



The Q1 2010 State of the Market Reports as we called it...

- and other materials from our Resource Persons

January 2010 to May 2010



The SHARE Support Service

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SEC and the Shareholders Association – Matters Arising

Olufemi Awoyemi, FCA

It has been said that history repeats itself; that certainly seems to be the case in today's environment. After the Great Depression, the United States saw landmark legislation and regulations that dramatically altered the oversight and structure of the financial markets, including the creation of the Securities and Exchange Commission.

As a result of the current economic crisis, there are ongoing discussions among the Nigerian Organised Private Sector, National Assembly, the CBN, the SEC, and other stakeholders regarding the need for significant reform; or re-regulation of the Nigerian financial system.

In the last few weeks, the discourse within the financial community had been varied – ranging from CBN's new policy on executive directorship, CBN's pronouncements on the 'rescued' banks and the non-remission of December 2009 year end financials, SEC's new rules for quoted companies, SEC's code of conduct guidelines for operators and their employees, SEC's new approach to enforcement and the naming & shaming of violators, SEC's plans to review the role of approved operators, brokers and dealers in the banking crises that ensued, the unresolved leadership issue within the NSE and what role (if any) must and can the SEC play, the resolution of the AMC bill and the impact on the market up to the efforts of SEC to regulate shareholders' activities, through the code of conduct for shareholders' groups.

This has been a season of activities unlike ever seen before in the financial market; yet we have all travelled this road before with consequential failures owing to the lack of rigour in the execution and management of the regulator-market schisms.

The mood currently is one of uncertainty – a natural reaction to a climate no one is certain how the end game would look like. Strikingly, the attempt by the SEC to paint a picture of what the market would look like after the interventions have been made is left to individual/personal conjecture and a religion-like impartation of faith in the definition of what is 'world class'.

It is this drive towards 'El-Dora Do' that is causing the friction and not the desire to embark on neither the journey nor the immediate dislocation this journey would cause.

For one, the market is unsure how long the journey will take, how well the two principal apex regulators have agreed on the implications of individual actions from either on the overall market and most certainly; what steps to take to get life to their entrepreneurial spirit and daily desire to outdo the competition – a cornerstone of the capitalist mindset that informs the workings of the capital market; nay financial market space.

Driven by the moral and professional fervour to save the markets, the regulatory leadership has embarked on the much needed but 'simultaneously delivered series' or plethora of initiatives designed to 'rein in' the rot that has occurred through years of, wait for it - ineffectual regulatory control.

In this season, it is quite possible for the market to deviate into a political type response – as one would expect during any transformation endeavour. Yet, as all change champions know – the inability to sell the change and its benefits to the

larger audience and secure the buy-in from relevant stakeholder group often forms the most critical success factor in such endeavours.

Recognising that one of the fairest ways to sell this change would require a change both in the administrative structure, process and legal empowerment of SEC itself – i.e. the review of the ISA laws to align it with world class practices – along with the CAMA rules and the introduction of a code of conduct for the SEC Board itself – may take a longer time; we agree with the decision of SEC to focus on the low-hanging fruits that underpin market credibility and designed to energise the change program and instil confidence in the market in serious need of belief.

Today, we re-engage the market on the issue of the shareholder associations.

The SEC Directive – Motives and parties Involved

The Director General of SEC, Ms. Arunma Oteh, at an interactive session communicated a directive to shareholders' interest advocacy group in the country to register with the Corporate Affairs Commission (CAC), and file in their CAC registration with the Commission if they want to get recognition as part of the wider definition of stakeholders in the emerging Nigerian Capital Market (NCM).

The essence was for the identification of the various leaderships of the associations, their membership and to be able to register them.

The regulatory authority was said to have given the directive, following the call by stakeholders in the market for ***proper regulation of shareholders associations for effective monitoring of company managers especially at the audit committee level.***

It was represented that the commission was miffed at the various groups' engagement in unruly behaviours, as some of them turned 'praise singers' or 'trouble makers' at Annual General Meetings (AGM) proceedings.

SEC represents that ***only seven (7) shareholders groups in the country have filed for and acquired registration certificates from the CAC, as required by the Investment and Securities Act (ISA).*** The seven shareholders groups are:

1. Lagos Zone Shareholders Association,
2. Renaissance Shareholders Association,
3. Association for the Advancement of the Rights of Nigerian Shareholders,
4. Dynamic Shareholders Association of Nigeria,
5. Nigerian Shareholders Solidarity Association,
6. Proactive Shareholder Association of Nigeria, and
7. Pace Setter Shareholders Association of Nigeria.

About twelve (12) other 'known' associations are yet to provide evidence of their registration with SEC. These include

1. Association of Corporate Investors of Nigeria,
2. Ibadan Zone Shareholders Association,
3. Onitsha Zone Shareholders Association,
4. Port Harcourt Shareholders Association,
5. Jos Zone Shareholders Association of Nigeria,
6. Kaduna Zone Shareholders Association of Nigeria,
7. Kano Zone Shareholders Association of Nigeria,
8. Ekiti Zone Shareholders Association of Nigeria,
9. Independent Shareholders Association of Nigeria,

10. Shareholders United Front,
11. Progressive Shareholders Association of Nigeria, and
12. Pragmatic Shareholders Association.

The Shareholder Group(s) and the NCM

It is instructive to point out the need for all stakeholders to understand and appreciate the evolution of this shareholding groups to fully comprehend what led to their creation and role.

Suffice to say, the Zonal associations have played crucial roles in the market and indeed the NSE – up until the proliferation of associations took place.

One must not also forget that such a grouping would have only thrived because the people that made up such an organisation could not rely on the structure (or lack of it and processes) to fully achieve the finer goals in the investment drive – and because the directors of quoted companies ‘took notice’ of their role(s) at the AGM’s and sought to ‘manage’ such a formidable constituency.

The management of such a grouping was a matter for discretion and not a subject of regulatory oversight – a much needed intervention as to definition of roles, relevance and responsibility at the time and up until now.

We must recall that at no time did a shareholder association’s name appear on a share certificate (as a bulk investment) through a ‘bundling’ of investment to ‘create’ an aggregate – a situation that is recognisable under our laws if made through an investment club, collective investment scheme, co-operative society, mutual fund and any of the ilk – BUT most certainly not as a shareholder association.

Thus, the choice of shareholder associations was not a creation of our laws, save for the purpose of a class action act – again hitherto untested/uncharted water.

From the debate so far, a few issues have crystallised which can be aggregated thus:

1. Is the action of SEC within its jurisdiction, considering the fact that these shareholders' groups are voluntary organisations?
2. Should the shareholders’ associations be left alone, considering some of the past actions, which has become a concern for stakeholders in the capital market?
3. Should the SEC not be focussing on the rules that affect shareholders within the definition of CAMA and the ISA and de-emphasize the role of the shareholders’ associations through the efficient discharge of obligations, responsibilities and regulatory oversight on the part of the SEC itself which have failed to live up to the billing in the period under reference in (2) above?
4. How can we avoid a situation where then SEC may directly or inadvertently muzzle the voice of the investors through sanctions or rule changes?

The Shareholder Group(s) - Origin and Practice

Shareholder groups were a rarity in the NCM until 1985 when the late Otunba Akintunde Asalu formed the Nigerian Shareholders Solidarity Association (one of the seven duly registered with the CAC).

In the contributory work done by Obinna Chima and Meshack Idehen, Friday, April 25, 2008 – “Not a few corporate organisations felt he was wasting his time trying to form an association of shareholders that would put managements of

companies to task about their operations and bookkeeping. It was virtually unheard of that shareholders would query the management of a quoted company on the use of funds available to it in a particular year. Shareholders' acceptance of the result of audited accounts of concerned companies was taken for granted, as the "ayes" always had it."

"Although some shareholders' associations had existed earlier in some parts of the country, NISSA became much more vocal. It subjected the annual reports of companies to serious scrutiny; forcing managements to explain how they arrived at the figures they paraded.

This led to the prominent status, respect and recognition accorded shareholders which ultimately led to the membership of audit committees of listed companies long before the fad of corporate governance made it such an imperative.

With NISSA, it became obvious that managements of companies had a lot to answer for if they mismanaged shareholders' funds.

Taking a cue from NISSA, other shareholders' associations began to spring up. Some emerged as a function of location, others as a function of focus but in the main, others emerged to partake in the economic cum commercial benefits that some came the way of a 'group' with so much leverage and relevance. ***The proliferation of these associations, in the absence of measures to regulate them, became its very undoing.***

Soon, it emerged that this group – like all power blocs – soon became a victim of its own success.

Recall an incident at the AGM of Unilever, when the late Asalu group was engaged in fisticuffs with another shareholding group over the right to seat on the front row. This was merely a tip of the iceberg. There was to be many documented and unconfirmed instances of pre-AGM briefings, Q & A sessions that mirrored role-plays ahead of the AGM, company sponsored trips, accommodation and benefits, year end gifts, special gifts at birthdays, shareholder group leaders' social functions or outright 'storming of the events' with products from the FGCM listed companies for use as take-away at such events, etc.

The lines were simply blurred out and soon a culture of incestuous relationships emerged. The protection of shareholder interest, driven by the failure of the regulatory authority to rapidly build up capacity to play that role, took a back seat and only a few associations were left committed to the cause.

The harm had been done and soon all shareholder groupings ended up being tainted by the same brush and the leadership of the few committed ones had to spend enormous time and resources defending their motives, causes and interests – taking a lot away from them.

The market crash of 2009 and the eventual expose on the activities of certain board directors opened up a 'Pandora' box that pitted the shareholders groups as a 'blackmail' organisation.

In all that has happened in the last five years, coupled with the advancement in capital market rule making, the shareholder groupings have difficulty in defining what they are really out for – what they are up to and what they seek to achieve that is not permissible within the law as an individual investor?

In spite of the above criticisms, promoters of some of these associations believe they are still relevant to the capital market. The National Coordinator, Independent Shareholders Association of Nigeria, Mr. Sunny Nwosu, described the criticisms as baseless.

He argued, in the work of Obinna Chima and Meshack Idehen that “the purpose of forming associations was to improve the relationship between the emerging shareholders population and the corporate world”.

According to him, “shareholders’ associations emerged during the Federal Government privatisation policy in the 70’s. He said the exercise brought in its wake the emergence of an era of shareholders’ activism and influence on the corporate existence of companies, adding that as more public enterprises became privately owned, shareholders of such companies sought explanations on the activities of their managements.”

Nwosu recalled that a late lawyer from Ekiti State, Mr. Gilbert Akinyele, first nurtured the idea of a shareholders’ association, with Asalu as the secretary-designate. But the association never came into being.

“What would have been the first shareholders association flopped after the merger talk between the then Lever Brothers Nigeria Limited and Lipton, because of some disagreement between Asalu and Akinyele on ratio and other benefits that would accrue to existing shareholders of both parties to the merger,” he explained.

Asalu was said to have left and formed NISSA, and used the platform to lead a crusade for investors’ awareness, thereby opening the way for the emergence of other groups.

Nwosu noted, “Ordinarily, a shareholders’ association must have a mission and vision, which it intends to achieve for the good of the investing public. Now that the population of shareholders has grown to more than six million people, **there is the need for NGOs to carter for them**, knowing full well that in a situation of a company having 50,000 or more shareholders, the AGM may not have more than 200 shareholders present, and it is this 200 people that would have to present a case for the other shareholders.

In the same vein, the President, Shareholders’ Renaissance Association, Mr. Olufemi Timothy, disagreed with those who said that there was a proliferation of shareholders association, saying that with the increasing number of investors in the stock market, there was also a need for shareholders’ groups to increase.

The SEC Code of Conduct in Existence before this Current Directive

In a bid to checkmate the ‘excesses’ of these associations, SEC inaugurated a code of conduct for shareholders’ associations in the country.

The code of conduct, which was inaugurated in 2007, is aimed at guiding the operations of shareholders’ associations. The highlights of the code include the following:

1. Establishment and membership of shareholders’ associations,
2. Attendance to annual or extra-ordinary general meetings, and
3. Membership of audit committees.

With regards to the establishment and membership of shareholders associations, the code says membership of a shareholders’ group must not be less than 50

shareholders of public companies, and must be duly registered with the Corporate Affairs Commission of Nigeria – an otherwise insufficient rule given the disperse nature of shareholding post the banking consolidation of 2006 which grew the number of shareholder 3-4 times fold.

The code also bars members and officers of shareholders associations from attending AGMs or EGM's of companies in which they are not shareholders except as legitimate proxies.

It is obvious that this code in itself did little to address the serious issues raised as regards role, relevance and conduct.

The SEC and its Mandate to Investors

The Securities and Exchange Commission (SEC) is the federal government agency (apex regulator) that oversees disclosure of information about companies to investors.

We have requested for, and will publish a legal guidance on the provisions of the ISA that specifically covers the role of SEC in relation with Shareholder Groups, outside of the specific responsibilities it has towards protecting investors and the general public through the enforcement of a set of rules that should ensure confidence in the conduct of the market and participants.

In the meantime, we would rely on the general notions as it relates to the basic objectives of the ISA in this regard – require that investors receive financial and other significant information concerning securities being offered for public sale; and prohibit deceit, misrepresentations, and other fraud in the sale of securities.

A primary means of accomplishing these goals is the disclosure of important financial information through the registration of securities. This information enables investors (*and here is the tricky part – not shareholder groups, not the government, and most definitely not advisers*) to make informed judgments about whether to purchase a company's securities.

While the SEC requires that the information provided be accurate, **it does not guarantee it**. Investors who purchase securities and suffer losses have important recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information (*which the SEC could not have detected through concealment or misrepresentation directly or aided by registered professional service providers*).

In general, the rules regarding registration of parties involved in the securities business compels the registration of all securities sold in the country – and provide essential facts.

The ISA equally requires a variety of market participants to register with the SEC. Such includes exchanges, brokers and dealers, operators, professional service firms and clearing agencies such as the CSCS. Registration for these organizations involves filing disclosure documents that are updated on a regular basis.

The Nigerian Stock Exchange is identified as a self-regulatory organization (SRO) – which means that it is empowered to create rules that allow for disciplining members for improper conduct and for establishing measures to ensure market integrity and investor protection.

SRO proposed rules ought to be published for comment from the market before final SEC review and approval.

The SEC however, both in our clime and in other jurisdictions with like roles and responsibilities, have an obligation to make such rules as they seem fit and can justify as critical to the protection of shareholder rights, access, independence and conduct.

While this currently appears contentious, it is devoid of any lack of clarity both in intent and the responsible discharge of obligations.

If the shareholder associations are compelled to register with the CAC and intend to function as a collective body, exercising collective bargaining powers and ostensibly pursuing a shared goal – they have therefore decided to come in to the main theatre of capital market activity as an 'institutional investor'.

Role of Institutional Investors

Many years ago, worldwide, buyers and sellers of company stocks were individual investors, such as wealthy businessmen or families, who often had a vested, personal and emotional interest in the company whose shares they owned.

Over time, markets have become largely institutionalized: buyers and sellers are largely institutions (e.g., pension funds, mutual funds, hedge funds, exchange-traded funds, other investor groups such as co-operative societies, investment clubs, etc; insurance companies, banks, brokers, and other financial institutions).

The rise of the institutional investor has brought with it some increase of professional diligence which has tended to improve regulation of the stock market (***but not necessarily in the interest of the small investor or even of the naïve institutions, of which there are many***). Note that this process occurred simultaneously with the direct growth of individuals investing indirectly in the market (for example individuals have twice as much money in mutual funds as they do in bank accounts). However this growth occurred primarily by way of individuals turning over their funds to 'professionals' to manage, such as in mutual funds.

In this way, the majority of investment now is described as "**institutional investment**" even though the vast majority of the funds are for the benefit of individual investors.

Unfortunately, there has been a concurrent lapse in the oversight of large companies, which are now almost all owned by large institutions.

The Board of Directors of large companies used to be chosen by the principal shareholders, who usually had an emotional as well as monetary investment in the company, and the Board diligently kept an eye on the company and its principal executives (they usually hired and fired the MD/CEO).

Nowadays, the Board is now mostly chosen by the MD/CEO, and may be made up primarily of their friends and associates, such as officers of the company or business colleagues. Since the (institutional) shareholders rarely object, the MD/CEO generally works in tandem with or influences who becomes the Chair of the Board (which makes it much more difficult for the institutional owners to "fire" him/her).

Conclusion

Up until the market crash experienced by the NCM in 2009, shareholder associations were not required to be registered with any other federal government agency other than the CAC.

Most of the shareholding associations thus existed to foster their collective interest in firms in which they have an aggregate interest and have felt that they needed to have more influence on the direction of the firms and by extension, protect their own investments.

The truth however is that it is about time that we resolved the questions raised above and we commend to all our conclusions on page 9 of **THE BULL IN THE CHINA SHOP** (www.proshareng.com/reports/view.php?id=2016) report that looked at the financial services industry post August 14, 2009, viz:

CBN – The Shareholder Associations - This point is quite ironic.....Over the years, unverified complaints and outright claims of compromise against the association and its numerous versions led to a weakening of the voice and perhaps, value/relevance.

At best, they positioned themselves to question and put on enquiry, CEO's, management and the board on the misuse of power and excesses.

The relevance and place of this, hitherto whistle blowing apparatus of our market should be reconsidered and a pronouncement made on the value or otherwise of continuing to retain the vehicle in the scheme of things. The market developments, it must be said, have altered the historical relevance of such an organisation/grouping.

End.

Shareholder Activism in a Post-Lehman World

30 March, 2010

By Ahmed Sule, CFA, March, 2010

As a global economy gradually recovers from the impact of the worst global financial crisis since the 1930s, companies continue to lay off thousands of employees and financial institutions are expected to write down trillions of dollars of toxic assets. In addition, governments have spent or committed to spend exponential sums of money in order to stabilize their economies.

Investors have been particularly affected by the consequences of the financial crisis, having suffered a significant reduction in the value of their investments in a number of companies. According to the world Federation of Exchanges, as of February 2009, the global equity market capitalization was estimated to have been reduced by US\$31 trillion since the peak prior to the crisis.

The major cause for the financial crisis, which culminated in the collapse of Lehman Brothers, was the bursting of the housing bubble. This development was driven not only by easy credit conditions but also by poor corporate governance practices in a number of financial institutions.

These practices include poor risk management, poor management oversight, irrational financial innovation, reckless and predatory lending practices, and a compensation regime that encouraged short-term risk-taking at the expense of long-term value creation. One major reason why these activities continued unabated is because of the limited engagement by shareholders with the management of these institutions, as investors opted to take a more passive approach.

In the aftermath of the financial crisis, regulators, governments, investors, and market participants have called for greater shareholder engagement with the management teams of companies. Furthermore, there has been an increase in shareholder activism in different parts of the world.

A number of benefits can be derived from increased shareholders engagement with management. It promotes better corporate governance.

Furthermore, it could lead to improved returns for shareholders if value-destroying activities are discouraged, thereby enabling management to embark on value-enhancing activities. It could also lead to improved profitability for the business. Moreover, shareholder engagement also helps bridge any misalignment between the objectives of management and shareholders.

In order to reduce the intensity and occurrences of similar financial crisis, it is essential that shareholders take a more active stance with the management team of the companies in which they invest. Lessons learnt from the current financial crisis are likely to lead to a dramatic change in shareholder activism in a post-Lehman world with shareholders playing an important part in engineering a better corporate governance regime.

How is shareholder activism likely to evolve? What changes in engagement between shareholders and management should we expect in the aftermath of the 2007-2009 financial crisis?

First, institutional investors will probably play a more prominent role in shareholder activism. Even though institutional investors championed shareholder

activism a couple of decades ago, hedge funds have been at the forefront of shareholders activism in recent years.

For corporate governance to improve in public companies, institutional investors must pursue more active engagement. In most parts of the world, including Europe, the United State, institutional investors hold a sizable percentage of shareholding in listed entities.

This concentration of ownership and voting power positions institutional investors at the vanguard for influencing change in the corporate governance practices of listed entities. In the past couple of months, institutional investors have become more vocal on corporate governance issues, as demonstrated by the recent activist stance taken by investors at Kraft, Mitchells & Butlers, Infineon, and Siemens.

Another likely change is that shareholders will begin to adopt a more proactive approach to shareholder activism. Usually, the clamor for increase shareholder engagement is greater after the occurrence of a major financial crisis. For instance, it took the bursting of the technology bubble and now the bursting of the housing to generate increased calls for more shareholder engagement. At the corporate level, shareholders do not usually take activist stance until after a corporate scandal or a run poor results.

This reactive approach increases the risk of poor corporate governance practice negatively impacting business performance. Going forward, shareholders are likely to engage with management on an ongoing basis, even when a company is performing well, as this approach is in the best interest of both management and the investor. Equally important, investors should try to identify problems at an early stage rather than waiting for the problem to become uncontrollable.

Investors will need to take a more active stance in relation to their investments in financial institutions. Despite increased activism with regards to nonfinancial sectors, institutional investors took a passive approach towards financial institutions in the run up to the crisis. A number of institutional investors failed to challenge financial institution on risky practices and compensation structures. Investors rarely voted against ineffective resolutions proposed by bank boards.

Three areas are likely to involve greater future interaction between investors and the management teams of financial institutions. The **first** area will concern the compensation structure in these institutions. Shareholders should keenly look into overcompensation of managers. Furthermore, management will be under increasing pressure to revise the remuneration structure to encourage long-term value creation. The **second** area of focus will be on risk management framework.

Third, investors will need to focus on the strategy adopted by these institutions. Strategic acquisitions will have to be properly justified. One of the most prominent value-destroying acquisitions in the build up to the crisis was the RBS acquisition of part of the business of ABN Amro. Rather than challenging the acquisition, most of the investors approved it. With lessons learnt from the RBS mistake, investors will be more cautious regarding strategic acquisitions.

In addition, governments and regulators will continue to review, update and amend current regulatory and legal frameworks in order to provide a more conducive environment for effective engagement between shareholders and companies.

The reforms have started in a number of countries. For instance, the SEC proposal to adopt a new Proxy Access Rule should give power to shareholders to nominate their nominees to the board of the companies in which they invest. In the United Kingdom, the Financial Reporting Council recently issued a consultation paper on a stewardship Code, intended to bring about more effective engagement between companies and shareholders. This *paper* is in addition to recent calls by U.K. Financial Services Secretary Lord Myners and Sir David Walker on the need for more shareholder engagement. In Canada, the Toronto Stock Exchange has mandated companies to seek shareholder approval for takeovers involving substantial issues of stock.

Investors will also need to be more creative when engaging with management to unlock value. Prior to the crisis, some investors put pressure on management to adopt financial engineering strategies to ensure value maximization. These strategies, which included altering the capital structure of companies through increase use of debt, sometimes resulted in value destruction, which negatively impacted institutional and retail investors in addition to the general public. In a post-Lehman world where credit availability is likely to be limited, forcing companies to de-lever their balance sheets, investors will have to focus increasingly on longer-term strategies in order to unlock value.

Retail investors also are likely to be more vocal on corporate governance issues. Compared with institutional investors, retail investors own a lower percentage of the ownership structure of listed companies in key global markets, but they are likely to be more engaged with management and other larger investors. The emergence of online shareholder activism sites, such as moxyvote.com, prodemocracy.org, and shareowners.org, will provide individual investors with a platform to advocate proper corporate governance. These portals and other means (blogs, electronic shareholder forums, etc.) will enable individual investors to mount campaigns against large companies, which would have been unimaginable a couple of years ago.

The post-Lehman world will also exhibit greater alliance among shareholders as investors seek more effective methods to put pressure on management to affect changes to unlock value. This cooperation will become necessary because shareholding in listed companies is dispersed, and entering into collaboration on issues of common interest will give shareholders a louder voice. In recent weeks we have seen instances of this emerging trend. For instance, a couple of weeks ago, Hermes championed a proposal in conjunction with other shareholders, which resulted in a change in the leadership at Germany's Infineon. Likewise, in the United Kingdom, a number of institutional investors collaborated in order to effect a leadership change at the pub group Mitchells & Butlers.

An issue that will increasingly be on the agenda of activist shareholders will be the independence of the board. Gone are the days when shareholders will be comfortable with a board that is influenced by management. Shareholders will advocate for strong independent boards that will challenge and oversee managers in the performance of their duties.

In the past, shareholders were pre-occupied with enhanced returns with little regard to the risk components. However, in the aftermath of the present crisis, there will be an additional focus on companies risk management practices, especially as the current financial crisis involved a massive failure to manage risk. Management teams should expect requests from investors seeking greater disclosure on how specific risks affect the company. Investors, however, will need to bear in mind management's need to take risk in order to generate reasonable returns.

Finally, activist investors will rely less on the use of general meetings to influence corporate governance reforms, in particular because a majority of votes is often required in order to pass a resolution that is binding on management. As a result, investors increasingly will use other tools for effecting and influencing change, such as private discussions with management, vocal criticism of management in public, media pressure, and judicial action as necessary.

In short, management teams of listed entities will have to get used to dealing with an increasingly demanding and less tolerant group of investors.

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New Reporting Requirements of SEC - Implications and Imperatives

INTRODUCTION

On 24th March 2010, the Securities & Exchange Commission (SEC) issued new rules and regulations containing additional reporting and compliance requirements for public companies in Nigeria. The rules became effective immediately.

Although this development was in furtherance of SEC's powers to make subsidiary legislation, the basis for the rules are contained in an Act of the National Assembly – the Investment and Securities Act, 2007 (ISA)

The basis of SEC's rules making powers is Section 313 of the ISA which provides that the SEC may make rules and regulations for the purpose of giving effect to the provisions of the Act and reserves the powers to prescribe penalties for non-compliance with the rules.

These new rules are therefore binding on all persons and authorities to whom they are stated to apply and have the force of law.

CHIEF COMPLIANCE OFFICER

Under Rule B4, every public company shall appoint a compliance officer, who, in conjunction with the Chief Financial Officer shall ensure compliance with all regulatory requirements of the SEC.

Although there is no requirement to notify the SEC of the appointment of this officer, it would be prudent to do so first to provide a point of contact for the SEC on regulatory matters and second to avoid the cost and expenses that may be required in responding to summons from the SEC aimed at confirming compliance with this requirement.

There is also no provision about the qualification and background of the Compliance Officer but it would seem sensible to appoint someone already familiar with the rules and the operations of the SEC to manage this interface. This for self-governing companies could be someone from the Legal Department.

Many companies especially those in the financial services sector have already publicly announced their Chief Compliance Officers and notified the SEC of these appointments.

ANNUAL REPORTS

Rules B4(1) & B4(2) stipulate that every public company shall file with the SEC annually or on other periodic basis, its audited financial statements and other returns prescribed from time to time.

The SEC requires that the Annual Report shall comply with the provisions of SAS 2 and contain disclosures on its unclaimed dividend fund covering bank balances, investments and earned income by way of notes to the audited accounts.

The annual report is required to be filed no later than 90 days after the financial year end must be certified by the CEO and the CFO or anyone exercising similar functions in the company.

The auditor is also required to, in his audit report to the company, issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the company.

CEO AND CFO CERTIFICATION

In a provision lifted directly from rules made pursuant to the US Sarbanes-Oxley Act, the SEC ISA in Section 60(2) now requires public companies to have its annual or other periodic reports to be filed with the SEC to be certified by the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO). The provision stipulates what these officers must certify.

At a meeting between Company Secretaries of listed entities and the SEC to introduce the new rules last week, the SEC provided a **template** of the type of CEO/CFO certification it would like to see. These are basically **drawn from the provisions of Section 60(2) of the ISA**.

EARNINGS FORECAST

Section 64 of the ISA provides that a listed public company, shall within 20 working days prior to the commencement of the quarter **disclose to the relevant stock exchange its quarterly earnings forecast**. In addition to this requirement, the SEC has now made rules regarding the release of the quarterly earnings forecast to the stock exchange, the SEC and the *investing public*.

The SEC now requires that the forecast shall be in line with the company's policy, the stock exchange listing requirement and the rules of the SEC.

The stock exchange other than requiring that earnings forecasts be submitted quarterly in line with the provisions of Section 64 of the ISA has not issued a format for the forecast; neither has the SEC. This therefore provides an opportunity for a well regulated company to comply by issuing what it feels comfortable with (at least until one of the regulators issues a standard format for everyone to adopt)

The forecast is now required to be certified by the CEO and the CFO or any other officer performing similar functions. **All public companies are also required to notify the stock exchange, the SEC and the investing public as soon as it is known that the forecast will not be realised.**

QUARTERLY REPORT

Public companies are required under Rule B4(4) to file with the SEC and simultaneously with the stock exchange and the investing public a quarterly report prepared in accordance with SAS 30.

The challenge this poses is the requirement of simultaneous filing with the stock exchange and the investing public using different fora.

The most popular way of informing the investing public is through newspapers publications (and/or the internet). Ideally, one needs to give the newspapers 1 or 2 days' notice for the publication. This therefore makes compliance with this requirement somewhat challenging when dealing with the mass market. This was pointed to the SEC at its meeting with Company Secretaries last and the body promised to review this requirement.

The requirement however has an upside and it could **help companies focus much more on the Investor Relations responsibilities and associated/credible platforms for disseminating such**. A company can and should consider the use of the internet platforms as a bridge to delivering on this requirement.

The quarterly report is expected to contain the following: accounting policy changes, seasonality or cyclicity of operations, unusual items, changes in estimates, issuance, repurchase and repayment of debts and equity securities, dividends, business combinations, etc. This report is also subject to the CEO/CFO certification requirement.

PUBLICATION OF INTERIM FINANCIAL STATEMENTS

All public companies are now required to *publish* their “signed” quarterly balance sheet, income statement and cash flow statement in at least one National daily newspaper (and by definition extension the web).

The accounting policies need not be published in the newspaper if they can be placed on the company’s website to which reference must be made in the newspaper publication.

The publication must be signed by the CEO and the CFO as with the other periodic reports.

HALF YEARLY RETURNS

All public companies are expected to file half-yearly returns in the prescribed format with the SEC containing the following information:

- General Information
- Corporate Governance Issues
- Financial Reporting
- Unclaimed Dividends
- Audit Committee
- Undertakings by the Company Secretary, Chief Internal Auditor, Financial Controller, Managing Director, Board Chairman and the Chairman of the Audit Committee certify the reliability of the information provided.

The returns must be made to the SEC within 30 days from the end of the half-year period either in hard copy or electronic copy.

UNCLAIMED DIVIDEND

All public companies shall file with the SEC in the prescribed form a report of unclaimed dividends on a half a yearly basis.

The company shall maintain segregated accounts for unclaimed dividend funds. The unclaimed dividends must be separated from cash balances and explanatory notes must be provided in the annual reports.

The names of the managers and signatories to the segregated accounts must be furnished to the SEC in the prescribed form.

Particulars of the qualification and experience of the managers of the fund must also be stated. The SEC has powers to inspect the fund on a quarterly basis.

For further information and assistance on implementing these changes, kindly contact info@proshareng.com

The CBN Deadline for Y/E Results and the \$70 per day Sanction

“Even when laws have been written down, they ought not always to remain unaltered.” – Aristotle (384 BC - 322 BC),



Today marks the end of the deadline for banks to submit their December 31, 2009 results.

The sanction for non-compliance is set at a paltry sum of N10, 000:00 daily from **Monday May 3, 2010** till the results are announced. This is a request made to ensure that banks comply with the Banks and Other Financial Institutions Decree (**BOFID**) of 1991 which provides a maximum of four months for the publication of the previous year's result.

Specifically, section 27 (1) of BOFID says:

"Subject to the prior approval in writing of the Bank, a bank shall not later than four months after the end of its financial year

(a) cause to be published in a daily newspaper printed in and circulating in Nigeria and approved by the Bank;

(b) exhibit in a conspicuous position in each of its offices and branches in Nigeria; and

(c) forward to the Bank copies of the bank's balance sheet and profit and loss account duly signed and containing the full and correct names of the directors of the bank".

As at mid-day today, only 10 out of the 24 banks have released their December 31, 2010 audited results with the a few declaring losses, counter balanced by the un-audited Q1 2010 reports.

These banks include First Bank Plc, UBA Plc, Zenith Bank Plc, GT Bank Plc, Diamond Bank Plc, Skye Bank Plc, Access Bank Plc, Eco Transnational (ETI) Bank Plc, Finbank Plc and Stanbic-IBTC Bank Plc.

These banks have simultaneously released both the December 2009 Year End results along with their Q1 2010 results with the latter taking the public space – perhaps to manage perception and present a more positive outlook of the state of their affairs. Who can begrudge them that management discretion?

Recall that we had highlighted these consequences in our August 22, 2010 report titled the **BULL IN THE CHINA SHOP** report - <http://www.proshareng.com/admin/upload/reports/The%20Bull%20in%20the%20China%20Shop%2020809.pdf> (August 22, 2010) and the **100 Days After: Paying a Heavy Price for Banks to be Virtuous** report- http://www.proshareng.com/admin/upload/reports/100_days_after_Report_-_Proshare_251109.pdf; where we sought to establish the execution challenges in the policy and pronouncements of the Central Bank of Nigeria (CBN); the confluence of which has undermined the most important ingredient in the financial market place – trust and clarity of objectives, motives and engagements.

For the avoidance of doubt, we retain the conviction that some sort of intervention was required at the time it came; and do believe that the scale and size of the intervention were at a base level required to 'rein in' the shift in practice that has all but eroded the professional responsibility of banks and bankers.

This eventuality (and its herd management) however meant that banks had to operate under excruciating but not existential circumstances and changes that impacted on how they managed their poor risk-based decisions, provisions, focus on new businesses and management changes; *further accentuated by the increased political/sovereign risk that pervaded the economy between November 2009 and February 2010* – all generally creating an atmosphere, it would appear, un-conducive to commercial vibrancy.

Yet, we must not assume for a second that the delay in releasing results was primarily due to the aforementioned conditions only.

Whereas, it was true that the banks had to deal with so many unanticipated issues, the shambolic management of the Year-End results has to do with the pursuit of many fronts at the same time by the regulators.

Some of the issues the banks had to deal with included, but not limited to:

- 1.** Compliance with year-end provisions, where the banks with less than 12 months reporting periods have had a lot to do to justify a favorable peer review with banks having more than a 12 months reporting time-frame.
- 2.** Dealing with changing requirements and guidelines from the CBN on what constitutes fair and risk-based provisioning;
- 3.** Management of issues related to hitherto practice now considered in-equitable with the strong financial regulation rightly imposed by the CBN;
- 4.** Treatment of provisioning made during the first audit and plough back issues which may or may not have been confused with recoveries
- 5.** The non-resolution of the margin loans issue has equally played up a key issue in the treatment of certain issues such as value of investments and the treatment of diminution in value, shares backed collaterals and asset value, treatment of the 1% general provision on NPL and other issues related to Directors interest and insider credits; and
- 6.** The need to adhere to full provisioning and transparency rules inherent in the new reporting standards the CBN has rightly insisted upon.

N10, 000:00 (USD \$70) a Day Fine as a Deterrent

The consequential imposition of a N10, 000 (about USD\$70) daily fine on banks that fail to render returns by the end of today is at best laughable. How can this be a deterrent?

So if a bank does not present its accounts as at the end of business today, does that indicate diligence in audit or does it signify crisis? Let us take a look at two issues.

First, the recourse to the rules requiring 4 months after year end for an operation that relies on daily position, performance and prospect was meant as a worst case scenario. It remains uncertain that the authors of the sanction/rule ever intended a situation where a bank would not do so.

This lapse has been what has allowed a few banks to go for up to more than a year (and in some cases, more) without rendering audited accounts – yet

continue to practice banking without any inhibitions or market sanction (indeed the stocks of such banks are still tradable/traded on the floors of the Nigerian Stock Exchange). How much of these fines have such institutions paid in the past and where is this disclosed in their financials. Lately, Unity Bank Plc, without releasing any latest results wrote to the Nigerian Stock Exchange that it intends to conduct a rights issue – their last audited report being June 2007.

If the fine had been of such materiality, followed by a market action; such practices would not occur.

Second, the delay in presenting these results indicates a much deeper concern about the institutions/sector it would appear. For a sector that can arguably be said to be the most highly regulated sector – with periodic audits, returns, compliance checks and internal reporting standards supported by increased external audit standards requiring periodic audits and deployment of CAAT's – the non-availability of a bank's results four (4) months after can only be adjudged curious in the least; and worrisome at best.

Conclusion

The imposition of a paltry sum as stated above and the non-sanction of the financial institution by the market therefore serves no deterrence.

Indeed, it can be argued that the reverse is the case – it appears more like an incentive. This cannot be a 'reform' dividend and the argument that investors, customers and the general public can make up their mind runs counter to the very basis/reason for the intervention by the apex institution.

If the 'penalty' is affordable, the breach of the rule becomes a commercial/economic decision for which the cost is meager and the consequences non-impacting.

Should a bank not render returns for a whole year, it only has to pay N3.65m or USD \$26, 000 (approx) under the above rule. This obviously is a sanction that needs to be reviewed, and reviewed immediately.

It is therefore an informed submission that the non-release of the financials of these banking institutions represents nothing more than the clearest indication of their financial condition; and analysts, investors and the general market must ensure that the financials of those that eventually present its accounts from May 03, 2010 should attract more than a passing scrutiny.

Needless to add, those that still fail to present their financials (long after others have complied) should be regarded accordingly – they have nothing worthy to report on.

April 30, 2010
Lagos, Nigeria.

Impact of Bonus Shares on Zenith Bank Plc’s Share Price

Zenith Bank International Plc recently reported its financials for the 15 months fiscal year ended 12/31/09.

<http://www.proshareng.com/news/singleNews.php?id=9972> - Zenith Bank Pays N11.3b dividend and Offers One for Four Bonus. Some of the high lights of the reports are:

- Gross earnings of N277.3 billion, represents an increase of 31%, compared with the equivalent prior year period;
- Net Interest Income increased 28% to N109.6 billion from prior year;
- Operating Income of N188.2 billion, an increase of 22%;
- Profit Before Tax of N35.1 billion, represents a decrease of 37%; and
- Profit After Tax of N20.6 billion, represents a decrease of 60%.

The bank’s results were fairly good in light of the challenging Nigerian economic environment and the various issues that confronting the banking sector since the 3rd quarter of 2009.

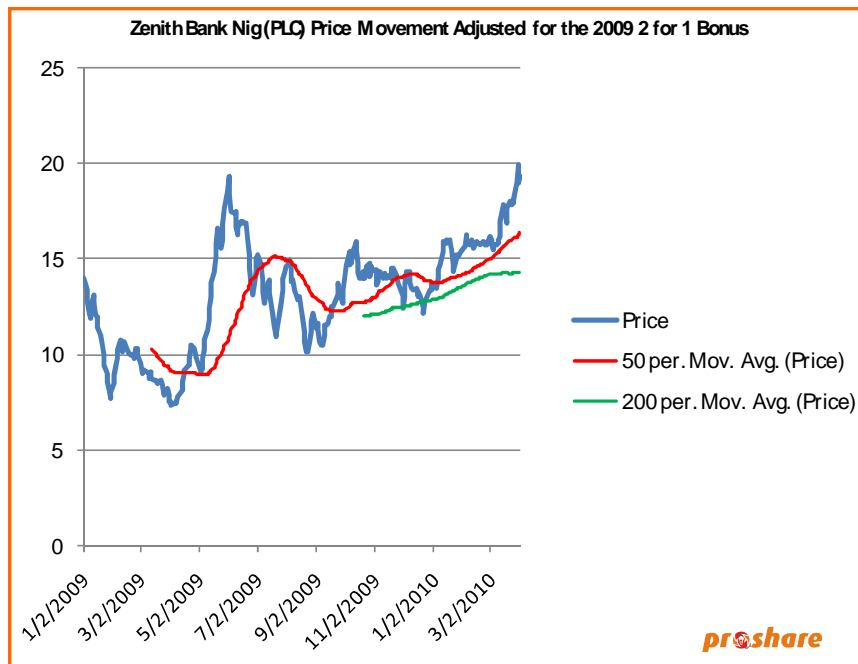
Technical Analysis:

Zenith Bank’s share price is among the best performing bank stocks in the NSE in the last two years. In 2009 the company offered a 1 for 2 bonus shares to its shareholders with an effective date of **June 4, 2009** and the stock price was adjusted to **N17.46k** from N26.20k to reflect the impact of the bonus offer.

However, by August 21, 2009 the stock price had declined by N7.36k or 42% to **N10.11k**, its lowest price in 2009.

Since, the low of August 21, 2009 and through April 1, 2010, the stock price has gained N9.19k or 90.9%. Majority of the gains (N5.80k, or 63.1%) were experienced in 2010 reflecting the turnaround in the Nigerian Capital Market.

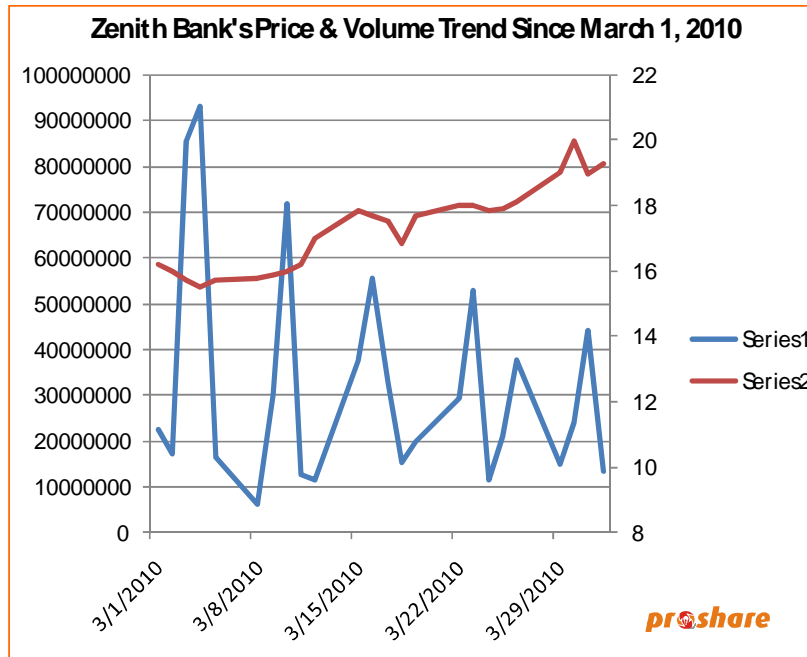
As of the close of trading on April 1, 2010 (**N18.97k**), the stock price was trading above its 50 and 200 days cumulative moving averages, indicating a strong relative strength.



Technically, the stock price performed very well in March 2010, gaining N2.82k or 17.4% through March 29, 2010. I highlighted the current breakout in my March

12, 2010 article "Shares to watch as the NSE goes into full Throttle" - <http://proshareng.com/blog/?p=243>.

However, technically the stock price now appears to be moving higher on decreasing volume, which is usually the first sign of trouble because it indicates waning interest by investors. Usually price breakouts on low volume technically does not augur well for stock prices, especially for a stock that is currently richly price and does not have any room at the top.



Fundamental Analysis and the Bank's Conference Call

Using the constant growth model and earnings multiple valuation models, the fair value of Zenith bank share price is approximately **N18.68k**, based on the fiscal year results.

This indicates that stock price is slightly overpriced at **N19.30k**. Technically; it does not mean that the stock price will not trend higher; however, it is important for potential investors to understand that the stock price is fully valued.

Conference Call Feedback

During the earning's conference call last week, I asked Mr. Jim Ovia, Group CEO/Managing Director of the bank, why the bank feels it is necessary to offer a **1 for 4 bonus** to shareholders considering the potential dilutive impact on future EPS and stock price.

Mr. Ovia represented that he did not believe that the offering of bonus shares to shareholders had a significant dilutive impact on the bank's share price and that bonus shares is a way to 'reward' the bank shareholders. He further noted that although large outstanding shares are viewed negatively in some developed market, the same cannot be said in the Nigerian context.

In 2009, Zenith offered a 1 for 2 bonus shares, and now in 2010 the bank is offering a 1 for 4 bonus shares. At the conclusion of the current offer, the number of outstanding shares will be approximately **31 billion shares**. I informed Mr. Jim Ovia about my different viewpoint regarding this issue by presenting the following scenarios:

Scenario 1

Let us assume that Zenith Bank doubles its net profit in 2010 to N41 Billion, the normal EPS based on 31 billion shares would be **N1.34** if a dividend of N1 is paid for the fiscal year 2010. Based on the aforementioned parameters, the expected growth rate will be 3.06%, a plowback rate of 25.5%, a dividend payout ratio of 74.5% (i.e., assuming N1 projected dividend) with a computed earnings multiple of 14.9. The estimated value for Zenith Bank for 2011 will be **N20.58k** given projected earnings of 1.34k and a growth rate of 3.06%, with next year's EPS estimated at 1.38k.

Scenario 2

If the bank did not offer any bonus shares and maintained its outstanding shares at 25 billion. Assuming the same earnings scenario as in scenario 1 above - the normal EPS will be **N1.66K**, the expected growth rate will be 4.7%, a plowback rate of 39.9% and dividend payout ratio of 60.1% (i.e., assuming N1 projected dividend) and a computed earnings multiple of 12.76 based on the aforementioned parameters, the estimated value for Zenith Bank for 2011 will be **N22.18k**.

Conclusion

As noted in the two (2) optimistic scenarios (i.e., if Zenith Doubles its NPAT N41 Billion) highlighted above, it indicates that Zenith Bank's shares will be negatively impacted by the new bonus shares, which adds about 6 billion shares to outstanding shares. Even though Nigerian shareholders expect bonus shares, **management of listed companies should educate their shareholders about the negative impacts of having bloated shares**. The large number of outstanding shares/float will eventually become the 'Achilles heel' for the share price of Zenith Bank, because with a large float it will need significant demand volume to move the price of the stock in a positive direction.

Finally, based on the reported earnings and NPAT, the stock price at N19.30 is trading above its fair value of N18.68k. Though the stock is trading above its fair value, **it does not mean that Zenith stock price will not move higher**, since in most instances the movement of a stock price is impacted more by supply and demand (i.e., Greed or Fear), rather than fundamentals.

Investors who significantly buy shares above fair value might regret the investment decision made out greed. The recent NSE downtrend should serve as a lesson to most investors as some insurance stocks which were purchased at prices that far exceeded their fair values have failed to recover; and do not appear to show signs of doing so anytime soon.

Relevant Links:

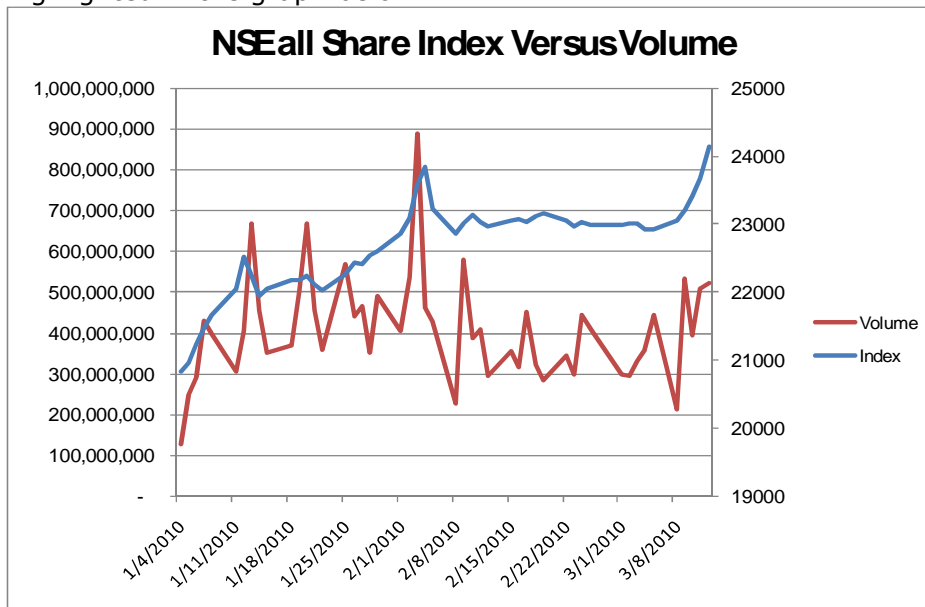
- Full Report - <http://www.proshareng.com/reports/view.php?id=2484>
- **Abridged Financials December 2009 (FINAL) 3**
- Zenith IR Page - <http://www.proshareng.com/investors/company.php?ref=ZENITHBANK>

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Shares to Watch as the NSE goes into full Throttle

For the week ended March 12, 2010, the NSE all share index gained 1,217.8, or 5.3% closing at 24,141.72, a new 2010 high. The current close represents 658 points, or 2.9% above the index 200 day moving average. This is the second time in six weeks, or since the NSE began its bearish decline on March 5, 2008 that the NSE all share index has confirmed a return to a bullish trend.

On February 3, 2010, the index confirmed its first return to a bullish trend, but reversed into a bearish mode two days later on a sell off on very heavy volume as highlighted in the graph below:



The current trend appears to be sustainable for several reasons:

1) For the week ended March 12, 2010, the trading volume for the NSE was above 500 million units for 3 of the 5 trading days. Additionally, the week experienced the highest trading volume since the February 5, 2010 close, when total volume for the week was 2.7 billion units.

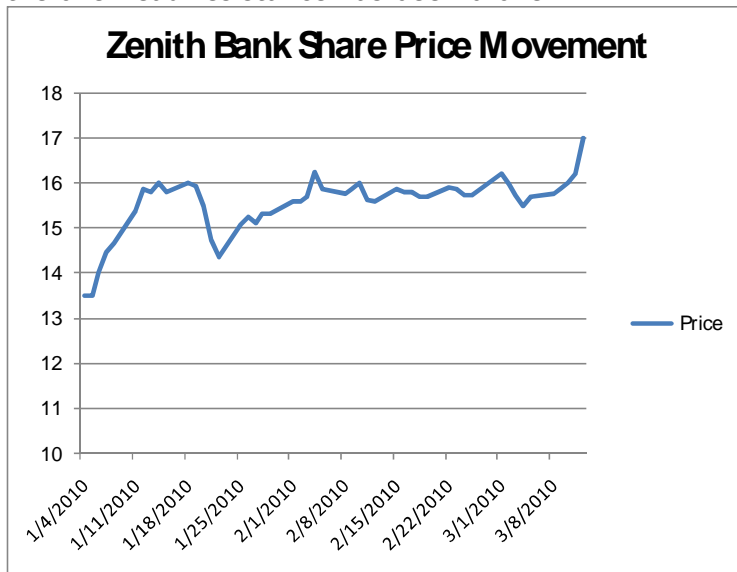
2) The increased volume for the week saw the index close at its highest level since August 14, 2009, and the highest level for 2010. Also, the index closed positively above its 200 day SMA on heavy volume relative to a negative close below its 200 day SMA on February 5, 2010, its first test above the technical bullish indicator.

3) Several blue chips stocks that have been struggling to break above strong overhead resistance finally breached their resistance. Notably First Bank and Zenith Bank.

Zenith Bank

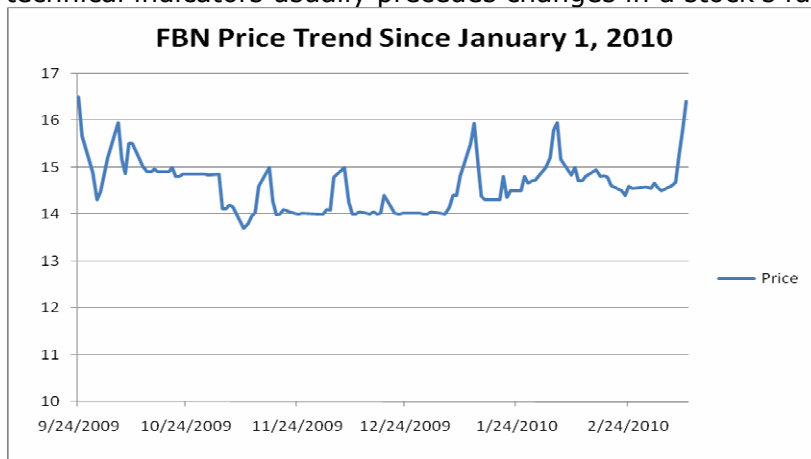
Zenith Bank closed at N16.99k on March 12, 2010, the highest closing price since June 19, 2009. Since January 14, 2010, Zenith Bank share price have tried three times to break above and sustain the N16.00k price level, but failed. On March 1, 2010, an attempt to breach the price level created a double top, and a push back to N15.50k. However, on March 12, 2010, the stock broke through the resistance on moderate volume (11 million shares) closing at N16.99k. Although, the share volume does not appear significant, however, the trading patterns on March 3, 4, 9, and 10, 2010 revealed that some "heavy hitters" were trying to push the stock higher as 85.4 million; 93.2 million, 30.2 million, and 71.9 million shares were

traded respectively. Therefore, the volume preceded the actual price move for I would have interpreted the breach as unsustainable, because technically the breach of a strong overhead resistance should be accompanied by significant volume. I expect this stock to continue its uptrend, however even if it pulls back, the overhead resistance has been broken.



First Bank Nigeria, Plc (FBN)

Since October 15, 2009, FBN has tried to break through the N16.00k price and failed. The last failure on February 4, 2010, was a triple top, and technically an ominous sign. The failure saw the stock trade down to its N14.50k, price support before attempting another recovery. However, on March 12, 2010, the stock broke through the resistance and closed at N16.40k on 37 million shares. The volume of shares traded represents the highest daily volume since January 15, 2010. Although, the N16.40k close represents the close above N16.00k represents, a breach of a significant resistance, I want to see further confirmation that the FBN stock price can sustain the uptrend, since the fair value based on historical data is slightly below N16.00k. However, it should be mentioned that technical indicators usually precedes changes in a stock’s fundamental trend.



Weighing the Effects of the CBN Banking Reform On The Nigerian Economy

Dr. Chukwumah Biosah

Last week, the National Security Adviser, Lieutenant-General Aliyu Gusau (rtd), made a statement that the banking reforms carried out by the Central Bank of Nigeria (CBN) led by Lamido Sanusi, CBN Governor, were damaging to the Nigerian economy. Additionally, the NSA represented that the CBN reforms have been selective and partial.

Since the statement was made, several individuals including the National Chairman of Independent Shareholders Association of Nigeria (ISAN), Mr. Adebayo Adeleke, have come out with comments supporting the National Security Advisers statement. As noted in the April 23, 2010 issue of the Vanguard, Mr. Adeleke made the following comments:

1. He believed that the "The statement credited to General Aliyu Gusau (rtd), National Security Adviser to the government has clearly vindicated ISAN and some other shareholders of the troubled banks.
2. When the reforms were instituted and the actions taken against the banks' chiefs were executed, ISAN mentioned that the actions were not in the best interest of the economy. Therefore, for the NSA to make such a statement, it shows that the Presidency is not happy and comfortable with some of the reforms and actions of the CBN Governor, Malam Lamido Sanusi.
3. Those who supported the reforms initially were looking at the effect from a myopic perspective.
4. CBN reforms have a multiplier-effect and that is what we are seeing. Every sector is suffering from the effect; industry and commerce, agriculture, energy, aviation, private and public sectors.
5. It is time for the Presidency to intervene and call the CBN to order. The reforms will cause more damage if urgent steps are not taken. When banks refuse to lend, how can the economy as a whole move forward? What is the primary responsibility of banks in any country? As our banks have refused lending, the economy will soon be crippled. If it were in advanced economies, the CBN governor would have resigned if the public and even the government came out to declare a vote of no confidence in him. "It is a shame that the man is still there, he should resign."

Analysis

It is a free world and a free country. Therefore everyone is entitled to their own opinion and their own view point in any issue. Nevertheless, everyone is not entitled to their own set of facts because **facts are undisputable.**

While I am not hundred percent in support of all aspects of the CBN reforms, I believe that some aspects of the reforms have been more beneficial to the Nigerian Economy than harmful.

To illustrate, one of the reforms I vehemently disagree with was the implementation of tenures for CEOs' of public companies, and the CBN's requirement that all potential CEOs' have to be approved by the CBN. Traditionally, these roles are solely for shareholders and the Board of Directors. In my humble opinion, the CBN is over reaching in this respect. Although it might be okay for the CBN to appoint, or remove CEOs' of bailed out banks since technically, the Federal Government is the majority shareholder, it is not the traditional role of the CBN to appoint or remove CEOs' of publicly traded companies that are duly owned by shareholders.

However, with this said, I believe the critics of the CBN should back their claims with facts. For example, when the CBN took over the nine (9) bailed out banks in the 2nd quarter of 2009, some of these banks had been using the expanded discount window (EDW) for long-term borrowing as opposed to short term fund needs. Majority of these banks were unable to pay back the funds because they were in precarious cash positions.

Recently, Dr. Kingsley Moghalu, CBN Deputy Governor, Financial Sector Stability, noted in one of his speeches "that beginning in October 2008, CBN had offered financial support to the ailing banks by providing liquidity through the Expanded Discount Window (EDW), adding, however, that the financial hemorrhage continued and the financial condition of the banks continued to deteriorate even as the EDW was abused".

It would really be mind bugging to assume that these critics would prefer that the CBN continued to allow these banks to keep borrowing with reckless abandon from the EDW; thereby furthering the perpetration of the little or no regulated lending policies which eventually would have plunged the Nigerian economy into a deeper crisis.

Furthermore, are we also to assume that the National Security Adviser's claim that the banking reform was partial and selective is true? I will not dispute this claim, since I do not have any evidence to the contrary. However, this type of statement from the NSA who is exposed to information that the average Nigerian is not predisposed to is damaging to the credibility of the CBN and the CBN Governor, because an official in such a prominent position definitely knows more than the "average joe".

Therefore, I challenge the NSA to divulge his proof that the reform was selective and partial.

It is my educated guess that it is not only the nine (9) bailed out banks who had problems with non-performing loans or who used the EDW for long-term borrowing due to cash flow problems. The bailed out banks were probably the biggest abusers of the system. Banks like Zenith Bank, First Bank, UBA, and GTB, who were deemed to be financially strong by CBN had gone to the bond market to raise funds, or made their intentions known that they will be raising new capital either through the bond market or secondary offerings since the conclusion of the bailout scheme.

In light of the fact that these banks raised substantial sums of money less than 3 year ago from the capital markets, one can conclusively deduce that these banks all had cash flow problems, and the problems were therefore, not exclusive to the bailed out banks. However, like I previously noted, the bailed out institutions must have been the biggest abusers of the EDW and other financial infractions.

For example, as I noted in my October 2009 article "Corporate Bond Craze and Its Implications on Financial Institutes in Nigeria" - <http://proshareng.com/blog/?p=35> - There is no doubt that FBN is one of the better run banks in Nigeria. However in 2007, FBN had a hybrid offer of public offer and rights issue. The offer was oversubscribed and the bank raised more money than was originally projected. However, FBN decided to keep only N250 Billion and returned the excess funds to subscribers in spite of objections from several influential shareholders. **Therefore FBN's current intentions to approach the bond market to raise expensive funds that might be detrimental to the future growth of the bank and its stock price barely**

two years after it refused to keep the cheap non-interest bearing shareholders funds is problematic and proof that the bank has tight cash problems.

In attempts to further explain the notion that the CBN reforms are detrimental to the Nigerian economy, the National Chairman of the Independent Shareholders Association of Nigeria (ISAN), Mr. Adebayo Adeleke noted that Nigerian continue to refuse lending to businesses which will eventually cripple the Nigerian economy. It is my professional opinion that the CBN cannot entirely be faulted for the lack of lending to individuals and businesses by Nigerian Banks.

The primary problem is that prior to the CBN interventions, most Nigerian banks had very lax and questionable lending standards. Majority of the loans made by these banks were either uncollateralized or lacked proper/stringent collection procedures as evidenced by the recent CBN listing of several non-performing loans.

Again, the lack of lending by banks is not unique to Nigeria. For example, the United States government invested over \$600 Billion Dollars to bail out most of their major banks and financial institutions in 2008. However, since the infusion of these funds, lending by these banks has dried up. Most of the Banks in the United States had very lax lending standards which caused rising mortgage defaults and credit crisis that virtually froze inter-bank lending prior to the financial crisis. Individuals with very questionable credits and no visible source of repayment were given loans to buy Million Dollar homes and expensive cars.

It now appears that after the bail outs, most of the banks learnt their lessons and have developed very strict lending standards. This is happening around the world and Nigeria is not an exception. Banks gave several uncollateralized loans and margin loans supported by worthless assets and over priced/over- valued stocks in Nigeria which contributed to the economic and financial crisis. However, the CBN's sanitization program revealed these excesses. The banks are now more prudent and do not want to loan money without proper standards and collateral.

Finally, I believe that the sanitization of the banking sector by the CBN has been good for the Nigerian Economy and the average investor. Some of the benefits of the reform program include the following:

1. The reform program forced many large borrowers with non-performing loans, who did not have any intentions to pay back their loans to scramble to pay back or make payment arrangements; thereby reducing the number of non-performing loans and the need for larger loan provisions for most of the banks.
2. Banks with questionable uncollectible and non-performing loans were forced to set up proper loan loss provisions, which revealed the true financial health of most of the banks in Nigeria.
3. CBN's decision to set up an Asset Management Corporation gave financial institutions the optimism that some percentage of their bad assets will be absorbed by the corporation. Also, investors had renewed confidence that absorption of some bank bad assets will free up capital to banks which will eventually trickle down to investors and the capital market. Although the AMC is not a panacea to most of the problems with the banking sector, the notion of its implementation helped spur the bullish resurgence that the NSE has experienced since the beginning of 2010.
4. Many foreign investors who had taken hiatus from the Nigerian capital markets are now returning as they are now comfortable with the transparency that the CBN reform has ushered.

5. CEOs' who did not act as shareholders custodians, and who thought that the banks were their personal properties were given the boot, dispelling the illusions by most of the former CEOs' that they owned the banks and were not answerable to the shareholders.

Although I have listed some of the benefits of the CBN reforms, ***there are many Nigerians and investors who might disagree with my view points.*** This is the essence of a healthy debate (if one is needed at all).

However, as I previously noted, we are all entitled to our opinions, but not **entitled to our own set of facts.** I believe that the NSA, investors, financial institutions, and the Nigerian public are all interested in having a strong capital market with strong transparency because an improved capital market will have a positive impact on all other sectors of the economy.

While some of the recent CBN rules (.i.e., tenure limits, approval of CEOs', etc) are somewhat over reaching in terms of regulations, the current CBN Governor has been good for the banking system. This is not the time to be calling for his removal. The position of the CBN governor should not be politicized. My recommendation is that if the NSA has evidence that the CBN was selective and partial in their reforms, the NSA should provide proof, because off-the-cuff comments are truly unhealthy and will hamstringing the CBN in implementing their policies. Finally, the NSA, investors and any financial institution who believes that the CBN reforms have damaged Nigerian economy should present the public with such evidence to help us all understand the issues, impact and next steps.

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CBN Must Now Rethink Its Reform Strategies

By Martin Oluba, Ph.D, DBA

In line with his responsibility, the national security adviser admonished not only the president this time but the entire Nigerian people who cared to hear about how the actions of the CBN is constituting real threats to national – economic, social, political - security. As the man with the ultimate responsibility for coordinating strategic intelligence for the survival of the Nigerian nation-state his official utterances mean a lot.

At the risk of allowing the continued plundering of this economy with attendant socio-political consequences, he called the CBN to order on its on-going banking industry interventions that are strangulating the 'larger society'. Many concerns and questions follow from this national security adviser's assessment and verdict on CBN's reforms. Has the presidency lost faith in CBN's reform programmes?

An important start in answering this question is to scope the key elements of the power and relevance of the national security adviser. The first is that he has responsibility for the strategic coordination of the entire national intelligence apparatus for the benefit of the president. The significance of this is that he can spy out dangers very clearly when he sees one. The second and most important characteristic of the NSA's position is that he is not a career bureaucrat but a key ally of the president who is appointed to that position primarily out of perceived loyalty. Ideally, he should be the most proximate government official to the president.

By fusing this position and the condemnation together, it is evident that the government may not be enthusiastic about the restructuring efforts of the CBN. This may contradict the earlier boastful stance of the CBN governor that opposing views mattered little as their programmes were comprehensively accredited by the presidency. This seeming presidential accreditation however seems to be getting stale.

Prior to the current CBN regime, many of our banks were clearly on life support occasioned by widespread violations of corporate governance standards. The then high governance criminality threshold that prevailed in the industry was significantly boosted by the incestuous affinity of the CBN and the leadership of industry operators as well as the outright system manipulation through constructively enacted scams garnished as policies.

Consequently, a conspiratorial network of the financial system regulators and the regulated with pockets of savvy speculators, ensured that those involved increasingly accumulated more resources by transferring real wealth from the rest of the Nigerians who are the true wealth owners to only themselves. The Nigerian stock market and the credit markets were the most used battle fields where the Nigerian economy and its people were humiliated and consigned to loss of investments, heavy debts, increased unemployment, strangulated enterprise etc. Upon appointment, the new CBN regime dealt a heavy blow on that system and magnanimously prevented the collapse of many of the banks that were clearly in the twilight of their existence. Majority of Nigerians hailed them and equally condemned the details of the approach as it kind-of signaled a possible hidden agenda.

But that glory did not last and is seriously on the line unless the CBN's management takes decisive steps to correct what is fast becoming an embarrassment. The underlying cause of this travail cannot just be put at the foot

of high wire politics or plot to remove the governor by those bank looters that were earlier exposed. But even if that is the case, the way and manner the current management of CBN has carried on with their reform efforts have provided them with sufficient justification to win some public sympathy. Without any doubt, the CBN management obviously lowered the standards in many areas. Firstly, the process adopted in the handling of bank audit at inception which consequently resulted in the sack of five managing directors and the consequent naming and shaming of debtors of some - and not all - banks were the earliest un-auspicious signs. Not much lesson appeared to be learnt from that as the CBN continued to make reform strategy design/implementation as 'my mama property'.

The governor's penchant for the media and the dishing out of reform measures in disjointed piecemeal fashion through public lectures and television interviews is yet another sin. One would have expected that given the macroeconomic background and prevailing events that heightened public expectations from him at the time of ascension that he would have given adequate attention first to the task of robust policy development (design and effective implementation strategies). Aside this, there were yet more criticisms such as the money-pumping approach that was almost akin to that of his predecessor without a deliberate strategy to make such injections less harmful while yielding salutary benefits to the economy.

The CBN equally failed in its circuitous and seemingly disjointed approach to financial and monetary policy design.

Reforms and critical policies that direct the course of the economy are not first debuted at school paper presentation fora. Similarly, many people including myself are still not convinced of imperative for such other seemingly strategic decisions such as the CBN-ordained tenure limits of bank CEO's and the abandonment/replacement of the universal banking regime, which appears merely as a blueprint for paving way for the actualization of some politico-religious ideological agenda.

In sum, there are many more measures enunciated by the CBN that triggered concerns, including some of the official pronouncements of the CBN that they denied and amended after outcries from critical quarters. **Aside these though no one can fault the current regime's clear intentions for the safety of deposits and the making of credits available for small businesses.**

But even these good intentions will be destroyed if the CBN at this point in time does not quickly retrace its steps, withdraw to the innermost recesses of their offices, gather their best brains to think through its proposed financial system reforms (if indeed necessary) and then **debut with a comprehensive strategy that is clear, impartial, theoretically founded and logically consistent, not politico-religious ideologically underpinned or driven, not self/theoretically contradicting, not economy destroying and so forth.**

This blue print must also specify clear implementation time horizons – short, medium and long term - with attendant expected deliverables. This is extremely important at this point in order to save this economy from the crisis of CBN-orchestrated uncertainty and economic inactivity.

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Nigeria: A land of Distressed Assets

By Osaruyi Orobosa-Ogbeide, FDC

A Fallout of the Banking Crisis

The Nigerian economy is still in a recession despite the recovery in the capital markets. The relative stability in demand for foreign exchange in a consumption-led, import dependent economy, are pointers to the fact that business is experiencing a lull. While some economists argue that the economy has bottomed out, others are of the view that it is still not underway.

The proponents in favour of the argument that a recession is imminent are companies in the real sector i.e. manufacturing entities. During the recent boom (2003-2007), a number of these companies with good brands and products over-extended themselves. Their recklessness in managing creditor relationships and their businesses were overshadowed by the abundance of credit. In a bid to address the recklessness of creditors (banks), the CBN intervention elicited trauma within the banking system as banks had to make huge provisions for losses. This, in addition to the political crisis and heightened level of uncertainty, increased risk premiums to a point where banks are now unwilling to lend despite excess liquidity. Credit growth to the private sector was 39.8% in 2008, 26.1% in 2009 and 11.82% in 2010 (annualized). This sharp increase in credit availability had varied consequences, affecting both properly managed and mismanaged companies.

The well managed companies are emerging stronger as they encroach on the market share of their competitors. The actions of many have been predatory, leading to the demise of their competitors. The strategy of staying focused and gaining market share from productivity gains and attracting capital off-shore has made acquisition of weaker competitor less appealing. In the words of a thriving and leading FMCG player, ***“Our activities in the market place will not only erode my competitors’ market share but destabilize them to a point where their entire value proposition will be less attractive to a potential investor”***.

The woes of struggling companies in the real sector have been further compounded by the CBN's eagerness to sell the ailing banks. In a bid to remain attractive and retain value, these distressed banks are pulling the plug on their debtors, i.e calling in their credit lines. The banks are using both orthodox and unorthodox means to recover their assets. Many of these debtor companies who had embarked on expansion programs due to the disguised market boom are now paralyzed, as they cannot get credit to complete their projects. Working capital is virtually non-existent and has led to low capacity utilization. Average industry capacity utilization is approximately 35%. Another issue to contend with is the strong divergence in income distribution. A high gini coefficient (the disparity between rich and poor) of 43.7% in a recession means depressed demand as the rich can consume only a limited amount.

As pledged collaterals are being demanded by banks, a number of these assets (physical and financial) have become distressed. The job losses have been enormous and salaries remain unpaid.

A Unique Opportunity for Private Equity and Distressed Asset Companies

This phenomenon in the Nigerian real sector is a classic illustration of the activities of Private Equity companies in South America between 2001 and 2005. During this period a number of companies with good brands, management and assets were faced with pending liquidation as they were unable to raise funds to meet their working capital requirements.

However, demand was fairly strong especially in the export market. A number of private equity companies and Distressed Asset Management Companies such as: Carlyle Group, IBM Venture Capital, Fondo de Fondos, Invercap, GLIC, Quilvest, Advent Inter-national, Portland Private Equity took positions in these companies. Within a 3-5 year period their return on investment was astonishing. The sharp demand in the domestic market and consolidation in the various industries (not many players survived) fuelled the recovery and high returns.

The question is: can private equity (PE) companies do the same in Nigeria? The answer is yes.

Although there are fundamental differences between these markets, the principle remains the same. A growing population, pending economic recovery story, a regional market are all factors that could fuel demand. Most of these companies are in dire need of good management as only a few have been able to institutionalize corporate governance standards, an additional factor that PE firms could bring to the table. However, many private equity companies must deal with the peculiarity and reality of the Nigerian market. They must understand that there are pockets of value in relatively small amounts. Therefore deal sizes (above \$20m) must be realistic and revised in order to meet the needs of the Nigerian markets.

Advice to CEOs

Companies with underlying value must learn to strategically manage the creditor relationship especially in difficult times. There must be a concerted effort to communicate effectively in order to satisfy their creditors and attract the limited credit available. They should be one step ahead, by optimally restructuring their facilities before the "plug is pulled by the creditor", which may then force them into liquidation.

Light at the End of the Tunnel, But Not So Soon

With the passage of the 2010 budget, which is expected to infuse cash into economy, temporary resolution of the political deadlock, passage of AMC law and resolution of the banking crisis, an economic recovery is imminent and a number of these companies will benefit from the recovery.

However, given the fact that the damage has been severe and that the lag between event and response has widened (especially with economic policies in Nigeria due to the weak structural linkages) the expected recovery may be delayed.

For Further Reading – Download the Economic Report Here
<http://www.proshareng.com/reports/view.php?id=2643>

CBN Reforms: Foe or Ally of the NCM?

By Amienyaru Enobakhare, FDC

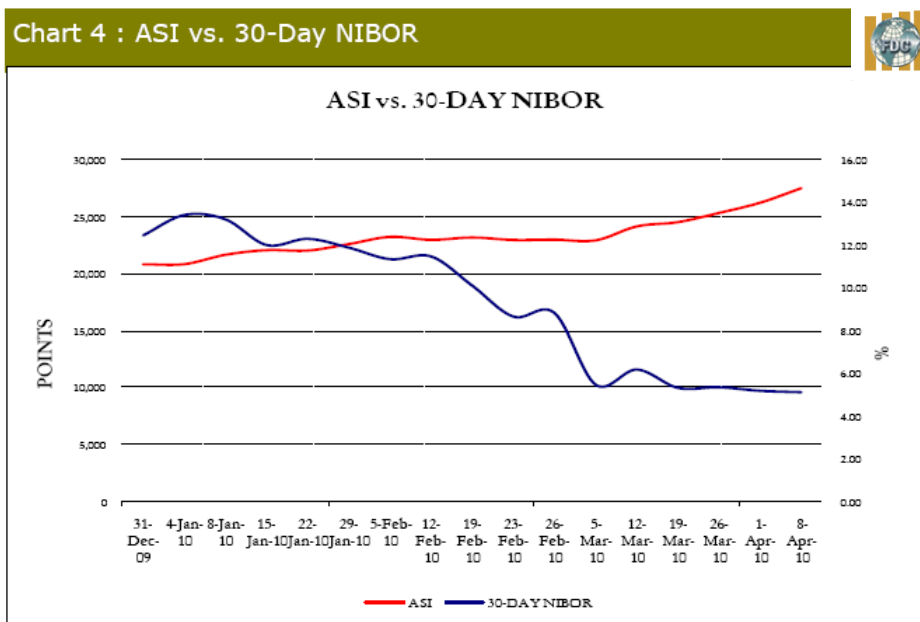
The derived demand relationship between the motor and steel industries can be likened to that which exists between a reserve bank and the nation's capital market. In economies worldwide, the central bank's primary function is to maintain monetary stability by focusing on the monetary policies.

While it might seem that CBN actions do not have a direct impact on the capital market; CBN policies, to a large extent, determine the state and direction of the capital market. The events in the Nigerian financial system in the last one year paint a vivid picture of this relationship.

Banking Stocks: A major determinant of NSE performance

Prior to CBN's action on August 14th 2009, the ASI and market capitalization were 24,482.52 and N5,612 billion respectively while the banking index at that time was 282.44. The banking sector had a market cap of N2.8trillion reflecting 51.09% of the index. As events unfolded in anticipation of the final CBN audit result, investors scrambled to sell off bank shares. The final results were released in October 2nd 2009 and at the end of the month the banking index had declined 12.05% closing at 248.41 while the all-share index had dropped by 10.94%.

To guard against a bank crisis, the CBN bank injected N620billion into the ailing banks. These funds were meant to prevent a run on the banks. However as the bank's new management team embarked on recovery with market uncertainty; the primary function of lending was neglected. This resulted in a steep fall in interest rate which did not instantly translate to capital market appreciation.



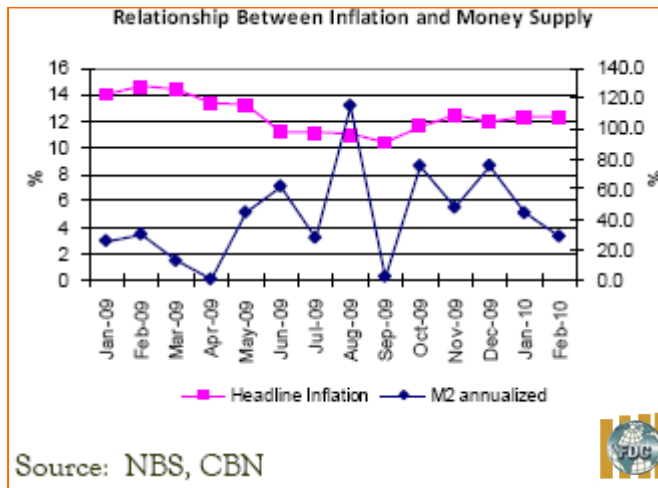
Source: NSE & MMA

AMC to the Rescue

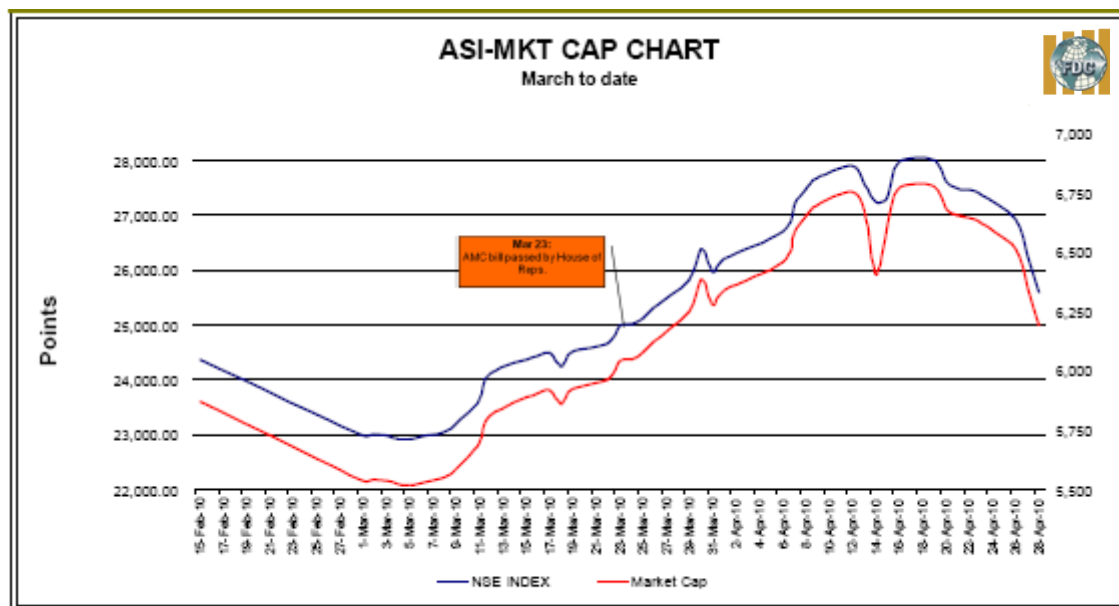
The confidence which every financial system - especially banks and deposit money institutions - thrives on began to decline sharply. Given the current scenario, the CBN governor took a cue from banking reforms embarked on by countries like Malaysia, Singapore and Thailand. CBN proposed an AMC bill, primarily owned by the FGN (100%) to buy up the bank's toxic asset at a premium to the market.

The immediate impact of the AMC law will be to improve the capital adequacy ratio of the banking institutions. It will also serve as a booster shot for the institutional investors who are either too scared or shy to place bets in a market that is probably fairly undervalued.

The market reaction to the passage of the bill in the lower house was instantaneous (see chart below). The ASI recorded a gain of 1.35% as at close of trade on March 23rd, 2010 when the bill was passed by the lower house.



To further buttress the bullish charge of the news; the ASI has gained 10.14% from March 23rd to April 22nd 2010.



Source: NSE

Impact on Nigerian Capital Market

The above CBN actions have affected the market in several ways giving rise to unintended and intended results. An example of the unintended action is the effect on the bond market. The bank saga and subsequent credit squeeze has led corporate institutions to look for new avenues of raising funds. This resulted in attraction for bond issuance both from the banks and other corporates. Furthermore investors have taken a liking to the bond market due to its safety and the current unattractive money market rates.

The Securities and Exchange Commission (SEC) has gone further to ensure that the bond market is made more active by reviewing the transaction charges. The likelihood of reviewing these charges is an increase in activities in bond trades on the NSE floor. Thus in essence, the actions of CBN have spurred increased activity in the once dormant bond market. Among the intended outcomes of the apex bank reforms was to unlock the credit and money markets.

CBN has taken a couple of measures one of which was to reduce standing deposit facility rate to 1% from 2% in the March MPC meeting. This was to ensure the banks start lending; **however the outcome has been a further exacerbation of excess liquidity as banks still remain reluctant to lend.** What is expected in the short term is confidence building and certainty guaranteeing pronouncement of policies that will encourage banks to resume lending.

Also, recent CBN actions have made the bankers more conscious and sensitive to strict regulatory requirements like transparency, good corporate governance and voluntary disclosures. Banks now want to be seen as transparent and responsive to all stake-holders, while some have gone ahead to adopt International Financial Reporting Standard (IFRS) ahead of the apex bank December 2010 deadline.

If the banks navigate this delicate path of transparency as envisaged, it will bring more credibility and build confidence in the equities market. This increased confidence in the most capitalized sector of the exchange will further attract local and foreign investors, thereby leading to an improved performance of the Nigerian capital market. A successful and early passage of the synchronised AMC bill will not only help to unfreeze credit to the real sector but will also aid the flow of funds into the capital market.

For Further Reading – Download the Economic Report Here
<http://www.proshareng.com/reports/view.php?id=2643>

The B. Longe Court Judgment - Impact on FBN Plc Shares

March 12, 2010; 2205 hrs, Lagos, Nigeria



“If asked to describe this or that exposure, the advice from many IR departments is to use some formulation that basically says don’t worry. I’ve tried to resist that. Now is not the time to tell people not to worry. If you’re in the financial services industry, you ought to be able to quantify. I try to be specific, and we’ve gained credibility as a result.” – August 7, 2009

quote from Jay Fishman, Chairman and CEO of Travelers, weighing in on both the commitment and the content for investor relations in a challenging time

Recall that on March 05, 2010 we published the breaking story on the landmark judgment delivered by the Supreme Court.

In the story, <http://www.proshareng.com/news/singleNews.php?id=9614>, we provided the investment community with the information that the Supreme Court of Nigeria had ordered the reinstatement of Mr. Longe as Managing Director/Chief Executive of the bank by agreeing that Mr. Longe’s sack violated the provisions of section 266 (1) and (2) of the Companies and Allied Matters Act, (CAMA).

The court was of the opinion that Longe was sacked without notification and ruled that the board of directors was wrong to have held a meeting where he was sacked without letting him know. The Supreme Court thereby ruled that any decisions taken at the meeting was illegal and null and void.

This was a huge and significant development, perhaps not so much for FBN Plc; but for the practice of HR and board decision making. It however drew out the ‘what next’ gap in managing developments – the first for the market and this interested us from a learning perspective.

The capital market, naturally was taken aback and unsure of how to handle this unique situation and investors held their breaths for a moment – wondering how the scenario would impact on their beloved company.

It was therefore a welcome relief that both parties managed the consequential fall-out very well – first was the comments from the counsel to Mr. Bernard Longe who said that they would seek a peaceful resolution and interpretation of the judgement; just as the FBN Plc corporate communications indicated that it would respect the court judgement.

This helped to manage the weekend jitters before the next trading week.

Commentaries on the Development

Analysts, shareholder groups and commentators expressed muted observations on the development. The most poignant came from BGL who issued an impact assessment note - <http://proshareng.com/blog/?p=240> – “Despite the ruling nullifying Dr. Longe’s dismissal as the CEO, *we do not expect a leadership crisis in the bank*. We believe that there will be a peaceful resolution between Dr. Longe and the board of First Bank to avert any crisis of confidence that may arise from the implementation of the ruling.”

On the impact of such a ruling on the share prices of FBN; BGL stated on March 10, 2010 that “While the bank would have to make some payment as entitlements to Dr. Bernard Longe, we do not expect the payment to be significant enough to affect First Bank’s profit negatively; hence and no expected negative impact on the bank’s stock price. We therefore maintain our target price of N17.46 and our ‘HOLD’ recommendation”

Other commentaries on the subject followed this cue and by mid week, the news cycle had turned. FBN Plc was no longer an issue.

Monitoring the Post Decision Impact

Trading on FBN Plc shares in the week of 8th to 12th March 2010 just about followed the same cue.

The share price of First Bank Plc in the last five trading days after the news broke out appreciated by **+13.10%** from **N14.50** as at 5th of March, 2010 to **N16.40** at the close of trading on March 12, 2010.

The share price of the bank within the period under review outperformed both the sector and the entire market; within the period, as the banking sector appreciated by **+7.69%** while the entire market recorded a **+5.31%** appreciation.

Subtle Concerns

A cursory review of the volume trend of FBN Plc shares however indicated a volume rise with the price within the observed period. This is against the indications from other banks in its cleared category that posted a different trend in their volume and price trends analysis.

Concern therefore exists – purely as a fail-safe approach to issues – in the upsurge in volume and the need to eliminate the possibility that a management of the post-decision impact could have driven the action/results observed.

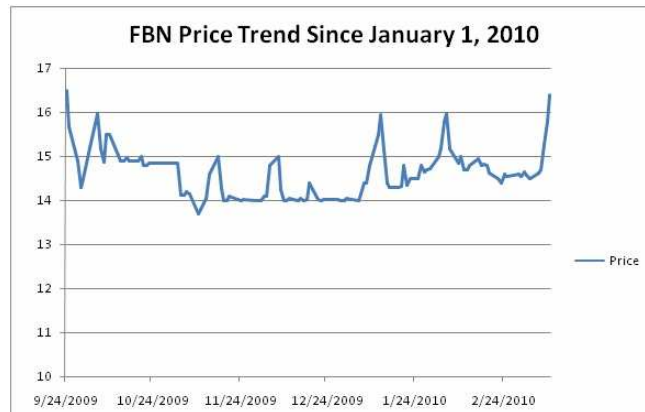
This concern is driving by the absence of any ‘new information’ in the market that could have influenced the impressive performance; where a sideways or at best marginal increase could have occurred. It might not be anymore than a coincidence and the new week should bear this out.

A Technical insight into the stock

Since October 15, 2009, FBN has tried to break through the N16.00k price and failed. The last failure on February 4, 2010, was a triple top, and technically an ominous sign. The failure saw the stock trade down to its N14.50k price support

before attempting another recovery. However, on March 12, 2010, the stock broke through the resistance and closed at N16.40k on 37 million shares.

According to Dr. Chukwumah Biosah, technical analyst to Proshare - "The volume of shares traded represents the highest daily volume since January 15, 2010. Although, the N16.40k close represents the close above N16.00k represents, a breach of a significant resistance, it will be important to see further confirmation that the FBN stock price can sustain the uptrend, **since the fair value based on historical data is slightly below N16.00k**. However, it should be mentioned that technical indicators usually precedes changes in a stock's fundamental trend".



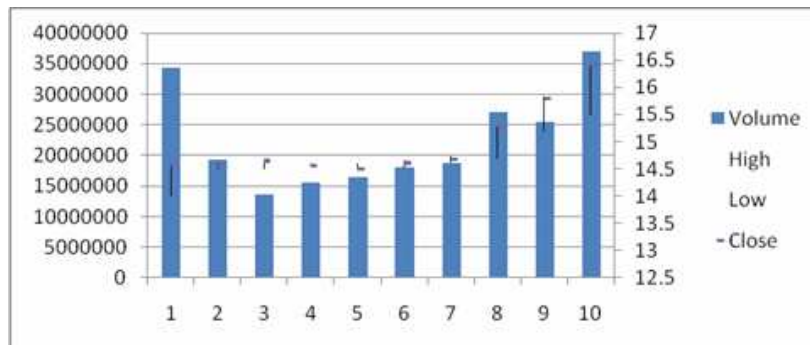
Need for Added Monitoring in the New Week/Month

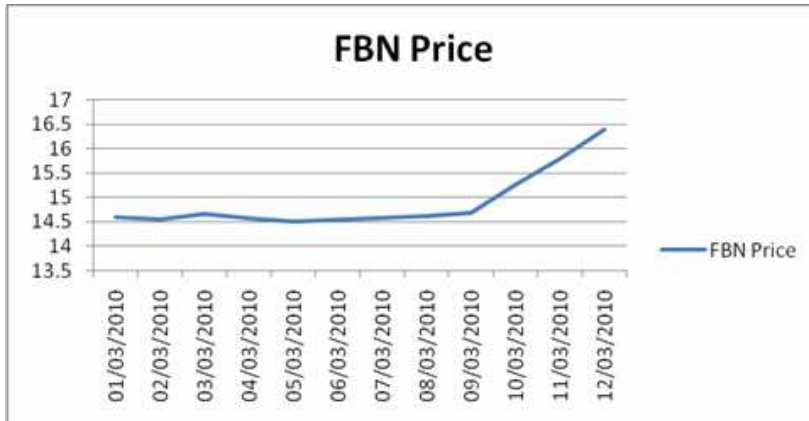
Without expressing a reservation on the positive outlook of FBN Plc's stock, and its ability to retain the upbeat; we will continue to keep a birds' eye-view on the stock which has more advantages working for it than most. Investor's actions and decisions will be monitored closely this week to affirm this positive development. Here are a few charts and comments on the bank and its fellow 'cleared' banks.

Charts

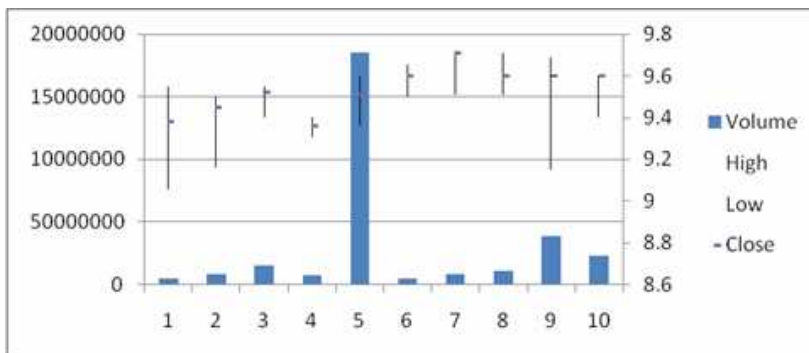


First Bank Plc: The bank's share price within the week appreciated by +13.10%
<http://www.proshareng.com/investors/company.php?ref=FIRSTBANK>

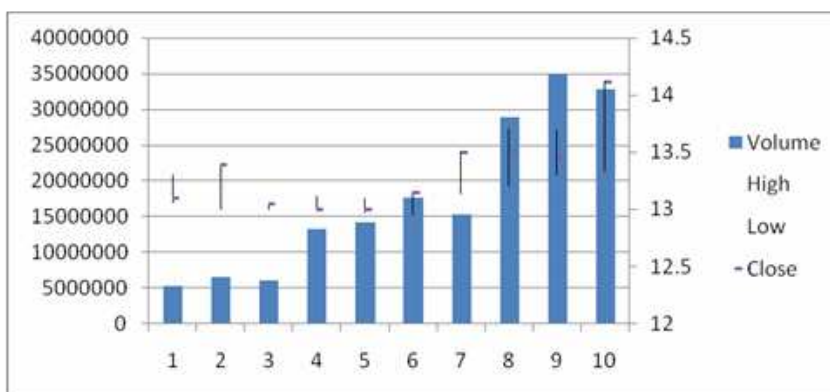




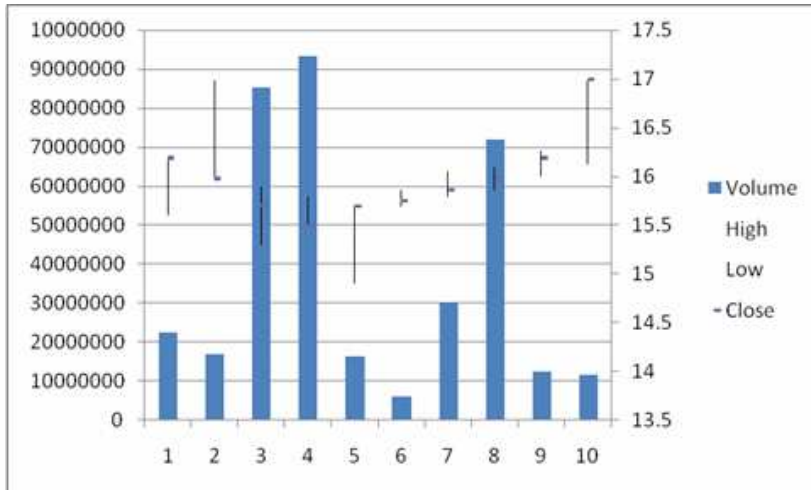
Access Bank: The bank's share price within the week appreciated by +0.95%
<http://www.proshareng.com/investors/company.php?ref=ACCESS>



UBA Bank: The bank's share price within the week appreciated by +8.54%
<http://www.proshareng.com/investors/company.php?ref=UBA>

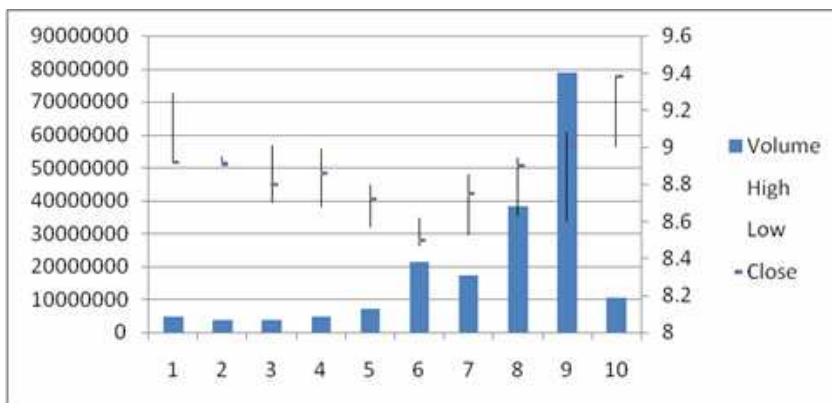


Zenith Bank Plc: The bank's share price within the week appreciated by +8.22%
<http://www.proshareng.com/investors/company.php?ref=ZENITHBANK>



Diamond Bank Plc: The bank's share price within the week appreciated by +7.57%

<http://www.proshareng.com/investors/company.php?ref=DIAMONDBNK>



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Bank CEOs, Tenure Limit: Legality and Regulatory Issues

February 01, 2010; 1955 hrs, UK

The Central Bank of Nigeria (CBN) recently issued a guideline to banks limiting the tenure of bank Chief Executive Officers (CEOs) to 10 years. This guideline is generally controversial for two main reasons.

First, it arguably interferes in private arrangements by intervening in and rewriting banks' memorandum and articles of association as well as the service contracts of the CEOs. These documents are generally regarded as private contracts. For example, this private contractual status is recognised in section 41(1) of the Companies and Allied Matters Act which provides that the memorandum and articles of association of companies (including banks) constitute a contract between the company, and its members and officers.

Second, the CBN's guideline purports to have a retroactive effect. It expressly provides that 31 July 2010 is the cut-off date for the 10-year tenure with the result that it affects any CEO who has been in office from 1 August 2000. In calculating the period of office, times spent as CEO of any bank apart from the current bank are combined with the latter.

The fundamental issue arising from the CBN's guideline is that it could be interpreted as an implied removal of the affected CEOs albeit from a future date.

The CBN's power to effect the removal of the CEOs consequently needs to be investigated from at least two perspectives. The **first is legality**. This requires subjecting the guideline to the provisions of the apparent enabling statutes- CBN Act 2007 and the Banks and Other Financial Institutions Act (BOFIA) as well as the Constitution. The **second aspect of the scrutiny goes beyond legality and constitutionality** by looking at the CBN's guideline in the light of theoretical and practical questions of regulation and intervention in apparently private affairs. Simply put, the twin issues are one of 'right'.

First, there is the question of the (legal) right ('power') of the CBN to issue the guideline. Irrespective of the answer to the first question, the second issue is the right (that is the 'appropriateness') of the state or an agency of the state (the CBN) to intervene in private arrangements generally and in the particular case of management of banks. Incidentally, the CBN's guideline expressly provides that it applies notwithstanding contractual provisions on the tenure of bank CEOs. The second issue is now topical, for example, in the United States where President Barack Obama recently announced a number of proposals including limiting the size of banks and the prohibition of banks from engaging in certain high-risk businesses.

This essay therefore examines the legality of the CBN's guideline in view of the CBN Act and BOFIA as well as relevant regulatory issues. The constitutionality or otherwise of the guideline will be examined in another essay.

As previously indicated, the legality of the CBN's action depends on the relevant statutory provisions. Specific provisions of BOFIA relating to qualifications of directors and officers of banks appear to be in sections 19, 33 and 44. **It seems that none of the provisions expressly permit the CBN to issue a guideline restricting the tenure of bank CEOs.** Section 19 prohibits employment of bankrupts and persons convicted of offences involving fraud, dishonesty or professional misconduct. It also prohibits joint directorships of banks and engagement of bank directors in any other business or vocation. Section 19 does

not in any way authorize the CBN to limit the tenure of CEOs or prevent banks from engaging their CEOs for more than 10 years.

The theme of qualification as a bank director is also contained in section 44. Section 44 disqualifies the following from being directors or continuing as directors of banks: persons of unsound mind, bankrupts, persons convicted of fraud or dishonesty and persons subject to actual or suspected disqualification from professional practice. Section 44(3) prevents directors and other persons directly concerned in the management of a bank that has been wound up from managing banks without the express authorization of the CBN.

Section 33, which is concerned with a failing bank, contains provisions for removal of bank directors and other officers. A failing bank under section 33(1) is a bank which has informed the CBN of its likely inability to comply with its obligations under the BOFIA, an insolvent bank or a bank the CBN has determined to be in a grave situation after carrying out a special examination under section 32. Section 33(2) (c) and (d) provide that the CBN Governor may remove directors, managers and officers irrespective of anything to the contrary in any written law or in a bank's memorandum and articles of association. The CBN Governor may also appoint any person as a director or adviser of a failing bank. The reasonable interpretation of section 33, therefore, is that the CBN's power to remove a bank director, whether or not the CEO, is conditional on the bank's status as a failing bank.

The clear conclusion is that there are no explicit enabling provisions in the BOFIA for the recent CBN tenure limit guideline. However, there are provisions in the CBN Act and BOFIA that suggest the CBN's legal right to impose tenure limit on banks' CEOs. It is submitted that a holistic approach to both statutes would indicate that the CBN was probably legally right, at least under the two statutes, in issuing the tenure limit guideline. For example, section 42(1) of the CBN imposes a duty on the CBN to, among other matters, ensure high standards of conduct and management in the banking system. Although tenure limit is arguably an issue of high standards of conduct and management, the difficulty here is that the CBN's duty is to "seek the co-operation of and co-operate with other banks in Nigeria." Mandatory tenure limit is plainly not a co-operative activity.

However, section 2(d) of the CBN Act provides that one of the principal objects of the CBN is the promotion of a sound financial system in Nigeria. More importantly, section 33(1)(b) of the CBN Act confirms that the CBN has the power to "issue guidelines to any person and any institution under its supervision" (emphasis supplied). Read with section 2(d), the implication is that the CBN can issue guidelines to any such person and institution while acting in furtherance of the statutory object of promoting a sound financial system in Nigeria. Tenure limit arguably comes within this remit. It is clearly a question of proper governance of banks which, in turn, is connected to the existence of a sound financial system. Incidentally, sections 1 and 2 of BOFIA confirm that the CBN retains and can exercise its powers under the CBN Act and BOFIA.

Part of the legality question is the permissibility of a retroactive tenure limit guideline under the CBN Act and BOFIA. There is nothing in the two statutes that seems to expressly or impliedly require the CBN's guidelines to have prospective effect only. An approach that looks at the retroactivity of the guideline a bit more broadly may be helpful in appreciating whether the CBN was legally right to issue a retrospective tenure limit guideline. For example, would one question the CBN's guideline if it has, instead, disqualified persons convicted or running away from a charge of sponsoring or participating in terrorism within a period from being bank

CEOs and directors? Would it matter that the CBN directs the immediate removal from office if a CEO has been convicted or is a fugitive from a charge of money laundering and corruption within the past 10 or so years? The CBN's action in either case is arguably for Nigeria's financial stability. Incidentally, the CBN's legal role of promoting a sound financial system is not restricted to issuing prospective guidelines.

There is one view that banks are private enterprises and, as a result, there is the need to encourage free enterprise and entrepreneurial spirit instead of interfering in their affairs. However, insisting that banks are private institutions and their affairs are private is a weak argument. The recent local and global financial crisis, at least, has clearly demonstrated that this argument is spurious and supposititious. It is akin to saying that banking profits are for operators of banks while its losses are community or state-owned. It is evident from the interventions of governments and state agencies including the bailouts of banks and provision of stimulus packages for the economy that banks are not exclusively private institutions. This is also the inference from the fallouts of local and global banking corporate governance failures and other scandals. **Following the issue of whether the right of the state to intervene in banks is justified is the question of the regulatory appropriateness of the intervention.**

What is corporate governance is the *critical issue here*. Corporate governance is a concept that encompasses internal corporate processes and structures in as well as society's (including the state) mechanisms for controlling the internal and external operations of corporations. Issues in corporate governance include the existence, membership, role, control and effectiveness of internal structures such as the board of directors, non-executive directors and the members in general meeting.

In looking at the broader question of interference in private arrangements in banks, the key questions include whether internal control or self-regulation by banks individually or as an industry would have been more effective; and whether shareholders can be trusted to ensure proper governance of banks by, for example, ensuring that personality cults do not exist or are promoted to the detriment of the banks. Without going into details, it is apparent from the recent and persistent banking failures and scandals in Nigeria that proper corporate governance and effective internal control mechanisms, including shareholder control, in banks are either non-existent or at least severely attenuated in many banks. A corporate governance model based on shareholder control and other internal mechanisms has not worked with many Nigeria banks. The result is that the CBN cannot effectively perform its role of ensuring financial stability and promoting a sound financial system without intervening in apparently private arrangements in banks. CEOs' tenure is presumably one of such arrangements that affect internal corporate governance and the national financial system.

In conclusion, the CBN was probably right to issue the tenure limit guideline. There is nothing in the CBN Act and BOFIA that suggest usurpation or overstepping of legal power. Going beyond the strictly legal questions, the CBN was also probably right to interfere with private arrangements in banks in order to ensure the proper governance of the banks and a sound financial system in Nigeria.

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Udo Udoma and the Ides of March

5 March, 2010

“Never believe in anything until it has been officially denied” - Otto von Bismarck, 1815-1898

The Udo Udoma issue was meant to be a closed matter by now but just about when you think all is done and dusted, the elements find a way to draw you back into the discourse. I will resist this urge this time and instead choose to expatiate on a position I believe we did little to define.

Our position is not driven by a narrow insight into the issue, nor are we today influenced by the jaundiced contributions presented as facts to the investment community by those who pretend to be aware of the issue under consideration. Frankly, this piece is not about raising or joining issues but to elevate the discourse and invite superior logic from the investment community into a ‘complex-yet-simple’ ideological difference in outlook on the regulatory regime that exists in the country.

In the last few months, we have witnessed positions and counter-reactions from two or three ideological viewpoints on the state of regulatory oversight, nay the corporate governance regime that exists in Nigeria today; yet this has been muddled up by ‘party crashers’ who obviously have an agenda different from the rich debate outlook determined for the resolution of the current impasse.

This contribution is addressed to the key stakeholders in the market and it is hoped that it should illuminate your perspective on current goings on in our market, with special emphasis on the SEC. We will have to come back to the NSE issue at some stage.

There are legitimate positions from the principals involved on the issue of the SEC chairmanship (and indeed the overriding objective of the Sec Board) based on instinctive reactions to the controversy that broke out. This unfortunately has been a victim of the inherent siege mentality in most humans and has affected both divides partly because of their failure to discern the communications that emanated or an inherent defensive and safety-first mindset that the environment encourages in leaders.

The required sense of understanding of the issues that was required was the first casualty in the strategic engagement envisaged by us from the onset. Our effort to react to this development was overtaken by developments and reactions that made the issues more personal than intended. Our subsequent contributions further illuminated the gaps in the opposing party’s position which they acknowledge but were unwilling to admit to because they were unsure of the motivation. **We needed therefore to raise the discourse.**

In reacting to some of these comments and reactions, we inevitably gave an impetus to a new group we knew less about. But all that can be ignored now as the Nigerian Investment public have raised their incisiveness in dimensioning who and what matters.

This is comforting, yet less assuring than the need to actively re-engage on the issues and re-position the arguments in its proper context before it, regrettably gets out of hand.

I must insist that beyond the ideological difference I consider is at the centre of the discussions, the concerns of the later group have not advanced their

intentions but revealed their narrow insight into the real deal. Their actions are despicable and remain insufficient to change our resolve as we affirm again that from our own prism, the person of Senator Udo Udoma is not under trial in our eyes and such tactic can only serve to distract. We should ignore their sound bites and focus on the key issue.

What is the key issue? – The proper dimensioning and contextualisation of the on-going debate in a framework that allows the discussions to flow – enable each party present a viewpoint that can be harmonised to aggregate a position that is not only selfless but defensible – creating a catalytic reaction that will raise the profile of SEC. **This, it cannot be re-iterated enough is not a referendum on the person of Senator Udo Udoma but on the office of the Chairman of SEC within a post-crisis financial market in Nigeria.**

Arising from this premise therefore, the more pedestrian arguments or attempts by some to ignore the factual reality of the two questions arising from the lessons/pains of the last two years of market downturn may be lost if we do not get back to the crux of the matter.

The question of fine-tuning our regulatory environment to cope with the demands of the market now, and in the future – is the central argument. The questions being raised, and arising from this **'restore, redeem and re-energise mindset'** relates to the need to resolve the question as to which model of regulation Nigeria wants to adopt i.e. the US or UK model or an amalgamated fusion of inconsistent standards (drawn from so many climes) that promotes a culture of incestuous relationships in the clime and makes the CEO of SEC vulnerable just as it makes its chairman open to external pressures – be it from public or private sector tendencies.

The second question will, by extension, relate to what we call the 'Cadbury Nigeria Effect' on corporate governance – where the cultural environment would make, for example; sacking the Board of a company with a SEC chairman on it is BOD practically impossible for so many reasons under the present arrangement we have. That is, if, as seen in recent comments, there is a consensus on whether or not it was proper for SEC to take the steps it took in the first place; and indeed if it acted within its authority.

In a piece titled: **"SEC and the capital market- Lest we forget,"** I noted that the commission has failed over the years to provide proactive direction for the nation's capital market – not as a function of one man's problem but as a result of the inability to elevate the institutional capacity of the commission to fulfil its purpose.

You may recall that as far back as September 1996, in the Report of the Panel on the Review of the Nigerian Capital Market submitted to the Federal Ministry of Finance by the respected Dennis Odife, **SEC by its own admission, said it was unable to supervise the Stock Exchange;** the situation has not changed that much and why?

Why? We have never placed the required focus on the commission's role as an apex regulator of the capital markets in the same way as the CBN has achieved.

This might be a function of events but the reality of today demands that SEC be and is the apex regulator in deed and not in name, for the capital market and this must stem from an ethical standpoint from whence it derives its authority.

To do this, we reasoned that it should start off by subjecting itself to a higher code of corporate governance that would elevate its authority and avoid a lame-duck situation that created the Transcorp situation from whence the market started its slippery slope. It can then place itself in a position to look directly in the eyes of quoted companies and pass corporate governance codes, look in the eyes of brokers and take action to stop the chaos some members have brought upon the distinguished group of professionals; and look directly in the eyes of the NSE and take steps to reverse what has been known by all – its impotence to act on matters related to the NSE for fear of raising or escalating tensions in the market place.

Thus in the Proshare report dated February 10, 2010, we noted for example that the SEC failed during the post-banking consolidation era to state what investors should do in the event of any dispute on their holdings, arising from the then fusion of 89 banks into 25. A lot of dispute did arise there from. This is in addition to the situation in 2007, when banks sourced funds from the market via public offers and rights issues, and in some instance twice within a three year period to pursue aggressive expansion through creation of subsidiaries, overseas outposts etc for which there were no supervisory oversight done by a largely ineffectual Financial Sector Regulatory Consultative Committee (FSRCC).

Only yesterday, the CBN confirmed this position when it said that “the lack of coordination among financial services regulators, such as the Securities and Exchange Commission (SEC), National Insurance Commission (NAICOM), Nigerian Deposit Insurance Corporation (NDIC), and Pension Commission (PENCOM), which comprised the FSCC, led to postponement of the meetings of the Committee for over two years, in spite of the widespread knowledge of bank malpractice and propensity to arbitrage”.

To gain a better insight into the issues as presented from this house, I commend you all to read more on the contributions here below. I will also encourage a reading of the arguments for the retention of the status quo to help you arrive at an informed judgement. Thanks.

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The Paradox of a Nation: A Social-Economic Perspective

By Remi Babalola, February 2010

Upfront, let me state unequivocally that my opinion, position and paper are personal in every material particular and do not constitute government's position or represent government policy in any form whatsoever. The organisers and target audience wanted me to have a latitude of presentation topic while looking forward to solutions on the current economic challenges.

We are all involved, as stakeholders, in Corporate Nigeria. Our political framework, though nascent and fragile, is getting embedded for the first time and the cost is affordable by us as a nation. Whatever motivations we require to confront the perceived inefficiencies in our polity, the solutions are the same. All that is needed is positive action. Therefore, everybody's feelings and opinions are equally important.

My experience spanning banking, finance, consultancy, entrepreneurship and public service makes me appreciate the concern of poverty, prosperity, growth and development as well as social harmony which form the bedrock of my paper.

IMF advisors, Xavier Sala-Martin and Arvind Subramanian, once described Nigeria as "metaphor per excellence for a failed development experience". Recently, Ambassador Princeton Lyman asked whether Nigeria is not losing it in terms of economic influence, strategic importance, and global relevance. That was a wake-up call on how bad our situation has changed within three decades. But we have some comfort in far-off forecasts by many professors on countries like Japan in 1955, South Korea in 1969 and recently on Malaysia, Singapore and Indonesia. Despite our challenges, the Nigerian song will still be celebrated if we all, as stakeholders, resolve to make Nigeria the centripetal force of the continent.

The waste and degradation of natural resources in developing countries are often traceable directly to government policy failures. These failures cause resource depletion that cannot be justified by whatever societal gains that may be achieved by such depletion. As forests disappear, petroleum and mineral resources are squandered, land erodes, water systems deteriorate and wildlife becomes scarce, we can almost always find a faulty government policy lurking in the background. The question is why? The depressing conclusion often reached is that the unsound policies are simply the result of greed, ignorance, selfishness, short-sightedness, corrupt tendencies and incompetence of persons in position of trust.

In our case, a common complaint is that our dependence on oil has relegated the country to the primitive economy of digging and hoeing, without prospects of moving up to more profitable economic activities. Equally worrisome, are postulations that the export of our raw materials expose the country to economic instability and that booms from oil export have caused untold damage to other sectors of our economy.

We all need to recognise that many policy failures are political successes for the officials that commit them. More often, the political successes of these officials are flawed policies that were adopted. They may have been admired for cleverly strengthening their political positions with these manoeuvres which came at the expense of the soundness of their policies. Nonetheless, these manoeuvres constituted policy failures.

The paradox of this nation is hinged on monumental policy failures of the past on a consistent basis. What should we say when resources are not exploited most beneficially for the nation's people in order that other laudable goals can be pursued? The key to resolving this paradox is to understand that in principle, we can pursue several of these programmes without distorting the processes, focusing on optimal benefit to the majority.

Today's Reality

Success of any nation is measured in reference to its history, potentials and opportunities, expectations, and relative performance of its peers. A pointer to the sad reality of today is depicted in the UNDP Human Development Report 2007-2008 that ranks Nigeria worse off in Human Development Index compared to Kenya, Ghana, Morocco, Malaysia and Libya. It shows a country with significant deprivation in the midst of huge potential.

How do we move away from deprivation, despondency, hopelessness, desperation and pervasive poverty? Poverty is getting more chronic and endemic without any perceptible reduction through policy. How do we explain abject poverty amidst plenty? That promise of Nigeria when I was a primary school boy, which seemed almost inevitable in the early 70's still remains unfulfilled as at today. How else do you explain a country with per capita GDP of \$1,113 in 1970 but lower as at 2009, with poor population measured as subsisting on less than \$1 per day increasing from 19 million in 1970 to 80 million in 2006?

Prior to the entrenchment of democratic governance in the country, we experienced the concentration of power in a small inner circle of the military hierarchy in contrast to a more collegial governing structure. This was largely responsible for the long standing institutional deficits, accelerated decline in structures of governance and the flawed provision of public goods. The peak agencies of economic management, crucial regulatory agencies, the judiciary, the civil service, local governments and the military itself were all deliberately weakened.

Fiscal shortfalls and calculated neglects led to deterioration of education, health services, alongside key elements of infrastructure particularly electricity and transportation. In all, economic governance steadily deteriorated, policies were inconsistent and there was the presence of endemic corruption with collapsing institutions that virtually choked off non-oil investments and rendered the Nigerian state a pariah in most global markets.

Where and How did we get it Wrong?

Political economy apologists tend to explain the reason for our sojourn to prolonged economic stagnation on the historic 1914 amalgamation, 30 month civil war (1967-1970), military incursion and many other easy excuses for failure.

In spite of these easy target explanations, Nigeria's economic dream should still have been realised more so with the abundant natural resources, enterprising Nigerians, fertile soil and the passion to be giant of Africa. A more important coincidence to our march to a disastrous economic cu-de sac is the discovery of oil and how it has configured and worsened our standard of living.

Following the country's independence in 1960, our economy witnessed expansion that averaged 5% annually with per capita income being above \$600 while we had a negligible inflation rate of about 4.1%. Although it was a low-income economy at that time, it boasted a range of primary agricultural commodities

such as cocoa, palm produce, groundnuts and rubber. The economy had stable terms of trade alongside solid minerals exports which bolstered export income. Fifty years down the line from independence, the economy fluctuated drastically with the predominance of oil-wealth creating impressive gains which were eroded by poor management.

With population growth virtually unchecked, the per capita income declined. The lack of a political and institutional centre that should serve as a principal economic change was the bane of our development. The leadership at the time was unable to foster a producer coalition or resolve the central pressures for distribution and the nation succumbed to a social dilemma wherein individuals and groups focused on particular selfish gains at the expense of collective goods and general welfare.

The revenue windfall from oil removed many of the perceived constraints on development spending and redistribution and a surge of foreign investment masked many of the liabilities of poor policies and weak administration after the Nigerian civil war. However, the litany of political succession – six successful military coups, numerous failed revolts, two abortive democratic regimes, three inconclusive democratization programmes – clearly illustrates the essential problems of leadership and institutional development in the country.

Oil, Prebendalism and the Resource Curse

From the period that oil became predominantly a deciding factor in the Nigerian economy, the structure, nature, productivity and competitiveness of the country took a different route. In the last 15 years, so much has been written about the natural resource curse and how to prevent the spell, if any.

Clearly, the oil windfall pushed up wages, distorted labour movement leading to drastic drop in domestic output and constrained sustained growth. A steep rise in public expenditure from foreign exchange earnings led to increase in prices of goods and services, making agricultural production uncompetitive.

The way and manner the exchange rate was managed then could not have led to diversified and balanced growth in the economy. That was the beginning of the end of agricultural sector, manufacturing sector and the road to Nigerian economy becoming extremely uncompetitive. The oil money generated rents and rent-seeking opportunities leading to increased corruption and adverse effects on long-run growth. It exposed Nigeria to external volatility with its consequential impact on growth. It led to the Dutch disease which is the tendency for the real exchange rate to become overly appreciated in response to positive shocks and thus contraction in tradable sector (manufacturing).

A bigger problem for Nigeria was the waste angle rather than the Dutch angle to explain the Nigeria's growth performance. There was rapid accumulation of physical capital from oil money with a substantial proportion of the increase from public capital spending financed by surging oil revenue. The outcome was seen in the decline in capacity utilization in manufacturing, mostly government owned. This shows clearly that quality of spending was sacrificed for quantity. Many economists and analysts have argued that the big difference between Indonesian and Nigerian response to oil windfalls was the ability of the Indonesian government to keep the exchange rate competitive and maintained relevance of its agricultural sector through investments in technology access to inputs. Professor Peter M. Lewis, a leading American expert on Nigeria at John Hopkins University actually wrote a book on this titled "Growing Apart" in which he compared Nigerian and Indonesian growth processes.

For much of the last four decades (except 2003 to date), compared to developing countries of same size, geography and resources like Brazil, Mexico and China, Nigeria achieved minimal growth, inert economic structure, abject poverty and growing marginality in the global economic system, with levels of potential and religious volatility. This was accentuated by chronic institutional decay, political uncertainty, severe social polarisation, political allotment of economic gains and associated corruptive tendencies. These conditions were antithetical to achieving sufficient, credible and conducive environment for economic transformation.

Abundant evidence suggest that economies with high levels of rent seeking and corruptive tendencies as obtained in most parts of developing countries in Africa, Asia and Latin America usually have very unstable economy. Coupled with abrupt political changes, absence of reliable institutional guarantees and economic shocks, there would, undeniably, be poor private and foreign investments. Historically, our political elites have been divided by multiple cleavages and this has made the consolidation of a stable coalition among these disparate interests and groups more difficult. Previous military and civilian governments have pursued erratic and often uncoordinated macroeconomic policies with strong populist and nationalist orientations. As we have now seen, most of these policies have proven to be anti-development in the long-run.

The Tripod of Challenges: Policy, Institution and Leadership

Using Botswana as a beacon of African success story, the tripod of achievement is seated on policy, institution and transformational leadership. The choice of policy determines the competitive terrain, business environment and regulation. This policy factor is more worrisome in economies like Nigeria where government is the biggest spender. How do we formulate appropriate and optimal policies based on macro-economic stability, openness to trade and capital flows as well as provision of necessary social and economic infrastructure?

The Asian miracle of Thailand, South Korea and Taiwan was due to, among other factors, the appropriate blend of policies in areas like the use of technology and cheap labour for export market, encouragement of private domestic investment and rapid growth in human capital.

In Nigeria, apart from the tough choice of policy formulation is the adjunct of government officials using their positions to influence business environment for their personal interest. People substitute the goals of the larger society with personal objectives. This is more so where the institutions are weak.

Institutions are the guardians of the will of society in placing limits to acceptable behaviour. Institutions reinforce the consensus as it brings predictability to actions. It is a settled fact that institutional weakness is a bane of development. The crisis of institution in Nigeria, according to Mmadau Dia in a World Bank Study, is "an institutional disconnects between government and civil society, formal and informal private sectors, corporate and social cultures". It is the institutional weakness that throws up strongmen in various spectres. Institutions are underdeveloped when the powerful see them as undermining their power.

Leadership deficit is the root of the paradox. When you see a poor country, look for poor governance then you will observe leadership challenge. No Nigerian is desirous of a corrupt society with poor infrastructure that stifles innovation and limits capabilities without ensuring peace and security. We all desire a system that works. What we desire is transformational leadership with shared purpose and vision not transactional leadership fashioned in the prebendal sharing of

excess crude, federation account earnings, rent seeking and crony capitalism. As long as we keep having followership that demands patronage, handouts and favours, our search for true leadership will be long and winding.

A revered former President of Tanzania, Mwalimu Julius Nyerere once posited that the key to any government's effectiveness and ability to lead the nation lies in a combination of three elements. First, its degree of closeness to the people, and the extent of its responsiveness to their needs and demands. In other words, the cultivation and sustenance of democratic values and culture is imperative. Second, its ability to coordinate and bring into a democratic balance the many functional and often competing sectional institutions, which groups of people have created to serve their particular interests. Finally, the efficiency of the institutions, both official and unofficial, by means of which decisions are made known and implemented throughout the country. It then goes without saying that all of these institutions must be rooted in the fundamental laws and appropriated to the society to which they are applied. As a result, a country should be governed by the principles of the rule of law and the supremacy of its Constitution.

These three conditions aptly capture the essence of the challenges to prosperity of any nation. However, a few other imperatives are also critical, though derivable from these three fundamental conditions: peace, security, transparency and accountability are further ingredients, required for Nigeria to move forward.

Scholars have stressed that political, economic and corporate governance are each to be given considerable importance as preconditions for development. The main socio-economic issues of good governance are in the areas of the management of public resources, the development and maintenance of a transparent economic and regulatory environment conducive to private sector activity, the ability to generate policies that would outlive administrations, the installation of appropriate legal and judicial institutions and instruments that guarantee right of life, property and privacy.

Indeed, economic governance should have significant current or potential macro-economic impact in the short and medium term on the government's ability to credibly pursue policies aimed at external viability and sustainable growth. Economic governance issues include corruption but go beyond this to encompass transparency, efficient rule making, discretion, and the scope for limiting abuse of power. Apart from undermining confidence in the government and its moral authority, pervasive governance problems have very real economic costs.

Empirical evidence suggests that significant governance problems negatively affect economic growth. Since they act as an unnecessary tax on enterprises, they raise costs and reduce incentives to investment. They are often discriminatory, with all the attendant economic and social ill-effects of discriminatory behaviour. Where well-publicised governance issues exist, they have discouraged foreign direct investment and sometimes induced investors to pull out. They reduce domestic savings and investment.

Fundamentals of a new Prosperous Nigerian Nation

After so much articulation and exposition of our developmental challenges, we should not mistake analysis for action. What is required is positive action, superior performance and efficient service delivery. We need to urgently build a capable state wherein peace, security and private enterprise are guaranteed over a sustained period. This requires an enabling political and legal environment for

economic growth and equitable wealth distribution with sound macro-economic management, institutional reform and overhaul in human capital development.

Between 2004 and 2007, Gross Domestic Product grew by an average of 6% per annum. Despite the slow pace of global economic growth, the Nigerian economy grew by 6.9% in 2009. This growth is in line with the regional growth expectation but much higher than the BB Sovereign rated economies. The inflation rate is under check and the banking system is being strengthened through enhanced governance, risk management and strategy reforms by the regulatory authorities.

The quality of growth with attendant mass poverty, unemployment, high inequality and absence of structural transformation need policy realignment.

The 7-Point Agenda and National Vision 20:2020 was conceptualised to set new priorities, deepen as well as strengthen the earlier reforms leading to lower poverty and reduced inequality. The fundamentals are as follows:

(a) ***Critical Physical Infrastructure***

To address the key milestone of being a top 20 economy by the year 2020, the current administration outlined a 7-Point Agenda covering improvements in critical infrastructure encompassing power, energy, water, aviation, rail and road transport; security and Niger Delta; food security; human capital development; land reforms and wealth creation. Government have placed priority on infrastructure which represents a major binding constraint in our quest towards sustainable development. Even though there are still tremendous challenges in the areas of power and transport infrastructures, significant successes are being achieved.

Low investment in the rehabilitation and maintenance of existing infrastructure, inadequate infrastructural spending and poor quality of infrastructural expenditure have resulted in low levels of access, inefficiency of available infrastructure and high costs. Currently, Nigeria ranks poorly on several indicators of infrastructural access, cost and quality.

The installed power generation capacity in Nigeria is 6000mw while the current available energy output is around 4000mw due to non-availability of gas. Conservatively, it is estimated that the country will need about 12000mw. Transmission and distribution networks are in poor state and need complete overhaul. From railway infrastructure to port services, the bottomline is the same leading to additional business costs and reducing competitiveness. The policy direction is clear, government should move away from being an exclusive provider to a facilitator in partnership with the private sector. There should be a standard and transparent methodology in public private partnership (PPP) to attract bidders, stimulate competition, lower prices and reduce government risks.

In order to liberalise the funding of our failing infrastructural facilities, government has recognised that privatisation and public private partnerships are appropriate forms of getting value for money. Thus, the move away from government-owned and government-run institutions remains vital. PPPs will involve the private sector supply of infrastructure assets and services that have traditionally been provided by the government. This will lead to an infusion of private capital/management that can ease fiscal constraints on infrastructural investments and increase efficiency. The attraction of private participation lies in the fact that it brings capital and efficiency that may be difficult to realise through purely public sector financing.

The existence of a huge resource gap for government has thrown up the urgent need for alternative funding source for infrastructure. For instance, it has been estimated that over the next five years, the Federal Government would need to invest over USD\$100 billion in key infrastructure areas, namely power (USD\$18-20 billion), rail track (USD\$8-17 billion), roads (USD\$14 billion) and oil and gas (USD\$60 billion). Government strongly believes that public private partnership will deliver real value for money if properly managed under the recently established Infrastructure Concessioning Regulatory Commission (ICRC).

(b) **Macroeconomic Stability**

Huge fluctuations and unpredictability in the price level, exchange rate, interest rate and tax burden are major deterrents to private investment which is the driver of growth.

The oil price based fiscal rule addressed this sufficiently until 2009. This smoothing rule ensures that if the current world price is \$80 but the normal (based on fundamentals) is adjudged to be \$50, the supernormal \$30 per barrel is saved in excess crude account as the \$50 benchmark is budgeted. It has fiscal side, foreign exchange side and long-run savings side to the equation. Due to the impact of the economic recession and revenue shortfall in 2009, the government augmented via draw-down with over N700 billion and distributed additional \$5.5 billion during the same year.

There is need for an established framework like a Sovereign Wealth Fund for the management of oil savings currently in excess crude account. This comes with clear rules on investment and withdrawal rather than the current practice of strong lobbying for sharing. Better fiscal and monetary policy coordination will engender macro-economic stability. Both should focus on long-term macro-stability for sustainable development.

(c) **Rule of Law, Accountability and Transparency**

Corruption leads to misallocation and mismanagement of scarce resources, undermines competition, increases costs, deters private investment and eventually engenders loss of trust in institutions and destabilizes government. We need strong oversight by legislative assemblies, vigorous law enforcement, supportive judiciary, independent anti-corruption agencies and transparency in revenue and budgetary system. The media and civil societies are up to steam in this respect but most importantly, we need the people to blow the whistle. We cannot continue holding the number 130 position in corruption perception index out of 180 countries when the likes of Ghana and Botswana are 69 and 37 respectively.

(d) **Governance Reforms**

We need to institutionalise our governance reforms and open access to government policy and performance. Monitoring and evaluation of projects, spending and development programmes.

(e) **Enhance Human Capital Development**

Enhanced investment, institutional capacity and access to quality of basic social services will lead to high quality growth. We need to align resource allocation, expenditure and management in line with pro-poor priorities. In a knowledge world, we can only sustain economic growth, raise living standards by investing in

education, health and nutrition. When large pool of young children are selling recharge cards and pure water on our roads, rather than being in schools, we should know we have crisis in waiting. Public spending on basic education, primary healthcare, safe drinking water, sanitation, reproductive health and nutrition should be non-negotiable minimum expectation from state and local government levels. There should be provision of vocational training centres to equip our youths for self employment linked to market needs.

(f) ***Rural Focused, Employment-Oriented Development Strategy***

There is considerable potential for increasing employment in agriculture through technological change and agrarian reform. Foster linkages between agricultural and non-agricultural activities through processing, growing domestic demand for farm output.

It is imperative to note that 90% of our farmers are small scale farmers, cultivating only 7% of irrigable land. The long-term agricultural strategy of this Government is to become a major supplier of food products to Africa. At present, our focus is on rice, cassava, cotton, livestock and fisheries. This can be evidenced by the fact that in the last few years, Nigeria has become a major producer and exporter of cassava to the rest of the world. However, major challenges still remain in the areas of preservation, storage and agro-allied food processing.

(g) ***Deregulation***

Between 2006 and 2008, the nation spent over N1.2 trillion on subsidies for petroleum products. In 2009 alone, petroleum subsidies accounted for over N600 billion; almost equivalent to the total capital budget of the Federal Government in fiscal year 2009. This diversion of scarce resources is not sustainable in the long-run. Therefore, full deregulation of the oil and gas sector remains very imperative. This will encourage investment in refining and marketing infrastructures. The legal and regulatory framework for the comprehensive reform of this sector is currently being considered by the National Assembly.

Since our exit from the Paris Club, we have continued to maintain a stable debt level. The outstanding debt obligations are now only to multilateral bodies. As at September 2009, the domestic debt level was N3,06 trillion while the external debt stood at USD\$3.8 billion. Presently, government policy is not to accept commercial loans. However, concessionary loans may be considered where necessary, especially in the key areas of upgrading infrastructures, agriculture and health facilities. We have therefore continued to finance a portion of our deficit from domestic bond issues which is also aiding the development of our local debt market without crowding out private capital.

The matter of restlessness in the Niger Delta has been largely resolved through the present Government's laudable amnesty programme. However, certain post-amnesty issues and some level of insecurity in the area remain immediate challenges which government is confronting head-on. Considerable budgetary allocations are being made to ensure government achieves its objectives in this area.

Concluding Remarks

Many analysts have concluded that most resource-rich developing economies are also endowed with poverty as they find it difficult turning their 'gold' into prosperity. The pervasive poverty in Nigeria is connected to oil wealth but not

caused by natural resource endowment. The misery or hopelessness index, whether quantified as \$1 per day or \$2 per day adjusted for purchasing power parity is a cocktail of poor leadership, unimaginable public choices, mis-governance and maddening corruption.

The remedies to the maladies confronting our polity cannot be found within the context of the Government alone. There is the need for all stakeholders in the Nigerian nation to be alive to their responsibilities.

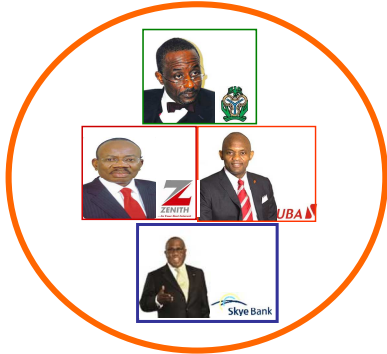
Our goal should then be to reorganise and restructure our economic and political institutions, develop national awareness and pride through sound educational values which will lead the people toward a more humane and rewarding life as citizens of Africa's most populous and progressive nation.

As with all economic and social problems facing any country, there is no magic wand when it comes to strengthening the capacity of public sector performance. Only a long term, carefully thought-out and sustained effort, tailored to solving the problem can succeed.

* Remi Babalola, Honourable Minister of State for Finance, presented this paper at the second annual Oba Olashore Lecture at the Obafemi Awolowo University, Ile Ife, on Monday February 15, 2010

Dissecting the CBN Directive on Bank CEO's

January 20, 2010; 1704 hrs, Omole, Lagos, Nigeria



"You have to make difficult choices in your life, and you just have to be happy with them." – Lori Laughlin quotes

CBN's directive yesterday, issued on the Proshare newsletter at 8pm, contains the following statement:

"Chief Executive Officers, CEO of banks shall serve a maximum tenure of ten years; All CEOs who would have served for ten years by July 31, 2010 shall cease to function in that capacity and shall hand over to their successors; Where a bank is a product of merger, acquisition, take-over or any other form of combination, the ten-year period shall include the pre and post combination service years of a CEO provided that the bank in which he previously served as CEO was part of the new bank that emerged after the combination; Any person who has served as CEO for the maximum tenure in a bank shall not qualify for appointment in his former bank or subsidiaries in any capacity until after a period of three years after the expiration of his tenure as CEO."

The directive from CBN - <http://www.proshareng.com/news/singleNews.php?id=8843> not only fixed a 10-year tenure for bank chief executive officers in the country, it laid out an exit date for those who would be affected, a disqualifying period for the CEO's, CBN, and NDIC officials, and made changes to both engagement contracts and provisions of the Memart.

What this means is that UBA's Tony Elumelu (CEO since 1995 – adding Standard Trust Bank), Zenith Bank's founder Jim Ovia (CEO since 1990) and Skye Bank's Sola Akinfemiwa (CEO since 2000 – adding Prudent Bank) are expected to vacate the banks they founded in July 2010.

So tenure guarantee, as defined in their contracts, is up in the air, and there is nothing the board of the bank can do about it – Memart and CAMA notwithstanding.

Is it any wonder therefore that stakeholders are left wondering whether the CEO's would surrendered their independence under such a ruling by CBN under a democracy and not a military government?

As one respected market analyst said to me: "**Which was a more profound announcement – the 14/08 sack of rescued bank CEO's or the 20/01 exit notification of cleared bank CEO's?**"

The nature of the CBN's directive not only surprised a few but its rhetoric as declared in the seven-point announcement raised the usual concerns that have often plagued the CBN in its good intentions.

I have had to place my intuition in check as I digested the breaking news and knew that this was not going to be another one of those announcements that simply goes away. Proshare had to respond and provide a view point that was impartial and dealt with the facts as it were.

The role and place of sit-tights founders/CEO's has always been with us for as long as the history of the country can be recalled and if anything, any discussion on the failing of the country will not be complete without addressing this issue in our public and private firms; not just the banks.

The banks however have been more prominent in the national discourse simply because of the critical role and perhaps overbearing role they play in determining our economic well being. If therefore the case is made about corruption, we cannot engage in this discussion without recognising the role played by these institutions.

Recall our blog post on **100 Days After: Paying a heavy price for banks to be virtuous** - <http://proshareng.com/blog/?p=79> and **Corporate Governance – Financial Crisis and the Nigerian Leadership Meltdown** <http://proshareng.com/blog/?p=54> where we made the case that "Now that we understand that we have a shared problem, can we change the engagement rules? The CBN must rethink its engagement approach if the ultimate goal is to establish a game changer? To have a market, we must have participants. In or desire to get the banks to become virtuous and disengage from being 'facilitators of criminal enterprises' as they have been branded, we have all be made to pay for the changes needed"

We surmised that "the cost of getting our banks to become 'virtuous' overnight without admitting the intrinsic cost of the democratic deficit that is being charged" would aggravate matters and perhaps bring the regulator to disrepute."

The Burning Question

Was this required at this time, just as the market was coming to terms with the series and sequence of pronouncements from the apex regulator on issues that affect shareholding, administration of authority and the symbols attached to it thereto and the redefinition of the rules of engagement?

Which was a more profound announcement – the 14/08 sack of rescued bank CEO's or the 20/01 exit notification of cleared bank CEO's?

Separately, they can probably all be justifiable in intent but perhaps not in approach and timing. If that holds true, the question of whether the principle behind the directive of yesterday was healthy for our markets should not be in doubt. We all know we needed to act on this and trust the CBN to take a decision that promotes the recovery of the market, not a decision that casts doubts on the process in the name of moral obligation.

Make no mistake about it, Proshare fully supports the need to set new engagement rules and term limits for banks based on our cultural imperatives and environmental dynamics – with a measure of buy-in from the stakeholders.

These men are in their own right, icons in the industry locally and internationally for whom the significant rise in profile and growth of the industry has been attributed to; along with the pioneers of customer-focussed banking Messrs Fola Adeola and Tayo Aderinokun.

Indeed, it was the model of succession management put in place by the latter that encouraged the belief that the banking sector is headed for a great future. The challenges involved in the management of the transition at GT Bank perhaps reflected more the resilience of the system they built which has produced other CEO's and top-of-the class executive directors of which the Managing Director/CE of Access Bank Plc, Mr. Aigboje Aig-Imokhuede and his colleagues represent a good reference point.

The banks whose CEO's are affected by this law have provided competent hands managing financial institutions including some who are serving in government as is the case with Remi Babalola (ex-Zenith Bank General Manager). Indeed the CBN picked at least five of its people to serve as executive directors and CEO in the rescued banks from UBA Plc who is still able to 'field a formidable first eleven' to show up in the market.

Thus the industry cannot be said to have an immediate capacity problem and **stakeholders should therefore not be in a panic mood**. Activities in the market in the next few days and weeks would however indicate how much of this reality is factored in. Needless to add; and this is for the benefit of the capital market, some of these CEO's have in place a credible team of top managers who are able to run the institutions they have laboured to build.

Arguments bothering on the inevitable 'what happens now question' can and should be equated to such questions that may arise, God forbid, if they had passed on. It is a direct testament to their legacy that they see to it that these institutions survive and grow with or without them. *Let no one be in doubt, the directive from CBN is huge and laden with many twists and turns in the days and months ahead.* The truth however is that taking no action was not an option in this case.

The CBN Motive - Justification

According to the CBN, the new guidelines announced at the end of the Bankers Committee's meeting in Abuja on Tuesday, are in line with the ongoing banking reform initiated by Sanusi Lamido Sanusi, the Central Bank governor, **to enthrone good governance in the nation's financial system.**

Samuel Oni, the bank's director of banking supervision department, who announced the guidelines, said they are designed **to help define the tenure of banks' managing directors and chief executives and institutionalise the appointment of banks' chief executives.** "Those CEOs of banks that are affected by new guidelines have been given up to July 31 to **prepare a successor as approved by their boards and have a credible succession programme that would be monitored by their boards and subjected to the monitoring to the CBN,**" Mr. Oni explained. He disclosed that the directive, which has already been communicated to the managements of all the 24 Nigerian banks, is also to ensure that banks have a good succession plan as well as **avoid the temptation of personalising their institutions.**

"In terms of the appointment of the CEOs of banks, the conditions and terms under which they were appointed and approved by the board must also be ratified

and approved at the annual general meetings and such terms of appointment in the first instance shall not exceed five years, though it is renewable for another term, provided that the period of service cumulatively does not exceed 10 years," he added.

In the words of Thisday Newspapers, "The Governor of CBN, Mallam Sanusi Lamido Sanusi made good **his threat to wrest banks from proprietors**". The reasoning behind this is not far fetched. Insider details on the outcome of the audits carried out by the apex regulator had indicated the following:

- ❶ The CEO's equated the institution in terms of policy, processes and procedure and indeed a verbal instruction from them was as good as an approved order;
- ❷ The CEO's of some of the rescued banks had employed most people in the organisation for over a decade and their loyalties were to the CEO's rather than the institution;
- ❸ There were infractions observed from the audit exercise which suggested that the culture of being there 'forever' created a huge overhang on the administration of proper corporate governance in the institutions.

The CBN Governor is on record as saying that the institution has nothing against the CEO's of the banks affected and that there should be no attempt to cast aspersions on their integrity or personal character. This directive therefore must be seen within the context of the cold realities of our local environment and cultural imperatives that allow the CEO to operate a hierarchical based administration that is sustained by the very notion that this organisation is owned by the individual at the top.

This culture of servitude leads to a culture of patronage and circumvention of best-intentioned corporate governance rules.

No one can and should fault these conclusions from the CBN. Indeed, this line of action is not only necessary and couldn't have come at a better time.

The CBN approved banking licence is a privilege, it is argued - the exercise of which means that it takes precedence over all other laws in its contextual application. Whenever the **BOFIA** (and not even the omnibus **CBN Act**) and CAMA is in conflict, BOFIA is supreme.

In consideration thereof of the recent abuses by some CEOs' of banks in Nigeria, the CBN perhaps felt that they needed to institute rules/regulation to protect investors, and to stop CEOs' from believing that they own these banks, or they are appointed for life - a major hindrance to enthroning a culture and value system that would support the professional discharge of obligations and responsibilities.

CBN has only given a directive, and it is supported in doing so by all the relevant laws - the CBN Act 1997, CAMA and BOFIA. The relevant decision needed will be taken by the Board/shareholders, in compliance with the regulator's directive.

The Counter Argument

The reactions have been varied but intense. Significant supporters of Sanusi Lamido Sanusi, CBN Governor have had to take a second look at the directive and with exceptions so rare have not given their usual 110% support. So what went wrong here?

Was it a question of the personalities involved or the motive behind such an action? As regards the motive, this appears clear as articulated above. If it were the personalities, the notion that no one was indispensable was clear to these individuals. It must therefore be the application of the rule and guidelines of the execution.

While one may never know the inner workings of men of money and power in Nigeria, this much remains clear - echoes of the words attributable to Pastor Martin Niemöller (1892–1984) came to the fore. Majority of the people appear spooked by the severity of the CBN Governors actions or they simply have genuine fears about the larger implications of the retroactive directive.

Recall the 1955 poem published by Milton Mayer - **They Thought They Were Free** - based on interviews he'd conducted in Germany several years earlier which went thus: *"First they came for the communists, and I did not speak out—because I was not a communist; Then they came for the trade unionists, and I did not speak out—because I was not a trade unionist; Then they came for the Jews, and I did not speak out—because I was not a Jew; Then they came for me—and there was no one left to speak out."*

This quotation, thought to have been contained in a January 6, 1946 speech before representatives of the Confessing Church in Frankfurt by Pastor Martin Niemöller (1892–1984) about the inactivity of German intellectuals following the Nazi rise to power and the purging of their chosen targets, group after group seem to aggregate the views of these group of people..

It is against this background that I contextualise the fears, uncertainty, shock and the classic distrust of government and its agencies for those who are strongly opposed to the directive.

For others with less conspiratorial leaning, the matter simply bothers on rights, principles of fairness and the need to avoid precedents that might harm rather than build. Specifically these varied concerns from stakeholders can be categorised under three distinct schools of thought, viz:

THE LEGAL SCHOOL OF THOUGHT

Here, the concern lies solely with the following issues:

- ❶ This development is about the sanctity of the law and the **protection of basic rights as allowed by the Constitution** of the Federal Republic of Nigeria;
- ❷ Purely as a matter of law, and with the exception of the military era when the constitution and basic civil rights were suspended, **the CBN Governor cannot pass retroactive laws;**
- ❸ Whereas BOFIA confers on the CBN Governor the power to approve licences and appointments into the board and senior management of banks; **it does not grant it the power to remove them without any cause;**
- ❹ There is no law superior to the Federal Constitution which guarantees the right to own property without let. The only law added to the constitution, to make it sacrosanct, was the Lands Use Act. Based on this every other law is inferior to the constitution and where there is a clear encroachment on the rights of individuals, the constitution and not BOFIA is supreme.
- ❺ The rights of individuals to own shares in a bank and to exercise control over the affairs of the company based on the consent of other owners is as provided for. The fact that the CBN gives licences and can remove same cannot be used as a threat to force compliance as there are grounds under which such removal can take place.

- ❶ What manner of precedence are we therefore setting for the corporate governance framework within the country – the banking sector obviously has a governance code now that allows it to run against a fundamental aspect of CAMA?
- ❷ Should NAICOM and SEC also pass rules that run contrary to the CAMA, what does that do to our rules and regulations – the rules of engagement commonly known to all players – local and international?

THE POLITICAL (Speculative and unfounded) SCHOOL OF THOUGHT

- ❶ The era of state controlled financial reforms is here with us – how this provides good corporate governance is open to debate. This has been a very delicate issue even in developed countries and though cultural imperatives make it important to provide a wedge, this action is without merit.
- ❷ The decisions by the CBN Governor have all but eliminated and alienated the South-South from the leadership cadre of the banking sector;
- ❸ With the exits of Cecilia Ibru, Francis Atuche, Jim Ovia and Tony Elumelu; not a few south-south leaders who supported the CBN governor have raised eyebrows on this development;
- ❹ The conspiracy theorists have indicated that under a new administration or dispensation, this move has provided the basis for a reversal of some of the decisions taken by the CBN Governor.

THE PROFESSIONAL SCHOOL OF THOUGHT

- ❶ This cannot be in the interest of a private sector led reform market. There are living examples of CEOs' of fortune 500 companies and banks in the US that have spent more than 10 years in their position as CEO. The argument about Nigeria's peculiar cultural issues does not hold water as businesses do not exist outside their local realities.
- ❷ Since the CEO's did not have any character, criminal or competence issues, what therefore informs such an approach to getting rid of them?
- ❸ If they have some issues not considered material enough to have encouraged the CBN to remove them during its two major pronouncements, they ought to have been privately briefed on the policy direction of the CBN and allowed to make a more honourable exit rather than being shown the way out of an institution they founded and built up to such an international standard in an environment where there are few examples of such landmark achievements.
- ❹ Ordinarily, the board and shareholders are responsible for appointing and voting out CEOs. Does this not further indicate the growing disregard for the role of shareholders in the determination of the affairs of the companies concerned and hence a further erosion of one of the fundamental principles of corporate governance?
- ❺ This new ruling is open to abuse and impacts the enthusiasm/commitment of the CEO who then realizes that no matter how good he is or might have been; he would not be able to enjoy the backing of his board – so much for trust.
- ❻ Does this not leave the CEO vulnerable to an overbearing board and a non-activist CBN Governor at some point in the future?
- ❼ What happens to their shareholding in the banks?
- ❽ The re-election of directors has already been fixed by the CBN in respect of CEO's which could possibly require a change in CAMA to make it proper. This infuses a new dimension to financial services sector Memarts.
- ❾ What signal does this send to those nearing the end of their tenures in banks in which the same characteristics they observed is prevalent?

The Retroactive Law and its Limitations under this Case?

An Ex Post Facto Law (*from the Latin for "from after the action"*) or retroactive law, is a law that retroactively changes the legal consequences (or status) of actions committed or relationships that existed prior to the enactment of the law.

It is important to explain that this **rule only applies to criminal issues**, where it may criminalize actions that were legal when committed; or it may aggravate a crime by bringing it into a more severe category than it was in at the time it was committed; or it may change or increase the punishment prescribed for a crime, such as by adding new penalties or extending terms; or it may alter the rules of evidence in order to make conviction for a crime more likely than it would have been at the time of the action for which a defendant is prosecuted.

In understanding this rule we must realise the nature of administrative pronouncements from the CBN and its non-application under this rule.

During the Soludo-era the separation of the executive vice-chairman and CEO was promulgated which led to the exit of **Subomi Balogun** from CBN. Also, it was under this era that the definition of who can be the MD/CEO of a bank where age and years sent on the job was defined.

The notion that this is a retroactive law therefore does not and would not be a sufficient ground for a court judgement. This is a purely administrative directive within the powers of the CBN.

A Game of Musical Chairs

Clearly, and without mincing words - The Challenge of Politics and Policy – will deliver one obvious answer - Politics shall overcome. Looking at the arguments above and the dynamics on ground, it is obvious that the political climate does to provide the CBN enough cover to successfully execute the move it has made this time around; this move will raise the political heat on the apex institution.

Let's humour ourselves with the little matter of the July 2010 deadline - How was this arrived at? Take Jim Ovia, for example, he has been in the saddle for the past 19 years in the same bank; so at which point do we determine his 10years – 9 years ago or immediately? Why therefore wait till July 2010 to get a successor when this was not a subject of the 'CBN special audit'?

As laughable as this faux-paux was, it is my judgement that the intention of the CBN was not to disrupt the banks or usurp the powers of the Boards/shareholders. Time will be required for the departing CEOs to put their houses in order, for a board meeting/AGM to be called and in that respect for due process to be observed. The question might then be that why should the CBN get themselves into this unnecessary situation in the first place?

Lets take for example the absurd point in the directive that said "**Any person who has served as CEO for the maximum tenure in a bank shall not qualify for appointment in his former bank or subsidiaries in any capacity until after a period of three years after the expiration of his tenure as CEO.**"

This provision opens up the possibility for a scenario where **Jim Ovia moves to UBA Plc either as CEO or Chairman** or **Tony Elumelu goes to Zenith Bank Plc** with the same options. **Sola Akinfenwa can easily re-appear as the CEO** of new bank, or an existing bank. In this case, they would not have flouted the CBN rules and only succeed in confusing the market place and ridiculing the CBN.

For what abiding purpose was this directive therefore meant to serve if it would open such a big loophole?

The phrase here should have been "**any bank**" even as I realise that **the intendment of the law/rule maker is clear**. Besides, considering the practical difficulties that may arise in making Ovia Chairman of UBA, or Elumelu going to Zenith; the author of the directive must have come to the conclusion that this was not a feasible option – thinking, what can such an individual still possibly be looking for? **That however is beside the point.**

Conclusion

Frankly speaking, the **best case scenario** is that this policy directive is allowed to stand. The **most likely scenario** is that the law will be subjected to the rigours of interpretation by the law courts as a contribution to our democratic development as a sovereign nation. The **worst case scenario** would be that the law is withdrawn or modified to eliminate the points raised above.

In the main, I fully agree with the reasoning adduced by the CBN setting term limits for the CEO's of banks who have, through their conducts given the public and regulators sufficient reasons to doubt their ability to stay above board in decisions either as a matter of cultural influence or personal ego.

My natural inclination is to support the directive. The Oceanic Bank and Intercontinental Bank Plc case (*a product of the trial by the media which I do not subscribe to*) has provided a background to why allowing 'sit-tightism' in a bank can create serious corporate governance problems. No one can imagine anyone even a director of the bank challenging Cecilia Ibru at Oceanic, Elumelu at UBA, Akinfenwa at Skye or Ovia at Zenith, and yet these are publicly quoted companies? The same equally goes for Balogun at FCMB, Adenuga at ETB, and many other banks and companies.

If at all there is any deduction to make from this directive (as good intentioned as it is), it would be that it is an ineffectual policy as the case of Otunba Subomi Balogun and Mike Adenuga has demonstrated.

Jim Ovia, Tony Elumelu and Sola Akinfenwa can set up a Zenith Group limited, UBA Group Limited and Skye Group Limited and control the activities of the institutions from such an entity outside the powers of the CBN. The rule can be easily side stepped without much drama.

On a final note, the point ought to be made that the more CEO's of banks stay in their institutions, the more susceptible to abuses are the corporate governance imperatives. This has been a matter for which those involved in the industry have spent considerable time deliberating on with many options and approaches put forward – the end game being that CEO's should and must not have an indeterminate tenure as the CBN seeks to introduce. The CBN Governor, Sanusi Lamido has bitten the bullet and taken the hard and difficult choice – it is left to the market to respond.

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