Corporate Governance:

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Corporate Governance – Financial Crisis and the Nigerian Leadership Meltdown

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"The culture of corporate governance was evidently not something the CBN itself imbibed very early on; yet it published one for others to comply with. I strongly believe that undue advantage is created in the market place – i.e. competitive advantage is 'informally' granted to those closer to regulators. This is the trigger or incentive that lies at the heart of the very problem we face regarding the market meltdown and by extension, corporate governance in Nigeria."

PREAMBLE

Corporate governance is the set of processes, customs, policies, laws, and institutions affecting the way an institution (or company) is directed, administered or controlled.

Corporate governance is a broad term that has to do with the manner in which **rights** and **responsibilities** are shared among owners, managers and shareholders of a given institution. In essence, the exact structure of the corporate governance in any given institution will determine what rights, responsibilities, and privileges that are extended to each of the corporate stakeholders, and to what degree each stakeholder may enjoy/exercise those rights. Generally, the foundation for any system of corporate governance will be determined by several factors, all of which help to form the final form of governing the institution. Some of these factors include, but not limited to the regulatory environment these institutions have to operate in. They largely dictate the overarching governance environment from which the institutions can build upon.

Corporate Governance codes are voluntary in nature and based on self-regulation (as we have for the NSE). Templars (Barristers & Solicitors) explains thus - in "comply or explain" jurisdictions, companies are required to report on compliance in their annual and other reports. The Cadbury Code (UK) for example was a private sector initiative, as well as subsequent editions of the code.

There has been renewed interest in the corporate governance practices of modern corporations since 2001, particularly due to the high-profile collapses of a number of large U.S. firms such as Enron Corporation and MCI Inc. (formerly WorldCom). In 2002, the U.S. federal government passed the Sarbanes-Oxley Act, intending to restore public confidence in corporate governance by requiring PLC's to adopt and report on compliance and this is backed by sanctions for non-compliance.

[1] Wikipedia – What is corporate Governance? - http://en.wikipedia.org/wiki/Corporate_governance

In Nigeria, the Securities & Exchange Commission (SEC) and the Corporate Affairs Commission (CAC) jointly issued a Code of Best Practices in 2003 more in the mould of a voluntary self-regulatory code. The Central Bank of Nigeria (CBN) introduced the Code of Corporate Governance for banks in Nigeria post consolidation in March 2006, effective April 3, 2006.

A survey by the Securities and Exchange Commission (SEC) reported in a publication in April 2003, showed that corporate governance was at a rudimentary stage in Nigeria, as only about 40% of quoted companies, including banks, had recognized codes of corporate governance in place. Specifically for the financial sector, poor corporate governance was identified as one of the major factors in virtually all known instances of a financial institution's distress in the country.

The above assertion by the CBN in 2006 was followed by this factual disclosure – ***"…The on-going industry consolidation is likely to pose additional corporate governance challenges arising from integration of processes, IT and culture….. In addition, the emergence of mega banks in the post-consolidation era is bound to task the skills and competencies of Boards and Managements in improving shareholder values and balance same against other stakeholder interests in a competitive environment***."

In CBN's wisdom, "***A well-defined code of corporate governance practices should help organizations overcome such difficulties***."

CBN further averred that "***Since 2003 when the Nigerian Securities and Exchange Commission released a Code of Best Practices on Corporate Governance for public quoted companies, the relevant banks had been expected to comply with its provisions. This was in addition to a Code of Corporate Governance for Banks and Other Financial Institutions approved earlier in the same year by the Bankers' Committee. The consolidation of the banking industry, however, necessitated a review of the existing code for the Nigerian Banks. This new code (2006) therefore was developed to compliment the earlier ones and enhance their effectiveness for the Nigerian banking industry. Compliance with the provisions of this Code is mandatory***."

Sadly, and in spite or despite these code(s) for corporate governance, the market meltdown that occurred in the Nigerian Capital market as well as the decline of asset quality and capital adequacy in the financial services industry was a direct result of the **leadership meltdown** that occurred jointly within the institutions and principally; the absence of oversight and supervisory control by the regulatory body (ies) charged with ensuring that the market functions under regulations designed to ensure that such complete meltdown does not occur.

Thus corporate governance should take on a plural tense to allow us truly appreciate why codes introduced as voluntary self-regulatory benchmarks and those made mandatory (like the CBN code) fail in this clime.

The recent admission by the Central Bank Governor, Sanusi Lamido Sanusi that the regulators all 'messed up' offers little comfort to the market. Those that have come before him have expressed such 'time sensitive remorse' only to ignore the very reason why they made the statement – the problem is not about setting rules or code of conduct or/and governance, it is about the system and the 'modus operandi' of the business operating environment which has been built on a premise that runs contrary to what the corporate governance creed seeks to establish.

INTRODUCTION

This paper seeks to establish the nexus between the financial meltdown that occurred in Nigeria and the leadership meltdown that preceded it due to the unwholesome disregard of basic corporate governance ethos by all level of stakeholders, including the Federal Government of Nigeria who had the ultimate responsibility to the nations' sovereign objectives to reign in the action(s) of institutions to align with the economic interest of the nation – the rights of which it earned through the ballot box.

At a first glance, the very tentative nature of our democratic maturity/practice begins to slip into the fabric of our business and economic operating environment through the discharge or otherwise of the rights and responsibilities of the elected leaders.

Often times, the argument has been deployed through light headed arguments about the extent, role and scope of influence central governments (conservative or liberal) exercises on the economy. Some of the arguments are well founded as governments the world over has proven itself to be incompetent in managing profitable firms and delivering the requisite enablers for the competitive mantra the world economy has chosen to run on.

In a practically globalised market place, the tendency for governments to move towards increased regulation is high, yet this has a high possibility of titling towards protectionism. Indeed the role of government in business has been shown to have a direct link to corrupt practices as the exercise of political clout leads to favours for cronies and political associates/tendencies making the case against government role more compelling. Yet, it is undeniable, as evidence suggest, that leaving firms to self regulate is a stretch of responsibility taking too far. Why? The natural human instinct for self preservation, survival and to get ahead often places firms in direct conflict with the wider expectations of a corporate governance regime.

In Nigeria, the argument is simply be narrowed to just how much room the government (which often functions more from a historically military-command mindset) would allow for dialogue, compromise and alignment of purpose/objectives. This matter remains yet unresolved and this is evident in the lack of kinship showed in the implementation of the codes initiated by regulators, which they are unable to enforce.

This argument has moved on because the need to quickly establish the linkage or failure of a positive linkage in our system of laws, practice and culture presents a far pressing need and pointer to the consistent leadership meltdown we are confronted with; even as the extent of our exposure to the global credit crunch is yet to be fully ascertained.

Recall that from being the best, the NCM ranked among the worst in 2008. In Africa, apart from ***Egyp*t**, which lost 56.43 per cent, Nigeria ranked below ***South Africa***, which lost 25.72 per cent and ***Kenya*** with a loss of 31.33 per cent. **Ghana, Tanzania** and **Tunisia**, however, gained 40.68 per cent, 21.26 per cent and 10.65 per cent respectively, probably reflecting their level of exposure to global events.

Nigeria also performed below other mature markets such as United States (USA), Japan and United Kingdom (UK), which lost 34.34 per cent, 42.12 per cent and 31.54 per cent respectively. (*Source: Proshare NCM report 2009 – NCM Report 2009:* **Nigerian Capital Market Report 2009: http://www.proshareng.com/analyst/downloads/ncmFULL.zip**

Yet at this stage, the then CBN Governor, Prof. Chukwumah Soludo said our markets were immune from the developments in other markets; even as foreign investors were calling up their funds here. The culture of corporate governance was evidently not something the CBN itself imbibed very early on; yet it published one for others to comply with.

To the informed commentator, of immediate concern would be three mutually exclusive but consequentially related causatives, viz:

1. One, did the meltdown occur because we 'failed' to adjust the supervision/regulatory environment relative to the risk occasioned by the increase in capital and opportunities of scope and size the post consolidation era represented?;
2. Two, did the meltdown occur because there was a deliberate 'gaming of the system' by the market players and operators beyond the capacity and competence of the regulators?; and
3. Three, did the market meltdown represent an inevitable consequence of the global financial market space we now operate in and for which we may not have prepared adequately for?

The possible answer to the above poser should by no means attract any applause. Far from it! Nothing sums this up better than these words from Financial Times (FT) – "*The Nigerian* ***market remains relatively fragmented****. …..More transparency and consolidation are needed. But* ***dramatic action risks undermining worthy ambitions, such as attracting foreign capital****. Nigerian authorities overhauled banks' management in the 1990s, but* ***oversight failed to keep pace with market change***."

Anyone closely associated with the inner workings of the Nigerian business clime would know that that the system thrives through a culture of patronage promoted and sustained by a well-structured category of 'incestuous relationships' well packaged as 'stakeholder engagements'.

Take the current celebrity-like tour by the new CBN Governor to events, seminars, appearances and granting of interviews on local and international media where policy statements or positions are made through such mediums. Granted, he needs to engage the audiences, but it should be brought to the attention of the CBN Governor that the Central Bank is an ultra conservative institution and for very good reasons too and this trend, first established by Prof. Soludo cannot be in the best interest of the institution.

When the CBN Governor speaks, the market must take away actionable intelligence from such pronouncements/comments which do not come in flurry as we have seen. If this is imbibed, we would have started the process of addressing the cultural issues that plague the execution of plans to retool and rebuild the broken trust and confidence in our financial system. The process of corporate governance at the CBN itself would be the first place to start the national re-orientation.

I believe this is doable and that Nigeria will move away from the dark days now upon it. The unintended consequences of the actions of the CBN Governor should not be a sole indictment of the Governor; rather, it must be seen as a revelation of the precarious status of the nations monolithic economy we have refused to address.

THE CULTURE OF PATRONAGE AS AN IMPEDIMENT TO CORPORATE GOVERNANCE

A critical insight into what Corporate Governance should be in Nigeria has often been presented within the prism of the UK or US market mindset. The standards introduced, though designed to reflect best practice (*yet it could not help them avoid the credit crunch*) has failed in a wholesome manner to reflect the realities of this 'unique clime' – by aggregating our company laws and practices, consider the depth of our markets, the sophistication or otherwise of our processes and systems, the quality of the people employed and the process of the educational system that produces them as well as the professionalism of the support service providers such as lawyers, accountants, auditors, engineers, valuers etc to deliver an independent opinion in a clime that does not reward whistleblowers or ethical stand of the management cadre.

These are very strong views one would say, but my work experience so far has emboldened me to come to reach this conclusion. Most poignantly, the nation has an undeniable reputation and affinity for corruption and fraud related incidents (sometimes more than should be expected), a history of management ineptitude or outright inability to manage big businesses, and a growing penchant to be ready to pay the price for breaking the law based on a knowledge that it can be negotiated upon.

The average CEO and board director knows all too well that the society lacks a public safety net and social infrastructural support which invariably places a huge burden on such business leaders to provide for their immediate and future needs within a short timeframe (the nation does not operate any long term processes across the board) and become a willing surrogate for others within their constituency to bridge the gap between the failure of government to provide socio-economic planks (by becoming a giver and dispenser of financial succor to address the elements of state failure) and the natural tendency for people to fleece those who have.

Thus the leaders and the nation are stuck in a perpetual cycle of greed, risk and perception management which all works together to make nonsense of the UK and US models as a solution to our needs.

Not only will it fail or be deliberately suffocated by the resilient, yet unspoken 'omerta code' of 'the end justifies the means'; the practice is usually skillfully handed down to the next generation of leaders who simply turn out as better skilled 'smart alecs'.

Is this representative of the majority of businessmen in Nigeria?

The jury is still out but a recent survey conducted by Proshare Analysts reveal that six in ten businessmen would take the most 'practical' means to overcome a business challenge than follow the rules. The findings also reveal that complaints and seeking of redress to/from the regulatory bodies is dependent on the level of 'contacts' the enquirer/complainant has. I leave you to make your conclusions.

Most disturbing as we have seen lately is the recourse to using the courts, law enforcement agencies and other instruments of power and coercion to influence action/decisions in favour of the mighty and powerful. These ones have the wherewithal to significantly influence the media to garner either a positive slant to their case(s) or to distort facts and reality in the public space.

WE CAN ONLY PRETEND FOR SO LONG.

The code we have chosen to live by as a people as described above has been 'nurtured' by successive governments through its manner and nature of governance and dispensing rewards. I cannot recall up to 20% of rewards through public recognition, appointments and celebration going to those who should be the leading lights of ensuring a regulatory environment that would deliver for Nigeria an economy that promotes corporate governance.

I strongly believe that undue advantage is created in the market place – i.e. competitive advantage is 'unknowingly' granted to those closer to regulators. This is the trigger or incentive that lies at the heart of the very problem we face regarding the market meltdown and by extension, corporate governance in Nigeria.

There exist a huge incentive to foster or promote the strategic development of 'cordial' relationships and back door channels with regulators to feed the private sectors desire for an edge in business. This often leads to what I have continuously referred to as the 'culture of incestuous relationships' at all levels right up to the very top. It is the 'conspiracy of criminality' that sits at the very heart of what Corporate Nigeria has become. The end result is usually the same - regulatory oversight capacity and efficiency is compromised and the outcome is the mess we always come back to.

Sanusi Lamido's sanitation of the banking industry should provide a good response to this paper – either serves as a confirmation of the hypothesis laid out above or seek to establish the evidence of how far we have come as a business community.

When this drama is all over in a few weeks and perhaps years ahead, it is most likely that nothing much would have changed, due to factors beyond the CBN's fervor for sacking inefficient bank executives, publishing incomplete list of debtors and general grandstanding through the management of the economy by the media.

This is a resilient system that takes it cue from the way the Federal Government functions. So what has really changed in the institutions of governance to encourage belief that these actions will be sustainable and can be built upon?

THE EVIDENCE AVAILABLE EXAMINED

In the Proshare NCM 2009 report issued in February 2009, we undertook the first ever appraisal of the role of regulators – CBN, SEC, NSE, and the NDIC, the case was made that the incidence of the global financial crisis was less a problem to Nigeria than the 'bubble' it had built up through a 'conspiracy of criminality' aided and abetted by the regulators.

Our report provided conclusive indices to indicate that despite Nigerian Stocks being subject to vagaries associated with the changing profile of investors in the market from savers and long term investors to about 85% of speculators, the worst and sustained decline in value for the market that occurred was driven in part by the break down in the needed rules of engagement in the market place.

Most firms that tried to adhere to strict implementation of the corporate governance ethos it had embraced found themselves on the losing end of the game. The market had turned on its head as the regulators, expected to maintain the decorum and apply the rules moved from establishing a level playing field to supervisory control by 'the highest bidder'.

Rather than move in tandem with the natural intent of the law, the pressure was now placed on individual CEO's and their Board of Directors to decide either to pursue a 'moral high ground' or 'adapt to the terrain' by doing the "needful" to ensure business survival.

In this process, outright 'criminality' festered amongst some hard core players and the natural laws of ethics – rights and responsibilities; was jettisoned for market led expediency.

In this game, we witnessed the recourse, by otherwise ethical leaders, role models and leaders/winners of the Corporate Governance movement; to a flight to expediency. The first signs of this occurred early in the day with the Cadbury Nigeria Plc expose where the winner for the PWC Most respected CEO of the year was indicted by the Securities & Exchange Commission for acts that not only cast doubts on the believability of the company's financials but on its prospects. The whole society wondered how that could happen. Cadbury has since moved on from this incident.

At about the same time, the market was awash with allegations of price manipulation (*most profoundly from SEC itself in February 2008, which the NSE refuted*), insider dealing, credit process abuse, lifestyle issues and the penchant for the regulators to engage in 'incestuous relationships' that makes it almost impossible for them to exercise the much needed independence needed.

This was the case till August 14, 2009 and it was an almost stunned market that embraced the 'new creed' of the new CBN governor; at least before it found its voice and once again deployed its arsenal to influence the shape of things to come. The entrenched group found their voice after three significant developments:

- The evidence of a sustained culture of 'incestuous relationships' appeared when Atedo Peterside, Chairman of Stanbic IBTC Bank Plc, a bank still under CBN's audit made an appearance in London to headline a town hall meeting arranged by the CBN and made statements that suggested a cordiality better left unsaid;
- The flip flop over the statements credited to the CBN Governor and his Deputy Governor about the plans to seek for foreign investors to the five (5) banks 'bailed out' but often referred to as 'taken over' based on the actions of the CBN Governor whose actions did not carry along the board and shareholders; and
- The hoopla over the published list of debtors that created a media frenzy of its own.

At this stage, the market was provided the much needed benefit of doubt and the non-regard for corporate governance rules was touted as the credible and legitimate basis for grouse against the much expected actions of the CBN Governor. Since then, a lot has happened and the case against the CEO's has been fragmented, backed by litigations that would stunt any plan acquisition. The media, a key beneficiary of these development is working on another news cycle – indeed prodding the CBN governor to take actions on

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the remaining banks and get to the magical figure of 15 banks the CBN Governor declared in his now famous FT interview.

This can only be a reflection of the above thesis on the resilience of the system we operate in which those who seek change must learn of and take decisive action to deal with as they seek to enthrone a culture of civility which the corporate governance creed seek to establish.

Proshare's state of the market report titled 'The Bull in the China Shop' issued in august 2009 has been proved right over and over again. How? The key issue in the corporate governance question in Nigeria is that of the culture of the people of Nigeria.

BEYOND THE CULTURE ISSUE: GETTING TO BRASS TACT

As I have always explained on the subject, over the past few years Nigerian corporate governance has been oriented towards the promotion of shareholder value – a good starting point.

The sharp decline in share prices that occurred in 2008 however implies this shareholder-focused corporate governance model "failed" and that reform is correspondingly justified.

This has been the public explanation to corporate governance in Nigeria and I wish to disabuse the mind of the reader from this premise and state clearly that my premise above does not seek to establish such a paradigm.

It should be noted and accepted that corporate governance is not the primary determinant of share prices, given that the empirical facts have all returned inconclusive. It therefore is possible that in 2008, corporate governance in public companies generally functioned satisfactorily in most firms amidst general market trends and disclosures that inexorably drove share prices downwards.

The inexplicable fact that I will not avoid saying is that the regulatory culture promoted the sidetracking of the more intrinsic elements of the corporate governance ethos during the meltdown. The blame is not about the code I insist, but the unaddressed culture that promotes conditions under which corporate governance can and will be compromised.

THE ANALYST OPINION

Classical thinking had recognized the possibility of betrayal by corporate agents of the trusts reposed on them by their principals. This much was pointed out in Adam Smith's exposition on the principal-agent relationship. In recent times, stakeholder expectations concerning how managers ought to comply with codes of corporate governance have become much more stressed. This draws from the truth that many business systems and entrepreneurial pursuits have buckled as a consequence of non existence – non clarity and non-compliance with the codes that specify the standards of transparency and accountability that should underscore managerial actions.

In order to checkmate these undesirable impacts corporate governance process directed at protecting the interest of all stakeholders in a balanced manner is put in place. Underlying this process are the principles of openness, integrity and accountability.

These principles unfortunately do not seem to be available in abundance in many underdeveloped countries particularly in Africa. Nigeria is not spared as it ranks among the leaders in global corruption scale: a combination of public and private sector violation of the fundamental stakeholder expectations on governance standards. For instance unofficial estimation ascribes more than 85% share of bank failures in Nigeria to poor corporate governance.

The central bank itself admitted in 2007 (September) that banks have not fully complied with the code of corporate governance introduced in the preceding year to forestall reoccurrence of distress in the industry[1].

The cases of the now revitalized Spring Bank plc and Wema Bank Plc are well known. Both banks were victims of poor corporate governance standards. The market's apex regulator had stated that, "consequent upon the mismanagement of the bank (Wema Bank) by the management, the capital adequacy ratio dropped to an unacceptable negative ratio of 3.67 per cent, thus requiring capital injection of N23.06 billion. The liquidity ratio of the bank was also below the required minimum of 40 per cent. As a result, the CBN's current account has been consistently overdrawn to the tune of N30 billion from January 2008. Likewise borrowing from banks and discount houses to finance the Wema Bank obligations stood at N21.4 billion as at the examination cut-off

[2] Babajide Komolafe (2007). 'Nigeria: Banks Flout Code of Corporate Governance – CBN'. Vanguard newspapers. September 12. http://allafrica.com/stories/200709120109.html

date of January 18, 2008." It will also be recalled that in the letter that announced the removal of the 13 members of the board of Spring Bank last year, which was signed by Soludo, the apex bank acknowledged that Spring Bank was in a difficult situation with liquidity problems and gradual erosion of its shareholders' fund as concerned the prudential requirements stipulated by the CBN and pursuant to the provisions of the Banks and Other Financial Institutions Act (BOFIA) 1991 and the CBN Act 1991 as amended”[2]. The banks are not the only good examples.

The capital market, the customs and indeed many other sectors have their own share of the devastation that this menace brings.

A vivid picture of how these corporate governance code violators connive or evade the supposed prying eyes of the regulators are captured in the Saturday Sun newspaper[3] of June 7, 2008 which presents a captivating albeit saddening headline on 22 out of our current 25 banks: Banks of Fraud.

According to the piece: “***…the audited financials sent to the CBN is usually profit-inflated since it is that same audited accounts that would be published showing bogus profits in order to make their shares attractive at the capital market after compromised approval has been given by the CBN. For the same period, the audited accounts that would be forwarded to NDIC would have a depleted deposit base in order for the banks to pay as little as an infinitesimal fraction of one percent insurance premium to NDIC. For the same accounting period too, the audited accounts that would be forwarded to the FIRS would have a reduced profit so that these banks would not pay any corporate tax to the coffers of the Federal Government of Nigeria while at the same time concealing Withholding Tax and VAT deductions, thereby defrauding the Federal Government of revenues due it. Lastly, the audited financials going out to States Internal Revenue Services would contain drastically reduced salaries and wages to prevent paying appropriate Pay-As-You-Earn (PAYE) and Withholding Tax to the various state governments… The CBN cannot be divorced from all the rot in the banking industry since they are the supervisors of the banks. Same can be said for the Nigerian Deposit Insurance Corporation (NDIC). First of all, we know that both the CBN and NDIC carry out periodic examination of the books of these banks and at the end of the day, give these banks clean bill of health as to compliance with accounting standards as well as***

[3] Scare over Sickly Banks November 2, 2008 | posted by Nigerian Muse. http://www.nigerianmuse.com/20081102000518zg/nigeriawatch/scare-over-sickly-banks (browsed on June 8, 2009).

[3] Seun Adeside (2008), Fraud in Banks, http://www.sunnewsonline.com/webpages/news/national/2008/jun/07/national-07-06-2008-001.htm (Browsed on June 7, 2008)

***banking regulations. Unfortunately, by the time we investigate the account of any bank customer; we cannot but unearth heavy breaches and distortions to the rules of CBN*".**

WHAT HAS SUSTAINED POOR CORPORATE GOVERNANCE IN NIGERIA?

The answer lies in deconstructing the pillars that support the current faulty institutionalized incentive structure. The structure has both shielded the unethically clever from being easily caught and made the good ones act in manners that are undesirable.

Many institutional structures were hitherto put in place but in some of them, there were absence of required level of incentives to drive needed compliance. The leadership of the **Central Bank of Nigeria** prior to the current one for instance was accused of complicity or frolicking (*incestuous relationships*) with the banks such that there was the anxiety concerning the Bank's capacity to objectively remonstrate an errant bank. At the **Nigerian Stock Exchange**, the case has not been any different as the leadership has equally been enmeshed in complicity issues.

What this brings to the fore is that the poor corporate governance in Nigeria is not necessarily a consequence of deliberate institutional arrangement to prevent and manage their occurrence, but the ineffective of those institutions to activate preventive mechanism as well as the inefficient justice system. As a matter of fact, Nigeria parades a good array of institutions and laws largely established by law primarily for ensuring maximum corporate governance.

Some of the most important ones include: the Nigeria Deposit Insurance Corporation (NDIC) Act of 1988, the Company and Allied Matters Act (CAMA) of 1990, the Prudential Guidelines, the Statement of Accounting Standards (SAS 10), the Banks and Other Financial Institutions (BOFI) Act of 1991, Central Bank of Nigeria (CBN) Act of 1991, CBN Circulars and Guidelines, et cetera.

There are equally public sector agencies and non-governmental associations that promote good corporate governance practices in Nigerian Financial Sector. These organizations, apart from the CBN and NDIC, include the Securities and Exchange Commission (SEC), the Nigerian Stock Exchange (NSE), Corporate Affairs Commission (CAC), Chartered Institute of Bankers of Nigeria (CIBN), Institute of Chartered Accountants of Nigeria (ICAN), Financial Institutions Training Centre (FITC); Institute of

Directors (IoD), et cetera. There are equally very important laws meant to deter violations.

For example, Part 11 section 18(1) of the Act states: "***Where an offence under this Act which has been committed by a body corporate is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of a director, manager, secretary or other similar officers of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate where applicable shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly". It also states that "where a body corporate is convicted of an offence under this Act, the court may order that the body corporate shall thereupon and without any further assurances, but for such order, be wound up and all its assets and properties forfeited to the Federal Government***".

FAMILY BANKS OR 'ONE MAN BANK' SYNDROME

The CBN Code according to Templars firm prescribes that no individual should have unfettered powers of decision making and that no two members of the same extended family should be on the board of a bank at a time.

The banks complied by simply finding cronies to occupy the positions on the board and hold shares for and on behalf of the CEO's. So what can the law do to avoid this? SLS, the CBN Governor has said that the era of a one man bank is over yet asks for a core investor for the banks? The issues here was well explained in the March 2006 newsletter by the Templars where its stated that **"...The domination of boards by a single individual has been fingered in jurisdictions across the world as a key source of bad corporate governance and the resultant corporate failures. Nevertheless, there are family banks (not just in Nigeria) that are run on sound business and corporate governance principles. Some jurisdictions permit combination of board and management roles in an individual where there are other strong independent board members to balance the dominant individual**".

The key question must be that of whether the board of an average Nigerian Bank can control its managing Director/CEO?

Since the CBN approves the appointment of board members and recognizes that gap in skill, competence or corporate governance issues and conflict of interest matters arising or related thereto, it should take responsibility for the average Nigerian Bank board not living up to its mandate.

CONCLUSION

Allowing the constitution to be fully operative through an efficient justice system will inevitably help in reducing the corporate governance challenges. But then, preventive measures bothering on regular monitoring, examination and full disclosures of the activities of firms through statutorily established institutional structures will produce more effective outcomes than the reactive stance of waiting till violators are caught.

One area I find disturbing is the non-passage of the law requiring directors of publicly quoted firms to disclose their trading activities on the shares held by them within the accounting period and a statement of tax returns by all directors. Most importantly, the directors should not be allowed to sell for a definitive period before a corporate action is announced such as a public offer, rights issue or announcement of results.

We must also address the regulatory gap needed to protect whistle blowers who are a critical component of any corporate governance regime. Most importantly, we also need to decide if we should make corporate governance a voluntary self-regulatory issue based on the evidences available.

For instance the idea of concerted supervision of the financial institutions by stakeholder regulators such as CBN, NDIC, SEC, NSE etc. coupled with full disclosure requirements will help tremendously in reducing this situation. The recent financial sector crisis equally challenges the banks particularly to be more committed to corporate governance culture.

Many of them that lacked good corporate governance codes or those that only have the codes for the sake of it suffered near otiose syndromes. The fear was very palpable. Based on that bitter experience many financial institutions will endeavour to put in place and comply with good codes of corporate governance. But until the hand of the law can decisively deal with culprits even the compliance with established codes may be more difficult than is envisaged.

Olufemi AWOYEMI, *FCA*

For further reading, click here to read other related NCM reports – 2009:

1. Bull in the China Shop: http://www.proshareng.com/reports/view.php?id=2016
2. Nigerian Capital Market Report 2009: http://www.proshareng.com/analyst/downloads/ncmFULL.zip
3. Half Year NCM Review 2009: http://www.proshareng.com/reports/view.php?id=1937