



## UCD Centre for Regulation and Governance

The UCD Centre for Regulation and Governance was established in 2010 to further enhance a strong track record of interdisciplinary research in the field and well-established international engagement with major academic centres internationally.

A distinctive feature of the Centre's research internationally is a focus on the issue of governance capacity, nationally in Ireland, comparatively with other small states, and in transnational and international governance regimes. A particular focus of the research is on the limits to the autonomous capacity of government and growing evidence of engagement with the governance capacity of firms, NGOs, and organized social interests. Related to issues of diffusion in regulatory capacity there is a need to better understand the conditions of legitimacy for emergent governance regimes which are often at some remove from conventional forms of democratic accountability.

Analytically the centre will focus on mechanisms through which policy objectives are authoritatively established and implemented. Regulation is not confined to conventional governance mechanisms of 'hierarchy' or governmental power. Market disciplines such as competition policy and tax instruments are widely used; so also is governance through networks of public and private actors.



University College Dublin



## Forging a New Regulatory Balance: OTC Derivatives and the Global Financial Crisis



## UCD Commercial Law Centre

Situated in the School of Law, the Centre is a forum which provides for a unique complementary relationship between University College Dublin, and the legal and business communities designed to promote expertise in national and international issues of commercial law and practice.

### The Centre's functions are:

- To promote seminars, conferences and courses on national and international commercial law developments
- To discharge the CPD function of UCD Law School

Chairman: Mr Justice Peter Kelly  
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Friday 20th May 2011

Newman House, St Stephen's Green, Dublin 2



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CPD Points available

## Outline

### The Global Financial Crisis (GFC) has revealed certain weaknesses in financial regulation, generating both commentary and policy responses.

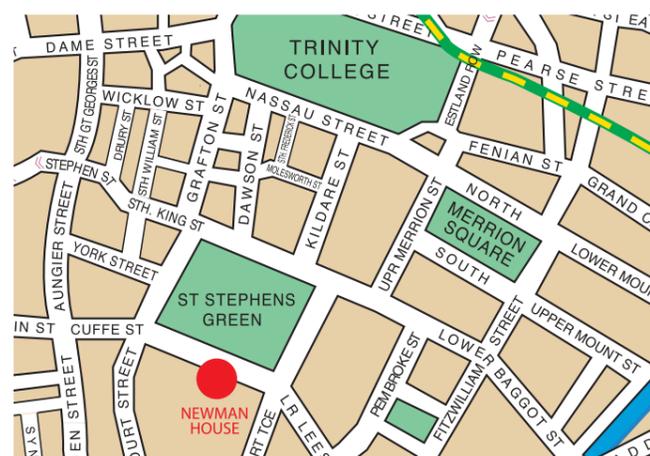
Within elements of this commentary, over the counter (OTC) financial derivative instruments, in particular, have been held up as a prime example of a market warranting substantially more direct public regulatory intervention, exemplified by recent regulatory proposals emanating from the United States and the European Union. This conference will map out both the historical and emerging nature and operation of both public and private regulation in the OTC derivatives markets. This offers participants a sense of where OTC derivatives regulation has been and where it is likely to go in the future, including its capacity to cope with challenges thrown up by the GFC. This will be coupled with an emphasis on OTC equity derivatives and the particular challenges they present to traditional corporate governance paradigms. This includes discussion both of the potential benefits of OTC equity derivatives as well as their capacity to skew incentives in the market for corporate control and facilitate a sidestepping of public disclosure rules

#### Who Should Attend?

This conference will be relevant to lawyers, accountants and other professionals with interest and experience in financial markets.

#### Venue

UCD Newman House, 85/86 St Stephens Green, Dublin 2



#### Payments

Please see enclosed registration form.

#### Further Information

John Biggins

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[www.ucd.ie/reggov](http://www.ucd.ie/reggov)

## Schedule

8.15 - 8.45	Registration/Coffee
8.45 - 8.50	Welcome <b>Professor Colin Scott</b> Centre for Regulation and Governance, University College Dublin
8.50 - 9.15	Keynote Speech <b>Professor Henry Hu</b> Allan Shivers Chair in the Law of Banking and Finance, University of Texas
9.15 - 10.45	Regulatory Trends in OTC Derivatives Markets <b>Tim Murphy</b> BNY Mellon <b>Mike Percival</b> Irish Banking Federation <b>Kevin O'Doherty</b> Compliance Ireland <b>Daniel Awrey</b> Faculty of Law, University of Oxford Q & A
10.45 - 11.00	Coffee
11.00 - 12.10	ISDA and the OTC Derivatives Market <b>Professor Christian Johnson</b> College of Law, University of Utah <b>Professor Colin Scott</b> Centre for Regulation and Governance, University College Dublin <b>Professor Anna Gelpert</b> College of Law, American University Washington <b>Professor Mitu Gulati</b> Faculty of Law, Duke University Q & A
12.10 - 13.20	The Effects of OTC Equity Derivatives on Corporate Governance <b>Professor Blanaid Clarke</b> School of Law, University College Dublin <b>Christian Donagh</b> Matheson Ormsby Prentice <b>Gareth Murphy</b> Central Bank of Ireland Q & A
13.00	End

## Speaker Biographies

#### Henry Hu

Henry T. C. Hu holds the Allan Shivers Chair in the Law of Banking and Finance at the University of Texas Law School. In September 2009, Securities and Exchange Commission Chairman Mary L. Schapiro appointed Professor Hu the inaugural Director of the Division of Risk, Strategy, and Financial Innovation, the first new Division in 37 years. He returned to academia in January 2011. As an academic, he is best known for recent articles on "decoupling" and early articles on the systemic and other risks posed by derivatives. His decoupling articles coined terms such as "empty creditor," "empty voter," and "hidden (morphable) ownership," terms that have come into use worldwide. The decoupling research has attracted attention, including a lead front-page story in The Wall Street Journal and stories in The Economist, The Financial Times, and The New York Times. A 1993 Yale Law Journal article that is receiving renewed attention in the wake of the global financial crisis showed how cognitive bias, compensation structure, financial "science," and other factors can cause major institutions to make mistakes as to derivatives. In 2010, the National Association of Corporate Directors named him as one of the 100 most influential people in corporate governance.

#### Daniel Awrey

Daniel Awrey is a University Lecturer in Law & Finance and a fellow of Linacre College, Oxford University. Dan's research and teaching interests include financial regulation, corporate finance and the micro-economics of contractual design. Before entering academia, Dan served as legal counsel to a global asset management firm and, prior to that, as an associate practicing corporate finance and securities law with a major Canadian law firm.

#### Anna Gelpert

Professor Gelpert's research explores the legal and policy implications of international capital flows. She has published articles on debt, development, and financial globalization. Her articles were selected for presentation at the Stanford-Yale Junior Faculty Forum in 2007 and 2009. She has contributed to international initiatives on financial reform and sovereign borrowing, most recently as part of the Second Warwick Commission and as an expert for the United Nations Conference on Trade and Development.

#### Mitu Gulati

Mitu Gulati is a Professor at Duke University. His primary research interests are in the design of international debt and derivatives contracts. He is currently working on the question of how best to set up legal systems to deal with contract interpretation issues that arise in these two contexts. Among his other areas of research interest are Customary International Law and the design of incentive systems for judges.

#### Colin Scott

Colin Scott is Professor of EU Regulation & Governance and Associate Dean of the UCD School of Law. Prior to his appointment at UCD in April 2006 he lectured at the University of Warwick and at the London School of Economics. Between 2001 and 2003 he was the Senior Research Fellow in Public Law at the Research School of Social Sciences, Australian National University. He is also a research associate of the ESRC Centre for the Analysis of Risk and Regulation (CARR), based at the London School of Economics and with which he had been associated since its creation in 2000. He is Director of the UCD Centre for Regulation and Governance, established in 2010. He is a co-author of the Irish State Administration Database (2010) and co-editor of the interdisciplinary journal Law & Policy.

#### Blanaid Clarke

Blanaid Clarke is an Associate Professor of Corporate Law in the Law School. Her research interests include corporate governance, takeover law, investor protection, corporate groups and contract law and she has published extensively in these areas. In addition, she was one of the

founding members of the Centre for Corporate Governance at University College Dublin. Blanaid was a Visiting Scholar to the University of Queensland (2006), Parsons Visitor to the University of Sydney (2006) and CLP Fellow in Osgoode Hall Law School, Toronto (2008). She works with the Irish Takeover Panel and is a Member of the European Securities and Markets Authority Takeover Bids Network. In October, 2010, Blanaid was appointed to the Central Bank Commission. In December 2010, she was invited to participate in a European Commission Expert Group on the future of EU company law.

#### Gareth Murphy

Gareth Murphy has recently been appointed a Director of the restructured Markets Supervision Division at the Central Bank of Ireland. Mr Murphy spent 13 years in the hedge fund and investment banking industries and served as Senior Advisor in the Financial Stability Directorate of the Bank of England.

#### Christian Donagh

Christian Donagh is a partner in the Structured Finance and Derivatives Group at Matheson Ormsby Prentice and is head of the firm's derivatives practice. Christian's practice focuses on advising investment banks and asset managers doing business in and through Ireland in relation to securitisations, fund-linked structured products, repackagings, securities lending and repos. Christian regularly advises Irish corporates and their counterparties in relation to ISDA master agreements and collateral arrangements relating to over-the-counter derivatives transactions such as interest rate swaps and collars and credit default swaps. Christian is a regular speaker at international conferences on issues related to derivatives and structured finance.

#### Tim Murphy

Tim Murphy is the Head of Derivatives Clearing for the EMEA region at BNY Mellon. Previously Tim was International Chief Operating Officer for BNY Mellon's Alternative Investment Services Division covering both the EMEA and Asia/Pacific regions and, previous to that, was responsible for product development for Alternative Investment Services globally. Tim has worked for BNY Mellon for over ten years. He has over twenty years of experience in securities services, having worked in the banking, auditing and asset management sectors.

#### Christian Johnson

Christian Johnson is an academic, scholar and consultant, focusing primarily on over-the-counter derivatives and global capital markets. Professor Johnson has co-authored five books with Paul Harding and written over three dozen articles on the derivative and repo capital markets. He is a Professor of Law at The University of Utah College of Law and was previously at Loyola University Chicago for 13 years. Professor Johnson speaks frequently on legal issues involving capital markets and has testified before the U.S. Congress on OTC derivative reforms. In addition, he has spoken at such institutions as the IMF and the Federal Reserve Bank of Chicago.

#### Mike Percival

Mike Percival is Senior Manager, Capital Markets and Risk at the Irish Banking Federation. At the IBF Mike's focus is on regulatory policy and prudential issues, including capital and liquidity regulation. As well as this Mike deals with issues relating to debt capital markets, including guaranteed debt, covered bonds, and securitisation.

#### Kevin O'Doherty

Kevin O'Doherty is Director of Compliance Ireland. Kevin has considerable experience regarding the legislation and regulations relating to Irish funds, in particular the anti-money laundering requirements. Kevin has spoken extensively at industry conferences and has lectured on accounting standards and stock exchange listing requirements.