

VOLUNTARY DELISTING OF COMPANIES IN NIGERIA¹

Introduction

Listing of a company connotes that its securities are traded publicly on the secondary market and referred to as a quoted company. Companies listed on the securities market are typically public companies. The Nigerian Stock Exchange (“NSE”) is the foremost securities market for trading of equity and debt instruments in Nigeria.

The trading of securities in Nigeria is not limited to the NSE. The securities of companies may also be traded on the FMDQ OTC and NASD OTC market. The debt instruments of companies, foreign exchange and derivatives over-the-counter securities exchange are tradable on the FMDQ OTC while the shares of unquoted public companies are tradable on the NASD OTC.

Companies listed on the NSE are governed by the NSE Listing Rules. The NSE may delist a company for non-compliance with the Listings Rules, breach of the terms and conditions of the general undertaking executed by the company when its securities were listed by the NSE, or where the shares of the company in the hands of the public are insufficient to make a market in the securities.

However, listed companies may voluntarily delist from the NSE for copious reasons which will be examined in this article. Companies in their life cycle will list and some of them will delist over time. That is the reality that Exchanges around the world experience. Companies will delist for different reasons from voluntary to regulatory delisting, mergers and acquisitions and other things that would cause them to delist.

The essence of this paper is to discuss voluntary delisting of companies from the NSE, the reasons and procedure for voluntary delisting of companies from the NSE.

What is Delisting?

Voluntary delisting is the withdrawal of an Issuer's securities listed on The Exchange with the express approval of the holders of its securities, after complying with relevant requirements. In the event that a company gets delisted, the management of such a company would have to consult their stockbroker to arrange an Over the Counter (OTC) sale. If the company's shares are listed on the NASD OTC exchange, they can be traded there.

When a company is delisted, it becomes an unquoted public company with options of remaining a public company or converting to a private company.

As a corollary, the shares of a delisted company would no longer be tradable on the floor of the NSE and its name removed from the daily official list of the NSE.

Voluntary Delisting

Voluntary delisting connotes the deliberate decision of a company to delist its shares from the NSE after obtaining the corporate authorisation of its management and shareholders.

According to the data on the NSE website, up to 23 companies have voluntarily delisted from the NSE between 2002 and 2017².

Reasons for Voluntary Delisting

A quoted company is subject to the NSE and Securities and Exchange Commission and must comply with the code corporate governance for publicly quoted companies.

There are copious reasons a quoted company may decide to voluntary delist from the NSE.

a. Costs

It is generally more cost effective to be a private company than a quoted public company. Operating as a quoted company could be expensive for a company which is not making profit coupled with huge debt profile.

Voluntary delisting of a company enables the company to reduce its exposure to regulators and minimise costs. Listed companies have post listing obligations they must adhere to in order to sustain its listing status and those who cannot meet the financial demands of those obligations tend to consider delisting as one of the cost reduction measures.

b. Inability to Raise Equity Capital

The share price of a quoted company is determined by supply and demand for its shares in the secondary market.

Where there is a reduction in the demand or trading of a company's shares, it affects its share price. Thus, it becomes difficult for the company to raise

² <http://www.nse.com.ng/issuers/corporate-disclosures/delisted-companies> accessed August 21, 2017. These also include companies that voluntarily delisted due to merger and acquisition.

equity capital due to lower share price compared to the real net asset value of the company.

Companies listed on The Exchange must maintain a minimum free float for the set standards under which they are listed in order to ensure that there is an orderly and liquid market in their securities.

The free float requirement for companies on the Main Board is 20% and 15% for companies listed on the ASEM board. Occasionally some companies apply for waivers from the Quotations Committee and provide compliance plans with tentative timelines to support their requests. However not all can meet this requirement due to a variety of reasons and rather be consistently categorised as operating “Below Listing Standards”, they seek to delist from the Exchange.

c. **Restructuring**

A quoted company may also choose to voluntarily delist from the NSE due to internal or external restructuring.

A scheme of arrangement between a company and its members or creditors could result to the voluntarily delisting of the company. For instance, the Nigerian Bottling Company Plc voluntarily delisted from the NSE in 2011 following a scheme of arrangement between Nigerian Bottling Company Plc and its members involving the cancellation of part of its share capital, such that the company became a wholly owned subsidiary of its majority shareholder, Coca-Cola Hellenic Bottling Company S.A³

The mandatory takeover of a company could also result in the voluntary delisting of the company due to a reduction in the 20% tradable shares (free float requirement) for public companies. For instance, AshakaCem Plc voluntarily delisted in 2017 following a mandatory takeover that affected its floated shares⁴.

Companies may also voluntarily delist due to merger and acquisition. Up to 8 companies voluntarily delisted from the NSE as consequence of mergers and acquisitions between 2002 and 2017.⁵ The amount of delisted stocks in 2018 represented a huge increase of 67.3 percent from N48.6 billion recorded in 2017. In 2018, 7 corporate bonds worth N57.34 billion

³ Nigerian Bottling Company to delist shares, published on December 15, 2010, retrieved on August 23, 2017 from <http://nigeriang.com/money/nigerian-bottling-company-to-delist-shares/6197/>

⁴ Board Proposes Voluntary Delisting of Ashakacem from the Nigerian Stock Exchange, published on November 16, 2016, retrieved on August 23, 2017 from <https://www.lafarge.com.ng/board-proposes-voluntary-delisting-ashakacem-nigerian-stock-exchange>

⁵ <http://www.nse.com.ng/issuers/corporate-disclosures/delisted-companies> accessed August 21, 2017

and N473.5 billion worth of governments securities were also delisted following their maturity.

Procedure for Voluntary Delisting

The role of the NSE is to make sure that it makes it easy for companies to enter and exit the capital market in an orderly manner. Accordingly, the NSE has recently enhanced its Listing rules to ensure that companies behave in an orderly fashion, especially companies that seek to delist voluntarily and where there is a business purpose why they are delisting.

The NSE has released a circular which stipulates the procedure for delisting a company from the official daily list of the NSE.

The circular stipulates the procedure for voluntary delisting include:

1. Directors meet and pass resolution to delist the company;
2. The resolution for delisting will then be proposed for approval of shareholders at the Annual General Meeting (“AGM”) or Extraordinary General Meeting (“EGM”) of the company; and
3. The company will draft a notice containing proposed resolution to be submitted to the NSE for vetting and approval, and also publish in at least 2 National Dailies at least 21 days before its AGM or EGM.

The proposal for delisting is required to be approved by a simple majority of members present in person or by proxy.

The representatives of the NSE must also be present at the meeting to observe the proceedings.

Dealing with Unwilling Shareholders in a Voluntary Delisting Process

In line with the provisions of Rule 1.10 of the Rules for Delisting of Equity Securities from the Daily Official List of The Exchange and in order to protect the interest of the minority shareholders that may dissent from the decision to delist the company, the majority shareholder or core investor is required by the circular to set aside sufficient funds to pay-off any shareholder who does not want to remain a member of the company in its unlisted status. The funds

must be domiciled with a Registrar or a Custodian duly registered by and in good standing with the Securities and Exchange Commission.

The circular also stipulates that the price at which unwilling shareholders are bought shall not be less than the highest price at which the company traded in the 6 months preceding the date of the AGM or EGM where the resolution to delist was passed.

Conclusion

It has been argued that delisting of companies gives the wrong impression to institutional and foreign investors about the fundamentals of the listed companies and the integrity of the stock market⁶.

Notwithstanding these contentions, voluntary delisting remains a viable means through which management can keep the company a going concern due to the challenges of doing business in Nigeria such as high operational costs, shortage of foreign exchange, erratic power supply, or decline in patronage of the company's product or services.

The voluntary delisting of a company does not preclude the company from being relisted on the NSE, rather it provides the company with the opportunity to restructure for better performance, minimise costs and stay competitive within its industry. Once the company becomes profitable and requires public capital, it is always open to it to apply to the NSE for relisting within a minimum of 3 years of its delisting.

⁶ How regulators can sustain stock rally, published in The Guardian, Vol. 34, No.14,115, August 21, 2017, page 19