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ETHICS AND CORPORATE GOVERNANCE IN THE NIGERIAN BANKING INDUSTRY

OYETUNJI, OluwayomiTaiwo,
AKANDE, Omowunmi Comfort,
OLURIN, Oluwatoyosi
Department of Accounting
Babcock University
Ilishan Remo, Ogun State.

ABSTRACT

Corporate governance in recent times has gained worldwide recognition and has become a subject of global discuss. Good corporate governance system and practices can be considered and regarded as a very useful tool in reducing risk for investors who have deposits in these banks. Investors are expected to have public confidence in the banking industry by virtue of the intermediation they play as well as securing public funds.This study however hovers around ethics and corporate governance system and practices in the Nigerian banking industry as well as critically examines issues and challenges associated with it where some key elements of corporate governance have been be x-rayed.The method adopted for this study is the conceptual analysis approach as well as exploratory reviewing of extant literatures and empirics studying various findings of authors as it relates to the subject matter from which inferential conclusions have been drawn and suggested recommendations made and provided.This study generally adds to the body of knowledge and existing literatures on the state of ethics and corporate governance development in the Nigerian banking sector, its impacts, banking regulations and efforts put in place in ensuring that Nigerian banks are well structured and properly governed.The finding revealed that the bank crisis is traceable to poor corporate governance practices and poor credit administration *processes. It therefore recommended, among others, zero tolerance for corporate governance infraction and shareholders should be alive to their responsibilities by being active at the Annual General Meeting.*

Keywords: Banking, Banking Regulations, Intermediation, Investors, Public Confidence**.**

INTRODUCTION

The soundness of banks can be directly attributable to the quality of corporate governance. In otherwords, corporate governance determines the extent to which an organization is being run in an honest manner (Sanusi, 2012). Effective corporate governance encompasses and embraces transparency, openness, accurate reporting and adherence to statutory regulations and prudential guidelines. History has it that financial crisis is as a result of lack of good corporate governance in the banks. A root cause of instability in the banking sector as a whole is inadequate practice of corporate governance. The power exercised to control and regulate its activities must be well and properly exercised so as to get maximum yields.

The distress in the banking sector in the last 20years has posed several challenges and problems to corporate governance.Odozi (2007) posited that ethics and corporate governance as well as transparency and accountability have been misused over the years. The collapse of banks in Nigeria has been due to not only inadequate corporate governance but failure of professional ethics, insensitivity to internal control system and risk management assessment which have been compromised.

Information and Communication Technology (ICT) and globalization have shrunk the world into a global village. As a result of this, there has been an integration of the economy and capital markets which has led to increase in the interdependence of international financial markets. In order to sustain investors' confidence in the capital market, corporate governance has been introduced since it would appear the only way corporate financial reporting can be seen to be transparent (Garuba&Donwa, 2011).

Poor corporate governance has been the major cause of corporate failures and as a response to these failures; the United States of America(USA) issued the Sarbanes Oxley Act (SOX) in July 2002, whereas in January, 2003, the Higgs Report was published in the United Kingdom (UK). In Nigeria, the Securities and Exchange

Commission (SEC) in 2003 also released the code of Best Practices for Public Companies in Nigeria.

However, the Central Bank of Nigeria (CBN) issued the code of corporate governance for banks in Nigeria after the consolidation and became effective on April3, 2006 to accommodate issues of transparency, equity ownership, appointment of directors, board structure and composition, auditing and risk management.The need for good corporate governance has been the central theme and discourse in the face of global economic issues and crises. The reason is adduced to the fact that the global financial crises are as a result of unimplemented corporate governance policies. That is the focus of this paper (Garuba&Donwa, 2011).

The experiences of the financial crises in Asia of the 1990s reveal the effective corporate governance procedures to the growth and survival of the macro economy. The crisis made known that "even the stronger economies lacking transparent control, responsible corporate boards and shareholder right can even collapse faster as investors' confidence collapse" (Sullivan, 2000). Economic reforms that have taken place in Africa in the 1980s in which government owned enterprises were privatized formed a major focus and brought about the heightened concern for corporate governance debate. The experiences of countries in the Eastern Europe that embraced the privatization without the requisite corporate governance "infrastructure", suggested that Africa needs to take appropriate measures of her corporate governance capacity.

Statement of the Problem

The present economy deservessound and viable banking operations followingfactors such as unethical professional practices, poor management quality which have all contributed to the low level of performance and finally the failure of the banking sector and industry.The increasing rate of corporate failures as seen globally has brought about this study and presentation of this paper. The present study is organized to evaluate the management ability of the banks, capacity and performance and also to reveal the various roles played by corporate governance to the performance of the banking industry.

Objective of the Paper

The objective of this paper is to examine the corporate governance in the Nigerian banking industry and how to address the issues confronting it in order to restore public confidence in corporate reporting of the banking industry.This paper is organized and structured into the following sections: meaning and definition of corporate governance, corporate governance in the Nigerian Banking industry, principles and pillars of corporate governance, theories of corporate governance, corporate governance issues and way out.

REVIEW OF RELATED LITERATURE

Meaning and Scope of Corporate Governance

There have been several definitions of corporate governance.The Cadbury Report (1992) is widely believed to be the first major adequate description of the concept. It defined it as the system by which companies are directed and controlled.Owojori (2010) defined corporate governance as the system of internal controls and procedures by which companies are managed. It went further by stating that it provides a framework that defines the rights, roles and responsibilities of different groups which include the management, board, controlling shareholders and minority shareowners within an organization. Corporate governance involves the processes, structures and relationships through which the board of directors oversees what the executives do. Looking at it in a broader sense, Gillan and Starks (1998) saw it as "the system of laws, rules, and factors operations at a company. We can see that from these definitions corporate governance is perceived from different perspectives.

However, researchers often times consider corporate governance mechanisms as falling into one of the two groups: those internal to the firms and those external to the firms. Jensen (1993) opined that Board of Directors at the zenith of internal control systems is charged with the responsibility of advising and monitoring management and has the responsibility to hire, fire and compensate the senior management team. However, there is a link between the shareholders (external) and the Board of Directors (internal).

As posited by Owojori (2010), good corporate governance practices ensure that:

a. Members of the board act in the interest of its shareholders;
b. The company is expected to act lawfully and in an ethical manner in their dealings with all stakeholders;
c. Shareholders have same right to participate in the governance of the company. All rights of shareholders and other stakeholders should be clearly stated and communicated;

d. The Board and its committees are structured in a way to act independently from the management, individuals that have control;
e. Appropriate controls and procedures are in place describing the running activities and day-to-day operations of the company; and
f. The company's operating and financial activities as well as its corporate governance activities are properly reported to shareholders in a fair, accurate, relevant and verifiable manner

How best a company achieves these goals to a large extent depends and lies on the adequacy of the company's corporate governance structure mechanisms and the strength of the shareholder's voice in matters that relate to corporate governance. The success of the Board in safeguarding the interest of shareholders rests on the above factors.

Corporate Governance in the Nigerian Banking Industry

The crisis that happened in 2009 is traceable to poor corporate governance in the industry. The fundamental aim of corporate governance is to increase and enhance the value of a company through good ethical behavior and promoting a policy of openness, fairness and ensuring informed economic decision making throughout the company. The ever growing stock market, pressured by stockholders for increasing returns as well as executives seeking to maximize bonuses based on the stock performance led some boards of directors and audit committees in constraining "creative" accounting to keep up their earnings number. Excessive earnings management will however distort the information content of the earnings (Schipper, 1989). Earnings management occurs when managers use judgment in financial reporting to alter the financial reports misleading stakeholders about the performance of the company (Healy &Wahlen, 1996).Sanusi (2012) and Brownbridge (1996)have both provided evidences of earnings manipulations in the Nigerian banking sector where fake profits are being declared as a result of poor corporate governance.

Also found in the banking industry was insider abuse. Insider abuse according to Garuba (2011) is any facility extended by a bank to a shareholder, board member, management staff, relations or related companies. He further stated that it included failure to disclose the interest of the borrower in his business dealings with the financial institution, diverting assets and income for the insiders own use; misuse of position by giving approval to transactions that are questionable for relatives, friends and associates; abuse of expense account, acceptance of bribes and gratifications and other questionable dealings. All these circumvent laid down guidelines and regulations resulting in non-performing loans as it happened to some of our banks and its ultimate failure. Apparently, this led to poor corporate governance in the banking industry as there was no transparency in doing banking business because there was no full disclosure and adequate provisions.

In August, 2009, the past governor of the CBN,LamidoSanusi made it known and clear what has been happening in the industry when he sacked five directors of five banks owing to the fact that these banks were culpable for lack of full disclosure and adequate provisions among other reasons based on the report conducted by the joint team of CBN and Nigeria Deposit Insurance Corporation (NDIC). He, however, attributed the high level of non-performing loans to "poor corporate governance practices, poor credit administration process and non-adherence to the banks credit risk management practices". This non-adherence led to significant capital impairment and the banks were undercapitalized and higher increase for provision of loans impacted negatively on their capital base (Sanusi, 2012)

The banks made huge losses after making a provision of N2.216 trillion. It was evident when most banks were declaring 'paper profits' because after the compelling by CBN, these banks declared losses. The scandals that had occurred in the last few years came as a rude shock not because of the global financial failures but because of the discovery of the questionable accounting practices that had happened in the industry. There is however, a link between these accounting failures and poor corporate governance and the call for good corporate governance has become very imperative (Sanusi, 2012).

Principles and Pillars of Corporate Governance

Pandey (2005) opined that good corporate governance requires companies to embrace and adopt best practices and policies which comprise performance, accountability, effective management control by the board of directors, board committee comprising professionals, Non-executive and independent directors, adequate disclosure of information and discharge of statutory duties.

Chris (2006) saw key elements of good corporate governance principle to include the following: honesty, trust and integrity, openness, performance orientation, responsibility and accountability, mutual respect and commitment to the organization. Senior executives should conduct themselves honestly and ethically especially concerning the actual conflict of interest and disclosure in financial report.

The Organization for Economic Cooperation and Development (OECD) gave a set of international principles of corporate governance. These principles were developed in response to growing recognition of the importance of governance to enterprise performance and to respond to the recent corporate failures in Asia, USA and other parts of the world. The OECD highlighted five of these principles: the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders, disclosure and transparency; and the responsibilities of the board.

The Rights of Shareholders

This is concerned with the protection of shareholders' right and the ability of them influencing the behaviour of the corporation. These rights include rights to: secure methods of ownership registration, transfer share, obtain relevant information on the corporation, participate and vote in AGM, elect members of the board and share in the profits of the corporation.

Equitable Treatment of Shareholders

All shareholders including foreign ones should as a matter of fact be treated fairly by controlling shareholders, boards and management. It calls for transparency with respect to the distribution of voting rights and the ways the rights are exercised. All shareholders of the same class should be treated equally. Members of the board and management should be required to disclose any material interests in transactions affecting the corporation.

The Role of Stakeholders

Corporate governance framework should recognize the rights of stakeholders as established by law. It should encourage active cooperation between corporations and stakeholders in creating wealth and the sustainability of a sound enterprise. Corporate governance should ensure that these rights are protected by law and respected. However, stakeholders have the opportunity to seek a redress if any violation of their rights. Stakeholders need to be provided with information that is relevant to enable them participate actively in the governance process.

Disclosure and Transparency

It supports the development of high internationally accounting standards. All material matters regarding the governance and performance of the corporation shall be disclosed. Applying high quality standards of accounting, disclosure and auditing is expected. Disclosure should include the following: company objectives, voting rights, members of the board and their remuneration, governance structure and policies information should be prepared, audited and disclosed while channels for disseminating information should be timely and cost effective.

The Responsibilities of the Board

Directors are responsible for the strategic guidance of the enterprise and monitoring management. They have the function to perform and ensure the strategic guidance of the company, effective monitoring and accountability to the corporation and shareholders.The board is expected to: ensure independence of the board, act fully informed on the basis of good faith with due diligence and care and in the interest of the stakeholders, treat all shareholders fairly, and ensure compliance with laws.

Theories of Corporate Governance

Akintoye (2010) in a presentation at the Institute of Chartered Accountants of Nigeria (ICAN) during an interactive session presented three essential theories of corporate governance which are: stewardship theory, agency theory and the market theory.

Stewardship Theory

The stewardship theory of corporate governance posits that since people can be trusted to act in the public good in general and in the interest of their shareholders in particular, it makes a whole lot of meaning to create management and structures of authority because it provides a unified command and facilitate autonomous decision making, enable companies to respond quickly to available market opportunities.

Agency Theory

On the other hand, the agency theory views shareholders as the principals and management as their agents. The agents will however act with rational interest; as employee directors of a company they will seek to appease the shareholders. This theory appears to be the basis for corporate governance today. Jensen and Meckling (1976) viewed corporate management as agents of the firm and owners who are termed the principals.

Market Theory

This theory holds that corporate governance doesn't really matter whether managers see themselves as stewards or agents because shareholders will simply sell in the market the stocks and shares of those companies whose directors are not generating adequate returns for their investment. Shareholders in Enron including many of its employees were unable to sell their shares since it became clear and evident that the company's governance was grossly inadequate.

Corporate Governance Issues

There have been several corporate governance issues over the years which have been a source of major concern. Some of these issues will be highlighted and some solutions suggested as well.The various scandals that occurred in the 1990s and 2000s resulted in the credibility crisis of the auditing profession. This period through 2006 witnessed various scandals following the aftermath of Enron, WorldCom in the USA, and Cadbury in Nigeria that called for emerging issues and stringent changes in the auditing practice and a total overhaul of the auditing profession. The reports issued by the auditors for the banks also had credibility issues.

In the words of Anao (2010), it was his perception that if the auditors and accountants carried out their duties in line with ethical principles and professionalism which is highly expected of them, some of these fraudulent scandals would have been averted.Stakeholders and investors are usually protected as they are part of the governance structure and the business as a whole. Although, at the top level, the company's code of corporate governance is aimed at enforcing the policies of the company, achieving its objectives, monitoring company performance and ensuring adequate disclosure of its activities.

The reporting system of the public and private institutions as regulated by the SEC, the Public Company Accounting Oversight Board (PCAOB) and the Financial Accounting Standard Board (FASB) which compelled and made companies to accounting and relevant disclosure standards and auditors auditing with due care and diligence adhering to ethical and quality control standards as well as performing an independent audit.Consideringthe above, it provides assurance on the effectiveness of controls and efficiency of operations as well as financial reporting credibility and compliance with relevant laws and regulations, it seemed that it has been grossly inadequate in most companies of which the banks are not left out.

It was also observed from literatures that there was lack of well-developed monetary policy, implemented corporate governance in most enterprise; the CBN in resolving this in 2006 made a turnaround for the banks in 2006. The tenure of banks' auditors were reverted to a maximum of five years to accommodate auditors' rotation, managing directors' tenure to also a maximum of ten years and a uniform financial year end of December 31st was adopted for credibility purposes.

Another important issue of great concern is lack of honesty and reporting transparency. Some corporations grew through acquisitions that were funded by increased stock prices which many banks did by over-pricing their shares in the stock market whereas the protection of the shareholders' interests were undermined. Traditionally, it has been the responsibility of the auditor to give an opinion about the financials of the reporting entity whether they are presented according to the Generally Accepted Accounting Principles (GAAP) which is our local GAAP, and now since 2012 moving from these GAAPs to the International Financial Reporting Standards (IFRS). Similarly, Statement of Auditing Standards (SAS) 99 gives some steps the auditor must follow in planning his audit in a way to address fraud leading to an expectation gap.

Inefficient and ineffective internal control system was another issue. Internal control system as defined by Garuba (2008) refers to procedures, policies, rules and regulations established by the management within an entity to increase the likelihood of achieving the overall objectives of the entity. It is also the responsibility of the management to set up adequate controls to ensuring that business is conducted in an orderly manner and safeguarding the assets of the entity. It is pertinent that accountants and auditors should move away from the local GAAP in which they carry out their duties and concentrate on the study of management and corporate behavior and this can be a useful tool towards averting corporate failures and ensuring honesty and transparency.

METHODOLOGY

The research approach adopted for this study was exploratory. The attempt was to reach useful conclusions by the review, analysis and insight drawn from secondary sources. The source was from previous published works of other researchers on the subject

THE WAY OUT

Having considered and established some corporate governance issues that occurred in the banking industry it will be sufficient enough to also highlights some way out which will to some extent reduce corporate failures.It is worthy of note that stakeholders should ensure that companies including the banking sector do not violate relevant guidelines as prescribed by regulatory agencies.Garuba (2010) in his study however gave some way out by saying that banks should adhere to the code of corporate governance which was introduced by the CBN to ensure the soundness and transparency in the conduct of their business in Nigeria.He also stated that quarterly reports submitted to the stock exchange should be in the prescribed format and any non-compliance should be noted.Finally, he opined that the Government must provide a suitable enabling environment to make business organizations operate and thrive well in the economy.Although Donwa andGaruba (2011) went ahead by stressing the fact that aside the Government providing an enabling environment, they are also expected to display transparency in governance.

CONCLUSION

This study has established that poor corporate governance has been the major cause of the recent corporate failures affecting the financial sector. As a result, in order to contain these emerging issues in corporate governance and to instill investors' confidence in corporate reporting, the issue about the subject matter needs to be addressed. Every stakeholders and the government both have a role to play by ensuring that the environment as well as appropriate institutions be put in place. The shareholders must all rise to their roles of checking the excessiveness of the Chief Executive Officers (CEOs) and the board of directors.

RECOMMENDATIONS

It is expected and anticipated that if the management and policy formulators adhere to these policies and follow these recommendations it will assist in addressing poor corporate governance in the Nigerian banking industry. These recommendations include the following:

1. Zero tolerance for any infraction of the corporate governance of the industry;
2. Regulatory bodies must live up to their responsibilities by ensuring they carry out proper checks and monitoring of the banks;

3. The CBN should as a matter of urgency establish good and reliable Management Information System (MIS) not for its only day-to-day operations but to serve as a link to monitor the transactions of these banks;
4. Shareholders must live up to their responsibilities by being active and present at annual general meetings;
5. The Government should create the necessary and conducive environment for good corporate governance;
6. The culture of whistle blowing must be promoted, establishing special courts within the judiciary setting for trying corporate offences, promoting ethics and adequate protection for whistle blowers.

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