CHAPTER- IX
FINANCE SECTOR REGULATION- INTERNATIONAL SCENARIO

In continuation of the analysis of the unified or multiple regulatory structure made in earlier chapter, the current chapter examines in greater detail, the experience of different countries in following different models. This chapter has identified the countries that have adopted unified model and countries that have adopted multiple model and the factors that have led to such adoption of those models. Such a study will help in identification of pros and cons of both models.

There are mixed examples of countries world over having unified/multiple regulatory structures. In general, the development of financial services regulation in many countries has followed a historic pattern. Among the factors that affect the structure are public policy, the structure of the existing legal framework (including the national constitution, as in the case of Canada), the impact of international best practices on various aspects of financial regulation, movements toward regional integration, a government’s response to financial scandals (such as the collapse of Barings and BCCI in the United Kingdom, and the collapse of Enron in the United States), pressure from the international community, and market pressure in general.

In many countries, the unified regulator is structured on either a functional or a silos matrix, depending on local conditions and the objectives of regulation.\textsuperscript{101} The classic example of unified regulatory structure functioning is U.K. Model. The Financial Services Authority (FSA) was created as a regulatory authority to take over some of the financial regulations such as securities, insurance, mutual funds etc., Some of the other countries which have opted for

\textsuperscript{101}Here and elsewhere in the chapter, the word “regulation” can be substituted for the word "supervision,” where the unified regulator has powers to both issue regulations and supervise financial services. Also, the word “regulation” can be used interchangeably with the word "supervision,” depending again on whether the unified regulator has both powers.
unified approach are Denmark, Iceland, Japan, Norway, Sweden, Bulgaria, Singapore etc. In United States of America, there still exists a dual regulatory structure with Securities Exchange Commission and Federal Reserve having functional jurisdictions. While the international trend appears to be shifting towards unified regulatory model, there is no specific study or finding that has emerged so far highlighting the efficacy of unified model over multiple model or vice versa.

While there is a significant global interest in examining the desirability of unified financial sector supervision – combining banking, insurance and securities regulation, the practitioners continue to be very few so far. While there are only a few practitioners of unified model, it is noteworthy that almost all of them are developed economies.102 However, much water has flowed down the bridge since then and it might be possible that some more countries have opted for unified regulator. But the efficacy of the unified regulatory structure is yet to emerge in significant measure to come to any specific conclusion on its preference over multiple structures.

EXAMPLES OF MULTIPLE REGULATORS:

9.1 AUSTRALIA:
Australia has a twin peak regulatory model that adopts a functional regulation approach. In a system that pursues functional regulation or generally referred to as "regulation by activity", there is a general view that it is more important to regulate the functions performed by financial services businesses than the types

of business undertaken by them. Australia follows this model. Under this model:

1. The Australian Securities and Investment Commission (ASIC) looks after market regulation and consumer protection (referred to as market conduct regulation”) ASIC is also responsible for financial sector consumer protection.

2. The Australian prudential Regulatory authority (APRA) is responsible for prudential regulation.

3. The Reserve Bank of Australia looks after monetary policy and systemic stability.

**Developments in the Regulatory Framework**

The transition to the new regulatory framework i.e. the twin peak model of regulatory structure in Australia was completed on 1 July 1999, with the transfer of responsibilities for institutions previously covered by the Financial Institutions (FI) Scheme to new national arrangements. The FI Scheme was a co-operative, uniform system of prudential supervision and regulation set up by the States and Territories in 1992, which governed the operation of building societies, credit

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unions and friendly societies. The Australian Financial Institutions Commission (AFIC) was the lead regulator of the FI Scheme, responsible amongst other things for the development of prudential standards, while day-to-day supervision and corporate regulation rested with State Supervisory Authorities.\textsuperscript{107}

Under the new arrangements, Australian Prudential Regulatory Authority (APRA) assumed responsibility for the prudential supervision of the FI Scheme institutions, and Australian Securities and Investments Commission (ASIC) for their corporate regulation. This transfer represented an historic example of the ceding of responsibility by the States and Territories to the Commonwealth in the interests of a more integrated and efficient system of protection for non-bank depositors and friendly society members.

The Council strongly supported APRA's current objective of developing a more integrated and harmonised supervisory framework for ADIs, to replace the previous disparate arrangements. The first stage in this project was the establishment of a single and 11 consistent set of prudential standards for ADIs to be issued under the Banking Act, 1959.

This reform represented a major change in the regulatory framework administered by ASIC. One aspect of the reform also has implications for the role of the Reserve Bank of Australia (RBA). The legislation proposed that the licensing of clearing and settlement facilities should be by ‘the Minister’ (i.e. the Treasurer or a Minister in his portfolio) while regulation should be by ASIC, with a significant role for self-regulation. In consultation with the RBA and ASIC, the Minister can declare that a particular clearing and settlement facility is of sufficient significance to the stability and integrity of the payments system that it should be regulated by the Payments System Board. This would have the effect of removing that facility from regulation under the new regime in the

\textsuperscript{107} Supra
Corporations Law and placing it under a comparable regime to be Payment Systems (Regulation) Act 1998.

Upon the legislation coming into effect, the RBA and ASIC entered into a Memorandum of Understanding (MOU) setting out areas of common interest as well as information-sharing and co-ordination arrangements.

**Co-ordination between Council Members**

Australia's financial regulatory structure includes strong mechanisms to ensure effective co-ordination and co-operation between the three regulatory agencies. These mechanisms aim at full and timely exchange of information, the avoidance of duplication and a clear delineation of responsibilities, particularly when dealing with matters such as a financial disturbance.

The liaison framework, which is overseen by the Council itself, is a multi-tiered one. At the highest level is a structure of overlapping Board representation and regular senior meetings between the regulatory agencies. The legislation provides for both the RBA (two members) and ASIC (one member) to have representation on the APRA Board and for APRA (one member) to have representation on the Payments System Board. In addition, the APRA Board meets formally with the ASIC Commissioners at least once a year, and senior APRA and ASIC representatives meet every six months to discuss matters of mutual interest.

At the operational level, co-operation arrangements have been set out in two MOUs which had been signed between the RBA and APRA and between APRA and ASIC. The MOUs cover such matters as information sharing, prompt notification of any regulatory decisions likely to impact on the other agency's area of responsibility, and consultation arrangements in the event of financial disturbances. The MOUs also establish bilateral Co-ordination Committees.
which aim, among other things, to avoid overlaps and gaps in regulatory coverage. Of course, at the broader level, this remains very much a focus of the Council.  

**Structure of Australian Regulatory Authority:**

Australian Securities and Investments Commission (ASIC) are Australia’s corporate, markets and financial services regulator. It contributes to Australia’s economic reputation and wellbeing by ensuring that Australia’s financial markets are fair and transparent, supported by confident and informed investors and consumers. It is an independent Commonwealth Government body, set up under and administer the Australian Securities and Investments Commission Act, 2001 (ASIC Act), and carry out most of their functions under the Corporations Act.

The ASIC Act, 2001 requires it to:

- maintain, facilitate and improve the performance of the financial system and entities in it
- promote confident and informed participation by investors and consumers in the financial system
- administer the law effectively and with minimal procedural requirements
- enforce and give effect to the law
- receive, process and store, efficiently and quickly, information that is given to us
- make information about companies and other bodies available to the public as soon as practicable.

ASIC currently comes under the portfolio responsibilities of the Minister for Finance.  

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Reserve Bank of Australia:

The Reserve Bank of Australia (RBA) is Australia's Central Bank and derives its functions and powers from the Reserve Bank Act, 1959. Its duty is to contribute to the stability of the currency, full employment, and the economic prosperity and welfare of the Australia. It does this by setting the cash rate to meet an agreed medium-term inflation target, working to maintain a strong financial system and efficient payments system, and issuing the nation's banknotes. The RBA provides certain banking services as required to the Australian Government and its agencies, and to a number of overseas Central Banks and official institutions. Additionally, it manages Australia's gold and foreign exchange reserves.

The RBA conducts monetary policy, works to maintain a strong financial system and issues the nation’s currency. As well as being a policy-making body, the RBA provides selected banking and registry services to a range of Australian government agencies and to a number of overseas Central Banks and official institutions. It also manages Australia's gold and foreign exchange reserves.

The role and functions of the RBA are underpinned by various pieces of legislation. The RBA is a statutory authority, established by an Act of Parliament, the Reserve Bank Act, 1959, which gives it specific powers and obligations. In terms of the Act, there are two Boards: the Reserve Bank Board and the Payments System Board.

The Reserve Bank Board’s obligations with respect to monetary policy are laid out in Sections 10(2) and 11(1) of the Reserve Bank Act, 1959. Section 10(2) of the Act, which is often referred to as the Bank’s ‘charter’, says:

‘It is the duty of the Reserve Bank Board, within the limits of its powers, to ensure that the monetary and banking policy of the Bank is directed to the greatest advantage of the people of Australia and that the powers of the Bank ...’

Available at http://www.asic.gov.au/our-role (Visited on October 17, 2014)
are exercised in such a manner as, in the opinion of the Reserve Bank Board, will best contribute to:

a. the stability of the currency of Australia;

b. the maintenance of full employment in Australia; and

c. the economic prosperity and welfare of the people of Australia.’

Section 11(1) of the Act covers the need to consult with Government;

‘the Reserve Bank Board is to inform the Government, from time to time, of the Bank's monetary and banking policy.’

The ‘charter’ of the Payments System Board is defined in section 10B (3) of the Act as follows:

‘It is the duty of the Payments System Board to ensure, within the limits of its powers, that:

a. the Bank’s payments system policy is directed to the greatest advantage of the people of Australia; and

b. the powers of the Bank under the Payment Systems (Regulation) Act 1998 and the Payment Systems and Netting Act 1998 are exercised in a way that, in the Board's opinion, will best contribute to:
   i. controlling risk in the financial system;
   ii. promoting the efficiency of payments system; and
   iii. promoting competition in the market for payment services, consistent with the overall stability of the financial system; and

c. the powers and functions of the Bank under Part 7.3 of the Corporations Act 2001 are exercised in a way that, in the Board's opinion, will best contribute to the overall stability of the financial system.’
Australian Prudential Regulatory Authority:  

The Australian Prudential Regulation Authority (APRA) oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies and most members of the superannuation industry. APRA is funded largely by the industries that it supervises. It was established on 1 July 1998.

APRA supervises Australia’s banks, building societies and credit unions (authorized deposit-taking institutions), life and general insurance and reinsurance companies, friendly societies and superannuation funds (excluding self-managed funds). APRA promotes financial stability by requiring these institutions to manage risk prudently so as to minimize the likelihood of financial losses to depositors, policy holders and superannuation fund members.

Through its supervision, APRA’s aim is to identify potential weaknesses in its regulated institutions as early as possible. APRA follows a risk-based approach under which institutions facing greater risks receive closer supervision.

After an institution is licensed by APRA, it is subject to ongoing supervision to ensure it is managing risks prudently and meeting prudential requirements, and to identify those institutions that are unable or unwilling to do so.

The two main supervisory tools APRA uses are on-site and off-site analysis. These reviews are undertaken by prudential supervisors with in-depth knowledge of institutions in a particular sector, and supported by specialist risk experts.

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110 Available at <http://www.apra.gov.au/Pages/default.aspx> (Visited on October 7, 2014)
The Council of Financial Regulators:

The Council of Financial Regulators (CFR) is the coordinating body for Australia's main financial regulatory agencies. It is a non-statutory body whose role is to contribute to the efficiency and effectiveness of financial regulation and to promote stability of the Australian financial system. Its membership comprises the RBA, which chairs the CFR; APRA; ASIC; and the Treasury. In the CFR, members share information, discuss regulatory issues and, if the need arises, coordinate responses to potential threats to financial stability. The CFR also advises Government on the adequacy of Australia's financial regulatory arrangements.

The CFR meets in person quarterly or more often if circumstances require it. The meetings are chaired by the RBA Governor, with secretariat support provided by the RBA.

The CFR operates as a high-level forum for cooperation and collaboration among its members. It is non-statutory and has no legal functions or powers separate from those of its individual member agencies. The role of the CFR is to contribute to the efficiency and effectiveness of financial regulation and to promote stability of the Australian financial system. This is achieved by the members sharing information and views on financial sector conditions and risks, discussing regulatory reforms and, if the need arises, coordinating responses to potential threats to financial stability.

The CFR has a role in advising the Government on the adequacy of Australia's financial system regulatory arrangements. The CFR also discusses the development and application of various international regulatory reforms in Australia. For example, in recent years, it has considered Australia's position on developments such as: strengthening the capital framework for authorized deposit-taking institutions (ADIs); strengthening liquidity risk management by ADIs; the regulatory framework for financial market infrastructures; resolution frameworks and shadow banking.
Many of the issues discussed by the CFR are reported on in the RBA’s semiannual *Financial Stability Review*, with input from the other CFR member agencies.

### 9.2 NETHERLANDS

The Netherlands Authority for the Financial Markets (AFM) has been responsible for supervising the operation of the financial markets since 1 March 2002. That means to say that AFM supervises the conduct of the entire financial market sector: savings, investment, insurance and loans. By supervising the conduct of the financial markets, AFM aims to make a contribution to the efficient operation of these markets.

AFM is the successor of the STE (Securities Board of the Netherlands / *Stichting Toezicht Effectenverkeer*), which supervised all of the participants in the securities trade. The establishment of AFM is a result of the policy document ‘Review of the supervision of the financial market sector’ (‘*Herziening van het toezicht op de financiëlemarktsector*’) of the Ministry of Finance. Accordingly, sector-based supervision has been replaced by function-based supervision, which is divided into prudential supervision and supervision of market conduct.

Prudential supervision addresses the question of whether participants in the financial markets can rely on their contracting parties being able to meet their financial obligations. The Dutch Central Bank (*De Nederlandsche Bank*) is, after the merger with the Pensions and Insurance Board (*Pensioen- & Verzekeringskamer*) in 2004, responsible for prudential supervision. The supervision of market conduct focuses on the question of whether the participants in the financial markets are handled properly and whether they have accurate information. This supervision is the responsibility of AFM.

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Financial supervision

To ensure that consumers and businesses enjoy the greatest possible protection when they entrust their money to financial institutions, the government supervises the operations of individual institutions and the entire financial system.

Financial Supervision Act

Supervision of the entire financial system in the Netherlands is laid down in an act of parliament, the Financial Supervision Act. It explains what requirements financial institutions (such as banks and insurance firms) must satisfy and how supervision is organised.

Two supervisors of the financial system

The Minister of Finance has final responsibility for the supervision of the financial system, which is exercised by two organisations on his behalf:

- *De Nederlandsche Bank* (DNB);
- The Netherlands Authority for the Financial Markets (AFM).

De Nederlandsche Bank (DNB)

*De Nederlandsche Bank* (DNB), the Dutch Central Bank, is responsible for the stability of the entire financial system. It is particularly concerned with:

- safe and reliable payment transactions;
- sound monetary policy (stable prices);
- robust and reliable financial institutions.
DNB checks the health of financial institutions in order to minimise the risk of bankruptcy and prevent problems at one institution spreading to others. Customers must be confident that institutions can meet their financial obligations. To this end, DNB oversees the individual institutions and the financial system as a whole.

**Netherlands Authority for the Financial Markets (AFM)**

The Netherlands Authority for the Financial Markets (AFM) is responsible for the smooth operation of the capital markets and the correct provision of services to national and international clients. The AFM supervises the way financial institutions serve their clients and how parties deal with each other on the financial markets. Financial institutions may not, for example, provide incorrect or misleading information to their customers. Their customers must also be able to understand the information they receive.

The AFM’s mission is to strengthen consumers’ and businesses’ confidence in the financial markets, both nationally and internationally. In doing so, it protects consumers and strengthens the economic reputation of the Netherlands.

**9.3 EUROPEAN SUPERVISORS:**

The credit crisis that began at the end of 2008 underlined the need for stronger international supervision of financial institutions and the financial system. Three European supervisors have since been established to oversee specific sectors of the financial market:
• The European Banking Authority (EBA);\textsuperscript{112}

The European Banking Authority (EBA) is an independent EU Authority which works to ensure effective and consistent prudential regulation and supervision across the European banking sector. Its overall objectives are to maintain financial stability in the EU and to safeguard the integrity, efficiency and orderly functioning of the banking sector.

The main task of the EBA is to contribute to the creation of the European Single Rulebook in banking whose objective is to provide a single set of harmonised prudential rules for financial institutions throughout the EU. The Authority also plays an important role in promoting convergence of supervisory practices and is mandated to assess risks and vulnerabilities in the EU banking sector.

The EBA was established on 1 January 2011 as part of the European System of Financial Supervision (ESFS) and took over all existing responsibilities and tasks of the Committee of European Banking Supervisors.

• The European Insurance and Occupational Pensions Authority (EIOPA);\textsuperscript{113}

The European Insurance and Occupational Pensions Authority (EIOPA) was established in consequence of the reforms to the structure of supervision of the financial sector in the European Union. Before and during the financial crisis in 2007 and 2008, the European Parliament has called for a move towards more integrated European supervision in order to ensure a true level playing field for all actors at the level of the

\textsuperscript{112}Available at\texttt{<http://www.eba.europa.eu/>} (Visited on October 12, 2014)

\textsuperscript{113}Available at\texttt{<https://eiopa.europa.eu>} (Visited on October 17, 2014)
European Union and to reflect the increasing integration of financial markets in the Union. As a result, the supervisory framework was strengthened to reduce risk and severity of future financial crises. EIOPA is part of a European System of Financial Supervisors that comprises three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, as well as the European Systemic Risk Board.

EIOPA’s main goals are:

i. Better protection of consumers, rebuilding trust in the financial system.

ii. Ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial institutions.

iii. Greater harmonisation and coherent application of rules for financial institutions & markets across the European Union.

iv. Strengthening oversight of cross-border groups.

v. Promote coordinated European Union supervisory response.

EIOPA’s core responsibilities are to support the stability of the financial system, transparency of markets and financial products as well as the protection of policyholders, pension scheme members and beneficiaries.

- **The European Securities and Markets Authority (ESMA).**[^114]

ESMA is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA

[^114]: Available at <www.esma.europa.eu/> (Visited on October 18, 2014)
fosters supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).

However, DNB and the AFM continue to supervise financial institutions in the Netherlands. The AFM’s supervision of credit rating agencies, however, is gradually being assumed by ESMA.

To oversee the European economy as a whole and the stability of the entire European financial system, the European Union has established a new independent body: the European Systemic Risk Board (ESRB). The ESRB will report to the European Parliament at least once a year.

9.4 CANADA:115

The Canadian model has two tiers. While the Office of the Superintendent of Financial Institutions (OSFI) is the primary regulator of federally chartered financial institutions, such as some insurance companies, pension funds, trusts and loans companies,116 the regulation of securities on Canadian Stock Exchanges is left to provincial agencies. This bicameral structure aligns itself with the Canadian Constitution, which requires all banks, federally incorporated insurance companies, pension funds, trusts and loan companies to be licensed and regulated at the federal level. These are the primary institutions OSFI regulated. Though by law, all banks must be incorporated and regulated at the federal level,117 some insurance companies, trusts and loan companies are

115Available at:<
(Visited on October 21, 2014)
116Supra note 18.
117Id.
provincially chartered and thus are licensed and regulated by the provinces\textsuperscript{118}. Securities firms are incorporated at the provincial level, subject to the laws and licensing requirements of the province where incorporation and licensing has taken place.

The Office of the Superintendent of Financial Institutions (OSFI) was created in 1987 to regulate and supervise financial institutions and private pension plans subject to federal oversight, to help minimize undue losses to depositors and policyholders and, thereby, to contribute to public confidence in the Canadian financial system. It is an independent, self-financing agency that reports to Parliament through the Minister of Finance.

**Regulatory powers of OSFI**

OSFI regulates and supervises all banks in Canada, and all federally incorporated or registered trust and loan companies, insurance companies, cooperative credit associations, fraternal benefit societies and private pension plans. OSFI’s mandate does not include consumer-related issues or the securities industry.

**Mechanism of Regulation and Supervision**

OSFI does not manage the daily operations of financial institutions or private pension plans. Their executive management and boards of directors or trustees are ultimately responsible for the success or failure of the financial institution or pension plan.

\textsuperscript{118}Id.
OSFI regulation involves providing input into developing and interpreting legislation and regulations, issuing guidelines, and approving requests from federally regulated institutions as required under financial institution legislation. OSFI also provides input on accounting, auditing and actuarial standards development, and determines how to incorporate them into the regulatory framework.

OSFI supervision involves assessing the safety and soundness of federally regulated financial institutions and pension plans. OSFI monitors the financial and economic environment to identify issues that may adversely affect these institutions. It assesses an institution’s material risks and the quality of its risk management and corporate governance practices. If potential problems are identified, OSFI intervenes at an early stage to take corrective actions.

**Partnerships within the Regulatory System**

Nationally, OSFI meets regularly with key federal partners to address the issues and challenges facing the financial sector, and to refine regulatory requirements that promote sound practices and procedures to manage risk, through the Financial Institutions Supervisory Committee (FISC). Its members are OSFI, the Bank of Canada, the Department of Finance, the Canada Deposit Insurance Corporation and the Financial Consumer Agency of Canada. Together, these organizations constitute Canada’s network of financial regulation and supervision, and provide a system of depositor and policyholder protection. OSFI also works closely with provincial counterparts and consults regularly with industry stakeholders.

International organizations such as the Financial Stability Board, the Basel Committee on Banking Supervision, and the International Association of Insurance Supervisors play a key role in the development of regulatory frameworks for banks and insurers that contribute to a strong and stable global financial system. OSFI’s active participation in these international forums allows
them to share the Canadian perspectives and help shape international rule setting.

Costs are recovered through assessments on the financial services industry and private pension plans that OSFI regulates and supervises, and through a user-pay program for selected services. A small portion of revenue is received through an appropriation from the Government of Canada for actuarial services relating to various public sector pension and benefit plans.

**Role of OSFI in the growth of the Canadian economy**

Canada has a very unique model of regulation in that Canadian unified financial supervision applies to institutions which are regulated at the federal level and not to those entities which are regulated at provincial level.

Over the past 45 years, the vast majority of studies by independent expert and academic analysts have come out in favour of establishing a Canadian securities regulator, beginning with the Porter Report in 1964 and the Kimber Report in 1965. In the most recent decade, the push for a national regulator has been particularly strong, with reports delivered from the Wise Persons Committee, the Crawford Panel and the Expert Panel on Securities Regulation.

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In the last Expert Panel, the Panel made a series of recommendations, the most important being the establishment of a Canadian securities regulator to administer a single securities act for Canada. The Expert Panel provided a roadmap to complete this transition, with one key step being the creation of a transition and planning team to oversee the transition to a federal regulatory system.121

On June 22, 2009, the Government of Canada acted on this recommendation and announced the launch of the Canadian Securities Transition Office to lead Canada’s effort to establish a Canadian securities regulator.122 The Transition Office was mandated to lead all issues connected with the transition, including the development of the proposed Federal Securities Act and the accompanying regulations, collaborating with provinces and territories, and developing and implementing a transition plan for organizational and administrative matters.123

All Canadian provinces were invited to join in the Government of Canada’s effort, to build on the existing infrastructure and expertise of the provincial and territorial securities regulators. Subsequently, the Government of Canada also constituted an Advisory Committee of ten Participating Provinces and Territories to the Transition Office with representatives from Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Saskatchewan, British Columbia, Yukon, Northwest Territories and Nunavut.124

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121 Id.
The Advisory Committee provides advice to the Transition Office on the transition to a Canadian securities regulator to ensure that each of the participating governments’ interests is represented in the work of establishing a Canadian securities regulator.

To date, the Transition Office and the Government of Canada have completed two key steps in the transition to a Canadian securities regulator: on May 26, 2010, the Government of Canada tabled for information in the House of Commons the proposed Canadian Securities Act. The proposed Act was built on provincial securities regulation and harmonizes existing legislation in the form of a single statute. It benefits from the work of the Expert Panel on Securities Regulation and other reform efforts, and reflects domestic and international best practices. It proposes significant improvements in terms of governance, adjudication, financial stability, and regulatory and criminal enforcement, and provides a wide scope of authority to regulate financial instruments and participants in capital markets.

In 2010, the Transition Office delivered its Transition Plan for the Canadian Securities Regulatory Authority to the Minister of Finance and the ministers responsible for securities regulation of the participating provinces and territories.

Concurrent with releasing the proposed Canadian Securities Act, the Government of Canada referred the proposed Act to the Supreme Court of Canada for its opinion on the following question: Is the annexed proposed Canadian Securities Act within the legislative authority of the Parliament of Canada?

126 Department of Finance, Backgrounder: A New Canadian Securities Regulatory Authority available at <http://www.fin.gc.ca/n10/data/10-051_1-eng.asp> (Visited on October 15, 2014)
Changing Dynamics of the Regulatory Architecture for Financial Markets

Canada? The Supreme Court heard the reference in April, 2011.\(^{128}\) In December, 2011 the Supreme Court gave its decision\(^ {129}\) stating that the proposed Canadian Securities Act as drafted would not be valid under the general branch of the federal trade and commerce power under section 91(2) of the Constitution. However, the court indicated that some aspects of the Act could be valid under that power. It also noted that it had not been asked for its opinion on the extent of Parliament's legislative authority under other heads of federal power, including the interprovincial and international trade branch of section 91(2). The Court concluded that a cooperative legislative approach through which the federal and provincial governments exercise their powers collaboratively would be possible.

Following the Supreme Court of Canada decision, the Government of Canada announced that it was exploring with provinces the possibility of working jointly to establish a common securities regulator\(^ {130}\)

**Unified Regulator:**

There are merits and demerits in both the models of regulation. The following were identified as important Key Issues in determining the suitability of a Unified Supervision for a jurisdiction.\(^ {131}\)

**Unification of supervision**

*Prerequisites for effective supervision:*

- Are supervisory objective clear and preferably set out in statute?
- Do supervisory authorities have adequate political independence?

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\(^{129}\) Id.

\(^{130}\) Id.

- Do supervisory authorities have adequate budgetary independence, including access to sufficient human resources?
- Is the regulatory framework comprehensive?
- Do supervisory authorities have appropriate range of enforcement powers (graduated corrective action)?
- Can and do the supervisory authorities make appropriate use of their enforcement powers?

**Regulatory Framework**

- Are there serious regulatory gaps or excessive areas of regulatory overlap?
- If financial conglomerates are important
  (a) Is supervision conducted on a consolidated basis?
  (b) Is regulatory arbitrage a problem or likely to become one?
  (c) Are there clear lines of accountability for and between the supervisory authorities?
  (d) Is coordination and cooperation between supervisory authorities a problem?
  (e) Are there agreements regarding the “lead” regulator in the event of financial difficulties in a conglomerate?
- Is the system able to quickly respond to financial innovations?

**Structure of financial system**

- Is banking sector dominant?
- Is a universal banking model used?
- Do financial conglomerates play a major role in the system?
- Has there been or is there likely to be a blurring of distinctions between the classes of financial institutions (notably the financial products offered)?
- Are capital markets well developed?
• Is the financial sector being liberalized or rapidly transformed?

**Issues relating to the Central Bank**

• Is the banking supervision function located in the Central Bank?
• If so, the Central Bank credible and does it have stature?
• If banking supervision is moved out of Central Bank, is there a serious risk that its political or budgetary autonomy will be compromised?

**Regulatory Efficiency**

• Is it likely that significant economies of scale can be achieved through unification (particularly avoiding wasteful duplication of functions and resources)?
• Do there appear to be significant synergies to having multiple supervisory agencies under a single roof (such as sharing expensive and specialized experts or making better use of scarce resources)?
• Is the regulation cost effective?

**Likelihood of unpredictable or undesirable outcome (Pandora’s Box)**

• Will opening this issue result in a pressure to create a unified agency whether or not such an agency is found useful?
  a) Will the unified agency be created as more of a tool to enhance some individual(s) political power than because it’s formation is really appropriate?
  b) Will the above-noted pressures result in the legislation being rushed through parliament even if the legislation is not well thought out and designed?
• Could political pressures undermine the budgetary or financial independence of the new agency or in some other way cause it to be weaker than the ones it replaces?
• Is there a risk that the formation of the new agency could result in a sufficiently large loss of key staff that regulatory capacity might be undermined? Is there a real risk that poor management of the charge aggravates these problems?

**Scope and function of agency**

• Which types of financial institutions share a common ownership? (Also see the section on the structure of the financial system)
• Are other nonbank financial institutions important in the financial sector?
  a) Are most of the major nonbank institutions part of financial conglomerates and (effectively) supervised on a consolidated basis?
  b) Would the unified supervisory authority have the resources to effectively supervise these institutions?
• Instituting a macro prudential approach to supervision and assigning a clean mandate to a systemic stability regulator
• Expanding the perimeter of financial sector surveillance to ensure that the systemic risks posed by unregulated or less regulated financial sector segments and addressed.
• Ensuring that prudential regimes encourage incentives that support systemic stability and discourage regulatory arbitrage and assure effective enforcement of regulation.
• Addressing that procyclicality of existing capital requirements and other prudential norms, preferably in a manner that is rules based and counters the cycle.
• Filling the information gaps, especially with regard to lightly regulated financial institutions and ‘off balance sheet’ transactions, ensuring that
both supervisors and investors are provided more disclosure and a higher level of granularity in information provided.

- Resolving the political and legal impediments to the effective regulation of cross-border institutions, develop special insolvency regimes to be used for large cross-border financial firms, and harmonize remedial action frameworks.
- Strengthening the capacity of Central Banks to provide liquidity and respond to systemic shock.
- Improving the capacity of national authorities to respond to systemic crises, including by establishing mechanisms for coordination both within and across borders.
- Establishing the basis for fiscal support during the crisis containment and restructuring phase, and an exit strategy for withdrawing public support and for a transition to a new and more stable financial market structure.

9.5 BULGARIA:132

Bulgaria established a unified regulator nonbanking financial service only, the Financial Supervisory Commission (FSC), on March 1, 2003. FSC was set up pursuant to the Financial Supervision Commission Act 2003. Primary motivations for setting up the FSC were the increased consolidation of financial markets in the country; the overlap of activities of investment funds, insurance companies, pension funds, and some banking institutions; and the emergence of new financial institutions and products.133 FSC is structured as a silos matrix. Its regulatory and supervisory functions are undertaken by three specialized divisions: Investment Supervision, Insurance Supervision, and Social Insurance Supervision. The structure of these divisions has been adapted to FSC's major roles, which are the issuance of licenses and the carrying out of examinations.

132 Available at <http://www.fsc.bg/Home-en-1>. (Visited on October 31, 2014)
133 Financial Supervision Commission Act 2003 of Bulgaria, Articles 1(1) and 2(1).
The Insurance Supervision Division comprises of Regulatory Regimes and Consumer Protection; Inspections and Financial Supervision; and Regulatory Policy and Analysis. The Social Insurance Supervision Division consists of two directorates, the Regulatory Regime and Risk Evaluation Directorate and the Control Activities Directorate. The Investment Supervision Division comprises of Regulatory Regimes; Supervision and Procedural Representation; and Market Analyses.¹³⁴

The Bulgarian FSC considers itself an independent body that is not influenced by the executive arm of the State. Functionally, FSC reports to the National Assembly and operates as a specialized government body for regulation of the nonbanking financial sector. The primary functions of FSC are to facilitate, through legal, administrative and informational means and to maintain stability and transparency in, the investment, insurance, and social insurance markets.¹³⁵

**9.6 NORWAY:**¹³⁶

Norway was the first to move to a model for unified financial supervision. In 1986, after a long process of consolidating it’s regulatory, Norway merged its Banking and Insurance Inspectorates. While the Ministry of Finance continued to be responsible for regulating the Oslo Stock Exchange, the Banking Inspectorate was entrusted with powers to undertake prudential supervision of specialist securities firms and investment management firms. Given that banks in Norway were already the most active participants in the securities markets, placing supervision of nonbank securities firms under the Bank Inspectorate was a natural extension of its role in overseeing nonbank securities activities. Since 1986 Norway’s single regulatory agency, the Kreditilsynet, renamed as Finanstilsynet in 2009, regulates banks, nonbank investment firms and


¹³⁵*Id.*

¹³⁶*Available at*<http://www.finanstilsynet.no/en/> (Visited on October 21, 2014)
insurance companies, giving primary attention to their solvency. It is also responsible for regulating real estate brokers and auditing firms. Only in 2000, it was given the authority to supervise the Norwegian Stock Exchange, Oslo Stock Exchange\textsuperscript{137} through the enactment Norway's Stock Exchange Act, 2000.\textsuperscript{138}

9.7 SWEDEN:\textsuperscript{139}
In Sweden, the \textit{Finansinspektionen}, which is the institution charged with unified financial supervision, was set up in 1991.\textsuperscript{140} The \textit{Finansinspektionen} monitors and analyzes trends in the financial market. It assesses the financial health of individual companies, the various sectors, and the financial market as a whole. Furthermore, it examines risks and control systems in financial companies and supervises compliance with statutes, ordinances and other regulations. In Sweden, the business operations that offer financial services require a permit from the Finansinspektionen. This unified regulatory body also issues regulations and general guidelines and assesses whether current legislation needs to be amended.\textsuperscript{141}


\textsuperscript{139} Available at<www.fi.se/Folder-EN/Startpage/About-Fi/> (Visited on November 7, 2014)


\textsuperscript{141} Id.
9.8 DENMARK:

*Finanstilsynet*, which is the Sweden's parallel in Denmark, was formed as a result of banking and insurance regulatory agencies in 1988. Sec.3 (2) of the Danish Financial Business Act, 2001 provides that the Danish Financial Supervisory Authority should set out rules and guidelines on fair business principles and best practices. Wherever the rules and guidelines deal with marketing and competition, the Danish Financial Supervisory authority would carry out negotiations with the Danish Consumer Ombudsman and the Competition authority of Denmark.\(^{142}\)

The responsibilities of Swedish and Danish regulatory bodies are akin to those of the Norwegian *Kredittilsynet*. In Denmark, as in Norway, the banking supervisory authority had enjoyed a long history as an agency outside the Central Bank and the prudential supervision of nonbank securities firms was part of its responsibilities before a fully unified agency was created.\(^7\) However, the creation of the Danish framework for unified financial supervision was largely an administrative arrangement, and there was no fundamental review of the said arrangement. It may also be noted that the Danish unified regulatory body operates under a number of different statutes inherited from predecessor organizations.\(^{143}\) Although Denmark made efforts to harmonize its legislation in the 1990s, governance of the Danish regulatory body has not been fully unified.\(^{144}\)

In Sweden, the establishment of the Unified regulatory architecture arose on account of the banking crisis that swept Sweden in 1990s. It was also felt by the Political set up that Sweden should keep pace with other Scandinavian countries that had already established a framework for unified financial supervision.\(^{10}\) Furthermore, Sweden, unlike Norway and Denmark, is also a member of the Basel Committee on Banking Supervision and hence more likely to achieve

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\(^{142}\) *Id.* at 6.

\(^{143}\) *Id.*

\(^{144}\) *Id.*
economies of scale and enhance its international presence. In addition to this all, there exists in Sweden, a long history of continued and added links between the banking and insurance sectors.  

Significant to note that in contrast, Finland has opted not to adopt a fully unified approach to financial supervision in spite of the fact that until the late 1980s the Finnish regulatory set up was a total mirroring structure of Sweden, Denmark and Norway. It is also worth noting that a number of institutional changes that were introduced to the Finnish system were with clear focus to increase the linkages between banking supervisors and the Bank of Finland.

Only against this backdrop the Finnish FSA was established in 1993. It terms of Section 1 of the Finnish Financial Supervision Authority Act 1993, it is stated that the Finnish FSA, operating in connection with the Bank of Finland, has extensive powers to supervise financial markets and institutions that are operating in the financial markets of Finland. However, a separate statutory structure applies to the supervision of insurance and pension institutions in Finland.

Viewed against this drop of model for unified financial supervision in all these Scandinavian countries as compared to the one which was in U.K. one can conclude that United Kingdom's model stands out as a shining exception amongst the northern European countries for a variety of reasons. It may be noted that this comparison of FSA model is attempted here for a comparative analysis as this differentiation no more exists as U.K. has recently moved away from the Unified model of Supervision.

One main reason is that, U.K., as against the Scandinavian countries, is a country which has the distinction of being international financial centre and the size of its financial services industry is much large in reach. They are also well

\[^{145}\text{Id. at 7.}\]

\[^{146}\text{Supra note 15.}\]

\[^{147}\text{Id.}\]
diversified and quite less concentrated as compared to Scandinavia. In addition to this, the UK’s financial Services Authority was fully responsible for both prudential and conduct of business regulation, unlike its counterparts in Scandinavia which have focused on prudential regulation only. More importantly, the formulation of the UK Financial Services Authority was undertaken more as a radical, bold measure, by bringing together its entire nine then existing regulatory bodies. As a contrast, the Scandinavian integrated regulators model reflects reactive actions from the past in that they were the products of a long process of financial agency consolidation. They were formed mainly on account of the merger of banking and insurance inspectorates. The growth of bancassurance business [that is financial conglomerate groups combining both banking and insurance activities] was considered as a significant reason for opting for an integrated approach to supervision [in most Scandinavian countries] ... It may be noted that none of the three Scandinavian integrated regulatory bodies [Sweden, Norway and Denmark] was created by removing the existing banking supervision function from the Central Bank which was the case in the then FSA model of UK. Also, in these countries, the regulation of commercial banks had long been through a specialist banking supervisory body.148

9.9 UNITED KINGDOM:

The example of the recently abolished FSA model in United Kingdom is cited as the best example ever in the global financial market. In the United Kingdom, on account of the charge that supervision of the banks was not carried out as it ought to have been by its supervisor, i.e. the Bank of England Act, 1998, the same was transferred from the Bank of England to the newly established Financial Services Authority.149 Until then, all the regulatory powers to conduct

148 Supra note (Taylor, Flemming) at 9 and 17.
149 Section 21, Bank of England Act 1998- It is important to delineate clearly the roles of any other supervisory authority so as to avoid the potential for conflicts of interest.
financial services supervision were vested with Bank of England flowing from the Banking Act 1987 and also in terms of Section 101(40 of the Building Societies Act, 1986 and in the Banking Coordination (Second Council Directive) Regulations 1992. Under these statutes, the core responsibilities of the Bank of England related to monetary stability, monetary analysis, monetary operations, banking activities, financial stability, and supervision and surveillance. FSA had the powers to supervise banks, listed money market institutions and related clearing houses. Similarly, in terms of Section 153 of the Financial Services and Markets Act, 2000, the Authority had the power to exercise its rule-making powers in writing.  

It was felt that in UK the enactment of the Bank of England Act 1998 would focus mainly the stability for the financial system as a whole and of the monetary system in particular; the financial system infrastructure, payment systems; broad oversight of the financial system as a whole; the authority to conduct official support operations; and the efficiency and effectiveness of the financial sector, with particular thrust on the international competitiveness.

There was overall belief in UK, that the supervisory structure that existed before the FSA lacked transparency and adequate accountability, partly because it was so fragmented. It was strongly felt that only a consolidated prudential supervision of multifunctional groups, could pave the way for an efficient way of managing the risks of different financial activities (for example, traditional retail banking and securities trading) while also being publicly accountable and transparent as also in any case, FSA was expected to carry out prudential

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151 Id. at 6-7.
153 Id. at 27.
financial supervision in accordance with a number of European Union directives, all of which were implemented in the UK.\textsuperscript{154}

The main purpose of the creation of the FSA was to promote "awareness of the benefits and risks associated with different kinds of investment or other financial dealing" while safeguarding "the general principle that consumers should take responsibility for their decisions" [Financial Services and Markets Bill, Clauses 4(2) (a) and 5(2) (c)]\textsuperscript{155}. The FSA also had the objective to protect the interests of the users of its various financial services by intervening at several stages: 1) by filtering the firms at entry level, to ensure that only those found to be "fit and proper" are permitted to conduct financial business; 2) by setting and enforcing prudential standards; 3) by using its powers of investigation, enforcement, and restitution against firms that fail to meet expected standards; 4) by setting a "one-stop" arrangement for resolving disputes between consumers and authorized firms -- the single "Financial Services Ombudsman Scheme", 5) by overseeing the compensation of investors when an authorized firm is unable meet its liabilities.\textsuperscript{156}

Overall, the FSA model of regulatory structure presented an ideal vehicle of financial regulation. The following roles were combined in the regulatory architecture of the then FSA model that was not covered by the previous regulatory regimes:

(a) Mutual Societies Registration
(b) Unfair Terms in Consumer Contract
(c) Regulation of Lloyd's Insurance Market

\textsuperscript{154} Id.
\textsuperscript{155} Supra note 85.
(d) Regulation of Code of Market Conduct - To tackle market abuse and exercising powers under civil law to connect an important gap that was present then in the ability of the UK authorities to deal with market abuse.

(e) Recognized Overseas Investment Exchanges - FSA was responsible for application from and supervising, recognized overseas investment exchanges and recognized overseas clearing houses having taken over these responsibilities from the Treasury. Recognized overseas bodies were also brought under the purview of the Financial Services and Markets Act 2000 (FSMA), by subjecting them to recognition requirements. In order to ensure that they are on par with the investor protection standards equivalent to those of U.K. recognized bodies under FSMA. The concept relies on the home regulators of the overseas bodies to supervise them effectively.\textsuperscript{157}

However, the Financial Services Authority (FSA), has been abolished and replaced with two successor organizations, namely Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA). Following the Great Financial Crisis 2008, the financial markets in U.K. went through a disastrous path leaving behind a trail of bank failures such as Northern Rock and the Government was forced to bail out banks such as Royal Bank of Scotland. It was observed that the FSA, in spite of having a unified structure could not stop the damage to the financial system. It was heavily criticized for the lapse on its part and not to have spotted burgeoning boom and subsequent bust and for not curtailing the risky trading of banks, leading to failure of banks like Northern Rock, Royal Bank of Scotland and Lloyds which were bailed out by the Government (effectively taxpayers) following GFC, 2008.

These changes have marked the end of the unified regulatory structure in the United Kingdom and heralding entry of UK into regulatory architecture of Twin peak authority.

\textsuperscript{157} Supra note 82.
The Prudential Regulation Authority (PRA) will ensure the stability of financial services firms and be part of the Bank of England. The Financial Conduct Authority (FCA) would be the new watchdog Financial Conduct of United Kingdom.

More importantly, the Bank of England has also gained direct supervision for the whole of the banking system through its powerful Financial Policy Committee (FPC), which can give direct instructions to both the new regulators.

This step was taken by the Government in 2010, with an intention to make it clear that Bank of England, PRA and FCA would be the authority who would supervise over the financial services sector and avoid a recurrence of failing banks and enormous state-backed bailouts.

With effect from 2013, the new regulatory architecture has become operational in United Kingdom. The responsibility of overall financial stability of the market has been vested with The Bank of England. Bank of England will be assisted by the newly created Financial Policy Committee in this respect. The Financial Services Act 2012 proposes:

(a) restructuring the law relating to market manipulation and misleading impressions
(b) establishing rules for regulating the benchmarks such as LIBOR, credit ratings etc.,
(c) transferring the regulation of consumer credit to FCA
(d) changing the structure for approval, supervision and discipline of sponsors under FSMA;
(e) expanding the scope of resolution regime as set out under Banking Act, 2009

**The Prudential Regulation Authority:**

Regulatory Roles of Prudential Regulation Authority (PRA) under the new dispensation are as follows:
(a) Its objective is promotion of the safe and soundness of the entities regulated by it, to ensure that the business of the regulated entities do not affect the stability of the financial market, to protect the interests of the insurance holders as also to minimize any adverse effect on the competition in the markets.

(b) It will be responsible for the promotion of a stable and prudent operation of the financial system by regulating all deposit taking institutions such as banks, building societies and credit union, insurance companies and investment firms and entities authorized by PRA.

**Financial Conduct Authority:**

(a) It will be responsible for regulation of conduct in retail and wholesale markets as also the infrastructure that supports the market.

(b) It will be responsible for the prudential regulation of the entities which are not regulated by PRA.

(c) Its objective is to ensure that interests of the end customers are protected, to promote fair competition in the markets

(d) It will be responsible for supervising the authorized entities and monitoring their compliance and take enforcement actions wherever infractions are found.

Both the authorities are required to coordinate and cooperate while discharging their functions and both have responsibility to co-operate with the Bank of England in its pursuit of ensuring financial stability.

**Financial Policy Committee:**

It functions as a Committee under Bank of England comprising as its members, Governor, Bank of England, Chief Executive of FCA, four members appointed
by Chancellor of Exchequer, and member from Treasury with primary objective of helping Bank of England in its goal of ensuring financial stability in UK and also supporting economic policy of the UK Government. The major regulatory areas are as follows:

(a) It will identify, monitor and take action to correct the systemic risks in the UK markets in order to protect and enhance the resilience of UK financial system.

(b) It may generally give directions to FCA or PRA requiring them to ensure implementation of macro-prudential measures as may be directed by the Government from time to time.

(c) It may also make such recommendations to the Central Bank on the financial assistance to banks and institutions, exercise of functions by the Central Bank in respect of Payment systems, settlement and clearing systems in UK.

**Payments Systems Regulator:**

The Payment Systems Regulator (PSR) was created on 1 April 2014, and will begin regulation in April 2015.

When money moves between individuals, businesses and government - for example when buying goods and services, receiving income or paying taxes - the transfers are made through payment systems. Each year, payments systems in the UK handle more than 20 billion transactions worth over £75 trillion.

Concerns have been raised about a number of issues in the payments industry; including access to the UK payment systems, the terms offered for access and the industry’s pace of innovation.

The PSR has three objectives:
(a) to promote effective competition in the markets for payment systems and the services they provide
(b) to promote innovation in payment systems
(c) to ensure payment systems are operated and developed in the interests of service users

It will be a competition-focused, utility-style regulator, similar to other economic regulators such as Ofcom. It will have the power to:

(a) give direction on actions and standards
(b) impose requirements regarding system rules
(c) require that payment systems give access to payment service providers
(d) amend agreements relating to payment systems
(e) act where it sees anti-competitive practices, alongside the Competition and Markets Authority (CMA)

Although the legislation is focused on payment systems, all participants within ‘designated’ systems will fall within the scope of regulation. The participants have been defined as:

- the operator of the payment system, such as Bacs Payment Schemes Limited
- any infrastructure provider, such as Vocalink
- any payment service provider, such as direct member banks and indirect participants

Some payment services institutions are already covered by the Payment Services Directive (PSD), for which the FCA is the ‘competent authority’. These firms will fall under both the FCA and PSR’s remit from April 2015.
Figure: New Financial Regulatory Architecture in UK, Effective 2012 Vide Financial Services Act, 2012

Scott Hirst, A New Era for UK Financial Regulation, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION, June 23, 2010
9.10 UNITED STATES OF AMERICA

The Financial Sector Agencies’ Supervision in the United States of America makes an interesting study. Interestingly, the whole panoply of Regulatory framework reveals a very complex nature calling for a careful understanding.

There are federal regulatory overlaps in which one agency can oversee a firm of the firm’s charter, a second agency regulates some of the activities that the firm is engaging in, but a third agency controls a government initiative to resolve or alleviate a problem related to the firm or its activities. On the other hand, there are regulatory gaps in which some of the firms participating in a financial activity do not have regulated charters, and the activity believed to be causing a problem does not have a regulator. Thus, answering “who regulates whom” requires first identifying the problem to be regulated and how.\textsuperscript{159}

In the U.S., the regulators are categorized into Regulators for Prudential Requirements and Regulators for Disclosure Requirements. Regulators for Prudence concentrate on monitoring and regulating the risks that an entity is engaged in whereas Regulators for Disclosure focus on monitoring and regulating the information that firms and exchanges provide to potential market players. Four federal agencies have prudential authority to examine banks, thrifts, and credit unions and fifth agency, Office of Thrift Supervision, abolished in 2010 and whose responsibilities were subsumed in the other four agencies, have prudential authority to examine banks, thrifts and credit unions. Two agencies oversee markets for financial contracts (securities and derivatives). The agencies listed in the other category regulate housing government-sponsored enterprises and consumer financial products, respectively. The entities listed in the coordinating forum category are made up of the other financial regulators with related duties or functions and facilitate communication and coordination among member agencies. Two agencies either regulate an

\textsuperscript{159} CRS Report for congress 7-5700.
activity regardless of the type of institution that engages in it or provide prudential regulation to nonbanks.\textsuperscript{160}

**Table I. Federal Financial Regulators and Organizations**

<table>
<thead>
<tr>
<th>Prudential Bank Regulators</th>
<th>Securities and Derivatives Regulators</th>
<th>Coordinating Forum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Deposit Insurance Corporation (FDIC)</td>
<td>Commodities Futures Trading Commission (CFTC)</td>
<td>Federal Financial Institutions Examinations Council (FFIEC)</td>
</tr>
<tr>
<td>National Credit Union Administration (NCUA)</td>
<td></td>
<td>President’s Working Group on Capital Markets (PWG)</td>
</tr>
<tr>
<td>Federal Reserve Board (FRB, or the Fed)</td>
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</tbody>
</table>

\textsuperscript{160}Id.
United States has one or more regulator for each category of financial regulation, rather than a single agency regulating all financial market activities or entities. The drawbacks pointed out in the multiplicity structure have drawn lot of criticisms calling for shift towards single regulator. Prior to the financial crisis of September 2008, U.S. Department of the Treasury, vide its Blue print for a Modern Financial Regulatory Structure, 2008, called for three tier structure a systemic regulator, a market supervisor and a consumer regulator. Similarly, in the aftermath of the crisis, the intense legislative debates that took place over the Dodd Frank Act, emphasized on the crying need to have to single Financial Regulatory Authority replacing all the financial regulatory authorities in the United States. However, Dodd Frank Act itself created two new agencies and merged the Office of Thrift Supervision (OTS) with the Office of the Comptroller of the Currency. There may be merits and demerits of choosing any particular Regulatory structure for the finance market. As one economist noted that “On the one hand, one might conclude that the need to compete with other agencies would motivate a regulator to perform its tasks as effectively and efficiently as possible, on the other hand, one might argue that the desire to attract more clients could drive a regulatory agency to be loose.”

Paradoxically, the country with a single regulator i.e. United Kingdom dismantled its Financial Service Authority which had jurisdiction over securities, banking, derivatives and insurance in the aftermath of the Financial Crisis 2008 due to its failure in identifying the problem. So also the jurisdiction with multiple structures like United States failed to stop the crisis as a result of which it was forced to contemplate creation of a single regulator.

The following depicts the prevailing regulatory architecture over financial entities and services in United States of America:

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1. Regulate Certain Types of Financial Institutions: Some firms become subject to federal regulation in pursuit of obtaining a particular business charter, and several federal agencies regulate only a single class of institution. Depository institutions are a good example; a depository may be subject to the regulations of multiple prudential regulators, but one agency is granted primary oversight authority based on the bank's charter, national or state bank, credit union etc., and the choice of charter may not greatly affect permitted activity. Government enterprises also have primary prudential regulator. This in fact opens up the scope for regulator shopping or regulatory arbitrage. Secondly unchartered entities undertaking similar business as regulated entities may escape regulatory oversight.

2. Regulate a particular market: Some markets may open to federal regulation when they start the trading of certain financial instruments as in the case of New York Stock Exchange and Chicago mercantile Exchange. The Securities and Exchange Commission (SEC) regulate the trading in stocks and bonds whereas the Commodities Futures Trading Commission (CFTC) regulates the trading of Commodity futures and derivatives. Both SEC and CFTC do not regulate the prices of stocks or futures traded on the exchanges. Their regulation is limited to organization and membership of the exchanges, rule for trading, fraudulent trading, conflict issues, market manipulation etc., such regulation linked to markets could create problems of jurisdictional overlaps and innovation of new products could lead to regulatory gaps.

3. Regulating a Specific Activity: Some financial activities are subjected to federal regulation irrespective of the nature of entity or who make trades in those activities. The Consumer Financial Protection Bureau (CFPB) regulates certain classes of loans to consumers irrespective of whether the same are lent by banks or nonbanks. If the bank is the lender, it is
required to comply with both CFPB as well as its regulator for banking activity. This could also lead to problems as an entity can avoid regulation by choosing a different type of contract or operating through entity which is not regulated.

4. Regulation for Systemic Risk: Regulators charged with oversight over the entities may be satisfied with the fact that there were no systemic risks in respect of area under their purview but may slip up on detection of risks arising from the interaction of firms and markets. Regulation of bank capital may affect potentially in times of booms or busts in asset markets. Dodd Frank Act created Financial Stability oversight council to assume coordination amongst heads of financial regulatory agencies.\(^{162}\)

The following chart gives a detailed regulatory architecture of Federal Financial Regulators and the Regulated Entities:

### Federal Financial Regulators and Who They Supervise\(^{163}\)

<table>
<thead>
<tr>
<th>Regulatory Agency</th>
<th>Institutions Regulated</th>
<th>Emergency / Systemic Risk Powers</th>
<th>Other Notable Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Reserve</td>
<td>Bank holding companies and certain subsidiaries, financial holding companies, securities holding</td>
<td>Lender of last resort to member banks (through discount window lending)</td>
<td>Numerous market-level regulatory authorities, such as checking services, lending markets, and other</td>
</tr>
</tbody>
</table>

\(^{162}\)[Available at CRS 7-5700](http://www.crs.gov) (Visited on June 9, 2015).

\(^{163}\)Id
| **Office of the Comptroller of the Currency (OCC)** | National banks, federally chartered thrift institutions |  
| **Federal Deposit Insurance Corporation** | Federally insured depository institutions, including state banks and thrifts that are not | After making a determination of systemic risk, the FDIC may invoke broad |
|  |  |  
|  |  | Operates a deposit insurance fund for federally and state chartered banks and |

companies, savings and loan holding companies, and any firm designated as systemically significant by the FSOC.

State banks that are members of the Federal Reserve System, U. S. branches of foreign banks, and foreign branches of U. S. banks.

Payment, clearing and settlement systems designated as systemically significant by the FSOC, unless regulated by SEC or CFTC.

In “unusual and exigent circumstances,” the Fed may extend credit beyond member banks, to provide liquidity to the financial system, but not to aid falling financial firms.

May initiate resolution process to shut down firms that pose a grave threat to financial stability (requires concurrence of two-third of the FSOC).

The FDIC and the Treasury Secretary have similar powers.

banking-related activities.
<table>
<thead>
<tr>
<th>(FDIC)</th>
<th>members of the Federal Reserve System.</th>
<th>authority to use the deposit insurance funds to provide and array of assistance to depository institutions, including debt guarantees.</th>
<th>thrifts.</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Credit Union Administration (NCUA)</td>
<td>Federally chartered or insured credit unions</td>
<td>Serves as a liquidity lender to credit unions experiencing liquidity shortfalls through the Central Liquidity Facility.</td>
<td>Operates a deposit insurance fund for credit unions, known as the National Credit Union Share Insurance Fund (NCUSIF).</td>
</tr>
<tr>
<td>Securities and Exchange Commission (SEC)</td>
<td>Securities exchanges, brokers and dealers: clearing agencies; mutual funds; investment advisers (including hedge funds with assets over $ 150 million) Nationally recognized statistical rating organizations Security-based swap (SBS) dealers, major SBS participants, and SBS execution</td>
<td>May unilaterally close markets or suspend trading strategies for limited periods.</td>
<td>Authorized to set financial accounting standards in which all publicly traded firms must use.</td>
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<tr>
<td><strong>Changing Dynamics of the Regulatory Architecture for Financial Markets</strong></td>
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<tr>
<td><strong>Corporations selling securities to the public must register and make financial disclosures.</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Commodity Futures Trading Commission (CFTC)</strong></td>
<td>Futures exchange, brokers, commodity pool operators, and commodity trading advisors</td>
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<td></td>
<td>Swap dealers major swap participation and swap execution facilities</td>
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<td></td>
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<tr>
<td></td>
<td>May suspend trading, order liquidation of positions during market emergencies</td>
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<tr>
<td><strong>Federal Housing Finance Agency (FHFA)</strong></td>
<td>Fannie Mae, Freddie Mac, and the Federal Home Loan Banks</td>
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<tr>
<td></td>
<td>Acting as conservator (since Sept. 2008) for Fannie Mae and Freddie Mac</td>
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<tr>
<td><strong>Bureau of Consumer Financial Protection</strong></td>
<td>Nonbank mortgage-related firms, private student lenders, payday lenders, and</td>
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<tr>
<td></td>
<td>Writes rules to carry out the federal consumer</td>
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<td>financial protection laws</td>
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<tr>
<td>larger &quot;consumer financial</td>
<td>determined by the Bureau</td>
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<tr>
<td>entities&quot; to be determined by</td>
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<tr>
<td>the Bureau</td>
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<tr>
<td>Consumer businesses of banks</td>
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<tr>
<td>with over $10 billion in assets</td>
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<tr>
<td>Does not supervise insurers,</td>
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<tr>
<td>SEC and CFTC registrants, auto</td>
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</tr>
</tbody>
</table>
| dealers, sellers of nonfinancial goods, real estate brokers and agents and banks with assets less than $10 billion | |}

Having discussed so far, the models of regulatory structure, unified or multiple followed by various countries, it is now proposed to analyse through data as to what is the status of each financial market in India, as compared to these countries.

The following graphs depict the various determining factors with respect to the countries whose regulatory architectures have been discussed herein above and co-relating the figures with that of India. Based on this study the researcher has made the final analysis as discussed in Chapter 12 of this paper.
The Graph on GDP Per Capita indicates Norway is the highest followed by Australia and other countries. Norway, possibly on account of a small country, tops GDP. What is revealing is the GDP Per capita of India is the lowest which shows that it is still emerging market and this would have implications for any change in its regulatory structure.

World Development Indicator: GDP Per Capita

![GDP per capita: 2009-2013](image)

The graph above on stock market activities indicates that the US has the biggest stock market in terms of the value followed by UK, Canada, Australia and others. India has active market as compared to other Scandinavian countries. However, these countries have less population in comparison to India.

165Available at <http://wdi.worldbank.org/table/5.4#> (Visited on October 12, 2014)
The above graph depicts US leading the insurance market followed by UK, Canada, Australia and then India. Here also the Scandinavian countries may be left out on account of their being small in size as compared to these countries.

\(^{166}\) Available at <http://www.iii.org/publications/international-insurance-fact-book-2015/download-by-chapter> (Visited on October 12, 2014)
The above graph shows that U.S. is leading in banking development followed by Sweden, Denmark, Norway, Canada and India ranking above Finland. Other than Scandinavian countries, almost all other economies are fully developed in terms of the above graphs. A collective study of the above graphs would reveal that the more developed an economy is, the choice of model of regulator or a change in regulatory model may not make impact as it happened in the case of U.K. when it was changed from twin-peak to unified in 2000 and reversed back to twin-peak by abolishing FSA in 2010. It had least impact as it was a developed economy. Whereas in a country like India, any change in model from multiple to unified or vice versa, may adversely impact on account of the following reasons:

Available at <http://wdi.worldbank.org/table/5.4#> (Visited on October 12, 2014)
1. Firstly, India is still a developing economy as compared to all the countries analysed for unified or multiple models of regulation.

2. Secondly, in India all the sectoral regulators are catering to a very large size of population as compared to these countries and complexity accordingly will be more in regulation.

3. Any change in the model from the current one to the unified or reverting to multiple if the change of model fails, could be an expensive preposition, as the economy may not be resilient enough like U. K. to withstand the change.

Hence, in conclusion, it is to be stated that there can be not clear solution of which could be the ideal model of regulation whether unified or multiple model as there were countries like Australia, U. S. A. which continue with multiple models whereas countries like U. K. which have moved away from unified to multiple model. Smaller countries like Denmark, Sweden, Norway, continue with unified structure. Various available data on size of the markets, as also development of the economy also have an impact on the choice of regulatory model or change of model.