**Engendering confidence in the financial system – challenges and observations**

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**Introduction and overview**

Two words - *trust* and *integrity* - more than any other underpin the operations of the London financial markets as an essential precondition to the creation of a climate of confidence. It is this confidence that helps the financial markets ride out the turbulence associated with periodic financial crises. One only has to think back to the 1994-95 Mexican peso crisis estimated to have cost $50 billion; to the 1997 Asian crisis with a price tag of $117 billion and to the 1998 Russian bond crisis which was put at $22 billion as some recent examples. The shock associated with the 2008 western financial crisis which, it is suggested, resulted in losses of $1.4 trillion appears associated with the widely embraced belief that market volatility had been tamed and that the long standing positive correlation between reward and risk had in someway altered in what was referred to as ‘the great moderation’:

*“One of the most striking features of the economic landscape over the past twenty years or so has been a substantial decline in macroeconomic volatility”*

Ben Bernanke, February 20th 2004[[1]](#footnote-1)

It was possibly the apparent unexpectedness of the 2008 crisis and the resultant market panic during which trust all but evaporated that paved the way for the emergence of an almost perfect storm of scandal and subsequent accusation that has seen changes in both the structure of regulation and the emergence of a heightened public and media interest in ‘bank bashing’. Indeed having been adopted by the press, this pejorative term has entered the lexicon as a recognised phrase:

*‘Overreaction, but more bank-bashing ahead’* Ian King, *The Times* April 17th, 2010

*‘Time for some bank bashing’ Emma* McKinney, *Birmingham Evening Mail,* April 1st, 2013

*‘There's a danger that all this bank bashing will just help our competitors*’ Business Section, *The Daily Telegraph* June 18th, 2013

Greater press attention on financial markets post-crisis, has inevitably raised public awareness and their opprobrium. Witness the various scandals that have emerged from the financial sector and found their way into the public arena: Most recently, the failings in respect of LIBOR setting colloquially referred to as ‘Libor fixing’ that in 2012, saw UBS[[2]](#footnote-2) fined £160m in connection with the event. In addition to UBS, other banks publically reprimanded and subject to FSA sanction, included both Barclays[[3]](#footnote-3) and RBS[[4]](#footnote-4) who were respectively fined £59.5 million and £87.5 million for the same market misconduct. Most recently the press has reported on what has been referred to as the ‘foreign exchange rate fixing scandal’,[[5]](#footnote-5) with reports drawing attention to the fact that the regulators have been investigating allegations of long term collusion between banks in relation to apparent fixing of foreign exchange rates. In light of this, it hardly comes as a surprise that *“highly respected individuals and institutions (bankers, regulators) suddenly became widely detested”* (Whittle and Mueller, 2012).[[6]](#footnote-6)

Set against this background, this chapter considers the general principles and objectives of financial market regulation. It goes on to discuss the changes in the financial markets in light of some high profile losses but notes that the nature of capitalist markets is inherently unstable. The chapter concludes with the argument that the answer to maintaining confidence does not lie in a constant tightening of rules but rather in the maintenance of a constant and open dialogue between the regulators and the institutions and it is this that creates trust.

**Financial market regulation – the long view**

Regulation has long been viewed as being *“critical to the successful development of financial systems”*[[7]](#footnote-7) (Mayer, 2008) and, largely in recognition of the interdependence between global financial markets and their congruence with the wider economy[[8]](#footnote-8), “*There can be few issues of greater public importance than the regulation of global financial markets”*  Picciotto and Haines[[9]](#footnote-9) (1999). Justification for market intervention can be found within welfare economics, where it takes place to correct a perceived failure in what are otherwise regarded as competitive markets. One of the main market failures that regulation is called upon to counter is that of informational asymmetry[[10]](#footnote-10) seen to exist between the professional practitioners within financial markets and the individual users (customers and investors) of the financial services that they provide.

Thus regulators are very much viewed as *‘technicians acting in the public interest’* (Ricketts, 2006)[[11]](#footnote-11) and that *‘the development of codification as institutionalisation’* (Vass, 2006)[[12]](#footnote-12) is embedded within the framework such that regulation becomes subject to judgement as to its fairness, proportionality, targeting and consistency (Baldwin and Cave, 1999; Kirkpatrick 2006)[[13]](#footnote-13). It also requires that regulators themselves are open to independent scrutiny – as, if the dominant paradigm is public interest, it is then imperative that regulators do not fall prey to actual or indeed, perceived, regulatory capture. Any suggestion of the latter would undermine the function that regulation plays in reinforcing confidence in financial markets. Capture occurs where the regulator and those subject to regulation identify with each other to such an extent that the former cannot envisage rule transgression by the latter and under which public denouncement and regulatory sanction becomes unthinkable.

In simple terms prudential regulation establishes the framework that ensures financial institutions are properly managed, adequately capitalised and have in place appropriate systems with which to control and monitor risk arising from the portfolio of their activities. These rules are intended to ensure stability and achieve the underlying objective of promoting confidence in the financial system. Enforcement of these rules falls to the national financial market regulator. The 1980s witnessed, through the 1986 Financial Services Act[[14]](#footnote-14), the first comprehensive attempt at wholesale taming of the financial markets. This Act established multiple self-regulatory bodies which collectively

*“demonstrated….that the City of London was a well regulated market and therefore an arena of probity and confidence”* (Stanley,1994)[[15]](#footnote-15)

A central tenet of the government at the time and its policy was to open up access to financial markets to the wider population, whereby the man in the street was encouraged to participate in the growing financial markets (Gamble, 1989)[[16]](#footnote-16). To be successful, the privatisation policy required the introduction of mechanisms that would ensure “*effective legal protection of investors*” (Johnson and Schleifer, 2004[[17]](#footnote-17); Crew and Kleindorfer, 2002[[18]](#footnote-18)); hence regulation delivered the means of engendering trust with the latter of critical importance to the financial sector (Pettit, 1995)[[19]](#footnote-19). As rules have to be policed, internal compliance and strong corporate governance took centre stage.

Regulation can follow one of two broad models – coercive or voluntary and within the UK the approach very much aligns with the latter whereby rules are put in place to avoid potential ‘*conduct failure’* (Vass, 2006)[[20]](#footnote-20). Thus there has been a long history of self-policing within financial markets with emphasis on a more persuasive model of regulatory compliance (Mascini, 2013)[[21]](#footnote-21) such that the regulator sits in benign oversight over self-regulatory structures that constantly monitor against a legal framework (Robinson and Marshall, 2006)[[22]](#footnote-22) reinforced by the belief that regulatory compliance would be driven through the discipline of the market – the paternalist model identified by Harvey and Bosworth-Davies (in press)[[23]](#footnote-23). Indeed, trust itself moved from the domain of the individual’s personal ethical stance ‘my word is my bond’ to expectation that it would permeate the standards exhibited by the institutions themselves as:

*“responsibility in the area of finance is not simply a matter of private ethics. It also involves establishing and maintaining bonds of trust between holders and users of capital, as well as between the operators themselves”* (Bonvin and Dembinski, 2002).[[24]](#footnote-24)

However these traditional voluntary-persuasive models of financial regulation assume an inverse relationship between internal cultural values and the prescriptive content of the regulatory framework, whereby organisations are intrinsically motivated to ensure that their actions remain legitimate and above board. This model permits regulation by exception – trusting that organisations self-police leaving the regulator to concentrate resource and effort in areas of high risk. This approach underpinned the movement from a rules-based to a risk-based approach promulgated by the Financial Services Authority (FSA).[[25]](#footnote-25) Indeed as pointed out in 1999 by Baldwin and Cave,[[26]](#footnote-26) compliance is synonymous with a risk based approach to regulation whilst deterrence models focus more on the impact of the harm. As coercive models make greater use of regulatory sanction and indeed, on prosecution, this approach can be expensive to operate and to enforce. In such circumstances a model based on persuasion is seen as more cost efficient as the ‘costs’ are shifted out from the regulator and into the regulated entities.

It is not the purpose of this brief contribution to trace the flux and change in response to the almost continuous series of financial scandal and crises that has largely been responsible for changing the UK regulatory framework[[27]](#footnote-27), however, more mature readers of this chapter will recall the names of Peter Clowes, Johnson Matthey Bank, Robert Maxwell, Guinness, Blue Arrow and Polly Peck[[28]](#footnote-28) as examples selected from the 1980s and 1990s that chart the move from self-regulatory to a greater degree of statutory regulation through the already mentioned creation of the Financial Services Authority. Move forward to the 2000s and there has been a further tranche of very public scandals involving sales of private pensions, endowment mortgages and most recently payment protection insurance (refer to Table 1). Indeed it is these cases that, in the wake of the financial crisis have heightened public sensitivity to confidence in activity within this sector. This is only to be expected, Jewkes (2004)[[29]](#footnote-29) noted the effect of framing[[30]](#footnote-30) on fact exaggeration whilst Combs and Slovac (1979)[[31]](#footnote-31) identified a strong correlation between availability[[32]](#footnote-32) bias and media coverage. The manner of how such issues are presented to society has been noted as an important factor in how perceptions are influenced, Stallings, (1990)[[33]](#footnote-33), notes that written media play a crucial role in this process.

**Table 1 Timeline of selected ‘incidents’ in the London Financial Markets**

|  |  |
| --- | --- |
| *year in which incident came to light* | Incident |
| 1984 | Johnson Matthey Bank |
| 1986 | Guinness/Distillers take over |
| 1988 | Barlow Clowes |
| 1990 | Polly Peck |
| 1991 | Robert Maxwell and Mirror Group |
| 1991 | BCCI |
| 1992 | Blue Arrow/Manpower takeover |
| 1993 | Credit Lyonnaise Rouse (LME) |
| 1995 | Nick Leeson - Barings |
| 1996 | Pensions Mis-selling (various) |
| 1996 | Peter Young - Morgan Grenfell |
| 2000 | Mortgage Endowments Mis-selling |
| 2000 | Equitable Life |
| 2002 | Split capital investment trusts and equity linked income bonds |
| 2007 | Self-certified mortgages (leading to the financial crisis) |
| 2011 | Kweku Adoboli - UBS |
| 2012 | Barclays Bank, RBS and UBS – LIBOR setting |
| 2013 | Interest rate protection products |

It is as a result of these various scandals and events that twice the government has resorted to a very public ‘rearrangement of the deck chairs’ and realignment of the regulatory structures. As noted, the first of these occurred in 1986 through the Financial Services Act, responsible for the creation of the various self-regulatory bodies for each discrete area of the financial sector; and their subsequent re-combination to mould the all-powerful single regulatory authority that was the Financial Services Authority (FSA). This emerged as a result of the Financial Services and Markets Act, 2000. Sharpened media attention undoubtedly prompted the FSA to increase the visibility of its regulatory sanction activity via implementation of a policy of ‘visible deterrence’ over the latter part of the 2000s and this did give rise to a gradual increase in the overall size of regulatory fines levied on rule transgressors. For example, in 2002 the FSA imposed nine fines totalling £9.4 million, with an average value of £827k and a range of £4k to £4 million. In 2012, it imposed 53 fines, with a total value of £311.6 million, an average value of £5.9 million and a range from £10k to £160 million[[34]](#footnote-34). Despite these higher sanctions the UK approach remained in sharp contrast to *‘the American system of enforcement* [that] *tends to be more adversarial, litigious and deterrence-based than the more compliance-oriented British approach’* (Baldwin and Cave, 1999).[[35]](#footnote-35)

It was thus far from unexpected that the latest assault on public confidence that emerged with the 2008 financial crisis that had led to calls for what Moshella and Tsingou (2013)[[36]](#footnote-36) referred to as *“re-regulation*” of these markets and *“to a more assertive and interventionist role for the public sector”*, would result in the third major reconfiguration of the regulatory framework that accompanied the Financial Services and Market Act 2012.[[37]](#footnote-37) For the FSA it was unfortunate that its visible deterrence efforts proved insufficient to save it from being reorganised and replaced in response to public criticism that its span of oversight had grown too large for it to be effective. This Act paved the way for the creation of the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) but also broadened and strengthened the law in relation to market manipulation (arising from the LIBOR setting ‘scandal’) and in relation to misleading statement and practices and creation of misleading impressions which was seen as providing a means of strengthening accountability.

*“The FSA has lasted barely a decade and was the second failed attempt to balance self-regulation with formal legislation to guard against City misdemeanours and miscreants”.* ‘And so, farewell to the FSA’ Sebastian Walsh, *Financial News* 9th Jan 2012

**Inherent instability**

Changing the structure of regulation is somewhat predicated on the assumption that it possible to intervene and substantially alter past behaviours learned and business models developed over many years of a free functioning capitalist system. Unfortunately what is frequently overlooked is the very real fact that the capitalist system itself is, by its very nature unstable as it centres upon successful profit generation and this requires companies to seek out and exploit potential market advantage. Seeking to benefit from the very market anomalies that regulation seeks to put right. Ingrained within this approach is the fact that *“people in markets act in their own self-interest”* (van de Ven, 2011).[[38]](#footnote-38) Indeed Minsky, (2003)[[39]](#footnote-39), argued the existence of regular endogenously generated financial crises as being part and parcel of capitalist economies. Setting out his first and second theorems that identified the predisposition of financial markets to lurch from one crisis to the next:

 *“The first theorem of the financial instability hypothesis is that the economy has financing regimes under which it is stable, and financing regimes in which it is unstable”*

and

*“The second theorem of the financial instability hypothesis is that over periods of prolonged prosperity, the economy transits from financial relations that make for a stable system to financial relations that make for an unstable system. In particular, over a protracted period of good times, capitalist economies tend to move to a financial structure in which there is a large weight to units engaged in speculative and Ponzi finance.”*

Thinking back over the past thirty years there have been various structural changes to financial markets and in the wider economy that created the conditions for opportunistic profit driven exploitation that led to the transgressions identified in Table 1 and indeed to the financial crisis. In 1986, ‘Big Bang’[[40]](#footnote-40) opened up the London financial markets to international competition. One of the consequences of this was a shift from traditional forms of relationship-based financial intermediation to transaction-based or market-place finance. Competition resulted in a driving down of profit margins and in light of the need to maintain profit flows attention turned to developing innovative new products. Significantly, one of the changes was the overt incentivisation (rather than management) of risk-taking by both individuals (bonus reward culture) and the firms that employed them (gaining market advantage). The result was that *“the efficiency of the financial system grew, but so did its vulnerability”* (Genschel and Plumper, 2011).[[41]](#footnote-41) Significant however was that the City culture was one that *“placed individual success and self-reliance as the primary indicators of excellence”* (Stanley, 1994).[[42]](#footnote-42) To this heady mix was added the continued economic liberalisation of cross border flows and opening up of sovereign markets to international capital that enabled institutional investors to chase short term gains (against a back drop of historically low interest rates) through moving speculative capital around the globe. Similarly, O’Brien (2009)[[43]](#footnote-43) summed up the origins of the 2008 crisis as arising from:

*“flawed governance mechanisms, including remuneration incentives skewed in favour of short-term profit-taking; flawed models of financing, including (but not limited to) the dominant originate-and-distribute model of securitization; and regulatory structures predicated on risk reduction which created incentives for arbitrage and paid insufficient attention to systemic credit risk”*

With the benefit of such hindsight, the financial crisis and indeed the continued regulatory ‘transgressions’ were and are somewhat predictable. In these circumstances the challenge facing governments is not to respond to the growing public clamour for a more and tighter regulatory response but to recognise that we inhabit an unstable system predisposed to rule-bending and, inevitably, period crises. Otherwise we will find that we enter into a constant upward spiral of regulatory tightening as *“when beliefs and presences are produced by a set of probability judgements, made inaccurate by the availability heuristic , legislation will predictably become anecdote driven”* (Jolls *et al* 1998).[[44]](#footnote-44)

**Discussion**

The argument being presented here is that there have always been and will always be financial crises and that changing (synonymous with tightening) regulatory structures will not prevent their continued occurrence. What is important is rather how the subsequent reaction of both markets and regulators is managed.

At present, the risk is that the UK shifts from the voluntary and essentially trust based model to a US style coercive model without properly understanding that in so doing they could stifle the very innovation that drives the economy or worse push such innovative minds to find ways to further circumvent the rules. Indeed the introduction of Deferred Prosecution Agreements[[45]](#footnote-45) could well be the start of this. Further a focus on national systems of supervision based on home country responsibility for supervision of internationally agreed standards fails to properly recognise the complexity of operation of financial institutions. It is better to clearly recognise that *“Arrangements for international regulatory coordination and cooperation still seem to lag well behind the dynamic of the transformations of finance”* (Picciotto and Haines,1999)[[46]](#footnote-46) and this will continue to be the case. Trust of itself is not something that can be inculcated via legislation. As pointed out by Harvey and Bosworth Davies[[47]](#footnote-47) trust within financial markets is underpinned by collective recognition of accepted and exhibited moral standards that are presumed to embrace both the individual and their employing institution. As long as we embrace a capitalist system crises will happen it is better that regulators have an open dialogue with the market so that they are informed of an impending problem sooner and are thus better able to manage the surprises:

*“I found a flaw. That is precisely the reason I was shocked because I’d been going for 40 years or more with very considerable evidence that it was working exceptionally well”’* Alan Greenspan, 23rd October 2008[[48]](#footnote-48)

1. Remarks by Federal Reserve Board Chairman Governor Ben S. Bernanke At the meetings of the Eastern Economic Association, Washington, DC February 20, 2004 available at <http://www.federalreserve.gov/Boarddocs/Speeches/2004/20040220/> [↑](#footnote-ref-1)
2. UBS fined £160 million for significant failings in relation to LIBOR and EURIBOR FSA/PN/116/2012

19 Dec 2012 <http://www.fsa.gov.uk/library/communication/pr/2012/116.shtml> (accessed 20/7/14) [↑](#footnote-ref-2)
3. Barclays fined £59.5 million for significant failings in relation to LIBOR and EURIBOR FSA/PN/070/2012

27 Jun 2012 <http://www.fsa.gov.uk/library/communication/pr/2012/070.shtml> (accessed 20/7/14) [↑](#footnote-ref-3)
4. RBS fined £87.5 million for significant failings in relation to LIBOR FSA/PN/011/2013 06 Feb 2013 <http://www.fsa.gov.uk/library/communication/pr/2013/011.shtml> (accessed 20/7/14) [↑](#footnote-ref-4)
5. Forex scandal: What is that all about? BBC Business News, 12th June, 2014 available at: <http://www.bbc.co.uk/news/business-26526905> (accessed 20/7/14) [↑](#footnote-ref-5)
6. Whittle, A., and Mueller, F., “Bankers in the dock: Moral storytelling in action” (2012) *Human Relations* 65:1, 111 at 112 [↑](#footnote-ref-6)
7. Mayer, C., ‘Trust in Financial Markets’ (2008) *European Financial Management*, 14:4, 617 at 620. [↑](#footnote-ref-7)
8. Htay, S. ‘Corporate Governance and Strategic Information Disclosure in Malaysian Listed Banks: Panel Data Analysis’, (2012) *International Review of Business Research Papers*, 8:1, 196 [↑](#footnote-ref-8)
9. Picciotto, S., and Haines, J., “Regulating Global Financial Markets” (1999) *Journal of Law and Society*, 26:3, 351 at 352 [↑](#footnote-ref-9)
10. Diamond, D., “Financial intermediation and delegated monitoring”, (1984) *Review of Economic Studies* 51, 393 [↑](#footnote-ref-10)
11. Ricketts, M., “Economic regulation: principles, history and methods” , Chapter 2, 34-62 Crew M and Parker, D., *International handbook on economic regulation* (2006) Edward Elgar at 37 [↑](#footnote-ref-11)
12. Vass. P., “Regulatory governance and the lessons from UK practice” Chapter 9, 188-205 in Crew, M. and Parker, D., *International handbook on economic regulation* (2006) Edward Elgar at 191 [↑](#footnote-ref-12)
13. Baldwin, R. and Cav.,e M., “Understanding Regulation: theory strategy and practice” (1999) Oxford University Press at 77; Kirkpatrick, C “Regulatory impact assessment” Chapter 11 232 – 251 in Crew, M. and Parke,r D. *International handbook on economic regulation* (2006) Edward Elgar at 236 [↑](#footnote-ref-13)
14. Financial Service Act 1986 C60 (Repealed) available at: <http://www.legislation.gov.uk/ukpga/1986/60/pdfs/ukpga_19860060_en.pdf> [↑](#footnote-ref-14)
15. Stanley C., “Mavericks at the Casino: Legal and Ethical Indeterminacy in the Financial Markets” (1994) *The Journal of Asset Protection and Financial Crime* 2:2. 137 at 143 [↑](#footnote-ref-15)
16. Gamble, A., ‘Privatization, Thatcherism and the British State. The Crisis of Social Democracy.’ In Gamble, A. and Wells, C., (1989) *Thatcher’s Law*, Basil Blackwell, London [↑](#footnote-ref-16)
17. Johnson, S. and Schleifer, A., ‘Privatization and Corporate Governance’, Governance, Regulation and Privatization in the Asia-Pacific Region, NBER East Asia Seminar on Economics, (2004) 12: 13, at 16 [↑](#footnote-ref-17)
18. Crew, M and Kleindorfer, P., “Regulatory Economics: Twenty years of Progress”, (2002), *Journal of Regulatory Economics*, 21:1, 5 [↑](#footnote-ref-18)
19. Pettit, P., ‘The Cunning of Trust’, (1995) *Philosophy & Public Affairs*, 24:3, 202 [↑](#footnote-ref-19)
20. *Op cit* footnote 12 at 191. [↑](#footnote-ref-20)
21. Mascini, P., “Why was the enforcement pyramid so influential? And what price was paid?” (2013), *Regulation and Governance* 7, 48 [↑](#footnote-ref-21)
22. Robinson, C., and Marshall, E., “The regulation of energy: issues and pitfalls chapter 15 325 -349 in Crew M and Parker, D., *International handbook on economic regulation* (2006) Edward Elgar [↑](#footnote-ref-22)
23. Harvey J and Bosworth-Davies R “Drawing the line in the sand: Trust, integrity and regulatory misdemeanour” *The Security Journal* (forthcoming) [↑](#footnote-ref-23)
24. Bonvin, J. and Dembinski, P., “Ethical Issues in Financial Activities” (2002) *Journal of Business Ethics* 37, 187 at 190 [↑](#footnote-ref-24)
25. The single Financial Services Authority was created by the Financial Services and Markets Act, 2000 (Financial Services and Markets Act 2000, C 8, available at: <http://www.legislation.gov.uk/ukpga/2000/8/pdfs/ukpga_20000008_en.pdf>) to replace the multiple self-regulatory bodies. [↑](#footnote-ref-25)
26. *Op. cit*. footnote 13 at 99 [↑](#footnote-ref-26)
27. For a thorough overview of the UK regulatory landscape refer to Nicholas Ryder “The financial crisis and white collar crime”, (2014) Chapter 5, 179, Edward Elgar [↑](#footnote-ref-27)
28. Briefly: Peter Clowes perpetrated a £17 million investment fraud during the mid-1980s. Refer to: <http://www.sfo.gov.uk/our-work/our-cases/historic-cases/barlow-clowes.aspx>; Johnson Matthey Bank, one of the central London bullion market makers collapsed in 1984 and was purchased by the Bank of England for £1 in 1991; Robert Maxwell had misappropriated £450m from the pension fund of his company, the Mirror Group newspapers; The Guinness take-over of The Distillers Company plc in 1986 involved illegal share support. Refer to: <http://www.sfo.gov.uk/our-work/our-cases/historic-cases/the-guinness-case.aspx>; The 1992 takeover by Blue Arrow of the Manpower employment agency involved price rigging of the Blue Arrow Shares; BCCI was involved in an £800m bank fraud in 1991. Refer to: [http://www.sfo.gov.uk/our-work/our-cases/historic-cases/bank-of-credit-and-commerce-international-(bcci).aspx](http://www.sfo.gov.uk/our-work/our-cases/historic-cases/bank-of-credit-and-commerce-international-%28bcci%29.aspx); Polly Peck collapsed in 1990 and was sued for £378m by its administrators. Asil Nadir, who has recently returned to the United Kingdom, faced charges for theft and false accounting. Refer to: <http://www.guardian.co.uk/business/2010/aug/26/polly-peck-business-asil-nadir>. [↑](#footnote-ref-28)
29. Jewkes, Y. *Media & Crime*. (2004) London: Sage Publications. [↑](#footnote-ref-29)
30. Framing refers to the cognitive heuristic in which people tend to reach conclusions based on the 'framework' within which a situation is presented with evidence that decisions will by systematically different if information is framed in a positive or negative way. [↑](#footnote-ref-30)
31. Combs P and Slovac, B.. 'Newspaper Coverage of Causes of Death', (1979) *Journalism Quarterly*, 56, 837 [↑](#footnote-ref-31)
32. The availability heuristic explains ease of availability of information recall in the brain – negative events that are easy to remember are accorded a greater perceived frequency and thus risk. This ease of recall can be influenced by heavy media coverage where such items are overstated as risk. [↑](#footnote-ref-32)
33. Stallings, R. 'Media Discourse and the Social Construction of Risk', (1990) *Social Problems*, 37, 1, 80 [↑](#footnote-ref-33)
34. *Op.cit* footnote 23 using data extracted from <http://www.fsa.gov.uk/about/press/facts/fines> accessed 15th July, 2013 [↑](#footnote-ref-34)
35. *Op. cit* footnote 13 at 97 [↑](#footnote-ref-35)
36. Moshella, M., and Tsingou, E., “Regulating finance after the crisis: Unveiling the different dynamics of the regulatory process” (2013) *Regulation and Governance* 7, 407 at 409 [↑](#footnote-ref-36)
37. Financial Services and Market Act 2012, C21 available at: <http://www.legislation.gov.uk/ukpga/2012/21/pdfs/ukpga_20120021_en.pdf> [↑](#footnote-ref-37)
38. Van de Ven, B., ”Banking after the crisis: Towards an understanding of banking a s a professional Practice (2011) *Ethical Persepctives*  18:4, 541 at 542 [↑](#footnote-ref-38)
39. Minsky, H., “The financial instability hypothesis”. In Stilwell F.and Argyrous G. (eds.), *Economics as a social science: readings in political economy*, (2003) North Melbourne: Pluto Press, 201 at 203 [↑](#footnote-ref-39)
40. Big Bang describes the event on October 27th, 1986 when the London Stock Exchange became an international exchange and transferred trading in equities and government bonds from physical to an electronic display system (SEAQ). [↑](#footnote-ref-40)
41. Genschel, P. and Plumper, T., ‘Regulatory competition and international co-operation’, (2011) *Journal of European Public Policy*, 4:4, 626 at 628 [↑](#footnote-ref-41)
42. *Op. cit.* footnote 15 at 139 [↑](#footnote-ref-42)
43. O’Brien, J., *“The Future of Financial Regulation: Retrieving the Meaning of Accountability in Capital Markets”*, Institute of International and European Affairs, presentation, (2009) 5th November available at: <http://www.iiea.com/event/archive_view?urlKey=the-future-of-financial-regulation-retrieving-the-meaning-of-accountability-in-capital-markets> [↑](#footnote-ref-43)
44. Jolls, C, Sunstein, C. and Thaler, R., “*Behavioral Approach to Law and Economics,* (1998) Stanford Law Review, July, at 1518 Available at SSRN: [http://ssrn.com/abstract=74927](http://ssrn.com/abstract%3D74927) [↑](#footnote-ref-44)
45. Deferred Prosecution Agreements: new guidance for prosecutors 14 February 2014 available at: <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2013/deferred-prosecution-agreements-new-guidance-for-prosecutors.aspx> [↑](#footnote-ref-45)
46. *Op. cit*. Footnote 9 at 354 [↑](#footnote-ref-46)
47. *Op. cit.* Footnote 23 [↑](#footnote-ref-47)
48. Testimony by former Federal Reserve Chairman Alan Greenspan in front of the US House Oversight Committee. [↑](#footnote-ref-48)