University of Strathclyde
Law, Arts and Social Sciences

Revolving doors, accountability and transparency: Emerging regulatory concerns and policy solutions in the financial crisis

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The Study

- What is the ‘revolving door’?
- Lobbying and the financial crisis
- The revolving door in Financial Services
  - Regulatory Agencies
  - The Fortune 500
- Precedents and practice: An overview of regulatory and ethics solutions to pre-and post employment conflicts
- Moving towards transparency and restoring trust
- Conclusions and recommendations

Regulatory Capture

- ‘It is a common phenomenon in all areas of regulation that regulators become ‘captured’ by the industry they regulate, meaning that they take on the objectives of management in the firms they regulate. They may thereby lose sight of the ultimate objectives of regulation. Regulatory capture is particularly serious in industries such as banking where there is a conflict of interest between the firms’ objectives (to maximise profits) and the objectives of the regulation (to provide consumer protection and maintain systemic stability).’
- Source: H. Benink, R. Schmidt, “Europe’s single market for financial services: views by the European Shadow Financial Regulatory Committee”, *Journal of Financial Stability*, 2004, p. 186.

Regulatory Capture?

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

  - Charlie McCreevy, European Commissioner for Internal Market and Services

- Source: Speech at the Institute of International and European Affairs, Dublin, February 9, 2009. http://www.rte.ie/news/2009/0209/mccreevyc.html

Steps to the crisis

- 1975 deregulation of the New York Stock Exchange on ‘May Day’
- 1979 ‘Volcker shock’
- 1986 The ‘Big Bang’ deregulation of the London Stock Exchange
- 1992 European Commission banking directive
- 1997 Independence of the Bank of England
- 1999 repeal of the Glass-Steagall Act

Lobbying for financial deregulation

- ‘I would say it's probably the most heavily lobbied, most expensive issue to come before Congress in a generation.
  - Ed Yingling, chief lobbyist for the American Bankers Association on the lobby to repeal Glass-Steagall

Lobbying for financial deregulation

- ‘Banking deregulation has been vigorously lobbied and debated for 20 years by three of the nation's wealthiest industries: banking, insurance and securities. In 1997 and 1998 alone, these three industries gave $58 million to Federal political candidates, according to compilations by the Center for Responsive Politics, a nonpartisan research group. They donated $87 million in so-called soft money to the political parties, and they reported spending $163 million in additional lobbying expenses.’

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

Lobbying and the Revolving door

- A great many of those lobbyists entered and exited through **the revolving door** connecting the lobbying world with government. Surveying only 20 leading firms in the financial sector (none from the insurance industry or real estate), we found that **142 industry lobbyists during the period 1998-2008** had formerly worked as “covered officials” in the government. “Covered officials” are top officials in the executive branch (most political appointees, from members of the cabinet to directors of bureaus embedded in agencies), Members of Congress, and congressional staff.

- Nothing evidences the revolving door — or Wall Street’s direct influence over policymaking — more than the stream of Goldman Sachs expatriates who left the Wall Street goliath, spun through the revolving door, and emerged to hold top regulatory positions. Topping the list, of course, are former Treasury Secretaries Robert Rubin and Henry Paulson, both of whom had served as chair of Goldman Sachs before entering government.

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

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Revolving door in regulatory agencies

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

Revolving door in regulatory agencies

- The regulators examined with the most numerous links were those of Ireland, New Zealand and the United Kingdom. Regulators in Belgium, Canada, Iceland and the United States were found to be more likely to recruit individuals from public institutions like Central Banks, government or other regulatory agencies. In Australia the ASIC was particularly notable for its high proportion of commercial lawyers, whilst regulators in Belgium, Canada, and the United States, were also more likely to recruit individuals from law and accountancy; many of whom nevertheless work – albeit indirectly – in the field of banking and finance.

Revolving door and the Financial Services Authority

- Since January 2000 there have been 36 different members of the FSA board.
- The data show that 26 of the members had connections at board or senior level with the banking and finance industry either before or after their term or office.
- Nine continued to hold appointments in financial corporations while they were at the FSA .

Fortune Global 500 Companies

- **Table 1. Financial Industry Corporations from the Fortune Global 500**

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

Fortune Global 500 Companies

- **Table 2. Financial Industry Corporations from the Fortune Global 500**

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

Fortune Global 500 Companies

- **Table 3. Financial Industry Corporations from the Fortune Global 500 by geographical region**

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

Fortune Global 500 Companies

- **Table 4. Financial Industry Corporations from the Fortune Global 500 European breakdown**

	Average no. of Revolving Door connections
Switzerland	6.2
(UBS, Credit Suisse, Zurich Financial Services, Swiss Reinsurance and Swiss Life)	
United Kingdom	4.8
Rest of Europe	2.3

Precedents and practice

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

- Former Chairman of the SEC, Harold M. Williams, Washington,D.C. February 27,1981 http://www.sec.gov/news/speech/1981/022781williams.pdf

Precedents and practice

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

Precedents and practice

- 4. Revolving Door Ban Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

- 5. Revolving Door Ban Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non career Senior Executive Service appointee for the remainder of the Administration.

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

Regulating Science

- ‘balance’ between the priority to encourage the financial sector and the public interest.
- ‘public interest’ and the ‘private interest’ as synonymous
- ‘conflict of interests’ versus ‘experience’ or ‘expertise’
- Range of solutions include disclosure, management of conflicts and their elimination
- Expertise, experience and legitimacy required – not necessarily ‘private interests’

Proposals 1 – Pre-employment

- Development of clear rules and procedures regarding divestment of interests upon joining public service from industry;
- Wider use of blind trusts as a means of disposing of assets and interests that may create conflicts while in public office;
- Prohibition on use of blind management arrangements where officials or public office holders can be made aware of their trust portfolio and its performance;
- Development of rules and procedures to bar regulatory appointments for person's whose employment background would tend to create frequent impartiality conflicts;
- Strengthening of recusal rules and procedures that bar appointees from handling matters involving their former employers in the private sector, once they have entered public service;
- Introduce mandatory recusal on matters directly involving one's former employers and clients including regulations and contracts during a defined period after taking office;

Proposals 2 – Pre-employment

- Require lobbyists entering government to recuse for a specified period from a) participation in any particular matter on which they lobbied; b) participation in the specific issue area in which that particular matter falls; c) seeking or accepting employment with any agency that the person lobbied for a specified period before the date of the appointment.
- Requiring officials as part of their terms and conditions of employment in the public sector to enter into a binding ethics 'entry plan' to clarify what activities will be prohibited;
- Requiring a list of the relevant interests of decision-makers within the public service, and summaries of their career histories outside the public service to be made public. Senior public servants would be required to put on a publicly available register details of past employment in the private sector (for the previous 5 years), along with details of current outside interests;
- Requiring a database of gifts and hospitality (above a token value) received by Ministers, their advisors and Senior public servants and regulators;
- Prohibition of regulatory staff from maintaining positions with financial sector or other corporations while serving on regulatory agencies;
- Strengthening the separation of interests from regulatory authorities by ensuring that regulatory agencies contain at least a significant proportion of board members with no or no recent senior involvement with financial sector business.

Proposals 3 - Post employment

- Strengthening of recusal rules and procedures that bar appointees from handling matters involving their former employers in the private sector once they have left public service;
- Introduce mandatory recusal on matters directly involving one's employers and clients during a defined period prior to taking office;
- Prohibiting senior officials from seeking employment with outside interests that may have benefited from policies formulated by those officials;
- Early notification of employment negotiation between officials and private sector employers;
- Extending the period during which officials cannot engage in lobbying after leaving office and expanding the scope of prohibited activities beyond direct representation to include the preparation, strategy work and supervision of lobbying activity designed to facilitate lobbying;

Proposals 4 - Post employment

- Requiring officials as part of their terms and conditions of employment in the public sector to enter into a binding ethics ‘exit plan’ when leaving the public sector to clarify what activities will be prohibited;
- Require binding revolving-door exit plans that sets forth the policy issues which the former employee is banned from working. Such reports should be available to the public;
- Prohibit, for a specified period of time, political appointees or special advisors and senior policymakers from being able to seek employment with private interests that may have significantly benefited from the policies they formulated;
- Require recently retired government officials and their new private sector employers to file revolving-door reports attesting that the former government employee and their employers have complied with the agreed revolving door exit plan.

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