The Need for Efficient International Financial Regulation and the Role of a Global Supervisor

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INTRODUCTION

This paper examines the need for international regulation of financial markets and suggests the possible role that a global financial supervisor might play in providing effective regulation of international financial markets. The first part discusses the nature of systemic risk in the international financial system and the necessity for international Minimum Standards of prudential supervision for banking institutions. The second part examines the efforts of the Basel Committee on Banking Supervision to devise non-binding international standards for managing systemic risk in financial markets. Recent financial crises in Asia, Russia and Latin America suggest, however, that informal efforts by international bodies such as the Basel Committee are inadequate to address the risk of systemic failure in financial systems. The third part therefore argues that efficient international financial regulation requires certain regulatory functions to be performed by a global supervisor acting in conjunction with national regulatory authorities. These functions should involve the authorisation of financial institutions, generation of rules and standards of regulatory practice, surveillance of financial markets, and coordination with national authorities in implementing and enforcing such standards.

THE NEED FOR INTERNATIONAL REGULATION

The need for international regulation of financial markets became apparent in the mid-1970s after the breakdown of the Bretton Woods fixed exchange rate system in 1971–73. The elimination of the fixed-exchange rate parity with gold resulted in the privatisation of financial risk, which created pressure to eliminate controls on cross-border capital movements and the further deregulation of financial markets. It became necessary for national regulatory authorities to promote safe and sound banking systems through the effective management of systemic risk in national markets. The G10 industrial countries took the lead by adopting international Minimum Standards of prudential supervision, intended to reduce systemic risk and prevent financial institutions in one jurisdiction from losing business to less-respectable institutions operating in poorly regulated jurisdictions.[1] The privatisation of financial risk in the post-Bretton Woods era increased the pressure on governments to liberalise their national controls on cross-border capital flows so that financial institutions could spread their risks to foreign assets and transactions. This led to a significant increase in short-term cross-border portfolio investment that has, in many instances, exposed capital-importing countries to increased systemic risk due to the volatility of cross-border capital flows.

The first major banking collapse that resulted from the privatisation of financial risk and which focused the attention of the international financial community on the need for enhanced international banking supervision occurred in 1974 and involved major banks from the UK, West Germany and the USA. In June 1974, West German authorities closed the Herstatt Bankhaus (Herstatt) following losses from foreign exchange dealings that threatened severe disruption of the US clearance system,[2] while UK authorities closed the British-Israel Bank of London for insolvency problems.[3] The closure of Herstatt and British-Israel Bank of London exposed major weaknesses in the international banking system.[4] Shortly thereafter, the Franklin National Bank in the USA collapsed under the combined weight of bad management in the volatile domestic wholesale deposit base, excessive speculation in international foreign exchange markets, and over-ambitious efforts to expand.[5] To prevent the crisis from spreading, the US Federal Reserve intervened by guaranteeing the bank's failed short-term foreign exchange commitments.[6] It has been argued that these banking collapses occurred because of the lack of adequate regulatory standards to protect against financial risk.[7]

During the 1980s and 1990s, a market-led global financial system emerged in which the volume of financial assets, the sophistication of international financial transactions, and advances in computer

Journal of Money Laundering Control
Vol. 5, No. 1, 2001, pp. 52–65
Henry Stewart Publications
ISSN 1368-5201

and telecommunications technology increased dramatically. By contrast, no corresponding institutional framework nor regulatory response has been developed on the international level to provide effective and efficient regulation of globalised financial markets. Unlike the Bretton Woods era, the current international financial order has led to recurring financial crises and overall declines in rates of economic growth and investment in the OECD countries.[8] In response, governments have attempted to recover some of the regulatory controls that they had exercised during the Bretton Woods era.[9] For example, leading developed states have established various international bodies[10] to improve the supervision of financial institutions involved in banking, securities, and insurance. These bodies have agreed on various sets of principles and rules establishing what are now agreed to be generally accepted international standards of prudential supervision. Notwithstanding these efforts, recent financial and currency crises in the 1990s demonstrate the inadequacies of the current international regime of financial regulation. This led the leading industrial states to create in 1999 the Financial Stability Forum, which meets twice a year to examine potential threats to the international financial system.[11]

The current loosely assembled regulatory and institutional framework for supervising international financial markets lacks coherence and political legitimacy and requires more concerted efforts to manage systemic risk. Indeed, the British Chancellor of the Exchequer Gordon Brown recognised the need for more concerted efforts at international regulation of financial markets when he stated '[B]ecause today's financial markets are global, we need not only proper national supervision, but also a fundamental reform — global financial regulation.'[12] This section will now discuss two of the major reasons why an international regulatory framework is needed.

The problem of systemic risk

The lack of a coherent international regime to provide standards for the risk-taking activities of financial institutions has exposed financial systems to an increased risk of systemic failure. Indeed, increasing linkages amongst the world's financial markets have led to a significant expansion in the number, size and types of activity, and in the organisational complexity of multinational financial institutions. Although these cross-border linkages generally bring efficiency to world capital markets, the increasing scope of international banking activity has highlighted the difficulty of ensuring effective supervision and may, in some cases, increase systemic risk, whereby losses in one banking group can affect the entire financial system.[13] The systemic risks inherent in international banking include: (1) global systemic risk — the risk that the world's entire banking system may collapse in response to one significant bank failure; (2) safety and solvency risks that arise from imprudent lending and trading activity; and (3) risks to depositors through the lack of adequate bank insurance.[14] Moreover, financial fraud activities also pose a significant threat to an internationalised banking industry. In these situations, systemic risk becomes a negative externality that imposes costs on society at large because financial firms fail to price into their speculative activities the costs associated with their risky behaviour.[15]

Although the taking of risks is a large part of what financial institutions do, prices in financial markets reflect only the private calculation of risk, and so tend to underprice the risk — or the cost — of investments faced by society at large.[16] This underpricing of risks in financial markets creates a negative externality caused by excessive risk-taking that may result in a financial crisis. The regulator's task is to internalise the negative externality of risk, ensuring that investors take into account the risks their activities impose on society. This may be accomplished through either of two approaches: (1) by requiring firms to internalise the costs of the risks they take by, for example, requiring them to adhere to capital adequacy standards or certain risk management practices, or (2) by the direct regulation of a firm's activities. In this way, the financial regulator seeks to require businesses to behave as if they took systemic risk into account, which thereby should reduce the occurrence of systemic breakdown in financial markets. Although effective regulation can make a significant contribution in reducing normal systemic risk, it can never protect firms and markets from abnormal market risk. Even the best regulatory standards and risk management practices may sometimes be overwhelmed by exceptional market turbulence. However, by building confidence in the maintenance of market stability in normal times, it is likely to reduce the chance of abnormal market risk.

In addition, banks have increasingly recognised that traditional methods of risk management have become obsolete and that new measures are needed to assess the risk of new financial instruments. The objective of reducing risk in complex financial markets has led banks to use innovative financial instruments to diversify earnings among several countries so that, in any given year, an inadequate investment outcome in one country may be offset by a positive investment outcome in another country. This need to reduce risk by expanding cross-border financial services has also resulted in the establishment of complex organisations, known as financial conglomerates.[17] An international financial conglomerate is an integrated group of companies, which offers a broad range of financial services. While financial conglomerates offer the benefits of diversified assets, risks and sources of earnings, their structure poses several problems for regulators. Comprehensive supervision of financial conglomerates requires that supervisors develop standards that address the degree of transparency[18] within the organisation and the placement of overall supervisory responsibility with a particular regulator. Moreover, the interrelationship of various divisions within a multinational conglomerate increases the likelihood that the default or liquidation of an affiliate in one jurisdiction will 'spill over' to other affiliates or controlled entities in other jurisdictions.[19] To prevent systemic risk from occurring on the international level, national regulatory authorities should coordinate their efforts to produce effective international standards of financial supervision to ensure that financial conglomerates internalise their costs of operation.[20]

As banking becomes more international and deregulated, national regulatory authorities remain the prime supervisors monitoring cross-border banking activities. But expanded and diversified international banking operations require adherence to a common core of supervisory and regulatory standards recognised by the world's major financial regulators. These core international standards require effective international supervision to reduce systemic risk. The effective control of systemic risk requires a global supervisory regime that performs certain essential functions, including, *inter alia*, the generation of norms and rules of prudential supervision, surveillance of financial institutions and markets, and coordinating enforcement by national authorities of international regulatory standards.

Extraterritoriality and systemic risk

In the absence of a supranational regulator, there is a disjunction amongst national regulatory regimes because many national legal systems will not regulate the activities of persons or transactions that are not exclusively located within their territorial jurisdictions.[21] It has been argued that traditional notions of territorial jurisdiction under international law are inadequate to provide effective regulation of financial markets,[22] and also fail to take account of the complexities of electronic commerce and trading systems. Indeed, a strict application of territorial principles of jurisdiction may result in inadequate regulation of cross-border financial services.[23] Some national authorities have adopted laws that seek to control extraterritorial sources of systemic risk by imposing jurisdiction over foreign persons or transactions that pose a threat to the financial markets of the regulating state.[24]

Some have argued, however, that when national regulators are permitted to regulate on an extraterritorial basis, they have a tendency to 'overregulate' their territorial markets in order to bring extraterritorial activities within their jurisdictional control, thus causing inefficiencies and in some cases systemic risk.[25] For example, the Federal Reserve Bank of New York has the authority to revoke the licence of a foreign bank to operate in the USA on account of its activities in a foreign jurisdiction that constitute, in the view of the Federal Reserve, unsafe or unsound practices.[26] In such a case, there is no requirement for the Federal Reserve to consult with the home country regulator of the foreign bank, nor to consult with other interested regulators in other host countries where the bank operates. This type of unilateral authority to impose extraterritorial banking regulation may increase systemic risk in a situation where the closure of the US branch of a foreign parent bank will adversely affect the parent bank's ability in its home market to maintain its credit lines with other financial institutions because of its perceived close dealings with its US branch. This loss of confidence could also spread to the bank's retail business, thus precipitating a bank run that could cripple its operations.

Moreover, the same sort of systemic problems could arise when a host bank regulator revokes the licence of a domestic bank that has branches, agencies or subsidiaries in foreign jurisdictions on account of the bank's *activities within the territorial jurisdiction* of the host state. This scenario does not concern extraterritorial jurisdiction *per se* (eg the authority of a state to regulate activities occurring in another state's territory) but instead addresses how the decisions of national regulators, taken for domestic reasons, can have an adverse effect on the economies of other countries. For example, the linkages within and between multinational banking groups and conglomerates create a seamless web through which the actions of national authorities to regulate a domestic enterprise can affect related enterprises operating in other countries. Indeed, this type of extraterritorial impact of national financial regulation truly demonstrates the essence of the extraterritoriality problem and the need for global supervision.

Nation states, however, jealously guard their territorial sovereignty and regulatory control over economic activity, especially that of financial institutions and markets. Although there are numerous economic, legal and political problems with states unilaterally imposing extraterritorial financial regulation, if states view it to be in their national interests to impose extraterritorial laws they will continue to do so, despite the harm it might impose on the international system. States could address the problem of extraterritorial jurisdiction and the extraterritorial impact of financial regulation by adopting interstate agreements — either treaties or non-binding mutual assistance agreements — that set forth Minimum Standards of prudential supervision and procedures for the exchange of information and evidence for surveillance of financial markets. These agreements could prescribe principles by which jurisdictional authority could be allocated to determine which country's substantive rules would apply to a particular person or transaction. For example, states could agree to coordinate the extraterritorial application of financial regulation and to impose sanctions for conduct that occurs entirely outside their territories but which breach international standards. Different approaches for coordinating extraterritorial jurisdiction may be appropriate for different regulations.[27] The establishment of a sound international legal framework to regulate financial markets necessitates that states adopt laws that regulate extraterritorial sources of systemic risk and coordinate the investigation and enforcement of such laws with foreign national authorities.

THE CASE OF THE BASEL FRAMEWORK OF BANKING SUPERVISION

Before examining the role and functions of a global financial supervisor, it is desirable to analyse a significant part of the current international regulatory framework for banking institutions. The Basel Committee on Banking Supervision was formed as an international standing committee of banking supervisors in late 1974 in response to the financial crises that had occurred in the aftermath of the Bretton Woods system.[28] The international committee was composed of the banking supervisors and central bank governors of the G10 countries. It became known as the Committee on Banking Regulations and Supervisory Practices,[29] which later became known as the Basel Committee on Banking Supervision.[30] The Basel Committee has assumed a major role in establishing voluntary principles and standards of 'best practices' for national supervisors to adopt in regulating the international operations of banking institutions.

Basel Concordat

The Basel Committee attracted very little attention until 1975 when, in response to the banking failures mentioned above, it adopted the Basel Concordat of 1975 ('Concordat') that established guidelines for banks operating outside their home states. The Concordat focused on the respective roles of the home and host state supervisors and regulatory authorities to ensure adequate financial supervision.[31] Specifically, it established five basic principles delineating the supervisory responsibilities of home and host countries' banking regulators in overseeing banking institutions that operate on a transnational basis. The Concordat emphasised that all banks operating in host countries should be supervised by both the home country's and the host country's supervisory authorities.[32] It recommended that the host authority take primary responsibility for the adequacy of the foreign bank's liquidity.[33] The home country's supervisory authority should, in turn, be primarily responsible for the solvency of a home country's bank whilst that bank is operating in a foreign country.[34] The fifth principle emphasises the need for cooperation between home and host country regulatory authorities in removing all legal restraints on the transfer of confidential financial information if such information is considered necessary for effective supervision.[35]

1983 Revised Concordat

In 1983, the Basel Committee members adopted new principles that further refined the 1975 Concordat with a view to ensuring that consolidated supervision could occur on a transnational basis. These principles were contained in the Principles for the Supervision of Banks' Foreign Establishments ('Revised Concordat').[36] The Revised Concordat established new principles for the allocation of bank regulatory responsibilities between home and host authorities.[37] It focused on ensuring that no bank operating in a foreign country could escape adequate supervision, and, hence, developed the approaches of 'consolidated supervision' and 'dual key' supervision.[38] Consolidated supervision means monitoring the risk exposure (including the concentrations of risk, the quality of assets and the capital adequacy) of the banking groups for which the home authority bears responsibility, on the basis of totality of the business, wherever conducted. Consolidated supervision expands the responsibilities of the home country's regulatory authority by requiring the home country regulator to monitor the total risk exposure and capital adequacy of the home country's bank.[39] The home country regulator is able to do so by reviewing the bank's total transnational operations.[40]

In contrast, 'dual key supervision' means that the regulatory authority of each nation concurrently assesses the ability of other national authorities to supervise and carry out their respective responsibilities. Where a host country determines that a home country has inadequate supervision, the Revised Concordat proposes two options: (1) the host country could deny entry approval to an institution from a country which does not adequately supervise its own institutions,[41] or (2) it could impose specific conditions governing the conduct of the business of foreign banks seeking to operate in the host jurisdiction.[42] When a host country does not have adequate supervision, the Revised Concordat urges the home country's regulatory authorities to discourage the home country's bank from expanding its operations into the proposed host country.[43] The purpose behind the dual-key approach was to prevent countries from lowering supervisory practices in order to attract foreign investment and foreign capital.[44]

The response to BCCI: Minimum international standards

Although the Revised Concordat and the 1990 Supplement improved the standards that were initially set forth in the Basel Concordat of 1975, significant gaps in the allocation of supervisory responsibilities still existed. For example, the collapse of the Bank of Credit and Commerce International (BCCI) in July of 1991 resulted, in part, from BCCI's ability to evade supervision by both home and host countries and demonstrated the difficulties of adequately supervising banks operating in more than one jurisdiction.[45] Indeed, the BCCI case raised serious questions about the regulation of cross-border financial institutions.[46] The BCCI scandal led to the Basel Committee's 1992 Report on Minimum Standards for the Supervision of International Banking Groups and their Cross-Border Establishment ('Minimum Standards'). These Minimum Standards continued to build on the principles of consolidated supervision, dual-key supervision, and communications between supervisory authorities, while setting forth guidelines for the implementation of these principles. The standards are important principles that reflect emerging norms of prudential supervision and regulation of transnational financial institutions. They can be summarised as follows:

— all international banking groups and international banks should be supervised by a home-country authority that capably performs consolidated supervision;
— the creation of a cross-border banking establishment should receive the prior consent of both the host country supervisory authority and the bank's, or banking group's, home country supervisor;
— supervisory authorities should possess the right to gather information from the cross-border banking establishments of the banks or banking groups for which they are the home country supervisor;
— if a host-country authority determines that any one of the foregoing Minimum Standards has not been met to its satisfaction, that authority could impose restrictive measures necessary to satisfy its prudential concerns consistent with these Minimum Standards, including the prohibition of the creation of a banking establishment.[47]

By re-emphasising the need for consolidated supervision, the Minimum Standards recommend that the host country regulators ensure that the home country receives consolidated financial statements of the bank's global operations. The Minimum Standards further exhort that the home country's regulators have the means to satisfy themselves as to the completeness and validity of all financial reports.[48] In addition, the host country's regulators should assure themselves that the home country's regulators have the authority to prevent banks under their jurisdiction from establishing organisational structures that circumvent supervision.

In 1996, the Basel Committee, International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS) created the Joint Forum on Financial Conglomerates[49] to devise standards for the effective regulation of financial conglomerates that operate in different jurisdictions and in different financial services sectors. The Joint Forum has issued a number of proposals seeking to improve coordination between regulators. Specifically, it has proposed that a lead regulator be appointed for each conglomerate that would be determined based on the conglomerate's overall activities. In mixed conglomerates with financial and other activities, it is proposed that the financial divisions of the group have separate legal personality. In February 1999, the Forum issued a final paper proposing measurement techniques and principles for assessing the capital adequacy of financial conglomerates on a group-wide basis.[50]

Basel Capital Accords

The other key component of the Basel Supervisory Framework is the concept of capital adequacy for financial institutions. As a result of the precipitous declines of the US and European stock markets (Black Tuesday) in 1987, the Basel Committee began to explore the need to prevent financial crises caused by disorderly capital movements and to ensure the capital adequacy of financial institutions. Indeed, the Basel Committee responded to the concern of banking regulators that the capital requirements of major banks did not reflect the true risks facing banks in a deregulated and internationally competitive market. Subsequently, the Basel Committee adopted a set of guidelines on the capital adequacy of banks in 1988.[51] These guidelines became known as the Basel Accord on Capital Adequacy, which required banks actively engaged in international transactions to hold capital equal to at least 8 per cent of their risk-weighted assets. This capital adequacy standard was intended to prevent banks from increasing their exposure to credit risk by imprudently incurring greater leverage. The Capital Accords advocated two principal goals: (1) to require banks to maintain higher levels of capital reserves by maintaining capital-to-asset ratios that are 'risked-based' (ie that reflect the real credit risks as well as the risks of banks' off-balance sheet portfolios);[52] and (2) to establish a level-playing field so that a bank based in one country would not receive a competitive advantage by enjoying a lower capital adequacy requirement than a bank based in another country.[53] Although these guidelines are not legally binding, the G10 countries have incorporated them into their national banking regulations; and a number of non-G10 countries have voluntarily implemented these standards into their national banking laws.[54]

Internal risk management models

In the early 1990s, national supervisors began to complain that the credit risk component of the Capital Accord was too narrow to deal with market, liquidity, and operational risks, all of which increased with the growth of banks' trading and derivative books. On 12th April, 1995, the Basel Committee developed a new approach to the calculation of capital requirements.[55] The approach allows banks, for the first time, to use their internal risk-management models to determine regulatory capital requirements. Instead of adhering to a detailed framework for computing risk exposures (for reporting purposes) and capital requirements, banks are able, under certain conditions, to use their own models — the ones they use for day-to-day trading and risk management — to determine an important component of their regulatory capital requirements. In particular, the Basel Committee advocates value-at-risk as the standard measure for risk exposures. Value-at-risk is an estimate of the maximum loss in the value of a portfolio or financial system over a given time period with a certain level of confidence. This level of confidence is represented by the probability that the actual value of a particular capital account will not decline beneath a specified minimum value over a period of time at a given probability. Value-at-risk also refers to the requirement of closer involvement with the banks under supervisory control and formal risk assessments using appropriate evaluation factors. The Basel Committee adopted the value-at-risk model in 1997 and it has been implemented into law by the G10 national regulators. Banks are encouraged to participate in the design framework for determining risk weightings for particular asset classes.[56]

In June 1999, the Basel Committee proposed significant reforms to the 1988 Capital Accord that would place greater reliance by regulators on private credit rating agencies and internal bank ratings.[57] These proposals specifically addressed the inadequacy of the 1988 Accord's efforts to assess credit risk in light of rapidly changing conditions in financial markets. The 1999 proposed reforms to the Capital Accord recommended replacing the existing system of credit weightings by one which would use private agencies' credit assessments to determine risk weights. The proposed reforms also contained suggestions for allowing some sophisticated multinational banks to use their own internal ratings of loans as a basis for calculating capital adequacy ratios.

After commentary from the banking sector and government regulators, the Basel Committee released a further revision of the proposed reforms to the Capital Accord on 16th January, 2001 (known as the new Capital Accord).[58] These proposed amendments modify and substantially expand the 1999 proposals by specifically describing the methods by which banks can determine their minimum regulatory capital requirements.[59] The structure of the new Accord contains three mutually reinforcing pillars that comprise the framework for assessing capital adequacy. The first pillar is the minimum regulatory capital charge that includes both the standardised approach (adopted in the 1988 Accord with subsequent amendments) and a revised internal ratings-based approach. The revised standardised approach provides enhanced, though limited, sensitivity to various risk categories. The internal ratings based approach represents a fundamental shift in the Committee's view on regulatory capital by placing greater emphasis on the internal credit risk rating practices of banks. This allows sophisticated institutions to estimate the amount of capital they believe necessary to support their economic risks.

The second pillar is supervisory review, 'intended to ensure that not only banks have adequate capital to support all the risks in their business, but also to encourage banks to develop and use better risk management techniques in monitoring and managing these risks.' This pillar encourages supervisors to assess banks' internal approaches to capital allocation and internal assessments of capital adequacy. Subject to the discretion of national regulators, it provides an opportunity for the supervisor to indicate where such approaches do not appear sufficient. The third pillar recognises that market discipline has the potential to reinforce capital regulation and other supervisory efforts to ensure the safety and soundness of the banking system. The Committee therefore is proposing a wide range of disclosure initiatives designed to add more transparency to the risk and capital positions of a bank. The Committee intends to finalise the new Accord by 31st December, 2001, and national governments will be encouraged to adopt the necessary legislation to implement the standards beginning in 2004.

Given the importance of capital adequacy to the soundness and safety of banks, the Basel Committee has continued to apply the capital accords to many areas of international banking activity. The Capital Adequacy Accord is a universal benchmark that greatly influences the investment activities and risk management practices of multinational banking institutions.[60] Although some bankers and policy makers view the Accord as unfairly penalising certain low-risk lending while favouring other much more risky transactions, the 2001 proposed revisions make significant progress in providing guidelines for national regulators to do a better job in matching regulatory risk with economic risk.[61]

Other international bodies

The Basel Standards will serve as a reference point for future work in association with other international financial bodies covering regulatory standards in the areas of securities, insurance and accounting. For example, the Basel Committee and IOSCO have both worked with the International Accounting Standards Committee (IASC) to establish international accounting standards. The Basel Committee has also worked with the Financial Action Task Force in developing minimum standards of disclosure and transparency for financial intermediaries to adopt in order to reduce financial crime.[62] The Basel Committee and IOSCO have agreed on converging capital adequacy standards for financial institutions conducting securities activities in derivatives.[63] IOSCO has also sought to formulate capital adequacy ratios for securities firms to match those already existing for banks under the Basel Accords.[64] IOSCO has also made parallel efforts on the international level to improve cooperation, coordination and harmonisation of regulation in securities and futures markets.[65]

The consensual and informal approach of the Basel Committee and IOSCO in developing non-binding standards and rules for regulating international financial markets has generally been viewed as a success in fostering cooperation and coordination amongst the regulators of advanced economies. The adoption of these standards by the countries of the European Union, the USA and other developed countries marks an important phase in the move to coordinate financial supervisory standards in the larger context of an international financial system.[66] The financial crises of the late 1990s, however, have caused increasing governmental anxiety, which has led to the informal procedures of the Basel Committee and other international financial organisations to be supplemented by a more concerted regulatory coordination by national authorities under the auspices of the Financial Stability Forum (FSF).[67] Moreover, recent efforts by the IMF and WTO to formalise international monetary and financial relations suggest that a more formal legal framework is developing for the supervision of international financial markets. The FSF or successor agencies may one day acquire decision-making powers that resemble those of a global supervisor, as discussed in the next section.

THE ROLE OF A GLOBAL SUPERVISOR

Because the stringency of national regulations vary from country to country and because banking is global, multinational banks are subject to disparate levels of regulation that may provide incentives for riskier activities in less stringent jurisdictions. Since multinational banks now operate in what are becoming seamless financial markets, the effective management of systemic risk on a global level requires a global supervisor whose regulatory domain is the same as the multinational entities it regulates.[68] Indeed, this would apply whether the domain of the market is defined in terms of institutions, products, or currencies, or even geographic areas. In a legal sense, this would require that the jurisdictional competence of a global supervisor to cover the same terrain as the financial markets and institutions it regulates.

The globalisation of financial markets and the limited competence of national authorities over such markets necessitate the establishment of a global supervisor whose domain would be international and would be responsible for generating regulatory standards and coordinating their implementation by national authorities. A global supervisor would need the jurisdictional competence to perform certain functions to ensure the control and management of systemic risk. Such jurisdictional competence should also include the authority to coordinate efforts by national regulators to deter market abuse and financial crime.[69]

At this time, however, the exclusive jurisdiction of nation states to regulate their own financial markets effectively precludes a global supervisor from ensuring that international standards are applied and enforced, unless some type of agreement is reached with national authorities. Such an agreement could authorise a global supervisor to exercise the following necessary functions in order to carry out efficient international regulation: (1) authorisation and guidance of financial institutions and exchanges, (2) information and surveillance, (3) cooperation and coordination with national authorities, and (4) enforcement and policy. These functions will now be discussed.

Authorisation and guidance

The authorisation of firms to operate in financial markets must be controlled by a licensing system, in which firms and individuals would only be licensed to operate after demonstrating that they are fit and proper, that they have adopted effective control and risk management procedures, and that they satisfy capital adequacy and other prudential standards. Regulatory authorities must have discretion to refuse, or rescind, a licence when firms/individuals fail to comply with required standards.

In addition, authorities should provide guidance through frequent communication with the firms they regulate. The regulator should foster a good relationship with supervised firms by providing mutual advice concerning a firm's internal operations. In this way, firms can be encouraged to provide a continuous flow of information. This type of cooperative relationship is far more efficient than adversarial inspections.

A global supervisor should take the lead in setting standards for national authorities to authorise or provide a licence to multinational financial institutions so that they can operate on a transnational basis. The authorisation process may be conducted under the type of home/host country arrangements that have been adopted by countries that adhere to the Basel Committee's principle of consolidated supervision. The global supervisor would have the responsibility to ensure that common authorisation procedures are followed and information is fully shared. A global supervisor could also provide guidance to national authorities in developing and implementing national regulatory standards that comply with international standards. Experts could be deployed to work with national regulators who would then be able to assist banking institutions and other financial service entities in establishing good risk management practices and regulatory standards. Indeed, international businesses need full information and harmonised guidance practices to avoid duplication of national regulatory standards.

Information and surveillance

The information disclosure system is an aspect of the broader task of *surveillance*. Effective surveillance is required to ensure that firms adhere to regulatory standards and rules. Some observers note that surveillance should be considered essentially as an 'intelligence operation'.[70] The accurate assessment of the changing structure of financial markets and the level of risk to which markets are exposed necessitate that regulators utilise effective surveillance techniques. Moreover, regulators should be better informed than the market participants whom they regulate. Accordingly, regulators should have access to confidential information that is relevant for performing their surveillance function. Traditional legal privileges protecting such confidential information from being disclosed should not apply to financial regulators. Indeed, the role of the regulator would be greatly enhanced and more legitimate if it were known that they had broader and more accurate information about markets.

Information and surveillance would be crucial responsibilities for a global supervisor. The Bank for International Settlements and the Basel Committee have provided a wealth of information on the development and performance of international financial markets and of suggested accounting standards for banking institutions.[71] The global supervisor could establish high standards of information disclosure so that market actors and national regulators could have access to the most recent and accurate information concerning international investment, short-term capital flows and liquidity and interest rate information. Regarding legal issues involving confidentiality of information held by financial firms, it will be necessary to harmonise national standards and eventually adopt one international standard for the disclosure of proprietary information related to financial markets.

The disclosure of information also raises the issue of what type of accounting standards or system should be used to disclose relevant financial information. It is the very foundation of an efficient market and effective regulatory system that accurate and relevant information is disclosed to the public, investors, creditors and regulators. Although the International Accounting Standards Committee (IASC) [72] and the International Organization of Securities Commissions (IOSCO) have made significant progress in adopting general disclosure standards for various public companies, progress towards an effective international standard with meaningfully specific standards that apply to all financial institutions has been slow. Providing an effective international standard could provide early warning for the types of financial crises that occurred in the developed financial markets of Japan and in the developing markets of East Asia, Russia and Latin America. Accounting standards should reflect the transactions that occur in rapidly changing financial markets. Moreover, the rise of electronic trading systems has resulted in the rapid dissemination of financial information that impacts the development of international disclosure standards.

It is important that international accounting standards reflect the complexities of the world's most sophisticated financial markets. For example, clear, comprehensive, and consistent accounting standards have proved vital in protecting US investors against market manipulation and financial fraud. In 1991, US residents held over $300bn of holdings in non-US equities.[73] In 1999, the amount had quadrupled to nearly $1,300bn, which exceeds 40 per cent of the value of the world's cross-border equity investments.[74] US accounting standards are regarded as of a high standard that promotes investor confidence and a robust level of capital formation. Moreover, the IASC has proposed a core set of accounting standards that provide a comprehensive basis of accounting. These standards are known as the 'International Accounting Standards' (IAS) and they have been accepted by many stock exchanges for cross-border listing purposes and by many national governments.[75] However, IOSCO, the US SEC, and Canadian authorities have not endorsed the IAS, which undermines its practical use in global capital markets.[76]

Effective international accounting standards are a necessary requirement for the effective management of systemic risk and for the efficient flow of cross-border capital. The information provided by consistent accounting standards will help ensure market discipline and effective regulatory oversight. The lack of consistent standards may create the conditions for 'accounting arbitrage' in some financial markets. A global supervisor should have the responsibility for overseeing the adoption of international accounting standards, while working closely with such organisations as IOSCO and IASC. The primary objective would be to establish comprehensive and complete standards based on the requirements of many of the world's sophisticated market economies and then to ensure that the problems of accounting arbitrage and the tendency towards the lowest common denominator would be overcome.

Regarding actual *surveillance*, the International Monetary Fund has extensive experience under its Article IV surveillance reports to assess the economic performance of its member states, and to monitor compliance by certain members states which have obtained credits under IMF conditionality programmes. A global supervisor could also be involved in reviewing and assessing the regulatory performance of states that have expressed their willingness to abide by the international regime. It would be able to assess the surveillance systems of particular countries, and in doing so would provide advice to states that were having difficulty in complying with international standards. Such a surveillance system has not been adopted in the current international financial system and would be difficult to achieve because it would require high standards of disclosure that are not yet provided amongst national authorities. Such a system would be necessary though for best regulatory practices in international financial markets.

Cooperation and coordination

A global supervisor could serve as a forum for the development and implementation of international financial cooperation. Many goals of an efficient international financial policy can be achieved by effective coordination of the activities of national authorities. This has been demonstrated by the work of the Basel Committee[77] in exchanging vital information on capital markets and in coordinating the regulatory supervision of financial institutions that operate on an international basis. This type of cooperation and coordination has also been achieved bilaterally through such agreements as the EU–US 1999 Statement of Cooperation on the Exchange of Information for the Purposes of Consolidated Supervision.[78] Such close cooperation is necessary for the comprehensive consolidated supervision of banks that have multi-jurisdictional establishments.

A global supervisor should have the authority both to reach agreement with national supervisors and to facilitate agreements amongst supervisors on a common framework for information sharing that can be used as a basis for reciprocal bilateral cooperation between supervisors and with banking institutions that have material operations in foreign jurisdiction. The global supervisory role could also involve building on current bilateral agreements, such as the EU–US agreement, to promote further exchange of information in investigations and enforcement.

Regarding confidential information, a global supervisor and national authorities should consider any information obtained through bilateral or multilateral avenues to be used only for lawful supervisory purposes, without prejudice to defendant rights in criminal cases. To the extent permitted by national law, supervisory authorities and their agents should hold as confidential all information obtained pursuant to such authorised exchanges. It is also contemplated that, in certain circumstances, information provided by one supervisor to supervisors in other countries may be disclosed to third parties if it serves a lawful supervisory purpose. Specifically, where a supervisor receives a request for information from a third party, the supervisor receiving the request will consult with the supervisor that provided the information in order to solicit its views on the propriety of releasing such information. Prior consent will be obtained from the supervisor that originated the information if consent is required by the laws or regulations of that country.

In any event where a supervisor is required to disclose information according to the rules of any interstate agreement, it would be understood that such supervisor will cooperate in seeking to preserve the confidentiality of the information to the extent permitted by law. In all cases of disclosure to third parties, to the extent required by national law, the supervisor disclosing the information will notify the supervisor that originated the information of such disclosure.

In addition, the advent of global banking has made it possible for a network of depository institutions to be linked by sophisticated telecommunications and computer systems. A global supervisor could take the lead in creating such a network by assisting national authorities to adopt the necessary technology and standards for an efficient payment and clearing system. A global supervisor could be vested with the authority of requiring banking sectors throughout the world to participate in a single network of international payments and deposits that would be a closed system to which all reputable banks will have to belong and for which a common, transnational regulatory framework will be required. Accordingly, a global regulator could play a role by supervising such an international payments system and providing Minimum Standards to reduce systemic risk.

Enforcement and policy

An effective international financial regulatory regime depends on the enforcement and implementation of international standards. The transnational nature of financial risk necessitates uniform principles concerning procedures for enforcement of financial regulation that take account of the growing number of multi-jurisdictional cases. This requires adhering states to enact appropriate legislation that imposes jurisdiction not only on violations or offences that occur solely in the enforcing jurisdiction, but also involve acts or omissions that occur in other territorial jurisdictions but which affect the financial markets of the sanctioning state. National authorities should also have competence to prosecute regulatory breaches or offences in which elements of the violation have occurred in foreign jurisdictions as well as in the territory of the prosecuting state. Further, expansive concepts of extraterritorial jurisdiction should be adopted to regulate electronic trading systems and to prosecute market abuse offences, which utilise the Internet to manipulate and threaten the integrity of financial markets.

To fulfil the enforcement function, a global supervisor will not try to enforce international standards directly but will provide information, evidence and political pressure to national authorities to ensure that they enforce international standards. The global supervisor should, however, take the lead in the enforcement effort and bring it consistency and coherence. Moreover, enforcement cases involving transnational operations of financial conglomerates will involve many difficult legal issues, including whether to pierce the corporate veil in cases involving corporate breach, attributing liability to controlling third persons or to those who are knowingly concerned,[79] and issues of double and multiple jeopardy in criminal cases.

One of the most important functions of the global supervisor will be the policy function. This function has already been undertaken by the various efforts of the Basel Committee, IOSCO and other international financial organisations in developing international standards and rules of prudential practice. The consensual approach has been important in providing legitimacy to the development of such standards and in gaining broader support for their implementation. But the voluntary approach means that the initiative lies with national authorities to adopt international standards. By contrast, a global supervisor would want to adopt a proactive policy function in which it would develop and adopt standards and rules of regulatory practice that national authorities would then be bound to adopt. The policy function should also continuously adapt the scope and content of regulation to the changing structure of international markets, and to the changing character of firms. Policy should address the character and development of rules and standards, and shape and constrain the policies of national regulators.

CONCLUSION

The establishment of a global financial supervisor would raise numerous political and legal issues regarding the type of powers to be delegated to such an authority and the role that states would play in influencing the development of international standards and rules of financial regulation. The notion of establishing a supranational authority would certainly infringe the traditional powers of national authorities to supervise their financial markets. Yet, if liberal international markets are to be sustained, the economic and legal challenges of managing systemic risk on a global level must be met in one way or another. In assessing the feasibility of a global supervisor, it is necessary first to define the functions that must be performed in order to have efficient international regulation of financial markets. Political reality demands that a global supervisor coordinate its functions with national regulatory authorities. The primary role of a global supervisor would be in facilitating harmonisation of standards and procedures, developing a global scope and relevance for decision making, and, when appropriate, exercising regulatory authority on a global scale.

The efforts of the Basel Committee and other informal international bodies (ie IOSCO and the FATF) demonstrate that national financial supervisors are capable of performing some of the functions of global regulation, such as exchanging information and establishing voluntary international standards to reduce systemic risk and market abuse. The effectiveness of this informal and voluntary approach to cooperation and standard setting worked well for developed countries in the immediate aftermath of the Bretton Woods system. Today, however, the changing structure of international financial markets and the increased risk of systemic failure require a more formalised structure of binding international standards and effective supervision and enforcement. Indeed, the international activities of banks are subject to overlapping and disjointed national regulatory structures that must be coordinated and subject to harmonised standards if the risks to financial markets are to be minimised.

Given the nature of systemic risk in the international financial system and the current regulatory system's disjointed approach to financial regulation, there should be serious consideration given to the creation of a global financial supervisor that would perform some of the essential regulatory functions that are currently handled by national authorities. A global authority could establish minimum standards of prudential practice, monitor national compliance with such standards and coordinate enforcement with national authorities. Nation states would be required to pool their sovereignties in the exercise of more efficient international regulation. In the absence of a more effective international approach, the scope and severity of financial crises are likely to increase in the future.

References

(1) Eatwell, J. and Taylor, L. (2000) 'Global Finance at Risk: The Case for International Regulation', Polity, Cambridge, pp. 21–23.

(2) See Dale, R. (1984) 'The Regulation of International Banking', Blackwell, Oxford, p. 156.

(3) Kapstein, E. (1989) 'Resolving the Regulator's Dilemma: International Coordination of Banking Regulations', *International Organizations*, Vol. 43, pp. 324, 327–328.

(4) Peake, D. J. (1986) 'International Banking: Regulation and Support Issues,' in E. P. M. Gardner (ed.), 'U.K. Banking Supervision: Evolution, Practice and Issues', London, p. 186.

(5) See Dale, R. (1992) 'International Banking Regulation', Blackwell, Oxford, p. 171.

(6) Peake, ref. 4 above, p. 186.

(7) Eatwell and Taylor, ref. 1, pp. 26–31.

(8) *Ibid.*

(9) See Newburg, A. (2000) 'The Changing Roles of the Bretton Woods Institutions: Evolving Concepts of Conditionality', in M. Giovanoli, 'International Monetary Law: Issues For the New Millenium', OUP, Oxford, pp. 83–86.

(10) These international bodies are not traditional 'international organisations', as that term is defined under public international law (established by treaty and composed principally of states, and having tangible manifestations of bureaucracy). Rather, they are associations of government representatives in various issue areas which serve as fora for the discussion of various policy issues in international financial relations. See Alexander, K. (2000) 'The International Supervisory Framework for Financial Services: An Emerging Regime of Transnational Supervision', *Journal of International Banking Regulation*, Vol. 1, No. 4, pp. 33, 34–35.

(11) See www.fsforum.org.

(12) See G. Brown, G. (1999) Prepared speech at the Council on Foreign Relations, New York, 16th September.

(13) General Accounting Office (1994) 'International Banking, Strengthening the Framework for Supervising International Banks', March, p. 6.

(14) See Cranston, R. (1996) 'Principles of Banking Law', OUP, Oxford, pp. 61–64.

(15) Eatwell and Taylor, ref. 1, pp. 7–10.

(16) *Ibid.* pp. 17–20.

(17) The term 'financial conglomerates' includes at least one financial component in an industrial or commercial operation. See Walker, G. (1996) 'The Law of Financial Conglomerates — The Next Generation', *International Lawyer*, Vol. 30, pp. 57, 60–62.

(18) Transparency requires full disclosure of information about the entire operations of a multinational financial conglomerate, including financial groups of the conglomerate, parent companies, and its subsidiaries. See Freis, J. (1996) 'An Outsider's Look into the Regulation of Insider Trading in Germany: A Guide to Securities, Banking, and Market Reform in Finanzplatz Deutschland', *Brit. Col. International and Comparative Law Review*, Vol. 19, No. 1, p. 11 (assessing increased transparency of German financial markets, improved investor's rights, and regulating participation in stock exchanges and securities markets).

(19) The risk of contagion occurs where losses in one activity reduce the capital available to support other parts of the corporate group or where visible difficulties in one affect confidence in other areas of the same group. See Scott, K. E. (1987) 'Deposit Insurance — The Appropriate Roles for State and Federal Governments', *Brooklyn Journal of International Law*, Vol. 53, pp. 27, 35.

(20) Walker, ref. 17 above. This may require firewall provisions to protect both consumers and taxpayers against possible conflicts of interest and to prevent the spread of a national safety net (deposit insurance) provided to banks, and any associated subsidy, from spreading to non-banking activities.

(21) The three forms of jurisdiction are jurisdiction to prescribe (the authority of a state to make its law applicable to persons or activities), jurisdiction to adjudicate (authority of a state to subject persons or things to its judicial process, and jurisdiction to enforce (authority of a state to induce compliance with its law). A state — or legal system — may have all three forms of jurisdiction in any particular case, or it may have only one or two. For example, under foreign judicial or arbitral decision, a law may be prescribed and adjudicated by one legal system and enforced by another. See (1987)

'A.L.I. Restatement', Vol. 1 (Foreign Relations Law), Saint Paul, MI, pp. 230–231.
(22) See Fox, M. B. (1997) 'Securities Disclosure in a Globalizing Market: Who Should Regulate Whom', *Michigan Law Review*, Vol. 95, p. 2498 (proposing choice-of-law rules for extraterritorial application of US securities laws to foreign corporations and transactors); see also Karmel, R. S. (1991) 'The Second Circuit Role in Expanding the SEC's Jurisdiction Abroad', *St John's Law Review*, Vol. 65, p. 743 (reviewing US Second Circuit's decisions).
(23) See Pecchioli, R. M. (1983) 'Internationalization of Banking: The Policy Issues', OUP, New York, pp. 63–70. The English Court of Appeal observed that traditional territorial constraints on English jurisdiction have prevented UK authorities from successfully using the criminal law to prosecute financial fraud that occurs in UK markets but for which an essential element of the offence takes place in a foreign territory. See *R v Manning* [1998] 4 All ER 876.
(24) Financial Services Modernization Act 2000 ('Gramm-Leach-Bliley Act'), Pub. L. 106–102, 113 Stat. 1338 (2000). For extraterritorial US banking regulations, see Regulation Y, 12 CFR Part 225 (2000).
(25) See Eatwell, J. (1999) International Financial Regulation Lecture Series, 26th November, Judge Institute, University of Cambridge.
(26) Gramm-Leach-Bliley, §103 (requiring the Board to apply 'comparable' capital and management standards to foreign banks with US branches, agencies or commercial lending companies, giving due regard to national treatment and equality of competitive opportunity).
(27) See Key, S. J. and Scott, H. (1991) 'International Trade in Banking Service: A Conceptual Framework', Group of Thirty, Washington DC, p. 112 (suggesting a matrix for analysis of different types of bank regulation, with a view toward clarifying the rules that should govern international trade in banking services and separating the regulatory decision making between home and host country). See also Ferran, E. (1999) 'European Financial Service Regulation', unpublished working paper, World Financial Authority Project, Queens' College, Cambridge, 5th June (analysis of home and host country financial regulation in the European Union).
(28) Dale, 'International Banking', ref. 5, p. 172.
(29) Norton, J. (1995) 'Devising International Bank Supervisory Standards', Kluwer, Dordrecht, p. 176.
(30) Cooke, P. (1984) 'The Basle Concordat on the Supervision of Banks' Foreign Establishments', Basel, *Aubenwirtschaft*, Vol. 39, pp. 151, 153. The Bank for International Settlements has provided administrative offices for the Basel Committee.
(31) See the Basel Committee, Report to the Governors on the Supervision of Bank's Foreign Establishments, Basel, September 1975.
(32) *Ibid.*
(33) *Ibid.*
(34) *Ibid.*
(35) Cooke, ref. 30 above, p. 164 (summarising the Basel Accords).
(36) Basel Committee, Principles for the Supervision of Bank's Foreign Establishments ('Revised Concordat') (May 1983) ; reprinted in (1983) ILM, Vol. 22, p. 900 (1983). The Basel Committee acted in response to the financial crisis that arose from the Latin American sovereign debt crisis and from the financial scandal involving Banco Ambrosiano.
(37) *Ibid.*
(38) *Ibid.* p. 905.
(39) *Ibid.*
(40) *Ibid.* p. 904.
(41) According to the Revised Concordat, the primary purpose of the Basel Committee is to examine the totality of each bank's worldwide business on the basis of consolidated supervision. See Revised Concordat, ref. 36 above, p. 901.
(42) *Ibid.*
(43) *Ibid.*
(44) Alford, D. (1992) 'Basle Committee Minimum Standards, International Regulatory Response to the Failure of BCCI', *George Washington Journal of International Law and Economics*, Vol. 26, pp. 241, 253.
(45) See Truell, P. and Gurwin, L. (1992) 'False Profits: The Inside Story of BCCI, The World's Most Corrupt Financial Empire', Boston, pp. 67–104.
(46) BCCI was able to evade supervision by establishing a holding company in Luxembourg. Consequently, the BCCI conglomerate held two parent (or home) banks: BCCI SA, incorporated in Luxembourg, and BCCI Overseas, incorporated in the Cayman Islands. Each of these banks had subsidiaries in foreign countries, such as the UK. This structure gave BCCI the ability to evade consolidated supervision. BCCI had two parent banks for which two countries held overall regulatory responsibility, but neither of the parent banks conducted its primary operations in those countries. This problem was compounded by the secrecy laws of the Cayman Islands and Luxembourg. See Truell and Gurwin, *ibid.* pp. 31–35.
(47) The Basel Committee (1992) 'Minimum Standards for the Supervision of International Banking Groups and Their Cross-Border Establishments', July, pp. 3–7.
(48) *Ibid.*
(49) See Joint Forum on Financial Conglomerates at www.bis.org. The Joint Forum has a mandate to continue the work begun by the Tripartite Group on the harmonisation of standards for financial conglomerates.
(50) Joint Forum on Financial Conglomerates (1999) 'Capital Adequacy Principles', Basel, February.
(51) See Committee on Banking Regulations and Supervisory Practices (1988) 'International Convergence of Capital Measurement and Capital Standards', BIS, Basel, 25th July, reprinted in (1991) ILM, Vol. 30, pp. 980–1008 ('Capital Accords') (introductory note by C. Lichenstein).
(52) See Scott, H. and Iwahara, S. (1994) 'In Search of a Level-Playing Field: The Implementation of the Basle Committee Accords in Japan and the United States', Berkeley, p. 2.
(53) *Ibid.* p. 3.
(54) Australia, Austria, Finland, Hong Kong, Israel, Korea, Mexico and Taiwan have adopted laws incorporating the Basel standards, and so have some emerging market economies. See discussion in Follak, K. P. (2000) 'International Harmonisation of Regulatory and Supervisory Frameworks', in M. Giovanoli, 'International Monetary Law: Issues for the New Millenium', Oxford, pp. 291, 307.
(55) See Basel Committee (1995) 'An Internal Model-Based Approach to Market Risk Capital Requirements', April (defining a series of quantitative and qualitative standards that banks would have to meet in order to use their own system for measuring market risk).
(56) See discussion of value-at-risk method in Folkerts-Landau, D. and Takatoshi, I. (1995) 'International Capital Markets Developments, Prospects and Policy Issues', IMF Working Paper No. 135.
(57) See Basel Committee on Banking Supervision (1999) '1999 Proposed Revisions to the Basel Capital Accord', June, pp. 1–3.
(58) See 'The New Basel Capital Accord', www.bis.org. Comments are due on the new proposed Capital Accord by 31st May, 2001.
(59) Although most national authorities had not applied the 1988 Accord to banks that did not have foreign establishments, US

regulators had applied the 1988 Accord to all banks, irrespective of whether or not they operated in foreign jurisdictions.
(60) The European Union, the USA and many non-G10 countries have adopted a Minimum Capital Adequacy Ratio similar to that prescribed by the Basel Capital Accords. See Follak, ref. 54 above, pp. 306–308. Further, the EU and USA have utilised the Basel Committee's recommendations to set regulation limits on loans and liquidity ratios. *Ibid.* pp. 309–310.
(61) Litan, R. (1992) 'Nightmare in Basle, International Economy', November/December, Brookings Institute Working Papers, p. 7.
(62) See Directorate for Financial, Fiscal, and Enterprise Affairs, Organization for Economic Cooperation and Development, Financial Action Task Force on Money Laundering, FATF VII Report on Money Laundering Typologies (1996).
(63) Joint Report of the Basel Committee on Banking Supervision and the IOSCO Technical Committee, Framework for Supervisory Information about the Derivatives Activities of Banks and Securities Firms, Basel, May 1995.
(64) International Organization of Securities Commissions (1989) Technical Committee Report on Capital Adequacy Standards for Securities Firms, August, reprinted in (1991) ILM, Vol. 30, p. 1018; see also (1998) 'Methodologies for Determining Capital Standards for Internationally Active Securities', Technical Committee of IOSCO, May.
(65) Guy, P. (1991) 'Regulatory Harmonisation to Achieve Effective International Cooperation', in F. R. Edwards and H. T. Patrick (eds), 'Regulating International Financial Markets: Issues and Policies', Kluwer, London, p. 291.
(66) Lucatelli, A. (1997) 'Financial and World Order, Financial Fragility, System Risk, and Transnational Regimes', New York, p. 77. These standards, however, may not necessarily be appropriate for the financial markets of the many emerging and developing countries that are undergoing tremendous economic change, and may require different standards for their various stages of economic development.
(67) See discussion in Giovanoli, ref. 54 above, pp. 25–27. The finance ministers and central bank governors of the G7 created the FSF after the so-called Tietmeyer Report had recommended new structures to enhance international cooperation amongst national supervisory authorities. *Ibid.*
(68) See generally, Eatwell, J. and Taylor, L. (1999) 'The Future of Financial Regulation: World Financial Authority', unpublished working paper, Cambridge.
(69) The remit of consumer protection should predominantly be the responsibility of national authorities.
(70) Eatwell and Taylor, ref. 1 above, p. 191.
(71) The Basel Committee has published 'Guidelines to Banks and Bank Supervisors on Public Disclosures in Banks' Final Reports', Basel, September 1998 ; see also 'Enhancing Bank Transparency', Basel, September 1998, and Basel Committee Paper (1999) 'Sound Practices for Loan Accounting, Credit Risk Disclosure and Related Matters', Basel, July.
(72) The International Accounting Standards Committee (IASC) was formed in 1973 with the objective of harmonising the accounting principles that are used by businesses and other organisations for financial reporting. It is an independent, private sector body composed of professional representatives from the accounting profession and does not represent any government agencies or international organisations. See www.iasc.org.uk. It therefore does not have the public legitimacy that the Basel Committee, IOSCO or the FATF have because these organisations are composed solely of government representatives.
(73) Eatwell and Taylor, ref. 1 above, pp. 183–187.
(74) *Ibid.*
(75) See www.iasc.org.uk. In June 2000, the European Commission issued a communication proposing that all listed EU companies be required to prepare their consolidated financial statements using the IAS.
(76) Since 1999, the European Union, Austria, Belgium, France, Germany, Italy and Spain have passed laws allowing certain companies to use the IAS for domestic reporting purposes, subject to certain conditions.
(77) This has of course been facilitated by the research efforts of the Bank for International Settlements.
(78) See Statement of Co-operation on the Exchange of Information for the Purposes of Consolidated Supervision, http://www.eurunion.org.
(79) See Lomnicka, A. (2000) 'Knowingly Concerned? Participatory Liability for Breaches of Regulatory Duties', *Company Lawyer*, Vol. 21, No. 4, pp. 121–126 (analysing principles of third party civil liability for breach of financial regulation).

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