
Tier One

TIER ONE: Now's The Time For Change - Use It Or Lose It

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LONDON (Dow Jones)--The financial crisis has provoked much talk about the need to change the rules of the banking game to make the next failure less likely and to soften its effects, but the chance will be lost unless regulators can force fundamental changes in the way bankers behave and what happens when they misbehave.

"If the regulators really mean it, this requires some deep thinking and real change otherwise you are just re-arranging the deck-chairs on the Titanic," Richard Lissack, a senior British advocate with extensive experience of regulation cases told Dow Jones Investment Banker in an interview before this week's G20 summit.

"It's about behavior -- you have to establish the moral and legal framework and make it stick."

Lissack, head of strategic development at Outer Temple Chambers, and English solicitor Deborah Sabalot, a professional associate of OTC who specializes in regulatory consulting, are collaborating on a report on financial services and banking regulation with other Outer Temple Chambers lawyers. They agreed that regulators must impose correct behavior on bankers since history has shown the "light touch" solution espoused previously by Britain's Financial Services Authority, for example, did not work.

"The light touch demanded a certain degree of probity in those being regulated which has in cases proved to be lacking," said Lissack. "The fundamental reason for regulation is to provide a common standard to protect people both inside and outside the financial system."

The light touch didn't work, and the disciplinary and enforcement framework in the financial industry has been shown to be unfit for purpose since few of the individual participants in the financial crisis have so far faced any sanction for actions which brought the financial system to within a whisker of total collapse. The two lawyers said senior management must be accountable and it was no defense for them not have had a clue about what was really going on or to say, "I pay people to do that for me."

Lissack, whose experience in major financial services cases goes back to the trials in the 1990s that followed the collapse of Robert Maxwell's media empire, said perhaps it's time for politicians and regulators to think again about the relationship between their regulatory and supervision functions and disciplinary and enforcement functions.

"Is it right", Lissack said, "for the regulator to be judge, jury and executioner and would it be better to separate these enforcement functions?" Both Lissack and Sabalot agreed that an independent enforcement function, as seen in other areas of regulation such as health and safety, could free enforcement from some of the policy and political pressures the financial regulators are subject to.

Lissack and Sabalot have seen a lot of water flow under the regulatory bridge and are philosophical as to whether the political will exists for governments and regulators to show a united front in an attempt to control the financial industry.

"You can't stop crises happening," said Sabalot. "This will happen again but you can mitigate the effects by trying to change behaviors and ensuring that those responsible for inappropriate risk-taking face the consequences of their actions."

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