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Professional Accountants' Responsibility And Whistle Blowing In Corporate Organization In Nigeria

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Abstract: ***The study which focused on professional accountants' responsibility and whistle blowing in corporate organization in Nigeria was designed as an exploratory research. The study focuses principally on the ethical responsibility of the professional accountant in the corporate sector whom it has been established has the primary responsibility for the preparation, review and consultation with management on affairs of the firm. The same professional accountant is also expected to maintain confidentiality regarding the affairs of his or her employer. This ethical responsibility in recent times has been questioned by the public and even from within the ranks of professional accountants. The reason for this is not farfetched from the fact that professional accountants have a duty to protect the public interest through disclosure of wrong doing within the entity they are serving. But often, the duty of confidentiality and the looming threat of law suit invariably tilt the scale in favour of confidentiality ahead of public interest. This has created a dilemma for the professional accountant in the face of weak constitutional and regulatory framework even in so called strong democracies such as the United States, United Kingdom and Australia. The paper found evidence suggesting that though professional accountants are likely to report wrong doing but are more likely to report such to a senior person or corporate governance committee within the entity than reporting to external authorities. The study recommended that legislation for whistle blowing should be enacted to encourage favourable response and to protect whistle blowers. In addition, professional ethics should be reviewed frequently in tune with social, political and economic exigencies.***

Keyword: Whistle-blowing, professional accountants, morality, public interest and Ethics.

I. INTRODUCTION

In the last twenty years, one of the leading discusses among professional accountants and even among members of the public centered on the need and how to ensure that the independence of the auditor (external auditor in particular) is not compromised. The need was seen as the surest way of ensuring the reliability, objectivity and even the integrity of the auditor. However, fresh development in the international financial arena has shifted focus away from issues related to auditors independence to the need for professional accountants to be more pragmatic and actively report wrong-doing within the organization in which they are either working or reporting on. To put it differently, professional accountants are being called upon to go beyond merely articulating internal control weaknesses in management report to blowing the whistle on management illegal activities that comes to light in the cause serving as an employee or external auditor. Erin, Ogundele and Ogundele (2016) perceived that by so doing, professional accountants would have acted ethically and that such an action will impact positively on economic stability and promote sound reporting practice.

Though whistle-blowing dates back to the 70's, renewed interest in the study of whistle-blowing started with the Enron corporate scandal in the United States of America (USA). According to Arbogast (2014), Sherron Watkin's disclosure on the wrongdoing of the executives of Enron paved the way for congressional hearing as to what actually lead to the failure of Enron. The outcome of that hearing led to the improvement on legislation to encourage whistle-blowing and safeguard whistle-blowers. Arowoshegbe, Uniamikogbo and Atu (2017), identified other incidence of corporate financial impropriety involving WorldCom, Global Crossing, Parmalat, Cadbury Nigeria HIH Insurance among others. Theses occurrences

drew attention to the need to review accounting rules, professional ethnics and new legislations to check the powers of corporate executives. Several countries, such as the United Kingdom (UK), Australia, Canada, India, South Africa and Nigeria felt the need to take steps to improve their whistle-blowing laws as a way of checking the excesses of corporate executives and financial impropriety in the public sector.

II. CONCEPT OF WHISTLE-BLOWING

Whistle-blowing in context means to raise alarm or to draw attention of the public or lawful authority to potential hazards capable of harming or that constitute a danger to the public. Again, the sound of a whistle can be seen as a signal for athletes to band off from the starting line. According to Hoffman and McNulty (2014), whistle-blowing as a practice originated from the police blowing their whistle in a bid to apprehend a suspected criminal and effect arrest.

This study focuses on whistle-blowing which pertain to drawing attention on corporate wrong doing with financial consequences. To this end, several consensus definitions by researchers on the subject matter abound. For instance, Marcia, Miceli and Janet (in Hoffman and McNulty 2014) defined whistle-blowing as the disclosure by organization members of illegal, immoral, or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action. A similar definition which laid emphasis on the need for the whistle-blower to have conviction regarding the matter being reported on is found in Bouville's (2007) definition. According to the author, whistle-blowing is the act for an employee (or former employee), of disclosing what he believes to be unethical or illegal behavior to higher management (internal whistle-blowing) or to an external authority or the public (external whistle-blowing). Drawing from the definitions, it is found that whistle-blowing implies that an illegal activity has taken place. Also, while the first definition was not specific as to whom to report the illegal activity, the second definition clearly stated the need to report to management.

The undertaking of whistle-blowing carries with it both praise and ignominy. Miethe (in Bouville 2007) noted that whistle-blowers are traitorous violators of organizational norms on one side, while on the other side they are perceived as heroes who defends values rated higher compared to organizational loyalty. Alleyn, Hudaib and Pike (2013) opined that the action of whistle-blowing is justified if it promotes public good. In other words, the action should not be undertaken for personal and selfish purpose considered outside the boundaries of public good.

III. THEORETICAL FRAMEWORK

Institutional theory provides the framework for understanding why firms and professional accountants often act in a way that is convenient to them when it comes to matters of disclosing wrongdoing of a corporate entity that happens to be their client or employer.

Institutional theory took on significance in the 1970's with notable contributions from Meyer and Rowan (1977), DiMaggio and Powell (1983) who pioneered the neo-institutional movement. In laying the bases for institutional theory, Meyer and Rowan (1977) argued that for modern societies to survive, it must build and rely on institutions that can stand the test of time. The theory recognizes that institution is made up of professionals, programs, policies and rules which provide the myth for success or failure. To benefit from the potentials of institution, organizations attempt to align and conform by structuring activities so as to incur the least cost possible should they proof not so successful in achieving their objectives and goals. By all means, organizations want to be seen as legitimate as this guarantees survival.

In their own contribution to the development of institutional theory, DiMaggio and Powell (1983) asserted that organizations viewed institution as a process; as a result, organizations are forced to become isomorphic at three distinct levels. At the first level described as coercive isomorphic level, the state through the use of laws, regulation, coupled with pressures from other organizations and the society, organizations are compelled to survive by conforming with expectation from these several influences.

The second level is the Mimetic Isomorphic level. Here organizations are affected by technology, market forces, competition from rivals, uncertainties among other. Organizations survive by adopting tactics which have served similar organizations well in the past.

The third level is described as the normative isomorphic level, whereby organizations are forced to operate within the cognitive framework developed by each profession. This involves setting standards, code, ethics, do's and don'ts for members.

In relating this theory to professional accounting bodies, the inference is drawn that the professional accountant, whether as employee or as an accounting firm, gains legitimacy through becoming members of professional bodies and the legal form of the firm. To succeed as a firm or as a professional accountant, it is imperative to uphold the doctrine of confidentiality, integrity and public interest among others as ethical guide. Failure to do so could result in being expelled from membership, loss of client and even loss of employment. This theory clearly explains why professional accountants are often reluctant to blow the whistle on client in so far as compliance and regulatory responsibilities are not in conflict with that of the profession.

IV. METHODOLOGY

This study explores existing literatures on the subject matter, particularly empirical publications in read journals. In gathering data for the study, emphasis was also giving to published work relating to the Nigerian situation, International arena and on how recent and timely the publication was. A total of 80 publications were accessed from which 25 journal and textbooks were selected. Exploratory design was considered justified because it allowed the researcher to assemble, analysis and draw conclusions objectively based on

the information generated from the data collected for the study.

V. OVERVIEW OF DEVELOPMENT IN WHISTLE-BLOWING IN THE CORPORATE SECTOR

Professionals in the diverse field of accounting are not unmindful of the abuses taking place in corporations and did express concern in several ways. Hoffman and McNulty (2014) reported that the association of certified fraud examiners expressed concern over the increasing prevalence of fraud in the United States. Then it was predicted to be $994 billion in 2008 of which 50 percent of this fraud was attributed to the connivance of accountants and top management. The above study provides compelling evidence of the involvement of professional accountants in financial related crime. De George (1986) examined the theory of whistle-blowing and the problem of duty. In his argument, De George provided evidence on the dichotomous view of whistle-blowing as morally prohibited, morally permitted and morally required. He argued that though American society is anti-ratting or telling on others, that that is not a sufficient ground to conclude that whistle-blowing is wrong or a disloyal act. He proceeded to propose four criteria which provided conditions under which whistle-blowing was considered morally required.

According to De George (1986), whistle-blowing is permissible on the following ground;

The firm, through its product or policy will do serious and considerable harm to the public,

The employee who is in knowledge of this fact should make his/her moral concern known in the first instance to management, otherwise, whistle-blowing is not justifiable,

All internal processes must be exploited to resolve the moral concern, starting from the complainer's superior up to the top management and even to Board of Directors,

The Whistle-blower must have access or documented evidence capable of dispelling reasonable doubt about the existence of the moral concern. If proof is upheld, whistle-blowing is said to be required,

The employee or whistle-blower must be convinced that there is a reasonable chance that by going public, the moral concern will be addressed and that the risk is commensurate to the result achieved. Again, if the above condition holds, then whistle-blowing is morally required.

It can be deduced from the above criteria set forward by De George (1986) that whistle-blowing was considered permissible only if the first three criteria are fulfilled. Fulfilling these criteria means that the prospective whistle-blower cannot immediately go public with evidence of the wrongdoing. The whistle-blower should first report to his/her immediate superior prior to considering the option of reporting to top management. These rigorous procedures has the adverse effect of alerting the wrongdoer and it also has the effect of bringing undue attention and pressure on the whistle-blower to the extent that obtaining evidence may prove impossible, except if the evidence is already at hand. Even at that, it is difficult to gauge the chances of success and the risk attached to success when criteria four and five are taken into consideration.

De George's criterion appears to suggest that the moral responsibility of whistle-blowing lies with non management personnel, given the intricate reporting channels specified under the whistle-blowing criteria. In effect, the chances of success is rather slim, as parties on whom complain was being made will have ample time to frustrate the action. It does not matter whether the parties involved are subordinates or superiors. The situation is even more precarious where top management is involved.

Bouville (2007) carried out a study on whistle-blowing and morality. The study made effort to draw out the relationship between professional code of conduct, ethics and morality. Code of conduct was seen as the responsibility which a professional owe to the public. To this end, whistle-blowing was considered a mandatory responsibility owed to the public while ethics was seen as rules which assist in creating solution through upholding standards of professions. Morality was explained as something good for the public and which often was at cross purposes with the interest of the self.

This conflict of interest explained above account for why it is difficult for the professional to tow the moral high ground of blowing the whistle on their employer or client. One possible explanation for this behavior is based on the knowledge that whistle-blowing involves risking one's career and not blowing the whistle can make one culpable. Overall, the author concluded that whistle-blowing if undertaken, it should not be done for selfish reason and personal gain.

Davis (1996) examined the standard theory of whistle-blowing and found out that the use of the word 'harm' was fraught with different meaning and interpretations which made it difficult to justify disclosure and at the same time led to increased risk on the part of the whistle-blower. He therefore offered a new theory which he referred to as complicity theory. The theory he proposed which are six in number are;

C1 what you will reveal derives from your work for an organization;

C2 you are a voluntary member of that organization;

C3 you believe that the organization, though legitimate, is engaged in serious moral wrongdoing;

C4 you believe that your work or that organization will contribute (more or less directly) to the wrong if (but not only) you do not publicly reveal what you know;

C5 you are justified in beliefs C3 and C4 and

C6 beliefs C3 and C4 are true.

Analysis of the complicity theory shows that the theory has tactically avoided the use of the word harm and opted for moral wrong doing and fortunately, this term has been used in several researches, such as De George (1986), Dworkin and Baucus (1998). The use of the term moral wrong doing in aforementioned studies assured the credibility of the term.

According to Davis (1996), whistle-blowers are expected to base disclosure on solid evidence to be double sure that the information disclosed has high chances of preventing the purported wrongdoing. In this regard, several studies have shown that though whistle-blowing is morally justified, however, an employee who reports wrong doing does so at great personal risk. Teen (2007) provided evidence from a study of 233 whistle-blowers in a hospital in the U.S showing

that 90 percent of the whistle-blowers were fired or demoted, 27 percent were sued, 26 percent had to seek psychiatric care, 25 percent suffered alcohol abuse, 17 percent lost their homes, 15 percent got divorced, 10 percent attempted suicide and 8 percent were bankrupted. Related studies included that of Dozier and Miceli (1985), John (2005), Keil, Tiwana, Sainsbury and Sneha (2010) and Ozekhome (2014). Indeed, the outcome of the study showed vividly the personal risk and cost which whistle-blowers face globally.

A study which provided an insight into expected behavior of undergraduate accounting students with respect to whistle-blowing was carried out by Mustapha and Siaw (2012). The study which involved a survey of 105 participants focused on the willingness of final year students of accounting in Malaysia to blow the whistle. The result showed that the seriousness of a wrongdoing was a major factor that would influence the reporting of wrongdoing in the work place, but would only do so at the least cost. It was therefore recommended that ethical education should given more emphases to ethical behavior in the curriculum of accounting students as a way of encouraging ethical behaviour in the work place.

VI. PROFESSIONAL ACCOUNTANT AND WHISTLE-BLOWING RESPONSIBILITIES

The clamor for increased willingness of employees and in particular of professional accountants to blow the whistle on the wrongdoing or harmful activities of corporations spurred series of academic researches. Some of these studies are examined in this current effort with focus on ethical, moral and institutional motivations on whistle-blowing.

In the first instance, is there any plausible reason why an employee should extend his/her scope of responsibility to include whistle-blowing on your employer or client? Hoffman and McNulty (2014) explained that the superiority of ethical conduct over loyalty to organization could be a possible reason. Other possible reasons suggested by John (2005) included the offering of financial inducement. Regardless of the motive for blowing the whistle, it is important to note that professional accountants are being called upon to play greater role in whistle-blowing. Alleyne, Hudaib and Pike (2013) insisted that it is the only way through which professionals can actually protect themselves, the profession and the company in which they are working.

Regardless of the assurances above, evidence abound proving that more often than not, professional accountants are averse to whistle-blowing on their employers. First, it is imperative to look for guide from the view point of professional accounting bodies. In this light, Allen (2012) observed that SC 140 (7) of the International Federation of Accounting Countries (IFAC) Code of Ethics for professional accountants on whistle-blowing permits members to disclose information to public authority on infringements of the law as long as it is within their right and professional duty to do so if the following prevails:

It has to do with the quality review of a member body or professional body,

There is a need to respond to an enquiry being conducted by a regulatory body,

There is a need to protect the professional interests of a member involved in a legal dispute,

It is imperative to comply with technical standards and ethics of the professional accountant. P4

The position of the American Institute of Certified Professional Accountant (AICPA) is similar in all respect to the ethical code of International Federation of Accounting Countries (IFAC). From the foregoing discussion, it can be deduced that none of the professional bodies mentioned so far made explicit statement or provided guidelines on disclosure to the public of illegal activities discovered by their members in the cause of rendering professional service to client. Allen (2012) was of the view that though IFAC's International Ethics Standard Board for Accountants (IESBA) has proposed a draft on the subject matter of fraud and illegal activities involving clients, it has stopped short of implementing it.

The reluctance of professional bodies to get involved in matters of fraud and illegalities perpetrated by clients is chiefly informed by the need to protect the practice and avoid the complexities involved which may culminate in possible litigation. In this light, Holmquist (2013) outlined the comments of the Australian CPA on the subject of whistle-blowing as follows:

That an accountant should have the right to report illegal acts but not the duty to report,

That pronounced reporting on all actions of management considered illegal could lead to a situation whereby management would become increasingly unwilling to share information with their accountants.

How do one define what is in the public interest?

What actions need to be taken to ward off potential retaliation and litigation and physical safety risk?

In expressing concern, Holmquist (2013) concluded that even if accountants are to be protected, through improved regulatory framework, it must be established first that the professional accountant involved acted truthfully and honestly regarding the wrongdoing concern.

On the drive towards ensuring that professional accountants blow the whistle when wrongdoing is detected, Holmquist (2013) advised accountants to always report illegal act first to management for discussion. If the response is not sufficient, only then can the matter be taken before the governing board. The author however did not advice on what action to take should the board response prove unsatisfactory. In conclusion, Davis (1996) encouraged whistle-blowers to act in order to prevent harm to others and as a moral duty. In addition, Curtis (in Alleyne, Hudaib and Pike 2013) advised that such conduct should be done only after weighing the associated personal cost. Davis (1996) deferred by providing leeway for professional. He viewed that only members of an organization entrusted with information can be categorized in the context of a whistle-blower. With this concluding remark, Davis (1996) succeeded in raising the question as to whether aside the employee-professional accountant; can an accounting firm be described as a member of his client organization? The answer to this question is outside the purview of this study.

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VII. PERSPECTIVES OF NIGERIAN PROFESSIONAL ACCOUNTING BODIES ON WHISTLE-BLOWING

A review of the ethics of Institute of Chartered Accountants of Nigeria (ICAN) and that of Association of National Accountants of Nigeria (ANAN) provides contents similar in language and interpretation. This not a happen chance but rather the result of being members of the International Federation of Accounting Countries (IFAC) and are therefore encouraged to adopt IFAC standard on ethic as benchmark.

ICAN ethics are enshrined in the code of conduct and guide 2009 for members while that of ANAN is contained in the members 2007 guide on professional ethics. Both handbooks contain instructions meant to promote best practice and uphold the independence, integrity, objective and confidentiality of members, client and employer relationship. Some aspects of the ethics are quite helpful to the development of whistle-blowing in Nigeria, for instance, chapter 16.2.4 of ICAN handbook advices members to exercise caution on matters bordering on management of client organization and that members involvement should not go beyond that of an adviser. Again, in chapter 17.22.0, members are to comply with international standards on auditing when providing internal audit services to client as a way of staying above board and mitigating against risk.

Chapter 20 of ICAN and part C, SC300.3 of ANAN ethical code covers rules for members in business, meaning those who are in paid employment, partners, directors or owner manager and those working in voluntary capacity. Specifically, chapter 20.1.8 of ICAN and Part C, SC300.8 ANAN ethics adviced chartered accountants to be mindful of self interest situation that can lead to compromise and unethical behaviour. Situations here means having financial interests, loans and guarantees, incentives, compensation arrangement, commercial pressure from outside the employing organization and inappropriate personal use of client assets among others that can undermine chartered accountant willingness to act against an employer involved in wrong doing.

Chapter 20 of ICAN and Part C, SC310.2 of ANAN ethics pointed out that where a professional accountant suffers intimidation because of refusal to wrongly apply accounting principle to facilitate earning management, or breach of laws or regulation or some other wrong doing, the ethics of both professional bodies offers such a member several options to act. Firstly, the member can report the offensive intimidation or wrong doing to the internal corporate governance unit. Secondly, the member may also alert his immediate superior. Thirdly, the member is advised to consider seeking legal help and fourthly to resign as a last option. In connection with the actions which a chartered accountant may take, chapter 1.1.2 of ICAN ethics encourages chartered accountant when acting to further self interest or that of employer to always ensure that public interest is maintained at all times. The content of chapter 1 and 20 provides evidence of ICAN support to members to disclose (whistle-blow) on employers who insist on releasing material and misleading information to the public. For ANAN, Part A, SC140.7 direct its members to report the wrong doing to public authority were it is lawful and receives the approval of client or employer or acting under some law that expressly demand for it. In other words, ANAN ethical guide does not require members to willfully disclose wrong doing (whistle blow) to lawful authority.

In all, the professional accountant having evaluated a situation bearing on wrong doing should endeavour to exhaust all options to stop the wrong doing after which he is obliged to report to appropriate authorities. While both professional bodies took care to protect the profession and members, it appears reluctant to take a clear position on willful disclosure to public authority in pursuance of public interest. Again, it is observed that the ethical guide for members made limited use of the word fraud and never mentioned whistle blowing or events that may requires, it. This deliberate action could have been informed by three reasons; the gap in extant legal reforms and protection for whistle blowers, the stigma attached to the practice and the need to remain professional detached in the true spirit of confidentiality as a normative practice. As a solution to the first and second reason, Sule (2016) advised that the word whistle blowing should be deemphasized in the public domain when developing legislation to protect public assets because of the negative perception it evoke and the risk to which it exposes whistleblowers. This advice alone, considering the conventions and principles guiding accounting practice will not be enough to persuade professional accountants to openly engage in whistle blowing. In summary, Akadakpo and Enofe (2013) concluded that though chartered accountant have the choice of several options to apply in matters of wrong doing, they however overwhelmingly prefer to look up to ethical standard for guide.

VIII. COUNTRY-WIDE LEGAL FRAMEWORK ON WHISTLE-BLOWING PRACTICES

From the discussion so far and the evidences available, there is no doubt that in the face of the unwillingness of professional accountants to involve themselves in whistle-blowing ventures as a result of perceived personal cost and risk of retaliation, a legal framework that protects whistle-blowers may be the best and final option to use in addressing these worries. The legal frameworks of several countries are examined below.

In USA, the laws that encourage disclosure of wrongdoing in corporation were made possible by the Sarbanes Oxley Act (2002) and the Dodd-Frank Act (2010). The law recommended that CPA report corporate wrongdoing to Security and Exchange Commission (SEC) and that whistle-blowers should be fully protected. Alleyne, Hudaib and Pike (2013), Taylor and Thomas (2013) disclosed that whistle-blowers are also to be giving 10 – 30 percent of the sum resulting from cases successfully prosecuted by SEC.

In the United Kingdom (UK), Alleyne, Hudaib and Pike (2013) identified the Public Interest Disclosure Act (PIDA 1998) and the Code of Conduct of Professionals developed by international accounting bodies as the major drivers of change towards improved whistle-blowing practice. However, in Australia, the Parliament was credited with improving whistle-blowing activities in that country. John (2005) stated that

though the Australian Parliament does assist the Treasury in recovering fund, coming up with a suitable parliamentary framework to protect whistle-blowers remains a challenge. The Parliament however considered the use of financial inducement to encourage whistle-blowers to act.

In South Africa, dating back to 2001, the Institute for Security Studies of South Africa (ISSSA 2004) disclosed that whistle-blowers are protected under the law referred to as the Protected Disclosure Act No 26 of 2000. The law which protects whistle-blowers also provided guiding rules to ensure that whistle-blowers don't use the opportunity to settle vendetta.

In Nigeria, according to Proshare (2017), the Security and Exchange Commission (SEC) and the Nigerian Stock Exchange (NSE) were the brain behind the Investment and Security Act (ISA 2007). In particular, section 306 of the Act dealt specifically with matters that requires whistle-blowing. It also made provision for the protection of whistle-blowers in sub section 5-12. The Central Bank of Nigeria (CBN) also released guidelines in 2012 encouraging financial market players to develop policies that would help curtail incidence of illegal activities in that sector.

IX. CONCLUSION

The ethical code with respect to confidentiality of professional accountants is often used as the reason for failing to report illegal activities that are not in the best interest of the public. This situation is found to be the practice globally despite the existence of empirical evidences upholding whistle-blowing as a moral duty and hence morally just to undertake. As a counter, empirical evidences have also showed that professional accountants are more likely to rely on ethical code of members for guide on account that it is consistent with the fundamentals on which accounting practice was established. The foregoing dichotomous evidences and the possible risk of incurring personal cost along with possible risk of retaliation from clients or employees have proved sufficient reasons to encourage professional accountants to act with caution on the specific issue of disclosing wrong doing of their clients and employers.

The way forward in encouraging whistle-blowing and protecting whistle-blowers has been in the direction and form of strengthening country specific legislation and for the rule making arm of the international accounting bodies to formulate ethical codes that would encourage members to act morally right beyond institutionally preferred option.

X. RECOMMENDATIONS

The national assembly should enact laws that promote disclosure aimed at protecting public and corporate assets and such a law should be comprehensive as to deal with all possible demand that will be placed on it. Therefore, it must take to deal with all necessary demand that will be made of it. Therefore, it must take care to fully protect those who willfully and willingly disclose wrong doing.

Professional bodies should encourage its members to adhere to the ethics developed to guide members. This will enable them to act morally in the interest of the self, profession and the public.

Ethical guide for professional accountants should be reviewed frequently in tune with social, political and economic challenges.

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