ANTI-CRISIS PARADIGMS OF CORPORATE GOVERNANCE IN BANKS: A NEW INSTITUTIONAL OUTLOOK

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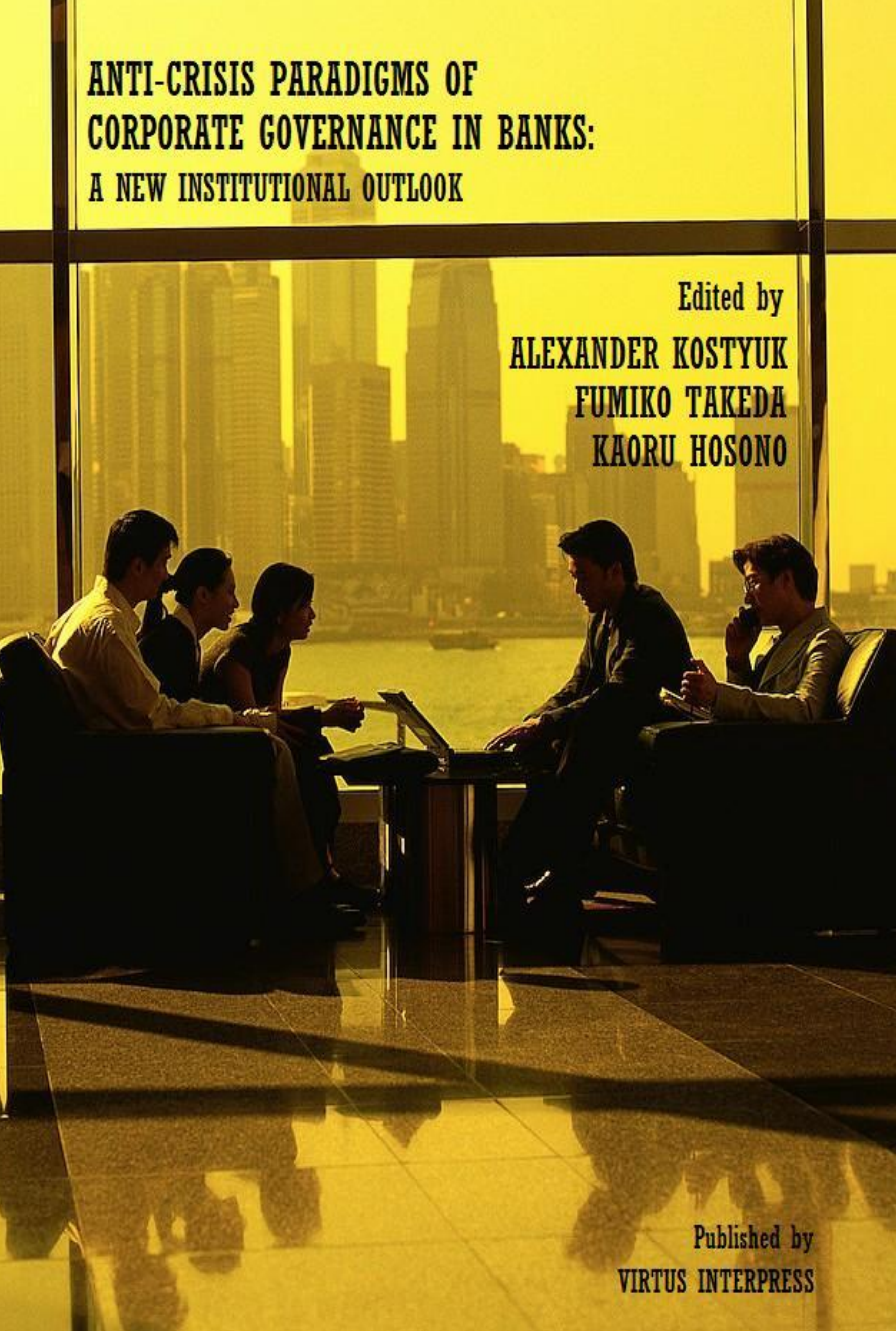

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名誉	良心	高貴
Meiyo	*Ryoushin*	*Kouki*
Honor	*Conscience*	*Nobility*
Честь	*Совесть*	*Доброе имя*

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CHAPTER 1

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CORPORATE GOVERNANCE IN THE USA BANKS

1. Concept of Corporate Governance in Banks of the USA

1.1. Introduction

Banking in the United States is dominated by bank holding companies – firms that own banks and other banking related companies. In fact, 75 percent of small banks with assets less than $100 million are owned by bank holding companies and 100 percent of large banks with $10 billion are controlled by bank holding companies.[1] Moreover, publicly available banking data are primarily confined to bank holding companies. Thus, consistent with research in this area, this paper focuses on governance of bank holding companies and uses the terms “banks” and “bank holding companies” interchangeably.

Bank holding companies are regulated by the Federal Reserve (Fed) which while serving as the nation’s central bank is also empowered to oversee the U.S. banking system. Nonetheless, the regulation of U.S. banks is not the exclusive province of the Fed and is divided among several entities.

Research indicates that corporate governance varies by industry (e.g., Boone, Field, Karpoff, and Raheja, 2007; and Coles, Daniel, and Naveen, 2008). This is particularly true in the case of the banking industry where the structure of the industry, regulation, boards and compensation differs from other industries. In particular, researchers have found that banks have significantly larger boards, more independent directors, and more committees (Kroszner and Strahan, 2001; Adams and Mehran, 2003). In addition, both CEO and director compensation are found to be lower in banking than in other industries (Houston and James, 1995; Adams and Mehran, 2003; Becher, Campbell, and Frye, 2005). In this chapter we will first discuss the industry characteristics and regulatory oversight of the banking industry, followed by a more detailed discussion of bank boards and compensation. The conclusion will present recent trends and discuss possible implications.

1.2. Industry Characteristics

Both organizational and ownership structure are important to keep in mind when considering bank governance in the U.S. The organizational structure form of banks in the U.S. is similar to business groups in other countries (Khanna and Yafeh, 2007), but is distinct from organizational structures commonly found in nonfinancial industries in the U.S. Bank subsidiaries are separately chartered in the United States. Therefore, Kroszner and Rajan (1997) argue that activities of subsidiaries are not as controlled by the parent as internal divisions might be in nonfinancial firms. Moreover, Adams (2009) argues that a bank’s governance is likely influenced by its subsidiaries because of the dual banking system of federal and state banks in the U.S.

Caprio, Laeven, and Levine (2007) find that 90 percent of U.S. banks in their sample are widely held. This is similar to the general ownership structure of nonfinancial firms in the U.S. but is in contrast to the predominance of family and

[1] http://www.fedpartnership.gov/bank-life-cycle/grow-shareholder-value/bank-holding-companies.cfm.

state bank ownership in many other countries (Caprio et al., 2007; Laeven and Levine, 2008). The dispersion of ownership in U.S. banks suggests large blockholders are unlikely to be an important governance mechanism. In addition, Adams and Mehran (2003) find that ownership by institutions and CEOs is lower in banks than in nonfinancial firms.

Studies that examine global banking environments provide some evidence as to the effect of the regulations for the banking industry. For example, Beck, Demirguc-Kunt, and Levine (2006) provide evidence that the supervision of banks is important because it forces accurate disclosure of information, and bank supervision by regulations can ease information costs and improve the integrity of bank lending. Additionally, Caprio, Laeven, and Levine (2007) find that countries that have regulations that protect shareholders, such as those found in the United States, tend to have banks with higher valuation. Further, regulations themselves do not have a positive impact on bank valuation through the reduction of expropriation nor do they have a negative effect on value through the reduction of bank risk beyond the desired level by shareholders.

Another illustration of the unique influence of regulation on bank governance is the fact that many provisions of the Sarbanes-Oxley Act of 2002, which implemented increased oversight of public corporations in the United States, were already in effect for banks. The Financial Institutions Recovery, Reform, and Enforcement Act (FIRREA) of 1989 and the Federal Depository Insurance Corporation Improvement Act (FDICIA) of 1991 predate Sarbanes-Oxley and include similar provisions. For instance, these banking regulations include internal control mechanisms as the primary component for transparent financial statements and require independent auditors to verify the accuracy of bank's financial statements. In addition to these provisions, as did SOX later, the banking regulations also require CEO and CFO certification of financial statements. However, SOX added the requirement with regard to a financial expert, serving on publically traded corporations' audit committees – including banks.

Regulatory oversight can serve as a substitute for or complement to corporate governance. Booth, Cornett, and Tehranian (2002) specifically examine the relation between regulatory oversight and corporate governance. They examine the monitoring function of directors in banks, public utilities, and manufacturing firms. Their results suggest that regulators may be a substitute for the monitoring function of directors in banks and public utilities. However, Gorton and Rosen (1995) look at why the rate of failures for banks climbed in the 1980s before the deregulation of acquisitions in the banking industry. The authors find support for their "corporate control" model and argue that the market for corporate control in banking is weaker than it is in markets for unregulated firms, which would suggest other governance mechanisms are more important when stricter regulations exist. We discuss the influence of the regulatory environment on boards and compensation within those sections.

2. Models of Corporate Governance Applied in Banks of the USA. Board Composition and Structure

Regulators impose additional responsibilities on banks boards because of characteristics discussed previously that are uniquely bank-related. Macey and O'Hara (2003) argue that these factors hold bank boards to a broader and higher standard of care than other directors. Thus, bank boards of directors have responsibilities in addition to having the same legal responsibilities of other corporate boards. Researchers have therefore examined the unique role of the boards at banks in the corporate governance framework. Specifically, researchers have examined board size, composition, meeting frequency, and function.

It is commonly thought that smaller boards are more efficient. However, research by Coles, Daniel and Naveen (2008) finds that this may not be true in the case of complex firms, such as bank holding companies. Coles, Daniel and Naveen find that complex firms with greater advertising requirements tend to have larger boards with more outside directors. Adding support to the argument of Coles, Daniel and Naveen that larger boards may not be less efficient in complex firms, Alonso and Gonzales (2008) find that there is an inverted U-shaped relation between board size and bank performance. This U-shape forms because up to a certain point, adding directors is associated with monitoring and advising benefits for banks, but there is a limit at which point the coordination, control, and decision-making problems of additional directors will outweigh the benefits. Alonso and Gonzales find this point to be around 19 directors for banks.

Compared to other industries in the United States, it is clear that the boards of banks are different. Boards of banking firms tend to be larger than non-banking boards (Adams and Mehran, 2003; and Brickley and James, 1987), and banks have more outside directors than do manufacturing boards (Brickley and James, 1987). Adams and Mehran offer three reasons that the board size may be different for banks. First, prior studies have shown that board size is positively correlated with firm size, and bank holding companies are larger than manufacturing firms in terms of asset size. Second, bank holding company boards may be larger because of their complex organizational structures that arise from their holding of subsidiary banks. This argument is consistent with Coles et al., 2008.

Third, an active level of consolidation in the banking industry may account for the board size. Because acquired banks may remain as subsidiaries with their own boards, directors of the acquired banks may be appointed to the acquiring bank's board. Consistent with this view, Adams (2009) finds that 43 percent of merger-directors sit on subsidiary boards. Also, Brickley and James (1987) find that when controlling for takeover regulations at the state level, the larger number and proportion of outside directors for banks only holds in states that allowed acquisitions prior to the passage of the Reigel-Neal Interstate Branching Act of 1994.

According to Adams and Mehran (2008), in addition to the previously mentioned factors of the high levels of M&A activity and unique organizational structure within the banking industry, there is another factor that influences board composition. This additional factor is the lending relationships between banks and directors' employers. The classification of a truly independent director is difficult in the banking industry as the board's independence may be overstated due to undisclosed individual loans that can exist between the bank and the directors or directors' employers.

Brook, Hendershott, and Lee (2000) study board of director characteristics and merger activity. They find that target banks' outside directors, but not inside directors, tend to own more stock than their counterparts in other banks. Neither the fraction of outsiders on a bank's board nor having an outside-dominated board appear to make a difference in deciding which banks are target firms. Instead, outside directors and blockholders appear only to be primarily responsible for encouraging bank managers to accept an attractive merger offer. In contrast, Shivdasani (1993) finds that ownership by outside directors is lower in nonfinancial firms targeted in a hostile takeover. These results suggest that the board of directors and hostile takeovers are substitute mechanisms in nonfinancial firms while the board of directors and mergers are complements in banks.

As regulations have changed over time, so have board characteristics. Adams and Mehran (2003) find that the size of bank boards is decreasing over time, but continue to be larger than non-bank boards during the sample period. Becher, Campbell and Frye (2005) corroborate the findings of Adams and Mehran (2003). They find that following the deregulation of interstate branching by the Reigle-Neal Interstate Banking Act of 1994, bank boards experience fundamental changes. Prior to the passage of the Act, bank boards were significantly larger than their industrial counterparts, had more independent outside directors, and received less equity-based compensation. Post regulation, the boards were still larger but there was little difference in the proportion of outside directors, and there was no difference in equity-based compensation. However, the differences in board size and proportion of outsiders may continue to diminish as board size and independence in other industries are found to be increasing over time, especially after Sarbanes-Oxley (Linck, Netter, and Yang, 2009). Another historical difference between the banking industry and non-banking industries that may be diminishing is the frequency of board and committee meetings. Historically, bank boards and committees have met more frequently (Adams and Mehran, 2003).[2] However, Linck et al. (2009) find that the frequency of meetings has increased for non-banking firms since the regulations under Sarbanes-Oxley went into effect.

2.1. Executive Compensation

In general, firm size and stock returns are positively related to executive compensation. That is, that the larger the firm and the higher the firm returns, the larger the compensation packages given to the executives of the firm. With this fact in mind, many researchers look at why the executive compensation in banks is so different than in other industries given that banks are generally larger in size.

Historically, bank CEOs have been compensated less than their industrial counterparts (Booth, 1993 and Becher, Campbell and Fry, 2005).[3] Moreover, Houston and James (1995) find that bank CEOs receive less cash compensation, are less likely to participate in a stock option plan, hold fewer stock options and receive a smaller proportion of their total compensation in the form of options and stock than do other CEOs. Houston and James note that they find no evidence that the compensation contracts for banks do not provide greater incentives for risk taking. They also find no support to the moral hazard hypothesis that riskier banks rely more heavily on incentives such as stock options than do less risky banks. Fields and Fraser (1999) also find less pay-for-performance sensitivity in the banking industry. They find that pay-performance sensitivities for commercial banks tend to be less than that for investment banks. Bank boards are also found to rely less on long-term incentive-based compensation in their CEO compensation packages. In addition, CEO ownership in terms of percent ownership and dollar market value are smaller for banks.

John and John (1993) suggest that levered firms award less equity compensation to mitigate the agency costs of debt. CEO compensation structures may also be different for banks because of the industry structure which limits entry into the industry and regulatory oversight. John and Qian (2003) argue that in general, pay-performance is lower for highly regulated firms. Mehran and Winton (2001) point out that because stock options are long-term compensation contracts, a rational bank executive should be expected to demand more cash compensation relative to equity-based compensation, because the latter becomes worthless in the event of liquidation. Although this is true for all companies, it perhaps is more likely in

[2] These differences are shown in Adams and Mehran's Table 3 which is shown in the Appendix below.
[3] Becher, Campbell and Fry's Table 2, Differences between bank and nonbank director compensation by year, is shown in the Appendix.

banking given the nature of banking. In the banking industry, distress typically leads to liquidation, the incumbent is removed from management (Skeel, 1998), and depositors' claims have seniority over management compensation contracts.

Regulators consider how stock-based compensation motivates top management to undertake more value enhancing decisions (Core, Guay, and Larcker, 2003). Regulators also consider how stock options affect risk-taking. For example, Brewer, Hunter and Jackson (2003) find that more risky banks have higher levels of equity-based compensation. Mehran and Rosenberg (2007) find that as bank CEO stock option holdings increase so do the bank's equity volatility and asset volatility. They state that "Regulators may also be concerned with the effect of stock options on risk taking, particularly when financial institutions do not have sufficient capital. For non-financial firms, stock options may be appropriate instruments to provide incentives for managers to create value, or to protect the creditors of distressed firms. However, for banks, stock options may create incentives that conflict with regulatory policy objectives to protect the non-share-holding stakeholders of banks, such as depositors and taxpayers."

Several studies examine changes in compensation associated with regulatory changes. For example, Hubbard and Palia (1995) find that CEO pay increased in the banking industry in the late 1980's and early 1990's comparable to the rate of increases in other industries. There is a stronger pay-for-performance relationship in states that allow interstate banking, which is argued to be evidence that the deregulations in the banking industry encourage banks to compensate executives more like other industries.

Harjoto and Mullineaux (2003) look primarily at how bank compensation policies have evolved in the 1990s in response to major shifts in the nature of the commercial banking business. The authors find support for the hypothesis that banks rely more heavily on incentive compensation than was the case in the 1980s. They also find that total CEO compensation at large banks equals or exceeds that at investment banks. Results also show that there is a strong relationship between incentive compensation and performance as well as some support for the prediction of agency theory that pay-for-performance sensitivity declines with increased variability of returns. The authors posit that banks may be exploiting the deposit insurance mechanism. However, Gorton and Rosen (1995) find that the behavior of the banking industry is better explained by managerial entrenchment than by moral hazard associated with exploiting deposit insurance.

Another area that is examined for differences in CEO compensation is the effect of mergers. Anderson, Becher, and Campbell (2004) find in their study that post-merger there is a significant increase in CEO total compensation. The authors note that studies in this area, such as Bliss and Rosen (2001), typically find that CEO compensation is related to asset size and thus increases after a merger occurs. Additionally, the authors find that the acquirer bank pays a premium for the target that reflects the gains that are anticipated from the merger and find a statistically significantly positive relation between changes in compensation and target assets. Anderson, Becher and Campbell find no consistent relationship between CEO compensation and changes in asset size following the merger. Importantly, they find that the change in CEO compensation post-merger is related to the combined increase of bidder and target banks upon merger announcement. They conclude that increases in CEO compensation after bank mergers are indicative of restructured incentives for CEOs required to focus their talents on the realization of merger gains in a more complex organization rather than from simply an increase in asset size.

This is different than Bliss and Rosen (2001) who also study the effects of mergers on CEO compensation. Bliss and Rosen find that acquiring bank CEO compensation increases after the merger even if the stock price falls. They also find that the fall in wealth from the decline in stock price does not offset the increase in compensation. However, their sample size is a third of Anderson et al.'s.

Similar to CEO compensation, Becher, Campbell and Frye (2005) find that total compensation is lower for bank directors. However, they find no difference in cash compensation. The difference is in equity-based compensation. They further examine how director incentives change in response to deregulation in the banking industry. The authors find that the differences in compensation between bank boards and non-bank boards disappear following deregulation, suggesting that regulation influences the compensation of boards in the banking industry. Becher, Campbell and Frye (2005) conclude that the banks have responded to deregulation by improving monitoring through aligning directors' incentives with those of shareholders.

The question that remains to be answered is whether in the post-Sarbanes Oxley environment those differences have continued to narrow. Linck, Netter and Yang (2009) find that for 8,000 nonbank public companies, the increased workload of directors along with additional risk and increased demand for independent directors have resulted in increased director compensation post-Sarbanes Oxley. The impact of Sarbanes-Oxley on banks may have a lesser impact in that banks were already compliant with regulations similar to those imposed by Sarbanes-Oxley. As a consequence, the differences in CEO and director compensation may have widened as a result of the passage of Sarbanes-Oxley.

3. The Banking Law and Regulation

3.1. Regulatory Oversight

Banks are typically omitted from corporate governance studies in the U.S. because they are viewed so differently from other industries due to unique industry characteristics and regulatory oversight. An underlying influence in the study of bank corporate governance in the United States is the presence of regulatory oversight.

The United States has a dual banking system. A bank can receive its charter either from the state in which it is headquartered or from the federal government's Office of the Comptroller of the Currency. If the charter is from the Office of the Comptroller, the bank is referred to as a National bank and must either have "national" or N.A. for "national associate" in its title. A national bank must also be a member of the Federal Reserve System (Fed) and all chartered US banks must purchase deposit insurance from the Federal Deposit Insurance Corporation (FDIC).

However, all bank holding companies are supervised by the Federal Reserve, regardless of the charters of their member banks. All banks must have FDIC-insured deposits and are subject to FDIC regulations. Indeed, the existence of federal deposit insurance, which provides government guarantees for a portion of bank's liabilities may create moral hazard problems that justify additional regulatory scrutiny. In particular, the existence of fixed rate deposit insurance can create a moral hazard issue by encouraging risk-taking when the value of a bank charter falls (see Gorton and Rosen, 1995).

Overall, banking in the U.S. has often been referred to as being the most heavily regulated industry in the country. Explanations for this degree of regulatory oversight of banks are the lack of transparency for banking firms in addition to other reasons that are uniquely bank related. For example, Macey and O'Hara (2003) note that the existence of the bank's fiduciary responsibility to depositors, the highly leveraged structure of the bank, and the mismatch of assets and liabilities lead to more regulatory oversight.

3.2. Major U. S. Banking Laws

Banking in the United States is governed by a set of legislative acts that have set forth the basic guidelines under which the appropriate oversight body writes the conforming regulations with which the banks must conform. Those acts in general either affect safety and soundness in the operations of the banks or compliance for consumer protection. The regulators generally have two separate sets of examinations to test for bank compliance in both areas. The major US banking laws are as follows:[4]

National Bank Act of 1864 (Chapter 106, 13 STAT. 99).

Established a national banking system and the chartering of national banks.

Federal Reserve Act of 1913 (P.L. 63-43, 38 STAT. 251, 12 USC 221).

Established the Federal Reserve System as the central banking system of the U.S.

The McFadden Act of 1927 (P.L. 69-639, 44 STAT. 1224).

Amended the National Banking Laws and the Federal Reserve Act and prohibited interstate banking.

Banking Act of 1933 (P.L. 73-66, 48 STAT. 162).

Also known as the Glass-Steagall Act. Established the FDIC as a temporary agency. Separated commercial banking from investment banking, establishing them as separate lines of commerce.

Banking Act of 1935 (P.L. 74-305, 49 STAT. 684).

Established the FDIC as a permanent agency of the government. It extended the branching provisions of the Banking Act of 1933 to FDIC non-members and required state member banks to obtain Federal Reserve Board approval of new branches.

Federal Deposit Insurance Act of 1950 (P.L. 81-797, 64 STAT. 873).

Revised and consolidated earlier FDIC legislation into one Act. Embodied the basic authority for the operation of the FDIC.

Bank Holding Company Act of 1956 (P.L. 84-511, 70 STAT. 133).

Required Federal Reserve Board approval for the establishment of a bank holding company. Prohibited bank holding companies headquartered in one state from acquiring a bank in another state.

Bank Secrecy Act (BSA) of 1970 (53 U.S.C. 5311, et seq).

Designed to aid the federal government in detecting illegal activity through

[4] See http://www.flofr.com/banking/forms/mbl.pdf.

tracking certain monetary transactions. Requires financial institutions to file reports of transactions conducted in currency in amounts over $10,000. Requires recordkeeping on beneficiaries and originators of funds transfers in amounts over $3,000. Requires information gathering and recordkeeping on sales of monetary equivalents (money orders, cashier's checks, traveler's checks) in amounts between $3,000 and $10,000. Establishes certain exemptions to the currency transaction reporting requirements.

Fair Credit Reporting Act of 1971 (P.L. 91-508 as amended by P.L. 107-56 (October 26, 2001) 15 U.S.C. § 1681).

Specifies the purposes for which a consumer report (often referred to as a credit report) or an investigative consumer may be obtained and the procedures which must be followed. This law places duties on the consumer reporting agency, reporting entities, and users of reports, and specifies certain protections for consumers.

Community Reinvestment Act of 1977 (Title VII of P.L. 95-128, 91 Stat. 1147 (October 12, 1977). The Community Reinvestment Act is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods.

International Banking Act of 1978 (P.L. 95-369, 92 STAT. 607).

Brought foreign banks within the federal regulatory framework. Required deposit insurance for branches of foreign banks engaged in retail deposit taking in the U.S.

Financial Institutions Regulatory and Interest Rate Control Act of 1978 (P.L. 95-630, 92 STAT. 3641).

Also known as FIRIRCA. Created the Federal Financial Institutions Examination Council (FFIEC). Established limits and reporting requirements for bank insider transactions, limits on correspondent accounts, restructures the operations of the NCUA and creates the NCUA Board. Created major statutory provisions regarding electronic fund transfers. Title XI of this act is the Right to Financial Privacy Act of 1978 (see separate entry below)

Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.)

The Right to Financial Privacy Act was Congress' response to a U.S. Supreme Court decision that found bank customers had no legal right of privacy for their financial information held by financial institutions. The law is largely procedural and requires government agencies to provide notice and an opportunity to object before a bank or other institution can disclose personal financial information to a government agency, usually for law enforcement purposes.

Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221, 94 STAT. 132).

Also known as DIDMCA. Established "NOW Accounts". Began the phase-out of interest rate ceilings on deposits. Established the Depository Institutions Deregulation Committee. Granted new powers to thrift institutions. Raised the deposit insurance ceiling to $100,000.

Depository Institutions Act of 1982 (P.L. 97-320, 96 STAT. 1469).

Also known as Garn-St. Germain Act. Expanded FDIC powers to assist troubled banks. Established the Net Worth Certificate program. Expanded the powers of thrift institutions.

Competitive Equality Banking Act of 1987 (P.L. 100-86, 101 STAT. 552).

Also known as CEBA. Established new standards for expedited funds availability. Recapitalized the Federal Savings & Loan Insurance Company (FSLIC). Expanded FDIC authority for open bank assistance transactions, including bridge banks.

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (P.L. 101-73, 103 STAT. 183).

Also known as FIRREA. FIRREA's purpose was to restore the public's confidence in the savings and loan industry. FIRREA abolished the Federal Savings & Loan Insurance Corporation (FSLIC), and the FDIC was given the responsibility of insuring the deposits of thrift institutions in its place. The FDIC insurance fund created to cover thrifts was named the Savings Association Insurance Fund (SAIF), while the fund covering banks was called the Bank Insurance Fund (BIF). FIRREA also abolished the Federal Home Loan Bank Board. Two new agencies, the Federal Housing Finance Board (FHFB) and the Office of Thrift Supervision (OTS), were created to replace it. Finally, FIRREA created the Resolution Trust Corporation (RTC) as a temporary agency of the government. The RTC was given the responsibility of managing and disposing of the assets of failed institutions.

Crime Control Act of 1990 (P.L. 101-647, 104 STAT. 4789).

Title XXV of the Crime Control Act, also known as the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, greatly expanded the authority of Federal regulators to combat financial fraud. This act prohibited undercapitalized banks from making golden parachute and other indemnification payments to institution-affiliated parties. It also increased penalties and prison time for those convicted of bank crimes, increased the powers and authority of the FDIC to take enforcement actions against institutions operating in an unsafe or unsound manner, and gave regulators new procedural powers to recover assets improperly diverted from financial institutions.

Federal Deposit Insurance Corporation Improvement Act of 1991 (P.L. 102-242, 105 STAT. 2236).

Also known as FDICIA. FDICIA greatly increased the powers and authority of the FDIC. Major provisions recapitalized the Bank Insurance Fund and allowed the FDIC to strengthen the fund by borrowing from the Treasury. The act mandated a least-cost resolution method and prompt resolution approach to problem and failing banks and ordered the creation of a risk-based deposit insurance assessment scheme. Brokered deposits and the solicitation of deposits were restricted, as were the non-bank activities of insured state banks. FDICIA created new supervisory and regulatory examination standards and put forth new capital requirements for banks. It also expanded prohibitions against insider activities and created new Truth in Savings provisions.

Housing and Community Development Act of 1992 (P.L. 102-550, 106 STAT. 3672).

Established regulatory structure for government-sponsored enterprises (GSEs), combated money laundering, and provided regulatory relief to financial institutions.

RTC Completion Act (P.L. 103-204, 107 STAT. 2369).

Requires the RTC to adopt a series of management reforms and to implement provisions designed to improve the agency's record in providing business opportunities to minorities and women when issuing RTC contracts or selling assets. Expands the existing affordable housing programs of the RTC and the FDIC by broadening the potential affordable housing stock of the two agencies. Increases the statute of limitations on RTC civil lawsuits from three years to five, or to the period provided in state law, whichever is longer. In cases in which the statute of limitations has expired, claims can be revived for fraud and intentional misconduct resulting in unjust enrichment or substantial loss to the thrift. Provides final funding for the RTC and establishes a transition plan for transfer of RTC resources to the FDIC. The RTC's sunset date is set at Dec. 31, 1995, at which time the FDIC will assume its conservatorship and receivership functions.

Riegle Community Development and Regulatory Improvement Act of 1994 (P.L. 103-325, 108 STAT. 2160).

Established a Community Development Financial Institutions Fund, a wholly owned government corporation that would provide financial and technical assistance to CDFIs. Contains several provisions aimed at curbing the practice of "reverse redlining" in which non-bank lenders target low and moderate income homeowners, minorities and the elderly for home equity loans on abusive terms. Relaxes capital requirements and other regulations to encourage the private sector secondary market for small business loans. Contains more than 50 provisions to reduce bank regulatory burden and paperwork requirements. Requires the Treasury Dept. to develop ways to substantially reduce the number of currency transactions filed by financial institutions. Contains provisions aimed at shoring up the National Flood Insurance Program.

Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. (P.L. 103-328, 108 STAT. 2338).

Permits adequately capitalized and managed bank holding companies to acquire banks in any state one year after enactment. Concentration limits apply and CRA evaluations by the Federal Reserve are required before acquisitions are approved. Beginning June 1, 1997, allows interstate mergers between adequately capitalized and managed banks, subject to concentration limits, state laws and CRA evaluations. Extends the statute of limitations to permit the FDIC and RTC to revive lawsuits that had expired under state statutes of limitations.

Home Ownership and Equity Protection Act (HOEPA) of 1994. HOEPA combats abuses in the home equity lending market and places restrictions on, and requires added disclosures with respect to, certain high-cost mortgage loans. The disclosures are contained in an abbreviated disclosure statement given at least three days before closing, and the restrictions are on certain loan terms that are associated with abusive lending. Coverage depends on whether the loan's annual percentage rate or the total of points and fees exceeds a specified percentage or amount.

Economic Growth and Regulatory Paperwork Reduction Act of 1996 (P.L. 104-208, 110 STAT. 3009).

Modified financial institution regulations, including regulations impeding the flow of credit from lending institutions to businesses and consumers. Amended the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974 to streamline the mortgage lending process. Amended the FDIA to eliminate or revise various application, notice, and recordkeeping requirements to reduce regulatory burden and the cost of credit. Amended the Fair Credit Reporting Act to strengthen consumer protections relating to credit reporting agency practices. Established consumer protections for potential clients of consumer repair services. Directed FDIC to impose a special assessment on depository institutions to recapitalize the SAIF, aligned SAIF assessment rates with BIF assessment rates and merged the SAIF and BIF into a new Deposit Insurance Fund.

Gramm-Leach Bliley Act of 1999 (P.L. 106-102, 113 STAT 1338).

Repeals last vestiges of the Glass Steagall Act of 1933. Modifies portions of the Bank Holding Company Act to allow affiliations between banks and insurance underwriters. While preserving authority of states to regulate insurance, the act prohibits state actions that have the effect of preventing bank-affiliated firms from selling insurance on an equal basis with other insurance agents. Law creates a new financial holding company under section 4 of the BHCA, authorized to engage in: underwriting and selling insurance and securities, conducting both commercial and merchant banking, investing in and developing real estate and other "complimentary activities". There are limits on the kinds of non-financial activities these new entities may engage in. Allows national banks to underwrite municipal bonds. Restricts the disclosure of nonpublic customer information by financial institutions. All financial institutions must provide customers the opportunity to "opt-out" of the sharing of the customers' nonpublic information with unaffiliated third parties. The Act imposes criminal penalties on anyone who obtains customer information from a financial institution under false pretenses. Amends the Community Reinvestment Act to require that financial holding companies can not be formed before their insured depository institutions receive and maintain a satisfactory CRA rating. Also requires public disclosure of bank- community CRA-related agreements. Grants some regulatory relief to small institutions in the shape of reducing the frequency of their CRA examinations if they have received outstanding or satisfactory ratings. Prohibits affiliations and acquisitions between commercial firms and unitary thrift institutions. Makes significant changes in the operation of the Federal Home Loan Bank System, easing membership requirements and loosening restrictions on the use of FHLB funds.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct

Terrorism Act of 2001, ("USA PATRIOT Act") (Pub. L. No. 107-56, 115 Stat. 272).

Signed by President Bush on October 26, 2001, the USA PATRIOT Act contains strong measures to prevent, detect, and prosecute terrorism and international money laundering. The Act is far-reaching in scope, covering a broad range of financial activities and institutions. The provisions affecting banking organizations are generally incorporated as amendments to the Bank Secrecy Act (BSA). The Act, whose coverage extends beyond insured depository institutions, provides the statutory groundwork for new filing and reporting obligations for banks and thrifts. It also requires certain additional due diligence and recordkeeping practices, especially in the area of private banking and foreign correspondent accounts. Some requirements take effect without the issuance of regulations. The U.S. Department of the Treasury, in consultation with the FRB, FDIC, OCC, OTS and the other federal financial institutions regulators, will implement other provisions through new or revised regulations.

Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204).

Signed by President Bush on July 30, 2002, the Sarbanes-Oxley Act of 2002 includes far-reaching changes in federal securities regulation that could represent the most significant overhaul since the enactment of the Securities Exchange Act of 1934. The Act prescribes a system of federal oversight of public auditors through a new five-member Public Company Accounting Oversight Board, a new set of auditor independence rules, new disclosure requirements applicable to public companies and insiders (including attorneys), and harsh civil and criminal penalties for persons who are responsible for accounting or reporting violations. Under the Act, CEOs and CFOs of public companies are now required to personally certify that the reports their companies file with the SEC are both accurate and complete. The Act also imposes new restrictions on loans and stock transactions involving corporate insiders while requiring the SEC or SROs to adopt rules addressing conflicts of interest involving securities analysts.

The Check Clearing for the 21st Century Act (“Check 21 Act”) - (Pub. L. No. 108-100).

Signed by President Bush on October 28, 2003, the Act sets forth a statutory framework under which a substitute check is the legal equivalent of an original check for all purposes. Defines check truncation as removing an original paper check from the check collection or return process and sending in lieu of it a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.

4. Anti-crisis Corporate Governance in Banks of the USA: Government Reactions to Financial Crisis[5]

The financial crisis within the United States starting in 2007 resulted in several governmental actions that affect bank operations and bank corporate governance. The U. S. Treasury and the Federal Reserve aggressively intervened into financial markets as a result of the financial crisis. The Fed injected $62 billion into US financial markets in August 2007. The Fed and the Treasury were instrumental in encouraging and aiding J. P. Morgan Chase to purchase Bear Stearns and for Bank of America to purchase Merrill Lynch. The federal government at a cost of $85 billion assumed control of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) in order to prevent their failure. The Federal Reserve injected $182.5 billion into American Insurance Group (AIG). The government launched the Troubled Asset Relief Program, the Capital Assistance Program, The Mortgage Assistance Program and the Federal Accounting Standards Board revised the mark-to-market accounting rules.

Troubled Asset Relief Program (TARP)

The Emergency Economic Stabilization Act of 2008 granted the Secretary of the Treasury the authority to establish a $700 billion program to purchase troubled assets called the Troubled Assets Relief Program (TARP). However, the Treasury ultimately abandoned the idea of purchasing distressed assets given the difficulty in pricing those assets. Rather, the Treasury has used TARP funds to purchase bank capital.

Firms choosing to participate in the TARP program have faced additional scrutiny from the federal government. The government has required all to issue either equity securities, equity warrants, or senior debt securities as payment to the government for its purchase of capital. Companies that receive funds also must submit plans detailing the specific intended uses of the capital and must make full disclosures to the public regarding their participation in the program. Involvement in the TARP program may affect a company's ability to issue dividends or to receive tax benefits. In addition, participating companies may be forced to limit executive pay.

Capital Assistance Program

In February 2009, the U.S. Treasury announced the Capital Assistance Program. As a part of this program, banks with assets above $100 billion subjected to a series

[5] The authors thank Holly Bucheit for her research assistance in this section of the paper.

of stress tests to determine capital adequacy. The federal government instructed institutions deemed at risk to raise the necessary funds within six weeks through issuing equity, selling assets or receiving TARP funds.[6]

Mortgage Assistance Program

In March 2009, the Obama administration launched a $75 billion mortgage assistance program to help 9 million 'at risk' homeowners. The program has offered incentives to banks and lending institutions to refinance or modify loans. The government asked banks to modify loans by reducing monthly payments through lowering the interest rate or extending the life of the mortgage.

Fair Value Accounting Standards Eased

On April 2, 2009, the Federal Accounting Standards Board (FASB) voted to ease the rules on fair value or 'mark-to-market' accounting. Fair value accounting refers to valuing assets at their market value. Thus, institutions during the recent financial crisis had to write down the values of their assets to reflect market values. This practice clearly influenced the financial positions of companies as asset values plummeted.

The new rule allows companies to value assets at prices which they expect to receive in the future. Ultimately, banks now have the ability to apply judgment when assessing value of assets. The new rule will allow bankers not to be forced to record losses that may never have occurred. Critics complain that the new rule opens the door for bankers to improve appearances by artificially inflating assets prices.

Actions by the Federal Reserve

The Federal Reserve has taken a number of actions to ease the liquidity crisis and stabilize financial markets. The Fed has injected capital into the financial system by purchasing direct obligations from Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. It also pledged to purchase $600 billion worth of mortgage-backed securities and to lend $200 billion to the holders of these securities. The Fed has also purchased long-term Treasury securities to assist the Treasury in its attempts to sell securities to help finance government expenditures. Finally, the central bank has established a number of new programs to alleviate the strain on financial markets.

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[6] See http://www.ustreas.gov/press/releases/tg40.htm.

Commercial Paper Funding Facility

Following the failure of Lehman Brothers and the near-failure of numerous prominent institutions, commercial paper markets saw a reduction of $95 billion in commercial paper outstanding. Particularly, money market funds, the largest investors in commercial paper, became more selective in their investment choices as they faced their own liquidity strains. Lenders began to doubt the ability of borrowers to repay debt, and they became reluctant to purchase commercial paper. The contraction of the commercial paper market ultimately meant that businesses could not gain access to the funding needed to maintain day-to-day operations.

In order to prevent substantial disruption to the economy and financial markets, the Fed opened a facility to purchase commercial paper on October 7, 2008 with the Federal Bank of New York purchasing three-month unsecured and asset-backed commercial paper from eligible corporations ("Commercial Paper Funding Facility").

Term Asset-Backed Securities Loan Facility (TALF)

The Federal Reserve announced the formation of the Term Asset-Backed Securities Loan Facility (TALF) on November 25, 2008. The Treasury designed the program in response to declines in the issuance of new asset-backed securities in September and October. Consumer credit markets had tightened with the deterioration of the secondary market for mortgage loans, auto loans, student loans, and business loans and the secondary market for their asset-backed securities had declined. Thus, the Fed intervened and created the TALF program to enhance credit availability.

Public-Private Investment Program (PIPP)

On March 23, 2009, the Federal Reserve in conjunction with the FDIC and the U. S. Treasury Department announced the Public-Private Investment Program for Legacy Assets ("Public-private Investment Program for Legacy Assets"). PIPP was intended to rid institutions of the toxic assets on their balance sheets. A toxic asset refers to any asset that cannot reasonably be sold because its value has dropped substantially. However, the program was slow to launch. Banks that had begun to regain their stability wanted to refrain from accepting government assistance. Other institutions did not want to advertise their investment in toxic assets for fear of ruining their reputations. Finally, as with the TARP and TALF participants, many believed that using the PPIP would ultimately result in added regulatory oversight. As a result, the Treasury has announced that it will significantly scale back the program. The Fed has also announced it will end some of its emergency lending programs on February 1, 2010. Programs being phased out are the PDCF (primary dealer credit facility), the TSLF (term securities lending facility). The Fed will also end swap lines for short-term corporate lending and foreign banks. The TALF will continue to lend until June, 2010.

Actions Taken by the FDIC

Temporary Liquidity Guarantee Program

On October 13, 2008, the FDIC announced the formation of the Temporary Liquidity Guarantee Program. Through the program the FDIC planned to guarantee the newly issued senior unsecured debt of banks, thrifts, and certain holding companies. It also arranged to fully cover non-interest bearing deposit transaction accounts in any denomination through December 2009. The FDIC did not restrict the program to the institutions it already covers; resultantly, numerous institutions have joined the program. Examples of participating institutions include GE Capital, Bank of America, Goldman Sachs, J.P. Morgan Chase, and Wells Fargo.

5. Conclusion

Banking corporate governance is different from its industrial counterparts. It is different in levels of executive compensation, regulatory oversight, and board structure. Banking executives have lower compensation, the industry is more heavily regulated and banks have larger boards with more outside directors.

Several researchers argue that these differences appear to be eroding over time as the industry becomes less regulated and the competitive environment intensifies. However, even with these changes, the differences are still significant. These differences support the argument that corporate governance is industry specific. Boone, Field, Karpoff, and Raheja (2007) and Coles, Daniel, and Naveen (2008) examine the relation between industry and firm characteristics and corporate governance. Taken together, their results indicate that board characteristics vary according to certain industry characteristics, e.g., the specific nature of a firm's competitive environment and the complexity of the firm. The results in Coles et al. suggest that, contrary to prior beliefs, larger boards may be optimal in complex industries. Consistent with this result, Sierra, Talmor and Wallace (2006) explicitly control for regulatory oversight and capital market discipline. They find that consistent with the monitoring function, a strong board of directors is associated with higher bank performance and lower levels of executive pay.

However, a question not directly addressed in the literature is whether banking risk is a function of managerial behavior or of the type of banking assets. If certain banking assets are inherently more risky, the bank may choose to use more option-based compensation because it is more valuable to the CEO. In other words the risk characteristics may determine the level of option-based compensation rather than the other way around.

Bank risk-taking also appears to be influenced by the ownership structure of the bank. Laeven and Levine (2006) find that changes in regulation will have different effects on the risk taking of banks dependent on the corporate governance structure of the bank. Banks with more powerful owners are found to take greater risks, which is thought to be a result of the fact that equity holders have stronger incentives to take risks than debt holders and that large owners have the power to induce management to increase their risk taking.

Another change in the corporate governance landscape in the U.S. which may impact banks is the growth of shareholder activism by institutional investors. Not only have these activists been successful in lobbying for regulatory changes, they have recently been successful in eliciting meaningful changes at large publicly traded companies through the use of "Vote No" campaigns, public campaigns where the activists publicly solicit other shareholders to join them in withholding votes for directors at companies when they are dissatisfied with management performance (Del Guercio, Seery, and Woidtke, 2008). Banks were among the public companies these shareholders targeted.

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Fact Sheet

The USA: Regulation on use of remuneration consultants in banks

The United States — the Securities and Exchange Commission requires listed companies to disclose all compensation (remuneration) consultants with any role in determining or recommending the amount or form of executive or director remuneration, stating whether such consultants are engaged directly by the committee and describing the nature and scope of their task. Proposed amendments in July 2009 include requiring disclosure about the fees paid to such consultants if they also provide other services to the company along with a description of those other services (SEC 2009a).

The United Kingdom — the UK Combined Code stipulates that where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company. The Walker Review in the United Kingdom included a draft 'Voluntary Code of Conduct in relation to Executive Remuneration Consulting in the United Kingdom' (Walker 2009). As of August 2009, Deloitte, Hay Group, Hewitt New Bridge Street, Kepler, Mercer, Towers Perrin and Watson Wyatt had all signed up to the draft code. The Code focuses on five fundamental principles: transparency, integrity, competence and due care, objectivity and confidentiality. The draft code also includes good practice guidelines on the ways in which these principles should apply.

However, the Association of British Insurers argues that the Code does not go far enough in acknowledging potential conflicts of interest. They contend that boards should disclose publicly how much they spend on pay consultancy each year, as well as how much management spend on other services from the same consultancy companies (Association of British Insurers 2009).

European Union — a 2004 European Commission recommendation stated that member policies should ensure that companies disclose the name of remuneration consultants whose services were used for determining remuneration policy (European Commission 2004). Subsequently, in April 2009 the European Commission released a further recommendation that stated that consultants who advise the remuneration committee should not advise the company as well (European Commission 2009a).

The USA: NYSE corporate governance commission

In November 2009 NYSE Euronext (NYX) completed the formation of the "Commission on Corporate Governance" to address U.S. corporate governance and the overall proxy process. The formation of this commission was first announced in September. Consistent with the NYSE's role as a leading advocate on governance issues, the commission, chaired by Larry W. Sonsini of Wilson Sonsini Goodrich & Rosati, brings together leading experts and representatives from public companies, institutional and individual investors, broker/dealers and other advisors. The commission has begun its deliberations and will work with policymakers and other interested constituents to evaluate and make recommendations on pressing corporate governance and proxy reform, including a review of:

- the roles of, and relationships, accountability and communications among, Boards of Directors, Management, Stockholders and other corporate stakeholders;

- the proxy voting process, including transparency of the process, the benefits and costs of recent and continuing regulatory initiatives in the proxy process;

- the role of proxy advisory services, institutional investors and individual investors within the proxy process, including practices which can further educate investors about, and encourage them to participate in, the proxy process;

- corporate governance structures and corporate mechanisms impacting the governance of the corporation; and

- stockholder access to corporate proxy cards, including recent developments in state law and the proposed initiatives by the SEC.

The Commission will also review, and comment upon as appropriate, the proposed policy initiatives, rules and legislative developments affecting corporate governance. As it considers these issues, the Commission will consider both the potential risks and benefits that may be associated with the expansion of regulatory obligations imposed on Directors, Management and Stockholders, including the risk that increasing such obligations may alter the balance of responsibility and accountability among such constituencies and may impede the focus of creating long-term shareholder value.

The Commission will seek input from experts in a variety of fields as appropriate, and will report on its progress periodically. The Commission will ensure that all constituents, including the SEC, issuers, broker/dealers, institutional investors, individual stockholders and other interested parties, will have an opportunity to provide input into this process.

The USA: Regulating executive compensation in banks

In October 2009 the Federal Reserve Board issued a proposal designed to ensure that the incentive compensation policies of banking organizations do not undermine the safety and soundness of their organizations.

The proposal includes two supervisory initiatives. One, applicable to 28 large, complex banking organizations, will review each firm's policies and practices to determine their consistency with the principles for risk-appropriate incentive compensation set forth in the proposal. These firm-specific policies will be assessed by supervisors in a special "horizontal review", a coordinated examination of practices at the 28 firms. The policies and implementing practices adopted by these firms in response to the final supervisory principles will become a part of the supervisory expectations for each firm and will be monitored for compliance.

Second, supervisors will review compensation practices at regional, community, and other banking organizations not classified as large and complex as part of the regular, risk-focused examination process. These reviews will be tailored to take account of the size, complexity, and other characteristics of the banking organization.

"Compensation practices at some banking organizations have led to misaligned incentives and excessive risk-taking, contributing to bank losses and financial instability", Federal Reserve Chairman Ben S. Bernanke said. "The Federal Reserve is working to ensure that compensation packages appropriately tie rewards to longer-term performance and do not create undue risk for the firm or the financial system".

Federal Reserve Governor Daniel K. Tarullo noted that the proposal on compensation practices is an important part of the Federal Reserve's ongoing effort to improve financial regulation.

"Today's proposal is but one part of a broad program by the Federal Reserve to strengthen supervision of banks and bank holding companies in the wake of the financial crisis", Tarullo said. "In customizing the implementation of our compensation principles to the specific activities and risks of banking organizations, we advance our goal of an effective, efficient regulatory system".

Flaws in incentive compensation practices were one of many factors contributing to the financial crisis. Inappropriate bonus or other compensation practices can incent senior executives or lower level employees, such as traders or mortgage officers, to take imprudent risks that significantly and adversely affect the firm. With that in mind, the Federal Reserve's guidance and supervisory reviews cover all employees who have the ability to materially affect the risk profile of an organization, either individually, or as part of a group.

The findings from these reviews will be incorporated into the banking organization's supervisory ratings. In appropriate circumstances, the Federal Reserve may require an organization to develop a corrective action plan to rectify deficiencies in its incentive compensation programs and processes.

The USA: SEC regulation of executive pay

The Securities and Exchange Commission in July 2009 approved three measures that are intended to better inform and empower investors to improve corporate governance and help restore investor confidence.

The Commission proposed requiring public companies receiving money from the Troubled Asset Relief Program (TARP) to provide a shareholder vote on executive pay in their proxy solicitations The Commission also voted to propose better disclosure of executive compensation at public companies in their proxy statements, and approved a New York Stock Exchange rule change to prohibit brokers from voting proxies in corporate elections without instructions from their customers.

"With over 800 billion shares being voted annually at over 7,000 company meetings, it is imperative that our proxy voting process work – starting with the quality of disclosure and continuing through to the integrity of the vote results," said SEC Chairman Mary Schapiro. "These three items considered today are all related to the fundamental goal of enhancing the quality of the system through which shareholders exercise their franchise."

The Emergency Economic Stabilization Act of 2008 requires shareholder approval of executive compensation during the period in which any obligation arising from financial assistance provided under TARP remains outstanding. The SEC is seeking public comment on proposed changes to Commission rules that would:

- Require public companies that are TARP recipients to provide a separate shareholder vote in proxy solicitations during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.

- Clarify that the separate shareholder vote would only be required on a proxy solicited for an annual meeting (or special meeting in lieu of the annual meeting) of security holders for which proxies will be solicited for the election of directors.

- Provide that registrants would be required to disclose in the proxy statement that they are providing a separate shareholder vote on executive compensation and to briefly explain the general effect of the vote, such as whether the vote is non-binding.

- Clarify that the new rules do not require smaller reporting companies to include a compensation discussion and analysis section in their proxy statements.

Appendix 1. Comparisons of Descriptive Statistics on Selected Corporate Governance and Financial Variables for Banking Holding Companies and Manufacturing Firms

Variable	**Bank Holding Companies**	**Manufacturing Firms (SIC 2000-3999)**
Board size[a]		
Mean	18.2	12.1***
Median	18.0	12.0***
Outside Directors (percent)[a]		
Mean	68.7	60.6***
Median	71.4	66.7***
Ratio of value of option grant to sum of salary and bonus[b]		
Mean	1.0	1.6*
Median	0.5	0.8***
CEO ownership (percent)[c]		
Mean	2.3	2.9*
Median	0.4	0.3***
CEO stake (millions of dollars)[d]		
Mean	27.9	133.8**
Median	11.9	9.6**
Meetings per year[e]		
Mean	7.9	7.6
Median	8.0	7.0*
Numbers of committees[f]		
Mean	4.9	4.4***
Median	5.0	4.0***
Tobin's Q[g]		
Mean	1.1	1.9***
Median	1.0	1.5***
Monthly stock return volatility (percent)[h]		
Mean	7.78	8.85***
Median	7.09	7.92***

Notes: The table presents statistical comparisons of selected corporate governance and financial variables for our sample of bank holding companies (BHCs) and for unregulated, nonfinancial manufacturing firms from 1986 to 1999. Because no data set on manufacturing firms contains all governance variables of interest over the 1986-99 period, the data source used to construct summary statistics for manufacturing firms varies by the variable under consideration and may also vary by year. For each variable, the BHC statistics is computed for the same period as the statistic for manufacturing firms.

[a] Manufacturing firm data are from Yermack (1993) for 1986-91 and from Spencer Stuart S&P 100 for 1995-96 and S&P 500 for 1997-99. There are 2,394 firm-years.

[b] Manufacturing firm data for 1992-99 are from ExecuComp and are for the top fifty S&P 500 firms based on total assets. There are 400 manufacturing firm-years.

[c] Manufacturing firm data for 1986-91 are from Yermack (1993); 1992-99 data are from ExecuComp. There are 6,613 manufacturing firm-years.

[d] Manufacturing firm data are for the top fifty S&P 500 manufacturing firms in terms of market value and are from Yermack (1993) for 10986-91 and from ExecuComp for 1992-99.

[e] Manufacturing firm data for 1993 and 1996 are from Spencer Stuart S&P 100; 1997-99 data are from Spencer Stuart S&P 500. There are 724 firm-years.

[f] Manufacturing firm data for 1993 and 1996 are from Spencer Stuart S&P 100; 1997-98 data are from Spencer Stuart S&P 500. There are 310 firm-years.

[g] Manufacturing firm data for 1986-91 are from Yermack (1993); 1992-99 data from Compustat for sample of manufacturing firms in the S&P 500. There are 4,017 firm-years.

[h] The variable is calculated as the standard deviation of monthly returns for a year, then averaged over 1986-99. Manufacturing firm include manufacturers from Yermack (1993) over the 1986-91 period. Data for 1992-99 are from Compustat for the S&P 500. There are 1,474 manufacturing firm-years.

***Statistically significant at 1 percent level.

** Statistically significant at 5 percent level.

* Statistically significant at 10 percent level.

Source: Adams and Mehran, Table 3.

Appendix 2. Differences between Bank and Non-Bank Director Compensation by Year

	1992	1993	1994	1995	1996	1997	1998	1999	All Years
Annual Retainer									
Banks	14.99	16.25	17.14	16.70	17.10	17.81	17.24	17.87	16.88
Non-banks	16.40	16.58	17.32	17.69	16.96	17.14	17.45	18.16	17.25
p-value	0.21	0.77	0.87	0.41	0.91	0.61	0.88	0.85	0.41
Total Meeting Fees									
Banks	7.20	7.84	8.62	7.99	7.68	7.85	7.42	7.55	7.78
Non-banks	6.13	6.34	6.57	6.80	6.64	6.78	6.94	7.02	6.68
p-value	0.06	0.01	0.00	0.06	0.11	0.11	0.31	0.31	0.00
Total Cash Compensation									
Banks	22.19	24.09	25.76	24.70	24.78	25.66	24.66	25.43	24.66
Non-banks	22.53	22.92	23.89	24.49	23.60	23.92	24.39	25.18	23.94
p-value	0.80	0.35	0.15	0.88	0.40	0.24	0.86	0.88	0.15
Total Equity Compensation									
Banks	2.68	3.39	4.15	5.52	11.75	18.87	25.30	26.38	12.05
Non-banks	7.63	11.84	15.90	17.09	26.93	32.85	35.41	49.09	25.88
p-value	0.03	0.03	0.01	0.00	0.05	0.04	0.14	0.04	0.00
Total Compensation									
Banks	24.88	27.48	29.91	30.21	36.61	44.53	49.90	51.81	36.71
Non-banks	30.23	34.83	39.87	41.67	50.66	56.86	59.85	74.44	49.91
p-value	0.04	0.06	0.03	0.00	0.08	0.08	0.15	0.05	0.00
% Equity-based Compensation									
Banks	7.51 %	8.85%	9.46%	14.72%	19.04%	27.98%	30.38%	33.61%	18.72%
Non-banks	14.69 %	19.08%	24.31%	26.68%	34.23%	39.61%	41.63%	44.96%	31.79%
p-value	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Note: this table reports for various measures of director compensation for banks and non-banks by year. All data are from ExecuComp. The p-value reports the significance of the difference between the two sample means. All dollar values are reported in thousands. Total fees assumes the director attended all board meetings. Total cash compensation is the sum of the total meeting fees and the annual retainer. Total equity compensation is the sum of the stock options granted and stock shares granted. Total compensation is the sum of total cash compensation and total equity compensation. The percentage of equity-based compensation is the total equity compensation divided by the total compensation.

Source: Becher, Campbell and Frye, Table 2.

Appendix 3. Checklist for New Institutional Corporate Governance in Banks: the USA

	New institutional corporate governance features	Problems featured by new institutional corporate governance	Efforts undertaken in the country to develop corporate governance in banks during financial crisis 2008-2009		
			Weak	**Moderate**	**Strong**
1	Process of corporate governance standards change (corporate governance codes, laws, etc.)	Irrational behavior of stakeholders of bank		○	
2	Process of advancing the compensation of bank executives	Irrational behavior of executives			○
3	Process of empowering contractual relationships between the banks and executives			○	
4	Process of empowering the role of independent director	Irrational behavior of executives		○	
5	Process of development of the board committee system	Irrational behavior of executives and asymmetry of information	○		
6	Process of empowering the financial reporting standards	Asymmetry of information		○	
7	Process of ownership structure changes	Transaction costs of the bank	○		
8	Process of stakeholder rights' protection	Irrational behavior of stakeholders		○	
9	Process of minority shareholders' rights protection	Irrational behavior of minority shareholders		○	
10	Process of interacting between the state and banks	Irrational behavior of stakeholders of bank	○		
11	Process of empowering the long-term oriented corporate governance	Uncertainty of the market participants		○	
12	Process of empowering the international corporate governance standards and practices	Irrational behavior of the market participants	○		