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Impact of Corporate Crime on Developing Capital Markets: Case Study of Nigeria

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Abstract. Capital market has been globally acknowledged as one of the main driving forces for the growth of modern national economy in this era of globalization and liberalization. It provides an avenue for both local and international potential investors to access the wealth of a particular country through buying and selling of financial instruments such as shares, bonds, etc. One of the basic requirements for the market to attract investors is that it must be seen to operate under certain level of transparency built on trust and integrity This paper examines the impact of corporate crime within the Nigeria's capital market and its attendant effects on the national economy. The findings of the study reveals that, the cumulative effects of crime taking place within the Nigeria's capital market is seriously having negative impact on its development and the national economy. It is therefore the position of the paper that regulatory agencies of the market should cooperate with one another to ensure that perpetrators of the crime who are indicted or found to have committed such crime in a particular sector are not allowed to operate in another sub- sector of the economy.

Keywords: Capital Market, Corporate Crime, Impact, Economy.

1. Introduction

The problem of crime in human society is as old as the history of mankind. That is to say crime is part of human nature, because it had existed in the past both in poverty and prosperity. In fact, crime according to Sociologist Emile Durkheim is an inevitable component of human society in view of the differences existing among human beings. However, sociologists have classified crimes into different categories one of which is corporate crime.

Corporate crime, which is classified as an aspect of organizational or white-collar crime, is now becoming a serious threat to national economy around the world. Schmalleger (2002:362) defines corporate crime as the violation of a criminal statue either by a corporate entity or by its executives, employees or agents acting on behalf of and the benefit of the corporation, partnership or other form of business entity. He further maintained that the crime can also be seen as a situation in which the powerful institutions or their representatives willfully violate the laws that are formulated to prohibit them from doing social harm, or that require them to do social good in form of corporate responsibility .

In developing countries like Nigeria, where the concept is relatively new, there have been instances where it has or is being committed within the market with devastating impact on national economy. Considering the vital role of capital market in the development of a nation’s economy, this paper examines the impact of corporate crime on Nigeria’s capital market and her national economy.

1.1 Background of the Research Area

The development of Nigeria’s capital market dates back to March 1960 when the Lagos Stock Exchange was registered and incorporated under section 2 of the Lagos Stock Exchange Act 1960. In December 1977, it became The Nigerian Stock Exchange, with branches established in some of the major commercial cities of the country. At present, there are six branches of The Nigerian Stock Exchange. Each branch has a trading floor. The branch in Lagos was opened in 1961; Kaduna, 1978; Port Harcourt, 1980; Kano, 1989; Onitsha, February 1990; and Ibadan August 1990; Abuja, October 1999 and Yola, April 2002. Lagos is the Head Office of The Exchange. The Exchange is the center point of the Nigerian capital market while the Securities and Exchange Commission (SEC) serves as the apex regulatory body. The Exchange, which started operations in 1961 with 19 securities listed for trading, today has 262 securities listed.

The Exchange provides the avenue for trading existing securities, as well as encourages large scale enterprises to gain access to public listing. At present, it is made up of 11 Government Stocks, 49 Industrial Loan (Debenture/Preference) Stocks and 194 Equity / Ordinary Shares of Companies, all with a total market capitalization of approximately N287.0 billion, as at August 31, 1999 (Wikipedia, 2008). Most of the listed companies at the exchange have foreign or multinational affiliations and represent a cross-section of the Nigerian economy, ranging from agriculture and manufacturing to services. The Exchange also provides a mechanism for mobilizing private and public savings, and makes such funds available for productive purposes.

The market has in place a tested network of Stockbrokerage Firms, Issuing Houses (Merchant Banks), practicing corporate law firms and over 50 quality firms of auditors and reporting accountants (most of them with international links). Operations within the market are conducted at two levels, i.e. the primary and secondary markets, respectively. The primary market is where new securities are issued and the mode of offer for securities traded in this market include the offer for subscription, right issues, the offer for sales and private placement. The secondary market on the other hand is where trading in existing securities is conducted. It consists of exchange and over the counter market where securities are bought and sold after their issuance in the primary market.

Major participants in the Nigerian Capital Market are the Securities and Exchange Commission (SEC), which is responsible for the overall regulation of the entire market, the Nigerian Stock Exchange (NSE), a self-regulatory organization that supervises the operations of the public quoted companies and other market operators, such as issuing Houses, Stock broking, Investors, etc., other key participants serving as regulators are the Central Bank of Nigeria (CBN), the Federal Ministry of Finance and the Investments and Securities Tribunal.

In 1980, the Federal Government in her effort to control the capital market established the Securities and Exchange Commission (SEC) pursuant to the enactment of the Securities and Exchange Commission Act of 1979. The agency as the apex regulatory body is saddled with the responsibility of developing and regulating the market in order to maintain proper ethical standards and professionalism. Among the powers of the Commission is the registration of the stock exchange, or its branches, registrars, investment advisers, securities dealers and their agencies. Again, in 1995, the Government acting on the recommendations of the Odife Panel established the Investment and Securities Tribunal (IST) as a specialized judiciary body.

The tribunal is an independent agency vested with the responsibility of adjudicating on disputes and controversies in capital market transactions which are referred to them by the Securities and Exchange Commission's Administrative Panel Committee (APC). The regulatory structure of the Nigerian Capital Market indicates that while the Securities and Exchange Commission (SEC) occupies the apex regulatory position, the Nigeria Stock Exchange (NSE) provides the market environment for transactions and regulation of operators through self-regulatory mechanisms.

On the other hand, the Central Bank of Nigeria and the Federal Ministry of Finance provide supervisory roles by formulating periodical monetary policy guidelines. Finally the Investments and Securities Tribunal (IST), which is a specialized court, also handles all the disputes that are referred to it by the SEC.

1.2 Statement of the Problem and Objective of the Research

The Nigerian capital market like any other capital market in the world is the avenue where corporate organizations, such as banks, public quoted limited liability companies, etc., conduct their financial transactions. It is therefore regarded as a vital sub- sector of the national economy where the wealth of a nation can be bought and sold (Ako, 1999). Although the market is relatively young and regarded as one of the emerging capital markets in the world, recent developments within the market indicate that it is riddled with criminal activities being perpetrated by key "market operators" who hide under corporate identities to commit the crimes.

For example, a study conducted by Aliyu (2011) reveals that several cases of corporate crimes are being committed by the market operators. Prominent among them are: illegal sales of stocks belonging to clients by stock brokers, the diversion or non-remittance of stock proceeds, the illegal or fake circulation and sales of non existing stocks by registered stock brokers and insider dealings, as well as frauds arising from deliberate delays by registrars in releasing share certificates for stocks purchased in the market. The cumulative financial losses arising from these crimes have been estimated to be in trillions of naira in addition to other social costs particularly the damage done to the country's image. Thus, although the market is still young or at the developmental stage, it has witnessed its fair share of corporate crime resulting in its collapsed in 2008 which created serious financial problems within the country's banking sector where many banks were declared as financially distressed and subsequently liquidated by the Central Bank. This goes to show that corporate crime within the capital market can seriously affect the national economy of a country. Therefore, considering the vital role which capital markets play in modern national economies of world, it is generally understood that crimes within the market can have some implications. Against this background, this research was conducted to examine the impact of the crimes committed by corporate entities within Nigeria's capital market.

1.3 Literature Review and Theoretical Framework

The concept of corporate crime, according to Siegel (1997), generated concern as far back as (1900) when a group of writers known as the Muckrakers targeted the unscrupulous business practices of some corporate business leaders in the United States of America (USA). Similarly, academic interest in economic crime, according to Larson (2004), can be traced back to the end of the1940s and early 1950s when a ground breaking research on the black market fraud connected to the ration system after World War II was conducted.

Reid (1996) posits that the term "white collar crime" was coined by the renowned sociologist, Edwin Sutherland, in 1939 during his presidential address to the American Sociological Society. She further explained that although corporate crime is a form of white collar crime, it is however different from the latter because it frequently involves individuals or small groups of individuals acting within their professional or occupational capacities. Hence, she concludes that corporate crime is an organizational crime that occurs in the context of an extremely complex interrelationship, stressing that it is the organization, not the occupation, which is of prime importance. Furthermore, she argued that a more precise distinction between white collar and corporate crime is that:

> If a policy making corporate executive were acting in the name of the corporation and the individual's decision to violate the law is for the benefit of the corporation, as in price-fixing violations, the violation would constitute corporate crime. If on the other hand, the corporate official acts against the corporation, as in the case of embezzlement, and is financing benefits in a personal way from his

official connections with the corporation, his acts would constitute white collar or occupational crime (Reid, 1996:312).

Corporate crime, therefore, according to Reid is defined as "an intentional act (or omission of an act when there is a legal duty to act) that violates criminal statutory or case law and that is committed by individuals in a corporate organization for its benefits" (1996: 312). Siegel (1997) explained that corporate crime was probably what Sutherland had in mind when he coined the phrase "white collar crime". He further stated that corporate crime as a component of white collar crime can be explained by using the seven elements typology created by criminologist, Moore (1980).

Clinard and Yeager (2006) explained that corporate law breaking covers a very wide range of misbehavior by corporations, but the most visible ones include violations like;

1. Accounting malpractices, such as false statements of corporate assets and profits;
2. Occupational safety and health hazards;
3. Unfair labor – practices;
4. The manufacturing and sale of hazardous products and misleading packaging of products;
5. The abuse of competition that restrains trade, such as antitrust and agreements among corporations to allocate markets;
6. False and misleading advertising;
7. Environmental violations of air and water pollution and illegal dumping of hazardous materials; and
8. Illegal domestic political contributions and the bribery of foreign officials for corporate benefits. Arising from the above summation, Clinard and Yeager 2006, therefore, assert that since corporate crime involves a wide range of violations, hence it can be defined as violations of administrative and civil as well as criminal law (2006:XV)

Braithwaite (1989) explained that corporate crime as an organizational crime which generally occurs under the following circumstances:

1. Organizational crime is more likely to occur when an organization (or an organizational subunit) suffers major blockages of legitimate opportunities to achieve its goals.
2. Organizational crime is more likely to occur when illegitimate opportunities for achieving the organization's goal are available to organizational actors. He further explained that a remedy for the above two problems lies in the linking of proposition between the opportunity for the crime and the organization`s corporate policy.

However, Weissman and Mokhiber (1999) posit that corporate crimes are often complicated and difficult to explain to the general public as against street crimes, which may provide visuals of victims injured or of property damaged in a spectacular manner. They further maintained that the media find it difficult to respond to corporate crime because reporting it may compromise the trial by tainting the Jury's perceptions or because of the danger of defamation .They continue to explain that because the news media are owned by large corporations, they therefore deny or refuse to provide the political will or resources to investigate and prosecute offenders.

The impact of economic crime, argued Lame (2002), may be difficult to assess in terms of cost, but the crime ranks amongst the most costly of all criminal activities with dire consequences for societies. Wells (2001) also argued that the problem of corporate crime has now become a sensitive political issue in some countries. For example, in the United Kingdom (UK), following a number of fatal disasters on the rail network and at sea, the term is now used to refer to corporate manslaughter and involves a more general discussion about the technological hazards posed by business organizations. In developing countries like Nigeria, many disasters resulting in the loss of lives and property have also occurred, e.g. the Abuja and Kano plane disasters due to the negligence of the airline operators.

Clinard and Yeager (2006) posit that the consequences of corporate crime can be more severe than conventional or occupational crimes. For instance, a report of the law reform commission of New South Wales (2001) indicates that corporate crime poses a significant threat to the welfare of the community, given the pervasive presence of corporations in a wide range of activities in our society, and the impact of their actions on a much wider group of people than are affected by individual action. The potential for both economic and physical harm caused by a corporation is therefore great.

Mokhiber (2007) also asserts that corporate crimes inflict far more damage on society than all street crimes combined, whether in body injuries or dollar terms. Available data from Federal Bureau of Investigation (FBI), argued Mokhiber (2007), indicate that burglary and robbery and other street crimes cost the American nation $3.8bilion a year, while, on the other hand, losses arising from a handful of major corporate frauds, such as TYCO, Adelphia, WorldCom, Enron, etc., surpassed the losses from all the street robberies and burglaries combined. For example, health care fraud alone costs Americans $100billion to $400 billion a year, savings and loan frauds, which the Attorney General of the United States of America (USA), Dick Thornburgh, called "the biggest white collar swindle in history", cost the Americans $300 to $500 billion, while other lesser corporate frauds, such as auto repair fraud, is estimated at $40 billion a year, etc. Furthermore, according to an FBI estimate, while 16.000 Americans are murdered every year, 56,000 Americans die every year on the job or from occupational diseases, such as black lung and asbestosis, and tens of thousands fall victim to the silent violence of pollution, contaminated foods, hazardous consumer products and hospital malpractice, which are part of corporate crime committed by organizations.

Ndanusa (2002) explained that the world is currently facing increased incidence of corporate crime, particularly financial and other crimes that are sabotaging the economies of most countries. He further stressed that it is in recognition of the above fact that the US government is creating a special financial crime team to root out corporate scandals. Ndanusa therefore, identified the followings as some of the prominent corporate crimes within the Nigeria`s capital market:

1. The falsification of Issuer`s Account/ Financial statements;
2. The non-disclosure of material information in prospectuses and other documents;
3. Mis-statements in the prospectuses and other offer documents;

4. The illegal offer of securities to the public;
5. False trading and market rigging transactions;
6. Market manipulations;
7. False, misleading statements, deceptive conducts; and
8. Insider dealings.

The above literatures indicate that corporate crimes generally involve behaviors such as an individual using a business enterprise to commit theft related crimes or an individual using his or her place within a business enterprise for illegal gain, and business enterprises collectively engaging in illegitimate activity. For example, pharmacists have been known to alter prescriptions or substitute low cost generic drugs for more expensive name brands. Professionals such as lawyers, accountants and bankers have also been found committing professional chiseling in form of the manipulation of records or the falsification of figures in annual reports. Chiseling can also take place in the commodity trading market like the stock or capital market, for instance, the churning of a client account by unscrupulous stock brokers involves repeated excessive and unnecessary buying and selling of stocks with either the intent to defraud the client or in willful disregard of the client investment interest.

Although there are several causes of corporate crime which comes in different forms various scholars have also attempted to explain them from different perspectives. John Braithwaite, an Australian criminologist cited in Siegel (1997), for instance, attempted to integrate a variety of theoretical perspectives to a general theory, which can explain all forms of crime including crimes such as corporate crime. However, the occurrence of this form of crime within the corporate world has prompted scholars to formulate a specific theory known as corporate culture theory.

1.4 Corporate Culture Theory

This theory postulates that some business organizations place excessive demands on employees, and at the same time create a corporate climate, which encourages employees' deviant behaviors. New employees learn that making profit is more important than obeying the rules. The learning process, according to Siegel (1997), is the same way Edwin Sutherland described the techniques of drug dealing and burglary from older youths through differential association. Similarly, Kramer(in Siegel 1997) explained that factors, such as socio-economic, political, cultural, legal, technological, as well as organizational, environmental and inter-organizational relationships, influence the commission of white collar crimes like corporate crime. He further asserts that:

> If the market conditions are weak, competition intense, law enforcement lax, and managers willing to stress success at any cost, condition for corporate crime therefore is maximized. When new employees talk at violating business laws, they are told informally "this is the way things are done here, don't worry about it" (1997:355).

The above assertion is in line with the position of Madden 1977 (in Clinard and Yeager 2006) that:

> If external forces drive the executive to meet the challenge of innovative competition, the internal forces push the executive towards learning how to use power to achieve the ends set by the external environment. To repeat a key theme: the internal master of the executive is the bottom line, guarded relentlessly by the investment analyst. The school, the club, the career ladder all point toward the value of winning at the gamesmanship of power on behalf of the bottom line. Business trade and policy organizations connect the external and the internal corporate world, supportive in ritual and action of the convictions of the collective corps of management (1977:71-72)

Siegel (2004) posits that the corporate culture theory can be used to explain the collapse of companies, such as Enron, where deliberate corporate policy was created to hide profits and avoid taxes. He further maintained that by placing excessive demands on employees, organizations create the climate for crime. In like manner, corporate crimes in Nigeria`s capital market, such as the Cadbury Nigeria Plc, financial scandal, the Bokolans securities scam and the collapsed of some merchant and commercial banks can be explained from this perspective.

2. Methodology

2.1 Data Collection

The in-depth interview (IDI) method was adopted to generate qualitative data from the respondents, which were drawn from 4 statutory regulatory agencies and 6 other institutions whose operations have a direct bearing on the capital market. The questions on the interview guide were constructed in the English language and administered on respondents with the help of research assistants.

The in-depth interview was conducted on two top management staff of the SEC and one each from the NSE, the CBN, the Federal Ministry of Finance and the Investments and Securities Tribunal. Similarly, one middle management staff was interviewed from the SEC, the NSE, the CBN, the Federal Ministry of Finance, the Associations of Registrars, Trustees, Stockbrokers, Issuing Houses and the Chartered Institute of Stock Brokers .The remaining five respondents interviewed were selected from the junior staff cadre of the SEC and the NSE where three were drawn from the SEC and two from the NSE. Here, two factors were taken into consideration, i.e. the relevance of each institution in the capital market regulation and the duties of each respondent within the respective agency.

2.2 Population of the Study

The population of this study was drawn from 4 major regulatory agencies, which are the Securities and Exchange Commission, the Nigerian Stock Exchange, the Central Bank of Nigeria and the Federal Ministry of Finance. Other respondents were selected from the Investment and Securities Tribunal, as well as other professional associations of the capital market operators, such as the Association of Registrars, Trustees, Stockbrokers, the Chartered Institute of Stockbrokers and Issuing Houses in view of their knowledge and understanding of Capital Market operations.

2.3 Sample Size and Sampling Procedure

For the purpose of this study, a total of 20 respondents were drawn to generate data. The size cut across the four Capital Market regulatory agencies, which are the SEC, NSE, CBN, and the Federal Ministry of Finance, as well institutions whose operations have a direct bearing on the market, such as the Investment and Securities Tribunal, the Association of Registrars, Trustees, Stockbrokers, the Chartered Institute of Stockbrokers and Issuing Houses. Furthermore, secondary sources of information (published case files, annual accounts and reports) were consulted to compliment the data generated from the IDI.

The selection was made taking into account factors such as the size of the organization or agency, its staff strength, and the role played by the organization within the capital market. Therefore, since the SEC is larger and the apex of all the regulatory agencies, five (5) respondents were selected from it, while four (4) were selected from the NSE which has lower staff strength compared to the SEC. On the other hand, three (3) respondents were selected from the CBN, and two (2) from the Federal Ministry of Finance because of the fact that they are not directly involved in the regulation of the capital market, since they serve as supervisors and policy makers. Similarly, one (1) respondent each was selected from the Investments and Securities Tribunal, the Chartered Institute of Stockbrokers, the Associations of Registrars, Trustees, Stockbrokers and Issuing Houses in view of their staff strengths and roles in the market. Thus, the total sample size of 20 respondents was used for the study.

The sampling procedure for the study is a non-probability sampling method. This is because the sample was drawn based on the availability of the respondents, taking into consideration their knowledge of the research topic, hence the use of a purposive or judgmental sampling procedure.

3. Discussions of the findings

Majority of the respondents were of the opinion and consensus that there are many effects of corporate crime, especially those that are committed within a vital sector of the economic sector like the Capital Market. One of the management staff respondents from the Nigeria Stock Exchange noted that one of the immediate effects of corporate crime is that, it prevents companies from meeting their social responsibilities to their immediate environments. For instance, if the over ten billion Naira squandered by the management of Cadbury Nigeria Plc. had gone into provision of social amenities, it would have improved the company’s community relations. Such amount could have been used in providing amenities, such as health care facilities, educational facilities, safe drinking water, etc. and these could have raised the corporate image of the company.

Another middle management staff from Securities and Exchange Commission (SEC) the apex regulatory agency of the market explained that the economic effect of corporate crimes within the capital market is too much. She further maintained that the financial cost, which is part of the economic effect of the crimes from few organizations, runs into billions of naira. According to her, there are numerous cases of corporate crimes relating to capital market operations, some of which have been properly documented by the commission. For example, if you take cases such as the recent 13billion naira Cadbury scandal, the over 600 million naira Bonkolans Investment security scam and the hundreds of million naira Thomas Kingsley fraud, you will understand that the economic costs or effects of these crimes are high.

However, a senior management officer from the Investment and Securities Tribunal argued that: The effects of corporate crime cannot be quantified in financial terms alone because apart from monetary loses the victims also experienced psychological stress arising from the betrayal by people whom they entrust their fortune with. For example, many investors whose funds were lost due the failure of banks in Nigeria have developed hypertensive problems, resulting to untimely deaths. Furthermore, the social effects of unchecked corporate crime within a developing capital market like Nigeria can create lack of investment confidence in potential investors. This is because when an investor does not trust the credibility of the market operators or the information on the prospectors he/she is not likely to invest in the market.

Another socio-economic effect of corporate crime, according to a middle management staff respondent from the Central Bank of Nigeria, is that companies affected by such crimes are not able to meet their production targets, as well as staff welfare. He further explained that when this situation is allowed to continue, it can eventually lead to a reduction of staff strength by the organization. Therefore the most immediate effect for this is that, it can lead to a closure of companies, thereby increasing the level of unemployment as people working in the affected companies are eventually retrenched. The effect of a high rate of unemployment, we all know, leads to a high rate of poverty and other social evils, such as crimes and violence.

The most immediate impact of the crime on the capital market according to a respondent from federal ministry of finance is that, the market cannot develop to the international standard due to lack of transparency. Since, the market can only attract investors when there is confidence in its operations. For example, following the recent collapsed of the market where investors lost several trillions through share scams many potential investors have completely deserted the market.

A respondent from stock broking firm one of the key players of the market corroborated the summations by other respondents regarding the decline of investors in the market as result of pervasive frauds by explaining that, at the moment, general public confidence in the market is very low especially among the potential investors. The market according to him was generating public awareness until its recent collapse due the mismanagement of investors' funds by the operators. Thus, today, it is hard for a broker to convince an individual or group of individuals to invest in the stocks of shares in Nigeria's capital market.

4. Summary and Conclusion

The findings reveal among other things that, although the Nigeria/s capital market is relatively young, it is characterized by different forms of corporate crimes. From the majority of the data gathered from the respondents, it is evident that the impact of corporate crime on Nigeria's capital market is enormous. Apart from the general socio-economic effects arising from corporate crime within the market in the country, many respondents identified lack of investment in the capital market, huge financial losses, decline public trust and confidence and the collapsed of the market in 2008 as few negative impacts of the crime on the market.

The finding is in harmony with the assertion of Bradshaw (2005), who argued that the effects of corporate crime in terms of damaging relationships are enormous both in social and economic terms. This is because society is a system or structure with various organs that function in harmony with one another and, therefore, crime within the capital market, which is a sub-sector of the economic structure of a capitalist system, can affect the society as a whole.

4.1 Recommendations

1. Proper monitoring of the market should be given a priority by the regulators through constant surveillance.
2. There is the need to ensure that the rules of corporate governance are not only preached but implemented and made to be one of the central principles of the market.
3. There is also the need for publicity about the activities of the capital market. This will help the public understand operations or market intricacies, such as how and from who stocks should be purchased. This will help in reducing the cases of fraud related to investors patronizing unregistered or fake stock brokers.
4. It is also recommended that the regulatory agencies of the capital market should cooperate with one another to ensure that those who are indicted for fraud in a particular sector are not allowed to operate in another sub- sector.
5. The standardization of records of transactions by market operators must be given a serious priority by regulatory agencies.
6. There must be the political will to implement regulatory policies that are aimed at preventing or reducing the occurrence of corporate crimes within the capital market.

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