



Publication and dissemination of Annual Reports to shareholders in Nigeria and the United Kingdom: The Economics of Social Media and Electronic Communication

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Abstract

While the cost of printing and sending out annual reports to shareholders by companies keep increasing and arguments have been made for cheaper and cost-effective ways of carrying out financial disclosure obligations by companies including electronic method, Companies' Acts maintain that shareholders remain the ultimate decision-maker in the question whether electronic means of publishing annual reports is to be adopted as the primary means of publishing and disseminating annual reports among shareholders. This line of reasoning by legislation is given impetus by the staple assumption that shareholders take the form of owners of the companies of which they are members and the question of what mode of publication and dissemination of annual reports, whether electronic or hard copy remains their exclusive preserve. However, a case is made for a more cost-effective means of carrying out companies' disclosure obligation through the vehicle of social media and electronic means.

Introduction

There is a staple assumption across legal jurisdictions that shareholders take the form of owners of the companies of which they are members.¹ As a result of this 'ownership' status, legislation imbues them with responsibilities as well as rights which naturally follow ownership in law. In this piece, we will focus on the rights of shareholders central to the flow of communication between a company and its shareholders in corporate governance and accountability.

As part of the rights of shareholders which include the right to receive notice of meeting² and to attend general meetings of the company³, to share in profits and dividends⁴, to vote at company meetings⁵ whether by themselves or by proxies⁶ as well as to inspect the company's registers⁷; is the right to receive information and financial report of how the company was run by directors, officers and managers in a given financial year.⁸ This information comes in the form of an annual report. An annual report is a document prepared by a company's directors whose contents contain auditors report⁹ as representing a true and accurate account of the directors' statement of how the company

¹ See section 79(1) (2) CAMA on definition of a member; section 112 UK Companies Act 2006. Section 79(3) CAMA provides that in the case of a company having a share capital, each member shall be a shareholder of the company and shall hold at least one share. Section 114(b) CAMA defines the rights accruable to the ownership of shares to include the right to attend any general meeting of the company and vote at such a meeting.

² S. 219 CAMA; s. 310(1) (a) UK Companies Act 2006.

³ See sections 81, 114, 227 CAMA.

⁴ See section 218(2) on declaration of dividends.

⁵ See sections 81; 114 CAMA; section 284(1) (2) (a) UK Companies Act 2006.

⁶ See sections 218(4), 224, 230 CAMA; section 284(2) (b), 324 UK Companies Act 2006.

⁷ See sections 192(1), 194(1), 207 CAMA; see sections 114, 116 (members register), 229(1) (copy of contract or memorandum of every director's service contract), 238 (1) (copy of qualifying indemnity provision made for a director of a company), 275(5)(a) (Register of secretaries), 358(3) (Record of resolutions and meetings), 720(4) (Directors statement and auditor's report to be available for inspection) UK Companies Act 2006.

⁸ See sections 334, 344, 345, 349 CAMA; see sections 146(4), 431, 432 UK Companies Act 2006.

⁹ See section 359 CAMA; see sections 427(4)(d), 428(4)(d), 495(1)(b),(3), 496, 497 UK Companies Act 2006.

was managed in a financial year¹⁰. This takes the form of an accountability statement by directors of their stewardship as provided by law. Indeed, companies' legislations hold out directors as managers and alter ego of a company, which in its state as an artificial person is merely an abstraction and needs persons to carry out its objects. This is what Lord Denning meant when he said in *Bolton (Engineering) Co. Ltd v. Graham & Sons* that

'...directors and managers...represent the directing mind and will of the company, and control what it does...'¹¹

However, though directors are a company's alter ego and carry out day-to-day managerial responsibilities; responsibilities which companies legislations require directors to utilize their skill and competence to carry out as fiduciary agents of the company, other matters which touch on the overall welfare of the company such as appointment of directors and directors remuneration, appointment of auditors and auditors remuneration, appointment of directors in place of those retiring, declaration of dividends among others, fall within the decision-making responsibility of shareholders in general meeting.¹² Since shareholders are not involved in everyday decision-making, which responsibility has been assigned to directors and officers of the company, the only avenue for reaching decisions will be at general meetings hence the need for publication and circulation of information of such meetings being held sacrosanct by companies' legislations.¹³ In fact, a shareholder can cause the invalidation of a meeting where it is shown that notice of meeting was not sent out to such shareholder.¹⁴

However, with the notice of meeting of the annual general meeting follows the annual report containing the directors statement, audited financial statement, corporate governance, shareholder information, performance highlights, business and economic review, management information, business description as well as strategic and performance highlights.¹⁵ Because the primary purpose of annual reports is accountability of directors stewardship, 'most annual reports...have a discussion of what the company has been doing in the past year and what it expects to do in the future...'¹⁶. This makes the annual report a very important document which distils information in a given financial year to shareholders so they can be abreast of happenings in the company, particularly how the company is being operated and the directors' activities inclusive. It is a form of report of stewardship issued to the owners of the company on the state of their company.

Cross-Jurisdictional Provisions on Annual Reports Publication

The obligation of directors of a company to publish annual reports in fulfilment of disclosure, reporting and accountability duties to shareholders is not limited to a particular jurisdiction but is cross-jurisdictional. In this respect, focus is made on the Nigerian and the United Kingdom legal positions on the publication of annual reports. A detailed analysis of what the law expects with regards to publication of annual reports in Nigeria and the United Kingdom is made in the following paragraphs. After this, the burden of cross-border shareholders on companies especially multinationals (MNCs) who are also required to fulfil this obligation of publishing annual reports by the hard copy method will be considered and finally the advantages of social media and electronic means of publication of annual reports, together with the challenges it presents will form the conclusion of this piece.

¹⁰ See section 334 CAMA.

¹¹ (1957) 1 Q.B 159 at 172-173. See also Lord Haldane in *Lennards Carrying Co. v. Asiatic Petroleum* (1915) A.C 705 at 713-714.

¹² See sections 214, 218(2) CAMA.

¹³ See sections 220-222 CAMA; see section 310(1)(a) UK Companies Act 2006.

¹⁴ See section 221 CAMA.

¹⁵ Ernst & Young 'Reporting to shareholders – A good practice guide' May 2008, p. 3 accessed at [www.ey.com/Publication/vwLUAssets/Reporting_to_shareholders/\\$FILE/Reporting-to-shareholders.pdf](http://www.ey.com/Publication/vwLUAssets/Reporting_to_shareholders/$FILE/Reporting-to-shareholders.pdf)

¹⁶ ASX audio-visual presentation on annual reports at www.asx.com.au

Nigeria

The relevant laws and regulations governing the publication and dissemination of annual reports to shareholders is governed by the Companies and Allied Matters Act (CAMA), Investment and Securities Act 2007, the Securities and Exchange Commission (SEC) Rules and Regulations as well as the Nigerian Stock Exchange (NSE) Regulations. It is apposite to add that the responsibility to publish annual reports is strict on public companies, which SEC and NSE largely regulate.

First, CAMA does not mention nor use the term 'annual report'¹⁷. The closest term used is annual accounts.¹⁸ Section 334(1) provides that in the case of every company, the directors shall in respect of each year of the company, prepare financial statements for each year and subsection 2 makes a list of items to be included in the financial statement. However, while ss. 335-337 elaborates on structure of financial statements for an individual company and a group, section 342 provides for the directors report which, in essence takes the form of an annual report as commonly known as it goes beyond the financial statement to contain the development of the business and its subsidiaries (if it has any), amount recommended to be paid as dividend, amount of reserves and its purpose, names of directors of the company, the financial activities of the company and its subsidiaries as well as significant changes in business activities; health, safety and welfare of workers, as well as the involvement of employees in the affairs, policy and performance of the company. A copy of the balance sheet included in the annual report will be signed on behalf of the board by two directors of the company and filed with the Corporate Affairs Commission.

Section 345 spells out the directors' duty to lay the financial statements as well as the contents of section 342¹⁹ before the shareholders in general meeting once every year and the auditors' report shall be read before the company in general meeting.²⁰ This happens before the annual report together with the annual returns which, in practice, is a form²¹ to be completed, is submitted to the Corporate Affairs Commission. Section 346 provides penalties for failure to comply with section 345, and section 344 includes shareholders, called members of the company, as persons entitled to receive financial statements as of right. Hence, because financial statements are included in annual reports, the conclusion is apt that every member of the company is entitled as of right to receive the accountability document dubbed the annual report.

CAMA makes no distinction between a private company and a public company in the publication of annual report, making the responsibility of publishing and issuing same to shareholders imperative for both types of companies.²² SEC Rules and Regulations together with the NSE Regulations on the other hand are particular about public companies publishing and sending out annual reports to shareholders. This is because public companies, unlike private companies issue publicly traded securities and shares to members of the public and before the issue of shares or securities, registration with and approval of SEC and NSE must be obtained by public companies. It is for the protection of the shareholding as well as securities-holding public that these bodies were established by law to improve corporate transparency, accountability and governance.

¹⁷ Unlike the UK Companies Act 2006 where 'annual accounts and report' was used in section 471.

¹⁸ See the heading of section 334 and in particular contents of section 334(2) CAMA.

¹⁹ The financial statement as well as the contents in section 342 is, in practice called the annual report.

²⁰ In practice, notice of AGM is published in 2 national dailies by the provision of section 222 at least 21 days before the AGM. It is sent out to shareholders by post, registered address or given personally to any member by the provision of section 220. However, this notice is also contained in the annual report which is prepared and sent out to shareholders before the AGM; the content of the annual report forming business to be transacted at the AGM (section 218(2)). This is done to give the shareholders a sound footing of the business to be transacted at the general meeting so they can prepare to make meaningful contributions to discussions at the meeting.

²¹ Form CAC 10A pursuant to sections 370 and 371

²² See section 334

Securities and Exchange Commission Rules and Regulations

Section 1 of the Investments and Securities Act 2007 establishes SEC and empowered it to, among other things, regulate public companies and issues of securities in the capital market, as well as ensure protection of shareholders investments. Towards the fulfilment of these objectives is the obligation on public companies to file annual and periodic reports²³ with SEC.²⁴ A public company is also under obligation to disclose quarterly earnings forecast to SEC.²⁵ The disclosure of quarterly earnings forecast is, as the name implies done quarterly during the course of the financial year hence usually may be included in the annual report done at the end of the year and sent out to shareholders. However, these forecasts being disclosures to the commission may be made available to investors and shareholders by the Commission on request.²⁶

It is noteworthy that section 60 mentions audited financial statements and such other returns as may be prescribed by the Commission from time to time, but does not mention annual report. However, section 60(2) mentions annual reports and provides the appropriate guidelines for filing of the returns mentioned in section 60(1). A combination of sections 60(2) and 61(2) hence is to the effect that while there are certain periodic returns to be made to SEC, there is still an obligation to file an annual report which, more or less, is a robust accountability statement of business affairs carried out by the directors and audited by the company's auditors, than the periodic returns.

Although rule 38 SEC Rules provides that public companies whose securities are required to be registered shall file on a periodic or annual basis audited financial statements and other returns as may be prescribed, rule 39 clears the doubt on the use of the disjunctive word 'or' and specifically mentions annual report which is to be filed with other information to be reflected therein and rule 39(2) provides that the annual report shall be filed with SEC not later than 90 days after the financial year end in line with the provisions of CAMA.²⁷

Nigerian Stock Exchange (NSE) Regulations

NSE is not left out as a regulatory agency for public companies whose securities are listed on the Stock Exchange in the issue of annual report to shareholders and holders of securities. Rule 2.0(b) NSE Regulations provides that the AGM of public companies as required by CAMA affords shareholders and holders of securities the opportunity of questioning the Directors and Management on the accounts and reports presented by the Directors at such meeting. Rule 2.1.3 mentions that the Board of Directors shall, at each AGM, present to the shareholders or holders of securities a Report of the company's activities detailing a fair view of the development of the business of the company and its subsidiaries (if it has any) during the year.

While rules 2.0(b) and 2.1.3 mention reports, rule 2.2.3 specifically highlighted annual report in its provision. The rule provides that every issuer shall submit to the Exchange for review, a draft copy of the notice of meeting, circulars and annual reports and other notices that will be issued to the holders of listed securities. In fact, rule 2.2.10 makes imperative the dispatch to shareholders or holders of securities as well as relevant regulatory authorities of the notice of meeting and the full copy of the annual report. The use of the word 'shall' admits of no discretion on the part of public companies in the publication and dispatch of annual reports.

²³ Periodic reports include audited financial statements, Half-yearly Returns Form for Public Companies as well as Half-yearly Return Form on Unclaimed Dividends for Public Companies – see Rule 42 SEC Rules and Regulations.

²⁴ See section 60 ISA 2007

²⁵ See Rules 40, 41 SEC Rules and Regulations; section 64 ISA 2007

²⁶ See section 13(k)(t) ISA 2007

²⁷ See also Rule 308 SEC Rules and regulations.

The United Kingdom

The United Kingdom position on annual reports is governed by a combination of the Disclosure and Transparency Rules (DTR) overseen by the Financial Conduct Authority (FCA) established by the Financial Services and Markets Act (FSMA) 2000, and the Companies Act 2006. The import of the rules made by the FCA is disclosure and transparency, which largely supports the rationale for the obligation of companies to publish annual reports in order to keep shareholders abreast of operations and developments in the company within a financial year.

The publication of annual reports is usually concurrent with the sending out of notices of company general meetings where the report of directors, auditors and other contents of the annual report will be deliberated on by shareholders in open meeting. Notice to be given in this regard for both private and public companies is governed by section 308 Companies Act 2006. Section 308 provides that notice of a general meeting of a company²⁸ must be given in (a) hard copy form, (b) in electronic form or, (c) by means of a website; or partly by one such means and partly by another. Note first the use of the mandatory word 'must' followed by the alternate word 'or'. This can be interpreted to mean that a company must, of compulsion, give notice of general meeting but the means of giving notice is left to the discretion of the company by any of the alternative means given from (a) to (c) by the use of 'or'. This will be properly argued below.

All other provisions as regards notice for it to be valid are provided for in sections 307-313. It would also seem that section 308 is supported by section 333 to the extent of notices given to members/shareholders in electronic form.

While the preceding sections stated above may be general in application to both private and public companies in the UK, section 336 clarifies the obligation imposed on public companies to the extent of annual general meetings (AGM) and specifies the time for holding a public company's AGM. Section 337 bolsters section 308 by providing that such notice of a public company calling an AGM must state that the meeting is an AGM. At the AGM, the activities and affairs of the company within the ended financial year will be deliberated upon; the matters for deliberation being given beforehand to shareholders/members in the annual report and accounts sent to them before the meeting. The items in section 393-422, to wit, directors report, annual accounts, information about directors' benefits, directors remuneration report among others are contained in the annual report and by section 423, every company must send a copy of its annual account and report for each financial year to every member of the company, every holder of the company's debentures and every person entitled to receive notice of general meeting. The spirit of sections 423 and 424 is to the effect that hard copies of annual accounts and reports must be sent out to current addresses of members/shareholders and within the time provided in section 424(2). However, section 430 makes further provision for public companies to make available on the company's website its annual report and accounts, in addition to the obligation of section 424 which is to send out hard copies of the report and accounts. By section 430(5), it would seem that the requirement to make available annual report and accounts on the company's website is not as strict as that of sending out annual reports and accounts to shareholders addresses in sections 423 and 424.²⁹ Moreover, provisions for offence and default are not as elaborate as contained in section 424.

Section 430(3) throws up a question: if access is made available to the company's website for shareholders to obtain annual report and accounts and access to hard copies of the accounts and report is not conditional to the payment of a fee, why impose the strict obligation of sending out hard copies of annual report and accounts in section 423 and 424 when sections 423 and 424 as one and

²⁸ The section does not specify whether private or public company, hence it is assumed to cut across.

²⁹ This is because section 430(5) is observed if the report and accounts are made available on the company's website for a period of time as specified in section 430(1) (b) (although this window may be expanded this method of publishing annual reports on the company's website is given teeth as satisfying company's disclosure obligation to shareholders even if it is the only means of publication used by a company).

section 430 specifically subsection (3) would achieve the same result? The economics is one of cost and result: cost to the extent of financial liability of printing tons of hard copies of annual reports and accounts, cost to the environment in the nature of trees felled in obtaining paper, cost of sending out the reports to various shareholders across borders in today's global economic environment and the result, which is to intimate shareholders with the information required by law to be disseminated to them in pursuance of companies' disclosure obligation. The issue is not so much of abiding by law but one of method and cost-effectiveness in fulfilling the spirit of the law. In fact, section 436 makes poignant the meaning of publication which also applies to annual reports and accounts thus:

'...a company is regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.'

Although section 436(1) seems to limit the provisions of section 436(2) to section 433, 434 and 435, the import of it applies in spirit to publication of annual reports and accounts and should be so applied in practice in the interest of the inherent economics involved.

The Disclosure and Transparency Rules (DTR)

These rules deal principally with quoted companies whose equity share capital has been included in the official list in accordance with the provisions of part 6 of FSMA 2000 (c.8), or listed in an EEA State, or admitted to dealing on either the New York Stock Exchange or the exchange known as NASDAQ.³⁰ The DTR Rules implement the EU transparency Directive to define periodic financial reporting requirements for companies admitted to trade on a regulated market such as the London Stock Exchange's main Market if the UK is the company's 'home state'. The EU Transparency Directive³¹ deals with periodic financial reporting, major shareholding disclosures and the provision of information to investors. Alongside other regulations and directives³², it is intended to ensure investor confidence in levels of disclosure by issuers of publicly-traded securities and to enhance the operation of efficient pan-European capital markets.³³

The DTR deal with companies as issuers and any issuer whose transferable securities are admitted to trading and whose home state is the United Kingdom.³⁴ These must make public their annual financial reports at the latest 4 months after the end of each financial year and must ensure it remains publicly available for at least five years.³⁵ DTR rule 4.1.5 lists the contents of an annual financial report to include (a) audited financial statements, (b) management report³⁶ and, (c) responsibility statements.³⁷

The requirements under the DTR Rules to post annual and half-yearly reports to shareholders are contained in DTR 4.1, 4.2 respectively and DTR 6, specifically DTR 6.1.7 makes provisions for the use of electronic communication from issuers to shareholders. However, the decision to convey electronically must be the shareholders taken in general meeting.

³⁰ See section 385(2) UK Companies Act 2006.

³¹ Directive 2004/109/EC, also known as the Transparency Obligations Directive

³² Such as the IAS Regulation (Regulation (EC) No 1606/2002), which has the effect for accounting periods commencing on or after 1 January 2005; the Prospectus Directive (Directive 2003/71/EC), implemented in the UK on 1 July 2000; and the Market Abuse Directive (Directive 2003/6/EC), implemented in the UK on 1 July 2005).

³³ Linklaters 'New UK reporting and disclosure obligations under the FSA's Transparency Rules' November 2006, p.2 accessed at www.linklaters.com/pdfs/Insights/corporate/1106TransparencyDirective.pdf on 3rd December, 2014.

³⁴ See DTR rule 4.1.1

³⁵ See DTR rules 4.1.3, 4.1.4

³⁶ For content of management report, see DTR rules 4.1.8, 4.1.9, 4.1.10, 4.1.11

³⁷ See DTR rule 4.1.12

The Burden of Large and Cross-Border Shareholders

The above analysis puts to rest the sacrosanct and strict responsibility of public companies to publish and disseminate annual reports to shareholders irrespective of the number of shares or class of shares held. However, the thrust of this issue is the economics of fulfilling this obligation by companies especially those with large and/or cross-border shareholders. Multinational corporations (MNCs) listed on exchanges of more than one country are a good example of public companies with cross-border shareholders. This is because the more the number of shareholders, the higher the cost of fulfilling this company obligation to each shareholder. The rule on disclosure via annual reports to shareholders is not provincial; it is in fact contained in companies' legislations across jurisdictions. While it is settled that companies, especially public companies are obligated to publish and disseminate annual reports to shareholders, legislation seem to be lax about electronic means of sending or publishing annual report, leaving it to the discretion of shareholders in general meeting to either approve or elect to choose the electronic form of annual report rather than in hard print. In fact, the UK Companies Act 2006 requires hard copy notification to be sent to shareholders to inform them that communication that would otherwise be sent to them have been published on the company's website. This is where the company in question has published such report intended for shareholders on its website. In the light of companies with large number of shareholders running up to 50, 000³⁸ as well as MNCs, would both electronic and print publication not be added financial responsibility?³⁹ In fact, it undermines cost-effectiveness and bedevils the effectiveness of information technology and the potentials of social media in a world where proper deployment of IT and social media spells the difference between success for candidates in an election, the difference between profitable businesses and struggling ones as well as the shaping of public opinion. The classic example of Wikipedia remains evergreen.

In December 2014, the Securities and Exchange Commission in Nigeria (SEC) organised a seminar for shareholder associations, in-house counsel for companies, Chief Executive Officers of companies and a few other corporate organisation stakeholders with a theme centered on cost-saving method of publishing annual reports in the light of rising costs of publishing annual reports in hard copies and sending same to a large number of people. Although the idea to go electronic as part of the suggestions mentioned went south with some shareholder associations, the seed seem to be sown about developments towards deploying innovations to reduce the cost of publishing annual reports.

The United States Securities and Exchange Commission (US SEC) Example

On the 2nd of April, 2013, the US SEC issued a Report⁴⁰ that gave companies a go-ahead to use social media outlets like Facebook and Twitter to announce key information in compliance with Regulation Fair Disclosure (Regulation FD)⁴¹ as long as investors or shareholders have been alerted of the fact of using social media and which social media to disseminate such information. Prior to

³⁸ In a particular address to the shareholders of Sagikor Financial Corporation in 2012, a company located in Barbados in the Caribbean, the Chairman of the company reported that the company had about 37, 000 shareholders in about 50 countries around the world.

³⁹ In a particular address to the shareholders of Sagikor Financial Corporation in 2012, a company located in Barbados in the Caribbean, the Chairman of the company reported that the company had about 37, 000 shareholders in about 50 countries around the world and over the last three years before 2012, the cost of printing and posting about 37, 000 annual reports, the size of which grows larger every year due to increased financial and corporate governance disclosures, had exceeded US \$400, 000 per annum. See

http://www.sagikor.com/Documents/Financials/Reports_Annual/2012_SahreholdersNoticePackage.pdf accessed on 8 December, 2014

⁴⁰ See "SEC Says Social Media OK for Company Announcements if Investors Are Alerted" via

<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171513574#.V5fIkaJHhkq> accessed on 10 April 2015

⁴¹ Regulation FD applies when an issuer discloses material, non-public information to certain enumerated persons, including shareholders and securities professionals. Regulation FD requires companies to distribute material information in a manner reasonably designed to get that information out to the general public broadly and non-exclusively. It is intended to ensure that all investors have the ability to gain access to material information at the same time.

2013, the Commission Guidance on the Use of Company Websites⁴² was directed primarily at the use of corporate web sites for the disclosure of material, non-public information. The Guidelines laid out the format that for purposes of complying with Regulation FD, a company makes a public disclosure when it distributes information “through a recognised channel of distribution”⁴³. The channel of distribution must be recognised by investors and shareholders to prevent selective disclosure of information against the provision of section 13(a) Exchange Act 1934. The 2013 Report of Investigation recognises that companies are growing past the use of the 2008 Guidelines channel of distribution and are increasingly using social media to communicate with shareholders and the market generally. It also recognised the fact that people are growing in social media compliance evidenced by the fallout of the announcement of Hastings over his Facebook page that Netflix has streamed over 1 billion hours of content in June 2012. Sequel to this announcement by Hastings over his personal Facebook page, Netflix’s stock rose from \$70.45 at the time of Hastings post to \$81.72 at the close of the following trading day. This shows that investors and shareholders are social media savvy and companies, having recognised this, are using social media as a channel to communicate with shareholders and the markets generally.

The import of the US SEC’s 2013 Report is to provide a legal basis to validate the use of social media for the dissemination of company disclosures to shareholders if and when the decision is reached by the shareholders. This approval by the US SEC was based on the reasoning that social media channels are in a class with other emerging means of communication used by public companies the same way it applies to companies’ websites and dissemination of information.

Today, many companies globally have social media channels and quite some of them utilize these social media outlets to conduct and transact business with actual and potential customers. For instance, Guaranty Trust Bank (GTB), one of the most profitable banks in Nigeria with listing on the London Stock Exchange⁴⁴ spearheaded the opening of savings accounts via Facebook and other banks have followed suit. The question is, if social media is efficient for the dissemination of information and the transaction of business for corporate persons, could not that potential be channelled to disseminating information to shareholders, notifying them of the publication of annual reports on the company’s website or in fact providing a direct web link to a soft copy of the annual reports on the social media page of the company? Virtually everyone has a social media account and the odds are about 70% of companies shareholders are on social media as can be deduced from the US SEC 2013 Report. To jumpstart this, an AGM would be a good opportunity for companies to inundate shareholders of the company’s social media channel for, among other purposes, notifying them of the publication of half-yearly statements as well as annual reports. This suggested means of notification via social media is in addition to legal provisions to publish in national dailies notice of general meetings. Providing a direct web link to the soft copy of the annual reports weakens the argument of opponents that annual reports posted on the company’s website may be difficult to reach where the company’s website is intricate or complex to navigate.

Debate on Use of Social Media and E-Means to Publish Annual Reports

A symposium organised by the Nigerian Securities and Exchange Commission (SEC) in conjunction with Bulkpost Ventures⁴⁵ about the 3rd December 2014 centered on the use of efficient and cost-saving methods in the dissemination of annual reports to shareholders. The methods identified include the use of compact discs (CD) and reduction of annual reports to electronic and downloadable files on the website of the Company. The shareholder associations on the other hand

⁴² Release No. 34-58288 (Aug. 7, 2008) (“2008 Guidance”)

⁴³ This channel of distribution includes web sites and “push” technologies such as email alerts and RSS feeds; and “interactive” communication tools such as blogs.

⁴⁴ On July 26, 2007, GTB was listed on the London Stock Exchange following a successful subscription of its \$750m Global Depository Receipts.

⁴⁵ Bulkpost Ventures is a postal agency run in conjunction with the Nigeria Postal Service and has the advantage of wide-spread which partnering with Nigeria Postal Service brings

raised objections by identifying obstacles to these methods including lack of electricity, immature IT systems, limited access to broadband width to access the web, IT illiteracy among others. However, the use of social media such as Facebook and Twitter was not mentioned at the symposium which, as everyday evidence suggests, is an affordable and efficient means of disseminating information including annual reports. The US SEC 2013 Report and its import discussed above is evidence enough.

Yet, the obstacles raised by these shareholder associations can be scaled. Shareholders have come together to form associations to protect their investments as one voice and these associations have by law in Nigeria been required to be registered by the Corporate Affairs Commission. The trustees of these associations are usually well-educated people and these associations have secretariats. Shareholder associations can arrange IT literacy forum and symposia for their members to educate them on how to access electronic annual reports. In another vein, an IT department can be arranged within shareholder associations to cater to shareholders whose IT literacy skills are low by assisting them to access the reports.

In another line of argument, the world has gone mobile with a significant population using mobile communication devices such as phones and tablets and these mobile devices have pre-installed on them social media such as Facebook and Twitter. Usually too, these tablets and phones can easily and at reduced cost too be connected to the internet and everyday evidence suggests that social media thrives more on mobile devices than on other traditional means of electronic communication such as desktop computers which may need uninterrupted connectivity to electricity. While these mobile devices can survive on batteries and are internet compatible with proliferating internet provider companies, the argument for communicating companies' disclosures via social media becomes more compelling.

Moreover, companies could donate a number of computers and broadband width to shareholder associations IT departments so that shareholders without mobile gadgets to access information on the web can visit their associations' secretariats to do so. This will significantly reduce cost in terms of finance and environmental impact in the nature of tree felling to print reports and post them. The electronic method of publishing annual reports does not only remain viable for companies with large local shareholders alone but is also attractive for MNCs with cross-border shareholders. It is worthy of note that the UK expressly recognises the use of electronic means of sending documents relating to written resolution⁴⁶ and for sending documents or information relating to meetings⁴⁷ such as, for instance, appointing a proxy, especially for cross-border investors who may, because of geographical limitation, appoint a proxy residing within the jurisdiction of the company and where the AGM is holding, to act as his proxy. If the electronic means is effective for sending documents relating to meetings and sending documents relating to written resolution, that practice can be extended to the publication of annual reports as an exclusive alternative means of publishing annual reports.

Recommendations and Conclusion

Companies' Acts maintain that shareholders remain the ultimate decision-maker in the question whether electronic means of publishing annual reports is to be adopted as the primary means of publishing and disseminating annual reports among shareholders. Although Companies' Acts provide for electronic notification and dissemination of information including annual reports and other statutory statements required to be sent to shareholders, these provisions regarding electronic means of publication remain at best an addition to the stereotype hard copy format of publishing annual reports; the decision of making it the primary choice being the shareholders' in general meeting. In effect, for these provisions to be fully utilized, companies need to pass a shareholder resolution approving the use of electronic publication of annual reports. It is assumed that once this is

⁴⁶ See section 298 UK Companies Act 2006.

⁴⁷ See section 333 UK Companies Act 2006.

done, hard copy publication will reduce or may be made the alternative and not the paramount means of communication or publication of annual reports. This then translates to amendment of the company's Articles of Association to enable it communicate annual reports and other required information to shareholders electronically.

In addition, Companies' Acts need to include a provision that gives effect to the disjunctive use of either the hard copy publication or soft copy/electronic publication of annual reports and that once a company in general meeting ratifies the use of the electronic means of publication of annual reports, such companies publishing annual reports electronically subsequently would have satisfied the legal obligation of publishing annual reports to shareholders without the need to print hard copies. Moreover, Companies' Acts can give an incentive to companies adopting this method by, for instance, giving them a reduction by half of fees required for filing the annual reports and other statutory reports with regulatory agencies.

Also, regulatory agencies such as the Nigerian SEC should step up on their roles as regulators to issue rules and guidelines in pursuance of its powers under section 13(dd) Investments and Securities Act 2007, that will support and give legal basis to the use of social media for company disclosures particularly to shareholders like the US SEC has consistently done.

The benefits of e-communication are many: it keeps companies in observance of disclosure obligation while protecting the environment from the felling of trees which would have gone towards printing hard copies of annual reports as well as stem climate change by maintaining a balance in the ecosystem. Other benefits are cost-effectiveness in terms of reduced budget expended in printing and sending out the reports; speed of dissemination, an advantage associated with social media which will inundate not only shareholders and debenture holders but also potential investors looking to invest in the company in question. Speedy dissemination also plays a key role with regards to MNCs having cross-border shareholders as well as reduces the cost of sending out hard copies across the globe to shareholders.

A bright side addition is that it contributes to enlightening shareholders who are not IT or web savvy to be more literate in that line once they realize their investments can be more properly monitored that way.

Finally, shareholder associations can look inwards at ways to organise, educate and assist shareholders about IT and web education and also facilitate access to annual reports via a web link posted on the company's social media channel such as Facebook and Twitter or via the company's website should the electronic method be adopted.

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