Unclassified **GOV/PGC/ETH(2009)2/REV1**

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development **21-Sep-2009**

English - Or. English

PUBLIC GOVERNANCE AND TERRITORIAL DEVELOPMENT DIRECTORATE
PUBLIC GOVERNANCE COMMITTEE

GOV/PGC/ETH(2009)2/REV1
Unclassified

REVOLVING DOORS: EMERGING REGULATORY CONCERNS AND POLICY SOLUTIONS IN THE FINANCIAL CRISIS

Expert Group on Conflict of Interest

The Expert Group is invited to provide comments on the revised draft paper by 5 October 2009.

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JT03269909

English - Or. English

REVOLVING DOORS: EMERGING REGULATORY CONCERNS AND POLICY SOLUTIONS IN THE FINANCIAL CRISIS

1. The movement of key private sector actors to regulatory positions and regulators to lucrative private sector positions, the so called 'revolving door' phenomenon, has received specific attention in the context of the financial and economic crisis. The Global Forum on Public Governance "Building a Cleaner World: Tools and Good Practices for Fostering a Culture of Integrity"[1] confirmed that the 'revolving door' pose particular risks to integrity. Forum participants also called for action to better understand how to address these risks.

2. This paper[2] reviews key aspects of the 'revolving door' phenomenon with a specific focus on regulators in the financial sector. It reviews both existing concerns related to the 'revolving door' phenomenon and emerging concerns related to the crises in the financial sector (e.g. banking, insurance, securities, etc). The paper provides data available on the extent of 'revolving doors' in OECD countries and beyond to better understand the extent of the problem caused by 'revolving door', in particular in the financial sector.

3. The re-emergence of interventionist states, as a result of the financial crisis, necessitates a review of how public servants and those appointed to guard the public interest in nationalised financial institutions are recruited, tasked and empowered to fulfil their duties. The paper therefore reviews frameworks (e.g. rules, procedures, policies) in place for fostering integrity, avoiding conflict of interest and maintaining trust as well as highlight lessons learned in addressing existing and emerging concerns to restore confidence.

4. This paper is complementary to the works undertaken by the Public Governance Committee on lobbying[3] and post-public employment[4] to provide comprehensive analysis of concerns raised in the financial crisis and provide reviewed options for informed policy debate.

Action

5. **The Expert Group is invited to provide comments on the draft paper by 5 October 2009**.

Future steps

6. The draft paper will be revised in light of the written feedback then submitted to the Public Governance Committee for approval at its next session on 22-23 October.

7. Experts could also provide comments in the Committee process before 21 October 2009.

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1 The Global Forum on Public Governance took place on 4-5 May 2009 in Paris, for further details including programme and materials see *www.oecd.publicgovernanceforum.org*.

2 This draft paper was written by Professor David Miller and Dr. William Dinan of the University of Strathclyde, Glasgow, UK, who gratefully acknowledge research and drafting support for this paper from Rich Cookson (England), Deirdre Kevin (France), Peter McQuade (Scotland), Tom Mills (England) and Erik Wesselius (Netherlands) and help with advice and translation from Craig Holman (US) and Dieter Plehwe (Germany).

3 *Lobbyists, government and public trust: Increasing transparency through legislation*, OECD, 2009 (forthcoming); *Lobbyists, government and public trust: Promoting integrity by self-regulation,* GOV/PGC/ETH(2009)5.

4 *Post-public employment: Good practices for preventing conflict of interest,* OECD, 2009 (forthcoming).

INTRODUCTION

7. This paper examines the phenomenon of the 'revolving door' with particular reference to the financial crisis. [5] It seeks to extend and supplement the analysis in the recent OECD report *Post-public employment: Good practices for preventing conflict of interest*.[6] In addition to examining the element of the 'revolving door' involving public servants moving to the private sector, it also examines 'pre-employment' that is the element of the revolving door involving people moving from the private sector into the public sector either in government or regulatory agencies.

8. The primary aim of the paper is to help policy makers and decision makers in OECD countries and beyond to:

- Understand the extent of the problem caused by 'revolving door' in regulation, in particular in the financial sector (e.g. banking, insurance, securities, etc); and

- Support informed policy debate on concerns and alternative options for solutions by highlighting strengths and weaknesses and supportive conditions in context.

9. The emerging and deepening financial crisis has occasioned a rethinking of the role of regulation in securing the public interest across the world. There has been a political backlash against the deregulatory impulse of governance that has characterised rule making and oversight in many developed market economies in the past twenty years. The presumption that better regulation inevitably equated with less regulation is now widely feared to have been a costly fallacy. At the heart of public concerns over distress in the banking and financial services sectors is the question of how the consequences of weak governance and risky and reckless investment decision making will impact on individuals and economies. Coupled with these worries are demands that those responsible are held accountable, do not profit from the current financial crisis, and that there are rules and processes in place to guard against a repeat of the worst excesses of speculative investment.

10. The development of rules and procedures to safeguard public interests in the context of a highly complex, and very poorly understood, financial system, is a significant challenge currently facing decision makers and public servants charged with oversight and repair of confidence in banking and finance. However, there are lessons that can be drawn from regulatory practices around the world. A striking feature of many of the reforms to guard against conflicts of interest and cronyism is that they have been introduced in the wake of crisis and scandal. In this respect, current regulatory debate in relation to banking and finance is of a piece with regulatory reform in relation to lobbying and revolving doors. One lesson that can already be drawn is that the regulatory solutions proposed should be based on sound principles of good governance rather than driven by immediate circumstances. Such 'knee jerk' policies rarely stand the test of time or benefit public welfare.

11. This paper analyses the 'revolving door' phenomenon in relation to the financial crises at both the individual level (in respect to the appointment of advisors and regulators) and at institutional level (focusing on the bail outs and nationalisations of banks in recent months). The paper includes data on revolving doors from various economies in recent months, and examines trends and emerging practices to

5 We gratefully acknowledge research and drafting support for this report from Rich Cookson (England), Deirdre Kevin (France), Peter McQuade (Scotland), Tom Mills (England) and Erik Wesselius (Netherlands) and help with advice and translation from Craig Holman (US) and Dieter Plehwe (Germany).

6 *Post-Public Employment: Good Practices for Preventing Conflict of Interest*, OECD, Paris, 2009.

secure the probity of the financial sector and restore confidence in the governance of the banking system. The re-emergence of interventionist states, as a result of the financial crisis, necessitates a review of how public servants and those appointed to guard the public interest in nationalised financial institutions are recruited, tasked and empowered to fulfil their duties. Given that this report is being compiled in a moment of transition and flux much of the data highlighted and assembled is anecdotal and based on secondary sources. The paper wherever practicable uses as much official data as possible, but there is both a lag in the publication of information, and some secrecy and confidentiality surrounding the processes under review.

12. This paper concentrates on key aspects of the 'revolving door' phenomenon with a specific focus on regulators, in particular in the financial sector. It will review both existing concerns related to the 'revolving door' phenomenon and emerging concerns related to the crises in the financial sector. Moreover, the paper reviews frameworks (e.g. rules, procedures, policies) in place for fostering integrity, avoiding conflict of interest and maintaining trust as well as highlight lessons learned in addressing existing and emerging concerns.

13. The paper takes forward the stocktaking of problem areas and good practice framework identified in the OECD report on *Post-Public Employment: Good Practices for Preventing Conflict of Interest.* The paper undertakes a critical review of types of concerns, risks to integrity and existing frameworks specifically related to:

- The movement of former regulators and decision makers to lucrative private sector positions, in particular in the regulated financial sector; and

- The appointment of private sector executives and lobbyists to governmental positions, in particular in financial regulators.

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ACRONYMS

ASIC - Australian Securities and Investments Commission

APRA - Australian Prudential Regulation Authority

BERR - Department for Business, Enterprise and Regulatory Reform, UK

CBFA - *Commission Bancaire, Financière et des Assurances*

CDIC - Canada Deposit Insurance Corporation

EESA - Emergency Economic Stabilization Act

EC - European Commission

EU - European Union

FSA - Financial Services Authority

GOCCPS - Guidelines on Official Conduct of Commonwealth Public Servants

LDA - Lobbying Disclosure Act

LSE - London Stock Exchange

NYSE - New York Stock Exchange

OSFI - Office of the Superintendent of Financial Institutions

RBA - Reserve Bank of Australia

SEC - Securities and Exchange Commission

TARP - Troubled Assets Relief Programme

UKFI – United Kingdom Financial Investments Ltd

US - United States

UK - United Kingdom

EXECUTIVE SUMMARY

7. This paper starts by analysing the 'revolving door' phenomenon and reviewing existing challenges as well as emerging concerns related to the financial crisis (e.g. at individual level when appointing economic advisors in regulatory agencies; and at institutional level, for instance when nationalising banks and financial institutions).

8. The first chapter defines the revolving door phenomenon and outlines the main principles of good governance distilled from previous work on post-employment issues. Critically it also draws attention to issues related to 'pre-employment.' It offers a brief review of the development and implementation of existing frameworks, including rules and policies (e.g. prohibitions and restrictions), procedures (e.g. for approval decisions, exemptions when leaving public office; screening potential conflict of interest when entering to public office) and how they could address emerging problems related to the financial crises (e.g. when governments absorb nationalised financial institutions).

9. The revolving door is an issue that is part of a wider concern about transparency in policy making and privileged access to policy making and regulation. **Chapter 2 on Financial crisis: revolving door and lobbying** notes the well-known phenomenon of 'regulatory' capture where regulators can become too close to those they are charged with regulating. It then examines the various theories about the origins of the crisis. While there are disputes and disagreements about this issue, there is a reasonable measure of consensus that the market reforms of the past three decades or so have played a significant role. Thus it is clear that the quality of regulation and transparency issues are at the heart of potential solutions to prevent such crisis in the future. The precise role of lobbying and revolving door is not yet clear. However, the evidence does suggest that many of the regulatory changes now blamed for contributing to the crisis were put in place following concerted lobbying campaigns by the financial industry. After the crisis broke, the issue of lobbying and the revolving door became more salient in policy discussion, leading some nationalised financial institutions to forswear lobbying altogether and notable efforts, for example by the newly elected US President to significantly tighten rules on transparency and close the revolving door. It is argued that concerns about lobbying and its impacts underlie much of the concern about the revolving door and that regulation in this area provides a potential model for attending to some pre- and post-employment issues.

10. **Chapter 3, The revolving door and conflicts of interest in financial services** presents unique data on the scale and scope of the revolving door phenomenon in relation to financial regulation in selected regulatory agencies. A wide range of regulatory agencies and groupings were examined from eight selected OECD countries – Australia, Belgium, Canada, Iceland, Ireland, New Zealand, United Kingdom and United States – with the addition of the European Commission High Level Group on Financial Services (The de Larosière Group). This first part of the chapter shows that – with one exception – all the regulatory agencies had multiple revolving door connections with the industry or closely allied endeavours such as law and accountancy. While some countries showed evidence of recruiting a higher proportion of regulators from National Banks than others, there was little distinction between the various agencies. In addition there was little sign of significant reform in the post-crisis phase.

11. The second part of this chapter then moves on to analyse revolving door issues in relation to the biggest global financial institutions. Using a sample of the 116 banks and other financial corporations in the Fortune Global 500, it examines data on the relationship between the public sector, in particular the regulators, and financial corporations. The data showed marked, intensive and prolonged connections between industry and the people charged with regulating it in government and regulatory agencies. These connections appeared to be most intense in Switzerland, the UK and the US. There was also a clear

correlation between the intensity of the relationships and position in the Fortune Global 500. In terms of industry sectors the Securities industry showed the highest level of engagement (followed by the banks). Around 70% of the top 116 financial corporations had revolving door connections with governments of regulatory agencies. The concern that this raises is the potential for 'regulatory capture'.

12. The report in **Chapter 4 on Precedents and practice** then provides a comparative overview of existing frameworks for addressing concerns related to the 'revolving door' phenomenon, in particular to avoid conflict of interest, bias and even capture, foster integrity and maintain trust in public decision making. This part focuses on key aspects of regulation, policies and practices, in particular, by:

- Reviewing existing frameworks, including rules and policies (e.g. prohibitions and restrictions), procedures (e.g. for approval decisions, exemptions when leaving public office; screening potential conflict of interest when entering to public office) and how they could address emerging problems related to the financial crises (e.g. when central banks absorb nationalised financial institutions).

- Highlighting experience of implementation and functioning of existing frameworks and how they fit into the wider public management and governance context (e.g. conditions for their effective functioning).

- Highlighting the strengths and weaknesses of rules, policies and practices at the national, sub-national and supra national levels.

- Providing a balanced view on lessons learned which enable us to understand the conditions for success.

- Reviewing efforts to modernise policy and practice, in particular to update frameworks to address concerns related to the financial crises.

13. As yet, much of the detail of regulatory reform of banking and financial services has not been publicised or widely disseminated. There are a number of ongoing, parallel, official reviews and inquiries in the re-regulation of the banking and financial services sectors. At present there appears to be little consensus on how best to re-engineer financial governance, save that the status quo is not an option. This chapter of the report presents an overview of the policies currently being considered and pursued by selected governments and central banks, as well as analysis of the corporate response to the emerging regulatory landscape. First this chapter examines the US revolving door regulation and the arguments that have tightened and liberalised the rules over the years. The main arguments here have related to the need for a light touch regulatory system and have insisted that disclosure and transparency can handle any issues arising. This judgement has seemed less secure since the onset of the financial crisis. The Executive order from President Obama certainly pulls in a different direction. In the UK by contrast the Financial Service Authority ethical guidance is less rigorous and lacks many of the features associated with transparency, such as regular publication of ethics and disclosure data. In addition the regulatory culture was oriented to serving and supporting the financial industry rather than exercising oversight. The new body set up to manage the UK's newly nationalised financial corporations has not departed markedly from the example set by the FSA. By contrast the Canadian system of regulation is often noted as both more stringent in its internal code of ethics and as possibly more successful in ensuring financial stability given that the Canadian banks appeared not to be as vulnerable as those in some other countries. The conclusion that can be drawn is that best practice on ethics - including rules on pre- and post-employment notification and 'cooling off' as well as divestment rules and those associated with mandatory blind trusts – can be generalised from one country to another.

14. Finally the conclusions in Chapter **5 on Moving towards transparency and restoring trust** include a range of possible responses to the issue of the 'revolving door' phenomenon in general and the issue of the financial services industry in particular. These are intended to show the range of regulatory responses available and will not be applicable in every jurisdiction, particularly since some have already been introduced by various OECD countries. Thus the lessons learned and policy recommendations for future improvement include:

- Rebalancing the private and public interest; Reinvigoration of the concept and value of the 'public interest' as distinct from sectional or 'private' interests.

- Creation or reform towards vigorous and independent regulators accountable to the democratic process and insulated from pressure through resources, the revolving door or lobbying.

- Learning the lesson of best practice from regulatory leaders and other areas such as science regulation where the question of 'expertise' can become more important than the question of industry 'experience'. Another lesson from science based regulation is the training of a cadre of independent regulators whose career prospects and advancement does not depend on their connections with the industry they regulate. Moreover, the question of consumer, citizen or civil society representation on regulatory agencies – and perhaps even the direct election of regulators could be considered

15. Finally, innovation and reform in ethics regulation – not only in financial regulation - is a matter of open political debate in OECD countries. Reforms such as those noted here can and probably should be considered as part of much wider reforms of fostering integrity and transparency through regulations. Amongst the measures that can be taken are:

- enhanced data collection on conflicts of interest and the interests of public servants and full publication of such data;

- mandatory ethics plans for entering and leaving public service;

- enhanced cooling off periods and recusal measure to separate the incoming or outgoing official from potential conflicts of interest.

16. These measures are not necessarily applicable or politically acceptable in all countries but the price of failing to take them seriously may also fail the test of public acceptability.

CHAPTER 1. THE REVOLVING DOOR PHENOMENON: DEFINITION AND CONCERNS

Background

17. The regulation of financial regulators is a topic that has shifted up the policy agenda throughout OECD countries over the recent months. The public have looked on in shock, anger and amazement at the successive failures of many of the world's best known financial institutions. While much of the blame for the collapse of these institutions might lie squarely with their boards, executives and risk managers, the role of financial regulation has rightly been called into question. Just as we have witnessed chief executives in banking resign, or being removed from their posts, there has been a similar change of personnel at the apex of financial securities regulation across many countries. While there is understandable political pressure for 'heads to roll', the limited accountability and reform that such personnel changes represent is also a real cause for concern. One of the emerging realities of the current financial crisis is that the architecture and culture of financial regulation has been woefully inadequate to fully protect the interests of investors, and the wider public interest. With taxpayers in many countries now holding majority stakes in many of the nationalised or rescued banks and insurance companies it is important that questions of how best to secure the public interest through regulation and oversight are properly deliberated upon.

18. The World Economic Forum at Davos in early 2009 displayed little consensus on how best to tackle the current crisis. While debates about globalisation versus protectionism ('deglobalisation') surfaced at this summit, there was growing support for regulatory reforms in general, and increased regulatory powers in particular in the financial sector. In the background there was some discussion of the need to move towards a global system of financial regulation.[1] The UK's Financial Services Authority (FSA) chairman Adair Turner argued that 'establishing such a "treaty-based organisation" would be a long-term project and in the meantime, governments and regulators must make the most of "existing architecture"'. In relation to the regulation of regulators, and the specific issue of revolving doors and conflicts, it is very clear that there is precious little architecture to work with. While in some respects this is a serious blind-spot in the regulatory gaze, it also presents the opportunity for good-practice based reform and innovation.

19. Another element to recasting financial regulation is a recognition that this will have considerable costs, especially in relation to the salaries that can be paid to regulators.[2] However, the costs of employing more regulators, and paying them higher salaries than may be available to all but the most senior public servants, may well be seen as a price worth paying to safeguard against the regulatory failures that have contributed to the current financial crisis, though political opposition to such reward exists. In the UK, officials in the FSA are already amongst the best remunerated public servants, and recent revelations under Freedom of Information legislation revealed that they also received the highest bonuses of all the regulators in the UK.[3] The meeting of the G20 Finance Ministers and Central Bank Governors in London in September 2009 stressed the importance of 'a robust and comprehensive framework for global regulation and oversight', though details on how regulators will be resourced and empowered remain unclear.

What is the 'revolving door'?

20. The phenomenon of the revolving door refers to the movement of people into and out of key policymaking posts in the executive and legislative branches and regulatory agencies. This can carry the risk that it increases the likelihood that those making policies are overly sympathetic to the needs particularly of business — either because they come from that world or they plan to move to the private sector after working in government. Because of the highly developed policy networks in many OECD

member countries, recent years have seen a rise in the number of policy intermediaries – often called lobbyists – in policy processes. As a result we can identify four main types of 'revolving door':

- **Industry-to-government**, through which the appointment of corporate executives to key posts in government or regulatory agencies raises the possibility of a pro-business bias in policy formulation and regulatory enforcement.
- **Government-to-industry**, through which public officials or civil servants move to lucrative private-sector positions in which they may use their government experience and connections to unfairly benefit their new employer.
- **Lobbyist-to-government** through which lobbyists move from the consultancy sector, think tanks or trade associations into advisory or decision-making positions in government.
- **Government-to-lobbyist**, through which former lawmakers and executive-branch officials become paid advocates and use inside connections to advance the interests of corporate clients.[4]

Concerns: Undermining the public interest

21. There are several **causes** of increased public and governmental concern about the revolving door and conflict of interest.

22. First, concern about the 'revolving door' is part of a broader concern in countries around the world about the probity and **integrity** of public officials and, in particular, about conflict-of-interest resulting in bias in public decision making.

23. A significant concern about revolving door offences, like conflict-of-interest in general, is that they could significantly **undermine public trust** in government. In democratic societies, potential decline of citizens' trust in public institutions and confidence in public decision making justify strong and concerted actions to promote good public governance. The development and implementation of effective measures to prevent breaches to integrity, such as revolving door offences, can help maintain or re-establish public confidence in the integrity of governmental activities.

24. This task is made more difficult by an increased concern about the revolving door, namely the citizens' perception that certain public sector reforms have brought some public officials into unduly cosy relationships with business and not-for-profit organisations and **created grey areas with risks to integrity**. New approaches to public sector management, including the substantial expansion of public-private partnerships, sponsorship, privatisation, partnership governance, secondments between the public service and outside bodies, concession and contracting out arrangements, have resulted in close interactions with the private sector and increased opportunities for conflict-of-interest situations, especially those related to the revolving door. Moreover, urging public servants to treat citizens as 'customers' or 'clients' may result in damage to the more general public interest as customers may expect 'special service'

25. Last but not least, making use of 'insider information' and improperly employing private sector representatives in the public service or former public officials during their 'cooling-off' period may also result in "**unfair advantage" over competitors** and could lead to corrupt practices. [5]

Good practice and the OECD framework

26. Several of the principles shown under the four core principles of the *OECD Guidelines for Managing Conflict of Interest* in the Public Service apply to the issue of the revolving door. The following box lists the principles included in the 2003 *OECD Guidelines for Managing Conflict of Interest in the Public Service* under the following core principles:

- serving the public interest;
- supporting transparency and scrutiny;
- promoting individual responsibility and personal example; and
- engendering an organisational culture which is intolerant of conflicts of interest.

Box 1.1. OECD Guidelines for Managing Conflict of Interest in the Public Service

The 2003 *OECD Guidelines for Managing Conflict of Interest in the Public Service* contain the following principles that public officials are expected to observe when dealing with conflict-of-interest matters in order to promote integrity in the performance of official duties and responsibilities:

Serving the public interest

- Public officials should make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain (*i.e.* be "disinterested"). The integrity of official decision-making, in particular in the application of policy to individual cases, should not be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of the decision-maker.
- Public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations.
- Public officials should avoid private-capacity action which could derive an improper advantage from 'inside information' obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.
- Public officials should not seek or accept any form of improper benefit in expectation of influencing the performance or non-performance of official duties or functions.
- Public officials are expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.

Supporting transparency and scrutiny

Public officials and public organisations are expected to act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity.

- Public officials' private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed appropriately, to enable adequate control and management of a resolution.

Box 1.1. OECD Guidelines for Managing Conflict of Interest in the Public Service (*cont.*)

- Public organisations and officials should ensure consistency and an appropriate degree of openness in the process of resolving or managing a conflict of interest situation.

- Public officials and public organisations should promote scrutiny of their management of conflict of interest situations, within the applicable legal framework.

Promoting individual responsibility and personal example

- Public officials are expected to act at all times so that their integrity serves an example to other public officials and the public.

- Public officials should accept responsibility for arranging their private-capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.

- Public officials should accept responsibility for identifying and resolving conflicts in favour of the public interest when a conflict does arise.

- Public officials and public organisations are expected to demonstrate their commitment to integrity and professionalism through their application of effective Conflict of Interest policy and practice.

Engendering an organisational culture which is intolerant of conflicts of interest

- Public organisations should provide and implement adequate management policies, processes, and practices in the working environment to encourage the effective control and management of conflict of interest situations.

- Organisational practices should encourage public officials to disclose and discuss conflict of interest matters, and provide reasonable measures to protect disclosures from misuse by others.

- Public organisations should create and sustain a culture of open communication and dialogue concerning integrity and its promotion.

- Public organisations should provide guidance and training to promote understanding and dynamic evolution of the public organisation's established rules and practices, and their application to the working environment.

Source : *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experience*, 2003: OECD, Paris.

Principles for managing post-public employment conflict of interest

27. Dealing with these issues requires a range of possible measures. The measures proposed below are based on the OECD principles for managing post public employment.[6]

28. While the post-employment principles are **tailored to meet the specific challenges** posed by post-employment problems, they share the spirit and intent of the broader *OECD Guidelines for Managing Conflict of Interest*. The post-employment principles provide a general reference that can be given more

detailed and tailored expression by policy makers and managers to fit their specific public sector or agency context. The post-employment principles are grouped into **four functional categories**, namely:

1. The first category involves problems that arise primarily while officials are *still working in the public sector* (Principles 1-5).
2. The second category entails problems that arise primarily *after officials leave government* (Principles 6-9).
3. The third category focuses on the duty of current officials to *avoid preferential treatment* of former public officials in Principles 10-12
4. Finally, Principle 13 involves non-governmental employers and underlines the *responsibility of private firms and not-for-profit organisations to avoid post-public employment problems* when employing former public officials.

29. Some of these principles – for example prohibiting the use of insider information – are aimed at a particular problem-area whereas others, such as announcing an official's intention to leave the public sector, pertain to more than one problem-area. Thus, each problem-area should be carefully assessed in terms of relevant principles that could prove useful in preventing, managing, monitoring and enforcing conflict-of-interest issues.

Box 1.2. Post-employment principles

The principles for managing post-public employment conflict of interest in the public service organise essential components of a post-public employment system to a comprehensive and coherent structure. The principles provide a point of reference against which policy makers and managers in public sector organisations can review strengths and weaknesses of current post-employment system and modernise it in light of their specific context including existing needs and anticipated problems.

Problems arising primarily while officials are still working in government

- Public officials should not enhance their future employment prospects in the private and non-profit sectors by giving preferential treatment to potential employers.
- Public officials should timely disclose their seeking or negotiating for employment and offers of employment that could constitute conflict of interest.
- Public officials should timely disclose their intention to seek and negotiate for employment and or accept an offer of employment in the private and non-profit sectors that could constitute conflict of interest.
- Public officials who have decided to take up employment in the private and non-profit sectors should, where feasible, be excused from current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.
- Before leaving the public sector, public officials who are in a position to become involved in conflict of interest should have an exit interview with the appropriate authority to examine possible conflict-of-interest situations and, if necessary, determine appropriate measures for remedy.

Problems arising primarily after public officials have left government

- Public officials should not use confidential or other 'insider' information after they leave the public sector.
- Public officials who leave public sector should be restricted in their efforts to lobby their former subordinates and colleagues in the public sector. An appropriate subject matter limit, time limit or 'cooling-off' period may be imposed.

Box 1.2. Post-employment principles (*cont.*)

- The post-employment system should take into consideration appropriate measures to prevent and manage conflict of interest when public officials accept appointments to entities with which the officials had significant official dealings before they left the public sector. An appropriate subject matter limit, time limit or 'cooling-off' period may be required.

- Public officials should be prohibited from 'switching sides' and represent their new employer in an ongoing procedure on a contentious issue for which they had responsibility before they left the public sector.

Duties of current officials in dealing with former public officials

- Current public officials should be prohibited from granting preferential treatment, special access or privileged information to anyone, including former officials.

- Current public officials who engage former public officials on a contractual basis to do essentially the same job as the former officials performed when they worked in public organisation should ensure that the hiring process has been appropriately competitive and transparent.

- The post-employment system should give consideration to how to handle redundancy payment received by former public officials when they are re-employed.

Responsibilities of organisations that employ former public officials

Private firms and not-for-profit organisations should be restricted in using or encouraging officials who are seeking to leave or who have left government to engage in activities that are prohibited by law or regulation.

Source : OECD (2009).

30. These principles are of relevance to the issue of the revolving door in relation to the financial crisis, but they do not cover the entire cycle. In particular they do not relate specifically to the questions of 'pre-employment'. We note above that this can take the form of lobbyists or representatives from the private sector entering public service. This can take a number of forms including standard employment contracts. But it is worth also listing a number of other types of relationship. The reason for this is twofold as, first, it is necessary to examine the kinds of relationship in order to develop effective mechanisms for managing them. It is important, secondly because they have increased in type and extent in recent years:

- **Secondments**; where private sector or lobbying personnel are seconded into government or regulatory agencies for a period while remaining employees in the private sector or not-for-profit sector.

- **Advisory appointments**; where personnel may take on the role of 'special advisors' or sit on advisory committees, while continuing to be employed by their 'pre-public service' employer.

- **Political appointments**; to governmental or regulatory appointments in which special arrangements have to be made (e.g. in cases where business personnel are appointed as government ministers or as directors of regulatory agencies).

31. These kinds of appointments carry with them increased risks of conflict of interest and can come in many forms. In developing measures to protect against conflict of interest it is important also to understand these processes.

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1 See for example Adair Turner's comments at Davos. *www.londonstockexchange.com/en-gb/pricesnews/investnews/article.htm?wbc_purpose=basic&WBCMODE=p,p?ArticleID=19001148.*

2 *http://money.cnn.com/2009/01/30/news/davos.sec.fortune/index.htm.*

3 Data released under Freedom of Information shows the following pattern of bonus payments to FSA staff:

Number of Staff	**Amount paid in bonuses to staff in total**	**Average staff bonus**	**Number of Employees on salaries over £100,000**	**Proportion of total staff earning over £100,000**	**Amount paid in bonuses to staff on salaries over £100,000**	**Average bonus paid to staff on salaries over £100,000**	**Highest bonus paid**
2,489	£19,700,000	£7,915	174	7%	£3,912,380	£22,485	£90,000

www.libdems.org.uk/media_centre_detail.aspx?title=Foster%3A_Bank_watchdogs_paid_%C2%A325m_in_bonus_bonanza&pPK=ba7997bb-c87e-42e3-a45f-18a931098503.

4 This section is adapted from Revolving Door Working Group. *A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government – And What to Do About It*. Revolving Door Working Group October 2005 *www.revolvingdoor.info*, p. 7-8.

5 The forgoing paragraphs are adapted from OECD, *Post-Public Employment: Good Practices For Preventing Conflict of Interest*, Public Governance Committee, 22-24 October 2008, Paris GOV/PGC(2008)20, 2008 p.12-14.

6 OECD (2009).

CHAPTER 2. THE FINANCIAL CRISIS, THE REVOLVING DOOR AND LOBBYING

32. The revolving door is an issue that is part of a wider concern about transparency in policy making and privileged access to policy making and regulation. Thus this chapter provides an overview of the context, the role of revolving door and lobbying in the run up to the financial crisis and the debate on the issue after the crisis broke, including changes and reforms taking place as a result of the crisis.

33. The financial and economic crisis is a fact of political, economic and social life but the origins of the crisis are both disputed and not entirely clear. On the one hand there is an account of the crisis that emphasises risky decision making and poor oversight in recent corporate governance. This suggests that the cause of the crisis is comparatively recent and significantly, that although serious, the question is how to ensure that confidence returns and then for wider decisions to be made. Adair Turner head of the UK Financial Services Authority, an advocate of market liberalism, has criticised such views:

> Now of course, if you are an extreme Chicago school economic liberal, what I have said cannot be the case. If the industry grew dramatically in the decade to 2007 that must be because it was performing value added services: if complex product innovations were able to sustain themselves economically, they must have been socially useful innovations. But after what has happened, I think we know that that is not the case. I think we know that imperfections and irrationality in financial markets which are not fixable just by disclosure, but are inherent, mean that financial innovation which delivers no fundamental economic benefit, can for a time flourish and earn for the individuals and institutions which innovated, very large returns.[1]

34. This line of argument – that there is no real problem with the liberalisation of the market - co-exists with a recognition that whatever the causes there is currently a necessity to reverse the more *laissez faire* policy of recent years and for states to intervene in the economy in terms either of bail out or public ownership.

35. This leaves open a second line of argument which is that the liberalisation of the financial markets has played a significant, perhaps crucial, role in the problem. It is widely acknowledged that the question of regulation is at the heart of the financial crisis. The OECD notes that 'the response to these unprecedented events cannot be "business as usual". New institutional mechanisms are needed.'[2]

Regulatory capture

36. Regulatory capture is a well-known danger of 'light touch' or deregulatory environments. Harald Benink, and Reinhard Schmidt, respectively Professor of Institutional Design of Integrating Markets, Rotterdam School of Management, and Wilhelm Merton Professor of International Banking and Finance, Goethe University, Frankfurt/Main are both members of the European Shadow Financial Regulatory Committee. They noted in 2004 that:

> It is a common phenomenon in all areas of regulation that regulators become 'captured' by the industry they regulate, meaning that they take on the objectives of management in the firms they regulate. They may thereby lose sight of the ultimate objectives of regulation. Regulatory capture is particularly serious in industries such as banking where there is a conflict of interest between the firms' objectives (to maximise profits) and the objectives of the regulation (to provide consumer protection and maintain systemic stability).[3]

37. The creation of the architecture of the global financial system ‘policies associated with globalisation and free market reform’ have, as Mansley and Hildyard put it, ‘actually weakened the regulatory capacities of state institutions in many countries’.[4] The European Shadow Financial Regulatory Committee (which also has US and Japanese equivalents) is a committee of academic experts on financial regulation which was set up in 1998 specifically because ‘Although the world of banking and finance is becoming more integrated every day, in most aspects the world of financial regulation continues to be narrowly defined by national boundaries. The main players here are still national governments and governmental agencies.’[5] ‘Until recently’, according to Benink, and Schmidt, ‘they tended to follow a policy of shielding their activities from scrutiny by their peers and members of the academic community rather than inviting critical assessments and an exchange of ideas.’ Since 2000, when this comment was written, this kind of approach has remained important on the regulatory scene. This connects directly to the issue of transparency in regulation and suggests that it is a core issue in the financial crisis.

The context: Origins of the financial crisis

38. How did this happen? The financial system in place when the crisis hit had a gestation period of some thirty years. The following paragraphs examine some of the elements of the financial architecture in an historical perspective, reviewing how and when they were put in place. There is never a ‘correct;’ place to start, but in this case a significant development was the deregulation of the New York Stock Exchange on ‘May Day’ 1975. This was a key element of the process.[6] The deregulation had the effect of heightening competition and set in train further reform including the 1979 abolition of controls on the London Stock Exchange. May Day led to a ‘dramatic reduction in average commission rates in the United States and a major restructuring and consolidation of US securities firms’ which undermined the competitive position of the London Stock Exchange.[7]

39. In July 1979 the new head of the Federal Reserve Paul Volcker, ‘a relatively obscure (but now renowned)’ figure[8] introduced his ‘Volcker shock’ in which monetary policy was dramatically changed: this was another key moment, coming as it did in the context of conservative governments assuming power in the UK and US. This was significant because they were key agents in transforming the regulatory system in which the financial institutions operated. These moves had the effect of liberating the ‘powers of finance both internally and on the world stage’, as Harvey puts it.[9]

40. The next important step was the deregulation of the London Stock Exchange in the ‘Big Bang’ in 1986. The ‘Big Bang’ was a ‘fundamental reform’ of the London Stock Exchange which ‘made stockbrokers compete on prices’.[10] In Japan, meanwhile the process was known as ‘Biggu Bangu’ and in both countries the effect was that it liberalised ‘the number and nature of financial instruments that could be traded, opened both countries' markets to foreigners, and introduced a much greater degree of competition than would have been believed possible twenty years earlier.’ According to Laurence ‘events in Britain and Japan demonstrate striking cross-national convergence of political and economic institutions.’ To explain this he refers to ‘the powerful domestic political impact of international capital mobility.’[11]

41. This was crucial since it opened the market to those new financial institutions with sufficient capital resources to make money on the scale of their own dealings, not just on their commissions on trading for others’. Market competition cut commissions and so the reforms created an incentive for brokers to trade ‘large quantities of shares on their own account’. These moves were a key factor in increasing the speculative trading of shares and the expansion of securitisation, hedge funds and derivatives.[12] With the Big Bang, the British system ‘went a step beyond the United States, allowing banks to participate in the securities business’.[13] The new model thus created was exported to Canada, Australia, France, Germany and other countries and was ‘adopted by the European Commission for its 1992 banking directive’.[14] These changes put the US system at a disadvantage and the pressure therefore mounted for the

repeal of the Glass-Steagall law separating ordinary and investment banking. It was 'de facto' repealed for selected banks in 1989,[15] but then finally formally ditched by the Clinton administration in 1999.

42. There were many other innovations of regulation which contributed to the financial crisis, but the key to understanding the role of the revolving door and of lobbying more generally is to situate such practices in relation to other influences on financial market regulation. One can see these processes as consisting of both economic (non-lobbying) and political (lobbying) elements. The domestic impact of international capital mobility has been the subject of a significant debate in political science and international relations.[16] While there are a range of contending schools of thought, variable emphases and differing empirical bases, it is clear that the economic impacts of international capital mobility - the ability of capital to leave – have also been accompanied by efforts by both corporations and international financial institutions to influence policy. Swank argues that the 'economic logic' of international capital mobility is accompanied by two political mechanisms which relate to, firstly, enhanced power in the domestic arena 'as a result of the "exit option"' and secondly the 'ascendance of neoliberal economic orthodoxy' which are reinforced by 'appeals for policies that improve international competitiveness and business climate'.[17] One summary of the debate concludes that:

> The ascendance of the new neoliberal policy regime was significantly influenced by the political action of a neoliberal coalition' of internationally mobile enterprises, international organizations such as the World Bank and the International Monetary Fund, and government central bankers and finance ministers. In sum pressures on the welfare state from the political logic of globalization may significantly augment the social policy pressures from the economic logic of globalization.[18]

43. This account challenges certain versions of the thesis of globalisation as an inevitable process. It also raises the issue of the actual policy process at both international and national levels and in particular points to the significance of lobbying and the potential for regulatory capture both of specifically regulatory agencies and also of governmental institutions. This is the context in which the question of transparency and accountability in lobbying and the question of the revolving door can be viewed.

Financial lobbying and revolving door before the crisis

51. It is certainly the case the lobbying has been an important factor in the policy process leading both to the creation of the global financial architecture and to many routine governmental and regulatory decisions within this framework. We can review some of the evidence on the role of lobbying specifically here. This is important as it illustrates the relationship between financial regulation and corporate strategy and because it indicates that corporate strategy includes an emphasis on lobbying of which a key component is the cultivation of relationships with governmental and regulatory agencies.

52. We can start by examining the repeal of the Glass-Steagall Act – a law that some in the business press are now suggesting should be reintroduced.[19] In March 2008 while still a Senator Barack Obama noted of the Act:

> Well, Glass-Steagall I think, is an example of where maybe we didn't entirely think it through. You had USD300 million worth of lobbying done by the financial institutions. They wanted to compete because they were seeing big profits in some of these areas. It wasn't necessarily the best thing to assure that U.S. consumers were protected or that the financial markets remained stable and sound.[20]

53. The campaign to repeal the law was, according to Ed Yingling, the chief lobbyist for the American Bankers Association a very significant effort. '"I don't know; I can't quantify it," he said. "But if

I had to guess, I would say it's probably the most heavily lobbied, most expensive issue" to come before Congress in a generation."' [21] According to a 1999 report in the *New York Times:*

> That should not be surprising, given that banking deregulation has been vigorously lobbied and debated for 20 years by three of the nation's wealthiest industries: banking, insurance and securities. In 1997 and 1998 alone, these three industries gave USD58 million to Federal political candidates, according to compilations by the Center for Responsive Politics, a nonpartisan research group. They donated USD87 million in so-called soft money to the political parties, and they reported spending USD163 million in additional lobbying expenses.

54. According to Yingling of the bankers association "This was our top issue for a long, long time. The resources devoted to it were huge, and we fought it tooth and nail." The *New York Times* reports how some of the money was spent:

> When Representative Charles E. Schumer was running for the Senate from New York last year, for example, he was probably aware when he spoke with securities industry lobbyists about deregulation that the industry had donated USD1.28 million to his campaigns over the previous five years -- even if not all of those donations were motivated by concern about this issue.
>
> Schumer was on the House Banking Committee and is now on the Senate Banking Committee. He has long been regarded as the securities industry's strongest ally in Congress. Of course, most brokerage and financial services companies are based in New York City, parts of which Schumer represented in the House. He received more money from the securities industry in 1997 and 1998 than anyone else now in the Senate, almost certainly because he was running for the Senate.
>
> Senator Christopher Dodd, the Connecticut Democrat, is regarded as one of the strongest allies of the insurance industry. Hartford is the nation's insurance capital. Between 1993 and 1998, Dodd received USD325,124 from insurance companies -- not a great deal less than the Republican chairman of the Banking Committee, Senator Phil Gramm of Texas, the man who determined whether banking bills came up for a vote. The insurance industry gave Gramm USD496,610. He also received USD760,404 from the securities industry and USD407,956 from the banking industry.
>
> The picture in the House is similar, though the numbers are smaller because there are so many more representatives. Members of the Banking Committee received large donations, and all three industries were especially generous to members from New York. John. J. LaFalce, a Democrat from Buffalo, is the ranking minority member of the Banking Committee and received USD174,398 from bankers in 1997 and 1998. Richard H. Baker, a Republican from Louisiana who is also on the committee, received the largest amount of money from bankers: USD209,353.[22]

55. The Glass-Steagall Act was not the only element of this process. A recent report by Wall Street Watch examines twelve separate 'Deregulatory Steps to Financial Meltdown'. These were listed as:

1. Repeal of the Glass-Steagall Act and the Rise of the Culture of Recklessness
2. Hiding Liabilities: Off-Balance Sheet Accounting
3. The Executive Branch Rejects Financial Derivative Regulation
4. Congress Blocks Financial Derivative Regulation
5. The SEC's Voluntary Regulation Regime for Investment Banks
6. Bank Self-Regulation Goes Global: Preparing to Repeat the Meltdown?
7. Failure to Prevent Predatory Lending
8. Federal Pre-emption of State Consumer Protection Laws
9. Escaping Accountability: Assignee Liability
10. Fannie and Freddie Enter the Subprime Market
11. Merger Mania

12. Rampant Conflicts of Interest: Credit Ratings Firms' Failure[23]

56. In the process of advancing these measures, the financial and associated industries spent at least USD5.1 billion between 1998 and 2008. As the Wall Street Watch report puts it:

> The entire financial sector (finance, insurance, real estate) drowned political candidates in campaign contributions over the past decade, spending more than USD1.7 billion in federal elections from 1998-2008. Primarily reflecting the balance of power over the decade, about 55 percent went to Republicans and 45 percent to Democrats. Democrats took just more than half of the financial sector's 2008 election cycle contributions. The industry spent even more — topping USD3.4 billion — on officially registered lobbying of federal officials during the same period.

57. The figures – derived from the US lobbying disclosure registry show that during the period 1998-2008:

- Accounting firms spent USD81 million on campaign contributions and USD122 million on lobbying;
- Commercial banks spent more than USD155 million on campaign contributions, while investing nearly USD383 million in officially registered lobbying;
- Insurance companies donated more than USD220 million and spent more than USD1.1 billion on lobbying;
- Securities firms invested nearly USD513 million in campaign contributions, and an additional USD600 million in lobbying. [24]

58. Also drawing on the lobbying registry data the report notes that the 'financial sector employed 2,996 lobbyists in 2007. Financial firms employed an extraordinary number of former government officials as lobbyists'.[25]

59. The kind of data available on the lobbying effort in the US is not available in many other jurisdictions because of a lack of lobbying disclosure legislation (or its recent introduction - limiting the number of years data available). Nonetheless evidence of lobbying also noticeable in other countries, for example in Ireland.[26]

60. Lobbying for financial deregulation is a strategic response by business to the realities of the financial markets. It is important to understand that the development of strategy to attempt to manage the regulatory environment.

61. The capture of regulatory institutions or indeed of apparently independent experts is an element of strategic planning and, according to regulation theorists Owen and Braetigam, 'is most effectively done by identifying the leading experts… and hiring them as consultants or advisors, or giving them research grants and the like. This activity requires a modicum of finesse; it must not be too blatant, for the experts themselves must not recognize that they have lost their objectivity and freedom of action. At a minimum, a program of this kind reduces the threat that the leading experts will be available to testify or write against the interests of the regulated firms.'[27]

62. It is clear that the revolving door is a part of the strategy adopted by many firms both in general and specifically within the financial industry. The evidence on this is mostly anecdotal, but what there is suggests that this has been significant. For example Weisman and Donahue note in their report that:

> A great many of those lobbyists entered and exited through the revolving door connecting the lobbying world with government. Surveying only 20 leading firms in the financial sector (none from the insurance industry or real estate), we found that 142 industry lobbyists during the period 1998-2008 had formerly worked as “covered officials” in the government. “Covered officials” are top officials in the executive branch (most political appointees, from members of the cabinet to directors of bureaus embedded in agencies), Members of Congress, and congressional staff. Nothing evidences the revolving door — or Wall Street’s direct influence over policymaking — more than the stream of Goldman Sachs expatriates who left the Wall Street goliath, spun through the revolving door, and emerged to hold top regulatory positions. Topping the list, of course, are former Treasury Secretaries Robert Rubin and Henry Paulson, both of whom had served as chair of Goldman Sachs before entering government.[28]

63. As this quotation makes clear, there is a potentially significant issue in the revolving door in relation to the financial crisis. The evidence on the extent and density of these connections is however not comprehensive. As a result this report provides new evidence of the extent of the phenomenon in the next chapter.

Lobbying, revolving door and the financial crisis

64. With the onset of the financial crisis lobbying and indeed negotiation has been intense. On 18 March 2009 the Financial Services Authority (UK) published a report on the regulatory overhaul necessary. This process was the subject of intense lobbying, according to the *Guardian*:

> One senior banker said [Adair] Turner wanted to usher in an era of responsible lending without killing the mortgage market or preventing firms from devising flexible products that could accommodate customer demands. "We can't fix the system in aspic. Turner knows that for London to remain a premier financial centre, there must be room for *manoeuvre*," he said. Banks and insurers have spent recent months lobbying the regulator to head off strict rules on the sale of financial products. They believe a draconian clampdown will stifle innovation in the City.’[29]

65. However, lobbying pressure has not only been directed at the FSA. Many businesses in the UK have increasingly diverted attention to the likely incoming Tory government, and are trying to shape the overhaul of regulation signalled by the Sassoon report on financial regulation published on 9 March 2009. According to the *Financial Times*:

> The many gaps in the Conservative manifesto create an opportunity for business to help shape the agenda. Lobbyists say companies are directing their efforts at influencing political promises at the next election, and principally at the opposition party. “Business is now expecting the next election to produce a Conservative government,” said Peter Bingle, chairman of Bell Pottinger Public Affairs. “The Conservative election manifesto therefore becomes critical as it will be the basis of the first Queen’s Speech and in reality the bedrock of David Cameron’s first term.”[30]

66. By contrast one early response to the financial crisis in the US was the cessation of lobbying activities by the two nationalised mortgage lenders Fannie Mae and Freddie Mac. As noted by Kenneth Doyle in *BNA Money and Politics Report*:

> Perhaps the only indisputable effect that the economic crisis and financial industry bailout have had on lobbying and political activities is the effect on the two “government-sponsored entities” that dominate the home mortgage sector: Fannie Mae and Freddie Mac. These private companies once were dominant players in lobbying and campaign giving, but agreed to give up all political activities when they lapsed into conservatorship last September. The government takeover put taxpayers potentially on the hook for trillions of dollars in mortgage debt.[31]

Both Fannie and Freddie filed Lobbying Disclosure Act (LDA) "termination" reports last fall and have ended all PAC giving, according to company officials. Previously, the two were among the top 20 all-time corporate lobbying spenders, according to the Center for Responsive Politics. Freddie Mac was ranked No. 13 on the center's list of lobbying spenders, having reported nearly USD95 million since 1998. Fannie Mae was ranked No. 20, with total spending of over USD79 million. The mortgage giants continued to be major players right up until they had to be bailed out last September. For example, the last entry on the last LDA contribution filing by Freddie Mac reported a Sept. 3, 2008 payment of USD 40 000 to the Consortium of Catholic Academies in honour of House Minority Leader John Boehner (R-Ohio).

Four days later, John Lockhart, the director of the Federal Housing Finance Agency, made a Sunday-afternoon announcement that Fannie and Freddie were being taken over by the government. 'All political activities including all lobbying will be halted immediately,' Lockhart said in the announcement. He added that Fannie and Freddie's charitable activities would have to be reviewed further.[32]

67. The US example is not the universal pattern, however. There have been few other reports of lobbying cessation by other entities taken into public ownership. However, this is a potential model for others to follow. The utility and legitimacy of lobbying and the pressure to make revolving door appointments are both considerably less under conditions of public ownership. The last chapter will return to this issue in the conclusion.

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3 H. Benink, R. Schmidt, "Europe's single market for financial services: views by the European Shadow Financial Regulatory Committee", *Journal of Financial Stability*, 2004, p. 186.

4 Mark Mansley and Nicholas Hildyard, 'Financial Market Lobbying A New Political Space for Activists' *Corner House Briefing* 25, first published January 2002 *www.thecornerhouse.org.uk/item.shtml?x=51979.*

5 Harald A. Benink and Reinhard H. Schmidt *Towards a Regulatory Agenda for Banking in Europe*, Johann Wolfgang Goethe –Universitat, Frankfurth Am Main *Fachbereich Wirtschaftswissenschaften* Working Paper Series: Finance and Accounting, No.58, September 2000 This version: August 2000 ISSN 1434-3401.

6 John Kador *Charles Schwab: how one company beat Wall Street and reinvented the brokerage industry,* John Wiley and Sons, 2002, p. 15-7.

7 Henry Laurence *Money rules: the new politics of finance in Britain and Japan,* Cornell University Press, 2001, p. 73.

8 David Harvey *A Brief History of Neoliberalism*, Oxford: Oxford University Press., p. 1.

9 Ibid.

10 Colin Leys, *Market-Driven Politics*, London, Verso, 2001, p. 58.

11 Laurence Op cit.

12 Susan Strange *Mad Money: When Markets Outgrow Governments*, Michigan University Press, p. 29-36.

13 Roy C. Smith *Comeback: The restoration of American banking power in the new world economy*, Harvard Business Press, 1993, p. 284.

14 Smith, Ibid. p. 284.

15 Smith, Ibid. p. 284.

16 See Benjamin J. Cohen *The International political economy of monetary relations*, Edward Elgar, 1993; Benjamin J. Cohen, Charles Lipson *Issues and agents in international political economy*, MIT Press, 1999; Robert Owen Keohane, Helen V. Milner (Eds) *Internationalization and Domestic Politics,* Cambridge: Cambridge University Press, 1996.

17 Duane Swank *Global capital, political institutions, and policy change in developed welfare states*, Cambridge University Press, 2002 p. 21.

18 Swank, Ibid. p. 26.

19 Though there is something of a debate about the role its repeal played in the current crisis. For contrasting views see: Matthew Goldstein 'Breaking Up is Hard to Do' *BusinessWeek*, March 31 2009. *www.businessweek.com/investing/wall_street_news_blog/archives/2009/03/breaking_up_is.html?campaign_id=rss_daily*,*Wall Street Journal*, 'Bill v. Barack on Banks: Clinton instructs Obama on finance and Phil Gramm'. 1 October 2008. *http://online.wsj.com/article/SB122282635048992995.html.*

20 'Obama on "Political Capital with Al Hunt"' *Bloomberg*, March 28, 2008 *www.realclearpolitics.com/articles/2008/03/obama_on_political_capital_wit.html.*

21 Joel Brinkley, 'Behind the Banking Bill, Years of Intense Lobbying', *New York Times*, October 23, 1999 *http://partners.nytimes.com/library/financial/102399bank-lobby.html.*

22 Joel Brinkley, 'Behind the Banking Bill, Years of Intense Lobbying', *New York Times*, October 23, 1999 *http://partners.nytimes.com/library/financial/102399bank-lobby.html.*

23 Robert Weissman and James Donahue *Sold Out: How Wall Street and Washington Betrayed America* March 2009, Essential Information , Consumer Education Foundation *www.wallstreetwatch.org/soldoutreport.htm* p. 15.

24 Robert Weissman and James Donahue *Sold Out: How Wall Street and Washington Betrayed America* March 2009, Essential Information , Consumer Education Foundation *www.wallstreetwatch.org/soldoutreport.htm* p. 15.

25 Weissman and Donahue, Ibid.

26 Michael Casey reported in The Irish Times 'We have learnt that trusting banks is foolish' (Irish Times, Friday, February 13, 2009 *www.irishtimes.com/newspaper/opinion/2009/0213/1233867934804.html).*

We did put manners on the banks some 15 years ago. At that time, there were quite strict regulations imposed on banks by the Central Bank for economic reasons rather than prudential ones. They included a primary liquidity ratio, a secondary ratio to ensure the banks bought certain amounts of Irish government bonds, a matrix of maximum interest rates which could be charged, and "corsets" which limited the margins banks could impose on their customers.

There was also a period when the banks had to limit their credit growth to a certain percentage every year, and they were obliged to allocate a proportion of that credit to productive business activities.

These regulations were designed primarily to help the economy and they were supervised by the economics side of the Central Bank and not by the Financial Regulator.

These (economic rather than prudential) regulations gave rise to serious lobbying by the banks, and gradually they were abolished on the (unproven) grounds that there was adequate competition among banks.

There may also have been a political push to this process of deregulation. It is clear that banks have always been part of the establishment of this country and have always maintained a close relationship with political parties. Since Anglo lent to many of the property developers, it had a natural affinity with the present Government.

27 Owen, B. M. and Braetigam, R. *The Regulation Game: Strategic Use of the Administrative Process*, Cambridge, MA: Ballinger, 1978, p. 7.

28 Robert Weissman and James Donahue *Sold Out: How Wall Street and Washington Betrayed America* March 2009, Essential Information , Consumer Education Foundation *www.wallstreetwatch.org/soldoutreport.htm* p. 100-101.

29 Phillip Inman and Richard Wachman ‘Watchdog to curb risky mortgages: Move part of radical shake-up of banking regulations’, *The Observer*, Sunday 15 March 2009. *www.guardian.co.uk/business/2009/mar/15/fsa-mortgages-regulators*.

30 Jean Eaglesham, ‘FSA needs overhaul, says Tory-funded review’ *Financial Times*, Published: March 8 2009 23:20 | Last updated: March 8 2009 23:20, *www .ft.com/cm s/s/0/bd92 b6b0-0bfd- 11de-b87d- 0000779fd2 ac.html.*

31 Kenneth P. Doyle ‘Lobbying, Political Giving Continued Unabated in ‘08, Despite Economic Crisis’ *BNA Money and Politics Report* February 5, 2009 *www.bna.com/moneyandpolitics/february2009.*html.

32 Kenneth P. Doyle ‘Lobbying, Political Giving Continued Unabated in ‘08, Despite Economic Crisis’ *BNA Money and Politics Report* February 5, 2009 *www.bna.com/moneyandpolitics/february2009.html.*

CHAPTER 3. THE REVOLVING DOOR IN FINANCIAL SERVICES

68. The relations between government, regulatory agencies and the banking and financial sector have been close in OECD countries. It is doubtful whether the term 'revolving door' would be able to accommodate the sheer density of such connections. This chapter reports on new evidence on the relationships involved. It looks at the relationship from two perspectives: first examines the regulatory agencies of eight selected OECD countries including agencies based in Canada and the US as these are among the most highly developed regulatory systems. These data show that all the agencies examined contained personnel with previous or post roles in the banking and finance industries or in closely allied roles such as in accountancy or law. The data do, however, show that the extent of these 'revolving door connections varies across national jurisdictions.

69. The second perspective examines the largest global corporations active in the banking, insurance and securities markets. It examines the 116 largest companies which comprise the total representations of such firms in the Fortune Global 500. It is worth noting that almost a quarter of the world's five hundred largest corporations were drawn from the banking and finance industry. No doubt the financial crisis will make a significant change to the composition of the Fortune Global 500, but the data we give here is based on an examination of the directors of these companies going back to the year 2000. The data show a very significant revolving door in operation in both directions. But the difference between this data and that on the regulatory agencies is the very significant number of personnel who have moved to and from governmental agencies (meaning elected representatives, civil servants or other central governmental officials as opposed to specifically financial regulatory agencies)

Regulatory agencies

70. This first part summarises findings on the revolving door connections of ten regulatory agencies from eight countries together with two agencies specifically set up to respond to the financial crisis, namely:

- Australian Securities and Investment Commission
- Canada Deposit Insurance Corporation
- *Commission Bancaire, Financière et des Assurances* - Belgium
- The Federal Deposit Insurance Corporation – U.S.A.
- Financial Services Authority – U.K.
- The Financial Supervisory Authority - Iceland
- Financial Services Regulatory Authority - Ireland
- Office of the Superintendent of Financial Institutions – Canada
- Securities Commission – New Zealand

- Securities and Exchange Commission – U.S.A.
- UK Financial Investments Ltd
- European Commission High Level Group

71. These regulatory agencies showed a common pattern in that all of them – with the exception of the Icelandic regulator – have employed or appointed personnel with close links to the banking and finance industries.

72. Starting with the case of the United Kingdom, revolving door has been encouraged by government policy seeking to modernise public service (similar polices have been adopted throughout the OECD countries, based on removing barriers to labour market participation). In practice this has meant increasing secondments into (and out from) British public service and the hiring of individuals from the private sector to senior civil service jobs. However it appears that over 75% of new private sector recruits to senior public service positions return to the private sector within five years.[1]

73. The primary financial regulator in the United Kingdom is the Financial Services Authority (FSA) which is financed by the financial services industry. The UK Treasury appoints the FSA Board, which consists of a Chairman, a Chief Executive Officer, three Managing Directors, and nine non-executive directors (including a lead non-executive member, the Deputy Chairman). Since January 2000 there have been 36 different members of the FSA board. The research found that 26 of the members had connections at board or senior level with the banking and finance industry either before or after their term or office, whilst nine continued to hold appointments in financial corporations while they were at the FSA.

74. The regulator in Ireland showed a similarly high level of connections. Here all but three of the Financial Services Regulatory Authority's 13 members were found to have connections with the banking and financial services industry (as directors or advisors to the Irish Central Bank, the Bank of Ireland, Barclays Bank, Merrill Lynch, Irish Life and Permanent, Standard Life, TSB, Canada Life, Citibank, Prudential) or with other corporations or corporate lobby groups (such as Guinness, Waterford Wedgewood, Irish Business and Employers Confederation).

75. The Chief Executive of the Authority, Patrick Neary announced his retirement in January 2009 after it was claimed that his staff knew in January 2008 that the chairman of Anglo Irish Bank Seán Fitzpatrick concealed loans from the bank he chaired of up to €87 million from Anglo Irish Bank shareholders for eight years by temporarily transferring them to another bank before each year-end to avoid disclosing them in the accounts.[2]

76. New Zealand's main regulator of investments, the Securities Commission, showed the highest proportion of connections with the regulated industries of all the regulators examined.

77. With the exception of one Commission member – who is Head of the School of Accounting and Commercial Law at the Victoria University of Wellington – all the current members have a background in finance, either as directors of companies, as lawyers at commercial law firms, or accountants at international accountancy firms. The findings on the Securities Commission are outlined in more detail in the box below.

Box 3.1. Securities Commission - New Zealand

The Securities Commission is New Zealand's main regulator of investments. It is a statutory corporation that operates under the Securities Act 1978. Its aim is to: 'strengthen investor confidence and foster capital investment in New Zealand by promoting the efficiency, the integrity, and cost effective regulation of our securities markets.' [3] It is made up of between five and ten members appointed by the Governor-General of New Zealand on the recommendation of the Minister of Commerce. Members hold office for up to five years, but can be reappointed.

There are no statutory qualifications for membership, but at least one member must be a barrister or solicitor with at least seven years' practice. Members are chosen for their knowledge or experience of industry, commerce, economics, law, accountancy, public administration or securities.

With the exception of one Commission member – who is Head of the School of Accounting and Commercial Law at the Victoria University of Wellington – all the current members have a background in finance, either as directors of companies, as lawyers at commercial law firms, or accountants at international accountancy firms. For example, the Commission's current Chairman since September 2001 was a senior executive with Westpac Banking Corporation from 1988 to 1993.[4] Three members are lawyers affiliated with commercial law firms, including Simpson Grierson in Wellington – one of New Zealand's leading commercial law firms[5] -- or founding partner of law firm Chen Palme that has advised many of the biggest corporate organisations in New Zealand and Australia, including the following banking and insurance groups: Southern Cross, Citibank, AMP, QBE Insurance Ltd, UBS Warburg.[6] Two other members are both chartered accountants and former partners of the international accountancy firm Ernst & Young. [7] Another member is a business consultant for 'companies listed in New Zealand and overseas' who is a also director of financial investment company Kingfish Ltd and its two subsidiaries Marlin Global Ltd and Barramundi Ltd.[8]

Source : Securities Commission of New Zealand website, 'Who we are', [www.seccom.govt.nz/about]

78. Regulators in Belgium, Canada, Iceland and the United States were found to be more likely to recruit individuals from public institutions like Central Banks, government or other regulatory agencies than those in the UK, Ireland or New Zealand.

79. In Australia the Australian Securities and Investment Commission (ASIC) was particularly notable for its high proportion of commercial lawyers. Eleven of the staff formerly worked for corporate law firms. A further seven for banks or other financial institutions, six as accountants or auditors in corporate auditing firms, two in finance lobby groups and a further two in other corporate sectors. Some six members had no such revolving door connections and one had worked in a 'Public Interest' law centre. Of the 11 staff in corporate law firms seven of them worked for Mallesons Stephen Jaques, a firm with a long association with the banking sector.

80. Regulators in Belgium, Canada, and the United States, were also found to be more likely to recruit individuals from law and accountancy; many of whom nevertheless work – albeit indirectly – in the field of banking and finance.

81. The senior personnel of Belgium's *Commission Bancaire, Financière et des Assurances* (CBFA) are mainly public officials and individuals who currently or have previously held positions at the National Bank of Belgium. This partly reflects that fact that half of the Management Committee must also be on the Board Directors of the National Bank of Belgium. However, The *Commission Bancaire, Financière et des Assurances* (CBFA) Supervisory Board, which oversees the Management Committee, has greater private sector representation. Its chair previously served on the board of several Belgium companies and a number of members who also serve as advisors to the National Bank of Belgium have connections to the private sector. The findings on the CBFA are outlined in more detail in the box below.

Box 3.2. ***Commission Bancaire, Financière et des Assurances*** **- Belgium**

The Banking, Finance and Insurance Commission (CBFA) supervise most financial institutions and financial services offered to the public in Belgium. It was created by royal decree in 2004 as a result of the merger of the Banking and Finance Commission and the Insurance Supervisory Authority.

The CBFA aims to protect of savers and policy-holders, ensure public confidence in financial products and services, and oversee the proper operation of markets in financial instruments. It is financed through contributions from the companies it regulates.

The CBFA has four decision-making bodies, the chairman of the Management Committee, the Management Committee itself, the Supervisory Board and the Secretary General.

The senior personnel of the CBFA are mainly public officials and individuals who currently or have previously held positions at the National Bank of Belgium. This partly reflects that fact that half of the Management Committee must also be on the Board of Directors of the National Bank of Belgium. Of the three current Management Committee members who are not directors of the National Bank, one is an academic, one is a former Government Minister, and another is a former ministerial aide.

The CBFA Supervisory Board, which oversees the Management Committee, has greater private sector representation. The board is chaired by a former politician and advisor to the National Bank of Belgium who previously served on the board of several Belgian companies.[9] Several members who also serve as advisors to the National Bank of Belgium have connections to the private sector, for example as a Managing Partner at Toelen, Cats, one of the leading business consultancy firms in Belgium;[10] a current President of the Executive Committee of the finance company Credible; a Chairman and CEO of investment company Koramic Investment Group; and a Vice President of Public Affairs at Coca-Cola Benelux.[11]

Corporate lawyers are also well represented on the Supervisory Board, including a founding partner of Laga,[12] a senior partner at Matray Hallet, and a partner in NautaDulith.[13] All three law firms deal primarily with the commercial and banking sectors.

82. Turing now to **Canada**, the Canada Deposit Insurance Corporation (CDIC) is a federal Crown corporation created by Parliament to insure Canadians' savings in case their bank or other CDIC member institution fails or goes bankrupt. Of the four executives, two have previous connections with the industry, one with a corporate law firm[14] and the other with the Royal Bank of Canada, Bell Canada, Canada Mortgage and Housing Corporation and Economic Council of Canada. [15]

83. The board of Directors contains a balance of public and private sector members. The private sector members by definition either retain or have had recent connections with the private sector, and in particular with banking, law and accountancy

84. On the other hand the public sector members are not required to have current or previous connections with the industry. Nor are they forbidden from such relationships. Including the chair and the two representatives of the Finance Ministry and the National Bank of Canada (each of whom have stand-in alternate members) there are eight public sector members of the commission. Of these eight, the chairman, one National Bank member and the other three 'public sector' representatives all have prior postings in the financial industry including postings in Goldman Sachs, Royal Bank Financial Group, Prescient Markets, Inc., ScotiaCapital, Inc. and the Metropolitan Life Insurance Company.

85. Canada's primary financial regulator is the Office of the Superintendent of Financial Institutions (OSFI), which is responsible for the regulation and supervision of all federally chartered, licensed or registered banks, insurance companies, trust and loan companies, co-operative credit associations and fraternal benefit societies.[16]

86. Neither the current Superintendent nor her predecessor appears to have had any background in the private sector. However, former Superintendent from 1994 to 2001, previously spent 28 years with KPMG and its predecessor firms and was Deputy Chairman of KPMG (Canada) from 1989 to 1993.[17]

87. Several Assistant Commissioners also have backgrounds in the private sector. Of the OSFI's three current Assistant Commissioners, two joined from the private sector, one from an internet-based investment bank and another after working in senior-level corporate services positions in several non-financial companies. Two former Assistant Superintendents also have backgrounds in banking at Canadian Imperial Bank of Commerce, Canadian Imperial Bank of Commerce and Toronto Dominion Bank and another former Assistant Commissioners has a background working for a range of non-financial companies.

88. In the **United States**, the Federal Deposit Insurance Corporation (FDIC) and the Securities and Exchange Commission (SEC) showed a similar mix of public and private sector representation.

89. FDIC's five person board of Directors is made up predominantly of figures drawn from the public sector but includes two individuals with backgrounds in commercial law, one of whom chaired his firm's Financial Institutions Group. The Senior Executives, although also predominantly made up of individuals from the public sector, also includes a number of figures from the financial sector. The current Deputy to the Chairman and Chief Financial Officer is a former partner in an international bank consulting firm,[18] the current Director of the Division of Supervision and Consumer Protection joined from Goldman Sachs,[19] and the current Director of the Division of Finance is a former consultant at both KPMG Peat Marwick and a former subsidiary of PricewaterhouseCoopers.[20] The current Inspector General was previously a Director at KPMG LLP, [21] whilst the Special Advisor to the Chairman for Markets, who is the most recent senior appointment, was previously Managing Director of the Financial Institutions Group at J.P. Morgan. [22]

90. In the case of the Securities and Exchange Commission, though the majority of its senior figures have backgrounds in the public sector, many have backgrounds in the private sector including previously holding positions at investment banks. Of the current Commissioners three previously worked primarily in politics and public service, whilst one was previously an academic at Olin Business School; and another was a partner with the international law firm of McKenna Long & Aldridge, LLP, where he specialised in securities law.[23]

91. Two of the SEC's four Division Heads have a background in finance. Its Director of Enforcement was most recently an in-house lawyer for Deutsche Bank[24] and its Investment Management Director was previously Global General Counsel for Merrill Lynch Investment Managers and Chairman of the firm's Global Risk Oversight Committee.[25] Two other senior executives are also drawn from investment banks. The SEC's Chief Information Officer formerly worked at both Morgan Stanley and Chase Manhattan,[26] whilst the Director of the SEC's Office of Investor Education and Advocacy, was previously Vice President for Global Compliance Operations at Goldman Sachs.[27] Several other current senior executives have a background in large corporate law or accountancy firms. The SEC's Acting Chief Accountant joined from Deloitte and Touche and its Associate Executive Director worked at Arthur Anderson & Co. prior to a period of Government service.[28] SEC's General Counsel joined from Cleary Gottlieb Steen & Hamilton LLP, where he was a partner in the firm's Washington D.C. office.[29] Two other senior executives have worked for corporate law firms and SEC's Executive Director was previously Executive Director of Univision Communications, Inc., the leading Spanish-language media company in the United States.[30]

92. Finally, the case of Iceland is notable because although all the senior personnel examined were drawn from public institutions – the Central Bank in particular – a number moved into the private sector after resigning from the regulatory authority.

93. The **Icelandic** regulator, the Financial Supervisory Authority (FME) began its operation in January 1999. Before that time the Bank Inspectorate of the Central Bank of Iceland and the Insurance Supervisory Authority had carried out the supervision of financial services.[31]

94. There have been 13 officers and directors of the FME listed in its Annual Reports published since 2000. The majority of these officers and directors have been officials of the Central Bank of Iceland, and two have held positions in the Ministry of Commerce. None appear to have had a background in banking or finance. The only exception is the former Vice-chairman of the FME until 2007, and Chairman between 2007 and 2009, who was also a partner in the international accountancy firm Deloitte in Reykjavík.[32]

95. Whilst none of the 13 FME officials appear to have been drawn from the private sector, three have since left to take up positions in banking and finance and one has reportedly been charged with tax evasion after moving into the retail sector.[33]

96. The next two examples that have been created after the onset of the financial crisis are examined to look for signs whether some of the issues identified are beginning to be addressed.

Regulatory agencies created in the financial crisis

97. On 3 November 2008 the UK Chancellor of the Exchequer announced that a new commercial company **UK Financial Investments Ltd** (UKFI) would manage the Government's shareholding in banks subscribing to its recapitalisation fund.[34]

98. According to *The Times* the plan to take direct stakes in the banks was made in October 2008 by 'an informal network of bankers such as representatives of UBS and JP Morgan... many of them connected to the powerful Business Minister [a former investment banker].'[35] The involvement of a former banker in the role of minister for business and with a responsibility for appointing financial regulators obviously represents a potential problem of conflict of interest resulting from the phenomenon of the revolving door.

99. The Treasury announced that UKFI would be managed by a board comprising: a private sector Chair, three non-executive private sector members, a Chief Executive and two senior Government officials (from HM Treasury and the Shareholder Executive). It stated that Sir Philip Hampton had agreed to become the first Chair and John Kingman the Chief Executive, and that 'remaining private sector board members' would consist of 'individuals of relevant commercial skill and experience'. [36]

100. Of the eight appointments announced by UKFI by April 2009, seven are known to have previously worked at one of the largest 116 banks, insurance or securities companies from the Fortune Global 500.

101. The Chair is a business executive who had been Chairman of J. Sainsbury plc, since 2004. Prior to that he had worked as Group Finance Director at Lloyds TSB Group plc and had previously worked at BT Group.[37] On 16 January 2009 Sir Philip Hampton resigned as Chairman of UKFI to take up his appointment as Deputy Chairman and Chairman-designate of the Royal Bank of Scotland. He was replaced by Glen Moreno who became Acting Chairman. [38]

102. The connections also straddle the world of business and the civil service. On 27 November 2008 UKFI announced the appointment of the Head of Market Investments, who joined UKFI from Merrill Lynch as Managing Director and Head of Equity Capital Markets for Europe, the Middle East and Africa.

He joined Merrill Lynch from Morgan Stanley where he had worked in a variety of roles since 1986. He also spent nearly two years on secondment to Her Majesty's Treasury as its senior corporate finance advisor from 2005-2007.

103. The subsequent appointees announced by the Treasury have with one exception also had such connections. Its Senior Banks Analyst joined UKFI from Execution Ltd and between 2003 and 2007 worked at Standard Chartered Bank, prior to which he was an analyst at UBS.

104. In January 2009 UKFI announced the appointment of four senior non-executive directors,[39] including a former Chief Investment Officer for Merrill Lynch Investment Management outside the US. [40] chief country officer for the UK at Citigroup Inc. and former vice-chairman of the British Bankers' Association, President of the Chartered Institute of Bankers [41,] Chairman of Pearson plc,[42] and a senior equity capital markets banker with extensive experience in privatizations who headed the global equity capital markets division at UBS until 2006. [43]

105. The single appointee that does not have such connections is the Chief Executive who was a civil servant at H.M. Treasury in the early 1990s under the Conservative government, and was appointed Press Secretary to the Chancellor of the Exchequer in 1999. However, in the interim period he worked as a columnist at the *Financial Times* and at the Group Chief Executive’s office at BP plc. [44]

106. In its response to the financial crisis the UK government has acted to create a new body to oversee the state interest in the banks. It may be that the reason that there are no citizen or worker representatives on UKFI is because of the necessary time pressures in creating UKFI. However, this has arguably resulted in a problem of conflict of interest resulting from the revolving door phenomenon.

107. Another institution created since the onset of the financial crisis is the **European Commission High Level Group.** The High Level group - often referred to as the de Larosière Group after its chair Jacques de Larosière - was approved by the European Council in October 2008 on the recommendation of the Commission. The Group was tasked with proposing a response to the crisis before the European Council’s Spring Summit in March.[45] According to the President of the European Commission José Manuel Barroso, the Group’s recommendations ‘will help us to develop our proposals for shaping global financial markets.’ [46]

108. The group is comprised of people closely linked to the financial industry, or to institutions that, to a greater or lesser extent, have been implicated in the crisis. Four members of the group are closely linked to financial corporations that have all played a significant role in the current financial crisis, a fifth was the head of the UK Financial Services Authority, a sixth is a critic of regulation and a seventh works for a company whose clients include major banks.

109. The issue here is the close connections between the high level groups and the regulated industry. Similar issues affect many other regulatory agencies or advisory bodies across the OECD countries.

110. There is little sign as yet that the issue of the revolving door is impacting on the creation and governance of regulatory agencies. The newly created institutions examined rely heavily on personnel from the financial sector, whilst recent appointments to the older regulatory agencies examined above show no departure from the pattern identified. For example, in March 2009 the U.S. Federal Deposit Insurance Corporation appointed a former Managing Director of J.P. Morgan and UBS Investment Bank as its Special Advisor to the Chairman for Markets,[47] and in February 2009 the U.K. Financial Services Authority appointed the head of European operations at J.P. Morgan as its chief operating officer.[48]

111. The most obvious sign that these issues are being taken up is the Executive Order issued on 21 January, the first day President Obama took up his office in the US, which does have significant consequences. It is examined in detail in the discussion on regulatory frameworks in Chapter 4.

112. The second part of this chapter turns to the political and regulatory connections of the largest banks, insurance and securities companies.

The Fortune Global 500 companies and revolving door

113. The 2008 edition of the Fortune Global 500 contains 116 firms from the banking, insurance and securities industries.[49] The research analysed data on the directors of all these firms with a view to building up a picture of the connections between these firms and governmental and regulatory agencies. The following provides a summary of findings to indicate the scale and nature of the connections and the intensity of the revolving door issue.

114. The data shows marked connections between the industry and the people charged with regulating it. These connections appear to be most numerous between the world's largest financial institutions, mainly based in Britain, Switzerland and the United States. It also shows a clear correlation between the number of revolving door connections and a company's ranking within the Fortune Global 500. In terms of the different business sectors within the finance industry, the securities companies showed by far the highest level of engagement followed by the banks.

115. The table below indicates the balance of companies in varying industries following the categories used by the Fortune Global 500 listing.

Table 3.1. Financial Industry Corporations from the Fortune Global 500

	Number of companies
Banks: Commercial and savings	67
Insurance Property and casualty (stock)	15
Insurance Property and casualty (mutual)	3
Insurance: Life, health (stock)	19
Insurance: Life, health (mutual)	8
Securities	4
Total	116

116. The table shows that the firms are mostly banks (67) and that in total the insurance industry includes 45 firms, mostly made up of stock (34) as opposed to mutual (11) companies. Examining the size of these firms in 2008, more than half of the banks (41) are in the top half of the table (i.e. above 250) with eighteen in the top one hundred. All the Securities firms are in the top half of the table - indeed the smallest securities firm (Lehman Brothers) comes in at 113 while the top three are all inside the top 100 firms in the world (Goldman Sachs, Morgan Stanley and Merrill Lynch at 61, 62 and 64 respectively). The insurance industry by contrast is more evenly distributed with eight of the fifteen Insurance Property and casualty (stock) and thirteen of the nineteen Insurance: Life, Health (stock) firms in the top half of the table. The

mutual firms by contrast are smaller with four of the eleven in the top half of the table (at 104, 115, 180 and 242) and none in the top one hundred.

117. The primary source of the data is biographical information on the current senior executives and managers available on the companies' website, as well as on the business directories of *Forbes.com*, *Business Week* and *Reuters*. This information was also supplemented with data from several other sources, including the Register of Interests of the U.K and Irish Parliaments, the U.K. Cabinet Office's Advisory Committee on Business Appointments, Dod's *Civil Service Biographies*, and the database of the Center for Responsive Politics in the United States.

118. It should be noted that in some cases, though board members of the companies examined are currently serving ministers of state, the connections (though recorded) have not been counted here. These include a number of directorships held by Ministers and other public officials at the German banks *Bayerische Landesbank, Landesbank Baden-Württemberg and KFW Bankengruppe*, the French insurance company CNP Assurances and the Russian bank Sberbank. These five companies are wholly or partly publicly owned and the appointments are ostensibly to represent the public interest on the board. For this reason they were not considered relevant for the current research which is concerned with the influence of the private sector within the public realm. Similarly several connections, though recorded, were not counted since the appointments were related to the injection of public money into the company since the onset of the current financial crisis. These included two executives of *Groupe Caisse d'Épargne* and two executives of *Aegon*.

119. Turning now to the specific findings, the data reveals that a majority of the 116 companies examined, have since January 2000 retained former or current members of government or regulatory agencies, or have had members of staff or executives move into governmental or regulatory posts. In total 81 of the 116 companies examined, or approximately 70 per cent, were found to have such revolving door connections.

120. The number of connections varied greatly. A plurality (36) of the 81 'connected' companies were found to have only one such connection, but a comparable number (28) were found to have more than three connections. A handful of companies showed an extremely high level of engagement. 17 companies were found to have five or more connections whilst five companies were found to have more than ten.

121. The data shows a clear correlation between the number of revolving door connections and a company's ranking within the Fortune 500. The companies with more than 10 revolving door connections were found to have a mean average Fortune 500 ranking of 44. The companies with between 6 and 10 revolving door connections were found to have an average ranking of 55. Companies with between 1 and 5 revolving door connections had an average ranking of 222, whilst those with where no revolving door connection was found to have an average ranking of 283.

122. In terms of the different business sectors, as defined by the Fortune Global 500, the securities companies, of which there are four (namely Goldman Sachs Group, Merrill Lynch, Morgan Stanley and Lehman Brothers Holdings), showed by far the highest level of engagement. The commercial and savings banks show a much lower level; but nevertheless still significantly greater than the insurance companies. Within the insurance industry the stock companies show a far higher level of engagement than the mutual companies. The figures are displayed below in Table 3.2.

Table 3.2. Extent of revolving door in financial industry corporations from the Fortune Global 500

	Average no. of Revolving Door connections
Banks: Commercial and savings	2.4
Insurance property and casualty (stock)	1.7
Insurance property and casualty (mutual)	0
Insurance: Life, health (stock)	1.7
Insurance: Life, health (mutual)	0.6
Securities	8.5

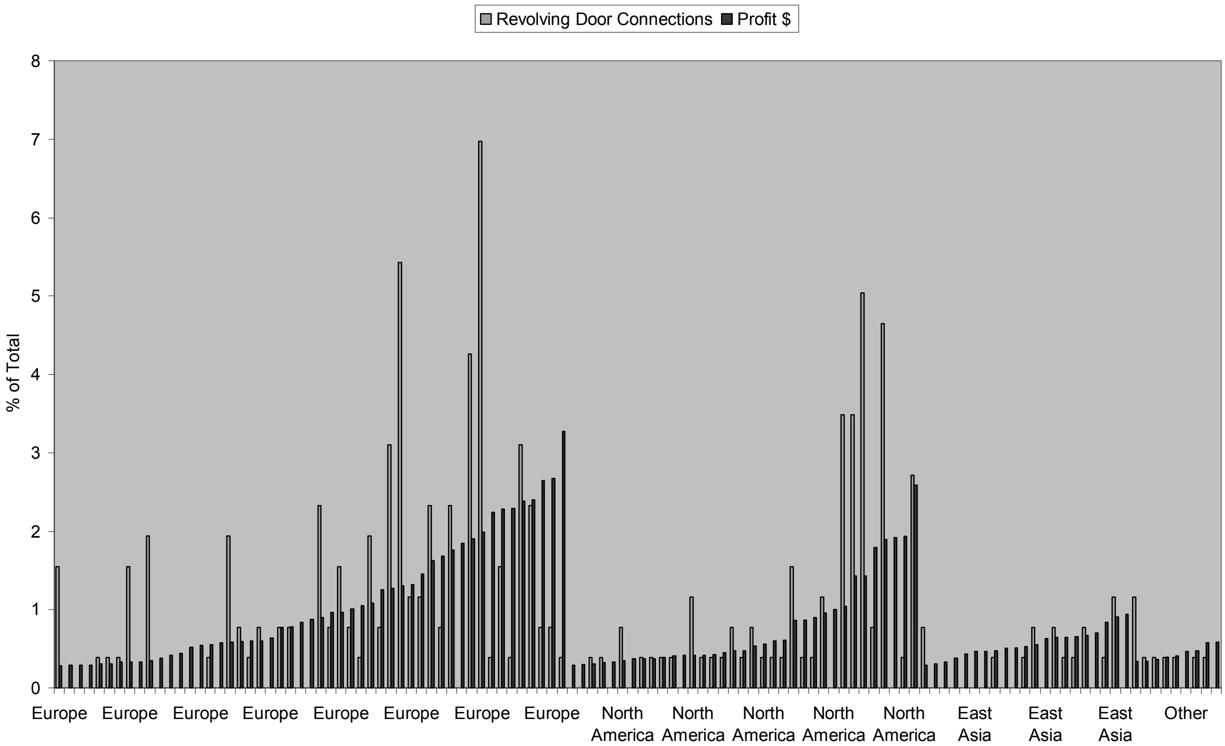
123. In terms of geographical variations, companies based in North America and Europe were found to have a much higher level of engagement than those of East Asia; the other major region represented in the Fortune Global 500. This may reflect the fact that the research has been limited primarily to English language sources that are less readily available in the East Asia region, as well as the general focus of the research on OECD member states. A breakdown of the average number of revolving door connections by region is shown in the following table.

Table 3.3. Revolving door connections in geographical regions

	Average no. of Revolving Door connections
North America (United States, Canada)	2.4
Europe (Austria, Belgium, Britain, Denmark, France, Germany, Ireland, Italy, Netherlands, Spain, Sweden, Switzerland)	2.9
East Asia (China, Japan, South Korea, Taiwan)	0.8
Australia	1
Brazil	0.3
India	1
Russia	3

124. The graph below compares the number of revolving door connections and profitability of each company in each of the four regions.

Figure 1. Comparison of profitability and revolving door connections in different regions



125. It should be noted that within the European region companies based in the United Kingdom showed a higher average number of revolving door connections than the average in mainland Europe. The average number of revolving door connections of companies based in Britain was 4.8, whilst mainland Europe considered separately from the United Kingdom gave an average of 2.3, a similar figure to North America.

126. Another country within Europe with an extremely high level of revolving door connections is Switzerland. Taken together the companies based in Switzerland (UBS, Credit Suisse, Zurich Financial Services, Swiss Reinsurance and Swiss Life) have an average of 6.2 revolving door connections; a figure which is by far the highest of any of the 22 countries where the corporations in the sample are based.

127. As outlined above, a number of the companies showed an extremely high level of engagement. 17 of the 116 companies were found to have five or more revolving door connections. These include

- Banks (Barclays, Citigroup, Credit Suisse, Deutsche Bank, Dexia Group, HBOS/Lloyds Group, HSBC Holdings, J.P. Morgan Chase & Co., Royal Bank of Scotland, Standard Chartered Bank, UBS - with one exception all are among the world's top 20 banks).[50]

- Securities firms (Merrill Lynch, Morgan Stanley, Goldman Sachs are the top three firms in the world).[51]

- Insurance Companies (Prudential, Swiss Reinsurance; Zurich Financial Services)

128. The size, industrial category and geographical base of these 17 companies conforms to the broader pattern of findings outlined above. 14 of the 17 are ranked within the top 100 of the Fortune

Global 500 and four of them are ranked amongst the ten largest companies in the world (Citigroup, Deutsche Bank and Dexia Group, and HSBC Holdings). The list includes three Securities companies (out of the four from the 116 sample), eleven banks, and three insurance (stock) companies. Geographically the 17 most connected companies are concentrated in the United Kingdom, the United States, and Switzerland. Six are based in the United Kingdom (Barclays, HBOS, HSBC Holdings, Royal Bank of Scotland, Standard Chartered Bank, Prudential); five in the United States (Citigroup, J.P. Morgan Chase & Co., Goldman Sachs Group, Merrill Lynch, Morgan Stanley); four in Switzerland (Credit Suisse, UBS, Swiss Reinsurance, Zurich Financial Services); and one in Germany and Belgium (Deutsche Bank and Dexia Group respectively).

Box 3.3. Barclays

Barclays is a commercial and savings bank based in the United Kingdom. In the current Fortune Global 500 it is ranked as the 70th largest company in the world and was the 24th largest financial company examined.

The Study discovered 14 revolving door connections at Barclays, making it the second most connected company examined after Deutsche Bank. The bank's connections are mostly with government, legislators and civil servants in the UK with two exceptions who are Americans, a former Deputy Director of Intelligence at the CIA who was subsequently recruited by Lehman Brothers then became Global Head of Sovereign Risk at Barclays Capital in 2008[52]; and an Under Secretary of Domestic Finance at the U.S. Department of the Treasury who was Non-Executive Director at Barclays Bank plc from 2005 to 2006.[53]

In Britain, former Barclays figures also moved into the UK government: one of them is currently Director-General of Finance at the Department for Business, Enterprise and Regulatory Reform (BERR).[54] while others joined the Cabinet Office's Business Support Group[55] or a former President of the Confederation of British Industry became the Chairman of the Cabinet Office's Better Regulation Task Force whilst still serving as a non-executive Director at Barclays.[56] On his departure the *Financial Times* was told that his most significant achievement was to persuade the UK government that regulation was "not a free good but a real cost to the economy".[57] Another business lobbyist and former Barclays figure who moved into government was Director-General of the Confederation of British Industry from 2000 to 2006 and then spent two years as a Senior Advisor to Barclays.[58] He was made a Life Peer in 2007 and then served for two years as a Minister of State at the BERR and the Foreign and Commonwealth Office promoting trade and investment.[59] He is one of two members of the House of Lords with connections to Barclays. The other has been Chairman of Barclays Private Bank since 2000.[60] In the House of Commons, one MP worked at Barclays Bank from 1993–2002[61] and another is currently a member of Barclays Asia-Pacific Advisory Committee.[62]

Former civil servants currently employed by Barclays include a former Chairman of HM Customs & Excise, who has been a Senior Independent Director at Barclays plc since 2003, [63], a former Non-executive Director of the Bank of England who was Chief Accountancy Advisor at HM Treasury from 1993 to 2003;[64] and former British diplomats who has been Vice-Chairman of Barclays Capital since 2003[65] and who was a Director of Barclays Private Bank Ltd from 1997 to 2001.[66] Barclays Bank employee was also seconded to the Department for Trade and Industry from 1998 to 2001 as an export promoter.

Box 3.4. Goldman Sachs Group

Goldman Sachs Group is a Securities company based in the United States. It is ranked by Fortune Global 500 as the 61st largest company in the world and was the 21st largest financial company examined. The study discovered 13 connections with government and legislators.

It found numerous senior figures within Goldman Sachs who moved into positions within government, public administration and Central Banks. The former Governor of the Bank of Canada and a Senior Associate Deputy Minister of Finance was the managing director of Goldman Sachs' Canadian operation until 2003.[67] The governor of the Bank of Italy is a former Managing Director,[68] and in 2005 the chief European economist for Goldman Sachs in London joined the Bank of England's Monetary Policy Committee.[69]

In the United States President Bush appointed Goldman Sachs executive Henry Paulson as Treasury Secretary,[70] whilst Mark Patterson, who was nominated U.S. Treasury Department Chief of Staff, previously worked as a lobbyist for Goldman Sachs.[71] Advisory Director and Non-Executive Chairman of Securities at Goldman Sachs until 2004 later served as Under Secretary of Domestic Finance at the U.S. Treasury from 2006 to 2008.[72] Another American has moved to and from positions in Goldman Sachs and the U.S. administration, as Assistant to the U.S. President for Economic Policy and Director of the National Economic Council from December 2002 until December 2004 and then was recruited as a director of Goldman Sachs in April 2005. He was then appointed Chairman of the U.S. President's Foreign Intelligence Advisory Board and Chairman of the Intelligence Oversight Board in January 2006.[73]

Goldman Sachs also recruited former government and regulatory personnel, for example in June 2006 U.S. Deputy Secretary of State joined Goldman Sachs.[74] An international adviser to Goldman Sachs International was European commissioner responsible for the internal market, financial services and financial integration, customs and taxation from 1995 to 1999 and for competition from 1999 to 2004.[75] The former Governor of the Reserve Bank of Australia and Chairman of the Australian Council of Financial Regulators, was appointed a member of the International Advisory Board of Goldman Sachs JB in 2007.[76] A former Special Advisor to the U.K. Chancellor and other Treasury Ministers, has been Managing Director in the Financing Group at Goldman Sachs since 2004.[77]

Goldman Sachs also has connections in the U.K. House of Lords with a Non-executive Director of Goldman Sachs Group from 1999 to 2007,[78] as well as a Vice Chairman of Goldman Sachs International and an International Advisor to Goldman Sachs on Europe since 1991.[79]

Box 3.5. UBS

UBS is a commercial and savings bank based in Switzerland. It is ranked by Fortune Global 500 as the 31st largest company in the world and was the 13th largest financial company examined. The study discovered ten connections with government and legislators.

UBS has recruited a number of former and current figures from the government and legislature in the U.S. and the UK. The Chairman of the Board of Directors of UBS AG since 2001 is a member of the International Capital Markets Advisory Committee of the Federal Reserve Bank of New York, and holds mandates with the Monetary Authority of Singapore's International Advisory Panel.[80]

A former U.K. Ambassador to France and Germany, was a Managing Director at UBS Investment Bank from 2000 to 2006,[81] and another British former Commercial Director at Department of Health, joined UBS Bank as a Managing Director and Vice Chairman in 2007.[82] A former U.S. Senator was appointed Vice Chairman of UBS Americas in 2002,[83] and several members of the U.K. House of Lords also have connections with the bank: a former Foreign Office Minister is currently a senior adviser to UBS Warburg[84] and a former UK minister and European Commissioner was appointed Chairman, UBS Ltd and Vice Chairman, UBS Investment Bank in 2000.[85] Lords were also appointed as a Director of Investment Banking and Vice-chairman at UBS in 2003,[86] and an Advisory Director to UBS-Warburg from 1997 to 2000.[87]

Two current directors of UK Financial Investments Ltd, the company established to manage the UK's public investments in financial institutions, are former UBS. Although not included in the figures, because the appointment preceded January 2000, another highly influential ex-UBS employee is the current UK Business Minister who has been an advisor to the current British Prime Minister and former Chancellor of the Exchequer Gordon Brown. A former investment banker at S. G. Warburg, which later became UBS, from 1984 to 1999 was an advisor to the Treasury from 1999 to 2007, and has been a Parliamentary Under-Secretary of State, Department for Business, Enterprise and Regulatory Reform since 2008.[88] According to reports in the UK press she has been an important and influential figure in formulating the UK Government's response to the financial crisis.[89]

Conclusion

129. The concern which flows from such connections is that the close relations could lead to conflict of interest at best and a suspension of critical faculties at worst. European Commissioner McCreevy has referred to such a view:

> In the case of legislators, I am convinced that over the years there has been too much 'regulatory capture' by the sell side of the financial services market: Their lobbies have been strong and powerful.[90]

130. Certainly this has been the implication of much commentary on the issue - from NGO's and civil society groups in the US[91] and European Union[92] to traditionally 'right wing' newspapers such as the UK *Daily Mail*, which has repeatedly reported the closeness of ministers, regulators and civil servants with industry lobbyists.[93]

131. The issue that the density of these networks highlights is not simply one of post or employment or of 'pre'-public employment. It is evident from the data above that in the case of the largest financial institutions there are multiple and ongoing relationships between the government, regulatory agencies and corporate leadership. On the one hand this could be seen as a positive sign that government and private

sector are both learning from the experience of the other, but on the other it could suggest the kind of regulatory capture referred to by Commissioner McCreevy.

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CHAPTER 4. PRECEDENTS AND PRACTICE: AN OVERVIEW OF REGULATORY AND ETHICS SOLUTIONS TO PRE- AND POST-EMPLOYMENT CONFLICT OF INTEREST

132. This chapter focuses on precedents and practice surrounding conflicts of interest in financial regulation, focussing where possible on available guidance and codes of conduct that govern pre- and post-employment conflict of interest. This review is mainly focused on the United States and United Kingdom, which operate different systems of financial regulation, the relative merits of which have been, and continue to be debated. The US system is defined by a functional array of regulators whereas the UK model is based around an integrated regulator working in a tripartite arrangement with the central bank and government. The analysis first examines in detail current practice and the evolution of ethics guidance on conflict of interest, reviewing the policies in place in selected financial regulators. The analysis then considers some examples of rules concerning pre-and post-employment (i.e. the 'revolving door' phenomenon) from other regulators and public sector agencies.

Evolution of revolving door regulation in the US

133. The debates on revolving doors and financial regulation in the late 1970s and early 1980s bears some resemblance to the current discussion on how to pitch regulatory reform so as to increase transparency and safeguard public confidence in government and the markets. In both cases the political momentum was moving towards more comprehensive regulation, which included the role of financial/market regulators.

134. Roberta S. Karmel, a former Commissioner of the SEC argued in 1978 that reforming revolving door rules ought to be handled sensitively, and be cognizant of a community of interests between public and public servants: "In order for democratic government to work the healthy distrust of government which is embedded in our constitution must not lead to an automatic distrust of our elected and appointed officials. We need a sense of community between members of the public and government officials, who are, after all, members of the public in government service." [1] Of course regulators may be part of the general community, but they may equally be part of the investment community and indeed other communities who could be seen to have special interests.

135. Most of the evidence presented in the previous chapter points to regular personnel exchange and traffic between officials working in banking, securities and financial regulation, and the industries they have regulated. The logic of revolving door rules and disclosure regimes is that such interests should be widely known and understood. There are models available that prohibit regulators having any stocks or shares in the companies they regulate. This would be a baseline requirement for the rebuilding of financial regulation. However, managing potential conflicts between former colleagues, friends and peers on either side of the regulatory divide is more complex.

136. Karmel argued that conflicts of interest caused by people moving between public and private sectors can be addressed by regulation and full disclosure. This is a preferable solution, she argued, than placing a ban on all such movements through the revolving door, which offers a renewal of talent for both sectors. This speech was in reaction to the then Carter administration proposing a blanket prohibition against any contact with an agency for financial remuneration for one year after termination of employment, and the public disclosure of personal financial information. In particular Karmel was opposed to reforms which elevated form over substance: that is, reforms which were designed to create the appearance of non-conflicts of interest and the presumption towards full public disclosure, when there may be little, if any, cause for placing such information in the public domain.

137. However, it appears that the current context demands that extraordinary measures are taken to restore trust in financial regulation and oversight, including the principle of full public disclosure of interests as a cornerstone of the new regulatory framework. Anticipating some of the changes that have characterised the deregulation of financial markets and banking in the last generation the former Chairman of the SEC, Harold M. Williams, presciently observed in 1981 that:

> Regardless of the philosophical bent of those in office, formal governmental regulatory systems can be dismantled only to the extent that the public's reasonable expectations of private sector performance and conduct could be, with reasonable likelihood, otherwise satisfied. *Conversely, if the private sector itself does not provide an environment which fosters public trust and confidence, no political office holder could insulate it from the consequences*.[2] (emphasis added)

138. The collapse in confidence in the system and practice of financial regulation across the developed economies means that a re-thinking of how best to regulate the regulators is an important part of the policy response to the current financial crisis. UK Chancellor Alastair Darling recently captured this sentiment when he stated: 'There is something of a social compact between banks and the people that they serve. It is time to reshape it.'[3] But, according to what principles and best practice? If regulators are to carry the fiduciary burden of restoring trust, and both protecting and promoting the public interest, the terms and conditions of their employment are of critical importance. An overview of contemporary rules and practices in relation to pre-, and post- employment of regulators provides an important point of departure for this analysis.

139. The US Securities and Exchange Commission has long developed guidance on revolving doors and conflict of interests. These are among the most detailed in any OECD country. The key principles which underpin these regulations include the notion of fiduciary duty, where public office is held as a trust, and a public servant's primary obligation is to the public interest. This means that the essence of public office is to uphold the general good above sectional interests. In relation to financial interests it is generally held that a public servant should not have any financial stake or relationship with the private corporations that he or she is responsible for regulating. Such an expectation does not apply widely outside the US, and is an acute issue in the field of financial regulation. Though as we noted above the financial regulation regimes in many OECD countries do not in practice live up to such standards.

140. There is also an ingrained expectation in the US system that form *and* substance do matter. While previous SEC commissioners have railed against the distortions of disclosure (see Karmel above) it remains the case that public officials must be, *and clearly be seen to be*, independent of the interests they regulate. According to one ethics counsel to the SEC a system that secures the confidence of the public must at least include a written code (which is widely disseminated and included in induction and training), strong leadership which lives by its code of conduct and promotes and reinforces a culture of ethical behaviour and transparency, and crucially (given the lapses in practice and enforcement across many regulatory systems in relation to banking and finance) 'Fair and Vigorous Enforcement'. [4]

141. Rules governing conflicts of interest in public office have evolved over time. The piecemeal and ad-hoc legislation that was on the statute books was brought together and codified in 1962 in the form of Chapter 11 of Title 18 of the United States Code. This code covers a range of issues including bribery, compensation and gifts. In relation to revolving doors and conflicts of interests the sections which are perhaps the most relevant are those dealing with 'Restrictions on former officers, employees, and elected officials of the executive and legislative branches', [5] 'Acts affecting a personal financial interest',[6] 'Offer of loan or gratuity to financial institution examiner'[7] and 'Acceptance of loan or gratuity by financial institution examiner'.[8]

142. The rules on post-employment restrictions established, in some cases, permanent bans and in other instances one and two-year 'cooling off' periods upon leaving public service (depending on the seniority of the officials). The provisions also regulated the behaviours of former elected representatives, staff and regulators. They specify that 'after the termination of his or her [public] service … knowingly makes, with the intent to influence, *any communication to or appearance before any officer or employee of any department*… in connection with a particular matter… in which the [state] is a party or has a direct and substantial interest, in which the person participated personally and substantially as such officer or employee, and which involved a specific party or specific parties at the time of such participation'.[9] (emphasis added).

143. This rule in effect prohibits former public servants 'switching sides' and representing private interests on matters which they previously held fiduciary trust. The statute recognizes that more senior officials should have more stringent rules applied to their post-employment behaviour as capacity to wield influence with former colleagues is more significant. Such staff are banned from contacting their former agency with regard to any matters formerly within their official portfolio, even where the official was not personally aware of the matter. These rules also prohibit contacts and communications on new cases and issues that may arise in the year after former public servants join the private sector.

144. The rules governing financial conflicts are set out rather simply, a clarity that appears both welcome and necessary in establishing confidence that regulators' actions are not driven by their personal financial interest.[10] Statute 208 prohibits officials from working on matters that would have a 'direct and predictable effect on his or her financial interest *and* the financial interests of their immediate family (including spouse, dependents) or any outside organisation in which they hold office[11] or with any organisation with whom the official is negotiating future employment. It is this rule in particular that compels the disclosure of the financial interests of public servants in the US.

145. Section 212/213, Offer/Acceptance of loan or gratuity to financial institution examiner, bans incentivising a public servant through the offer of loans, grants or gratuities. Moreover 'A Federal financial institution regulatory agency may prescribe regulations establishing additional limitations on the application for and receipt of credit under this section and on the application and receipt of residential mortgage loans'.[12]

146. The logic of public financial reporting and disclosure in the US system, as developed in the 1978 Ethics in Government Act, and its amendment in the 1989 Ethics Reform Act (which created the Office of Government Ethics, OGE), is that conflict of interest are minimised through full public disclosure.

147. The SEC has since its inception developed rules that prohibit employees from certain forms of trading and investment. In 1953 the SEC was the first government agency in the US to introduce written regulations proscribing certain post-employment practices, financial transactions, personal conflicts, negotiation for private employment after public service. In the past half century these rules have been relaxed somewhat, especially in terms of cooling off periods and investments in mutual funds.

148. Originally, employees were required to hold all securities for at least one year after the purchase date. Later, the holding period was reduced to eleven months and then to six months, which is the requirement currently in effect. Mutual fund purchases, once totally banned, may now be made with certain limited restrictions.[13]

149. The SEC's rules on securities ownership were specifically designed to avoid conflict of interest and encourage disclosure. The major provisions in terms of officials and employees are as follows:

- Carrying securities on margin, purchasing securities with borrowed funds, and selling short are prohibited;
- Holding an interest in a broker-dealer or investment advisor directly regulated by the Commission is prohibited;
- Purchasing or selling securities that are subject to current registration statements is prohibited, but waivers are available for sales if the employee has no non-public information and is not working on the registration;
- Purchasing securities of a company that to the employee's knowledge is involved in current Commission investigations or proceedings, or that is in a bankruptcy proceeding in which the Commission has made an appearance is prohibited;
- Purchasing or selling options, futures, or options on futures involving a security or group of securities is prohibited;
- Selling a security that has been held for fewer than six months after purchase is not permitted unless an exception (such as transfers within a family of mutual funds after being held for 30 days, or if a stop-loss order has been entered at the time of purchase) is available;
- All securities transactions (other than subsequent transactions in a money market fund or some other exceptions) must be reported within five days of the transaction and all securities holdings must be reported annually.[14]

150. Notwithstanding these provisions, there appear to be significant exemptions and waivers in practice. While considerable effort is devoted to training, education and counselling regulatory staff on the rules and their interpretation, there appears to have been some drift in the original intention of the SEC's regulations to create clear, fair and proportionate regulations that would insulate officials from conflicts of interest, particularly in their own market activities. This would appear to be an appropriate moment to reconsider what the purpose and effect of the current regulations are, given recent experience and widespread loss of confidence in regulatory oversight and performance.

151. The Obama administration in Washington has clearly signalled that reform of revolving door issues specifically and related conflict of interest measures are an important element of restoring faith in the US system of governance. President Obama signed an Executive Order upon entering office aimed at tightening up pre- and post-employment guidelines. These state:

> 2. Revolving Door Ban All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
> 3. Revolving Door Ban Lobbyists Entering Government. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
> (a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment;
> (b) participate in the specific issue area in which that particular matter falls; or
> (c) seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment.

4. Revolving Door Ban Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.
5. Revolving Door Ban Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non career Senior Executive Service appointee for the remainder of the Administration.[15]

152. It is widely anticipated that legislation will follow to make these rules binding for officials in all branches of government. There is also an expectation that the rules and principles governing financial regulation and conflicts of interest will also receive close scrutiny.

153. The increased sensitivity to influence by outside interests in the banking and finance sectors is already evident in the US Treasury policy on the implementation of the Troubled Assets Relief Programme (TARP) and the Emergency Economic Stabilization Act (EESA). New rules on lobbyists and the 'bail out' include the implementation of 'safeguards to prevent lobbyist influence over the program, including restricting contacts with lobbyists in connection with applications for, or disbursements of, EESA funds… The Treasury Department will ensure that political influence does not interfere with EESA decision making, using as a model for these protections the limits on political influence over tax matters.'[16] This approach is being mirrored across Washington. The U.S. House of Representatives Financial Services Committee recently extended the recusal of a former committee aide now lobbying for Goldman Sachs from contacting any staff or members for an extra year, owing to 'an abundance of caution due to the nature of financial regulation reform'.[17]

The United Kingdom

154. In the UK rules governing conflict of interest in financial regulation, are administered via the code of conduct of the Financial Services Authority (FSA).[18] The code of conduct outlines a series of conflict of interest staff should avoid, and mechanisms for their disclosure to line managers within the FSA. Public transparency in relation to such conflict of interest is not secured in this model. The conflicts captured in the FSA staff handbook are outlined as follows:

a) a direct or indirect financial interest;
b) a direct or indirect financial interest held by a commercial undertaking with which we have connections;
c) a personal association or relationship with those affected, or likely to be affected, by the information or issue in question;
d) an expectation of a future interest (for example, future employment);
e) in some cases, a previous association with the information or issue in question;
f) an interest arising from a common interest grouping, such as a trade association or other public or private society.
This list is not exhaustive, nor will all of the examples necessarily give rise to significant conflicts of interest. If you are in doubt about whether a conflict has arisen, please consult the Ethics Officer.[19]

155. The procedures in place to guard against such conflicts involve reporting to line managers, a designated Ethics Officer, and using an internal electronic communications system. Those entering employment in the FSA are required to disclose their interests, including details of previous employment with 'relevant organisations' in preceding five years, and other material and significant relationships with such organisations, including:

a) any post, other employment or fiduciary positions that you hold, or have held in the past five years in connection with a Relevant Organisation or an organisation that presently, to your knowledge, has a contractual relationship with the FSA;
b) any other significant relationship, including a professional, personal, financial or family relationship, held in connection with or capable of affecting a Relevant Organisation; This includes investments normally excluded from the definition of Securities and related investments for the personal dealing requirements … (collective investment schemes and insurance, including pension products). You are also required to make a disclosure in the circumstances … e.g. if you are in dispute with a Relevant Organisation over the provision of products or services;
c) the names of organisations with which you hold Securities and/or related investments, pension products, investments with life assurance content, mortgages, endowment policies, collective investment schemes, holdings in investment portfolios (including where full or partial discretion is given to the investment manager), interests in hedge funds and private equity funds;
d) the names of family members that hold positions or are employed by a Relevant Organisation or a firm connected with the FSA's business, such as a supplier or professional adviser;
e) details of any Connected Person who works at the FSA.[20]

156. The provisions of the FSA code mean that such disclosures are confidential to the organisation, and indeed, to particular officers within the organisation (specifically the line manager and ethics officer of covered officials). Potential and actual conflicts of interest therefore are unlikely to be known about by other staff or colleagues, except in extraordinary circumstances. This situation places an onus on the public servant to declare and disclose emergent conflicts that arise through the course of work. The FSA code of conduct makes special provisions for a number of potential conflict of interest, including the receipt of hospitality, share dealing, and the disposal of assets.

157. FSA employees are required to seek prior clearance to deal in securities and other related investments organisations regulated by the FSA. Staff must complete an electronic request and secure their line manager's consent to the proposed dealing. The code explicitly provides against the use of material market sensitive information: 'you must not deal or begin the process of dealing before clearance has been given or if clearance is refused**.** This includes calling your broker and putting them on standby to deal in specific securities. Once approval has been given you are free to deal, but must do so within two working days of clearance otherwise you must apply for clearance again'.[21]

158. This advice is intended to ensure that conflicts of interest associated with regulators financial dealings are avoided and that officials clearly recognise that permission must be sought and received before any transactions can be initiated. The guidance also highlights the time-sensitive nature of permission and action. Staff would be expected to know that their market dealings related to relevant organisations are subject to authorisations that must be sought and secured continuously. While this guidance offers a framework which might prevent certain conflict-of-interest situations arising the question of whether regulators should be allowed to trade at all requires some consideration. The merits of blind trusts and the standardisation of advice is a matter that will be returned to below.

159. The conduct of employees at the FSA is also prescribed in terms of contacts with outside organisations, especially the media and regulated organisations. Staff are made aware that they must not speak to the media on matters related to their work, or the work of the FSA. This guidance is to avoid the possibility of market sensitive information being released via the media. However, market sensitive information can also be communicated to other interested parties, and the FSA code of conduct includes provision against disclosing confidential information, the breech of which may result in criminal charges:

- You should be particularly discreet in casual, social or other contact with journalists, regulated firms and individuals and other people operating in the financial markets.

- Disclosing confidential information without permission may be a criminal offence.
- The duty to observe confidentiality is ongoing and does not cease after you leave the FSA.[22]

160. The FSA code of conduct also offers guidance on other professional contacts with regulated organisations. It offers specific advice on recording hospitality from covered organisations, which means that details of working breakfasts, lunches and drinks receptions are discoverable and available to outside scrutiny (though these details are not routinely published by the FSA). The code also cautions against accepting 'exclusive or expensive hospitality' unless it will further the FSA's interests, or increase the regulators effectiveness. However, this guidance is rather general and vague and does not identify any grounds or criteria against which a judgement about furthering the regulators interests or efficacy might be judged. This raises the important question of the regulatory culture operated by financial supervisors in general, and the FSA in particular. A recent review of financial regulation by the main UK opposition party argued that:

> Creating an effective regulatory structure is a necessary but not sufficient condition for a successful regulatory regime. Critically, the regulatory agencies within the structure must be adequately resourced with talented and experienced staff, enjoy an appropriate range of powers under the legislative framework and have a good working relationship with the financial institutions they oversee.[23]

161. The question of appropriate regulatory culture arises from the final part of this statement. The assumption in the above review, and many similar analyses of financial regulation, is that regulators should in many respects be close to those who are regulated ('close' in the sense of coming from the same kinds of professional backgrounds, with similar professional experiences, and many shared assumptions about the role of markets and regulation). This is an assumption that should be tested as it is not at all obvious what the wider social or public benefits of such close interrelationships between financial regulators and financial industries are.

162. One of the recent regulatory responses to the financial crisis in the UK has been the introduction by the FSA of the Supervisory Enhancement Programme, which involves the recruitment of extra staff to oversee the UK financial services sector. In testimony to the UK Treasury Select Committee the head of the FSA frankly admitted the short-coming of the partnership approach to regulation overseen by the FSA since its inception, outlining key faults and remedies which included:

> Inadequate resources devoted to some potentially high impact firms, too rapid turnover of some of the key staff and a failure in some classic protest things to document and make clear what had occurred and to stick to procedures…[the Supervisory Enhancement Programme] entails an additional 218 people in focused relationship management supervision. By relationship management we mean supervision of those larger institutions where we have dedicated professional people to them. That is 218 extra people, which is on top of about 500.[24]

163. This recruitment drive is explicitly targeting a blend of industry and public service specialists, the former are required as they are said to understand the issues from the industry perspective, whereas the latter take 'a more dispassionate view with a professional regulatory background'.[25] The FSA response also includes a new nine week induction programme for new staff, and existing supervisors are to be put through 'a defined training and competence scheme'.[26] This is a pretty stark admission that financial regulatory practices and regulators skills in the UK were simply not fit for purpose. In more recent testimony the head of FSA referred to the need for a 'fairly complete change in the structure of banking regulation *and the style of bank supervision*. (emphasis added)[27] This new style of banking supervision requires at minimum a preparedness for regulators to ask much more searching questions of industry, and placing regulation on a more interventionist footing. This would mean that regulators would be prepared to

'product regulate', or ban financial products on the basis that they may be too complex and too risky. The head of FSA outlined a vision of the necessary new style of financial regulation as follows:

> I think that regulators in the future can do a very much better job than in the past in leaning against the winds of exuberance…I also think that only regulators or central banks can do it. I think we have a fundamental issue here rooted in human nature and institutional cultures whereby, if we leave the leaning against the wind entirely to boards of directors and management, it will not happen to sufficient extent. I think that human nature and institutional cultures do have a tendency for, as it were, the animal spirits of capitalism to get out of hand and be self-reinforcing.[28]

164. This is where distance and the challenging, rather than sharing, of basic assumptions becomes critical. Recent research suggests that there is an important relationship between financial stability and regulator independence, from both political control *and* market participants.[29] Therefore regulatory reforms should consider how best to create and maintain appropriate distance between regulators and regulated. Evidence supplied to the UK Treasury Select Committee revealed that regulators bonuses could be influenced by appraisals from the banks and financial institutions they were charged with supervising, which was seen as a strong disincentive to robust regulation.

165. FSA staff were anxious not to antagonise the banks because of the potential impact on pay. The FSA's regulatory staff were warned "not to frighten the horses" during visits to financial institutions because it relied on their cooperation. The FSA ethos was that it was "to serve" the industry which fully funded it. Staff turnover and lack of resources meant there was insufficient FSA expertise to question the strategies of the big banks.[30] This remains a serious problem for the FSA. Recent disclosures under Freedom of Information legislation reveal that staff 'churn' continues, with 268 new appointments and 190 full-time staff leaving between January 2007 and April 2009. Despite a concerted recruitment drive the majority of the new intake at the FSA have been at the lowest pay-scale available (the number of 'associates' in this pay bracket has increased from 412 in December 2007 to 567 in April 2009. In the same period the number of 'specialists' at the FSA only increased from 20 to 23).

166. The UK context has arguably witnessed confusion about the role of financial regulation, where the public interest was unproblematically seen to equate with the interests of the City. In effect 'better regulation' meant a regulatory regime that saw its mission in part as promoting London (and the rest of the UK) as a business-friendly environment.

UK Financial Investments Limited (UKFI)

167. UK Financial Investments Limited is the company created in November 2008 by HM Treasury (which is also its sole shareholder) to manage the UK taxpayers' interest in Britain's rescued banks. The company's activities are governed by its Board, which is accountable to the Chancellor of the Exchequer. Membership of the Board of UKFI comprises a private sector Chair, non-executive private sector members, a Chief Executive seconded from HM Treasury and senior Government officials. The Acting Chairman – formerly at Citicorp – received attention upon his appointment to the post given his relationship with the Liechtenstein Global Trust, although his interests in Citibank and the Man Group were apparently declared to the executive search company, and interview committee, for UKFI (though these were not discussed explicitly with the Chancellor of the Exchequer). [31] It is not yet public what, if any, conditions have been placed on his post-employment as the Acting chairman of UKFI, once he steps down from his role in UKFI. All the independent non-executive members of the board of UKFI were appointed after public advertisement of the posts and the normal interview process. UKFI was created to be a small, lean, organization, with a projected staff complement of 16, including seconded civil servants. At the beginning of March 2009 two members of UKFI staff were drawn from the financial services sector.[32] UKFI has subsequently continued to appoint staff from commercial banking.[33]

168. In March 2009 the Framework Document between UKFI and HM Treasury was published (and was revised in July 2009).[34] The investment strategy of UKFI is still unpublished, and is understood to be under negotiation between UKFI and HM Treasury. In effect UKFI has devoted its energies in the early months of its existence to crisis management and financial stability. This has meant that attention has yet to fully focus on the strategy for UKFI to sell public shares in rescued banks. However, in terms of employment practices the performance of UKFI employees will not attract bonuses related to the sell-off of such shares, as this is recognised as potentially introducing a perverse incentive for employee performance within the company.

169. Paragraph 7.3 of the Framework Document guidance on conflicts of interest is published. This states that:

> HM Treasury is determined to ensure that: (i) the Investments, and the management of the Investments by the Company do not lead to a prevention, restriction, distortion or significant lessening or impediment of effective competition in contravention of merger control or competition law restrictions; and (ii) the Company adopts appropriate procedures for managing conflicts and inside information. In order to achieve this objective, the Company will, in particular:
>
> (A) ensure that there are no cross-directorships between:
> (i) the Listed Investee Companies in relation to the appointments in which it has a specified role;
> (ii) the Listed Investee Companies (in relation to the appointments in which it has a specified role) and the Wholly-Owned Investee Companies; or
> (iii) the Company and the Listed Investee Companies;
> (B) put in place robust barriers which are monitored and adhered to by Company personnel and enforced by the Board at all levels to ensure that commercial information relating to:
> (i) a Listed Investee Company does not leak to, and is not exchanged with, another Listed Investee Company or a Wholly-Owned Investee Company; or
> (ii) a Wholly-Owned Investee Company does not leak to, and is not exchanged with, a Listed Investee Company;
> (C) develop and maintain procedures to ensure that:
> (i) it exercises its rights in relation to each Investee Company individually if and to the extent required to comply with merger control and competition law restrictions; and
> (ii) it does not exercise its rights in relation to Investee Companies , or otherwise manage the Investments, in a manner which may result in a prevention, restriction, distortion or significant lessening or impediment of effective competition; and
> (D) develop, establish and apply policies and procedures to ensure that the Company (and its directors, officers and employees) abides by the Code of Market Conduct, and other rules and guidance laid down by the Financial Services Authority and recognised investment exchanges to which securities of the Listed Investee Companies are admitted to trading (such policies and procedures to cover, in particular, insider dealing and market abuse) (the "**Compliance Policies**"). In this context, it is envisaged that the Company will normally act as other institutional shareholders would act, using published information in a structured dialogue with key members of the Listed Investee Company's board. In considering whether it is necessary or appropriate for the Company (or any of its directors, offices or employees) to become an "insider" in relation to a Listed Investee Company (for example where it is necessary for the Company to receive price-sensitive information to enable it to perform its responsibilities under this Framework Document), the Company will pay due regard to the objective of implementing the Investment Mandate and manage the situation in accordance with the relevant elements of its Compliance Policies.[35]

170. The creation of UKFI in late 2008 has involved the recruitment of a board and small team from industry and government – in effect everyone in the company has come through the revolving door.

Currently UKFI is housed within the UK Treasury and piggybacks on some of that government departments resources. While UKFI was created to operate at 'arms length' from government it is clear that the company is also subject to ministerial guidance. Therefore the relationship with its shareholder, as set out in paragraph 9.1 of the Framework Document, is a matter of public interest, and relevant to those financial institutions in which UKFI is itself the main shareholder. The document states:

> Interactions between the Company and HM Treasury need to be underpinned by resolve on both sides to conduct affairs on the basis of a professional, efficient, trust-based dialogue:
>
> (A) Professional: professional people engaged in dialogue relevant to delivering the Company's objectives, with commitments delivered on time and to specification;
>
> (B) Efficient: both parties ensuring a joined-up and efficient approach amongst their constituent elements; and
>
> (C) Trust-based: open dialogue, based on a shared commitment to providing the Company with the ability to pursue its objectives effectively.[36]

171. UKFI has been described as acting like an 'engaged institutional shareholder' in its dealings with rescued banks.[37] It has been praised by its chairman as setting new standards for engaged shareholding, but has also attracted some criticism for poor communication and secrecy in its operation and dealings to date. The reporting activities of UKFI are rather minimalist to date, but chairman and chief executive are required to appear before official committees if requested. Details on remuneration and guidelines on dealing with pre- and post-employment matters are unlikely to be published, but may be the subject of future parliamentary scrutiny.

Managing conflict of interest and revolving doors: Financial regulators and beyond

172. This part briefly reports and reviews available guidance on financial regulator conflict of interest, and what rules and guidance are available concerning revolving door issues. In general it is clear that revolving door conflict of interest appear to be a lesser order concern to many financial regulators than conduct and ethics issues in terms of handling of sensitive information and declarations of interests. The analysis also includes a review of some recent public agency initiatives to tackle growing concern about revolving door conflict of interest.

173. The **Australian regulatory system** divides regulatory oversight into two branches: one dealing with consumer protection (ASIC) and another dealing with the soundness of financial institutions (APRA) (referred to sometimes as the 'twin peaks' approach). The Australian Council of Financial Regulators (Council) membership comprises representatives of the Reserve Bank of Australia (RBA), the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Treasury. The Council is chaired by the Governor of the RBA.

174. The Australian Prudential Regulation Authority (APRA) code of conduct[38] offers principle based guidance on managing conflict of interest and relations with outside interests. Regulators are encouraged to 'be alert to any situations where your private interests could possibly conflict with your duty to APRA. This is particularly relevant to ownership of or interests in securities of institutions regulated by APRA.[39] APRA did not introduce an absolute ban on staff holding securities in regulated institutions because it ' would disadvantage many staff with holdings which they had prior to the introduction of this policy or the establishment of APRA with its responsibilities wider than those of their former employers; and could preclude the employment of new staff who are desirable employees by reason of their connection with the financial sector and who have acquired personal interests in the financial sector because of that

connection.'[40] It is not clear why mechanisms to dispose of such interests in ways which would not adversely affect the overall value of the covered officials financial interests were not explored, particularly as the code acknowledges that it is important to ensure that conflict of interest, real and perceived, as minimised. Instead, staff are prohibited from acquiring additional holdings on joining ARPA, and must submit an annual statement of their securities holdings, which are reviewed by senior management. New investments by ARPA staff in ARPA regulated institutions are only permitted through managed funds.

175. In terms of employment practices the ARPA code allows its employees to 'obtain supplementary employment outside APRA, or hold honorary positions in clubs, charities, etc., provided the performance of APRA duties is not adversely affected and there is no conflict of interest'.[41]

176. Australian Securities and Investments Commission (ASIC) does not publish in-house guidance on its official website on conflicts of interest or revolving doors issues. Guidance on better regulation or careers information does not mention these matters. ASIC officials are covered by the standards of conduct set out in the Guidelines on Official Conduct of Commonwealth Public Servants (GOCCPS). These guidelines are constructed around the principles of integrity, equity and the need to avoid real or apparent conflict on interest. It is worth noting that these regulations cover financial and personal interests of the official and their immediate family members. [42] Principle 8. (b) of the Bowen Report directs officials not to 'solicit or accept any benefit, advantage or promise of future advantage , whether for himself, his immediate family or any business concern or trust with which he is associated from persons who are in, or seek to be in, any contractual or special relationship with government'. [43]

177. The **Canadian model of financial regulation** has attracted some attention recently, given that the Canadian banking system has performed relatively well to date in comparison to its G8 peers. The Canadian system is centred on the Office of the Superintendent of Financial Institutions, which regulates both the banking and insurance sectors. Regulation of securities is handled at the sub-national level and each Canadian province has competence in this area. However, a draft Securities Act proposes to transfer these powers to a national agency.

178. The OSFI promotes a policy to govern conflict of interest, including provisions on post-employment activities. The guiding principle of this policy is in favour of the public interest:

> Employees must act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law. Employees must be aware of the perception of a particular situation in the public eye and act with a view to minimizing actual and perceived conflicts of interest. Employees shall take necessary actions and arrange their private affairs in a manner that will prevent real, potential or apparent conflicts between their private interests and public service duties from arising, but if such a conflict does arise, it shall be resolved, in a timely manner, in favour of the public interest.[44]

179. The policy regarding the financial interests and activities of staff in OSFI states that the regulators staff are as prohibited from beneficially owning, directly or indirectly, what are termed controlled assets such as 'any securities of any financial institution or any other institution, however created, carrying on any business in Canada substantially similar to the business of a financial institution; … any securities of a corporation the value of which are materially dependant on investments in one or more financial institutions or related entity, or any other institution, however created, carrying on any business in Canada substantially similar to the business of a financial institution; …mutual funds, exchange-traded funds, pooled funds and any investment funds that have a stated policy of investing primarily in Canadian financial institutions; …any securities of a company owned by a financial institution that deals primarily in financial activities …[and] for employees who participate in the awarding of government contracts, securities in a corporation, or loans receivable from a corporation, that contracts with OSFI. [45] The OFSI also issues guidance on exempt assets, which is relevant to issues of revolving

doors in that 'money owed by a previous employer, client or partnership' is deemed an exempt asset.[46] The guidance issued by the OFSI includes detailed exemplars of conflict of interest, so guidance is not too abstract, which is important in terms of staff and indeed public understanding and disclosure.

180. The OFSI code also contains detailed rules on the disposal of controlled assets. These rules mean that an employee of the OFSI must divest any controlled assets within 120 days of taking a public appointment. This regime appears to be one of the most comprehensive in place in financial regulation and is a model that other regulators might look to as an example of best practice:

- Within 120 days after appointment, employees shall arrange for their Controlled Assets to be disposed either through divestment in an arm's length transaction or placing them in a blind trust. Controlled Assets that have been pledged to a lending institution as collateral shall be arranged for disposal within 180 days after appointment.

- If possible, employees should avoid being involved in any decisions relating to the timing of the disposition. They must also decline to be involved in any circumstances or decisions that may lead to a conflict of interest because of their ownership of the Controlled Assets until they have disposed of them.

- Employees obtaining Controlled Assets because of situations beyond their control such as inheritances or gifts are required to report these assets and arrange for them to be disposed of either through divestment or placing them in a blind trust within 120 days.

- The Superintendent's designate is responsible for determining that a trust meets the necessary requirements, including the requirements issued by the Commissioner. Before an arrangement is executed or when a change is contemplated, a determination that the arrangement meets the necessary requirements shall be obtained from the Superintendent's designate.

- Confirmation of sale or a copy of any executed instrument shall be filed with the Superintendent's designate. With the exception of a statement that a sale has taken place or that a trust exists, OSFI will keep all information relating to the disposition confidential.

- On the recommendation of the Superintendent's designate, the following reimbursements for costs to comply with this Policy may be permitted, subject to the reimbursement limits published by the Commissioner:

    – Divestment of Assets: the OFSI cover costs of staff divestment of assets.[47]

181. These regulations are predicated on the need to avoid actual and potential conflicts of interest and to ensure that regulators are not in a conflict of interest situation when making fiduciary decisions. Such rules offer some measure of confidence that financial interests and conflicts can be managed for appointments from the private sector. The issue of regulatory culture and enforcement is paramount in ensuring a clear separation of regulator and regulatees.

182. In terms of employment practices OFSI rules ban serving officials to hold directorships in regulated companies: 'Employees are prohibited from serving on the board of directors of financial institutions or financial institution's holding companies, or entities carrying on business that is substantially similar to any business carried on by any financial institution.'[48] Directorships of non-commercial and philanthropic organisations are not prohibited, but staff are directed to ensure that such appointments do not create conflicts with their official duties.

183. The OFSI policy on managing revolving door conflict of interest has been developed relative to the other financial regulators in the Canadian system. The rules are divided into two main sections, those dealing with measures before and after leaving public office. The rules governing behaviours before leaving public office are guided by the key principle that 'Employees must not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.'[49]

184. Senior officials are required to notify OSFI as soon as possible when they have received firm job offers that may place them in a conflict with their regulatory duties. The acceptance of such must be disclosed in writing to the officials managers: 'In such an event, where it is determined that the employee is engaged in significant dealings with the future employer, the employee shall be assigned to other duties and responsibilities as soon as possible. The period of time spent in the position following such an assignment shall be counted towards the limitation period'.[50] While the negotiation of future employment does not need to be disclosed until a firm offer is received, there are some provisions in the OSFI code with an effect on the 'cooling off' period:

> Employees shall not, within a period of one year after leaving office:
> (a) accept appointment to a Board of Directors of, or employment with, a regulated entity, the sponsor of a pension plan supervised by OSFI or an entity in a business relationship with OSFI if, during the period of one year immediately prior to their departure from OSFI:
> i. the former employee had direct and significant official dealings with the proposed new employer; or
> ii. the former employee acquired a significant amount of confidential information about a direct competitor of the proposed new employer; or
> (b) make representations for or on behalf of any other person or entity to OSFI.[51]

185. The post-employment restrictions operated by OSFI are drafted to secure trust in the integrity of financial regulators independence, and to ensure that officials cannot take advantage of privileged or inside information when they leave public service, or use such information to negotiate their post-employment. The code states that:

> Employees shall not, after they leave OSFI, act in such a manner as to take improper advantage of their previous position or employment. This includes not switching sides by acting for or on behalf of their new employer or client in connection with any *specific* ongoing proceeding, transaction, negotiation or case to which OSFI is a party and where the former employee acted for or advised OSFI.[52]

186. While the OSFI has developed the above rules to manage conflicts of interest related to its own staff, these regulations have been developed in the Canadian context. One of the issues that attracted some attention in recent years was the question of disposal of assets or managing conflict of interest by placing shares and securities in a blind trust. This practice attracted some criticism as some public office holder's managed such matters via blind management agreements (a.k.a. Venetian blind trusts) whereby officials could continue to be informed of their outside commercial interests. The Canadian Conflict of Interest Act banned the use of Venetian blind trusts, whereby the public office holder could no longer exercise any management role in relation to the trust, and the trustee(s) would not seek or accept any guidance from the public office holder.[53]

Sub-national level

187. Similar guidance exists at **state level in the US**. For example the Code of Ethics[54] that applies to New Jersey Department of Banking and Insurance employees states that they should not have any 'interest in or any dealings or transactions with any financial institution, insurance company or other entity regulated by the Department, except in the performance of their duty'. Blind trusts are exempted.

188. Rules about the operation of blind trusts are issued by the State of New Jersey's State Ethics Commission.[55] The rules are intended to assist state employees or officers interpret of the State's Conflicts of Interest Law[56] and the Commission's Rules[57]. These guidelines include the following [58]:

- Blind trusts cannot contain assets which cannot realistically be transferred, such as businesses, real estate, security interests in personal property and mortgages;
- The trust shall contain a clear statement of its purpose, "namely, to remove from the grantor control and knowledge of investment of trust assets so that conflicts between grantor's responsibilities and duties as a public employee or public officer and his or her private business or financial interests will be eliminated"…
- The trustee cannot disclose to the employee any information about any of the assets in the trust;
- Trustees are forbidden from investing the trust property in "corporations or businesses which do a significant amount of business with the State of New Jersey or from knowingly making any investment in a corporation, business or venture over which the grantor has regulatory or supervisory authority by virtue of his or her official position";
- The employee shall retain no control over the trustee or make any recommendations or suggestions about investments;
- The trustee shall be a commercial trustee and not a natural person;
- The trust must be approved by the Commission and grant it access to all records;
- A copy of the blind trust agreement shall be filed with the Commission and with the head of the department in which the State officer or employee holds his/her position.

189. The use of blind trusts is one mechanism for dealing with conflicts created by revolving door appointments between the financial sector and financial regulators. It would appear that the use of such trusts is often not mandatory, or that these only apply to very senior officials within regulatory agencies and public service. There appears to be some merit in considering how trusts can be used as a tool to help manage these kinds of conflicts.

190. The strengthening of rules governing revolving door conflicts are an important element in restoring public confidence in regulatory oversight and the probity of public office. Given the scale of the revolving door issue in relation to financial services (outlined in Chapter 3) it is timely that re-thinking the structure and culture of regulation should draw on best practice from other areas of public service. In this regard rules on offering and accepting improper influence (including the promise of future employment), as well as contingent and severance payments would repay some analysis.[59]

191. This chapter has reviewed some precedents and current practice in relation to the management of conflicts and revolving door issues in financial regulation. The lessons that can be drawn from this, and

wider recommendations, based on the analysis in the preceding sections of this report, will be addressed in the following chapter.

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2 Harold M.Williams, Chairman Securities and Exchange Commission, SEC Speaks, Washington,D.C. February 27,1981 *www.sec.gov/news/speech/1981/022781williams.pdf.*

3 Alastair Darling, 7 February 2009, *www.telegraph.co.uk/finance/comment/4548092/The-era-of-risk-is-over-what-we-now-demand-of-banks-is-responsibility.html*.

4 Lennox, W. (2006) 'Outline of rules of ethics for employees and officials of a securities regulatory agency', U.S. Securities and Exchange Commission Washington, D.C. April 5.

5 TITLE 18—CRIMES AND CRIMINAL PROCEDURE: CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST *www4.law.cornell.edu/uscode/18/usc_sup_01_18_10_I_20_11.html p. 207*.

6 Ibid. p. 208.

7 Ibid. p. 212.

8 Ibid. p. 214.

9 TITLE 18—CRIMES AND CRIMINAL PROCEDURE: CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, § 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches *www4.law.cornell.edu/uscode/18/usc_sec_18_00000207----000-.html*.

10 There are however a number of stated exemptions to this rule, including where the interest is deemed to be not so substantial, inconsequential, and where the individuals public service contribution outweighs the potential conflict of interest. Waivers and exemptions to these rules must be disclosed.

11 This provision includes officials acting as directors, trustees etc. The category of unpaid adviser or consultant is not specified, but could and perhaps should be included in future conflicts of interest regulations. Details on Conflicts of Interest regulations can be found at US Office of Government Ethics, 'Laws and Regulations: Regulations Issued by or Affecting OGE and Its Mission' *www.usoge.gov/laws_regs/regulations/5cfr2637.aspx*.

12 TITLE 18—CRIMES AND CRIMINAL PROCEDURE: CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, § 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches *www4.law.cornell.edu/uscode/18/usc_sec_18_00000207----000-.html.*

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14 Lennox, op cit, pp. 14-5.

15 Barack Obama, 'Executive Order -- Ethics Commitments by Executive Branch Personnel', The White House, January 21, 2009 *www.whitehouse.gov/the_press_office/ExecutiveOrder-EthicsCommitments/*.

16 US Department of the Treasury 'Treasury Secretary Opens Term Opens With New Rules To Bolster Transparency, Limit Lobbyist Influence in Federal investment Decisions', *Press Room*, January 27, 2009 *www.treas.gov/press/releases/tg02.htm.*

17 Kevin Brawbaugh, 'US Rep Frank bars Goldman Sachs lobbyist-aide', Reuters, 16 September, 2009 *www.xe.com/news/2009-09-16%2017:23:00.0/677089.htm?c=1&t=*.

18 *www.fsa.gov.uk/Pages/Library/Other_publications/Staff/staff_handbook/obligations/index.shtml* Accessed 15 March 2009.

19 Section 3.5 of the FSA code of conduct for employees (revised December 2008) is published online at *www.fsa.gov.uk/pubs/staff/code_conduct.pdf.* Accessed 15 March 2009.

20 Section 3.6 of the FSA code of conduct for employees (revised December 2008).

21 Section 4.5 of FSA code.

22 Section 3.X of the FSA code.

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24 Lord Turner of Ecchinswell, Treasury Committee Evidence, ev11, p.16, 3 November 2008. This analysis is a direct refutation of claim in previous years that all was well with the FSA model of regulation: We need to keep a watch on the institutions in the financial sector and their interactions, both amongst themselves and with lenders and borrowers outside the financial sector. The soundness of individual banks is a key area of the FSA's activities. And we are in daily contact with them. Reassuringly at present this area of threat looks quite remote – in the UK itself at least. Supervision has come a long way in the past five to ten years as have the banks' risk management systems'. Large (2003) *Financial stability: maintaining confidence in a complex world*, National Liberal Club, Monday 17 November, p.3.

25 Hector Sants, FSA Chief Executive, Treasury Committee Evidence ev 280, 25 February 2009.

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28 Ibid, ev 286.

29 Donze, cited in Davies, H. and Green, D. (2008) *Global Financial regulation: the essential guide*, Polity: Cambridge. p. 204.

30 Watts, R. and Ungoed-Thomas, J. (2009) 'Exposed: the banks' cosy ties to watchdog', *Sunday Times*, 8 March *http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article5864476.ece* Accessed 17 March 2009.

31 Glen Moreno, Treasury Committee Evidence Ev 332, 3 March 2009.

32 Treasury Committee Evidence Ev 329, 3 March 2009.

33 *www.ukfi.gov.uk/releases/20090604%20Keith%20Morgan%20appointment%20release%20FINAL.pdf* Accessed 19 September 2009.

34 *www.ukfi.gov.uk/publications* Accessed 10 March 2009.

35 UKFI Shareholder Relationship Framework Document, Revised Version 13 July 2009, p. 7-8 *www.ukfi.gov.uk/releases/Framework%20Document%20July%20Revised%20Version.pdf*, p.16. Accessed 10 September 2009.

36 Ibid, pp. 9.

37 Stephen Hester, Treasury Committee Evidence Ev 262, 11 February 2009.

38 APRA Code of Conduct: A Determination made in accordance with Section 48AC of the *Australian Prudential Regulation Authority Act 1998* (1 July 2007) *www.apra.gov.au/AboutAPRA/upload/Code-of-Conduct-July-2007.pdf.*

39 Ibid, p.6.

40 Ibid, p. 12.

41 Ibid, p.10.

42 These conflicts are also covered by the *Public Service Act 1922.* See *www.apsc.gov.au/publications96/conduct.pdf* p. 65.

43 Code of conduct proposed by the Report of the Committee of Inquiry Concerning Public Duty and Private Interest (the Bowen Report) — Principles for the avoidance and resolution of conflicts of interest. *www.apsc.gov.au/circulars/psa99advice28.htm* Accessed 10 March 2009.

44 *www.osfi-bsif.gc.ca/app/DocRepository/1/eng/osfi/coip_e.pdf* p.2. Accessed 19 March 2009.

45 Ibid, section 2.2.1 Controlled Assets.

46 Ibid, pp. 4-5.

47 Ibid, Section 2.5 Disposal of Controlled Assets, 2.5.1-2.5.6.

48 Ibid, Section 5.2.1, p.12.

49 Ibid, Section 6.1.1.

50 Ibid, Section 6.1.3.

51 Ibid, Section 6.3.

52 Ibid, Section 6.2.1, p. 14.

53 Blind management agreements (in which the public office holder retains a level of management) are prohibited. To meet the requirements:

- the assets must be registered to the trustee (unless they are in a registered retirement savings plan account);
- the public office holder has no power of management or control over the assets;
- the trustee shall not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets;
- the trust shall continue for as long as the public office holder holds office, or until the trust assets have been depleted;
- the trustee shall not provide information about the trust, including its composition, to the public office holder, except for information that is required by law to be filed by the reporting public office holder;

• the reporting public office holder may receive any income earned by the trust, and add to or withdraw from the capital funds in the trust;

• the Commissioner must be satisfied that an arm's length relationship between the public office holder and the trustee exists;

• the trustee must be a public trustee, a public company qualified to perform the duties of a trustee, or an individual who may perform trustee duties in the normal course of his or her work – and must provide the Commissioner a written annual report verifying the nature and market value of the trust, a reconciliation of the trust property, net income for the year, and any fees.

The Canadian Conflict of Interests Act is part of the Federal Accountability Act (Chapter 9 of Statutes of Canada 2006), *http://ciec-ccie.gc.ca/%5Cresources%5Cfiles%5CEnglish%5CPublic%20Office%20Holders%5CConflict%20of%20Interest%20Act%5CConflict%20of%20Interest%20Act.pdf*. A summary of these rules can be found at *http://ciec-ccie.gc.ca/Default.aspx?PID=18&lang=en*

54 Department of Banking and Insurance, Supplemental Code of Ethics [*www.nj.gov/ethics/docs/ethics/bankcode.pdf*], 19 September 2007.

55 State of New Jersey's State Ethics Commission, Guidelines on Blind Trusts [*www.state.nj.us/ethics/statues/guide/blind_trust.html*], 29 August 2006.

56 See *www.state.nj.us/ethics/statues/conflicts/*.

57 See *www.state.nj.us/ethics/statues/rules/*.

58 See *www.state.nj.us/ethics/statues/guide/blind_trust.html*.

59 See for example Commonwealth of Pennsylvania's State Ethics Commission Ethics Act. *www.ethics.state.pa.us/ethics/cwp/view.asp?a=3&Q=31937&ethicsNav=|983|#restricted*.

CHAPTER 5. RESTORING TRUST: CONCLUSIONS AND RECOMMENDATIONS

Moving towards transparency and restoring trust

192. The revolving door is a significant issue in the regulation of financial markets and corporations. This report has noted that the revolving door has been a burgeoning phenomenon and has become more of an issue in many countries. The close relationship between regulators and lawmakers on the one hand and the finance industry and its lobbyists on the other is fed by the regular cycling of personnel between one side of the fence and the other.

193. It is clear that the closeness of relations between government and the finance and banking industry is part of the widespread public concern across most OECD countries. The revolving door is just one part of the issue here, which also includes lobby transparency on the one hand and the much bigger question of confidence in the financial markets and the wider economy. Tackling the revolving door is an indispensable part of the process of restoring confidence in both the government system and the financial markets more generally.

The public interest

194. It is evident that many OECD countries do attempt to find some kind of 'balance' between the priority to encourage the financial sector and safeguard the public interest. However, it has also been the case that the very concept of the 'public interest' as distinct from the interests of private capital has been devalued in many countries. It is plain that the public interest and the private interest do not necessarily coincide and it is necessary to be clear on this in government and especially in regulatory agencies. This clarity will only be won by significant changes in the approach to regulation by many OECD members.

195. On the other hand it is also clear that the cost of treating the 'public interest' and the 'private interest' as synonymous in practice has had negative consequences for the financial system. In other words it is becoming evident that the financial sector requires a strong public interest regulator to function in a more predictable and less irrational fashion. The reinvigoration of the idea of the public interest is a key precursor of many of the reforms laid out below. However, many of the reforms below would also help to move regulatory culture towards the public interest.

196. Many of the reforms in financial regulation currently mooted focus on the structure of regulation as governments and agencies deliberate on optimal divisions of responsibilities and powers for financial regulators supervising an ever more complex and globalised financial system. There has been a dearth of innovative thinking on how best to ensure that regulatory culture is also reformed: for without sufficiently empowered, independent, vigorous and necessarily forceful regulators, no amount of reworking of the regulatory architecture will be able to secure the public interest in properly supervised banks and financial services companies.

197. A cornerstone of such cultural reform should be an explicit recognition, perhaps codified in a statement of founding principles, that the public interest in paramount and must not be mistaken for, or simply assumed to coincide with, the interests of the banking and financial sector (or indeed any other private interest). Financial regulators should develop a clear set of guiding principles that identify the public interest in a sound, trustworthy and equitable banking system, and demonstrate how their procedures and policies are geared toward delivering that public interest. There is an urgent need for a

much wider debate on agreeing such principles and thinking through and how such principles can be embedded within organisational culture and practices.

198. Concrete steps in this directions can be taken by following best practice internationally as well as learning lessons from seemingly separate policy arenas, in particular in relation to the regulation of conflict of interest in science. While this report has focused on the experience of financial regulation, it is worth highlighting at this stage that there is experience from the regulation of science which has addressed similar issues.

The example of science regulation

199. The issues here revolve around the potentially conflicting concepts of 'conflict of interests' versus 'experience' or 'expertise'. It is often assumed and sometimes stated that people appointed to regulatory positions in the financial sector are selected or recruited by virtue of their experience of working in the 'real world' financial sector. This is one possible criterion for appointment, but not the only one. One alternative often deployed in science regulation is the use of people with 'expertise' as opposed to experience, though the two can of course coincide. This could mean, for example, appointing academic or non-profit sector experts to regulatory positions.

200. In the area of science based policy there have been a number of very significant disputes over the impartiality and independence of scientific expertise. One response to this is to ensure that science advisory committees are composed largely of experts. This means academic specialists and working scientists. This came under challenge when it emerged that many apparently independent experts actually had financial relationships with industry – either through research or consultancy or via directorships or owning shares. A range of solutions to these problems have been tried including disclosure, management of conflicts and their elimination.[1] Another strategy to address the supply of regulatory expertise is the training and appointment of a cadre of professional regulators, much as is done in the field of environmental health or health and safety. The key to effective regulation here is the minimisation or elimination of conflicts of interest. It is crucially important that regulators are able to be entirely committed to upholding the 'public interest' and that this commitment is not compromised by private interests.

201. In addition, the extent to which 'expertise' is the *sine qua non* of participation in science advisory committees is open to challenge. In a number of cases citizen or consumer representatives have been appointed to scientific advisory committees. This lesson also appears to be applicable to the financial sector, where both consumer/citizen and employee representatives might be thought to have a meaningful role in contributing to sound regulation. It is important that the composition of regulatory bodies is such that no sectional interests can dominate and that citizen or consumer representation is not merely tokenistic.

The revolving door: Issues faced

202. On the basis of the findings on the scale of the revolving door phenomenon and on the variety of solutions and practice in the field, the paper suggest that the main issues are as follows, noting that these apply to persons prior to entry, during service and after leaving the public service:

- Conflicting loyalties
- Participation in areas of interest to former/current/future employers
- Declaration of interests

- Personal interests (e.g. in terms of personal shareholdings and the interests of the immediate family)
- Conflict of interest in public service (i.e. continuing to have outside interests)
- Using inside information (for example while on secondment or on leaving public service)
- Continuing relationships with previous employer (including gifts, sponsorship and other issues)
- Seeking future employment
- Post-employment lobbying
- Switching sides
- Re-engaging or re-employing former officials [2]

203. The issue of the revolving door is complex and requires a number of differing measures for differing elements of the revolving door phenomenon. We can note that there are some reforms that can apply at a system wide level and others that will apply mainly to government (politicians and civil servants) or to regulatory agencies. In addition there are rules that might apply to 'pre-employment' or entering public service as well as 'post-employment' or leaving public service. Furthermore rules can apply to either the public service or the private sector or both.

204. Measures to deal with the revolving door could and perhaps should be integrated with wider ethics regulation including regimes of disclosure, transparency and accountability. It is plain that there is an escalating scale of measures which can be taken. This starts with transparency and disclosure and includes management of conflict of interest, usually ending with elimination of conflicts via divestiture or recusal.[3] In addition, it is plain that the regulatory architecture can be designed in ways that minimise the potential for conflict of interest. In particular as noted above the issue of independence from vested interests is of signal importance. In the area of science the question of research funding is significant. In the financial sector such concerns may also be present. However, it is also clear that there are a myriad of other ways in which private money can play a role in policy processes. These range from sponsorships, to gifts and similar benefits to partnership governance arrangements in which corporations bear some of the cost of regulatory or decision making activities.

205. Best practice measures will in general require both written rules and institutional form. The most obvious and severe issue in contemporary practice is where financial regulators also have outside interests in entities that they are responsible for regulating. Accordingly these recommendations begin with general revolving door reforms, addressing pre- and post-employment issues and conclude with specific reforms related to the financial sector. The generic guidelines on revolving doors draw on other OECD governance studies, and analyses of the revolving door topic in various jurisdictions.[4]

General principles and reforms

206. Based on a review of current practice in a variety of jurisdictions it appears that the following steps could considered to address the issues of conflict of interest and confidence that arise given the widespread revolving door practices:

- Consolidation of ethics guidance, with clear and uniform rules adopted across the public sector on ethical conduct and practice, including mainstreaming of disclosure and public reporting;

- Standardisation of conflict-of-interest rules throughout government;
- Scrutiny and enforcement powers appropriate to robust public interest regulation;
- Renewed emphasis on oversight and enforcement powers in jurisdictions where rules and guidance exist but are poorly enforced;
- Promotion of a strong public interest regulatory ethic, including increased emphasis on the status and rewards for regulators;
- Training and career structures for regulators to insulate them from pressures from the private sector;
- Adequate public funding to minimise or eliminate dependence on funding and resources from the private sector.

Pre-employment practices: disclosures, disposals and other reforms.

- Development of clear rules and procedures regarding divestment of interests upon joining public service from industry;
- Wider use of blind trusts as a means of disposing of assets and interests that may create conflicts while in public office;
- Prohibition on use of blind management arrangements where officials or public office holders can be made aware of their trust portfolio and its performance;
- Development of rules and procedures to bar regulatory appointments for person's whose employment background would tend to create frequent impartiality conflicts;
- Strengthening of recusal rules and procedures that bar appointees from handling matters involving their former employers in the private sector, once they have entered public service;
- Introduce mandatory recusal on matters directly involving one's former employers and clients including regulations and contracts during a defined period after taking office;
- Require lobbyists entering government to recuse for a specified period from a) participation in any particular matter on which they lobbied; b) participation in the specific issue area in which that particular matter falls; c) seeking or accepting employment with any agency that the person lobbied for a specified period before the date of the appointment.
- Requiring officials as part of their terms and conditions of employment in the public sector to enter into a binding ethics 'entry plan' to clarify what activities will be prohibited;
- Requiring a list of the relevant interests of decision-makers within the public service, and summaries of their career histories outside the public service to be made public. Senior public servants would be required to put on a publicly available register details of past employment in the private sector (for the previous 5 years), along with details of current outside interests;
- Requiring a database of gifts and hospitality (above a token value) received by Ministers, their advisors and Senior public servants and regulators;

- Prohibition of regulatory staff from maintaining positions with financial sector or other corporations while serving on regulatory agencies;
- Strengthening the separation of interests from regulatory authorities by ensuring that regulatory agencies contain at least a significant proportion of board members with no or no recent senior involvement with financial sector business.

Post-employment rules and reform

- Strengthening of recusal rules and procedures that bar appointees from handling matters involving their former employers in the private sector once they have left public service;
- Introduce mandatory recusal on matters directly involving one's employers and clients during a defined period prior to taking office;
- Prohibiting senior officials from seeking employment with outside interests that may have benefited from policies formulated by those officials;
- Early notification of employment negotiation between officials and private sector employers;
- Extending the period during which officials cannot engage in lobbying after leaving office and expanding the scope of prohibited activities beyond direct representation to include the preparation, strategy work and supervision of lobbying activity designed to facilitate lobbying;
- Requiring officials as part of their terms and conditions of employment in the public sector to enter into a binding ethics 'exit plan' when leaving the public sector to clarify what activities will be prohibited;
- Require binding revolving-door exit plans that sets forth the policy issues which the former employee is banned from working. Such reports should be available to the public;
- Prohibit, for a specified period of time, political appointees or special advisors and senior policymakers from being able to seek employment with private interests that may have significantly benefited from the policies they formulated;
- Require recently retired government officials and their new private sector employers to file revolving-door reports attesting that the former government employee and their employers have complied with the agreed revolving door exit plan.

207. 'Cooling off' rules are a common response to dealing with post-employment conflicts, whereby a former public office holder or senior official is barred from undertaking tasks in the private sector that relate to their regulatory or representative duties. The recent introduction of a similar period prior to accepting or once in employment by the Obama administration is in indication of the increasing focus on both ends of the revolving door: entry to and exit from public service. In terms of financial regulation it is clear that there has been considerable turnover of staff moving from public to private sectors, despite cooling off periods. It may be worth revisiting the scope and scale of such post-employment rules, particularly as they appear to have been somewhat ineffective in retaining talent and expertise in public agencies. Some further deliberation is required on the length of cooling off periods (these vary, from less than 12 months, to a fairly typical 1-2 year period, and in some cases more than 2 years): would a three, or five, year cooling off period serve the public interest? Perhaps a more effective way of retaining staff and

expertise would be to disallow officials in financial regulators to work in the private sector in any compliance role related to their public service.

208. These measures will not be applicable to all countries. Some have already been implemented, notably by the Obama presidency and some will need to be adapted to local circumstances. However, there is clearly a pressing need for significant action to improve transparency and accountability and to act to remove conflicts of interest which continue to characterise the financial and indeed more general regulatory system in many OECD countries.

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1 Sheldon Krimsky and L. S. Rothenberg, 'Conflict of Interest Policies in Science and Medical Journals: Editorial Practices and Author Disclosures' *Science and Engineering Ethics* (2001) **7**, 205-218; Kevin C. Elliott 'Scientific Judgment and the Limits of Conflict-of-Interest Policies' *Accountability in Research*, Volume 15, Issue 1 January 2008, pages 1 – 29.

2 The last four points in the list adapted from Kenneth Kernaghan*, Public Integrity and Post-Public Employment: Issues, Remedies and Benchmarks* Expert Group Meeting on Conflict of Interest: Ensuring Accountability and Transparency in the Public Service 6-7 June 2007 Chateau de la Muette, Paris, Public Governance and Territorial Development Directorate, Public Governance committee, GOV/PGC/ETH(2007)3 Unclassified. Paris: OECD *http://www.ingentaconnect.com/search/download;jsessionid=5sopoovp5ckic.alexandra?pub=infobike%3a%2f%2foecd%2f16091914%2f2007%2f00000007%2f00000007%2f0207071ec002&mimetype=application%2fpdf*.

3 Kevin C. Elliott 'Scientific Judgment and the Limits of Conflict-of-Interest Policies' *Accountability in Research*, Volume 15, Issue 1 January 2008 , pages 1 – 29.

4 These include House of Commons Public Administration Select Committee, *Lobbying: Access and influence in Whitehall*, First Report of Session 2008–09, Volume I Report and Appendix, together with formal Minutes, Ordered by the House of Commons to be printed 9 December 2008 HC 36-I Published 5 January 2009 by authority of the House of Commons London: The Stationery Office Limited; Barack Obama, 'Executive Order -- Ethics Commitments by Executive Branch Personnel', The White House, January 21, 2009 *www.whitehouse.gov/the_press_office/ExecutiveOrder-EthicsCommitments/* ; OECD (2009), *Post-Public Employment: Good Practices For Preventing Conflict of Interest*, Paris; Revolving Door Working Group. *A Matter of Trust: How the Revolving Door Undermines Public Confidence in government – And What To do About it*. Revolving Door Working Group October 2005 *www.revolvingdoor.info*.