**Capital Market Update - Federal High Court Delivers Landmark Judgment on the Information Rights of Investors in the Nigerian Capital Market**

The Federal High Court has recently delivered a judgement which establishes the rights of both institutional and retail investors in the Nigerian capital market, to (1) demand for information from securities exchanges operating in the Nigerian capital market and; (2) the obligation of securities exchanges to provide requested information within the period stipulated under the Freedom of Information Act, 2011 ( the FOI Act)

The case is cited as **Dr. Ayibatonye Owei & Ors vs. The Nigerian Stock Exchange.** The Plaintiffs in this case, is former Bayelsa State Commissioner of Health, Dr Ayibatonye Owei and his 4 children.

In the present case, the Plaintiffs, like many other Nigerians, had lost substantial amounts of monies following an investment in an unregistered investment product, referred to as the Partnership Securities Deposit Account (PSDA) and promoted by the Partnership Investment Company Limited and Partnership Securities Limited ( the Partnership Entities). In order to fully understand the nature and extent of the rights/reliefs of the Plaintiffs vis-à-vis the liability of the Partnership Entities, the Plaintiffs had, relying on the FOI Act, requested for certain information/documents, relating to the affairs of the relevant Partnership Entity from the Nigerian Stock Exchange (the NSE). However, the NSE refused the Plaintiffs’ request for information on the grounds that the NSE is not subject to the FOI Act and therefore not under any obligation to honour the Plaintiffs’ request for information. After unsuccessful attempts at obtaining said requested information from the NSE, the Plaintiffs filed an action in court asking the court to inter alia (a) reach a finding on the question as to whether the NSE is a ‘public institution’ within the intendment of the FOI Act and; where (a) is answered in the affirmative, (b) grant an order directing the NSE to make available the requested information/documents to the Plaintiffs.

In point of law, the decision of the Federal High Court, on the legal issues submitted to it, turned primarily on the interpretation of section 2(7) of the FOI Act. In sum, counsel to the NSE, argued that the NSE does not use public funds to carry out its activities and that for a private company to qualify as a ‘public institution’ within the intendment of the FOI Act, such private company must utilize public funds to provide ‘public services’ or to perform public functions’. On this basis, counsel submitted that the NSE is not a ‘public institution’ within the meaning of the FOI Act. Counsel to the NSE took the view that the activities of the NSE does not amount to a ‘public function’ or a ‘public service’. Counsel to the NSE, further argued that, assuming the court were to hold the NSE to be a public institution, the NSE is entitled to the exemption under section 14 of the FOI Act which allows a ‘public institution’ to deny an application for information that contains personal and financial information of individuals and third parties.

In its own submission, Plaintiffs’ Counsel reasoned that the use of public funds was not the sole defining characteristic of the ‘public institutions’ regulated under the FOI Act. Counsel submitted that, even though, the NSE could not be said to be utilizing ‘public funds’, the nature of NSE’s mandate from the SEC, and the extent of the powers delegated to the NSE by the SEC, were evidence of the fact that the NSE carried out a ‘public function’ or ‘public service’. The Plaintiffs further reasoned that it is possible for a private company to perform a public function by using its own funds and that a private institution may perform a public service without utilizing public funds. Counsel to the Plaintiffs’ submitted that the public is entitled to information relating to, not only public entities that have received public funding but also to private entities that may not have received public funding but have been tasked by contract, statute, or other legal means with the obligation to perform a ‘public function’ or ‘public service’. With respect to the applicability of the exemption under section 14 of the FOI Act, Plaintiffs’ Counsel reasoned that the public interest ramifications of the information requested by the Plaintiffs outweighed the privacy rights preserved by section 14 of the FOI Act.

In its judgment, the court, agreed with the submission of the Plaintiffs and declared that the NSE is ‘public institution’ within the contemplation of the FOI Act. On the basis of the affidavit evidence before it, the court also reasoned that it is in the interest of the public to disclose the affairs of an entity that has done business with the public and is alleged to have acted against the interest of the public. The court found that the Defendants could not legitimately enjoy the protection of section 14 of the FOI Act, and that the ‘public interest’, in the instant matter, far outweighs the interests of the clients of the Partnership Entities. The court consequently ordered the the NSE to deliver requested documents to the Plaintiffs within 7 days. With this judgement, the NSE and other securities exchanges operating in Nigeria’s capital market must now comply fully with the obligations placed on public institutions under the FOI Act. The NSE has complied with the aforesaid order of the court.

Counsel to the Plaintiff: Balogun Harold

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