

An Overview of the Legal Frameworks for Public Offering of Securities in Nigeria

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ABSTRACT

The Nigerian capital market plays a pivotal role in the nation's economic development, offering businesses access to capital and providing investors with opportunities for wealth creation. At the core of this system are the regulatory frameworks that govern the public offering of securities. These frameworks are built on several key legal and institutional components. Among the most significant legal frameworks are the Investment and Securities Act (ISA) 2007 and the Companies and Allied Matters Act (CAMA) 2020, both of which set the foundation for public offerings in Nigeria. This Study aims to provide a comprehensive appraisal of the legal and institutional frameworks for public offering in Nigeria, identify its inefficiencies and gaps, and recommend measures to address them. This study also conducts a comparative analysis of the legal frameworks in the United States and the United Kingdom to identify international best practices that Nigeria can adopt. To achieve this aim and objective, the study adopts a doctrinal method of research, which involves employing primary and secondary sources of materials, such as statutes, cases, textbooks, journals, articles, and others. This research finds that for a country's economy to develop and thrive, it requires a well-regulated capital market. However, while these laws provide a solid foundation for the operation of the Nigerian capital market, there are notable gaps that affect the efficiency and transparency of public offerings at the Nigerian capital market. The regulatory framework is critical to the Nigerian capital market's evolution and its contribution to economic development. While the existing legal and institutional mechanisms are robust, they still fall short in addressing some identified challenges and implementing the required reforms that will enhance efficiency, adaptability, and investor confidence in the Nigerian capital market.

Keywords: capital market, public offering, securities and exchange commission, shares

INTRODUCTION

The capital market is regarded as the cornerstone of growth and development in a modern national economy because it can attract investors to various economic sub-sectors. (Ubesie et al., 2020). The significance of a capital market cannot be overstated, as research has

shown a positive relationship between capital accumulation and real economic growth. (Schumpeter, 1912, p. 1077).

The primary drivers of business within a society are large and small-scale businesses, and to foster economic growth, they need funds to sustain their operations. (World Bank Group, 2019). Similarly, government needs funds to execute capital-intensive projects that will ultimately benefit the masses, attracts foreign direct investment and foster economic growth. The capital market offers a viable mechanism for raising these essential funds for businesses and governments through public offering. The establishment of the Lagos Stock Exchange in 1961, now known as the Nigerian Exchange Group (NGX), marked the beginning of formalized capital market where funds can be raised by both government and businesses alike. Over the decades, the market has expanded, attracting both domestic and international investors, and contributing to overall economic growth. (Olusegun & Ajao, 2024).

The impact of public offerings in Nigeria has been demonstrated by various statistical evidence. Statistics from 2020 to 2022 show the total value of domestic initial public offerings (IPOs) in the Nigeria capital market. (Statista, 2022). In 2022, the domestic IPOs in Nigeria were projected to reach a value of approximately 13 million Udollars (Statista, 2022). Also, in a similar bid to raise capital, locally-owned Nigerian companies such as Seplat Energy plc, amongst others listed its shares on the Nigerian Exchange plc (NGX), making their stock available for purchase by the general public. Following a successful IPO in April 2014, the share price of Seplat Energy rose from NGN297.85 in January 2015 to NGN1,350.00 per unit, as at May 30, 2022 (FBN Quest, 2022). In addition to the above, it is worthy of note that the Initial Public Offerings market in Nigeria was projected to reach a transaction value of US\$1.46bn in 2024 (Statista, 2024).

According to Abugu (2015), the need for regulation of securities is borne out of the desire and indeed, the necessity to protect the investing public from fraud, instill confidence in the system, and ensure the emergence of financial markets that will enhance economic growth and development. (p. 56). Also, it aims to fulfill certain objectives such as safeguarding the interests of investors or consumers of financial products and services, ensuring the efficiency, transparency, and integrity of the market, and mitigating risks to the financial system or minimizing systemic vulnerabilities (Nwatu et al., 2023).

CONCEPTUAL CLARIFICATIONS OF PUBLIC OFFERING OF SECURITIES

2.1 Concept of public offering of securities

According to Black's Law Dictionary, "Public Offering" is an offer of stocks and shares to the public from a company entering the stock market. The sale of shares is guaranteed by an underwriter. The offer is only produced after the securities regulator has passed the offer and released it to the public (Aguda, 2015). Public offering of securities is the sale of equity shares or other finan-

cial instruments such as bonds to the public in order to raise capital. (Schumpeter, 1912, p. 1077). In other words, “Public Offering” is when a company sells its shares or bonds to the general public to raise money. This process allows anyone interested in the shares of the company to buy a piece of the company or its debt, which in turn will assist the company to gather the funds needed for various purposes such as expanding its business or paying off existing debts. Schumpeter (1912) goes further to state that the term public offering is equally applicable to a company’s initial public offering (IPO), as well as other subsequent offerings. (p. 1077)

The court aptly stated in the case of *Blue-Chip Acquisition and Investment Co. Ltd v. Zenith Bank Plc & 3 Ors*, that “a public offer is an invitation to the general public to subscribe to the shares of the issuing company. Such an offer can only be undertaken by public limited liability companies. Most importantly, the public issue of securities is one of the most effective means of raising large amounts of long-term capital by companies. However, this method of raising long-term finance is only available to a public company.” (*Blue-Chip Acquisition and Investment Company Ltd v. Zenith Bank Plc & 3 Ors*, 2005)

Consequently, this means that private companies are not allowed to offer their shares to the general public. To issue shares publicly, a private company must first transition to a public company. This involves meeting specific regulatory requirements and obtaining the necessary approvals to list their shares on a stock exchange. In order to successfully offer their shares to the members of the public for subscription, public companies must engage the services of the key players in the public offering of securities such as the Issuing Houses, Underwriters, Solicitors, Public Accountants, and the Securities and Exchange Commission (SEC).

Modes of offering securities to the public

The key modes for raising funds from the capital market include:

- **Offer for Subscription**—This method involves a public company or agency in need of funds (deficit units) issuing part of its authorized share capital (surplus units) to the public. Buyers in this category automatically become part owners of the company hence sharing in the risks of the company (SEC, 2023). Through this method, a public company issues new shares for sale to the general public to raise additional capital.
- **Offer for sale**—This is when a public company sells all its shares or equities or debentures to the Issuing House, which then invites the members of the public to subscribe to the issue. This is usually done at a higher price, than the price the company has sold to the Issuing House. The risk or failure of the IPO will be fully borne by the Issuing House (SEC, 2023).
- **Through placement**—As the name implies, a private placement is a special kind of offer whereby the securities of a company are sold to specific or pre-arranged buyer(s). The company involved here could be private or public while the security may be debt or equity. The proceeds are mainly used for targeted developmental projects by the company. However, private placements by private companies are not under the regulatory purview of the Securities and Exchange Commission. (SEC, 2023).

- **Rights Issue**—A right issue is a method through which existing shareholders are given the opportunity to acquire more shares of a company in proportion to their existing holdings. A right issue of 1 for 2 gives an existing shareholder of 100 shares, the opportunity to acquire 50 more shares at a price usually lower than market value (SEC, 2023).

LEGAL AND INSTITUTIONAL FRAMEWORKS REGULATING PUBLIC OFFERING OF SECURITIES IN THE NIGERIA CAPITAL MARKET

The rationale behind the regulation of securities is to safeguard investors, promote market transparency, and maintain confidence in the financial system. The International Organization of Securities Commissions (IOSCO) for example, has set out three core objectives of modern securities regulations. These are: protection of investors, ensuring that markets are fair, efficient, and transparent; and the reduction of systemic risks (IOSCO, para. 4). It is without gainsaying that securities regulation in Nigeria, like elsewhere, is indispensable for protecting investors, ensuring market transparency and integrity, and fostering confidence in the financial system.

Key legislations governing public offering of securities

i. Investment and Securities Act (2007)

The Investment and Securities Act (ISA), 2007 is Nigeria's principal legislation on the capital market. It repealed the Investments and Securities Act of 1999 and established the Securities and Exchange Commission as the apex regulatory authority for the Nigerian capital market as well as regulation of the market to ensure the protection of investors and the reduction of systemic risk. By Section 38 of the ISA anyone engaging in investment and securities business, including activities like stock trading, asset management, and investment advisory, must register with the SEC and comply with the principal act, and rules and regulations made pursuant to the act. This is further illustrated in the case of *Owena Bank (Nig.) Plc v. Nse & in Re: SEC* where it was held that SEC has the power to suspend the registration of any person's security for the period of 12 calendar months and no more for failure of compliance with the requisite laws. See also the case of *SEC v. Prof. A.B. Kasunmu, San & Ors.*

The regulation of the capital market by the ISA particularly in respect of the Public Offering are discussed below;

a. Public Offering of shares and sales of securities

By virtue of Section 69 of ISA, an invitation is deemed public if it meets specific criteria such as being published, advertised, or disseminated through various media to the public. The implication of this is that no invitation shall be countenanced by the commission if such invitation is not

in compliance with the provision of section 69. To buttress this, section 67 of ISA strictly prohibits public invitations without compliance with specific conditions such as being a public company. Any violations of these will incur fines of N500,000 for corporate entities and N100,000 for individuals (ISA, 2007).

Section 68 of the act further mandates companies to secure the SEC's written consent before soliciting public deposits. The commission however, has absolute discretion to either grant or withhold the written consent. (ISA, 2007). Where a company give false or misleading information in order to attract members of the public to subscribe for its shares, those responsible for false or misleading invitations, including directors shall be liable for whatever loss(es) that may be incurred by affected parties. The only exception is if they can prove that they believe the statements were true (ISA, 2007). Section 70 of the act provides for when an offer for sale is deemed to be made by the company including issuance through forms, notices, or advertisements (ISA, 2007).

In accordance with legal requirements, issuing an invitation to the public without the required prospectus is an offence punishable by a fine. Section 75(1) (ISA, 2007) prohibits the issuing, circulating, or distributing any notice, circular, or advertisement offering or inviting members of the public to subscribe or purchase of securities without a registered prospectus, except the offer is not made to the public or fits specific exceptions (ISA, 2007). Hence, media houses, including newspapers, radio stations, and television stations are prevented by law even with the permission of an authority or officer of the company, from advertising an unregistered prospectus. (ISA, 2007, S 75(2)). Any contravention of this section would amount to an offence and such person will be liable upon conviction to imprisonment or to a fine. (ISA, 2007, S 75(2))

b. Prospectus and disclosure requirements

According to section 315 of the (ISA, 2007), a prospectus is: “any written or electronic information, notice, advertisement or other forms of invitation offering to the public for subscription or purchase, any shares, debentures or other approved and recognized securities of a company and other issues or schemes.” This definition is supported by case laws including *Andrews v. Mockford* and the 19th century ruling by Kindersley VC in *New Brunswick and Canada Railway Co. v. Muggidge* which established that those issuing prospectuses must present all information with strict accuracy omitting no facts that could affect the perceived advantages of the investment.

Section 71 of the act mandates that any public offer of securities must be accompanied by a prospectus unless an exemption is granted (ISA, 2007). Exemptions may apply in specific cases where legal compliance becomes overly complex due to the size and nature of the issue (ISA, 2007). However, a prospectus must not contain any false statements. A false statement can be a half-truth presented as the whole truth as held in *Aaron's Reefs Ltd v. Twiss*. In the same vein, section 83 of ISA states that a statement in a prospectus is considered untrue if it is misleading in its form and context. By virtue of the provision of section 85 of the Act, specific individuals, including current directors, can be criminally held liable for any loss incurred by investors due to such false

statements (ISA, 2007). This criminal liability is set out in section 86 (1) of the Investment and Securities Act which provides that any director or officer of a company who authorizes a prospectus that contains any untrue or misleading statements, commits an offence and faces severe penalties a fine of at least ₦1,000,000,000 or imprisonment or both (ISA, 2007). Such directors or officers can avoid liability if they can prove that the false statement was immaterial or that they have reasonable grounds to believe, and did believe until the prospectus was issued that the statement was true.

c. Allotment of securities

Section 88 states that when a public offer of securities is made, regardless of whether they are listed or not, the issuer and the issuing house are responsible for the allotment of the company's securities. This allotment is subject to the approval of the commission, which must be in accordance with the guidelines outlined in the rules and regulations established by the commission (ISA, 2007).

Furthermore, section 89 provides that no securities in a company shall be allotted until the beginning of the third day after the prospectus is first issued, or any later time specified in the prospectus (ISA, 2007). The allotment of securities is crucial for public offerings, as the act mandates that no securities can be allotted unless subscriptions exceed the minimum percentage set by the commission (ISA, 2007, S 90). Additionally, application money or any other funds paid before allotment must be held in trust by the Issuing House (ISA, 2007, S 91). Any violation of allotment procedures, including false or misleading statements will make the allotment voidable and impose liabilities on directors and companies for any loss suffered by the allottee and results in compensation to the allottee. (ISA, 2007, S 92).

ii. Companies and Allied Matters Act (CAMA) 2020

The Companies and Allied Matters Act (CAMA), 2020 is the principal legislation governing company formation, administration, and management. The Act also provides for the establishment of the Corporate Affairs Commission in place of the Registrar of Companies. The act regulates the formation, governance, winding up, and share allotment in a company amongst others. Some provisions of CAMA enable a private company to transit into a public company to offer its shares to the members of the public for subscription.

It is imperative to state that a private company may decide to change its legal form to a public company without forming a new corporation or disrupting its business before it can offer its shares to the public. The process of effectuating this is called conversion or re-registration of a company and the procedure for achieving it is contained in section 50 (CAMA, 2020). At the fulfillment of the procedures and presentation of requisite documents, a new certificate of incorpora-

tion is issued by the Corporate Affairs Commission (CAC) to the company, showing the company's new status as a public company.

(a) Issuance of different classes of shares

The provision of section 141 of (CAMA, 2020) permits companies to issue shares, subject to any limitations in the company's articles, including pre-emptive rights of shareholders. Accordingly, the act in section 142 provides that a company shall not, in any event, allot newly issued shares unless they are offered in the first instance to all existing shareholders of the class of shares being issued in proportion as nearly as may be to their existing holdings. Furthermore, section 143 goes further to enunciate that a company can issue different classes of shares if its articles of association permit it.

Section 868 introduces the "share capital," which is defined as "the issued share capital of a company at any given time." By this provision, only the issued share capital of a company is recognized as the share capital of that company under CAMA 2020 which replaced the "authorized share capital" rule under the old CAMA 1990. Section 124 provides that no company shall have a share capital below its minimum issued share capital of ₦100,000.00 for private companies and ₦2,000,000.00 for public companies.

(b) Allotment and method of allotment of shares

Regarding the allotment of shares, section 149(1) of the CAMA 2020 places the power to allot shares with the company, which can be transferred to the board of directors. However, such delegation of power is subject to any specific conditions or directives outlined in the company's articles of association or decided upon during a general meeting of the company. (CAMA, 2020). Subsection 2 of the above section is to the effect that the power to allot shares of a public company is subject to the provisions of the Investment and Securities Act while subsection 3 provides that the powers to allot the shares of a company are not exercisable by the directors of a company unless express authority to do so has been vested in the board of directors by the company in a general meeting; or the company's articles (CAMA, 2020).

Section 150 of CAMA provides that private companies may require prospective shareholders to submit written applications while public companies' applications must meet additional criteria by the SEC to promote transparency. Additionally, subsection 2 of the above section states that applicants have the right to withdraw their application at any point before the allotment is made. This protects the applicants' interests by allowing them to reconsider their decision to invest and withdraw their application if they choose to do so before the final allotment of shares is made by the company. (CAMA, 2020). However, the applicant's failure to withdraw their offer before the allotment of shares is made by the company would be taken as the company's acceptance of the ap-

plicant's offer to purchase its shares, and the contract becomes effective on the date the company makes the allotment (CAMA, 2020).

(c) Irregular allotment of shares and its implication

Irregular allotment of shares by companies refers to the process where shares are allocated in a manner that does not comply with legal and regulatory requirements. Section 155 of the CAMA 2020 is to the effect that an allotment made by a public company to an applicant, if done before the holding of the statutory meeting and in contravention of the provisions of the Act, is voidable at the instance of the applicant. The implication of this is that the applicant is entitled in law to void the allotment under certain conditions. Specifically, the applicant can void the allotment within one month after the company's statutory meeting but not later than this period. Alternatively, if the allotment is made after the statutory meeting, the applicant has the right to void it within one month from the date of the allotment (CAMA, 2020). This right to void the allotment is maintained even if the company is in the process of being wound up.

In the same vein, subsection 2 goes further to provide that if any director of a company knowingly contravenes, permits, or authorizes the contravention of any of the provisions of the Act with respect to the allotment, he would be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have incurred, but proceedings to recover any such loss, damages, or costs shall not however be commenced after the expiration of two years from the date of the allotment. (CAMA, 2020).

It is evident from the above provisions of the Companies and Allied Matters Act (CAMA) that while it sets forth important regulations and requirements for investment and securities transactions, these are still largely irregularities in the allotment of shares notwithstanding the enforcement of the primary legislation on public offering of securities in the Nigerian capital market.

Other than the principal legislations such as ISA and CAMA guiding public offerings of shares of a company, there are additional legislations impacting public offerings. These other legislations are the Public Enterprises (Privatization and Commercialization) Act, 1999 (As Amended). The Nigerian Investments Promotion Commission Act, 2004, Trustees Investment Act 2004, Central Bank of Nigeria Act, and the Banks and Other Financial Institutions Act 1991 (As Amended), The Chartered Institute of Stock Brokers Act 1995, The Money Laundering Prohibition Act, 2004, The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 2004 amongst others.

REGULATORY BODIES IN PUBLIC OFFERING OF SECURITIES AT THE NIGERIAN CAPITAL MARKET

Regulatory bodies play pivotal roles in ensuring transparency, investor protection, and market stability at the Nigeria Capital Market. The roles include; enforcing compliance, setting standards, facilitation fair and orderly capital market activities while safeguarding the interests of in-

vestors and stakeholders alike. The key regulatory bodies include the Securities and Exchange Commission (SEC) and the Nigerian Exchange Group (NGX).

i. Securities and Exchange Commission (SEC)

The Securities and Exchange Commission (SEC) was established pursuant to the provisions of the Investment and Securities Act 2007 (ISA) as a body corporate with all the incidents of corporate entity. (ISA 2007). The SEC is the apex regulatory authority of the capital market and securities transactions in Nigeria. Section 13 of ISA outlines these statutory responsibilities some of which are; regulation of investments and securities business in Nigeria; registration of securities of public companies and regulation of all offers of securities by public companies; registration and regulation of capital market operators; protection of investors and maintenance of fair and orderly markets; preventing fraudulent and unfair trade practices relating to the securities industry etc.

The act confers on the commission the power to suspend registration of securities of public companies and capital market operators where they violate the provisions of the Act and rules made thereunder. Accordingly, the commission, in exercising its regulatory powers, may order the withdrawal of a capital market operator's certificate and prohibit the operator from conducting any capital market activities if such prohibition and withdrawal would serve the public interest. If the registrations of public companies' securities are suspended, trading of these securities on the exchange (if listed) will cease for the duration of the suspension. (ISA, 2007). The commission is also empowered to impose various penalties on non-compliant operators, including monetary fines (ISA, 2007).

Thus, in the celebrated case of (*Owena Bank (Nig) Plc v. Nigerian Stock Exchange, 1999*), the court considered the scope of the disciplinary powers of the Securities and Exchange Commission. In the said case, the Supreme Court held that the Commission has powers to suspend the registration of any person's security for a period of twelve calendar months and no more. Other cases where similar disciplinary actions were considered by the court include; *Bartholomew Bassey Ekong vs SEC* and *Forte Oil Plc vs Fidelity Finance Co. Ltd & Ors.*

ii. The Nigerian Exchange Group (NGX)

The Nigerian exchange Group (NGX), formerly known as the Nigerian Stock Exchange, was founded in 1961 in Lagos. It is now a fully automated trading platform for the sale and purchase of securities of the listed companies and government bonds. Stock Exchange though not defined anywhere in the Investment and Securities Act, is "a market for the sale and purchase of securities" (Orojo, 2008). The stock exchange as a market provides the essential trade facilities for companies and governments to raise money for business expansion and project development through investors who will, upon the allotment of the number of shares purchased, be part of the owners of the corporations for the ultimate benefit of the economy. The Nigerian Stock Exchange (NSE) has sev-

eral branches with head office and branches in Abuja, Lagos, Kano, Kaduna, Port Harcourt (Rivers), Onitsha (Anambra), and Ibadan (Oyo), Yola, among others.

The Nigerian Exchange Group operates within a regulatory framework that ensures the transparency, integrity, and fairness of the capital market. The Securities and Exchange Commission (SEC) is the primary regulatory authority responsible for overseeing the activities of the NSE and other market participants. The SEC sets regulations and guidelines that govern the operations of the NSE, including listing requirements, trading rules, and disclosure standards, under the Investments and Securities Act (ISA).

Other important regulatory bodies in public offering includes the Central Securities clearing system (CSCS), the Corporate Affairs Commission (CAC) and the Investment and Securities Tribunal (IST) which also plays a vital role in public offering of securities in Nigeria.

CHALLENGES AND ISSUES IN REGULATING PUBLIC OFFERING OF SECURITIES IN THE NIGERIAN CAPITAL MARKET

The regulation of public offerings in Nigeria faces several challenges and issues that hinder the efficient functioning of its capital market. Despite efforts to establish a comprehensive legal framework through the (ISA, 2007) and the oversight of SE), the system is characterized by regulatory overlaps, enforcement gaps, and limited transparency. These challenges undermine investor confidence and create obstacles for companies seeking to raise capital.

Compliance and enforcement of regulations

One of the principal regulatory shortcomings in the public offering of securities in the Nigerian capital market is the inability of the pivotal regulatory agency and other regulatory agencies to properly exercise their powers and functions in the formulation and execution of capital market policies. (Fawei, 2017). Some of these have been traced to the inadequacy of capacity and capability particularly of the Securities and Exchange Commission to implement the provisions of the Investment and Securities Act and effectively exercise its authority over market operators, exchanges, self-regulatory organizations, and other market participants, especially as the market grew very rapidly in size and complexity. (Fawei, 2017).

The importance of enforcement of the laws and policies at the capital market cannot be overemphasized as doing this will mitigate and reduce the fraud and fowl play at the market, dissuade directors or officers of companies from sharp practices and insider trading, misleading/falsified disclosure, or fraud. (Hail & Leuz, 2006). Over time, the SEC's role as the chief regulatory and compliance body in the capital market has come under scrutiny. Despite being tasked with ensuring the integrity and proper functioning of the market, the SEC has frequently been found wanting in this regard. Historical patterns and recent market activities highlight the SEC's shortcomings,

particularly its failure to rigorously enforce its investigatory mandate. Critics argue that the SEC's oversight has been insufficient, leading to gaps in market regulation and enforcement.

Inadequate disclosure and erosion of investor confidence

Information asymmetry in the Nigerian capital market, particularly in the context of public offerings, poses significant challenges to investor protection and market efficiency. It occurs when companies and their insiders possess more detailed and accurate information about the company's financial health, risks, and future prospects of the companies than potential investors, without full disclosure.

In recent years, information asymmetry has gained awareness because countries are desirous of their financial markets attaining efficiency, and its effects on a capital market are undesirable. Some of these effects range from; investors offering less for shares than the original asking price because they believe the market is tainted with falsified disclosures, thus, generating a negative effect on corporations that want to list in the market for the first time and corporations that have not falsified information (Healy & Palepu, 2001).

Another effect of information asymmetry is that it diminishes investors' confidence in the market when they become aware of the possibility of receiving misleading information, prompting them to seek necessary details from sources that can be expensive and potentially inaccurate (Nayar, 1990). Investors who encounter transparency challenges often lose confidence in the Nigerian capital market and perceive themselves as being at a disadvantage. This lack of confidence contributes to reduced market participation and can lead to increased market illiquidity, as fewer investors would be willing to engage in transactions when they believe the playing field is not leveled. The concentration of critical information among a limited group of insiders exacerbates these issues, further deterring broad investor involvement and weakening the overall market. (Umoren, 2009). Delayed disclosures, misstatements, and fraudulent disclosures have affected the Nigerian capital market as the market is described as one where investors do not trust the system to trade. The rampancy of information asymmetry in the market is attributable to the deficiency of market compliance, which is exacerbated by the lack of automated processes (Eboh, 2012).

Corruption and insider dealings

"Insider trading" or "insider dealing" are phrases used interchangeably to describe the use of inside information that is price sensitive and has not been made available to the public about a company or securities to make a profit or avoid loss through trading activity (Arnour, 2016). It usually involves an insider (director, employee, or professional advisor) or someone connected to such persons trading on information obtained in the course of employment or in the course of their professional relationship with a company and for which information is not available to other investors or intending investors. It also includes instances where one party provides the inside infor-

mation (commonly referred to as tipping) to another party/parties who trade on the basis of the inside information (Brumborg et al., 2016).

The impact of insider trading on the capital market is undeniable, and its effects cannot be underestimated. This is largely due to the adverse effects it has on the market's reputation and on investors' participation in the capital market. First and foremost, insider trading erodes the investors, trust in the markets, leading to a significant decline in their confidence to invest. When company officials engage in insider trading, they betray the trust of investors, especially in both prosperous and challenging economic times, where investors' funds are crucial to keeping companies afloat. This breach of trust drives investors away from the market, ultimately resulting in decreased market liquidity. (Gailard, 1992).

To curb the adverse effects of insider dealing, section 111 (2) (a) prohibits a person from trading on information obtained directly or indirectly from another person connected with a particular company or someone connected to a company within the six months preceding the obtaining of such information. Furthermore, the receiver of the information is expected to know that the person from whom the information was obtained holds the information by being a member of the company and that the holder is not expected to disclose such information except for the proper performance of the functions attached to that position (ISA, 2007).

REGULATORY OVERLAPS IN NIGERIA'S CAPITAL MARKET

In Nigeria, public offerings of securities are primarily governed by the Securities and Exchange Commission (SEC) under the Investments and Securities Act (ISA). However, other regulatory bodies, such as the Nigerian Stock Exchange (NSE), the Corporate Affairs Commission (CAC), and the Central Bank of Nigeria (CBN), also play a role in overseeing various aspects of these transactions. This overlapping jurisdiction can create situations where the powers of these agencies intersect, leading to regulatory overlap.

The presence of multiple regulators can lead to inefficiencies such as delays in the approval process and increased compliance costs. Each regulator has its timeline and procedures, potentially prolonging the capital-raising process and affecting financial planning. Furthermore, inconsistent interpretations of the law across different agencies can create confusion and uncertainty for market participants. This lack of harmonization undermines investor confidence, highlighting the need for a clearer delineation of responsibilities among Nigeria's regulatory bodies to enhance the efficiency of capital market regulation (Nwosu, et al, 2021).

COMPARATIVE ANALYSIS WITH OTHER JURISDICTIONS

United States

Public offering of securities in the US is governed by the Securities Act of 1933 and the Se-

curities and Exchange Act of 1934. The Securities Act (of 1933) regulates the distribution of securities, establishing a disclosure system for, and rules regarding the conduct of, securities offerings. The 1933 act requires the registration with the SEC of all securities to be offered or sold unless an exemption is available while the (Securities Exchange Act of 1934) regulates principally the secondary market: trading in securities, the securities markets, tender offers, brokers, dealers and the extension of credit for purchasing securities (Bartos, 2006). These Acts aim to ensure transparency and integrity in both the primary and secondary markets.

In the United States, a company must register its securities with the Securities and Exchange Commission (SEC) before offering them to the public unless an exemption applies as seen in section 5 (Securities Act of 1933) of the act. Companies typically hire investment banks, which help price the securities and market them to potential investors. Beyond IPOs, companies can raise additional capital through secondary offerings, where they either issue new shares (dilutive offerings) or allow existing shareholders to sell their shares (non-dilutive offerings).

Once the SEC declares the registration effective, a final prospectus on the public offerings will be issued. The prospectus would contain all relevant information about the offering, including the number of shares and price. Section 10(a) of the Securities Act provides that the prospectus must be delivered to potential investors before or at the time of the sale of the securities (Securities Act of 1933). If there are any material misstatements or omissions in the prospectus, issuers and other involved parties can face civil liability under Section 11 of the Securities Act, which allows investors to seek damages for inaccurate or misleading information.

Also, under Section 2 of the (Securities Act of 1933), individuals or entities found guilty of willfully violating the act, such as filing false registration statements, can face fines of up to \$10,000 and imprisonment of up to 5 years. Similarly, Section 32 of the Securities Exchange Act of 1934 provides for harsher penalties, including fines of up to \$5 million for individuals and \$25 million for corporations, along with up to 20 years in prison for severe offenses (Securities and Exchange Act of 1934).

The US Securities and Exchange Commission is the main body overseeing public offerings and market intermediaries, ensuring compliance with securities law unlike Nigeria's multiple regulatory bodies, the US benefits from centralized oversight and enhances market efficiency.

United Kingdom

The regulation of securities issuance and sale in the UK is primarily governed by the Financial Services and Markets Act (FSMA) 2000, with oversight by the Financial Conduct Authority (FCA). While FSMA 2023 is relevant for recent reforms and amendments, the FSMA 2000 is still the cornerstone of the UK's financial regulatory framework. FSMA establishes a comprehensive framework designed to ensure transparency, market integrity, and investor protection.

Companies issuing securities must be authorized by the Financial Conduct Authority (FCA). This authorization ensures that only qualified and regulated entities can conduct activities related

to securities issuance at the market. Section 55A empowers the FCA to grant or refuse authorization based on whether the firm meets the required standards (FSMA, 2000). A central provision of FSMA related to securities issuance is Section 85, which mandates that a company must publish a prospectus approved by the FCA when making a public offer of securities (FSMA, 2000). The aim is to ensure that potential investors have all the information needed to make informed decisions. The FCA's role includes reviewing and approving the prospectus to ensure it complies with all legal requirements.

Schedule 10A and the Prospectus Regulation specify the content and format requirements for a prospectus. The prospectus must include comprehensive information about the issuer, detailing the company's business activities, management, and financial condition/statement. It must also present audited financial statements for the past three years or the duration of the company's operation as well as the risks associated with terms of the offer and price of securities (FSMA, 2000). Additionally, section 87A stipulates that the prospectus must contain all necessary details to allow investors to assess the company's financial status and the associated risks (FSMA, 2000). Once approved by the FCA, the prospectus must be made available to the members of the public, typically through the issuer's website or the regulated market where the securities will be traded.

Furthermore, civil and criminal liability is established to ensure compliance with the FSMA, 2000. An investor who has acquired shares based on a false prospectus may seek financial compensation in addition to or instead of rescission. Section 90 of the (FSMA) Act permits investors to claim compensation if they suffer losses due to false or misleading information in a prospectus. The investors are not obligated to verify the accuracy of the information, nor must they prove that the person responsible for the misstatement was aware of its inaccuracy as seen in the case of *Aaron's Reefs Ltd v. Twiss*.

However, criminal liabilities arise under Sections 89-92 of the Financial Services Act 2012, which criminalizes knowingly or recklessly making false or misleading statements, or dishonestly concealing material facts in a prospectus (Financial Services Act, 2012). Hence, anyone found guilty of these offences is liable to a maximum penalty of seven years imprisonment with a fine (Financial Services Act, 2012). Thus, in the case of *R v. Feld*, the Court of Appeal upheld a six-year sentence against a director for offences relating to a right issue prospectus.

Regulatory bodies such as the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA), and Bank of England (BoE) play key roles in overseeing financial markets, ensuring firms meet capital requirements, and safeguarding market integrity.

CONCLUSION

Though, it is evident that the Nigerian market has progressed in the current regulations and market practices, there are still however significant issues that prevent it from reaching its full potential. The article shows the need for a more robust legal framework that can be adopted in the Nigeria capital market, particularly in the area of issuance of public offerings to meet up with global

financial changes and technological advancements. The future success of Nigeria's capital market depends on reforms that focus on transparency, strict enforcement of regulations, and building investors' trust. The need for improving regulatory practices, updating legal frameworks, protecting investors' funds, and increasing the confidence of investors in the Nigeria capital market will help create a more dynamic, inclusive, and competitive market. A well-regulated capital market is essential for driving economic growth and can position Nigeria as a key financial center in Africa, attracting both local and foreign investments.

RECOMMENDATIONS

In order to address these challenges and maximize the aforementioned benefits, the following recommendations are suggested for the regulatory agencies and the legislative arm of government:

1. The Securities and Exchange Commission (SEC) should enhance its regulatory oversight to ensure more efficient enforcement of existing laws. This can be achieved by adopting stricter monitoring mechanisms and ensuring compliance with global best practices to foster greater investor confidence.
2. Public offering processes should be streamlined to reduce delays and inefficiencies in public offerings. The processes for registering and approving securities should be simplified.
3. Existing punishments for non-compliance with prospectus should be made more stringent to serve as a stronger deterrent. Repeat violations or severe cases of non-compliance, such as deliberate misinformation or fraud, should attract harsher punishments, including longer prison terms for individuals involved. Regulatory bodies must also ensure consistent enforcement of these penalties.
4. Given the rapid advancement in financial technologies, it is necessary to update legal frameworks to accommodate new financial instruments and innovations such as fintech and blockchain. This will help the capital market remain competitive and modernized.
5. There should be increased focus on protecting minority and retail investors. The SEC and other relevant authorities need to develop more robust policies that safeguard investors from market manipulation and unfair practices.
6. Public education programs should be expanded to raise awareness among potential investors about the opportunities and risks in the capital market. This can help attract more local and foreign investors, boosting market liquidity and participation.

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