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Corporate Governance: A Reflection on 2023 Nigeria Financial Services Sector Governance Reform

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Certain regulatory developments redefined the Nigerian financial services industry's landscape recently. Chief among them are the two governance guidelines simultaneously released by the Central Bank of Nigeria: (1) the "Corporate Governance Guidelines for Commercial, Merchants, Non-interest, and Payment Services Banks 2023" and (2) the "Corporate Governance Guidelines for Financial Holding Companies in Nigeria, 2023". The pivotal potentials of these guidelines are projected to reinvent corporate governance in the sector. Extrapolating from the perspective of stakeholders' theory, this paper highlights some of the salutary provisions designed to bolster transparency, accountability, and best ethical practices. In providing a deeper insight into some of the innovations, the paper employs a descriptive-analytical approach. The paper concludes that in the quest to maintain stability and enhance public confidence in the financial services industry, subject to the proclivities of the financial services industry, corporate governance regulation must proceed beyond the present reactionary regime.

Keywords: Nigeria, corporate governance, financial service industry, the Guidelines, board

Introduction

The vestiges of the momentous 2009 Banking Failure in Nigeria on the economy remain evident to date. Interestingly, investigations revealed that Nigeria's economy was insulated from the 2007-2009 Global Financial Crisis because it had limited integration and exposure to the global credit system then (IMF, 2009). Thus, domestic events conclusively spurred the 2009 Banking Failure in Nigeria. Unlike the 2007-2009 Global Financial Crisis (Hudson, 2009), which had no evidential link to corporate governance failure (Becht, Bolton, & Ailsa Röell, 2011), on the other hand, 2009 Banking Failure was primarily triggered by fundamental failures in internal governance in the affected financial institutions (Sanusi, 2010). This fact highlights the importance of having a proactive corporate governance regime for the financial industry (Sanusi, 2010). Recently, in response to the near digitalization of every aspect of the operations of the sector, the Central Bank of Nigeria (CBN) in promotion of a sound financial system in Nigeria[1] opened a new epoch in the annals of corporate governance in the financial services sector. The CBN released two guidelines (1) the "Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria, 2023" and (2) "the Corporate Governance Guidelines for Financial Holding Companies in Nigeria, 2023". This piece outlines some of the

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[1] Central Bank of Nigeria (Establishment) Act, No. 63, of 2007 (hereinafter CBN Act), Section 2(d).

salient provisions of these guidelines. It examines their strengths and weaknesses and extrapolates on how best to harness the provisions in entrenching transparency, accountability, and other values in the operations of players in the financial services industry. To provide a deeper insight, the piece examines the capacity of these provisions to accommodate the vicissitudes of the subsector and recommends a more proactive approach to corporate governance regulation in the country.

Trajectory of Corporate Governance in Nigeria's Financial Services Industry

Etymologically, the term "corporate governance" is a relatively recent concept in corporate management. Ironically, regulating the management of corporate entities is as old as when distinct corporate personality was first accorded to artificial bodies. Evolutionary, the wholesale integration of the principles of corporate governance in the management of corporate entities in the financial services industry is closely interwoven with the regulation of Nigeria's corporate space; company law. This emphasis is important because, in Nigeria, only a company, which is duly incorporated in the country and holds a valid banking licence, is allowed to carry on banking business.[2]

Early in the development of the concept and before having a formal corporate governance code, laws regulating companies and allied matters were in addition to internal management codes the regulatory tools for regulating the management of corporate entities in the country. The earliest amongst these legal instruments is the Companies Ordinance of 1912.[3] This was closely followed by the Companies Ordinance of 1917,[4] the Companies Ordinance of 1922,[5] later, the Companies Decree of 1968 (Oraegbunam & Ubanyionwu, 2019),[6] and the Companies and Allied Matters Act 1990.[7] In addition to these general statues are sector-specialised statutes, which in many respects shaped and set minimum ethical and prudential management standards for the financial services industry. Chief among them are the Central Bank of Nigeria Act,[8] Central Bank of Nigeria (Establishment) Act 2007, Nigerian Deposit Insurance Corporation Act,[9] Banking Ordinance 1958, Banking Act 1969[10] and the Banks and Other Financial Institutions Act 1990,[11] Failed Banks (Recovery of Debts) and Other Financial Malpractices in Banks Decree,[12] and Financial Malpractices in Banks No. 18, 1994.

[2] Nigeria, Banks and Other Financial Institutions Act, No. 5 of 2020 (hereinafter BOFIA). Similar provisions were inserted in the repealed Nigeria's Banking Acts. Under the Act, the business of other financial institutions "includes—(a) business of a discount house; (b) bureau de change; (c) credit bureau; (d) finance company or money brokerage; (e) international money transfer services; (f) mortgage refinance company; (g) mortgage guarantee company; (h) credit guarantee; (i) financial holding company or payment service providers; and (g) businesses whose objects include—(i) factoring, (ii) project financing, (iii) equipment leasing, (iv) debt administration, (v) private ledger services, (vi) investment management, (vii) local purchases order financing, (viii) export finance, and (ix) such other business as the Bank may, from time to time, designate, regardless of whether such businesses are conducted digitally, virtually or electronically only." See s 57(1) BOFIA.
[3] Is a verbatim copy of the English Company Act, 1908. The Ordinance was in force in the Colony of Lagos.
[4] Upon amalgamation of the Northern and Southern Protectorate, the need for a national law to regulate the registration of companies led to the enactment of this Ordinance.
[5] This Ordinance repealed the Companies Ordinance 1917.
[6] This Decree was substantially a replica of the English Company Act of 1948.
[7] Cap C 20, Laws of the Federation of Nigeria 2004 (LFN 2004).
[8] The first in the series is No. 30, 1958 and the second is Decree No. 24, 1991.
[9] First was the 1988 Act, Cap N102, LFN 2004, repealed by the Nigerian Deposit Insurance Corporation Act 2006.
[10] Cap 28, Laws of the Federation of Nigeria 1990.
[11] Cap B 3, LFN 2004.
[12] No. 18, 1994.

While none of the abovementioned statutes expressly employed the term "corporate governance", they at one point or another along with the internal governance creed of the various entities, provided the touchstone for measuring minimum best management practices in the sector, serving as the regulatory bedrock for prudential, transparent, and ethical management. Progressively, these instruments introduced key corporate governance concepts, such as oversight functions, minimum auditing and accounting standards, equity ownership, corporate democracy, protection of creditors and minority shareholders, codification of the functions and duties of directors, and others.

The Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria of 2003[13] issued by the Banker's Committee was the first formal instrument to engage the term "corporate governance". The code was issued in response to the financial crisis of the 1990s. In the words of the code "Poor corporate governance has been identified as one of the major factors in virtually all known instances of financial sector distress. It is therefore crucial that financial institutions observe a strong corporate governance ethos." This was followed by the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006, which was purportedly issued to address the challenges likely to arise from the merger of over 89 banks into 25 mega banks (Odiase, 2015).

Following the 2009 Banking Failure, the government among others, responded by promulgating the Financial Reporting Council of Nigeria Act, 2011.[14] The Act was the first statute in Nigeria in the context of corporate management to employ the term "corporate governance". To date, the Act remains the primary statute regulating corporate governance in Nigeria. The FRCNA established an independent regulatory body known as the Financial Reporting Council of Nigeria[15] (FRCN) to administer its provisions and particularly to among others "enforce and approve enforcement of compliance with accounting, auditing, corporate governance and financial reporting standards in Nigeria."[16] These are laudable and enormous responsibilities.

In the interim between the promulgation of the FRCNA and the release of FRCN's code on corporate governance, the CBN in the year 2014 issued[17] the Code of Corporate Governance for Banks and Discount Houses in Nigeria and Guidelines for Whistle Blowing in the Nigeria Banking Industry 2014 (2014 Code). The 2014 Code was majorly criticised for its scanty provisions on whistleblowing and for failing to provide incentives for whistleblowing.

The FRCN after extensive consultations in 2018 issued the present "Nigerian Code of Corporate Governance 2018" (NCCG 2018), which proscribed all existing sectorial codes of corporate governance and made its provisions applicable to every sector of the Nigerian economy.[18] Couched in the form of recommendations, the NCCG 2018 contains prudential management principles covering every facet of management including the compositions and conduct of key officers of the company; assurance mechanisms (risk management, audit, and whistle-blowing); board of directors relationship with shareholders; ethical management; sustainability (environment,

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[13] https://www.cbn.gov.ng/OUT/PUBLICATIONS/BSD/2003/CORPGOV.PDF.
[14] Hereafter "FRCNA".
[15] FRCNA, s 1(1).
[16] FRCNA, s 7(2)(a).
[17] Issued via Circular to Banks and Discount Houses, reference No. FPR/DIR/GEN/01/004 of May 16, 2014, accessed on January 2024, https://www.cbn.gov.ng/out/2014/fprd/circular%20on%20code%20of%20circular%20on%20corporate%20governance%20and%20whistle%20blowing-may%202014%20(3).pdf.
[18] Regulation on the Adoption and Compliance with Nigerian Code of Corporate Governance 2018, s 1.

social, and governance); and transparency (communications with stakeholders and comprehensive honest disclosure), and other corporate governance etiquettes.

Given its general outlook and the likelihood of inadvertent gaps resulting from the peculiarity of individual sectors, the NCCG 2018 allows sectoral regulators to issue sector-specific codes to regulate entities under their purview; subject to prescribing standards higher than those specified by it.[19] These iterations are aimed at ensuring that governance practices in the different sectors meet with the proclivities of global best practices in the respective industry. The CBN[20] took advantage of this prescription to release (1) the Corporate Governance Guidelines for Commercial, Merchant, Non-Interest, and Payment Service Banks in Nigeria 2023 ("2023 Guidelines"), and (2) "the Corporate Governance Guidelines for Financial Holding Companies in Nigeria, 2023" ("FHC Guidelines") to address the uniqueness inherent in the activities of the financial services industry.

The two guidelines are on all fours similar to one another but for some infinitesimal variations; each is a replica copy of the other and imposes substantially the same obligations. Given the similarities, having two distinct codes on the same subject matter for different players in the industry is unnecessary. It is suggested that both guidelines be merged into a single instrument. Accordingly, unless otherwise stated, both guidelines are herein discussed as one and jointly referred to as "the Guidelines".

Reflection on Salient Provisions of the New Guidelines

The Guidelines took effect from August 1, 2023[21] and embrace much of the motif of the NCCG 2018. The Guidelines are couched in obligatory terms. The following subsections consider some of the innovations.

Applicability

Unlike previous codes, which were exclusively applicable, the Guidelines concede and support a pluralistic regulatory regime; the provisions apply concurrently with that of the NCCG 2018.[22] However, in the event of a conflict between the Guidelines and NCCG 2018, the Guidelines are silent on the supremacy of any of the provisions. But then, what can be deduced from the Guidelines is that the provision of detailed guidance on the application of the "Principles, Recommended Practices and Responsibilities" contained in the NCCG 2018 is one of the listed primary objectives of the Guidelines. Given this objective, the Guidelines function both as a regulation and interpretative reference book on how best to apply the provisions of the NCCG 2018 in the financial services industry. Consequently, the objective obviates incidents of conflict because the provisions of the NCCG 2018 are expected to be applied in harmony with the interpretation provided by the Guidelines.

In scope of application, the Guidelines have wider coverage than that of the previous codes. Their catch-net extends to Commercial, Merchant, Non-Interest, and Payment Service Banks (CMNIBs) on the one hand and, on the other to Financial Holding Companies (FHCs) along with their subsidiaries.[23] Given the near wholesale digitalisation of the sector, the broadening of the scope indicates the imperative of preventing and proactively

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[19] See Para. C, the preamble to NCCG 2018; Code Philosophy.
[20] The CBN relied on s 2(d) of the CBN Act 2007 and s 56(2) and 67(1) of the Banks and Other Financial Institutions Act (BOFIA 2020).
[21] 2023 Guidelines, s 29.0 and FHC Guidelines 28.0.
[22] Ibid.
[23] The Guidelines, the paragraphs headed "Application".

mitigating anticipated incidents of financial crimes and to ensuring compliance with the tenets of good governance by all players.

Board of Directors and Meetings

Tritely, the main organs of the company are the board of directors and the General Meeting. Interestingly, the directors are for all purposes collectively and individually regarded as the officers of the company[24] as well as its alter ego.[25] They are persons "… duly appointed by the company to direct and manage the business of the company."[26] As a result, they are the directing mind and will of the company, with power to bind the company.[27] Consequently, because of the enormous powers, the Guidelines prescribe higher standards of governance than previous codes and impose wider obligations on the board of directors and the individual directors. In furtherance of the underlying omnibus joint and personal liability of members of the board, section 2 of both Guidelines enumerates some distinctive roles and responsibilities. In this wise, section 2.1 reiterates the directors' duty of care as outlined by CAMA.[28] However, to bolster accountability, the section imposes strict liability on the board and its members where any of the responsibility is breached.[29] Justification for this is not farfetched, every director severally and jointly is saddled with the responsibility of directing and managing the company,[30] therefore, is a proper person to be held accountable for its activities. In other words, because the director is directly or indirectly responsible for the day-to-day management of the affairs of the company, it follows that every director should be held responsible, as it were, for his actions or inactions.

To entrench transparency and predictability in the process and outcome of decision-making processes, the Guidelines invite the board of directors to subject to the approval of the CBN make Charters for the board of directors and its committees.[31] Given the dynamism of the financial service industry, to avert a situation where the charters may become moribund, the board of directors is obliged to at least once triennially review the charters. To subject the charter to quality test, the board must within thirty days of the review and before implementing the outcome, transmit the approved copy to the CBN for its "NO OBJECTION".[32] In addition to other provisions, the charters must contain provisions dictating transparent process for the appointment of members of the board of directors.[33] In the case of the committees, in addition to other provisions, the board-approved Charter must expressly state the terms of reference and composition of the committee.[34]

In recognition of the place of proactive planning and purposeful execution in successfully managing corporate entities, the Guidelines obligate the board of directors to develop and approve short, medium, and long-

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[24] CAMA, s. 868.
[25] *Longe v. F.B.N. Plc* (2010) 6 NWLR (Pt. 1189) 1.
[26] CAMA, s. 269 (1).
[27] *Baffa v. Odili* [2001] 15 NWLR (Pt. 737) 709 at 737; *Olawepo v. S.E.C* [2011] 16 NWLR (Pt. 1272) 122 *Iwuchukwu v.Nwizu* [1994] 7 NWLR (Pt. 357) 379.
[28] CAMA, s. 308.
[29] 2023 Guidelines, s 2.2 and FHC Guidelines 2.2.
[30] CAMA, 269(1).
[31] The Guidelines, s. 2.3 of the respectively.
[32] 2023 Guidelines, s 2.3 and FHC Guidelines 2.3.
[33] 2023 Guidelines, s 1.1 and FHC Guidelines 1.1.
[34] 2023 Guidelines, s 6.1 and FHC Guidelines 7.2.

term corporate strategic goals[35] and to closely supervise the implementation of the set goals.[36] To prevent complacency, the investment policies and goals must be reviewed at least once in three years. Again as a way of providing a quality gauge, upon completion of the internal review process, a copy of the final document must be forwarded to the Director of Banking Supervision Department (BSD) of the CBN.[37]

Risk Management and Compliance

Despite the abundance of risk management provisions in the then extant law,[38] the examinations conducted by regulators after the 2009 Banking Failure, identified reckless risk-taking by affected banks as one of the contributory factors (Sanusi, 2010, p. 10). In other words, weak implementation and enforcement of prudential provisions were at the heart of the crisis (Soludo, 2004). In addressing the lacuna, the Guidelines promote a risk-preventing governance approach.

The approach enjoins the board to combine a distress-preventing and detecting supervisory method. To this end, the board of directors is required to formally outline in the corporation's Enterprise Risk Management (ERM) Framework its "risk appetite, risk culture, governance architecture, policies, procedures and processes for the identification, measurement, monitoring and control of the risks inherent in its operations."[39] A Non-Interest Bank (NIB) is further required to ensure that its risk strategy conforms to Sharia governance principles regulating non-interest banking.[40] The ERM must aggregate the authority of key risk officers, assign responsibilities, and obviate detrimental risk-taking by explicitly defining the roles and responsibilities of key officers such as the Board Risk Management Committee (BRMC), Executive Director in Charge of Risk Management (ED Risk), Chief Risk Officer (CRO), senior management, and internal control function.[41] Since professionalism and competency are prime considerations for appointment under the regime of the Guidelines. Every ERM framework must state the relevant qualifications and experiences required of such officers,[42] who must be fit and proper persons.[43] Consistent with the motif of aligning with global best practices, the ERM framework is required to be reviewed at least once in three years.[44] Finally, to eliminate incident of gap between the provisions of the ERM framework on the one hand, and practice and procedure on the other hand, the board of directors must at least once in a year assess the effectiveness of its implementation.[45]

Closely connected to risk management provisions are the detailed directions on procedural practical compliance. To galvanise effective oversight function, the Guidelines prohibit the board from outsourcing compliance functions.[46] Consequently, boards of CMNIBs are to appoint an ED as Executive Compliance Officer (ECO), while FHCs are to appoint a Chief Compliance Officer (CCO)[47] who performs similar functions

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[35] 2023 Guidelines, s 2.4 and FHC Guidelines 2.4.
[36] Ibid.
[37] 2023 Guidelines, s 2.5 and FHC Guidelines 2.6.
[38] The repealed Banks and Other Financial Institutions Act, 1991, No. 25, Cap B3, Laws of the Federation of Nigeria, 2004.
[39] 2023 Guidelines, s 2.7 and FHC Guidelines 2.7.
[40] 2023 Guidelines, s 2.23.4 and FHC Guidelines 2.7.
[41] 2023 Guidelines, s 12.1 and FHC Guidelines 14.1.
[42] 2023 Guidelines, s 6.14(b)(i).
[43] 2023 Guidelines, s 12.2 and FHC Guidelines 14.2.
[44] 2023 Guidelines, s 12.6 and FHC Guidelines 14.5.
[45] 2023 Guidelines, s 12.5 and FHC Guidelines 14.4.
[46] 2023 Guidelines, s 13.1 and FHC Guidelines 15.1.
[47] FHC Guidelines, s. 16.1.

as an ECO of CMNIBs.[48] The schedule of an ECO includes ensuring adherence to internal protocols and financial reporting obligations.[49] The office holder is required to cascade regulatory requirements and expectations. Other functions include control and operational functions like audit, risk management finance, foreign exchange transactions, Anti-Money Laundering/Combating the Financing of Terrorism and Countering Proliferation Financing (AML/CFT/CPF), Information Technology (IT), and cyber-security[50] to present to the board all detected infractions and concerns.[51] The appointment of an ECO or a CCO must be communicated to the CBN;[52] the requirement underscores the imperative of adhering to due process, and appointing a fit and proper person to the office. Given the sensitivity of the office, a director appointed as an ECO or CCO is prohibited from combining the responsibility with any other income-generating activity.[53] On the whole, despite the power to delegate compliance functions by the board, its oversight function over policies and procedures relating to compliance and AML/CFT/CPF subsists.[54] The imposition re-emphasises the joint and personal liability imposed on members of the board; and is validly justifiable in the circumstance because the ECO operates under the direct supervision of the board with the obligation to present "… all regulatory infractions and concerns"[55] to it.

With special regard to the uniqueness of NIBs, the Guidelines devote special provisions on internal audits and compliance functions in NIBs, which among others authorise an NIB to establish a Sharia Review/Compliance (SRC) unit, headed by an Internal Sharia Compliance Officer (ISCO), who reports to the CCO.[56] The SRC is empowered to conduct regular assessments to ensure compliance with Sharia requirements in the operations and activities of the NIB.[57] Furthermore, NIBs are to appoint an Internal Sharia Auditor (ISA) as the head of the internal Sharia audit function. The holder of the office must not be below the rank of Assistant General Manager.[58] These provisions are designed to reinforce transparency in line with Sharia's banking principles.

Other Key Responsibilities

Among others, similar responsibilities imposed on the board of directors include developing and implementing an Information Technology Framework;[59] having in place a framework for the delegation of authority; defining and delimiting the authority of the various offices; specifying the threshold for all manner of transactions;[60] establishing a credit committee to be known as Board Credit Committee (BCC), which is required to be entrusted with oversight responsibility over credit matters.[61] To mitigate incidents of the ominous nemesis of insider abuses,[62] the Guidelines specify as part of internal protocols requirements that all insider credit

[48] FCH Guidelines, 16.4.
[49] 2023 Guidelines, s 2.13.
[50] 2023 Guidelines, s. 15.2(a).
[51] 2023 Guidelines, s. 15.2(b).
[52] 2023 Guidelines, s 2.13 and FHC Guidelines s 16.3.
[53] 2023 Guidelines, s 15.1.
[54] 2023 Guidelines, s. 2.6 and FHC Guidelines, s 2.6.
[55] 2023 Guidelines, s. 15.2.
[56] Ibid, s. 16.
[57] Ibid.
[58] Ibid, s. 14.1.
[59] Ibid, s. 2.9.
[60] Ibid, s. 2.17.
[61] Ibid, s.6.5.
[62] Sanusi, The Nigerian Banking, 7.

applications (regardless of the amount) must be rooted through the BCC for its recommendation subject to the express approval of the board.[63] Further, in addition to the board's and its committees' Charters, the board must develop and approve a Code of Business Conduct and Ethics for all employees, which among others must set-out the institution's values, standards, and ethical culture.[64] These are salutary provisions projected to redefine the financial sector's corporate space and insulate it against distress.

Structure and Composition

In harmony with the provisions of CAMA and NCCG 2018, the board of directors under the regime of the Guidelines is composed of both executive and non-executive directors with the NED in the majority both at the board and in committees.[65] The NED must include independent non-executive directors (INED). Compared to CAMA and the NCCG 2018, the Guidelines increased the minimum number of members of the board of directors from five prescribed by NCCG 2018 to seven and reduced the maximum from twenty to fifteen for CMNIBs. In the case of Payment Service Bank (PSB), seven is the minimum, while the maximum number is thirteen directors.[66] Similarly, the minimum number of directors for FHCs is seven and the maximum is nine directors.[67] The explanation for the increase in the minimum number is to accommodate the minimum number of INEDs prescribed by CAMA for public registered companies. Under CAMA, at least one-third of the members of the board must be INEDs and they must not be less than three.[68] At least one of the INEDs must possess requisite "knowledge and experience in innovative financial technology, Information Communication Technology (ICT) and/or cyber security."[69] These adjustments represent a deviation from NCCG 2018, which recommended two INEDs. The imposition of larger minimum INED quotas is designed to strengthen the quality of objective inputs at meetings and the integrity of decision-making.

Other restrictions include (a) the pegging of a subsidiary CMNIB's representation of the board of its FHC and the FHC's representation on the subsidiary CMNIB's board at 30% maximum;[70] (b) where a CMNIB is a member of an FHC, the Chairman of the CMNIB is barred from sitting on the board of the FHC in whatsoever capacity. This applies mutatis mutandis to the chairman of the FHC;[71] (c) a maximum of two members belonging to the same extended family are allowed on the board (this is a modification of the recommendation of NCCG 2018, which prohibits the appointment of an INED who is a close family member of the directors);[72] (d) not more than one member from an extended family is allowed to occupy the positions of Managing Director/Chief Executive Officer (MD/CEO), Chairman, or Executive Director at any point in time.[73] Under the Guidelines, the term "extended family" is defined to include "director's spouse, parents, children, siblings, cousins, uncles, aunts,

[63] 2023 Guidelines, s. 2.22.
[64] 2023 Guidelines, s 2.19 and FHC Guidelines 2.18.
[65] FHC Guidelines, s. 1.4.
[66] 2023 Guidelines s 1.3.
[67] FHC Guidelines, s 1.3.
[68] CAMA, s 275.
[69] Ibid, s. 1.7.
[70] 2023 Guidelines, s. 1.5.
[71] Ibid, s. 3.1.3.
[72] Ibid, s. 1.12.
[73] Ibid, s. 1.13.

nephews, nieces, in-laws and any other construed relationship as may be determined by the CBN."[74]

Another improvement is the requirements for gender diversity and inclusion in the appointment of members of the board of directors. To this end, the board is prohibited from having a mono-gender-based membership.[75] Apparently, this is in recognition of the fact that women are often confronted with the hurdles of discrimination and inequality in workplace particularly in this part of the world, hence, the Guidelines specifically require regulated entities to implement Principle 4 of Nigerian Sustainable Banking Principles.[76] The principle obligates players in the financial industry to "… promote women's economic empowerment through a gender inclusive workplace culture in … Business Operations ..."[77] Taking into consideration the directive, requirements as to skill, competency, and integrity of the process must not be without compromise.

Suitability for appointment to the board of directors under the Guidelines is predicated on possession of knowledge and experience in business and financial matters.[78] In addition, the track record of the appointee must meet the standards for integrity and past performance outlined in the guidelines on competency and fit and proper persons for the Nigerian banking industry.[79] Intending and serving directors are required to disclose any existing or possible appointment to the board of other institutions.[80] Similarly, with respect to NEDs, the Guidelines emphasise that prospective NED shall not be an employee of a financial institution except in instances where the bank is promoted by that financial institution and the proposed NED is representing the interest of that financial institution. Similarly, members of regulatory bodies are not permitted to be appointed as members of the board of directors or senior management staff.[81] Again INED in an FHC is expected to possess sound knowledge of the operations, relevant laws and regulations guiding the business of FHS's subsidiaries and have proven skills and competencies in the respective field.[82] These requirements along with others are designed to produce an independent and ethical driven board. To further enhance governance, the Guidelines set out in specific terms the prerequisites for the structure and composition of the boards across the regulated entities.

Sanctions

Unlike previous codes, the Guidelines are loud on what happens in the event of a breach of any of the provisions. Generally, failure to comply with any of the requirements of the Guidelines and the recommendations of NCCG 2018 or where false, misleading, or incomplete information is provided to regulatory authorities, such will be adjudged as constituting a regulatory breach and attract a penalty. The penalties are relatively severe. In the event of a breach by a director, manager, or officer, the office holder will be held accountable and appropriate sanctions meted. The sanctions could be as severe as suspension or removal from the board particularly for repeated offences. Other sanctions include the imposition of monetary penalties and administrative measures.

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[74] Ibid, s. 1.12.
[75] 2023 Guidelines, s. 1.8 and FHC Guidelines, s 1.6.
[76] 2023 Guidelines, s. 1.9 and FHC Guidelines, s 1.7.
[77] Nigerian Sustainable Banking Principles, 2012 (NSBP), p. 19, accessed on January 2024 https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf.
[78] Ibid, s. 1.10.
[79] Ibid, s. 1.11.
[80] Ibid, s. 1.14.
[81] Ibid, s. 1.12.
[82] FHC Guidelines, s, 3.4.1.

Justification for the New Era

The financial sector occupies a pivotal position in sourcing and allocating capital needed for economic growth in every modern society. Thus it is imperative to have a robust corporate governance regime for the sector. This importance is accentuated by, first, the need to reassure the owners of capital (depositors, creditors, and shareholders) that their rights and interests are protected, and their funds will be prudentially managed; second, to prevent bad managerial risk-taking; and third, to provide the regulators of the sector with macro-prudential regulatory tools to prevent systemic risk failure (Freixas, Laeven, & Peydró, 2015).

The Guidelines ambitiously fit the provisions of the NCCG 2018 to the uniqueness of the activities of the financial sector. To this end, the Guidelines adopt with modifications the principles and recommended practices of the NCCG 2018 and effectively adjusted them to provide governance requirements for the different banking models in the country.[83] From the mandatory tenor of the Guidelines, it would appear that having specialised guidelines for the sub-sector is tacit disapproval of the underlying principle of voluntary adherence of the NCCG 2018. A painstaking perusal of the provisions of the NCCG 2018 reveals that they are couched in the form of self-regulatory recommendations that prioritise the "business judgment rule" (Donaldson & Preston, 1995). In this respect, the provisions of the NCCG 2018 confer wide latitude and unfettered discretion on the boards of corporate institutions in deciding the way and manner to implement its provisions;[84] expressly, the boards are directed to adopt the "Apply and Explain" approach in reporting compliance with its provisions. To avoid the enervating effect of self-regulation, the provisions of the Guidelines are couched in specific mandatory terms, imposing inflexible obligations that must be complied with by the regulated financial institutions: commercial banks, merchant banks, non-interest banks, payment service banks (CMNIBs), Financial Holding Companies (FHCs) along with their subsidiaries.

The imposition of specific obligations through the vehicle of corporate governance regulation is a complete detour from the mundane corporate governance codes drafting technique, which traditionally are couched in the form of "policy statements". The approach of the Guidelines leaves little or no room for the exercise of discretion, thus, addressing one of the deficiencies inherent in traditional corporate governance codes. In essence, the approach equips a formal dysfunctional paper tiger with teeth to bite. Among the benefits of the approach is the potential to compel the boards of regulated institutions to align their internal governance practices with the prescriptions of the Guidelines[85] and safeguard financial stability.

Theoretically, an examination of the provisions of Guidelines reveals that they are nested within the core values of stakeholder theory, which postulates that the intrinsic goal of corporate management is the protection of the interest of a range of stakeholders (Phillips, Freeman, & Wicks). The pent-up theme running through the Guidelines projects the prioritisation of the protection of stakeholders' interests. Accordingly, the Guidelines expressly extend the range of management concerns to include the duty of care and loyalty to act in the interest of the entities' employees and other stakeholders.[86] In furtherance of these obligations, the boards, in formulating internal governance policies are required to "… take into account the legal obligations and reasonable

[83] See the introductions to the Guidelines.
[84] Para C, Preamble, NCCG 2018; Code Philosophy.
[85] 2023 Guidelines, s 2.1 & 21.2 and FHC Guidelines, s 2.1 20.1.
[86] 2023 Guidelines, s 2.1 and FHC Guidelines, s 2.1.

expectations of … stakeholders…"[87] Similarly, the board is obligated to align the remuneration of the executive and board with the long-term interest of the company and its shareholders.[88]

The style adopted by the Guidelines is however not devoid of negative deleterious effects. This is because some of the specified obligations may directly or indirectly disrupt or impinge on the effectiveness of some basic underlying corporate governance concepts, such as shareholders' democracy, "board's autonomy", and so forth. There is also the potential of serving as a disincentive to or inhibiting factor to individual firms from developing distinct forms of internal corporate governance practices. However, it is of greater value to the sub-sector that the provisions of the Guidelines are designed to embed prudential culture in the management of the financial institutions, to protect non-shareholding and shareholders' interests. These are laudable initiatives designed to synchronise corporate governance regulations with the regular features of banking statutes (Laeven, 2013).

Conclusion

The fusion of FinTech into the traditional operations of the financial services industry has no doubt, further heightened the already volatile nature of the subsector. The need to obviate another financial service industry's failure, instigated by internal governance gaps and ensure stability through adherence to the highest corporate governance standards is rhetorically evident in the circular releasing the Guidelines (Central Bank of Nigeria, 2023). The Guidelines represent a momentous paradigm shift in Nigeria's financial services industry's corporate governance regulation. The Guidelines through a series of new and modified governance regulations seek to promote accountability, transparency, and prudential management across all facets of the subsector. Among the novelties tailored to ensure the entrenchment of sustainable good governance practice in the subsector is the engagement of provisions detailing operational guidance and specification of the roles and responsibilities of the board and other key office holders. As it were, these provisions confer authority, bolster independence, and impose individual accountabilities on the holder of the said offices. As a corollary, the provisions provide other stakeholders, regulators, and the general public with a range of minimum expectations from the holder of the different offices upon which accountability may be demanded.

To ensure stability in the financial services industry, exigencies dictate a constant review of the subsector's corporate governance framework. The rationale is to facilitate having proactive regulation as foisted by the dynamics inherent in the subsector. While the Guidelines may at the moment be considered robust, there is however plenty of room for improvement.

For instance, the requirement to establish BRMC and delineate its roles and responsibilities tends to diminish the responsibility of the board in the sphere of risk management. Despite the omnibus imposition of joint and individual strict liability on the members of the board,[89] coupled with the requirement that the approved ERM Framework state the roles and responsibilities of the board and others,[90] to prevent holistic delegation of risk management to BRMC, ED Risk, and CRO, it is particularly important in the pursuit of the board overarching responsibility to expressly insert in the Guidelines the responsibilities of the board with respect risk management.

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[87] 2023 Guidelines, s 21.2 and FHC Guidelines, s 20.1.
[88] 2023 Guidelines, s. 11.2 and FHC Guidelines, s 13.2.
[89] 2023 Guidelines, s 2.2 and FHC Guidelines 2.2.
[90] 2023 Guidelines, s 12.1 and FHC Guidelines 14.1.

Given that the office of the CRO plays a vital corporate governance role in the day-to-day operations of different entities in the subsector, it is a disservice to leave the determination of the minimum qualification requirement to the board. It would be more in line with the objective of the Guidelines to expressly specify minimum requirements for the skills and competence of office holder.

Just as the events that provided the catalyst for Nigeria's financial failure between 2007 and 2009, should governance fail to effectively operate within the organisation, the Guidelines did not provide the CRO with an external line of defence to mitigate the exposure of the organisation. It is therefore imperative that Guidelines in addition to whistleblowing provisions, provide the CRO with external lines of defence.

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