

THE LEGAL FRAMEWORK
FOR THE ISSUANCE OF
GREEN BONDS

THE LEGAL FRAMEWORK FOR THE ISSUANCE OF GREEN BONDS

Until recently there has been no specific regulation governing Green Bonds in Nigeria. However, Issuers usually resort to the general legislation for the issuance of bonds in Nigeria as well as International regulations for guidance. Subsequently and following a series of engagements with Stakeholders and Capital Market Operators, the Securities and Exchange Commission Nigeria (SEC) launched the Green Bonds Issuance Rules 2018. The release of SEC Green Bond Rules can be regarded as a significant step in advancing efforts of the government, regulatory bodies and the financial services industry in creating and enhancing sustainable development and sustainable economic activities.

WHAT ARE GREEN BONDS?

According to the SEC Green Bond Rules, a Green Bond is 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. A Green Bond is a corporate bond which requires the disclosure of an additional information for the use of proceeds which must be for an environmentally friendly project. Green

African Development Bank, The Cost of Adaptation to Climate Change in Africa (Tunis: African Development Bank, 2011) 2.4 V. Foster and C.

Bonds aim at wooing foreign green project investors for their role in enhancing sustainable development. The Green Bond is usually issued with a mandate to apply the proceeds of the issue to a green project usually specified in its portfolio.

WHY GREEN BONDS?

Africa has been generally recognized as the most vulnerable region to Climate change, research shows that the cost of climate change in Africa will exceed 20 billion dollars within the next 15 years¹. Also, it has been reported that the global climate finance flows in 2017 range from approximately \$510 - \$530 Billion reiterating the necessity to engage in projects that are adaptive to climate change.



Green Bonds are usually issued to finance eco-friendly projects. Green Bonds are still one of the novel and in the nearest future major ways that one can finance projects adaptive to climate change and eco-friendly projects with funds sourced from foreign investors.

ELIGIBLE GREEN PROJECTS

The SEC Green Bond Rules has delineated projects that are eligible for Green Bonds and they are as follows:

- a. Renewable and sustainable energy
- b. Clean transportation
- c. Sustainable water management
- d. Climate change adaptation
- e. Energy efficiency
- f. Sustainable waste management
- g. Sustainable land use
- h. Biodiversity conservation
- i. Green buildings (Commercial Real Estate Development)
- j. Any other categories as may be approved by SEC from time to time.

Some Green Bond projects will include projects that target a reduction of greenhouse emissions or that absorb them.

THE PROCESS OF ISSUING GREEN BONDS

In addition to the recently released Green Bond Rules, to issue a green Bond requires the application of the ordinary rules of bond issue as contained in Rule 567



of the Securities and Exchange Commission Rules. Since Green Bonds are corporate bonds, issuing a Green Bond is significantly the same save for the additional guidelines contained in the Green Bond Rules published by the SEC. The following steps are required to be fulfilled in house before the issuance of a Green Bond:


1. Identify a project that is environmentally friendly or that is adaptive to climate change and adopt the same.
2. Structure the bond using an independent adviser to reflect accountability for the use of the proceeds for the project.
3. An Independent/External reviewer's verification should be obtained by the Issuer.



4. The Bond must be certified by a relevant and recognized green standard organization. For example the just concluded Access Bank Green Bond issue was certified by the Climate Bond Initiative to meet the Climate Bond Standards.
5. The Green Bond framework must be assessed by a SEC registered or an internationally recognized rating agency.

Asides from the general requirements for a bond issue stated in the Rules and Regulations of the SEC, the following are required for the approval of a Green Bond.

- a. A letter from the Issuer committing to invest all the proceeds of the bond in projects that qualify as green project(s) or assets in line with the SEC Rules.
- b. A Feasibility Study and Report stating clearly, the measurable benefits of the proposed green project or Assets such as Green House Gas reduction, reduction of water use and reduction of harmful emissions.
- c. A prospectus which shall include project categories, project selection criteria, decision-making procedures, environmental benefits, use and management of the proceeds.
- d. An independent assessment or certification issued by a professional certification authority or person approved or recognized by the SEC.
- e. Any other documents that may be required by the SEC.



Information about the bond must be disclosed to the public subject to approval by the SEC. The use of a prospectus is preferred and its contents are as provided in **Section 73 of the Investment and Securities Act 2007.**

Where the Issuer proposes to utilize a proportion of the proceeds towards refinancing of existing green assets or projects, the Issuer shall clearly provide in the prospectus the details of the portfolio/assets/projects which are identified for such refinancing, the relevant extent of its utilization and the expected look-back period for refinanced projects. The Issuer may also elect to underwrite the issue. Other options include book building or shelf registrations.

REPORTING

An important aspect of the Issuer's green bond framework is SEC's requirement for minimum annual reports. The reports shall be made through out the tenor of the bond and shall be made to SEC and in some instances to the Stock Exchange where listed. A second form of report shall also be made on the issuer's website. The first report shall specifically address the project and allocations of the proceeds of the bond issue and shall include:

- a. A brief description of the projects and the amounts disbursed, including (where possible) the percentage of proceeds that have been allocated to different eligible sectors and project types and to financing and refinancing.
- b. The expected impact of the projects and assets.
- c. Qualitative performance indicators and quantitative performance measures of the impact of the projects
- d. Disclosure of the methodology and underlying assumptions used to prepare performance indicators and metrics.

The second report usually known as the assessment report shall be made and published on the Issuer's website or other media. The assessment report shall be issued by an independent professional assessment or certification agency. The Issuer is also required to conduct and report annual follow-up assessments of the green projects and associated environmental benefits throughout the tenor of the bond and publish same in its annual report, on its website or other media after which a copy of the report shall be filed with SEC.

CONCLUSION

Green bonds are the next wave of finance for eco-friendly projects and because they are attractive to foreign investors they require additional protection from fraud to maintain investor confidence in the market hence the Green Bond Rules issued by SEC. The Green bond which are specialized bonds are to be strictly applied to the particular eco-friendly project for which they were raised.

CONTACT



Adedayo Adesina
Managing Partner
012932390
email: dayo@oyewoleadesina.com



Moromoke Adegbosin
Associate
012932390
email: romoke@oyewoleadesina.com



Bankole Oyewole
012932390
email: kole@oyewoleadesina.com

www.oyewoleadesina.com

