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The Obama Administration's Plan for Financial Reform—Part 2

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Over the past two years the United States has faced the most serious financial crisis since the Great Depression. On June 18, 2009, the Obama administration introduced a white paper outlining a regulatory reform agenda aimed at restoring stability to the financial system (Plan), through increased governmental oversight of the financial markets. In the following months, the administration introduced draft language to Capitol Hill aimed at setting the Plan into motion, with the last piece of the comprehensive reform package delivered to Capitol Hill on August 11, 2009. In Part 1, which appeared in the September issue of *The Investment Lawyer*, we discussed the key provisions of the Plan. In Part 2 of this article, we will look at the draft legislation that has been proffered up by the administration to implement the Plan; we will consider the reactions of some of the key players in the US financial markets; and we will consider how the economic crisis has affected the rest of the world and look at some of the initiatives presented by the rest of the world to stabilize economies affected by the crisis and to regulate the systems that may have contributed to their collapse.

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Proposed Legislation

Since the introduction of the Plan in June, the administration has introduced 16 pieces of draft legislation in order to put the Plan into motion.

The legislation both creates certain new acts and amends legislation already in place to achieve its goals. We have summarized the key pieces of the draft legislation below. It also should be noted that administration officials have indicated that many of the proposals outlined in the Plan would not require Congressional action and could be directly adopted by regulators.

Systemic Risk Legislation

On July 22 and 23, 2009, the government proposed legislation that would require consolidated supervision and regulation for all financial firms. The proposed legislation creates a Financial Services Oversight Council (Council) to facilitate the coordination of financial regulatory policy, resolution of disputes and identification of emerging risks in financial markets. Council members will include the members from each of the eight principal federal regulators. This tranche of legislation would require that all financial firms that are found to pose a threat to the economy's financial stability based on their size, leverage, and interconnectedness to the financial system (Tier 1 FHCs) be subject to:

1. Strong, consolidated supervision and regulation by the Federal Reserve regardless of whether they own insured depository institutions;
2. The non-financial activities restrictions of the Bank Holding Company Act; and
3. Strict standards on capital, liquidity, and risk management.

Tier 1 FHCs also would be subject to prompt corrective action from its supervisory agency should its capital levels decline. The proposed legislation also provides the government with the authority to dissolve any such firms in an orderly manner. Additionally, the legislation would create a National Bank Supervisor through the consolidation of the Offices of Thrift Supervision and the Office of the Comptroller of the Currency.[1]

Registration of Hedge Fund Advisers and Other Private Pools of Capital

The bill proposed by the administration under the title, "Private Fund Investment Advisers Registration Act of 2009" would, for the first time, require that all investment advisers with more than $30 million of assets under management register with the Securities and Exchange Commission (SEC).[2] Once registered with the SEC, investment advisers to private funds will be subject to important requirements such as:

- Substantial regulatory reporting requirements with respect to the assets, leverage, and off-balance sheet exposure of their advised private funds.
- Disclosure requirements to investors, creditors, and counterparties of their advised private funds.
- Strong conflict-of-interest and anti-fraud prohibitions.
- Robust SEC examination and enforcement authority, and recordkeeping requirements.
- Requirements to establish a comprehensive compliance program.

Regulation of Core Markets and Market Infrastructure

In order to prevent the massive build up of risk that previously was allowed to amass in the securitization markets, and which the administration believes played a central role in the recent financial crisis, the government has introduced legislation to strengthen such markets and subject credit default swaps and other over the counter (OTC) derivatives to comprehensive regulation. Under the proposed legislation, banking regulators are asked to issue regulations that require the originator of a securitized loan or the sponsor of a securitization to retain 5 percent of the credit risk of securitized exposures. Regulators also are asked to reduce their use of credit ratings in regulations and supervisory practices wherever possible. The comprehensive regulation of the OTC markets will include:

- Requiring transparency for all OTC derivative trades and positions through recordkeeping and reporting requirements.
- Empowering market regulators to take vigorous enforcement action against fraud, market manipulation, and other market abuses.
- Requiring conservative regulation of all OTC derivatives dealers and all other major participants in the OTC derivatives markets.
- Requiring standardized OTC derivatives to be centrally cleared and executed on exchanges and other transparent trading venues.
- Requiring higher capital charges for customized OTC derivatives.

The Commodity Futures Trading Commission (CFTC) and the SEC are encouraged to harmonize

securities and futures regulation by making recommendations to Congress on how to eliminate nonessential differences in statutes and regulations. A new Financial Services Oversight Council (FSOC) will be given broad authority to collect information about activities in financial markets that may pose a threat to financial stability. The Federal Reserve will be given stronger authority to oversee payment, clearing, and settlement systems and will be required to consult with the FSOC to identify important systems and in setting standards for those systems.[3]

Strengthening Consumer Protection

The administration has proposed legislation to create a new federal agency, the Consumer Financial Protection Agency (CFPA). The agency will be dedicated to looking out for American families when they take out loans or use other financial products or services—with a mission to promote access and protect consumers. The legislation is not designed to impede on the investor protection jurisdiction of the SEC or the CFTC. The CFPA will be responsible for promoting concise and clear information for consumers and protecting them from unfair and deceptive practices and improving access to financial services. The CFPA will be tasked with writing rules across bank and non-bank firms for "level playing fields and higher standards" such as:

- Mandating a proactive approach to disclosure and requiring that such disclosures be fair, reasonable, and balanced.
- Defining standards for "plain vanilla" products that are simple and have straightforward pricing and requiring that all providers and intermediaries offer these products prominently alongside whatever other products they choose to offer.
- Subjecting alternative products to more scrutiny with higher penalties for violations.
- Banning unfair terms and practices.
- Imposing heightened duties of care on financial intermediaries.
- Ensuring that underserved consumers and communities have access to prudent financial services.[4]

Strengthening Investor Protection

The administration's proposed "Investor Protection Act of 2009" is designed to strengthen the SEC's authority to protect investors, and has at its core principles of increasing fairness, disclosure, accountability, and investor engagement for those who provide investment advice about securities. Among the provisions of the proposed legislation are provisions that:

1. Establish consistent standards for brokers, dealers and investment advisers who provide investment advice about securities;
2. Set rules regarding the timing and the quality of disclosures; and
3. Establish liability standards for control persons and persons who aid or abet violations of the Securities Act of 1933 and the Investment Company Act of 1940 and persons who aid or abet violations of the Investment Advisers Act of 1940 (Investment Advisers Act).

The legislation would also establish a permanent Investor Advisory Committee to "keep the voice of investors present at the SEC," in advising on issues concerning new products, trading strategies, fee structures and the effectiveness of disclosure.[5]

Credit Agency Reform

The administration has proposed legislation that would tighten oversight of credit rating agencies. The proposed legislation is designed to protect investors from inappropriate credit rating agency practices by increasing transparency, tightening oversight, and reducing reliance on credit rating agencies. The legislation also would work to reduce conflicts of interest at credit rating agencies by barring firms from consulting with any company that they also rate and strengthening disclosure requirements related to potential conflicts of interest. The proposed legislation would strengthen the SEC's authority over and supervision of credit rating agencies by establishing a dedicated office at the SEC for supervision of ratings agencies and make registration mandatory for all ratings agencies.[6]

OTC Derivatives

Under the administration's proposed legislation, the OTC derivative markets will be comprehensively regulated for the first time since their inception. The draft legislation provides for:

1. Regulation and transparency for all OTC derivative transactions;
2. Strong prudential and business conduct regulation of all OTC derivative dealers and

other major participants in the OTC derivative markets; and

3. Improved regulatory and enforcement tools to prevent manipulation, fraud, and other abuses in the OTC derivatives markets.

The draft legislation seeks to achieve these goals by regulating both the OTC derivative markets and dealers, requiring federal regulation by the CFTC or the SEC of any firm that deals in OTC derivatives and any firm that takes large positions in OTC derivatives.[7]

Say on Pay

The administration delivered draft "say-on-pay" legislation to Congress that would require all publicly traded companies to give shareholders a non-binding vote on executive compensation packages. Say-on-pay legislation, which was co-sponsored by the then-Senator Obama in 2007, would encourage greater accountability and better disclosure in setting compensation. In providing the draft legislation, the administration announced its eagerness to support Chairman Dodd and Chairman Frank, both long-time advocates for say-on-pay, as they begin consideration of the proposal. The draft legislation would:

- Require a non-binding annual shareholder vote on compensation for all public companies. All public companies will be required to include a non-binding shareholder vote on executive compensation as disclosed in the proxy for any annual meeting held after December 15, 2009. The disclosures that would be subject to the say-on-pay vote include tables summarizing salary, bonuses, stock and option awards and total compensation for senior executive officers, as well as summaries of golden parachute and pension compensation and a narrative explanation of the board's compensation decisions.
- Mandate a separate vote on golden parachutes in the case of a merger or acquisition, with a clear and simple disclosure of the amounts executives will receive.[8]

Reaction from the Industry

Reaction from the financial industry and the regulators, as expected, has been mixed and we expect to see plenty of industry pushback as the legislation goes through Congress. The Plan, which has been hailed by the President as one of his administration's top domestic priorities has been criticized by the financial services industry, as well as the regulators as both groups face major overhauls in the way they conduct their business. In the following sections we look at the reactions of these groups to the Plan.

Regulators

At the end of July, testimony was heard before the House of Representatives from a litany of financial regulators regarding the administration's proposals for industry reform. Among those who testified were Treasury Secretary Timothy Geithner, Federal Reserve Chairman Ben Bernanke, Federal Deposit Insurance Corporation (FDIC) Chairman Sheila Bair, Comptroller of the Currency John Dugan, and Office of Thrift Supervision acting Director John Bowman. Geithner, clearly expecting that not all of the proposals set forth in the Plan would meet with approval, noted at the hearing, "I understand why people who still preside over those authorities are trying to preserve them,"[9] but, he added that he sees no "plausible defense" for maintaining the status quo. However, on August 4, 2009, Mr. Geithner's attitude towards regulators who have not reacted positively to parts of the Plan was notably more frustrated as he raised concerns about regulators who questioned the wisdom of giving the Federal Reserve more power to oversee the financial system, leading some commentators to wonder whether the regulators themselves could cause the administration's Plan to falter before its goals can be fully realized.[10] Below, we summarize some of the initial reactions to the Plan from some of the key financial industry regulators.

The SEC

On July 22, 2009, Mary Schapiro, Chairman of the SEC, testified before the House of Representatives Committee on Financial Services regarding the aspects of the Plan that would most directly bear on the SEC's regulatory mission, including those concerning OTC derivatives; harmonization of securities and futures regulation; hedge funds; broker-dealers and investment advisers; SEC enforcement; credit rating agencies; and the need to identify and address emerging systemic risks that pose a threat to the stability of our financial system. In general, Ms. Schapiro noted that in her opinion "the proposals described in the Plan and laid out in several recent legislative drafts do much to strengthen the [SEC] and improve

investor protection in the process, as well as to help to restore confidence in the soundness and integrity of our financial system as a whole."[11] In particular, Ms. Schapiro has expressed her support for ensuring that all dealers in the OTC derivatives markets are subject to prudential supervision and regulation.

To reduce duplication, the SEC proposes that OTC derivatives dealers that are banks would be subject to prudential supervision by their federal banking regulator and other dealers in securities-related OTC derivatives would be subject to supervision and regulation by the SEC. Additionally, Ms. Schapiro noted the importance of the administration's proposal that advisers to hedge funds and other private pools of capital should be required to register with the SEC under the Investment Advisers Act stating her belief that the bill put forth by the Treasury Department, entitled the "Private Fund Investment Advisers Registration Act of 2009," would accomplish this important goal. On other occasions however, Ms. Schapiro has questioned certain aspects of the Plan by expressing doubts about giving more power to the Federal Reserve.

Federal Reserve

Chairman of the Federal Reserve, Ben Bernanke, also has been very supportive of the Plan, and resulting draft legislation that has been presented to Congress in order to implement it. In particular, Bernanke has supported the Plan's mandate to confer more power on the Federal Reserve as the nation's central bank. Providing testimony before the House of Representatives on July 23, 2009, Mr. Bernanke stated his support for the expansion of the Federal Reserve's responsibilities which would be an "incremental and natural extension of the Federal Reserve's existing supervisory and regulatory responsibilities reflecting the important relationship between financial stability and the roles of a central bank."[12] Bernanke also emphasized the importance of having consolidated supervision of potentially systemic firms as a necessary component of the Plan, given that the current financial crisis demonstrated that risks to the financial system arise not just through banks, but all types of financial firms, such as investment banks and insurance organizations.

Mr. Bernanke also stressed that while the proposal was a significant piece of an agenda to contain the systemic risk and the too big to fail problem, it would not actually entail a significant expansion of the Federal Reserve's mandate, a proposition with which other regulators have openly disagreed. With respect to the consumer protection piece of the Plan; however, Mr. Bernanke did express some doubts as to the scope of the administration's proposals. As Mr. Bernanke observed in his testimony before the House, the administration proposes to shift responsibility for writing and enforcing regulations to protect consumers from unfair practices in financial transactions from the Federal Reserve to a new agency, the CFPA. Mr. Bernanke stated his belief that some benefits would be lost through this change, in particular noting that the Federal Reserve has adopted strong consumer protection measures in the mortgage and credit card areas in the last few years, and that such regulations had benefited from the supervisory and research capabilities of the Federal Reserve.

FDIC, Office of the Comptroller of the Currency, and Office of Thrift Supervision

Other regulators, testifying before the House on the Plan have variously challenged and defended parts of the Plan's reform proposals. Linda Bair, Chairman of the FDIC, challenged granting more power to the Federal Reserve to oversee the banking industry, and instead favors forming a council of regulators to advise financial services.[13] Bair also endorsed the CFPA, but said bank regulators should continue to examine and enforce standards. John Dugan, head of the Office of the Comptroller (OCC), also has said the CFPA should not strip powers from bank regulators. Under the Plan, the OCC and Office of Thrift Supervision (OTS) would be merged in a single regulator, and so perhaps not surprisingly, both heads of the two regulators have expressed doubts about this aspect of the Plan and attempted to protect their turf. OTS Director, John Bowman has stated that he disagrees with the administration's proposal to abolish his agency and to eliminate the federal thrift charter underlying the savings and loan industry. The OTS previously has been criticized for its reputation as the most lenient agency and critics have argued that this weakness allows financial firms shopping for regulators to choose the OTS for just that reason. Bowman has refuted this claim, and argued against allowing the CFPA to take over the reigns of enforcement and examination powers from the current bank regulators. Dugan however, has said that he generally supports the Plan, including the proposal to merge the OCC with the OTS, but he has expressed opposition to a proposal to allow the Federal Reserve to encroach on the OCC's power over national banks.[14]

Financial Industry Groups

As expected, reaction from the financial industry has been mixed with most industry groups supporting the lofty goals of increasing consumer and investor protection, and creating safety nets for systemic failure. However, while few are arguing against an overhaul of regulation generally, lobbyists and industry trade groups increasingly are arguing that policymakers should tread lightly when it comes to their particular constituents.[15] As might be expected, thrifts are fighting to keep the widely criticized OTS from being merged with other bank regulators; hedge funds are calling for caution on rules that go beyond basic registration of the investment pools and the derivatives industry's supporters are warning that proposals to require increased transparency and more systematic markets for the complex financial instruments could drive up costs for a variety of financial and industrial companies.[16] Additionally, the US Chamber of Commerce, which called consumer-protection improvements a key part of reform earlier this year, is fighting against the administration's proposed CFPA.[17] Below, we have summarized some reactions from a few representative groups in the financial industry.

American Bankers Association (ABA)

The ABA president and chief executive officer Edward L. Yingling asserted that the banking industry recognizes that change is needed, which is why the ABA supports several aspects of the proposal. However, Yingling also stressed that the changes to be enacted must improve the ability of banks to continue serving their communities and be mindful of unintended consequences that have the opposite effect.[18] He emphasized that financial regulatory reform should focus on three main priorities:

1. Creation of a systemic risk regulator;
2. Creation of a mechanism for bringing orderly resolution to troubled systemically important non-bank financial firms; and
3. The need to address gaps in the regulatory system.[19]

According to Yingling, the ABA opposes the proposal to create a consumer financial regulator because he believes that regulation of a company and its products cannot be separated, and that the grant of authority to the proposed agency is dangerously broad. He highlighted that, "[i]t is one thing to identify holes in existing regulation and close them…it is another to take out the entire body of laws, developed over decades, on which consumer finance is based and, in effect, replace it with a broad general regulatory authority."[20]

The Securities Industry and Financial Markets Association

The Securities Industry and Financial Markets Association (SIFMA) is an organization that represents the shared interests of participants in the global financial markets. Its members include international securities firms, US-registered broker-dealers, and asset managers. SIFMA generally represents the industry on regulatory and legislative issues and initiatives. SIFMA's President and CEO Timothy Ryan responded positively to the Plan, specifically the administration's proposed legislation to create a systemic risk supervisor and the Financial Services Oversight Council.[21] Ryan asserted that systemic risk has been at the heart of the current financial crisis, and SIFMA has been a leading advocate for the creation of a single, accountable systemic risk supervisor. SIFMA's belief that a central authority is essential to ensure that problems at one or a handful of institutions do not threaten the functioning of the financial markets and the broader economy are directly in line with the administration's Plan.[22] Additionally, SIFMA announced that it unanimously supports the new federal fiduciary standard for broker-dealers and investment advisers who provide personalized investment advice as proposed under the Plan. According to Ryan, "SIFMA wants to deliver clear, understandable reforms and strong, consistent protections for America's investors."[23] "Under this new, federal fiduciary standard, it won't matter who is giving the advice—broker or adviser—investors will be protected by the exact same federal fiduciary standard when receiving the same services."[24]

Managed Funds Association

The Managed Funds Association (MFA) represents the majority of the world's largest hedge funds and is an advocate for sound business practices and industry growth for professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. It is the MFA's view that any revised regulatory framework should address, "identified risks, while ensuring that private pools of capital are still able to perform their important market functions."[25] MFA President and CEO, Richard H. Baker, testified before the House

Financial Services Committee emphasizing a smart approach to regulation, which includes appropriate, effective, and efficient regulation and industry best practices that "(i) promote efficient capital markets, market integrity, and investor protection and; (ii) better monitor and reduce systemic risk."[26]

Smart regulation likely will mean increasing regulatory requirements in some areas, modernizing and updating antiquated financial regulations in other areas, and working to reduce redundant, overlapping, or inefficient responsibilities, where identified. On behalf of the MFA, Baker stated that Congress, the administration, and policy makers should consider specific goals as they make decisions on the appropriate regulatory reform framework. Baker acknowledged that regulation should address identified risks or potential risks, and should be appropriately tailored to those risks because without clear goals, there will be no way to measure success. However, he asserted that the MFA's position is that regulation should not impose limitations on the investment strategies of private pools of capital. Thus, "regulatory rules on capital requirements, use of leverage, and similar types of restrictions on the funds should not be considered as part of a regulatory framework for private pools of capital."[27]

The Mortgage Bankers Association (MBA)

The MBA led by John A. Courson, President and CEO, also provided testimony on the administration's financial regulatory reform proposals.[28] Courson stated a desire to work with Congress and the administration to make sure that the new regulatory structure "does not create conflicting and contradictory regulatory regimes that further confuse both lenders and borrowers… we want to ensure that the new structure does not stifle innovation or increase costs for consumers."[29] Courson also highlighted that the MBA will continue to fight for "one preemptive set of mortgage regulations throughout the country to replace the current patchwork of state and local laws."[30]

International Response to the Crisis

Improving International Regulatory Standards and Cooperation

There is no part of the world that has been unaffected by the economic crisis. The advanced economies experienced a record decline in Gross Domestic Product during the fourth quarter of 2008 and the first quarter of 2009.[31] There are more than 20 countries with current account deficits that exceed 5 percent of their economic output;[32] according to the International Monetary Fund (IMF) these countries are considered in the endangered category.[33] While the collapse of the housing sector in the United States has caused this economic downturn, the fallout created by this economic crisis has expanded to other parts of the world. Western Europe and Asia have been overwhelmed, "by the collapse in global trade, as well as by rising financial problems of their own and housing corrections in some national markets."[34]

The administration has expressed an interest in seeing that the international community respond strongly to the global economic crisis and noted, that to ensure that US regulatory safeguards are not undermined abroad, the United States needs to take the lead in calling for strong, modern regulation and supervision of the financial markets around the world, and it proposes to do just that by (1) leveling the playing field, and (2) promoting higher international standards.[35] In the final section of this article we look at exactly what the international community has done to respond to the crisis.

European Union

Within Europe, national governments, private firms, and international organizations have varied in their response to the financial crisis, reflecting differing views over the proper policy to pursue and the unequal effects of the financial crisis and the subsequent economic downturn.[36] Initially, it seemed that EU members would address the crisis on a case-by-case basis, but because of the increasingly global nature of the financial markets, regulators have strived to increase the levels of regulatory cooperation and enhance the role of regulatory organizations.[37] For example, much of the financial services regulation in the United Kingdom originates in the European Union.[38] Since EU members have to give effect to European law, active engagement with the European Union often is essential.

In Europe, European banks were affected quickly by the downturn in residential property values in the United States through effects felt in the market for asset backed commercial paper. European banks were either directly holding the securities or they were being held indirectly by such banks through structured investment vehicles. As the banks began to realize that such assets were impossible to value, European governments dealt with the failing banks on a case by case basis. For example, the British

government nationalized housing lender Northern Rock and the mortgage lender, Bradford & Bingley; and the governments of Belgium, France, and Luxembourg provided capital to Dexia, the world's largest lender to municipalities.[39]

However, as the crisis deepened the European Union realized that a more coordinated effort would be required in order to address the struggling financial markets. On October 29, 2008, the European Commission released its "European Framework for Action" (EU Framework) that agreed on a series of immediate measures in order to rescue failing banks and protect investments. Among other things, the EU Framework called for reinforced regulation and supervision of banks and financial firms as well as support for an immediate rescue package for failing banks.[40] On November 27, 2008, the European Commission proposed a € 200 billion (equivalent to approximately US $256 billion) recovery plan (the EU Plan), which was approved by the European Council on December 12, 2008. The EU Plan is made up of "two key pillars and one underlying principle," which:

1. Provide a major injection of purchasing power into the economy, to boost demand and stimulate confidence;
2. Based on the need to direct short-term action to reinforce Europe's competitiveness in the long term, sets out a comprehensive program to direct action to "smart" investment (that is, investing in the right skills for tomorrow's needs, investing in energy efficiency to create jobs and save energy, investing in clean technologies to boost sectors like construction and automobiles in the low-carbon markets of the future and investing in infrastructure and inter-connection to promote efficiency and innovation); and finally
3. Has as its fundamental principle, solidarity and social justice (that is, to work to protect jobs through action on social changes, address the long-term job prospects of those losing their jobs, and to cut energy costs for the vulnerable through targeted energy efficiency).[41]

As part of the EU Plan, budget rules imposed by the European Union have been loosened to allow EU members to adopt economic stimulus plans to shore up their declining growth rates. Unlike the United States, where the federal government can legislate policies that are consistent across all 50 states, the EU process gives each EU member a great deal of discretion to decide how they will regulate and supervise financial markets within their own borders. In the United Kingdom, the government has introduced stimulus packages aimed at cutting sales tax and providing credit to small and medium businesses that have been unable to secure financing due to the collapse of the banks. Additionally both France and Germany have introduced large stimulus packages aimed at both stabilizing the banking industry and saving workers' jobs.[42] EU members also are considering, among other things, regulation with respect to: cross-border financial supervision in the European Union that stops short of setting up a single, all-powerful EU supervisor, but does propose that the European Central Bank has a core role in supervising systemic risk among banks; guidelines for banks and financial institutions to deal with toxic assets such as certain mortgage-backed securities; transparency of derivatives and OTC markets; systemic risk management of highly leveraged institutions; review of valuation and accounting standards; standards for liquidity and liquidity risk management of financial organizations; and requiring mandatory registration and supervision by national regulators of credit rating agencies.[43]

However, so far members of the European Union have not been successful in implementing a fully coordinated response to update the regulatory framework needed to respond to the economic crisis, in part due to deep-seated philosophical differences of EU members.[44] For example, measures introduced to the European Parliament in September 2008, to reform hedge fund and private equity regulation face months of conflict over a European directive aimed at imposing limits on the industry.[45] However, EU members are expected to consider proposals to examine financial supervision and regulation within the global context when it engages in negotiations with the United States and the G20 later in 2009.

Asia and the Pacific

The impact of the economic crisis has varied across Asia, largely depending on each country's degree of: (1) integration into the global financial markets, (2) reliance on external demand, and (3) sensitivity to commodity price fluctuations.[46] The financial stimulus packages and reforms announced by many Asian countries, led by the People's Republic of China, should help in creating a more integrated and coordinated Asia and the Pacific that builds up on collective regional strengths and resources, according to the UN Economic and Social Commission for Asia and the Pacific, Executive Secretary Noeleen Heyzer.[47]

Responses by governments have varied depending on how and when the crisis affected them, their specific circumstances, and their ability to take action.[48] The main concern facing financial institutions and regulators in Asia has been to reverse the economic slowdown by aggressively reducing policy rates and introducing a variety of measures to increase liquidity in the banking systems and encourage banks to expand their lending. For example, the Association of Southeast Asian Nations member countries have reduced policy rates to stimulate economic growth; these countries also have introduced fiscal stimulus packages to help support the economic recovery process. The Asian Development Bank (ADB) has proposed a number of responses to help developing Asian countries deal with the current economic crisis including:

1. The provision of budgetary support to eligible developing member countries to meet short term liquidity requirements;
2. Provision of short term finance and capital to vulnerable banking systems;
3. Financial and technical assistance to support sector reforms; and
4. Expansion of guarantees to foreign banks and private investors.

The ADB also has highlighted the need for increased financial sector regulation noting that "regulation and prudential requirements" should be strengthened for financial institutions in line with systematic risk and exposure to retail clients,[49] and reiterating concerns that have been noted in the US administration's Plan, that to be effective and sustainable, such increased regulation should be complemented by an increased enforcement capacity and greater resources for regulators.

In the Pacific, governments' responses to likely impacts of the global economic crisis have been limited and based on policies that have not contributed to underlying economic performance.[50] The ADB has noted that governments in the Pacific region should develop a response that is "proactive, targeted, and tailored to the individual circumstances of each Pacific economy."[51] The Secretary General of the Pacific Islands Forums, Tuiloma Neroni Slade, has reiterated this viewpoint in a recent statement noting that "our response to this crisis must be a Pacific tailored one, acknowledging the challenges the region faces and that national governments, regional organizations and development partners must work collaboratively, in unison and now to implement such responses in a sustainable manner."[52] Over the long term, Mr. Slade noted that Pacific strategy must focus on "building resilience through strengthened capacity, better coordination of action, economic integration, and improving standards of governance and leadership."

Africa

Africa has been hard hit by the financial crisis and is now facing an unprecedented crisis in the productive sectors of the economy, despite the fact that many of these countries are not financially tied to the economies that suffered from the economic downturn. Moreover, the continent's drastic deterioration in external growth has reduced the demand for African exports and reduced workers' payment. This current financial crisis has compounded the existing challenges and shocks caused by high food and energy prices, which have impacted on the African poor, particularly women, children, and small-scale producers. The African Development Bank Group (AFDB) reports that the impact of the economic crisis is being felt on African equities, currencies, exports, and difficulties in accessing capital and trade finance, lower revenues, fiscal retrenchment and capital projects that risk being suspended.[53]

On March 4, 2009, the Board of Directors of the AFDB adopted a policy paper on the "Bank's response to the economic impact of the financial crisis," which was comprised of four initiatives:

1. An emergency liquidity facility that will provide a provisional US$1.5 billion to enable recipients to meet short term financing needs caused by the financing crisis;
2. A trade finance initiative;
3. A framework for accelerated resource transfer of African Development Fund resources to eligible countries; and
4. Enhanced policy advisory support to enable Africa's policy makers to share experiences on the development challenges facing Africa's financial markets.[54]

The response is based in large part on the conclusions of African Finance Ministers' Conference that was held in Tunisia in November, 2008, through the joint initiative of the African Union Commission, UN Economic Commission for Africa, and the AFDB.

In addition to the initiatives adopted in the policy paper, other groups with an interest in African financial development and financial industry interest groups have called for African governments, and

investors in the African private sector to use forthcoming international financial forums such as the G20 summit to encourage a "new global financial architecture that is responsive to Africa's needs," and to take into account, among other things African views in developing global financial policy.[55]

International Cooperation

The economic crisis also threatens countries in Eastern Europe, and Latin America. Countries in these regions depend on foreign capital and trade with the United States.[56] In addition, commodity prices have decreased during the crisis, causing an especially large loss of income for the Middle Eastern economies but also for many other commodity exporters in Latin America and Africa.[57] In addressing the complexities and urgency of this financial crisis on the world, the managing director of the IMF, Dominique Strauss-Kahn stressed that, "[W]e're facing a systematic crisis and it needs a systematic response."[58] In response to the crisis, the IMF has been tracking economic and financial developments worldwide so that it can help policymakers with the latest forecasts and analyses of developments in financial markets.[59] The IMF has helped to provide a coordinated international response by "increasing its lending, using its cross-country experience to advise on policy solutions and provide technical assistance, and introducing reforms to modernize its operations and become more responsive to member countries' needs."[60] In recent meetings of world leaders and finance ministers, emphasis was given to the importance of the IMF's role in helping to combat the global economic crisis and reinforcing the global financial system going forward, including strengthening the international financial architecture by drawing lessons from the crisis that can be used to create international financial policy and regulation, and reform of the global financial architecture.

Additionally, since the crisis, the G-20 has played a critical role in attempting to resolve the financial crisis through enhanced international cooperation. In November 2008, the G-20 held its first leaders meeting to address the crisis, the "Washington Summit on Financial Markets and the Global Economy." The Secretary-General of the United Nations, the President of the World Bank, the Managing Director of the International Monetary Fund, and the Chairperson of the Financial Stability Forum (reconstituted at the London Summit as the Financial Stability Board) joined the heads of the member states to attempt to find a viable solution to the economic downturn, resulting in a unanimous commitment to an Action Plan.[61] In April 2009, the G-20 met again in London to revisit and reinforce the Action Plan. The leaders reached agreement on six pledges:

1. To restore confidence, growth, and jobs;
2. To repair the financial system to restore lending;
3. To strengthen financial regulation to rebuild trust;
4. To fund and reform our international financial institutions to overcome this crisis and prevent future ones;
5. To promote global trade and investment and reject protectionism; and
6. To build an inclusive, green, and sustainable recovery.[62]

Many of the goals set by the G-20 in April made their way into the administration's Plan. Since the Plan was published in June, the administration has reaffirmed its commitment to international cooperation, in particular calling for US lawmakers to work with the international community in committing to: (1) strengthen the international capital framework; (2) improving the oversight of global financial markets, (3) reforming crisis prevention and management authorities and procedures; and (4) enhancing supervision of internationally active financial firms.[63] The upcoming G-20 meeting in Pittsburgh, PA, scheduled for October 2009, will give "leaders the opportunity to take stock of the progress made and discuss further actions to assure a sound recovery from the global economic and financial crisis."[64]

Conclusion

The Obama administration's initiative for financial reform is far from complete, and the rest of the world seems still to be searching for a solution. At home, the administration's Plan faces resistance from various financial industry groups as well as the financial market regulators themselves. As it stands today, while it seems obvious that increased regulation of the financial sector in the United States is likely, the full extent of any such new regulatory scheme is far from evident. One clear theme that has emerged in the aftermath of the crisis is that increased globalization of the financial markets, in terms of the way they are regulated and supervised, seems necessary if not inevitable, as the international community realizes that no country can completely insulate itself from

the effects of the international financial markets, and the regulatory schemes and economic systems of other countries. Such international cooperation in regulating the global financial markets already has been strongly called for by the US administration, and it is a sentiment that has been echoed around the world.

NOTES

1. *See* "Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward," US Department of the Treasury, news release, July 22, 2009, available at *http://www.treas.gov/press/releases/tg227.htm*.

2. *See* "Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward, Legislation for the Registration of Hedge Funds Delivered to Capitol Hill," US Department of the Treasury, news release, available at *http://www.financialstability.gov/docs/regulatoryreform/registration_hege_funds.pdf* (last visited Aug. 31, 2009).

3. *See* "Fact Sheet: Strengthening Regulation of Core Markets and Market Infrastructure," US Department of the Treasury, news release, available at *http://www.financialstability.gov/docs/regulatoryreform/strengthening_reg_core-markets_infrastructure.pdf* (last visited Aug. 31, 2009).

4. *See* "Fact Sheet: Strengthening Consumer Protection," US Department of the Treasury, news release, available at *http://www.financialstability.gov/docs/regulatoryreform/strengthening_consumer_protection.pdf* (last visited Aug. 31, 2009).

5. *See* "Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward Legislation for Strengthening Investor Protection Delivered to Capitol Hill," US Department of the Treasury, news release, available at *http://www.financialstability.gov/docs/regulatoryreform/investor_protection.pdf* (last visited Aug. 31, 2009).

6. *See* "Fact Sheet: Credit Rating Agency Reform Legislation Sent to Capitol Hill," US Department of the Treasury, news release, available at *http://www.financialstability.gov/docs/regulatoryreform/credit_rating_agency.pdf* (last visited Aug. 31, 2009).

7. *See* "Fact Sheet: Administration's Regulatory Reform Agenda Reaches New Milestone: Final Piece of Legislative Language Delivered to Capitol Hill," US Department of the Treasury, news release, Aug. 11, 2009, available at *http://www.treas.gov/press/releases/tg261.htm*.

8. *See* "Fact Sheet: Administration's Regulatory Reform Agenda Moves Forward Say-On-Pay," US Department of the Treasury, news release, available at *http://www.financialstability.gov/docs/regulatoryreform/say-on-pay.pdf* (last visited Aug. 31, 2009).

9. *See* Kevin Drawbaugh, "U.S. financial regulators stake out turf defenses," *Reuters*, July 24, 2009, available at *http://www.reuters.com/article/timothyGeithner/idUSTRE56L5XV20090724*.

10. *See* Damian Paletta and Deborah Solomon, "Geithner Vents at Regulators as Overhaul Stumbles," *The Wall St. J.*, Aug. 4, 2009.

11. Schapiro, Mary, "Testimony: Regulatory Perspectives on the Obama Administration's Financial Regulatory Reform Proposals," July 22, 2009, available at *http://www.sec.gov/news/testimony/2009/ts072209mls.htm*.

12. *See* Bernanke, Ben S., "Testimony: Regulatory Restructuring Before the Committee on Financial Services," July 24, 2009, available at *http://www.federalreserve.gov/newsevents/testimony/bernanke20090724a.htm#f2*.

13. *See* Bair, Sheila, "Statement of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation on Regulatory Perspectives on Financial Regulatory Reform Proposals before the Financial Services Committee," July 24, 2009, available at *http://www.fdic.gov/news/news/speeches/chairman/spjuly2409.html*.

14. *See* "Comptroller Dugan Supports Regulatory Reform Plan, Urges Revision to Some Details," OCC Press Release, July 24, 2009, available at *http://www.occ.treas.gov/ftp/release/2009-88.htm*.

15. Theo Francis, "Financial Regulation: Industry Objections Increasing" *Business Week*, June 26, 2009, available at *http://www.businessweek.com/bwdaily/dnflash/content/jun2009/db20090626_446404.htm* (last visited Aug. 28, 2009).

16. *Id*.

17. *See* Letter on H.R. 3269, the "Corporate and Financial Institution Compensation Fairness Act of 2009" from R. Bruce Josten, July 30, 2009, available at *http://www.uschamber.com/issues/letters/2009/090730_hr3269.htm*.

18. *See* American Bankers Association, "ABA Testifies On Proposals For Financial Regulatory Reform," available at *http://www.aba.com/Pressrss/071509HFSCRegReform.htm* (July 15, 2009).

19. *Id*.

20. *Id*.

21. *See*, "SIFMA: Administration Proposal for Systemic Risk Supervisor Another Positive Step Forward," July 22, 2009, available at *http://www.sifma.org/news/news.aspx?id=12496*.

22. *Id*.

23. *Id*.

24. *Id*.

25. *See* Baker, Richard, "Testimony of Richard H. Baker for the hearing on Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals," before the Committee on Financial Services US House of Representatives, July 17, 2009, available at *http://www.managedfunds.org/downloads/Testimony%20of%20Richard%20Baker%20--%20Managed%20Funds%20Association.pdf*.

26. *Id*.

27. *Id*.

28. *See* MBA Press Release "MBA Testifies Before House Financial Services Committee on Regulatory Reform," July 15, 2009, available at *http://www.mortgagebankers.org/NewsandMedia/PressCenter/69641.htm*.

29. *Id*.

30. *Id*.

31. Spatafora, Nikola, "The Global Financial Crisis 2009: Preparing for the Future, World Economic Outlook: Crisis and Recovery 2009," at 83 (PLI, Corporate Law and Practice Course Handbook Series, No. 20457, 2009).

32. This includes countries such as Bulgaria, Romania, Estonia, Greece, Spain, South Africa, Vietnam, Costa Rica, and the United States.

33. Landler, Mark, "Financial crisis could also hurt Eastern Europe, Latin America and Africa," *The NY Times*, Sept. 25, 2009.

34. Spatafora, *supra* n.31, at 83.

35. *See* "Fact Sheet: Improving International Regulatory Standards and Cooperation," US Department of the Treasury, news release, available at *http://www.financialstability.gov/docs/regulatoryreform/improving_internatl_reg_standards_co-op.pdf* (last visited Aug. 31, 2009).

36. Jackson, James K., "The Financial Crisis: Impact on and Response by the European Union," June 24, 2009, *Congressional Research Service*.

37. Members of the European Union are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

38. According to the Financial Service Administration (FSA), the financial services regulator in the United Kingdom, 70 percent of policymaking by the FSA is driven by EU initiatives.

39. Jackson, *supra* n.36, at 9.

40. *See* Financial Crisis to Recovery: A European Framework for Action, Communication from the Commission, European Commission, COM (2008) 706, Oct. 29, 2008, available at *http://ec.europa.eu/commission_barroso/president/pdf/COMM_20081029.pdf.*

41. *See* A European Economic Recovery Plan: Communication from the Commission to the European Council, Commission of the European Communities, COM (2008) 800 final, Nov. 26, 2008, available at *http://ec.europa.eu/commission_barroso/president/pdf/Comm_20081126.pdf*.

42. Jackson, *supra* n.36, at 25.

43. *See* Berès, Pervenche, Chairwoman of the Economic and Monetary Affairs Committee, CESR's Conference on 23, Feb., 2009.

44. *Id*.

45. *See, e.g*. Moyer, Elana, "Hedge funds face long EU regulation battle," *The Guardian*, Aug. 20, 2009, available at *http://www.guardian.co.uk/business/2009/aug/20/hedge-fund-regulation-battle*.

46. *See* Asian Development Bank (ADB), "ADB's Response to the Global Economic Crisis: An Update," Aug. 2009, available at *http://www.adb.org/Documents/Policies/Global-Economic-Crisis/in221-09.pdf*.

47. *See* "Thanks to Asia, economic crisis is rolling back: UN," *The Economic Times*, July 16, 2009, available at *http://economictimes.indiatimes.com/News/International-Business/Thanks-to-Asia-economic-crisis-is-rolling-back-UN/articleshow/4785126.cms*.

48. *See* ADB, "Lessons from the ADB's Response to the Global Economic Crisis," June 2009, available at *http://www.adb.org/Documents/Reports/Economic-Crisis/Global-Economic-Crisis-042709.pdf*.

49. *Id*.

50. ADB, "ADB's Response to the Global Economic Crisis: An Update."

51. *Id*.

52. Slade, Tuiloma Neroni, "Press Statement: Pacific Tailored Response to the Effect of the Global Economic Crisis on the Region," Aug. 4, 2009, available at *http://www.forumsec.org/pages.cfm/newsroom/press-statements/2009/response-economic-crisis-must-be-pacific-tailored--sg.html*.

53. The African Development Bank Group, "Response to the Economic Impact of the Financial Crisis," March 2009, available at *http://www.afdb.org/en/topics-sectors/topics/financial-crisis/*.

54. *Id*.

55. *See, e.g.* African Monitor, "Dialogue on Africa's response to the Global Financial Crisis," adopted 23-24 Feb. 2009, in Midrand, South Africa, available at *http://www.africanmonitor.org/Site/index.php?option=com_content&task=view&id=109&Itemid=55*.

56. Landler, Mark, "Financial crisis could also hurt Eastern Europe, Latin America and Africa," *The NY Times*, Sept. 25, 2009.

57. Spatafora, *supra* n.31, at 83.

58. Landler, *supra* n.56.

59. *See* International Monetary Fund, "Recession Loosens Grip But Weak Recovery Ahead," available at *http://www.imf.org/external/np/exr/key/finstab.htm* (last visited Aug. 31, 2009).

60. *See* International Monetary Fund, "The International Community's Response to the Economic and Financial Crisis and its Impact on Development," IMF Contribution to the United Nations Conference, New York, June 24–26, 2009, available at *http://www.imf.org/external/np/pp/eng/2009/062409.pdf*.

61. This Action Plan sets forth a comprehensive work plan to implement the five agreed on principles for reform: (1) strengthening transparency and accountability; (2) enhancing sound regulation; (3) promoting integrity in financial markets; (4) enforcing international cooperation; and (5) reforming international financial institutions. *See* "Action Plan to implement principles for reform" G-20 Summit on Financial Markets and the World Economy, Washington, DC, Nov. 15, 2008, available at *http://www.pittsburghsummit.gov/resources/125137.htm*.

62. The Pittsburgh Summit 2009, *http://www.pittsburghsummit.gov/about/* (last visited Aug. 30, 2009).

63. "Fact Sheet: Improving International Regulatory Standards and Cooperation," *supra* n.35.

64. The Pittsburgh Summit 2009, available at *http://www.pittsburghsummit.gov/about/* (last visited Aug. 30, 2009).

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