

# Regulatory change is driving audit committee agendas

## Executive summary

In 2009, leaders from around the world came together to address the global economic crisis. The Group of Twenty (G-20) nations worked throughout the year and committed to efforts to stabilize and stimulate their economies and repair the global financial system. The G-20 also adopted a broader policy agenda that includes accounting standards, tax and anti-corruption efforts, and energy security and climate change.<sup>1</sup> For their part, Democratic leaders in the United States, led by President Obama, have promoted a tough enforcement agenda in keeping with the G-20's approach.

Ernst & Young commissioned Tapestry Networks to engage a diverse group of subject matter experts to discuss the significant risks this broad agenda of government intervention raises and the impact of those risks on audit committees. For a list of research participants, please see the appendix on page 16.

Key findings from the discussions with experts were:

- ▶ **Audit committees face unprecedented accounting change over the next decade** (page 3)  
Commentators and accounting professionals have spent the past few years avidly reading the announcements from the Securities and Exchange Commission (SEC) to determine if the United States will adopt International Financial Reporting Standards (IFRS). The most recent announcement on February 24 provided some continued momentum in this regard. Some of the participants in this *InSights* research urged companies to focus on the unprecedented change to US Generally Accepted Accounting Practices (GAAP) that will take place over the next few years, due to the projects already underway to bring the two sets of standards closer together, rather than keep speculating on whether the US will convert to IFRS. Meanwhile, Canadian companies will continue their work this year as they transition to IFRS in 2011.
- ▶ **Tax authorities are cracking down** (page 6) Driven by the need to reduce massive deficits, tax authorities are enforcing tax rules more aggressively, and seeking greater transparency through increased tax reporting and disclosure. Research participants expect more and faster tax audits, larger fines, and transfer pricing arrangements to continue to be thorns in the sides of audit committees. They also predict that audit committees will have to step up oversight of tax strategies and gain a more complete understanding of evolving tax risks.



- ▶ **Governments are bringing climate change and sustainability to the forefront** (page 8) The protracted international debate, including the December 2009 climate change negotiations in Copenhagen, and the US and Canadian delay over cap-and-trade legislation, may have lulled companies into a false sense that climate change and sustainability are no longer of top concern, but participants warned them of the dangers of that attitude. Regulatory and legal changes are already occurring that present potentially significant reputational, reporting, and financial risks to companies, and too few companies are sufficiently prepared.
- ▶ **The compliance risks of operating in emerging markets are increasing** (page 11) US authorities continue to lead the charge against bribery and corruption with a significant push to prosecute companies that run afoul of the Foreign Corrupt Practices Act (FCPA). With G-20 leaders putting energy behind similar efforts in developed and emerging markets, global companies face a much greater risk of prosecution. Audit committees will need to remain vigilant on compliance programs and must ensure they are well prepared to assess the magnitude of these risks.
- ▶ **Antitrust investigations and litigation risks are increasing** (page 13) The Department of Justice (DOJ) and Federal Trade Commission (FTC) have signaled an intent to get tough on antitrust. At the same time, antitrust officials in the European Union have significantly stepped up their enforcement efforts, as have other countries. Participants believe this makes oversight of corporate compliance efforts a higher priority for audit committees.
- ▶ **Conclusion: regulatory change raises risks for companies** (page 15) Audit chairs are gradually acknowledging that regulatory risks are on the rise and may need to form a core part of their committee agendas going forward. However, research participants fear that audit chairs still greatly underestimate the broad range of risks their companies now face as a result of increased government intervention at both the domestic and international levels. Complicating matters, these risks come at a time when US and Canadian companies face considerable change in accounting standards.

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1. G-20, "The Pittsburgh Summit," leaders statement, September 25, 2009.

# Audit committees face unprecedented accounting change over the next decade

Much has been written about the possibility that the United States will move to IFRS. Canada has taken the plunge and their public companies go live with IFRS next year. However, regardless of whether or when the United States converts to IFRS, several participants noted that “unprecedented change” is coming to US GAAP over the next few years.

## The state of convergence: the first “big bang”

For nearly a decade, the two leading standards setters, the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB), have been working together on a massive initiative aimed at achieving a single, global set of accounting standards. These convergence activities, which were formally launched by the 2002 Norwalk Agreement, are responsible for a number of financial reporting changes that have taken place in recent years, notably changes in accounting for business combinations and the increased use of fair value assessment of assets.

Although in the aggregate the changes to date have been significant, they are small in comparison to the implications of the new rules that could be implemented in the next few years. One participant called it “a tsunami of accounting change.” Eight major convergence projects are projected to be completed by the end of 2011.<sup>2</sup> One participant noted that “companies will have to restate their financials for several years, else investors will not have meaningful data,” which magnifies the size of the effort required. While companies will be affected in different ways, participants pointed to several projects that should be of particular interest to audit chairs:

- ▶ **Revenue recognition.** One participant noted that changes in revenue recognition “will affect almost every company” because, as another noted, “over a hundred [sector-specific] standards will be unwound to be replaced by a single principles-based standard.”
- ▶ **Leases.** Bringing lease assets and obligations onto the balance sheet could have significant operational and financial implications for most companies, and companies will “need a lot of lead time to gather the data.” Several participants recommended companies get ahead of such change “in case the changes blow through their debt covenants.”

- ▶ **Financial statement presentation.** The proposed changes “will create more of a direct cash flow approach for financial statements,” noted one participant. This could have significant implications for the way in which companies gather and aggregate data and may create financial communication challenges because “this is how you explain yourself to your shareholders.” Other traditional performance metrics would also change.
- ▶ **Financial instruments reporting and insurance contracts.** These projects may “bring more fair value accounting into the balance sheet” and have significant implications for banks and insurers.

Participants concluded that “change is coming,” and they fear that “many companies are woefully unprepared for [those] changes.” One noted that even corporate accounting personnel seem to be unaware of the volume of change they face. Moreover, there is debate about whether, or which of, the projects can be completed in 2011, as scheduled, and one participant questioned whether the aggressive timeline for implementing all these changes is feasible. However, another noted that there are important factors driving standards setters to finish the projects on time. For example, the SEC’s decision in 2011 regarding whether or not to move to IFRS will be based, in part, on the FASB’s success or failure completing the convergence projects by their deadlines.<sup>3</sup> Meanwhile, the IASB is facing relatively significant turnover in its membership, with three members reaching the end of their tenure this year and next, including Sir David Tweedie, the chairman. Likewise, the FASB has some turnover during 2011. Educating board members could delay approval of some of the projects.

Additionally, there are concerns about the pace at which the new standards would be implemented. For example, Financial Executives International has concluded that, given “the unprecedented breadth and complexity of the convergence projects, and the associated systems, procedures and control changes,” there should be a three-year implementation period.<sup>4</sup>

**US companies are facing “a tsunami of accounting change.”**

2. For a list of the projects and their target completion dates, see Financial Accounting Standards Board, “Technical Plan and Project Updates.”

3. US Securities and Exchange Commission, “SEC Approves Statement on Global Accounting Standards,” press release, February 24, 2010.

4. Arnold Hanish to Robert Herz and Sir David Tweedie, “Re: Effective Dates for the Major Convergence Standards,” February 12, 2010.

## Norwalk 2: the sequel?

The current convergence projects will keep standards setters and preparers of financial statements busy for several years, but even after those projects are completed, other standards will still require attention. Both the FASB and the IASB have other projects that they put on the back burner when, in 2008, they updated their convergence agreement to prioritize more critical projects.<sup>5</sup> Some major FASB projects were deprioritized in 2008, notably tax accounting, employee benefits, and impairment of fixed assets. Moreover, the FASB set aside its disclosure framework project,<sup>6</sup> which both issuers and investors support. As one participant explained, the project aims to “rationalize and reduce redundant disclosures,” a move audit committee chairs would welcome.

Participants observed that the central question is not whether more change will occur, but whether further changes will be coordinated between the two standards setters or not. Both boards have remained relatively silent on whether another round of convergence projects is preferable or likely. To the extent the boards don't coordinate their work, it has the potential to create more differences between the two sets of standards.

5. See Financial Accounting Standards Board, *Completing the February 2006 Memorandum of Understanding: A progress report and timetable for completion* (Norwalk, CT: Financial Accounting Standards Board, 2008).

6. For more on the disclosure framework project, see Financial Accounting Standards Board, “Project Update: Disclosure Framework,” December 8, 2009.

7. US Securities and Exchange Commission, *Commission Statement in Support of Convergence and Global Accounting* (Washington, DC: US Securities and Exchange Commission, 2010), 2.

8. G-20, “The Pittsburgh Summit,” leaders statement, September 25, 2009, 9.

9. Ernst & Young, “SEC reaffirms its commitment to IFRS,” *Hot Topic*, February 24, 2010.

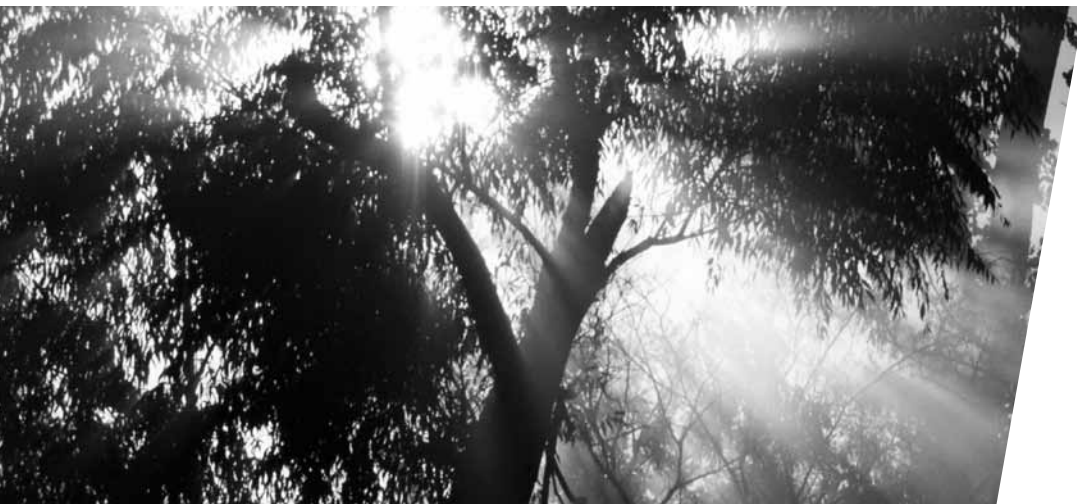
10. *Ibid.*, 2.

## The conversion: another “big bang”

Audit committees – and the issuer and investor communities at large – still speculate about whether the United States will convert to IFRS. The recent announcement by SEC chairman Mary Shapiro and her fellow commissioners reiterated the SEC's commitment to a single set of high-quality global accounting standards, and recognized that “IFRS is best-positioned to be able to serve the role as that set of standards.”<sup>7</sup> In so doing, the SEC followed the G-20 call for standards setters “to redouble the efforts”<sup>8</sup> on convergence. However, the announcement stopped short of a ringing endorsement that some in the corporate and accounting communities had hoped for. Rather, it outlined some specific factors that the SEC will consider in 2011 in determining whether to move to IFRS, including the independence and governance of the IASB, and whether the convergence projects are complete.<sup>9</sup> The SEC chief accountant James Kroeker suggested that a move to IFRS could be somewhat later than the existing Roadmap, so as to ensure adequate transition time, in “approximately 2015 or 2016.”<sup>10</sup>

Audit committee chairs have a broad range of views on conversion to IFRS. Some believe it will never happen because they do not believe the SEC is willing to cede power to the IASB. Others worry that a more principles-based approach would be difficult to implement in the US legal environment. However, some audit chairs of companies with significant overseas operations, support conversion and want the SEC to fix a date so their companies can prepare in earnest and with certainty.

Notwithstanding the pros and cons of converting to IFRS, if and when it happens, as one participant pointed out, “it will still be a big bang [even after the convergence projects].”



## The role of audit committees

Canadian audit committees are currently working through their IFRS preparations, and are well aware of the challenges that conversion presents.<sup>11</sup> However, participants urged US audit committees to stop speculating about whether the United States will convert to IFRS or not and instead to start preparing for the many changes in US GAAP that will be implemented over the next few years through convergence. They point to a number of critical challenges facing US companies:

- ▶ **The standards-setting process.** Participants worry that companies are not prepared to analyze and comment on the many exposure drafts that will be released this year. One said, "Audit committees need to be aware, and they need to ensure their companies are evaluating the drafts, commenting on their detail and effective date of implementation, and, if they want real influence, volunteering for field tests."
- ▶ **The effect of new standards on financial statements and systems.** As the exposure drafts are issued, participants recommend committees discuss the implications with management and the external auditor. For some, the effect on financial statements could be significant. Also, given the breadth of change and the likelihood that there will be more to come, audit committees may wish to ask management to evaluate any planned or in-process major information technology projects to determine how these might be affected.

- ▶ **The finance staff.** Given the unprecedented nature of the upcoming changes, participants recommended audit committees take stock of their finance team, particularly those charged with financial reporting and accounting roles. Audit committees should assess whether their companies have the necessary in-house expertise and, if not, determine where outside advice is required. During this period of change, training for executives and audit committee members will be important, as will effective coordination with the external auditor.
- ▶ **The audit committee role.** Audit chairs who have spent time considering the upcoming set of convergence projects recognize that the changes to US GAAP will require the increased use of judgment by management and auditors in applying new standards. They also recognize the requirement for consistent application of the standards within their own companies and the need for audit committee oversight of the transition to the new standards.

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11. Canadian Audit Committee Network, "The transition to IFRS: progress and challenges," *IFRS Update*, March 2, 2010.

### Questions for audit committees:

- ▶ Has management presented the committee with an initial plan to address the financial reporting and operational impacts of these potentially significant accounting changes? How prepared is the company for the upcoming period of accounting change?
- ▶ Is the audit committee encouraging the finance team to participate in shaping the new accounting standards?
- ▶ How is the audit committee educating itself on the upcoming accounting changes?
- ▶ How will the audit committee ensure the finance team, internal auditors, and external auditors work together effectively during the changes to minimize financial statement risks?
- ▶ Does the company have the right amount of qualified personnel to undertake the necessary accounting changes? In what areas can the company rely heavily on third parties?
- ▶ Has the finance team engaged in dialogue with other stakeholders – tax, IT, general counsel and operations personnel – across the organization about the potential impacts of the convergence projects within their own domain?

# Tax authorities are cracking down

Research participants agreed that the economic crisis has elevated taxation to the top of governmental agendas for one simple reason: the looming need to reduce the massive deficits that governments have incurred in responding to the crisis. As deficit reduction, rather than fiscal stimulus, becomes an increasing priority, governments will focus much harder on tax enforcement. IRS commissioner Douglas Shulman summed it up when stating that, other than spending cuts, “the only meaningful way to bring down the deficit is by bringing in more revenue.”<sup>12</sup> This means collecting “more of the money that is legally owed to the government,”<sup>13</sup> or increasing taxes, as President Obama has proposed to do on companies’ foreign earnings.<sup>14</sup>

## Several trends are pushing tax up the audit committee agenda

Research participants noted four trends that are driving the audit committee to devote more attention to tax matters:

- ▶ **Greater transparency of tax risks.** Standards setters and tax authorities have been using disclosure as a means to aid investors and also enforcement officials. The FASB published an interpretation (FIN 48, *Accounting for Uncertainty in Income Taxes*) of its statement on accounting for income taxes that forces companies to be more open about their uncertain tax positions.<sup>15</sup> More recently, the IRS has proposed using FIN 48 as a means to require companies to “disclose uncertain tax positions in the form of a concise description of those positions and the maximum amount of US tax exposure if the taxpayer’s position is not sustained.”<sup>16</sup> Authorities are also encouraging tax intermediaries, such as investment banks, to be more clear and forthcoming regarding tax planning matters.<sup>17</sup> See “Mr. Shulman’s questions for the tax director and external auditor,” on the next page.

- ▶ **Faster, more focused tax audits.** Authorities in the United States and Canada are speeding up audit cycles; they are “not waiting three or five years after taxes are paid, but acting sooner,” and they are going deeper in certain areas and reserving the right to return to a given year. Tax authorities have focused significant attention on transfer pricing, which is a complex area, and experts anticipate considerably more transfer pricing audits and penalties in the coming years.<sup>18</sup> This year alone, the IRS is hiring 800 more professionals just to focus on international tax enforcement.<sup>19</sup>
- ▶ **More international cooperation.** Research participants validated the trends Ernst & Young identified in *Tax administration without borders*.<sup>20</sup> These trends include more information sharing among tax authorities (about specific companies as well as tax administration best practices) and more cooperation among authorities on joint audits (although some participants saw this development as still being only in the early stages).
- ▶ **Greater oversight for tax risk being placed explicitly with the board.** Increasingly, tax officials are stressing the need for active board or audit committee oversight of tax risk. Mr. Shulman advised a group of board directors that “tax issues should remain on your radar screen ... it’s one of the biggest expenses on your income statement ... tax strategies can ... present a financial and restatement risk, and sometimes when the cases are high profile, a significant risk to corporate reputations.”<sup>21</sup>

## Audit committees must be more proactive about assessing tax risks

Several participants noted that audit committees often avoid too much discussion of tax risks because “it’s complicated and a bit of a black box,” and few board members are experts on taxation. They also observed that audit committee interactions with tax executives can be infrequent, and even when they do occur, some tax directors believe “it’s their role to limit the amount of time the audit committee spends on tax matters.” However, tax authorities like the IRS expect directors to understand who is involved in tax management and how the tax process works; directors must ensure that tax matters are integrated with risk management and adequately resourced and that a robust framework for communications among the tax team, senior management, and the board is in place.<sup>22</sup>

12. Douglas Shulman, remarks before the Tax Executives Institute, October 21, 2008.

13. Ibid.

14. Robert Willens, “Obama Budget to Spark Tax Debates,” CFO.com, February 16, 2010, 1.

15. Financial Accounting Standards Board, *FASB Interpretation No. 48: Accounting for Uncertainty in Income Taxes* (Norwalk, CT: Financial Accounting Standards Board, 2006).

16. Douglas Shulman, remarks to the New York State Bar Association Taxation Section Annual Meeting, January 26, 2010.

17. See, for example, Organisation for Economic Co-operation and Development, *Study into the Role of Intermediaries* (Paris: Organisation for Economic Co-operation and Development, 2008).

18. Ernst & Young, “Transfer pricing enforcement takes center stage in the post-crisis environment,” *Tax policy and controversy briefing*, November 2009, 18.

19. US Department of the Treasury, *Update on Reducing the Federal Tax Gap and Improving Voluntary Compliance* (Washington, DC: Department of the Treasury, 2009), 11.

20. Ernst & Young, *Tax administration without borders: Navigating the changing global tax controversies and risk management landscape* (Ernst & Young Global Limited, 2009).

21. Douglas Shulman, address to the National Association of Corporate Directors Governance Conference, October 19, 2009.

22. OECD Forum on Tax Administration, “General Administrative Principles: Corporate governance and risk management,” *Information Note*, July 2009, 5-12.

**“Tax strategies can ... present a financial and restatement risk, and sometimes when the cases are high profile, a significant risk to corporate reputations.”**

– IRS Commissioner Doug Shulman

Participants recommend that audit committees:

- ▶ **Strike the proper balance between tax minimization and tax certainty.** Achieving tax efficiency is extremely important today, when companies must control costs, but pushing the boundaries of tax planning when tax authorities are clamping down and tax laws and policies are continually changing could be foolhardy. As Mr. Shulman warned, “Tax expense in this sense is no different from other expenses. Manage it too loosely and you give up profit. Manage it too aggressively and there are bad consequences.”<sup>23</sup> One participant noted a shift in companies’ perspectives on this issue: “CFOs used to only worry about paying the lowest amount of tax, but I’ve noticed they are now increasingly focused on obtaining more certainty about future tax obligations.”
- ▶ **Develop strong relationship with tax authorities.** Participants say that better relationships with tax authorities will pay dividends by:
  - Creating more certainty on taxes by facilitating advanced resolution arrangements between companies and tax authorities wherein tax liabilities are agreed upon up front.
  - Establishing a collaborative relationship with tax administrators.
  - Accelerating tax-return certainty through programs such as the IRS’s Compliance Assurance Process<sup>24</sup>
  - Enabling the utilization of alternative dispute resolution processes.
  - Helping companies understand the red flags that trigger audits.

23. Douglas Shulman, address to the National Association of Corporate Directors Governance Conference.

24. For more information on the Compliance Assurance Process, see US Internal Revenue Service, “8.26.8 Compliance Assurance Process - Fast Track Settlement.”

25. Douglas Shulman, address to the National Association of Corporate Directors Governance Conference, October 19, 2009.

- ▶ **Integrate the tax function into business planning.** One participant advocated a change in the role of the tax function, given the current environment: “Tax can’t be an advisory role; it must be more embedded in the [business planning] process.” Tax personnel should be more actively involved in decisions about structuring businesses and reporting lines so that the chosen tax strategy will fit the “business purpose.” Participants urged companies to ensure documentation and communications about the tax strategy reflect this approach.

#### **Mr. Shulman’s questions for the tax director and external auditor**

In his October 2009 address at the National Association of Corporate Directors Governance Conference, Mr. Shulman asked the following questions:<sup>25</sup>

- ▶ What was the process for identifying uncertain tax positions and how do you know all material issues have been identified?
- ▶ How did you go about determining the maximum tax exposure relating to each uncertain tax position? What makes you comfortable that it accurately reflects your maximum exposure?
- ▶ How did you go about quantifying the likelihood of winning or losing uncertain tax positions? Do you plan to litigate the issue if the IRS challenges the position? Does the external auditor or tax advisor agree with the tax director’s assessment?
- ▶ Could the company be subject to potential penalties, such as for underpayment of tax, negligence or worse? If so, are they appropriately recorded, and perhaps more important, what does this say about how aggressive the company’s position is regarding those issues?

#### **Questions for audit committees:**

- ▶ What tax risks does the company face? How does the audit committee evaluate the company’s approach to tax planning and tax strategies? Has the company set a threshold confidence level for taking a tax position?
- ▶ What is the audit committee’s approach to overseeing tax matters? Are there ways to improve the committee’s ability to evaluate the tax function? How often does the committee meet with the tax director?
- ▶ What is the company’s relationship with tax authorities in the jurisdictions in which it operates? Does the audit committee have a good sense of which tax positions are most vulnerable or the extent of tax audits currently being undertaken in the company?

# Governments are bringing climate change and sustainability to the forefront

Corporate interest in sustainability and climate change has waxed and waned in recent years. In 2008, legislative momentum appeared to be picking up significantly. The US Senate had its first vote on a cap-and-trade regime, and climate change proposals were high on the agendas of both presidential candidates. Then, the financial crisis struck and appeared to stall legislative and corporate efforts focused on climate change and sustainability arenas. Not surprisingly, except in industries for which climate change and sustainability is a central issue, such as energy and utilities, audit committee interest also waned.

Participants fear that companies have grown too complacent about the subject. Federal authorities are implementing measures that could present significant reporting and reputational challenges for companies over the next few years, and state and provincial authorities in both the United States and Canada are developing a complex web of standards and tax incentives. Litigation risks are also increasing. A federal cap-and-trade regime in the US and Canada may still be years away, but audit committees would nevertheless be well advised to revisit climate change and sustainability issues.

## Legislative, regulatory, and legal actions are all driving change

Many have criticized the lack of progress at the Copenhagen climate change summit of December 2009. While an accord was eventually reached, it had limited teeth, and the level of commitment was clearly lower than many had hoped. However, participants in this *InSights* research pointed out that the event represented “an unprecedented level of high-level attention” to the issue, with 119 heads of state and government and ministers from 194 countries present.<sup>26</sup> President Obama demonstrated “personal commitment” to the issue by pressing for a strong accord and by working afterwards to gain more support for action. The Copenhagen meeting also drew attention to broader global action on the environmental agenda, driven by the G-20’s prioritization of the issue in 2009.

26. Ernst & Young, *The business response to climate change: Outcomes and implications of the Copenhagen Accord* (Ernst & Young Global Limited, 2010), 1.

27. GHG generally refer to the six gases listed in the Kyoto Protocol: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), and fluorinated gases (HFC, PFC, SF<sub>6</sub>). Certain regulations, such as the EPA’s GHG reporting rule, modify that to include additional greenhouse gases. An entity’s combined emissions of these gases, translated into carbon equivalents, is known as its “carbon footprint.”

28. For more information, see US Environmental Protection Agency, “Mandatory Reporting of Greenhouse Gases Rule.”

29. Securities and Exchange Commission, “SEC Issues Interpretive Guidance on Disclosure Related to Business or Legal Developments Regarding Climate Change,” press release, January 27, 2010.

30. Ontario Securities Commission, “OSC announces plans to enhance compliance with corporate governance and environmental disclosure requirements for 2010,” press release, December 18, 2009.

One participant described recent regulatory, judicial, and stakeholder developments relating to climate change and sustainability as a “perfect storm” that has put the topic front and center for US and Canadian companies:

- ▶ **Many groups are tackling the issue of carbon disclosures.** Much energy has been expended on defining standards for measuring and reporting carbon emissions, with, as one participant highlighted, “[over] 130 [different groups] looking at this issue globally.”
- ▶ **Many companies will have to disclose greenhouse gas (GHG)<sup>27</sup> data in 2011.** The US Environmental Protection Agency (EPA) implemented a rule requiring companies that generate 25,000 tons or more of GHG to begin collecting data as of January 1, 2010, and to submit data on annual emissions, on a self-certified basis, to the EPA in March 2011.<sup>28</sup> Many participants view this as “the sleeper issue.” The data, which must be provided on a per facility basis rather than aggregated by corporation, will be made public. Participants believe that companies have not yet recognized the reputational challenges this will create: “Once this data is made public, companies will face local pressure – from concerned citizens and via the media – to reduce their carbon emissions. Putting a GHG number out there without a plan to cut emissions would be foolish.” Several participants noted that whenever new regulations have forced companies to disclose data on pollutants, it has caused local action against the companies. It has also triggered proactive companies to take action.
- ▶ **Companies will have to disclose prospective climate-change-related risks.** The SEC voted in February to issue guidance that “may require a company to disclose the impact that business or legal developments related to climate change may have on its business. The relevant rules cover a company’s risk factors, business description, legal proceedings, and management discussion and analysis.”<sup>29</sup> One participant noted, “The really new part of this guidance is [that] companies will have to disclose how future legislation or market or customer trends could affect their business, when material.” The Ontario Securities Commission (OSC) is running in the slipstream of the SEC and aims to issue similar guidance by the end of the year.<sup>30</sup>

► **Shareholders will press companies more on climate change and sustainability risks.** In recent years, activist institutional investors have both stepped up their direct engagement with companies and pressed for broader climate change disclosures via groups such as Coalition for Environmentally Responsible Economies (CERES) and the Carbon Disclosure Project. In addition to requiring the new disclosures noted above, the SEC has added more weight to investor pressure by issuing new interpretative guidance in October 2009 that will make it harder for companies to exclude shareholder proposals related to “environmental, financial or health risks.”<sup>31</sup> There has already been a surge in such proposals, with 40% more filed this year compared to last.<sup>32</sup>

► **Greater regulatory complexity creates compliance risks.** Participants noted that compliance risks are growing, not only because of the actions of international and federal policymakers, but because of regional activities. As one put it, “The most striking part of the Copenhagen meeting was the level of activity that is taking place globally at the regional and city levels.” Between July 2008 and February 2009, 250 climate change regulations were enacted across the globe.<sup>33</sup> In North America, states and provinces have been banding together to create regional carbon-trading platforms, and the majority of US states and Canadian provinces now have renewable-energy standards aimed at “driving a different mix of energy.” These developments are “creating a complex web of rules that companies operating across state or international borders have to navigate.”

► **Companies may face regulations controlling carbon emissions.** After the US Supreme Court issued a ruling in 2007, the EPA issued a long-expected rule stating that GHG threaten public health, a move that allows it to regulate GHG without the enactment of additional laws.<sup>34</sup> Participants feel this could be a watershed moment for business. One said, “Businesses are panicked about this. It will drive industry to have to do something.

Audit committees need to get on board.” Subsequently, the EPA has issued proposals focused on the automotive industry (the industry at the center of the 2007 Supreme Court decision) and a broader set of companies under the so-called tailoring rule, which focuses on emitters that breach the 25,000-ton GHG limit.<sup>35</sup> Michael Gerrard, the director for climate change law at Columbia Law School, has said that “there is no doubt that EPA regulation would inflict pain on some industries.”<sup>36</sup> Not surprisingly, the EPA’s actions have been challenged in court, but the outcome is hard to predict. Longer term, several participants noted that the US Senate and Canadian federal government are still discussing cap-and-trade regimes, but they observed that the appetite for a “big solution” of this sort has waned significantly over the last 18 months.

► **Litigation risk is increasing.** Near term, companies may face litigation related to their claims regarding how environmentally friendly their products are – “greenwashing” – because the FTC has stated it will update its environmental marketing guidelines (its “Green Guides”).<sup>37</sup> In the longer term, the 2007 Supreme Court ruling could have broader legal ramifications. Plaintiffs’ cases on GHG have, in the past, been dismissed by courts as nuisance claims. However, in two important cases, appeals courts overturned lower courts and acknowledged the standing of individuals to have their cases heard (the appeals courts did not comment on the merit of the cases).<sup>38</sup> While “these cases are far from over,” they indicate a rise in the potential level of litigation risk. As one participant noted, “If any one of these plaintiffs wins, it will open the floodgates for more cases.”

31. US Securities and Exchange Commission, “Shareholder Proposals,” staff legal bulletin, October 27, 2009.

32. “Investors File a Record 95 Global Warming Resolutions: A 40% Increase Over 2009 Proxy Season,” *PR Newswire*, March 4, 2010.

33. DB Advisors, *Global Climate Change Regulation Policy Developments: July 2008-February 2009* (New York: DB Advisors, 2009), 6.

34. Alister Doyle, “U.S. moves to curb emissions, aids U.N. climate talks,” *Reuters*, December 7, 2009.

35. US Environmental Protection Agency, “Fact Sheet - Proposed Rule: Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule.”

36. Elizabeth Shogrun, “EPA: Greenhouse Gases Threaten Health,” *All Things Considered*, December 7, 2009.

37. Gabriel Nelson, “FTC Moves May Signal Start of ‘Greenwashing’ Crackdown,” *New York Times*, February 3, 2010.

38. Craig Gannett and Lauren Giles Wishnie, “Court Gives Thumbs Up to Katrina Climate Change Litigation,” Davis Wright Tremaine legal advisory, October 21, 2009.

## Audit committees may have to put climate change and sustainability on their agenda

Governments and provincial authorities will continue to offer incentives designed to tackle climate change, sustainability, and energy conservation,<sup>39</sup> and companies will strive to take advantage of those incentives, which means that boards will need to integrate those issues into their strategic thinking, product development, and investment plans.

Meanwhile, as climate change and sustainability-related regulations become more burdensome, there are a number of ways in which audit committees could provide additional oversight:

- ▶ **Integrate climate change and sustainability into enterprise-wide risk assessment.** Increasingly, ignoring these issues may have significant negative ramifications from an enterprise risk perspective. Many participants described sustainability as an important reputational risk: “The discussion we see around this is that it’s [about] the public relations of the business ... It could be a real reputational danger if [you aren’t doing the right things.]”
- ▶ **Focus on quality of disclosures.** Several research participants commented on the difficulty that sustainability reporting presents: “There is a lot of uncertainty around how to measure [sustainability efforts], what to include and what not to include. Also, how should the company set targets? What represents appropriate benchmarking? This is an important issue audit committees will

have to face.” Several participants noted that, in light of the new GHG reporting requirements, audit committees may want to revisit their climate change and sustainability reports: “Once companies start reporting GHG formally, it is important that data aligns with data released in other company reports.”

- ▶ **Evaluate the reporting systems.** “Companies will feel peer pressure on climate change disclosures, especially in the early years, when they have no idea how bad or good they look versus their peers,” noted one participant. Yet, as another pointed out, “Companies will find it’s very difficult gathering accurate and timely data. Who wants to disclose the wrong data on carbon emissions?” The expert continued, “You don’t just flip a switch and you have this data ... it takes quite a while [to compile].”
- ▶ **Consider third-party validation of reporting.** Several participants noted that as reporting standards become more onerous, the pressure to validate sustainability and climate change-related data will grow. To the extent the data make their way into the financial statements, the external auditor may have to attest to their accuracy. Some companies are getting ahead of this trend and are already seeking voluntary data validation by third parties. One participant said, “External audit needs to ensure that what is reported is appropriate ... For now, these reports are not of great value.”

39. For example, in one seven-month period, governments around the world committed to investing more than \$430 billion of their stimulus package to climate change efforts such as tax credits, grants and incentives. See Ernst & Young, *The business response to climate change: choosing the right path* (Ernst & Young Global Limited, 2009), 2.

### Questions for audit committees:

- ▶ Is climate change sustainability risk captured fully in the company’s enterprise-wide risk assessment process? Does the assessment fully anticipate the emerging reporting, reputational, and legal risks associated with sustainability?
- ▶ Is the audit committee confident that management has a clear understanding of the regulatory initiatives that are under way and how they could impact the company’s risk profile?
- ▶ How has the audit committee evaluated the integrity of the company’s sustainability and climate change-related reporting and the systems used to generate this data?
- ▶ How can the audit committee best use internal and external audit to review reporting on sustainability and climate change? How can they help review the reporting process?

# The compliance risks of operating in emerging markets are increasing

Economists have been predicting a global shift in economic power from west to east for years, and many believe the fallout from the economic crisis has accelerated this trend materially. Audit chairs believe the strategic issues this trend raises are a matter for the full board to address, but they are asking what role the audit committee should play, if any.<sup>40</sup> Participants in the research for *InSights* suggested that audit committees should turn their attention to the increased compliance risks the new environment presents, notably risk relating to anti-bribery rules.

## US authorities have significantly ramped up their focus on the FCPA

US and Canadian companies operating in foreign countries are increasingly subject to more intense anti-bribery enforcement by authorities in those countries. Over the past few years, for example, authorities in Germany and the UK have ramped up their enforcement efforts. Moreover, at the September 2009 Pittsburgh G-20 meeting, world leaders added significant momentum to global anti-bribery and corruption efforts by calling for “the adoption and enforcement of laws against transnational bribery,”<sup>41</sup> with specific reference to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions established by the Organisation for Economic Co-operation and Development (OECD), among other initiatives. Secretary-General Angel Gurría of the OECD said recently, “Thanks to the Convention established by the and the commitment to the countries that are Parties to it, foreign bribery is now a criminal offense in much of the world ... Because of this collective crackdown on corruption, some 150 sanctions have been imposed for cases involving foreign bribery.”<sup>42</sup>

US companies, however, are most at risk of being prosecuted for foreign corruption by US officials under the FCPA.<sup>43</sup> US enforcement officials have increased the intensity of their focus on FCPA violations substantially in recent years. As assistant attorney general Lanny

Breuer put it last year, “One can say without exaggeration that this past year was probably the most dynamic single year in the more than 30 years since the FCPA was enacted. We saw a record number of trials, a record number of individuals charged with FCPA violations, and record corporate fines.”<sup>44</sup> Last year saw 40 enforcement actions, 26 brought by the DOJ and 14 by the SEC, with over 130 investigations still open.<sup>45</sup>

Participants noted that these statistics point to several important changes undertaken by enforcement authorities:

- ▶ **Authorities have empowered their enforcement officials.** The SEC has made a host of changes designed to beef up its enforcement activities, including establishing a new unit dedicated to enforcing the FCPA and empowering lower-level officials to move cases forward faster. Overall, as one participant put it, the SEC has “become more aggressive and prosecutorial in its posturing.”
- ▶ **The DOJ and SEC have adopted a punitive interpretation of the law.** Few companies are willing to go to court on FCPA matters, preferring instead to settle. One participant said, “[Companies] don’t want the reputational damage and fear that losing the case will blacklist them from government contracts.” Another participant pointed out that a consequence of this is that “in practice, the authorities’ interpretation of the law matters more than the actual law.” For example, participants noted that, while the law allows for so-called facilitation payments and state practices that are legal under local laws are permissible, US authorities have interpreted those exceptions narrowly. At the same time, the SEC has pushed the prosecutorial boundaries of the law: for example, under the theory of control person liability, the SEC settled charges with a CEO and CFO for alleged corrupt payments that the executives did not authorize and of which they were not aware.<sup>46</sup>
- ▶ **Authorities are using carrots and sticks more aggressively.** The DOJ and SEC have ratcheted up the pressure, pushing companies and, more recently, individuals to bring FCPA infractions to them voluntarily. One participant said, “The DOJ has made it clear that the sooner a company goes to them, the more credit they get.” Conversely, the participant continued, “The worst thing that can happen is the authorities find out by some other means, say from a whistleblower or competitor, and worse still that the company knew it was occurring.” The SEC has also taken a page out of the DOJ’s playbook, announcing that it, too, will use deferred prosecution agreements and other tools to encourage cooperating witnesses.<sup>47</sup>

40. For the thoughts of audit committee chairs on this topic, see Audit Committee Leadership Summit, “Risk in emerging markets,” *ViewPoints*, August 4, 2009.

41. Pittsburgh Summit 2009, “Leaders’ Statement: Pittsburgh Summit,” September 24-25, 2009.

42. Angel Gurría, “Foreign Bribery: Who Pays the Price?” Remarks broadcast live from Washington, DC, to the OECD roundtable on foreign bribery in Paris, December 9, 2009.

43. US Department of Justice, “Foreign Corrupt Practices Act: Antibribery Provisions.”

44. Lanny A. Breuer, address to the 220d National Forum on the Foreign Corrupt Practices Act, November 17, 2009.

45. Melissa Klein Aguilar, “2009 Another Record Year for FCPA Actions,” *Compliance Week*, January 7, 2010.

46. Gibson, Dunn & Crutcher, “2009 Year-End FCPA Update,” January 4, 2009.

47. Robert Khuzami, “My First 100 Days as Director of Enforcement,” remarks before the New York City Bar, August 5, 2009.

**“Most people in large companies take false comfort that their compliance systems are getting through to the people on the ground in foreign countries.”**

## Audit committees can help the company improve compliance

Audit chairs are well aware that cultural differences in the ways of doing business in emerging markets can cause companies inadvertently to run afoul of anti-bribery laws. One participant warned, “Most people in large companies take false comfort that their compliance systems are getting through to the people on the ground in foreign countries.” In reality, FCPA risks are sufficiently high that another participant recommended companies implement compliance programs or conduct investigations with a clear scenario in mind: “imagine sitting opposite an enforcement official, making your case ... what is the factual story you would prefer to be able to tell?”

Participants point to a number of ways their committees can be proactive in dealing with compliance risks in emerging markets:

- ▶ **Consider “deep dives” into existing controls.** Participants urged companies to undertake a deep dive into the company’s FCPA compliance systems. Several participants said that FCPA training should be promulgated and updated routinely; they noted that in recent years, companies have changed their programs to make them more consistent with the authorities’ interpretation of the law, rather than the law itself - for example, by de-emphasizing or removing reference to facilitating payments. Thorough processes would ensure FCPA risk evaluations are incorporated into merger-and-acquisition (M&A) due diligence. Unfortunately, as Ernst & Young highlighted last year in its annual global fraud survey, “nearly 30% of respondents had never - or infrequently - considered bribery or corruption risks in the context of a potential acquisition.”<sup>48</sup>
- ▶ **Ensure FCPA compliance is seen as a top priority.** Several participants recommended that companies avoid delegating overall responsibility too far down the organization. As one put it, “Ideally, the executive in charge reports routinely to the board of directors or audit committee. This highlights to employees and government authorities that the company takes FCPA seriously.”

- ▶ **Ensure a robust communication flow to the audit committee.** Audit chairs highlighted the importance of a steady flow of information from the CFO, internal audit, and other reporting channels (such as whistleblower hotlines) to provide insight into the culture and operations in emerging markets. Several recommended board members visit the firm’s operations in those markets to get a sense of the ethical tone there and the quality of the senior management. As one participant noted, “Companies are not asking enough hard questions ... if [an audit committee member] wants to be comfortable, send someone from head office out to the operations and consider going with them to see the operations.”
- ▶ **Ensure relationships with regulators and other authorities are strong.** Participants almost unanimously agreed this effort will pay off in the current era of increased regulatory scrutiny. Participants noted that companies are particularly vulnerable if they:
  - Rely heavily on foreign third-party distributors or agents. One participant remarked, “Companies think [incorrectly] they are immune if they are using such third parties.”
  - Operate in countries known for corruption, for example, those that rank high on indices such as Transparency International’s Global Corruption Barometer.<sup>49</sup>
  - Have foreign, state-owned entities as customers.
- ▶ **Seek the advice of outside experts.** Audit committees can work with local risk advisers, outside legal counsel, and their external auditors to gain insight into potential fraud or corruption risks. Audit chairs tend to have zero tolerance for FCPA violations, and insist that all such issues are reported to them and appropriately investigated, with external advice as necessary. Outside legal advice is particularly important in determining when to communicate directly with the authorities about potential violations and in deciding when it’s prudent to disclose information externally.

48. Ernst & Young, *Corruption or compliance - weighing the costs: 10th global fraud survey* (Ernst & Young Global Limited, 2009), 14.

49. Transparency International, *2009 Global Corruption Barometer* (Berlin: Transparency International, 2009).

### Questions for audit committees:

- ▶ Are there ways in which the company can improve the effectiveness of its FCPA and anti-bribery compliance efforts? Is the company clear that any allegations of violations should be automatically communicated to the audit committee chair?
- ▶ Are board or audit committee meetings scheduled in key emerging markets? Are audit committee members encouraged to visit these countries to meet with local management? Is management from those countries invited to present at audit committee meetings periodically?

# Antitrust investigations and litigation risks are increasing

The Obama administration has signaled an energetic approach to antitrust enforcement. The DOJ and FTC have both set forth more aggressive enforcement agendas, as illustrated by comments by DOJ assistant attorney general Christine Varney: “In the last decade, the Division has not been ... as active as it could have been. It is time for the Antitrust Division to step up its efforts.”<sup>50</sup> Participants believe this marks a significant change in tone and may represent a rise in companies’ antitrust risks, especially for large global companies, which are also facing heightened antitrust scrutiny from enforcement authorities in Europe and elsewhere.

## A number of factors necessitate a watchful eye on antitrust

Participants identified a number of factors that will likely push compliance with antitrust laws up corporate and audit committee agendas over the next few years:

- ▶ **More effective enforcement.** US authorities have been restocking the armory of weapons available to them in the antitrust arena. For example, last year, the DOJ withdrew a report on monopoly-related antitrust offenses issued during the Bush administration, noting “the report ... raised too many hurdles for government antitrust enforcement and favored extreme caution.”<sup>51</sup> Moreover, in FY 2009, the percentage of merger filings leading to enforcement actions was more than double the previous two years.<sup>52</sup>
- ▶ **Criminal prosecutions of individuals.** Antitrust authorities have increasingly pursued criminal prosecutions of individuals. Other countries have followed the US example: nine European countries now have laws that enable individual prosecutions, and many other countries, such as Russia and Mexico, are considering enacting similar laws. As one participant noted, “More and more countries are introducing legislation to criminalize [violations] and prosecute individuals,” which, as the DOJ notes, instills “genuine fear of detection among executives.”<sup>53</sup> The focus on individuals means

that companies may still suffer reputational damage, even if authorities decide not to prosecute the company due to public policy concerns about unnecessary collateral damage caused to the company’s stakeholders.

- ▶ **Increased financial exposure.** US and European authorities have been steadily increasing fines for antitrust violations. In the United States, companies were fined \$4.2 billion for antitrust violations in the last decade, up from \$1.6 billion in the decade before, and over \$1 billion in fines were levied in 2009 alone.<sup>54</sup> The European Commission has been even more aggressive, imposing, for example, more than €1 billion in fines in each year since 2006. As one participant remarked, “The fines can be big, really hitting the bottom line.” With the potential emergence of private litigation in Europe, alongside existing litigation risks in the United States, “the financial exposure implications are huge.” One participant noted that while companies rightfully focus on FCPA violations, “the fines for antitrust are much higher.”
- ▶ **More global alignment on enforcement, but no consistent view on antitrust behavior.** Efforts to coordinate antitrust investigations across borders have picked up pace in recent years. Antitrust agencies have been using channels such as the International Competition Network<sup>55</sup> to share best practices more effectively and to facilitate information sharing, and they are working much more closely on individual cases. However, one participant noted that despite the increased global alignment, differences in philosophy exist: “There is more international consensus on cartels ... but US and European authorities do not see eye to eye on analyzing mergers or companies with a dominant market position ... the US still puts emphasis on the consumer benefits of dominant companies.” This makes compliance more complex for global companies because they have to deal with competing perspectives on what constitutes antitrust behavior.

50. Barry A. Nigro, Jr., Peter Guryan, Richard C. Park, Tobias Caspary, and Ianis Girgenson, “Recent FTC Report And Nomination Of New FTC Commissioners Suggest More Active Antitrust Enforcement,” November 24, 2009.

51. US Department of Justice, “Justice Department Withdraws Report on Antitrust Monopoly Law,” press release, May 11, 2009.

52. Barry A. Nigro, Jr., et al., “Recent FTC Report And Nomination Of New FTC Commissioners Suggest More Active Antitrust Enforcement.”

53. Scott D. Hammond, “The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades,” paper presented at the 24th annual National Institute on White Collar Crime, February 25, 2009.

54. *Ibid.*

55. For more information on the International Competition Network, see <http://www.internationalcompetitionnetwork.org/>.

**“In any merger, you have to determine if there is antitrust behavior afoot ... else, once you’ve made the acquisition, you are stuck with it and open to prosecution.”**

## **Audit committees will need a strong focus on compliance**

Compliance with antitrust laws has long been an issue for companies, and most established companies are organized to address it. However, as scrutiny of compliance with existing laws increases in the United States and across the globe, and as the consequences of prosecutions become more severe, audit committees may want to ensure their companies bolster their compliance processes, ensure they have sufficient staff oversight, and improve their relationships with regulators. Participants had several suggestions:

- ▶ **Implement a robust compliance system.** One participant remarked, “The application of strict compliance programs in relation to the behavior of employees is a fundamental safeguard in any corporation.” Compliance policies and processes need to be promulgated throughout the organization, on a routine basis, such that every employee knows what a cartel is and what types of agreements or discussions with competitors are not acceptable. Resources should be available for employees who have questions so they can answer those questions easily.
- ▶ **Test the compliance system.** Companies need to ensure that the compliance system works as intended. Is it reaching all employees? If the program appears to be inadequate, forensic measures may be used to ferret out any problems. External advisors can be helpful in assessing the system, or in assessing the appropriateness of pricing agreements and discount strategies. This can be particularly important for companies operating in multiple jurisdictions, given that what is acceptable in one country may not be in another.
- ▶ **Maintain open, proactive communication with regulators.** Several participants noted that regulators are more forgiving of companies that are forthcoming with information. One remarked, “[Authorities] can reward those that give [them] additional information, but not those who wait around to see if they get prosecuted or not.” If companies suspect that there is a problem, they should quickly let regulators know. More than 50 countries now have leniency programs to encourage companies and individuals to come forward to the authorities. The DOJ calls these programs “the single most significant development in cartel enforcement.”<sup>56</sup>
- ▶ **Build antitrust analysis into M&A due diligence.** Several participants noted that companies are often inept at evaluating potential antitrust matters in the M&A context. As one put it, “In any merger, you have to determine if there is antitrust behavior afoot ... else, once you’ve made the acquisition, you are stuck with it and open to prosecution.” That participant continued, “Sometimes, the economics are too good to be true, especially if the [acquired company’s] products are commoditized.”

<sup>56</sup> Scott D. Hammond, “The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades.”

### **Questions for audit committees:**

- ▶ Is the audit committee confident that the company’s compliance systems adequately address antitrust issues? How well has the company tested these systems?
- ▶ What is the level of awareness among employees regarding antitrust laws, and how is their understanding maintained and updated?
- ▶ What kind of relationship does the company have with antitrust authorities? Would the company’s management feel confident consulting the authorities about potential problems? What kind of perceptions do antitrust authorities have of the company?

# Conclusion: regulatory change raises risks for companies

Audit chairs are well aware that change is taking place in Washington, DC. Many contemplate the sheer breadth and pace of the policy change that is taking place. Close to home, board directors remain concerned about the extent of change to corporate governance laws and regulations.<sup>57</sup> Across an array of industries, directors worry about what some call “regulatory risk.”

However, few audit chairs have considered the extent to which policy changes - within the United States and Canada, or more broadly, at the international level - are starting to affect audit committee agendas. Participants in this research concluded that audit chairs greatly underestimate the breadth and intensity of the regulatory risks their companies now face, particularly companies operating across borders.

Participants urged audit committees to recognize that the upswing in governmental intervention has significantly increased existing compliance risks and has the potential to create more reputational, financial, and reporting risks over coming years, for example, in the area of climate change and antitrust. At the same time, US audit committees have to prepare for significant changes to US GAAP over the next few years, while their Canadian peers finalize preparations for implementing IFRS in 2011.

As one participant put it, “We are really entering a very new era in terms of the attitudes of regulators ... It’s a new kind of aggression. [We risk running] afoul of things that were ok and now are not [ok].” One participant noted that “regulation is very much affecting [the] audit committee agenda, and audit committee members are very concerned ... and are pushing the conversation with management.” However, it will be a challenge for audit committees to adapt their agenda sufficiently during the course of 2010 to appropriately oversee the risk that can be attributed to broad-scale government intervention, particularly as the zeal for enforcement - including cross-border enforcement - picks up speed.

## About Tapestry Networks

Tapestry Networks is a privately held professional services firm that brings leaders together to solve complex problems. Since 2002, networks convened by Tapestry Networks have tackled some of the most significant strategic challenges facing institutions and society, including raising standards in corporate governance in the United States, Canada, and Europe, developing strategies for a more sustainable health care environment in Europe, and enhancing national security in the United States through public-private collaboration.

Tapestry Networks convenes eight audit committee networks, sponsored by Ernst & Young, that collectively consist of more than 120 individuals, who chair more than 180 audit committees and sit on over 300 boards at some of the world’s most admired companies. For more information, please visit [www.tapestrynetworks.com](http://www.tapestrynetworks.com).

## About this document

*InSights* is produced by Tapestry Networks to provide assessments of key issues of interest to audit committee members. It will be distributed by Ernst & Young and Tapestry Networks. Anyone who receives *InSights* may share it with those in their own network. The ultimate value of *InSights* lies in its power to help all constituencies develop their own informed points of view.

The views expressed in this document represent those of the individuals who participated in the research. They do not reflect the views nor constitute the advice of network members, their companies, Ernst & Young, or Tapestry Networks.



57. Tapestry Networks and Ernst & Young, “The 2010 proxy season: a forewarning of what’s to come in 2011,” *InSights*, January 2010.

# Appendix: Research participants

In December 2009 and February 2010, Tapestry Networks interviewed a range of individuals with relevant experience and knowledge in North America and Europe. All discussions were held under a modified version of the Chatham House Rule, whereby views expressed during private discussions are not attributed to individuals or their organizations. Participants included:

<b>Rupert Bondy</b> Group General Counsel, BP	<b>Ken Marshall</b> Americas IFRS Markets Leader, Ernst & Young
<b>James Brady</b> Vice President, Group Internal Audit, AstraZeneca	<b>Tim McCormally</b> Executive Director, Tax Executives Institute
<b>Cathy Cobey</b> Senior Manager, Advisory Services, Ernst & Young LLP (Canada)	<b>Hank Neely</b> Americas Tax Managing Partner - Markets, Ernst & Young
<b>Adrian Cooper</b> Managing Partner, Oxford Economics	<b>Frank Ng</b> Executive Director, Tax Controversy and Risk Management Services, Ernst & Young LLP (United States)
<b>Patrick Finnegan</b> Member, International Accounting Standards Board	<b>Jeff Owens</b> Director, Centre for Tax Policy and Administration, Organisation for Economic Co-operation and Development
<b>Gil Forer</b> Global Director, Cleantech, Ernst & Young	<b>Jeff Petrich</b> Executive Director, Washington Council Ernst & Young, Ernst & Young LLP (United States)
<b>Felice Friedman</b> Director, Global Public Policy, Ernst & Young	<b>Russ Ryan</b> Partner, Special Matters and Government Investigations, King & Spalding
<b>Thomas Fuerer</b> Senior Vice President and Group Function Head for Corporate Tax, ABB	<b>Andrea Potter</b> Assistant Director, Americas Markets Planning & Analysis, Ernst & Young LLP (United States)
<b>Brian Gilbert</b> Executive Director, Fraud Investigations & Dispute Services, Ernst & Young LLP (United States)	<b>Leslie Seidman</b> Member, Financial Accounting Standards Board
<b>Trent Henry</b> Tax Managing Partner, Tax Services, Ernst & Young LLP (Canada)	<b>Steve Starbuck</b> Americas Climate Change And Sustainability Services, Ernst & Young
<b>Anita Hoffman</b> Partner, Heidrick & Struggles	<b>Kevin Sullivan</b> Partner, King & Spalding
<b>Jeremy Jennings</b> Regulatory & Public Policy Leader, EMEA, Ernst & Young	<b>Jeff Taylor</b> Americas Leader, Fraud Investigations & Dispute Services, Ernst & Young
<b>Philip Lowe</b> Former Director General, Competition, European Commission	<b>Mark Weinberger</b> Global Vice Chairman - Tax Services, Ernst & Young
<b>Anne MacGregor</b> Counsel, Baker & McKenzie	

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