

THE FUTURE OF GREEN FINANCE AND SUSTAINABILITY BOND IN NIGERIA: THE CHALLENGES

James Eleonu*

Abstract

Green finance, green bond or sustainability bond has emerged as a vital financing mechanism to manage environmental impacts of human activities and the expansion of world economy through industrial processes. The massive development of the global economy has resulted in tremendous prosperity and upgrade of living standards in many countries. However, this equally came at a cost seen in severe destruction of the ecological environment, biodiversity, marine habitat and catastrophic consequences for human, animal health and subsistence. Increasingly, many countries attach great importance to achieving “green growth” of their economies while strenuously developing their economies. The green upgrading of traditional industries and the growth of strategic green emerging industries require are testimonies of changing climate in economic and industrial activities in favour of green economy. Although, green financing is fairly new in many jurisdictions and fairly older in other jurisdictions, what is not debatable the momentum and popularity it has been gaining across jurisdictions, issuers and investors. The exponential growth in the jurisdictional recognition and issuance of green bond is matched with institutional endorsement at the highest multilateral levels. The paper adopted doctrinal research methodology and

* LL.B (Hons), BL, LL.M, PhD (Law), Notary Public of the Federal Republic of Nigeria.
Email: jameseleonu2020@gmail.com

examined sundry ways green bond is good for Nigeria. The paper found that there is urgent need for legislative intervention in this area of environmental jurisprudence.

Keywords: Energy, Bond, sustainability

1.0 Introduction

The United Nations' Environmental Programme, the World Bank,¹ the Organisation for Economic Co-operation and Development² and the G20 are collectively working to promote sustainable finance and the integration of environmental, social, and governance considerations into global financial systems in order to promote financial stability, asset pricing, risk assessment, and more efficient allocation of capital toward investments that promote sustainable and resource-efficient development.³ Green finance seeks to support environmentally beneficial projects, environmental improvements, climate change and efficient use of resources to achieve green economy. Green finance is becoming more prominent, driven by the scale and urgency of the challenge of financing sustainable development sustainable development goals, the Paris Agreement on climate change and the financing for development package, and the realization that only a fraction of this can realistically come from public sources.

The emergence of green bond instruments in the Nigerian capital market is in consonance with the global trend. Nigeria joined the green bonds market in December 2017, becoming the first African country to issue

¹ United Nations Environment Programme & the World Bank Group (2017), *Roadmap for a Sustainable Financial System* 2. Retrieved from <<https://www.un.org>> 10 June 2023

² Organisation for Economic Co-operation and Development (2021). *Financing for Sustainable Development*. <<https://www.oecd.org>> accessed 11 June, 2023

³ United Nations Environment Programme Inquiry (2015). *The Financial System We Need: Aligning the Financial System with Sustainable Development* <<https://unepinquiry.org>>; *Sustainable Finance*, <<https://ec.europa.eu>> Accessed 11 June 2023

sovereign green bonds, and the world's fourth sovereign issuer of green bonds. The debut issuance was to the tune of ₦10.69 billion green bonds with a commitment to use the proceeds to finance green projects.⁴ Despite this achievement, there are many challenges facing Nigeria's green regulatory landscape, such as poor reporting and verification standards, poor enforcement standards and distorted criteria for classifying green bond. This creates room for abuse, regulatory arbitrage and undermines the goal of green bond issuance. Consequently, Nigeria needs to adjust its law and policy on green bond to take advantage of the huge potentials it offers for managing climate change mitigation and adaptation.

2.0 Conceptualization

A green bond is a debt instrument whose proceeds are used to finance environmentally friendly projects (green projects). They are called green bonds because proceeds from these bonds are used solely for financing green projects. Such financing generally concerns climate change mitigation and adaptation projects, or any environmentally-driven objective. So far, this has been the underlying theme running through the majority of definitions of green bonds by renowned capital market experts and institutions. For instance, the International Capital Market Association defines a green bond as any type of bond instrument whose proceeds will be exclusively applied to finance or refinance in part or in full, new and/or existing eligible green projects.⁵ The Nigerian Stock Exchange defines a green bond as any type of bond instruments where the proceeds are exclusively used to finance or refinance, in part or in full, new and or existing eligible green projects that align with the four core components of the green bonds principles.⁶

⁴Debt Management Office of Nigeria, Green Bonds Fact Sheet. <https://www.dmo.gov.ng> accessed 20 September, 2023

⁵International Capital Markets Association (ICMA), "The Green Bond Principles" (June 2018)< accessed 22 September 2023

⁶ *Ibid*

Green finance also includes financial services that support investment and financing of green projects, project operations and risk management. This means that green finance includes not only financing activities such as loans and securities issuance, but also risk management activities such as green insurance as well as a carbon finance business with multiple functions. The definition of green finance and the labelling of green financial products on this basis will help green enterprises and green investors to get the reputational effect they deserve and encourage more green investment.

A close look at the various definitions of green bond indicates that they possess a certain quality which differentiates them from a regular bond. This quality is the “the application of the bond proceeds to fund green projects”. By adopting a literal interpretation of this qualifying character of the green bond, i.e. “use of proceeds to fund green projects”, it will mean that a bond is green only if its proceeds are used to finance eco-friendly projects. Hence, fulfilling this special requirement becomes the determinant factor.⁷ The implication is that at the issuance stage the bond must demonstrate through its prospectus and legal documentation that indeed some eligible projects that will result in positive environmental impacts will be funded with the bond proceeds. Consequently, for a bond to maintain its green quality, it must abide by its green promises and follow through on it throughout the life cycle of the bond to avoid legal or reputational risks that may follow.⁸ Tracking the bond proceeds, management and monitoring of proceeds, periodic reports on project impacts throughout the life cycle of the bond becomes necessary to ensure the bond stays green. Anything short of this robs the bond of its “green standard” and not even the mere presence

⁷ A Cochu and others, “study on the potential of green bond finance for resource efficient investments” (European Commission, 2016) 10

⁸ A Franklin, “How to minimise legal risk of green bond” (Environmental Finance (May 2017), < <https://www.environmental-finance.com/content/analysis/how-to-minimise-the-legal-r.pdf>> accessed on 22 September, 2023

of a “green label” can alter this.⁹ However, the consequence of a shift from the green standard depends on the regulation guiding issuance of the bond.

3.0 Delimitation of Green Bonds

While there seems to be a consensus on the definition of green bonds, what is not clear is the delimitation of what amounts to a green project. The widely accepted guiding documents like the Green Bond Principles and the Climate Bonds Standard contain a list of eligible green projects, but they do not delimit what should not be classified as a green project. This situation is also present in the green bond regulation of many countries, including Nigeria’s green bond rules, and the Guidelines for issuing green bonds in Brazil as endorsed by the Brazilian Federation of Banks and the Brazilian Business Council for Sustainable Development. Some scholars consider this as an advantage, contending that the situation gives room for including innovative technologies in the green project list as technologies advance. On the other hand, it is possible that the term green may become relative, with various issuers deciding various taxonomies of green projects according to their economic priorities and preferences. The implication is that hydro-carbon intensive projects may still be funded by finances sourced from the green investment pool.¹⁰ This situation presents a governance challenge which has become heightened due to the absence of a consensus in classifying green bond standard thereby creating regulatory arbitrage. Currently, the green bond market is largely regulated by multiple private governance regimes which allow for the selection of regulatory frameworks most suitable to their interests.¹¹

4.0 Historical Evolution

Green credit policies are relatively new. In 1974, the Federal Republic of Germany founded the world’s first policy-oriented environmental

⁹*Ibid*

¹⁰S Kim Park, “Investigators as regulators: green bonds and the governance challenges of the sustainable finance revolution” (SJIL, 2018) 1-31

¹¹*Ibid*

protection bank.¹² The German Rejuvenation Credit Bank, which is the national policy bank, used by the capital market and commercial banks to implement financial and subsidy policy on environmental projects, maximizing the role of Government-subsidized funds.¹³ The most well-known example of an environmental information disclosure policy is the Toxic Release Inventory, first employed in the United States in 1985 and later incorporated into the Pollution Prevention Act of 1990. Other countries have followed the United States in making disclosure of environmental information part of their laws. The Aarhus Convention ratified in Denmark represents turning point in environmental disclosure in Europe. The British Companies Act of 2006 required companies listed on the London Stock Exchange to report environmental impact in their annual Business Review.¹⁴

Green credit has spread worldwide and is supported and valued by more and more financial institutions. The so-called “Boerdisi principles” and “Equator Principles” have become operational guidelines for international banks’ green credit practices.¹⁵ Additionally, environmental disclosure practices have expanded significantly worldwide. For example, the United States sets legally enforceable standards to emphasize that banks need to take responsibility for the use of credit funds, thereby restricting loans that do not meet the green credit criteria and promoting effective development

¹²A. Andrikopoulos and N. Kriklani (2013). *Environmental Disclosure and Financial Characteristics of the Firm: the Case of Denmark. Corporate Social Responsibility*. Retrieved from <<https://www.onlinelibrary.wiley.com>> accessed 13 June 2023

¹³B. Scholtens and L. Dams. *Banking on the Equator*. World Development 2007. Retrieved from <<https://www.sciencedirect.com>> accessed 13 June 2023

¹⁴S. Lydenberg, K. Grace Innovations in Social and environmental disclosure outside the United States. Retrieved from <<https://www.domini.com>> 13 June 2023

¹⁵C. Wright. *Global banks, the environment, and human rights: the impact of the equator principles on leading policies and practices* (Global Environmental Politics 2012) 56-77

of a green economy.¹⁶ Barclays Bank in Britain has set up a social and environmental credit guide including having a risk assessment talent pool within the bank to review prospective loans and supports green credit in technology and projects.¹⁷

In the past 20 years, the number of corporations that disclose environmental information in annual reports and other communications media has increased significantly. The main purpose of introducing environmental information disclosure policies is to reduce informational asymmetries and put, if necessary, pressure on corporations to reduce emissions. Accordingly, it can play a role of non-financial information disclosure, such as to assess social and environmental impacts of corporate activities, to measure the effectiveness of corporate social and environmental programmes, to report corporate social and environmental responsibilities, and to allow external and internal information systems for comprehensive assessment of sustainability impacts for all corporate resources.¹⁸

There are many corporations in developed countries which disclose environmental reports independently. Most listed companies in heavy polluting industries in China disclose environmental information in their social responsibility reports or environmental reports separately, according to the requirements of the 2010 China Environmental Information Disclosure of Listed Companies. Inevitably, corporate environmental reporting acts as the vehicle for providing environmental data designed to

¹⁶R.K. Aburaya. *The relationship between corporate governance and environmental disclosure*.Uk evidence.(2012) retrieved from <<https://www.theses.dur.ac.uk>> accessed 12 June 2023

¹⁷C.J. Cowton (2002).*Integrity, responsibility and affinity: Three aspects of ethnics in banking. Business ethics.*<<https://www.philpapers.org>> accessed 14 June 2021

¹⁸ H. Jerkins and N. Yakovleva. *Corporate Social responsibility in mining industry: Exploring trends in social and environmental disclosure*retrieved from <<https://www.papers.ssrn.com>> accessed 14 June 2023

satisfy the accountability relationships and to indicate corporate consciousness through a moral discourse on environmental issues.¹⁹

5.0 Green Credit and Sustainable Financing

Green credit is often referred to as sustainable financing or environmental financing, even though the two terms are technically different. Sustainable financing means that banks provide financing facilities for sustainable commercial projects and use credit to guide sustainable development,²⁰ while environmental financing refers to the specific financial instruments designed to deliver environmental quality and transform environmental risks. Green credit financing includes aspects, the credit and the financial instruments. Under the Equator Principles guidelines, banks can provide loan applicants to those who perform well in environmental protection credit loans.

The assessment of green credit's actual effectiveness, however, is inconsistent. Albertini argued that green credit plays a role in promoting energy saving, emission reduction, and economic development for the whole society, while it promotes environmental risk management for commercial banks. An additional strain of criticism from scholars suggests that the inhibition effect of green credit policy is waning.²¹

Additionally, Hu and Cao had debated the impact of green policies on the context of developing countries. Developing countries' economies are still dependent on energy-intensive industries to fuel industrialization and urbanization. Until the current export and investment-driven economic

¹⁹ T. Shearer. *Ethics and accountability: from the for-it-self to the for-the-other*. Retrieved from <<https://www.pagecentertraining.psu.edu>> 14 June 2023

²⁰ M.K. *Green Banking: A Unique Corporate Social Responsibility of Indian Banks*. International Journal responsible community 2012. <<https://www.semanticscholar.org>> accessed 15 June 2023

²¹ E. Albertini. *Does environmental management improve performance? A meta-analytical review*. Retrieved from <https://www.sciencedirect.com> accessed 15 June, 2023

growth pattern fundamentally changes the rigid demand for export, investment activities will weaken, if not overwhelm, the policy's effectiveness.²² Case studies have suggested that collusion between governments and corporations to provide false environmental information to the bank will still allow credit to flow without forcing compliance with green credit restrictions.²³

Furthermore, both the limited infrastructure for enforcement and the corporate culture encourage, rather than discourage, collusion. The commercial banks and corporations are more likely to collude in the absence of external constraints.²⁴ Moreover, banks, middle level managers, and their customers do not understand the policy of green credit, and the risk management consciousness is weak. Corporate managers are indifferent to environmental protection; corporations lack environmental management support systems, and employee's lack environmental training and education.

6. Developments in Nigeria

The Investments and Securities Act, 2007 is the principal legislation governing securities transactions in Nigeria. The Act establishes the Securities and Exchange Commission²⁵ which serves as the apex regulator of the Nigerian capital market. The Securities and Exchange Commission is empowered under section 313 of the Investment and Securities Act to make rules and regulations to effectuate the provisions of the Investment and Securities Act and also generally for capital market operations in Nigeria. To that effect, the commission, recently released the Green Bond

²² N.W Hu and D.W Cao. *Green credit policy and environmental risk management of commercial banks*. <https://www.paper.ssrn.com> accessed 15 June 2023

²³ J. Duan and M.Q Niu (2011), *The paradox of green credit in China*. *Energy procedia*. <https://www.semanticscholars.org> accessed 15 June 2023

²⁴ B. Omnamasivaya and others. *The influence of financial performance on environmental accounting disclosure practices in India*. <https://www.econbiz.de> accessed 15 June 2023

²⁵ Green Bond Rules 2018, r 3.0

Rules 2018 to regulate issuance of green bonds in Nigeria. Under the Rules, a state government, local government, corporation or supranational agency can issue a green bond.²⁶

On qualification, in order for a green bond to be approved, the Rules require that in addition to the general requirements for debt issuances stated in the regulations of the commission,²⁷ an issuer is to file a “letter of commitment” with the Commission, committing to invest all the proceeds of the bonds in those projects that qualify as green projects in accordance with the rules; a feasibility study report stating the benefits of the green projects; a prospectus which include project categories, project selection criteria, decision-making procedures, environmental benefits, use and management of the proceeds; an independent assessment or certification issued by a professional certification authority or person approved or recognized by the Commission.

The Rules contain a list of projects that qualify as a green project, they include renewable and sustainable energy, clean transportation, sustainable water management, climate change adaptation, energy, efficiency, sustainable waste management, sustainable land use, biodiversity conservation, and green buildings.²⁸ Also, while, the list of eligible green projects contained in the Rules does not include fossil fuel projects as one of those projects which green bonds proceeds could be funded with, it does not explicitly exclude fossil fuel projects, rather, the list indicates an unending character as it ends with the wordings “and any other project the

²⁶Those conditions include filing a registration statement, general company documents and resolution as required by Securities and Exchange Commission, together with a prospectus with mandatory contents. With the Green Bond Rules stating the mandatory contents for the prospectus of a green bond, those will apply instead of the mandatory contents as stated in the consolidated rules. See SEC Consolidated Rules 2013, r 567; See also Green Bond Rules 2018, r 3.0 (iii)

²⁷ The eligible green projects as listed in the rules are in parimateria with those listed in the green bond principles. See Green Bond Rules 2018, r 2

²⁸*Ibid*

Commission may approve”²⁹ This situation may present an avenue for funding non-green projects with green bond proceeds and has been considered worth addressing in some jurisdictions. For example, the Philippines Green Bond Rules 2018 maintains an outright ban on fossil fuel power generation projects from those projects which green bond proceeds could be funded with.

According to rule 4.0 (i) of the Rules, proceeds of the bonds can be used for only those purposes stated in the approved offer documents, which are limited to those eligible green projects approved by the rules as stated above. On the management of proceeds, the Rules mandate that a separate account is maintained for the net proceeds of the offer from which projects are to be funded. However, regarding the process of project evaluation and selection, the Rules are silent on requirements of what the process should entail or what standards should be met.

On reporting, which is very crucial to the success or failure of green bonds and green projects monitoring, the Rules provide that the issuer is to provide a green bond report to the commission annually. The report is to state the project to which proceeds from the bonds were applied, the amounts disbursed, expected impact of the projects, qualitative and quantitative performance indicators, and the methodology used to prepare those indicators. Further, the Rules require that the issuer is to publish an assessment report of the green project and its associated benefits. This report is to be conducted by an independent professional assessment agency and to be published annually. However, like its progenitor the Green Bonds Principles, verification of post-issuance assessment report is not mandatory under the Rules, nor does it state the implication of publishing an inadequate assessment report. Arguably, these defects can be exploited to abuse financing through green bond.

²⁹ Peoples Bank of China Executive Order No.39 2015, art 5. See also China Securities Regulatory Commission Guidelines 2017, art 4

7.0 International Perspectives

The Green Bonds Principles and the Climate Bonds Standard are the two most popular international guidelines for issuing green bonds and they form the basis of most jurisdictions' green bonds regulation. The Green Bond Principles was launched in 2014 by the International Capital Market Association. It has continued to undergo yearly review to reflect recent developments and growth in the green bond market. The Green Bond Principles are voluntary guidelines for issuing green bonds intended for use by capital market participants desirous of using fixed debt securities to invest in environmental sustainability through specific projects. The International Capital Market Association acts as Secretary to the Green Bond Principles advising on governance and other matters, as well as providing organizational support. The principles are centred on four key components which seek to ensure transparency, accountability and sustainability in using green bonds. These components include use of proceeds; evaluation and selection; management of proceeds; and reporting.

8.0 Applicability of Proceeds

The use of proceeds component require that proceeds of the bond should be used for identified green projects, which should be appropriately described in the bond prospectus and application documents for approval of the bond.³⁰ All designated green projects should provide clear environmental benefits which should be assessed and, where feasible, quantified by the issuer. Such projects include renewable energy, energy efficiency, pollution prevention and control, clean transportation, sustainable water management, terrestrial and aquatic biodiversity conservation, climate

³⁰ "LEED" acronym for "Leadership in Energy and Environmental Design" was established by the US Green Building Council in response to a perceived need that specific and determined standards and third-party verification by required in order for structures to be considered environmentally friendly; See Damilola Olawuyi, Principles of Nigerian Environmental Law (Afe Babalola University Press, 2015) 317

change adaptation projects, green buildings and eco-efficient products. However, the list of green projects contained in the Green Bound Principles is not delimited nor does it exclude projects which ordinarily should not be classified as green due to their carbon intensive nature. This situation leaves room for diverting green bond proceeds to carbon intensive projects, for instance, the Peoples Bank of China green bond regulation includes coal development in its list of eligible green project. This problem is further compounded where there is no definite green standard across board.

9.0 Project Evaluation and Selection

This component mandates issuers to outline environmental sustainability objectives of the bond in the legal documentation, the process by which the issuer determines how projects are selected, and how they will achieve those environmental sustainability objectives of the project. For example, if a green building project is listed in the prospectus to be funded by proceeds from the green bond, the issuer is expected to disclose Leadership in Energy and Environmental Design certification details. The project evaluation and selection criteria become very important as it casts a search light on project selection process and ensures that the projects are not mere lofty expectations, but will indeed have feasible eco-friendly impacts.

10. Management of Proceeds

This component requires that funds realized from green bonds are not mixed with those from other sources in order to ascertain the real value of an issue, as well as track the proceeds. It requires that proceeds from the bonds be credited to a sub-account and tracked by the issuer to reflect the issuers lending and investment operations for green projects.³¹ The essence is to disclose the formal internal process of how the issuer intends to disburse funds for the nominated green project. Where the funds are currently unallocated, the issuer should disclose the intended type of temporary placements for unallocated proceeds. The reason for this is

³¹*Ibid*

obvious – so that investors can monitor and influence the use of their funds at almost every given time.

11. Reporting

The reporting component is most crucial to a green bond's life-cycle. It ensures transparency and monitoring which is very crucial to integrity of the green bond market. The component requires that an issuer makes and keeps readily available up-to-date information on the use of proceeds from the bond. As regards impact of the green projects, the reporting component requires the use of qualitative performance indicators and quantitative performance measures (e.g., energy capacity, electricity generation, greenhouse gas emissions reduced/avoided, number of people provided with access to clean power, decrease in water use, reduction in the number of cars required, among others), for disclosing information contained in the report.³² However where competition or confidentiality will be affected the Green Bound Principles recommends presentation of information in generic terms.

In order to safeguard its tenets, the Green Bound Principles recommend second opinion reviews to be conducted by institutions with environmental expertise independent of the issuer. External reviews are conducted to ensure alignment with the core components of the Green Bound Principles. External reviews can be done via second party opinion providers such as Cicero, Certification, or Green ratings by green bonds rating agencies which focus on the environmental performance of the bonds and not just on their creditworthiness.

As robust as the Green Bound Principles may seem, it still suffers some limitations which may hinder its relevance as a model green bond regulation. The Green Bound Principles recommend verification of the

³²Cicero Shades of Green provides independent research-based evaluations of green bond investment frameworks to determine their environmental robustness. For further readings, See Cicero, "Shades of Green" <[https:// www.cicero.green/](https://www.cicero.green/)> accessed 20 September 2023

green bond framework by external reviewers at the pre-issuance stage. However, it does not make post issuance reports on impacts of green project by external reviewers mandatory, nor does it set standards for external reviewers. Making post-issuance report verification mandatory will serve as check to ensure that an issuer follows through on the green promises of identified green projects. Also, the Green Bound Principles have no monitoring mechanism to ensure compliance with its provisions.

12. Climate Bond Standard Certification Scheme

The Climate Bonds Standard Certification Scheme operates a closely guarded certification scheme for green bond issuances. The Climate Bonds Standard includes robust framework for monitoring, reporting and assurance of conformity with the climate bonds standard which is built around a scientific framework that defines which projects or assets are consistent with a low carbon and climate resilient economy. An alignment of a bond issue with the Climate Bonds Standard automatically aligns the bond issuance to the Green Bounds Principles.³³ However, the Climate Bonds Standard goes a step further by requiring specific eligibility criteria for low carbon and climate resilient projects chosen by an issuer.³⁴ The certification process comprises pre-issuance requirements, post-issuance requirements and a suit of sector-specific eligibility and guidance documents. The Certification Scheme is overseen by the Climate Standard Board, a board of independent members composed of institutional investors, leading environmental Non-Governmental Organizations and scientists who approve the standard, sector specific criteria, and verifiers.³⁵ Furthermore, the Climate Bonds Standard certification scheme goes beyond recommending broad integrity principles as it is the case with the Green Bounds Principles, but creates a robust and effective certification system where issuers have to conform to certain criteria listed in the Climate Bonds Standard at pre-issuance stage in order to obtain a certification mark, and

³³*Ibid*

³⁴*Ibid*

³⁵*Ibid*

post-issuance requirements to retain the certification mark after issuance of the bond.

To ensure that issuers follow through on the green promises of selected green projects, the Climate Bonds Standard mandates an issuer to complete an “assurance engagement” and submit the verifier’s report to the Climate Bonds Standards Board to maintain the certification mark of the bond awarded at the pre-issuance stage, proving its conformity with the Board’s Standard. This post-issuance “assurance engagement” must be completed within one year of the bond’s issuance. Where the Board is satisfied that the Issuer and the bond are compliant with the post-Issuance requirements of the Climate Bonds Standard, it provides a statement that confirms the certification of the bond.

The issuer then has the right to continue using the Climate Bond Certification Mark in association with the relevant bond (but not others) for the duration of the bond term. However, the Board reserves the power to revoke the certification mark where it discovers that the bond is no longer in conformity with the Climate Bonds Standards. Where the certification mark is revoked, the issuer is required to inform the bondholders, the relevant exchanges and the climate bond market participants of the change in the certification status of the bond. It is indicative that through issuance and revocation of certification marks, the Climate Bonds Standards certification scheme seeks to tighten enforcement of its standards .However, the Climate Bonds Standard enforcement mechanism seems to have loopholes which an issuer could manipulate to its advantage. For instance, the Climate Bonds Standards is silent on the implication of continuous usage of the certification mark even where it has been revoked by the board. Lax enforcement mechanism happens to be a common feature of private governance regimes. Hence, enforcement can be strengthened at the national levels through legislative and institutional regulations.

13. Challenges

a. Inadequate Reporting and Verification Standards

As mentioned earlier, reporting is a very crucial aspect of green bonds as it ensures transparency and effective monitoring of the use of proceeds, which is very critical to the integrity of the green bond market. Reporting also helps in ascertaining the impacts of green projects. Reporting is a required component of green bond practice globally.³⁶ As a form of check, verification of green bond reports is conducted by independent external reviewers using an assessment report in order to ensure its credibility. Nigeria's Green Bond Rules ,2018 provides for preparation and filing of annual green bond reports, as well as the need for an assessment report by an independent assessor. However, the Rules are silent on the need for verification of these assessment reports. This is because the Rules also do not provide for any standards that should be met by an assessment report, or on whether the assessment reports should be verified by Securities and Exchange Commission.³⁷

Although a case of false or inadequate assessment report is yet to occur, the absence of verification standards in the Rules point out a gap that needs to be filled to prevent such incidences from occurring. In China, external verification assessment reports are required to meet the standards set by the Green Bond Standard Committee. These standards include items such as information of the green bond; environmental impact of green projects; detailed description of the verification methods for assessing impacts; and a summary report. Setting standards for external assessment reports is important for testing the credibility of green bonds and for verifying the impact of green projects. It ensures that verification is conducted in a more orderly and prudent manner, as well as forecloses the likelihood of inconsistent forms of assessment reports. Nigeria should take a cue from China by including standards which assessment reports in Nigeria's Green

³⁶*Ibid*

³⁷*Ibid*

Bond Rules must meet. This will reduce chances of green washing and other sharp practices. Such standards could include sector-specific requirements for qualification as a verifier, methods of assessing project impacts, and internal process assessment.

b. Inadequate Enforcement Mechanism

The green bond process involves several stakeholders and actors, such as issuers, investors, external reviewers, and market regulators who all play several roles, but with the collective goal of ensuring that green bond proceeds eventually realize positive environmental impacts. At domestic levels, government regulators play the critical role of monitoring and supervision. They approve eligible green projects, set green label standards, verify and approve progress reports, met out penalties where there are defaults, exercise quasi-judicial functions, among a host of other things.³⁸ These functions can only be exercised properly if regulation is backed by legal authority, but this is not the case in Nigeria.

The Green Bond Rules, 2018 is silent on consequences of not complying with green promises, or on publishing inadequate or false green bond reports. This creates a loophole and incapacitates regulators from enforcing green standards especially for post-issuance requirement compliance, as the Rules do not provide any penalty for default of any of its mandates. The closest provisions enabling Securities and Exchange Commission as a regulator to penalize default in fulfilling bond obligations is rule 566 (f) of the Securities and Exchange Commission Consolidated Rules 2013 which provides for payment of principal and interest within three months in case of default. For green bonds, a default in any of the green obligations or promises in the bond prospectus should ordinarily attract liability since they form the criteria for classifying a bond as green. However, the Consolidated Rule is not clear on whether “default” here covers default on any obligation of a bond at all, or only default related to payment of principal sum or

³⁸ ISA 2007, s 13

interest. If this is the case, then it does little to address potential breach on green bond promises or other green bond regulation.

In comparison to China's green bond regulation, whenever a verification assessment report reveals a negative conclusion, and an issuer fails to rectify the anomaly during the rectification period, the green bond certification is revoked by the green bond standard committee and an investor is allowed to exercise a put option. This revocation mechanism keeps issuers on their toes, as revoking a green bond certificate will mean reputational loss and liability for a green bond issuer. This penalty mechanism present in China's green bond regulation ensures compliance with pre- and post-issuance requirements of the green bond. Nigeria's Green Bond Rules can be amended to include penalties for breaching provisions of the rules. This will go a long way in ensuring that issuers meet their green promises, as well as increase investor confidence in Nigeria's green bond market.

c. Lack of Substantive Criteria for Classifying Green Projects

Green projects are the central focus of green bonds issuers, as utilizing proceeds of the bonds on projects that result in environmentally friendly outcomes is the basis for classifying a bond as green. In identification and selection of green projects, it is important that they are realistic with their sustainability aspirations and indeed capable of resulting in feasible positive environmental impacts. The list of eligible green project, as listed in international green bond guidelines such as the Green Bond Principles or the Climate Bonds Standard, is more of an indicative list meant to guide jurisdictions in formulating their own list of green projects.³⁹ Most jurisdictions have adapted the list of green projects as contained in those guidelines as their green project taxonomies. For example, the list of green projects in Nigeria's Green Bond Rules 2018 is in consonance with that of the Green Bond Principles. While this is commendable, one cannot help but

³⁹ *Ibid*

wonder how those projects reflect the peculiar climate change related problems of the various communities and how they proffer solutions to these problems. Working with a national development plan and sector-specific standards in developing a list of eligible green projects is a good starting point in arriving at a substantive basis for identifying projects. Doing so will ensure that priority sectors are impacted; a pipeline of eligible green projects for the green bond market is available; also, a standard for gauging potential and achieved impacts of green projects are provided. Having substantive criteria for classifying green projects for Nigeria will entail having a sustainable development inclined national master plan that maps out sector-specific standards, which green projects could be built upon.

d. Problem of Locating Green Projects

The Rules are silent on where green projects should be located. It may not be out of place to consider situations where proceeds from a bond issue could be used in carrying out green projects outside Nigeria, thereby depriving its citizens of the direct benefits of such green projects, since there is no law prohibiting an issuer from exporting proceeds of a bond issued. This circumstance has been considered and, in some jurisdictions, laws have been made that ensure green projects are erected where the bonds were issued. For example, the Philippines Guidelines for Issuance of Green Bonds 2018 provides that proceeds from green bonds must be invested in green projects situated in the Philippines. It is recommended that the Securities and Exchange Commission Green Bond Rules 2018 be amended to ensure that proceeds from green bonds issued in Nigeria are channeled towards projects that must be situated in Nigeria.

14. Conclusion and Prescriptions

A green bond is a debt instrument whose proceeds are used to finance environmentally friendly projects (green projects). They are referred to as green bonds simply because the proceeds from these bonds are used solely for financing green projects such as climate change mitigation and

adaptation projects, or any environmentally-driven objective. While there seems to be a consensus on the definition of green bonds, what is not clear is the delimitation of what amounts to a green project. The widely accepted guiding documents like the Green Bond Principles and the Climate Bonds Standard contain a list of eligible green projects, but they do not delimit what should not be classified as a green project. This situation is also present in the green bond regulation of many countries, including Nigeria's green bond rules. While this may create room for abuse, it can also help to widen the scope of areas covered by green financing in the future. Nigeria stands to gain massively if it adjusts its law and regulation of green bond to optimise the underlying advantages.