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ADOPTION OF CUMULATIVE VOTING TECHNIQUE IN CORPORATE GOVERNANCE IN NIGERIA: PROSPECTS AND CHALLENGES

By

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Abstract

The voting rights of shareholders have been subjected to a continuous process of erosion to the point where corporate democracy has become anachronistic. This is most evident when it comes to the election of members of the board of directors of companies as the majority shareholders determine who gets elected to the board and who is retired. The implication of this is that the majority shareholders retain the unilateral power to elect the directors. There is virtually no chance for minority shareholders to vote their representatives to the board of directors. Minority shareholders are mere onlookers in this process as they only have their say while the majority shareholders have their way. This is made possible by the voting technique adopted in corporate election, which is skewed in favour of the majority. It was discovered that no statute in Nigeria provides for cumulative voting and as such there is dearth of case law on the subject as there is nothing to interpret. This study explored the theory and practice of cumulative voting in some foreign jurisdictions and considered its prospects and challenges with a view to adopting the practice into Nigerian corporate governance.

Key words: Cumulative voting, Corporate Governance, Prospects and Challenges, Nigeria.

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Introduction

Cumulative voting is the procedure of voting for a company's directors. This system of voting permits shareholders to cast all their multiple votes for a single candidate or apportion them among different candidates in any manner.[1] The rationale of cumulative voting is to afford the minority shareholders an opportunity of representation on the board of directors.[2] Without it, the majority shareholders could elect the entire board members and exclude the minority from participation in the management of the company. Cumulative voting cannot be employed in any shareholder election other than the election of directors; neither can it be employed when only one director is to be elected. Consequently, in order for cumulative voting to be effective, all the directors to be elected at any particular meeting must be voted for collectively and not by individual elections. The greater the number of vacancies, the higher the possibility of minority shareholders securing some representation by focusing their multiple votes on the same one or few candidates. By contrast, under non-cumulative voting, a majority shareholder could determine all positions of the board.

Advocates of cumulative voting see it as an important measure to protect minority interests against overreaching by the majority[3] and to empower large minority shareholders, so much so that cumulative voting is the key to Black and Kraakman's 'Self-enforcement approach' to corporate law.[4]

1. *Wright v Central California Water Co* 67 Cal532.
2. U C Braendle, 'Shareholder Protection in the USA and Germany - "Law and Finance" Revisited' (2006) 7 *German Law Journal*, 270.
3. J N Gordon, Institutions as Relational Investors: A New Look at Cumulative Voting' (1994) 94COLUM, *L.REV*, 124-142.
4. R Kraakman & B S Black, 'A Self Enforcement Model of Corporate Law', (1994) 109 *HARV. L. REV*, 124-142.

This view has been supported by some empirical researches, which suggest that a positive correlation exists between cumulative voting and firm's values.[5] Critics have, however, called into question the universality of cumulative voting as a measure for shareholder rights. They have maintained that cumulative voting can polarize the board and insulate managers from the full force of the market for corporate control. They were also of the view that special interest factionalism can exist in a system that uses cumulative voting, which can hinder a company's performance.

Nevertheless, cumulative voting is an unknown election rule in Nigeria company practice despite its usage in many developed countries. In Nigeria, there is no statute providing for cumulative voting. Consequently, there is no Nigerian case law on the subject. This article therefore studies the prospects and challenges of cumulative voting and seeks the benefits and possibilities of introducing it into Nigerian corporate governance.

Meaning of Corporate Governance

There is no monolithic understanding of 'Corporate governance' as a term. There are various definitions of the concept from scholars and practitioners of diverse persuasions. Jayashree observes that 'corporate governance when used in the context of business organization is a system of making directors accountable to shareholders for effective management of the companies in the best interest of the company and the shareholders along with concern for ethics and values'.[6] It is

5. S Bhagat and J A Brickley, 'Cumulative Voting: The Value of Minority Shareholder Voting Rights',(1984) 27 *JLK & ECON*, 339.
6. S Jayashree, 'Some Views on Corporate Governance,' (2006) *Indira Management Review*. Indira School of Management Studies. Pune: Tathawade, 5.

concerned with 'the management of companies through the board of directors that hinges on complete transparency, integrity and accountability of management'.[7] According to Oyejide and Soyibo, two perspectives of the concept are discernible: a narrow one in which it is viewed merely as being concerned with the structures within which a corporate entity or enterprise receives its basic orientation and direction; and, a broad perspective in which it is regarded as being the heart of both a market and democratic society.[8] Lemo is of the view 'that corporate governance is a body of the rules of the game by which companies are managed and supervised by the board of directors in order to protect the interest and financial stakes of shareholders that are far removed from the management of the firm'.[9] For Mensah, 'corporate governance is an institutional arrangement which provides the discipline and checks over excesses of controlling managers'.[10]

In the light of the above descriptions, corporate governance is a system by which organizations are managed and controlled. It targets transparency and accountability in an organization's processes with the aim of fulfilling responsibilities to shareholders, employees, consumers and the community it resides.[11] The essence of corporate governance is the 'accountability of persons entrusted with duties and

7. S Jayashree (n 7).
8. T A Oyejide, and A Soyibo, Corporate Governance in Nigeria. Paper Presented at the Conference on Corporate Governance, Accra, Ghana, 29-30 January 2001.
9. T Lemo, Keynote Address of the 34th Conference of ICSAN.Sheraton Hotel and Towers. Banquet Hall, Lagos.22-23 September, 2010.
10. S Mensah, Corporate Governance in Africa. The Role of Capital Market Regulation. Presented at 2nd Pan Africa Consultation Forum on Corporate Governance, Nairobi, Kenya, 2003.
11. O A Momoh and M S Ukpong, 'Corporate Governance and its effects on the Nigerian Insurance Industry', (2013) 8/1 *European Journal of Globalization and Development Research*, 481.

responsibilities in relation to the direction of the corporation's affairs,[12] hence, good corporate governance is based on four main principles: fairness, transparency, accountability and responsibility. Beside the reduction of the vulnerability to financial crises, these principles reflect the standards necessary to provide legitimacy to the corporate sector and to broaden and deepen access to capital.[13] No doubt, this is bound to ultimately have a positive impact on economic growth. It is upon this assumption that this article examines the nature of cumulative voting and recommends its adoption into corporate practice in Nigeria.

Origin of Cumulative Voting

Historically, the use of cumulative voting for the election of corporate board of directors originated because of abuses of power by railroad corporation executives during the last Century. Cumulative voting in corporate election was introduced into American law through a provision in the constitution of the State of Illinois that was adopted by the people in 1870.[14] At the time that the delegates to the constitutional convention met, popular indignation at the excesses and frauds of various railroad managements was at fever pitch.[15]

Thus, giving minority shareholders representation on corporate boards through the device of cumulative voting was

12. O A Momoh and M S Ukpong, (n 11) 483.
13. I A Karasneh and A Bolbol, 'Corporate Governance and Economic Growth', *Gulf News and Economy*, November 13, 2016. Available at < http://gulfnews.com/business/economy/corporate-governance-and-economic-growth-1.441767 > Assessed on 13/11/2016.
14. E A Stephan, 'Cumulative Voting and Classified Boards: Some Reflections on *Wolfson v Avery*', (1956) *Notre Dame Law Review*, Vol 31, No. 3, 351.
15. *Ibid.*

the brainchild of Joseph Medill, publisher of the Chicago Tribune and a towering figure at the 1870 Convention in Illinois. Medill had been won over to the principle of minority representation by the writings of John Stuart Mill who in 1861, in his 'Representative Government 'had stated thus:

> ...Because the majority ought to prevail over the minority, must the majority have all the votes, the minority none? Is it necessary that the minority should not even be heard? Nothing but habit and old association can reconcile any reasonable being to the needless injustice. In a really equal democracy, every or any section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives; but a minority of the electors would always have a minority of the representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege; one part of the people rule over the rest; there is a part whose fair and equal share of influence in the representation is withheld from them; contrary to all just government, but above all, contrary to the principle of democracy, which professes equality as its very root and foundation.[16]

Although, Stuart Mill was speaking of minority representation in political matters Medill and his group, however, saw the usefulness of the principle in corporate elections. Soon after the

16. Stephan, *op cit*, p. 352.

convention opened, he introduced the cumulative voting provision for the election of corporate directors.

Meaning of Cumulative Voting

Cumulative voting is a method of election of the members of the board of directors used by corporations whereby a stockholder may cast as many votes for directors to be elected as he or she has shares, multiplied by the number of directors to be elected.[17] According to Clark, 'Cumulative voting is a shareholder voting arrangement under which each shareholder has a number of votes equal to the number of shares she owns multiplied by the number of directors to be elected at the shareholders' meeting'.[18] Fletch defined cumulative voting as the procedure of voting for a company's director where each shareholder is entitled to one vote per share times the number of directors to be elected.[19] Under cumulative voting, voters receive as many votes to cast as there are seats to fill; voters then may distribute these multiple votes among candidates in any way they prefer. Thus, voters may plump all their votes on one candidate in the case of preference for the particular candidate; or give one vote each to several candidates.

Voting Techniques in Nigerian Corporate Governance

At corporate meetings, motions are moved and resolutions passed. Such resolutions are passed after voting by all members present and having the right to vote. Nigerian Company Law recognizes two methods of voting at corporate

17. C Claire. 'Cumulative Voting', <http://www.legaldictionary.com> accessed 14 May 2016.
18. R C Clark. *Corporate Law*, (Little, Brown and Company, 1986) p361.
19. RFletch,'TheMeaningof Cumulative Voting', <http://www.investopedia.com> accessed 14 May 2016.

meetings namely; voting on a show of hands and voting by Poll.

Voting on a Show of Hands

Voting on a show of hands simply means that every shareholder has one vote and one vote only, irrespective of the number of shares she or he owns in the company. Section 224 of the Companies and Allied Matters Act (CAMA)[20] provides to the effect that at any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded. The show of hands is the basic common law method of taking any vote unless a poll was demanded. On the show of hands vote, each member enjoys one vote without regard to the number of shares that a member holding the hand possesses.[21]

This method of voting is very democratic and facilitates a "one man one vote" system of passing resolution. In a voting on a show of hands, shareholding is of little consequence and minority issues do not arise. The catch, however, is that it is usually only used in passing innocuous or non-contentious resolutions where divergence of opinion and interest is not expected to be strong. In deciding on serious issues, this method of voting is seldom used as shareholders with higher stake in the company usually want to exert their powers as a means of securing their investment in company.

20. Cap C20, Laws of the Federation of Nigeria, 2004 (Hereinafter referred to as CAMA).
21. S Iyaniwura and W Iyaniwura. 'The Nature of Shareholding in Nigeria: Evidence from the Banking Crisis' (2014) 13 *Global Journal of Management and Business Research*, 38.

Voting by Poll

This is the alternative voting technique recognized by the CAMA. This implies voting according to shareholding. Section 224 of CAMA stipulates the persons capable of demanding a poll to include:

(a) the chairman, where he is a shareholder or a proxy;
(b) at least three members present in person or by proxy;
(c) any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or
(d) any member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.

The right to demand a poll should be exercised immediately after a declaration by the result of the show of hands,[22] or where it is required to be taken immediately at the meeting, it must be taken as soon as practicable in the circumstance.[23] The demand could also be made privately to the chairman and by him communicated for the meeting; unless the article of association states specifically the time and place of taking the poll the chairman may direct the method

22. *Campell v Maund* (1836) 5 Ad & E 865.
23. *Jackson v Hamlyn* (1953) Ch 577.

and manner of taking it.[24] The right to demand a poll cannot be alienated by the articles.[25]A member entitled to more than one vote need not use all his votes or cast them in the same way.[26] Voting by poll enables the majority shareholders have their way at the meetings, as they can determine the fate of motions presented at the meeting. They can either allow a motion or frustrate it. This raises the minority protection issues, especially when it comes to the election of the members of the board of directors. A single majority shareholder or a handful of them working in concert can determine the composition of the entire board.

A member of a company may appoint a proxy to attend the meeting and vote on his behalf.[27] Thus, any member permitted to attend a meeting is at liberty to appoint another person, whether or not the person is a member as 'proxy' to attend and vote as a substitute of him, and such proxy appointment to attend and vote as a substitute confer the same right to speak at the meeting on the proxy. The term proxy therefore refers both to the agent appointed by a member to vote on his behalf at a meeting of the company and to the document appointing that agent. Even when a meeting is adjourned, a member can appoint a fresh proxy to attend and vote in his stead on the business to be transacted at the adjourned meeting if the articles so provides[28]. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing or; if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorized[29]. There is a problem in ensuring, so far as

24. *Re Chillington Iron Co* (1885) 29 Ch D 159.
25. CAMA s 225.
26. *Ibid* s 226 (1).
27. CAMA s 230.
28. *Ibid.*
29. *Ibid* s 230 (6).

possible, that members may exercise their voting rights. Most shareholders of large companies do not attend the general meeting. In some cases, to find adequate physical accommodation for all the members if they desire to attend would be impossible. The solution is to enable voting members of the company to execute this instrument referred to as proxy in favour of another person, enabling that person to exercise the member's voting rights.

Any member may appoint a proxy. A person who holds a proxy to vote at a specified meeting of the company is not deemed to have an interest in the share.[30] Where a shareholder having executed a proxy, himself attends the meeting personally, the authority of the proxy, is revoked automatically. On the death of a shareholder, after he had appointed a proxy, the proxy is revoked if a written notice of death is served on the Company before the meeting. A proxy does not have the title to the shares vested in him unlike a voting trust[31]. A corporation, whether a company within the meaning of this Act or not, may if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.[32] A creditor (including a debenture holder) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the

30. O I Aderibigbe, 'The Mechanisms of Corporate Meetings under the Companies and Allied Matters Act (CAMA) 1990', (2011) 2 *International Journal of Advanced Legal Studies and Governance*, 176.
31. *Ibid.*
32. CAMA s 230.

company held in pursuance of isions contained in any debenture or trust deed, as the y be.[33] Proxies are in fact normally solicited, either fo behalf of management, which wishes the meeting to affi olicies, or on behalf of dissentient members seeking to the management. In *Peel v London and North Weste o,*[34] the court held that management was not only entitle was bound, to send out circulars explaining their policy, itled to solicit votes in support of that policy and could he necessary expenses from company funds. This power e exercised bona fide, but it may well be difficult to prov of good faith.

Poll and Cumulative Voting Disti hed

Ordinarily, when persons are pres for election, they are elected by a majority vote. The e n of members of the board is a very serious issue and reholders have vested interests in this election. Thus, majority shareholders usually demand a poll. This gives the jority shareholders an opportunity to determine the compos n of the board, and in essence, the corporate policy of the ompany. This system shuts the minority shareholders out from influencing company policy directions. In the event that a single individual is the majority shareholder, he/she elects to the board, members loyal to him/her and wields unlimited control over the company.

Cumulative voting system on the other hand offers th minority a level of representation on the board. Cumulativ voting helps to strengthen the ability of minority shareholde to elect a director. This method allows shareholders to cast a of their votes for a single nominee for the board of directo when the company has multiple openings on its board.

33. *Ibid* s 231.
34. (1907) 1 Ch 5.

contrast, in "poll" voting, shareholders may not give more than one vote per share to any single nominee, thus allowing the majority shareholders have the day. In other words, it is one vote per share. There is no room for the multiplication of the votes by the number of directors to be elected and the possibility of casting all such votes for a single individual standing election to the board.

Thus, in poll voting, a shareholder therefore votes the number of shares he owns for each candidate for office. If nine directors are to be elected and the shareholder owns 100 shares, he casts 100 votes for each of the candidates. For instance, a shareholders owning a majority of 51 percent or more of the shares can elect all nine directors, the minority elects none. However, under cumulative voting, a shareholder is entitled to as many votes as he has shares multiplied by the number of directors who are to be elected. He may concentrate all of his votes on one candidate as he sees fit. Thus, the formula to determine the number of shares necessary to elect a given number of directors is shown below.

$$X = \frac{Y \times N^1}{N + 1}$$

X = No. of shares needed to elect a given number of directors
Y = Total No. of shares at the meeting
N^1 = No. of directors desired to be elected
N = Total No. of directors to be elected

The formula to determine how many directors a given group controlling a certain number of shares can elect is also shown thus:

$$N = \frac{X \times (D + 1)}{S}$$

N= No. of directors that can be elected
X= No. of shares controlled

D= Total No. of directors to be elected
S= Total No. Of shares that will be voted at the meeting[35]

So, if y = 1,000,000
d = 2
D = 10

$$\text{Then } X = \frac{1{,}000{,}000 \times 2}{10 + 1} + 1$$

X = 18,182

Hence, with cumulative voting freely operating, the possibility of minority shareholders to gain representation on the board of directors is feasible. In any event, in cumulative voting the minority shareholders have the potential opportunity to elect their candidates by uniting all their votes. As such, the benefit of this system of voting should be considered more seriously by the majority since, it will help to avoid conflict between the parties and guarantees the votes for minority shareholders without diminishing the legal status of the majority shareholders.

Challenges Facing Cumulative Voting Technique

Since cumulative voting is unknown at common law, the right can only exist where it is expressly provided by the statute.[36] Statute law authorizing cumulative voting are of two types, namely, "mandatory" and "permissive." Where the statute is mandatory, cumulative voting rights cannot be removed by charter or by - law provisions. On the contrary, where the statute is permissive, cumulative voting is authorized only if the charter or by - laws of the company provide for it or in some cases, do not prohibit it. Thus, in some states having

35. This formula is found in R Siegler & E Talel, 'Cumulative Voting Revisited' (2005) *New York Law Journal*, Vol 233 No 85 256.
36. *Swanson v Perham* (1948) 30 Wash 2d 308.

mandatory cumulative voting provisions, certain means have been employed by the majority shareholders in an attempt to circumvent or nullify the requirement for cumulative voting. For example, where the majority shareholders have already chosen their directors, board meetings are sometimes replaced by "informal discussions" among majority shareholders. In other instances, committees without minority representation are appointed by the board to perform acts of management. Again, if the majority has the power to remove directors without cause, it may seek to deprive the minority of its representation on the board by removing the director who was elected by the minority through cumulative voting. Through other devices, the majority may seek to prevent the minority shareholders from effectively utilizing the privilege of cumulative voting. For example, a reduction of the number of the directors to be elected will make it proportionately more difficult for the minority shareholders to cumulate enough votes to elect a director.[37]

Furthermore, classification of the board with the resultant "staggering" of the terms of its members achieves a similar result, since it decreases the number of directors to be elected each year.[38] It is evident therefore, that as the number of share

37. J F Coyle, 'Altering Rules, Cumulative Voting and Venture Capital' (2016) 4 *Utah Law Review* 604.

38. The effect of such reduction was cogently explained in *Wolfson v Avery* 126 NE2d 701: in an election of a full board of nine directors, the owners of 10 percent of the stock voted, plus one share, could elect one out of the nine directors to be elected. On the other hand, if the board of directors is classified so that only three are elected each year, it would require 25 percent of the stock voted, plus one share, to gain a single seat on the board. Where all nine members are elected at once, a minority holding 49 percent of the stock could elect four..., if only three members of the board are elected each year, however, the holders of 49 percent would be able to elect only one director at each election, and could never have more than three directors on the board at one time; see also *eBay Domestic Holdings, Inc. v Newmark* (2010) Del Ch 38 cited in J F Coyle *op cit* p 604.

votes necessary to elect directors decreases, the number of share votes necessary to elect one director increases. Classified board of directors is therefore one in which only a part usually one third of the directors are elected annually. In other words, only a fraction of the directors is to be elected each year. In *Wolfson v Avery,*[39] the Illinois Supreme Court declared a classification statute to be in violation of the Illinois cumulative voting provision. Also in *Wright v Central Colony Water Co,*[40] the court held that classified board completely circumvents the principle of cumulative voting. The crippling effect that the classified board has on the cumulative voting right is simple to demonstrate. Thus, in a corporation with nine directors, all of who stand for election at each annual meeting, shareholders owning 10 per cent of the stock plus one share can elect one director. If the board is so classified that only three of the nine directors are elected each year, 25 per cent of the stock plus one share is required to elect a single director. Thus, through the device of staggering terms, 250 per cent more votes are necessary to gain one seat on the board than if all directors were elected simultaneously. Classification can be carried to even greater extremes. If it is proper to elect classes of only three directors each year, why not elect only two? Then persons owning up to $33^{1/2}$% per cent of the shares would be unable to elect a single director. If only two directors of an 18-man board were elected annually, minority shareholders would have to have $33^{1/2}$ per cent of the shares plus one share to elect a director, whereas if all directors were elected at once, a minority of 5.3 per cent could gain representation.

39. *Wolfson v Avery* (n 38).

40. (1885) 67 Cal 532; *Humphrys v Winous Co* 125 NE2d 204.

Furthermore, the writer is of the view that since the legislatures in the states where cumulative voting is made mandatory by constitutional provision are invariably under no compulsion to provide for annual elections or for terms of any specified duration, a classification statute could theoretically be passed which permits boards of directors with 18 or 27 members to have one-ninth of the membership elected each year for terms of nine years each. The election of a 27-man board could thus be spread over 27 years. In such a case, instead of a minority with approximately 3.6 per cent of the shares being able to elect a director, it would take 25 per cent. Moreover, under such circumstances the owners of 75 per cent of the shares could not gain control of the board in less than 21 years. These examples are extreme but they illustrate one glaring fact about classified boards; once the principle of classification is held to be compatible with the constitutional right of cumulative voting, the legislature has it within its power to reduce the right to practical impotence. It is no answer to say that the legislatures would not subject the right to such mutilation. Constitutions are enacted to relieve legislatures from any such temptation. As such, once the people of a state have determined that cumulative voting is of sufficient importance to provide for it in the basic law, is it likely that they intended the right to be subject to the limitations and restrictions mentioned above, or is it more probable that they intended that minority shareholders should have the opportunity to gain representation on the directorate proportional to their shareholdings? Proportional representation versus any representation at all thus becomes the pivotal issue in any analysis of the propriety of staggered boards in the context of a constitutionally protected right. Thus, certain commentators, and principally Williams had

called attention to the essential antagonism that existed between cumulative voting and classified boards and he stated thus:

> Efforts to limit the impact of cumulative voting have taken the form of measures designed to prevent election of opposition candidates and of restrictions upon the influence of successful minority candidates as directors. Those who would like to curb the ambitions of minority groups have found classification of directors an effective limitation on the use of cumulative voting. Classified or staggered boards are usually established through enactment of a bylaw dividing the directors into, say, three classes. Customarily, at the first election under the classified provision, directors of one class are elected for, say, three-year terms, those of the second class for two, and of the third for one. Thereafter, each class is elected for full three-year terms, so that the directors of only one class come up for election each year. Hence, by reducing the number of candidates up for election each year, classification effectively limits the ability of minority groups to take advantage of cumulative voting. It does not eliminate the right in a technical sense; in a practical sense, nevertheless, it can make the right an empty one for all but very strong minority groups.[41]

41. C M Williams, 'Cumulative Voting for Directors', (1955) *The University of Chicago Law Review*, Vol 22 No 3 751 – 759.

Classification effectively limits the ability of minority shareholders to take advantage of cumulative voting. It does not eliminate the right in a technical sense; in a practical sense, it can make the right an empty one for minority shareholders. Cumulative voting was intended to give representation to minority shareholders on corporate boards of directors and cumulative voting uninhibited by the classification device, results in proportionate representation for both minority and majority shareholders.

Another challenge facing cumulative voting is the issue of removal of directors. The majority shareholders can by majority votes remove the minority directors for no just cause. This removal of the directors elected by the minority shareholders can be remedied by giving the minority shareholders the statutory right to prevent removal of their directors if they do not consent in the removal.

Importance of Cumulative Voting to Nigerian Corporate Governance

Critics of cumulative voting have argued that cumulative voting can polarize the board and insulate managers from the full force of the market for corporate control. They are of the view that cumulative voting has only a minimal role, if at all, to play in corporate governance of some countries and thereby doubt the value of cumulative voting in protecting the interests of minority shareholders. However, the writers strongly disagree with the views of the critics and of the opinion that cumulative voting play a significant role in corporate governance by giving the minority shareholders voice in the management of the company and as such protecting their interests in the company. In addition, they argue that cumulative voting could result in the election of directors who

do not have the support of a significant percentage of shareholders. Cumulative voting therefore results in the election of one or more directors by shareholders who represent a relatively small minority of the company's shares. This according to the board would contravene the principle of majority rule, which the company has adopted as good governance. Furthermore, it could lead to divisiveness on the board, because one or more directors could be elected or re-elected with the support of the holders of only a minority interest in the company who may have a narrow agenda, thereby impairing the board's ability to operate effectively as a governing body. [42]

In spite of these arguments against cumulative voting, the writers are of the view that cumulative voting safeguards minority shareholder interests and bring independent perspectives to the board decisions. It also encourages management to maximize shareholder value by making it easier for a would-be acquirer to gain board representation. It is not necessarily intended that a would-be acquirer materialize, however, that very possibility represents a powerful incentive for improved management of the company. There is no gainsaying that cumulative voting holds a lot of prospects for corporate governance in Nigeria. It is more representative. Corporate governance is founded on representation and the protection of the financial interests of members of a company. Cumulative voting makes the composition of the board more representative and accommodating of minority interests.

This will go a long way to allay fears of oppression and favouritism in the minds of the minority shareholders. Again, it provides room for board innovation. Cumulative voting

42. C Xi, 'The Political Economy of Cumulative Voting: The Case of China' (2014) 14 The *Asian Business Lawyer* 63.

makes room for increased chances of electing directors with novel ideas that will take the company to greater heights. It gives the minority shareholders the opportunities to elect their own representatives to the board thereby obtaining direct contact with the business of the company and its management. [43]More so, cumulative voting reduces the likelihood of corruption/fraud. It has an added advantage of checking corrupt/fraudulent practices by the board of directors by providing large minority shareholders with a look-in at the board. Cumulative voting equally encourages management to maximize shareholder value by making it easier for a would-be acquirer to gain board representation without necessarily embarking on takeover bids or proxy contests.

The Need for the Adoption of Cumulative Voting Technique in Nigerian Corporate Governance

Around the world, many nations are facing corporate governance challenges and lack of corporate accountability. Nigeria is no exception. The writers are of the view that this is because the directors of the companies have perpetuated themselves in office with the help of the majority shareholders. The board becomes stale and stereotyped, without room for the introduction of fresh ideas. At every meeting where directors ought to retire, the voting power of the majority is brought to bear. Most times, it takes the special intervention of regulatory agencies/industry watchdogs to force these seemingly incompetent or corrupt directors out of office to create room for change. A case in hand, is the scandal that rocked the

43. Y Chen, 'Cumulative Voting, Tunneling and Social Responsibility: Evidence from Chinese Listed Companies in the Food Industry' (2013) 3 *International Journal of Management Research and Review*, 3047; see also D C Kimball and M Kropf, 'Voter Competence with Cumulative Voting' (2016) 97 *Social Science Quarterly* 619.

Nigerian banking sector. It took the special intervention of the Central Bank of Nigeria, Economic and Financial Crimes Commission and other agencies to effect change. This leaves one to wonder whether the shareholders of the affected companies were asleep. The truth remains that they were aware of the crisis but could not effect any change in the management due to their minority shareholding. They could very easily be out – voted on any motion for a change in the board. This is all due to the voting schema being used in Nigerian corporate governance. The end result of this state of affairs is that as the minority shareholders and the company suffers; the economy of the nation is also affected.

In most instances, a shareholder is entitled to cast one vote for each share that he /she owns every time matters are brought before the shareholders for a vote. Voting for the corporate board of directors is no exception. Unfortunately, this one voting system frequently put shareholders with a small amount of shares, termed minority shareholders, at a disadvantage. Since directors run for individual positions, minority shareholders are unable to exert influence over any of the elections. Their small number of votes translate to a very small sphere of influence and thereby unable to elect their own representative to the board of directors. However, by using cumulative voting, minority shareholders can have greater input and involvement in the election of the board of directors. Cumulative voting gives the minority shareholders the chance to be represented on the board of directors by allowing them to cast all their votes for a single candidate or apportion them among different candidates in any manner. The outcome of cumulative voting is that minority shareholders are able to gain some representation on the board of directors of the company and thus, can have a say in the management of the company. In many cases, this enables shareholders to elect a nominee

that has similar interests and priorities. The inherent advantage of this is that there is a 'watch dog director' on the board.

Cumulative voting is not yet part of Nigerian corporate governance. The consequence of this is that the majority shareholders retain the unilateral power to elect the directors. There is virtually no chance for minority shareholders to vote their representatives to the board of directors. Cumulative voting should therefore be made mandatory for companies of all types and sizes in Nigeria since it serves as a shield for the minority shareholders from the prejudice of the majority shareholders. The practice allows the minority shareholders to obtain direct contacts with the business of the company and the management. Cumulative voting can therefore strengthen minority shareholders because if cumulative voting is used in the election of directors, minority shareholders can elect directors of their choice to provide a fairer balance of interests on the board, which will otherwise almost exclusively be elected by the majority shareholders. In the light of the above, there is need to enact relevant laws or effect necessary amendments in the extant ones to provide for mandatory cumulative voting for corporate director elections in Nigeria. Doing this will go a long way to improve system of corporate management in Nigeria.

Conclusion and Recommendations

Cumulative voting is a procedure of voting for corporate directors. It could polarize the board and insulate managers from the full force of the market for corporate control. Cumulative voting could result in the election of directors who do not have the support of a significant percentage of shareholders. In spite of these disadvantages, cumulative voting provides large minority shareholders with a look in at

the board and affords the minority shareholders the opportunities to elect their own representatives to the board thereby protecting minority rights. Also, it does not partially disenfranchise the voter. Each voter can have a say in the election of every representative. Thus, with the adoption of cumulative voting technique, minority shareholders would have a voice in the management of companies. It is therefore recommended that Nigeria should provide for mandatory cumulative voting together with provisions relating to changes in the number of directors, classification of directors, unequal voting rights and removal of directors with no cause. Thus, affording shareholders especially minority shareholders the opportunity to have a voice in the management of a company will improve Nigerian corporate governance. It is only logical that good corporate governance will attract more investors to invest in the capital market, which will improve the economy. This improved economy will in turn encourage more investments thereby leading to the prosperity and stability of the capital market.