

## **Divided posse trails off in confusion**

*di Brooke Masters*

It is like watching a classic cowboy movie gone wrong. The sheriff has rounded up the terrified townspeople, given his spine-stiffening speech about unity in the face of evil, and now, just as the triumphant music should be playing, the posse is riding off in different directions.

Politicians in the US, UK and Europe have been talking for months about the problems that led to the financial crisis. They have even agreed on the outlines of a solution: global co-operation, better systemic regulation, tougher bank regulation and more supervision of previously unregulated entities and products, such as hedge funds and derivatives.

But now the platitudes are giving way to concrete proposals, the unity is starting to break down.

Barack Obama's plan to revamp US regulation, Wednesday night's speech by Alistair Darling, UK chancellor of the exchequer, and the European Union's directive on alternative investments each focus on different villains and propose different solutions.

While the US's biggest changes would be in banking regulation and consumer protection, the main EU proposals are intent on reining in hedge funds and private equity, and Mr Darling last night emphasised the importance of corporate governance.

Taken together, these developments suggest that regulatory convergence is not going to be the silver lining in the financial crisis's black cloud.

"G20 summits talk about global co-ordination of financial regulation. Recent steps in both Europe and the US are neither global nor co-ordinated," said Tim Plews, a law partner at Clifford Chance. "A serious crisis is being wasted."

Even in areas where there is some agreement on the need for new regulation, there are stark differences in approach. Both the EU and US are looking at hedge funds but the Americans so far want fund managers to register, as they do in the UK, while the EU is proposing limits on leverage. Mr Obama's proposal is drawing positive responses from US hedge funds, while the EU directive was greeted with outrage.

"We don't see much evidence of any proper co-ordination between the EU and US authorities. I suspect we will have a load of inconsistent, different proposals that don't fit together," said Jan Putnis, law partner at Slaughter and May.

The continuing differences will lead to higher costs for global banks. Many Europeans were disappointed that

Mr Obama has bowed to political realities and is making only small attempts to thin the US thicket of overlapping regulators.

The different approaches are also likely to lead to regulatory arbitrage, in which financial services firms flock to countries with fewer restrictions.

The EU and the US, for example, want to require banks to retain an interest in the securitised products they issue, known as "keeping skin in the game", but Mr Obama's proposal would apply only to asset-backed securities while the EU appears to be looking at it more broadly. Similarly, there is broad agreement that standard over-the-counter derivatives should be regulated and centrally cleared, but so far the US and EU seem to be moving towards using regional exchanges rather than a global solution. The two sides may also draw the line differently between regulated products and customised derivatives that would remain private.

Convergence may not be entirely out of reach. All sides are still talking about the need to work together and European banking and insurance groups say they have been heartened by

Mr Obama's emphasis on common standards.

There is also plenty of time. The EU has not yet announced its proposals for derivatives and the UK government plans to fight to amend the hedge fund and private equity rules before they are sent out for approval. On the US side, Mr Obama's proposal will almost certainly be subject to extensive amendments.

Many in industry welcome the slow pace. They remember the US experience with the Sarbanes-Oxley corporate accountability law, which was rushed through in 2002 after the collapses of Enron and WorldCom but proved more expensive and unwieldy than expected.

"The more rapid the legislation, the more knee-jerk, the greater the risk of overreaction," said Bob Penn, partner at law firm Allen & Overy.

The only thing worse than relying on a disorganised sheriff's posse would be seeing the confused cowboys start shooting at each other