

Udo Udoma, SEC and the Call to Quit

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"Allow a situation to go bad for too long and suddenly there are no good solutions left". - *Late Arthur Burns, former Chairman of the Federal Reserve Bank of the United States*

Yesterday, Senator Udo Udoma justified his dual roles as UACN and SEC chairman when he described as baseless the petition by Chairman of Senate Committee on Capital Market, Senator Ganiyu Solomon seemingly asking the Minister of State for Finance, Mr Remi Babalola, to compel him to resign as Chairman of the Securities and Exchange Commission (SEC) following his recent appointment as Chairman of UACN Plc along with his roles as Vice-Chairman of Linkage Assurance Plc, Director of Unilever Nigeria Plc as well as being a partner in the commercial law firm of Udo Udoma & Belo-Osagie Principal (a registered practice with the SEC).

He pinned his argument on the logic of '**approbating and reprobating**' in the same breadth which he attached to the action taken by Senator Ganiyu Solomon.

He averred that it was the same Senator Ganiyu Solomon-led Senate Committee on Capital Markets that approved his appointment in the first place – an appointment made after adequate screening for the SEC chairmanship – with his curriculum vitae giving a full disclosure (*unlike what UACN Plc did*) of his directorship of the above three firms.

The Senator himself and those close to the '*Kings College Old Boys Group*' had made the case that the key issue was not his chairmanship of UACN Plc but the directorship of a company on which the question of fiduciary rights and duties rest.

The more important issue in their view is that - if he was considered fit to hold both roles by the select committee of the Senate; it cannot now be said that this was wrong – pretending as it would appear, that the knowledge of his directorship, was a present day discovery.

We agree with this reasoning, albeit; up to a determinate point – 14/08.

Indeed, and sadly for this school of thought; our argument had always been premised on Udo Udoma's directorship of a quoted company as we alluded to in our August 22, 2009 report – BULL IN THE CHINA SHOP at page 63 where we stated that *"The current holder of the office of Chairman SEC is a distinguished senator and a widely acknowledged believer in the upliftment of standards and values. It is thus curious to note that in the performance of this role, he ought to have recognised that his current directorship of UACN Plc raises serious issues that could compromise the perception of impartiality. It is simply not right and there must be a cogent explanation for this, giving what we know of the man and his pedigree. We do not have any case of wrongdoing alleged against the Chairman but we believe that the elimination of the room for 'unregulated relationships' is critical to any perception of integrity or the ability of the regulator to take actions without fear or favour of 'powerful' forces that loom large over the SEC. It must be noted that SEC has operated under excruciating circumstance that have seemingly drowned out the considerable amount of good work done. This work however, we insist, is not at a level that matches the level of growth in the market. That is the responsibility gap the Chairman will have to address"*.

Assuming that circumstances remained at the old status quo, we would not be in a position to make a fuss about this standpoint.

On August 14, 2009 however, **everything changed** and with SLS came a new and profound sense of purpose and standard for judging corporate governance in Nigeria.

The previous conflicted status, for which we wrote about then, i.e. the directorship – remains the central issue and not so much the Chairmanship of UACN Plc (a honorary position subject to the choice of the directors), the obvious attempt to conceal this conflicted position by UACN Plc and the new standards set in that same week by the CBN Governor meant that everything needed to be looked at with a “**fresh eye**”.

Our piece on **Udo Udoma, SEC and the Perception Gap**, Feb 03, 2010, <http://www.proshareng.com/articles/singleNews.php?id=2029> just about sums up the arguments here. When the Senator suggested further in the press release that his appointment was of a part-time nature, he was being economical with the truth as the above has shown.

If all he does was to execute the relevant section of the Investments and Securities Act (ISA) – i.e. *to declare his current interests and not participate in any decision involving any of them* – he should equally have known that the appearance of a conflict was as equally grave for a regulator just as the definitive act.

The golden rule remains – **“You should avoid even the appearance of such a conflict”**.

After **14/08** in Nigeria, the standards for corporate governance changed and if the CBN Governor can set and apply those standards in the market place – it was only fit and proper for the Kings College and Oxford Graduate to recognise that global best practice had shifted and moved two notches ahead.

In this regard five (**5**) significant positions from the Senators Press Release deserve a recalibration of the central argument:

1. The Senator said that **“my investigation also revealed that this was an established practice. Indeed, my immediate predecessor as chairman of SEC and I served on the same board whilst he was the chairman of SEC. Had it been otherwise I would have declined the offer to be the chairman of SEC.”** This is clearly incongruent with the central argument that post 14/08 the standards for what was acceptable had changed. He was looking to the past rather than to the future with regards to the engagement rules being set for the present. Indeed, rather than being a vehicle of change, he suggested that we should hold ourselves back to the standards of old – a position SEC itself jettisoned when it made a case on August 19, 2009 – a move much unrecognizable to its previous stance; albeit one done under the cover of SLS’s bold move.
2. He further said: **“Having accepted the offer, my name was sent to the Senate and I was screened, and cleared, by the Capital Market Committee, headed by the same Senator Ganiyu Solomon. At my screening I presented to that Committee my curriculum vitae clearly showing that I was serving on the boards of UAC of Nigeria Plc, Linkage Assurance Plc. and Unilever Plc., as well as being a partner in the commercial law firm of Udo Udoma & Belo-Osagie. Under the**

circumstances, it is difficult to understand Senator Solomon's claim that he was not aware that I was already serving on those boards before my appointment as chairman of SEC in June 2008." Deriving from the established locus of the central argument made earlier – i.e. the scale and scope of the heightened state of best practice as it relates to corporate governance in the financial services sector post 14/08; this argument cannot hold.

Again, instead of holding himself and the office to higher standards; he has chosen to rely on well-worn arguments related to status and historical acts taken against a lower standard of performance. It is however instructive to note that the role of the SEC chairman vis-à-vis his **law firms' role in the capital market indeed opens himself to the perception of creating an undue advantage** – which may not necessarily be of his own making but as a function of the operating environment. Evidence available suggest that not only was he instrumental in forming the association of capital market lawyers – a good act by the way; his firm has in the last two years been involved in a sizeable number of transactions in the capital market. This could as well be a co-incidence as the firm is adjudged credible, competent and deserving. Nonetheless, this opens him to the accusation of creating an undue advantage for the firm.

3. Senator Udo Udoma said in his press release that during his visit to **Malaysia**, "he discovered that **part time members of the Security Commission serve on boards of quoted companies but the law is being reviewed restricting them to only companies on which they were serving prior to their appointment.** This is because it would be most unfair to approach reputable individuals whose experience was needed by the Commission to serve as part time board members, and then to ask them to give up their existing commitments for an unpaid national assignment". He added – "**Just as in Nigeria, part time commissioners in Malaysia only receive sitting allowances, and no salary.** It has also been confirmed to me that in many other countries, such as **Thailand**, the part time members also serve on the boards of quoted companies. **However, full time members are generally restricted from accepting any other appointments except in other regulatory agencies.**"

It is not only disingenuous for a legal practitioner and a serving Chairman who considers this a national service to present such a submission as de-facto fact ignoring the premise that the Malaysian Securities Chairman is of an executive status (**quite unlike ours designed to be non-executive yet with powers to approve or disapprove decisions made by the DG/CEO**).

In the first place, we modeled our SEC after the US SEC (one of the key submissions which the Dennis Odife report frowned upon and which remains debatable – yet it is wrong to create a doubt as to the benchmark Nigeria is working with for this purpose). To the best of our knowledge; our SEC is not modeled after the Malaysian SC though we recognise that we are able to obtain best practice ideas from such performing or 'similar operating environment' like theirs. **As regards his choice of Malaysia to justify the part-time argument, we will accept it even as we expand the discourse to include the qualifying criteria for chairmanship of such a board the Senator might have in mind.**



For the purpose of his comments above, we feel it is important for the market to realize that Tan Sri Zarinah, Chairman of the Malaysian Securities Commission (SC) is a graduate of law as our esteemed Senator. She did not go to Oxford but obtained an LLB (Hons) from the University of Malaya. She started her career in the Government Legal and Judicial service where she served in the courts as well as the Attorney-General's Chambers. She assumed this post on 1 April 2006, after she had served as Deputy Chief Executive of the Securities Commission and member of the Commission since 1 December 2001.

According to the Malaysian Securities Commission's website - <http://www.sc.com.my/main.asp?pageid=223&menuid=191&newsid=&linkid=&type=> Tan Sri Zarinah is the Vice Chairman of the Emerging Markets Committee of the International Organization of Securities Commissions (IOSCO). She was Chairman of the ASEAN Capital Markets Forum, a grouping of senior ASEAN securities regulators, from 2006 - 2008.

Tan Sri Zarinah currently chairs the Malaysian Venture Capital Development Council and the Capital Market Development Fund, and is a member of the National Economic Consultative Council (NECC), the Labuan Offshore Financial Services Authority (LOFSA), the Financial Reporting Foundation (FRF), the Foreign Investment Committee (FIC), and the Board of Directors of the Institut Integriti Malaysia (IIM). Tan Sri Zarinah is also a member of the Panel of Industry and Corporate Advisory Board, Graduate School of Management, Universiti Putra Malaysia.

In terms of previous working experience, Tan Sri Zarinah spent 22 years with Shell and was Deputy Chairman of Shell Malaysia prior to joining the SC; thus ensuring that by the time she joined the SC (not as chairman); she was not conflicted in any way as the standards for the board were obviously higher than that for an executive commissioner or a Director General.

Thus; as regards the "PART-TIME" status of members, the board is comprised of a **'career'** chairman and a board of competent, committed and part-time members as follows:

Tan Sri Zarinah Anwar
Chairman, Securities Commission Malaysia

Francis Tan Leh Kiah
Managing Director, Azman, Davidson & Co., Advocates & Solicitors

Dato' Muhammad Ibrahim
Assistant Governor, Bank Negara Malaysia

Dato' Gumuri Hussain
Chairman, SME Bank (Bank Perusahaan Kecil & Sederhana Malaysia Bhd)

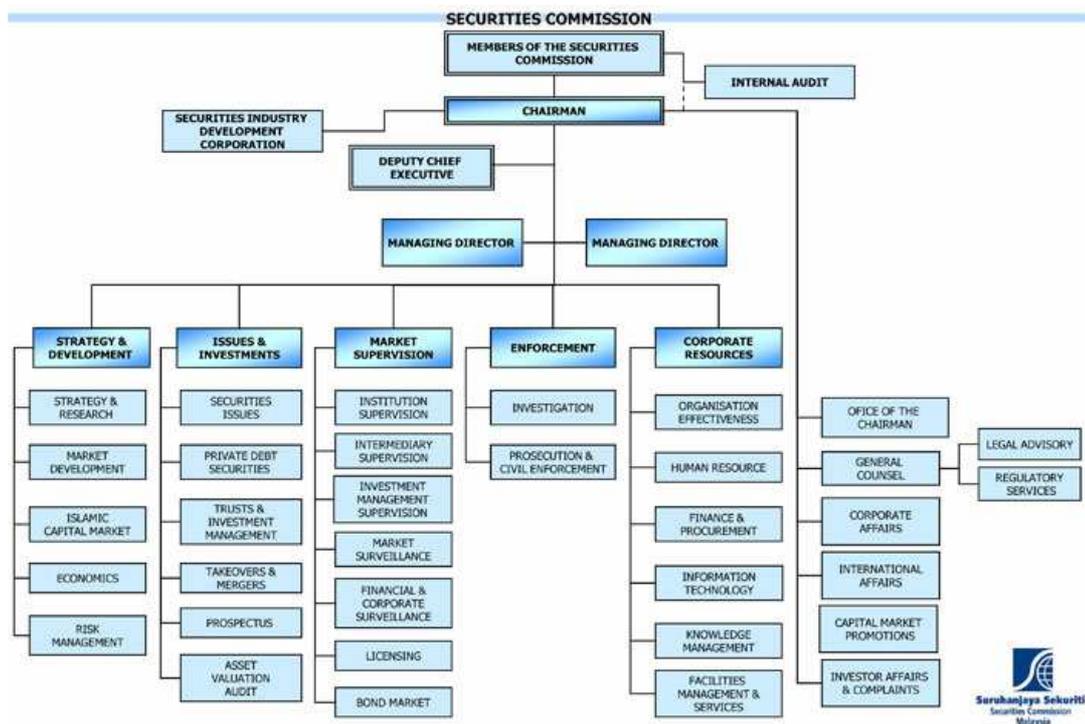
Dato' Mohd Bakke Salleh
Group Managing Director, FELDA Holdings Bhd

Fazlur Rahman Ebrahim
 Managing Director, Prokhas Sdn Bhd

Datuk Wira Ismail Saleh
 Secretary General, Ministry of Plantation Industries and Commodities

Datuk Latifah Datuk Abu Mansor
 Deputy Secretary General of Treasury (Policy), Ministry of Finance

The organisation structure for the Malaysian SC look like this – NB: the Nigerian SEC is not so modeled and we need to be careful in comparing apples with oranges), viz:



4. Senator Udo Udoma described as erroneous and totally misleading the attempt by Senator Solomon to equate his role as SEC Chairman with that of the Director-General of the Nigerian Stock Exchange who serves as Chief Executive in that capacity. According to Udoma, the **NSE DG** was “**rightfully queried for accepting to serve on the board of a quoted company whilst a full time executive of the primary regulator of the capital market. The more appropriate comparison should have been with my good friend and highly respected businessman, Oba Otudeko, who, as the non-executive president of the Stock Exchange, the primary regulator of the capital market, served as non-executive director of First Bank of Nigeria Plc.**” This is a worrisome analogy the Senator seeks to make here. **Do two wrongs make a right? Does an SRO equate to an apex regulator in terms of the standard of governance expected and executed?**

It is trite knowledge in the market that SEC and the NSE have an unhealthy relationship that is festered by personal leverage, influence and power rather than purpose, processes and safeguards. Shadowy figures have worked assiduously through an expansive network to deliver the removal of the Director General of the Nigerian Stock Exchange, **Dr. (Mrs.) Ndi Okereke Onyuke** and whilst the

market and observes believes the NSE will get a deserving change in leadership, most of the accusations against the person of Ndi Okereke-Onyuike has refused to stick simply because she is first, not reporting to SEC but the council of the NSE and second, her decisions have often had the backing/support of the council.

Why? The SEC who had the mandate to do so did not. Primary regulator? SEC as the apex regulator approved the public offer of TRANSCORP Plc where it was clearly stated that she was the Chairman of the company. She was on television and on road shows marketing the offer; and this writer – issued a four separate reports (two published as full page features in BusinessDay) raising the alarm on the situation and highlighting the risk of allowing the political risk cloud the governance issues that may arise. SEC has now found its voice after the fact. Maybe the Senator can tell us about the outcome of the public query issued?

The comparison with **Oba Otudeko** is lost on us as the same situation/circumstance exist with **Alhaji Aliko Dangote**, current President of the NSE and Chairman Dangote Group; a tradition by the NSE since inception. If what he is saying is that should he be asked to step down, this other people should to – that is perfectly in order. That was his job in the first place. He ought to set the standard for governance in a post 14/08 financial services regulatory environment. He is finally getting the message after all.

With this mindset, what has the past and supposedly questionable status of governance got to do with the enhanced regulatory regime SLS has worked hard to create? Senator Udo Udoma may need to be reminded that it is the SEC, under his chairmanship that is empowered by the provisions of ISA to oversee the activities of the NSE based on best practice – not use their failings to justify a flawed position by the apex regulator.

5. Senator Udo Udoma posited that whilst he has not violated the current law in Nigeria, he suggested that Senator Solomon's Committee should play a role in modifying the law in order to remove any suspected conflict of interest. **"The solution for those who feel that the existence of such a potential conflict is unacceptable in Nigeria might well be to adopt the United States model where SEC Commissioners are all full time. This will require an amendment of the Investment and Securities Act. These are all matters for debate, and Senator Ganiyu Solomon, as the Chairman of the Senate Committee on the Capital Market, could play a role in helping to lead that debate.** We agree entirely with him on this point and challenge the Senate Committee on Capital Markets as well as the Honourable Minister of State for Finance, Remi Babalola (under whom SEC reports) to consider it a matter of economic priority to review and amend the ISA; leveraging the work done by the Adedotun Suleiman-led Committee on Capital Markets (2009), the unaddressed issues in the Dennis Odife panel report (1996) and the developments in company law and global securities exchange market to amend and pass the law.

Udo Udoma went on to add **"However, it is wrong and in very bad taste, for Senator Solomon to seek to bring to public ridicule a person who has done nothing wrong; a person who simply responded to an invitation to serve his country within the terms of the existing law, and practice"**. The position taken here by Senator Udo Udoma is curious and may be overplaying the 'appeal to sympathy' template for public office holders. Why? – If it was such an inconvenient service, why not let it go? No one has accused me of anything BUT called on him to raise the bar – What can be wrong in that?

We will not hold brief for Senator Ganiyu Solomon. We do know that we sent a petition to the senate committee asking them to recognise and elevate the standards for the capital markets to the increased standards set by the Sanusi Lamido's Central Bank of Nigeria; learning from the contributory role an unsupervised capital market played in feeding the frenzy that brought the market to its knees.

This we believe is just one of such steps – for to change the capital market as we know it in Nigeria; the market needs a clean slate upon which to work on and this must start from the leadership – in appearance and deed.

For us at Proshare, the objective was to raise the consciousness of members of corporate Nigeria to the paradigm shift that occurred on 14/08 in spite of its imperfections and to challenge the system to rise up to a higher benchmark – one for which the rules are still being written. Lets those who think the stand take heed lest they might fall!

Conclusion

Do these associations, actions and examples represent/result in or have the appearance of a conflict of interest/role situation? The Proshare Service appears to think so.

This was and has never been an attempt to ridicule Senator Udo Udoma in any way. He, of all persons, must know that in the climes with which he benchmarks Nigeria; the standards of probity are much higher than that to which we, analysts, the Nigerian media and corporate Nigeria have held him.

We, unlike most, have stayed loyal to the investor advocacy remit we started with and are happy to note; he also subscribes to. For all who seek a winner/loser scenario; that offers us no joy for what we seek is already happening – The opportunity to engage in a rigorous public debate on the standards needed to position SEC in such a way that provides market confidence in the system and eliminates the turf war between SEC and the NSE.

With regards to the small matter of finding a replacement for him should he decide to resign his post as SEC Chairman, we believe that this is self indicting. One of the key indicators of a good institution is the ability to have at all times a good contingent plan to ensure sustenance of leadership at the SEC. There are clearly persons that may come to mind but when subjected to the same standards may not qualify – that should not therefore be criteria for adopting a flawed model.

SLS, a Kings College Old Boy has raised the bar – all other regulators must raise their game.

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