the SEC, the main regulatory body of the capital market, is an agency of the federal government.²⁶

23 SEC Rules, Rule 416.

24 The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

25 Section 251 of the Constitution.

26 There is often an overlap of jurisdiction between the Federal High Court (FHC) and the Investments and Securities Tribunal (IST) in capital market disputes, and there have been no definitive pronouncements or general guiding principles laid down by the Supreme Court on this issue. Cases have therefore been determined individually, creating inconsistency, uncertainty and the opportunity to forum shop.

For example, in *Ajayi v. SEC* [2009] 13 NWLR Pt 1157, the FHC decision declining jurisdiction was upheld by the Court of Appeal. The case was for judicial review of an SEC decision through its Administrative Proceedings Committee. The FHC in declining jurisdiction stated that the Investments and Securities Act, 2007 (ISA) ‘rested the adjudication arising from the operation of the ISA within the purview of the IST’. That jurisdiction of the IST is not of a concurrent application with the FHC (per Peter-Odili, JCA at p. 26). However, another panel of the Court of Appeal in *Christopher Okeke v. SEC* (2013) LPELR-20355 (CA) refused to follow *Ajayi v. SEC*, and decided that the FHC had jurisdiction instead. The Court in its ruling stated that the jurisdiction of the FHC granted by the Constitution ‘cannot be whittled down or taken away by an ordinary Act of the National Assembly in the absence of any amendment to the provision [of the Constitution] in question’ (per Saulawa, JCA at p. 28).

vii The FMDQ OTC Securities Exchange

The FMDQ is the largest securities exchange in Nigeria by trading volume and focuses on debt and derivative products. It operates as a hybrid somewhat of a traditional securities exchange and an over-the-counter (OTC) platform. Equity securities are currently not admitted for listing on the FMDQ. Like the NSE and in furtherance of Part XIV of the ISA, the FMDQ established its investor protection fund in 2017. The FMDQ's listing requirements are similar to those of the NSE but dissimilar in its admission of commercial papers for listing. Also, unlike the NSE, the FMDQ operates only one quotation list.

The FMDQ also has a thriving derivatives platform and plays a vibrant role in the trading of OTC FX futures.²⁷ In 2016, the FMDQ, in collaboration with the CBN, launched the naira-settled OTC FX futures. The FMDQ also developed the Nigerian Autonomous Foreign Exchange Rate Fixing (NAFEX), which is a fixing methodology for the settlement of certain FX derivatives in the Nigerian market. Generally, and with the supervision of the CBN, the FMDQ is responsible for the registration and operational regulation of FX options and will spearhead the development of other risk management products and guidelines. The setting up of a central counterparty is imminent, as is broadening of the product offerings available.

viii The NSE

A very significant player in the Nigerian capital market is the NSE.²⁸ Established in the wake of Nigeria's independence from British colonial rule, the NSE operates an automated trading system and is, in conjunction with the Central Securities Clearing System Plc (CSCS), capable of offering electronic clearing, settlements, delivery and custodial services. Headquartered in Nigeria's commercial capital, Lagos, the NSE has 13 other branches in the country, where trading occurs simultaneously.

The NSE currently operates the Main Board, the Alternative Securities Market (ASeM), and the Premium Board, which was introduced in August 2015.²⁹ The ASeM Board is targeted at small and medium-sized enterprises, and requires fewer stringent listing requirements and relatively low capital-raising costs. Significantly, companies seeking to be listed on the ASeM must appoint a 'designated adviser' whose role is to navigate the company through the listing process and requirements, especially its continuing obligations once listed on the ASeM. Conversely, the Premium Board is for gold standard companies that successfully meet the most stringent standards of the NSE. Importantly, all trading and listing on the NSE occurs through dealing members, which are stockbroking firms so licensed by the NSE. Investors are required to open securities accounts with the CSCS.

27 See the Guidelines for the Operation of the Nigerian Inter-Bank Foreign Exchange Market, 2016.

28 The Nigerian Stock Exchange (NSE) is currently a non-profit-making CAMA company limited by guarantee. However, there are plans for the demutualisation of the NSE. In this regard, the SEC released the 'Rules on Demutualisation of Securities Exchanges in Nigeria' in the first quarter of 2015.

29 The Premium Board was officially launched by the NSE on 25 August 2015 with the three pioneer companies that successfully met the stringent listing requirements – Zenith Bank Plc, FBN Holdings Plc and Dangote Cement Plc. On 16 April 2018, the NSE migrated Access Bank Plc, Lafarge Africa Plc, Seplat Petroleum Development Company Plc and United Bank for Africa Plc to the Premium Board. These seven companies are the only companies listed on the Premium Board as at October 2018.

As mandated by the ISA,³⁰ the NSE has maintained an investor protection fund (IPF) since 2013. The IPF is administered by a board of trustees subject to the regulatory supervision of the SEC. The purpose of the IPF is for compensation of investors' losses arising from:

*the insolvency, bankruptcy or negligence of a dealing member firm of a securities exchange or capital point; and defalcation committed by a dealing member firm or any of its directors, officers, employees or representatives in relation to securities, money or any property entrusted to, or received or deemed received by the dealing member firm in the course of its business as a capital market operator.*³¹

Claims can be made against a dealing member, and the current maximum amount an investor can receive as compensation in a claim against a dealing member is 400,000 naira.³² The SEC launched the National Investor Protection Fund (NIPF) in 2015. The rules of the NIPF were finalised and became operational in June 2017. The launch of all these funds (i.e., the IPF, the NIPF and the FMDQ investment protection fund) is in furtherance of the investor protection mandate of the 10-year Nigerian capital market master plan launched in 2015.

ix Other securities exchanges

The NASD provides a formal OTC trading platform for unlisted securities of public companies. Unlike the FMDQ, equity securities can be traded on the NASD platform. Securities traded on the NASD are categorised as either 'blue tier' (higher disclosure requirements) or 'pink tier'.³³

There are a number of proposals to establish exchanges for commodities in addition to the Nigerian Commodity Exchange (NCX)³⁴ and the AFEX Commodities Exchange. The NCX was set up as a stock exchange in 1998 and converted into a commodity exchange in 2001. Major commodities currently being traded are agricultural produce such as cocoa, sesame seeds, palm produce and cowpea. The NCX recently announced that it would extend the use of its platform to solid mineral-related products. The NCX was the only commodity exchange in Nigeria until 2014 when SEC registered the first private sector commodities exchange – AFEX.³⁵ The Lagos Commodities and Futures Exchange is also currently being promoted by the Association of Stockbroking Houses of Nigeria, which signed a memorandum of understanding with the Central Securities Clearing System in 2017.

30 The SEC's national investor protection fund is 5 billion naira (approximately US\$16.4 million). See ISA, Section 197.

31 ISA, Section 198.

32 This amount might be inadequate to compensate a high net worth investor. In relative terms, however, it is a decent sum to the average small-time investor who is more susceptible to volatility in the market and misconduct on the part of market operators.

33 The NASD provides the rules for admission of securities on its website at nasdng.com/issuers/Admitted_securities (accessed on 8 October 2018).

34 See <http://nigeriacommex.com/en/> (accessed on 1 October 2018).

35 See SEC publication 'A Report on Commodities Trading Ecosystem in Nigeria', available at <http://sec.gov.ng/wp-content/uploads/2018/04/Report-of-TC-on-Commodity-Ecosystem-2.pdf> (accessed on 1 October 2018).

II THE YEAR IN REVIEW

i Derivatives

The derivatives regulatory space has been very active in recent years. Derivatives are largely traded on a bilateral basis between international banks and major Nigerian banks. Perhaps, because a majority of the players in the space are banks and the underlying instruments for most derivatives transactions that currently occur in the market are foreign exchange ones, the main regulator has been the CBN. Interestingly, the SEC and the NSE have also proposed different rules to guide the trading of derivatives.³⁶ While the NSE's rules will govern trading of derivatives on the NSE, the SEC rules will govern both OTC-traded derivatives and exchange-traded derivatives. In May 2018, the Senate of the National Assembly passed the Companies and Allied Matters Bill (the Companies Bill), which seeks to amend the CAMA. The Companies Bill includes provisions on the validity of netting arrangements in certain contracts, including derivative contracts. It is expected that the Companies Bill will be passed by the House of Representatives and assented by the President soon. These regulatory, albeit incomplete, interventions in the derivatives space are indicative of the growing relevance of derivatives in the Nigerian capital market.

ii CBN regulation

To provide some background, prior to 2016, certain hedging products had been approved by the CBN for offer by authorised dealers to their customers. In particular, Memorandum 5 of the FX Manual permits authorised dealers to deal in FX spot, forward, futures and swap contracts. In addition to this, in 2011, the CBN released 'Guidelines For FX Derivatives in the Nigerian Financial Markets', which lists the approved hedging products that authorised dealers can offer to their customers as 'FX Options, Forwards (Outright and Non-Deliverable), FX Swaps and Cross-Currency Interest Rate Swaps'. The 2011 guidelines further state that 'Authorised Dealers are to ensure that their customers are hedging trade- (visible and invisible) related foreign exchange exposures in their obligations and not speculating on the Naira'.

In 2016, as part of its response to the prevalent FX liquidity shortage in the Nigerian financial markets, the CBN issued its Revised Guidelines for the Operation of the Nigerian Inter-Bank Foreign Exchange Market (the Revised Guidelines). By the Revised Guidelines, naira-settled non-deliverable OTC FX futures (NDFs) were included in the 'approved hedging products' that authorised dealers can offer to their customers. As with other hedging products, NDFs must be backed by trade transactions (visible and invisible) or evidenced investment. The CBN further directed that the NDF trades were to be facilitated on the FMDQ platform. Generally, with the CBN review of the FX Manual, stakeholders anticipate further CBN circulars soon to explain how the changes in the FX Manual will affect the continued implementation of these guidelines.

36 The draft regulations by the NSE and the SEC can be accessed at www.nse.com.ng/regulation-site/IssuersRules/Rules%20of%20The%20Nigerian%20Stock%20Exchange%20Derivatives%20Market%20-%20For%20Exposure%20-%202022%20December%202017.pdf (accessed on 1 October 2018) and www.proshareng.com/news/Regulators/SEC_proposes_New_Rules_on_Regulation_of_/41570 (accessed on 8 October 2018), respectively.

iii OTC FX futures and NAFEX

The CBN issued a circular dated 21 April 2017, through which it established an investors' and exporters' window for eligible invisible transactions detailed under the miscellaneous payments of Memorandum 15 of the 2006 version of the FX Manual (Memorandum 14 of the 2017 revision). Via the same circular, the CBN gave the FMDQ the responsibility of publishing the NAFEX, to facilitate derivatives activities in the window. It is expected that the CBN will issue an updated circular recognising the new items in Memorandum 14 and detailing how the revisions to the FX Manual will affect derivatives activities in the investors' and exporters' window.

iv Electronic certificates of capital importation

As a result of the problems posed by the issuance of a paper certificates of capital importation (CCI), such as the difficulties encountered in transferring CCI from one investor to another or in replacing a lost CCI, the CBN initiated the development of an electronic CCI platform in 2016. In a circular dated 7 September 2017,³⁷ the CBN announced the deployment of the eCCI platform to authorised dealers and the public. Consequently, with effect from 11 September 2017, the processing of CCIs can be done electronically on the eCCI platform. The FX Manual now provides for eCCIs to be issued to foreign investors purchasing securities through the NSE and Nigerian treasury bills and foreign government bonds³⁸. The FX Manual also introduced a master eCCI for global depository receipts (GDR). Authorised dealers are expected to issue master eCCIs in the amount of the foreign exchange inflow to depository banks.

v New products

From the second half of 2017, the federal government has pioneered the issuance of new products in the market. The first was the seven-year 100 billion naira sovereign *sukuk* bond issued in September 2017. On 18 December 2017, Nigeria issued a five-year 10.69 billion naira sovereign green bond (SGB), which is the world's first Climate Bonds Certified sovereign bond. The SEC has also proposed rules on green bonds, which will be issued once the approval process is completed.³⁹ Additionally, the FMDQ, the Climate Bonds Initiative and the Financial Sector Deepening Africa are currently promoting a scheme targeted at driving education and awareness on the implementation of green financing in Nigeria, and as a consequence, the development of the green bond market and the non-sovereign debt capital market. The scheme (Nigerian Green Bond Market Development Programme) is supported by the SEC and other private sector stakeholders.

vi Sundry matters

In a circular dated 24 January 2018, the NSE announced that the nominal price of shares would now be determined by market forces. Hitherto, all shares quoted on the NSE had a floor price of 50 kobo (0.50 naira) per share. The Nigerian Insurance Commission,

37 The detail of this circular can be found at <https://www.cbn.gov.ng/Out/2017/CCD/Re%20Implementation%20of%20eCCI.pdf> (accessed on 1 October 2018).

38 Memorandums 19 and 20 of the FX Manual.

39 See <https://www.proshareng.com/admin/upload/reports/10806-ProposedNewRuleonGreenBonds-proshare.pdf> for a draft of the proposed rules (accessed on 1 October 2018).

NAICOM, recently revised upwards the minimum capital base for insurance companies and implemented a tier-based minimum solvency structure. There are likely to be a lot of capital-raising exercises (both debt and equity) in the insurance industry in the coming months as insurers seek to comply with the new requirements.

III OUTLOOK AND CONCLUSIONS

The Nigerian capital market can best be described as emerging, robust and dynamic. Current global economic challenges have no doubt had an effect on the Nigerian capital market. However, tailor-made regulations and products introduced by the SEC make the market attractive to both local and foreign investors.

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