

A REVIEW OF THE REVISED DRAFT CODE OF CORPORATE GOVERNANCE FOR BANKS IN NIGERIA

In continuation of its efforts at building a robust banking industry, the Central Bank of Nigeria (CBN) issued an Exposure Draft Code for Banks in Nigeria (the Code) in July 2012. There have been mixed reactions from public analysts, commentators, investors and operators. The general consensus is that the review of the existing code is long overdue in view of the significant developments that have taken place in the financial services sector in the recent past. Furthermore, the existing Code appears to have outlived its immediate objective which was the provision of guidance to banks that emerged after the consolidation exercise of 2005.

In introducing the draft code, the Central Bank of Nigeria stated that the essence was to “strengthen governance practices, eliminate perceived ambiguities in, and align the Code with current realities and global best practices”. It is in the light of the foregoing that the draft Code proposes to introduce provisions aimed at strengthening the financial services sector. We note that some of the provisions replicate those of the SEC Code of Corporate Governance for Public Companies, an apparent indication of the need to have a unified Code of Corporate Governance.

These new provisions include:

- **Application of the Code** - Application of the Code has been expressly extended to Discount Houses.
- **Board Charter** - The Board is required to put in place a charter and formal statement of areas of authority delegated to Management. This is an improvement on the existing Code which requires that the Articles of Association should clearly specify those matters that are exclusively the rights of the Board to approve apart from those for notification.
- **Limits of authority** - Limits of authority to be set by the Board, specifying the threshold for approval of large transactions “before they take place”.
- **Executive Directors** - Shall not be more than 40% of the board size. The existing Code merely provides that the number of Non-Executive Directors should exceed that of Executive Directors.
- **Tenure of the CEO** - Subject to a maximum of ten years. Upon expiration of this period, the CEO is prohibited from serving in any capacity in the Bank or its subsidiaries, for a further period of 3 years. The existing Code limits the term of Non-Executive Directors to 12 years – 3 terms of 4 years each.
- **Liability:** Members of the Board are severally and jointly liable for the activities of the Bank
- **Board Committees** - The Code introduces the Board Governance and Nomination Committee and excludes the Board Credit Committee as a mandatory Committee. The Committees proposed in the draft Code are Risk Management Committee, Board Audit Committee (distinct from the Statutory Audit Committee) and the Governance & Nomination Committee. The Chairman shall not be a member of any of the Committees and/or those of the Bank's subsidiaries except the Governance and Nomination Committee.
- **Board Meetings** - Directors must attend at least two-thirds of board meetings to qualify for re-election. This is a provision of Section 12.2 of the SEC Code.
- **Remuneration** - Share options offered as part of executive remuneration shall not be priced at a discount except with the authorization of the relevant regulatory authority. Share options are subject to approval at the AGM and shall not be exercisable until one year after the expiration of the tenure of the director. (Section 14.4 of the SEC Code).
- **Sitting Allowance:** Executive Directors shall not receive sitting allowance and Directors' fees. (Section 5.3 (e) of the SEC Code).
- **Rights of Shareholders** – Shareholders shall have the right to obtain information from the Bank and right to participate and vote at general meetings. Every Bank is obliged to have a website with information in respect of matters such as major



developments in the Bank, risk management practices, executive management compensation, local and offshore branch expansion, board and top management appointment etc.

- **Shareholders' Meetings** - The venue of the AGM should be easily accessible and important issues should not be lumped together. In addition, the Board should ensure the implementation of decisions reached at AGMs. Again, these provisions are contained in the SEC Code (Sections 23 and 25).
- **Internal Audit Function:** The Board Audit Committee shall amongst other functions assess the performance of the Internal Audit function and recommend the appointment or dismissal of the Internal Auditor.
- **Ethics and Professionalism** - Banks are mandated to have a code of conduct (Section 36 of the SEC Code), as well as a Whistle Blowing Policy.
- **Conflict of Interest** – Banks are to develop a policy on conflict of interest to guide the Board and individual directors. In particular, directors are to disclose any real or potential conflict of interest before the board or its committee and abstain from discussions and voting on matters they have or may have

conflicting interest. In addition, directors who suspect conflict on the part of another director are to discuss this with the director concerned or the Chairman. Disclosures on conflict of interest to be recorded in the minutes. (Section 16 of the SEC Code).

- **Compliance** - Compliance with the Code is mandatory and Banks are to render quarterly returns on status of compliance.

The proposed CBN Code provides a bit more structure than the existing one. However, there is room for improvement in the following areas:

- **Enforcement and Sanctions** – the mode and quantum of sanctions for violation of the Code should be stated.
- **Independent Director** – the Code should define the term “independent” within the context of its usage.
- **Consultants for Board Evaluation** – As is the case with external auditors, it is suggested that the consultants who conduct the evaluation of the board be rotated periodically to guarantee their independence and the integrity of the reports they provide.



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As indicated above, there appears to be a gradual convergence of the Codes of Corporate Governance, suggesting that the National Code of Corporate Governance as proposed by the Financial Reporting Council Act of 2011 is indeed necessary. It is suggested that the Steering Committee for the development of the National Code of Corporate Governance recently inaugurated by the Honorable Commissioner of Trade and Investment, should consider the SEC Code as a base to build on and further align it with international standards of best practice.

However, the Committee should recognize the need for industry Codes and work with industry regulators to harmonize their codes with the National Code.