

MANAGING TRANSITIONS BETWEEN NON-EXECUTIVE AND EXECUTIVE ROLES WITHIN FINANCIAL GROUP STRUCTURES IN NIGERIA: A GOVERNANCE PERSPECTIVE

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INTRODUCTION

The corporate governance framework for financial institutions has significantly evolved over the past two decades, emphasising on well-governed, accountable, and independent boards. Central to the complexity of corporate governance is the transition from executive to non-executive roles within the governance structures of banks and their financial holding companies. Such transformations are critical to ensuring strong governance, driving innovation, and creating sustainable value for shareholders, stakeholders, and the business as a whole.

The role of an Executive Director is quite different from that of a Non-Executive Director, and transitioning from one to the other within the same institution or another institution within the same group structure is not always seamless. An Executive Director is typically responsible for overseeing the company's day-to-day operations and strategy as needed. Conversely, a Non-Executive Director has the primary role of ensuring oversight and governance while not engaging in the institution's day-to-day activities. This shift in roles, is driven by strategic, regulatory, and individual career considerations which must be managed proactively to ensure that the functioning board remains accountable, transparent, effective, and compliant with the laws and regulations in place.

The Central Bank of Nigeria (CBN) has, over time, reviewed its Corporate Governance Codes and has given particular attention to the evolving nature of the composition of boards of commercial banks, merchant banks, non-interest banks, and financial holding companies. These reviews encourage and protect institutional integrity and mitigate conflicts of interest.

This article explores the intricacies of transitioning from a non-executive role to an executive role on the board of the same bank or another institution within a group structure. It will examine the CBN's Corporate Governance Guidelines, which provide the guide for these transitions. Furthermore, it will discuss best practices associated with such transitions, emphasising the significance of strategic alignment and governance excellence.

Overview of Corporate Governance in Nigerian Financial Institutions: Post the 2008-2009 Banking Crisis.

The Nigerian banking sector has faced significant challenges in the past, with issues relating to poor corporate governance practices being a primary concern. A combination of factors, including excessive risk-taking, weak internal controls, poor corporate governance, and inadequate supervision by regulatory authorities precipitated the 2008-2009 banking crisis in Nigeria. This prompted the Central Bank of Nigeria (CBN) to intervene by taking control of the distressed banks, dismissing the managing directors and executive directors of the affected banks, and appointing directorate management staff from the CBN to replace them.¹ This highlighted the urgent need for a comprehensive overhaul of corporate governance frameworks in the country's financial institutions.

The introduction of the Exposure Draft Code of Corporate Governance for Banks and Discount Houses in Nigeria by the Central Bank of Nigeria ('Exposure Draft') on July 31, 2012,² was a response to these concerns, aiming to establish a robust framework for ensuring sound corporate governance in the industry. Upon receipt of stakeholders' comments on the Exposure Draft, the CBN on May 16, 2014, issued a Corporate Governance guideline for Banks and Discount Houses in Nigeria aimed at eliminating perceived ambiguities and strengthening governance practices.³

In 2019, the Financial Reporting Council of Nigeria (FRCN) implemented significant reforms in corporate governance by introducing the Nigerian Code of Corporate Governance 2018 (NCCG 2018). This code serves as Nigeria's comprehensive Corporate Governance Code for Nigeria, superseding all previous sectoral codes, including the Central Bank of Nigeria's Code of Corporate Governance for Banks and Discount Houses issued in 2014.

Following the FRCN's announcement permitting sector regulators to establish sector-specific corporate governance guidelines, the Central Bank of Nigeria (CBN) adopted the principles and recommended practices from the NCCG 2018, along with global best practices and previous codes, circulars, and directives issued by the CBN. On July 13, 2023, the CBN issued a circular that repealed all previous corporate governance codes and introduced the CBN Corporate Governance Guidelines for Commercial, Merchant, Non-interest, and Payment Service Banks, as well as Financial Holding Companies, collectively referred to as the ("CBN Corporate Governance Guidelines, 2023").⁴

¹ Paseda, O. (2012), '*The Code of Corporate Governance for Banks in Nigeria: A Critique*', University of Lagos – Faculty of Business Administration. Available at SSRN: <https://ssrn.com/abstract=2900390> or <http://dx.doi.org/10.2139/ssrn.2900390>

² <https://www.cbn.gov.ng/OUT/2012/CIRCULARS/FPR/Exposure%20Draft%20-%20Corporate%20Governance%20Code%20&%20Whistle%20Blowing%20Guidelines.PDF>

³ Circular on Code of Circular on Corporate Governance for Banks and Discount Houses and Guidelines and whistle blowing in the Nigerian Banking Industry, 2014. Available at [https://www.cbn.gov.ng/out/2014/fprd/circular%20on%20code%20of%20circular%20on%20corporate%20governance%20and%20whistle%20blowing-may%202014%20\(3\).pdf](https://www.cbn.gov.ng/out/2014/fprd/circular%20on%20code%20of%20circular%20on%20corporate%20governance%20and%20whistle%20blowing-may%202014%20(3).pdf)

⁴ Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria, 202. Available at <https://drive.google.com/file/d/1OWF9zQJiP4o85JIFlGVZBHtQaGMlz3/view?pli=1>

The CBN Corporate Governance Guidelines, 2023, outlines three primary objectives:⁵

- a. *Provide additional guidance on the corporate governance Principles, Recommended Practices and Responsibilities contained in NCCG 2018;*
- b. *Outline industry-specific corporate governance standards for banks; and*
- c. *Promote high ethical standards amongst operators whilst enhancing public confidence.*

Officers of the Board: Executive vs. Non-Executive

Understanding the growth of corporate governance in the financial sector sets the path to appreciating the delineation between executive and non-executive positions on the board. An executive officer of the board is a member of a company's board of directors who holds management responsibilities and is, therefore, actively involved in the day-to-day management of the company. In contrast, a non-executive officer of the board is a member of the board who does not engage in the day-to-day management of the company.⁶ The primary role of a non-executive officer is to provide independent oversight and contribute to strategic decision-making from an external perspective.

The CBN Corporate Governance Guidelines, 2023, has enumerated the positions that classify as executives on the board to include executive directors, deputy managing directors, or managing director/ chief executive officer, and non-executives on the board to include non-executive directors and independent non-executive directors. In defining the roles of executives and non-executives on the board of any organisation, Principle 4 of the Nigerian Code of Corporate Governance, 2018 has described the roles of executives on the board thus:

The Managing Director/Chief Executive Officer is the head of management delegated by the Board to run the affairs of the Company to achieve its strategic objectives for sustainable corporate performance.

While,

Executive Directors support the Managing Director/ Chief Executive Officer in the operations and management of the Company.⁷

It is therefore evident that the executives on a company's board play a pivotal role in bridging leadership and operational aspects. They facilitate effective communication and alignment, ensuring that strategic board decisions are implemented at the operational level. This seamless connection is essential for the successful and efficient execution of the organisation's mission.

Conversely, a non-executive director contributes expertise, knowledge, and independent judgment on issues relating to the Company's strategy and performance,⁸ while an independent non-executive director brings a high degree of objectivity to the Board, sustaining stakeholder trust and confidence.⁹ Non-executive directors on the board play a vital role in

⁵ Objectives – Corporate Governance Guidelines for commercial, merchant, non-interest and payment service banks, and financial holding companies in Nigeria.

⁶ Stephen Conmy, 'The difference between a director and a non-executive director', Corporate Governance Institute, UK. Available at <https://www.thecorporategovernanceinstitute.com/insights/guides/director-and-a-non-executive-director/>

⁷ Principle 5 of the Nigerian Code of Corporate Governance, 2018.

⁸ Principle 6 of the Nigerian Code of Corporate Governance, 2018.

⁹ Principle 7 of the Nigerian Code of Corporate Governance, 2018.

balancing the executive directors' targets with the board's oversight responsibilities. Since executive directors are tasked with managing the company's daily operations and driving growth, they may pursue bold strategies or take aggressive steps to meet these objectives. Non-executive directors, however, act as a counterbalance by offering strategic guidance, mitigating excessive risk-taking, and ensuring that the company adheres to sound governance principles, long-term sustainability, and regulatory compliance. Their distance from daily operations allows them to maintain an impartial perspective, which is essential for sound decision-making and achieving long-term success.

Non-executives challenge and support the executive team by ensuring accountability, reviewing management performance, and advising on long-term strategy and ethical practices. Their objective viewpoint helps in balancing decision-making and promoting transparency, often representing the interests of shareholders and other stakeholders to maintain trust and integrity in the organisation's operations. These roles underscore the importance of non-executives, particularly independent non-executive directors, maintaining independence in character and judgment and being free from such relationships or circumstances with the Company, its management, or substantial shareholders that may, or appear to impair their ability to make an independent judgment.¹⁰

The roles of executive directors and non-executive directors are distinct yet complementary in regarding work processes and corporate governance. Understanding the key differences across all aspects and dimensions is essential for effective governance and the strategic direction of organisations.

The Dynamics of Transitioning Between Executive and Non-Executive Roles on the Board of a Bank or Financial Holding Company: Governance, Challenges, and Strategic Implications

The dynamic nature of the financial sector demands flexibility and adaptability within the boardroom. These qualities are essential for responding effectively to changes and developments within the sector, ensuring the company stays aligned with its strategic objectives, makes informed decisions, remains compliant with regulations, and navigates uncertainties while maintaining long-term stability and growth.

One critical aspect of this flexibility is the transition between executive and non-executive roles on the board of a bank or its financial holding company. Such transitions play a pivotal role in ensuring leadership continuity, maintaining effective oversight, and complying with regulatory requirements. However, the rationale behind delineating these positions must be preserved in the transition.

Governance Guidelines for Banks

In line with Corporate Governance practices and to ensure that the objectivity and independence a director needs to carry on his/ her duties are maintained, the CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks 2023 (Corporate Governance Guidelines for Banks), prohibits an executive director (ED) or non-executive director (NED) from transitioning to an independent non-executive director

¹⁰ Principle 7 of the Nigerian Code of Corporate Governance, 2018.

(INED) in the same bank or its group structure.¹¹ Similarly, the transitioning of an independent non-executive director to any other capacity in the same bank or its group structure is prohibited.¹²

In the case of a non-interest bank (NIB), the transmutation of an INED or a member of the Advisory Committee of Experts (ACE) into any role in the same bank is prohibited.¹³

Cooling off period

Although certain transitions within a financial group structure, as previously above, may be prohibited, some changes are permitted provided that a cooling-off period has been served. An Executive (ED, DMD or MD/CEO) who exits from the board of a bank either at or before to the expiration of his/her maximum tenure is mandated to serve out a cooling period of two (2) years before being eligible for appointment as an NED in the same bank.¹⁴ This is, however, subject to applicable cumulative tenure limits.¹⁵

Furthermore, where an executive (ED, DMD or MD/CEO) of a bank is to be appointed to the Board of its Financial Holding Company (FHC) in any role, a cooling-off period of two years must be observed.¹⁶ While it is noted that a cooling off period of two years must be observed for an executive officer (ED, DMD or MD/CEO) to be eligible for appointment to the Board of its holding company in any role, it is crucial to state that the “any role” excludes the position of an INED.

Although it may be argued that the provision intends to encompass the position of an INED. One must, however, take into consideration the criteria for the qualification of an INED¹⁷ and section 3.5.6, of the Corporate Governance Guidelines for Banks, which expressly prohibits the transmutation of an ED or NED to an INED within the same bank or its group structure. Nevertheless, regardless of the interpretation one may choose to adopt, the *generalia specialibus non derogant* rule will always apply, meaning that when there is a conflict or overlap between a general provision and a specific provision relating to the same subject matter, the specific provision takes precedence and governs the matter.¹⁸

An NED shall observe a cooling period of two years before being eligible for appointment in any executive role in the same bank,¹⁹ and a cooling-off period of two (2) years shall apply when a director from a bank transition to another subsidiary within the group structure, which will result in a change of role. However, the cooling-off period shall not apply where there is no

¹¹ This includes its Holding company and any other financial institution within the structure

¹² Section 3.5.6 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023

¹³ Section 7.3 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023

¹⁴ Section 7.1 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023

¹⁵ The cumulative tenure limit of directors (ED, DMD, MD and NEDs) on the Board of the same bank is twenty-four (24) years and this is computed from the day a director was first appointed in the bank.

¹⁶ Section 7.2 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023

¹⁷ Section 3.5.3 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023; Principle 7.2 of the NCCG, 2018.

¹⁸ *Osahon v. F.R.N.* (2003) 16 NWLR (Pt. 845) 89

¹⁹ Section 7.4 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023

change of role²⁰ and when any director in a bank is appointed to the Board of another bank or an FHC outside the bank's group.²¹

Governance Guidelines for FHCs

In relation to FHCs, the CBN Corporate Governance Guidelines for FHCs, in line with the NCCG 2018, prohibits a former director who has served in the Financial Holding Company (FHC) or its subsidiaries²² from being an INED.²³ This means that an ED, NED, MD/CEO, DMD and any other person who served in the FHC or its subsidiaries cannot transition or be appointed an INED on the FHC.

For context, a Financial Holding Company is defined in the CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria 2014 as *a company whose principal object includes the business of a holding company set up for the purpose of making and managing (for its own account) equity investment in two or more companies, being its subsidiaries, engaged in the provision of financial services, one of which must be a commercial, merchant or specialised bank.*

The Corporate Governance Guidelines for FHC further state that an individual occupying the position of an executive in a FHC shall not be eligible for appointment as an NED in the same FHC and vice versa. At the same time, an INED on the board of an FHC or its subsidiary shall not transmute into any other role in the FHC or any of its subsidiaries.²⁴

The Guidelines also prohibit an executive in an FHC from being appointed as an NED in the same FHC and vice versa.²⁵ Furthermore, an INED on the Board of a FHC or its subsidiaries is not permitted to transition into any other role in the FHC or any of its subsidiaries.²⁶ Due to the crucial role an INED plays on the board, an INED on the board of an FHC is prohibited from sitting concurrently on the board of its subsidiaries.²⁷

Cooling off period

Similar to the CBN Corporate Governance Guidelines for Banks, 2023, the CBN Corporate Governance Guidelines for FHCs, 2023, provides for a two-year cooling-off period in which an individual occupying the positions of either an MD, CEO or an ED in a bank must observe before they can be appointed to take on any role in its Holding Company.²⁸ Furthermore, a NED of a bank is not expected to serve any cooling-off period before being eligible for

²⁰ Section 7.6 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023

²¹ Section 7.5 of CBN Corporate Governance Guideline for Commercial, Merchant, Non-Interest and Payment Service Banks, 2023

²² In this case, the subsidiary being a bank, insurance companies, investment firms, and other financial services entities

²³ Section 3.4.3 (i) of Corporate Governance Guidelines for FHCs, 2023

²⁴ Section 4 of CBN Corporate Governance Guidelines for FHCs, 2023

²⁵ Section 4.1 of CBN Corporate Governance Guidelines for FHCs, 2023

²⁶ Section 4.2 of CBN Corporate Governance Guidelines for FHCs, 2023

²⁷ Section 4.3 of CBN Corporate Governance Guidelines for FHCs, 2023

²⁸ Section 5.1 of CBN Corporate Governance Guidelines for FHCs, 2023

appointment to the Board of its FHC as an NED.²⁹ However, as stated above, an INED on the board of an FHC cannot transmute to any other role in the same FHC or its subsidiaries.

It is worth noting that a director whose first appointment was in the subsidiary bank shall not be eligible to serve as an interlocking director at the same subsidiary bank or any other CBN-regulated subsidiary while serving on the Board of the FHC.³⁰

In light of the above-discussed prohibited transmigrations and transmigrations that must be done with observance of the cooling off period, it is my considered view that the rationale behind these provisions of CBN Corporate Governance Guidelines is to prevent conflict/ bias while safeguarding the objectivity and independence of the Directors, enabling them to perform their duties and functions objectively and effectively, in the interest of the relevant FHC and bank.

For financial holding companies and their subsidiaries, this cooling-off period is critical due to the ease with which the lines of control, ownership, and management can become blurred between the FHC and its subsidiaries. The CBN Corporate Governance Guidelines have not provided any circumstances where an ED, MD or CEO of a Bank will be exempt from observing the two-year cooling period before taking on any position in its FHC.

Implications for non-compliance with the CBN Corporate Governance Guidelines, 2023

It goes without saying that compliance with these provisions of the CBN Corporate Governance Guidelines, 2023, is mandatory, with attendant sanctions for non-compliance/ defaults contained in the Guidelines. Section 27 of the Corporate Governance Guidelines for Financial Holding Companies provides that failure of an FHC to comply with any of the provisions of the Guidelines and the Recommended Practices in NCCG 2018 constitutes a regulatory breach, punishable by sanctions as prescribed by the CBN. Specifically, sections 27.3 and 27.4 provides as follows:

27.3. Breach of any of the provisions of this Guidelines by a director, manager, or officer of the FHC shall attract appropriate sanctions including monetary penalties and administrative sanctions on the individual responsible for the breach.

27.4. In addition to the provision of Section 27.3, such director, manager, or officer of the FHC shall be suspended for six months in the first instance and possible removal from the Board or employment of the FHC in the event of continued reoccurrence.

Considering the above provisions, banks and FHCs need to comply with the provisions of the CBN Corporate Governance Guidelines, 2023, to avoid attendant sanctions from the Regulatory Agency.

²⁹ Section 5.2 of CBN Corporate Governance Guidelines for FHCs, 2023

³⁰ Section 5.3 of CBN Corporate Governance Guidelines for FHCs, 2023

Achieving Business Objectives of FHCs and Subsidiaries within the CBN Corporate Governance Guidelines, 2023.

There are several reasons why changing roles on a board may be desirable for an FHC and companies within its structure. These reasons include optimising strategic alignment, enhancing governance and oversight, promoting diversity and inclusion, and developing expertise across the group, amongst others.

Despite the restrictions by law, there are several strategies that can be adopted to ensure strategic alignment, enhance governance and oversight within a group structure, taking into consideration the provisions of the CBN Corporate Governance Guidelines, 2023. Some of the recommended strategies are listed below:

- a. **Joint Meetings/ Strategy Sessions:** One suggested method for achieving comprehensive oversight within a financial group structure is for companies to have joint board meetings. In this instance, the board meeting of the FHC and its subsidiaries is scheduled to take place concurrently. The identity of each company's board meeting must be preserved despite the concurrent nature of the meetings. Therefore, there should be independence in records of meetings, issues arising, and matters to be treated on the agenda of the Joint Board meeting.
- b. **Informal advisory:** The Bank may create an advisory position, wherein the individual occupying that position would have the role of proffering advice on designated/ sensitive matters (particularly in areas of intersection or where decisions on such issues are likely to affect the subsidiary bank) to the Chairman of the FHC and vice versa. Alternatively, the CEO of the Bank may provide informal advice to the Chairman of the FHC in this regard and vice versa. This way, governance and oversight may be strengthened.
- c. **Develop and Implement Group-Wide Policies:** Develop group-wide policies that apply consistently across the FHC and subsidiaries while accounting for their unique business needs. Furthermore, a central compliance unit may be established to ensure subsidiaries align with the FHC's policies and the CBN guidelines, reducing the risk of regulatory breaches.
- d. **Clear definition of the Independent Status of each company:** It is important to note that although an FHC has its equity investments in the bank, the Financial Holding Company is a separate entity from the bank. Although the FHC exercises ownership of the bank by virtue of its controlling interest, it should not be involved in the management or daily operations of the bank; the executives of the subsidiaries are, therefore, not expected to report or take directives from the executives of its FHC. This recommendation is reinforced by Section 6.1 of the CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria, 2014, which states that an FHC shall not:
 - i. *Interfere in the day-to-day activities of the subsidiaries;*
 - ii. *Be involved in credit administration and approval process of its subsidiaries;*
 - iii. *Require its subsidiaries (including any organ, servant, employee, staff, manager, officer or director thereof) to take directives or act on the instructions of the financial holding company in its decision-making process, or in relation to the conduct of its business in any way whatsoever.*

- e. **Delineation of Roles:** This recommendation operates *pari passu* with the immediately preceding recommendation. In clearly defining the Bank as independent of the FHC, it is important that the roles and duties of the members of both companies are clearly defined. The Chairman and CEO/ MD of the FHC are expected to manage the affairs and operations of the FHC and not of the Bank, which also has its own Board. In buttressing this point, section 6.1 of the CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria, 2014, further states that the FHC shall not “*arrogate to itself any of the powers or functions of the Board of Directors, or internal management responsibilities and obligations of any of its subsidiaries or associates of any such subsidiary*”.

CONCLUSION

Transitioning between executive and non-executive roles within a financial group structure in Nigeria is not only strategic but also a matter of governance. Such changes can build resilience within the organisation in a changing regulatory and operational environment while developing leaders and ensuring compliance with corporate governance regulations, including the CBN Corporate Governance Guidelines, 2023.

Well-managed transitions unlock the potential of the various managerial skill sets, foster the generation of new ideas through cross-pollination, and align executive functions with more synoptic strategic goals. By remaining at the board level while also stepping down from executive roles to non-executive roles, the transitioned director has sufficient knowledge of the history, policies, and long-term goals, of an organisation, which helps guide decisions and ensures continuity, with the independence necessary to provide appropriate oversight and monitor potential conflicts of interest.

However, these transitions must be executed with care. Clear policies, role definitions, and structured succession plans are critical to mitigate potential risks, such as conflicts of interest, governance fatigue, or undue influence. Furthermore, adherence to regulatory guidelines and the principles of accountability, transparency, and independence ensures that these transitions strengthen governance rather than compromise it.

Ultimately, a financial group’s ability to navigate these transitions effectively reflects its maturity and commitment to long-term value creation. By cultivating a culture of flexibility, strategic alignment, and ethical leadership, financial groups in Nigeria can improve their operational proficiency and also position themselves as models of corporate governance excellence in an increasingly competitive financial sector.

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