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## THE ROAD TO DEMUTUALISATION OF THE NIGERIAN STOCK EXCHANGE

ARTICLE SERIES

## INTRODUCTION

The Nigerian Stock Exchange (“NSE”), a company limited by guarantee, is currently in the process of being demutualised<sup>[1]</sup> into a public company limited by shares (“Plc”). Upon conclusion of the NSE’s demutualisation, its shares will be available for public ownership and it will be subject to the rules and regulations governing companies in Nigeria. This conversion will permit the NSE to carry on business activities with the aim of making profits, as is the case with regular corporate entities. It will also permit the NSE to constitute a board of directors to oversee its operations.

Demutualisation has been on the NSE’s agenda for over 10 years. In 2011, demutualisation was discussed in the paper ‘The Roles and Expectations of Regulators in the Demutualisation Process’ issued by the NSE. A 21-member technical committee was also instituted and charged with developing a legal framework for the demutualisation process. This was followed, in 2014, by the issuance of requests for proposals from local and foreign advisers, to guide the NSE through the process.

Subsequently on 12th April 2015, the Securities and Exchange Commission (“SEC”), the regulator of the capital markets in Nigeria, issued the ‘Rules on Demutualisation of Securities Exchanges in Nigeria’, which provided a framework for the process. Notwithstanding, the movement to demutualisation grounded to a halt and it was not until 2017 that the process recommenced.

## JUSTIFICATION FOR DEMUTUALISATION

Since the first demutualisation of the Stockholm Stock Exchange in 1993, leading stock exchanges, such as the New York Stock Exchange, London Stock Exchange, Toronto Stock Exchange, Singapore Stock Exchange and Australian Stock Exchange have followed suit. We have also seen a number of stock exchanges in emerging market jurisdictions demutualising. The NSE will become the 57th stock exchange to do so.

It is our considered view that the demutualisation of the NSE will bring the Nigerian capital market in line with prevalent international practice and standards. It may also result in enhanced governance, transparency and global visibility whilst attracting strategic partners/investors and significant inflows of capital.

## THE DEMUTUALISATION PROCESS

### *Passage of Resolution by Members of the NSE*

In March 2017, members of the NSE (including dealing members) passed the requisite resolutions authorising the demutualisation. Specifically, members of the NSE authorised its Council and Management to proceed with the process, subject to applicable laws and regulations, obtaining the approval of its members and procuring the consent of the relevant regulatory authorities.

[1] Demutualisation is the process by which a company limited by guarantee (i.e. member-owned company) is converted to a company limited or unlimited by shares (i.e. a shareholder-owned company), in which third party investors can participate.



They also ratified the engagement of different specialists such as financial advisers, legal advisers, tax advisers and other advisers that they deemed relevant to the process.

### **DEMUTUALISATION OF THE NIGERIAN STOCK EXCHANGE BILL**

Though the NSE passed the necessary resolutions for demutualisation, as a company limited by guarantee, the NSE had no share capital. The Companies and Allied Matters Act[2] (“CAMA”) also prohibits the division of the undertakings of a company limited by guarantee into shares. Given that CAMA makes no provision for the conversion of a company limited by guarantee to a Plc, there was the need to establish the process for such conversion. To address this, the Demutualisation of the Nigerian Stock Exchange Bill (“Bill”), which sought to authorise the NSE to convert to a Plc, was passed by the Senate on 22nd December, 2017 and by the House of Representatives on 1st February, 2018. On 29th August, 2018, President Muhammadu Buhari signed the Bill into law (the “Demutualisation of the Nigerian Stock Exchange Act”).

Amongst other things, the Demutualisation of the Nigerian Stock Exchange Act stipulates that upon the conversion and re-registration, all income, assets, property and liability of the NSE shall continue to be the income, assets, property and liabilities of the NSE as a Plc. Additionally, it exempts the NSE from any tax liability that may arise in connection with, or as a result of its conversion to a Plc.

However, the NSE will be liable to pay tax on subsequent profits it earns after the conversion.

### **SEC APPROVAL**

SEC gave its ‘No Objection’ to the NSE to proceed with the demutualisation on 23rd December, 2019.

### **COURT-ORDERED MEETING OF THE NSE**

At the Court-Ordered Meeting held on 3rd March, 2020, the members voted and assented to:

- a.  
The re-registration of the NSE as the ‘Nigerian Exchange Group Plc at the Corporate Affairs Commission (“CAC”),
- b.  
The transfer of its securities exchange licence and other assets, required to carry out the securities function, to the Nigerian Exchange Limited,
- c.  
The establishment of a separate subsidiary company to be charged with the regulatory functions of the NSE post-demutualisation, to be called ‘NGX Regulation Limited’,
- d.  
The total share capital of Nigerian Exchange Group Plc would be N1,250,000,000 (One Billion Two Hundred and Fifty Million Naira) divided into 2,500,000,000 (Two Billion and Five Hundred Million) ordinary shares of 50 kobo each.

e. The allotment of 1,964,115,918 (One Billion, Nine Hundred and Sixty-Four Million, One Hundred and Fifteen Thousand, Nine Hundred and Eighteen) ordinary shares ("Issued Shares") to dealing members and ordinary members on the basis of a ratio of 78:22, respectively,

f. The provision of 'Claims Review Shares' totalling 40,083,999 (Forty Million, Eighty-Three Thousand, Nine Hundred and Ninety-Nine) ordinary shares, representing 2% (two per cent) of the Issued Shares of Nigerian Exchange Group, will be set aside for allotment to parties who are adjudged as being entitled to shares in the demutualised exchange and,

g. The transfer of the assets of NSE Consult Limited, NSE Nominees Limited and Coral Properties Limited – existing subsidiaries of the NSE – to the Nigerian Exchange Group Plc.

Following the conclusion of the Court-Ordered Meeting, the members reconvened for an extraordinary general meeting, where the Board of directors of Nigerian Exchange Group Plc was constituted. Otunba Abimbola Ogunbanjo was appointed as Chairman and Non-Executive Director and Mr. Oscar N. Onyema was appointed as the Chief Executive Officer and Managing Director.

## **NEXT STEPS**

Before the shares of the NSE is listed after the demutualisation, the NSE will need to file the necessary resolutions from the Court-Ordered Meeting, and other required documents, at the CAC and SEC. They will also be required to obtain the court order sanctioning the scheme, complete all necessary registrations and seek the final approval from the SEC to ultimately demutualise. It has set 24th April 2020 as the date to conclude the demutualisation process.

## **CONCLUSION**

The demutualisation of the NSE will ensure that the Nigerian market becomes more efficient and competitive. The Nigerian Exchange Group Plc may be able to easily raise funds to finance strategic objectives and expansion. Demutualisation will lead to greater investor participation in the governance of the exchange and the exchange will be subject to the highest standard of corporate governance expected of a public company. The Nigerian Exchange Group Plc is also expected to generate revenue for the government through payment of taxes that profit-oriented organisations are expected to pay.

Despite the above, the demutualisation of the NSE has raised some concerns. Some deem it important to have the right checks-and-balances in place to ensure that the Nigerian Exchange Group Plc does not abuse its position as both market participant and market regulator to its own advantage.



Others have expressed concern that the Nigerian Exchange Group Plc may become so fixated with profit making that it sacrifices effective regulation in order to achieve the short-term goal of maximising shareholder returns.

In all, the demutualisation of the NSE represents a huge step in the right direction. However, it is our recommendation that the NSE should set up measures to ensure market operations are conducted with the highest levels of transparency and in line with global standards.



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