Practice and Standard of Corporate Governance in the Nigerian Banking Industry

Wumi K. Olayiwola
Department of Economics and Development Studies
College of Development Studies, Covenant University, Nigeria
Tel: 234-805-470-1214 E-mail: kolayiwola@gmail.com

Abstract

The main objective of this paper is to examine practice and standard of corporate governance in Nigeria using banking industry as a case-study. The consolidation of the banking industry in 2004 necessitated a review of the code of corporate governance for the Nigerian Banks. The recent Global Financial Crisis, Asia Crisis and the bitter experience of banks distress and failure, suggest that Nigeria needs to take stock of its corporate governance capacity. This paper reviews the practice of corporate governance in the banking sector of Nigeria and uses OECD Corporate Governance Assessment Instrument to analyze the standard of corporate governance in Nigeria. The analysis clearly shows a divergence between the code of corporate governance and its compliance. More importantly, for Nigeria to reap the benefits of effective corporate governance and build a sustainable public confidence in the banking industry there is need to strengthen the enforcement mechanism of the regulatory institutions. It is important to restore the confidence of the average shareholder in the capacity of the judicial system to help him enforce his rights.

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1. Introduction

Corporate governance, as a concept, can be viewed from at least two perspectives. The narrow view is concerned with the structures within a corporate entity or enterprise receives its basic orientation and direction. The broad perspective is regarded as being the heart of both a market economy and a democratic society (Oyejide and Soyibo, 2001). The narrow view perceives corporate governance in terms of issues relating to shareholder protection, management control and the popular principal-agency problems of economic theory. In contrast, Sullivan (2000), a proponent of the broader perspectives, uses the examples of the resultant problems of the privatization crusade to prove that issues of institutional, legal and capacity building as well as the rule of law, are at the very heart of corporate governance.

Oyejide and Soyibo (2001) defined corporate governance as the relationship of the enterprise to shareholders or in the wider sense as the relationship of the enterprise to society as a whole. However, Mayer (1999) contends that it means the sum of the processes, structures and information used for directing and overseeing the management of an organization. The Organization for Economic Corporation and Development (OECD) (1999) also defined corporate governance as a system on the basis of which companies are directed and managed.. In another prospective, Arun and Turner (2002) contend that there exist a narrow approach to corporate governance, which views the subject as the mechanism through which shareholders are assured that managers will act in their interests. However, Oman (2001) observed that there is a broader approach which views the subject as the methods by which suppliers of finance control managers in order to ensure that their capital cannot be expropriated and that they earn a return on their investment.

There is a consensus, however that the broader view of corporate governance should be adopted in the case of banking institutions because of the peculiar contractual form of banking which demands that corporate governance mechanisms for banks should encapsulate depositors as well as shareholders (Macey and O'Hara (2001). Arun and Turner (2002) joined the consensus by arguing that the special nature of banking requires not only a broader view of corporate governance, but also government intervention in order to restrain the behavior of bank management. They further argued that, the unique nature of the banking firm, whether in the developed or developing world, requires that a broad view of corporate governance, which encapsulates both shareholders and depositors, be adopted for banks. They posit that, in particular, the nature of the banking firm is such that regulation is necessary to protect depositors as well as the overall financial system.

The adoption of various economic reform programmes in Africa in the 1980s, in which privatization of government-owned enterprises forms a major plank, has heightened the corporate government debate in the continent. The bitter experience of Asian financial crisis of the 1990s underscores the importance of effective cooperate governance procedures to the survival of the macro-economy. This crisis demonstrates in no unmistakable terms that "even strong economies, lacking transparent control, responsible corporate boards, and shareholder rights can collapse quite quickly as investor's confidence collapse" and emphasizes the need to ensure effective corporate governance with a view to ensuring the development of market-based economies and democratic societies based on the rule of law (Soyibo et al, 2002). Financial scandals around the world and the recent collapse of major corporate institutions in the USA and Europe have brought to the fore, once again, the need for the practice of good corporate governance. For the financial industry, the retention of public confidence through the enthronement of good corporate governance remains of utmost importance given the role of the industry in the mobilization of funds, the allocation of credit to the needy sectors of the economy, the payment and settlement system and the implementation of monetary policy.

In the Nigerian financial sector, poor corporate governance is identified as one of the major factors in virtually all known instances of a financial institution's distress in the country. On July 6th 2004, the Central Bank of Nigeria further reforms the financial system by increasing the minimum capital base for banks to N25 billion ($168.5million) with 31st December, 2005 as deadline. The reform entailed a phased withdrawal of public sector funds amounting to N74 billion commencing 21st July of the same year; consolidation of banking institutions through mergers and acquisition; adoption of risk-focused and rule-based regulatory framework especially in the area of data recording and reporting. This policy reforms reduced the number of banks in Nigeria from 89 to 25. The reform also poses corporate governance challenges arising from integration of processes, IT and culture. Research had shown that two-thirds of mergers, world-wide, fail due to inability to integrate personnel and systems as well as due to irreconcilable differences in corporate culture and management, resulting in Board and Management squabbles. In addition, the emergence of mega banks in the post-consolidation era is bound to task the skills and competencies of Boards and Managements in improving shareholder values and balance against other stakeholder interests in a competitive environment.

The consolidation of the banking industry, however, necessitated a review of the existing code for the Nigerian Banks. The 2006 ***Code of Corporate Governance for Banks in Nigeria Post Consolidation*** was developed to compliment other policies and enhance their effectiveness for the Nigerian banking industry. Compliance with the provisions of this Code is mandatory. However the recent Global Financial Crisis, Asia Crisis and the bitter experience of banks distress and failure, suggest that Nigeria needs to take stock of its corporate governance capacity. The main focus of this paper is to examine the practice and standard of corporate governance in Nigeria by using banking industry as a case-study. In the next section, we identify and review the different provisions of legislation governing corporate governance in Nigeria. We evaluate the standard of corporate governance in Nigeria using the OECD scoring instrument in section III and conclude in section IV.

2. Practice of corporate governance in Nigeria

Following the leadership of Ricardo (2000) and as documented by Oyejide and Soyibo (2001), we review the different provisions of legislation governing corporate governance in the Nigerian banking industry from three perspectives: disclosure and transparency; minority and shareholder rights; and oversight management.

2.1 Disclosure and Transparency Issues

*I*n this section we review the various laws governing the practice of corporate governance in the Nigerian banking industry.

2.1.1 Financial Performance

The basic company law is the Companies and Allied Matters Decree (CAMD) of 1990. It provides that the directors of every company shall prepare financial statements reflecting a true and fair view of the operations of the company during the financial year. The financial statements must include, among others, the balance sheet and profit and loss accounts; the source and application of funds, giving information about the generation and utilization of funds; the value added statement reporting the wealth created by the company during the year; and the five year summary which provides comparative inter-temporal performance information. The financial statement must be laid before the share holders at the Annual General Meeting (AGM). These statements must reach the shareholders, who must decide whether to approve or reject the financial statements, at least 21 days before the AGM. The CAMD also provides for the annual preparation of the Directors' Report which should give shareholders a fair view of the developments of the business of the company, its principal activities during the year and any significant change in those activities.

2.1.2 Auditing Matters/Required Accounting and Auditing Standards

The Company Law specifies that all companies must appoint at its AGM, auditor or auditors to audit the financial statements of the company and hold office until the next AGM. In cases where no auditors are appointed or re-appointed, the law empowers the directors to appoint a person to fill the vacancy. It also provides for the procedure for reappointing any retiring auditor without a resolution being passed at the AGM. To ensure the independence of the auditor, CAMD prohibits any officer or servant of the company from being an auditor, neither can who is a partner or is in the employment of any officer of the company, nor is any person or firm that offers consultancy services to it. Additionally, for a bank, no person who has any interest in the bank other than as a depositor or who is indebted to the bank; no firm in which a director of the bank has interest as director or as a partner shall be an auditor. The BOFID also requires that any auditor appointed by any bank must be approved by the Central Bank of Nigeria (CBN). The auditor is expected to form an opinion as to whether the company kept proper accounting records and proper returns relevant for the audit have been received the branches not visited. The auditor will also tell whether the company's balance sheet and profit and loss account are in agreement with the accounting records and returns.

2.1.3 Requirements for Equity Ownership Disclosure

The law requires that each company must keep a register of members/shareholders where the shares held by each holder is recorded as well as the amount paid or agreed to be paid. Whenever shares are sold they must also be recorded in the register. For a Plc, in addition to the register, the law also requires that unless the register is in such a form that it constitutes in itself an index, the company shall keep an index of the names of the members of the company. In the case where any alteration is made in the register of members, the company must within 14 days make any necessary alteration in the index. The index is expected to have sufficient information to enable the account of any member to be easily located. The register or index shall be open for inspection during office hours expect when the register of members is closed, subject to such restriction that the company in general meeting may impose and such that not less than 2 hours in each day shall be allowed for inspection.

2.1.4 Disclosure on Sundry Issues and Items

An important issue in corporate governance relates to the requirements of the company law in relation to disclosure on identity, compensation, background of directors and senior managers and of the relationship between directors and senior managers, as well as disclosure of related party transactions. As stated earlier any change in ownership interest and values must also be updated and be made known to all shareholders who have a right to ask for a copy of the register, or any part thereof, albeit, at a fee. The company law requires that the identity of directors, the size of their shareholding and their remuneration be in the public domain and thus be known and available to all shareholders. Accordingly, the law requires that a register of all members of the company including its index, where appropriate, be maintained in its registered office. In addition, parts V and VI of Schedule 3 of CAMD specify that the compensation of directors and number of employees remunerated at higher rates be made public. Besides, as mentioned earlier, disclosures on transactions and agreements on loans, quasi loans and other dealings in favour of directors and "connected persons" is mandatory under the law.

2.2 Minority Shareholder Rights

2.2.1 Guarantee of Minority Shareholders' Right in Meeting Participation

The provisions of CAMD specify the minimum length of notice to be given to all those entitled to receive notice of a general meeting of any company as 21 days from the date on which the notice was sent out. However, a notice is deemed to have been properly effected, if it is sent to the member by post to him or his register address and it is properly addresses and prepaid. The law provides that failure to give notice of meeting to any person entitled to receive it may invalidate the meeting unless such failure is an accidental omission on the part of those responsible for sending the notice.

2.2.2 Shareholder Voting and Proxy Rights

Section 116 (la) of CAMD establishes and underscores the one-share-one-vote system for Nigerian companies. Accordingly, a shareholder's vote is proportional to the number of shares owned in the company. However, this does not affect the issuance of preference shares as defined by Section 143 of the decree and in particular, Section 119 of CAMD prescribes that a company may issue any shares with such preferred, deferred or special rights. But Subsection 1(b) of the Section 116 outlaws the issuance of non-voting shares in Nigeria.

2.2.3 Measures for Secure Shareholder Share-Registration

Both CAMD and the Investment and Securities Decree (ISD) provide that only public companies satisfying some provision of decrees or licensed banks can lawfully make an invitation to the public to (a) acquire or disposed of

securities of a company; or to deposit money with company for a period, whether is it interest-bearing or not. The law requires that all securities offered for sale to or for subscription by the public or to be offered privately shall register with the Securities and Exchange Commission (SEC).

2.2.4 Ability to Transfer Ownership and Enforcement of Rights

Only shares of a quoted Plc can be transferred by shareholders. Section 32 of ISC states that only securities or investment registered by SEC can be transferred electronically or by either approved means/systems, or sold. Thus shareholders of quoted Plc have easier access to share transfer. However, such transfer has to be effected through a qualified person. Section 33 (2 & 3) of the ISD requires that such a qualified person should keep a register of securities acquired or disposal by them. Information relating to the date of acquisition or disposal, and the reason for the change shall be entered in the register within 7 days of acquisition or disposal. Besides, that person shall give to SEC notice, in the prescribed form, such particulars relating to the register as may be prescribed, including the location of the register. To enforce rights, shareholders have to seek redress in the law courts.

Shareholders can also seek redress in the law courts. Sections 310 – 312 of CAMD contain provision of relief that can be sought by any shareholder on the ground of unfairly prejudicial and oppressive conduct. If the court is satisfied that the petition so made is founded, it may make such orders as it thinks fit for giving relief to the petitioner. Such order can include winding up the company; regulating the affairs of the company in the future; the purchase of shares of any member by other members of the company; the purchase of the shares of any member by the company and reducing the capital of the company accordingly; among other orders.

2.3 Oversight Management

2.3.1 Mechanism and Structures for Prudent Management of Shareholders' Asset

There are many rules and regulations for ensuring that management of companies act in the interest of investors and of the firms. Among these are the shareholders' meeting which have supervisory functions over the companies; the requirements that financial accounts of companies be certified by external auditors; the different returns the companies are expected to send to regulatory agencies like the Corporate Affairs Commission (CAC) which registers all incorporated companies; the SEC which registers all shares of quoted Plcs; the Central Bank of Nigeria (CBN) and the Nigeria Deposit Insurance Corporation (NDIC) which have regulatory and supervisory mandates for licensed banks and other financial institutions like finance houses and community banks; the National Insurance Commission of Nigeria (NAICOM), which has regulatory mandate over insurance companies. Shareholders can use their meetings to express and exercise their collective will as a corporate body. It is these meetings that all shareholders get to express their opinions about the way the company is run and make suggestions about how the company operations can be improved. In these meetings shareholders have the right to speak and vote on resolutions concerning the affairs of the company. In Nigeria, the CAMB provides for two main types of meetings: Statutory and General Meetings.

The use of external auditors to examine the books of companies is a way of exercising oversight management. Section 357 of CAMD provides that all companies must appoint a qualified person as external auditors who must make a report to the all members of the company on all accounts they examined, and on every balance sheet and profit and loss account and on all group financial statement copies, which are to be laid before the company at AGM during the tenure of the auditor. Besides, Section 29 of BOFID prescribes that auditors of licensed banks must be approved by CBN. This is another way of exercising oversight management of banks. In particular, Subsection 5 of the same section provides that every auditor shall have a right of access, at all times, to the books, accounts and vouchers of the bank and shall be entitled to require from directors, managers, and officers of the bank such information and explanation that he thinks necessary for the performance of his duty. Additionally, Subsection 6 requires that two copies of the auditor's report and that of the directors together with the auditor's analysis of bad and doubtful advances in a prescribed form be forwarded to the CBN.

2.3.2 Mechanism for Effective Oversight of the Audit Function

The use of the Audit Committee for Public Limited Companies, elected annually at the AGM, provides some measure of oversight for the audit function. However, its effectiveness is an empirical question. The membership is equally distributed between the Board of Directors and other shareholders subject to a maximum of six. Among the functions of the Committee which are germane to oversight of the audit functions are:

♣ review of the scope and planning of the audit requirements;

♣ review of the findings on management matters in conjunction with the external auditor and the internal responses thereon;

- keeping under review the effectiveness of the company's system of accounting and internal control;
- making recommendations to the Board regarding the removal and remuneration of external auditors; and
- authorizing the internal auditor to carry out investigation into any activities of the company which may be of interest or concern to it.

2.3.3 Liabilities and Sanctions for Directors who Fail to Perform

The AGM with its power to appoint and remove directors as well as approve their remuneration is expected to act as check on the performance of directors. Accordingly directors will endeavour to bring to the AGM results that will win the approval and commendation of shareholders. Besides, certain sections of the company law prescribe penalties for erring directors and officers of the company. For example, Section 348 of CAMD prescribes the penalty for each director of any company that lays a faulty financial statement before any meeting of shareholders. If the company is in liquidation, for example, Section 502, prescribes the offences that can be committed by officers of the company antecedent to or in the course of winding up. Section 503 prescribes penalty for falsification of company books; Section 504, for frauds while Section 505 prescribes the liability for not keeping proper accounts. Section 507 prescribes the power of law courts to assess damages against delinquent directors while the prosecution of delinquent officers and members of the company is provided for in Section 508 of CAMD.

2.4 Code of Corporate Governance Practices for Banks Post Consolidation

As documented in the CBN (2006), the code of corporate governance is in different dimensions:

2.4.1 Equity Ownership:

The practice of free, non-restrictive equity holding has led to serious abuses by individuals and their family members as well as governments in the management of banks. However, to encourage a private sector-led economy, holdings by individuals and corporate bodies in banks should be more than that of governments. It is also recognized that individual who form part of management of banks in which they also have equity ownership have a compelling business interest to run them well. Such arrangements should be encouraged. Government direct and indirect equity holding in any bank shall be limited to 10% by end of 2007. An equity holding of above 10% by any investor is subject to CBN's prior approval.

2.4.2 Organizational Structure:

Executive Duality : The responsibilities of the head of the Board, that is the Chairman, should be clearly separated from that of the head of Management, i.e. MD/CEO, such that no one individual/related party has unfettered powers of decision making by occupying the two positions at the same time. No one person should combine the post of Chairman/Chief Executive Officer of any bank. For the avoidance of doubt, also no executive vice-chairman is recognized in the structure. No two members of the same extended family should occupy the position of Chairman and that of Chief Executive Officer or Executive Director of a bank at the same time.

2.4.3 Quality of Board Membership

Institutions should be headed by an effective Board composed of qualified individuals that are conversant with its oversight functions. Existing CBN guidelines on appointment to the board of financial institutions should continue to be observed. Only people of proven integrity and who are knowledgeable in business and financial matters should be on the Board. Regular training and education of board members on issues pertaining to their oversight functions should be institutionalized and budgeted for annually by banks. The Board should have the latitude to hire independent consultants to advise it on certain issues and the cost borne by the banks. The number of non-executive board members should be more than that of executive directors subject to a maximum board size of 20 directors.

At least two (2) non-executive board members should be independent directors (who do not represent any particular shareholder interest and hold no special business interest with the bank) appointed by the bank on merit. A committee of non-executive directors should determine the remuneration of executive directors. There should be strict adherence to the existing Code of Conduct for bank directors, failing which the regulatory authorities would impose appropriate sanctions including removal of the erring director from the board. Non-executive directors' remuneration should be limited to sitting allowances, directors' fees and reimbursable travel and hotel expenses. In order to ensure both continuity and injection of fresh ideas, non-executive directors should not remain on the board of a bank continuously for more than 3 terms of 4 years each, i.e. 12 years. Banks should have clear succession plans for their top executives.

There should be, as a minimum, the following board committees – Risk Management Committee, Audit Committee, and the Credit Committee. The practice of the Board Chairman serving simultaneously as chairman/member of any of the board committees is against the concept of independence and sound corporate governance practice, and should be discontinued.

2.4.4 Board Performance Appraisal:

While adherence to corporate governance principles is recognized as necessary for successful performance of Boards, it is often not a sufficient condition. Hence, the need for Board performance reviews or appraisals as a new

concept to ensure successful or exceptional performance. Each Board should identify and adopt, in the light of the company's future strategy, its critical success factors or key strategic objectives. Boards should determine the skills, knowledge and experience that members require to achieve those objectives. A Board should work effectively as a team towards those strategic objectives. There should be annual Board and Directors review/appraisal covering all aspects of the Board's structure and composition, responsibilities, processes and relationships, as well as individual members' competencies and respective roles in the Board's performance. The review should be carried out by an outside consultant. The review report is to be presented at the AGM and a copy sent to the CBN.

2.4.5 Quality of Management**:**

Appointments to top management positions should be based on merit rather than some other considerations. Existing guidelines on appointments to top management of banks should continue to be observed. Track record of appointees should be an additional eligibility requirement. Such records should cover both integrity (fit and proper' as revealed by the CBN 'blackbook', CRMS etc) and past performance (visible achievements in previous place(s) of work).

2.4.6 Reporting Relationship**:**

Officers should be held accountable for duties and responsibilities attached to their respective offices. The structure of any bank should reflect clearly defined and acceptable lines of responsibility and hierarchy.

2.4.7. Industry Transparency, Due Process, Data Integrity and Disclosure Requirements

These are core attributes of sound corporate governance practices that are essential to installing stakeholders' confidence. Where board directors and companies/entities/persons related to them are engaged as service providers or suppliers to the bank, full disclosure of such interests should be made to the CBN. Chief Executive Officers and Chief Finance Officers of banks should continue to certify in each statutory return submitted to the CBN that they (the signing officers) have reviewed the reports, and that based on their knowledge:

- The report does not contain any untrue statement of a material fact
- The financial statements and other financial information in the report, fairly represent, in all material respects the financial condition and results of operations of the bank as of, and for the periods presented in the report.

False rendition to CBN shall attract very stiff sanction of fine plus suspension of the CEO for six months in the first instance and removal and blacklisting in the second. In addition, the erring staff would be referred to the relevant professional body for disciplinary action. There should be due process in all the procedures of banks.

All insider credit applications pertaining to directors and top management staff (i.e. AGM and above) and parties related to them, irrespective of size, should be sent for consideration/approval to the Board Credit Committee. The Board Credit Committee should have neither the Chairman of the Board nor the MD as its chairman. Any director whose facility or that of his/her related interests remains non-performing for more than one year should cease to be on the board of the bank and could be blacklisted from sitting on the board of any other bank. The Board Credit Committee should be composed of members knowledgeable in credit analysis. The practice/use of Anticipatory Approvals by Board Committees should be limited strictly to emergency cases only ratified within one month at the next committee meeting. Banks' Chief Compliance Officers (CCO) should, in addition to monitoring compliance with money laundering requirements, monitors the implementation of the corporate government code. Banks should also establish 'whistle blowing' procedures that encourage (including by assurance of confidentially) all stakeholders (staff, customers, suppliers, applicants etc) to report any unethical activity/breach of the corporate governance code using among others, a special email or hotline to both the bank and the CBN.

The CCO shall make monthly returns to the CBN on all whistle blowing reports and corporate governance related breaches. The CCO together with CEO of each bank should certify each year to the CBN that they are not (apart from 6.1.14) aware of any other violation of the Corporate Governance Code. The corporate governance compliance status report should be included in the audited financial statements.

2.4.8 Risk Management**:**

The Board/Board Risk Management Committee should establish policies on risk oversight and management. Banks should put in place a risk management framework including a risk management unit that should be headed by a Senior Executive, in line with the directive of the Board Risk Management Committee. The internal control system should be documented and designed to achieve efficiency and effectiveness of operations; reliability of financial reporting, and compliance with applicable laws and regulations at all levels of the bank. External auditors should render reports to the CBN on bank' risk management practices, internal controls and level of compliance with regulatory directives.

2.4.9 Role of Auditors: Internal Auditors*:*

Internal auditors should be largely independent, highly competent and people of integrity. The Head of Internal Audit should not be below the rank of AGM and should be a member of a relevant professional body. He should report directly to the Board Audit Committee but forward a copy of the report to the MD/CEO of the bank. Quarterly reports of audit must be made to the Audit Committee, and made available to examiners on field visits.

Members of the Board Audit Committee should be non-executive directors and ordinary shareholders appointed at AGM and some of them should be knowledgeable in internal control processes. One of such appointed ordinary shareholders should serve as the Chairman of the Committee. The Audit Committee will be responsible for the review of the integrity of the bank's financial reporting and oversee the independence and objectivity of the external auditors. The Committee should have access to external auditors to seek for explanations and additional information without management presence. Internal Audit Unit should be adequately staffed.

External Auditors: External auditors should maintain arms-length relationship with the banks they audit. Appointment of External Auditors will continue to be approved by the CBN. The tenure of the auditors in a given bank shall be for a maximum period for ten years after which the audit firm shall not be reappointed in the bank until after a period of another ten years. A bank's external auditors should not provide the following services to their clients:

1). Bookkeeping or other services related to the accounting records or financial statements of the audit client;
2). Appraisal or valuation services, fairness opinion or contribution-in-kind reports;
3). Actuarial services;
4).Internal audit outsourcing services;
5). Management or human resource functions including broker or dealer, investment banking services and legal or expert services unrelated to the audit contract.

Quality assurance auditing should be engaged whenever the CBN suspects a cover-up by auditors, and where proved, erring firms would be blacklisted from being auditors of banks and other financial institutions for a length of time to be determine by the CBN. An audit firm would not provide audit services to a bank if one of bank's top officials (Directors, CFO, and CAO etc) was employed by the firm and worked on the bank's audit during the previous year.

3. Standard of corporate governance in Nigerian banking industry

3.1 Methodology and Approach

To achieve the objective of evaluating the standard of corporate governance in the banking sector of Nigeria, the baselining initiative methodology is adopted. This methodology has both objective and comprehensive components (Thai Institute of Directors, 2002). Objectivity is important because the evaluation of corporate governance relies on subjective interpretation which can be questioned. Comprehensiveness involved incorporating both the OECD guidelines and other relevant international practices on corporate governance. The basic approaches are baselining evaluation methodology and survey of relevant banking sector regulatory agencies. The first approach uses publicly available information to determine corporate governance scores and the second one involves the comparative assessment through the survey using OECD principles.

Following the leadership of Oyejide and Soyibo (2001), the regulatory agencies survey was conducted in 2008. Questionnaire based on OECD principles was sent to regulatory agencies in Nigeria like CBN, SEC, NDIC, other stakeholders in corporate governance like the Chambers of Commerce, shareholder organizations in major commercial centers like Lagos and Ibadan, fund managers, issuing houses, stockbrokers, major auditing firms and corporate lawyers to collect a more qualitative perspective where no public information was available. The survey instrument used was the OECD Corporate Governance Assessment Instrument. Questions were segmented by the OECD categories of governance- shareholders rights, disclosure and transparency, and role of board of directors. The actual questions were chosen based on the OECD guidelines, and the evaluation was made of 52 questions and covered 25 guidelines. Each question was scored between 0 and 3, with 3 represents best practice, 2 represents partial compliance with best practice, 1 represents low compliance with best practice and 0 represents no compliance. Detailed criteria for each question determined a 0, 1, 2, and 3 rating, each question within a category had a specific weight and each category also had a separate weight.

A total of 50 questionnaires were distributed, but only 30 were retrieved and used. For this analysis, we compared the computed scores for the different measures of comparing governance in Nigeria with those of countries of Middle East and North Africa (MENA) and Eastern Europe. This was to demonstrate the relative performance of Nigeria.

3.2 Analysis of Results

3.2.1 Shareholder Rights

3.2.1.1 Fair conduct of shareholders' meetings

The average score for the assessment of respondents on fair conduct of shareholders' meetings is 1.4 out of a maximum score of 3 (Table 1). This score contrasts poorly with the average score recorded in three countries of Middle East and North Africa (MENA) studies in SG (2000). Turkey, Greece and Israel recorded maximum average score of 3 while Egypt and Morocco which recorded average scores of 2 are comparable to Nigeria. In fact, 42% of

our respondents felt that as regards fair conduct of shareholders' meetings, there is compliance in critical areas by Nigerian banks while 30% felt that there is non-compliance in critical areas. The balance of 28% indicated that Nigerian companies exhibit complete compliance.

3.2.1.2 Effective prohibition of insider trading

With regards to whether insider trading is effectively prohibited Nigeria's score compares favourable with MENA countries. Its average score is 2 which is similar to the score of Turkey, Greece, Israel and Egypt each of which had an average score of 2. It is better than Morocco's average score of 1. However, 85% of our respondents felt that while country's regulations require that this be the case, compliance/enforcement is inconsistent in the country.

3.2.1.3 Regular publication of Directors' dealings

Nigeria's score as regards compliance with the requirements of regular publications of directors' dealings is rather low an average score of 1out of 3. The country is only better than Morocco out of the five MENA countries studied by SG(2000). It is on the same footing with Egypt with an average scare of 1. As many as 55% of our respondents hold the opinion that there consistent evidence of abuse in this case by Nigeria banks while 30% felt that regulations in the country requires this, there is no meaningful compliance. The balance of 15% held the view that there is no consistent compliance and enforcement of the existing regulations.

3.2.1.4 Capital changes announcement with due warning and participatory opportunity

Our respondents sore Nigeria rather low with regard to announcement of changes in capital with due warnings and giving potential shareholders opportunities to participate, when compared with MENA countries. The average score of 1.8 for Nigeria is lower than even Morocco's score, but about the same score as Egypt. While as many as 50% of our respondents felt that local regulations in this regard are complied with, 30% held the opinion that compliance/enforcement is inconsistent. Furthermore, as many as 15% of respondents felt that there is no meaningful compliance while 5% believed there is consistent evidence of abuse of abuse of this regulation.

3.2.1.5 Transparent implementation of extraordinary transactions

Nigeria's average score as regards carrying out extraordinary transaction at transparent prices is 1.5 out of a maximum of 3. This performance compares with that of Egypt and better than that of Morocco but worse than those of Turkey, Greece and Israel. While 70% of our respondents felt that compliance with enforcement of existing regulations is inconsistence, as many as 25% held the view that there is no meaningful compliance to the existing regulations by Nigerian companies.

3.2.2 Disclosure and transparency

3.2.2.1 Regular and Consistent Publications of Results

Nigeria's performance compares favourably with MENA countries in this regard. Its average score of 2.0 is only lower than Israel's average score of 3 but better than morocco's average score of 1. Generally, respondents held the view of some positive action as regards this regulation because only 5% indicated that there is consistent evidence that this is an area of abuse. As many as 35% of our respondents held the view that audited annual and interim accounts of companies are promptly published in a consistent and reliable manner. The same proportion of respondents felt that audited annual and interim accounts are published promptly according to International Accounting Standard (IAS).

3.2.2.2 Annual Independent Audits

The average score of Nigeria ie 2.1 compares only with that of Morocco. It is lower than the average score of other four MENA countries studied by SG(2000). Most respondents (75%) felt that the condition of **independent** audit is not required in Nigeria but is done by most organizations. However, 25% of our respondents believed that this is required in Nigeria and is consistently published.

3.2.2.3 Equal Access to information of all Shareholders

Respondents generally believed that all shareholders do not have equal access to information. Nigeria's average score of 1.3 equals the regional average of MENA countries and is higher than the average score of 1 by Egypt and Morocco. As many as 95% of our respondents, felt that there is no meaningful compliance to this regulation or that compliance/enforcement is inconsistent.

3.2.2.4 Shareholder structure Information Freely Available

The average score for Nigeria is higher here. Its value of 2.6 is higher than the regional average of 2 for MENA countries studied by SG(2000). It compares favourably with the value 0 in Morocco. As many as 95% of our

respondent held the view that this as a requirement of the law in Nigeria and is consistently published or that, even if not required, it is done by major firms.

3.2.3 Role of Board of Directors

The average score of 1.4 regarding the role of the board of directors compares favourably with the average score in MENA countries. It is slightly higher than the regional average score of 1.2 for MENA countries believed that while notion of an independent board with responsibility to shareholders is gaining acceptance, there is little evidence of this in practice. In fact, 65% of our respondents hold the view that this is the case in Nigeria.

3.2.4 Effective Shareholder Right Enforcement by the Courts

Generally, our respondents scored the courts low in enforcing shareholders' rights effectively in Nigeria. The average score for Nigeria is 0. This is like the average score of Turkey and Egypt but surprising much lower than the average score of 3 for Morocco. A majority of respondents (70%) felt that there is no evidence of legal/administrative system with respect to shareholder rights while 24% believed that there is clear evidence that the system does not work.

3.2.5 Quality of access on Visits

Respondents tended to hold the view that while there is inconsistent quality of information during company meetings in Nigeria, the situation is not hopeless. Hence the average score for the measure of quality access during visits is just 1.2 which compares only with the average score of morocco among the MENA countries studied by SG(2000) (Fig.12). a majority of respondents (75%) hold this view, while 15% believed that companies pay regular visit abroad and/or make good people available to meet with investors/analysts when they visit or company is readily available on telephone.

3.2.6 *Sectoral and Overall Assessment*

Nigeria's performance sectorally is best in disclosure and transparency issues where the sectoral average score is 2.0 out 3. In contrast, the average score for shareholders' rights is 1.6. Overall country average of the corporate governance is 1.3 which is same compared to average of 1.4 for Morocco and lower than the value of 1.8 for Egypt. However, the total country score of 18.1 out 36 is better, than 18. For Czech Republic and Morocco, and 14.1 for the Anglo-American tradition of corporate governance than the transition economies of Eastern Europe, this overall performance deserves to be improved on.

3.3: Challenges of corporate governance for post consolidation banks in Nigeria

In 2006, CBN listed 16 challenges that post consolidation banks may face in Nigeria (CBN, 2006 pp 6-8). The recent happenings in the Nigerian banking industry are clear attestation to these challenges. From Table 2, we discuss some of them that are pertinent to this discussion.

3.3.1: Technical incompetence of board and management:

In view of the greatly enhanced capital base of the consolidated bank, Board members lack the requisite skills and competencies to effectively redefine, re-strategize, restructure, expand and/or refocus in the areas of change of corporate identities, new business acquisitions, branch consolidation, expansion and product development.

3.3.2: Relationships among directors:

The dominance of a "key man" emerges with the attendant problems. For example, Equitorial Trust Bank and Oceanic Bank. In Saturday Punch of October 10, 2009 page 44, there was a caption "Are banks established to defraud the Public?". A statement was credited to a director who owned a controlling share and also indebted to the bank saying "I owe myself and there is nothing in that".

3.3.3: Increased levels of risks:

Inspite of recapitalization, very few banks have a robust risk management system in place. With the huge amount of funds available to them and the significantly increased legal lending limits, banks are financing more long-term mega projects in oil and gas as opposed to the existing working capital/trade financing. Given the expected significant increase in the level of operations, the banks are facing various kinds of risks which lead to significant losses. The management of risks in a transparent and ethnical way will thus present some issues bordering on corporate governance. For Example Margin Loans

3.3.4: Inadequate management capacity:

Recapitalization of banks makes Directors and Managers to be running a much larger organization and controlling a significantly higher level of resources. The fact sill remain that adequate management capacity is needed to efficiently and profitably run a larger organization.

3.3.5: Resurgence of high level malpractices:

To boost income as a result of intense competition and lack of enough viable projects, malpractices resurface in post consolidation banks in Nigeria. Such sharp practices include round-tripping of FOREX, excessive customer charges, falsification of records etc., and adoption of un-ethnical methods to poach customers.

3.3.6: Insider-related lending:
Banks consolidation fails to achieve transparency through diversification in bank ownership. This is still pervasive influence of family and related party affiliations in banks and this resulted in huge levels of insider-abuses and connected lending. For Example Intercontinental Banks and Oceanic Banks
3.3.7: Rendition of false returns:
Nearly all banks in Nigeria engage in rendition of false returns to the regulatory authorities and concealment of information from Examiners to prevent timely detection of unhealthy situations in the banks. There is absolute lack of transparency and accountability. The concealment of material issues discovered by banks during their pre-merger due-diligence also compromise good corporate governance. As a matter of fact the accounting information of banks has lost its relevance in Nigeria.
3.3.8: Ineffective board/statutory audit committee:
The audit committee, which comprises both directors and shareholders who are not board directors, is composed of people who are not knowledgeable in accounting and financial matters thus rendering the committee less effective.
3.3.9: Absence of a robust risk management system:
There is the belief that huge amount of funds that become available to banks increased their legal lending limits and make them engage in financing long term mega projects. The management of the attendant risks in a transparent and ethnical manner therefore requires, as part of sound practices, the institutionalization of a robust risk management system. This is absolutely lacking in all banks. The huge amounts of non-performing loans and attendant impact of near collapse of capital market in Nigeria are clear attestations to this fact
3.3.10: Transparency and adequate disclosure of information:
These are key attributes of good corporate governance that banks need to cultivate with new zeal in order to provide stakeholders with the necessary information to judge whether their interests are being taken care of. Currently there are many deficiencies in the information disclosed, particularly in the area of risk management strategies, risk concentration, performance measures etc. These shortcomings need to be addressed for a good corporate governance in the banking sector of Nigeria.

4. Conclusion and Recommendations

This paper reviews practice of corporate governance in the banking sector of Nigeria and analyzes the standard of corporate governance in Nigeria. Our review of the legislation relating to corporate governance in the banking sector and the analysis of the standard of corporate governance in Nigeria clearly show a divergence between the code of corporate governance and its compliance. This divergence therefore raises many issues.

1) Institutions and the legal framework for effective corporate governance appear to be in existence;
2) Compliance appears to be weak or nonexistent;
3) Enforcement appears to be weak or nonexistent;.
4) The CBN has failed woefully to perform its oversight role; and
5) The banking supervision department of CBN has compromised their roles.

Banks in Nigeria negate the basic hallmarks of banking which are high degree of professionalism, transparency, and accountability. These are very essential for building strong public confidence in the banking industry. The recent systemic distress in the sector and unpleasant consequences on all shareholders therefore call for certain imperatives of good corporate governance;

1) Raising of awareness and commitment to the value of good corporate governance practices among stakeholders;
2) A functional and responsible Board of Directors;
3) Active role of internal and external auditors; and
4) Adequate and comprehensive information disclosure and transparency.

More importantly, for Nigeria to reap the benefits of effective corporate governance and build a sustainable public confidence in the banking industry there is need to strengthen the enforcement mechanism of the regulatory institutions. The role of the **law courts and judicial system** in the regard cannot be over-emphasized. There must be consequences for any actions. It is important to restore the confidence of the average shareholder in the capacity of the judicial system to help him enforce his rights. The rule of law is the bastion of democracy (Oyejide and Soyibo, 2001).

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Table 1. Nigerian: Scores of Measures of Corporate Governance

1. Shareholders' Rights	Average score
a. Fair conduct of shareholders' meetings	1.4
b. Insider trading effectively prohibited	2.0
c. Directors' dealing published	1.0
d. All capital change announced with due warning ad opportunity to participate	1.8
e. Extra-ordinary transactions carried out at transparent prices	1.5
Average Score	1.6
2. Disclosure and transparency	
a. Publication of result-regular and consistent quality	2.0
b. Independent audits	2.2
c. Equal access to information to all shareholders	1.3
d. Information on share holding structure freely available	2.6
Average score	2.0
3. Role of the board of Directors	1.4
4. Effective enforcement of shareholders' rights in courts	0
5. Quality of access on visits	1.2
National Average Score	1.4
Total Score(Maximum 36)	18.1

Source: Field Work 2008