TRADING OF FOREIGN LISTED SECURITIES IN NIGERIA – REGULATORY UPDATE

Introduction

Regulators of financial service sectors all over the world grapple with the overwhelming effect of disruptive technologies which have left policymakers and academics alike scratching their heads in search of a coherent set of regulatory remedies. This trend also applies to Nigeria, as evident by the recent directive of the Securities and Exchange Commission (SEC), that fintech companies facilitating trade in foreign listed securities, should desist from offering such securities to the Nigerian public through the fiat of registered Capital Market Operators.

From a neutral point of view, the above-mentioned platforms which include companies like Bamboo, Chaka, Risevest, etc. have so far offered Nigerians an opportunity that was hard to imagine not too long ago; the ability to invest in some of the juiciest foreign stocks, bonds, and other securities from US companies like Apple, Amazon, Tesla, Facebook, PayPal, etc. with a few swipes on a mobile phone, thereby expanding their investment reach beyond the borders of Nigeria.

As can be expected, this SEC directive on local trading of foreign securities is viewed from different perspectives by concerned Nigerians. This article aims to analyse the rationale/implications of SEC's recent directive.

What was the legal basis for the directive?

The SEC directive of 8th April 2021[1] referred to existing provisions of the SEC Rules and Regulations 2013 (Rule 414 and Rule 415), and the Investment and Securities Act, 2007 (Section 67 – 70).

Some points to note from the above-mentioned legislation include the following:

1. Rule 414 of the SEC Rules and Regulations 2013 permits the sale or offer for subscription of foreign securities to the Nigerian public, through the Nigerian Capital Market.

2. Rule 415 provides that "*Every foreign issuer of securities is required to file an application for registration of its securities with the Commission, accompanied by a draft prospectus and under such conditions as prescribed by the Commission.*" (Form SEC 6F)

3. Section 67 of the ISA 2007 permits only authorised public companies, statutory bodies, or banks (in Nigeria), to offer corporate securities to the public, or deposit money with any Nigerian company for such purposes.

4. Section 67 also mandates compliance with obligations placed on Sub-Brokers, Market Makers, Underwriters, and Issuing Houses under sections 73 to 87 of ISA 2007.

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[1] **Securities and Exchange Commission Nigeria** '*Proliferation of Unregistered Online Investment and Trading Platforms Facilitating Access to Trading in Securities Listed in Foreign Markets*" <https://sec.gov.ng/proliferation-of-unregistered-online-investment-and-trading-platforms-facilitating-access-to-trading-in-securities-listed-in-foreign-markets/> **Accessed on the 10th of April, 2021**

Penalties are prescribed for default, and the written consent of the SEC is compulsory for any such public offers of securities to the public.

Analysis

Notably, the SEC does not introduce any new laws, but simply refers affected companies to pre-existing laws. The SEC Rules do not place an absolute restriction on the sale or offer of foreign securities to local investors. Nonetheless, entities who intend to offer foreign securities for sale within Nigeria, are mandated to register such securities with the SEC. This requirement appears reasonable as it is understandable that economies often opt for protectionist policies geared at aiding domestic investment and curbing capital flight. However, regulators and policymakers need to conduct more research on the economic benefits which the exposure of Nigerian citizens to trading in foreign securities may offer to the economy at large. Though it may seem that Nigerian capital is being invested in foreign jurisdictions to the detriment of the local economy, consideration should also be given to the economic benefits which accrue from successful investments by the Nigerian middle class whose spending power is improved and who obtain a level of insulation from naira devaluation.

Furthermore, Section 67 of the ISA permits only Nigerian public companies, banks, or statutory bodies to offer corporate securities to the public or deposit money with any Nigerian company for trading in local or foreign securities. A capital market must be able to pool funds from both local and international financial markets through the formulation and implementation of policies that promote competition and foreign investment. Therefore, by restricting eligibility to public companies, Section 67 of the ISA may hinder foreign companies wishing to make their stock available to the Nigerian capital market and stifle the ease of doing business in this respect. Financial Authorities may need to explore additional options for the 'onboarding' of foreign securities to the Nigerian capital market through technological means.

Conclusion

Studies have shown that the efficiency in the way the Nigerian stock market (or any other stock market globally) dispenses with its functions, is a major determinant of economic growth in the country.[2] Although the development of the tech space in Nigeria (particularly Fintech) has created several investment opportunities within Nigeria and outside Nigeria; for evident economic growth, it is imperative that laws evolve to encourage, whilst regulating innovative technological developments.

The SEC in their efforts to ensure proper regulation of the capital market, may choose to 'borrow a leaf' from other jurisdictions such as India and the USA, where investments in foreign company stocks are permitted through several specialized, but regulated schemes.

[2]Oladayo Timothy Popoola, 'The Effects of Stock Market on Economic Growth and Development of Nigeria' (2014) Journal of Economics and Sustainable Development Vol.5, No.15