AJUMOGOBIA & OKEKE

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OVERVIEW OF THE NIGERIAN CAPITAL MARKET

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BACKGROUND

The Nigerian capital market has gone through its fair share of ups and downs in recent times. This notwithstanding, it can be argued that the capital market has, for the past several decades, remained the most effective mechanism for Nigerian entrepreneurs and businesses to raise medium and long term capital. Since 1946 when the first loan stock was floated in the Country[1], the establishment of the Nigerian Stock Exchange (NSE or the Exchange) in 1961[2] and the establishment of the Securities and Exchange Commission (SEC or the Commission) in 1980[3], the development of the capital market as a mechanism for determining prices and a channel for sourcing capital, has made it possible for businesses seeking alternative methods of financing other than loan financing to remain viable in a very tough environment whilst at the same time allowing the average investor the opportunity to become part owner of highly skilled or technical and often profitable enterprises that they would ordinarily not have been a part of.

The Nigerian capital market also felt the impact of the global meltdown in 2008 because many foreign investors divested from emerging markets such as ours in order to cushion the effects of losses suffered at home. It seemed that local investors also erroneously imposed banks short-term orientations on a long- term capital market. The inadequacy of some of the existing regulations particularly in areas such as margin-trading were also exposed.

End of year 2013, NSE equity market capitalisation surpassed the market cap at the peak of the market in 2008 (₦13.23 trillion vs. ₦12.62 trillion)[4]. The capitalization of listed equities grew by 47.33% and the NSE All Share Index (ASI) gained 49.19%. Currently the capitalisation of the NSE is about 27% of Nigeria's gross domestic product (GDP)[5]. In comparison, the capitalisation of the Malaysian market for example is 270% of that country's GDP, while that of Brazil and India is 130%. The regulators of the capital market do not have to be told that Nigeria's capital is lagging behind comparable developing nations and that there is an urgent need to develop and grow the capital market as it is such an essential area of a nation's economic development.

[1]1946 10-year plan Local Loan Ordinance for the floatation of the first N300,000, 3% Government stock 1956/61 with its management vested on the Accountant-General.
[2] Lagos Stock Exchange Act 1961- Supplement to Official Gazette No.4, Vol. 48, 8th June 1961 – PART A, LFN 1961
[3] Securities and Exchange Commission Decree 1979, Decree No. 71, LFRN 1979
[4] Source: Capital Assets Limited - research
[5]using official GDP figures before the rebasing exercise that has increased the country's GDP to about 510 Billion US Dollars.

It is not surprising therefore that reforms are being introducedto the capital market aimed at ensuring that the market capitalisation of the NSE grows in leaps and bounds henceforth, with a forecast target of 130% of the Country's GDP by 2024[6].

To achieve this target, the SEC has stated that it will be addressing issues impacting on regulations in general focusing on stronger enforcement, regulatory oversight and capacity building within the Capital Market in general, the introduction of new products and reducing overall costs of transactions among others.

INITIATIVES GEARED TOWARDS ENHANCING THE DEVELOPMENT OF THE NIGERIAN CAPITAL MARKET

REFORMS/INITIATIVES:

The Main Board vis a vis the Alternative Securities Market (ASEM) Board

The market structure and segmentation of the Exchange has undergone some changes in recent times. The First Tier securities market is now referred to as the Main Board while the Second Tier securities market is now referred to as the Alternative Securities Market (ASeM) Board.

The Main Board primarily features shares of large (blue chip) companies. There are three (3) important criteria for admission in to the Main Board. These are:

i. at least 20% of issued shares must be held by the public;
ii. the number of shareholders of the company must not be less than 300; and
iii. the issuer is required to pay an annual listing fee based on its market capitalization.

The ASEM Board on the other hand is a specialized board of the NSE for start-ups, emerging businesses, small and medium sized companies with high growth potential. The listing rules and requirements for admission to ASeM have been made quite flexible to accommodate a wide range of small to medium sized businesses essentially to provide them the opportunity to access the many benefits of the capital market.

[6] Source – MounirGwarzo, Executive Commissioner (Operations), SEC at the Centenary Capital Market Committee (CMC) meeting held in Lagos on 26 March 2014.

In order to ensure compliance with requirements and obligations of ASeM, the Exhange conducted a selection process to appoint Designated Advisers ("DAs") for companies to be listed on the ASeM Board of the Exchange. The Das will provide professional resources to qualifying companies for guidance and advice on securities related matters in general.

Registration of Over the Counter (OTC) Trading Platforms

The Commission approved the registration of two (2) OTC trading platforms in 2012. The trading platforms (FMDQ OTC Plc and National Association of Securities Dealers (NASD) Plc) are for transactions in unlisted securities including equities and bonds. This is in view of the fact that only about two hundred (200) companies are listed on the NSE and trading on the securities of other unlisted plcs was never captured. The rationale behind the registration of the OTC platforms was that it will further the cause of efficiency, transparency, price discovery and liquidity in the trading of the shares of unlisted companies and also prepare unlisted companies for listing on the NSE.

The NASD OTC market was launched in Lagos in July, 2013. The NASD is expected to offer a variety of products and services now and in the future. They include Securities Trading, Derivatives, Options, Futures, Company Listing, Capital Raising, Research Analytics and other value-added services as in other jurisdictions. In addition, the NASD OTC market will offer investors a platform from where they can obtain information on available investments that are not listed on the NSE. This information will include prevailing prices/last deal price on a security, a range of asset classes to choose from and financial performance of non-listed companies. FMDQ OTC Plc which was inaugurated in November 2013, is an OTC market where fixed income instruments and currencies are exchanged.

It is hoped that the existence of the new OTC platforms would encourage retail participation in bond trading which is virtually non-existent now. On its own part, the NSE in January 2013 in a bid to revamp trading activities of secondary fixed income securities listed on the NSE unveiled six (6) Fixed Income Market Markers (FIMMs), to engage in market making of the listed bonds.

Creation of New Rules on Book Building, Shelf Registration and Sukuk

Introduction of new rules on book building[7], shelf registration[8] and Sukuk among others are meant to hasten the development of the capital market and reduce transaction costs. The introduction of Book Building and Shelf Registration have shortened the average issuance period and improved the price discovery process for bonds and other issues while Sukuk which is more recent will provide issuance variety in the Nigerian capital market. The advantage of the introduction of Sukuk instrument[9] is that it is non-interest bearing and would capture the group of investors who are averse to interest bearing instruments. Already one State government[10] has issued bonds in the market through Sukuk.

Developing Collective Investment Schemes

SEC has over the years continued to emphasize its resolve to develop and ensure increased investor participation in the collective investment schemes. Consequently, further significant steps were taken in this direction in 2012. Steps taken in the year included the directive to transfer assets under the management of fund managers to custodians in order to prevent conflict of interests, as obtains in the pension industry. Trustees are therefore limited to handling only the fiduciary functions while the fund custodians hold the assets.

Restoration of Investors' Confidence

SEC has continued to carry out various activities aimed at restoring the confidence of investors (particularly local investors) in the capital market.The focus has been on clarity of rules and regulations to achieve transparency and market efficiency. Some of the major actions taken include:

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[7] This is the process of price and demand discovery by which an issuing house book runner, attempts to determine at what price a public offer should be made, based on demand from qualified institutional and high net worth investors.

[8] This occurs where one issuer uses a single prospectus ("Shelf prospectus") to raise funds in the capital market at different intervals within a reasonable period (used more often for bond transactions, example is the Asset Management Corporation of Nigeria (AMCON) N1.7 trillion zero coupon (three-year) bond issues in 2011).

[9]investment certificates or notes of equal value which evidence undivided interest/ownership of tangible assets, usufructs and services or investments in the assets of particular projects or special investment activity using Sharia principles and concepts approved by the SEC."

[10]Osun State Government – N10 billion lease due in 2020.

- Enlightenment/outreach programmes organized for each state;
- Closing down and sealing up of the premises of companies proven to have engaged in Ponzi schemes (wonder banks) and illegal market operations; and
- Real time online surveillance of trading on the floor of the NSE to further promote market integrity and transparency.

Development of New Products

The Commission hosted an Infrastructure Roundtable in collaboration with the National Planning Commission (NPC) which brought key policy makers, issuers and experts together to explore ways in which the capital market could be leveraged to finance the $3.9 trillion required investment in infrastructure over the next thirty (30) years according to the National Integrated Infrastructure Master Plan (NIIP).

SEC also co-sponsored a Debt Capital Market Conference in collaboration with the International Finance Corporation (IFC), where plans by the IFC to float its first long-term, local-currency bond programme of about $1 billion in Nigeria was disclosed. The bond will allow the IFC issue series of local-currency bonds to deepen the domestic capital markets and support private sector development in Nigeria. SEC has also invested hugely in the area of securitization in terms of capacity building.

Reduction/Eradication of Insider Trading

SEC has placed a high priority on reduction of incidents of insider trading[11]and aims to eradicate it completely.

Other Initiatives

Takeoff of Sovereign Wealth Fund:with a takeoff fund of US$ 1 billion set aside as seed capital, part of this fund will definitely be invested through the capital market.

Government Reforms and Policies: Privatization of the power sector is expected to require substantial private sector financing. The new owners are expected to access the capital market for funds particularly through private sector participation. This will in turn create more

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[11]Insider trading is the trading of the shares of a public company or other securities by individuals who by virtue of their work or position have access to the otherwise non-public information about the company which can influence critical investment decisions relating to retention or sale of shares in that company at a specific time or during a period of time.

employment opportunities, new markets and development of financial instruments to fast track the accessibility of funds for the development of the power sector.

Cross Border Listings: The NSE encourages cross border listings.Overseas issuers can list their shares on the NSE once they comply with the cross border listing rules and they are encouraged to contact the NSE if they envisage any difficulties in complying fully with the relevant requirements.

The NSE reserves the right in its absolute discretion, to refuse a listing of securities of an overseas issuer for any number of reasons one of which is the belief that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Nigeria[12].

Unless the NSE agrees, only securities registered in Nigeria may be traded on the NSE[13] and where two (2) or more registers are maintained, it will not be necessary for the NSE register to contain particulars of the shares registered on any other register[14].

If the listing involves a marketing of the securities for which listing is being sought, then securities with an expected market capitalization of at least N28 Billion or equivalent must be offered in Nigeria[15].

It should be noted that a number of Nigerian companies have done the reverse by successfully embarking on cross border listings or issuance of securities abroad. In recent times some of the trail blazing Nigerian companies particularly within the oil and gas sector have been able to access huge amounts of foreign funds in the international markets.

This new era of securities of companies based and operating out of Nigeria being accepted and coveted by the international investment community at large is indeed a most welcome development.

[12] Rule 3.1(i) of the NSE Listing Requirements (The Green Book), Chapter 10
[13] Rule 3.5 of the NSE Listing Requirements (The Green Book), Chapter 10
[14] Rule 3.6 of the NSE Listing Requirements (The Green Book), Chapter 10
[15] Rule 3.7 of the NSE Listing Requirements (The Green Book), Chapter 10

Global Depositary Receipts [16]**(GDR's):** Interestingly, many of the GDR's that have been issued from Nigeria all happened in the same year, 2007. In that year seven (7) companies (First Bank Plc, GT Bank Plc, UBA Plc, Access Bank, FCMB Plc, Diamond Plc and Fidelity Bank Plc) all issued global depositary receipts in other jurisdictions.

See table below:

S/N	ISSUER	LISTING STATUS	VALUE	DATE ISSUED
1	Diamond Bank Plc	Listed on LSE	$400M	20/11/2007
2	GT Bank Plc	Listed on LSE	$750M	19/07/2007
3	Fidelity Bank	Non - listed	$250M	21/08/2007
4	Access Bank	Non - listed	$300M	23/07/2007
5	First Bank of Nig Plc	Non - listed	N100B	05/07/2007
6	FCMB Plc	Non - listed	$100M	02/07/2007
7	UBA Plc	Non - listed	N2.60B	23/02/2007

METHODS FOR LISTING OF SECURITIES ON THE EXCHANGE

These include the following:

a) **Offer for subscription**which is an invitation by or on behalf of a company or other authority to the public, for subscription of securities at a fixed price;

b) **Offer for sale**which is an offer to the public by or on behalf of a shareholder, the proceeds which will go to the vendor(s);

[16]Negotiablecertificate issued by one country'sbank against a certain number of sharesheld in its custody but traded on the stock exchange of another country. GDRs entitle the shareholders to all associateddividends and capital gains, and can be bought and sold like other securities. Thus they allow investors in any country to buy shares of any other country without losing the income or tradingflexibility

c) **Placing**which is asale by a broker to his clients, of securities, which have previously been purchased or subscribed for;

d) **Rights offer/issue**which is a privilege offer/issue to existing shareholders to acquire proportionately additional shares in the company usually at a special price;

e) **Capitalisation Issue**which is a bonus/scrip issue to existing shareholders;

f) **Tender** is an offer of specific quantity of shares and stock to the public by or on behalf of a company or other authority or a third party for bidding;

g) **Introduction**is the Listing of securities already widely held;

h) **Conversion** is an exchange for or conversion of securities into other classes of securities;

i) **Options -** Anoffer to buy or sell some shares at an agreed price and time; and

j) Any other method Council may prescribe.

INVITATIONS TO THE PUBLIC

Invitations to the Nigerian public with regard to investments in general are regulated by the Investment and Securities Act[17] (ISA), I 24 LFN, 2010, the SEC Rules pursuant to the ISA, the NSE Listing Requirements, the Companies and Allied Matters Act (CAMA)[18] and other relevant legislation/regulations.

[17] Section 67(1) ISA – requires that no person shall make an invitation to the public to acquire or dispose of the securities of a body corporate unless the body corporate is a public company (whether quoted or unquoted).

[18] Cap C20 LFN, 2010

CONVERSION AND RE-REGISTRATION OF COMPANIES

The majority of companies registered in Nigeria are private companies with the liability of its shareholders limited by shares held in the company. Therefore, in order for a private company seeking funds from the capital market to comply with the ISA requirements, it would need to take advantage of the provisions of CAMA which allows for conversion a company from private to public.

Section 50 CAMA states the process for the registration of a private company as public as follows:

S. 50(1) – Subject to this section, a private company having a share capital may be re-registered as a public company if:

a) a special resolution that it should be so re-registered is passed; and

b) an application for re-registration is delivered to SEC together with the documents prescribed in sub section (3) of this section.

The special resolution shall alter the company's memorandum so that it states that the company is to be a public company.

REGISTRATION OF A LIEN AT THE CENTRAL SECURITIES CLEARING SYSTEM (CSCS)

In Nigeria, the practice is that where a borrower intends to use dematerialized[19] shares as security for a loan, a lien will be required to be placed at the Central Securities Clearing System (CSCS). This is done by filing a Joint Memorandum of lien (JML). Once a lien has been placed, the CSCS will issue a letter advising that lien placement has been received and the CSCS will thereafter move the Secured Shares to a *CSCSReserved Lien Account*with the interest of the lender noted in the lien account. It is in the interest of the lender not to disburse funds until it receives the letter of confirmation of placement from the CSCS.

The process of filling a JML at the CSCS is as follows:

1. The lender must obtain a current statement of stock position from the CSCS Ltd.

[19] Move from physical certificates to electronic book keeping

2. A JML duly filled and executed by the authorised signatories of the lender and the borrower requesting the CSCS to place a lien on specific quantity of the stock(s), must be registered at either the Stamp Duties Office or sworn to before a Commissioner for Oaths in any Court of Law.

The JML should thereafter be forwarded to CSCS with the following documents:

(a) A list of the authorised signatories that have the capacity to sign the relevant JML;
(b) An undated letter signed by the borrower, authorizing the lender to sell the stocks in the event of default at the expiration of the loan due date;
(c) The lender, the borrower and the Stock-broking firm(s) may be required to confirm and/or consent to the lien agreement;
(d) The draw down date and duration of the lien agreement must be specifically stated in the JML; and
(e) A copy of the facility and security agreements.

3. The lender (and no other party) should advise CSCS to remove the lien placed on stocks **en bloc** when the borrower has discharged his/her/its obligation under the contract. The stock(s), which should be listed on the letter of instructions from the lender, is/are moved back to the original stock-broking firm(s) from where the stock(s) was taken.

4. When the borrower defaults and/or fails to discharge his/her/its obligation under the contract, the lender at the expiration of the loan due-date shall:

(a) Inform CSCS of the default by the borrower and advise CSCS to remove the lien to enable sale to be effected.

(b) With a copy of the undated letter written by the borrower to the lender further give instructions/directives to CSCS for the purpose of the release and sale of the totality of the holdings through a mandated or named stock-broking firm, which is a member of the NSE.

(c) CSCS, if satisfied that the procedure has been complied with, will be obliged to remove the lien on the stock(s) upon such information/instructions from the Lender after the expiration of the loan due-date without recourse to the borrower, when evidence of Notice of Default from lender to borrower is received/sighted by CSCS.

(d) If the Debtor/Shareholder refuses to acknowledge receipt of the Notice of Default mentioned in Paragraph ‘‘c” above, the lender should write a letter to CSCS affirming such position/situation which may suffice for CSCS to release the stock(s) without recourse to the borrower.

It should be noted that a lien is placed on shares whose owner(s) is/are the direct borrower(s) and not third party to the contract, which fact the lender must attest to, expressly or by implication.

MERGERS AND ACQUISITIONS (M & A's)

In discussing M & A's or business combinations within the Nigerian context, we have decided to focus on the policies put in place by the regulatory authorities in order to forestall a potential monopoly or undue advantage that may result from a merger or an acquisition.

Anti-Monopoly Regulations

Whenever required to consider a merger, the Commission determines whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in Section 121 (2) of the ISA.

Section 121 (2) requires that when determining whether or not a merger is likely to substantially prevent or lessen competition, the Commission shall assess the strength of competition in the relevant market, and the probability that the company, in the market after the merger, will behave competitively or co-operatively, taking into account any factor that is relevant to competition in that market, including –

a) the actual and potential level of import competition in the market;
b) the ease of entry into the market, including tariff and regulatory barriers;
c) the level and trends of concentration, and history of collusion, in the market;
d) the degree of countervailing power in the market;
e) the dynamic characteristics of the market, including growth, innovation, and product differentiation;
f) the nature and extent of vertical integration in the market;
g) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and
h) whether the merger will result in the removal of an effective competitor.

If it appears that the merger is likely to substantially prevent or lessen competition, then the Commission has to further determine –

i. whether or not the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than, and off-set, the effects of any prevention or lessening of competition, that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented, and
ii. whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3)

Section 121 (3) of the ISA, when determining whether a merger can or cannot be justified on public interest grounds, the Commission considers the effect that the merger will have on-

a) a particular industrial sector or region;
b) employment;
c) the ability of small businesses to become competitive; and
d) the ability of national industries to compete in international markets.

QUALIFICATIONS:

This article has been written by the firm of Ajumogobia & Okeke based on materials obtained from the Securities and Exchange Commission and Capital Assets Limited (member of the NSE), in addition to our in house research and review of relevant regulations/legislation governing the Nigerian Capital Market. It does not purport to render legal advice on the Nigerian Capital Market and should not be taken as such. The firm will not be liable for actions taken by any party relying solely upon the contents of this article.

Potential participants or investors in the Nigerian Capital Market should therefore consult or appoint recognised professionals who are duly registered with the regulatory authorities in charge of the capital market in Nigeria to assist them in relation to any potential transaction that they may wish to undertake.

This article is limited to the laws regulating the capital market in Nigeria and we express no opinion concerning the laws of other jurisdictions or the effect thereof.

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See also: ADDENDUM - NIGERIAN END OF YEAR CAPITAL MARKET ROUND UP (2017)

ADDENDUM

NIGERIAN END OF YEAR CAPITAL MARKET ROUND UP (2017)

The aggregate value of transactions at the Nigerian Stock Exchange increased from January to September 2017 by 78.60 percent to ₦1.6555 trillion as against ₦927.08 billion in the same nine months period in 2016. The equities have gained from the positive news that the economy appears to be exiting recession. Oil price has risen to $64.07 per dollar and external reserves have increased in excess of $34.5 billion and third quarter GDP grew by 1.4 percent. Nigeria's inflation rate is currently around 15.91 percent.[20]

Equities exceed ₦13trillion mark

Nigeria's stock market surpassed the ₦13.13 trillion mark for the first time in about three years on Wednesday as investors continue to chase value across select stocks.

The Oil&Gas sector in particular closed high at+3.76% on account of a +7.73% jump in Seplat, which saw it close at a life-time high of ₦540.05. This was due to turnover being lifted by block trades totaling 14.0m shares and valued at $5.38mn involving offshore investors.[21]

[20]BusinessDay 30 November, 2017
[21]RMB Nigeria Ltd Stockbrokers bulletin, 14 December,2017

The following are stocks that have out- performed the Nigeria Stock Exchange All Share Index (NSEASI) in their year to date price change[22]:

Company	Percentage Gain %		Percentage Gain %
Access Bank	**70.4**	GT Bank Plc	72.3
Air Service Plc	**138**	Honeywell Flour Mills Plc	57.7
Beta Glass Plc	**69.2**	International Breweries Plc	212.6
Caverton	**52.2**	May and Baker Nigeria Plc	187.2
Cement Company of Northern Nigeria Plc	**88**	Nascon Plc	80.6
C & I Leasing	**182**	Nestle Plc	62.3
Dangote Flour Mills	**136.9**	Okomu oil Palm Plc	67.3
Dangote Sugar Plc	**188.7**	Presco Plc	64
Ecobank Transnational	**65.2**	PZ Cussons Plc	53.4
FBN Holdings Plc	**109**	StanbicIBTC Plc	178.7
Fidelity Bank Plc	**136.9**	Transcorp Plc	59.8
Fidson Healthcare Plc	**196.9**	UBA Plc	120
Flour Mills Nigeria Plc	**83.9**	Zenith Bank Plc	68.1

[22]Source: BusinessDay 30th November 2017

Treasury Bills at a two year low

Monetary and fiscal policies have combined to push T-Bill yields to a two year low. The plan to redeem all Nigerian Treasury bills maturing in December 2017 and a halt in Open Market Operation (OMO) bill issuances by the Central Bank have combined to send yields to their lowest since 2015. Yields on Treasury bills dropped by more than half to around 7 percent across board after the Debt Management Office (DMO) announced recently that it would redeem some ₦198 billion (USD$647 million) in maturing T-Bills for the month of December.

That is a 61 percent decline from one year T-Bill yields. The Treasury bills will be redeemed primarily using proceeds of the USD$500million Eurobond raised in November 2017.[23] Nigeria had issued a dual tranche USD3billion Eurobond in November 2017 out of which USD$2.5 billion is to part finance the deficit in the 2017 Appropriation Act and the balance of USD$500 million is for the refinancing of domestic debt.[24]

Foreign investors' inflow into stock market decreases by ₦9bn

Foreign investors inflow into the nation's capital market decreased by 18.30 per cent from ₦48.42 billion in September 2017 to ₦39.56 billion in October 2017[25]. According to the report from the Nigerian Stock Exchange (NSE), foreign outflows also decreased by 21.67 per cent from ₦35.85 billion in September 2017 to ₦28.08 billion in October 2017.

Total transactions at the nation's bourse decreased by 1.31 per cent from ₦129.52 billion recorded in September 2017 to ₦127.82 billion, about $0.42 billion in October 2017. The aggregate value of transactions from January to October 2017, increased by 79.96 per cent from ₦991.11 billion recorded in 2016 to ₦1.783 trillion in 2017.

Foreign investors outperformed domestic investors by 5.84 per cent. Total foreign transactions decreased by 19.73 per cent from ₦84.27 billion recorded in September 2017 to ₦67.64 billion in October 2017. However, total domestic transactions increased by 32.99 per cent from ₦45.25 billion to ₦60.18 billion within the same period.

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23 Source: Debt Management Office
24BusinessDay 13 December, 2017
25 Daily Trust 13 December, 2017

Domestic composition of transactions on the exchange between January and October 2017 indicates that the institutional composition of the domestic market increased by 51.93 per cent from ₦21.72 billion recorded in September to ₦33.00 billion in October 2017.

The retail composition also increased by 15.51 per cent from ₦23.53 billion to ₦27.18 billion within the same period. This indicates a higher participation by institutional investors over their retail counterparts.