



## Finding a balanced approach to global regulation

### Introduction

On 30 September and 1 October 2008, members of the European and North American Audit Committee Leadership Networks met to discuss a range of issues,<sup>1</sup> including how best to find a balanced approach to global regulation. During the course of the summit, members were joined by Sir Callum McCarthy, immediate past chairman of the UK's Financial Services Authority (FSA); Charlie McCreevy, European Commissioner for the Internal Market and Services; and Ethiopis Tafara, Director of the Office of International Affairs at the US Securities and Exchange Commission (SEC). For further information on the networks, see "About this document," on page 10.<sup>2</sup> For a full list of participants, see the appendix on page 11.

### Executive summary

The third Audit Committee Leadership Summit took place in London against a backdrop of the continuing financial crisis. During the meeting, the news was dominated by European bank rescues, the failure of the US Congress to support the original market rescue plan and declining stock markets worldwide. The discussions, which were a continuation of prior summit discussions on regulatory matters,<sup>3</sup> focused on the following topics:

- **The need for better co-ordination and collaboration among regulators** (*Page 2*)

Audit chairs<sup>4</sup> and guests agreed that the current financial crisis clearly highlights the need for more effective co-operation and collaboration among regulators to avoid duplication of efforts, reduce costs and improve compliance with regulations. While progress has been made in recent years, the guests were relatively pessimistic about the prospects for better co-ordination in the short term, given the level of turmoil created by the financial crisis and the demands of domestic politicians for national regulatory responses to protect their nations' taxpayers, whose money is at risk in the various rescue packages.

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<sup>1</sup> Other summit discussions included "IFRS in Europe and the US: lessons learned and challenges ahead," and "Enterprise risk: recurring challenges and new considerations for the audit committee." *ViewPoints* on both of these discussions can be found at [http://www.tapestrynetworks.com/networks/net\\_audit\\_summit3.html](http://www.tapestrynetworks.com/networks/net_audit_summit3.html).

<sup>2</sup> *ViewPoints* reflects the use of a modified version of the Chatham House Rule whereby names of members, guests and company affiliations are a matter of public record, but comments made by members before and during meetings are not attributed to individuals or corporations. However, Messrs McCarthy, McCreevy and Tafara, who were all speaking in a personal capacity and whose views do not necessarily represent those of their organisations, have given permission for their comments to be attributed. Comments made by participants at the summit are shown in italics.

<sup>3</sup> The first summit, in February 2007, focused on the competitiveness of capital markets, the future of financial reporting and the global role of the Public Company Accounting Oversight Board (PCAOB). It included guests from the New York Stock Exchange Group (NYSE), the SEC and the PCAOB. See Audit Committee Leadership Summit, "Enhancing trust and competition in global public capital markets," *ViewPoints*, 6 April 2007. Available at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_Summit\\_View1\\_Apr07.PDF](http://www.tapestrynetworks.com/documents/Tapestry_EY_Summit_View1_Apr07.PDF). At the November 2007 summit, members continued the discussion on the competitiveness of global capital markets, joined by US Treasury Secretary Henry Paulson and several former regulators from the SEC. See Audit Committee Leadership Summit, "Discussion with Treasury Secretary Hank Paulson," *ViewPoints*, 23 January 2008. Available at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_Summit\\_View4\\_Jan08.pdf](http://www.tapestrynetworks.com/documents/Tapestry_EY_Summit_View4_Jan08.pdf).

<sup>4</sup> This document uses the term "audit chair" to include all summit participants who are members of audit committees.



- **Calls for a more effective approach to enforcement** (*Page 4*)

Summit participants dismissed the ongoing debate about the relative merits of a more principles- or rules-based approach to regulation, although most expressed a preference for starting with principles. There remain differences in opinion as to the degree to which regulators should rely on enforcement to meet their objectives. However, participants did agree that companies should develop more collaborative, open relationships with regulators, so long as regulators play their part.

- **Streamlining global regulation** (*Page 7*)

The financial crisis has propelled the debate on the need to overhaul regulatory regimes in the United States and Europe up the political agenda. However, summit participants were sceptical of the possibility that substantive reforms would be made in the short term.

## **The need for better co-ordination and collaboration among regulators**

The financial crisis has brought to the fore the need for greater co-operation and collaboration among regulators. Mr McCreevy commented, *“The turmoil [in the markets] has shown that the international financial system has come closer together, so I’m inclined to believe that solutions need to be inter-governmental.”*

### **Enhancing co-operation**

In preparing for the summit, audit chairs stressed that they are keen to see more co-ordination. “We need more effective co-ordination both in Europe, between European regulators and [bank] supervisors and also between Europe and North America,” stated one audit chair. At the meeting, one participant asserted, *“We want harmonization, convergence and simplicity.”*

At the summit, Mr Tafara summed up the view of many regulators when he remarked, *“Regulatory cooperation is important, and it is increasingly so.”* He expressed his views more fully in an address to members of Chatham House:

Because we do not have – and are not likely to have – a global regulator with the same autocratic powers that a gifted orchestra conductor enjoys when he steps up to the podium, we will need national regulators with a global vision for our markets to work effectively. More than that, we need national regulators that can cooperate with each other, coordinate their regulatory efforts, and share responsibilities in order to promote investor protection and market integrity in their home markets and in those markets that cross international borders.<sup>5</sup>

Mr Tafara has frequently confirmed his belief that “international collaboration among a coalition of like-minded regulators with comparable regulation”<sup>6</sup> is an effective way of dealing with the problems of market

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<sup>5</sup> Ethiopis Tafara, “Tchaikovsky’s Fourth or Monk’s Mood: Improvisation and Harmony in Cross-Border Regulation.” Speech at Chatham House, London, 15 June 2007. Available at <http://www.sec.gov/news/speech/2007/spch061507et.htm>.

<sup>6</sup> Ethiopis Tafara, “Investors’ Choice in the Regulation of Global Capital Markets?” Speech at the 2008 International Corporate Governance Network Annual Conference, Seoul, 19 June 2008. Available at <http://www.sec.gov/news/speech/2008/spch061908et.htm>.

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globalisation and has stated that “cooperation among regulators allows for smoother, more consistent, and more rational cross-border oversight.”<sup>7</sup>

## Mutual recognition

Mr Tafara stated at the summit that *“market participants – credit rating agencies, investment banks, investment funds – are now global in their operation, so to get a complete picture of their condition and the risk presented, regulators need the help of their counterparts.”*

The approach that has gained most momentum in recent years is mutual recognition, whereby regulators permit others’ standards to satisfy their regulatory objectives rather than trying to establish extraterritorial regulatory powers. Mr Tafara feels that “mutual recognition arrangements predicated upon shared regulatory philosophies and outcomes and put into effect through strong supervisory and enforcement co-operative arrangements could create the kind of international regulatory infrastructure that will support current trends and strengthen the global market rather than undermining it.”<sup>8</sup>

For mutual recognition to work, regulators must be comfortable with their counterparts’ objectives. As Mr Tafara has explained previously, “[Each regulator] must be confident that foreign partners share the same legal powers and regulatory philosophy. This assurance might take the form of a ‘comparability assessment’ by which [two regulators] trade information about their regulations and how those regulations are enforced, to help ensure that [their] objectives and philosophies are the same. It might also include enhanced enforcement and prudential information-sharing arrangements to help ensure that, if fraud should occur, each will help the other prosecute the offenders and seek redress for defrauded investors.”<sup>9</sup> Mr Tafara said at the summit that he believes that *“mutual recognition has made progress. For example, the SEC recently signed a mutual recognition arrangement with Australian securities regulators.”*

Critics have expressed concern that mutual recognition is not keeping up with the globalisation of capital markets. Some audit chairs blame the slow pace of progress on the fact that, as one said prior to the summit, ultimately, “someone has to give up power ... and there’s no clear political will to make that happen.”

Mr Tafara has addressed this concern previously: “Some believe the idea of mutual recognition is unfolding too slowly, and does not go far enough. To these critics, I say that, as the custodians of capital markets, we regulators have an obligation to get it right, and to ‘do no harm.’ Getting it right necessarily requires that we move carefully and deliberately, and to be sure that we understand fully the problems we are attempting to solve and the consequences of the solutions we propose.”<sup>10</sup> At the summit, Mr Tafara cautioned that politicians may be even more reluctant to rely on foreign regulators: *“We certainly will face political resistance to [the notion of relying entirely on] another country’s enforcement ... That is undoubtedly a step too far.”*

<sup>7</sup> Ethiopis Tafara, “Shared Responsibilities in Global Capital Markets.” Speech at BritishAmerican Business Inc.’s Financial Services Forum, London, 8 May 2007. Available at <http://www.sec.gov/news/speech/2007/spch050807et.htm>.

<sup>8</sup> Ethiopis Tafara, “Investors’ Choice in the Regulation of Global Capital Markets?”

<sup>9</sup> Ethiopis Tafara, “Trading Places: Mobility and the New International Financial Regulation.” Speech to the AMF, Montreal, 15 October 2007. Available at <http://www.sec.gov/news/speech/2007/spch101507et.htm>.

<sup>10</sup> Ethiopis Tafara, “Shared Responsibilities in Global Capital Markets.”



Sir Callum cited several areas in which progress has been achieved in enhancing regulatory co-operation, notably in determining a common approach to capital requirements in banks, informal co-operation between supervisors within colleges of supervisors for particular financial institutions and a preferred regulatory approach to credit rating agencies. However, he too noted that the current crisis has had an adverse effect on progress: *“It is a central fact of life that with finance ministers having to act with taxpayers’ money and central bankers doing the same, it will become increasingly difficult to rely on one another’s regulation ... There has to be political accountability.”* Hence, he expressed pessimism about making significant progress in the short term: *“There is a growing sense that an international solution is required but ... the fallout from the current crisis will make that difficult.”*

The unprecedented international co-ordination on interest-rate cuts and financial support for domestic financial institutions that took place after the summit may indicate a more optimistic future for regulatory co-ordination. However, organising central bank and governmental co-ordination may prove less difficult than creating more ongoing regulatory co-ordination, particularly if the political pressure for such co-ordination wanes as the markets recover.

## **Calls for a more effective approach to enforcement**

The financial crisis has also reignited an underlying philosophical debate among regulators and those that are regulated about whether regulatory regimes should be based more on principles or rules. As the *Economist* summarised, “Those who support a more formulaic approach think that a system based on principles leaves too much room ... [for regulated entities] ... to wriggle free of their obligations. Those who support principles say much the same thing: precise rules are inflexible and more easily gamed.”<sup>11</sup>

Leading regulators believe the supposed dichotomy is overstated. The UK’s FSA, often cited as a leading proponent of principles-based regulation, has strenuously denied that regulators face such a stark choice. As Sir Callum pointed out, “[While] we have eleven core principles – short enough to be put on a 5" by 3¼" card; only 194 words ... the FSA is also an organisation with a very large rule book (8,500 pages of rules and guidance) ... the FSA has and will always have a mixture of general principles and particular rules.”<sup>12</sup>

When discussing principles versus rules at the summit, Mr McCreevy said he was not sure there were really significant differences between the two approaches, if one looked at the volume of the FSA rulebook. However, he pointed out that neither principles nor rules were able to prevent the current crisis: *“A fair assessment is that both approaches failed.”*

Mr Tafara has called the principles-versus-rules discussion “a sterile debate”<sup>13</sup> and has urged regulators and others not to “fall prey to [its] false dichotomous question ... To paraphrase an American legal scholar, ‘Rules

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<sup>11</sup> “Regulators need to counterbalance the cycle, not accentuate it,” *Economist*, 15 May 2008. Available at [http://www.economist.com/surveys/displaystory.cfm?story\\_id=11325492&fsrc=RSS](http://www.economist.com/surveys/displaystory.cfm?story_id=11325492&fsrc=RSS).

<sup>12</sup> Sir Callum McCarthy, “Financial Regulation: Myth and Reality.” Speech for the British American Business London Insight Series and Financial Services Forum, 13 February 2007. Available at [http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2007/0213\\_cm.shtml](http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2007/0213_cm.shtml).

<sup>13</sup> Ethiopia Tafara, “Tchaikovsky’s Fourth or Monk’s Mood: Improvisation and Harmony in Cross-Border Regulation.”



without principles are a menace. But principles without rules are likely a mess.”<sup>14</sup> On another occasion, he has said, “Regulators must strike a balance between under-regulation, which carries with it the risk of contagion in the form of fraud, and over-regulation, which saps the vitality of otherwise vibrant markets. A balance must be achieved and different markets strike this balance in different ways.”<sup>15</sup>

At the summit, Mr Tafara acknowledged one particular aspect of the debate: *“What is of relevance is the point of departure. The better approach is to begin with principles. We need to get the sequence right.”*

Audit committee chairs believe the question of principles and rules can be resolved. Audit chairs share the view that balance is required: “I am very much in favour of not having a rigid choice between one or the other ... I would like to look for a practical result instead of looking at each extreme. Not compromise for the sake of it, but [to find] a kind of middle solution,” remarked one European audit chair prior to the meeting.

Audit chairs do believe, however, that US influence works against more principles-based regulation. One US audit chair said in preparing for the summit, “I am almost certain that [the compromise we arrive at] will be more rules-based than most Europeans like to see, because of the dominance of the US.”

## **Concerns about ineffective enforcement**

In discussing principles versus rules, audit committee chairs often comment on the degree to which the regulatory system relies – or is perceived to rely – on enforcement actions and the nature of interaction between the regulator and regulated.

Regulators remain sensitive to concerns that they over- or under-use enforcement. Those regulators that have a system perceived to be based heavily on enforcement, such as the SEC, fall prey to complaints that they do not focus sufficiently on preventing problems. Mr Tafara insists that “the complaint we so frequently hear that ‘regulator-led governance’ is geared more towards enforcement rather than prevention is fundamentally misplaced. The rules are designed to prevent problems before they arise.”<sup>16</sup>

Conversely, regulators that strive for a more principles-based approach, such as the FSA, are sensitive to concerns that such an approach translates into a weaker enforcement environment. Sir Callum has talked about the myth that the FSA is a “‘light touch’ (or, even more misleadingly, ‘soft touch’)” regulator.<sup>17</sup> Sir Callum believes “there is nothing light or soft about the use of principles ... principles confer flexibility on the regulator.”<sup>18</sup> Furthermore, he points out that a principles-based approach, when supported by broad regulatory scope and the ability to impose substantial fines, gives a regulator the “ability to take action against

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<sup>14</sup> Ethiopis Tafara, “Remarks on UK and US Approaches to Corporate Governance and on the Market for Corporate Control.” Speech at the International Conference on Corporate Governance and Securities Markets, Madrid, Spain, 8 February 2007. Available at <http://www.sec.gov/news/speech/2007/spch020807et.htm>.

<sup>15</sup> Ethiopis Tafara, “Shared Responsibilities in Global Capital Markets.”

<sup>16</sup> Ethiopis Tafara, “Remarks on UK and US Approaches to Corporate Governance and on the Market for Corporate Control.”

<sup>17</sup> Sir Callum McCarthy, “Regulating financial services in the UK.” Speech at the BBA International Banking Conference, 10 June 2008. Available at [http://www.fsa.gov.uk/pages/library/communication/speeches/2008/0610\\_cm.shtml](http://www.fsa.gov.uk/pages/library/communication/speeches/2008/0610_cm.shtml).

<sup>18</sup> Ibid.



breach of principle, even when no specific rule has been broken.”<sup>19</sup> He reiterated this argument forcefully at the summit: *“I think we should get away from the idea that rules are more strict than principles. That’s simply not true.”* He cited the so-called “Dr Evil” trade undertaken by several Citigroup traders who took advantage of a structural flaw in the Italian-based MTS electronic bond market: while technically no rule was broken, the FSA levied a £14 million fine and was the only European Union regulator which was able to take enforcement action.<sup>20</sup>

From an enforcement perspective, however, a greater reliance on principles requires that “institutions generally conform with the spirit of the regulations and operate ethically,”<sup>21</sup> as John Trowbridge of the Australian Prudential Regulatory Authority put it. This means that the regulator must determine “whether the aspirations and intentions of senior management are indeed being translated into putting in place appropriate procedures and into delivering the right outcomes in the customer-facing operations of their firm.”<sup>22</sup>

In preparing for the summit, audit chairs expressed mixed views on enforcement. Some are not opposed to stronger enforcement, with one noting that “many people in Europe say we need tough regulation; some think there is not enough.” However, one European audit chair argued, “We don’t need additional rules ... we need more effective enforcement of existing rules.” But they drew the line at what they saw as excessive enforcement. One audit chair criticised the SEC on that account, saying, “The SEC is grossly over-zealous on enforcement.”

Audit chairs noted that ineffective enforcement is often associated with under-resourcing regulators. As one put it prior to the meeting, “They need more money, talent and people.” At the summit, Sir Callum agreed that this is a problem: *“[Attracting talented people] is clearly a huge problem for regulators, as it has been in any organization for which I ever been responsible, particularly because, as a result of the current crisis, we can expect more regulation, some of which will not be well thought out.”* However, Mr Tafara did not think that the SEC suffers from any real problems in attracting talent.

## **Improving relations with regulators**

Audit chairs commonly express concern over the manner in which regulators discuss issues or challenges with the companies they regulate. In preparing for the summit, audit chairs expressed a clear preference for collaboration, and there is a sense that principles-based regulators are more open to dialogue. “[Within a principles-based environment], when there was a problem or an issue you wished to discuss ... you had a reasoned discussion about what was up, and you worked out a sensible solution for all. There were no ‘gotchas’,” stated one US audit chair.

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<sup>19</sup> Sir Callum McCarthy, “Financial Regulation: Myth and Reality.”

<sup>20</sup> John Plender and Avinash Persaud, “The day Dr Evil wounded a financial giant,” *Financial Times*, 22 August 2006. Available at <http://www.ft.com/cms/s/2/144f84ca-31fd-11db-ab06-0000779e2340.html>.

<sup>21</sup> John Trowbridge, “Prudential Regulation: Future Directions.” Keynote address, Institute of Actuaries of Australia Business Luncheon, Sydney, 8 August 2007. Available at <http://www.apra.gov.au/Speeches/upload/Prudential-Regulation-Future-Directions-8-August-07-updated-v.pdf>.

<sup>22</sup> Clive Briault, “Principles-based regulation in the retail market.” Speech at the FSA conference on principles-based regulation, 23 April 2007. Available at [http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2007/0423\\_cb.shtml](http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2007/0423_cb.shtml).

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At the summit, Sir Callum remarked that companies could do more to create better working relations with regulators, regardless of the regulatory approach: *“With regard to interactions between regulators and the regulated, companies need to get away from deceiving regulators. It’s fundamentally important that companies set up a good working relationship with their regulators. When I was a regulator, I tried to encourage companies to treat the regulator like one treats one’s boss: if there is a problem, they should be the first to tell the regulator.”* One US audit chair agreed that companies have to set the right tone when building relations with regulators: *“Our approach is to remember that we are operating in other people’s countries, so we are a guest, so we need to act like a guest.”*

Mr Tafara agreed that there are benefits to be gained from improving relations between regulators and those they regulate, but he warned against taking too simplistic an approach to the matter: *“The relationship between the company and the regulator will differ depending on the mandate of the regulator. Interaction with a prudential supervisor will necessarily differ from interaction with a markets/business conduct regulator. Their mandates are distinct: one focuses on the safety and soundness of the institutions; the other is concerned with investor protection and market integrity. Some institutions want to have the same relationship [with all their regulators], but I’m not sure it’s possible.”*

## Streamlining global regulation

The most challenging, but arguably the most promising, regulatory initiatives are those aimed at streamlining or integrating existing global regulatory frameworks. The financial crisis has energised political debate about such reform.

Regulators are sceptical about calls for global solutions. As Jochen Sanio, president of the German Federal Financial Supervisory Authority (BaFin), noted at the beginning of the year, “There are more and more voices to be heard asserting that globalised financial markets have a legitimate claim to a global regulator. Or as a first step, at least a single European regulator ... That is a pipe-dream – no government is currently prepared to surrender its sovereign rights in financial regulation.”<sup>23</sup>

At the summit, Mr McCreevy noted that given the world’s current financial situation, *“there may be understandable pressure to sort out one’s domestic problems and questions raised [about getting] involved in others’ problems.”* However, he continues to press for inter-governmental solutions, as illustrated by his announcement the following day regarding revision of the capital requirements directive, in part, through the establishment of international “Colleges of Supervisors to enhance cross border cooperation between supervisors and the mandatory exchange of information between supervisors to help detect signs of stress.”<sup>24</sup>

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<sup>23</sup> Jochen Sanio, “Opening address at the New Year Reception of the Deutsches Aktieninstitut,” 24 January 2008. Available at [http://www.bafin.de/eln\\_109/nn\\_721228/SharedDocs/Reden/DE/2007/re\\_080124\\_sanio\\_en.html?\\_\\_nnn=true](http://www.bafin.de/eln_109/nn_721228/SharedDocs/Reden/DE/2007/re_080124_sanio_en.html?__nnn=true).

<sup>24</sup> Charlie McCreevy, “Capital Requirements Directive.” Press conference, Brussels, 1 October 2008. Available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/478&type=HTML&aged=0&language=EN&guiLanguage=en>.



## Pressure for reform mounts in the United States

With regard to the United States, Treasury Secretary Paulson noted at the November 2007 summit, “When you step back and ask what the real issues are, it’s the regulatory environment and mind-set. Over the course of our nation’s history, we have added multiple regulators to respond to the issues of the day. Our regulatory system has adapted to the changing market by expanding, but perhaps not always focusing on the broader objective of regulatory efficiency, so there is a patchwork quilt.”<sup>25</sup>

As discussed at the November 2007 summit in the United States, the current thrust for reform first came in 2006–07, as policymakers expressed major concerns about the competitiveness of US capital markets.<sup>26</sup> Policy makers worried that an over-zealous regulatory environment was encouraging some companies to execute their initial public offerings in non-US markets and other companies to delist from US exchanges.<sup>27</sup> More recently, at Mr Paulson’s urging, the US Treasury created its *Blueprint for a Modernized Financial Regulatory Structure*.<sup>28</sup> Explaining its far-reaching recommendations, Mr Paulson said, “Our model proposes three primary regulators: one focused on market stability across the entire financial sector, another focused on safety and soundness of institutions supported by a federal guarantee, and a third focused on protecting consumers and investors. A major advantage of this structure is its timelessness and its flexibility.”<sup>29</sup>

The *Blueprint*, which initially received a mixed reaction, has since sparked a discussion on the long-term evolution of the US regulatory framework. Mr Tafara stated at the summit, “*In the US, there will be an examination of what regulatory architecture is needed. Most of our regulators were born from crises: the Fed from the 1909 crisis, state insurance regulation from the early 1900s, the SEC from the Crash of 1929. Now we face a new crisis. When the Treasury Blueprint was conceived, it was more of an academic exercise; now regulatory reform is likely to rise to the top of the agenda.*”

In his statement on the *Blueprint*, Mr Paulson noted that the subprime lending crisis shows that “we have both a clear need and a unique opportunity to accelerate this process.”<sup>30</sup> As noted in a recent issue of *InSights*,<sup>31</sup> capital markets’ reform has moved up the political agenda, with both US presidential candidates – Republican Senator John McCain and Democratic Senator Barack Obama – on record championing a

<sup>25</sup> Audit Committee Leadership Summit, “Discussion with Treasury Secretary Hank Paulson,” 2.

<sup>26</sup> For more information on capital markets, see Committee on Capital Markets Regulation, *Interim Report* (Committee on Capital Markets Regulation, 2006). Available at [http://www.capmktreg.org/pdfs/11.30Committee\\_Interim\\_ReportREV2.pdf](http://www.capmktreg.org/pdfs/11.30Committee_Interim_ReportREV2.pdf). See also Michael Bloomberg and Charles Schumer, *Sustaining New York’s and the US’ Global Financial Services Leadership* (New York and Washington, DC: City of New York and U.S. Senate, 2007). Available at [http://www.senate.gov/~schumer/SchumerWebsite/pressroom/special\\_reports/2007/NY\\_REPORT%20\\_FINAL.pdf](http://www.senate.gov/~schumer/SchumerWebsite/pressroom/special_reports/2007/NY_REPORT%20_FINAL.pdf).

<sup>27</sup> Audit Committee Leadership Summit, “Working with the SEC,” *ViewPoints*, 23 January, 2008, 3. Available at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_Summit\\_View3\\_Jan08.pdf](http://www.tapestrynetworks.com/documents/Tapestry_EY_Summit_View3_Jan08.pdf).

<sup>28</sup> US Department of the Treasury, *Blueprint for a Modernized Financial Regulatory Structure* (Washington DC: Department of the Treasury, 2008). Available at <http://www.treas.gov/offices/domestic-finance/regulatory-blueprint/>.

<sup>29</sup> Henry Paulson, “Oral Statement on Regulatory Reform before House Committee on Financial Services,” press release, 10 July 2008. Available at <http://www.ustreas.gov/press/releases/hp1074.htm>.

<sup>30</sup> Henry Paulson, “Remarks on the U.S., the World Economy and Markets.” Speech at the Chatham House, 2 July 2008. Available at <http://www.ustreas.gov/press/releases/hp1064.htm>.

<sup>31</sup> Ernst & Young and Tapestry Networks, “An accelerated pace of change: what to expect from the presidential candidates,” *InSights*, 8 October 2008. Available at [http://www.tapestrynetworks.com/documents/Tapestry\\_EY\\_ACLN\\_InSights\\_Oct08.pdf](http://www.tapestrynetworks.com/documents/Tapestry_EY_ACLN_InSights_Oct08.pdf).



streamlined regulatory framework. Moreover, the market rescue plan approved by the US Congress calls on the newly established Congressional Oversight Panel to “submit a report on regulatory reform ... analyzing the current state of the regulatory system and its effectiveness at overseeing the participants in the financial system and protecting consumers, and providing recommendations for improvement.”<sup>32</sup>

However, subject-matter experts are sceptical about the prospect of real progress in overhauling US regulatory structures, in part because political power brokers and regulators will fight against reforms that would require them to cede power.<sup>33</sup>

### **The debate on reform is also raging in the European Union**

A similar discussion has been ongoing in Europe, where the focus has been on the need to harmonise regulation within the European Union (EU) and the possibility of a Europe-wide regulator. Mr McCreevy has long been a major advocate for pan-European and transatlantic regulatory reform and for moving forward in a “co-ordinated multilateral manner, rather than attempting to build the foundations of the new order on a thicket of bilateral agreements and understandings.”<sup>34</sup> At the summit, Mr McCreevy asserted that, “*The current financial turbulence necessitates a Europe-wide response.*” He continued, “*We should expect a new [regulatory] architecture once the dust settles.*”

Other European regulators have cautioned against pulling back from integration. Michel Prada, of France’s Autorité des Marchés Financiers (AMF), argues that “the market turmoil which erupted a year ago should not detract us from, but actually encourage us to, building a stronger regulatory framework.”<sup>35</sup> He believes that “convergence and integration at the European, as well as at the global levels, are not a parallel objective to our present management of the crisis: they are the consistent response which is vital to finding solutions for the crisis.”<sup>36</sup> As BaFin’s Jochen Sanio noted, this means “The EU should arrive at as uniform an application of their harmonised rulebooks as possible.”<sup>37</sup>

For their part, audit chairs are less enthusiastic about pushes to harmonise regulation. In preparing for the summit, one European audit chair said, “It would be nice to deal with [just] one regulator ... The problem is [that] in Europe, they don’t rise to the highest common denominator, but they go to the lowest common denominator.”

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<sup>32</sup> The complete text of the Emergency Economic Stabilization Act of 2008 is available at [http://financialservices.house.gov/essa/ayo08c04\\_xml.pdf](http://financialservices.house.gov/essa/ayo08c04_xml.pdf). The text quoted here is from p. 72.

<sup>33</sup> Ernst & Young and Tapestry Networks, “An accelerated pace of change: what to expect from the presidential candidates,” 5.

<sup>34</sup> Charlie McCreevy, “Building the Transatlantic Market place.” Speech at the Heyman Center on Corporate Governance, New York, 7 March 2007. Available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/131&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>35</sup> Michel Prada, “Speech at Paris Europlace,” 2 July 2008, 13–14. Available at [http://www.amf-france.org/documents/general/8369\\_1.pdf](http://www.amf-france.org/documents/general/8369_1.pdf).

<sup>36</sup> Ibid., 14.

<sup>37</sup> Jochen Sanio, “Opening address at the New Year Reception of the Deustches Aktieninstitut.”

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## Conclusion

Members warned that the financial crisis may have stalled efforts to overhaul regulation and promote more effective co-operation among regulators, and they fear that the relatively interventionist comments from politicians in Europe and the United States are a sign that more, not less, regulation will be implemented in the short term. In the words of Sir Callum, *“There will be a movement towards more intrusive regulation.”*

## About this document

The European Audit Committee Leadership Network (EACLN) and Audit Committee Leadership Network (ACLN) are groups of audit committee chairs drawn from leading European and North American companies committed to improving the performance of audit committees and enhancing trust in financial markets. The network is convened by Ernst & Young and orchestrated by Tapestry Networks to access emerging best practices and share insights into issues that dominate the new audit committee environment.

*ViewPoints* is produced by Tapestry Networks to stimulate timely, substantive board discussions about the choices confronting audit committee members, management and their advisers as they endeavour to fulfil their respective responsibilities to the investing public. The ultimate value of *ViewPoints* lies in its power to help all constituencies develop their own informed points of view on these important issues. Anyone who receives *ViewPoints* may share it with those in their own network. The more board members, members of management and advisers who become systematically engaged in this dialogue, the more value will be created for all.

*The views expressed in this document represent those of the European or North American Audit Committee Leadership Networks. They do not reflect the views nor constitute the advice of network members, their companies, Ernst & Young, or Tapestry Networks. Please consult your counsellors for specific advice. Ernst & Young refers to all members of the global Ernst & Young organisation.*

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## **Appendix: Participants at the Audit Committee Leadership Summit**

European and North American Audit Committee Leadership Network members participating in all or part of the summit, who sit on the boards of over 44 large-, mid- and small-cap public companies between them, included:

- Dr Werner Brandt, Audit Committee Member, Lufthansa
- Mr Phil Hodkinson, Audit Committee Chair, BT
- Mrs Judy Richards Hope, Audit Committee Chair, Union Pacific
- Mr Laban Jackson, Audit Committee Chair, JPMorgan Chase
- Dr DeAnne Julius, Audit Committee Chair, Roche Holding
- Ms Marie Knowles, Audit Committee Chair, McKesson
- Mr Wim Kok, Audit Committee Chair, ING
- Mr Daniel Lebègue, Audit Committee Chair, SCOR
- Mr Oscar Munoz, Audit Committee Chair, Continental Airlines
- Mr Chuck Noski, Audit Committee Chair, Microsoft and Morgan Stanley
- Ms Pam Patsley, Audit Committee Chair, Texas Instruments
- Pierre Rodocanachi, Audit Committee Member, Vivendi
- Ms Guylaine Saucier, Audit Committee Chair, Areva
- Mr Kees Storm, Audit Committee Chair, Unilever and InBev
- Dr Bernd Voss, Audit Committee Chair, ABB
- Steve West, Audit Committee Chair, Cisco Systems
- Chris Williams, Audit Committee Chair, Wal-Mart

Ernst & Young partners participating in all or part of the meeting included:

- Mr Steve Almassy, Americas Assurance Leader
- Mr Steve Howe, Americas Managing Partner
- Mr Tom McGrath, Managing Partner, EMEIA Financial Services
- Mr Christian Mouillon, Deputy Area Managing Partner EMEIA