Corporate Executive and professional misconduct have been threatening the existence of some quoted companies and capital markets in Nigeria and Overseas for almost a decade now. More importantly, public outcry against unethical practices threatens the free market system itself. This article attempts to identify some common unethical practices by accountants, auditors, directors and company secretaries who are key players in the market economy, and to suggest possible remedy for them. The article supports the view of other writers and commentators that “greed and fear”, the two most powerful forces in modern capitalism, are the major causes of unethical practices by professionals, directors and market operators/participants when carrying out their various activities. The article is divided into seven sections–Section 1: Introduction, examines definitions of ethics offered by selected writers. Section 2 deals with a brief review of philosophical principles of Ethics, while section 3 through 6 deal with the aspects of unethical practices by accountants, auditors, directors and company secretaries respectively. Finally, Section 7 is conclusion. The article strongly recommends a review of ethical codes by professional bodies and establishment of Financial Reporting Council with statutory oversight and regulation of Auditors and other capital market operators.

Introduction
The issue of ethics is at the very centre of all societies. Every society, such as a nation and sub-societies such as a family, a social group and a business organization must operate according to some ethical guidelines. Without such guidelines, the society would lapse into anarchy and eventual collapse. The term “ethics” is defined as the study of moral principles and values that govern the actions and decision of an individual or groups. Where such decisions are not morally acceptable it is said to be “unethical” to the larger society. Ethics involves learning what is right and wrong, and then doing the right thing. Ethics is also described as the process by which individuals, social groups and societies evaluate their actions from the perspective of moral principles and values (Blackburn, Klayman and Malin, 1985).

Wheelwright (1959) defines ethics as “that branch of philosophy which is the systematic study of reflective choice, of the standard of right and wrong by which it is to be guided, and of the goods toward which it may ultimately be directed. From this definition three key elements can be identified. First, ethics involves question requiring reflective choice (decision problems). Second, ethics involves guides of right and wrong (moral principles). Third, ethics is concerned with the consequences (goods) of decisions. A problem situation exists when a person must make choice among alternative actions, and the right choice is not absolutely clear. An ethical problem situation may be described as one in which the choice of alternative actions affects the well-being of other person (Robertson and Louwers 2002:462). The term “ethical dilemma” is sometimes used by some writers in place of “an ethical problem situation”.

The Oxford Dictionary of English provides a more accessible definitions of ethics with four possible views, thus: ‘ethics is (i) the science of morals, (ii) moral principles (iii) a philosophy or (iv) a code’. The fourth definition of ethics as “an ethical code” is the one commonly preferred in professional associations’ circle.

Establishing and maintaining a reputation for ethical behaviours is a valuable corporate asset in the business community. The business community is expected to make positive contribution to the general moral climate of the society. The accountants, auditors, directors and company secretaries are
major players in the business community, which is a part of the social system. For instance, executive and professional misconduct have been threatening the existence of some quoted companies and the capital markets in Nigeria and Overseas for almost a decade now. More importantly, public outcry against unethical practices or unethical business activities threatens the free enterprise system itself.

Greed and fear – the two most powerful forces in modern capitalism (Dan Keele, 2009) have pervaded the social system, especially the financial sub-system in most economies of the world. Greed on the part of financial market operators, corporate executives and their associates, and fear on the part of investors (existing and potential investors), even professionals in practice, are typical examples. When the public loses confidence in the ability of the market to prevent corporate misbehaviour, it often demands increased government regulation. For example, frequent cases of misconduct by corporate executives have led to the passage of various Acts in Nigeria, Such Acts include the Companies and Allied Matters Act, 2004 Cap C20, LFN, the Economic and Financial Crimes Commission (EFCC) Act, 2004, the Investment and Securities Act (ISA) 2007, the Independent Corrupt Practices and other Related Offences (ICPC) Act 2003, Banks and other Financial Institutions Act 1991, Money Laundering Act, and many others. The Sarbanes Oxley Act of 2002 is another powerful Act that regulates corporate behaviour in the United States of America (U.S.A). The objective of this article therefore, is to identify the types and causes of unethical practices by accountants, auditors, directors and company secretaries in business organization, and suggest possible remedy for them.

Brief Review of Philosophical Principles in Ethics

According to Titus and Keeton (1996:131), “each person capable of making moral decisions is responsible for making his own decisions, and the ultimate locus of moral responsibility is in the individual. Thus, the function of ethical principles is not to provide a simple and sure rule but to provide some guides for one’s individual decisions and actions. In addition, an understanding of some of the general principles of ethics can contribute to background for a detailed consideration of the behaviour directed by the code of professional conduct and other ethical rules usually issued by various professional bodies (such as ICAN, ANAN, CIBM, Chartered Institute of Stockbrokers) and government regulatory agencies such as SEC, CBN, CAC, and so on. Their application through codes of professional conduct is a challenge to professionals in practice.

There are three schools of thought as identified by philosophers that an individual or group can use in reasoning through an ethical decision problem. These are the imperative, utilitarianism, and general principles of moral philosophy (Robertson and Louwers, 2002: 464-467).

The Imperative Principle

This principle directs a decision maker to act according to the requirements of an ethical rule. Strict versions of imperative ethics maintain that a decision should be made without trying to predict whether an action will probably create the greatest balance of good over evil. Ethics in the imperative sense are a function of moral rules and principles and do not involve a situation-specific calculation of consequences. The philosopher Immanuel Kant (1724-1804) was perhaps the foremost advocate of the imperative school. Kant was unwilling to rely solely on decision makers’ inclinations and values for decisions in various circumstances. He strongly preferred rules without exceptions to the varied and frequently inconsistent choice of individuals (Robertson and Louwers, 2002). He maintained that reason and the strict duty to be consistent governed the formulation of his first law of conduct. One of Kant’s rules is ‘live up to all your professional duties not to knowingly misrepresent facts’. Another is the duty to ‘Be loyal to your employer’. However, conflicts of rules and duties may create difficult problems because adherence to one means breaking the other.

Most professional codes of ethics have characteristics of the imperative type of theory. As a general matter, professionals are expected to act in a manner in conformity with the rules. However, society frequently questions not only conduct itself but the rules on which conduct is based. Thus, a dogmatic imperative approach to ethical decisions may not be completely sufficient for the maintenance of professional standards. Society may question the rules, and conflicts among them are
always possible. The continuous widening gap in audit expectation gap is a case in point. Since the Kantian imperative theory does not provide an easy way to decision making, someone who is rule-bound may find himself or herself in a dilemma. The kind of dilemma, according to Robertson and Louwers, (2002), prompts people to look for ways to weigh the consequences of actions, and one way is described by the principle of utilitarianism discussed in the next section.

The Principle of Utilitarianism

The principle maintains that the ultimate criterion of an ethical decision is the balance of good over evil consequences produced by an action. The emphasis in utilitarianism is on the consequences of action, rather than on following some rules. The criterion of producing the greater good is made an explicit part of the decision process. Utilitarianism was propounded by two philosophers Jeremy Benthan (1748-1832) and John S. Mill (1806-1873) where individual happiness is balanced against the needs of society (Elliot and Elliot, 2002:772). The principle has two main components – the act-utilitarianism and the rule-utilitarianism.

In act-utilitarianism, the centre of attention is the individual act as it is affected by the specific circumstances of a situation. An act-utilitarianism ethical problem may be framed in this way: “what effect will my doing this act in this situation have on the general balance of good over evil?” This theory admits general guides such as “Telling the truth is probably always for the greatest good”. However, the emphasis is always on the specific situation, and decision makers must determine whether they have independent grounds for thinking that the greatest general good will result from not telling the truth in a particular case. The general difficulty with act-utilitarianism, according to Robertson and Louwers (2002) is that it seems to permit too many exceptions to well-established rules.

By focusing attention on individual acts, the long-run effect of setting examples for other people appears to be ignored. If an act-utilitarian decision is to break a moral rule, then the decision’s success usually depends on everyone else’s adherence to the rule. For example, to benefit from tax evasion for a good reason depends on everyone else not having an equally good reason for not paying their taxes.

Rule-utilitarianism, on the other hand, emphasizes the centrality of rules for ethical behaviour while still maintaining the criterion of the greatest universal good. This kind of utilitarianism means that decision makers must first determine the rules that will promote the greatest general good for the largest number of people. The initial question is not which action has the greatest utility, but which rule. For instance, the statement of the rule-utilitarian’s problem may be stated as: “What would happen if everybody acted this way?” In this form, the question becomes ‘generalization’.

The Principles of Generalization

The generalization principle may be considered a judicious combination of the imperative and utilitarian principles, for all practical purposes. Put succinctly, the question is often stated as: “What would happen if everyone acted in that certain way?” If the answer to the question is that the consequences would be undesirable, then our conclusion, according to the generalization test, is that the way of acting is unethical and ought not be done. The key ideas in the generalization test are similar persons and similar circumstances. These features provide the needed flexibility to consider the many variations that arise in real problem situations. They also demand considerable judgment in determining whether persons and circumstances are genuinely different or are just arbitrarily rationalized as different so that a preconceived preference can be ‘explained’ as right (Robertson and Louwers,2002:467). For instance, a professional accountant and an employee of a particular company was asked by his director to enhance the financial statements by misrepresenting some figures and he saw the enhancement as lie. His generalization question may be something like this: “What if all accountants fudged financial statements and fooled loan or lending officers when their companies needed to obtain loans?” Most people will see an easy answer – the result would be undesirable (because it might succeed often and cause considerable losses to banks along with other undesirable personal consequences for the actors, in addition to the problem of having broken a rule that requires
truth-telling). Another kind of generalization test is a situation where an external auditor’s desire for service on the board of directors of audit client and the need for independence. The firm’s audit independence no doubt, would be impaired.

Unethical Practices by Accountants

An accountant is an individual whose work involves the application of accounting in performing some or all of the following: preparing financial statements; conducting financial investigations; preparing, reporting and advising on the purchase and sale of businesses, business combinations, obtaining capital for enterprises, changes in partnerships, fraud and insolvency; preparing tax returns; giving advice on taxation; contesting disputed tax before officials; preparing or reporting on profit forecast and budgets; planning external and internal audits and supervising audit work; advising on, reorganizing, devising, and overseeing the installation and implementation of accounting, bookkeeping and related systems. (Department of Employment, London, 1972)

Wherever accountants work, their responsibilities centre on the collating, recording and communicating of financial information and the preparation of analyses for decision making purposes. The accountant working within business has a different set of ethical problems due to the dual position as an employee and a professional accountant. There is a potential clash of issues where the interests of the business could be at odds with professional standards.

Ethics is an important aspect of the accountant in business enterprise’s work and profession. Professional ethics in this context can be summed up as the commitment of the management accountant to provide a useful service for management. This commitment means that the management accountant has the competence, integrity, confidentiality and objectivity to serve management effectively (Blocher et al, 2005: 23-25).

The standard of competence for example, requires the accountant to develop and maintain the skills necessary for his or her area of practice and to continually reassess the adequacy of those skills as the firm grows and become more complex. The code or standard of confidentiality requires adherence to the firm’s policies regarding communication of data to protect confidential information. Integrity refers to behaving in a professional manner such as refraining from activities that would discredit the firm or profession (e.g. unfair hiring practices), and to avoiding conflicts of interest (e.g. not accepting a gift from a supplier or customer). Objectivity refers to the need to maintain impartial judgment (e.g. not developing analysis to support a decision that the accountant knows is not correct.

The type of unethical practices by accountants in business include the followings:

i. requests by employers to record purchases or expenditure or sales that never occurred;
ii. requests to produce figures to mislead shareholders, e.g. participation in the production of false and misleading financial statements;
iii. request by employers to manipulate tax returns;
iv. request to conceal information;
v. requests to manipulate overhead absorption rates to extort more income from customers; and to manipulate cost allocation;
vi. requests to authorize and conceal bribes to buyers and agents, a common request in some exporting business;
vii. requests to produce misleading projected figures to obtain additional finance or loan;
viii. requests to conceal improper expense claims put in by top management or senior managers;
ix. requests to over-or under-value assets;
x. request to misreport figures in respect of government grants;
xi. requests for information, which could lead to charges of ‘insider dealing’ in shares or stock.
xii. requests to redefine bad debts as ‘good’ or vice versa;
xiii. requests for padding the budget by knowingly include a higher amount of expenditures in the budget than they actually believe is needed;
xiv. wasteful spending to exhaust remaining budgeted amounts before the end of the period; and
xv. requests to prepare unreasonable Executive compensation plan. The tax authority can deny a firm’s right to deduct compensation that it determines to be unreasonable.
**Unethical Practices By Accountants, Auditors, Company Secretaries And Directors: Types, Causes And Remedies**

The cause of unethical practices by accountants in business can be traced to the problem of dual ethical structures, namely, as professionals and employees. The remedy for this conflict causes many problems for the accountant who is left with only three possible solutions, namely:

i. Take some action by either informing a superior (letting them take some action) or by whistle-blowing to an outside agency such as professional body, EFCC, the police, the media or whatever. This, may well cause the accountant some personal problems and is difficult if the superior is the ‘guilty party’.

ii. Resign on principle and leave the organization with personal and professional ethics intact but with a possibly damaged career.

iii. Ignore the action and hope someone else notices the unethical behaviour and takes the appropriate action.

**Unethical Practices by Auditors**

Auditor, in this context means an individual, a partnership firm, or an organization carrying out an audit of an enterprise or an undertaking. Such persons are not usually employed by the accounting entity or by its managers and is, as far as possible, independent of the persons who manage the entity, hence they are often referred to as ‘external auditors’; or ‘accountants in practice’.

The Companies and Allied Matters Act (CAMA) 2004, Cap C20, LFN requires every limited liability companies to appoint an auditor or auditors who must be a Chartered Accountant or a firm of Chartered Accountants at annual general meeting (AGM), to audit their financial statements (section 357, CAMA).

The external auditor or accountant in practice has a considerable body of ethical support to work from particularly if he is a member of one of the various Chartered Accountancy bodies. These bodies (e.g. ICAN and ANAN) publish guidelines covering key areas of accounting work and behaviour such as their relationship with the client; the type of work they can do for the client; the way to safeguard independence; the standard of behaviour expected of accountants; the manner of dealing with conflicts of interest; the way they will behave in given situations such as take-over, insolvencies and so on, and the nature and type of advice they can give clients.

The common areas of unethical practices by auditors include: making or permitting others or audit clients to make false and misleading entries in accounts or records and financial statements; soliciting for equity holdings and/or directorship in client company; begging for loan or other financing inducements from audit client; imposing unreasonable fees and charges on clients; failing to follow relevant accounting and auditing standards during the conduct of an audit; failing to file tax returns or remit payroll and other taxes collected for others (e.g. audit employee taxes withheld); withholding a client’s books and records and important working papers when the client has requested their return; disclosing any confidential information (e.g. client trade secret) without the specific consent of the client; and expressing unqualified opinion on financial statements that contain material misstatements.

The causes of these unethical practices are (i) greed on the part of the auditor and (ii) the auditor’s quest to retain his appointment or tenure with the client, and (iii) outcome of conflicts of interest.

To remedy these ethical problems, accountants in public practice (auditors) must be careful in all areas of practice. They must not lose sight of the non-accountants’ perspective. No matter how complex or technical a decision may be, a simplified view of it always tends to cut away the details of special technical issues to get directly to the heart of the matter (Robertson and Louwers, 2002:490). A sense of professionalism coupled with a sensitivity to the effect of decisions on other people are invaluable in the practice of accounting and auditing. Auditors must also adhere to the fundamental of professional conduct such as integrity, objectivity and independence, due care and public interest.
Unethical Practices by Directors

Directors is defined under section 244(1), CAMA 2004 as ‘persons duly appointed by a limited liability company to direct and manage the business of the company. Every registered company must have at least two directors for private limited, and at least seven for public limited company (plc). Every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interest of the company, and shall exercise that degree of care, diligence and skill (section 282, CAMA 2004). The imposition of fiduciary duty on directors by the Act, is meant to prevent abuse of power and conflict of interest on the part of directors in general areas of corporate governance (e.g. in the issue, transfer and registration of shares; in their contracts either with the company or on its behalf with third parties, their dealings with physical assets or properties of the company and corporate opportunity and information in whatever form (Oshio, 1995:178).

Unethical practices by directors in companies include: breach of agency relationship which put directors in fiduciary status; failure to disclose their personal interest in the company, e.g. shareholdings and loans or other form of contract arrangement; making secret profits from the company; failure to disclose spouse/children’s interest in the company; claiming unreasonable amount as directors’ fees; claiming outrageous/ unapproved expenses from the company; requesting accountants/auditors to misrepresent figures in financial statements with intent to cheat investors or shareholders and the government; age misrepresentation or failure to disclose age; failure to disclose qualifications; sole directorship; and insider-dealings—by taking advantages of a perceive downward movement in share prices and selling off his holdings.

These unethical practices by directors are caused by greed and quest to accumulate wealth to the detriment of the shareholders and the society at large. The possible outcome is what is known as agency cost. Agency cost is the costs of the conflict of interest between shareholders and management (directors). Such a conflict is called an agency problem (Ross, Westerfield and Jordan, 2000:12).

To remedy these ethical problems the Corporate Affairs Commission (CAC), the Securities and Exchange Commission (SEC), the Central Bank of Nigeria (CBN) and other relevant federal regulatory agencies should ensure the enforcement of their various rules, ethical codes and codes of corporate governance as applicable to company directors. Upward review of amount of fines imposed by CAMA 2004 for breach of fiduciary duty by directors is also desirable.

Unethical Practices by Company Secretaries

The CAMA 2004 requires every company to have a secretary. The appointment is usually made by the directors. The company secretary’s duties are mainly administrative including:

a. attending the meetings of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meetings with the applicable rules and regulations;
b. maintaining the registers and other records required to be maintained by company under the CAMA;
c. rendering proper returns and giving notification to the CAC; and
d. carrying out such administrative and other secretarial duties as directed by the directors, or the company (section 298, CAMA 2004).

The secretary shall not without the authority of the board of directors exercise any powers vested in the directors.

The common types of unethical practices by Company Secretaries include: making secret profits, where he is acting as an agent of the company; letting his duties conflict with his or her personal interests; using confidential information he obtained from the company for his own benefit; releasing confidential information about the company to the press or any other persons without the board’s permission; lobbying for the appointment of his spouse or close relative for appointment as a
director of the company; charging the company a fee that is considered unreasonable; engaging in ‘insider-dealings; and unnecessarily delaying the circulation of notices of meetings to members of the company;

The causes of and remedy for unethical practices by company secretaries are similar to those of the directors. In addition, company secretaries like the accountants in practice, have a considerable body of ethical support to work from, particularly if they are members of the Institute of Chartered Secretaries and Administrators (ICSA) and of the legal profession such as the Nigerian Bar Association (NBA).

Conclusion

Professionals in practice such as accountants, auditors, secretaries, and even corporate directors are responsible to the firm and the public for maintaining a high standard of performance, as set out in their various code of professional ethics and good corporate governance (usually issued by SEC in response to market abuses).

The professional ethics standards of most professional bodies and associations such as IFAC, ICAN, ANAN, CIMA, ICSA, NIM, CIS, Institute of Directors (IoD) and many others, include competence, integrity, objectivity and confidentiality. Professional ethics are not simply a matter covered by a few rules in a formal code of professional conduct. Concepts of proper professional conduct permeate all areas of practice. Ethics and its accompanying disciplinary potential are the foundation for practitioners’ self-regulatory efforts (Robertson and Louwers, 2002). In the light of this, knowledge of philosophical principles in ethics such as the imperative, the utilitarianism and the generalization principles will also help these professionals make decisions about SEC and their professional associations’ rules.

One important lesson from recent cases of scandals in the capital market and corporate circles is that not only is unethical behaviour in business wrong in a moral sense, but it can also be disastrous from the standpoint of the economy. ‘We cannot have business people lying, stealing, perpetrating frauds, and making up accounting rules as they go without seriously disrupting business’ (Hilton, 2005). Thus, according to him, ethical behaviour by businesspeople in general, and accountants in particular, is not a luxury or a discretionary ‘good thing to do’. It is an absolute necessity to the smooth functioning of the economy.

This article supports the view of other writers and commentators that ‘greed and fear’, the two most powerful forces in modern capitalism, are the major causes of unethical practices by professionals, directors and market operators/participants, when carrying out their various functions and activities.

Recommendations

In view of the above conclusion, the following recommendations are desirable for the effective and efficient running of any market economy including Nigeria:

- Greater efforts should be made by the relevant professional bodies to review their various ethical codes guiding members’ conduct or behaviour in practice. Widespread enlightenment coupled with stiffer penalty for professional misconduct could also be a way out.
- Priority should be given to ensuring that rules and regulations formulated by the Securities and Exchange Commission (SEC) are consistent with both the operators’ and investors’ needs, as well as the developmental needs of the economy as a whole. Proactive measures to prevent market abuses are also necessary on the part of regulators.
- Establishment of Financial Reporting Council (FRC) by government that will function as statutory oversight, and regulation of Auditors and other capital market operators. Such Council should be able to operate an independent investigation and discipline scheme for public interest cases, by overseeing the regulatory activities of the relevant professional bodies.
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References


