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## **EXCHANGE TRADED FUND LISTING RULES**

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**Extracted from SEC-Approved FMDQ Bond Listing and  
Quotation Rules**

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**Table of Contents**

**DEFINITIONS ..... 2**

**1. GENERAL CONDITIONS ..... 5**

**2. CONTENTS OF THE ETF PROSPECTUS..... 5**

**3. RULES RELATING TO ETFs ..... 6**

**4. POST-LISTING REQUIREMENTS ..... 8**

**5. ENFORCEMENT OF THE BOND LISTING AND QUOTATION RULES ..... 9**

**NOTES ..... 11**

**APPENDIX I: FORM OF GENERAL UNDERTAKING (EXCHANGE TRADED FUNDS) ..... 12**

## DEFINITIONS

The following terms and expressions shall, unless the context otherwise requires, have the following meanings in the FMDQ Bond Listing and Quotation Rules:

- “**Associate Company**” is an investee company that is not a subsidiary and in respect of which;
- a) The investor’s interest in the voting power of the investee is substantial,
  - b) The investor has the power to exercise significant influence over the financial and operating policies of the investee, and
  - c) The investor intends to retain its interest as a long-term investment.
- “**Benchmark**” means a standard against which the performance of a security is measured; usually an index of securities of the same or similar class.
- “**Board**” means the Board of Directors of FMDQ OTC Securities Exchange.
- “**Bond Specialist**” means a Dealing Member of FMDQ OTC Securities Exchange who is committed to making firm bid quotes at which it is prepared to buy the bonds that are listed/quoted on FMDQ. The Bond Specialist will also make offer quotes at its discretion or give indicative quotes on the specific bonds.
- “**Capital**” includes shares and loan capital.
- “**Close-Ended ETF**” means a collective investment scheme that issues a fixed number of securities during the initial public offer (IPO); these securities are not redeemable from the fund, but can only be traded on a securities exchange.
- “**Commission**” means the Securities and Exchange Commission.
- “**Committee**” means FMDQ Board Listings and Quotations Committee.
- “**Company**” means a company as defined by the Companies and Allied Matters Act Cap C20 LFN 2004.
- “**Creation Size**” means the minimum number of securities as determined in the prospectus of the ETF or as otherwise communicated to FMDQ and the Commission from time to time, which can be acquired for the delivery of corresponding Portfolio Assets to the ETF.
- “**Custodian**” means a financial institution in charge of holding securities for safekeeping; arranging settlement of any purchases and sales and deliveries in/out of such securities, and providing information on the securities and their Issuers.
- “**Dealing Member**” means a member of FMDQ that is licenced to make market in securities on any of the FMDQ-advised trading systems.

<b>“Director”</b>	means a director as defined by the Companies and Allied Matters Act Cap C20 LFN 2004.
<b>Exchange Traded Fund (ETF)</b>	means a fund that tracks the performance of an index or commodity of a specific financial market, and aims to replicate the movements of the said index or commodity.
<b>“FMDQ”</b>	means FMDQ OTC Securities Exchange.
<b>“Fund Manager”</b>	means an entity contractually appointed by a fund to implement its investment strategy and manage its portfolio.
<b>“Index”</b>	means a tool used by investors and financial managers to describe the market, and to compare the return on specific investments. It is a method of measuring the value of a section of the securities market and is computed from the prices of selected securities (typically a weighted average).
<b>“Information Memorandum”</b>	includes circular, explanatory memorandum, or other equivalent document circulated, relating to the securities for which Quotation is sought.
<b>“Listing/Quotation”</b>	means admission of publicly offered and privately placed fixed income securities to the FMDQ Quotations List. Securities listed on FMDQ automatically qualify for Quotation.
<b>“Market Maker”</b>	means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who with respect to a security, holds himself out (by entering Quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.
<b>“Member”</b>	means a member of FMDQ OTC Securities Exchange.
<b>“Offer Document”</b>	means a Prospectus or Information Memorandum for the public offer or private placement of securities respectively. This may include any other document containing relevant information to help an investor make an investment decision, such as, Pricing Supplement, Programme Memorandum etc.
<b>“Portfolio Assets”</b>	means a portfolio of constituent underlying assets of an ETF.
<b>“Prospectus”</b>	means 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 recognised securities of a company and other issues or scheme.
<b>“Public”</b>	means persons other than the directors and employees of a company.

- “Quotation List”** contains information (market/model prices and yields, and the values traded) on all securities listed and quoted on FMDQ.
- “Redemption Size”** Means the specified number of securities determined by the Fund Manager which can be redeemed in consideration for delivery by the ETF.
- “Registration Member (Listings)”** means a member sponsoring an Issuer of publicly offered/privately placed securities for Listing and/or Quotation on FMDQ. (See definition of **Sponsor** below).
- “Rules”** means these FMDQ Bond Listing and Quotation Rules.
- “Securities”** include units of debentures, bonds (Federal Government of Nigeria (FGN), Agency, Sub-national, Supranational and Corporate), fixed income ETFs, exchange traded funds, asset-backed securities, mortgage-backed securities and non-participating preference shares.
- “Shares”** include ordinary and preference shares.
- “Shelf Registration”** means the filing undertaken by Issuers intending to access the market in the near future. It permits Issuers to disclose certain information in a core disclosure document that is updated on a regular basis.
- “Sponsor”** means an issuing house appointed by the Issuer in connection with the Listing/Quotation of securities on FMDQ. The sponsor must be an FMDQ-licenced Registration Member.
- “Trust Deed”** means the agreement drawn up between the trustees and the managers or between such persons approved by the Commission and in relation to the provisions of the Act for that administration of securities or assets for the benefit of a third party. This includes supplemental Trust Deed.
- “Trustee”** means a person or firm that holds or administers securities or assets for the benefit of a third party.
- “Underwriting”** means the act of agreeing to buy all or part of a new Issue of securities to be offered for sale with a view to a resale and not as a form of investment. There are two basic types of underwriting:
1. Firm underwriting: Where the Issuer sells the entire Issue to the underwriter, who then attempts to resell the securities. The Issuer receives the agreed amount and all the risks associated with selling the securities are transferred to the underwriters; and
  2. Standby underwriting: Where the underwriter is legally bound to take and pay up to the underwritten percentage only if the Issue is not fully subscribed.

## **1. GENERAL CONDITIONS**

- 1.1. ETFs sought to be listed shall comply with the FMDQ Bond Listing and Quotation Rules, ISA 2007 and SEC Rules made thereunder and other relevant statutory requirements.
- 1.2. ETFs shall first be registered with the Commission.
- 1.3. ETFs shall be traded in the same manner as other securities on the FMDQ approved trading systems and settled through the Central Securities Clearing System.
- 1.4. ETFs shall be issued on an index or structured on any one or a combination of fixed income securities and currency or any other instruments as may be determined by FMDQ.
- 1.5. ETFs shall be fully backed at all times; either by an acquisition of the underlying securities, assets or instruments it represents, and proxy securities acceptable to FMDQ which should be listed, freely tradable and have adequate liquidity.
- 1.6. ETFs shall hold assets which shall be held by a third party Custodian under the administration of a trustee (unrelated to the Issuer) both of whom must be approved by the FMDQ, to protect the interests of the investors in the ETF.
- 1.7. The Fund Manager shall appoint an FMDQ-licenced Registration Member (Listings) to sponsor the ETF.
- 1.8. The Fund Manager shall provide evidence to FMDQ, that it has the relevant expertise (as determined by the FMDQ) to issue and/or effectively manage ETF or has access to such expertise.
- 1.9. The Fund Manager shall satisfy FMDQ that a secondary market in the securities of the ETF will be effectively established and maintained.
- 1.10. Prior to Listing, the Fund Manager shall be required to appoint a third party who shall be an authorised financial institution and who shall undertake to use its reasonable endeavours to maintain a secondary market in the ETF.
- 1.11. The Fund Manager shall sign a General Undertaking to meet the post-Listing requirements as may be prescribed by FMDQ from time to time.
- 1.12. The Fund Manager shall pay all applicable Listing fees as provided in the FMDQ Fees & Dues Framework.
- 1.13. Such other conditions as may be prescribed by FMDQ from time to time.

## **2. CONTENTS OF THE ETF PROSPECTUS**

- 2.1. The ETF Prospectus shall disclose the index on which it is structured.
- 2.2. The ETF Prospectus shall disclose the percentage change of the NAV of the underlying basket of securities for the previous 6 months on a daily basis (where necessary).

- 2.3. The ETF Prospectus shall disclose the basis of computation of management fees, if any.
- 2.4. The ETF Prospectus shall provide detailed information as to the course of action that would be taken by the issuer in the event an underlying security is suspended or de-listed, and its effect on the computation of NAV.
- 2.5. The ETF Prospectus shall disclose details of the issuer, as prescribed by FMDQ.
- 2.6. The ETF Prospectus shall disclose rules pertaining to the treatment of corporate actions including unbundling and re-bundling of securities.
- 2.7. The ETF Prospectus shall disclose such other information that may be required by FMDQ.

### **3. RULES RELATING TO ETFs**

#### **Corporate Actions and Income Distribution**

- 3.1. The procedure and rights, pursuant to which a ETF shall be obliged to distribute income to investors shall be contained in the Offer Document. In the event that no income is distributed by the ETF, it shall clearly state this in the Offer Document. Such procedure shall be fair and transparent.
- 3.2. Any income such as dividend payments shall be distributed to investors at least annually and not later than that set out in the Offer Document.
- 3.3. A Fund Manager shall rebalance the Portfolio Assets of the ETF as disclosed in the Offer Document.

#### **Pricing of Securities**

- 3.4. The ETF shall not issue securities other than at the price calculated in accordance with the Offer Documents.
- 3.5. The calculation of the NAV of the ETF by the Fund Manager shall be based on a methodology which is transparent and independently verifiable.

#### **Fund Manager**

- 3.6. The ETF shall appoint a Fund Manager to manage the Portfolio Assets.
- 3.7. The Fund Manager shall obtain appropriate authorisations and licences to act as a Fund Manager.
- 3.8. The Fund Manager shall have proper and adequate internal control procedures and satisfactory risk management procedures.

#### **Creation and Redemption of Securities**

- 3.9. Unless otherwise stated in these Rules, an investor may acquire or redeem a security in a ETF subject to the terms of the Offer Documents and all relevant provisions and procedures relating to redemption of a ETF
- 3.10. Any transaction for the acquisition or redemption of ETF Securities may be settled physically by

providing in-kind consideration.

- 3.11. Physical settlement of securities shall be subject to a respective Creation Size and Redemption Size.

**Specific Rules Relating to ETFs That Invest in Unlisted Securities**

- 3.12. A Fund Manager shall only invest in unlisted securities of a company that has:
- (i) Demonstrated compliance with the code of corporate governance.
  - (ii) Consistently produced audited accounts for the preceding five (5) years.
  - (iii) Consistent history of profitability for at least the preceding five (5) years.
- 3.13. The company shall not be leveraged above a reasonable amount as may be prescribed by the Commission from time to time.
- 3.14. The funds and assets of a ETF shall not be invested in unlisted securities where the investment:
- (i) Is in early/start up stage of the target company, or will qualify as seed capital.
  - (ii) shall cause the value of the assets of the fund so invested to exceed 20% of the net asset value of the fund.
  - (iii) Shall cause the value of the fund so invested in the securities of a single unlisted company to exceed 5% of the net asset value of the fund.
  - (iv) Is in a company where the board, management, or affiliate of the fund manager jointly or severally have more than 10% stake.
- 3.15. A Fund Manager seeking to invest assets of a fund in unlisted securities shall disclose the following:
- (i) The nature and extent of its professional indemnity insurance coverage, in the funds' offer documents.
  - (ii) The interest of its board, management or affiliate (if any), in the target unquoted company.
  - (iii) All risk associated with investments in unquoted securities, and proposed strategies to mitigate those risks.
  - (iv) The fund's proposed maximum exposure to unlisted securities.
  - (v) To investors through the fund Prospectus, the fact that the fund shall also invest in unlisted securities.
- 3.16. Investor Protection Requirements:
- (i) The constituent documents of a fund which wishes to invest in unlisted securities must contain a liability clause stating that the Fund Manager takes full responsibility for any investment in unlisted security.
  - (ii) A copy of an agreement between the fund manager and the target company on the



investment exit strategy shall be submitted to the Commission prior to making the investment.

3.17. Valuation of Unlisted Securities

- (i) A Fund Manager who invests in unlisted securities shall perform a quarterly valuation of the portfolio of unlisted securities.
- (ii) The methods or bases of valuation shall be adequately disclosed in the ETF Offer Document.
- (iii) Fair value shall be determined on methods or bases which have been verified by the auditor of the ETF and approved by the Trustees.
- (iv) In estimating fair value of an investment, the fund manager shall apply a methodology that is appropriate in the light of the nature, facts and circumstances of the investment and its materiality in the context of the total investment portfolio, and shall use reasonable inputs, assumptions and estimates.
- (v) Fair value shall reflect reasonable estimates and assumptions of all significant factors that parties to an arm's length transaction would be expected to consider including those which impact upon the expected cash flows from the investment.
- (vi) The degree of risk associated with those cash flows.

3.18. The Fund Manager shall attach a detailed report on the investment in unlisted securities investment in the monthly, quarterly, and annual reports/returns in the format prescribed by the Commission.

**4. POST-LISTING REQUIREMENTS**

- 4.1. The ETF post-Listing requirements are outlined in the attached Form of General Undertaking for Exchange Traded Funds to be signed by the Fund Manager.
- 4.2. The Fund Manager shall ensure strict compliance with any relevant laws particularly, the Rules relating to ETFs as stipulated in SEC Rules 2013 (as may be amended from time to time).
- 4.3. The Fund Manager shall also note that FMDQ has the right to request additional information/documentation at any time during the life of the listed ETF.
- 4.4. The Reporting and Audit Requirements<sup>1</sup> stated below shall also apply to ETFs listed on the FMDQ OTC Securities Exchange:
  - (i) The Fund Manager shall comply with all reporting and audit requirements of collective investment schemes as prescribed by the ISA 2007 and the Rules made thereunder, and also comply with the audit requirements of these Rules.

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<sup>1</sup> Rule 554 of the SEC Rules and Regulation 2013

- (ii) The Fund Manager shall provide FMDQ and the SEC with all reports in accordance with relevant provisions of the SEC ETF Rules within the time stated in the SEC ETF Rules. Where the SEC ETF Rules are silent on the time within which a report should be provided, the ETF will provide the report within two (2) business days.
- (iii) The Fund Manager shall provide FMDQ with a copy of all notices received from the SEC within 5 (five) business days of receipt.

## **5. ENFORCEMENT OF THE BOND LISTING AND QUOTATION RULES**

5.1. Where FMDQ considers an Issuer to have committed an infraction under these Rules it may impose any one or more of the following penalties:

- (i) Fines (see Appendix V).
- (ii) Suspension of the security from the Quotations List.
- (iii) DeListing of the security from the Quotations List.
- (iv) Public Censure (naming the director(s) responsible for the infraction).

5.2. Power to suspend or delist a security from the Quotations List:

- (i) Listing/Quotation is granted subject to certain considerations and conditions as provided in these Rules (subject to amendment from time to time). Where the Exchange considers it necessary for the protection of investors or the maintenance of an orderly market, it may at any time suspend or delist any security from the Quotations List in such circumstances and subject to such conditions as it deems fit. Such conditions include but are not limited to the following:
  - (a) The Issuer fails to comply with these Rules and all relevant FMDQ Rules.
  - (b) FMDQ considers that the Issuer does not have satisfactory level of operations or sufficient assets to warrant the continued Listing/Quotation of its securities on FMDQ.
  - (c) The Issuer fails to meet corporate governance standards as may be prescribed by FMDQ and other relevant regulatory authorities.
  - (d) The Committee considers that the Issue no longer be suitable for Listing/Quotation.
  - (e) Such other circumstances as the Committee may deem fit to suspend or delist the security from the Quotations List.
- (ii) Where an Issuer seeks a suspension of its listed/quoted security, the request for suspension must be made by the Sponsor and must be confirmed in writing.
- (iii) In all circumstances, the request must be supported by specific reasons for the request for

- suspension, the requested duration of the suspension, the nature of the event affecting the Issuer's activities and the current state of events with respect to the Issuer's activities in order for the Committee to assess the need for and appropriate duration of the suspension.
- (iv) The continuation of a suspension for a prolonged period without the Issuer taking appropriate action to obtain restoration for Listing/Quotation may lead to the Committee removing the Issue from the Quotations List.
  - (v) Where the Committee considers the Issue no longer suitable for Listing/Quotation, the Issuer/Sponsor shall be informed in writing of the decision of the Committee. In certain circumstances, the Issuer may be given an opportunity to take remedial action and resolve any issues raised by the Committee within a stipulated timeframe. Failure by the Issuer/Sponsor to take such remedial within the stipulated timeframe shall lead to a deListing of the Issue from the Quotations List.
- 5.3. An Issuer whose primary Listing/Quotation is on FMDQ may voluntarily withdraw its Listing/Quotation only if it gives the holders of the affected class, and the holders of any securities convertible into the affected class, of its listed/quoted securities and FMDQ at least ninety (90) days' advance written notice providing a clear and adequate explanations of its decision to withdraw Listing/Quotation and if either:
- (i) The Issuer has or will have at the time of deListing an alternate Listing/Quotation on another securities exchange acceptable to FMDQ; or
  - (ii) The Issuer has obtained the approval of the holders of the affected class, and the holders of any securities convertible into the affected class, of its listed/quoted securities by way of a three quarters majority vote at duly convened meetings of such holders.

**NOTES**

1.	FMDQ reviews the Bond Listing and Quotation Rules on an ongoing basis to ensure conformity with international best practices.
2.	FMDQ retains the right to grant a Listing and/or Quotation to an applicant that does not meet all its rules or refuse a Listing and/or Quotation to an applicant that complies with the Bond Listing and Quotation Rules, on the grounds that, in the FMDQ's opinion, the grant or refusal of the Listing and/or Quotation is in the interests of the investing public.
3.	FMDQ encourages all public companies seeking Listing and/or Quotation to comply with the SEC Code of Corporate Governance for Public Companies in Nigeria to enhance corporate discipline, transparency and accountability within the tenets of its operations.
4.	FMDQ may grant exemptions to the application of these Rules, as it may deem necessary.
5.	These Rules shall be read in conjunction with the Investments and Securities Act 2007, the Securities and Exchange Commission Rules made pursuant to it and any other relevant and applicable enactments of the National Assembly of the Federal Republic of Nigeria.

**APPENDIX I: FORM OF GENERAL UNDERTAKING (EXCHANGE TRADED FUNDS)**

**[FUND MANAGER LETTERHEAD]**

**THE BOARD LISTINGS AND QUOTATIONS COMMITTEE**  
**FMDQ OTC Securities Exchange**  
**1 Olosa Street**  
**Victoria Island**  
**Lagos**

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(Fund Manager)

acknowledges that it shall remain on the Quotations List of FMDQ only at the pleasure of the Committee and hereby resolves and undertakes as follows:

1. To immediately notify the Managing Director/CEO of FMDQ without delay of the following:
  - a. methodology for compiling or calculating the Benchmark/index (if applicable);
  - b. composition of the Benchmark/index due to e.g. the rebalancing of any security;
  - c. weightings of the Benchmark/index;
  - d. Benchmark/index constituents' corporate activities or significant market movements;
  - e. identity of the party that sponsors and/or calculates the Benchmark/index (if applicable);
  - f. nature of the financial markets (for ETFs, the nature of the market of the asset tracked by the security) and any material factor which would have an adverse impact on the price of any security  
(such as a disruption or cessation in trading of an asset or index);
  - g. ability of the ETF to provide a secondary market in the security
  - h. status of the security e.g. new legal and regulatory provisions that may impact on the performance of the fund;
  - i. Methodology for computing fund manager's fees;
  - j. Material contracts of the ETF;
  - k. Offer Documents;
  - l. any change in the directors of the company;
  - m. any proposed change in the trustees;
  - n. any proposed alteration of the Trust Deed;
  - o. any proposed changes in the terms of the security as contained in the Offer Documents;

- p. any proposed changes to the parties to the issue including but not limited to receiving banks, issuing house, Bond Specialists, solicitors, auditors, agents and trustees as contained in the Offer Documents;
  - q. any proposed change in the collateral, if any, deposited under the Trust Deed;
  - r. any proposed change in the general character or nature of the business of the company or of the group;
  - s. the date of the dividend payments;
  - t. the date of closing the register; and
  - u. such other information as may be necessary to enable holders of the security to appraise the position of the statutory body and to avoid the establishment of a false market in the security.
2. To forward the following to the Managing Director/CEO of FMDQ:
- a. NAV of the ETF and the NAV per security of the ETF at their closing price at realtime or near real-time basis;
  - b. two copies of all circulars, notices, reports, documents or announcements at least 14 days before they are advertised/circulated to prospective investors or made in respect of the ETF;
  - c. annual ratings report by a rating agency accredited by the Commission within three (3) months of the anniversary of the issue;
  - d. annual utilisation report showing that the proceeds of the security have been disbursed in line with the Offer Documents;
  - e. all reports in accordance with relevant provisions of these Rules within 2 (two) business days;
  - f. a copy of all notices received from the Commission within 10 (ten) Business Days of receipt.
3. To publish the following on the corporate website on a daily basis:
- a. The NAV of the ETF at the closing price of the preceding day;
  - b. The accrued reserves distributable to ETF holders, (if applicable) each preceding day; c. The bid and offer prices of the fund;
  - c. Index level, price or rate tracked by the ETF at the close price of the preceding day;
  - d. The constitution of the Portfolio Assets which an investor wishing to subscribe in specie shall deliver on the following trading day;
  - e. The cash amount which an investor wishing to subscribe in specie shall deliver on the following trading day; and
  - f. The cash amount which a holder wishing to redeem in specie (i.e. exercise his delivery rights) would receive.

4. To recognise that the Committee reserves the right to remove the name of any security from the Quotations List if:
- a. it is considered that there is insufficient public interest in the security, viz, insufficient securities in the hands of the public;
  - b. any of the foregoing terms and conditions are not complied with;
  - c. the Committee so resolves, at its absolute discretion.

\_\_\_\_\_  
**Authorised Signatory**

\_\_\_\_\_  
**Authorised Signatory**

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_**