THOUGHT LEADERSHIP

BY JACKSON ETTI & EDU

ISSUANCE OF GREEN BONDS AND ENVIRONMENTAL PROTECTION OBLIGATIONS:

A WIN-WIN FOR CORPORATES IN THE NIGERIAN FMCG SECTOR

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Fast Moving Consumer Goods Sector

Introduction

The need for protection of the environment is at the front burner of political discussions both at local and international levels. The reason for this is not farfetched as it is already obvious that the Planet Earth, as we know it, may be harmed or damaged to a significant extent if care is not taken on how the environment is treated. To this end, various governments have taken steps using legislations for protection and preservation of the environment.

In the same vein, from across the length and breadth of legal and commercial discussions, Green Bonds is a consistently trending topic. If the capital that has been raised all around the world by means of Green Bonds are anything to go by, it would not be wrong to conclude that Green Bonds seem to have come to stay and can only get better.

This article looks at the environmental obligations of companies, especially those operating in the Manufacturing Sector - generally referred to as the Fast-Moving Consumer Goods (**FMCG**) sector, under various Nigerian legislations relating to the environment. Attention is paid to the companies in the FMCG sector because of the impact their manufacturing operations have on the environment. The article also looks at the features, history and future of Green Bonds; the differences between Green Bonds and other traditional bonds; how Green Bonds have been utilised for capital raising around the world by both corporates, supranational institutions and states; and how Nigerian corporates, especially corporates in the FMCG sector can also take advantage of the uniqueness of this specialised financial instrument to raise capital for the advancement of their businesses and operations and at the same time take the opportunity of the Green Bond issuance to ensure compliance with their regulatory obligations under the relevant environmental legislations.

Protection of the Environment

Protection of the environment is one of the aims and objectives of every government everywhere in the world. Many governments impose environmental protection obligations on all entities whose commercial operations impacts on the environment. In Nigeria, the State has, as one of its duties, the protection and improvement of the environment.[1] Accordingly, the encouragement of continued economic development in manners compatible with protection and improvement of the environment is one of the key aims of the government.

To this end, there are several legislations and legal instruments that have been enacted in Nigeria with the aim of protection and improvement of the environment (the **Environmental Laws**). Pursuant to the Environmental Laws, companies in the FMCG sector

have obligations towards the protection and improvement of the environment.

Some of the Environmental Laws include:

i. Environmental Impact Assessment Act, 1992.
ii. Environmental Protection Laws of States.
iii. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 **(NESREA Act).**
iv. National Environmental (Noise Standards and Control) Regulations 2009 (S.I No. 35).
v. National Environmental (Chemical,

1 See Section 20 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Pharmaceutical, Soap and Detergent Manufacturing Industries) Regulations, 2009.
vi. National Environmental (Electrical/Electronic Sector) Regulations, 2011.
vii. National Environmental (Permitting and Licensing System) Regulations, 2009.
viii. National Environmental (Sanitation and Waste Control) Regulations, 2009.
ix. National Environmental (Food, Beverages and Tobacco Sector) Regulations 2009.[2]

Under the provisions of the listed legal instruments, stakeholders have obligations relating to protection, preservation, and improvement of the environment.

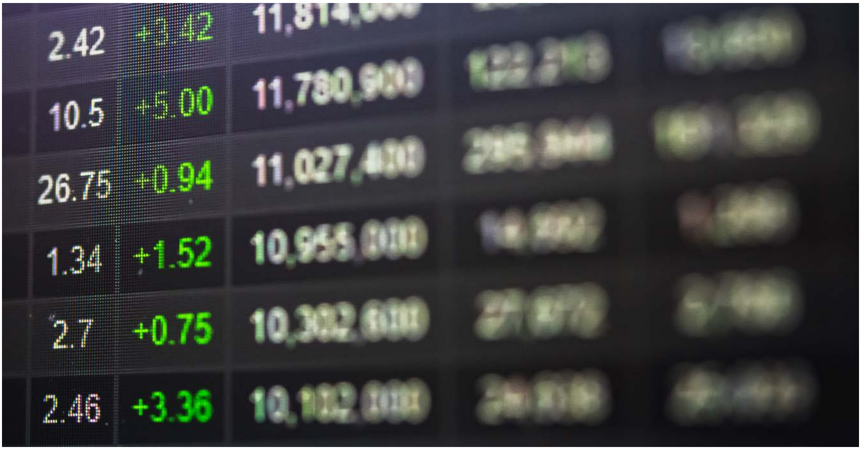
For instance, pursuant to the provisions of Environmental Impact Assessment Act; National Environmental (Noise Standards and Control) Regulations 2009 (S.I No. 35); National Environmental (Food, Beverages and Tobacco Sector) Regulations 2009 and National Environmental (Sanitation and Waste Control) Regulations, 2009 a company has the following obligations, among others:

i. Obtaining and submitting Environmental Impact Assessment.
ii. In the event that the company's operations or activities will likely emit noise in excess of the permissible levels, the company is required to apply to National Environmental Standards and Regulations Enforcement Agency **(NESREA)** for a permit to emit noise in excess of the permissible levels
iii. Obligation to undertake measurements of noise levels within the manufacturing facility as well as within the ambient environment of the premises using noise level meters, measurement schedules and protocols that meet NESREA's standard.
iv. Submission of Environmental Audit Report (EAR) to NESREA every three years.
v. Submission of Environmental Management Plan (EMP) detailing the process an organisation will follow to maximise compliance and minimize harm to the environment.
vi. Submission of Incidence Report and Monthly Effluent Data Sheet.
vii. Submission of Monthly discharge Monitoring Report
viii. Report on release of effluent and sludge into the environment in excess of permissible level as contained where such an event has previously occurred.

It is important to note that certain commission and omission may constitute criminal liability under the Environmental Laws which are sanctioned with penalties ranging from terms of imprisonment to imposition of fines.[3]

2 Regulations listed in items iii – viii are all made pursuant to the provisions of NESREA Act,

3 Criminal liability under the provisions of the Harmful Waste (Special Criminal Provisions Etc) Act seems to be more serious as same is punishable with life imprisonment and objects used for the commission of the offence liable to forfeiture to the Federal Government.



Features of Green Bonds

Bonds generally are financial instruments, form of interest-bearing debt security. A Green Bond, like any regular bond is also a financial instrument; it is an interest-bearing debt security.

Furthermore, Green Bonds have similar features with regular bonds. For example, price, maturity, coupon, frequency of payment of coupon are all features of regular bonds which are also shared by Green Bonds. The major factor which distinguishes Green Bonds from other bonds is the specification in the use of proceeds of Green Bonds. Green Bonds are used to raise capital to finance environmentally friendly related projects; proceeds are used for climate change adaptation, renewables and other environment-friendly projects.

The rules of the Securities and Exchange Commission, 2013 (as amended) **(SEC Rules)** defines Green Bonds as

"any type of debt instrument, the proceeds of which would be exclusively applied to finance or refinance in part or in full new and/or existing projects that have positive environmental impact".

It is a common trend with Green Bonds to support climate change; as such, after assessment of all regular features of conventional bonds, investors in Green Bonds will also assess the environmental purposes of the projects which the proceeds of the Green Bonds will be used to finance.

History of Green Bonds

Authors of Green Bonds texts seem to agree that the need to access capital for financing climate change related projects was responsible for the emergence of green Bonds (also known as 'climate bonds'). The first attempt at a Green Bond was in 2001 at San Francisco wherein the city proposed

a Chatter Amendment that would allow the city to issue 'solar bonds' the proceeds of which would be used to finance solar power and other clean energy technologies for the residents and businesses of the city.

In 2007, the European Investment Bank **(EIB)** issued an equity index-linked bonds in the value of €600,000,000 (Six Hundred Million Euros) which was referred to as "Climate Awareness Bond" and its proceeds were dedicated specifically to renewable energy and energy efficiency projects.

EIB's Climate Awareness Bond was followed by the first "Green Bond" labelled debt security issuance by the International Bank for Reconstruction and Development **(IBRD)** in 2008 in the value of approximately $440,000,000 (Four Hundred ad Forty Million United States Dollars) in Swedish Koran. It is on record that the IBRD has issued more than 130 Green Bonds since 2008 to the tune of more that $10 Billion (Ten Billion United States Dollars).

Poland was the first sovereign nation to issue Green Bonds and was soon followed by Fiji, France and China. Many other countries have in the recent past issued Green Bonds. In 2017, Nigeria also issued its debut Green Bonds in the value of nearly N10.69 Billion (approximately $29 Million) to fund environmental friendly projects. It should be noted that the bond was fully subscribed. Nigerian has again in 2019 issued its second sovereign Green Bonds in the value of N15 Billion. The second issuance yielded the sum of N32.93 Billion indicating a 220% subscription.

Many corporates of international status have also issued Green Bonds around the world. For example, in November 2017, Toyota Motor Credit Corporation (TMCC) issued a €600,000,000 (Six Hundred Million Euros) Green Bonds; the proceeds of the bonds would be allocated specifically to the production and sale of low emission vehicles. It is on record that TMCC was responsible for the introduction of the worldwide auto industry's first-ever asset-backed Green Bond in 2014; as at

December, 2017, TMCC had already issued four Green Bonds in the value of approximately $5.3 Billion. Other corporates that have also issued Green Bonds include, Apple, Industrial and Commercial Bank of China, Agricultural Bank of China among numerous others. In Nigeria, at least two corporates in the energy and financial services sectors have issued Green Bonds, Access Bank Plc and North South Power Company Limited. Whilst Access Bank's Green Bonds were fully subscribed, North South Green Bonds were over subscribed by 60%.

Issuance of Green Bonds worldwide has consistently grown over the years since it was first introduced in 2007. In 2017, the total amount raised from Green Bonds was in excess of $155 Billion; Green Bond issuance in 2017 represents about 78% increase when compared with the 2016 figure of $87.2 Billion.

According to Climate Bonds Initiative, a new global record of Green Bonds issuance was set in 2019 with a total sum of $257.7 Billion which is a 51% growth in the 2018 figure of $170.6 Billion. The 2019 figure was from 1788 Green Bonds issued by 496 entities from 51 jurisdictions around the world. The record of issuance of Green Bonds in Nigeria has also shown growth trajectory.

Legal Framework for Issuance of Green Bonds in Nigeria

There is an existing legal framework for issuance of bonds in Nigeria. The main legislation governing issuance of bonds in Nigeria is Investment and Securities Act, 2007 **(ISA)** and the SEC Rules. Where the bonds will be listed on the platform of the Nigerian Exchange **(NGX)**, then the relevant Listing Rules of the NGX will apply to the Green Bonds. Also, where the Green Bonds will be listed on the FMDQ Platform, relevant FMDQ Listing Rules will apply.

Please note that the SEC in 2018 amended the SEC Rules to add rules and regulations which specifically provide for issuance of Green Bonds. Some notable provisions of the amendments include the definition of "Green Bonds", which provides a description of the term; the definition of "Look Back" which refers to the maximum period in the past to which an issuer may access to select Green Bonds eligible projects. The new amendments also include a list of the kind of projects which will be considered by SEC to be eligible projects under the Green Bonds issuance in which proceeds of Green Bonds can be invested; as well as conditions for approval of Green Bonds. The SEC Rules on Green Bonds seem to be largely based on the Green Bond Principles issued by the International Capital Market Association (ICMA) in 2015 and updated in 2018.[4]

The conditions for approval of Green Bonds as provided in the amended SEC Rules are as follows:

i. A letter from the issuer committing to invest all the proceeds of the bond in projects that qualify as green project(s);
ii. A feasibility study and report stating clearly, the measurable benefits of the proposed Green project or Assets;
iii. A prospectus which shall include project categories, project selection criteria, decision-making procedures, environmental benefits, use and management of the proceeds.
iv. An independent assessment or certification issued by a professional certification authority or person approved or recognized by the SEC; and
v. Any other documents that may be required by SEC.

Please note that the above listed conditions are in addition to the general registration and approval requirements for regular bond issuances under the SEC Rules.

Opportunities for FMCG Companies in Nigeria

The projected growth of Green Bond issuance could mean only one thing for Nigeria companies, a huge opportunity waiting to be utilised.

Some of the advantages of the Green Bonds which will avail Nigerian FMCG players:

- Capital Raising: The companies will be able to raise capital which can be used for projects that are environmentally friendly and at the same time progress the businesses of the companies and result in increase in revenue for the companies.

- New Investors: The companies will have access to new investors such as sustainable funds which invest in environmentally friendly instruments;

4 Green Bond Principles are voluntary process guidelines that recommend transparency and disclosure and promote integrity in the development of the Green Bond market by clarifying the approach for issuance of a Green Bond. There are four components of the Green Bond Principles and they are: use of proceeds; process for project evaluation and selection; Management of Proceeds; and Reporting

investors with a specific mandate to buy green bonds; and investors with long-term goals such as pension funds and insurance companies.

- Low Cost of Financing: Green Bonds have the potential to attract new investments at cheaper costs, on account of the huge demand for bankable green projects.
- Reputational gains: More visibility for the green projects. Positive marketing instrument differentiating the issuance of Green Bonds from conventional or regular bonds.

Conclusion

Perhaps, the most important advantage of issuance of Green Bonds by corporate in the FMCG Sector is the ability to use same sets of facts for capital raising as well as regulatory compliance especially compliance with the provisions of Environmental Laws and at the same time increasing the fortune of the company. For instance, proceeds of Green Bonds may be used to invest in environmentally friendly projects as required for the purposes of the Green Bonds issuance which projects will also at the same time ensure compliance with the obligation of protection and preservation of the environment imposed by Environmental Laws.

Furthermore, materials/items provided by the company for the purposes of reporting requirements pursuant to Green Bond issuance may also be used to comply with reporting obligations under the Environmental Laws. This way, the company saves more money, improves its fortunes and yet comply with its obligations under the law.

This is therefore an invitation to companies in the FMCG Sector to consider and if deem fit to use one set of circumstances to take double advantage of Green Bond issuance as well as compliance with Environmental Laws. Players in the FMCG sector are thus encouraged to take advantage of the popularity of Green Bonds as a tool for capital raising.

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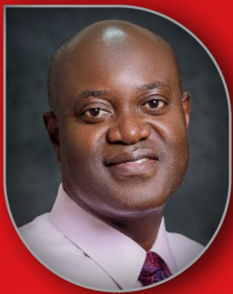

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