The developing legal risk management environment

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Abstract
Financial institutions are facing an increasing number of risk management regulations with different national and international approaches. The legal framework, including its risk management provisions that existed prior to the current financial crisis, has been severely tested in 'real life' and did not hold up to its expectations (whether reasonable or not). As a reaction to the financial crisis lawmakers and policymakers have been focusing on, inter alia, risk management regulations to restore public confidence in companies and the overall market. The underlying question here is whether new regulations can indeed prevent the next crisis.
As a reaction to the financial crisis lawmakers and policymakers have been focusing on, inter alia, risk management regulations to restore public confidence in companies and the overall market. The underlying question here is whether new regulations can indeed prevent the next crisis. Of course, new regulations can improve the legal environment of financial institutions, thereby reducing the imperfections shown by this crisis. However, there seems to be nothing to gain with extensive additional regulation that can only prevent a crisis with attributes that are similar to the one the market is facing now. First of all, previous crises have had their specificities and the next crisis will most likely have its own features. Hence it is more than doubtful whether a lot of this kind of regulation is needed to prevent the next crisis. Secondly, introducing new rules without reducing existing rules that should have (but might not have) tackled the same or relating problems, will lead to a pile-up of regulations. Compliance with all applicable rules and regulations becomes prohibitively costly for companies. At the same time, the compliance risk will increase, which in turn can also increase costs. Compliance risk can be defined as “the risk of legal or regulatory sanctions, material financial loss, or loss to reputation a financial institution may suffer as a result of its failure to comply with laws, regulations, rules, related self-regulatory organization standards, and codes of conduct applicable to its activities”. This is why, in the words of Enriques (2009), “excessive reregulation today is the best guarantee of effective pressure towards deregulation tomorrow” and “regulators should make a lot of noise and show a lot of activism, all the while producing very little change”. Excessive regulation will have a lot of negative side effects and may not even ensure justified public faith in the reliability of companies and the overall market in the future. The upshot is that it makes sense first to have a closer look at existing risk management regulation and determine the goals in the long run before deciding on the need for more financial regulation.

Two types of rules provide the basis for the legal risk management environment. Firstly, there are regulations that demand companies to have an appropriate risk management system present. This includes not only ensuring that there is a system to identify and analyze risks, but also ensuring that the system is adequately maintained and monitored. Secondly, there are regulations that require the company to disclose information on (a) the company’s risk management system or (b) the risks that the company faces (thus indirectly require a system). This firm-specific information set is important for minimizing the information asymmetry between managers and shareholders. After all, managers are involved with the day-to-day business and have better access to all company information whereas the shareholders, the providers of capital, only receive publicly available information. The information needed to reduce this asymmetry must be disclosed in prospectuses (one time disclosure document) and in half year or annual reports (ongoing disclosure documents).

In specific, financial institutions are facing an increasing number of risk management regulations with different national and international approaches. The legal framework, including its risk management provisions that existed prior to the current financial crisis, has been severely tested in ‘real life’ and did not hold up to its expectations (whether reasonable or not). These risk management provisions can be divided into general and sector-specific provisions. As the sector-specific rules supplement the general requirements, the latter will be discussed in the next section. The following section will address the sector-specific risk management regulation and the final section provides some concluding remarks.

General risk management regulation

To start off, in general the board of directors is responsible for managing the company. For example, the U.S. statutory model states that the board of directors has to manage and oversee the business and exercise corporate powers and the U.K. model articles of association state that the board has to manage the company’s business. In both the U.S. and U.K. practices, management directs operations since delegation of board authority is recognized, but policymaking remains a task of the board of directors. Throughout the years, the duty of directors has been further developed. In the 20th century the duties of the directors included maintaining a system of internal controls and disclosing the company’s risks. For years, the U.S. was forerunner with requirements that focused solely on the financial reporting aspect of the internal control and risk management framework. The foundations of American federal securities law are laid down in the 1933 Securities Act, demanding issuers to publicly disclose significant information about the company and the securities, and the 1994 Securities Exchange Act, requiring mandatory corporate reporting and independent audits. Congress enacted these two securities Acts in response to the American stock market crash of 1929 and the Great Depression in order to reduce the information asymmetry between managers and shareholders. The Securities and Exchange Commission (SEC) was established pursuant to the 1934 Act. In the 1933 Act, regulatory recognition was given to the importance of internal control (which had a more limited scope than risk management as we know it today). Regulation S-X Rule 2-02(b) of the 1933 Act required external auditors to give appropriate consideration to the adequacy of the system of internal control implemented by the corporation. In its final report of 1940, the SEC recommended a more thorough assessment of the internal control system. After a number of corporate scandals, which were related to the bribery of foreign officials in the mid-1970s, the American regulatory approach to internal control changed. The 1977 Foreign Corrupt Practices Act (FCPA) required reporting companies to keep books, records, and disclosure documents.

1 Basile Committee on Banking Supervision, 2005, “Compliance and the compliance function in banks,” Bank for International Settlements, p. 1
3 Section 8.01(b) of the US MBCA 2005 and Regulation 70 of the U.K. Table A as amended on 1 October 2007 as well as Article 3 of the Model Articles for Public Companies of the Companies Act 2006.
accounts as well as maintaining a system of internal accounting controls in order to control management activities. A few years later, companies needed to assess their risks as item 303 of the MD&A was added to Regulation S-K. It required management’s discussion and analysis report to include “material events and uncertainties known to management that would cause reported financial information to be necessarily indicative of future operating results or of future financial condition.” Around that time, U.S. recommendation reports and guidelines — such as the 1978 Cohen Report and the 1979 Minahan Report and later the 1987 Treadway Report and 1992 COSO I Report — were starting to stress a broader internal control framework. Moreover, recommendations towards the oversight duty of audit committees of the board of directors regarding the financial reporting process and internal controls started to develop.

Years after the U.S. 1933 Act, the FCPA, and the MD&A, the U.K. followed with self-regulatory but more detailed provisions to manage companies’ risks. The main rules on mandatory disclosure were given by the Companies Act of 1985 and the Listing Rules. Section 221 of the Companies Act required companies to keep accounting records in order to show and explain their transactions and to disclose their financial position. The Listing Rules required listed companies to include a statement of compliance with the provisions of the 1992 Cadbury Report in their annual report and accounts on a comply-or-explain basis. This self-regulatory report provided that the board of directors had to maintain a system of internal control over the financial management of the company — including procedures to mitigate corporate governance risks and failures — and that the directors had to make a statement in the annual report on the effectiveness of their internal control system.

The Cadbury Report also recommended that all listed companies should establish an audit committee, comprising at least three non-executives. The report gave the audit committee’s duties, which include reviewing the company’s statement on internal control systems. The 1998 Hampel Report broadened the U.K. internal control perspective by arguing that the system did not only have to cover financial controls but also operational and compliance controls, as well as risk management.

As the Hampel Committee suggested, the London Stock Exchange issued the Combined Code on Corporate Governance, which included the provisions of, among others, the Cadbury Report and Hampel Report. Later, other European member states followed the U.K. with internal control and risk management regulations. For instance, the Netherlands issued a self-regulatory code (the 1997 Peters Report) that stressed the board of directors’ responsibility for effective systems of internal control and recommends the supervisory board to consider whether to appoint an audit committee. This committee was recommended specific duties such as supervising external financial reports, compliance, and the control of company risks.

Obviously, the legal internal control and risk management environment significantly changed when the U.S. Congress passed the Sarbanes-Oxley Act (SOX) after the corporate failures and fraud cases between 2000 and 2003. It has been said to be the culmination of a century of internal control developments. This 2002 federal law was intended to restore public faith and trust by, inter alia, improving the accuracy and reliability of corporate disclosures. It contains not only disclosure requirements, but also substantive corporate governance mandates. The legal duties of corporate constituents regarding a system of internal controls are further developed by this Act and other legislative measures. The well-known SOX Section 404 demands an annual internal control report in which management’s responsibility for “establishing and maintaining an adequate internal control structure and procedures for financial reporting” is stressed. The report also has to include an assessment of the effectiveness of these structures and procedures. Section 302 requires the CEO and CFO – thus not management as Section 404 does – to certify the fairness of the financial statements and information as well as their responsibility for establishing and maintaining internal controls. The CEO and CFO also have to present their conclusions — not the total evaluation of Section 404 — about the effectiveness of the internal controls based on their evaluation. The duties of audit committees also continued to evolve as Section 301 requires that audit committees establish procedures for, “the receipt, retention, and treatment of complaints [...] regarding accounting, internal accounting controls, or auditing matters.”

Section 205(a) stresses that the purpose of the audit committee is to oversee the company’s accounting and financial reporting processes and audits of the financial statements. Other U.S. legislative measures as well as guidelines have a wider internal control and risk management perspective, such as the MBCA and the COSO II Report.

The MBCA provides the scope of the board’s oversight responsibilities relating to the company’s major risks and the effectiveness of the company’s internal financial, operational, and compliance controls. The COSO II Report broadens reporting to encompass non-financial information and internal reporting and it adds a fourth category, the strategic objectives, to the existing financial reporting, operational, and compliance objectives. Eversince the corporate failures manifested themselves, it has been argued that new regula-

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6 15 U.S.C. section 78m-(b) (2) (B)
7 17 CFR 229.303a-3-4 and “Instructions to paragraph 303(a),” under no. 3
9 Establishing an audit committee was already recommended by the SEC in 1972 and by the NYSE in 1978.
10 The Cadbury Committee was set up by the Financial Reporting Council, the London Stock Exchange, and the accountancy profession. Its recommendations are focused on the control and reporting functions of boards, and on the role of auditors.
13 Committee on Corporate Governance, 1997, Corporate governance in the Netherlands - forty recommendations, Paragraphs 4.2, 4.3, 3.2 and 6.4.
16 Section 802(3), subsections (2) and (6) of the Model Business Corporation Act 2005.
tions such as SOX might not succeed in regulating frauds or that their effectiveness would be limited as the frauds that preceded this legal response occurred despite several levels of monitoring in place at the time. For example, Cunningham notes that "[h]istory offers no reason to expect that new rules will prevent a repeat of account-
ing scandals even of this large size or frequency" and Bratton, that "[t]he costs of any significant new regulation can outweigh the compliance yield, particularly in a system committed to open a wide field for entrepreneurial risk taking".

Within Europe, the legal internal control and risk management envi-
ronment also changed after the failures and frauds around the new mil-
leum, but with a more principle-based and self-regulatory approach. Following the 2003 European Commission’s Plan to Move Forward, E.U. member states have drawn up or updated their national corporate governance codes for listed companies. In the U.K., due to the Hampel Report, the 2000 Combined Code already underlined the board’s duty to maintain a sound system of internal controls, on a comply-or-explain basis. The Code added that the board has to report annually to the shareholders that it has reviewed the effec-
tiveness of the group’s internal control system, covering financial,
operational, and compliance controls and risk management. A few years later, the provisions dealing with the audit committee’s duties were updated due to the 2003 Higgs and Smith Reports requiring the committee to review the company’s internal control and risk management systems. The 2009 Review of the Combined Code announced amendments to the internal control principle in order to stress “the board’s responsibility for defining the company’s risk appetite and tolerance and maintaining a sound risk management system” and to the provisions in order to include that the board has to “satisfy itself that appropriate systems are in place to enable it to identify, assess and manage key risks.” Other E.U. member states also issued corporate governance codes that emphasized the board’s and audit committee’s duties. For instance, the Dutch code provides that the board is responsible for complying with all relevant primary and secondary legislation and managing the risks associated with the company’s activities. In addition, the board has to report related developments to and discuss the internal risk management and control systems with the supervisory board and the audit committee. The audit committee has to monitor the activities of the board with respect to the operation of the internal risk management and control systems.

Traditionally, E.U. lawmakers focused mainly on corporate disclosure rules and not so much on requiring management systems to endorse the reliability of the reporting and an internal control framework. Responding to the corporate failures and fraud around the new mill-
leum, the E.U. became more active in areas such as company law,
accounting, and auditing law, although parts of these areas remain controlled by the national legislators. The E.U. legislative movement brought forward several general as well as sector-specific direc-
tives and recommendations. One of these general directives is the Prospectus Directive with the purpose of harmonizing, inter alia, the information contained in the prospectus in order to provide equivalent investor protection. It requires the prospectus to include key information on the company’s risk factors and a summary in which “the essential characteristics and risks associated with the issuer, any guarantor and the securities” are disclosed. In addition, the Transparency Directive 2004/109/EC harmonizes transparency requirements to ensure a higher level of investor protection and mar-
et efficiency within the E.U. The directive acknowledges the impor-
tance of disclosure of the companies’ main risks as Articles 4 and 5 of the directive require the annual and half-yearly financial reports to include a management report in which a description is given of the “principal risks and uncertainties” that the company faces. Next to disclosing general information on the companies’ risks, it is required to disclose information on the risk management systems regarding the financial reporting process. That is because Articles 1 and 2 of the 2006/46/EC amendment to the Accounting Directives – the Fourth and Seventh Company Law Directives – provide that the annual corporate governance statement must include a description of the main features of the company’s (or group’s) internal control and risk management systems for the financial reporting process. Moreover, specific features of the audit committee’s duties are given at E.U. level. In a Commission Recommendation (2005/162/EC), the audit committee is recommended to assist the board to review the internal control and risk management systems. The committee should do so in order to ensure that the main risks the company faces are properly identified, managed, and disclosed. This monitoring role of the audit committee is further developed in the 2006/43/EC Audit Directive for monitoring the financial reporting process and the effectiveness of the company’s internal control and risk management systems. Thus, the legislative measures at the E.U. level require reporting on the main features of the systems for the financial reporting process and monitoring the effectiveness of the systems. Before implement-
ing these directives in national laws and regulations, most member states had already issued corporate governance codes focusing on a broader concept of internal control and risk management, emphasizing the financial reporting, operational, and compliance aspects.

22 Committee on Corporate Governance, 2003, The Combined Code - principles of good governance and code of best practice (Combined Code 2003), Provision C.3.2
24 Corporate Governance Code Monitoring Committee, 2008, The Dutch corporate gov-
ernance code - principles of good corporate governance and best practice provisions (DGCG 2008), Principle I.1
25 DGCG 2008, Best practice provision III.5.4
26 The 1984 Eighth Company Law Directive (84/253/EEC), OJ L 126, 12 May 1984, p. 20-26) harmonized the approval of persons responsible for carrying out the statu-
tory audits of accounting documents. Articles 3 and 24 demanded such persons to be independent and of good repute.
ties are offered to the public or admitted to trading and amending Directive 2001/34/ EC, OJ L 345, 31 December 2003, p. 64-89
The Solvency Directive, and the MiFID. The Basel Committee on Banking Supervision was established in 1974 by the central bank governors of the Group of Ten countries\(^{29}\). Without formal supra-national supervisory authority, the committee issues supervisory standards and guidelines which national authorities can implement. The 1988 Basel Capital Accord introduced a capital measurement system which provided for the implementation of a credit risk measurement framework. In 2004 a revised framework was issued. This 2004 Basel II Accord provides for requirements relating to minimum capital, supervisory review, and market discipline and disclosure\(^{30}\). It stresses that risk management is fundamental for an effective assessment of the adequacy of a bank’s capital position. The Basel II framework is introduced into European legislation through the Capital Requirements Directives, comprising Directive 2006/48/EC and Directive 2006/49/EC. It affects credit institutions and certain types of investment firms. In line with the above described general legal provisions, Article 138 of Directive 2006/48/EC requires credit institutions to have adequate risk management processes and internal control mechanisms in place, including reporting and accounting procedures. Article 135 of that Directive reads that E.U. member states have to demand that “persons who effectively direct the business of a financial holding company be of sufficiently good repute and have sufficient experience to perform those duties.” Consequently, where general legal provisions develop what the duty of the board and managers includes, this sector-specific provision regulates what a proper person for performing certain duties would be like. In addition, credit institutions and certain types of investment firms must have effective processes to identify, manage, monitor, and report their risks as well as adequate internal control mechanisms. Their management body – consisting of at least two persons with sufficiently good repute and sufficient experience to perform such duties – should approve and review the strategies and policies for identifying, managing, monitoring, and mitigating the risks, taking into account specific criteria regarding the credit and counterparty risk, residual risk, concentration risk, securitization risk, market risk, interest rate risk arising from non-trading activities, operational risk, and liquidity risk\(^{31}\). Obviously, these requirements, especially the specific criteria, are much more detailed than the general ones described in the previous section.

Another sector-specific European Directive that introduces a comprehensive framework for risk management and regulates certain internal functions within the organization is the Solvency II Directive\(^{32}\). It has a much wider scope than the Solvency I Directive and contains thorough revision and realignment of the E.U. Directives relevant to (re)insurers. The Solvency II Directive has similarities to the Basel II banking regulation. This set of regulatory measurements for insurance companies includes provisions regarding capital, governance, and risk management, effective

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<th>Establish/</th>
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Table 1 - Aspects of the main general E.U. and U.S. internal control and risk management provisions

Sector-specific risk management regulation

Next to these general provisions, the legal risk management environment – especially with regards to the financial industry – is shaped by sector-specific legal measurements. The financial industry-specific provisions cover mainly the banking system, insurance, and securities. The previous section shows that the foundation of the legal risk management environment is given by mainly two types of rules. Firstly, having – including maintaining and monitoring – internal control and risk management systems and secondly, disclosing information about those systems and the risks the company faces. As the current section will show, the financial industry regulations and guidelines supplement these two levels – though much more detailed – but also expand the first level. Indeed, the general rules provide that a system must be in place and stress the board’s duty to maintain internal control and risk management systems and the audit committee’s monitoring role therein. The financial industry-specific provisions, however, regulate certain internal functions within the organization and emphasize the external monitoring role of the supervisory authorities. Several financial industry-specific provisions are described below in order to further explain these expansions\(^{28}\).

At E.U. level, financial industry-specific directives that refer to risk management are, inter alia, the Capital Requirements Directives, the Solvency Directive, and the MiFID. The Basel Committee on

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29 Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the U.K. and the U.S. and later also Switzerland.

30 Basel Committee on Banking Supervision, 2004, International convergence of capital measurement and capital standards - a revised framework


supervision, and disclosure. It requires written and implemented policies for the company’s risk management, internal control, and internal audit. In addition, the (re)insurance companies must have an effective and well integrated risk-management system in order to identify, measure, monitor, manage, and report risks, covering, inter alia, market, credit, liquidity, concentration, and operational risks. The risk management system must include risk mitigation techniques and the companies have to conduct risk and solvency assessments. Next to the risk management system, an effective internal control system with administrative and accounting procedures, an internal control framework, and appropriate reporting arrangements is required. To sum up, compared to the general provisions described above, this directive introduces a more comprehensive set of risk management and internal control requirements. The directive also prescribes internal functions and the duties of as well as the personal qualifications for those functions. For instance, for the evaluation of the adequacy and effectiveness of the internal control system, an internal audit function is required. Furthermore, the (re)insurance companies are instructed to have a compliance function within their organization. This compliance function has the duty to advise the management or supervisory board on compliance with laws and regulations, to identify and assess compliance risks, and to assess the possible impact of any changes in the legal environment. Moreover, it demands that the “persons who effectively run the undertaking or have other key functions” are fit and proper, that is, have adequate professional qualifications, knowledge, and experience and are of good repute and integrity respectively.

A third financial industry-specific piece of E.U. legislation is the MiFID, the markets in financial instruments directive, which provides organizational requirements and operating conditions for investment firms. Like the previous directives it requires companies to establish, implement, and maintain risk management policies and procedures in order to detect risks, set the level of risk tolerance, and includes risk minimizing procedures. The directive further demands investment companies to monitor the adequacy and effectiveness of these risk management policies and procedures. With regard to the internal functions of the organization, it provides that investment companies have to establish and maintain a compliance function, for which a compliance officer must be appointed, with the duty to monitor and assess the adequacy and effectiveness of the company’s measures and procedures. It goes on to describe that this compliance function must have “the necessary authority, resources, expertise, and access to all relevant information” in order to create an environment in which it can discharge its responsibilities properly and independently. In addition, likewise the insurance companies, the investment companies need to have an internal audit function for the evaluation of the adequacy and effectiveness of the internal control system.

As the regulatory reform is making its entrance at E.U. level, E.U. member states are introducing their own financial industry-specific guidelines and the U.S. is developing general regulations regarding certain internal functions within the organization. In the U.S., the New York Stock Exchange corporate governance rules require audit committees to discuss the guidelines and policies to govern the process of risk assessment and risk management. In addition, in May 2009 legislation entitled ‘Shareholder Bill of Rights Act of 2009’ has been introduced in the U.S. Senate by Senator Charles Schumer that would, if passed, mandate risk committees for publicly traded companies in general. The role of these risk committees – that are to be composed of independent directors – is to be responsible for the establishment and evaluation of the risk management practices of the issuer. Like in the U.S., in E.U. member states the idea of requiring companies to have a risk committee is also starting to be considered. For instance, the Dutch self-regulatory Banking Code requires banks – not listed companies in general – to have a risk committee. Furthermore, the U.K. Walker Review recommends certain listed banks and insurance companies to establish a risk committee in order to, inter alia, oversee and advise the board on current risk exposures and the future risk strategy. Similar to the Netherlands, but contrary to the U.S., this U.K. recommendation is not extended to non-financial listed companies. In general, from a legal perspective reform as a reaction to the financial crisis includes the (further) development of the duty of the board, senior management, the supervisory body or non-executives, the audit committee, the internal audit, the compliance function, and the risk committee.

Next to regulating the duty of and personal qualifications for certain internal functions within the organization, the more recent financial industry-specific provisions emphasize the external monitoring role of the supervisory authorities. Financial markets are more global than they used to be and since the financial crisis can be defined as a global systemic crisis, lawmakers are searching for ways to address regulatory repair internationally. The reaction at
the E.U. level 42 includes introducing European supervisory authorities to supplement the national supervision in order to repair the lack of cohesiveness and form a supervisory front. The European Commission mandated the de Larosière Group, a high-level group on financial supervision in the E.U., to propose recommendations on the future of European financial regulation and supervision. The report of the de Larosière Group provides for a framework that points out three main items to strive for: a new regulatory agenda (to reduce risk and improve risk management), stronger coordinated supervision (macro- and micro-prudential), and effective crisis management procedures (to build confidence among supervisors) 43. In reaction to these recommendations, the European Commission proposes reforms relating to the way financial markets are regulated and supervised. It recommends a European financial supervisory framework composed of two new pillars. The first pillar is a European Systemic Risk Board (ESRB) “which will monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole (‘macro-prudential supervision’)” 444. The second pillar is a European System of Financial Supervisors (ESFS) that should consist of a network of national financial supervisors as well as new European Supervisory Authorities. At the moment, three financial sector-specific committees are already in place at the EU level: the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Committee (CEIOPS), and the Committee of European Securities Regulators (CESR). In order to establish European Supervisory Authorities, a directive is proposed which transforms these committees into a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA) 45.

Concluding remarks

Since the financial crisis started, the legal risk management environment is under construction. Especially for the financial services industry, regulations relating to the internal organization of the company and the external monitoring role of the supervisory authorities are piling up. As argued above, the underlying question here is whether new regulations can indeed prevent the next crisis. For new regulations to improve the legal environment of financial institutions – thereby reducing the imperfections shown by this crisis – firstly the current legal environment must be clear and secondly, the primary problem has to be understood. This seems only logical, but gauging the precise problem is far from easy. Where Fein argues that it might not be bank regulation that is broken, but rather bank supervision, Kashyap argues that regulation is broken at the most basic level 46. Even so, if new regulations can prevent a crisis such as this one, there is no guarantee that this type of regulation is needed to prevent the next one, as the next crisis will most likely have its own features. Besides that, at a roundtable on the future of financial regulation Harring argued that there might almost never be a perfect time for reform. “When profits are high and markets are buoyant, it’s only we ivory tower types who think about it. And when there’s a crash, risk aversion rises to such an extent that tightening regulations is unnecessary because institutions and markets are already too risk-averse to rekindle economic growth” 47. To conclude, it might not be the right time for regulatory reform, but when it is, it might be best to focus on what we want to achieve in the long run and how that can be achieved keeping in mind an adequate balance between the interests of corporate constituents, consumers, and investors on the one hand, and the overall costs, on the other. After all, the financial services industry is one of the most heavily regulated industries already.

42 See for the U.S. reaction: H.R.4173 - Wall Street Reform and Consumer Protection Act of 2009. U.S. House passed this financial services reform bill on 11 December 2009, which is said to be ‘the biggest change in financial regulation since the Great Depression.’ When the bill becomes law, it would provide for, inter alia, protection of consumers and investors, enhanced Federal understanding of insurance issues, and regulated over-the-counter derivatives markets. This legislation would also establish a Consumer Financial Protection Agency and give the Treasury Department new authority. See in addition, Department of The Treasury, financial regulatory reform – a new foundation: rebuilding financial supervision and regulation, 17 June 2009 (the White Paper on Financial Regulatory Reform of June 2009 from the Obama Administration).

43 The de Larosière Group, 2009, Report of the high-level group on financial supervision in the EU, Brussels, p. 4


