STIMULATING THE NIGERIAN STOCK MARKET DEVELOPMENT THROUGH SHARE BUYBACK

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Abstract

Share buybacks have become a common phenomenon in the financial markets worldwide. Since the legalization of the share buyback programme, no single company in Nigeria has expressed interest to repurchase its shares. This paper therefore examines the possible reasons(s) that may have hindered companies in Nigeria from undertaking the share buyback. The documentary research design and qualitative analysis were employed. The paper reveals that companies are discouraged from share buyback as a result of the stringent rules spelt out by the Securities and Exchange Commission (SEC), which in turn lead to high transaction costs for companies. For share buyback to be wholeheartedly embraced in Nigeria, there is the need to relax or even amend some of the unnecessarily stringent rules of the SEC such as the strict requirement for announcement and disclosure prior to and during a buyback program and even some provisions of the Companies and Allied Matters Act (CAMA) 1990 on share buyback like the approval of a buyback program by a special resolution at a general meeting of the company.

Keywords: share buyback, Stock Market, Nigeria

Introduction

There are a number of financial goals available to a firm from which it may choose to pursue one or more in order to achieve its ultimate objective(s). One of such goals is the maximization of shareholders' wealth by offering increased return on investment. Where a firm chooses to pursue wealth maximization as its goal (which is mostly the case), the excess cash flow or return; in addition to appreciation in share value (capital gains) is transferred to shareholders in the form of dividends or stock options. As an alternative method of distributing cash to investors (relative to dividends), share buyback or stock repurchase has grown tremendously in the past two decades (Larbie, 2008).

Studies by Goldman (1999) foresaw share buyback becoming a common phenomenon worldwide. Even nations like Germany, Australia, Japan

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and India who previously prohibited share buyback have now adopted provisions to make them acceptable. Share buyback is a transaction through which a firm repurchases some portion of its outstanding shares in the market. Previous researches by Gelb (2000), Lie (2004), Lamba and Ramsay (2005) and Oded (2005) on share buyback have shown that the market reacts positively to announcements of open market, fixed price and Dutch auction tender offer repurchases. The main motive of share buyback is the attempt by management to convey their assessment to the market that the stock of their firm is undervalued. Thus, share buyback remains one of the common methods of enhancing shareholders' returns.

USA stands amongst the first countries for firms to initiate share buyback. As a result, most of the studies on share buyback focus on the USA. Firms here began repurchasing shares since the early 1960s and this peaked during the 1980s. However, there were no specific regulations governing share buyback in the USA until 1988 (Cook, Krigman and Leach, 2003). The USA has the most liberal process of stock repurchase, with companies permitted to raise debt for the purpose of share buyback. According to Larbie (2008), companies spent $381 billion, $472 billion, $703 billion and $887 billion on share buyback in the USA in 2004, 2005, 2006 and 2007 respectively. In the USA, share buybacks have surpassed dividend payments as a method of distributing excess cash flow to shareholders in the past few years, reversing historic trends. The reasons for this dramatic change are not farfetched. With buybacks, shareholders have the choice to retain rather than to sell if deferring tax is a priority. In addition, share buyback allows investors to make the decision to either buy or not. However, in dividends, the firm decides whether to pay or not. Investors who sell stocks pay tax on the difference between selling price and cost, but dividends are taxed at full value.

In Nigeria, the recent consolidation of the banking and insurance sub - sectors witnessed the indiscriminate floatation of shares by firms in their bid to recapitalize. This in turn over - bloated the number of shares quoted on the floor of the Nigerian Stock Exchange (NSE). Between 2006 and 2007 alone, over 356 billion units of new issues were floated (in addition to existing shares), about 67 percent of which was from the banking and insurance sub - sectors (NSE, 2007). This large number of shares outstanding has significantly eroded the Earnings Per Share (EPS) of these companies, and by extension public confidence. It has also caused investors in these firms to incur severe losses in the form of depreciation in the value of their investments.

The situation was not any better even after the introduction of share reconstruction by some companies, especially banks. In fact, the share reconstruction programme introduced by some banks left many shareholders short-changed. This was further exacerbated by the Nigerian stock market meltdown which led to erosion in market capitalization of about N 3.19 trillion (representing 24.95 percent) between March and December, 2008 (Nkiruka, 2008). This led to huge outcry from investors and management of some companies, who argued that the perennial problem of decline in shares prices can only be adequately addressed if company share buyback is legalised.

Against this backdrop, the federal government came up with measures aimed at addressing this persistent decline in equity prices on the 26th August, 2008; prominent among which was the legalisation of company share buyback in Nigeria. The measures announced allowed a company to buyback up to 15 percent of its outstanding shares, subject to certain conditions (SEC, 2008).

The source for concern however is, despite the apparent need to revive the Nigerian stock market through company share buyback, no single firm has expressed interest to buyback its shares since the legalisation of the programme. Thus, what was expected to be the lifeline for reviving the ailing Nigerian stock market was not embraced by any firm so far.

Bearing the above in mind, a study of this nature would be of immense importance to firms, investors and policy makers in Nigeria. Being a new and relatively unexplored area of research in Nigeria, the study of share buyback could not have been undertaken at a better time than now since all other measures employed have failed to revive the market. Given the persistent general decline in prices in the Nigerian Stock Market, the study would go a long way in providing guidance to policy makers on the likely reasons that may have hampered firms in Nigeria from buying back their shares and the benefits of share buyback to investors, quoted firms and the economy in general.

Thus, the study is of significant relevance in that it would bring to the fore measures that should be adopted by the regulatory authorities of the Nigerian capital market to make share buyback in Nigeria successful and by implication stabilising the stock market, bearing in mind the experiences and lessons of other economies across the globe that have implemented the programme. In the light of this, the paper seeks to address the following basic research questions:

(a) What are the benefits of share buyback to investors and firms? and
(b) How adequate is the existing legal and regulatory framework in terms of encouraging firms to buyback their shares in Nigeria?

The main objective of this paper is to identify the possible reason(s) that may have hampered Nigerian firms from embarking on share buyback programmes. Other objectives include to identify the benefits of company share buyback to firms and investors in Nigeria, and to assess the appropriateness and adequacy of the existing legal and regulatory framework with respect to share buyback in Nigeria.

The Concept of Share Buyback

Share buyback have become a common event in the financial markets worldwide. In a share buyback programme, the company distributes its excess cash flow among the shareholders by way of repurchasing its own shares, generally at a premium. Mishra (2004) defined share buyback as a process that relates to a company buying back shares which it has issued earlier from the market. While Kaniampuram (2008) viewed share buyback as the repurchase of stocks from the existing shareholders by a firm or a company, Larbie (2008) considered it to be the purchase by a company of its outstanding shares from the market, subject to certain conditions. Usually, the shares bought back are either extinguished from the existing capital of the company or retained as treasury shares in order to be able to re-sell them, allocate them to fulfil stock options or to otherwise avoid issuing new shares. While the investor gets an exit opportunity at a higher price than the prevailing market price, the company gets an opportunity to reduce its outstanding equity capital.

Broadly speaking, a company may buyback its shares through one of three ways: open market, fixed price tender offer and Dutch auction tender offer. The open market buyback is the most common means through which companies buyback their shares. Under this method a company buys its shares in the open market through a brokerage house as any other investor does (Lie, 2004). The company has to announce a minimum and maximum buyback price, while the actual price is determined by the market.

Open market repurchases are resorted to when the number of shares to be bought is relatively small (Mishra, 2004). According to Grullon and Michaely (2000), the primary objective of open market buyback is not to boost the company's share price but rather to distribute excess cash to shareholders in lieu of dividend. This argument, however can be faulted on the basis of the fact that, a gradual open market share buyback programme can actually drive up the prices of the stock because of the

positive signal it will send to investors. Consistent with the notion that open market buybacks convey favourable information to the market, Lie (2004), Thirumalvalavan and Sunitha (2006), and Lee and Suh (2008) reported that the stock market reaction to announcements of open market repurchases is positive.

Fixed Price Tender Offer is a very powerful tool to implement a value-creating buyback. Under this method, the company makes a formal offer to stockholders to purchase a large number of shares, usually at a set price. Thus, a company may present shareholders with a formal tender offer, whereby they have the option to submit (or tender) a portion or all shares within a certain period (usually 20-30 day period), at a preset price (mentioned in the public announcement required by regulation), generally at a premium (typically between 15 percent and 20 percent above the prevailing market price) (Mishra, 2004).

A tender offer is resorted to when the number of shares that a company hopes to buyback is slightly large. If the shareholders tender more than the originally specified quantity, the company is at discretion to purchase the whole or part of the excess shares or the company may accept the shares on a pro rata basis. On the other hand, if it is undersubscribed, the company may either accept whatever is tendered or extend the time limit. This method provides equal opportunities to all shareholders to participate in buyback plan (Lee and Rui, 2004).

Empirical studies on the signalling strength of fixed price tender offer by Comment and Jarrell (1991) and Hackethal and Zdantchouk (2004) concluded that fixed price tender offers send positive signals to the market. They argued further that stock price reactions to this method of share buyback are at least twice as large as stock price reactions to open market transactions. The problem with this method however is, the transaction costs of making a fixed price tender offer are much higher to the firm than those incurred through open market repurchases.

Under the Dutch Auction Tender Offer, a company specifies the number of shares it is prepared to buyback from the market at a range of prices. Each shareholder is given the opportunity to submit to the company the number of shares he/she is willing to sell at a particular price. The company specifies in advance the number of shares it wishes to repurchase as well as the minimum and maximum price it will entertain. Typically, the minimum price is slightly above the current market price (Penman, 2001). Upon receipt of all tender offers, the company arrays them from low to high within the range. It then determines the lowest

price that will result in full repurchase of shares specified. This price is then paid to all shareholders who tendered shares at that price or below. The advantage of this method to the purchasing firm is that, since the price is the same; this may encourage certain shareholders to submit low ask prices. Unlike a fixed tender offer, the company does not know the eventual repurchase price.

Results from empirical studies on Dutch auction tender offer by Bagwell (1992) and Chou and Lin (2004) found positive market returns around announcement periods. These positive abnormal returns attest to the signalling effect of this method of share buyback.

Comparing the relative signalling power of open market, fixed price tender offer and Dutch auction tender offer repurchases; Comment and Jarell (1991) and Larbie (2008) found that the signalling power of an open market repurchase was weaker than the two other methods of buyback. This finding is consistent with the existing literature on share buyback. They argued further that if the management of a firm wants to convey private information of positive future prospects to market participants, they can enhance the signalling mechanism by using the fixed price tender offer method. This, however, may not be true for all situations and at all times.

Other less pronounced types of buyback include the private transactions method under which the company buys back shares directly from a particular shareholder, away from the open market, at a negotiated fixed or formula price and the exchange offer method where a company offers shares it owns in another public company, or offers another class of its own securities in exchange for common shares of another company. The private transactions method is most often subjected to abuse by corporate predators who threaten to takeover firms for selfish motives.

Motives for Share Buyback

The intention to buyback shares is certainly good and aims at improving market valuations by facilitating more efficient allocation of resources and imparting stability into prices. The literature is rich with motives as to why companies might choose to buyback their shares (Dittmar, 2000, Mishra 2004, Lee and Rui, 2004, Chemmanur, Cheng & Zhang, 2008, & Larbie, 2008). Although, there is no single dominant motive for companies to buyback their shares nowadays, some of the most commonly cited reasons include increase the underlying share value is the most commonly cited reason for buyback.

Baker, Gallagher and Morgan (2002) surveyed 642 top financial managers to study their opinions about share repurchases from January 1998 to September 1999. They found that undervaluation is the most highly cited reason for repurchasing shares. In theory, the repurchase by a company of its own shares is guided by the principle that the intrinsic worth of the share is substantially higher than the market price and as a result, the management believes that the company's share is undervalued.

Lee and Rui (2004), Lamba and Ramsay (2005), and Chemmanur et al (2008) argued that under normal market conditions, a company's announced plan to buyback its shares usually boosts the share price by sending signals that the underlying shares are quoting below their intrinsic worth (actual value). By buying its shares, the company allows some desperate shareholders to exit and thus enhance the value of the remaining shareholders. Since the buyback is usually at a higher - than - the - market price, the investor who tenders his share back to the company gets to exit at a premium, while those who hold on to their shares benefit from the higher Earnings Per Share (EPS). This is the basis of the signalling and undervaluation hypotheses.

As convincing as this motive for buyback may seem to appear however, the possibility of desperate and unscrupulous managers of firms using it to manipulate share prices and mislead investors cannot be ruled out. A clear cut example is where management claim that the firm's share is undervalued, when in actual sense it is not. Investors and other market participants must therefore be cautious.

Another frequently cited reason is to rationalize company capital structure. A share buyback programme is one technique to redistribute the capital components of a firm's equity. It enables equity capital to be reduced by substituting cheaper tax - deductible debt capital for common equity. This strategy allows the company to actively manage its capital and to improve performance measures (Chemmanur et al, 2008). As a company buys back its stock, the equity base reduces and consequently the debt to equity ratio increases. Share buyback therefore is a tool for managing capital structure. Other reasons are substituting share buyback for cash dividend payout, return of surplus cash to shareholders, and to prevent hostile takeovers.

The surge in share buyback programme in recent years may reflect, in part a broad tax-motivated substitution of repurchases for dividends. Since capital gains may be taxed at rates lower than dividend income,

this offers existing longterm shareholders a tax-advantaged distribution. This forms the basis of the substitution hypothesis.

There has been some recent debate on the extent to which such substitution is occurring. The dividend irrelevancy theory of Miller and Modigliani (1961) implies that share buybacks and dividends are perfect substitutes given perfect and complete capital markets. Grullon and Michaely (2002) argued that although there is evidence that firms are increasingly substituting share buyback for cash dividend payouts, theorists are not unanimous on whether dividends and share repurchases are perfect substitutes, or on the degree of their substitutability. The motive fails to recognize that in reality, it is not that firms are cutting dividends and replacing them with repurchases, but that large, dividend paying firms are repurchasing stocks rather than increasing dividends and that much of the growth in popularity of share buyback is attributable to large dividend paying firms.

Share buybacks are preferred alternative investments for any cash flow left over once the company has met its capital investment needs. In such cases, buying back shares, even if they are fairly valued should provide a better return than having management throw cash down the drain on low return investments. According to Dittmar (2000) and Lie (2004), share buybacks reduce free cash flow, and hence reduce the amount of excess funds that managers can waste through investments in negative net present value projects. However, this motive can be criticized on the ground that it could send a bad signal that management has run out of ideas and as a result could not find a viable re-investment window for surplus funds.

A company may buyback its shares in order to eliminate an undesirable shareholder or to defend against any threatened takeover proposal. Jarrell and Comment (1991) found that a buyback offer at very high prices raises the market price and hence makes the takeover more expensive for the raider. Thus, share repurchase may be used to stop potential corporate raiders from accumulating shares in the open market. However, this motive fails to recognize the fact that takeover attempts by corporate raiders or desperate shareholders in most cases is an indication that management have failed in their responsibility of maximizing the company's wealth and keeping shareholders satisfied.

Benefits of Share Buyback

Substantial research efforts have been devoted to the benefits of share buyback to the firm and its shareholders. Jarrell and Comment (1991) Mishra (2004), Kiniampuram (2008) and Larbie (2008) found that the

benefits of share buyback include improvement of the stock's EPS, stabilisation of the stock's market price, provision of tax advantage to shareholders and improvement of key ratios.

Companies acquire their own shares to improve earnings per share by reducing the number of shares outstanding in the market. With fewer shares outstanding after a buyback, and assuming that buyback does not adversely affect the company's earnings, the earnings per share of the remaining shares will increase. Each remaining outstanding share after a buyback represents a slightly higher percentage of the company which are used to recalculate the EPS, one of the most important factors in determining share price. Thus, buyback programmes tend to result in higher prices and eventually, increased EPS.

Share buyback helps the company to curb the menace of persistent decline in the prices of its shares, especially in difficult investment terrains. A good example is the prolonged depression in the Indian Stock Market between 1996 and 1998 which compelled the Indian authorities to consider introducing share buyback (in 1998) as the best alternative to stabilize prices (Kaniampuram, 2008). Since buyback programmes assure nervous investors that the management is confident about the future prospects of the company, this information, naturally translates into higher and stable stock prices.

Another important benefit of share buyback is that it offers tax advantage to tendering shareholders (relative to dividends). This is so because capital gains from share repurchases are taxed at rates lower than dividend income. The relative lower rate of tax on share buyback adds to the total income of shareholders who choose to exit by tendering or surrendering their stock to the company.

The reduction of outstanding shares through share buyback has an accounting effect not only on EPS but also the Price/Earnings (P/E) ratio and the Return on Equity (ROE) which make the number look better even though performance is the same. Improved ROE of the company leads to higher P/E multiple. Share repurchase also improves the Return on Networth (RONW) and book values.

Notwithstanding its benefits, share buyback has been criticized. Share buyback can be detrimental to the company's health if it does not have enough funds to buyback its shares and they are replaced by debt. Since share buyback weakens a company's balance sheet by reducing cash, buying back shares can be hazardous for debt-heavy companies. This is because for any company, a buyback shifts the weighting of the balance

sheet toward debt and away from equity. This helps a company post higher return on equity but only at the expense of riskier balance sheet. Some companies cannot afford this luxury.

Contrary to common belief, a quick market revival cannot be guaranteed by a buyback as it may be impacted by other factors. Moreover, the share buyback may also send negative signal to the share market. If this happens, the performance of the company on the capital market may reverse, with share prices drifting down post buyback. The resultant effect would be a complete erosion of investor confidence.

There is also the common apprehension that if companies are allowed to buy back and re-issue shares, management may resort to manipulation. They may, through collective trading depress prices and create anxiety among investors and tempt them to sell the shares to the company by making apparently attractive offers. Corporate energies may be diverted from the main business of the company to share market games.

Notwithstanding the drawbacks, the benefits of share buyback (especially in a persistently bearish stock market like Nigeria's) by far outweigh the likely negative implications. This is because most of the above weaknesses are due to market imperfections, and not share buyback per se.

Methodology

This paper adopts the descriptive research design in explaining the concept, benefits, process and requirements for share buyback in Nigeria, among others. The choice of this method is warranted by the fact that where a new area of research is being developed and explored, it is very sensible to focus on systematic description as the objective of the research (Punch, 2008). This is considered so because the careful description of complex social processes can help us to understand the factors to concentrate on for later explanatory (empirical) studies. Thus, since share buyback is an emerging concept in the Nigerian finance and investment environment, it can only be clearly understood through systematic description.

The paper relies heavily on secondary data collected from textbooks, online journal articles/publications, working papers, annual reports and online materials from the websites of the Nigerian Stock Exchange (NSE) and the Securities and Exchange Commission (SEC), editorials and commentaries from newspapers and other useful on-line materials.

Result and Discussions

The Nigerian Capital Market was described as the fastest growing in the sub-Saharan Africa by Okereke-Onyuike (2008) and lived up to this billing till the first quarter of 2008. Market capitalization experienced an all - time high of N12.64 million on 7th March 2008, while All Share Index attained a peak of 66,371.22 points. Suddenly, global economic recession crept in and has become a serious issue. There is still dissention among scholars and financial experts on the extent to which the global economic crisis has affected the Nigerian Stock market but this is not the focus of this paper.

The market opened this year on a good note with capitalization of N60.69 trillion and All Share Index of 58,750.55 points as at January, 2008. By the end of December 2008 however, the market lost 11.60 percent of its capitalization to close at N9.45 trillion. Similarly, the All Share Index depreciated by 24.46 percent to stand at 44,380.94 points. This persistent decline in the prices of quoted equities on the floor of the Nigerian Stock Exchange may be attributed to factors such as market adjustments to political risk and inconsistent policies of the regulators in the financial industry such as the controversial pronouncements of the cancellation of the margin facility and the unified financial year for banks, among others (Muhammad, 2008 and Nwagbaraji, 2008).

While the above factors may be considered as the immediate causes of the meltdown in the Nigerian Stock Market, the remote cause is simply the bloated number of shares outstanding in the market. The consolidation of the banking and insurance sub-sectors has given rise to fresh issues amounting to billions of units of shares. The table below shows the number of new issues (equity) floated by quoted companies in Nigeria between 2004 and 2007:

Table 1: Summary of New Issues (Equity) Between 2004 and 2007

	PUBLIC OFFER /PRIVATE PLACEMENTS	RIGHTS ISSUE	PREFERENCE SHARES	INTRODUCTION	TOTAL
2004	25,838,224,000	3,045,868,131	-	16,251,250,000	45,133,342,131
2005	19,429,473,000	8,234,552,824	5,000,000,000	31,637,459,000	64,311,484,824
2006	170,369,980,000	-	2,699,500,000	-	173,069,480,000
2007	98,267,548,000	14,805,608,000	4,926,966,000	52,737,732,000	170,737,854,000
TOTAL	313,905,225,000	26,086,028,935	12,626,466,000	100,636,441,000	453,254,160,955

Source: Nigerian Stock Exchange Annual Report and Accounts (2004- 2007).

Table 1 indicates that a total of 453,254,160,955 units of new equities have been issued by quoted companies between 2004 and 2007. This total consists of 45,135,342,131 units issued in 2004, 64,311,484,824 units in 2005, 173,069,480,000 units in 2006 and 170,737,854,000 units in 2007.

Furthermore, Table 1 reveals that a total of 313,905,225,000 units were issued through public offer/private placements, 26,086,028,955 units through rights issue, 12,626,466,000 units as preference shares and 100,636,441, 000 units through introduction within the same period. This large number diminished the EPS and thus culminated in general price decline in the Nigerian Stock Market.

In the bid to arrest this slide, the Nigerian Stock Exchange came up with a circuit breaker in June 2008 which did not reverse the decline in prices, suggesting that much more needs to be done. This prompted the Federal Government to set up the Presidential Advisory Team (PAT) to brainstorm on ways of reviving the market. The team resolved that the following measures were to take immediate effect:

(i) The Office of the Attorney - General of the Federation should issue an exemption to the provisions of the relevant sections of the Companies and Allied Matters Act (CAMA) 1990 on share buyback to allow quoted companies buy back up to 15 percent of their outstanding shares albeit with the approval of the Securities and Exchange Commission (SEC).

(ii) A capital market stabilization fund be established to intervene promptly, effectively and prudently in the market as and when due.

Prior to the announcement made by the then Minister of Finance on 26th August 2008 that the office of the Attorney - General has been directed to issue an exemption to the provisions of the relevant sections of CAMA 1990, share buyback was prohibited by law in Nigeria. Immediately this pronouncement was made, the Securities and Exchange Commission issued an amendment to its existing rules titled "Amendments to the Rules and Regulations of the Securities and Exchange Commission on Share Buy-Back" to reflect the legalization of share buyback in Nigeria. These amended rules prescribed the procedure and regulations guiding share buyback in the Nigerian Capital market.

Below are the highlights of the amendments and their implications:

(i) The aggregate number of shares to be bought back shall not exceed 15 percent of the company's existing issued and paid up equity capital in any given financial year: This is in concord with best share buyback practices worldwide. Allowing a company to buyback up to 15 percent of its outstanding shares but not more ensure the protection of shareholders' funds and the long term survival of the organization.

(ii) The buying back of a company's shares shall be by a special resolution as provided in the CAMA: A special resolution, as defined by the CAMA, is that which is passed by such members of the company at a general meeting of which not less than three fourths (75 percent) of the votes cast by such members of the company at a general meeting of which twenty one days' notice has been duly given. The notice of such meeting shall be published in at least two national daily newspapers and evidence of the publication shall be filed with the SEC. Although it is necessary to give an exercise of this nature much credibility and prudence, this rule is viewed by many as too stringent and entails heavy costs for a stock market that direly needs revival. This has raised some concerns that share buyback may not be embraced by companies until the CAMA is amended.

(iii) Shares shall only be repurchased out of the share premium account and/or accumulated profits of the company which would otherwise be available for dividends and shall be reflected in the last audited accounts. The source of funding the buyback shall also be disclosed and the shares bought back shall be cancelled from the books of the company in accordance with the procedures set out in the CAMA: This implies that a company cannot use borrowed funds directly or indirectly through nominee companies to repurchase its shares. This accord with best practices and dictates of financial soundness and solvency of the company.

(iv) The buyback shall be either through Open Market or through Self-Tenders Offer. The buyback shall be a direct purchase made only by the company and the beneficiary shall be the company. For open market buyback, the price of the shares to be bought back shall be at the current market price and for self-tenders offer; the price shall be determined by the Board of Directors and shall not be more than 5 percent above the average market price over the last five days: This is considered too stringent since open market repurchases are not at a premium and self tenders offer are at a maximum of only 5 percent. This may discourage stockholders from tendering their shares.

(v) The maximum time allowed for the completion of the buyback process shall not be more than twelve (12) months from the

date of the shareholders' resolution. Any two buyback programs shall be separated by a minimum period of 365 days after the end of the preceding buyback, even if they are of different classes: While the timeframe for buyback may be considered fair enough, it should have been extended to limit the time, price, volume and even the number of brokers on daily basis within the context of a strongly regulated buyback program.

(vi) The buyback shall not be made if the company is illiquid (i.e. a company defaulting in payments of its obligations including dividend payment). A letter from the Auditors on the going concern status of the company shall be filed with the SEC. A declaration of solvency shall also be filed with the SEC by the Board of Directors of the company that they believe that the company would remain solvent in the foreseeable future. The residual debt - to - equity ratio shall not exceed 2:1 after the buyback (the equity for this purpose is the shareholder's funds). This rule is most welcome, especially after the Cadbury Corporate misgovernance scandal of 2005 which has served as a signal for the need to hold directors and other key professionals such as auditors accountable for breach of their duties. However, the imposition of a 2:1 debt - to - equity ratio is arbitrary as gearing ratio varies from industry to industry. To fix a one-fits-all ratio therefore may not have been appropriate.

(vii) Finally, the company shall make a public announcement in at least two national daily newspapers at least five days to the commencement of the program, disclosing relevant information to the public, such as proposed size, nature, duration and the potential impact on the company's financial position. A similar announcement shall also be made at the conclusion of the exercise: A buyback program as it stands now under this rule will impose high transaction costs for the company. This is because the requirement for information disclosure and filing the evidence of same with the SEC and Corporate Affairs Commission (CAC) will entail costs that could discourage companies from embarking on a buyback program.

Conclusion and Recommendations

There is no doubt that the SEC, which is the apex regulator of the Nigerian Capital Market is determined to ensure that share buyback in

Nigeria is conducted under a strong and effective regulatory framework. The policy standpoint of the SEC for a strong regulation of share buyback makes a lot of sense, especially having regard to the crisis being faced currently globally by capital markets of countries that have been championing a less regulated environment, especially the USA. This is because the credibility of any buyback worldwide is measured in terms of the prudence and robustness of the underlying regulations governing the process.

While the efforts of the SEC in ensuring a credible buyback are laudable, the apex regulator seemed to have misplaced its priorities by being unnecessarily stringent where ordinarily it should have been lenient. For a developing country like Nigeria, share buyback would continue to be a mirage if the apex regulator does not recognize its lapses and take a cue from countries like India where share buyback is a success story.

In order to achieve the desired results and curb all tendencies of market manipulation and abuse of the process, there is the need for the apex regulator to set limits on the time, price, volume and number of brokers in the market on a daily basis. Furthermore, it is also necessary and expedient that the prices of the shares to be bought back be offered at a reasonable premium that would encourage stockholders to tender their stock.

For the programme to succeed there is also the need to put in place measures that would drastically reduce transaction costs to companies. Once the costs associated with buybacks are reduced, companies would be encouraged to embrace the program.

On the whole, the SEC has a lot to do by relaxing rules that appear to be arbitrarily and unnecessarily stringent in order to encourage companies to wholeheartedly embrace share buyback as a as a lifeline for reviving the ailing Nigerian capital market. In this regard, there is the apparent need to push for the amendment of the CAMA to make share buyback more attractive and less difficult to embrace.

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