# The Internationalization of American Market Regulation

## Why an American Financial Empire Prevailed throughout the 2008 Global Financial Crisis

Graduate School of North American Studies
Department of Political Science

Doctoral dissertation submitted in partial fulfillment of the
requirements of the Department of Political and
Social Sciences, Freie Universität Berlin,
for the attainment of the degree of
Doctor Rerum Politicarum

Submitted by
Nikolas Matthias Keßels

Berlin, September 2017

Date of the defense: February 22, 2018.

First Supervisor: Prof. Christian Lammert
John-F.-Kennedy Institute for North American Studies
Department of Political Science,
Freie Universität, Berlin.

Second Supervisor: Prof. Anja Jetschke
Department of Political Science,
Chair for International Relations,
Georg-August-Universität, Göttingen.

*Far as mankind still is from having adapted itself to the use of machines, and great as the pending changes are, the restoration of the past is as impossible as the transferring of our troubles to another planet.*

Karl Polanyi (1944)
"The Great Transformation"

To my family, who has always believed I could do anything I set my mind to,
and to my partner, whose love kept me afloat when things got overwhelming.

**TABLE OF CONTENTS**


**CHAPTER ONE: RESEARCH DESIGN**
**THE PUZZLING NATURE OF AMERICAN DOMINANCE IN GLOBAL FINANCIAL REGULATION 1**

Transatlantic Rivalry and European Financial Markets Integration 1
The End of the American Empire? 6
The Puzzle in Institutional Terms 9
*European Preferences* 10
*American Preferences* 11
The U.S. in the Regulatory Driver's Seat 12
Research Question 14
Proposing Market Power – The Arguments and the Literature 14
Theoretical Approach 31
Methodological Approach 36

**CHAPTER TWO: A CHANGING PERCEPTION OF RISK**
**HOW U.S. INTEREST IN SELF-REGULATING MARKETS ERODED BEFORE THE CRISIS 41**

Self-Regulation: First Solutions to Ensuing Market Failure 42
Betwixt and Between: Systemic Risk Readiness and Competitive Advantage 46
Before Macroprudential came Prudential: First Steps towards Systemic Oversight 48
From Technical Analysis to Political Consequence 51
The American Experience with Self-Regulatory Governance: A Basel II Interlude 55
A Rumbling Change in U.S. Interests 62
*At the End of Regulatory Soul-Searching, …* 65
*…Belief in the Market Still Strong* 66

**CHAPTER THREE: FROM THE FORUM TO THE BOARD**
**HOW THE USA REFORMED AN ORGANIZATION TO SERVE ITS INTERESTS 71**

The FSB: State of the Art 71
*Institutional Criticism of the FSB* 72
*Research on Intergovernmental Cooperation at the FSB* 74
Pre-reform Stock Taking: The President's Working Group 79
America Changes the International Perception 83
Governments Catch-Up with Globalization 87
The Reform of the Financial Stability Board 91
*The FSB's Institutional Design* 91
*Enhancing Commitment – Peer-Review Reform* 93
*Ensuring Control – Codification of the FSB's Decision-Making Process* 95
*Extending the Circle – The FSB's Membership Enlargement* 102
The FSB as an Organization of American Design 108

**CHAPTER FOUR: AN AMERICAN WISH-LIST GOES GLOBAL**
**BASEL III, SYSTEMIC IMPORTANCE, DERIVATIVES** **110**

SYSTEMIC RISK – A CONGRESSIONAL PRELUDE 112
*When it All Came Together: September Crashes Vault Systemic Risk Front and Center* 121
*“Enact now, negotiate later” – The U.S.’ first-mover strategy and global re-regulation* 123
CASE STUDIES ON AMERICAN FINANCIAL MARKET POWER 127
FIRST CASE: NO MORE COZY MEETINGS – BASEL III 127
*Raising the Amount of Capital* 127
*Improvements to the Quality of Capital* 129
*Simulating Stress: When Push Comes to Shove for Capital and Liquidity* 130
*So, What about American Market Power?* 131
SECOND CASE: SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS (SIFIS) 137
*A Duplication of American Structures* 137
*From SIFI to G-SIFI: Reinforcing Regulatory Structures* 140
THIRD CASE: THE REFORM OF DERIVATIVES MARKETS 146
*Defining an Elusively Ubiquitous Product* 146
*The Multifarious Non-Regulation of Derivatives* 149
*The Product Making Too-Big-To-Fail Possible* 157
*Derivatives Markets and the Global Financial Crisis* 161
*You Break it, You Own it: Speculation and Skin in the Game* 166
*The Internationalization of Derivative Reforms* 173

**CHAPTER FIVE: MARKET POWER – BUILT ON SIZE, DRIVEN BY INTEREST**
**THE LIMITS OF DODD-FRANK AND THE LIMITS FOR GLOBAL REFORM** **189**

FOURTH CASE: THE SHADOW BANKING SECTOR AND AMERICAN DISINTEREST IN MEANINGFUL REFORM 190
*Stabilizing OTD, Strengthening Underwriting: Capital. Capital! Capital?* 193
*International Reforms of the Shadow Banking Sector* 199
*Without Leadership Progress Remains Elusive* 205
FIFTH CASE: ACCOUNTING STANDARDS – ASPIRING HARMONY, LOCKED IN A TRANSATLANTIC STALEMATE 207
*Closing Loopholes, Improving Translation* 209
*Regulatory Movement with No Political Momentum* 210
*Transatlantic Interest Divergence* 223

**CONCLUSION: MARKET POWER – NOW WHAT?** **226**

**BIBLIOGRAPHY** **240**

# Chapter One
# Research Design

## The Puzzling Nature of American Dominance in Global Financial Regulation

This dissertation will confront the puzzling continuity of American market power when circumstances indicated that change was highly likely. My research rests on the observation that the United States, due to the timing and spatial development of the global financial crisis of 2007/08, used a first-mover advantage in re-regulating financial services. Compared to the European Union as the most likely contender for setting international rules, I will specifically demonstrate why the United States was able to internationalize its domestic financial reforms after the 2008 subprime mortgage crisis had shaken first the U.S. and then the world economy. I posit that in order to avoid regulatory arbitrage the U.S. set the G-20's reform agenda by using its market power to make its interest correlate with that of the Financial Stability Board (FSB) – the G-20's regulatory group.

Normally, American dominance is hardly remarkable, let alone surprising. The puzzle ensues when one considers previous research that has stressed a decline of America's international influence, the increasing regulatory competition with a strengthened and economically integrating European Union (EU), and genuinely diverging transatlantic interests that had been already apparent when the FSB's predecessor, the Financial Stability Forum (FSF), was first created in 1999. What needs understanding, then, is the absence of a power shift in an environment that made such change probable. The narrative developed here rests on the argument that in the U.S. state actors moved into the void left by market failure, while in the EU technocratic decision-making constrained political regulation.

### Transatlantic Rivalry and European Financial Markets Integration

Even though financial services are conducted globally, this dissertation chooses a decidedly transatlantic focus. Together the U.S. and the EU make up 70 percent of the world's capital markets with America having an edge in terms of its market size. (Stoltenberg et al. 2011, 580; Wull 2012, 202) This does not render other jurisdictions or analytical approaches insignificant. However, I am confident that if U.S. dominance can be established towards the next biggest, and hence competing, market, my study provides a perspective further research can draw upon to evaluate financial services regulation more globally.

Up until 2008, the United States of America was by far the world's biggest market for financial services and had established a unique and hegemonic position in regulating market access within and outside of its borders. (Sobel 1994a, 1994b; Reinicke 1995; Oatley and Nabors 1998; Pahre 1999; Simmons 2001; Simmons and Elkins 2004) Between 2001 and 2006, the Age of the Great Moderation reached its optimistic peak with the Federal Reserve Bank's (FRB) interest rate, despite of solid economic growth, held at an all-time low. The FRB essentially performed the role of a market maker. (El-Shagi and Kelly 2017, 721)[1] At that point the prevailing opinion was that U.S. regulatory influence rested on the gravitational force field its unparalleled market size created. (Simmons 2001, 592) In the decade following 1995, global asset management more than doubled from USD 21 trillion to USD 53 trillion. American institutional investors led the pack and accounted for half of that share with continental Europe and the United Kingdom coming in second and fourth, respectively. (IMF 2007, 67) To borrow an expression by John Mearsheimer, the U.S. had established itself as the "[…] most formidable […]" (Mearsheimer 1994, 12) financial power on the planet.

On the other side of the Atlantic, Europeans were racing to catch up. Institutional investors had spent the larger part of the 1990s to improve their performance. (IMF 2002, 28) But, the way Europeans were doing business was dominated by American regulations. Even when it did not involve American counterparts, Europeans were, still, playing by American rules. In 2003, legal scholar Eric Pan emphasized the U.S.' hegemonic influence on Europe, which for its multitude of national financial regulators he deemed institutionally ill-equipped to handle the mandate of overseeing an integrating European market. Accentuating market size as the main cause, he asserted "[…] the EU today has an effective single securities regulator – the SEC […]" To Pan, the SEC was shaping market standards to such an extent that "[…] issuers in Europe follow SEC rules […] even when contact with the United States is incidental." (Pan 2003, 532)

To effectively counter U.S. financial hegemony, the EU chose a two-pronged approach by streamlining financial regulation across the European market as well as centralizing regulatory governance. (Quaglia 2013, 7) Beginning with the consensus the European Council was able to reach at its Cardiff meeting a year earlier, the Council's 1999 Vienna meeting established the Financial Services Action Plan (EC 1999, 19–31) with the expressed goal of creating one Europe-wide common market for financial services. (EC 1999, 31) On the regulatory

[1] In specifying a form of sustainable credit expansion, Dirk Bezemer and Maria Gyrdaki try to square resilient growth with deepening financial markets. Analytically, they depart from a criticism of the Fed as too willing to fuel markets "[…] where financial deepening, even while it supports growth in output, renders the economy more vulnerable to shocks, or is building up the likelihood of shocks produced by the financial sector itself." Their verdict is clear. The policies facilitating the "[…] Great Moderation stability [were] destabilizing." (Bezemer and Grydaki 2014, 175)

side, this endeavor was supported by a supranational governance initiative headed by Alexandre de Lamfalussy, whose report suggested the establishment of a single common regulator and an accelerated legislative process. (Lamfalussy 2001, 36) The European Union successfully propelled the integration of its market for financial services. Lumping Pan's hegemony together with dominance, Elliot Posner has claimed that this integration was so successful that "[…] EU financial governance transformation has already brought an end to US regulatory dominance at the international level." (Posner 2010b, 58) Posner has shown how the outcome of this process has presented Europeans with a significant increase in political cloud. Confronting U.S. predominance over a stretch of several disputes between 2002 and 2006, the EU was able to push the United States towards the mutual recognition of, for example, auditing rules or the governance of stock exchange competition. (Posner 2009, 671)

Creating another precedent for a more reciprocal transatlantic relationship was a dispute on accounting standards that emerged during the 1990s. (Posner and Newman 2015, 1328–29) With Europeans exerting little influence before the common market, Posner has built his argument on research by Walter Mattli and Tim Büthe, who argued that the centralization of regulatory authority has put the EU in a position favorable enough to challenge U.S. market power. (Posner 2009; Posner and Newman 2015, 1327; Büthe and Mattli 2003, 25; Mattli and Büthe 2005, 402–3) To be sure, America still refuses to accept the European model as designed by the International Accounting Standards Board (IASB) to be completely equivalent to U.S. Generally Accepted Accounting Principles (GAAP) as issued by the Financial Accounting Standards Board (FASB). But, U.S. authorities became more accommodating when Europeans threatened to limit market access and introduced the Financial Conglomerates Directive (FCD).[2] FCD requires non-European companies to be supervised in their entirety as opposed to oversight that merely considers a company's regional branch: "Regulated entities whose head office is located outside the EU must be subject to supervision which is equivalent to that provided for by this Directive."[3] While the EU has not reversed the U.S.' position on accounting standards, Posner's and Mattli and Büthe's perspective explains why the EU was able to withstand further economic pressure to adopt American regulations.

With the advent of derivative trading during the mid-1980s and due to the universal business model of its industry, the UK had made consolidated supervision – i.e. the principle "that a single regulator must oversee all parts of large financial conglomerates […]" (Posner 2009, 672) – an important feature of its regulatory regime. (Singer 2007, 81) At first unwilling to come the UK's way, the U.S.' strategy changed when FCD introduced this particular regula-

[2] European Parliament and Council Directive 2002/87/EC issued December 16, 2002.
[3] See the FCD's summary at http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32002L0087.

tory principle for the entire financial market in the EU. Despite the repeal of the Glass-Steagall-Act in 1999 – and the larger financial entities this made possible –, SEC policy remained lenient and did not provide for consolidated supervision in 2002. (Singer 2007, 80) This rendered an EU equivalency determination unlikely. Therefore, U.S. companies would either have had to withdraw their business or shoulder the costs of switching completely to European regulatory standards. To avoid adjustment costs for its industry, the SEC announced it would introduce relevant legislation and followed through in 2004 with the introduction of the consolidated supervised entities (CSE) program. (Posner 2009, 672) With signs clearly pointing towards a compromise, the Norwalk Memorandum of Understanding signed in September 2002 laid the groundwork for the mutual recognition of EU and U.S. accounting standards. (FASB and IASB 2002) European influence continued even and in early 2008 both sides decided to initiate the convergence of U.S. GAAP and IASB's International Financial Reporting Standards (IFRS). (FASB 2008, 2)

Later that same year, the U.S. was dealt a significant blow when on September 15, the investment bank Lehman Brothers was forced to file for bankruptcy. Since then, this default has become the fire signal for what is now referred to as either the Second Great Contraction – for those who see parallels to the late 1920s (Blinder 2013, 22; Reinhart and Rogoff 2009, 199) – or the Global Financial Crisis (GFC).[4] Lehman's default was a development long in the making. Mortgage backed securities (MBS) and other derivatives had already been depreciating for some 18 months. (Münchau 2008, 18) Worse even, American supervisors failed to anticipate many of the developments that had been brewing during that time. In May 2008, after JPMorgan Chase had taken over Bear Stearns – a heavily compromised investment bank – officials at the Treasury Department "[…] thought the worst had already happened [when] we realized the worst was yet to come."[5] One official of the FRB has emphasized the irritation and surprise felt by many in an "[…] unprepared regulation industry […]" (Kay 2015, 216) With subprime mortgages accounting for roughly a mere five percent of the mortgage market in the U.S., regulators wondered: "How could this blow up the world?"[6]

The world, however, did not share this diagnosis; at least for a few years. First and foremost, the crisis had seemed to hurt the financial services market in the U.S. Until early 2010, Europeans in particular failed to appreciate the massive involvement of its banking industry in the securitization of the American housing market. As Nicholas Véron has commented, Europe-

[4] Non-western politico-economic analyses are quick to point to the limited scope the 2008 credit crunch had on many emerging markets and insist that the downturn was rather a western, if not Anglophone crisis. (Goodstadt 2011) While I admit to the Atlanticist bias of the term, I will still use GFC, because if anything the crisis was an awesome display of contagion in interrelated markets.

[5] Author's interview on October 01, 2015. Comments not for attribution. Reference code: SFAZ5H.

[6] Author's interview on September 18, 2015. Comments not for attribution. Reference code: DKS848.

ans "[…] lived in denial […]" until the continent's bail-out programs laid bare how deeply banks like BNP Paribas, Deutsche Bank, Anglo Irish and others were involved in the housing market.[7] In eschewing the negative externalities that likely would have ensued otherwise[8], governmental finances were heavily strained triggering in effect the sovereign debt crisis in the Eurozone. This notwithstanding, during the fall of 2008 then-German finance minister, Peer Steinbrück, exuded a confidence that seemed to go alongside Posner's contention about increasing European influence. Presuming a decline of U.S. influence, Steinbrück envisioned Asian and European banks would be pushing into the vacuum the crisis had left:

> "The USA will lose its status as global finance's superpower; not abruptly, not suddenly, but incrementally. The global financial system will become more multipolar. In this new world of financial banking […] European universal banks will claim their share – a system which by the way has proven itself to be superior to the U.S.' institutional separation of commercial and investment banking." (Bundesregierung 2008, 2)[9]

The narrative of the United States as the source of the global financial crisis was popular not only in Germany, but also resonated with continental Europeans in general. In an educational video on the sovereign debt crisis from 2012, the European Commission graphically depicted the subprime crisis as a red wave that originated in the U.S. and subsequently swept all over Europe. Effectively toning down the finger-pointing, the video has been taken off the servers.[10] Nevertheless, the Commission still resorts to blaming American investment strategies for the continent's difficult economic situation and claims: "Europe's debt crisis was initially triggered by events in the American banking sector." Instead of referring to the structural deficits of the common currency, the Commission's view concentrates on the more suggestive transatlantic dimension: "When a slowdown in the US economy caused over-extended American homeowners to default on their mortgages, banks all over the world with investments linked to those mortgages started losing money." (EC 2015) In 2013, Martin Schulz, in his role as President of the European Parliament, referred to the subprime crisis as a sign of American economic demise and promoted a more active economic foreign policy by the European Union. (Schulz 2013)

---

[7] Author's Interview with Nicholas Véron on May 12, 2015.

[8] Even amongst critical authors, like Mark Blyth and John Kay, the bail-out programs were seen at the time as sensible stabilization of the world economy. However, both authors stress the enormous morale hazard this produced and conclude that in the long run the winding down of more financial institutions would have created meaningful reforms and a paradigm shift focusing the industry's resource allocation more productively towards the real economy. (Blyth 2013a, 231; Kay 2015, 226)

[9] Since universal banking had already been a reality in the U.S. for almost ten years, Steinbrück's praise for the European model as "rather superior" adds ignorance to complacency and denial. In 2006, then-Under Secretary Jörg Asmussen published an article titled "Securitization from the viewpoint of the Ministry of Finance." Herein, Asmussen outlined the ministry's official position to enlarge the securitization process in Germany and, in order to avoid "[…] unnecessary testing and documentation requirements […]," to rely heavily on Basel II's self-regulatory framework as well as on the expertise of credit rating agencies. (Asmussen 2006, 11)

[10] Video on file with the author.

The End of the American Empire?

European assurance and Posner's centralization argument tie in with a discussion that has long been prominent within the United States. Publishing as recently as 2012, Graham Wilson notices that narratives of American decline are a popular career-maker and posits with regard to the GFC: "Aided by a tendency in the United States to exaggerate China's power (and to underestimate Europe's), it has been common to anticipate the United States ceasing to be the world's largest economy." (G. K. Wilson 2012, 64)

From its very beginning, the American republic has been described by some as an empire. The founding fathers emphasized its progressive set of values and the aspiration of becoming a leader among nations. (Thayer 2007, 7–9) During America's early industrialization, British commentators focused on the high degree of adaptability and ingenuity of the emerging economy predicting the U.S. to become a leading force of innovation in the future. (McPherson 1982, 10–15) If not for U.S. isolationism after World War I, it can be plausibly argued that the Wilson Administration could have established a foundation for America's international reach before the U.S. under Presidents Roosevelt and Truman realized the country's hegemonic influence after World War II.

During the Cold War debates on the demise of American global predominance emerged. Understandably, these discussions stressed how the U.S.' global commitments put a strain on its military capabilities and emphasized the likelihood of an overstretched global commitment.[11] Termed "declinism" (N. Ferguson 2005, 17), this debate was paused when the Soviet Union dissolved. With intellectuals in the western hemisphere on a unipolar honeymoon, monographs like "The End of History" (Fukuyama 2006)[12] and "American Primacy" (Brzezinski 1997) evoked only little resistance (Hanson 1993). This changed, however, when the second Bush administration's controversial foreign policies brought the debate back to live. In late 2002, Harvard historian Charles Maier warned that the Bush doctrine's unilateral character could have a negative impact on America's perception as a world leader. (Maier 2002) With U.S. troops invading Iraq without proper international mandate, effectively alienating even its closest allies, contributions to the debate on the end of the American empire not only contin-

[11] Paul Kennedy published one influential account in the 1980s. However, because of his more conservative scholarly outlook, he subordinates economic capabilities to the military commitments of what he describes as great powers. With regard to the United States, he posits the danger of an "imperial overstretch" (Kennedy 1987, 515): "[…] the United States today has roughly the same massive array of military obligations across the globe as it had a quarter century ago, when its share of world GNP, manufacturing production, military spending, and armed forces personnel were so much larger than they are now." (Kennedy 1987, 521) Given that Kennedy recklessly compares two statistical relations – that of U.S. military presence relative to that of other states and American GDP relative to other economies –, Kennedy's statement fails to be analytically illuminating beyond its isolationist message.

[12] Many understand Fukuyama to have made a U.S. centric argument. However, while he certainly is part of the intellectual discourse on American predominance, he acknowledges that other powers could plausibly rise and even reframe many of the values today's America stands for. (Fukuyama 2006, 280–84)

ued declinism's focus on military overstretch (Soros 2004; Bacevich 2011), but also shifted the focus to America's even bigger asset – its unparalleled position as an economic powerhouse (N. Ferguson 2005; Sandbrook 2012).

Intellectuals on both sides of the Atlantic have stressed a narrative of decline on grounds of economic reasons. This line of thinking emphasizes that American over-consumption, the country's reliance on credit, and the low rate of household savings are pivotal to understanding America's likely demise. In 1992, Jim Hanson catered to America's fear of Japanese competition. He even went so far as to compare the U.S. as an "ageing fox" to the lion he saw in a unified Germany. (Hanson 1993, 129) While many were skeptic about Germany's role after 1989, Hanson's larger point is with the widening spending gap, which led him to predict that the combination of an aggressive foreign policy with irresponsible spending (Hanson 1993, 184) will change the character of U.S. democratic institutions: "Continued increasing costs and losses will ensure decline, which will manifest itself through economic breakdown, political corruption, and perhaps even military/police abuse." (Hanson 1993, 132)

Sketching a scenario not quite that apocalyptic, Chalmers Johnson has also employed the tale of an unraveling economic superpower. In his Blowback series[13], Johnson castigates the U.S. devoting economic resources to its military needs (C. A. Johnson 2008, 273) and argues America's decline on two parallel tracks. Concerning international security, Johnson claims that the unilateral policies that were introduced in the advent of the Bush doctrine have tainted America's international reputation. (C. A. Johnson 2004, 256) Secondly, referencing British historian Niall Ferguson, Johnson diagnoses that globalization is not only the main result of the neoliberal policies of both the British and the American empire, but is furthermore solely "[…] premised on cheating the poor and defenseless […]"[14] (C. A. Johnson 2004, 281)

Johnson ties the U.S.' unilateral foreign and economic policies back together using Micha Kalecki's concept of "military Keynesianism." The ever-increasing devotion of U.S. manufacturing assets to the defense sector, the ensuing import of non-military goods "[…] in order to maintain […] customary lifestyles […]", and "[…] American militarism and imperialism […]" (C. A. Johnson 2004, 281), Johnson predicts, will lead to the U.S.' certain demise. In an interview to promote his publication *Nemesis*, he pointed out the overall reasoning for his book series:

---

[13] Chalmers Johnson, himself a former advisor to the Central Intelligence Agency and a self-described "Cold Warrior" (C. A. Johnson 2007, 3), published a series of three books, in which he sternly criticized the role of the military in U.S. foreign policy after the end of the Cold War. His first critical monograph, *Blowback*, was originally published in 2000. *The Sorrows of Empire* and *Nemesis* followed in 2004 and 2006, respectively. (C. A. Johnson 2003, 2004, 2008)

[14] Here he explicitly refers to the Clinton Administration's negotiations for the World Trade Organization. (C. A. Johnson 2004, 255–56)

> "[…] the political system of the United States today […] is one of the most unstable combinations there is – that is, domestic democracy and foreign empire […] A nation can be one or the other, a democracy or an imperialist, but it can't be both. If it sticks to imperialism, it will, like the old Roman Republic, on which so much of our system was modeled […] lose its democracy to a domestic dictatorship." (C. A. Johnson 2007, 3)

For reasons firmly situated at the other end of the political spectrum, Niall Ferguson has also predicted the decline of American hegemonic influence. Referring to parts of Johnson's critique (N. Ferguson 2005, 3), he insists that America's military endeavors will have nothing to do with the country's likely demise. (N. Ferguson 2005, 261–62) Ferguson, a political and fiscal conservative, takes issue with the costs he suggests are unnecessarily caused by such programs as disability and retirement income, death and survivorship benefits, as well as Medicare and Medicaid. Grossly misrepresenting a vastly more complex debate on public and private goods, Ferguson goes on:

> "Americans like security. But they like Social Security more than national security. It is their preoccupation with the hazards of old age and ill health that will prove to be the real cause of their country's overstretch, not their preoccupation with the hazards of terrorism and the 'axis of evil.' Today's latent fiscal crisis is the result not of excessive overseas military burdens but of a chronic mismatch between earlier Social Security legislation, some of it dating back to the New Deal, and the changing demographics of American Society." (N. Ferguson 2005, 269–70)

Ferguson sounds genuinely surprised that there is, indeed, such a thing as society. Following his logic, the structure of entitlements in the United States is not only an apparent weakness, but, with European integration gaining speed, its fiscal consequences also come at an inconvenient time.

In an op-ed for The Economist, Joseph Nye differentiates certain areas of power to depict Europe as a likely economic competitor. He argues that while no other nation can compete with American military capabilities, with regard to economic power and transnational relations, "[…] the United States is not a hegemon, and must often bargain as an equal with Europe." (Nye 2002) Ferguson uses this argument and agrees that in areas like demographics, foreign aid, and trade relations, the integration of the European market and the common currency have created a capital market equal to that of the United States. (N. Ferguson 2005, 231–33) On the other hand, Ferguson also points to structural weaknesses of the common currency and the difficulties associated with Europe's ageing population. Moreover, Ferguson objects to what he understands to be "Europe's leisure preference," which he claims to stand in the way of Europeans replacing the U.S. as a world economic power.[15] (N. Ferguson 2005,

[15] Not a scholar with an apparent quantitative skill-set, Ferguson's measuring rod for European "leisure culture" is represented in hours worked per day. Ignoring any dynamic relationship between working hours and individual efficacy, Ferguson quotes a study by the OECD, according to which Germans work 22 percent less than Americans with the "[…] Dutch and Norwegians put[ting] in even fewer hours." And if that is not enough, Europeans also take too much holiday and "[t]hen of

241) Diagnosing a transatlantic stalemate, he joins Nye in proposing cooperation and counsels both sides not to spend the changing power structure engaging in politico-economic conflict. With economic ties strong and material interests aligned, Ferguson argues, "[…] both the United States and the European Union have far more to gain from cooperation than from competition. The bottom line is that they need, even depend on, each other." (N. Ferguson 2005, 257)

Following the contributions on America's demise, one is left with two "declinist" hypotheticals. First, Johnson and Hanson presume that the inevitable collapse of the U.S. is imminent. Indications of this scenario have been scarce, which has led many observers to discard such notions. (G. K. Wilson 2012, 64) On the other hand, Nye, Sandbrook, and Ferguson present a cooperative narrative, in which the U.S. loses some of its economic influence with Europe partly failing to live up to its own expectations. (Nye 2002; N. Ferguson 2005; Sandbrook 2012) Hence, the prediction is that of strengthened transatlantic cooperation between equal powers pursuing cooperative gains.

The Puzzle in Institutional Terms

For both options presented above, the 2008 Global Financial Crisis could plausibly have been a watershed moment. If proponents of the declining American Empire had been correct and European confidence apposite, Europe should have seized the opportunity and used the U.S.' moment of relative weakness to become itself the shaping force in the post-crisis reform efforts. On the other hand, an approach based more on cooperative equality should have reasonably resulted in a strengthened institutionalization of global financial governance via the G-20 and the FSB. Indeed, in the aftermath of the global financial crisis, one outcome of the ensuing G-20 rounds was to strengthen the FSF (FSF 2009), which had been established as a result of the Asian Financial Crisis of 1997/98, and to re-establish it as the FSB.

Since the European-dominance-scenario is a little out there, the following episode can be read as one stimulating genuine multilateralism. The 2008 crisis was linked to an asymmetry between globalized financial services and the plethora of domestic regulatory systems created to keep the industry's externalities in check. To Daniel Drezner, a key factor that fueled the crisis was the lack of an effective international regime, which would have provided a unifying approach regarding international financial regulation and ensured a level of obligation among the participating regulatory jurisdictions. (Drezner 2010, 791) Drezner makes his point by

course there are the strikes." (N. Ferguson 2005, 243) Again Ferguson brushes over a more complex debate that started with Henry Ford and John Maynard Keynes on the dialectical relationship between production, efficiency, and consumption. (Keynes 1963; Virtanen et al. 2009; Lam 2014; R. Smith and Pollock 2014)

taking a closer look at the developments that immediately preceded Lehman's default. The U.S. Treasury and the Federal Reserve wanted to assist British Barclays Capital in its takeover bid for Lehman. However, the American government refused to give assurances worth USD 70 billion to protect Barclays should unknown chasms in Lehman's finances prove to become threatening to the British bank. Without such a parachute, the UK Financial Services Agency (FSA) – until the first quarter of 2013 the country's chief financial regulator – was neither willing nor legally positioned to license the merger. (Brinkbäumer et al. 2009, 48–49) "The failure in regulatory coordination between two of the world's closest allies," résumés Drezner, "paved the way for the acute phase of the 2008 global financial crisis." (Drezner 2010, 791) Following the default, market capitalization became increasingly difficult, then spread to the real economy, which in turn aggravated overall deadweight losses (J. Buckley and Howarth 2010, 119; Collyns 2008, 6; Helleiner 2010a, 629; C. I. Jones 2009, 12), and eventually triggered the sovereign debt crisis in the Eurozone (Afonso, Furceri, and Gomes 2011, 6; Ebner 2014, 56; Pagliari 2013, 395)

European Preferences

In his contribution on the 1999 FSF, Alexander Reisenbichler was able to show that key EU-players would have preferred a technocratic design to "[…] constrain US power by championing the role of IFIs [international financial institutions] and making the work of global technocrats politically binding." (Reisenbichler 2015, 14) However, U.S. market power – and the interest cohesion it often generated particularly between the U.S. and its Anglophone EU counterpart (Quaglia 2013, 12–13, 2014, 338) – stood in the way of depoliticizing a decision-making process that otherwise would have given the EU a competitive edge at the FSB due to its aligned regulatory competences. (Posner 2007, 141, 2009, 680; Posner and Véron 2010, 403) What is more, the U.S. administration assured its political cloud and its favored policies by coordinating and streamlining the multitude of technocratic American agencies at the FSF. (Greene and Boehm 2012, 1095; Reisenbichler 2015, 16; Singer 2009, 26) Asked about the FSF, Mark Sobel, Deputy Assistant Secretary at the Treasury Department, has stressed the unaltered regulatory influence of the United States:

> "[…] when you get down to the work that has to be done in the FSB [sic!], or in a standard-setting body, the U.S. plays a very key role. It is important that we do so, given that the U.S. is the world's largest financial market and our strong interest in high quality global standards. In that regard, it would not be feasible to promulgate global standards without having the U.S. on board. As a result, U.S. regulators and officials heavily engage with the international community, be it in standard setting bodies, bilaterally or in multilateral fora, and in this way the U.S. exerts a lot of influence, including behind the scenes." (Reisenbichler 2015, 18)

As is apparent in this and other interview references[16], Reisenbichler's sources talk interchangeably about FSF and FSB alike – as if economic conditions or the situation of the interested parties were comparable from one instance to the other. While this poses a methodological problem for his larger point, it also underscores American that officials have reasons to assume their continued dominance from one organization to the other.

American self-definition and -confidence, however, cannot serve as a proper indicator for continued dominance. Therefore, a counterfactual can assist in outlining power relations within the transatlantic. With Europeans in denial about how the GFC hit the transatlantic symmetrically until early 2010 (Véron 2015) and U.S. economic leadership concomitantly losing legitimacy, the EU should have been pushing for a more technocratic reform of the FSF, particularly since they had already tried to harness American power by trying to keep the more political finance ministries out of the FSF in the first place. (Reisenbichler 2015, 18) After all, Peer Steinbrück had envisioned the transatlantic power-shift by insisting on the superior European approach to financial regulation.

American Preferences

Following the establishment of the FSB, then-Treasury Secretary Timothy Geithner reveled the network to be a milestone in international economic cooperation comparable only to the watershed set-up of the Bretton-Woods system:

> "[…] the important thing we did in London […] is to add, in effect, a fourth pillar to the architecture of cooperation we established after the second world war. After the second world war, we came together and established the IMF, the World Bank, the GATT which became the WTO. But the Financial Stability Board is, in effect, a fourth pillar of that architecture It [The FSB] brings together central banks, finance ministers, supervisors of banks, market regulators like the SEC and the CFTC, the accounting standard setters – brings them together and tries to forge consensus on standards, so we can have, again, common standards applied globally." (Geithner 2009a)

While the reform of the FSF could be understood as a multilateral improvement in support of a transatlantically balanced approach to regulatory cooperation, a closer look at the origin of both, FSF and FSB, reveals the irony of Timothy Geithner's Bretton Woods comparison: a U.S. dominated multilateralization of its material interests.

The crisis had shown that the FSF warranted comprehensive reform, which is why the American desire for reforms had an ideal timing. Even before the crisis, the FSF's official mission

[16] In another interview, Reisenbichler quotes Elke König, who currently presides over the EU's Single Resolution Mechanism (SRM), in which she points to the FSB, not the FSF, as the state-centered network: "By their very nature and mandate finance ministries always – and rightly so – have a political agenda […] The FSB as a forum where finance ministries, central banks and supervisory authorities discuss and align their work adheres in its regulatory measures to the G-20 political agenda." (Reisenbichler 2015, 19)

had been to "[…] focus on the nature of systemic risk in the international financial system […]" (Kern, Dhumale, and Eatwell 2005, 75) However, lacking the necessary regulatory mandate and restricted by the microprudential approaches of its members, the FSF had to confine itself to publish "[…] some excellent reports […]" Yet, over the course of its decade-long existence it remained unclear to what extent it could induce regulatory action or who would feel obligated to take the FSF's expertise into account. In the absence of meaningful political commitment, the FSF became eventually known as "[…] a think tank with nowhere to go." (Kern, Dhumale, and Eatwell 2005, 76) I argue that by increasing the FSB's efficacy and committing more fully to the proceedings of an organization it could control, U.S. influence shaped the FSB and its agenda even more than it did when creating the FSF under more favorable circumstances. There is a point to be made that international reform efforts were informed by the assessment that cooperative failure had exacerbated the crisis. I argue, however, that if one works on the premise of a transatlantic partnership shaped by common incentives and dependencies one fails to fully appreciate the size, capacities, and timing that together have formed the base of U.S. politico-economic power.

The U.S. in the Regulatory Driver's Seat

Contrary to what a more technocratic and institutionalized prevalence of European interests would have looked like, the size of the FSB's secretariat with its 32 bureaucrats (Drexler 2015) is comparatively small, the personnel is not permanently appointed but on leave from other institutions (Pauly 2010, 16), and contrary to what a supposed power-shift would have suggested, we now observe not less, but actually more state-involvement. In short, the U.S. "[…] emerged as leading champion of the creation of the FSB and the new push to strengthen compliance with international standards." (Helleiner 2010b, 285) But if Véron's assessments holds true and the EU simply did not realize that the GFC affected it equally, then why did Europe remain so passive? Should Europe not have pushed into the perceived vacuum?

Helleiner builds his hypothesis on David Singer's research on the interrelatedness of domestic and international rule making. (Singer 2007, 25–30, 2004, 532) He asserts that "[t]he US subprime crisis has generated enormous domestic pressure on US officials to tighten domestic financial regulations […]" (Helleiner 2010b, 286) At the same time and to avoid regulatory arbitrage, U.S. officials have pushed for an international playing field that would not diverge from the regulatory agenda the U.S. intended to implement in its own market. Going the same way from a regulatory capture perspective, Shawn Donnelly claims that Congress has not been a regulatory driving force à la Singer, but "[…] has proven a point of open access for

banks and other financial institutions seeking to soften the application of international standards." (Donnelly 2012, 272) Donnelly identifies the FSB's Senior Supervisors Group (SSG) as an exclusive grouping of ten major economies, which use the SSG as an intellectual regulatory powerhouse to push their club standards globally. (Donnelly 2012, 273; Drezner 2007, 147)

Rendering matters more complicated, some scholars have asserted that the crisis made American leaders question whether their politico-economic business model was working. Keynesians, marginalized in previous financial crises, now had the chance to "[...] use the crisis as evidence supporting their understanding of economics and to help shape new coalitions". (Farrell and Quiggin 2011, 6) What is more, Mark Blyth pointed out that at least for a short while Keynesians found an audience willing to listen, because "[n]o one was buying 'the price is always right/state bad and market good' story when prices had been shown to be wrong by a few orders of magnitude [...]" (Blyth 2013a, 55) Supported by the philosophical insecurity that followed the economic shock, a yearlong period of consumer-oriented policies started in the U.S. that lasted from 2008 to 2009 and collapsed during 2010. (Farrell and Quiggin 2011, 4) Nevertheless, the administration seized the public sentiment of the day and moved to enshrine a more actively involved state when working out the Wall Street Reform and Consumer Protection Act of 2010, also known as the Dodd-Frank Act (DFA). (Dodd and Frank 2010)

Based on the puzzle of why the U.S. dominated post-crisis institutional and policy reform, my own contribution will be to show that all sides of the academic debate have been analyzing different aspects of the same phenomenon: the U.S. used its market power to, first, create reforms in response to the crisis, second, to give its rules an international scope and avoid potential arbitrage, while, third, concomitantly ensuring its industry would not lose its competitive advantage in a global regulatory environment governed by genuinely American financial rules. In 2008, the new President and the Democratically held chambers of the 111$^{th}$ Congress[17], while certainly prone to moderate Keynesianism, had to engage in reforms balancing the interests of a highly lucrative industry. My argument will be that America's push to tighten oversight domestically and abroad has been based on the firm belief regulation could ensure the profitability of the financial services industry while at the same time restricting its apparent externalities.

[17] I disagree with one of Reisenbichler's testable hypotheses, namely that in the case of the FSB there should "[…] be little evidence to conclude that national legislatures constrained actors involved in the negotiation process." (Reisenbichler 2015, 20) If we consider that Dodd-Frank has implications on the competitiveness of U.S. financial companies, supporting the laws extraterritorial reach (Greene and Potiha 2012) via strengthened cooperation at the FSB could very well have been in Congress' interest.

Research Question

The state of America's economy is always under scrutiny and commentators inside and outside of the United States continue to form and forge opinions on this matter, even in times of continued economic growth.[18] In a special report in the world economy in its October 3, 2015 issue, The Economist, while carefully avoiding reducing America's economy in relative importance, nevertheless committed itself to parts of the "declinist" discourse:

> "America's response to the financial crisis of 2007-08 can also be seen as a last hurrah. Officials, as always, did all they could to bail out the banks and refloat the world, but at the cost of shattering the American public's trust in policymakers and causing a populist backlash that is still reverberating today. The way America saved the world in 2007-08 may make it impossible for it to do so again. All this points in a bitterly pessimistic direction." (The Economist 2015, 15)

In light of the populist reign currently molding America's global image, it would be hard not to recognize the premise of negative political short-term reverberations. However, I argue that following the events of September 2008 the United States did not brace itself for a "last huzzah." In fact, American market power created a new regulatory regime under the G-20, which ironically no single American administration could reverse.

To sum up, American dominance is puzzling because preceding the crisis Europeans had already been competing with U.S. authorities. Besides this potential necessary condition for increasing European influence, the GFC originated in the U.S. giving a too-confidant Europe sufficient cause to push for more influence. America's economy was sincerely weakened by the crisis while its competitors continued to do comparatively well. Finally, international reform efforts focused on an organization that the U.S. had shaped substantially as a response to the Asian Financial Crisis and which had failed in facilitating meaningful international cooperation in promoting systemic stability for global financial services. Therefore, this dissertation asks specifically: Why was the United States able to internationalize the 2010 Dodd-Frank Act's financial reform agenda?

Proposing Market Power – The Arguments and the Literature

My work emphasizes the power of the American market as the factor genuinely responsible for the prevalence of American influence. Arguing that the pendulum has swung back from

[18] At the beginning of 2016, the American economy registered a net gain in employment for the second year in a row. (BLS 2016, 2–3) However, it is necessary to put this growth into perspective. With economic inequality steadily increasing, the Bureau of Labor Statistics qualifies its own general findings: "Although the unemployment rate fell to 5.0 percent in November 2015, wage growth after the recession has been minimal. Employment levels for long-term unemployed workers, marginally attached workers, and those working part time for economic reasons are improving, but remain below prerecession levels." (Byun and Nicholson 2015, 1)

market-based regulation positions my analysis in the vicinity of a "[…] statist or state-centric approach." (Krasner 1978, 5)

When Stephen Krasner published his monograph on the prevalence of national interests in economic policies, critics were confused, irritated even (Hogan 1979; Warnecke 1979; Amacher 1980); and they had a point. Distancing his study from Marxism (Krasner 1978, 20–26) and Liberalism (Krasner 1978, 26–30), the argument is about his assumptions as a scholar rooted in realist international relations theory. And despite the study's subtitle "Raw materials and U.S. Foreign Policy", Krasner never sincerely engages with the economic interconnections that oftentimes blurs any clear distinction between a state's need for security and its interest in promoting businesses. Rather, he opposes the view that either a bourgeoisie would control the material endowment of the state (Krasner 1978, 21) and goes even so far as to sincerely quote the laissez-faire touting Manchester school as an ideal type for liberal theories. (Krasner 1978, 29) Calling his approach inductive, he identifies national – and by that he means security – interests as "[…] induced from the statements and behavior of central decision-makers." (Krasner 1978, 35) He recognizes these interests are interwoven with diverse sets of societal interests, but argues that since it is impossible to unravel them analytically "[…] an inductively based conceptualization of the national interest can only be operationalized in terms of the preferences of central decision-makers, that is, the state." (Krasner 1978, 44) The question of where the interests of, mind you, elected officials originate is ignored. So is the fact that his case selection is biased. Even where Krasner sees variation – as in the case of Vietnam – he relies on an irrationality defense. (Krasner 1978, 324–25) As Vincent Ferraro pointed out in his review of "Defending the National Interest," Krasner's eclectic use of history is more than a stumbling stone when claiming an inductive approach using a deductive lens.[19] Ferraro equivocally compliments Krasner's contribution as "[…] a valuable book, which should stimulate thinking about international political economy issues from a realist perspective." (Ferraro 1981, 573)

As far as realists have contributed to this field, the structural pre-condition of self-interest had to be replaced with the extent of jurisdictional markets; an automatism stipulating nothing more than that size matters. (Drezner 2007) However, I use market power not interchangeably with market size, but rather as a compound notion which rests on an actively involved state. Included in the concept are the institutional capacities that the U.S. created to govern and reg-

[19] Krasner fails to differentiate lobbying interests from national security interests and then looks at foreign policy with no methodological tool for differentiation. One crucial design difference in this study is, that U.S. and global finance can reasonable assumed to have staunchly opposed tighter regulations and that the variation from old to new regulations was mirrored by international re-regulations. Aiming for generalization, Krasner's study cannot rely, as my study does, on a single historical incident inducing change.

ulate its market. While one could argue that capacities are merely a result of the global significance of the U.S. market, including regulators, lawmakers, and the public, makes for a more dynamic understanding of power. This has two reasons. First, markets hardly come with interests of their own. But as we have seen in the statement by Mark Sobel (Reisenbichler 2015, 18), actors in these markets do. Second, only through these actors' interests can we understand why the sequence of domestic U.S. reforms to, then, a corresponding international agenda was instrumental in reaffirming American market dominance. Hence, the timing of U.S. reforms forced the hands of America's G-20 partners in agreeing to an already developing reform agenda that culminated in the passage of Dodd-Frank. This first-mover advantage is not simply a function of market size. It results from the intent to strategically apply faculties that accompany size, but cannot plausibly be understood to automatically emanate from the market.

Having conceptualized market power with prominent agency for the state at a certain point in time limits this study's applicability for subsequent research. In the context of the 2008 crisis, this limitation was chosen purposefully as it demonstrates how size itself is a double-edged property. The volume of financial services enabled risk to spread throughout almost the entire financial system, which came at detrimental costs once the interconnectedness of market participants became apparent. (Brewer and Klingenhagen 2010, 59–60; IMF 2010, 66; World Bank 2012, 74–78; Fink 2014) Rather, this study analyzes how a dominant market, willing to adapt to changing circumstance, retains influence by applying its capabilities and resets the rules in an essentially global market. In light of this understanding of market power, I make five arguments that frame my analysis, provide a chance to meaningfully engage with the existing literature, and sketch out in which way my own research communicates with as well as extends existing work. My first argument opposes accounts geared towards undifferentiated generalization of structural preconditions. Instead, this argument gives weight to state-actors as meaningful decision-makers.

> Argument One:
> American market-power, not the size of its markets, is the dominant influencing factor in shaping international regulatory reform.

Using this market-size-to-market-power lens requires engaging with scholarship that has fundamentally challenged neo-realist assumptions. Prominently, Posner's research on the strength of Europe is built on the argument that the centralization of its regulatory architecture during the Lamfalussy-process handed Europeans an advantage in negotiations about accounting standards. Indeed shortly before the financial crisis, even major U.S. regulators outlined the comparatively polar institutional reality of financial regulation on the other side of the

Atlantic. (U.S. Treasury 2008a, 2008b) Some observers have asserted that the rank growth of U.S. regulatory agencies made transatlantic coordination significantly more complicated. (Balleisen 2011, 564–71; R. P. Buckley and Arner 2011, 108–10; Stoltenberg et al. 2011, 578; Baxter 2012, 65; Quaglia 2013, 8) Legal scholars Edward Greene and Joshua Boehm have analyzed Dodd-Frank's influence on transatlantic regulatory cooperation and concluded that concerning its institutional side, the reform "[…] makes for an intriguing inverse of Henry Kissinger's famous statement […] 'If I want to call Europe, who do I call?'" Greene and Boehm continue to paint a U.S. regulatory structure in disarray: "Today, Europeans would be forgiven for expressing similar confusion when determining how to coordinate their reforms across America's multitude of agencies." (Greene and Boehm 2012, 1095)

Judging from a market-power perspective, however, this research misses how a successful structural alignment only correlates with increasing regulatory influence.[20] Of course, avoiding overlapping institutional responsibilities increases inter-agency cooperation and can have a myriad of benefits – first among them higher efficiency. However, Posner's argument relies on a narrative, in which the U.S. gave in to Directive 2002/87/EC – i.e. the Financial Conglomerates Directive (FCD) – because its supranational centralization had elevated the European bargaining position. Hence, America had to grudgingly recognize the EU's increased influence in rule-making. (Posner 2009, 691, 2010a, 652) Posner's argument, however, is too neat and he fails to mention that this recognition was just one step in a longer process that predated this particular dispute. In addition, creating a centralized, more powerful regulatory administration came at a cost. Balancing sovereignty costs with an apolitical and rules-based framework, Europe offset its gain in size and efficacy with the congenital defect that championed stewardship over political maneuverability.

Lamfalussy's so-called Committee of the Wise Men was commissioned by the European Economic and Financial Affairs Council (ECOFIN) on July 17, 2000. (Lamfalussy 2001, 1) The report's recommendations for a supranational regulatory process in the EU were implemented sufficiently before the 2002 Norwalk Agreement. Yet, while this particular timeline supports Posner's claim, he omits that with the U.S. Securities and Exchange Commission (SEC) and FASB two major U.S. regulators were instrumental in a modernization process that was intended to positively affect the European regime of accounting standards. (Kirsch 2012)

[20] Seeing as the United Kingdom has decentralized its regulatory oversight after the crash of 2008, I would propose that simply according more responsibility to a regulatory agency increases its portfolio, first. While it seems plausible that this also lowers the cost of coordination, the UK's Financial Services Act of 2012 re-separated the Financial Services Authority after twelve years of unified oversight. Today, the Financial Conduct Authority regulates market integrity, competition, and serves to provide consumer protection. See: https://www.fca.org.uk/about/the-fca, accessed March 17, 2017. The Prudential Regulation Authority was integrated into the Bank of England and is "[…] responsible for the day-to-day prudential supervision of financial institutions." (HM Treasury 2010)

Before it became the International Accounting Standards Board (IASB) in 2000, the International Accounting Standards Committee (IASC) had served as international and European standard-setter since 1973. (IFRS 2017) When in December 1999 the IASC Board voted unanimously to initiate the reform process and implement the structure that would transform IASC to IASB – still the EU's accounting standards setter today –, the IASC Board had secured the approval of both SEC and FASB while the "[…] European Commission was not represented, nor was there a Japanese member." (Kirsch 2012, 31) What is more, while the Norwalk-Agreement constitutes for Posner the turning point in the transatlantic competition over accounting standards, there had already been a roadmap about easing the regulatory burden emanating from significant differences in both regimes. With the first publication already in 1998, the FASB issued its already second report on the IASC[21]-U.S. Comparison Project in October 1999. Not only did the report stress how both U.S. and IASC standards provide approaches complementary to respective counterpart legislation; the report did so with the expressed intent to provide a "[…] basis for the FASB and IASC to raise the quality of their standards while narrowing the difference between them." (FASB 1999)

Posner himself recognizes a difference in size between both transatlantic economies; in fact, his puzzle is built on the unequal distribution of market share. (Posner 2009, 679–80)[22] If, however, the U.S.' willingness to cooperate already existed, Posner's argument no longer holds: "[…] centralizing (or decentralizing) regulatory authority in large polities, all other things being equal, increases (or decreases) the international bargaining power […]" (Posner 2009, 680) The long-term convergence of accounting standards was sure to meet resistance, as Posner has described accurately. However, the Norwalk Agreement cannot be causally linked to Europe's changing regulatory architecture[23], because the European Council and the European Parliament created the unified, supranational regulatory structure in February 2002 after FASB and SEC had started considering the potential convergence of standards. Posner explains change with a collaborative continuity where "all other things" simply were not

[21] Before it became the International Accounting Standards Board (IASB) under the governing body of the International Accounting Standards Committee Foundation (IASCF) in 2000, the International Accounting Standards Committee (IASC) had served as international and European standard setter since 1973. (IFRS 2017)

[22] Posner has only a nominal appreciation for the respective sizes of transatlantic markets. Neither does he expound on growth rate, foreseeable benefits from further integration, or the distance between the transatlantic and all other markets for financial services: "The U.S.-to-European ratios of equity market capitalization and total value of share trading, for example, increased from approximately 2:1 in 1994 to 2.5:1 in 2003. After peaking in 1998 at 2.7:1, U.S.-to-European ratios of investment banking revenues leveled off at 1.7:1 in 2003, the same ratio as in 1995. Between 1998 and 2003, moreover, the U.S. diminished Europe's lead in international bonds, over-the-counter derivatives, and foreign equity trading." (Posner 2009, 679–80)

[23] In terms of implementation, Europe's move to centralize authority has not led to the dismissal of the respective nation states' regulatory authority. Today, via the Lamfalussy process Parliament and Council agree upon framework legislation, which is then substantiated by EU regulators. (Möller, Stein, and Steinpaß 2005, 67) That means the EU's character as a political system sui generis complicates Posner's narrative of European supranationalism. It follows that centralization was only efficient when allowing for regional differences represented in the Council, in which case the question is whether centralization or rather European economic integration in general significantly influenced transatlantic negotiations.

equal. I argue the developments leading up to Norwalk were already predicated on finding a compromise between what Drezner has described as the two largest, yet slightly unequal, markets for financial services. (Drezner 2007, 123)[24] In times following abrupt changes, I therefore propose that the capabilities necessary to regulate the biggest market also gives actors an edge in implementing reforms comparatively quickly.

> Argument Two:
> Far from simply creating an unwieldy cacophony of regulators, American market size has led to the formation of preeminent institutional capacities and financial regulatory expertise, which in turn realized the substantiation of regulatory change.

Power in relation to a market as global as financial services is, of course, a function of other jurisdictions' interest in ensuring the competitiveness of their own industry as it engages not only with American counterparts, but also conducts business within the United States. Hence, U.S. leverage in setting global financial rules depends on whether or not the EU as potential competitor had the capability of counterposing the new layout for an international financial regulatory regime. This argument about the role of politics in globalized economic policies ties back to earlier research conducted by the aforementioned Krasner (Krasner 1978), as well as John Ruggie (Ruggie 1982; Kratochwil and Ruggie 1986), David A. Singer (Singer 2004, 2007; Mosley and Singer 2009; Singer 2009), and Rawi Abdelal (Abdelal 2007).

Positioning the concept of embedded liberalism in between structural and liberal-constructivist approaches, Ruggie re-interprets American market power and recognizes its first-order contribution to structuring the international economy after World War II. (Ruggie 1982, 397–98) He reflects how states collectively shaped the political design – the second order, that is – of the international politico-economic order after the end of the Bretton Woods system. (Ruggie 1982, 386) Expounding on the deficiencies of hegemonic stability theory (Ruggie 1982, 392), Ruggie's contribution is to outline the limits dominant states face when exerting influence. It is this difference between hegemony and dominance that drives the market-power argument of this thesis.

Debating what significance should be accredited to power, Singer describes first attempts at having banks internalize some part of the risk they were taking on. Without explicitly referring to a tragedy of the commons issue, he nevertheless ends on how banks' potential exter-

[24] Drezner makes his case plausibly outlining that the size of market is not nominal but relational: "From 1995 onward, the great powers in the financial realm have been the United States and the principal members of the European Union […] these jurisdictions possess the two largest capital markets, as measured by bonds, equities, and bank assets. Only the United States and the European Union have capital markets larger than $50 trillion – more than double the next largest market. There was also a large gap between the great powers and the rest of the world in terms of financial strength. In percentage terms, Moody's weighted average of bank financial strength for the United States and principal EU countries was 75 percent and 70 percent; the average figure for the rest of the world was 28 percent." (Drezner 2007, 123)

nalities required international solutions.[25] Singer focuses on regulatory agencies as actors and identifies a principal-agent relationship between them and their respective legislatures. Unable to impose rules unilaterally for fear of arbitrage, Singer argues, regulators seek international cooperation once the win-set of balancing competitiveness with stability vanishes. (Singer 2007, 30) Persuading Japan – a strong international competitor – to support the imposition of restrictions on capital available to banks globally, regulators were able to counteract the increasing number of bank failures within western financial markets since the mid-1980s. (Singer 2007, 47) With second-order change collectively in the hands of governments[26], Singer argues, financial regulators in both the U.S. and the UK threatened to exclude Japanese banks from their respective markets to budge Japan's government into accepting capital adequacy rules.[27] Effectively setting his argument apart from traditional market-size approaches, Singer concludes: "Scholars of the Basel Accord agree that the outcome can be explained by a simple acknowledgement of market power, and the analysis presented here is no exception." (Singer 2007, 60) Regulators on the receiving end of such market power found themselves in a situation, in which it was in their interest to keep markets accessible. In the case of Japan's banks this meant that the home-industry had to suffer some short-term disadvantages.

Rawi Abdelal's research ties neatly into these analyses, if only for the low scale second order change with which a socialist French government reacted to globalizing financial markets and thereby unintentionally created the neoliberal politico-economic architecture of the European Union. (Abdelal 2007, 221) One essential part of my argument is Abdelal's substantiation of Europe as a technocratic liberalizer that later served as a foundation of Reisenbichler's intriguing play on the Varieties-of-Capitalism-debate;[28] with inverse roles accredited to either side of the transatlantic.[29] Abdelal sets out explaining why it had actually been "[…] European leadership […] writing the liberal rules of global finance […]" (Abdelal 2007, xi) and he out-

[25] Instead of a commons-narrative, Singer choses to speak about "spillover effects" – a rhetoric that is grounded more in the technical jargon of economics than the cooperation-prone language of International Relations. (Singer 2007, 17–19)

[26] Singer points out that while Anglophone market size was the tool giving U.S. and UK regulators the leverage needed to make the Japanese Ministry of Finance agree to capital adequacy rules, they "[…] did not use their market power to foist a global standard onto the industrialized world with complete disregard for the concerns of other countries. Indeed, the final Basel Accord accommodated some of the preferences of the G-10 countries, Japan included." (Singer 2007, 61)

[27] Following the principle of *keiretsu*, Japan's Ministry of Finance heavily used its banking industry to capitalize its coordinated market economy and, in case of financial difficulties, even provided "[…] funds or arrange the orderly acquisition of the bank's assets by another financial institution." (Singer 2007, 59) On a globalizing market, *keiretsu* created significant imbalances for Anglophone banks, which did not enjoy systematic bail-outs as part of their governments' politico-economic strategy.

[28] Reisenbichler argues the reversal of roles normally attributed to coordinated and liberal market economies. (Reisenbichler 2015, 3) For a more thorough discussion of these roles and an appreciation of change in often too rigidly conceptualized coordinated market economies see: (P. A. Hall and Soskice 2001; Fioretos 2001; P. A. Hall and Thelen 2009; Prabhakar 2013)

[29] I thank Abraham L. Newman for suggesting this formulation.

lines three distinct developments for the puzzling European-ness of global finance.[30] He starts with the usual suspect and diagnoses convincingly that the United States had no incentive to codify neoliberal policies or have the European framework or the IMF do so. Because of its "[…] overwhelming dominance […] in international financial markets […]", U.S. policymakers would have preferred to obtain their goals by what Abdelal calls "ad hoc globalization" rather than becoming constrained by international rules, which are notoriously hard to reverse by virtue of their inclusiveness. (Abdelal 2007, 220) Secondly, he brings into play the European Commission's impetus for codifying the liberalization of capital controls. The Commission had strong incentives to lay down the law of the Union according to its most influential member countries' interests. (Abdelal 2007, 217) This stabilized the European project through continued integration and a concomitant emphasis on supranational European institutions. (Abdelal 2007, 65–67) Eventually, however, Abdelal blames a puzzling interest alignment between France and Germany as the condition sufficiently pushing the EU over a codified neoliberal edge.

During the Mitterrand years, it became clear that multinational firms and global financial institutions could circumvent French restrictions on capital mobility, while at the same time serving "[…] as an instrument of the repression of the middle classes, rather than the control of speculators." (Abdelal 2007, 61) Hoping for a level playing field within Europe, France partnered up with an unlikely ally – at least when it comes to economic policies. Since Ludwig Erhard, Germany's regime of financial controls had been enabling capital flows (Abdelal 2007, 49) and the economic lessons learned from the protectionist 1930s promised to make Germany a reliable partner within Europe.[31] Unwilling to make meaningful concessions to markets intent on protecting their share, German governments refrained from pushing too hard for a European liberalization of capital controls in the decades preceding the late 1980s. (Bakker 1996, 34) However, when France' governing socialists agreed to a full liberalization of capital movements within the community, the German ministry of finance wanted Council Directive 88/361/EEC to apply in full under the erga omnes principle – that is as a right towards all. The reason for this, according to Hans Tietmeyer, former chair of the German Bundesbank, was to put the European project to the test:

[30] "The emergence of a liberal regime for global finance is not best understood as a conspiracy, and much less as one orchestrated by U.S. policymakers and bankers. The most influential plotters were French socialists, German central bankers, and European bureaucrats." (Abdelal 2007, 21)

[31] As a response to the political situation after the Great Depression, Germany overvalued its currency, thereby creating cheaper imports for its drained economy. When in the mid-1930s Hjalmar Schacht developed the system of Mefo-exchanges, the country started printing money to finance the economic programs with which it aimed at creating full employment. The overvaluation of the Mark made it possible to expand its purchase power and therefore limit the extent of inflation. In the short run, this assured the supplies of important goods, while the Reich prepared its economy for war. (Kirshner 1995, 32–40)

> "We saw in full capital liberalization the possibility for a test of the stability of the ERM [Exchange Rate Mechanism] – a test by the markets of policy credibility. We wanted a test by world markets, not just European markets. That was why the *erga omnes* principle was so crucial. Liberalization *erga omnes* would demonstrate that we had in Europe a stable fixed exchange-rate system with market-proved stability, rather than artificial stability provided by controls." (Abdelal 2007, 70)

In the end, Article 7 of Council Directive 88/361/EEC gave member-jurisdictions a political lever stating that governments "[…] shall *endeavour* [emph. ad.] to attain the same degree of liberalization […]" (EC Council 1988, 2) Ultimately, however, this was more a technocratic than a political process and the decision was left to central banks charged with controlling large-scale short-term capital movements.

Since the administrative approach to European centralization promised to at least conceal the power asymmetry within Europe, its political latitude likewise continued to be inhibited.[32] Because of this fundamental building-principle of the EU, the aforementioned ignorance to the crisis' fallout – very much apparent in the hastily laced up "all-in" euro-rescue package (Enderlein 2010, 11) – is only a symptom.[33] Members decided to de-politicize market regulation so that all could agree on a common approach and in the process create a larger market to increase competitiveness; a lopsided decision void of genuinely political ambition.

As outlined above, Rawi Abdelal has argued that while the U.S. is often seen as the main force of financial globalization, the European Union has had considerable influence in legally cementing the free movement of capital both within and outside of its jurisdiction. (Abdelal 2007, 13) Its main tool in creating such an "ever-closer"[34] financial market was a shift of regulatory authority to the European level, which was strengthened when the Treaty on European Union laid the legal groundwork for the common currency in 1992. Part of the Maastricht Treaty was the establishment of an independent European Central Bank (ECB), which gained considerably in importance, because Article 9 of the 2007 Lisbon Treaty constituted the ECB as one of the seven central governing institutions of the EU. (European Union 2007, 16) Fol-

[32] In an interview for the German weekly newspaper *Die Zeit*, Deutsche Bank CEO John Cryan has reiterated what many in the banking sector have long argued made all the difference for U.S. financial recuperation following the credit crunch: "American banks – also politically under the gun– started to increase capital relatively early and improved internal controls. Today, they are ahead of us by three to four years. The American approach was to solve problems quickly, conduct write-offs, pay fines, collect fresh capital – and start over. In Europe, we tend to shelve problems. This has to do with the companies themselves, but Europe's political approach to the financial crisis is also to blame." (Nienhaus and Storn 2017, 23) My own translation.

[33] European finance ministers agreed on a EUR 110 billion first aid bail-out plan and the massive EUR 750 billion European Rescue Fund on May 9, 2010. This decision has been called the single biggest all-in in the history of poker, because if it "[…] goes well, it will go really well. If it goes wrong, the Euro will most likely fail." (Enderlein 2010, 11) Certainly, the mortgage crisis merely triggered the sovereign-debt crisis in the Eurozone due to credit recalls that revealed the enormous structural deficits in Europe's common currency. (Dyson 2010, 19–20; Enderlein 2011, 26–28) Be all this as it may, only two months after European first aid measures were enacted, U.S. President Barack Obama signed Dodd-Frank into law. (Dodd and Frank 2010)

[34] In the founding document of the European Economic Communities, the 1957 Treaty of Rome, its six founding members agreed to put first their determination "[…] to lay the foundations of an ever-closer union among the peoples of Europe […]" and to use economic integration at the center of this effort. (European Communities 1957, 2)

lowing the GFC, the EU has further strengthened its commitment to an independent technocratic regulatory framework. Entering into force on December 16, 2010 (Council 2010, 164), the European Parliament and the Council of the European Union implemented the recommendations of the High Level Group chaired by former IMF Managing Director Jacques de Larosière. (EP and Council 2010) Institutionalizing a system of macroprudential oversight, the EU established the European Systemic Risk Board (ESRB) as part of the larger European System of Financial Supervision (EFSF). The EFSF is also comprised of the European Supervisory Authorities (ESAs) which include the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA). (EP and Council 2010, 5) While all these agencies are part of the larger EFSF framework, the EU stressed its commitment to macroprudentiality in putting the ESRB first among these institutions. Chaired by the President of the ECB, the ESRB commits all EFSF agencies to its mission. (EP and Council 2010, 9)

Parliament and Council put the EU's systemic regulator in policy-receivership and explicitly instructed it to coordinate "[…] its actions with those of international financial organisations, particularly the IMF and the FSB […]" (EP and Council 2010, 6) Keeping in mind what researchers have written about the fragmentation of American regulators, this re-structuring highlights a persistent challenge putting the European Union at a comparative disadvantage. By design, all these agencies are independent. Effectively checking power, the Larosière Group pointed out that independence from political interference can yield many positive results:

> "Based on various internationally recognised standards and codes […] supervisory independence can be defined as a situation in which the supervisor is able to exercise its judgment and powers independently with respect to the enforcement of prudential and/or conduct of business rules, i.e. without being improperly influenced or overruled by the parties under supervision, the government, the Parliament, or any other interested third party. As such, the supervisory authority must be empowered and able to make its own independent judgments […] without other authorities or the industry having the right or possibility to intervene. Moreover, the supervisor itself must base its decisions on purely objective and non-discriminatory grounds." (Larosière 2009, 47)

In a political union comprised of 27 states, "objectivity" is a critical term regarding regulation; and it is a double-edged one at that. It covers the assumption that cooperation regulators necessarily have to have with the industry in overseeing its potential externalities is generally unproblematic and that non-interference would be, in any way, an apolitical decision.

David Levi-Faur challenges academic accounts that critically admonish the negative impact neoliberal policies have had on elected governments' socio-economic steering-capacities. (Levi-Faur 2005a, 17) While he does not deny the ideology's dominant influence, Levi-Faur

also points out that globalization has led to a horizontal pattern of diffusion, within which autonomous regulators, who share "[…] profession, hobbies, and lifestyle […]" exchange their views (Levi-Faur 2005a, 26) and through that process transform the "[…] neoliberal agenda […] in unexpected ways." (Levi-Faur 2005a, 13) These unexpected ways, he argues, have caused a regulatory capitalism that re-defined "[…] the boundaries between the experts and the politicians […]" and created "[…] a regulatory revolution [that] is gathering pace despite the hegemony of neoliberal ideology." (Levi-Faur 2005a, 27) Levi-Faur's benevolent assessment of the virtues of "autonomous expertise" and "impartial analysis" are mirrored in regulatory practice; and of course Europe is by no means alone in this. The FED, for example, maintains offices and personnel inside the banks it regulates to gain expertise, which for several reasons poses an enormous problem to whatever concept of objectivity we apply.[35]

The de Larosière Group was not oblivious to the dangers of regulatory capture and, therefore, stressed that "[…] to strengthen legitimacy and as a counterpart for independence, proper accountability to the political authorities at the EU and national levels should be ensured." (Larosière 2009, 47) The report, however, relies conceptually on a rather complicated chain of legitimacy. Because of the ESRB's institutional interdependence with the ECB, no EU institution is qualified to exert direct political control over any of the new regulators.[36] As an answer to the problem this lack of political oversight poses, the de Larosière group recommended on February 25, 2009 a strengthening of the FSF. To improve its accountability, a new and reformed FSF should have to report to the IMF and the Basel Banking Committee. While some of the report's recommendations were realized – chapter three will establish why –, less than two months after its publication, the reform of the FSF went a different way structurally. Nevertheless, what we can establish for the present argument is that Europeans – ignoring how the diversity of 27 member-states in the council would itself become a check on political power – failed to set-up a mechanism that would give members latitude in times of politico-economic crises.

Transferring this willingness to replace political latitude with inflexible legal norms to the post-crisis era, John Kay argued alongside the structural implications of the Varieties-of-

[35] During my field research one of my interviewees elaborated on the differing experience regulatory agencies have in the macroprudential oversight of financial sectors: "The Federal Reserve has a long history of that kind of macroprudential oversight. The Federal Reserve stations people at the banks. That's where their offices were created. They may have a dozen people in a major bank 24/7 one way or another. The SEC had probably twelve, 18 people for all of them and they were not stationed there." Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

[36] Discussions on the difficulties that abound in Europe between its mix of intergovernmental and supranational institutions have led to the consensus of calling the Union a system "sui generis." Starting with the sovereign debt crisis in the Eurozone, pro-European academics, journalists, and technocrats have posited that an answer to the crisis has to be "More Europe!" (Enderlein 2011, 29) Calls for a supranationalization of financial oversight have not subsided since then. Also in 2011, Jean-Claude Trichet called for a common European ministry of finance when he received the Charlemagne Price (Trichet 2011, 6) and more recently members of the ECB's Board of Directors have pressed for this idea hinting that France and Germany would both be open for such reform of the European Treaties. (Schubert 2015)

Capitalism debate. Referencing France's and Germany's corporatism, he diagnosed that both "[…] have done the least to implement substantive financial reform since the global financial crisis." (Kay 2015, 287) I propose that one can realistically expect European representatives to continue their technocratic approach when it comes to international financial regulation; particularly since Europeans – lacking any initial appreciation for their own involvement – felt comfortable not to doubt their approach.

> Argument Three:
> Market-power explains why the U.S. was capable of leveraging the size of its market into influence and to do so unchallenged by Europe, which lacked the political willingness to press for a new set of regulatory rules. Europe's disposition to replace politics with technocratic rules, therefore, made it unable to counterpose U.S. market power.

With Europeans fixated on a technocratic and largely non-political approach to financial regulation, the question remains what kind of change the United States dominated. This debate is starkly influenced by the diagnosis of and ensuing disappointment with the not-so-sweeping reforms that shaped international finance following the meltdown in 2008. Many observers have labeled the credit crunch as the worst financial crisis since the Great Depression of 1929. (Fioretos 2010a, 714; J. Buckley and Howarth 2010, 119; Collyns 2008; The Economist 2008c; Mankiw 2008; G-20 2009b; The Economist 2009a; Greene and Boehm 2012, 1093)[37] Any comparison with this particularly critical point in economic history evokes associations of the Bretton Woods system as the immediate reaction to the Great Depression. Referencing this multilateral feat, observers from academia, international organizations, and the press became frustrated when it turned out that a replication of this historically unique period of politico-economic stability would not come to pass. (Blyth 2013a, 43–44; G. K. Wilson 2012; Lin 2013, 194–97; Kay 2015, 281–87)

Almost as a matter of course, revolutionary second-order change failed to materialize. Some historical institutionalists were amongst the first to decry the inertia of regulatory structures as the main source of why the world had to observe structural continuity throughout dramatic changes:

> "And, as late as the early autumn of 2008 when the largest financial crisis since the Great Depression became a global reality, G-7 governments and the hedge fund industry oper-

[37] Some accounts go beyond the comparison and use it as a similar case study to outline the differences to the economic situation in the interwar period. The IMF, for instance, takes up the comparison to show how the GFC differed in quality from the Great Depression. The IMF's main message is that international cooperation has helped to "[…] avoid the worst of the past." (Collyns 2008, 7) The Economist, on the other hand, combines criticism of the financial industry with a caveat: "[i]f the price of sophistication is instability, something is wrong. You might conclude that the thing to do is to shackle finance as it was shackled in the 1950s and 60s. If ever there were a moment for this, it would be now. It takes a big upheaval to open the way for radical reform." Nevertheless, The Economist warns that (a) completely shutting down international finance would be a mistake in an otherwise globalized economy and would (b) only lead to a situation, in which – very much akin to the state of affairs in France's regime of capital controls before 1988 – "clever financiers work around the rules." (The Economist 2009a)

> ated under the assumption that a self-regulation regime based on the promotion of an unenforceable set of global best practice standards without direct public oversight would be the core of a global regulatory regime for hedge funds." (Fioretos 2010a, 714)

Fioretos is not the only scholar who identified hedge funds as among the main culprits (Lysandrou 2012; Huang and Wang 2013; Mählmann 2013)[38] and for many historical institutionalism was the intellectual weapon of choice to make sense of how the socialization of finance's externalities was met with what these authors felt were sluggish international reforms.[39] While this thesis argues that the U.S. actively employed its market power to affect regulatory change where it aligned with its interests, historical institutionalism puts emphasis on the structures that inhibit agency. Joseph Jupille, Walter Mattli, and Duncan Snidal have presented a theory that attempts to square inert structures with political latitude and, hence, appears to be particularly fitting. Their monograph *Institutional Choice and Global Commerce* maps potential choices within institutional settings based on a historical institutionalist heuristic. The theory's bias in explaining status quo policy-making communicates well with some of the abovementioned frustration, which is why I maintain that market power is better suited to explain the virtual lockstep of international regulatory change with U.S. domestic reforms.

Ontologically, the authors turn to rationalism's philosophical aporia[40] and adopt a concept of boundedly rational actors. (Jupille, Mattli, and Snidal 2013, 34) Jupille et al. argue that once international actors have collectively decided to meet a challenge they will follow a sequential process (Jupille, Mattli, and Snidal 2013, 35) down a decision tree comprised of four consecutive choices: use-select-change-create or USCC. International actors will either make use of an existing focal institution or select between "[…] two or more […] plausible alternatives […]" (Jupille, Mattli, and Snidal 2013, 29). Should the selection process yield no results, relevant actors can change existing cooperative arrangements before, as a last resort, they have

[38] Photis Lysandrou's contributions have been particularly critical. His article in the Journal of Post Keynesian Economics bears the title "The primacy of hedge funds in the subprime crisis" (Lysandrou 2011) All observers agree that hedge funds, even those who do not hedge, pose a systemic risk primarily because of their intense reliance of leverage. (Stowell 2013, 221) What is more, hedge funds do make for intriguing culprits due to systemically critical defaults in the past and the continued practice of self-regulated oversight. (Edwards 1999; PWG 1999a; Kambhu, Schuermann, and Stiroh 2007; Engert 2010; Pagliari 2012; Wull 2012; Fichtner 2014; Sennholz-Weinhardt 2014) However, Robert J. Bianchi and Michael E. Drew have emphasized that the leverage argument applied to almost the entirety of actors in the market. Curbing the disruptive power of hedge funds is not a panacea for an overall regime of financial regulation that played fast and loose with the availability of credit. (Bianchi and Drew 2010, 24) An abundance of credit – and the concomitant mispricing of risk – caused the financial crisis and since hedge funds operate on leverage they most certainly played their part in its amplification. But, as intermediate variable hedge funds deserve only part of the ensuing regulatory attention and zeroing in on hedge funds exclusively would leave unattended the underlying issues that the crisis revealed. (Crotty 2009, 568–70)

[39] As quoted above from The Economist, governmental interventions to support the economy came at the expense of public trust. (The Economist 2015, 15) With the troubled asset relief program (TARP), public opinion justifiably started castigating an apparent "lemon socialism"; an economic form of hypocrisy that acclaims entrepreneurial success, but has taxpayers chip in once the risk taking goes sideways. (Krugman 2009b; Will 2008)

[40] To Jupille et al. it is clear that "[…] in order to know whether to acquire more information, one must know its potential value, which, of course, is exactly what actors do not know given their ignorance of the alternatives (and hence their value)." (Jupille, Mattli, and Snidal 2013, 34)

to decide whether or not to create an entirely new mode of regulatory cooperation. (Jupille, Mattli, and Snidal 2013, 30)

On the face of it, the institutional reforms from FSF to FSB seem to echo the theory of institutional choice. Conceptualizing actors as boundedly rational helps the authors to stay clear of the lack of theoretical micro-foundations inherent to historical institutionalism. (Rixen and Viola 2014) What is more, the decision tree of USCC cushions the theory's dependence on the oftentimes big bang-like understanding historical institutionalists have of so-called critical junctures.[41] Due to its focus on the USCC process, Jupille et al.'s institutional choice theory seemingly resonates with an observation Eric Helleiner has made about any Bretton-Woods comparison. Discussing its rhetorical value, he emphasizes the comparison's usefulness in prodding heads of state and government towards more decisive action. Helleiner insists, however, that invoking Bretton Woods should not lead to expectations that misconstrue either the developments following 1944 or project a reductionist, pseudo-historical understanding onto today's world: “The creation of a new international financial system, in other words, was not a product of that single meeting but rather the outcome of a much more extended historical process.” (Helleiner 2010a, 620)

Relating to international financial services regulation, institutional choice theory, nevertheless, displays shortcomings, which result in an almost predetermining bias for structure. Three reasons stand out: a lack of genuine distinction from other approaches, a problematic conceptualization of actors and their respective interests, as well as an overemphasis of aggregate decision-making on the international level. First, Jupille et al. make a circular argument when they state: “Focal institutions are a power resource for actors that are advantaged by them.” (Jupille, Mattli, and Snidal 2013, 42) The inherent assumption here is that any form of exogenous shock has already revealed a power shift that – properly reflected – would exert shear stress on the present institutional design. If, however, the underlying distribution of power does not change, structure as an independent variable loses its significance. Institutional choice theory fails to answer a question it has raised itself, namely whether or not structural changes are dependent on a regime's underlying distribution of power with which actors created the structure in the first place.

Second, Jupille et al. put the cart before the horse when it comes to actors. Their main assumption regarding the inertia exuded by existing structures is that further down the decision

[41] The very concept of critical juncture is rooted in an essentialist understanding of historical events. The importance accredited to such events is, of course, an act of interpretation. The understanding that significant change follows from such junctures runs the danger of a binary understanding of what constitutes change and results in an underappreciation of what incremental changes can affect in the future. The irony of critical junctures is that as a concept it makes incremental developments – if you look close enough sudden changes become rare and incrementalism more the rule than the exception – seem anti-change, thereby defying the very historicism the theory attempts to re-introduce to social science.

tree actors are faced with – and, hence, encumbered by – increased uncertainty costs. According to Jupille et al., these include "[…] both the transaction costs of searching for and bargaining over new institutional arrangements […]" as well as sovereignty costs. (Jupille, Mattli, and Snidal 2013, 25) The latter prove to be specifically burdensome due to domestic opposition and ratification processes. (Goldstein et al. 2000, 396; Kahler 2000, 668–69)[42] While one could argue that existing structures tied the world community to the FSF/FSB-regime, we do not get a satisfactory answer to two questions: Why would a network supported by a negligible staff and run by its members impose relevant costs at all? And even if the inertia argument holds, why would actors already tied to and, therefore, inhibited by structures collectively decide in the midst of a crisis to enlarge the circle of parties participating in FSB negotiations?

It, therefore, comes down to a debate in which actors are pitted against structures. USCC relies heavily on aggregate decision-making without accounting for why some voices matter more than others. During the months following the GFC, arguments along the lines of the savings glut debate[43] suggested an organizational form featuring a comprehensive membership. Assuming collective or aggregate decision-making necessarily follows a logic of sovereign equality, which makes the continued, yet institutionally deepened, existence of the FSF as FSB unlikely. To employ the language of institutional change, if the plan was to change or create a more inclusive organization, why not use an existing one? If not for the FSB as a vehicle of American market power, the IMF could have presented an attractive institutional option.

Compared to the IMF, however, it turns out the FSF did not have a structural problem per se, which keeps institutional choice in play as a theory. The organization's expertise had not experienced a dent in legitimacy comparable to the IMF. Fund experts failed to foresee the credit crunch and even legitimized regulatory authorities in the U.S. during its Chapter IV consultations during the summer of 2007. The Fund was aware that the interconnectedness of finan-

[42] One aspect in favor of the FSB as a vehicle dispersing American reforms was that as a member-driven network it was not established under international law. Established since early 2013 as a Swiss a non-profit association, its consensus-driven decisions are not binding. (FSB 2015d, 16)

[43] In 2005, Ben Bernanke, former chairman of the U.S. Federal Reserve, pointed to the imbalances due to the self-insurance activities of Asian economies after the Asian Financial Crisis. IMF policies in the crisis' aftermath left these countries skeptic about the virtues of multilateral monetary cooperation. Bernanke assumed that Asian monetary self-reliance led itself to a balance of payments mismatch. He warned that a systematic acquisition of U.S. government debt by Asian economies and the deficits in American domestic saving was "[…] implying a rise in the current account deficit and increasing dependence of the United States on capital inflows." (Bernanke 2009, 9) The savings glut argument has been disputed from various economic angles (Shenai 2014, 152) What is significant for the present dissertation is that the political ramification of this discussion led to considerations to create a globally encompassing financial services regulator charged with assuring systemic stability. One of the interviewees emphasized the IMF's expertise and capabilities in ensuring systemic stability and voiced frustration over the club-like arrangement that became the FSB. Interview on September 16, 2015. Comments not for attribution. Reference code: 4SBE9E. See also from the literature: (Strauss-Kahn and Draghi 2008; Momani 2010; Chwieroth 2010, 288–89).

cial markets could transmit financial disruptions swiftly into the real economy. (IMF 2007, 20) Its evaluation was, however, optimistic of the economic "slowdown" and projected a soft landing (IMF 2007, 4) for an otherwise robust U.S. financial industry:

> "Profitability and capital adequacy of the banking system are high by international standards. In particular, for large bank holding companies, the reduced interest margins from low long-term interest rates and a flat-to-slightly-inverted yield curve have been more than offset by rising fee income and near record-low defaults. Reflecting this, and despite a recent uptick following subprime difficulties, market measures of default risk have remained benign." (IMF 2007, 14–17)

At that point, the FSF had already published a report that called for stricter regulatory oversight of highly leveraged institutions. (FSF 2007, 3) What is more, the 2007 report was an update of an earlier publication. In its 2000 assessment of the Asian Financial Crisis, the FSF had attempted to increase awareness that the disastrous crash of Long-Term Capital Management was due to excessive leverage ratios, which could just as easy cause severe market disruptions in developed economies. (FSF 2007, 1) This time around, the FSF warned that ever more complex financial products would not only outrun current regulatory oversight, but also significantly heighten systemic risk. (FSF 2007, 10) On April 7, 2008 – five months prior to Lehman's default –, the FSF warned that global finance's "[…] volume and complexity in recent years […] had systemic effects that crossed national and sectoral boundaries." (MIR 2008b, 43)

This suggests that the Forum was reformed because enlarging its membership kept it at a manageable size well below the Fund's 189 members, its expertise was valued, and its scope – as an entity solely devoted to financial services – was deemed appropriate. This narrative however does not fit with USCC's aggregate understanding of agency. This is why my thesis posits that all these indicators plausibly point to the material interests of the United States as the largest regulatory jurisdiction for financial services. America assumed a leadership role, leveraged its market power to realize its interests, and in that course relevant international partners were given a strong incentive to follow suit.

Other scholars have also written extensive rebukes of institutional choice based on its structural bias. Tobias Hofmann has criticized bounded rationality as inconsequential because it provides only insufficient discriminatory power:

> "It is not always (made) clear whether states did not care to collect additional information, were incapable of processing available information, or found themselves in an inherently incomplete and/or imperfect information environment and, most importantly, what difference it would have made for their *collective* [emph. ad.] use, selection, change, and creation decision." (Hofmann 2014, 383)

Unsure as to what the theory's ontological conceptualization of actors comes down to, Hofmann exposes bounded rationality as an analytical compromise ill-suited to bridge agency and structure. That Jupille et al. try to have their cake and eat it, too, has likewise been pointed out by Eleni Tsingou for whom USCC posits too lean a narrative. Tsingou argues the monograph's empirical chapters "[…] might have benefitted from more attention to detail […]" (Tsingou 2014, 672) and ironically exposes institutional choice to criticism that was originally intended to promote historical institutionalism in the first place.[44] As one of the reference scholars at the interstices of social science and historical research, George Lawson stresses how historical accounts can enrich political science research by improving the field's understanding of diachronic processes through its emphasis on critical source analysis. (Lawson 2006, 415) He warns, however, that history is too often mistaken for scripture with lessons from the past informing research on questions in the present. (Lawson 2012, 204) History in fact does not rhyme all too often and Lawson stresses that political science should not "[…] reduce the past to a 'pick-and-mix' sweet shop which is raided in order to satisfy the tastes and tropes of the researcher." (Lawson 2012, 205)

Institutional choice theory, however, would indeed lead us into this sweet shop. Jupille et al. ignore actors' preferences and their respective material capabilities and instead trap any meaningful agency in predetermined structures. It is important to note that this is not to say that historical accounts are meritless in social science. To the contrary, one wonders why an approach squarely in the field of historical analysis would take its own parsimony so far until all that is left is some structurally refracted form of path-dependency. Institutional choice defies the very historicity scholars in these adjacent fields have promoted by creating knowledge on a case-by-case approach. My argument is, instead, that the United States yielded influence derived from the size of its market to induce organizational change and adjust[45] the institution of international financial services regulation more generally. The change that we can observe, then, is due to a substantial commitment by the United States to coordinate financial regulation internationally. Therefore, the U.S. as an actor induced the change at the FSB with the intent of using the organization to spread its domestic regulatory agenda internationally.

> Argument Four:
> Stressing the role of the state in implementing America's financial reforms as a distinctly political agenda, market-power's focus on actors has more explanatory power than historical institutionalism's structural status-quo bias.

[44] All in all, Tsingou has some backhanded praise for Jupille et al. Even though she points out that their contribution to historicize international relations is not entirely new, she accentuates that institutional choice theory "[…] makes a case for the value of theoretical bridge-building in developing this type of research further." (Tsingou 2014, 672)

[45] Throughout this thesis, adjustment comes as a tool necessary for interest-based re-regulation. It is defined as a function of a market-power induced alteration within non-ergodic change options.

Theoretical Approach

Having criticized institutional choice for its status-quo bias, it is important to note that market power is also different from classic market-size arguments. By itself, market-size is just another structural argument, which posits that somehow change occurs without making explicit the way that agents translate politico-economic potential into actual results. Neo-realist approaches in international relations theory assume that state-behavior is dominated in one way or another by the anarchy that results from the juxtaposition of sovereign states concerned above all with ensuring their very existence. (Waltz 1959; Krasner 1982; Mearsheimer 1983; Walt 1990) Recognizing that politico-economic realism is less about the self-interest in survival but concerned with the balance of relative and absolute gains, Dan Drezner joins this research tradition in his monograph *All Politics is Global* – a catchy play on a bon mot coined by Philip "Tip" O'Neill. (O'Neill 1987) Drezner's research contradicts transnational approaches that pronounce the dissolution of state authority in a globalized world. His aim is to conceptualize a theory that "brings the great powers back in." (Drezner 2007, 3–9) Acknowledging a globalizing world and re-introducing states as central actors, Drezner admits that his research is informed by Andrew Moravcsik's seminal work on the role domestic interests play when formulating preferences for international negotiations.[46] This, however, does not prevent Drezner from simplifying market-size as a function of the share a respective state can claim in a particular area of business. He then translates this share into influence: "In an era of globalization, market size can still be translated into government power." (Drezner 2007, 32)

It is central to the research question at hand that Drezner's theory – as appealing as it is due to its vast generalizability – does not fit with the empirical data available following the global financial crisis. In his chapter on transatlantic financial services regulation, Drezner talks up the FSF as a club, in which compromises are collectively struck between great powers on both sides of the Atlantic. (Drezner 2007, 119–48) Drezner leaves his readers with a vague mélange of institutionalism's collective bargaining and a realist position on market size somehow translated into power. Much like the USCC framework, this inability to differentiate power resources and situate them according to actors' interests keeps Drezner from understanding how the United States could advance its foreign economic policy goals after the credit crunch had significantly weakened its market-share. In short, Drezner's Great Powers argument sacrifices a historically sound appreciation of actors' interests for the sake of generalizability. This is ironic, because resting on the assumption that two powers rely on compa-

[46] This distinction between set interests from which flexible preferences are derived and which can then be stratified, is implicit in Moravcsik's work, but never clearly stated. (Moravcsik 1997; Keohane, Moravcsik, and Slaughter 2000; Moravcsik 2002, 2008)

rable power resources (Drezner 2007, 129), his theory describes a situation that is unlikely to ever precisely occur.

In light of the above, my study rests on two principles. First, interests are diverse and actors play vital roles in voicing and utilizing theirs. And second, state and market are social realms positioned next to each other in their influence on social change. This stands in theoretical contrast to the state-heavy argumentation of realist IR theory, where – crudely put – sovereign nations make decisions supported by the power of their markets. However, if realism glosses over the subtler influences agents can exude beyond their structural confinements, studies on the prevalence of the market and its actors are equally unfitting for a study that stresses the deliberate re-regulation of entire industries after 2008. (Lipschutz 1992; Underhill 1995; Strange 1996; Matthews 1997; Keck and Sikkink 1998; Chwieroth 2010; Cutler 2010; Engert 2010; Goldbach et al. 2010; Atik 2011; Kaal 2011; Hale and Held 2012; Rauterberg and Verstein 2013) My approach uses market-power as a function of the deliberate leveraging of market-size by state actors asserting their interests at a time when this leveraging could reasonably be expected to affect a desired outcome. In this regard, my account analyzes the relative distribution of power between state actors and market participants. Hence, the central underlying tenet of this study is that state and market are complementary and interpenetrative forces. Under the administration of then-President Barack Obama, the U.S. took the initiative to impose new and meaningful regulatory changes, which – given the global scope of international finance and to avoid arbitrage – necessarily required that these regulations would apply globally.

In this, my research stands in the tradition of what Fran Tonkiss and Don Slater have described as the ever-changing and fluid relationship between state and market, who wrote in the tradition of Karl Polanyi that "[…] the margin between them is a site of interaction, regulation and mediation. The interface between the state and the market is relative to specific forms of economic government at different political moments." (Slater and Tonkiss 2001, 147) Slater and Tonkiss' enormous contribution to the study of political-economics has been to draw on Polanyi's 1944 study of "The Great Transformation." (Polanyi 2001) Polanyi's ultimate intellectual hope was for the emergence of what he called complex societies – a co-existence of nations employing diverse economic philosophies and willing to decidedly distance themselves from those political clutches the Cold War would nevertheless continue for 45 years.[47] Building on Polanyi's extensive anthropological delineation of market society as a

[47] The Great Transformation saw the slaughtering on the European continent to be mandatorily followed by an episode of socio-economic reconciliation: "[…] it will become possible to tolerate willingly that other nations shape their domestic institutions according to their inclinations, thus transcending the pernicious nineteenth-century dogma of the necessary uni-

relatively young intellectual concept, Slater and Tonkiss revisited these "different political moments" and pointed out that "[…] the powers and problems involved in markets can best be understood and opposed by understanding them as diverse and localized phenomena […] rather than by treating them as generic technical solutions or as the thin end of inevitable oppression." (Slater and Tonkiss 2001, 202) It is central here that these political moments are understood as points in time, at which the regulators and the regulated employ existing structures to serve their interest while at the same time maintain their autonomy to go beyond the structures implemented by previous actor choices.

Balancing actors' interests with existing structures in a time of regulatory reform makes it necessary to theoretically address the oftentimes sweeping observation of regulatory capture and, hence, to acknowledge the more nuanced role actor interests play during times of regulatory change.[48] The concept of regulatory capture goes back to George Stigler's seminal phrase that the coercive powers through which the state is able to "[…] ordain the physical movements of resources […] provide the possibilities for the utilization of the state by an industry to increase its profitability." (Stigler 1986, 245) Scholarly work by Marver Bernstein[49], Anthony Downs[50], and Mancur Olson[51] preceded Stigler's research. Already in 1955, Bernstein

formity of domestic regimes within the orbit of the world economy. Out of the ruins of the Old World, cornerstones of the New can be seen to emerge: economic collaboration of governments *and* the liberty to organize national life at will." (Polanyi 2001, 262)

[48] One instance supporting this claim is Dodd-Frank's regulation of "the banking industry." As president of the Independent Community Bankers of America (ICBA), Camden Fine became one of Barney Frank's most important allies. Fine had worked hard to establish that there were two kinds of banks out there: big investment banks responsible for the crisis and community banks with sustainable ties into the communities that they serve. On his second day in office, President Obama's Secretary of the Treasury, Timothy Geithner, called Fine and invited him to a "[…] seventy-five-minute tête-à-tête […]" (Kaiser 2013, 138-39) Fine became an ally of the administration, because, as he put it in an interview for Robert Kaiser's *Act of Congress*, he knew that if small banks would join larger institutions in their opposition to regulatory reform: "[…] our voice would be lost, and the community banks would just be roadkill on the financial highway. Because we would have played right into the hands of Wall Street, and there were genuine issues that divided us." (Kaiser 2013, 139–40) At the end of the day, joining forces with an administration committed to sweeping regulatory reform payed out for Fine and his association. Frank ensured that Dodd-Frank's new watchdog agency, the Consumer Financial Protection Bureau (CFPB), would have supervisory authority only over banks with assets exceeding a USD 10 billion threshold. (Kaiser 2013, 161) And the Gutierrez amendment increased the share with which large financial institutions have to support the Financial Deposit Insurance Corporation (FDIC). Adding an extra USD 1.4 billion in increased funding to the U.S. agency in charge of insuring the assets of depositors of American banks meant that community banks did not have to come up with this sum. (Kaiser 2013, 164)

[49] In a paper published in 1989, Sam Peltzman claims that the term "regulatory capture" was originally coined in 1972 by William Jordan in the Journal of Law and Economics. Peltzman correctly points to the lack of an explicit wording in Stigler's original piece and, for the field of economics, 1972 might even be the birth year of the concept. (Peltzman 1989, 5) Bernstein's politico-economic research, however, established that notion almost 20 years earlier. Bernstein's publication is based on the observation that independent commissions are sometimes seen as "[…] ineffective and will remain so as long as they are *caught* [emph. ad.] in the political cross fire between the president and Congress." (Bernstein 1955, 4)

[50] Based on Joseph Schumpeter's assumption that the behavior of political actors could be functionally compared to that of economic actors, Downs theorized the actor as a homo oeconomicus. (Downs 1957, 49) According to this view, individuals make decisions based on linear, non-competing preferences. (Downs 1957, 166–68) Downs' work has been extensively criticized, but with regard to regulatory capture, the rational choice approach focused scholarly attention on the conflict between the short-term interest of electable principals and their agents, and long-term policies geared towards the public good – and this is where Mancur Olson's theory comes into play. See next fn.

[51] Olson went one step further than Downs, basing his analysis on the difference between actors' rationality (Olson 1971, 63–65) and actors' self-interest, i.e. their drive towards maximizing benefits. (Olson 1971, 86) His contribution in *The Logic of Collective Action* was to argue a compelling case for the advantage that privileged groups enjoy over latent ones. With private goods accruing material benefits for small groups, latent group interests are at a strategic disadvantage in defending

was puzzled by the existence of independent regulatory commissions like the SEC as the outcome of a period of strong government intervention. If the SEC served the obvious necessity "[…] to prevent fraudulent manipulation of the securities markets and to fix the blame for the depression," then why was the responsibility to regulate finance not given to the executive branch? The answer shapes his general argument. Empirically anticipating Schlesinger's concept of the imperial presidency (Schlesinger 1973, 115), Bernstein argued that representatives of the legislature supported the SEC "[…] as a device for counteracting the trend toward the concentration of power in the executive branch under a strong president." (Bernstein 1955, 53) Years before macroprudential regulation and systemically important financial institutions entered public discourse, Bernstein argued that in addition to institutional ambiguities ideology posed a potential stumbling stone for public good regulation:

> "[…] the laissez-fair bias in popular American thinking has placed the commission on the defensive. Popular preference for a self-regulating economy operating according to natural economic law rather than governmental direction challenges one of the premises upon which the idea of the commission is based, namely, that government commissions are needed to help save capitalism from destroying itself though its own abuses." (Bernstein 1955, 13)

Evaluating independent commissions from this ideological denominator, or "mental map,"[52] in American society, Bernstein concludes that independent agencies are an integral part of the regulatory governance structure in the U.S.[53] However, his original puzzle and the capacity of small groups to lobby for privileges led him to normatively argue for an involved and active state: "[…] the function of political leadership is to maintain the vitality and integrity of regulation in the public interest." (Bernstein 1955, 260)

When we look at subsequent scholarship, we understand the appeal of regulatory capture as a heuristic tool. As Stigler has pointed out, at times capture involves a direct transfer of money, but more often will be composed of a set of structural privileges that make market access harder for competitors. (Stigler 1986, 245) James Wilson has outlined that the logic of manag-

public goods from the externalities of private interests, because the members of latent groups are less well organized since no member can be excluded from enjoying a public good. (Olson 1971, 141–48)

[52] Some institutionalists have argued that structures are not only established by ideological presuppositions, but also stabilize them in the long run. In their article *Political Science and the three new institutionalisms*, Peter A. Hall and Rosemary Talyor have outlined how this assumption effectively challenges the ontological premise of rational choice institutionalism. (P. A. Hall and Taylor 1996, 942) Douglass C. North, in particular, has based his research on the question why inefficient institutional designs could resist competitive pressures compared to ahistorical coordinative solutions. He argues that during early learning stages individuals process "[…] information through pre-existing mental constructs through which they understand the environment and solve the problems they confront." (North 1990, 20) This throws into question how change in general can be expected to occur, since these "mental maps" (Denzau and North 1994, 13) become self-reinforcing in that they "[…] structure the very choices about reform that the individual is likely to make." (P. A. Hall and Taylor 1996, 940)

[53] Bernstein quotes William O. Douglas to underscore the normative exuberance regulators displayed during the SEC's early days. Douglas, Chairmen of the SEC and subsequently called for the Supreme Court's bench, was highly critical of the aforementioned practice that markets could regulate themselves: "They [regulatory agencies] have become more and more the outposts of capitalism; they have been given increasingly larger patrol duties, lest capitalism by its own greed, avarice, or myopia destroy itself." (Bernstein 1955, 244)

ing scarce resources also influences politics. (J. Q. Wilson 1980, 363) According to Wilson, public good regulation only occurs when new actors challenge existing regulatory practice and lobby effectively for change that accidentally rather than purposively ends the unfair distribution of privileges. (J. Q. Wilson 1980, 365) However, he only identified interest-driven market participants as accidental change agents for the public good. (J. Q. Wilson 1980, 367–70) His critical scholarship was later expanded by Walter Mattli and Ngaire Woods, who have argued that common interest regulation is likely to be triggered when exogenous shocks make regulatory entrepreneurs endogenously lobby for change. (Mattli and Woods 2009a, 4) These entrepreneurs become necessary, because latent groups – themselves stakeholders – are unlikely to effectively organize so as to affect desired changes.

Three kinds of entrepreneurs are supposed drivers of overcoming the status quo: (a) national and international non-governmental organizations (NGOs, INGOs) as well as other civil society groups, (b) public officials, and (c) entrepreneurs of regulatory change that originate in the private sector. (Mattli and Woods 2009b, 2009a, 28–36) The entrepreneurial alliance effecting change is built on interests and ideas converging on a specific interpretation of provided information. (Mattli and Woods 2009a, 21) But, the theory does not expound on how change agents interact with the existing regulatory structure. Instead, Mattli and Woods argue that a bias towards the status quo is indicative for both regulatory capture and the dominance of actors with entrenched interests. (Mattli and Woods 2009a, 4) Their conception of change, therefore, mainly accounts for the hurdles with which the existing status quo inhibits altering privileging practices. Wilson identified this problem in his account:

> "Whoever first wished to see regulation carried out by quasi-independent agencies and commissions has had his boldest dreams come true […] There is supposed to be an 'iron triangle' of influence linking each agency, congressional committee, and interest group into a tight and predictable pattern of action, but we have not seen many of these triangles. Those we have seen appear to be made of metal far more malleable than iron." (J. Q. Wilson 1980, 391)

Wilson's account demonstrates the obstacles reformists on the domestic as well as international level will encounter, even after a crisis, when embedded interest groups have created structures that are a power-resource for those regulated. Their reform, it follows, makes a strong political commitment necessary. It is at this juncture that I see the concept of market power contributing to a politico-economic discussion on the role of the American state following the global financial crisis. A re-regulation of financial services necessarily pits state-actors, and their allies in civil society and the financial industry, against those expecting to profit, or at least not to continue losing, from keeping rules unchanged. It follows that a diagnosis of the regulatory pendulum swinging back to a more involved state also requires reflect-

ing that agents will have to focus their regulatory interests, i.e. that market power necessarily has limits.

In the context of this study, I therefore propose a concept of within-system change that is dependent on market-power. Regarding the U.S., market size has created interests in a stable and competitive industry. (Singer 2004, 537) As a reaction to the GFC, the Dodd-Frank reforms were aimed at reforming those issues whose surfacing during the crisis made them the most pressing. Using its market power, the U.S. then projected its reform agenda onto the international level and, thereby, created an incremental domestic-international tandem change, with which it re-regulated its market without losing competitiveness internationally. In 2011 Eric Helleiner and Stefano Pagliari published a "Postcrisis Research Agenda," in which they stated: "Those concentrating on the interstate political arena need to address a power shift in finance revealed by the crisis and to conceptualize power in international regulatory politics more broadly than just in terms of 'market size' and 'power-as-influence'" (Helleiner and Pagliari 2011, 196) This study combines a market-power argument with the assumption of non-ergodic, structurally inhibited change. Hence, it contradicts the power-shift suggested by Helleiner and Pagliari and instead proposes the prevalence of American dominance in the regulation of international financial services.

Methodological Approach

To substantiate how market power projected U.S. interests, this study choses a qualitative approach based on an empirical narrative in chapter two that expounds on why central ideas of macroprudential regulation predated the credit crunch. In outlining the expertise that powered the U.S.' global strategy, this chapter provides the groundwork for subsequent cases. Chapter three traces the development that led to very specific reforms at the FSF. Here, the main conflict line is that crucial European players unsuccessfully opposed American reform proposals. The remaining five cases will then take up central elements from the FSB's agenda. Three cases – banking regulation, the related yet distinct regulation of systemically important financial institutions (SIFIs), and reforms to derivatives trading – are part and parcel of Dodd-Frank's agenda. Constituting a fait accompli, U.S. domestic regulatory reform restricted global reform movements. The last two cases analyze the observable gridlock the FSB has experienced with its agenda for shadow banking reform as well as the harmonization of accounting standards; two areas in which Dodd-Frank did not put forth reforms. These two negative cases, therefore, eliminate both a hypothetical independent role of the FSB and the

assumption that market-size itself is an appropriate explanation for the regulatory changes that followed the financial crisis.

The selected cases for my study vary four to two on the theorized causal relationship between existence/non-existence of U.S. regulatory change – the inferred assumption that this represents American interests – and the success/failure of the FSB's global regulatory agenda. Conducting essentially interpretive case studies, I follow Alexander George's concept of qualitatively tracing the processes that led from market power to rule internationalization.

Already a seasoned scholar in 1979, George allegedly appropriated the notion of process-tracing from the study of psychology and introduced it to the field of political science. (Bennett and Checkel 2015, 5) George was frustrated with history and political science as the disciplines "[…] drifted steadily apart as political science responded to the challenge of the scientific 'behavioral' movement in the social sciences." (George 1979, 44) He was precociously aware that qualitative and quantitative studies were "[…] not really antithetical but, rather, are 'complimentary' […]" (George 1979, 45) George developed a methodological approach that could potentially bridge scholarly contention for a more refined appreciation of how different questions – and, hence, methods – could be put to identical fields of study. Preceding debates about how observations could be taken for monadic black boxes of fact (G. King, Keohane, and Verba 1994) or opened up to require intersubjectively challenging acts of interpretation (Mahoney 2010), George stroke a more conciliatory tone outlining:

> "[…] some political scientists have developed an alternative research strategy that employs a qualitative procedure that makes use of the historian's methodology of explanation. Thus, to assess whether a statistical correlation between independent variables and the dependent variable is of causal significance, the investigator subjects a single case in which that correlation appears to more intensive scrutiny, as the historian would do, in order to establish whether there exists an *intervening process*, that is, a causal nexus, between the independent variable and the dependent variable." (George 1979, 46)

Setting aside potential caveats from quantitative political scientists as well as historians, George's understanding of tracking a process as the analytical distance between an observation and its perceived cause has inspired both positivist (Beach and Pedersen 2014, 5) as well as interpretive analyses. (Wendt 1987, 352; Jacobs 2015, 55; Pouliot 2015, 237)

In 2005, George together with Andrew Bennett published a monograph on case studies, which continued to incorporate process-tracing in historical case studies. (George and Bennett 2005) This is relevant to this study, since it picks up on the notion referred to earlier as "political moments" or, as Alexander Wendt has pointed out: process-tracing "[…] in social science ultimately requires case studies and historical scholarship." (Wendt 1999, 82) George and Bennet have defined that through tracing the steps in between cause and effect "[…] the re-

searcher examines histories, archival documents, interview transcripts, and other sources to see whether the causal process a theory hypothesizes or implies in a case is in fact evident in the sequence and values of the intervening variables in that case." (George and Bennett 2005, 6) Dedicating an entire chapter on "Process-Tracing and Historical Explanation", George and Bennett continue to employ a terminology already used in George's 1979 contribution. Particularly, the concept of intervening variable requires some reflection when used in an interpretive study that emphasizes agency at the expense of a traditional realist market-size explanation:

> "Process-tracing is an indispensable tool for theory testing […] not only because it generates numerous observations within a case, but because these observations must be linked […] It is the very lack of independence among these observations that makes them a powerful tool for inference. The fact that the intervening variables […] should be connected in particular ways is what allows process-tracing to reduce the problem of indeterminacy […]" (George and Bennett 2005, 207)

Indeterminacy, however, does not disappear simply because the researcher calls certain "histories, archival documents, interview transcripts, and other sources" intervening variables. In a study that is based on qualitative evidence, it is simply impossible to surgically delineate beforehand the border between "part of the narrative", "altering the narrative", and "contradicting the narrative." To George, intervening variables are inherently binary as they either lead back to a hypothesized cause or fail to do so. But this kind of mechanistic understanding of historical developments oversimplifies historical developments for the sake of generating larger generalizations from the occurrence of distinct variables as opposed to others. To put it in the prevalent metaphor of falling dominoes: From one stone to another might branch off more than one development. This is to say that observations that at first seem to confirm an assumption might in fact trigger events or reactions that, on further evaluation, do not harmonize with the overall expectation and vice versa. Rather, the causal inference from one domino to another is often an interpretive act the plausibility of which unfolds once the entire line of argumentation is presented. Also criticizing the concept of intervening variables on grounds of their inability to fit into complex historical accounts, Bennett and Checkel have proposed to instead speak of "[…] 'diagnostic evidence' […] and define process tracing as the analysis of evidence on processes, sequences, and conjectures of events within a case for the purposes of either developing or testing hypotheses about mechanisms that might causally explain the case." (Bennett and Checkel 2015, 7) That is the form of process-tracing to which this dissertation subscribes.

Despite using as diagnostic evidence previous scholarly research, reports published by departments, think-tanks, and international organizations, newspaper as well as magazine arti-

cles, and official government documentation obtained under freedom of information legislation in both the United States and the European Union, this study also relies on a body of over 13 hours of qualitative interview research.

Conducting interviews is not without its methodological pitfalls. In order to create reliable empirical material in the field, prompting questions directly to relevant actors differs significantly from the more common journalistic interview. Based on the work of German sociologist Karl Mannheim, sociological research emphasizes that the conceptual openness of an interview is seminal for generating empirically useful data. This requires from researchers to create an environment, in which interviewees are enabled to provide more than mere statements. Remarks are made in context and represent larger indexicalities, which can be accessed by researchers only if they give interviewees the space to provide longer narratives. (Kruse 2009c, 4) Fundamental for this approach is the constructionist assumption that reality is endowed with meaning by those who help to generate it through discourse. (Kruse 2009a, 19; Helfferich 2009, 21) Consequently, any form of exchange will necessarily include the interviewer as a vital part of the text so produced. (Kruse 2009b, 59) Leaning on Paul Watzlawick's bon mot about how non-communication is impossible, Cornelia Helfferich has emphasized that researchers need to reflect that every question necessarily constitutes some form of unintended influence on the interviewee. (Helfferich 2004, 32) Her definition of interview, therefore, stresses how this reciprocity has to be reflected already in the field:

> "Every interview is communication – and it is mutual at that. Hence, it has to be considered as a process. Every Interview is interaction and cooperation. The 'interview' as complete text is, in fact, a product of the 'interview' as mutual and interactive process between interviewee and interviewer – this applies to every type of interview." (Helfferich 2004, 10)

It is beyond question that asking is the core trade of the interviewer. Nevertheless, questions can be potentially leading. To ensure intersubjective traceability, they require transparent design and, to ensure comparability, must be put to all interviewees alike. (Kruse 2009b, 36) Before this theoretical background, it is necessary to make concessions regarding, first, the interviewees' time and, second, the scholarly interest. This again poses a problem, since theoretical work on expert-interviews that could give methodological guidance is rare and largely unsatisfactory compared with its frequent use in scholarly work.[54] (Bogner and Menz 2002b, 21)

[54] Take for example the following question: who qualifies as an expert? Surely, some clear-cut examples could be mentioned. But since the interviewer decides on who s/he asks for the interview, the generated outcome will always suffer from the largely arbitrary assumption of competence. Such competence likely differs widely even among the peers in one field and because the interviewer is logically precluded from being such an expert, the selection process is somewhat indeterminate. (Krassner and Wassermann 2002, 104) Recognizing this difficulty, Alexander Bogner and Wolfgang Menz assume that being

Kruse, on the other hand, rejects a definition that is based on interviewee characteristics and is, therefore, based on merely half of the parties engaged in the interview. Consequently, his comprehension of differentiating certain kinds of interviews is structural, which is why to him a definitional separation of expert interview and, for example, open or narrative interviews fails to make sense. (Kruse 2009b, 242) Rather, interviews should be separated by the techniques that they employ in generating empirical data. While structured interviews or even survey forms are ideal for quantitative research questions, qualitative projects might require entirely open interviews – which is most common in sociological studies. The approach chosen for this study lies in between. Semi-structured interviews provide respondents with enough room to create a narrative, while at the same time setting an analogous structure by relying on a predetermined set of relatively open questions that confine the interviewee's answers to the area of interest. (Helfferich 2009, 29; Kruse 2009b, 243) I relied on such semi-structured interviews during my field research with broad opening questions that gave interviewees the opportunity to freely shape their response in content as well as in length. In the parlance of Karl Mannheim, the goal was for the interviewees to generate meaning within the indexicality of their own words. However, some answers were derived from follow-up questions that were not in the guide. These additional questions as well as slight departures from the guide can be necessary in and legitimized by the specific interview situation. (Helfferich 2009, 159) Along with the interview requests, I sent a two-page outline of the research project, therefore, limiting potential results of the interviews. However, in the process of making appointments all interviewees had ample time to position themselves towards the thesis of my research so that any undue manipulation of their responses can be ruled out.

A particularly pressing issue was that interviewing high-level U.S. and EU regulators, as well as officials from international organizations, has potential political reverberations that complicated the field research. This has implications on the transparency with which these sources can be used. All interviews were conducted granting Chatham House Rule. Getting interview partners to open up was virtually impossible without asserting anonymity. Hence, all quotes taken from the interviews were given a six-character codification comprised of numbers and letters. All interviews were fully transcribed and are available under their codification upon request.

an expert does not require exclusive insights, but that experts are distinct in their actual efficacy in shaping their respective fields. (Bogner and Menz 2002a, 45) However, this only postpones the issue. How is one to measure the actual ability to shape outcomes? Arguing that even experts on lower levels of an organization's hierarchy can be relevant experts, Bogner and Menz' own account tries to bridge theorization and practical field research and, consequently, fails to disperse the fundamental difficulty of defining expert interviews through the persons interviewed. (Bogner and Menz 2002a, 40)

# Chapter Two
## A Changing Perception of Risk
### How U.S. Interest in Self-Regulating Markets Eroded Before the Crisis

In this chapter, I will explain why U.S. authorities readily changed tack after September 2008. Preceding the eventual market upheaval by at least 18 months, supervisors, legislators, and the executive incrementally departed from competitive, domestic rule-making as their leading regulatory principle. However, this was not a binary process ending in movement for genuine international cooperation. Nor was this a purely strategic turn-around. Rather extemporarily, U.S. authorities tried to understand systemic risk as a pressing issue starting in early 2007. When, eventually, most markets had to face the structural reality of interconnected and global finance, America was the one-eyed king among the blind. And willing to use this window of opportunity, it now had the contours of a larger strategy in place that would approach finance's apparent externalities with a global set of measures made in America.

Due to the liquidity crisis that came to economically define much of 2007, a technocratic elite within the Republican administration had already started to question whether global systemic risks could be adequately contained by decentralized and domestic supervision. This development fundamentally shaped the U.S.' crisis response and necessarily positioned the country to internationalize its post-crisis policy agenda. Such a two-step analysis – from domestic interest change to international interest projection – comes with the advantage that it counters a likely counterfactual. In fact, on August 31, 2007, President George W. Bush stressed defaulting home-owners' individual responsibility, effectively restricting the role for government intervention. (Bush 2007) Such lukewarm American economic leadership could have petered out as a mere tactical response; as opposed to a strategic change in international regulatory coordination. But, the market turmoil that accompanied the rescue of Bear Stearns, Lehman's default, and the bankruptcy of Merrill Lynch started a second phase and gave sufficient incentive for U.S. decision-makers to complete the pivot the abovementioned elite under Secretary of the Treasury Henry Paulson had initiated. With no ambition to forego its economic leverage, America's repositioning was grounded in the crisis' technical particularities and served to re-emphasize its claim to regulatory dominance.

To substantiate my claim, I will delineate an adapting understanding of risk. Based on credit, financial actors had created a web of interconnected liabilities. During a first phase, it was thought that market rumblings would soon be over. Assessments of the liquidity shortage recommended to tackle unsustainable risk by improving market discipline and by enhancing risk

management at firms themselves. However, when the full extent of the crisis became apparent, the spread of risk was increasingly understood as a market failure. In response, the American approach increasingly assigned responsibility to entities that either assumed risk via business practices or posed a risk by virtue of their respective market position. Importantly for the argument presented here, the sequential congruence of how international expertise echoed American assessments can be found following either phases of the American pivot. While any crisis presents various options for reform, the approach favored by FSF, as the G-20's financial organization, vertically corresponded to U.S. changes in both the assessments of the crisis' underlying causes as well as the reaction it proposed to its externalities.

This chapter will, therefore, proceed as follows. A first section will outline the initial technocratic reaction to the liquidity crisis. The analysis will begin with an American initiative of September 2007 and trace the process of how problems were framed right up until April 2008. I will demonstrate the U.S.' intellectual influence on the international response to the global financial crisis as pre-specified in the Treasury Department's intellectual groundwork for legislative action culminating in the Dodd-Frank Act (DFA).

Self-Regulation: First Solutions to Ensuing Market Failure

From its onset, the U.S. reaction to the 2007 liquidity shortage came with an explicit leitmotif. First of all, the official American interpretation was built on the assumption that economic conditions had been unusually "benign" for years. Starting point for this public perception was an article published by Treasury officials David McCormick, Undersecretary for International Affairs, and Robert Steel, his colleague in Domestic Finance, on September 13, 2007 in The Financial Times. This particular phrase became the starting point for almost all relevant policy papers I found dealing with the pre-crisis period. Their analysis continues that, consequently, market participants found an abundant supply of credit during a time when economic indicators made it attractive to invest and to refinance existing debt by taking on new credit. In this climate, traditional financial products lost their yield, which is why market participants assumed risk more willingly than they would have in what we have to assume are "normal times."

McCormick and Steele's public statement in the London-based publication is relevant, because they explicitly outlined an official view that any reaction to such market turmoil rather than being handled domestically had to be cross-jurisdictional. Considering the global audience of The Financial Times, the article's first paragraph confers tentative signs that the U.S.

was willing to meet the liquidity shortage's international dimension with a politico-economic response to match:

> "Recent capital market challenges have prompted calls for immediate regulatory action. Before recommending lasting policy changes, US economic decision-makers are committed to working multilaterally to put these events in perspective, examine the root causes and respond in a thoughtful and timely fashion."(McCormick and Steele 2007)

Characteristically for pre-crisis assessments, the authors make their case for strengthened co-operation proposing states should individually support their respective market participants to improve the way they manage risk. And it is this notion of decentralized oversight that betrays a distinct pre-crisis belief non-invasive governance could make appropriate adjustments to the status quo. Hence, the origin of risk and the responsibility of market participants in ensuring stable markets were put front and center in September 2007:

> "Positive worldwide economic conditions over the past few years have helped fuel a demand for credit and investment. The marketplace responded with an abundant supply of both, through a broad array of innovative, complex financial instruments and structures. Borderless capital flows made it possible for financial institutions and economies around the world to benefit from these new investment products. These new opportunities also brought some challenges and we are dealing with some of those today.
>
> Benign market conditions bred complacency and credit discipline deteriorated, particularly in leveraged loans, US subprime mortgages and other, related asset classes. Recent volatility in the credit and mortgage markets reflects a reassessment and a re-pricing of risk, as well as retrenchment from lower-quality and less-liquid assets. This readjustment is a painful reminder of the importance of robust risk management and of the need for investors to properly understand, evaluate and examine risk." (McCormick and Steele 2007)

This longer quote is significant for its incremental re-interpretation of the role financial actors and the state have to play in the market place. As leading bureaucrats, McCormick and Steele added another layer to the perception of the economic environment. Conceptually, they expanded the indexicality of good or favorable "market conditions" with the connotation that over longer periods of time an abundance of means and opportunities to invest elicits a decline in market discipline and significantly tilts how actors manage and assess risk. While this is anything but news domestically, the global effects of the downturn in the American housing market had made clear that investments were increasingly declining in spatial correlation; that is, domestic regulators began to understand that they had a role to play in discouraging reckless optimism in the market.

The particularity of this change is twofold and illuminates why academic readings of the crisis response have noticed either meaningful reforms (Stoltenberg et al. 2011; Baily and Elliot

2014)[55] or a continuation of the status quo. (A. Baker 2010a; R. P. Buckley and Arner 2011; Ebner 2014; Kay 2015; Reinhart and Rogoff 2009; Wigger and Buch-Hansen 2014) First of all, the shock of the GFC put an end to an era of monetary regulation often described as the Great Moderation. (Bernanke 2004; Hakkio 2013) American officials understand this period of relative economic stability as a time in which luck, changed conditions, and most of all "improved monetary policies" (Hakkio 2013, 1–2) created a "[…] substantial decline in macroeconomic volatility." (Bernanke 2004, 8) The connection between monetary policy and the risk taken on by market participants is not immediately apparent and the reason for this is simple: there did not use to be one and therein lies the problem. Regulators lacked a systemic, bird's-eye view when it came to supervising businesses and as a result enabled risk to spread undetected throughout the economic system. Even where the central bank was assuming a systemic perspective, it did not concern itself with the effects monetary policy had on the diffusion – and that means sharing – of risk among market actors. Instead, central bankers in the U.S. and elsewhere assumed that enterprises lived and died according to the structure of their individual capitalization. Admitting to this deficit, Ben Bernanke identified the missing link between system-wide oversight and the individual assumption of risk, i.e. capitalization, as one of the core elements that led to the Global Financial Crisis:

> "[…] for the most part, financial stability did not figure prominently in monetary policy discussions during these years. In retrospect, it is clear that macroeconomists – both inside and outside central banks – relied too heavily during that period on variants of the so-called Modigliani-Miller theorem, an implication of which is that the details of the structure of the financial system can be ignored when analyzing the behavior of the broader economy." (Bernanke 2013, 11)

Making the distinction between good and "benign" economic conditions marked the second change in perspective. Responsible for analyzing "underlying causes and weaknesses" on the international side, an interim report by MIR[56], a working group of the FSF, traced the substantial increase in volatility back to what McCormick and Steele had already submitted as the main explanation: "Unusually benign global macroeconomic, monetary and financial condi-

[55] When asked whether governments have induced substantial change following the financial crisis, most of my interviewees – while being cautious about the sustainability of the change they observe – have made statements echoing the following regulator (October 8, 2015; Reference Code: IO8S4J): "I would argue: yes, I do think that there's been substantial change. Is that change sufficient? Is that change long-lasting enough? I do get worried that some parts of Europe appear to be backsliding on the commitments to or the approach to regulation of financial reform. I do get worried that the U.S. and Europe are maybe going back to the race to the bottom rather than race to the top. But, governments, particularly central banks and bank regulators, pre- versus post-crisis are night and day. And I think derivatives regulators, like the CFTF: night and day." Unsurprisingly, European colleagues that were likewise involved in the post-crisis re-regulation mostly agree with such an assessment. For example, one international regulator claimed the crisis was an opportunity for those actors who wanted to end too-big-to-fail (August 18, 2015; Reference Code L75FO2), and another asserted that regulatory cooperation has experienced a government sanctioned structural shift (June 3, 2016; Reference Code: C5IGY2).

[56] MIR is short for the Financial Stability Forum's "Working Group on Market and Institutional Resilience." It was established following a letter to G-7 Deputies by Donald Kohn, Vice Chairman of the Board of Governors of the Federal Reserve System, and David McCormick, the abovementioned Treasury Undersecretary for International Affairs. McCormick and Kohn's letter predated the newspaper article and was sent on September 6, 2007.

tions over recent years bred high risk appetites, a reach for yield and rising leverage among financial institutions, investors and borrowers." (MIR 2008a, 3) In the following weeks, the FSF's Senior Supervisors Group (SSG), the United States President's Working Group on Financial Markets (PWG)[57], as well as MIR's final report on "Enhancing Market and Institutional Resilience" grounded their findings back in this "[…] long period of benign economic and financial conditions […]" (SSG 2008a, 1; PWG 2008, 8; MIR 2008b, 1)

One larger report that was published parallel to those mentioned above should be looked at more closely for its quality of fundamentally addressing issues that were structurally conducive to the crisis. Secretary of the Treasury, Henry Paulson, had commissioned the report in March 2007. Following a conference on market competitiveness, Treasury was concerned that "[…] while functioning well, the U.S. regulatory structure is not optimal for promoting a competitive financial services sector leading the world […]" (U.S. Treasury 2008a, 1) Published as "Blueprint for a Modernized Financial Regulatory Structure" a year later in March 2008, it was stuck in the logic of regulatory competition and, hence, not aiming to bridge the already showing philosophical rift between decentralized rule-making for a global financial industry. Consequently, it failed to even promote policy reforms comparable to what will later be presented as the U.S.-induced set of measures countering the liquidity shortage before the height of the crisis in September 2008. From the start, however, it contrasted risk with systemic stability and distanced itself from competition as a race to the regulatory bottom. Instead, Treasury insisted its mission was to promote economic growth and stability: "[…] Critical to this mission is a sound and competitive financial services industry grounded in robust consumer protection and stable and innovative markets." (U.S. Treasury 2008a, 1)

Clearly, competitive market regulation and global financial stability make for a confusing balancing act, to say the least. However, we can already see an American willingness to use the size of its market in projecting its vision of global financial markets. Somewhat occupying a middle ground by emphasizing its claim to international leadership while concomitantly relying on decentralized competitive rule-making, it is the Blueprint's fundamental approach towards the structure of financial services regulation in the U.S. that works as an intellectual link between policies that predated the GFC and those that followed it.

[57] The establishment of the U.S. President's Working Group goes back to executive order 12631. Issued on March 18, 1988 by President Ronald Reagan, the group was created as an advisory council following massive turmoil in global market in October 1987. PWG's membership speaks to the administrative capacities that were put in place to address financial turbulences from comparatively early on. Designed as a pool of financial expertise, its consists of high-ranking administration officials, namely the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the SEC, and the Chairman of the Commodity Futures Trading Commission (CFTC). (Reagan 1988) PWG's chairmanship was assigned to the Secretary of the Treasury. This composition, while immensely circumstantial, established a practice of bundling cross-sectoral expertise that we also find at today's Financial Stability Oversight Council (FSOC) that was introduced in July 2010.

Betwixt and Between: Systemic Risk Readiness and Competitive Advantage

The Blueprint begins by emphasizing that financial markets have increasingly become international. With the functional regulatory system – i.e. oversight "[…] divided by historical industry segments of banking, insurance, securities, and futures […]" (U.S. Treasury 2008a, 13) – dating back to Glass-Steagall, Paulson's Treasury made the case for a sweeping overhaul towards objectives-based regulation. In a particularly timely governmental recognition of systemic risks, the report posited that the American regulatory system was not equipped to manage the potential externalities of global markets and, therefore, promoted re-structuring the entire regulatory system:

> "[…] no single regulator possesses all of the information and authority necessary to monitor systemic risk, or the potential that events associated with financial institutions may trigger broad dislocation or a series of defaults that affect the financial system so significantly that the real economy is adversely affected. In addition, the inability of any regulator to take coordinated action throughout the financial system makes it more difficult to address problems related to financial market stability." (PWG 2008, 4)

While this reads already like following the rationale mostly employed after the fall of 2008, the Blueprint was not intended to advance the internationalization of American regulation. At one point, its authors acknowledge that the Commodity Futures Modernization Act prescribed core principles, which could possibly enhance "[…] global regulatory cooperation." (U.S. Treasury 2008a, 110) But, the general emphasis of finance's international dimension mainly served to underscore the report's domestic focus and advocacy for re-building an objectives-based regulatory structure. In such a system:

> "[…] key objectives would guide the regulatory functions: market stability regulation, prudential financial regulation, and business conduct regulation (linked to consumer protection regulation). Market stability regulation generally remains the key responsibility of the central bank. As a result, market stability regulation focuses on the financial system and the economy as a whole as opposed to individual institutions' financial conditions." (U.S. Treasury 2008a, 142)

At this early stage, America championed its global interests leading by example, as opposed to the post-Lehman approach, when it leveraged market size consistently presenting other jurisdictions with a "take-it-or-leave-it" choice. (Greene and Boehm 2012, 1094) The report outlined that moving towards objectives-based regulation made sense, if an effective form of centralized communication served to maintain the coordination among those agencies commissioned with each regulatory objective. While much of the post-crisis nomenclature of macroprudential oversight is absent from the report, it still hit close to home in its rationale for establishing a cross-issue administrative body: "Effective communication throughout the system is also critically important to ensure that the market stability regulator possesses the

information necessary to perform its functions." (U.S. Treasury 2008a, 142) In light of this and as a short-term solution to the shortcomings of the current system, the report proposed the institutionalization of the PWG as a permanent council. (U.S. Treasury 2008a, 75–77) Such institutionalized oversight would later be established by Dodd-Frank with an almost identical set-up as Financial Stability Oversight Council, or FSOC. With its conception of systemically relevant regulation and the proposal for a central council ensuring information sharing and communication, Secretary Paulson's Blueprint was informative not only for post-crisis legislation in form of the Dodd-Frank Act, but also for the international efforts American experts led at the FSB and other international fora.

Having outlined how the overt goal of the Paulson report warrants America's claim to politico-economic leadership, one necessarily must re-emphasize the way that it did this from an inert institutional understanding that perpetuated a global status quo. Notwithstanding the degree to which the Blueprint has shaped the international response to the GFC, its apparent weakness aligns it with the analyses seen in the publications by FSF, PWG, and SSG[58] – or The Financial Times, for that matter. Despite its recognition of international coordination, the Blueprint was also written before the intellectual background championing regulatory competition. It decidedly promoted an objectives-based structure to maintain and even increase the reach of the American market for financial services:

> "Markets and financial products have evolved and continue to evolve at a pace that the SEC's current procedural practices fail to accommodate. Competitive pressures from technological innovation and globalization have rendered these delays problematic. Stock and options exchanges are competing both domestically and globally and must be able to make technical adjustments to their trading systems through rulemaking in a more rapid fashion. These adjustments typically relate to market and operational integrity. New securities products are often introduced and begin trading in other jurisdictions before appearing in the United States because of delays in regulatory approval." (U.S. Treasury 2008a, 112)

From this vantage point, American regulatory internationalization still had a long way to go before notions of systemic risk aligned regulators' self-conception with the global nature of finance. As a remnant of the centripetal belief that markets sustainably regulate themselves, American and international analyses looked to individual actors to restore market-discipline. Before the defaults of Lehman and Merrill-Lynch, the comparatively early engagement of American technocrats created an approach that contributed to a confidence that the crisis was manageable. Eventually, this led to a distinctly American agenda and provides a revealing explanation as to why the largest economic shock since the Great Depression did not cause

[58] The Senior Supervisors Group, or SSG, is a group of international regulators under the umbrella of the FSF/FSB (SSG 2008b) that analyzed approaches to risk-management practices both governmental and by market-participants. (SSG 2009a, 2014) The SSG's work will play a more pronounced role in the remainder of this chapter.

tectonic regulatory shifts comparable to the economic sea change after the Second World War.

Before Macroprudential came Prudential: First Steps towards Systemic Oversight

On September 6, 2007, McCormick together with Donald Kohn, the Vice Chairman of the Board of Governors of the Federal Reserve System, had sent an official address to G-7 Deputies requesting the establishment of MIR. Substantially, the address covered the same ground as did the article in The Financial Times' September 13 issue. There, McCormick and Steele spoke of "reassessment" and "retrenchment" to describe a within-system crisis allegedly manageable with the regulatory tools at hand. The address to G-7 Deputies, on the other hand, was not geared towards calming a worrying financial public about deteriorating liquidity. This rather technical document stipulated to other regulators a predefined agenda of necessary actions alleviating the strain and restoring market discipline:

> "The Financial Stability Forum (FSF) was created to examine issues related to financial stability. The G-7 should request that the FSF assess the underlying causes of recent market developments. We suggest that the G-7 ask Mario Draghi to have the FSF form a working group to analyze the issues and coordinate Work on topics of interest, drawing on the expertise of the Basel Committee on Bank Supervision (BCSB), the Committee on the Global Financial System (CGFS), the International Organization of Securities Commissions (IOSCO), and the International Accounting Standards Board. Under this proposal, Treasury Secretary Paulson would invite FSF Chairman Draghi to provide an initial report on the FSF discussions and work plan at the October 19, 2007 Ministerial. The working group would report to the G-7 Finance Ministers and Governors at their meeting in April 2008 […] In a preliminary assessment, it appears that the risks associated with certain structured credit products may not have been fully understood, but questions have also been raised about the robustness of institutional risk management, accounting issues, credit rating agencies, and prudential supervision of regulated entities." (McCormick and Kohn 2007)[59]

This longer quote was chosen, because it illustrates the American strategy through four interrelated aspects. U.S. officials wanted the FSF to step in and envisioned the working group that would later become MIR. They did so because of the FSF's network expertise, which apparently made sense given the difficulties interconnected finance had started to pose. Moreover, the G-7 Deputies were confronted with a rather specific timeline that anticipated the actual dates when MIR would publish reports. And, lastly, McCormick and Kohn went beyond just implementing a form when they pre-defined its content and set the analytical framework.

Going through the multilateral FSF already marked a noticeable departure from the previous practice of competitive regulatory action, which left the FSF more often than not to its powerless expertise. (Kern, Dhumale, and Eatwell 2005) Consequently, McCormick and Kohn

[59] The document was made available by U.S. authorities due to a Freedom of Information Act request. The document is on file with the author.

stressed that regulators had to re-think their supervisory practice and recommended that MIR concern itself with "[…] *basic supervisory principles of prudential oversight of regulated financial entities*, especially in terms of exposures to structured products and counterparties." (McCormick and Kohn 2007) Since this thesis assumes American dominance in regulatory matters, it is, therefore, not surprising that the FSF's preliminary report failed to note the co-operative implications of this cautious departure towards systemic oversight. Lagging conceptually behind, the working group merely echoed the attention the U.S. paid to the behavior of market actors without yet embracing the advancing American understanding of comprehensive supervision:

> "Many of the issues […] will need to be addressed by market participants […] Market participants have already taken some steps and are considering others to rebuild confidence in the structured finance market. These efforts include taking measures to obtain the data and analytical resources necessary to strengthen valuation approaches for structured finance products […] More broadly, private sector groups are working to enhance risk management and disclosure practices of hedge fund managers." (MIR 2007, 2)

During my field research, interviewee U8JESC outlined that one of the biggest problems facing regulators during the crisis was a significant lack of data. The market had created an informational decentralization in which "[…] just nobody had it" and "[n]obody, nobody knew" what could be expected to happen. MIR fell prey to the U.S. regulators' philosophical incoherence on whether or not a global response could be formulated – and change affected – without addressing the contradiction arising from various regulatory responses to one common regulatory problem. In a three-page outline of how MIR envisioned the international response, the absence of a palpable governmental role set a tone tuned to the necessity of market discipline. This led to a roadmap, in which none of the issues for which the FSF initiated the working group were being addressed by proposals for authoritative rule making or even coordinated regulatory action. Political actors as well as regulators were entrenched in their assumption that if everybody took care of finance domestically, the industry would make phenomenal profits while also being supervised globally. (Sapir 2011, 52; Sennholz-Weinhardt 2014, 1247; Wigger and Buch-Hansen 2014, 119; Barkin 2015, 179–80) And technocrats conceded as much during the fieldwork for this study. Asked about international cooperation, all interviewees answered in a manner that to varying degrees corresponded with the abundant[60] accounts on pre-crisis politico-economic navel-gazing:

[60] In addition to the literature cited above, the following publications adversely criticize competition's contribution to the regulatory control of markets: Bengston 2004; Mokhtari and Abdelhamid 2008; Grauwe 2011; Nölke 2011. One notable exception can be found in the works of legal scholar Roberta Romano, who has remained a vocal proponent of neoliberal, and government-opposed, free-market regulatory policies. (Romano 1998, 2001, 2005, 2014)

> "[…] rather than cooperate everyone assumed that financial services was local and the most important thing was to ensure that domestic financial services companies didn't compete at a disadvantage […] and to ensure that domestic financial markets continued to be attractive to foreign entrance. So, there wasn't much in the way of cooperation. I mean, nobody thought there was a need for it."[61]

With competition a neoliberal credo since the financialization-industry discovered the blessings of the Delaware-effect during the 1980s (Fichtner 2014, 116), it is hardly surprising that the first MIR-report failed to match the U.S.' call for increased attention to prudential supervision. And still, or rather because of this, it provides an intriguing insight as to America's ability to dominate international negotiations. As outlined above, McCormick and Kohn proposed that supervisors engage in questions of how to improve international cooperation regarding larger financial companies that inevitably operate throughout a plethora of regulatory jurisdictions. This notwithstanding, it appears that at least initially the G-7, as opposed to the FSF, refused to structure the explicit mandate along the lines of the American request, since the report states unequivocally:

> "Although the G-7 did not request that the Group examine the following topics, the turmoil has also raised some issues regarding the authorities' capacity to respond to episodes of market turbulence. These relate to the tools and instruments available to central banks and supervisors in times of distress and coordination between them at the national and international level. There are a variety of ongoing initiatives looking at these issues. The Working Group will take stock of these and identify the key issues meriting attention going forward." (MIR 2007, 3)

Unfortunately, I was unable to obtain the documentation that specified the original mandate with which G-7 Deputies tasked the FSF with establishing MIR after they had received the American address. Nevertheless, I found significant circumstantial evidence supporting my claim that the United States was able to overcome international political resistance by reversing its position on political participation in regulatory coordination and use its technocratic leverage in prodding MIR's members to extend the group's mandate.[62]

As we have seen in chapter one, the U.S. had advocated from the beginning that the FSF be given a relevant and substantial political voice. Assuming in 2007 that the global consensus on light-touch regulation might have outlived its technocratic feasibility, the U.S. wanted to access the full range of regulatory expertise available – if only to avoid losing its competitive advantage. One interviewee outlined that the U.S. anticipated a potential politicization of

[61] Author's interview on October 6, 2015. Comments not for attribution. Reference code: G9FQN4.

[62] One should, however, refrain from assuming this as an outright power grab by the United States. In the pursuit of developing technically feasible solutions, working groups are mostly given extensive leverage in designing and structuring their work. It is this technocratic power that I see at play, when the U.S. makes use of the expertise its personnel has gathered in this largest market for financial products and pushes for policies that it deems worth pursuing.

MIR's work and hence pressed the G-7 to agree to a Working Group that would be comprised only of supervisory practitioners:

> "And it came up. So, we at the Treasury Department wanted to make this more technical, less political so we designed it so Finance Ministries would not be part of the working group. It would just be regulators and the regulators would go ahead and investigate the causes of the crisis and then come back to the FSF with their recommendations."[63]

While this statement does not provide hard evidence as to the immediate role Americans had in putting supervisory issues on the agenda of the working group, we can say with certainty that with its next report MIR adhered the internationalization McCormick and Kohn had outlined as necessary. The interim report published in February 2008 provides ample evidence that the working group massively prioritized the supervisory consequences they regarded appropriate in response to the market turmoil.

From Technical Analysis to Political Consequence

Before the incipient internationalization of U.S. regulatory action can be delineated, one potential caveat has to be addressed. Taken at face value, it is surprising that regulators took a step back from analyzing primarily the role of market participants in favor of an unprecedented willingness to engage internationally – if only based on the inconsequential findings of a working group. Even more, it could conceivably contradict the main assumption of this research thesis, since it questions the continued relevance of the United States as the leading jurisdiction in financial regulation. In fact, proponents of the end of the American empire and Congressional Republicans argue that the intellectual development towards more cross-jurisdictional collaboration marks the beginning of the FSF/FSB evolving into "[…] this puppet master that is manipulating U.S. financial regulators in order to do their bidding."[64] Yet looking at the empirical data, the stronger argument is that in this phase preceding the bailout of Bear Stearns in April 2008 U.S. officials were laying the groundwork for a response to a systemic crisis they already had some indicators could occur. MIR was the organizational vehicle that gathered expertise on the liquidity shortage and explored avenues on how to maneuver the intricacies of a potential regulatory alignment. This refocusing, however, did not imply that calling for the reconstitution of market-discipline was given up on by the U.S. Rather, this latter effort was outsourced to another group within the network of the FSF.

The so-called Senior Supervisors Group (SSG) was established during the fall of 2007. An early mission statement outlined that the group's task was to investigate practices of risk

[63] Author's Interview on October 01, 2015. Comments not for attribution. Reference code: SFAZ5H.
[64] Author's interview on October 6, 2015. Comments not for attribution. Reference Code: G9FQN4.

management in global finance. It continues that "[d]eveloping this perspective would […] enable the SSG to educate the industry and the supervisory community about where leading practice is going and how supervisors can work to support/guide industry efforts in that direction – or away from that direction if it seems wrong." (SSG 2008b) A follow-up mission statement of 2010 details the close ties the FSB maintains with the industry: "The group is comprised of senior executives […]" from a select number of regulatory jurisdictions and "[…] leverages the network of relationships in the Group to share information on supervisory approaches and also engages with the financial services industry to better understand new challenges and emerging risks that systemically important institutions face." (SSG 2010) The most interesting aspect about the SSG is where the mission statement remains opaque, which is its membership. For the report published on March 6, 2008, the SSG brought in members from five jurisdictions; namely from France, Germany, Switzerland, the UK, and the United States. Considering that the FSF – as a G-10 dependent – had only a rather limited number of members proper, this constellation still appears to be quite representative. What is revealing in terms of the extent of American dominance is, however, that of the SSG's 27 contributors 14 were recruited from the Federal Reserve System, the OCC, or the SEC. Additionally, in naming William L. Rutledge chairman of SSG, leadership of that group was given to an economist who had worked for 34 years at the Federal Reserve Bank of New York. (SSG 2010) With U.S. prevalence that apparent, we can assume that American experts considerably influenced the findings published by the SSG. This is significant, because content that corresponds with both the reports of SSG and MIR can be expected to have had the technocratic and political recognition of American experts and decision-makers.

In relation to MIR's interim report, the inquiry into the causes of the liquidity shortage on which it based its recommendations coincide entirely with the observations made by the SSG; it is this fact that builds a cornerstone for this thesis. The U.S. led the effort in establishing a fundamental political consensus on the interconnectedness of global finance and, more importantly, the ensuing necessity for a common regulatory approach. On account of America's role in diagnosing some grievous regulatory shortcomings within its own system, the U.S. was ideally positioned to propose its reasoning as a sensible on-hand solution as to what affected the global economy.

MIR outlined five causes underlying the massive retrenchment of the markets and it is striking that in tackling home loans, MIR cited origination practices as well as interrelated liabilities that had also prompted the Paulson Treasury to re-evaluate the mortgage origination process according to their systemic implications. (U.S. Treasury 2008a, 79–81) The working

group singled out as the prime systemic weakness: "*Poor underwriting and some fraudulent practices in the US subprime mortgage sector*, in part reflecting gaps in the US regulatory structure, but also widespread expectations that house prices would continue to rise." (MIR 2008a, 3) On the other hand, the report of the SSG was significantly more elaborate on this subject due to its distinct self-regulatory emphasis on "Observations on Risk Management Practices during the Recent Market Turbulence." Here, the senior supervisors outlined that firms "[…] also noted that mortgage underwriting standards had deteriorated […]" and were often structured in a way that made it attractive to raise credit without considering whether the borrower would be able to service the loan in the future. (SSG 2008a, 18)

Chairman Rutledge's address to then FSF-Chair Mario Draghi is even more telling and serves as a strong indicator that an expert consensus – and a philosophical alignment bridging finance's global scope with the necessity of increased collaboration – was forming during the first quarter of 2008. Not only was finance international, but the consequences of regulatory shortcomings had global ramifications:

> "The predominant source of losses for firms in the survey through year-end 2007 was the firms' concentrated exposure to securitizations of U.S. subprime mortgage-related credit. In particular, some firms made strategic decisions to retain large exposures to super-senior tranches of collateralized debt obligations that far exceeded the firms' understanding of the risks inherent in such instruments, and failed to take appropriate steps to control or mitigate those risks. Such firms have taken major losses on these holdings, with substantial implications for their earnings performance and capital positions." (SSG 2008a)

Note the reference to collateralized debt obligations (CDOs), which only half a year later would earn their notorious reputation as arcane and dubious products in the mind of a broader public. Their complexity of which served distributors to price the myriad of underlying assets "[…] according to one simple rule […]: underestimate the real risk and pass it on to the suckers down the line." (The Economist 2008b) Besides stressing the U.S. as country-of-origin of these products, the reports continue to align on the combination of weaknesses that had a significant role in hiding risk within and spreading it throughout the global financial system:

> "*Shortcomings in firms' risk management practices*: […] including from off-balance sheet exposures, and insufficient regard to tail risks and their interaction under stress […] *Poor investor due diligence practices*, including excessive, too often mechanical, reliance on credit rating agencies (CRAs) […] *Poor performance by the CRAs* in evaluating the risks of subprime residential mortgage backed securities and CDOs of asset-backed securities." (MIR 2008a, 3)

The account of the SSG largely concurs with this assessment. Its focus, though, is on those market actors who were able to steer safely through year-end 2007 and consequently represents an investigation into best practices. That is to say, the tone of both reports diverges inso-

far as the senior supervisors appear to be very confident in the ability of the larger industry to solve the crisis by adapting its behavior based on experience. This is reflected in the fact that the SSG's report does not pronounce the dangers of structural deficiencies or regulatory shortcomings. Those traces of the FSF's findings that we can detect in the report of the SSG do not serve as a foundation for a larger debate on domestic regulatory action in times of interconnected global financial markets. As shown in table 1, the group's findings display a predisposition that has been characterized in preceding accounts as "benign." Failing to expound on the urgency for regulatory reform and cooperation, however, comes with the territory of listing best market-practices and establishing a comprehensive picture about what firms were stable during the liquidity shortage. While a reminder of the real threat of regulatory capture, the divergence in approaches makes sense. A comprehensive look at SSG's subsequent publications lines up with the groups mission statement as the FSB's direct link into the industry. (SSG 2009a, 2009b, 2014)[65]

[65] Especially the supplement to its 2009 report on the origin of the global financial crisis is a distinct reminder of the fine line regulators walk when assessing industry practices and maintaining close ties to the industry for that purpose. The SSG claims that its "Self-Assessment Template" "[…] serves solely to provide clarity and transparency concerning the self-assessment exercise". Firms underwent these self-assessments during the group's efforts to establish the correlation between the stress these companies experienced – measured in market share, company value, balance-sheet exposures – and the management of assets as well as investment strategies that preceded these exposures. (SSG 2009b)

The American Experience with Self-Regulatory Governance: A Basel II Interlude

The work of American experts within these pre-GFC working groups provides only tentative evidence for the U.S.' leading role in replacing the system of regulatory competition with American leadership in streamlining global re-regulation. Palpable evidence for the internationalization of American regulation, however, converges on the issue of Basel II. With the third, post-crisis edition of banking rules practically American-made (Mathew 2014), U.S. unwillingness to subscribe to the second accord hints at a meaningful interest change. I argue that this was based on a re-evaluation of the danger entrepreneurial risk poses as an externality to entire markets as opposed to the individual threat it poses to firms. In addition to such new-found appreciation for systemic risk regulation, the interest change also signifies a lesson-learned regarding America's disposition towards global regulatory leadership. Instead of chopping and changing its attitude towards global standard setting, the United States executed a politico-economic – in the proper meaning of the term – strategy change.

Rather than having been initiated in the wake of the global financial crisis, this process can be traced back to the first quarter of 2007. This also provides evidence that America started reconsidering its approach at a point in time that significantly preceded what according to historical institutionalists should have been the "critical juncture" during the tumultuous economic events of September 2008. Looking at Basel II, therefore, serves as a burning glass for America's changing regulatory posture. It appears that by making international regulatory cooperation part of its realpolitik America realized the evident potential for reducing regulatory arbitrage.

To be sure, Basel II "[…] was fatally flawed."[66] Despite the role financial institutions had in writing "[…] their own models […]" and how this resulted in fundamental shortcomings regarding the actual pricing of risk, Basel II never was – as some put it – "[…] dutifully implemented." (Blyth 2013a, 38) From a technical side Basel II was in no way equipped to prevent the financial meltdown. It has been forcefully argued that the accord's benevolent and naive trust in firms' in-house risk-assessments as well as its indifference to procyclicality not only provoked, but also exacerbated the meltdown that followed the Lehman crisis.[67]

---

[66] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

[67] Paul Atkinson argued in 2008 that Basel II's promise to increase the quality of risk management while freeing up excess capital has to be seen as the "[…] classic case of regulatory capture." (Atkinson 2008, 14) With regard to the elaborateness of risk-measures conducted by financial firms, the expert circle around Adair Turner provided seminal insights to the wider public by stating that the short-term observations underlying Value-at-Risk (VaR) models have led to a systematic mispricing of assets conducive to herd reactions through which "[s]ystemic risk my be highest when measured risk is lowest, since low measured risk encourages behaviour which creates increased systemic risk." (FSA 2009, 23) Heidi Mandanis Schooner and Michael W. Taylor elaborate on the danger of sacrificing systemic stability for more efficient risk measurements and point to the network within which all financial institutions have to be seen. Their argument quite simply states that individual risk measurement systems cannot account for the network liabilities that are likely to arise in today's interconnected markets. (Schooner and Taylor 2009, 37–39) Less technical and more bluntly, Katia D'Hulster argued on the part of the World Bank:

Despite its technical shortcomings, Basel II was also ailing as an international agreement for three interconnected reasons. America's willingness to commit to international regulatory collaboration was crippled by a belief in market-discipline and self-regulation, a strong bias for competitive rule-making, and domestic lobbying efforts. These reasons stood in an irreconcilable opposition to the political goal of implementing one level set of rules. In short, you simply cannot have both.

The fundamental inability to fully commit to globalization's pull-factors materialized as a soft law tool that reflected the waning ambition by regulators to closely monitor how financial firms hedged against adverse market developments. Hence, Basel II came with clear political ramifications. Simply put, the trust in being able to make the split between rules effectively regulating businesses and increasing the attractiveness of one's own market culminated in the unvacillating confidence in the technical capabilities of U.S. based financial institutions. Prominently, FRB Governor Susan Schmidt Bies stressed this belief in 2005 in a speech addressing international bankers in Washington D.C.:

> "One sometimes hears that the advanced approaches of Basel II are 'too complex' for anyone to understand, and the mathematical formulas in various drafts of the framework can look like a foreign language to some readers. But remember the complexity in Basel II reflects today's sophisticated risk-management practices that employ advanced quantitative methods. Most of you in this room understand that mathematics and statistics are an integral part of how you manage your businesses. Thus, it is only sensible to implement a framework at our largest institutions that is in line with what bankers themselves are doing." (Schmidt Bies 2005)

Schmidt Bies appears to have been truly captured by the zeitgeist-assumption that quantitative methods could compensate for a sound qualitative evaluation of the assets of which financial products were comprised. Hers emphasizes an understanding of regulation that fails to appreciate how globally intertwined financial activity ran circles around the competing domestic frameworks haplessly trying to govern a global marketplace. It does not come as a surprise, therefore, that contrary to its stated purpose Basel II, in the words of one financial expert, "[…] was a race to the bottom, not to the top."[68]

Basel II was a regulatory hybrid that allowed for complex risk measuring algorithms while also allowing each respective regulator to limit the adaption costs of its respective industry. (Jacobson, Lindé, and Roszbach 2005, 44) This pre-crisis interest alignment by larger mem-

"The greater risk sensitivity of Basel II capital requirements can result in a perverse incentive for financial institutions to structure products so that they qualify for lower capital requirements. When this incentive is collectively exploited", which clearly happened via SIV activity intended to test the limits of originate-to-distribute (MIR 2008b, 9), "the system is likely to end up with high concentrations of structured exposures subject to low regulatory capital requirements." (D'Hulster 2009, 4) Hence, it is fair to say that this evaluation has become a consensus among most scholars and public policy institutions. (González-Páramo 2009; Hope 2008; Kling 2010; Steil and Setser 2008; U.S. Treasury 2009)

[68] Author's interview on October 8, 2015. Comments not for attribution. Reference code: IO8S4J.

bers of the financial industry with their respective supervisors becomes even more pronounced when we look at comments two lobbyists of the American Bankers Association delivered regarding the market risk capital rule. After proposing that firms "[…] should not be required to 'clearly articulate' which positions are hedges […]," they suggested that requirements on, mind you, partial transparency about internal modeling should "[…] remove excessive reporting burdens that serve no useful purpose." Basically, they demanded to be left alone:

> "The board of directors should not be required to verify that the institution has made all necessary disclosures and maintains effective international controls under the market risk rule. Nor should the chief financial officer be required to provide any additional certification beyond what is required by existing laws." (P. A. Smith and Strand 2007a, 2)

Effectively lobbying to remove the transparency that stood between Basel II's self-regulation-approach and a no-regulation-approach, Smith and Strand went on to demand even more leeway regarding risk based capital requirements. They argued that financial institutions "[…] assess risks, and allocate capital to protect against those risks, on a daily basis. This is done for reasons apart from regulatory capital requirements." (P. A. Smith and Strand 2007b, 2) Claiming risk assessments were decisions best made by businesses themselves, Smith and Strand virtually denied the possibility of market failure. They wittingly dismissed the role public interests play in requiring banks to hold more capital than they thought they should. This came as a reaction to considerations by U.S. regulators to review "[…] the extent to which banks should hold capital in excess of regulatory minimums […]" given that the U.S. banking system was considerably more advanced than other Basel II jurisdictions and that the "[…] ratings-based approach […]"(OCC et al. 2007, 9) provided potential supervisory loopholes. (Herring 2007, 416–17) However, for the ABA an increase in supervisory rigor was out of the question, since at least its two lobbyists claimed the U.S. to be "[…] more restrictive and prescriptive as compared to the Framework [i.e. Basel II] or the schemes being implemented in other countries." (P. A. Smith and Strand 2007b, 3) Politics, the ABA argued in defending their call for even fewer restrictions, should seize unwarranted infringements on banks, but align with the lighter touch supervision in other Basel II jurisdictions:

> "It is important that risk and capital be appropriately linked for all banks regardless of their size and in such a way as to avoid creating competitive disparities. However, the efforts to improve the risk sensitivity of regulatory capital requirements should not result in disproportionate compliance burdens. Applying a select menu of reasonable capital standards for banks of all sizes is the best course of action." (P. A. Smith and Strand 2007b, 9)

The last sentence is of particular interest. While different rules for different sizes and activities sound sensible, the wording "menu of reasonable capital standards" makes it sound as if

Governor Schmidt Bies' "let-them-best-regulate-themselves"-attitude was anything but conducive to the interests of large banking institutions. That such demands could be voiced shortly before the liquidity shortage of 2007 shows how the private sector habitually brushed aside concerns for financial stability as a public good.

Squaring the supervisory circle through sophisticated self-regulation created the second reason for the U.S. to limit its international commitment. With the financial industry being quintessentially global, the regulation of financial actors increasingly made for a political bone of contention at home and abroad. Domestically, the fragmentation of the regulatory structure led to crisscrossing competencies and turf wars among American regulators[69], which put it belatedly on track for implementing Basel II – "[…] with at least a two year lag." (Herring 2007, 427) Internationally, one interviewee and former negotiator of the second accord linked the relative gains logic inherent in regulatory competition specifically to the manifold political weaknesses of the final agreement. According to interviewee 4SBE9E, politicization – understood as misguided intervention in a technocratic sense – was due to (a) the end of what used to be a club atmosphere among supposedly ends-oriented technocrats[70], and therefore (b) to the complex system of exemptions reflecting special interests – i.e. individual gateways for regulatory capture and international rule fragmentation:

> "The Federal Reserve Bank of New York was pushing to allow for more sophisticated ways to measure risk. And implicit in that was […] a superficial logic and appeal: that the banks themselves were trying to manage their risks better […] It also became quite clear during that process that the Americans were way ahead of the rest in developing models […] I remember well that in the committee particularly Germany realized that if the Americans got away with allowing these techniques, American banks would run circles around European banks […] And here the political elements started entering into the discussions. There was awareness that whereas in the old days you could have these nice cozy sort of meetings in Basel […] the significance of what a revision of the Basel Accord would imply was much greater, there were political ramifications and there were two results of this awareness. First of all, the discussion became much more calculated and guarded and reflecting national interest. And, secondly, the whole system became more and more complex, because every country had their own set of desires and preferences […] and, before you knew it, Basel II was a pile of hundreds of pages, which had the exact opposite effect of being more effective, because with all the complexity nobody really understood it anymore."[71]

One of the major difficulties in evaluating the Basel Accord is to analytically separate between the technocratic aspects of creating new rules for banking – that is, whether or not these

[69] Author's interview on September 30, 2015. Comments nor for attribution. Reference code: U8JESC.

[70] Roman Goldbach has submitted one of the most comprehensive accounts of the Basel II negotiations. Referencing Dan Drezner's seminal piece on club standards in international regulatory regimes (Drezner 2007, 119–48), Goldbach outlines that while the accord was intended to serve the purposes of "[…] a select set of industrialized countries with developed financial systems […]" (Goldbach 2012, 212), he also expresses as concern what the practical experience of interviewee 4SBE9E quoted below, albeit anecdotally, suggests: "Whether the recent organisational changes result in an actual deviation from the club model remains to be seen." (Goldbach 2012, 55)

[71] Author's interview on September 16, 2015. Comments not for attribution. Reference code: 4SBE9E.

new rules were likely to work – from the political negotiations that led to the final accord. What is voiced by interviewee 4SBE9E at the end of this longer quote borderlines on an argument about political intervention being generally detrimental to what should be technocratic legalization.[72] However, if we tie together what 4SBE9E called "superficial logic and appeal" with the political struggle over the distribution of adjustment costs at "these nice cozy sort of meetings," we encounter an interpretation that transforms into a more fundamental argument. Following Mark Blyth's emphasis on the difference between rationality and interests (Blyth 2009, 196–99), the neoliberal instruction sheet[73] ended up creating an "adding-insult-to-injury"-scenario; informed by both the assumption that self-regulation should be a public policy tool and a negotiating process based on competitive rule-making. Obviously, the refusal to thoroughly oversee risk assessments according to a single international standard and the creation of exemptions conforming to the multitude of domestic particularities are codependent variables in a global soft-law agreement. To paraphrase Jeffrey Friedman and Wladimir Kraus, it appears that Basel II was as complex as Basel I had become outdated. (Friedman and Kraus 2011, 64–65) In search for yield, banks did not so much circumvent these rules – in the sense that they broke the law –, but followed incentives to invest in mortgage-backed securities that regulators, investors and rating agencies alike thought were almost risk-free. (Friedman and Kraus 2011, 80–85)

Given the size as well as the diversity of the U.S. banking sector, it is unsurprising that the industry complicated the implementation process effectively forcing the U.S. to first find a compromise that worked domestically. American banking was far from a monolithic bloc. Arguing that Basel II distorted the domestic level playing field in the U.S., smaller financial services providers sought ways to discredit parts of the accord. Consequently, a third reason

[72] As a strand within international relations scholarship, early legalization literature (cp. the special edition by *International Organization*: Goldstein et al. 2000; Abbott et al. 2000; Keohane, Moravcsik, and Slaughter 2000; Simmons 2000; Goldstein and Martin 2000; Kahler 2000) has been aware of soft law's Janus-faced character, outlining that despite its flexibility it "[…] also enables rent-seeking officials to minimize political losses in the face of strong private distributional conflicts. In domestic politics, officials facing such conflicts resist taking sides, hoping not to alienate either group of constituents; they use such expedients as calling for further study, supporting vague statements of principle, or passing the buck to administrative agencies." (Abbott and Snidal 2000, 453) Regarding the domestic implementation of Basel II in the United States, this could not have been stated more accurately.

[73] In a 2003 contribution, Blyth argued that "Structures do not come with an instruction sheet," because actors can still find enough room within to induce change and "[…] make history apart from their structurally given interests." (Blyth 2003, 698) In his seminal monograph on the origins of austere policy-making, Blyth takes this concept a step further and conceptualizes ideas as giving structure to social behavior – i.e. actors as a group – to a degree that defies the underpinnings of rationality while corresponding to the interests of both those capturing and captured. (Blyth 2013a, 22–23) Jeffrey Friedman and Wladimir Kraus have made a similar argument. However, they do not look at the issues of sovereign debt and, hence, deliver an even more precise – if less conceptual – account of the instruction sheet's shortcomings. They reject the idea that a free-market libertarian ideology induced the crisis and instead speak of a fetishization of prices; a fetish being "[…] an object to which magical powers are attributed." This, they argue, made regulators believe "[…] not that capitalists' *behavior* should be left alone, but rather that market *prices* somehow have the ability to overcome human limitations and accurately predict the future." (Friedman and Kraus 2011, 149)

for the U.S. to limit its commitment to the Basel process can be found in the resistance of some parts of the banking industry to a wholesale implementation.

At the core of the conflict was the accord's provision of the so-called Advanced Internal Ratings-Based (A-IRB) approach, which would require large banking institutions with "[…] at least $250 billion or at least $10 billion in on-balance- sheet foreign exposures […]" to adopt a more differentiated set of risk specifications. (Berger 2006, 6) In a first study on the effects of the accord, Edward Altman and Anthony Saunders argued that the reliance on credit rating agencies would produce what they called a "cyclically lagging" capital requirements. Criticizing point-in-time assessments and valuations, they argue that these ratings falsely projected confidence about past financial stability into a future when these respective assets would have to be cashed in to cover ensuing liabilities. Therefore, the coarse and indiscriminate grouping of assets that represented loans at, as well as below, investment grade was bound to lead to a severe mispricing of risk. (Altman and Saunders 2001, 42-43) Known as procyclical, point in time valuations gave no indication of the assets' real worth in a slump, when a significant number of market participants would have to simultaneously cash in and prices would consequently drop; a concern American authorities and academic alike shared even before the crisis. (FRB et al. 2006, 14–16; Herring 2007, 421)

Aside from Altman and Saunders' critical stance towards credit rating agencies, their paper also laid the groundwork for studies outlining the distorting effects on certain product segments in which A-IRB and traditional Basel I institutions were competing. A study by Tor Jacobson and colleagues, for example, argued that risk evaluations of credit given to small and medium sized enterprises (SMEs) were more conservative under Basel I. Through the reform however, larger providers of the same credits utilizing advanced risk models would be required to hold:

> "[…] less regulatory capital for given default probabilities. The main reason for this differential treatment is that small business loans and retail credit are generally found to be less sensitive to systematic risk. Their risk of default is thought to be largely of an idiosyncratic nature and, as a result, default probabilities are assumed to be more weakly correlated when compared with corporate loans." (Jacobson, Lindé, and Roszbach 2005, 44)

Considering that, for example, CDOs were often rated benevolently because it was assumed that their underlying assets were geographically dispersed enough to not be strongly correlated (Fabozzi and Choudhry 2004, 660–61), this was an almost prophetic statement. The list of objections continued. With regard to financial institutions that would not adopt more sophisticated risk weighing models tied to CRA evaluations, Allen Berger found that Basel II "[…]

may significantly adversely affect the competitive positions in the SME credit market of large banking organizations in the U.S. that do not adopt A-IRB." (Berger 2006, 33)

Outside of academia, lobbying efforts from the very beginning sought to counter potential externalities tied to the introduction of varied capital requirements for enterprises differentiated largely by size. Hence, as early as 2003 then-vice chairman of the FRB, Roger Ferguson explained that the U.S. would conduct several studies into what he called a bifurcated approach "[…] trying to determine empirically the evidence for the competitive implications of the U.S. implementation proposals on credit for small and medium-sized business, residential mortgage, and credit card markets." (R. W. Ferguson 2003, 4) At that point, three quantitative impact studies had already been conducted. Anticipating such concerns, these studies had been mandated by the BCBS to support international implementation efforts. Nevertheless, lobbying efforts by respective industry segments in the United States – and Europe – were pushing for a fourth (QIS 4) study (BIS 2010a), which was then announced by all relevant U.S. agencies in June 2004. (FRB et al. 2004)

Reflecting the competitive disadvantage analyzed by Jacobson and colleagues, the second American banking lobby – the Independent Community Bankers of America (ICBA) – insisted that the main takeaway of QIS 4 was that Basel requirements would effectively distort the market. In May 2005, the ICBA claimed that A-IRB "[…] would yield lower capital charges for residential mortgage, retail and small business loans for Basel II adopters, the very credits where community banks compete with large institutions." (ICBA 2005, 3) With ICBA's traditionally strong ties to the House of Representatives (Kaiser 2013, 307), this argumentation proved to be effective. For the next 15 months ICBA made extensive use of their interpretation of the factual evidence by arguing: "[…] both the third and fourth Quantitative Impact Studies have confirmed our concerns about the competitive equities of the new accord. These studies show dramatic reductions in capital for residential mortgage credits, small business credits and consumer credit." (ICBA 2006, 4) Of course, this claim was itself called into question. (Paletta 2005) But, the fear of the punch-bowl being taken away caused a rift in an already fragmented college of regulators that matched the diverse interests of the U.S. banking sector. (Paletta and Bergman 2005)

All this is not to say that a complete implementation of the new framework would have forestalled the GFC. Regardless of Basel II's implementation – or a retention of the old accord –, regulators did little to alleviate the structural incentives for systemically adverse business conduct. (Kay 2015, 270) Nor would they have imposed capital requirements equal to the liabilities that loomed on the horizon. (Atik 2011, 748–54) The accord was agreed upon in

June 2004, introduced in the EU on January 1, 2007[74], and was far from being implemented in the U.S. when the liquidity crisis began. Therefore, one of my interviewees suggested that the prolonged implementation process in the United States reflected a posture of regulatory navel-gazing that championed competitiveness above stability:

> "[…] the Federal Reserve never signed on to Basel II. It said it did, but it never really did. That's because that's the role they play and that's kind of its culture, too. You saw in the United States the commercial banks held up better than investment banks. A big part of that was, because they said they were going to do Basel II, but they weren't. They were second guessing it, third guessing it, and doing it on an ongoing basis. So, there are a lot of political pearls. Some of it was turf-battles. Some of it was in a vastly changing environment that nobody was really keeping up with. And a complete lack of data and nobody knew where the interconnections were."[75]

I want to expound on this statement by cross-checking it with the documented international activity by American regulators that followed the initial squeeze on liquidity. The regulatory change of heart tied to the experience with Basel II serves as a strong indicator for the American pivot and has important consequences for the market power argument throughout this thesis. MIR's analysis into the liquidity shortage's underlying causes is congruent with U.S. assessments. This strongly suggests America's ability to project its interests, but the larger argument is rounded out by the earlier absence of such leadership. The lack of a global commitment, and its implications for systemic financial stability, had made the discussion initiated by McCormick and Kohn necessary in the first place. To put it more bluntly, by acting globally the U.S. formed an international response to a situation its absence had created. In the remaining part of this chapter, the empirical analysis will outline how the aspects described above merged into a more general strategy of U.S.-led regulatory alignment.

### A Rumbling Change in U.S. Interests

In the wake of 2007's liquidity crunch, the appreciation for regulatory agenda setting increased because U.S. regulators discovered theirs – as well as anybody else's – was the supervisory equivalent of flying blind. MIR's interim report consequently urged that cooperation, "[…] including the exchange of information, needs to improve both at national and international levels." (MIR 2008a, 8) Of course, the FSF has an undeniable bias for multilateral

[74] The European Commissioner Jörgen Holmquist lobbied the U.S. himself, because the comparatively early implementation of Basel II rules put competitive pressures on financial institutions within the EU. European frustration about America's lacking international commitment notwithstanding, he nevertheless managed to diplomatically spin an understanding for a difficult American position: "I am here today primarily to share with you some observations on Basel II. Focusing on regulatory burdens. This is high on our agenda in Europe, as it is on yours. When regulatory costs and the international competitiveness of the banking industry are at stake, it should be at the top of everyone's agenda […] As you know, Basel II applies to all banks in Europe, regardless of size. We are convinced of the benefits of the new rules for our firms, our financial system and our economy. So Europe – as most other G-10 countries - has implemented the full set of Basel II approaches. For credit risk and for operational risk." (Holmquist 2007)

[75] Author's interview on September 30, 2015. Comments nor for attribution. Reference code: U8JESC.

approaches. But it consequently followed Treasury's call for strengthened collaboration in the Blueprint. Identifying systemic stability as a self-serving goal, Treasury had outlined in some depth how international cooperation should be facilitated.[76]

One example is the creation of an Office of National Insurance (ONI). The report argues that its head should be authorized to "[…] engage in international efforts to secure bilateral and multilateral cooperation and agreements, […] with respect to insurance regulation in global markets […] and to consult and coordinate with the Executive Office of the President and the U.S. Trade Representative." (U.S. Treasury 2008a, 132) Specifically, the Blueprint promoted ONI because of insurance's "[…] importance as a separate line of economic activity, as well as its influence upon commerce and economic growth […]" through which private and institutional investors can hedge risk and diversify their exposure to financial markets. (U.S. Treasury 2008a, 127) The stark difference between the industry's global operation and at times provincial regulation was seen "[…] in a time of increasing convergence and globalization […]" as lacking "[…] effectiveness and efficacy […]" (U.S. Treasury 2008a, 127)

The destabilizing role played by insurance companies and providers of insuring financial products – most importantly credit default swaps (Archarya and Richardson 2014) – shows that regulators were not asleep at the wheel before or when the crisis happened. (The Economist 2013a) Rather, they woke up too late to a systemic crisis of such rare magnitude. By no means does this deviate from the assessment that states and their regulators collectively failed the wider public and came up short in fulfilling the very task that justifies their existence. Also, being awake a while before the crisis hit carries little consolation for everyone affected by the crisis – particularly for public finances and those most dependent on the various public services that these means could otherwise have provided. Nevertheless, it is testament to why the U.S. had readily available the policies that would be internationally implemented after the crisis.

Leaping to MIR's final report of April 2008, it becomes clear that, first, the agenda set by the U.S. in September 2007 continued to be dominant. Second, this agenda had evolved with a

[76] The Blueprint dedicates a whole chapter to the idea of a market stability regulator, in which it outlines a distinction that would be dominating the discourse following the financial crash. It clearly distinguishes regulatory cooperation as opposed to national and international coordination, which the report understands as relating to complementary modes of regulatory supervision; for example supervision of specific financial institutions that is coordinated with the central bank so as to gauge developments comprehensively. (U.S. Treasury 2008a, 143–48) While the latter sounds rather arcane, it has manifest consequences as to the systemic focus regulators in all G-20 countries adopted as a supervisory imperative after the crash. MIR's interim report also makes this distinction. (MIR 2008a, 8) While it was published a month before the Blueprint it makes sense to argue that this distinction was advocated first by American regulators. The Blueprint dedicates its whole purpose to the advocacy of an ideal regulatory scenario, to which the distinction of cooperation and coordination is central. Seeing as its agenda was set in April 2007, long before the FSF was called upon to gather information on the liquidity crisis, I argue that America's move towards this concept might not have been original – the Blueprint frequently references the British supervisory system when it comes to this distinction. Nevertheless, it shows how a change in regulatory policies requires U.S. support to become internationally viable.

systemic awareness that put emphasis on Basel II, in particular because of the global approach it represented. U.S.-led internationalism would later frame the implementation of Basel III according to the regulatory nomenclature of the Dodd-Frank Act, and reversely commit the America to the rules it favored for the wide array of financial services. This development is already apparent when we compare the report by the PWG of March 2008 with MIR's final report published a month later. Both reports display stark structural and substantial similarities in both their assessment of the crisis as well as the recommendations derived from them. In terms of diagnosing what caused market actors to corral their wagons and cease liquidity provision to the market, MIR diagnosed a global regulatory structure un-equipped to deal with a vastly expanding industry. With ambition and reality so far off, states had effectively created a giant with feet of clay:

> "In a range of credit market segments, business volume grew much more quickly than did investments in the supporting infrastructure of controls and documentation. Misaligned incentives were most conspicuous in the poor underwriting and in some cases fraudulent practices that proliferated in the US subprime mortgage sector, especially from late 2004." (MIR 2008b, 7)

Likewise, the PWG continued the Blueprint's structural critique and added its analysis emphasizing "[…] a *dramatic weakening of underwriting standards for U.S. subprime mortgages, beginning* in late 2004 and extending into early 2007." (PWG 2008, 1)[77] Of course, the consequences of poor loan origination extended far beyond 2007. Yet despite this statement's misplaced optimism, the causal relationships presented are identical between MIR and PWG. From the unsustainable growth of financial products and the wanting state of controls and infrastructure to the abysmal incentive structure – what PWG described in March was reiterated in April by the findings of international experts at the Financial Stability Forum. (PWG 2008, 8–10; MIR 2008b, 6–10)

The President's advisory group made no pretense of America's leading role in creating market turmoil and, consequently, saw the government's unwillingness to oversee market participants at fault:

> "Originators had weak incentives to maintain strong underwriting standards, particularly at a time when securitizers, credit rating agencies, and mortgage investors did not conduct

[77] One caveat has been formulated by Geetesh Bhardwaj, economist for The Vanguard Group and Rajdeep Sengupta, economist at the Federal Reserve Bank of St. Louis. Seeing as they have proposed that no serious weakening of underwriting standards has occurred, it must be noted that Vanguard is a supplier of index funds, which work on the principle that on average investment managers cannot beat the market. The report's argument is that "[…] information available on mortgage originations does not reveal deterioration in underwriting standards for securitized subprime originations, particularly after 2004." (Bhardwaj and Sengupta 2009, 4) Recognizing the danger of taking PWG's statement too literal, they argue instead that the non-decline of underwriting standards is built on "[…] the premise that underwriting standards were poor to begin with." (Bhardwaj and Sengupta 2009, 31) Therefore, both author's fundamentally question what they argue is the PWG report's analytical foundation and demand a more systemic approach to comprehending the crash of the housing market. (Bhardwaj and Sengupta 2009, 32)

> due diligence sufficient to align originator incentives with the underlying risks. Against this backdrop, limited government oversight of mortgage companies […] contributed to a rise in unsound underwriting practices in the subprime sector, including, in some cases, fraudulent and abusive practices." (PWG 2008, 11)

Following the agenda set in October 2007, MIR concluded its own investigation to the same effect. It devoted a full section on security origination and the originate-to-distribute model and covered the very same issues PWG had expounded on, namely mortgage originators, securitizers, CRAs, mortgage investors and an overall lack of due diligence amongst market participants. (MIR 2008b, 9–10)

At the End of Regulatory Soul-Searching, …

Much has been said already about the flaws of the rating system, failed risk management, and the failure of regulators to mitigate risk. The analyses did not depart from previous American as well as international reports. Looking at the FSF's eventual findings, it becomes apparent that the diagnoses aligned. (PWG 2008, 8–10; MIR 2008b, 6–10) But if actors agreed globally on what caused this first market upheaval, the question arises: why did actors fail to follow up on these reports by implementing measures according to these insights? Therefore, I want to come back to the falsely sanguine outlook on the PWG report's first page mentioned above, which is part of a larger frame that brackets an introductory section called "Comprehensive Review of Contributing Factors":

> "The infrastructure of the financial markets generally has coped quite well with the heightened price volatility and surging trading volumes. Backlogs of unconfirmed trades in credit derivatives increased substantially in July and August 2007 but subsequently receded. Although liquidity in the credit derivatives markets has declined noticeably by some measures, those markets have continued to perform important price discovery and risk management functions." (PWG 2008, 11)

Despite the bleak insights into the causes of the liquidity crunch, the fact-finding endeavor did not conclude with an imperative for concrete legislative action, much less with a comprehensive international agenda to counter the developments. Particularly confusing, the PWG's almost complacent undertone framed its description of considerable, yet somehow inconsequential, weaknesses. This serves as further illustration of the argument about regulators "waking-up-at-the-wheel." Still slightly groggy, regulators knew all the pieces, but failed in appropriately assembling them; an aspect that was also singled out by one of my interviewees:

> "When Lehman failed, nobody knew where the connections were. It was all interconnected. And there were other calculations, too. Lehman wasn't a surprise. Everybody knew for six months it was going to happen. Everybody I knew had known, everybody in the market was assumed to have known. When Bear Stearns went it was viewed as a warning: 'The next guy isn't gonna be propped up!' So, everyone was actually shocked when all these things had an effect, because the view was there was enough time. But, there

> wasn't enough data. So, even if you knew that Lehman would fail, you didn't know your exposure to it."[78]

This is an important point, because it complicates the narrative developed by both those who argue that the crisis hit clueless regulators as well as those charging the complacency apparent in the findings of Secretary Paulson's working group. From a politico-economic point of view, both sides miss as much as they get right. Evidently, supervisors were reacting to the systemic externalities of a global market place they had had an essential role in creating by relying on regulatory competition. However, American regulatory leadership was not yet on the table – hence the status quo approach at problem solving – and it took the massive financial crisis five months later for the U.S. to replace an internationally decentralized system of regulation with a global projection of its interest.

…Belief in the Market Still Strong

This brings us to the largely congruent recommendations of American and international technocrats, which nevertheless displayed some pronounced distinctions. Due to being an inherently domestic affair, U.S. reflections on reforming mortgage origination did not have an FSF-mandated equivalent. And while there is some international pre-GFC consensus discernible – on enhancing market discipline, reforming the credit assessment process, upgrading the infrastructure regarding derivative trading, on risk-management practices at global financial institutions, and on revising prudential regulatory policies – the findings by American experts paint a picture betwixt and between regulatory reform.

The PWG's insistence on "Improving Investors' Contributions to Market Discipline" – the agenda item following the reform of the mortgage origination process – puts emphasis on consumers of financial products. The group found that investors failed to gather information individually and, instead,

> "[…] seem to treat a credit rating as a 'sufficient statistic' for the full range of risks […] when, in fact, credit ratings are assessments of creditworthiness, and not of liquidity, market, or other risks […] In turn, originators underwriters, and sponsors did not always supply investors with sufficient information related to assets they were selling, securitizing, or using as collateral for structured credit products." (PWG 2008, 12)

In comparison to the final FSF report, the difference in how much weight American regulators put on consumers' personal responsibility stands in contrast to the position international – and among them also American regulators – experts took. While MIR's finding of poor in-

[78] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

vestor diligence has been noted already, the group adopted a decidedly more interventionist tone by putting clear emphasis on changing the practices of providers of financial services:

> "[…] public disclosures by financial institutions did not always make clear the risks associated […] The information disclosed about risk exposures was not sufficiently timely and useful to many investors […] A number of financial institutions and auditors worked together to improve risk disclosures […] for the second half and for year-end 2007. However, a lack of adequate and consistent disclosure of risk exposures and valuations continues to have a corrosive effect on confidence." (MIR 2008b, 22)

Consequent in how it outlined the collaboration between providers and consumers of financial products, in the next paragraph MIR referenced the SSG's project on identifying best practices and sketched plausible "near term" solutions: "Some examples of leading practice risk disclosures in current market conditions have been set forth in a supervisory report on recent quantitative and qualitative disclosures by a sample of global banks and securities firms." (MIR 2008b, 23) This complicates the analysis. While the PWG's report seems to emphasize mistakes made by consumers, the FSF uses the work of the U.S.-dominated Senior Supervisors Group to push providers of financial services towards more transparency. Of course, supply-side arguments do not foreclose demand-side considerations. But, the difference between PWG's work and the report by MIR points to U.S. experts still trying to find their eventual position on how to evaluate the crisis.

This motif runs through other aspects of regulatory reform as well. American supervisors sought to collaborate with the International Organization of Securities Commissions (IOSCO) in changing the over-reliance on CRA's by financial firms and consumers. However, U.S. support of using an international angle in these reforms was still lukewarm, stating that IOSCO "[…] should be encouraged to continue addressing credit rating issues through revisions to its 'Code of Conduct.'" (PWG 2008, 15) Reading MIR's analysis, this nod to international efforts can be viewed as paying lip service to the global scope of financial services. No supporter of regulatory competition, the FSF's international perspective had to make American policy-makers at least uncomfortable.

Both accounts noted CRAs' paradoxical acknowledgement of stark differences between structured financial products and standard commercial bonds while continuing to use identical methodologies for rating these products. (PWG 2008, 14; MIR 2008b, 32) However, the Forum's investigation linked this business practice to "[…] intense conflicts of interest […]" (MIR 2008b, 33) In contrast to sovereign credit ratings (Sinclair 2005, 136–38), providers of structured financial products paid for the ratings of, for example, CDO tranches and stood in constant exchange with rating agency personnel to make sure the creation of financial products and their eventual rating were synchronized:

> "While the issuer-pays model applies to all the products rated […], the standard conflicts of interest may be more acute for structured finance ratings. Because structured products are designed to take advantage of different investor risk preferences, they are typically structured for each tranche to achieve a particular credit rating. To the extent that CRAs discuss with issuers during this structuring process the rating implications of particular structures, the potential for conflicts of interest becomes greater. The conflicts are exacerbated when CRAs also sell consulting services to entities that purchased ratings." (MIR 2008b, 33)

MIR went to work outlining a comprehensive agenda that included the collaborative efforts of both BCBS and IOSCO (MIR 2008b, 14) as well as a detailed roadmap of proposed changes to IOSCO's code of conduct. The latter was explicitly geared to "[…] address conflicts of interest, including concerns about analyst remuneration and about the separation of consulting and rating activities." (MIR 2008b, 34) Given the U.S.' interest in protecting an industry that to this day has remained exclusively American, it is perfectly obvious why PWG did not establish a causal link to the paradox it described. Instead, American regulators suggested to improve internal reviews at rating agencies and stayed their course promoting market-discipline: "The methodologies that the rating agencies used to rate structured products are reasonably transparent. Nonetheless, greater transparency is both possible and desirable." (PWG 2008, 14)

Investigating the risk management practices conducted by global financial institutions, the economic advisors under Secretary Paulson were only indirectly appealing to international cooperation. Its recommendations were, in fact, taken entirely from the SSG's report and even included equally worded criticisms of how firms lost sight of their overall exposure due to "[…] weak controls over potential balance sheet growth […]" (PWG 2008, 15; SSG 2008a, i) Included in this criticism was, of course, firms' so-called conduit business – i.e. the legal sponsorship of structured investment vehicles – that created, if only for reputational reasons (SSG 2010), undisclosed financial obligations due the lack of legal reporting requirements. The systemic implications of these business practices seem to have been clear to American experts. Consequently, they urged the SEC to improve "[…] concentration risk management, liquidity risk management, stress testing, and other risk management practices that are necessary to ensure that liquidity and capital cushions are sufficiently robust to […]" – and here the language precedes the regulatory discourse that would follow the crisis globally – "[…] absorb extreme system-wide shocks." (PWG 2008, 16) All these insights notwithstanding, MIR went along the international consensus of what kinds of firms mostly constituted global financial institutions – that is banks and bank holding companies – and announced that a reform of Basel II's pillar on supervisory review would take procyclical risk into account:

> "The BCBS will issue further Pillar 2 guidance over the course of 2008 and 2009 […] The turmoil has exposed significant differences between firms in their ability to effectively identify, aggregate and analyse risks on a firm-wide basis […] Supervisors should therefore strengthen guidance for firm-wide management of concentration risks not only to individual borrowers but to overall sectors […] The guidance should take account of […] the potential for exposures in related areas to become more correlated at times of market strain […] Building on industry best practices, the BCBC will develop guidance for use under Pillar 2 to assess banks' stress testing practices." (MIR 2008b, 18)

In terms of substance, PWG as well as MIR highlighted the externalities that business practices had created. Both called for reforms that could potentially give firms and investors control over their exposure. However, with only one side invoking the Basel framework, it appears that U.S. experts were not prepared to commit their approach internationally beyond nondescript phrases: "U.S. authorities should encourage other supervisors of global firms to make complementary efforts to develop guidance along the same lines." (PWG 2008, 16)

To be fair, with even derivatives reform proposals largely harmonized (PWG 2008, 18–19; MIR 2008b, 20–21), regulators had reached consensus on all save the role international regulatory fora should play. As such, Basel II did feature in the PWG's recommendations when it came to enhancing "Prudential Regulatory Policy." As expected, the domestic difficulties surrounding the accord also manifested palpably in the PWG's report. In comparison to MIR calling upon the banking agreement 46 times, the group's three times mention of the international agreement is telling despite it being a third the other's size. However, on prudential regulation, the PWG anticipated some of the FSF's findings. Outlining how the model of originate-to-distribute created so-called "pipeline risks," the Paulson Treasury insisted that the "[…] securitization framework in Basel II is a more risk-sensitive approach […]" (PWG 2008, 17) It is surely debatable what good internal risk assessments do, if they fail so spectacularly. Nevertheless, it is notable how U.S. regulators re-positioned themselves to their domestic market and found new appreciation for international regulatory cooperation. Keeping in mind the longer quote from the FSF's report, the following recommendation to improve prudential oversight reads like a first instruction sheet for the banking reforms initiated by Treasury under the helmsmanship of Timothy Geithner:

> "Supervisors should review the adequacy of guidance on Basel II's Pillar 2 with respect to the consideration of the reputational risks that conduit and asset management business entail and the implications for institutions' need for […] liquidity contingency plans. To promote the maintenance of strong capital cushions and to mitigate the possibility that a more risk-based capital regime will heighten the potential for capital requirements to amplify credit and economic cycles, supervisors should rigorously assess banks' implementation of the Advanced Internal Ratings Based Approach to Basel II, especially the conservatism of estimates of losses from defaults during a downturn and the robustness of banks' stress tests." (PWG 2008, 18)

This recommendation preceded the eventual crash by half a year. Interviewee SFAZ5H was quoted at the beginning of the first chapter saying that everybody thought the crisis was over following the rescue of Bear Stearns. In hindsight, it is easy to score points emphasizing the naivety of such statements. But an anecdote from SFAZ5H's family vacation in August 2007 also outlines the level of preparedness. Having missed the rescue of the German bank IKB, SFAZ5H noted that after European banks' exposure to the U.S-subprime market became clear regulators still felt a sense of urgency:

> "And so, the question at that point: 'Who do we go to? Do we go to the IMF or do we go to the FSF?' And, I think, why we'd felt at Treasury to push the G-7 to turn to the FSF was that the FSF had had practitioners. They had people, they had the banking regulators, and the securities market regulators, and the central banks. They had people that were on the job, who had to deal with this. Whereas if we'd gone to the IMF…no. They were certainly capable people, but they were not responsible for managing a [financial] crisis. So, we were going to […] the ones who could tell you first-hand what the problem was, what they were working on in terms of the solutions. So, that was the answer."[79]

This approach remained the answer. September 18, 2008 did not alter the American strategy. Meeting a global problem had to be matched with a global response. But with the scale of the crisis increasing, U.S. officials realized the FSF had to change for regulators to scale its towering challenges.

[79] Author's interview on October 01, 2015. Comments not for attribution. Reference code: SFAZ5H.

## Chapter Three
## From the Forum to the Board
## How the USA Reformed an Organization to Serve its Interests

The observable change in global regulatory leadership and cooperation that accompanied the Global Financial Crisis (GFC) did two things in one. It confirmed the proverbial witticism that a "crisis is a terrible thing to waste" and provided ample evidence of the significant market power the United States yields in shaping cooperation in this policy field. The following chapter analyzes the institutional change the Financial Stability Forum (FSF) went through in becoming the Financial Stability Board (FSB) between October 2008 and April 2009. In so doing, it specifically complicates scholarship proposing relative market size as a key resource for power. (Kapstein 1989; Krasner 1982, 1991; Drezner 2007) As outlined in the first chapter, some scholars have argued that European integration has given the EU a significant edge in international standards negotiations (Posner 2007, 2009) – a claim made even when scholarship turned American institutional fragmentation back at Europe. (Greene and Boehm 2012) Fioretos, for example, implies that intergovernmental fragmentation has survived all European efforts in creating a common market and has itself become a source of power. (Fioretos 2001, 2010b) To address the inherent puzzle this scholarship poses for the role the two largest markets played in creating the FSB, I argue market size has to be made more explicit as a power-resource. Market size itself, I propose serves only as a necessary condition, which by itself does not automatically create influence. Regarding regulatory cooperation within the FSF/FSB-framework, I promote that three sufficient conditions helped translating U.S. market size into politico-economic leverage: political commitment, institutional capabilities, and timing.

### The FSB: State of the Art

So far, research on the FSB has been scarce and what little has been produced addresses the question of how an institution as weakly institutionalized as the FSB might be able to significantly influence and coordinate international regulatory cooperation in financial services. An institutionalist re-formulation of the problem can be found within the confines of legalization theory: how can we expect an organization to work with minor levels of precision in its rules and procedures, with only peer pressure to bind its members to already low levels of obligation, and with no delegation to enforcement procedures – let alone a dispute resolution regime? (Abbott et al. 2000; Abbott and Snidal 2000, 2001, 2009) This particular strain of

scholarship is tied to politico-economic research on globalization and, to a lesser degree, the retreat of the state. Emphasizing how economic size and subsequent capabilities translate into market-power, I argue that such purely institutionalist considerations misrepresent the FSB's role in regulatory cooperation and fails to explain why it caters particularly to the interests of the United States.

Nevertheless, the focus on the FSB as an organization still represents a notable shift. It reflects how social science research has started to skeptically review the promise of apolitical technocratic efficiency. Previous accounts emphasized the merits of loose regulatory arrangements and tied their alleged impact to deeply embedded networks situated between political steering and the expertise and interests of private market actors. (Levi-Faur 2005a, 2005b; Jordana, Levi-Faur, and Marín 2011) Louis W. Pauly, for instance, has consequently criticized how scholars from a wide range of disciplines have welcomed the neoliberal absence of political interference and "[…] tried to put an optimistic spin on the notion that 'networked governance' can be appropriate for an integrating global economy." (Pauly 2010, 18) Expanding his second order argument, Pauly draws a parallel to the laissez-faire economic policies and the insufficient state of international cooperation after World War I. He questions the FSB's weak institutionalization and warns that without enlarging the "[…] pretty narrow base for a fourth pillar […]"[80] (Pauly 2010, 16) the FSB could meet the same fate as financial regulatory cooperation at the League of Nations. Of course, Pauly's historicization only makes sense when one assumes that, on its own, a stronger institutionalization of the FSF would have prevented the regulatory fallout of the GFC. However, my argument is that the institutional structure is subordinate to and epiphenomenal of the political commitment with which the U.S. has incentivized G-20 member states to participate in the work done at the FSB. Much post-crisis research on the governance of international financial services has attempted to evaluate the FSB according to its structural merits or the interests of G-20 members in general. Ignorant of its genesis and the resulting potential impact, it rarely captures the politico-economic significance of a new governance mechanism chaperoned by the U.S.

### Institutional Criticism of the FSB

In one of the earliest longer pieces on the FSB, Douglas Arner and Michael Taylor view the FSB as a hardening of the soft-law arrangement typified in the FSF. (Arner and Taylor 2009) Comparing the international responses to the Great Depression and the GFC, both authors

---

[80] Describing the FSB as the fourth pillar of international economic cooperation was Timothy Geithner's preferred approach to assure the wider public that the Obama Administration had taken substantial, global countermeasures in the aftermath of Lehman and Merrill Lynch. (Geithner 2009a)

built on the apparent conundrum a historical comparison presents. Often described as the worst financial crisis since the 1930s, they emphasize that the hard-law institutions of the Bretton Woods process accommodated a worldview in which finance should seize to be global. (Arner and Taylor 2009, 27) The FSB's cautious hardening of the FSF's soft law approach, they argue, is consistent with the reversal of that policy and embodies a new mechanism of international coordination in the twenty-first century. Publishing in June 2009 – the month the FSB held its inaugural meeting (Lombardi 2011; FSB 2009b) –, Arner and Taylor are skeptical of whether the organization's institutionalization can actually facilitate the cooperation necessary to "[…] burden-share the costs of cross-border bank failures." (Arner and Taylor 2009, 30)

Similarly, Philip Turner calls upon states' long-term interest in financial stability and argues that the traditional regulation of individual companies has led to an amplification of economic cycles. (Turner 2010) Under the aegis of the FSB, preventing systemic risk has been encapsulated by its macroprudential framework. Deliberately distinguishing it from the microprudential pre-crisis approach, this set of policy-tools has been conceptualized as an addition. It is meant to give regulators a bird's-eye-perspective. (Zahler 2010; Viñals 2011, 2013) Turner submits that states will have to have the stomach to experience somewhat of a learning curve. "New policies," he reasons, "inevitably involve trial and error – and the lack of decisive prior evidence on how they would work in practice is not a reason for not acting when the likely alternative is worse." (Turner 2010, 47)

Of course, many authors have figured that the long-term/short-term interest dimension could very well be the FSB's Achilles' heel. At the core of its work, macroprudentiality will mean to install countercyclical policies that moderate economies once they start overheating. Credit crunches – so the idea – would be cushioned by comprehensive risk incorporation via stricter capital requirements on individual market participants. (Griffith-Jones 2010, 49) Evidently, this will take sustained political effort. Aware of the political capital necessary when taking the punch bowl away, Andrew Baker references the likely public good repercussions of regulatory capture (A. Baker 2010a, 651) and argues that the political election cycle creates a bias towards economic pro-cyclicality. (A. Baker 2010a, 649, 2010b, 21)

On a meta-level, exponents of this structural criticism of the FSB asks for how the organization could induce members' commitment by virtue of its institutional design. Specific critique, therefore, comes from scholars who argue that the FSB's peer-review mechanism should be improved to support its regulatory agenda. Tony Porter advances the idea of a politicized policy-surveillance. Reflecting sequentially "[…] the concerns of different powerful

subgroups of G-20 members […]" within reviews, he argues, would help to maintain incentives for regulatory cooperation. (Porter 2010, 40) At the same time, the FSB should take a more active role in publicizing the findings of peer-reviews and create an audience to ensure continued accountability of members to the FSB's cooperative goals. (Porter 2010, 41) Roberto Zahler also toys with ideas on how to remedy political opportunism. He argues that if the FSB's in-house macro-prudential assessments were to be part of the larger IMF review process, a deeper integration of the international regime in financial surveillance would ensue and foster continued state support. (Zahler 2010, 56) Rolf Weber and Dominic Staiger propose a similar institutional merger and promote an enforcement scheme that would work like the World Trade Organization's (WTO) dispute settlement mechanism. However, they admit that any form of international dispute settlement would inevitably lack a common denominator, because individual jurisdictions have specific and diverse rules in regulating financial services. (Weber and Staiger 2014) Ignoring how its largest member drives the FSB – aside from the rather diverse premises of each trade policy and financial services regulation – Weber and Staiger's piece never engages with the fundamental aspect that the FSB's structure is a result of the regulatory diversity they outline themselves as an almost insolvable institutional weakness.

Critical of soft-law regimes, Andrew Walter follows Zahler[81] insofar as he also departs from a Bretton Woods perspective. But, he contradicts proposals of any such regime mergers emphasizing that the IMF already had trouble keeping governments accountable. (Walter 2010) Considering a generally mixed track record in FSAP/ROSC[82] evaluation procedures, Walter highlights that the U.S. has been particularly absent from these peer-reviews. Without a sustainable American commitment to undergo any such oversight, Walter doubts the efficacy of jurisdictions holding each other accountable: "The FSB has stated that its peer surveillance will rely heavily on FSAP assessments of G-20 countries, but ROSCs have been an ineffective tool for promoting compliance in the past; nor did they prevent the build-up of financial fragility in the major centres before 2008." (Walter 2010, 35)

Research on Intergovernmental Cooperation at the FSB

Aside from the implications on the FSB as an organization, research on peer-review departs as a matter of course from the observation that states are at the center of the FSB's member-

[81] To Zahler, Weber and Staiger's argument is only important insofar as it regards merging the newcomer FSB with the conventional proceedings of established, inclusive, Bretton-Woods organizations.

[82] IMF and World Bank conduct peer-reviews of member jurisdictions using the Financial Sector Assessment Program (FSAP), which applies mostly to developed countries, and the more inclusive Reports on the Observance of Standards and Codes (ROSC).

driven search for consensus. Accordingly, some research discusses the immediate impact of action taken by the G-20 member states. Because of the prominent role governments played in the aftermath of the crisis, Stavros Gadinis as well as Susanne Lütz have branded their observation as a politicization of financial services regulation.[83] Gadinis identifies surprising state-support in re-regulating accounting standards. During normal times a mere technicality negotiated at most among sherpas, he asserts the reform agenda was anything but left to private sector associations (i.e. the IASB[84]), but was developed with the larger political cloud of the FSB and "[…] under the watchful eye of political actors […]" A financial law expert, Gadinis concludes: "That accounting inspires this level of detail in a report to government leaders is, on its own, a fascinating development." (Gadinis 2013b, 171, 2013a) While Gadinis' claim is empirically limited to one subset of financial services regulation, Lütz' more general account accentuates that domestic executive stakeholders – responsible for implementing regulatory policies on the ground – are now increasingly involved in transatlantic regulatory cooperation. Often a contentious political issue domestically, regulation, she claims, is now "[…] shaped by political leaders, rent-seeking interest groups and legislators rather than by networks of technocrats." (Lütz 2011, v-vi)

My research will show that the reverse appears to be more accurate. Technocrats play an increasing role in the member-driven and arcane work of financial services regulation. Because of this misconception, Lütz underlines a problem that is tied to the politicization of transatlantic regulation. Cooperation, she predicts, might become more, instead of less, difficult, because of two potentially incompatible regulatory regimes with exclusive administrative rule-making in the U.S. and inclusive political negotiations on the content of regulation within the EU. (Lütz 2011, xv) Consequently, her analysis is at odds with research emphasizing that members have no issue finding a consensus on the principles of regulation. Shawn Donnelly has argued strongly in the opposite direction. While he calls for more second-order change and criticizes the reformist impetus of the organization's work, he also finds praise:

[83] Considering how the FSF was established due to an initiative of the G-7 heads of states and governments with finance ministries responsible for political steering and oversight (Walker 2013, 2), the detection of political initiative at the FSB is less a change because of the FSF's reform but rather due to the appreciation of the FSB's work by governments and their commitment following the GFC.

[84] The International Accounting Standards Board is part of the larger International Financial Reporting Standards (IFRS) foundation and a classic example for the way in which standards had been developed before the GFC. A London-based not-for-profit organization, it receives funding from various sources, among them the Board of Governors of the Federal Reserve System (noteworthy for its once strict opposition to non-U.S. accounting standards) (Posner 2009), Deutsche Bank AG, Bank of America, CitiGroup, PricewaterhouseCoopers, the Bank for International Settlements (BIS), several Ministries of Finance, with the largest donation of roughly USD 4.3 million coming from the European Commission. (IFRS 2015, 43) The IASB is a member of the FSB, therefore endowed with voting privileges, and among the most visible structural evidence that technocratic expedience and private interest are still, even if only in concert with governments, very much represented in the field of international financial services regulation.

> "[…] these institutional developments and mechanisms do more to develop concrete common goals, enhance transparency and generate peer-pressure for institutional strengthening and isomorphism across countries than the Forum once did. They also represent the potential to establish joined-up regulatory standards that close up regulatory gaps. In this sense, the institutional changes at the Board are game-changing for the international financial architecture." (Donnelly 2012, 275)

While this praise is a point-in-time statement about the overall incentives states had to cooperate, Chris Brummer tries to explain the political dimension that led to Donnelly's observation. He emphasizes that the FSF's potential as a network was largely overshadowed by its financial hegemon. Brummer echoes the aforementioned Louis Pauly when he criticizes that in overestimating U.S. commitment and being oblivious to previously irreconcilable philosophical differences, "[…] network theory […] largely overstate[d] the transformative potential of regulatory interconnectivity." (Brummer 2010, 330) Concerned with policy implementation, he proposes a bottom-up approach in understanding the FSB. Brummer presumes weakened American dominance in finance (Brummer 2010, 345) and claims the crisis has created a strong incentive for overall cooperation or, as he calls it, "[…] a dramatic realignment of regulatory philosophies […]" (Brummer 2010, 362) The consequent increase in state-actor participation, Brummer argues, has turned the FSB "[…] into the nearest thing the world has to an overarching global financial regulatory group." (Brummer 2010, 360) It remains, however, unclear to what extent either Americans or the EU have actually changed their regulatory philosophies due to the GFC or why the crisis would have led to a benevolent struggle for a meritocratic regulatory reordering in an organization that in Brummer's scenario would have to rest on the principle of sovereign equality.

While Jan Wouters and Jeb Odermatt join the optimistic appraisal of international reactions to the GFC, they do so assuming opposing pre-conditions. (Wouters and Odermatt 2014) Diverging from Donnelly's emphasis on institutional design and Brummer's claims of a level playing field, they argue that the informality of the FSB's regulatory network provides strong states with a cover to project their interests and preferences with a set of internationally binding rules. (Wouters and Odermatt 2014, 74) But, Wouters and Odermatt's notion of informality[85] is never clearly separated from the opacity that characterized the pre-crisis state of international cooperation. Consequently, their account fails to expound on exactly why rules would suddenly have become binding and, hence, what really changed through FSB reforms. Both authors indicate a strengthening of the FSB due to its set up as a Swiss legal entity following the 2013 G-20 summit in Los Cabos, which they claim has put the FSB on a long road

[85] The authors define informality as "[t]he lack of formal decision-making and voting procedures […]" (Wouters and Odermatt 2014, 66).

to the "[…] other pillars in terms of legal basis." (Wouters and Odermatt 2014, 55) While cautiously arguing the organization's evolution towards more institutionalization, it seems they ignore the organization's quality as an international regime sui generis. In its second annual report, no political motive is discernible to fundamentally alter cooperation at the FSB. (FSB 2015a, 10–13) My own field research has confirmed that this new administrative status has had no impact aside from signaling a continuation of the Board's work.[86] Since its legal separation, in fact, the offices of the FSB have not been transferred to a facility outside of the BIS. Interviewee SFAZ5H, who agreed to be identified as a former G-20 sherpa for Timothy Geithner summarized this institutional development as subject solely to the requirements of the FSB's internal procedures:

> "We decided in the end that […] all these funding […] proposals were too complicated. So, we just went to the one that we had before, which was the BIS. BIS agreed to fund the FSB, fund their budget. We set up a new Standing Committee on Budget and Resources. Treasury's Under Secretary was a member on that for a bit, so we had […] part of the process to get the budgets going. But, in the end, I think, […] we just needed a little bit more rigorous structure as auditors [became] involved. And to do that you need to be a Swiss legal entity. And so, the reason for Switzerland was, because we were already there (laughter), the FSB was there… that was really the reason, there wasn't anything neat to that, I think."[87]

Other interviewees have also stressed the advantages of establishing the FSB as a not-for-profit-organization under Swiss law, since it made the FSB independent from its former status as one of the departments at the Bank for International Settlements (BIS)[88] and permitted it to hire personnel autonomously[89]. Since none of the empirical data suggests that the FSB's changed legal status implied anything more than its administrative merits, readers are left to wonder in what way Wouters and Odermatt's piece goes beyond institutional conjecture.

Larry Backer has also delivered a state-centered account, but departs from a diametrically opposed set of presuppositions. Backer squares research narrowly focused on structural evaluations based on legal dogma with the legal practice he observes: "Its charter does not create any legal rights or obligations, or produce, formally, a fully constituted legal personality. But for the purposes of its work, that may make little difference." (Backer 2011, 785) In times during which globalization has "[…] destroyed the old presumption of a substantially complete identity between subjects and objects of regulation" (Backer 2011, 754), the domestic implementation of consensually agreed upon, non-binding re-regulations becomes an exclusive endeavor projecting power onto non-participating regulatory areas: "Transnational soft-

---

[86] Author's interview on August 15, 2015. Comments not for attribution. Reference code: L75FO2.
[87] Author's interview on October 01, 2015. Comments not for attribution. Reference code: SFAZ5H.
[88] Author's interview on August 18, 2015. Comments not for attribution. Reference code: L75FO2.
[89] Author's interview on September 16, 2015. Comments not for attribution. Reference code: 4SBE9E.

law developed within the FSB framework becomes a gateway to hard law that is crammed down on nonparticipating jurisdictions through the application of pressure form G-20 member states." (Backer 2011, 788)

Backer's assessment, however, is problematic in view of a fact emphasized by Daniel Nolle. Regarding banks' assets, stock market capitalization, and respective bond markets, G-20 jurisdictions, he asserts, represent some 90 percent of financial markets. (Nolle 2015, 5–6) Therefore, theories about Drezner-like club rules imposed on non-member jurisdictions fail to explain which non-members would be left to be significantly exposed to the re-regulation set by FSB consensus. The approach pursued in this study makes a similar power argument, but with American rules as radiating influence factor on other FSB member jurisdictions.

Thus far, assessments of the FSB stress the role of either the organization or the plurality of its member-states in advancing – or failing to expedite – regulatory cooperation. This leads to analyses that presume some potential development either driven by an admittedly rather small organization, a diffusion of G-20 stakeholders' interests, or a concurrence of both. However, it is this thesis' main assumption that the United States, and not any plurality of members or stakeholders, set in motion the reform process of the FSF and forged ahead with an agenda to internationalize domestic reforms and, hence, forestall international arbitrage.

One last author must be mentioned, who early on understood the FSB as a U.S.-driven enterprise but failed to deliver any meaningful empirical proof supporting this claim. Based on David Singer's theoretical work (Singer 2004, 2007), Eric Helleiner conjectured that while the U.S. had no interest to engage with the Forum (see also: Kern, Dhumale, and Eatwell 2005, 76; Davies and Green 2008, 116), the GFC has created a strong incentive to commit to an internationalization of post-crisis re-regulation:

> "The US subprime crisis has generated enormous domestic pressure on US officials to tighten domestic financial regulations, but they are aware that unilateral tightening risks undermining the international competitive position of the US financial sector. If, however, all states can be encouraged to tighten their standards in tandem with the US, the competitive concerns can be addressed. International regulatory coordination, in other words, helps US policy makers meet the twin goals of stability and competitiveness." (Helleiner 2010b, 286)

Helleiner presents a theory-driven deduction of America projecting its influence. However, he provides no evidence as to why exactly this affected the inner workings of international financial services regulation. Therefore, his piece resorts to questions of institutional design and how this could sustain members' commitment. What ensues is a tour de force of the concerns already voiced: the desirability of improving commitment through a WTO-like dispute settlement body, the various regulatory approaches available, and potential legitimacy issues.

Since the author fails to rigorously pursue his argument about American dominance, the analysis peters out:

> "The development of appropriate standards is inherently difficult given the constant innovation in financial markets and the tendency of policy makers to fight the last battle rather than the next one. […] In the pre-crisis era, Anglo-American practices acted as a kind of focal point for international coordination because of their prestige and apparent success. As these practices have lost some of their legitimacy, international standard setting may become more difficult, especially with a larger and more diverse group of countries now in the decision-making bodies." (Helleiner 2010b, 287)

Holding U.S. regulatory practice constant, Helleiner himself becomes one to fight the last battle. Oblivious to his own use of Singer's internationalization argument, he fails to connect American domestic reforms to the FSB's member-driven search for consensus. Thanks to its regulators' omnipresence in the respective FSB committees and working groups, Washington's reform-agenda ensured both the country's virtual veto power and the proliferation of its domestic reform agenda.

Pre-reform Stock Taking: The President's Working Group

Whatever the structural implications of the Treasury-lead PWG's set-up for the politicization of the FSB, the group matters to the issue at hand because starting October 2006 it became involved in thinking about the systemic implications of a potentially disastrous financial crisis. In an online blog post of *The Daily Telegraph* from October 30, 2006, then-Treasury Secretary Hank Paulson is quoted saying "[…] the group had been allowed to languish over the boom years. Henceforth, it will have a command centre at the US Treasury that will track global markets and serve as an operations base in the next crisis." (Evans-Pritchard 2006)

While this establishes awareness on the side of the U.S. administration, and therefore solidifies America's agenda-setting role, it also clearly requires a response to an ensuing counterfactual: if Treasury did already know about the looming crisis during the fall of 2006, then why did officials allow the bubble to burst a full two years later? The answer to that is simple. During a time still widely perceived as "bullish," they did not know precisely in what part of the economy the bubble had developed and where its bursting would be felt.[90] Secretary Paulson only had a hunch and asked the PWG to think about the "[…] systemic risk posed by hedge funds and derivatives, and the government's ability to respond to a financial crisis."

[90] Ambrose Evans-Pritchard, for example, also correctly predicted the crisis, but was less than precise as to what areas of financial services would be involved, where the vulnerabilities would breach first, and what scope the crisis would assume. Nevertheless, the blog post ends with a stern warning: PWG "[…] should examine a recent report by the New York Fed warning that whenever the yield on 10-year Treasuries has fallen below 3-month yields for a stretch lasting over three months, it has led to each of the six recessions since 1968 […] As of last week, the yield curve was inverted by 29 basis points, was continuing to invert further, and had been negative for over three and a half months. If the Fed is right this time, the recession of 2007 is already baked into the pie. Those speculative positions may have to be unwound very fast." (Evans-Pritchard 2006)

(Evans-Pritchard 2006) As it turned out, hedge funds did not immediately cause the GFC (Bianchi and Drew 2010, 24; Crotty 2009, 568–70), even though extensively leveraging CDO-related investments amplified the market downturn and hedge funds hemorrhaged money from failed investments just like any other investor. (Fioretos 2010a, 719; Münchau 2008, 121; Lysandrou 2011) What the involvement of the PWG does suggest, however, is that an intellectual groundwork was activated during the last quarter of 2006 that allowed the U.S. to assume the leadership role in what ultimately became an internationalized U.S. response to the financial crisis.

In a memorandum to President George W. Bush of March 13, 2008 – the day before the New York branch of the Fed bailed out Bear Stearns with USD 25 billion –, Secretary Paulson emphasized how parts of the government had been concerned for some time about developments in the markets: “Last August, you called on the President’s Working Group on Financial Markets (PWG) to review the underlying causes of developing financial market turmoil.” (PWG 2008) At that meeting in August, the administration had voiced an initial, if only crude, comprehension of the looming turbulences:

> “In many cases, the neighborhood banker who issued a family’s mortgage does not own that mortgage for long. Instead, mortgages are sold as securities on the global market. And that makes it harder for the lender and borrower to renegotiate. The recent disturbances in the sub-prime mortgage industry are modest – they’re modest in relation to the size of our economy. But if you’re a family […] I understand these concerns, and therefore, I’ve made this a top priority […] We’ve got a role, the government has got a role to play – but it is limited. […] It’s not the government’s job to bail out speculators, or those who made the decision to buy a home they knew they could never afford.” (Bush 2007)

This quote illustrates that parts of the administration knew that financial markets were in trouble. While this speaks to the U.S.’ tentative awareness, it does not, however, eliminate the fact that at that meeting the White House fell for the zeitgeist’s pervasive optimism[91] and overlooked how individual defaults on mortgages were going to wreak systemic havoc within structural securities that were additionally widely hedged by credit default swaps. (Manns 2013, 1623)

While the official disposition towards risk-taking and -management was incrementally changing, the White House showed no appetite for global economic leadership in August 2007. Nevertheless, the Paulson-Treasury tried to improve its understanding of the economic turbulences and readied itself for a possible international response:

[91] One expert intimately familiar with the American housing market commented on this particular circumstance in an interview: “[…] there was this combination of anxiety and ignorance […] people said: so, what about subprime mortgages and we would go look at subprime mortgages … we’d say: gosh, it’s five percent of the mortgage market, it’s just not that big a deal. How could this blow up the world?” Author’s interview on September 18, 2015. Comments not for attribution. Reference code: DKS484.

> "And then in 2007, we had the beginnings of a financial crisis […] and in August 2007, we were talking about what the response should be to the financial crisis and who should look at the causes and investigate it. We in the U.S. Treasury, we suggested that the FSF do that and the U.S. Treasury and the Fed wrote a letter to other G-7 Deputies and got their agreement to ask the FSF to take forward this work and they set up a working group on financial market resilience, I believe it was called."[92]

The letter is of particular interest, because – as outlined in the last chapter – American regulators pre-formulated the overall agenda of the ensuing FSF MIR working group. Insisting that "[i]t is in the interest of all the G-7, not just the United States, to understand the issues and address any weaknesses" (McCormick and Kohn 2007), David McCormick, Under Secretary of the Treasury, and Donald Kohn, Vice Chairman of the Board of Governors, set in motion an international response to market volatilities at a time when the eventual crash of the financial system was still behind the horizon. This meant the request came untarnished by any dent to the market power the U.S. was able to exert and resulted in a working group that followed the American request to the letter. In terms of agencies involved, McCormick and Kohn stipulated that besides regular FSF state members, the organization would also include IOCSO, the Basel Committee, and the Committee on the Global Financial System (CGFS). The latter is – just as the Basel Committee – a sub-organization of the BIS.

Involving CGFS made sense beyond its mission to monitor international banking. It was a concrete corollary of American market power: CGFS' chairman at the time was Donald Kohn. Consequently, one interviewee, who was directly involved in the proceedings from a European side, outlined the importance of such expert personnel:

> "There wasn't in the initial stages a very strong understanding of the complex structured vehicles that were causing problems in the system […] So there was this initial problem to begin with in understanding the nature of those problems and looking beyond the simple capital ratios of banks to ask oneself further what is the health of the financial system […] we had within our membership some very able senior financial market regulators and authorities. I was very struck by their readiness to act quickly [and] to find ways to coordinate [and] to do that in an unbureaucratic way so as to begin to grapple with the system. People like Mario Draghi, our chair, Don Kohn at the Federal Reserve Board […] once they started to identify the problem they were very keen to find ways […] to act. That enabled the FSF to take action quickly."[93]

In September 2007, McCormick and Kohn outlined four areas within which expertise should be accumulated internationally; and these areas were then integral parts of the final reports of both the PWG – which is hardly surprising – and the FSF: risk-management issues, the accounting and valuation of "[…] *certain types of financial derivatives* […]", the role of credit rating agencies regarding these structured financial products and, finally, a re-evaluation of

[92] Author's interview on October 01, 2015. Comments not for attribution. Reference code: SFAZ5H.
[93] Author's interview on August 18, 2015. Comments not for attribution. Reference code: L75FO2.

the practice of prudential oversight. Striking a decidedly cooperative tone, they nevertheless deliberately leveraged the full weight of the U.S. financial market by invoking its subsequent institutional capabilities: "The U.S. Treasury Department and the Federal Reserve, in consultation with staff at the U.S. Securities and Exchange Commission, believe that the course of action outlined above will be extremely useful in responding to the developments of the last several weeks." (McCormick and Kohn 2007)

When the reports by PWG and FSF were published in March and April of 2008 respectively, it not only became apparent that the economic situation had deteriorated, but also that the U.S. had solidified its leadership role. Just as the FSB, its predecessor was a member-driven institution and the U.S. was a strong voice at MIR's table. The working group consisted of 26 members, four of whom were representatives from the United States: Christopher Cox (Chairman of the SEC), Donald Kohn (CGFS), Timothy Geithner (President of the Federal Reserve Bank of New York), and John Dugan (Comptroller of the Currency). Aside from the personnel, recommendations of the FSF issued on April 7, 2008 largely mirror the PWG's findings published on March 13, 2008. Here, all five of the internationally[94] relevant recommendations of the PWG have had significant influence on the FSF's April report. This agenda-setting role was adumbrated when the PWG ended the report outlining its international course of action:

> "Internationally, the PWG is working with foreign regulators, finance ministries, and central banks through the Financial Stability Forum (FSF) on a report to the G-7 Finance Ministers and Governors that will provide a diagnosis of the causes of global financial turmoil and an agreed-upon set of recommendations for addressing identified weaknesses in global markets and institutions. As part of that cooperative process, the PWG has shared with the FSF the diagnosis and recommendations set out in this statement." (PWG 2008, 20)

Like the PWG, the FSF outlined that credit rating agencies (CRAs) conduct "[…] assessments of creditworthiness, but not assessments of the level of liquidity, market or rating volatility risk." (MIR 2008b, 37; U.S. Treasury 2008a, 12) Therefore, both reports demand that "investors […] develop an independent view of the risk characteristics […] rather than rely solely on credit ratings." (PWG 2008, 13; MIR 2008, 38) Comparable similarities can be found regarding a differentiation of the rating process "[…] for structured products from ratings for corporate and municipal securities […]" (PWG 2008, 4; MIR 2008b, 34)[95]

[94] The first recommendation "[…] for *reforming key parts of the mortgage origination process* […]" deals exclusively with jurisdictional issues U.S. state and federal regulators face and calls for more intra-U.S. cooperation. (PWG 2008, 3)

[95] The FSF outlined the same recommendation, but substantiated its reasoning more vocally: "Many investors took CRAs' ratings opinion of structured credit products as a seal of approval and looked no further. But structured finance ratings differ from traditional corporate debt ratings in that they are model-based and to a larger degree assumption-driven, result from an 'inverted' ratings process in which a structure is fitted to a desired rating, often rely on non-public information about the underlying assets, and have the potential for significantly higher ratings volatility in certain circumstances." (MIR 2008b, 34)

To ensure that these structural reforms are implemented, both reports emphasize stress-testing as a way to avoid system-wide shocks. (PWG 2008, 16; MIR 2008b, 17–18) Consequently, the similarities continue with regards to prudential policies. Both documents outline difficulties with the originate-to-distribute model (MIR 2008b, 9–10) that President Bush had referred to in August 2007 and insist that the associated pipeline risks will have to be monitored more closely. (PWG 2008, 17; MIR 2008b, 19) However, the almost exact duplication of the PWG's recommendations enhancing "[…] *the OTC derivative market infrastructure* […]" in the FSF's report merits attention and makes a plausible case for the U.S.' internationalization of its reform program. Over-the-counter financial products were largely unregulated and had been initially traded only between two knowledgeable counterparties. Since the originate-to-distribute model contradicted the logic of limited bilateral exposure, reforming derivatives markets was a matter of course. Both documents call (a) for amending "[…] standard credit derivative trade documentation to provide for cash settlement of obligations stemming from a credit event […]", (b) for automating "[…] trade novations and set [ambitious/rigorous[96]] standards for the accuracy and timeliness of trade data submissions and the timeliness of resolutions of trade matching errors for OTC derivatives", and finally (c) ask for the development of "[…] a longer-term plan for a reliable operational infrastructure supporting OTC derivatives." (PWG 2008, 19; MIR 2008b, 21)

America Changes the International Perception

However, two differences between the American assessment and that of the Forum stand out. The PWG calls for regulators to increase supervisory activity and prompt market participants to fulfill the policy-changes describe above. In the FSF's version, market participants are trusted to make these changes without supervisory pressure. This difference in the quality of statism (Krasner 1978), i.e. the government's regulatory authority deemed necessary to implement reform, is reflected by the difference in wording regarding data transparency in OTC derivatives trade. The PWG's use of the term *ambitious* refers to the potentially stronger role which regulators could be expected to play re-regulation after the market turmoil of 2007 had already increased political pressure at home.[97] However, calling for a *rigorous* process – as the FSF document does – betrays a confidence in explicitly non-political and technocratic self-regulatory philosophy, which constituted much of the pre-crisis deficits in regulatory

[96] The President's working group uses the term ambitious, while MIR calls for a more rigorous procedure.

[97] The double subjunctive used here is due to the fact that the PWG's report itself fails to vigorously demand action. By expressing "Supervisors should insist […] should urge […] should ask […]" (PWG 2008, 6) the U.S. regulatory elite refused to call for immediate action, but remained indecisive in facing a threat that was only looming during the spring of 2008. Interestingly, a day after the PWG's recommendations were reported the Federal Reserve had to bail out Bear Stearns when two of its hedge funds found themselves unable to meet their obligations.

oversight. Unsurprisingly, the PWG's report calls for strengthened international regulatory cooperation twice, in the executive summary and in the section on risk management practices: "U.S. authorities should encourage other supervisors of global firms to make complementary efforts to develop guidance along the same lines." (PWG 2008, 5, 16) A rift had become apparent, causing the U.S. to use its market power in installing a regulatory practice that recognized the need for international cooperation in forestalling systemic market-failure.

At the beginning of the century, supervisory regulation was American made and diffused because of the U.S.' hegemonic market size. (Simmons 2001; Simmons and Elkins 2004; Pan 2003) What is more, it does make sense to think of regulatory networks – like the FSF – as clubs (Drezner 2007) through which powerful jurisdictions project their rules internationally. (Bach and Newman 2010; Helleiner and Pagliari 2011; Maggetti and Gilardi 2011; Quaglia 2013; Spiro 2004; Verdier 2013) However, if the "[…] USA was able to both dictate the structure of and later influence th[e] [F]orum […]" (Reisenbichler 2015, 18), then going through the trouble of pushing for a FSF working group – as opposed to simply dictating new rules – might betray the demise predicted by the end of the American Empire; or at least a significant loss in market dominance. (Brummer 2010) Looking at the change in tone that is apparent from the PWG-document to the recommendations of the FSF working group, one could also be inclined to diagnose what Brummer has called "[…] the rise of the rest." (Brummer 2010, 345)

This would be a misrepresentation of the status quo ante. The FSF had in effect no significant role to play between 1999 and late 2006, because, as one former Congressional aide has put it:

> "[…] the idea was that if the United States regulated too much that business would migrate. So, one alternative would have been for greater cooperation between the international regulators, but rather than cooperate everyone […] assumed that financial services was [sic!] local and the most important thing was […] to ensure that domestic financial services companies didn't compete at a disadvantage against their foreign peers and to ensure that domestic financial markets continued to be attractive to foreign entrance. So, there wasn't much in the way of cooperation. I mean, nobody thought there was a need for it."[98]

The overall lack of American cooperative leadership was reflected by this policy of regulatory competition. Its effect on the FSF was that a seemingly unabated belief in the discipline of market participants was still pervasive with non-American – and as chapter two outlined also many U.S. regulators – FSF members even when the U.S.' position was already shifting. Even under the aegis of the Republican Bush-administration, actors were aware that if reforms would come, these new rules would have to be administered internationally. Yet, at the

[98] Author's interview on October 6, 2015. Comments not for attribution. Reference Code: G9FQN4.

same time important partners, particularly in continental Europe, thought that the turbulences would not lead to a systemic crisis, but were an admittedly major market correction. The German central bank for example outlined in a memo from September 19, 2007:

> "The collapse of two large-volume – and arguably 'sophisticated' – hedge funds at Bear Stearns as well as the unprecedented extent of the credit rating downgrade of hundreds of residential mortgage backed securities tranches functioned as a catalyst of the market correction. Because of consequential deleveraging, increasing risk aversion as well as a flight towards liquid and secure investments (like government bonds), the re-evaluation of risk at credit markets spread to other market segments in several steps." (BBk 2007a)

Obviously, market turbulences had not passed by unnoticed. But, to the Bundesbank this development was proof of the self-regulatory faculties of markets, which it partly tied to the reliability of credit rating agencies (BBk 2007a) – a point of view the Germany's central bank re-iterated at a meeting of the forum later that month: "FSF might wish to send a message in order to further a more rational debate on ratings; ratings are important for the functioning of credit markets." (BBk 2007b) The condescension to dismiss legitimate concerns and criticism of CRA's as irrational, I argue, was part and parcel of the pre-crisis state of regulatory cooperation. In this case, Germany as an important voice within the G-7 and European economic policy-making, continued to trust in technical solutions to problems that needed genuinely political answers.

However, the pervasiveness of technocratic regulation was not only ideological. It also benefitted European political interests. Pre-crisis, Europeans reacted to American strength by attempting to bind the hegemon within sets of rules that would be developed among expert peers allegedly less influenced by reciprocal market leverage. (Farrell and Newman 2014) It makes sense, therefore, to complicate the account presented by Reisenbichler, which reads as if U.S. hegemony would have enforced genuine pre-crisis cooperation. To the contrary, the extreme distribution of power forestalled a meaningful common effort. The outcome never was "[…] a state-centered FSF favored by the USA […]" (Reisenbichler 2015, 3–4), because this would imply that states actually engaged with each other. Instead, as one American regulator has pointed out, "[…] different jurisdictions were seeking to obtain competitiveness or perceived competitiveness for their own markets through deregulation."[99] The purported politicization that Reisenbichler implies with his concept of state-centeredness never bore fruit. He misses the reason for the FSF's ineffectuality because he fails to rigorously pursue the dissent between the parties and to connect it to the organization's institutional design.

From its very beginning, the FSF was never equipped to either harness American hegemony or incentivize the U.S. to commit to meaningful politico-economic cooperation. Making his

[99] Author's interview on October 8, 2015. Comments not for attribution. Reference code: IO8S4J.

report to the G-7, Hans Tietmeyer, then president of the Bundesbank – Germany's "[…] fiercely independent […]" central bank (Abdelal 2007, 76)[100] –, had recommended a very loose structure. (Tietmeyer 1999) The only institutional issues addressed explicitly were questions of membership and aspects related to "[…] the need for the Forum to have a manageable size." (Tietmeyer 1999, 7) Since the FSF's main mission was to develop "[…] objectives, priorities and programmes for action, the Forum would work through its members […]" (Tietmeyer 1999, 6) so as to generate impact from cooperation. With the U.S. in a singular position, the member-driven Forum could only have delivered politically efficacious results if it had had the active backing of American regulators. However, the U.S. simply deemed being tied up like that unnecessary. Consequently in 2007, Hans Tietmeyer himself stressed that "[…] we *must avoid complacency*." (Tietmeyer 2007, 13)[101] One of the key players in the installation of the FSF, Tietmeyer recognized the FSF's expertise but also warned that failure to develop a momentum that reconciled regulatory realpolitik could potentially lead to grave externalities:

> "I would like to say *a few words on global liquidity* […] Global excess liquidity might already have developed into a threat of systemic proportions. I would like to encourage both central bankers directly and the FSF to discuss this issue seriously and address it decisively. The stability of the system must not be compromised […] Aside from this major challenge, the FSF is to keep up with *significant trends in the international financial system*. […] The FSF in canvassing views from different parties and angles is the very body to keep track of them and to consider and encourage possible mitigating action." (Tietmeyer 2007, 10–11)

Tietmeyer's remarks underline scholarly assessments that emphasized the FSF was never designed to realize and implement pragmatic policy recommendations. (Donnelly 2012, 264–66) During its years, it got by as an arcane institution that encouraged the development of international best practices. In turn, these were intended as beacons for domestic regulators. All in all, cooperation under the auspices of the FSF was as enthusiastic as the network's "people-is-policy"-approach:

> "Support for the Forum would be provided by a small secretariat […] Members of the secretariat could be drawn from the BIS and from the participating international financial institutions. Staff from the IFIs would not be expected to move to Basle; if appropriate, they could remain based in Washington, working closely with their colleagues." (Tietmeyer 1999, 7)

[100] As already mentioned in the previous chapter, America's "ad-hoc globalization" was met by continental Europeans with "accidental globalization." (Abdelal 2007) Considering that European integration has long been understood to be the middle powers' answer to a world in which they would inevitably lose in significance, I think it is fair to assume that (a) rescinding capital controls certainly had unintended consequences, but that (b) everything that followed in terms of European political cooperation sui generis was the in large parts successful attempt of a group of states at meeting the international significance of larger powers. Hence, one can expect Europeans to rely heavily on independent and technocratic agents and structures so as to hedge against the political leverage of nominally stronger players.

[101] This is taken from a dinner speech Hans Tietmeyer held titled "The FSF re-visited." The highlighting is part of the original text.

Therefore, European insistence on a technical approach was less due to the decrease in American influence, but reflects how members had to adapt to the increasing willingness of the U.S. to take the helm in re-regulating global financial services.[102]

Governments Catch-Up with Globalization

To understand why the re-regulation of financial services came with a renewed approach at international cooperation, it is useful to track what challenges the global financial crisis posted to regulators after the default of Lehman Brothers Holdings. So many of the crisis' intricacies have been accounted for that by now even pop-cultural contributions expect viewers to be fluent about the technicalities of the global financial crisis. Next to the resurrection of an all-time villain like Gordon Gekko in the sequel *Wall Street: Money Never Sleeps*, critically acclaimed films like the documentary *Inside Job* or the biographical picture *The Big Short* have made available to the broader public what scholarly work had sometimes been itself flabbergasted to uncover. (Collyns 2008; Bernanke 2009; Krugman 2009a; Mosley and Singer 2009; A. Baker 2010a; Bresser-Pereira 2010; R. P. Buckley and Arner 2011; W. Grant and Wilson 2012; Blinder 2013; Blyth 2013b; Bayoumi 2014) For the re-creation of the FSB, however, a focus on ideology, regulatory capture, or failing institutions is only part of the story. In 2009, Layna Mosley and David A. Singer prodded international political economists:

> "[…] to consider whether a proliferation of trans- and intergovernmental institutions leads to higher levels of cooperation, or to increased opportunities for 'forum shopping,' especially by powerful countries. More research is required to understand the conditions under which the multiplication of institutions […] fosters regulatory convergence, and the circumstances under which this proliferation generates centrifugal pressures that lead to regulatory fragmentation." (Mosley and Singer 2009, 425)

Mosley and Singer's dichotomy is analytically misleading. Their commentary fails to appreciate that the multitude of international organizations represented within the FSB is not only comprehensive. It was also American commitment that strongly incentivized international regulatory cooperation under the FSB's umbrella and, therefore, created this "[…] nearest thing […]" to a global regulator so far. (Brummer 2010, 360) The reason behind the push for closer international ties emerged from the structural characteristic of global financial markets that had been politically ignored: even a former economic and regulatory hyperpower

[102] At this point, I want to shortly counter a second hypothetical arguing for the aforementioned "rise of the rest." Seeing as the report by the FSF's working group was published one day after Bear Stearns had to be bailed out, the reliance on market participants' discipline could be indicative for Europeans able to withstand American demands. However, as William Murden was quoted in the previous chapter and following the assumption of the Bundesbank that Bear Stearns' problems were a correction of the market, following the bail-out most regulators directly involved at the time thought the worst was over. Therefore, going back to regulatory principles the Republican administration was surely more willing to embrace does not give away any significant power-shift, but in my opinion references the learning curve American regulators and the political leadership underwent before the systemic crisis forced their hands.

(Abdelal 2007, 220) like the U.S. was unable to monitor all relevant market developments sufficiently on its own. Asked for the main stumbling stones during the GFC, one of the interviewees outlined what he understood to be the principal challenge:

> "First and foremost it was data. Honestly, it was just nobody had it. There were decisions that had to be made on a very short-term basis […] about critical stuff and nobody had any information. You know, in government, across borders, within industry people were just flying blind. I remember for a moment in the crisis, I was at the SEC and I was talking to a colleague […] and he said: 'Oh, you know, we got some problems. Some of these firms are really exposed;' not-the-firm-going-bankrupt-exposed, but exposed. Of course, they were going bankrupt. Nobody, nobody knew."[103]

To illustrate this point, interviewee U8JESC hinted at the unintended consequences of the EU's consolidated entity program. While on its own not part of any race-to-the-bottom competition, the EU had threatened – as outlined in the first chapter – to have the holding companies of financial services providers ring fence their European operations should the respective broker-dealers' parent corporations not be under consolidated supervision in their country of origin. Because of intense lobbying efforts, the SEC introduced its own consolidated supervised enterprise (CSE) program in 2004, thereby helping its market participants to avoid the looming adaption costs. (Singer 2007, 80; Posner 2009, 672) As it turned out, the European initiative to close the regulatory gap resulted in SEC rule-making that revealed not only that this was too-little-too-late in terms of systemic oversight, but more importantly that domestic regulators had to come up with a mechanism to significantly improve regulatory cooperation internationally.

To fully appreciate the consequences of this decision, the SEC's regulatory jurisdiction should be more clearly delineated. Fulfilling two interrelated tasks, broker-dealers act as agents when they buy and sell securities for their customers and become principals when, instead, conducting proprietary trading. The relevant regulator for such brokerages is the SEC. With its focus on market discipline, the commission promotes that – once operations fall below the minimum capital requirements (Jamroz 1992, 864) – these market participants can get out of business while still servicing their outstanding liabilities. (SEC 2015, 131) The main regulatory tool used to this end is the net capital rule, which states "[…] broker-dealers maintain more than one dollar of highly liquid assets for each dollar of liabilities […] at all times." (Bethel and Sirri 2015, 241) The idea of an orderly liquidation was partly undermined when non-bank companies, which would not fall under the restrictive and comprehensive supervision of any of the banking regulators, started to hold multiple subsidiary brokerages which in turn had to meet lower capital requirements due to the parent firm's supposed financial um-

[103] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

brella: “The rise of large securities firms […] made the disparity between what the SEC regulated on the statutory basis (the broker-dealer) and the far-flung nature of the total enterprise […]” ever more apparent. (Bethel and Sirri 2015, 242–43)

This complicates Posner’s centralization argument (Posner 2009)[104], because the SEC’s decision to introduce its own CSE program was not only due to with Directive 2002/87/EC. (EP and Council 2002) The SEC itself had been arguing for stronger statutory authority over these markets.[105] The Gramm-Leach-Bliley Act of 1999 had left regulators without authority to comprehensively supervise financial firms even though the Drexel scandal of February 1990 had already pointed to the issue of pipeline risks. (The Economist 1990) With Congress in 2004 still unwilling to institute statutory regulatory competence, the SEC was forced to rely on a more voluntary framework to achieve what itself understood to be a long-standing (Bethel and Sirri 2015; Cox 2008) regulatory gap:

> “[…] the Commission sought to fill a gap in the statutory system of supervision by offering to the US investment banks, for the first time, a regime of comprehensive consolidated oversight by virtue of its conditions on the broker-dealers. Given pressures from Europe, it was expected that the five largest US investment banks would make the necessary one-time election to be supervised under this regime. Thus the Commission effectively added an additional layer of supervision at the holding company where none had existed previously.” (Sirri 2009, 2)

This quote is part of a larger speech Erik Sirri, then SEC Director at the Division of Trading and Markets, delivered explicitly to counter allegations according to which the SEC’s Alternative Net Capital Requirements (SEC 2004) had been a deregulatory measure directly causing unsustainably high leverage ratios. This discussion had come up since regulators were trying to understand why two of Bear Stearns’ hedge funds went under. Reporting to the Senate finance committee, the Office of the Inspector General outlined that high leverage could reasonably be identified as a contributing factor in the Bear Stearns collapse. However, the report also maintained that the investment bank’s – or, as it turned out, any banks’ – “[…] very precise and very wrong […]” (Haldane 2009) Value-at-Risk (VaR)[106] models as well as

[104] Ironically, Posner considers alternative explanations in his account and by discounting the market-power argument entirely (Posner 2009, 678), misses how Europe’s centralized bureaucracy gains momentum not because it trumps market power, but because it sets an incentive for one of the U.S.’ main regulators to proceed with regulation in area itself had been advocating since the early 1990s. (Bethel and Sirri 2015, 242; Cox 2008)

[105] Nevertheless, the European threat to force brokerages to ring fence was clearly outlined in Directive 2002/87/EC. In Chapter II, Section 4, Article 18(3), the European Parliament and the Council of the European Union are clear on the ring fencing provision for all non-bank holding companies: “The competent authorities may in particular require the establishment of a mixed financial holding company which has its head office in the Community, and apply this Directive to the regulated entities in the financial conglomerate headed by that holding company.” (EP and Council 2002, 12)

[106] At a conference in London, Andrew Haldane outlined why even stress testing failed to anticipate the strain on financial markets and introduced his analysis with an iconic formulation that – at least for a year – reflected a more fundamental criticism: VaR models “[…] failed Keynes’ test – that it is better to be roughly right than precisely wrong. With hindsight, these models were both very precise and very wrong.” (Haldane 2009) Mark Blyth has written a scathing criticism of the VaR practice and likewise delivered one of the most accessible accounts on the failure of risk management. (Blyth 2013a, 32–37)

the extreme reliance on mortgage-backed-securities (MBS) as collateral were directly linked to Bear Stearns' default. (Kotz 2008, 20)

Congress failed to provide adequate regulatory authority over non-bank financial entities and their respective subsidiary brokerages and the SEC was left to set an incentive for brokerages to join a voluntary framework of its Alternative Net Capital framework. That was when things got out of hand. By offering broker-dealers the opportunity to opt out of the SEC's regular net capital rule – that was, more than one dollar on the dollar (Carney 2012) –, it extended to firms the Basel II privilege of computing risks on their own. To ensure reasonable levels of supervision, the framework's provision would have required an increase in regulatory capacities. This did not happen and adding to the ensuing destabilization the framework incentivized contemplable firms to join the framework by allowing them to hold as allegedly liquid assets even fewer MBSs the higher these products were rated. (Kotz 2008, 20–23) To put it into a nutshell, the state deliberately gave ground because the U.S. legislature was unwilling to provide oversight in a vastly changing market.[107] The SEC introduced the voluntary CSE program to fill a regulatory gap and ended up creating another one:

> "The SEC was in charge of the investment banks and didn't want lose its oversight. So, it took over […] the prudential regulation of the major investment banks […] The Federal Reserve has a long history of that kind of prudential oversight. The Federal Reserve stations people at the banks […] they may have a dozen people in a major bank 24/7 one way or another. The SEC had probably twelve, 18 people for all of them and they were not stationed there. […] The SEC's got 80 years of history, basically a disclosure based model […] It's not the handholding, micromanaging, which you see at the Federal Reserve. So, they [the SEC] were out of their depths […]"[108]

To be fair, in the aftermath of Bear Stearns the SEC requested "[…] dedicated Congressional funding for the CSE program and increased CSE staffing from about 25 to 40 people." (Kotz 2008, 8) Regardless of these too-little-too-late policies, we can find that the at times provincial fixation on domestic oversight – keeping in mind that it was Lehman's London office that initially brought down the entire holding (The Economist 2009c) – ended up being a major impairment to supervision. True international cooperation, actually practiced at a relevant international cooperative body, therefore, became a corollary following the financial collapse of September 2008.

[107] In order to present a balanced picture, one has to say that the Kotz-report also found massive regulatory lapses by the SEC itself. (Kotz 2008, 17–18)

[108] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

## The Reform of the Financial Stability Board

### The FSB's Institutional Design

To remedy the inadequate state of international regulatory cooperation, the FSF's institutional design was reformed. As already mentioned, the FSB is since June 2012 a not-for-profit organization seated at the BIS in Basel, Switzerland. (FSB 2015d, 16) The organization is supported by a Secretary General and a small secretariat. Since he has held this post since the FSF's inception in 1999, Secretary General Svein Andresen's continuing appointment is noteworthy.[109] Not changing the FSF's leadership during the reform process – something Mario Draghi's likewise continued Chairmanship between 2006 and 2011 also speaks to – signals that the issue in 2009 was seen rather as a lack of cooperation among members than genuine organizational failings. In an exploratory interview, one staffer at the German Ministry of Finance has confirmed what was also hinted at in the previous chapter, namely that the FSF had been trying to promote systemically relevant regulatory measures, but was heard only after the financial crisis was picking up speed. (Treeß 2015) Today, the secretariat is comprised of 32 genuine employees. Considering that the organization is member-driven, this is felt at the FSB as a considerable increase from pre-crisis operations when the FSF was notoriously shorthanded. (Drexler 2015)

Due to being comprised of high-ranking government officials, the Plenary, as the main decision-making body, convenes only a couple of times per year. In its absence, a Steering Committee headed by the Chair guides regular operations and, more importantly, sets the agenda for upcoming meetings. This division between organizational support and member-induced agenda setting is also mirrored in the FSB's leadership. Differing from the regular structure of international organizations, the Secretary General is only responsible for leading the organization's administrative business. In all other matters, Andresen is subject to directives coming from the Chair, which is currently held by the Governor of the Bank of England, Mark Carney. Following Art. 21, the Chair as the "[…] principle spokesperson […] represents the FSB externally […] will take all decisions and act as necessary to achieve the objectives of the FSB in accordance with the directions given by the Plenary." (FSB 2012a)

Manned by representatives from member states' supervisory authorities, four Standing Committees (SC) structure exchange on regulatory matters and are concerned respectively with assessing vulnerabilities (SCAV), supervisory and regulatory cooperation (SCSRC), standards implementation (SCSI), as well as budget and resources (SCBR). (FSB 2012a, 6–8) These

[109] Andresen will retire from the FSB in 2017. See: http://www.fsb.org/2017/07/fsb-launches-recruitment-for-secretary-general-position/.

committees are free to implement working groups to assist their activities.[110] Numbers on the amount of working groups are hard to come by and even though they would establish the degree to which the FSB facilitates interaction, none of the annual reports has so far expounded on them. (FSB 2015a, 2015d) Nevertheless, one active participant of FSF- and FSB-proceedings emphasized that participation has soared with the 2009 reform because of the marked organizational differences that separates the FSB from organizations like the IMF:

> "[…] the big difference is that the FSB is membership-driven. You have deputy ministers and you have heads of supervision, who actually have daytime jobs. They go to these meetings, they compare the experiences and they go back and follow-up on implementation. I think that gives some power to the FSB in terms of getting things done. That's pretty critical. And the FSB has now about 50 working groups altogether, if you add up all the standing committees and all the working groups and sub-committees. And those are all members."[111]

Based on the functional logic of a membership-driven organization, membership was a second major reform area. During that process, its particularity as a "network of networks" (Helleiner and Pagliari 2011, 193) was maintained. International organizations like the IMF and the World Bank continue to be voting members together with global financial standard-setters: the Organisation for Economic Co-operation and Development (OECD), the International Accounting Standards Board (IASB), and the International Organization of Securities Commissions (IOSCO). Based on their significance in global markets, the FSB not only hosts the G-20 members, but also Hong Kong, Singapore, Spain, and Switzerland – i.e. states that had already been FSF member jurisdictions. Depending on their size and importance for financial markets, member representation includes at a maximum the heads of the treasury department, the central bank, and the chief financial regulator, all of which participate fully in the decision-making process. (FSB 2012a, 5)

Finally, and since none of the provisions within its charter are "[…] intended to create any legal rights or obligations" (FSB 2012a, 10), two steps were taken to strengthen members' obligation[112] to the FSB's macroprudential mission in overseeing systemic risk: the introduction of consensus at the Plenary and an enhanced peer-review process. As outlined above,

[110] Moreover, the FSB has institutionalized an outreach program. Mindful of the systemic crisis and despite the quantitatively low significance in market size of non-FSB member jurisdictions, six Regional Consultative Groups are supposed to sustain international dialogue and cooperation beyond the G-20 level. (FSB 2012a, 2–15) Research has yet to show whether this outreach facilitates cooperation in identifying regulatory gaps, which as the crisis has shown do not have to be quantitatively significant on first sighting. An equally plausible, yet by no means mutually exclusive, interpretation is that the outreach services powerful FSB members' interests in projecting standards beyond their immediate reach. (Donnelly 2012)

[111] Author's interview on October 01, 2015. Comments not for attribution. Reference Code: SFAZ5H.

[112] Obligation is used here as conceptualized in legalization theory. According to Kenneth Abbott and colleagues, obligation in international regimes ranges from non-binding power politics to so-called hard law, which in extreme cases can be considered as domestic application of ius cogens. (Abbott et al. 2000, 404) Strengthening the obligation in this particular instance would mean to create the preconditions for sustained exchange among regulators and the proceedings to ensure that domestic implementation becomes more likely.

much of the intellectual groundwork for cooperation had already been laid in the late 1990s. After the credit crunch in Asia, the G-7 had committed "[…] to foster stability and reduce systemic risk in the international financial system […]". (Tietmeyer 1999, 1) Hence at least nominally, systemic risk was an established concern within the FSB's predecessor. Since it failed in facilitating significant international cooperation to that effect, the FSB's consensus rule is a notable adjustment as it ended the practice of taking decisions by majority. (Kern, Dhumale, and Eatwell 2005, 74) Especially with the organization's membership increased, it makes finding a common denominator mandatory and compromises struck between all parties can be expected to have a higher impact on FSB jurisdictions than in the past.

Enhancing Commitment – Peer-Review Reform

A similar reasoning can be applied to the peer-review process the FSB started in 2010, "[…] to promote complete and consistent implementation of agreed G-20/FSB financial reforms […]". (FSB 2015b, 1) The review process is not specifically tailored to the FSB, but as part of the network's answer to interconnected finance makes recourse to and uses the findings of already established institutional tools of review. According to Article 6(1) of its Charter the FSB conducts recurring "[…] reviews, using among other evidence IMF/World Bank public Financial Sector Assessment Program [FSAP] reports […]" (FSB 2012a, 3–4) Following the financial turmoil in the late 1990s, the IMF had spearheaded the Standards and Codes Initiative in 1999, which was assumed to reflect "[…] a more explicit acknowledgement that financial stability is more likely to be achieved in institutional environments that meet certain standards." (IMF and World Bank 2005, 8) The Financial Sector Assessment Program (FSAP) was created in 1999 to "[…] promote national and international financial stability […]". (IMF and World Bank 2000, 2) The division of labor with the World Bank was muddy. The IMF conducted FSAPs for advanced economies and shared the responsibility for assessments of developing countries with the World Bank. In these cases, the Bank provided Reports on the Observance of Standards and Codes (ROSCs) as an integral part of FSAP. (IMF and World Bank 2005, 8–9) However, five years after its pilot phase, a first résumé concluded:

> "The initiative is not seen as having yet had a commensurate impact on actual reform implementation: this may partly reflect the substantial time needed to introduce reforms – using this time scale, the initiative may still be considered new. Hard evidence on the impact of the initiative on countries' adherence of standards is not available." (IMF and World Bank 2005, 5)

Systemic risk kept piling up in industrialized countries during the years that followed this reflection and just like the FSF, the Financial Sector Assessment Program was restructured after 2009. Institutional responsibilities between IMF and World Bank are now more explicitly defined and, today, the IMF focuses on financial stability in advanced and emerging economies, leaving the World Bank in charge with the formation of financial sectors in less and least developed countries. (IMF 2015) Tools of analysis have been specialized to meet the demands of IMF and World Bank assessments respectively, and, finally, stress tests were improved to cover a broader range of macroprudential risk. (IMF 2015, 1)

Within the FSB, the mechanism has been given more nominal weight over time. In 2009, the review process was mentioned as one of the commitments all members had to subscribe to. In a revised and updated 2012 version, the peer-review process has developed into an integral part of the FSB's inner workings: as part of the FSB's explicit mandate (Art. 2), as every member's commitment to the FSB (Art. 6), and as part of the portfolio of SCSI (Art. 16.). (FSB 2012a) SCSI conducts two kinds of monitoring: (a) reviews on the "[…] implementation and effectiveness across the FSB membership […]", and (b) country reviews, which focus on the implementation and effectiveness of regulatory policies in a specific member jurisdiction. (FSB 2015b, 1–2) So far, more than half of the members have undergone the procedure, in which the FSB merges its "[…] cross-sectoral, cross-functional, system-wide perspective […]" (FSB 2015b, 3) to already existent assessment mechanisms.

Tietmeyer's FSF-report had already outlined that an improved bird's-eye view was necessary in order to substantially address systemic vulnerabilities, to enhance coordination among domestic and international regulatory entities, and to advance "[…] improved in-house risk management at financial institutions in the wake of recent market events." (Tietmeyer 1999, 6) Never mind that this last statement seems to have assumed self-regulation's timeless quality, it still is sensible to tie the macroprudential mission statement to a peer-review process in an attempt to strengthen compliance. Influenced by sociological research, institutionalists have made plausible arguments about the socializing effects of peer-review procedures, especially regarding new and/or developing country members (Bown 2008, 2009), of which several are now members of the FSB. Additionally, the region most affected by the GFC – the transatlantic – not only makes up 70 percent of global trade in financial services, but it is also filled with advanced industrialized jurisdictions in which individual interests will likely lead to conflicting regulatory approaches. A case in point is the regulation of derivatives, which has been following two very distinct approaches in the transatlantic since 2009. While European regulators target the type of activity a financial company pursues (EC 2014a, 2014b),

financial governance in the U.S. is concerned with the size an individual business assumes. (Greene and Broomfield 2013, 24) In its 2013 progress report on implementation of derivatives trading reforms, the FSB has used the review mechanism to acknowledge and expound on the difficulties that different approaches towards risk mitigation imply. (FSB 2013d, 26)

Ensuring Control – Codification of the FSB's Decision-Making Process

The reforms of the FSF have been promoted as a significant improvement to "[…] the architecture of international cooperation […]" after World War II. (Geithner 2009a) While they do signify meaningful change, I argue their origin can hardly be appreciated without recognizing the projection of U.S. interests that was not only responsible for the shape of the reforms, but has also re-invigorated the collaboration among its members. The latter aspect hints at the oftentimes apparent differences between legal norm and legal practice pervasive in international cooperation. And from an institutional perspective, one of the most important aspects would be the codification of consensus decision-making at the enlarged Plenary.

At the FSF, decision-making procedures were never formalized and the importance of a codified consensus-rule at the FSB (FSB 2009a, Art. 7(2)) has been widely interpreted. Comparing the FSB to the WTO – as the only politico-economic organization based on the principle of sovereign equality – we can argue that consensus is more suited than other decision-making processes to stabilize organizations and regimes, since it legitimizes input to the organization and seemingly prevents disruptive policy changes by powerful players. (Franck 1988, 752; Lang, Rengger, and Walker 2006, 284; Zelditch 2001, 37–41; Henkin 1995, 7)

As one expert on international trade has put it: "[…] the law is more often than not a tool of the weak to oppose the strong, because the strong can impose their interests anyway."[113] As Thucydidean as the last part sounds, research has shown, indeed, that under conditions of sovereign equality powerful players still manage to assert their position. Richard Steinberg, for example, has presented the classic argument about how consensus can be outmaneuvered or even created via agenda setting, which is what Steinberg has called "[…] organized hypocrisy in the procedural context." (Steinberg 2002, 342)[114] Two aspects underscore such hypoc-

[113] Author's interview with Jan Bohanes, legal council, Advisory Centre on WTO Law, June 6, 2011.

[114] The closing of the Uruguay Round, Steinberg argues, has been an example of how industrialized nations – the European Union and the United States in particular – have used their administrative and economic power to push through a compromise known as the Dunkel-draft. Named after the Portuguese-Swiss trade expert Arthur Dunkel, the draft was an attempt to harmonize the trade interests of the United States and the European Union. After a first approval, the draft entered slightly bigger caucuses, then Green-room discussions, and eventually became the substantive foundation of the Uruguay Round consensus. (Steinberg 2002, 356) Steinberg suggests that developing countries had no intention of signing TRIMs, TRIPS, or GATS. To enforce consensus and avoid any opting-out clauses, which developing countries – just as in previous rounds – tried to secure for agreements from which they did not expect positive results, the final act declared all agreements "[...] as integral parts binding on all members [...]" (Steinberg 2002, 360) As a result, the U.S. and EC withdrew from its previous GATT 1947 membership leaving all other states no choice but to accept the conditions. Steinberg's point is that WTO "[...]

risy with regard to the FSB: While not a legal norm, making decisions by consensus had already been customary among members of the Forum. Moreover, consensus at the Board ensures that members powerful enough to project their interests internationally can veto decisions without being overruled by a majority of the organization's new membership.

Consensus is an established practice and part of the expert culture at the Bank for International Settlements that hosts the BCBS, CGFS, or the FSB. This gives room to my argument that the codification of consensus decision-making was more reflective of the legal practice than a genuine change by which we can assess the political development at the FSB. Accordingly, it testifies to the preservation of an expert culture from which markets with extensive governance experience would have to gain the most; and by extension, where players yielding superior market power would see their agenda prevail. During my field research, most interviewees were unable to comment on decision-making procedures at the FSF, mostly because it did not seem relevant to their experiences. Consequently, one American representative to both the Forum and the Board pondered the importance of the norm versus its practice: "I wonder whether that was a substantive change or whether the FSF didn't in effect operate by consensus as well […]"[115]

In light of this, it makes sense to look to European FSF members for resistance to such change, since they would have made up a smaller block of members after the membership increased. However, neither interviews nor over one hundred pages of official documentation, which were requested pursuant to freedom of information legislation in Germany[116], yielded any results as to the new norm or reservations about it. Especially Germany, as it turned out, was far more concerned with enlarging the circle of participating jurisdictions, to which consensus seems to have been an auxiliary norm. That decision-making was epiphenomenal to the enlargement-process is also suggested by the following observation of a former European representative to the FSF:

> "I remember it quite well when Tietmeyer came with his proposals […] It was more lubrication rather than domination. Also very important: in those days, the FSF had the same […] composition as the Basel Committee […] it was a very traditional, western type of composition and had the hallmarks of the more gentlemanly type of arrangements that you had in preceding decades […] The FSB coincided […] with an extension of its membership. […] It's not quite the G-20 type of composition. I'm very aware of this, be-

---

powerful states have dominated agenda setting, and rounds have been concluded in the shadow of power [...]." (Steinberg 2002, 365) Organized hypocrisy in the procedural context of closing trade rounds as well as the use of economic power in consultation phases, Steinberg argues, will only be diminished when some of the members in legalized systems become economically stronger and, therefore, able to hedge the power that can be yielded behind the formal principle of equality. He explicitly mentions Brazil, China, and India – i.e. states with stronger litigation records – as candidates who could by virtue of their growing economies make demands that increasingly serve developing countries' interests. (Steinberg 2002, 396)

[115] Author's interview on January 18, 2016. Comments not for attribution. Reference code: A5MFXR.

[116] Requests pursuant to the "Informationsfreiheitsgesetz" – Germany's equivalent FOIA legislation – were granted by the Ministry of Finance and the Central Bank.

> cause the Netherlands, for instance, is very frustrated that they are not a member of the G-20, but they have managed to hang on to being a member of the FSB. So, it's not an entirely synonymous overlap, but in both cases the power and the influence became more global than traditionally western […] In the traditional set-up you had all these well-established national authorities of countries that had central banks for centuries […] and setting standards amongst them was very much a collaborative consensus process."[117]

The interviewee's description of the culture of cooperation from the Forum to the Board shows the formalized decision-making process as a tool that ensures obligation and cooperation as the organization relies on a more diverse set of actors. As a matter of course, plenary proceedings became more cumbersome with the wider circle of participating jurisdictions. A newly established Steering Committee (FSB 2009a, Art. 12, 13) became the mechanism to formally help alleviating the Plenary's bulkiness. It is here that we can observe the second aspect of consensus as "organized hypocrisy", namely that by virtue of increased efficacy, something consensus at the plenary seemed to oppose, a smaller group of countries should be piloting the organization's process via the Steering Committee.

Germany's reaction to this structural change displays clearly that at least this particular financial middle-power feared a division of labor, in which this committee would guide the FSB's actions and the plenary would be left to rubber-stamp[118] the results of negotiations requested from working groups by the Steering Committee. A preparatory note from March 10, 2009 details the Bundesbank's G-20 London-meeting positions and illuminates that it was unclear to German negotiators what the American proposal for an "executive committee" would entail. Preparatory notes mostly consist of three parts: An outline of goals, a proposal of pre-formulated conversation items, and some background information. As part of the conversation guidelines, the Bundesbank stipulated the following statement to its negotiator: "[…] the Executive Committee should not be fully at the discretion of the Chair so as not to fully disempower the plenary; Executive Committee should rather be *elected by the FSF plenary*." (BBk 2009) What is remarkable in this document is the distribution of roles that becomes apparent when comparing the central bank's position to those of the German Ministry of Finance. The Bundesbank warned in the paper's background information that this particular institutionalization of the FSF would strengthen Chair, Secretariat and executive committee members at the expense of the Plenary as well as marginalize those actors directly politically accountable. (BBk 2009, 5–6)

With Germany's central bank in opposition, the actor politically accountable on the German side was still the finance ministry. In its guideline for the London meeting – published on the

[117] Author's interview on September 16, 2015. Comments not for attribution. Reference code: 4SBE9E.

[118] As it turned out, non-German Europeans have used this term explicitly as a way to describe the sharing of tasks between both bodies. Author's interview on September 16, 2015. Comments not for attribution. Reference code: 4SBE9E.

same day as the central bank's position paper –, the ministry does not even mention a steering or executive committee. And this makes sense, considering that the ministry's objective for the meeting was that if the enlargement of the membership was necessary, it should not come at the expense of effectiveness. (BMF 2009a, 1) Therefore, the preparatory note simply outlined in its background information that the "executive committee" would serve the membership by guiding the organization's activities and that the chair would cast its members according to balanced representation. (BMF 2009a, 3) As we will be outlined more thoroughly, the ministry's main concern were the consequences the wider membership could potentially have had on what essentially was a massive European overrepresentation.

Emblematic for the dominating role the U.S. assumed during the entire FSF reform process, the Steering Committee as an organizational mechanism emerged not due to the enlargement; this is its stated purpose, not its origin. It, actually, came about as a continuation of an expert group that U.S. officials had created during the spring of 2008 – roughly half a year before the crisis peaked. One indicator of this development was already given, the Bundesbank as well as the German finance ministry mention an "Executive Committee" (BBk 2009; BMF 2009a) before German bureaucrats started using the re-labeled designation "Steering Committee" as it was officially constituted in the Charter. (BMF 2009a, 2009b; FSB 2009a) Turned into an institutionalized mechanism that would be geared towards pooling expertise within the enlarged FSB, one American participant of the executive committee outlined how the group started out in early 2008:

> "One of the issues that came up right away was there was an executive committee set up. [We] were a group of about 15 to 20 people to put together a lot of plans and examine what had gone wrong so far and we didn't know what's gonna go wrong much further and I remember in the spring of '08 we put out a plan of attack: what issues had been identified and what we were urging people to do; that is we: the Financial Stability Forum and this executive board. And then, when the Financial Stability Board was formed with a G-20 representation on it, there were a lot of questions. Who would be on this little executive committee and our concern was that if everybody were in the room it would be unwieldy and difficult to get things done. And I remember a meeting – and in my memory this occurred at the BIS' venue –, in which some of the new countries – Saudi Arabia and whatnot – were saying: 'We wanna be part of this executive committee.' Mario [Draghi] was resisting making the executive committee too big, because he thought it would be unwieldy. […] there were transition issues as new countries got brought into the process."[119]

The committee's evolution from an expert group to a Charter-designated part of the FSB points to how the U.S. leveraged its regulatory know-how and the temporal advantage this proficiency had made possible. Again laying the groundwork early in April 2008, U.S. regulators were in a position to fully apply their market power and create path-dependencies pur-

[119] Author's interview on January 18, 2016. Comments not for attribution. Reference code: A5MFXR.

portedly legitimized by the necessity to react to the crisis. Hence, in the absence of a serious second-order challenge to global finance, U.S. power was derivative of what appeared to like-minded experts as the best – or at least better – argument. As will later become apparent, Germany and other Europeans were struggling with what the interviewee called "transition issues" and what these would mean for their respective standing. Characteristically, the executive committee started out relatively soon following the systemic events at Bear Stearns. However, Germany recognized the importance of structural change in the FSF only a year later and after its central bank had pushed the issue of representation. While the country's finance ministry sounded accommodating and even sanguine in April 2009, officials started to worry shortly before the FSB's inaugural meeting in June. The ministry instructed its negotiators to stick to the following argument:

> "I support in principal the proposal regarding the key internal structures. (Secretariat, Plenary, Steering Committee and their respective power to direct) The decision regarding the country membership in the Steering Committee as well as in the Standing Committees should reflect the significance of the national financial sector. Based on GDP and financial size indicators, Germany ranks among the most significant FSB-members (overall ranking among G-20 – according to FSF ranking: 4, after USA, JAP, UK). Therefore, Germany should be appropriately represented in the new bodies, in particular, the Steering Committee and the Standing Committees." (BMF 2009b, 3–4)

To take up what the interviewee has identified as "transition issues", the German side at least felt the need to vocally assert its position as an important European and financial middle power – and, maybe more importantly, did so without assuming an overall European position. While states like Saudi-Arabia have yet to ascend in importance to the ranks of developing nations like the BRICS, it must have seemed to officials that with the restructuring of the FSF even a core economic hub and driving force within the European Union could be marginalized. As the documents show, Germany expected that under an American initiative to restructure the governance of global finance a persisting European overbalance might come at the price of individual representation. One interviewee has outlined accordingly that the reform process transformed the Plenary from a negotiating body to an institution that formalizes the FSB consensus into official resolutions:

> "The Plenary at the FSB is now pretty large. I was in some of the Plenaries for the FSF, representing my principle. Those were smaller meetings and more conducive to discussion […] it expanded – we have now 60 people at the table – and now it's more formal. So, that has changed: the nature of the discussion within the FSB has changed, the Plenary is just very large and [it is] very difficult to have really good discussions. But, there's a Steering Committee, which there didn't use to be, which is smaller and now all the work is now done in committees, which didn't used to happen."[120]

[120] Author's interview on October 01, 2015. Comments not for attribution. Reference Code: SFAZ5H.

So even under consensus-rule, countries not represented at the Steering Committee have to either block decisions, which over time will come at increasing political costs, or assent to proposals they only had limited influence in shaping. This decrease of parties directly involved in the re-regulatory work of the FSB went parallel to the enlargement process. I argue that once we translate the size of a market into potential regulatory proficiency and are able to trace corresponding activity and commitment, we can understand how consensus served as a rule concomitantly codifying sovereign equality as well as maintaining the prevalence of American regulatory expertise and its global projection.

My field-research in Europe and the United States yielded explicit qualitative and balanced data producing evidence to that effect. To gain information on the distribution of power within the FSB, I confronted American and European regulators with remarks then-SEC Chairman Daniel M. Gallagher made in an op-ed for the Wall Street Journal (WSJ) and at the University of Virginia Law-School. Both times Gallagher neither hid his martial[121] and at times nativist rhetoric – one WSJ article was entitled “How Foreigners Became America’s Financial Regulators” (Gallagher and Wallison 2015) – nor his crude understanding of international cooperation in the wake of a global financial disaster:

> “The FSB, it’s important to note, is made up of representatives from all of the G-20 countries, including such free-market stalwarts as Russia and China. In voting power, European FSB members have disproportionate influence as the EU is represented at the supranational as well as national levels. Perhaps we should petition to allow the Great State of Texas to become an FSB member!” (Gallagher 2015a, 3)

Since comments like this can be plausibly classified as part of the intellectual movement promulgating the end of the American Empire, my field research had to reflect such a diametrically opposed position. The question was originally intended to supply information on how the biggest single market (United States) and the group of states best represented at the FSB (European Union) interacted. Interestingly, all interviewees reacted by acknowledging the cooperative environment at the FSB – which is not surprising given that the personnel I spoke with is accustomed to maintaining a diplomatic tone. Apparently unable to entertain questions of arbitrary power, representatives from the U.S., Europe, and the international organizations represented at the FSB referred to experience and proficiency as the one American core trait. For example, one source closely acquainted with the proceedings at the BIS reacted by outlining the relation between potential U.S. dominance, FSB decision-making, and the role of expertise:

[121] Gallagher’s speech at the university of Virginia made reference to the popular 2001 World War II drama “Enemy at the Gates.” Using this imagery in his speech titled “Bank Regulators at the Gates” clearly caters to a myopically domestic focus in regulation that serves an ideology of global regulatory competition.

> "We don't have voting shares, or processes, we operate by consensus. So, everyone has to agree on the policies that we take. The U.S. is fully part of that process. I think because the U.S. is one the countries hardest hit by the financial crisis and one of the countries where the problems were located that, obviously, the U.S. was very highly motivated to act strongly in response to the crisis. And, indeed, through its inability to be able to resolve Lehman in a very satisfactory way, it recognized that there were changes that needed to be made to their legal system to be able to act. So, the U.S. is a very strong force calling for action, recognizing as well that it has an international leadership role […]"[122]

Replying to Gallagher's accusation of disproportionate European representation, one U.S. regulator stated that in his experience the European Union oftentimes fails to display the unity necessary to project European interests as a whole:

> "They're often not on one page. So, the fact that you do have three or four voices makes the U.S., because we're big and united, more of the 800-pound Gorilla. Do we get everything we want out of the FSB? I doubt it. But, is the FSB gonna do things that we really don't like? I doubt that, too."[123]

Lastly, in an interview with two officials from international organizations represented at the FSB and former staffers at both the Forum as well as the Board, the issue of representation was again reflected in terms of the Board's key internal structure. One of them explicitly outlined the U.S.' influence in an organization that conducts its work through working groups staffed by members:

> "Well, the U.S. is a very active member of the FSB, as you would expect; as is the European Union and as is China, as is India […] the U.S. has three plenary members, formally, but in terms of working groups other regulatory agencies are brought in as experience demands or warrants into the working level discussions. I mean, the FSB would bring in people like the FDIC expertise in terms of resolution; if it is getting into some issues in respect of derivatives, then CFTC could be brought in. Sometimes that web would work through IOSCO and indirectly."[124]

This last part is particularly noteworthy, because, for example, IOSCO or the IMF are both significantly influenced by the U.S. This gives it yet another handle – aside from its expertise and virtual permanent representation in the Steering Committee – to lead the decision-making process even before issues are brought up at the FSB's Plenary for consideration.

However, this leads the analysis to a structural impasse. Why would the U.S. insist on a larger membership and then create internal structures to circumvent the entirety of members when the financial crisis was not particularly global, but rather transatlantic, to begin with? Why would it go through the trouble and invest its resources in changing an organization so it would consist of members who barely have skin in the reform efforts or significant experience to contribute? The obviously technical answer is, of course, because a systemic crisis like this

[122] Author's interview on August 18, 2015. Comments not for attribution. Reference code: L75FO2.
[123] Author's interview on October 8, 2015. Comments not for attribution. Reference code: IO8S4J.
[124] Author's interview on November 13, 2015. Comments not for attribution. Reference code: OALREM.

warrants a re-regulatory approach to which rising international market places should be party. However, the search for a politico-economic answer indicates that a larger change occurred for which the reform of the FSF was only a symptom. Building on my argument from chapter two, I argue that America had taken notice of financial developments and drawn up a plan in response. The U.S. defied the demise of its market place's significance by changing its philosophy from prevailing under the conditions of regulatory competition to actively projecting its interests via a U.S.-friendly cooperative mechanism.

Extending the Circle – The FSB's Membership Enlargement

The enlargement of the membership served U.S. interests as a way to include all relevant jurisdictions from which financial services are conducted. As I have specified above, the FSB is comprised of the G-20+; that is, the Group of Twenty in addition to non-G-20 members who were part of the Forum and stayed on the Board. This group makes up the overwhelming majority of actors regulating global finance. (Nolle 2015, 5–6) However, to understand the involvement of the G-20, we need to go back to the Treasury Department's efforts to deal with the mounting crisis during the early course of 2008. Stuart Mackintosh has outlined that "[b]oosting the role of key emerging economies had been a long-standing US Treasury goal, and the crisis afforded an opportunity to hasten that change." (Mackintosh 2015, 26) Considering the international dimension of the crisis and the resulting necessity to re-regulate on a global scale, it seemed inevitable from a U.S. perspective to at least try – if only for a time – to switch gears and cooperate internationally; and of course, none of the new members hesitated when a seat at the table became available.

It is important to trace what party initiated the international move from regulatory competition based on an unequivocally domestic focus towards a path, on which regulatory cooperation – with all its shortcomings based on myopic self-interest and technical incongruences – became an established practice in regulating global finance. Officially, it was the U.S. that called for an emergency G-20-Summit in Washington on November 14-15, 2008. However, who precisely initiated this cooperative international reaction to September's economic disaster is not quite clear. In a blog post for the Brookings Institution, Lex Rieffel has claimed that French President Nicolas Sarkozy and British Prime Minister Gordon Brown had seen "[…] an opportunity to make political hay domestically by exhibiting strong leadership," and congratulated the Bush Administration to play along. (Rieffel 2008) Given their respective domestic audiences, Rieffel outlined that neither Sarkozy nor Brown had a strong opinion on the substance of issues or the format in going forward. This corresponds to observations made by

Mackintosh: “Sarkozy floated the idea of an emergency summit of heads of state using a ‘G-8 plus five’ structure, and Merkel leaned towards the old G-7–G-8 format.” (Mackintosh 2015, 25) Further complicating is an article the Financial Times published shortly before the summit. Its authors insisted that the European effort was nowhere near as united as it seemed. With French officials hoping to end regulatory competition, the article makes a sensible case that the United Kingdom was unlikely to easily abandon its philosophy of light touch regulation. Never mind the French rhetoric of a “New Bretton Woods,” London’s highly competitive market place, the article concluded, “[…] is not an advantage that Mr. Brown would sacrifice lightly.” (B. Hall and Eaglesham 2008)

Qualitative data gleaned during my field research makes sense of the factual medley described above. It underlines how the U.S. abandoned relying solely on market size to amplify its regulations and consequently asserted its leadership in a cooperative political setting:

> “[…] there were calls by a number of the leaders – President Sarkozy, France, UK Gordon Brown and others – for a leaders summit […] this is probably in October. [A]fter some of the major problems with the Lehman bankruptcy we had Fannie ’n Freddie [Fannie Mae and Freddie Mac], we had AIG, we just … things were looking very dire. So, there was a call for some grouping of leaders and we struggled at the time to figure out what group made sense. And there were some proposals for G-13 and the feeling was the original G-7 was not inclusive enough, not broad enough, so it had to be larger. So, we – Treasury – urged the White House […] to look to the G-20. The G-20 didn’t have a leaders process, ’cause at that point it was only G-7 or G-8 leaders. But, there was a G-20 finance ministries and central bank governors group […] So, we thought that in terms of trying to pool together a summit – we only had maybe six weeks to do it – rather than create a new grouping from scratch, we best use the infrastructure from the G-20 finance ministers and central bank governors […]”[125]

SFAZ5H’s comment bears the unequivocal marks of an internationalist. However, during the period to which the interviewee refers the Republican administration – as evidenced by the Bush Administration’s failure to cooperate internationally much earlier and on a larger scale – was reluctant to accept that its regulatory approach had been outrun by reality. And the rift among Republicans on the Troubled Asset Relief Program (TARP)[126] speaks to the tentativeness of the internationalization process. However, it underscores how the regulatory bureaucracy and parts of the wider Administration took the analyses available to heart and laid the groundwork for a new approach in American leadership.

The main reason for regulators to push for international cooperation was connected directly with the way that finance had caused the crisis. More precisely, the fluid and adjustable characteristics of some of modern finance’s more abstract businesses made regulators aware that

[125] Author’s interview on October 01, 2015. Comments not for attribution. Reference Code: SFAZ5H.

[126] Frank Luntz, a Republican strategist, was mainly responsible for blaming the Democratic Administration under President Obama for allegedly spending “[t]rillions of taxpayer dollars to bailout CEOs and their risky investment schemes.” (Luntz 2010, 12)

the principles of regulatory action needed to change. Instead of regulation as a ceiling, which incentivizes behavior via best practices and recommendations, its purpose had to be reversed. Asked about the state of regulatory cooperation before the financial crisis, one U.S. regulator expounded on exactly this problem: "[…] to the extent that there was cooperation, it was often a race to the bottom, lowest common denominator, application of standards as a ceiling not a floor." This situation had to be remedied, the interviewee argued, because "[…] if the big major economies don't have a basic floor of financial stability regulation, they're interconnected enough such that […] there's a problem in one place and it'll flow over into another."[127]

To put it less abstract it helps to look at the one group of financial products that was at the very center of the financial crisis: derivatives. In 2009, Steve Eisman[128] briefed Julie Chon, aide to Senator Christopher Dodd during the efforts to re-regulate the U.S. financial sector, and outlined that without a "[…] tough derivatives bill […] you might as well not show up for work, it's going to be pointless." (Kaiser 2013, 289) Derivatives can be understood as financial products deriving their respective value from a so-called underlying. As contractual agreements, derivatives have no spatial correlation to their underlying. That is part of the reason why they have been instrumental in creating immense investment opportunities connecting stakeholders to markets everywhere. And my field-research has shown that to experts involved in the reform of the FSB's membership any institutional re-organization necessarily had to reflect finance's apparent spatial limitlessness:

> "The FSF before the FSB was something of a non-entity […] It was basically a talk shop […] The FSB, because it had the G-20 […] gained more importance […] And the way it was structured with larger economies and not necessarily the old economies, but bringing in India, China, big players like that added to its importance. So, it has a lot more cloud than it ever did before […] Major players in the FSB basically have a policy preference, but they know that if they do it unilaterally they'll be sucked into a race-to-the-bottom. Say we want to get to a dark pool: dark pools are very easy to set up elsewhere. So, if not everybody does it, all you're doing [is] encouraging people to leave. And we saw this before the financial crisis […] derivatives are just contracts. You can write those anywhere and you can move them in no time at all. So, the fear has always been that if you regulate too much, people will move […] So, everybody needs to get on the same page."[129]

For the practitioners, enlarging the circle of members was central to preventing the arbitrage of those reformed regulations the U.S. wanted to strengthen after the crisis. As argued above, the consensus rule assured newcomers a nominal veto, even though American technocratic expertise and institutional capabilities would be dominating the agenda-setting process. And it

[127] Author's interview on October 8, 2015. Comments not for attribution. Reference code: IO8S4J.
[128] Eisman was the eccentric hedge fund manager, turned icon, who was one of the few to early on bet against the mortgage market. Christian Bale starred as him in Adam McKay's 2015 film "The Big Short".
[129] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

was central to the U.S.' larger strategy that all FSB countries would subscribe to the Standards and Codes Initiative (BIS 2009a) ensuring and improving a collaborative effort FSF, IMF, and the World Bank had launched in reaction to the Asian Financial Crisis. (Moghadam and Devan 2011, 66) A strengthened version of these standards combined with agreed upon G-20 and FSB commitments (FSB 2012a, 7) constituted the core of the peer-review process, which is supposed to further the implementation of a regulatory floor ensuring the systemic stability of global finance.

It is noteworthy how the peer-review process is conducted within the network or supervisory organizations party to the FSB. The findings of the IMF's FSAP program feed back into the FSB review process and influence the IMF's decision-making regarding the determination of certain markets as systemically important.[130] In turn, standards set by the FSB inform the IMF's and World Bank's review and consulting activities towards their more inclusive membership. Talking with two sources – both with extensive experience within the web of international economic organizations –, the matter of the FSB's institutional reach was particularly accentuated:

> "Interviewee A: One should not underestimate the reach of the FSB in the sense that it is now. You have a set-up [of] regional groupings of non-members through which you can liaise and try to promote its views on different issues. But, […] because the IMF and the World Bank are members in the FSB, they often – although always adjusted to member countries' circumstances – in surveillance, in the FSAP program, …
>
> Interviewee B: …Yes!
>
> Interviewee A: … even in economic reform programs they will often look to some of the principles and standards the FSB promulgates in giving policy advice to their members. So, it has a much broader reach than just it's narrow membership.
>
> Interviewee B: Yes, there are 70 jurisdictions, I think, which are active members of what's called the [FSB's] regional consultative groups. And then, it goes broader than that for exactly the reasons that were indicated.
>
> Interviewee A: Now, of course, these organizations will always adjust what they promulgate with the circumstances of their members, particularly developing country members. But, still there is a very strong influence."[131]

On the basis of these statements, one can make the case for both American dominance or for the intuitively more suggestive argument on regulatory clubs dominated by industrialized countries. (Drezner 2007) However, the already cited preference of French and German leaders to keep membership to a minimum has already been noted. (Mackintosh 2015, 25) This is particularly important, because a unified understanding between both countries traditionally translates into a common European position. The inference of American dominance is made

[130] Author's interview on September 24, 2015. Comments not for attribution. Reference code: MSSLXW.
[131] Author's interview on November 13, 2015. Comments not for attribution. Reference code: OALREM.

more plausible by the fact that during the second half of 2008 – when the G-20 process was started – France held the presidency in the European Council. And despite a clear Franco-German alignment of preferences, the American wish for FSB membership enlargement was satisfied.

One explanation is that German resistance to enlarging the membership came with a substantial tactical disadvantage; and a doubled one at that. Germany did not want to give up its seat for a more supranational European representation, which would have effectively lowered the number of countries at the table. At the same time, it argued in favor of the FSF's membership remaining manageable. As early as February 26, 2008, official documentation from the German central bank referred to efforts by some Europeans to include the European Commission as a member.[132] The Bundesbank's position paper outlines that the country's finance ministry had come out in favor of a supranational seat representing the Union as a whole as early as 2006. (BBk 2008a) However, the bank was distinctly opposed to including any political European-level representation. In late 2005, the Commission had published a white paper outlining its bewilderment about not being represented in the Forum:

> "[…] the EC needs to be represented strongly in international bodies […] Cooperation and information exchange must be effective […] European coordination in international fora such as the Basel Committee, IAIS, IOSCO, UNIDROIT needs to be stepped up prior to meetings in order to define precise European negotiating positions. Furthermore, the Commission must also participate in the Financial Stability Forum where it is presently excluded for no good reason." (EC 2005, 15)

Three years later, Germany's central bank had three reservations against including the Commission. First, the central bank claimed the Commission had no immediate jurisdiction over the regulation of financial services, because even with the Lamfalussy-process in place it would fall to members to adopt and implement its policies. Second, as was previously noted, Hans Tietmeyer had envisioned the Forum as a body with a "manageable size" to facilitate an exchange among experts. (Tietmeyer 1999, 7) The Bundesbank held onto this dictum and argued with decidedly more political savvy that with the Commission present, countries like the BRICS would likely express their covetousness for joining the circle, effectively "[…] diminishing the body's effectiveness." (BBk 2008a, 1) The last reason for the central bank to oppose the European Commission becoming a party to the FSB was that "[e]very additional European member would accentuate [European] overrepresentation and provides for unnecessary […]" political exposure. (BBk 2008a, 2)

The Federal Ministry of Finance welcomed the Commission's membership in general. However concurring with the tactical evaluation of the Bundesbank, the ministry mentions in its

[132] The European Central Bank became a member of the FSF in March 2002. (BBk 2008a, 2)

background information that the United States – as corroborated by Mackintosh's analysis (Mackintosh 2015, 26) – was already lobbying to have emerging economies represented at the FSF when it was established. (BMF 2008a, 3) Therefore, both the Ministry as well as the central bank feared that in the case of a Commission membership the United States would either demand to reduce EU overrepresentation or be given sufficient leverage to push for including emerging economies, thereby diluting the European influence.

These positions eroded politically over the course of 2008. Acutely aware of U.S. preferences, Germany's central bank more fiercely opposed the membership enlargement in coherence with the arguments it had invoked regarding the Commission's membership. The ministry, however, had already made the political calculation that it wanted the Commission at the table and was experimenting with ideas how to contain the likely admittance of emerging countries. (BMF 2008a, 3) One approach was the ministry's use of rhetoric, giving Europe's supranational representation an observer status, something the Bundesbank directly discarded: "The FSF knows only members, not observers. Due to the lack of discretionary competence at the FSF, the distinction would be irrelevant. Consequently, the phrasing 'observer' has to be understood with regard to appeasing of potential critics." (BBk 2008a, 1) The Bundesbank proposed on September 24, 2008 to strengthen the organization's regional outreach as a "[…] suitable way to include emerging countries in the FSF's work without enlarging the FSF's actual membership." (BBk 2008b, 3) However, the bank soon realized that the political climate did not favor continuing the institutional split of members and non-members participating on an ad-hoc basis. Therefore in a position paper in the run-up to the world financial summit, the Bundesbank retreated from its original position arguing for the admittance of "[…] two or three […]" G-20 members, who could be chosen on the grounds of "objective criteria" like "[…] size, global interlacing of domestic finance sector, currency reserve/sovereign wealth funds, function as a financial hub." (BBk 2008c, 9–10)

The futility of Germany's attempts become apparent if one confronts technocratic expedience with the American decision to switch from regulatory competition to leveraging its market power in a global re-regulation of financial services. Politically, this re-regulation had to come at the price of sidelining European overrepresentation. When chancellor Merkel decided after the World Financial Summit to still oppose the enlargement – a position her own ministry reflected by advising its negotiators to keep enlargement to a minimum (BMF 2008b, 3) –, the Bundesbank worked out a ranking of G-20 countries according to their relative im-

portance to the financial system. Using eight different indicators[133], Germany's central bank acknowledged "[…] the ultimately political decision […]" on how to specifically widen the circle of members. (BBk 2008d, 1) Failing to appreciate the irony of bringing technocratic numbers to a political fight, the rating yielded a ranking in which Russia, Brazil, Mexico or South Africa could claim only negligible importance and even the United States failed to score more than 180 out of 184 attainable points. (BBk 2008d, 3)

Ending effectively the debate on sense and sensibility of rankings and objective criteria, the Bundesbank noted that FSF members had decided to not issue any position papers for its meeting on December 16, 2008 in Hong Kong: "The meeting is supposed to facilitate an exchange of opinions among members regarding the upcoming enlargement of the FSF's circle of members." (BBk 2008e) By this time, the U.S. Treasury was already working on its proposal "Institutionalizing the Financial Stability Forum," according to which all G-20 countries would join a reformed FSF, following a weighted 3-2-1 representation in accordance with the respective member's financial significance. With maximum membership including the Ministry of Finance, the central bank, and the securities regulator, least significant members would be represented by one out of three. Additionally, Treasury had proposed an executive committee, three standing committees, renewing the mandate of the FSF, as well as positioning the FSF more clearly as the global systemic supervisory entity. (BBk 2009, 3–4) With the eventual negotiation result so closely along the lines of U.S. preferences, the German position became irrelevant. The Bundesbank rejected a rotation of European seats, because the widening of participating jurisdictions watered down the argument about European overrepresentation. (BBk 2009, 4) And assuming the more political part, the Ministry of Finance insisted that membership would have to be tied to obligations, which all jurisdictions had to agree would be reviewed regularly. (BMF 2009a, 3)

### The FSB as an Organization of American Design

Europeans were checkmated on two positions. First, the material reality of the FSF's structure was that the Union made up over half the jurisdictions involved. It had, consequently, not many good arguments in hand after a crisis that had proven that five percent of a market could virtually take down the first and finest of Wall Street's financial behemoths. That is to say, the American assessment of the crisis had already been that size and overall importance was not a

[133] Relative percentage of global stock exchange capitalization, pending foreign claims, pending deposits, number of internationally active commercial banks, relative share in global portfolio investments, relative share in average daily derivative trade volume, relative share in forex volume, as well as the rating according to the Global Financial Centres Index (GFCI). (BBk 2008d, 3)

viable indicator for not-being-regulated. The German counter-strategy was based on arguments that predated the crisis and naturally failed to make an impact during negotiations.

Second, with Europeans failing to unite behind one common goal in managing the U.S.' virtual regulatory leadership, there was not much of a market-size argument to be made by those members; the one-time proponent of combined European market-size later advocated to that effect himself. (Posner and Newman 2015) While Europeans argued about whether or not to keep Spain as a member of the FSF (BMF 2008b, 2) – before its housing crash an international role-model for what was then seen as the standard in macroprudential regulation[134] –, Germany was divided even on the question of whether or not it wanted an actively participating European Commission. Mainly responsible for steering the political and technocratic integration of European finance, the Bundesbank argued against the Federal Ministry of Finance in its claim that an all-European representation would dilute the representation of European countries at the Forum. (BBk 2008a, 2) Such disunity, combined with America pivoting towards cooperation and determined to have as much politico-economic reach as possible, enabled a reform of the Forum structurally dominated by the U.S. and soon to be influenced by the agenda set by Congress' Dodd-Frank legislation.

[134] Author's interview on October 6, 2015. Comments not for attribution. Reference code: G9FQN4.

# Chapter Four
## An American Wish-List Goes Global
## Basel III, Systemic Importance, Derivatives

On August 27, 2009, then Chairman of the House Financial Services Committee, Barney Frank, gave an interview to National Public Radio's Adam Davidson in their podcast segment "Planet Money." Irritated by partisan conflict over regulatory reform, Davidson asked: "[…] why can't we just take two or three years, study the hell out of what happened, really look into why this crisis happened, figure it out and then re-write our financial regulatory system?" (Davidson 2009) Representative Frank was quick to assert both the inflexibility along party political fault lines as well as the fact that, with time being of the essence, reform proposals were built on an existent expert consensus outside the realm of domestic U.S. politics[135]:

> "I dispute the premise that we are 'going to know what happened' in two or three years. These are ideologically very contested issues […] There is never going to be a consensus answer to what happens […] I disagree with you that we're gonna know more two years from now that we know now. As to too much haste: Secretary of the Treasury Paulson outlined much of what we plan to do with some differences in some of the specifics in April of 2008. We will be well over a year and a half afterwards […] The world's not gonna stand still while we engage in a debate, which I do not think will ever be conclusively resolved about why we had the problem." (Davidson 2009)

In his rebuttal, Frank's – by his standards – almost indulgent comment is reflective of the rift that went through American conservatism at the turn of 2008/2009.[136] While there was almost no political willingness to compromise – Republicans blamed the Obama administration for bailouts that had been brought before Congress by the Paulson Treasury (Raju 2010) –, on a technocratic level Frank knew there was consensus. When the mortgage market initially experienced increasing stress, Secretary Paulson's Treasury organized a conference on March 13, 2007. Dedicated to ensuring the U.S.' dominant role in global financial markets, its participants "[…] examined the impact of the United States regulatory structure and philosophy […] on United States capital market competitiveness." (Congress 2010, 10581) In the end, Treas-

---

[135] As becomes apparent here, Frank anticipated the reason why Robert Kaiser in his monograph on the legislative and political history of the Dodd-Frank Act concluded with a chapter titled: "Still Broken." One of the core conflict leading to his pessimistic finding was that Dodd-Frank was in the end heavily contested with none of the issues raised by Congressional Republicans even close to being factually accurate. "They were reforms based on a consensus among many professionals and academics who followed the issues of financial regulation. That consensus did not cover every detail, but it narrowed the targets for reform to nearly all the subjects that the final bill ultimately covered. The existence of a bipartisan, expert consensus made it easier […] Legislation whose provisions enjoyed the support of Hank Paulson, prominent Republican and former head of Goldman Sachs, wasn't easily dismissed as a radical left-wing idea." (Kaiser 2013, 371–72)

[136] Not seeking another term as Congressman, Frank's already well-known propensity for harsh reactions to what he perceived as ideological points of view became a staple in his attempt to defend the Dodd-Frank legislation against what every so often were ideological onslaughts, indeed. (Singal 2010)

ury published the Blueprint in March 2008[137] (U.S. Treasury 2008a) and called for more efficiently dovetailing the work of U.S. regulatory agencies by institutionalizing the PWG as a permanent steering mechanism. (U.S. Treasury 2008a, 75–77) Contrasting functions- with objectives-based regulation, the report made a tentative first step towards comprehending the detrimental link between domestic supervision and global financial markets.

Despite the more detailed intricacies regarding particular segments of financial services regulation, there is one overarching theme that connects the Blueprint to a Treasury report Timothy Geithner commissioned in 2009. Entitled "Financial Regulatory Reform. A New Foundation," the report became known as the Whitepaper. The most striking similarities in terms of policy proposals were immediately noticed by Gordon McDonald at the Pew Research Center. (McDonald 2009) Outlining the similarities on banking reform, enhancing transparency in derivatives markets, and a couple of issues that relate mostly to domestic challenges[138] (McDonald 2009, 3), McDonald's analysis fails to provide meaningful analytical depth. This becomes particularly apparent when he inaccurately claims the Whitepaper would go institutionally beyond the Blueprint, since the latter "[…] does not specify a permanent council of regulators." (McDonald 2009, 17) In fact, the Blueprint's first short-term recommendation is that a "[…] new Executive Order should reinforce the PWG as an ongoing financial policy coordination and communication mechanism. [It] should also instruct the PWG to focus on the financial sector more broadly, rather than solely on financial markets." (U.S. Treasury 2008a, 76) While this sounds like a weak initiative to reform the U.S. regulatory structure, it is important here to re-iterate that the Blueprint assigned a strategic role to a working system of communication. For its optimal – objectives-based – scenario, the Paulson Treasury envisioned the Fed would be assuming this particular role of a market stability regulator, which would come at the expense of the central bank's current "[…] focus on the financial health or failure of an individual institution […]" Following this overhaul, the regulatory structure would fulfill three interrelated tasks: "[…] market stability regulation, prudential financial regulation, and business conduct regulation […]" Especially in this optimal scenario the role of a permanent council of regulators is a necessity the Blueprint recognizes in all but name:

> "An objectives-based regulatory structure does pose a key problem in ensuring that effective lines of communication exist […] Effective communication among regulators is important for coordinating examinations and other activities impacting the operations of fi-

[137] In October that same year the Republican administration rolled out the Troubled Asset Relief Program, or TARP. Politically, Republicans in House and Senate used the "bail-out" reproach to disqualify the re-regulation efforts that ended up becoming the Dodd-Frank Act. This obvious schism between what seemed on the one hand technocratically imperative, but on the other hand failed the test of political expedience characterizes well the schizophrenic debate partisan hardliners had with reality.

[138] This includes consumer protection, eliminating the thrift charter, and consequently to abolish the Office for Thrift Supervision. (McDonald 2009, 3)

> nancial institutions. Effective communication throughout the system is also critically important to ensure that the market stability regulator possesses the information necessary to perform its functions. Even with enhanced information from other regulators, determining […] when the conditions triggering corrective actions are present poses challenges." (U.S. Treasury 2008a, 142)

Three times the Paulson Treasury mentions "communication" as the one central precondition necessary for objectives-based regulation to work. Keeping in mind the elaborate changes such information exchange requires in terms of legal preconditions, it makes sense to see the PWG's strengthening not only as a short-term policy. In fact, the Blueprint's authors – either not expecting their long-shot agenda to become relevant any time soon or due to the segmented work process through which such reports are produced – did not follow objective-based regulation to its logical conclusion. Relying on established institutional fragments instead of creating new structures in the attempt of making the supervision leaner overall, the Blueprint does not specifically insist on the establishment of an entirely new permanent council of regulators.

So, why does this sophistry matter? Failing to discern the likeness of institutional provisions in both reports, McDonald cannot appreciate how a clear macroprudential tenet concerned with systemic financial risks links both reports. Simply put, the abovementioned regulatory consensus had become that the financial system as a whole – domestically in the Blueprint and with an explicitly international scope in the Whitepaper – is more than the sum of its parts.

Systemic Risk – A Congressional Prelude

Following Congressional negotiations on Dodd-Frank, Kaiser also identified the "[…] existence of a bipartisan, expert consensus […]" but raised Frank in so far as assigning to it the main reason why the bill passed House and Senate despite intense political quarrel. (Kaiser 2013, 372) Kaiser only traces this consensus back to technocratic experts within the executive. However, American lawmakers had likewise become increasingly aware of the dangers facing the American and global financial system. In general, the effort to re-evaluate financial services regulation in the U.S. grew from the increasing complexity of global finance. And still, the lock-step with which the House Committee on Financial Services matched the efforts of the Treasury Department is striking. Simultaneously to Treasury's "Blueprint conference" on March 13, 2007, the House Committee started a series of exploratory hearings on systemic risk.

Committee Chairman Barney Frank, with his attention on the externalities financial markets could have on his constituents, framed the kick-off session in some contrast to Treasury's

focus on U.S. "[…] capital markets competitiveness […]" (Congress 2010, 10581) and and chose to concentrate on consumer protection. Surely it is naïve to assume international competitiveness would not feature highly in these proceedings, but the committee started its work by developing an understanding of the role systemic risk played in financial markets with a particular eye on "[…] the question of investor protection versus the question of systemic risk." (Frank 2007a, 2) Staying true to this spirit, the ranking Republican member, Spencer Bachus, went on the record cautioning that regulators needed to consider how unforeseen externalities are in all likelihood detrimental to the U.S.' global interests:

> "Systemic risk is not theoretical, and if not properly contained and managed, it can threaten the stability and soundness of our financial markets. There is always the potential for a single event, such as a massive loss at a large complex financial institution to trigger a cascading effect that could impact the broader financial markets and ultimately the global economy." (Frank 2007a, 4)

Republicans' willingness to collaborate during the formulation of Dodd-Frank was, however, not guided by this insight (Kaiser 2013) and this alters the deductive power we can extract from Bachus' statement. But even assuming the ranking members was paying lip service, the committee nevertheless took to finding out about the more granular options it had in addressing systemic risk and heard several witnesses. Among the experts interviewed was Gerald E. Corrigan, managing director at Goldman Sachs and former president of the Federal Reserve Bank of New York. Pressed by the chairman as well as the ranking member for how to enhance supervision so as to limit the systemic externalities of hedge funds, Corrigan insisted that communicating information about business activities was key in understanding the risks that connected non-depository financial institutions to the activities of depository – e.g. banking – institutions throughout the larger financial system. To attain this goal, Corrigan invoked a transatlantic effort to develop best practices that, in his view and due course, should be made mandatory (Frank 2007a, 22):

> "[…] the Federal Reserve, in cooperation with the SEC, and interestingly with the U.K. FSA, went through an exercise […] in a largely principles-based approach. They spent a […] substantial amount of time with each of the major banks and securities firms that have prime brokerage activities, in an effort to systematically review and understand the nature of those relationships, out of which they will be developing a statement of best practices to be used prospectively in order for them to be able to better judge how individual institutions perform this function." (Frank 2007a, 23)

As has been mentioned in the last chapters, hedge funds had no significant role in causing the crisis (Bianchi and Drew 2010, 24; Crotty 2009, 568–70)[139] – despite being customers of opaque financial products and amplifying its effects. (Edwards 1999; PWG 1999a; Kambhu,

[139] For a more detailed discussion see chapter one on page 26.

Schuermann, and Stiroh 2007; Engert 2010; Pagliari 2012; Wull 2012; Fichtner 2014; Sennholz-Weinhardt 2014) The hearing, however, speaks to an awareness and concern supervision might generally miss crucial interconnections. Still, as with the Blueprint's palpable, yet incremental, recognition that global markets were challenging American regulators, so does the testimony by Corrigan manifest in a complacent acceptance of incremental change. While he points out how regulated financial institutions were elusively exposed to unregulated pools of money, it is important to note that Corrigan invokes principle-based regulation as a remedy. With rule-based being proscriptive, principle-based regulation is rather prescriptive and akin to the Blueprint's final goal of an objectives-based regulation. Striking a slightly different chord, principle- and objectives-based are set in a frame of mind Arnold Kling described in a blog post for the American Enterprise Institute in 2012: "The banks will always be savvier than the consumers and nimbler than the regulators, so bright-line [rule-based] regulation is bound to fail." (Kling 2012, 1–2) Or, in the words of the UK's now dissolved Financial Services Authority (FSA):

> "Principles-based regulation means […] moving away from dictating through detailed, prescriptive rules and supervisory actions how firms should operate their business. We want to give firms the responsibility to decide how best to align their business objectives and processes with the regulatory outcomes we have specified." (FSA 2007, 4)

To be precise, objectives-based regulation is more skeptical of market-participants and is specifically "[…] designed to focus on the goals of regulation in terms of addressing particular market failures." (U.S. Treasury 2008a, 13) The significant difference here is that the former refuses to believe the market could be controlled with the regulatory system at hand, while the latter re-organizes the regulatory structure with the aim of gaining supervisory control over the market as a whole, the individual business conducted by market participants, and linking consumer protection to business practices. (U.S. Treasury 2008a, 142) Both, the Blueprint as well as the first hearing indicate that a change in regulatory philosophy started to tentatively take hold with members of the technocratic elite as well as lawmakers.

Later that month, Frank's subcommittee on Financial Institutions and Consumer Credit met under the chairwomanship of Carolyn B. Maloney on March 27, 2007. The subcommittee's topic was clearly framed not only by its title – "Subprime and Predatory Lending: New Regulatory Guidance, Current Market Conditions, and Effects on Regulated Financial Institutions" –, but also by Maloney's introductory remarks: "We are facing, by all accounts, a tsunami of defaults and foreclosures in the primary subprime market." (Frank 2007b, 1) Having made the argument that market power also derives from the capacities to identify issues and draw political conclusions, this statement is noteworthy. Already in March 2007, the effect of subprime

mortgage origination, its distribution, and detrimental effects on depository institutions was anticipated. Sheila Bair, at the time of the hearing chairwoman of the Federal Deposit Insurance Corporation (FDIC), laid out in detail why for regulated, deposit-taking institutions the practice of subprime mortgage origination posed serious problems:

> "Subprime loans have largely been originated for sale into the secondary market, where they are pooled into securitizations and known as collateralized mortgage obligations (CMOs) or asset backed securities (ABS) […] In some instances, ABS tranches find their way into more complex capital market instruments called collateralized debt obligation (CDOs), which carve up credit risk in ways that are often difficult for the average market participant to comprehend. Securitizing pools of loans in this manner also raises additional risks including liquidity risk and market risk – especially when demand for securitization paper backed by loans intended for immediate sale unexpectedly dries up, forcing the originator to secure long-term funding for these assets." (Frank 2007b, 83–84)

Bair describes the three steps that led the charge into the financial crisis: the originate-to-distribute model, the interconnection of deposit and non-deposit institutions linked by mortgage securitizations, and finally the potential for a sudden shortage of liquidity in the market. Note that she makes a point in stressing the complexity of structured products not for laypeople, but for average market participants who professionally engage in their purchase and sale. Consequently, she closed her remarks about securitization risks outlining that regulators granted capital relief to originators of complex securities "[…] with the expectation that such vehicles transfer risk to the capital markets […]" (Frank 2007b, 84) Since risk dispersion was coming increasingly under pressure, Bair cautiously broached a reversal of this policy: "[…] additional capital requirements may be considered." (Frank 2007b, 85)

All this could should have prepared lawmakers, were it not for two significant caveats. First, the subcommittee's hearing was not part of the series on systemic risk and while chairwoman Bair certainly touches on that particular subject, she never flags the issue prominently or uses the term "systemic." Second, even if her statement would have been more explicit, there is still a good chance it would have gone by unnoticed. The statement above was part of her written testimony and during her opening statement, Bair had just enough time to expound on predatory lending practices and was cut off before she had a chance to move on to the interconnectedness of finance. (Frank 2007b, 8) In the interview that traditionally follows the opening statements, committee members stayed on the topic of predatory lending and it is not conjecture to assume that for members' constituents the specific ramifications of fraudulent business practices ranked higher than arcane regulatory soul-searching.

Despite having touched all the potential warning signs supervisors and academics would later refer to in explaining the crisis (Ivashina and Scharfstein 2010, 330; Piskorski, Seru, and Vig 2010; Shleifer and Vishny 2010, 316–17), Bair's opening statement was not clear enough to

cause alarm in a hearing whose representatives were more concerned with the effects that unavoidable renegotiations of loans had on customers in their respective districts. Cause and symptoms of the coming crisis were not yet separated clearly enough as to lead to a decisive response by Congress. Nevertheless, Frank was becoming wary and alluded to the content of Bair's written testimony when he opened the committee's meeting on July 11, 2007 by expressing his understanding that regulators as well as the legislative that oversaw the regulatory process was in the dark about what was really bothering them:

> "I think, as I read the testimony, we have a kind of uneasy consensus that there is a potential problem here that we wish we were more sure about how to approach […] I don't think anybody can be confident that all is entirely well here, but neither is there any obvious thing we ought to be doing. This is a matter for concern. It is an interesting issue in that it's a challenge to our regulatory system both within the United States and internationally." (Frank 2007c, 1)

The committee continued its hearing series that day and heard testimonies, which again dwelled on the connection between hedge funds – and, generally, unregulated pools of money – and systemic risk. At this point, political oversight continued to understand systemic risk as an issue manageable via entity-focused supervision. Frank clearly stated that he knew something had to be done, but the committee did not have a roadmap outlining what action could be taken. This resulting propensity for keeping the status-quo was underscored when the committee's first witness, Treasury's Undersecretary for Domestic Finance Robert Steel, emphasized: "Private pools of capital, which include hedge funds as well as private equity and venture capital funds, exemplify the innovation that make our capital markets the strongest in the world." (Frank 2007c, 12) Nevertheless, in his attempt to deliver a balanced account of what critical challenges would have to be met politically, Steel underscored that financial innovation had outrun the supervisory grip regulators had on market actors. (Frank 2007c, 13) Following Steel, Kevin Warsh delivered a statement on behalf of the Federal Reserve Board of Governors, in which he explicitly outlined what during subsequent pre-crisis efforts – by both the U.S. administration as well as international regulatory working groups under the FSF's umbrella – would be the main tool in restoring market liquidity:

> "The most effective mechanism for limiting systemic risks from hedge funds is market discipline. And the most important providers of market discipline are the large global, commercial, and investment banks that are their principal creditors and counterparties. This emphasis on market discipline neither endorses the status quo nor implies a passive role for government […] further progress on this front is needed, in no small part because of the increasing complexity of structured credit products such as collateralized debt obligations." (Frank 2007c, 14)

With hedge funds remaining suspect and a consequent blind-spot concerning overall loan origination, actors were nevertheless aware of potentially looming market disruptions; but it

was not more than an indistinct sentiment, which in its inscrutability went hand in hand with a lack of a clear regulatory, let alone legislative, agenda. However in the later course of the hearing, representative Maloney picked up on the clue Warsh had provided and engaged the witnesses critically regarding structured MBS. Of particular concern to her was the effect a fire sale of such products could have on the larger financial system including both financial institutions as well as regular, non-sophisticated investors. It is, furthermore, worth noting that in this July 2007 hearing, Maloney grew increasingly skeptic about what later were to become a major international regulatory concern:

> "Are the credit rating agencies acting with appropriate speed to downgrade assets that no longer warrant their investment grade? […] And what is the systemic consequences of a broad downgrade or significant deterioration of those types of securities' values? […] Is there a bubble there? And what is […] the systemic effect really on the markets with properly valuing them?" (Frank 2007c, 36–37)

Warsh answered careful and diplomatically, which makes sense seeing as he was on the record and that market actors had access to what he was about to say. As quoted from Frank's NPR-interview, financial markets are not simply following an arithmetically rigorous structure, but are deeply social and, hence, prone to herd behavior. Maloney, however, was in no mood for diplomacy and involuntarily uncovered what, nine months later, the Blueprint would outline as one of the main structural shortcomings in the U.S. – namely entity-focused regulation: "I want to make it clear […] I am not talking about a major firm losing money, but what effect it has on the value of the CDOs and the systemic problem it could have on the markets […]" (Frank 2007c, 37) Unfortunately, Maloney failed to appreciate the situation Warsh and his colleagues were put in and misinterpreted the witness' insistence on strengthening market discipline as a lack of candor. Both, Warsh and Maloney were essentially aiming at the same argument, which was that structured financial products had to be re-evaluated and that market disruptions were the probable outcome. Warsh even said as much when he hinted that write-offs would necessarily see market participants "[…] revisit their valuations, revisit the ratings that have [been] put on these securities to make sure they know where their risks are. The Federal Reserve […] is keenly focused on ensuring that the risks held by these institutions are manageable." (Frank 2007c, 37) In the course of the hearing Maloney grew increasingly frustrated with Warsh, asked to put a number on the expected downgrades of financial products and even expected him – and later Steel – to declare openly whether or not they thought there was a housing bubble. (Frank 2007c, 37–39) The experts answered indirectly, by deflecting to the risk-management efforts of both the Fed as well as Treasury. Even when they hit oh so close to home, they were not able to identify the interconnections, as in-

terviewee U8JESC has been quoted saying in the last chapters. A case in point can be found in Erik Sirri's testimony. During the July hearing, the Director of market regulation at the SEC, was the first to publicly use the term "systemically important financial institutions" before Congress and thereby introduced it to everybody's politico-economic vocabulary. Sirri, however, needed the expression to depict how hedge funds were effectively diversifying risk and, therefore, "[…] beginning to look more […] like mature financial institutions […]" (Frank 2007c, 18) Frank, reassured in his assessment that something was going on and still uncertain what exactly to do about it, moved to close the hearing.

With most of the peculiarities of the coming crisis yet to unfold, the committee used September and October 2007 to prepare for what many assumed would be the consequences of a significant market correction; and yet, with no one entirely sure what systemic risk meant in terms of policies, none of the actors braced for the impact that almost crushed the world economy a year later. A hearing on September 2, was not part of the systemic risk series but dealt with "Recent Events in the Credit and Mortgage Markets and Possible Implications for U.S. Consumers and the Global Economy." While hedge funds consequently did not feature highly, the issues of systemic risk and the failing mortgage market began to merge. One striking outcome of this was that the indexical connection of "systemically important financial institutions" and "professional risk management" – once a matter of course – began to break down. In its place, Erik Sirri established how the dynamic of a sudden devaluation of assets caused investors to drain liquidity from markets:

> "As default levels on subprime mortgages exceeded expectations, market participants began to question the value of a variety of financial products. And as valuations came into doubt, liquidity in these products fell sharply, which further complicated the task of valuing particularly complex instruments." (Frank 2007d, 25)

This statement makes abundantly clear why in previous hearings, particularly in the exchange with representative Maloney, regulators had shied away from expounding on the specificities of derivative valuation. As an inherently social process, any comment would have exacerbated a process that apparently was already taking place. Now commenting clearly on the situation market actors found themselves to be in, Sirri described the classic mechanism of a run: an over-adjustment throughout asset classes with no more valuation-certainty than before. Without a strategy for countering the nexus between massively revalued structured credit obligations and the liquidity crunch following the herd-like flight out of these product segments, Sirri conceded that regulators struggled as to what to do next:

> "Overall, these dynamics have significantly impacted a wide range of market participants from individual investors to *systemically important financial institutions* [emph. ad.]. In this environment […] the Commission [SEC] seeks to fulfill its basic mandates: to protect

> investors; maintain fair and orderly markets; and facilitate capital formation." (Frank 2007d, 25)

The second chapter outlined how the SEC struggled with the dual burden of the CSE program and budget cuts from Congress, which rendered the commission a toothless supervisor of financial products so complex that not even their creators grasped the full extent of their repercussions. Democrats in Congress took to legislate against what they – correctly – perceived to be the root cause of the financial upheaval. The September hearing was preceded by a legislative initiative by both Senate and House – with Christopher J. Dodd and Barney Frank steering the initiative in their respective committees – to ban the practice of subprime mortgage lending and, thereby, cut the underlying mortgages off from securitization. (Andrews 2007) However, without sufficient clarity as to how the liquidity shortage could exactly be tied to mortgages, Republicans in both chambers as well as the industry mounted an opposition, which in the end killed the legislative proposal. (Frank 2007d, 9; Andrews 2007, 2)

For both regulators and legislators, what was left was to wait for the informed, yet "uneasy consensus" to manifest and develop its momentum parallel to the pressure increasingly troubled markets exerted. In October 2007, Frank convened the last hearing of the systemic risk series, which now distinctly addressed the situation on the mortgage markets instead of the institutional risk connected to hedge funds. The featured witnesses contributed more fundamentally than in previous meetings and explained how systemic risk had changed from a regulatory problem that could be dealt with on an entity-basis to a pervasive condition connecting all market participants. Originally invited as an expert on hedge funds, Richard Bookstaber, gave the practitioner's account of how systemic risk had long exceeded the bank run scenarios of the 1930s:

> "I believe that the threats to the financial system stem largely from […] the complexity of the market. Complexity basically means that an event can propagate in unanticipated ways. And for financial markets, complexity comes through […] innovative products. Many derivatives have nonlinear payoffs, which means that a small market move in some situations can lead to really substantial impacts on the derivatives […] [M]any derivatives lead to unexpected […] linkages between instruments and markets. We observed some of these unnatural linkages during the subprime problems […] And like a kid who brings a cold to a birthday party, the subprimes mingling with these other instruments led to contagion into these other markets." (Frank 2007e, 8)

The key terms here are "innovation" and "contagion" and they fundamentally informed how the House Committee on Financial Services began to conceive of systemic risk. Bookstaber's account described in simple terms how the structuring of credit, its purchase, leveraging, as well as the use of structured-insurance of CDOs via CDS – all of which was fueled by cheaply available credit – created obligations that could only be served by continuing to prime the

pump. The system was massively overheated and either worked on the run, or it would nosedive. In his written testimony, Robert Kuttner re-emphasized this connection. Turning on its head the way monetarism broke open a gridlocked political economy during the late 1960s, Kuttner invoked Milton Friedman as inspiration for regulators to walk outside the beaten path:

> "[…] regulation is so out of fashion these days that it narrows the legislative imagination […] It no longer works to assert that all innovations, by definition, are good for markets or markets wouldn't invent them. We just tested that proposition in the sub-prime crisis, and it failed. But which forms of credit derivatives […] truly make markets more liquid and better able to withstand shocks, and which add to the system's vulnerability. [sic!] We can't just settle that question by the all purpose assumption that market forces invariably enhance efficiency." (Frank 2007e, 61–62)

The committee was not presented with an unequivocal consensus. One fellow from the American Enterprise Institute (AEI) advocated to stay course since busts were "[…] a price well worth paying in return for the innovation and growth only such markets can create." (Frank 2007e, 70) However, the committee did not engage the witness meaningfully with even ranking member Bachus ironizing the AEI representative's comments. (Frank 2007e, 20) Overall, it was Steven L. Schwarcz, professor at Duke University's law school, whose integrated approach explicitly re-defined systemic risk for the committee members. Instead of simply focusing on individual market participants and their actions within the markets ("institutional systemic risk"), regulators should extend their understanding by also recognizing "market systemic risk." (Frank 2007e, 73) In an article Schwarcz published in 2008, he explicitly referenced and quoted from his appearance before the committee and boiled down his message before Congress:

> "Institutional systemic risk and market systemic risk […] should not be viewed each in isolation. Institutions and markets can be involved in both. Perhaps a better way to think about systemic risk is that its focus is sometimes on critical financial intermediaries […] and other times its focus is on markets and/or institutions […] As disintermediation increases, therefore, systemic risk should increasingly be viewed by its impact on markets, not institutions per se." (Frank 2007e, 73; Schwarcz 2008b, 202)

Having studied all written testimonies, Frank started the October hearing by referencing Henry Paulson in saying that innovation had outrun regulation[140] (Frank 2007e, 1) and that, therefore, American regulators had to start working cooperatively instead of relying on the paradigm of regulatory competition: "[…] given the global nature of our financial markets, U.S. regulators must work closely with their international counterparts to promote cooperation, not

[140] In December that same year, Paulson went even further and advocated for a strong regulatory role of the government. He emphasized not only had market actors outrun regulation, but, more importantly, the market had outrun its actors, too: "Well, if I ever saw a legitimate role for the government, it is a situation like this, where there's been so much complexity and innovation that it's outrun the private sector's ability to deal with it […]" (Paulson 2007, 4)

competition, among regulatory bodies and ensure that information about potential systemic risk is shared promptly." (Frank 2007e, 4)

The internationalization of American regulation was based on a consensus that recognized the necessity for international markets to work, if the U.S. economy was to recover. In December 2007, Secretary Paulson went on the air with NPR's Judy Woodruff. During the interview, attentive observers were given a clue that Treasury was going global in its attempt to protect the U.S. economy; a mindset because of which the gap between internationally operated and domestically regulated markets would be strategically closed. Answering Woodruff's question as to how much worse it would get, before the economy would start to recover, he put particular weight – and optimism – on how deeply the U.S. economy was globally embedded: "[…] what I've said all the way along is that we have a healthy, diverse economy in the U.S., and we can be grateful […] for the growth outside of the U.S. I think our economy is going to continue to grow." (Paulson 2007, 6) Counting on overall global growth as the line of last defense meant that if the systemic crisis spread outside the U.S. there would be only limited options other than supporting the markets through massive government intervention.

When it All Came Together: September Crashes Vault Systemic Risk Front and Center

Of course, the situation became direr than expected. Secretary Paulson's TARP signified an unprecedented and whopping USD 700 billion government aid package for the banking industry. (Black and Hazelwood 2013, 790; Tirole 2016, 11–12) Its effects on public trust and – equally important – banking institutions' willingness to assume risk[141] fueled an intense public debate. As a result, attempts by American conservatives to pin government bail-outs on the Administration under President Barack Obama was a clear sign of the ideological uncertainty and precariousness that caused Republicans to distance themselves (Luntz 2010) from the light-touch regulatory policies they had a significant role in creating. The general conviction that markets were efficient had vanished. Consequently, in giving their accounts as to what the main challenges for reregulation were, experts agreed that a failing sense of orientation made reacting to the crisis even trickier than it had been during regular bust cycles: "[…] if you look[ed] to the traditional indicators of the resilience of the system, there seemed no reason for this loss of confidence in the financial system that seemed to be taking place."[142] Indeed, other experts pointed out that one of the major challenges was "[…] identifying the cri-

[141] To differing degrees, all authors agree that the U.S. administration found itself between a rock and a hard place when bailing-out financial institutions – with all emphasizing the at least potentially detrimental effects on market discipline and some arguing it caused outright moral hazard. (Bayazitova and Shivdasani 2012, 379–80; Cihak and Nier 2009, 4–5; Farruggio, Michalak, and Uhde 2013, 2601; Hryckiewicz 2014, 262–63; Jang 2016, 18; Liu et al. 2013, 5059)

[142] Author's interview on August 18, 2015. Comments not for attribution. Reference code: L75FO2.

sis and developing a policy solution […]", because the competitive approach to regulation had left the overall system with "[…] gaps in information available to regulators and the potential for regulatory arbitrage weaken[ed] individual countries' systems for regulation […]"[143] Another interviewee lamented that the lack of information domestically as well as internationally "[…] has hampered collaboration."[144] U8JEASC described 2008 as a saddle period during which technocrats knew policies would have to change and – just like Dodd and Frank – had to hold out until the increasing level of economic pain forced a more general recognition for necessary, and to U8JESC somewhat ironic, reforms:

> "There's a saying in Washington: 'Nothing succeeds like failure.' A lot of the financial crisis had been attributed to the federal funds rate, lower interest rates, lax banking supervision, that kind of thing. The Federal Reserve in many ways was the most powerful U.S. regulator before and gained a lot of power as a result of that. Some of it is not necessarily something it wants. So, there is that element. The security regulators would say that banking supervisors around the world gained on that one. Within the United States, obviously, Dodd-Frank wouldn't have gotten passed otherwise, you know. Some ideas, such as the Consumer Financial Protection Bureau, would not have gotten much traction otherwise."[145]

In the previous chapters, U8JESC's comment that "everybody knew about Lehman"[146] already signified how regulators until the very end believed that the rescue of Bear Stearns was a clear sign for market-discipline that, nevertheless, failed in providing stability.

U8JESC's "failure succeeds"-sentiment summarizes regulators' learning curve and how rather incrementally systemic risk entered supervisors' and legislators' radar. The consistencies between the Paulson's Blueprint and the Geithner Whitepaper reflected the expert-consensus. In the Whitepaper, the Geithner Treasury expanded on the Blueprint's point of view that domestically "[…] a poorly designed or poorly run system or series of rules governing such systems can contribute to financial crises […] thereby imperiling the stability of U.S. and foreign financial markets." (U.S. Treasury 2008a, 101 and 106) Building on this, the Whitepaper proposed that the Federal Reserve's Board of Governors become a central systemic supervisor:

> "If the Federal Reserve has reason to believe that a payment, clearing, or settlement activity is systemically important, it should have authority to collect information from any financial firm engaged in that activity for the purpose of assessing whether the activity is systemically important." (U.S. Treasury 2009, 53)

[143] Author's interview on October 2, 2015. Comments not for attribution. Reference code: 7XLXR5.
[144] Author's interview on September 24, 2015. Comments not for attribution. Reference code: MSSLXW.
[145] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.
[146] "Lehman was not a surprise. Everybody knew for six months it was going to happen. Everybody I knew had known, everybody in the market was assumed to have known. When Bear Stearns went it was viewed as a warning: 'The next guy isn't gonna be propped up.' So everyone was actually shocked when all these things had an effect, because the view was there was enough time. But, the problem was there wasn't enough data. So even if you knew that Lehman would fail, you didn't know your exposure to it. That's one of the things that everybody is trying to fix now." Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

To further close the data gap and enhance supervision, the Whitepaper likewise explicitly outlined its international agenda with regard to endangered financial behemoths. Announcing to the wider financial community what would in Dodd-Frank become the orderly liquidation authority, or OLA, Treasury announced that the U.S. would push "[…] its international counterparts [to] work together to improve mechanisms for the cross-border resolution of financial firms […]" (U.S. Treasury 2009, 82) Finally, the Whitepaper also announced it would bring forward legislative language that would "[…] propose a stricter regime of supervision and regulation apply to […]" large financial holding companies (FHCs). (U.S. Treasury 2009, 84) In an interview for The New York Times Magazine, Geithner restated his prominent mantra on capital requirements and reasoned that regulatory disorientation, despite all measures that could be taken in the meantime, can only be conclusively dealt with by inhibiting risk assumption on a larger scale:

> "We don't know where the next crisis is going to come from […] We won't be able to foresee it. We're not going to pre-empt all future bubbles. So we want to build a much bigger cushion into the system against those basic human limitations. I don't want a system that depends on clairvoyance or bravery […] The top three things to get done are capital, capital and capital." (Leonhardt 2010, 9)

"Enact now, negotiate later" – The U.S.' first-mover strategy and global re-regulation

My argument is that the comparatively swift inuring of the Dodd-Frank Act (DFA) reaffirmed the U.S. as the most dominant market internationally. In this chapter I will present three cases – on banking reform, systemic oversight, and derivatives regulation – that strongly suggest the U.S. used Dodd-Frank to put "[…] the EU and other countries in a 'take-it-or-leave-it' position with respect to streamlining their policies with that of the United States." (Greene and Boehm 2012, 1094) Michael Barr, from whom the quote in the title is taken, said in this context:

> "The United States has largely […] pursued an 'enact first, negotiate later' strategy to reform, issuing rules with significant extraterritorial reach in an effort to increase pressure on other, major economies and magnify its bargaining position on the global stage. Other actors, including the European Union, have lagged behind the United States by months and even years on some key elements of reform […]" (Barr 2014, 1017)

Crudely put, what often separates legal from political science scholarship is that the former is principally concerned with legal norms and its dogmatic effect on the larger legal system, while the latter often asks how power is distributed and used within a given social system. In this instance, these two principles fall together and the fundamental precept of the rule of law informs Dodd-Frank's seminal significance: no international negotiation or accord can become law of the land in the United States without a process of ratification or an independent

legislative act by Congress. While this sounds trivial, it materialized on July 21, 2010 with substantial consequences for reforms of regulatory processes, which had started with a considerable lag time internationally. Despite the U.S.' prominent market-size, one could argue that DFA's enactment does not necessarily create a first-mover advantage. The G-20's Financial Stability Board held its inaugural meeting on June 26-27, 2009. What is more, the default of Lehman, and the even bigger crash of Washington Mutual – the lesser known, yet biggest bank failure in American history – were significant events. (Carmassi and Micossi 2012, 32; Bennetts and Long 2013, 6; J. R. Barth and Wihlborg 2016, 34) Between 2008 and 2010, enough time was left to put international pressure on the U.S. and force a weakened hegemon to adopt new rules.

There are many blind spots in this hypothetical, though. For example, declarations by the G-20 do not have the consequential momentum as does domestic legislation. Yet, next to assuming a politico-economic power vacuum weakening America and its policy-makers, one can, like one of my interviewees, argue in the opposite direction: "So, there's the expression 'In every crisis there is opportunity' – that Chinese proverb – and that's what happened here. The crisis happened and there were failures and lots of blame to go around and the recognition that more needed to be done […]"[147] By the time the FSB held its first meeting with a vastly increased membership, the Geithner Whitepaper had already been published and the Obama administration was well along in drafting the technical outlines and – even more importantly – the substance for legislative language that the House passed on December 11, 2009, the Senate adopted on May 20, 2010 and following the Conference Committee – an outdated practice that became necessary due to the immense complexity of the reform act (Kaiser 2013, 338) – was signed into law eight weeks later.

By way of comparison, during my field research a German bureaucrat from the Ministry of Finance went on the record outlining that Germany had not considered the institutional rearrangement from the FSF to the FSB to be particularly important. She emphasized that a meanwhile deceased negotiator had been mainly in charge of the negotiations accompanying the G-20 process with regard to financial services and the ministry had failed to secure any of the institutional knowledge. (Hermes 2016) This lack of strategic foresight and appreciation for realpolik explains why a case officer interviewed for this study would respond the way s/he did when asked about shortcomings in the FSB framework. In R4CNEM's view a major shortcoming of the FSB's work was the weak role the organization assumed during the sover-

[147] Author's interview on October 1, 2015. Comments not for attribution. Reference code: SFAZ5H.

eign debt crisis in the Eurozone[148] – an area, mind you, the FSB has never taken any interest in or claimed to have competence over, since it is clearly within the realm of the IMF's mandate. On the supranational level of the European Union, the awareness of the regulatory importance of the G-20 process was disparately higher. One of the EU's top negotiators admitted that Dodd-Frank had put any attempt at a genuinely European re-regulation between a proverbial rock and hart place. Confronted with Greene and Boehm's "take-it-or-leave-it" comment, C5IGY2 responded:

> "Ya, you can say that. But that's not just Dodd-Frank. That's everything in the U.S. The SEC behaves in exactly that way […] So, the U.S. as the biggest capital market on earth – well it's not, actually, the European capital market is bigger but it's less coordinated, less organized, but the U.S. as a single capital market, single national capital market –, the U.S. always says: 'This is the way it's gotta be.' So the U.S. – and this goes back to U.S. discomfort at the global level –, they don't like being forced to do things at the global level, they want to do it on their own terms." [149]

The larger argument about the relatively early adoption of DFA, of course, aims at the legitimacy of the FSB process. If the U.S. negotiated with only very narrow room for compromise, what assurances would its partners have that the new rules were more than lip service to more effective global regulation? In this scenario, could the FSB claim that its process actually represented a genuine approach at international regulatory cooperation? While most U.S. officials evaded the question C5IGY2 frankly responded to, one high-ranking, American technocrat argued like Barney Frank at the onset of this chapter and transposed it to the international level:

> "I can understand why some people might think that, but I do think that the political situation or the judgment of the Obama Administration was that if they were going get something passed they had to pass it quickly; and if they had waited for an international consensus to be reached who knows what would have happened? I mean, by that time, the Congress would have been Republican rather than Democrat."[150]

This last sentence, of course, applies its ex-post logic to vindicate America moving first by referencing Republicans' complete non-cooperation with the Obama administration. (Raju 2010) While this sounds plausible, in 2009 technocrats and political decision-makers could not have known the results of elections scheduled for November 2010. Moreover, while financial regulation had been a defining topic during the first half of 2009, domestically the issue took a backseat after the reform of the health care system became a major bone of contention in the second half of 2009. Particularly, so-called tea party Republicans focused on and dominated the news cycle with their misgivings. (Skeel 2010, 2)

[148] Author's interview on May 27, 2016. Comments not for attribution. Reference code: R4CNEM.
[149] Author's interview on June 3, 2016. Comments not for attribution. Reference code: C5IGY2.
[150] Author's interview on January 8, 2016. Comments not for attribution. Reference code: A5MFXR.

Traditionally in charge of America's foreign affairs and commanding more expertise than the legislature, it was the executive branch that wrote the substance of DFA. Given the complex nature of the necessary reforms, Barney Frank emphasized this decisive role: "[…] the president did gently but clearly make the point that he did not want us drafting this bill because it was after all pretty complicated stuff and he hoped that the drafting could be done in the executive branch. I told him I was not only willing for that to happen but eager." (Kaiser 2013, 37) With the president-elect deliberately absent from the G-20s Washington Summit, the incoming president's transition team had nevertheless been engaged with the international process that would be tackling the consequences of the global financial crisis (Bradford, Linn, and Marting 2008; MacAskill and Goldenberg 2008); so much so, in fact, that President Obama's chief of staff Rahm Emanuel "[…] hoped something could be enacted by the House or by Frank's committee, before Obama met […] the Group of 20 […] in early April." (Kaiser 2013, 36–37) While legislative action was naturally out of the question on such short notice and this wide a range of issues, the Geithner treasury put out its agenda on time for the G-20 meeting in London. A dense two page press release, the document contains the precise scope of the eventual reforms as they relate to the agenda of the FSB: addressing systemic risk and the establishment of a single systemic risk regulatory council, SIFI identification, payment and settlement systems, higher capital standards, increased oversight on OTC derivatives, mandatory clearing of contracts, as well as stronger resolution authority. (Treasury 2009)

Therefore, it makes sense to consider DFA particularly for its "extraterritorial reach"; a point which interviewee A5MFXR emphasized immediately after the statement cited above:

> "I think, the major outlines of Dodd-Frank are completely consistent with the global consensus as also embodied by the Basel Committee, in which the Europeans have – at least on the banking side – a full voice. So, I don't see … in the end I can see why they thought 'Oh gee, the U.S. has acted and they're, kind of telling us to come along their way,' but I think we would have ended up in a very similar place and whether the U.S. actually could have passed the legislation after all that time had passed and the legislature had turned to another party, I think, is highly doubtful."[151]

This sounds like much of the "there-is-no-alternative" discourse that was employed throughout the 1980s as well as during the more recent sovereign debt crisis in the Eurozone. However, this is a lesson in American market power more than ideologically manifested policy-making. The United States set the agenda for the entire re-regulation process by capitalizing as early as beginning 2007 – when much of the public discourse on both sides of the Atlantic would still be unaware of the looming crisis for almost another year – on the expertise its regulatory system harbored and a legislature keen on staying informed on potential externalities

[151] Author's interview on January 8, 2016. Comments not for attribution. Reference code: A5MFXR.

of its financial market. The rest of this chapter will outline how main issues on the FSB's agenda, rather than embodying a change from regulatory competition to genuine cooperation, reflect an internationalization of American market regulation and a projection of its economic interest.

## Case Studies on American Financial Market Power

According to its current website and as apparent from the international discussion on the contents of potential re-regulation of global finance, the FSB formulated six major areas of reform: building resilient financial institutions, addressing systemically important financial institutions, making derivatives markets safer, transforming shadow banking to resilient market-based finance, as well as a residual category of miscellaneous topics.[152] The latter is surprising, because it includes the convergence of accounting standards, an agenda item that had been on the G-20's agenda from the very beginning. Considering how Europeans were able to make inroads on convergence before the crisis, the deferral of this once crucial policy field will be considered as a least-likely case at the beginning of the next chapter together with shadow banking as a final part in the discussion about the market-size induced projection of American regulatory interests.

### First Case: No More Cozy Meetings – Basel III

#### Raising the Amount of Capital

With banking regulation under the second Basel accord as prominent example for dysfunctional international regulation, Basel III was adopted by the BCBS in December 2010 to "[…] address the market failures revealed by the crisis […]" (BCBS 2011a, 2) The committee finalized major changes to capital requirements in 2011, to mandatory levels of liquidity in January 2013, and to a new leverage ratio in October 2014. (BCBS 2011a, 2013a, 2014a) The core principle of the accord is that assets – and that fundamentally is banks' entrepreneurial risk – are weighed relative to their probability of default. Via risk-weighted assets (RWA), Basel III categorizes what a bank owns – outstanding loans, investments, or debentures – and applies several weighting ratios depending on the likelihood that the exposure of a bank will be covered. The weighing process has been roughly outlined by the BCBS and its concrete specificity falls under national jurisdiction. What is noteworthy, the BCBS continues to offer two options: the standardized as well as the internal-ratings based (IRB) approach. (BCBS 2016, 24)

[152] http://www.fsb.org/what-we-do/policy-development/. Accessed June 13, 2015.

While internal ratings have to be signed off by the national regulator, the standardized approach is intended to create a regulatory floor, which IRB-applying financial institutions must exceed. (BCBS 2016, 22) In its 2016 publication, as in all previous versions, the BCBS sets a bottom line for both approaches – with the standardized version the less technical and unwieldy, which is why this section will focus on the standardized approach. The BCBS recognizes that financial institutions are generally exposed to different types of lenders and borrowers and, therefore, differentiates between numerous classes of exposure. This can materialize as exposure to a sovereign entity – i.e. countries like the U.S. and their respective bond-issuing central banks –, to other non-sovereign banks, to corporate debt, and especially exposure to residential real estate. (BCBS 2016, 25–37) The risk weighting percentage differs enormously throughout and within exposure classes. If one looks at sovereign debt, it is surprising that the BCBS benevolently maintained the inclusion of credit rating agencies' (CRA) assessments. Debt issued by a country with a AAA to AA- rating is weighed at zero percent, at 20 percent for classes between A+ and A-, at 50 percent and 100 percent respectively for the upper B and lower B ratings lot, at 150 percent for exposure issued by below B- institutions and, finally 100 percent for unrated sovereign debt. (BCBS 2016, 25) Considering the ratings-induced bubble in European debt, the BCBS' approach is surprising. In the U.S., FDIC finalized its standardized approach for RWA in 2012, which included as a matter of course the provision formulated by section 939(a) of DFA, which partially eliminates the applicability of credit rating agency assessments as mechanistic thresholds for more or less risky credit exposure of financial institutions. (Dodd and Frank 2010, 510; FDIC 2012, 1) All in all, the FDIC stuck to what it calls credit conversion factors (CCFs) similar to the BCBS surcharges referenced above. However, regulators have gained a much more intimate access to financial institutions' business decisions. Therefore, the FDIC ruled that if a bank should fail:

> "[…] to demonstrate *to the satisfaction of its primary federal supervisor* [emph. added] a comprehensive understanding of the features of a securitization exposure would materially affect the performance of the exposure, the banking organization would be required to assign the securitization exposure a risk weight of 1,250 percent." (FDIC 2012, 10–11)

Equally harsh, CCFs become automatically applicable for debt past the settlement date, with 100, 625, 937.5, and 1,250 percent respectively set at the discretion of the supervisor and relative to the originally assigned asset risk. An automatic 1,250 percent CCF become effective for all assets five days past their respective settlement dates regardless of asset class. (FDIC 2012, 26) While punitive thresholds for non-serviced debt of any kind work before as well as after the fact as serious balance sheet disruptions, in its capital requirements regulation the European Union does not consider punitive thresholds to that effect. The EU did, however,

follow the FDIC in establishing the 1,250 percent financial "panic button." Left to the individual banking regulator's discretion in the U.S., EP and Council prescribed Europe-wide the qualitative and quantitative attributes constituting "significant risk" as the triggering evaluation causing the vastly increased risk weight. (EP and Council 2013, 63–64)

With the qualitative criteria set for the computation of RWA, Basel III's capital requirement regime was adapted. The minimum total regulatory capital relative to RWA remains at the Basel II standard of eight percent. (Barr 2014, 1005) However, banks will now have to hold – following a phase in until 2019 – an additional capital conversation buffer of 2.5 percent that is to be held out for stressed market situations. (Eernisse 2012, 255) One of the experiences during the GFC was that banks would not touch their excess capital fast enough for fear of reputational repercussions and tighter regulatory control. This incentive still exists, but was mitigated through the introduction of the conservation buffer. If a bank has to rely on these 2.5 percent it will be subject to more scrutiny and unable to issue dividends. However, these consequences are mild compared to the proceedings triggered when banks have to touch their minimum capital cushion. (Eernisse 2012, 256) A countercyclical buffer is also added – up to 2.5 percent pending implementation by national regulators – to enhance resilience during stable economic times and "[…] achieve the broader macroprudential goal of protecting the banking sector from periods of excess aggregate credit growth." (BIS 2010b, 2) Moreover, regulators agreed to a surcharge for Global Systemically Important Banks (G-SIBs) within the range of 1 to 2.5 percent beginning in 2019. (BCBS 2015, 45)[153]

Improvements to the Quality of Capital

All these extras set aside, the quality of capital relative to RWA was central to capital requirements reform. With the risk-weighting process sensitized to all asset classes, the required eight percent are comprised of two percent Tier 2 capital, which consists of re-valued reserves, hybrid capital instruments that mix debt and equity instruments, and subordinated debt. The remaining six percent must be comprised of 4.5 percent common equity Tier 1 (CET1) capital and 1.5 percent Tier 1 capital. The difference between CET1 and regular Tier 1 capital lies with the readiness, with which it provides liquidity to banks under stressed conditions. CET1 includes available profits, stock earnings, reserves (i.e. gold), and issued common shares that meet fourteen criteria, the first of which is that the issued share is part of the last liquidation batch and therefore represents a value the bank holds for the longest amount

[153] SIBs as well as SIFIs will be discussed in the next part of this chapter. It is clear that in this area the U.S. yielded enormous influence. Banks are, of course, partially affected by SIFI regulations, which is why any discussion of the Basel III agreements is necessarily incomplete without reference to America's stern push for extra requirements concerning systemically important financial institutions.

of time. (BCBS 2011a, 14–15) Tier 1 capital on the other hand is still owned by a bank insofar as the bank has a legal claim to these assets. However, their liquidation and procurement reduces its on-point availability. Out of, again, 14 criteria for what qualifies as additional Tier 1 capital two stand out, because they require an asset to retain a high degree of stability: Tier 1 has to be "[…] issued or paid in […]" – that is, a legal claim exists which only the respective bank can make – and the asset has to be perpetual, which means that "[…] there is no maturity date and no incentive to redeem." (BCBS 2011a, 15–17)
Intimately connected to banks' ability in reacting to sudden market events, Basel III prescribes leverage ratio in excess of three percent. (BCBS 2011a, 63) In this process, no risk weighing is applied so as to gauge the entirety of assets involved in the leveraging process. In computing terms, Basel III comes down to CET1 – the capital measure – divided by a bank's total exposure, which includes specifically on- and off-balance sheet items, exposures to derivatives, as well as securities financing. The higher the amount of CET1 – the numerator – the higher the percentage; which in turn indicates that the more core capital a bank holds relative to its assets, the less the institution is leveraged. (BCBS 2014a, 1–3)

Simulating Stress: When Push Comes to Shove for Capital and Liquidity
Finally, liquidity rules were tied to regular stress testing, which is supposed to assure regulators of the functioning of markets as an essentially social variable. Liquidity fundamentally depends on how actors react, including largely irrational herd behavior, during times of intense stress. Two categories were outlined. First, the liquidity coverage ratio (LCR) covers the relation of so-called high-quality liquid assets (HQLA) to the funds outgoing over a period of 30 days of intense strain on the markets. HQLA is not equivalent to CET1, but requires a wide diversification of uncorrelated assets so that banks have "[…] limits in place in order to avoid concentration." (BCBS 2013a, 17) Naturally, for the bank to not face a troubled balance sheet, the ratio has to remain equal or in excess of 100 percent. (BCBS 2013a, 12–14)
Second, the more complex net-stable funding ratio (NSFR) was introduced, which applies a similar principle over the course of one year. Balancing a bank's accounts over the course of a year is intended to solidify the business structure, by particularly limiting the "[…] overreliance on short-term wholesale funding […]" (BCBS 2014b, 1) – a practice that only works during "bullish" times and immediately turns fragile re-financing strategies into financial disasters the very moment market participants lose confidence in asset values. To induce more long-term stability, NSFR was defined as the amount of a bank's available means – available stable funding (ASF) – relative to the required capital the bank must hold – required stable

funding (RSF). This relation is dominated by a weighting process that assigns high multipliers for low risk assets and low – potentially down to zero percent – for assets more risky and in their maturity deemed irrelevant for a bank's overall available liquidity. (BCBS 2014b, 3–6) On the denominator side of the ratio, RSF is multiplied the other way around, which means that highly liquid assets like coins, banknotes, or central bank reserves do not appear in the equation – by virtue of being valued at zero percent – and, for example, "[…] assets that are encumbered for a period of one year or more […]" are valued as RSF at 100 percent. (BCBS 2014b, 11)

## So, What about American Market Power?
### Transatlantic Compliance with Basel III Rules

The account on Basel III was presented in detail for methodological reasons. Given the secluded negotiation process at the Basel Committee, it is hard to establish how American proposals would have influenced the third accord. This applies particularly since the argument could be made that U.S. banks – extremely strained because of the crisis – had strong incentives to lobby regulators to water down requirements on capital and balance sheet exposure, leverage, as well as liquidity. (Lall 2012, 628) However, assessing Basel III as a case of relational quality – given that the market size argument underlying this thesis is genuinely relational – the performance in fulfilling the Basel rules provides insights as to America's role in projecting its financial re-regulation internationally.

Regarding the new banking rules, some scholars have argued that America, in tandem with the UK, strongly favored higher capital requirements and liquidity standards. (Barr 2014, 1005; Howarth and Quaglia 2013, 333–34) In Mervyn King, then Governor of the Bank of England, Secretary Geithner found an ally whose banking system had been equally close to collapse, which created an Anglophone coalition pushing for tighter banking rules. (Eernisse 2012, 260–61) Admittedly, this cooperation yielded mixed results. To be productive, this is not so much an assessment of the efficacy of the Basel III rules per se[154], but rather a commentary on the way these rules were implemented. Skeptics have been rather vocal. For example, the abovementioned Ranjit Lall published an article on the subject in 2012 entitled

[154] To provide a serious evaluation on sense and sensibility of these new rules, this thesis would have to expound on the banking sector and cross-examine it with all other reform areas, for example shadow banking, to provide a precise delineation of reciprocal exposure. Due to the politico-economic direction chosen here, any claim as to what the accords economic deficits are and what to do about them – i.e. how much more capital would be necessary, what quality it would have to fulfil, and how to balance the new requirements with larger economic considerations on available credit – go beyond the scope and subject-specific arsenal. While the availability of credit is not a fundamental concern at the moment, one would have to build an economic model balancing the likelihood of another financial crisis that would also estimate asset depreciation of Tier 1 as well as CET1 capital. Since this thesis is not attempting to stress test global re-regulation, it is much more interesting what stance the U.S. has taken towards Basel III given that the implementation of Basel II had failed to American neglect.

"From failure to failure." Explicitly building on the work of Walter Mattli and Ngaire Woods (Büthe and Mattli 2003; Mattli and Woods 2009a, 2009b; Abbott and Snidal 2009; Büthe and Mattli 2011), he outlined that "[…] large international banks once again managed to seize control of the regulatory process, closing the window of opportunity for substantive reform." (Lall 2012, 626) Concern for whether or not the banking system is more resilient than it used to be is an important and legitimate contribution. In 2010, King held a speech at the annual Buttonwood Gathering, in which he welcomed banking reform and likewise strongly advocated a more concerted effort:

> "It is certainly a step in the right direction, an improvement on both Basel I and the ill-fated Basel II, and we should all welcome it. But if it is a giant leap for the regulators of the world, it is only a small step for mankind. Basel III on its own will not prevent another crisis for a number of reasons." (M. A. King 2010, 12)

In King's view, three aspects stood out in 2010. First due to the sudden re-valuation of assets in times of financial stress, the new capital levels were not high enough in his view, because "[o]nly very much higher levels of capital […] would prevent such a crisis." (M. A. King 2010, 12) Second, with RWA computing based on past experiences – data that is likely rendered irrelevant during a crisis (Blyth 2013a, 32–34) – risk can only be captured adequately if the non RWA-based leverage ratio is applied in all jurisdictions. Third, liquidity was a key weakness during the GFC – "[…] so much so that […] of all the major banks the one with the highest capital ratio was, believe it or not, Northern Rock." (M. A. King 2010, 13) Therefore, King continued, implementation efforts were key to whether or not Basel III actually had a chance to be effective during the next crisis.

Looking at Basel III from the implementation angle provides us with an opportunity to relate the two largest markets for financial services to one another. The U.S. Government accountability office (GAO) published a report in 2014 on "U.S. and Other Jurisdictions' Efforts to Develop and Implement Reforms." (GAO 2014) GAO found that both Europe and America were observing ongoing implementation efforts. (GAO 2014, 24–25) That, however, is a benign description of the state transatlantic reform implementation finds itself in. At the most fundamental level, the BCBS found in the same year that the European Union was "non-compliant" regarding Basel III's counterparty credit risk framework and "materially non-compliant" with the overall framework. (BCBS 2014c, 19)[155] This goes right to the core of what the reforms were trying to remedy. Essentially in 2012, the EU allowed its banks to refrain from adding the risk determined in so-called "credit valuation assessments" (CVA) to

[155] Note that "materially non-compliant" is a description that outlines serious flaws, while "non-compliant" is the more serious evaluation and refers to a framework that fails to adhere to basic requirements of the accord.

some counterparties. This meant that banks' exposures to pension funds, EU-member states' central and regional governments, as well as local bodies – since they qualified for a 0 percent risk-weight under the standardized approach across the board – simply do not appear on European balance sheet. (BCBS 2014c, 25) Considering the diverse default risks of bonds issued in the EU, this is an astonishing regulation. Beginning in 2014, the EU's capital requirements regulation (CRR) codified this structural cheating-tool in Title IV, Article 381 (4) c. (EP and Council 2013, 224)

On the other hand, the U.S. was found materially non-compliant regarding the credit risk within its regulatory framework on securitization as well as the standardized approach for market risk. (BCBS 2014d, 17) However, the BCBS recognized that lapses in the implementation process were in both cases due to "fundamental reviews" of these rules conducted by the BCBS itself. "Overall, and given the planned adoption and implementation of some amendments […] the US regulatory agencies agreed to […], the assessment team finds the risk-based capital requirements in the US to be largely compliant […]" (BCBS 2014d, 5)

In 2016, the FSB adapted its evaluation accordingly. In its latest report, EU member states were still found materially non-compliant regarding risk-based capital requirements and in "[…] their March 2016 follow-up reporting, these members did not report taking, or planning to take, actions to address identified deviations." (FSB 2016c, 9) Nevertheless, regarding liquidity coverage or the implementation of leverage ratios EU-members have been found compliant, despite European complaints that particularly these additional measures substantially added up to more of a "Basel IV" framework. (DGIPol 2017, 8) Such checkered implementation, however, should not be misconstrued as open defiance against the Basel III framework, as on international official remarked during an interview. In fact, MSSLXW's argument is that given the enormous importance of banking in Europe, the progress achieved was impressive, especially with the deadline for final implementation set for 2019:

> "In Europe, you have a strong role for the banks. So, if you limit the activities of the banks it has a macroeconomic consequence that's much bigger than in the U.S. So, from that perspective, I think, it's not surprising that sometimes Europeans would probably take on a posture that could be seen as quote/unquote more bank friendly, simply because for them credit generation by the banking sector is more important."[156]

### Putting it to the Test: Good News for Reformers

A cogent measure for U.S. leadership within the Basel III regime is the overall trust American performance has created when compared to European banking institutions. Despite higher U.S. capitalization levels, this confidence of market actors in American banking institutions

[156] Author's interview on September 24, 2015. Comments not for attribution. Reference code: MSSLXW.

has evolved from the stress-testing regimes that have been put in place. As part of Basel III's stress test regime, banks are required to provide half of their re-called assets as credit to the wider economy. (BCBS 2013b, 36) This puts additional strain on banks' balance sheets to ensure the availability of credit even when conditions would otherwise dictate a retreat from markets.

One American regulator outlined that given the deeply political character of in-crisis supervision, enforcing such behavior internationally through regularly administered stress-testing might make regulatory intervention easier during a real crisis:

> "Pre-crisis you're telling everybody: hold more capital, hold more liquidity, tighten your underwriting-standards. There the political dynamic is that holding more capital and liquidity means that banks make less money and they've got lower returns on equity and there's competitive disadvantage with those foreign banks that have laxer regulation – of course, they're saying the same thing about U.S. banks. And on tighter underwriting standards: 'you're getting in the way of the democratization of credit.' But, when you're in a crisis, they don't need to be encouraged to de-leverage, to hoard liquidity, and to tighten up their underwriting standards.
>
> The policy at that point becomes: capital is there to act as a buffer for losses, so use it. Liquidity doesn't make sense if you hoard it, so stop hoarding your liquidity! Instead, have some faith that the system will be liquid and as for underwriting standards: you're killing us with these super-tight underwriting standards. The economy is in free-fall, because no one can buy a car, much less a house. These people are good risks. The horse it out of the barn, there's no need for you to close the door now. I think, your question really points to something I feel central bankers had to come to grips with, which is that financial stability policy-making is inherently a political exercise much more political than monetary policy-making and it always has been."[157]

As interviewee DKS848 has pointed out, stress testing is only a simulation of the real-life conditions under which policy is made. Stress testing has become more demanding on banks' balance sheets preparing them for a situation that, of course, remains an unknown variable. Hence, regulators put stress also on three different kinds of deposits. Deposits by individuals and small and medium-sized enterprises (SME) face a run-off between 3, 5, and 10 percent – depending on the type of SME business. Deposits by other banks are simulated to be written off at 100 percent due to the fact that under stressed conditions all banks are likely to experience liquidity shortages. Lastly, for credit granted to corporates the BCBS has proposed a floor requirement of 25 and 40 percent depending on whether or not a bank maintains operational relationships to the respective corporate. (BCBS 2013a, 20–22) While the last rule was intended to strengthen ties between lending and the real-economy, it has to be said that this is the watered down version of a much stricter proposal that had set aside a balance-sheet write-off of 75 percent assuming non-operational relationships. (BCBS 2011b, 13) While simula-

[157] Author's interview on September 18, 2015. Comments not for attribution. Reference code: DKS848.

tions are indeed watered down insofar as they prescribe 35 percent less outflow of liquidity, it turns out that, even under this lower standard, European banks are performing much worse when compared to U.S. banks and bank-holding corporations.

Transatlantic performance has been almost analogical to overall rule implementation. As part of their commitment to Basel III, the Federal Reserve and the European Banking Authority (EBA) conducted stress tests exposing depository institutions to scenarios of adverse and severely adverse economic stress. Forcing U.S. banks to swiftly re-capitalize (Farruggio, Michalak, and Uhde 2013, 2587) paid out in 2014 with decent results that predicted higher levels of CET1 capital under severely stressed economic conditions. After the simulation, the total risk-based capital ratio – including CET1, Tier 1, and tier 2 – was at an average 11.0 percent following severely stressed conditions, with CET1 at 7.9 percent (FRB 2014, 27), and a median CET1 capitalization of 8.2 percent. (FRB 2014, 30) By way of comparison, during the first quarter of 2009, this ratio was just above 5 percent on average, with some banks significantly below a threshold of the 4 percent to qualify for the label "well-capitalized." (FRB 2014, 3) In the 2016 tests, these numbers increased to 12.3 percent for the average total and 8.4 percent for average CET1 levels. Also, instead of just computing the more stable median of CET1 ratios, the report measured the median change in CET1 capitalization to account for the severity with which liquidity would have left the system. With a median loss of 3.5 percent, U.S. regulators had every reason to be satisfied with their results. An exuberant Jamie Dimon, CEO of JPMorgan Chase, followed up on his bank's performance calling his a "[…] 'fortress' balance sheet." (The Economist 2016b, 15) Even before the latest round of tests, Michael Barr outlined that the strength of America's banks under simulated crisis conditions had a fundamentally transatlantic quality, because it had: "[…] served a critical role in bolstering capital oversight […] In Europe, stress testing has not worked to date, with the European Central Bank's new stress tests an essential signal of whether the Bank will have credibility as the eurozone's bank supervisor." (Barr 2014, 1007)

Indeed, EBA – as part of the Committee of European Banking Supervisors (CEBS), to which the ECB is also party – conducted a stress test in 2014 that by all accounts went badly. A minimum of 24 banking institutions did not meet the minimum capital requirements of 5.5 percent when the 30 days of simulation were up. (EBA 2014, 18) Worse even, EBA grudgingly admitted that overall performance was far from satisfactory: "It should also be noted that a number of banks are above but close to the capital threshold of 5.5%, but that following the significant strengthening of capital ratios in recent years, 56% of the banks in the sample show a CET1 ratio above 8% in the adverse scenario." (EBA 2014, 20) While EBA tried to

give this fact a positive spin, it also said that half of Europe's banks – after significant effort – managed to still be below the average of their American counterparts concerning CET1 capital levels. Moreover, Jerin Mathew, financial correspondent for the International Business Times, sounded the alarm outlining that a total of 36 European banks would have failed under a scenario of severely stressed conditions had these additional 12 institutions been assessed under Basel III rules proper. (Mathew 2014) And while German Finance Minister Wolfgang Schäuble felt vindicated in his confidence in the German banking system, Hans-Werner Sinn, head of the ifo-institute at the University of Munich, discounted the European simulation as toothless. The tests did not include the rather likely chances of deflating southern European economies in times of adverse economic conditions and, consequently, it was not tested how this scenario would feed back into the overall banking systems of the common currency area. (Handelsblatt 2014, 1–2) Given that it has been argued in 2013 that Europe's sovereign debt crisis was fueled by the exposure of northern European banks to the bad sovereign debt of countries like Greece and Cyprus (Blyth 2013a, 85–86), this is a fatal design flaw in the European stress testing model.

Following such an abysmal performance, Europe's banks did much better in 2016, with capital ratios expected to fall from the 2015 baseline of 12.6 percent to 9.2 predicted for 2018. (EBA 2016, 12–13) Facing a Eurozone with an only partially implemented banking union (Magnus and Cairen 2016), the testing regime still comes with a lot of deficits, three of which stand out. First, just as with simulating the impact of deflation in the EU's Mediterranean countries, EBA failed to put Greek or Portuguese banks to the test. Moreover, forcing U.S. banks to rely on investor funds, such as common equity, instead of borrowed money, helped not only during the simulated drain on liquidity, but "[…] helped contain the damage from the Brexit market rout." (Tracy and Borak 2016, 2) EBA, however, did not enter the effects of London breaking away from Europe into its data set. Instead, and in an almost outrageous move of protectionism, EBA's 2016 regime "[…] deliberately does not include a pass fail threshold […]" as the Federal Reserve's test did. (EBA 2016, 10) And while investors know, for example, that the American branch of Deutsche Bank failed the Fed's test the second time in a row due to "[…] 'broad and substantial weaknesses' […]" (Henry and Rucker 2016, 1), EBA has contended itself with administrative jargon to cover up the political failure to integrate at a higher paste. The tests, EBA claims, were not predictive in nature:

> "Instead it is a crucial input into the SREP in 2016 as well as a key element of transparency designed to foster market discipline. The results of the EU-wide stress test will allow supervisors to assess banks' ability to meet applicable capital requirements under stressed scenarios based on a common methodology and assumptions." (EBA 2016, 9)

Behind the acronym SREP lies Europe's "Supervisory Review and Evaluation Process", which is part of Basel III's Pillar 2 requirements and marks the European willingness to implement the Basel post-crisis reforms. However, European political fragmentation has led to delays in implementation. With EBA failing to provide investors with much needed information about the stability of banking, one is reminded that Europe has been politically unable to match America's push for increased market-discipline. With European banks' shares taking a whopping 3 percent hit following the allegedly good news of the 2016 tests and American institutions gaining between 1.2 and 2.3 percent (Elliot 2016), Europe's squeamish implementation and oversight process remains under scrutiny by a market that has come to appreciate the regulatory floor implemented by the U.S. regime of capital requirements.

Second Case: Systemically Important Financial Institutions (SIFIs)

A Duplication of American Structures

Financial reforms in the U.S. if they were matched with an international equivalent to prevent arbitrage of American rules and financial businesses from going abroad.[158] That strategy, however, also applied domestically. Critical parts of Dodd-Frank were secured through international agreements and practices. However, the Paulson Treasury had already been skeptical about the chances of implementing fundamental structural reforms. (U.S. Treasury 2008a, 143) And with a Republican opposition defiant of their its role in creating the crisis and opposing regulatory reforms as governmental overreach, a reform bill the size of Dodd-Frank was particularly vulnerable where it provided a target in form of a new regulatory body like the Financial Stability Oversight Council (FSOC). With increasing capital-buffers at the core of the American endeavor to make financial crises less overwhelming systemically, the process of designating firms as systemically important serves as a prime example for how U.S. market power globalized its regulatory agenda and stabilized its re-regulation at home.

In 2015, Daniel Gallagher declared he would not be seeking another term in what can be regarded as one of the most strident and illustrious commissionerships in the SEC's recent history. Mr. Gallagher's core problem was with the U.S.' role at the FSB and the new practice of SIFI designation by both the FSOC and the FSB. In March of that year, he outlined his skepticism in an op-ed for the Wall Street Journal, the title of which also included Gallagher's main misgiving: "How Foreigners Became America's Financial Regulators." (Gallagher and Wallison 2015) Because of questions he raised in the article, the piece must be viewed as part

[158] As interviewee IO8S4J outlined, one common global approach was vital in securing America's interest in stabilizing the overall financial system: "[…] because if you don't have strong floor, people will all do different things, that you've got a race to the bottom, and you'd get negative externalities that will probably will flow into someplace else." Author's interview on October 08, 2015. Comments not for attribution. Reference code: IO8S4J.

of the neo-protectionist movement in the U.S., which very much relies on a narrative of a declining and unfairly treated America.[159] Gallagher does not at all appreciate America's global leadership and pretends to know only little about the workings of international law: "Are the FSB's policies and decisions meant only to be advisory for member countries […] or are they intended to be binding? If the latter, the Treasury, Fed and SEC – and every other U.S. financial regulatory agency – would be expected to implement FSB rules." (Gallagher and Wallison 2015, 2) Of course a lawyer himself, Gallagher was well aware of the unenforceable nature of international law. Additionally, he knew that the loosely institutionalized FSB had no means to enforce action from the U.S. – despite Gallagher's claims that Mark Carney's "well measured warning" to report peer review results to the G-20 could put pressure on an unwilling U.S. government. (Gallagher and Wallison 2015) Substantially, Gallagher's attack aimed at the correlating designation of AIG, Prudential, and MetLife as SIFIs first by the FSB and subsequently by FSOC. With the designation process taking from 2013 to 2014, Gallagher outlined his concerns about America being entangled too much internationally. On a symposium at the University of Virginia Law School, he accentuated the intention of his remarks using a martial and isolationist reference to a 2001 World War II drama: "Bank Regulators at the Gates." (Gallagher 2015a, 3–4)

None of Gallagher's criticism went beyond conjecture or intended to establish causality. That never was their goal. These attacks were part of an assault as old as Dodd-Frank itself. In January 2010, Frank Luntz, a colorful conservative spin-doctor, published a paper called "The Language of Financial Reform." The paper would ultimately advise House and Senate Republicans to pin the TARP legislation on the Democratically held Congress and used so-called "words that work" sections to streamline Republican messaging: "[…] harmful policies by Washington bureaucrats that in many ways led to the economic crash must never be repeated," (Luntz 2010, 5) was the message that transported conservatives' disdain of government and, apparently, long-standing Republican economic positions. To shift the blame for the crisis away from the Bush administration under whose stewardship the crash occurred, Luntz recommended to appeal to voters' sense of justice: "Taxpayers should not be held responsible for the failure of big business any longer." (Luntz 2010, 8) Obviously, this aimed at changing the perception on 2008's TARP legislation and led to the larger issue, with which the assault on

[159] Gallagher's work opposing the Obama administration has foreshadowed the level of substantive economic debate the current administration has cultivated. In outlining his office's position on the renegotiation of NAFTA, United States Trade Representative (USTR), Robert Lighthizer, insists that the new administration is seeking "[…] to obtain fairer and more open conditions of financial services trade." (Lighthizer 2017, 8) It remains very much unclear how Canada and Mexico, both members of the FSB and the G-20's leaders process, will position themselves towards the dangerous fragmentation to global regulatory standards this would entail. Alleging unfair financial services trade practices, furthermore, casts doubt on whether USTR Lighthizer is fully aware of the details of international financial services regulation.

Dodd-Frank was continued even after it was signed into law: "We don't need another Federal government agency. We don't need bigger government. What we need is a better approach that promotes accountability, responsibility and effective oversight." (Luntz 2010, 10)
Despite explaining the intellectual flexibility of Dan Gallagher in claiming an arcane organization, like the FSB, could force the U.S. to do anything relying on its 36 bureaucrats helps us to understand the pivot the former SEC commissioner made when talking via satellite at a Harvard Law symposium in Frankfurt am Main, Germany. Counting on comparably strong isolationist sentiments in Germany and Europe – at the symposium expert from all over the Union were present –, he put his argumentation into reverse:

> "What Dodd-Frank does on a domestic level, the G-20 and its implementing arm, the Financial Stability Board, are doing on an international basis. Although early on, certain U.S. regulators wanted to regulate the world unilaterally […] more recently, U.S. policymakers have worked hand in hand with the FSB in what passes as a multilateral effort to regulate the world financial markets. In doing so, they hijacked what used to be referred to as 'regulatory harmonization' to meet their own ends." (Gallagher 2015b, 1)

Gallagher attempts to draw a parallel between what he perceived as an illegitimate regulatory takeover by the Fed as the new systemic regulator[160] and parts of the European financial community, which had been complaining about tightening Basel requirements as a purported introduction of "Basel IV." (DGIPol 2017)[161]
Coming back to Gallagher and his critical stance on SIFI designation by FSOC and the FSB, one expert interviewed for this study has made the power argument more along the lines of interviewee A5MFXR, namely that (a) the new international oversight regime would have ended up along the same necessities with or without DFA, because (b) the U.S. was looking for global partners in its re-regulatory endeavors to defend these newly minted and consensual rules against a global and domestic opposition that could reasonably expected to push the pendulum back towards lighter-touch regulation. Hence, expert IO8S4J outlined the ulterior motive behind the American commitment to the FSB's agenda:

> "Often they [Republicans] have been generally opposed to many parts of that process [of SIFI designation] […] One might say they are repeating many things they hear from the industry. Maybe they believe it independently and that's fine. I'm not accusing any individual Republican not to believe in these things on their own. FSOC designation of insurance companies and then asset managers coincided with FSB looking at insurance companies and asset managers. It was at that point that you begin to see a lot of Republican criticism turn from the FSOC to FSB. So, the major asset management companies –

[160] This point has been stressed by all of the U.S.-based interviewees and most of the non-U.S. based regulators and experts.
[161] Some of the criticism was aimed at the U.S. practice that the Basel capital requirements were to be understood as mere floors "[…] pressuring lenders to go further than the minimum levels detailed in the wake of the financial crisis […]" (Colchester 2013) But, transatlantic power asymmetries notwithstanding, one revealing fact is that European institutions – as outlined by the BCBS' RCAP of the European Union (BCBS 2014c) – still have manifest problems in finalizing the RWA process at the agreed upon deadline, which is why the consulting firm KPMG has started a Europe-wide campaign promising to support financial institutions to comply with challenging regulation before this deadline is up in 2019. (Ogrinz 2016)

> BlackRock, Fidelity, Vanguard, T. Rowe Price, PIMCO – were fighting back against the same thing that the [American] regulators were trying to get out of FSB. Regulators would get out of FSB the credibility of 'We got a problem, we have to do something,' so those who opposed the industry said: 'Well, I can't just fight this on the domestic level, I have to fight internationally. So, let me get my folks who agree with me – for whatever good reason they agree with them – to go not only criticize the domestic folks, but you gotta criticize internationally, too.'"[162]

Treasury was outspoken about using this approach as early as June 2009, not so much as a warning to the minority in both chambers of Congress, but as a declaration to its international partners that, if one wanted to exit the race-to-the-bottom of regulatory competition, arbitrage had to end: "The challenges we face are not just American challenges, they are global challenges. So, as we work to set high regulatory standards here in the United States, we must ask the world to do the same." (U.S. Treasury 2009, 4) Especially with firms the failure of which could threaten financial stability, the U.S. government announced that it would act to push for "[i]nternational reforms to support our efforts at home, including the capital framework; improving oversight of global financial markets; coordinating supervision of internationally active firms; and enhancing crisis management tools." (U.S. Treasury 2009, 4)

From SIFI to G-SIFI: Reinforcing Regulatory Structures

Consequently, the SIFI designation process was at the heart of Dodd-Frank. America had a clear interest in duplicating DFA's provisions internationally and as a first step towards that goal, DFA's SIFI rules were put on the FSB's agenda at the G-20 Summit in Seoul, Korea, in November of 2010. It was already outlined that the Paulson Blueprint recommended a federal charter and preemption for "[…] systemically important payment and settlement systems […]" (U.S. Treasury 2008a, 9) Geithner's White Paper not only took up that idea, but proposed the installment of an institutional mechanism to supervise systemic threats and the market participants from which these originate:

> "We propose the creation of a Financial Services Oversight Council to facilitate information sharing and coordination, identify emerging risks, advise the Federal Reserve on the identification of firms whose failure could pose a threat to financial stability due to their combination of size, leverage, and interconnectedness (hereafter referred to as a Tier 1 FHC), and provide a forum for resolving jurisdictional disputes between regulators." (U.S. Treasury 2009, 20)

In title I (A), sections 112 through 117, the eventual legislation did indeed provide the authority for such a council to regulate non-bank financial companies (sec. 113) as well as large, interconnected bank holding companies. (sec. 115) Once classified as risks to the financial system, these companies are subject to enhanced "[…] prudential standards and reporting and

[162] Author's interview on October 8, 2015. Comments not for attribution. Reference code: IO8S4J.

disclosure requirements […] that are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States […]" (Dodd and Frank 2010, 28) For a financial institutions to fall under this category it takes two-thirds of FSOC members as well as an affirmative vote cast by FSOC's chairperson (sec. 113 a,1), the Secretary of the Treasury. (Dodd and Frank 2010, 23) According to sec. 115 a (2), the council can base its decision on a market participants' activity and evaluated risk to the wider financial system or – as has been practiced mostly (Archarya and Richardson 2014; Slovik 2012) – adhere to the recommended asset threshold of 50 billion USD. (Dodd and Frank 2010, 28)

Internationally, the notion of systemic relevance was already floated in the G-20 declaration following the Washington summit. However, the G-20's plan was far behind the American emphasis on ensuring systemic stability of critical financial infrastructure, on which the Paulson Treasury had elaborated in the Blueprint, but called for a review of "[…] institutions, instruments, and markets that are currently unregulated, along with ensuring that all systemically-important institutions are appropriately regulated […]" (G-20 2008, 2) Internationally, the term "systemically important financial institutions" was first used in the declaration of the leaders-summit in London, when the G-20 announced that the IMF in collaboration with the re-established FSB would "[…] produce guidelines for national authorities to assess whether a financial institution, market, or an instrument is systemically important." (G-20 2009a, 3)

The report by IMF, BIS, and FSB introduced minor changes to the White Paper's definition for SIFIs. As indicators for SIFIs, the international consensus replaced "size, leverage, and interconnectedness" with "size, substitutability, and interconnectedness". (FSB, IMF, and BIS 2009, 2) It is worth mentioning that a year later substitutability was replaced by "size, complexity, and systemic interconnectedness" as well as "size, market importance, and global interconnectedness" in one document. (FSB 2010b, 1–2) Whatever the discussions on the detailed criteria, with which jurisdictions would identify SIFIs, the underlying causal relationship had been set by Treasury's White Paper and reiterated by all G-20 declarations as well as FSB policy proposals, namely that the failure of any such institution or infrastructure would cause economy-wide externalities. (G-20 2009a, 3, 2009b, 10, 2010a, 18, 2010c, 2, FSB 2010a, 5, 2010b, 1)

By the time FSB, IMF, and BIS had published their report to the G-20 in October 2009, Timothy Geithner had gone on the record responding to inquiries about the U.S. administration's legislative proposal at a hearing before the U.S. Senate Banking Committee. Herein, he defended the increased authority for the Federal Reserve with the "[…] coordinating checks

and balances role […]" of FSOC, in which treasury would take the leads. (Geithner 2009b, 2) Critical questions from law-makers were reasonable and, as U8JESC's comment above indicated, had to be expected. Republican Senator Richard Shelby voiced a well-founded institutional criticism of Treasury's plan with Christopher Dodd even seconding Shelby by employing some folksy with: "[…] giving the Federal Reserve more authority is like a parent giving his son a bigger, faster car right after he crashed the family station wagon." (Geithner 2009b, 1)

During the summer that followed, the Senate Banking Committee re-worked the draft with an eye on providing an "ideal version" of systemic oversight. Particularly, Democrats took issue with the legislative language that Treasury had pre-formulated. Contrary to Barney Frank's eagerness to have the administration work on the specifics, these Senators felt, according to Ed Silverman, staff director of the Senate Banking Committee, that the "[…] administration had made too many concessions to what is considered political necessity […]" (Kaiser 2013, 147)

With the implementation process well under way in the U.S. in the summer of 2009, the G-20 "[…] endorsed the policy framework […] by the FSB to reduce the moral hazard risks posed by […]" SIFIs at the Seoul Summit on November 12, 2010. (G-20 2010c, 7) In 2011, the FSB followed up with the designation process and first named 29 global systemically important financial institutions (G-SIFIs), 27 of which were based either in the EU or the U.S. (FSB 2011b, 4) This was hardly surprising to observers given that the overwhelming majority of financial transactions is made from and most of the world's financial assets are located within the transatlantic. (Bowles, Hagel, and Warner 2010, 2) Neither was it a surprise that all these G-SIFIs were banks or BHCs. It corresponded with the public perception that the banking sector had left the public out to dry in paying for the externalities they themselves had created. The BCBS issued a methodology for identification in 2011 that accorded a weight system of 20 percent to each of the following categories: cross-jurisdictional activities (measured by claims and liabilities), size (measured by Basle III leverage ratio), as well as interconnectedness, substitutability/financial institution infrastructure, and complexity (each measured by three distinct indicators weighed at 6.67 percent). This methodology was adapted in 2013 with the categories remaining the same and some of the individual indicators in the latter three categories specified and delineated more clearly. (BCBS 2011c, 5, 2013c, 6) This institutional division of labor led to a differentiation of systemically importance that would internationally recognize so-called G-SIBs (systemically important banks), G-SIIs (systemically

important insurers), and leave the designation of systemically important market infrastructures to domestic regulators.

The last listing of G-SIB and G-SII designations by the FSB dates back to November 2015 and has been updated yearly before that. For the 30 G-SIBs in question this has meant that they will be required to hold additional capital charges ranging between 1 and 3.5 percent extra CET1 capital depending on the respective risk category under which these G-SIBs are categorized. There are five so-called buckets to account for differences in their systemic relevance, with the fifth bucket of 3.5 percent not listing any G-SIB as of 2015. The phase-in for additional CET1 charges started in January 2016 and is projected for final implementation in 2019. (FSB 2015e, 3) Also by 2019, FSB member jurisdictions have agreed to implement the FSB's proposal for G-SIBs to have a total loss absorption capacity, known as T-LAC. According to the FSB's latest impact assessment, this will require designated institutions to hold additional CET1 capital reserves, which depending on the risk they pose varies between a total 16 to 20 percent of RWA. Moreover, these institutions will have to adhere to "[…] at a minimum twice any Basel III leverage requirement." (FSB and BCBS 2015, 5) During my interviews, one U.S. official who had negotiated T-LAC in 2015 was pleased that they were able to install this extra layer of financial security globally. Asked about compliance issues with bound to surface with such stark requirements, SFAZ5H turned out to be quite confident in claiming "[…] yes, it will be implemented."[163]

G-SII designation comes with additional capital as well as structural requirements meant to secure the exposure of insuring companies, which in case of over-exposure would be – as world leaders outlined at the G-20 Seoul Summit, "[…] destabilizing the financial system and exposing the taxpayers to the risk of loss." (G-20 2010c, 7) For insurers, the implementation of the additional requirements is also set to be in 2019 and like the BCBS formula is based on three risk categories, or buckets, with the respective regulatory capital increasing by 50 percent per category. Just like with the maximum 3.5 percent BCBS requirement, the International Association of Insurance Supervisors (IAIS) "[…] anticipates that the High bucket will initially remain unpopulated and therefore act as a disincentive for G-SIIs to increase their systemic importance." (IAIS 2015) There are, however, requirements that apply to designated insurers before the 2019 threshold. The nine insurers identified as potentially threatening the financial system in 2015 will have to meet seven milestones. Within six months of designation, companies like Allianz, Met Life, Axa, and Prudential – of a total of nine G-SIIs – will have to establish a so-called Crisis Management Group (CMG), whose work will then focus

[163] Author's interview on October 1, 2015. Comments not for attribution. Reference code: SFAZ5H.

to develop a recovery plan within a year to deal with severe stress. Moreover, CMGs will outline resolution plans, assess emerging issues with the resolvability of the company, develop a plan to manage risk that is genuinely systemic to the respective company and ensure that liquidity is available to meet these adverse scenarios. That whole process is projected to last no longer than two years. (FSB 2015e, 4)

Oversight of the consequences of these designations will be conducted by national authorities. In its peer-reviews of the U.S., Germany, and the United Kingdom – the largest transatlantic financial markets reviewed so far – the FSB has found differences in the implementation process that very much correspond to the rest of the findings so far. The U.S. was found to be in good compliance with the agenda set forth by the FSB, "[…] particularly as regards systemic risk oversight arrangements […]" (FSB 2013a, 6) The review did find cause for improvements regarding FSOC's non-transparent inner workings FSOC and the problems this causes for the council's communication- and coordination-role. (FSB 2013a, 7) Yet, the reviewers also emphasized that the best solution to this issue was already in place: FSOC's Office for Financial Research (OFR):

> "[…] should play a coordinating role in the monitoring and assessment of financial system developments as well as in the evaluation of policy effectiveness by levering its analytical strengths, its access to data and leading-edge research, and its system-wide perspective." (FSB 2013a, 22–23)

A peer review report published the same year on the UK notes that reforms to the supervisory infrastructure regarding the macro-prudential framework in the UK – the equivalent to the SIFI framework in the U.S. – "[…] are very recent, so it is too early to evaluate […]" (FSB 2013c, 6) With much praise for the swiftness with which the UK implemented a new regime to oversee systemic risk on April 1, 2013 (FSB 2013c, 5), the FSB report recommended mainly that the UK's Financial Policy Committee (FPC) – as the political arm implementing macro-prudential policies – should enhance its coordination with the subsequent Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). Dealing with the arcane details of regulatory reform and provided with the necessary personnel, these two organizations had the appropriate expertise "[…] on the prudential framework and supervisory practices when identifying and implementing policies to promote financial stability." (FSB 2013c, 19)

Germany institutionalized its system of macro-prudential oversight starting January 1, 2013 when the "Finanzstabilitätsrat,"[164] or Financial Stability Council (FSC), became operative.

[164] Ironically, this is also how, if ever, experts refer to the Financial Stability Board in German. See: https://www.bundesbank.de/Navigation/DE/Service/Glossar/_functions/glossar.html?lv2=32030&lv3=152158.

(FSB 2014a, 14) Germany, just like the UK, lagged behind the U.S. two years with regard to relevant legislation and the institutionalization of systemic oversight. However, Germany also failed in the view of its peers at imposing the institutional umbrella necessary to deal effectively with system-wide financial stress. In the UK, the complete integration of systemic oversight into the Bank of England (FSB 2013c, 14) was presented as an institutional novelty and overhaul that "[…] may improve information flow, coordination, and a shared sense of purpose." (FSB 2013c, 18) As a matter of course, the FSB's review team cautioned against unintended consequences from such a pooling of oversight – such as "[…] 'group-think' mentality […]" But, the report also conceded "[…] UK authorities are alert to this risk and they have made commendable efforts to address it […]" (FSB 2013c, 18) An entirely different finding was issued by Germany's peers, who noted that the country's regulators still had towering homework left, particularly concerning its institutional framework around the FSC:

> "In particular, the FSC is not directly responsible for the regulation and supervision of systemically important financial institutions (SIFIs), and its focus is not on regulation *per se* but rather on systemic risks and how to address them, including through regulation. However, the extent of its involvement in the identification of SIFIs or the development of regulations with systemic […] implications (e.g. capital buffers for SIFIs, or margin requirements for over-the-counter (OTC) derivatives) or their implementation is not fully clear. This is also the case for crisis management and resolution of a failing institution with potential systemic consequences, particularly since several FSC members may be involved in those decisions within their respective institutions." (FSB 2014a, 19)

This last sentence, in particular, has major implications when compared to the international reasoning for SIFI-designation in general. An institution is systemically important when its failure imposes externalities that the institution responsible is unable to absorb. In Germany, it seems, neither regulators nor policy-makers seem to be clear on that; a point that was reiterated in an interview with a German government official. Staying true to Germany's corporatist economic culture (P. A. Hall and Soskice 2001; Fioretos 2001; Lütz and Eberle 2008; P. A. Hall and Thelen 2009; Nölke 2011), YNVQSI had to laugh while insisting that requiring firms to make plans for their potential resolution – also known as "living wills" – was from a regulatory point of view not only "putting the cart before the horse", but, furthermore, simply asking too much of market participants.[165] In the end, however, Germany did in fact implement FSB reforms domestically. Regarding failing institutions, authorities effectuated the full range of resolution powers – something that only EU countries have accomplished so far. (FSB 2016a, 47–48) And, even more important to this case, Germany has also implemented FSB reforms covering its SIBs. And while the FSB's reviewers had some minor criticism calling for Germany "[…] to cover the various supervisory areas more broadly and systemati-

[165] Author's interview on March 22, 2016. Comments not for attribution. Reference code: YNVQSI.

cally" (FSB 2015c, 56), it appears that its European allies have been rather successful in adapting their jurisdictional frameworks to the supervision of strategically positioned to the supervision of systemically important and publicly insured financial institutions. (FSB 2015c, 55–79)

### Third Case: The Reform of Derivatives Markets

#### Defining an Elusively Ubiquitous Product

The Basel III process as well as the SIFI/G-SIFI determination model have certainly addressed central questions posed by the global financial crisis. However with the public eye very much focused on institutional culprits, the revolutionary rise of the product that made it all possible has remained somewhat in the background. Publishing an article entitled "The origins of the financial crisis," even The Economist failed to mention the cornerstone product genre of derivatives:

> "With half a decade's hindsight, it is clear the crisis had multiple causes. The most obvious is the financiers […] especially the irrationally exuberant Anglo-Saxon sort, who claimed to have found a way to banish risk when in fact they had simply lost track of it. Central bankers and other regulators also bear blame […] The 'Great Moderation' […] fostered complacency and risk-taking […] All these factors came together to foster a surge of debt in what seemed to have become a less risky world." (The Economist 2013b)

Certainly, banks were undercapitalized and systemic relevance should have been on everybody's radar much sooner. But, the original built-up of risk in the financial system, its contagious spread, and the eventual threat of an outright collapse of the global financial system was due to a certain class of financial products previously unregulated: over-the-counter derivatives. (Reed 2009, 2; FCIC 2011, 45–46) A market-liberal publication, the magazine implicitly faults actors' misuse of credit default swaps (CDS) and collateralized debt obligations (CDO), i.e. the swaps market. Neglecting to put derivatives front and center in an article on how the crisis came about says a lot about the public attention derivatives regulation has received. Yet, this market segment was, and still is, of vital importance to market participants as well as to all regulators concerned with systemic risk. Therefore, I want to start this analysis by defining what derivatives are.

The following attempt by Frank Partnoy and David A. Skeel illustrates why public pressure was very much different when compared to more palpable issues like banking reform: "We define credit derivatives as financial instruments whose payoffs are linked in some way to a change in credit quality of an issuer or issuers." (Skeel and Partnoy 2007, 1029) Linking something to something else in some way is not helpful as an explanation and others were more successful in conveying how the simple ontological principle, on which derivatives rest,

creates an almost impervious web of financial interdependencies. (Born 2001, 608; Cadmus 2012, 192; Collard 2015, 880; GDSG 1993, 99; Rauterberg and Verstein 2013, 11; Stout 2009, 2) These approaches mostly converge on a consensus of what a derivative is and all of them converge on the fact that a derivative is a spatially untethered contract, mostly bought with borrowed money that establishes a legal claim to certain proceeds. Ironically, I found a definition with comprehensive intersubjective explanatory power in a televised crime-series. While short, it substantially touches upon most of what the BIS came up with to get to conceptual grips with the terminology of this diverse product genre. (Chui 2012, 3–4)

In its second season, the crime-drama “Life” featured an episode that dwelled on the death of a derivatives trader. The main character, detective Charlie Crews, turns to his roommate, Theodor Early, to gain insights on the specificities of the case. Early used to be a big name in the financial world before he was sentenced to prison on felony charges for embezzling millions of dollars from a client. The episode “Hit Me Baby” aired post-crisis on December 30, 2009 and the definition provides not only a clearer depiction of what a derivative is, but also why certain derivatives became a hinge-mechanism for the immense accrual of risk within the global financial system:

> “A derivative is a financial product whose value is derived from the value of something else: the underlying. Because the value of the derivative is contingent on the value of the underlying, the notional value of derivatives is recorded off the balance sheet, while the market value of derivatives is recorded on the balance sheet.” (Keene 2009, at 09:36)

This definition points out an important consequence of the two-tiered construction of derivatives, which is why the terms *notional* and *market value* matter here. The notional value is the total value of an asset in a leveraged position, that is the entire amount necessary to purchase the underlying including the money borrowed for gaining control of whatever position is considered for purchase. The market value, on the other hand, is recorded – and updated – in the accounts of a company. This is done to provide potential investors with information on the actual worth of the assets held; and this has consequences. The latter form of recording is more commonly known as mark-to-market or fair-value accounting and is supposed to provide transparency, which it does to a certain degree. The moment an asset loses value, the holding company’s balance sheet reflects the falling position. (Novoa, Scarlata, and Solé 2009, 7–8)[166] It does not, however, give investors the complete picture of the individual assets in possession of a company. Therefore, the insinuated effect of fair-value accounting on rational self-regulation by risk-assessing market-participants does not, in fact, necessarily lead

[166] Fair-value accounting, due to its responsive rather than active quality in a market, also comes with a propensity of fueling procyclicality when economic development are already dire. (BIS and FSF 2009, 11–12; Goldschmid and Hoogervorst 2009, 4; Novoa, Scarlata, and Solé 2009) See also the case study on accounting standards harmonization in chapter five.

to adequate behavioral changes. A derivative is always bought on a margin of only a couple of percentages of the notional value and, thereby, creates individual exposures that differ with the respective underlying. Investors can only see the aggregate exposure when looking at the accounts. They cannot, however, assess the exposure to a certain class or let alone individual underlyings. An illustrative example of this is CDOs. Traders bundled mortgage contracts and created a financial product with the respective mortgage payments as their underlying. Afterwards, these bundles of mortgages were sliced into different tranches and the more secure tranches were "insured" through CDS. (K. N. Johnson 2011, 192–93) Technically, this made them secure investments and rating agencies sequaciously awarded these products their highest approval. (MIR 2008b, 5; Blyth 2013a, 27–30) But, the amount of leverage used on individual asset derivatives as well as on the CDS, which were just as leveraged, created credit interdependencies that, first, no one could reconstruct, which is why, second, the illusion was created that by hedging investments with counter-investments financial engineering could evade risk and eventual failure. (FCIC 2011, 293)

The many levels on which derivatives markets work limit the empirical insight one can gain by defining the product as such. The definition, nevertheless, illuminates how credit risk spread throughout the financial system, tying actors together into a myriad of interdependent exposures. Eventually, this generated a wave of obligations so high their threat to the financial system became apparent only when it was too late and significant amounts of debt had to be serviced with no opportunity to restructure this debt – which is in fact the act of borrowing new money to meet older obligations. (FCIC 2011, 6) The systemic risk that emanated from financiers individually acting without incentive to preserve the financial system caused a tragedy of the commons, a true form of market failure requiring regulators to step in. (Hardin 1968, 1245; Coffee 2014, 1269; Schwarcz 2008a, 400, 2008b, 206, K. N. Johnson 2011, 2013, 215–24)

Aside from the apparent dangers of derivatives markets, it is important to recognize that in general derivatives serve a purpose. This asset class is among the oldest financial products in the world and has been traditionally connected to agricultural production all over the world. Lynn Stout has outlined how derivatives "[…] have been around for millennia. (The Babylonians used derivatives to bet on trading caravans)" (Stout 2009) More advanced in later centuries, derivatives played an important role in maintaining price stability in markets heavily reliant on sometimes fickle weather conditions. In Japan, for example, "Osaka's Dojima rice market offered forward contracts in the 17th century and organised futures trading by the 18th century." (The Economist 2009b) Today, futures have become transparent contracts through

which investors can speculate on the spread of agricultural goods while creating a stable price for those goods upon delivery by producers. (The Economist 2017a)

In the difference between forward and futures contracts we are able observe a development that constituted a significant influencing factor when the housing bubble burst. A forward is a bilateral contract, in which both parties run the risk of default. A futures contract is always traded on an exchange, offers price discovery and transparency (The Economist 2017a), and, since 1923, regulators in the U.S. have required the use of central counterparties (CCPs) or clearing houses "[…] under which each clearing member is required to report on a daily basis the market positions of each trader exceeding a specified size." (CFTC 2017) Forward and future contracts are, therefore, regulated differently, which is why Kathryn Collard puts these derivatives into two categories: "exchange-traded derivatives and over-the-counter (OTC) derivatives." (Collard 2015, 881) Not being exchange traded, OTC derivatives used to be strictly bilateral with no regulatory strings attached.

While it is somewhat surprising to find that a financial product that is by definition heavily leveraged would remain, at least partially, unregulated, derivatives regulation after the crisis was not a natural fit at all. The prominence of banking institutions and insurance corporations involved in the crisis mobilized large parts of the public and created a momentum that helped legislators to push the regulatory pendulum. The arcane complexity of derivatives, however, left the regulation of these markets without a "[…] natural constituency, and no lobbyists were supporting it." (Kaiser 2013, 288) While the lack of political support and massive headwinds against regulation makes the accomplishment of Dodd-Frank and its internationalization noteworthy, this legislation was also an attempt of digging a way out of the hole legislative inaction had caused roughly a decade earlier.

## The Multifarious Non-Regulation of Derivatives

### How the CFTC was Once a Voice in the Wilderness

In 1999 and three months before the Gramm-Leach-Bliley (GLB) Act replaced portions of the 1933 Glass-Steagall Act (GSA), Randall Kroszner published an article on the effectiveness of private self-regulation in the in the Journal of Money, Credit, and Banking:

> "Historically, the private markets have been very sensitive to credit risk issues for both individual institutions and for the system as a whole […] Today in the largely unregulated OTC derivatives markets, we again see those concerns about risk management leading to further innovation and new organizational forms […] competitive forces have and can control risk in ways that can address public regulators' concerns about safety and soundness of the payments and clearing system." (Kroszner 1999, 614–15)

To be sure, this is not to argue that tearing down the separation of commercial and investment banking was the structural cause for the crisis. Conservative pundits, like Yaron Brook and Don Watkins of the Ayn Rand Center, have heavily attacked those who have used the catchy and mechanistic logic of GSA's repeal to explain the 2008 credit crunch. Focusing their rebuke particularly on Nobel Prize Laureate Joseph Stiglitz, Brook and Watkins point to the lack of a direct causal link to what would happen eight to nine years later. After all, none of the institutions that encountered heavy seas in 2008 would have fallen under the purview of Glass-Steagall: "The reason deregulation is blamed for the crisis is not because there's proof that GLB was responsible. It's because people like Stiglitz […] have an ideologically based suspicion of markets and the self-interest they unleash." (Brook and Watkins 2012) In this case, admonishing the normativity of an argument while pushing libertarianism not only fails to be refreshing it also leads to an undercurrent debate about the yeas and nays of positivism and discursivity in a multipolar understanding of the crisis.

In short, Stiglitz never blamed GLB for causing the crisis. In the magazine article, to which Brooks and Watkins refer, Stiglitz in fact talks about "[…] 'systemic failure,' when not a single decision but a cascade of decisions produce a tragic result." (Stiglitz 2009, 48) In this context, Stiglitz mentions GLB to illustrate that tearing down the separation in banking opened-up the entire financial system to the high-risk/high-reward approach of investment banking without addressing "[…] the new challenges posed by 21$^{st}$ century markets." (Stiglitz 2009, 48) Specifically, Stiglitz points to the unregulated trade in derivatives. Unlike any other financial product, derivatives are emblematic of investment banking's high-stakes culture and he, therefore, puts into perspective the politico-economic fault lines of the late 1990s. During those years, then-head of the Commodities Futures Trading Commission (CFTC), Brooksley Born, advocated a more rigorous approach regarding unregulated derivatives markets. During the deregulatory 1990s, her initiative was everything but en vogue. She was later effectively ousted from the CFTC and Stiglitz understandably insists that sidelining her was a lamentable mistake. (Stiglitz 2009, 48)

Painting a dramatic picture in 2008 and depicting Born as a voice in the wilderness, New York Times reporter Peter Goodman pits the libertarian and government skeptic Alan Greenspan against a resistant and fierce Born looking out for the health of the financial system. In a catchy condensation of his sources, Goodman ascribed to her an alarming statement before Congress against "[…] unfettered, opaque trading […]" practices. (P. S. Goodman 2008) Goodman certainly handled his sources creatively, but not irresponsibly. The statement he talks about was made regarding the collapse of a hedge fund ironically called Long-Term

Capital Management (LTCM) and its activity in the OTC market. In her testimony before the House Committee on Banking and Financial Services, Born shed light on why regulators were unable to foresee a default of almost systemic proportions. She clarified that while regulators had:

> "[…] full and accurate information about LTCM's on-exchange futures positions, no federal regulator received reports from LTCM on its OTC derivatives position. Indeed, no reporting requirements are imposed on most OTC market participants. This lack of basic information about the positions held by OTC derivatives users and the nature and extent of their exposures potentially allows OTC derivatives market participants to take positions that may threaten our regulated markets or, indeed, our economy without any federal agency knowing about it." (Born 1998b, 3)

This last sentence has given Born an almost prophetic standing in the debates following 2008 (Roig-Franzia 2009) and it explains the arrangement Goodman chose for a piece that certainly put into a nutshell the CFTC's actions during the late 1990s. However, it forecloses a reading more in line with the narrative presented here, namely that the non-regulation of trade in some derivatives was a decision made almost by consensus; which is to say: systemically, things were not at all as hairsbreadth as they appear.

For Goodman's article, Arthur Levitt, then head of the SEC, took the chance of explaining how he regretted opposing the CFTC's stand so thoroughly and blamed his conduct on the unity between then-Treasury Secretary Robert Rubin and Greenspan. (P. S. Goodman 2008) Rubin, on the other hand, attributed his inaction to the financial zeitgeist when he actually "[…] favored regulating derivatives – particularly *increasing potential loss reserves* [emph. ad.] – but that he saw no way of doing so while he was running the Treasury. 'All of the forces in the system were arrayed against it.'" (P. S. Goodman 2008) Potential loss reserves in derivatives markets are comprised of capital as well as so-called margin requirements. They are safeguards that ensure liquidity in a market that is prone to intense fluctuations. Since liquidity had been a serious regulatory concern long before the article was published in October 2008, Rubin's remarks come with the triteness of a truism. And, yet, it provides a good opportunity to pause for some specifications. Both capital and margin requirements perform important and complementary risk mitigation functions and do so in distinct ways. First, margin is collateral measured as a small percentage of an individual derivative contract. In case of a credit event leaves one of the parties with the unfulfilled liabilities of the defaulted counterparty, this percentage does by no means replace the loss. But, since it is exclusively tied to the individual contract it can meaningfully absorb some of the losses. Therefore, margins can be understood as "defaulter-pay." Capital requirements, on the other hand, are not tied to indi-

vidual deals, but work as "survivor-pay" intended to stabilize the system as such. (BCBS and IOSCO 2015, 4)

Greenspan's Rand-allegiant disdain for most things government and esteem for self-regulating markets is no secret. (Time 2009) Even though, it should be added that Greenspan later opposed the role he played favoring the George W. Bush tax cuts and was one of the first to caution against a developing housing bubble as early as 2005. (The Economist 2005; Mandel 2007) In any case, the narrative of the trusted financial maestro turned villain withholds that the proposal the CFTC released on May 12, 1998 (CFTC 1998) was staunchly opposed by all three men named above. Under Born's leadership, the CFTC outlined:

> "The CFTC's last major regulatory actions involving OTC derivatives were regulatory exemptions for certain swaps and hybrid instruments adopted in January 1993. Since that time, the OTC derivatives market has grown dramatically in both volume and variety of products offered and has attracted many new end-users of varying degrees of sophistication. […] The Commission wishes to maintain adequate safeguards without impairing the ability of the OTC derivatives market to continue to grow and the ability of U.S. entities to remain competitive in the global financial marketplace. […] The Commission is open both to evidence in support of easing current restrictions and evidence indicating a need for additional safeguards. The Commission also welcomes comment on the extent to which certain matters are being or can be adequately addressed through self-regulation, either alone or in conjunction with some level of government oversight, or through the regulatory efforts of other government agencies." (CFTC 1998, 26114)

This longer quote illustrates a changed economic situation, the need for regulatory action, and a rather long assurance soothing market participants about the CFTC's regulatory intentions. But, regulating a high yielding financial product during bullish economic times was a hornet's nest to begin with and public opposition was swift and uncompromising. So much so, in fact, that roughly two months later, on July 5, 1998, Greenspan, Rubin, and Levitt issued a joint statement, in which the regulators declared their strict reservation against the CFTC's approach, questioned the commission's jurisdiction, and declared:

> "The concept release raises important public policy issues that should be dealt with by the entire regulatory community working with Congress, and we are prepared to pursue, as appropriate, legislation that would provide greater certainty concerning the legal status of OTC derivatives." (Rubin, Greenspan, and Levitt 1998)

This, of course, was not an invitation to a constructive exchange about regulation. With William Gramm, the infamous de-regulator and Chairman of the Senate Banking Committee, presiding over most legislative efforts, it was clear that any form of regulatory endeavor would go nowhere. (Fox 2009) Such forceful opposition could be expected to point to a CFTC determined on sweeping re-regulatory action and some form of institutional mission creep. And, yet, even if one takes an in-depth look beyond the report's introductory note, the CFTC's concept release on over-the-counter regulation neither intended to add institutional

layers, nor did it ask for additional margin or even capital requirements. The proposal simply started from the observation that the use of:

> "[…] OTC derivatives has grown at very substantial rates […] interest rate swaps, currency swaps, and interest rate options during the first half of 1997 increased 46% over the previous six-month period. The notional value of outstanding contracts in these instruments was $28.733 trillion, up 12.9% from year-end 1996, 62.2% from year-end 1995, and 154.2% from year-end 1994." (CFTC 1998, 26115)

As the CFTC's observation suggested, the notional amount of outstanding OTC derivatives contracts continued to increase. It experienced a dent in 2008 and exceeded "[…] $600 trillion at the end of June 2009 […]" (IMF 2010, 92–93) where it since has stabilized with USD 639 trillion outstanding in June 2012 (BCBS and IOSCO 2013, 2) – a benchmark the BIS and IOSCO continue to work with. (BCBS and IOSCO 2015, 3) In 1998, the CFTC advocated that the increased interest by market participants in using CCPs should be accommodated, since clearing houses fulfill a vital function in the markets:

> "[…] such as the reduction of counterparty credit risk, the reduction of transaction and administrative costs, and an increase in liquidity. They also can provide benefits to the public at large by increasing transparency. These benefits are obtained at the cost of concentrating risk in the clearing organization. Accordingly, a greater need may exist for oversight of the operations of a clearing organization than for any single participant in an uncleared market." (CFTC 1998, 26122)

From today's perspective, this approach ticks all the boxes necessary to account for systemically stabilizing oversight. Beyond that, and as the quotation's last sentence implies, the CFTC made it clear that it deemed raising capital requirements on individual OTC market participants unnecessary because of "[…] the sophistication of the participants, the generally principal-to-principal nature of their relationships with one another, [and] the fact that OTC derivatives dealers typically do not hold customer's funds in an agency relationship […]" (CFTC 1998, 26124)

With derivatives markets significantly growing, the CFTC intended to strengthen CCPs – after all, as financial infrastructure their default would expose parties to financial risk unrelated to the contractual risks as such and would, therefore, lead to significant market failure. The commission made it clear, however, that it had no intention of increasing capital requirements, and did not even bring up a mandatory posting of margins. To the contrary, instead of asking for more skin in the game the CFTC went out of its way to clarify that it welcomed significant input from the industry and distinctly devoted a section on self-regulation into its request for comment:

> "Industry groups have already issued a number of voluntary initiatives aimed at reducing risks and promoting stability and integrity in the OTC derivatives marketplace. The

> Commission is interested in exploring the extent to which concerns described in this release might be addressed, and adequate oversight of the OTC derivatives marketplace might be attained, through industry bodies or through self-regulatory organizations." (CFTC 1998, 26127)

The CFTC intended to strengthen markets by introducing more transparency and promoting exchanges and clearing houses. But, even such minimum standards of regulation were running afoul of to the industry, the business model of which was based exactly on this lack of transparency. With 97 percent of the U.S. OTC market dominated by an oligopoly of "[…] just five large institutions (in 2008 JPMorgan Chase, Citigroup, Bank of America, Wachovia, and HSBC) […]", America's "[…] largest investment banks were also among the world's largest OTC derivatives dealers." (FCIC 2011, 50; C. M. Baker 2010, 148)[167] This market constituted a source of income, in which only few banks with extraordinary capacities could meet the demand. These institutions protected their vested interests not by illegally agreeing on prices – which would have led the industry into the cross-hairs of competition authorities –, but by evading competitive pressures on their products via the alleged singularity of the contracts they offered. Sellers of OTC derivatives had no interest of trading on exchanges or have these contracts cleared – both of which requires a certain amount of standardization so that comparing derivative products is possible. With the amount of derivatives sold, standardization was a fact of the trade, particularly since only five to six banks were dominating the game. But, exchanges and clearing facilities would have led to greater competition and, hence, pricing, which in turn would have benefitted buyers in the derivatives markets. Nowhere has this mechanism been more apparent than in the market for Credit Default Swaps (CDS).

### Why Insuring and Speculating makes a Difference

#### The Creation of a New Market

"A swap is a contract by which two parties exchange the cashflow linked to a liability or an asset." (The Economist 2017a) In such an exchange of financial instruments, a CDS is the financial instrument of choice when one party has bought bonds of any kind but is unsure about the default risks by the bond's issuer. To limit the risk, the bond buyer agrees that a portion of the regular payments she receives from the bond issuer will go to the issuer of a CDS. In case the bond issuer goes bankrupt, the CDS takes effect and its issuer will reimburse

[167] One year prior, Colleen M. Baker presented similar numbers based on research conducted by the Office of the Comptroller of the Currency (OCC). In her account, Wachovia and HSBC are replaced: "Five large commercial banks [J.P. Morgan Chase, Bank of America, Goldman Sachs, Citigroup, and Wells Fargo] represent 97% of the total banking industry notional amounts [of OTC derivatives] and 88% of industry net current credit exposure." (C. M. Baker 2010, 1335) This notwithstanding, the case is clear that the trade in OTC derivatives was largely an American endeavor.

the CDS holder for the losses she incurred by the bond issuer's default. (Erdmann, Heidt, and Hölscher 2017; FT 2015; Investopedia 2003)

According to a Newsweek article by Matthew Philips, the idea of CDS was born in 1994 when JPMorgan Bankers gathered at the Boca Raton Resort & Club in Florida for a so-called off-site weekend. The "problem" these bankers wanted to address is the typical story found in every act of regulatory arbitrage: "[…] JPMorgan's books were loaded with tens of billions of dollars in loans to corporations and foreign governments, and by federal law it had to keep huge amounts of capital in reserve in case any of them went bad." (Philips 2008) What JPMorgan and its point person on the project, Mark Brickell, came up with was more than a financial product. They created an entire market. First, JPMorgan would sell its debt to those who believed buying JPMorgan's risk was unproblematic, because the investment bank, secondly also offered an "insuring" financial product, the CDS. It took the bank three years to set up the system that effectively allowed it to make profits of the entrepreneurial risk it had assumed. In December 1997 one of the earliest CDS deals went to market. From its books, JPMorgan took 300 different loans:

> "[…] totaling $9.7 billion, that had been made to a variety of big companies like Ford, Wal-Mart and IBM, and cut them up into pieces known as 'tranches' […] The bank then identified the riskiest 10 percent tranche and sold it to investors in what was called the Broad Index Securitized Trust Offering, or Bistro for short." (Philips 2008)

While providing historical insight, Philips fails to appreciate the double track effectiveness of JPMorgan's approach. Of course, what he describes above as a CDS is not the swap itself, but its underlying. As a product, CDS are a way with which customers of BISTRO bonds could defer risk to the entity issuing the swap. That way, JPMorgan rid itself of the regulatory requirements of issuing debt and, in addition, made more money by re-assuming the risk. Providing products with insurance-like faculties was a legal trick the bank used to circumvent the regulatory burden that actually insuring something always entails. If a company takes the role of an insurer, supervisors specify the reserves the company has to hold to cover its business. In addition, supervisors also require customers to share some of the burden of the insurance risk which is why supervisors also link the reserves to the premiums that have to be paid regularly for the insurance contract to take effect between the parties involved: "Insurance companies are therefore relatively low on leverage, high on reserves and unspectacular in terms of profit and pay. A CDS contract, however, was explicitly not defined as an insurance contract and therefore not subject to insurance regulation." (Morgan 2012, 401)

For Derivatives, Deregulation was an Enforcer

It sounds preposterous, frankly, to allow for a financial product that has high yields, bears consequently much risk, but comes with almost no regulatory costs. However, the absence of governmental oversight emanated from a reasoned historico-legal trajectory, in which the state initially had left actors speculating in swap markets entirely unprotected. It was only following the so-called deregulation movement of the 1980s that such contracts would bear legal consequences, were enforceable, and, therefore, would influence economies around the globe.

I her 1999 paper, "Why the law hates speculators", Lynn Stout has cautioned against the impressive, albeit schizophrenic, split the financial industry was able to accomplish. For centuries in common law countries, it had been uncommon to legally enforce contracts in which no tangible assets were exchanged, i.e. contracts in which two parties would bet on a certain interest rate, currency exchange, or price index. (Stout 2009, 715–16) Stout explores this tradition by referring to a case tradition in which courts continuously decided against legal claims made upon financial agreements with no tangible assets involved. (Stout 1999, 714) This tradition culminated in a decision the U.S. Supreme Court handed down in 1884. In its Irwin v. Williar decision, the court referred to ample legal precedent from both sides of the Atlantic to establish its ruling:

> "The generally accepted doctrine in this country is […] that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods, nor any other means of getting them than to go into the market and buy them; but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer; and if, under guise of such a contract, the real intent be merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the ***difference*** [emph. ad.] between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void." (USSC 1884)

The first sentence clearly argues in favor of derivative contracts used to hedge risk in agricultural markets and upholds the principle that non-delivery has no effect on the legal validity of these contracts. The verdict reinforced, however, the rule against the use of contracts resting on the future developments of underlying assets with no tangible real-economic value. This later influenced the 1936 Commodity Exchange Act and its provisions against speculation (Stout 1999, 703), which outlined that without regulatory approval by the CFTC speculative difference contracts traded outside of regulated futures exchanges were "[…] presumptively illegal […]" (Stout 1999, 705) Stout uses the term presumptive, because on the basis of a rich tradition of freedom of contract, particularly in Anglophone countries, individuals were free

to agree on speculative terms as long as they did not expect the law to enforce such contracts. (Morgan 2012, 395) Eventually, this created the gray zone from which speculative derivatives markets would emerge.

The first step for difference contracts to become legitimate was taken when the UK decided to repeal part of the provisions that withheld legal protection from speculative financial markets. More specifically, under Prime Minister Robert Peel the House of Commons had submitted the Gaming Act of 1845, which stated in its 18th section under the headline "wagers not recoverable by law":

> "And be it enacted, That all Contracts or Agreements, whether by Parole or in Writing, by way of gaming or wagering, shall be null and void; and that no Suit shall be brought or maintained in any Court of Law or Equity for recovering any Sum of Money or valuable Thing alleged to be won upon any Wager, or which shall have been deposited in the Hands of any Person to abide the Event on which any Wager shall have been made […]" (Peel 1845, 13)

This provision did not extend to specified actions of legal gaming, but aimed at bets in which the odds could not be adequately represented. At the height of the de-regulation movement, the UK consequently feared that the exploding derivatives business could collide with the Gaming Act and its amendments. Hence, the Financial Services Act of 1986 abolished the reach the Gaming Act had towards speculative finance (Clark 1997, 183) and reiterated its position in Section 416 of the 2000 Financial Services and Markets Act. In a piece for the New York Times, Stout outlined the U.S. reaction to abandoning the economic skepticism explicit in the difference contract principle: "[…] when Britain 'modernized' its laws […] American regulators followed suit in the 1990s by legalizing O.T.C. trading for particular types of financial derivatives, especially interest rate swaps." (Stout 2009, 3)

Here it seems useful to return to the schizophrenic split actors in derivatives markets lobbied for successfully. Because while free-market advocates despise government intervention, their strive for freedom from government was not consequential enough to oppose making risky and unprotected business practices legally enforceable. In an era that would later be described as unusually stable, the five investment banks promoting derivative contracts were assisted by Congress and, particularly, those regulators who so staunchly opposed the efforts by the CFTC in the late 1990s.

### The Product Making Too-Big-To-Fail Possible

While the CFTC and its chief had no intention of picking a fight, Born found herself in a losing battle, nonetheless. Throughout 1997 and into 1998, CFTC leadership tried to halt the trend of de-regulating derivatives markets. Rubin, Greenspan, and Levitt pushed for changes

to the 1936 Commodity Exchange Act, which Congress implemented with the 2000 Commodity Futures Modernization Act (CFMA). (Kaiser 2013, 168) One issue in particular concerned the head of the CFTC, namely the sweeping exemption of "professional market participants" that also forestalled any attempts of getting derivative trading, if not on exchanges, so at least through clearing houses. (Born 1997a, 2, 1997b, 3, 1997c, 1, 1998a, 1998b) While speculators had always been free to push their investments into unregulated territory, neoliberal advocates wanted to allow for speculation within the confines of the law – i.e. with the guarantee that even though adequate collateral was never posted legal consequence would transfer much of the risk onto society at large. This principle of leaving so-called professionals with a minimized regulatory burden rested on the widely-held assumption that financial actors should be trusted to regulate themselves thanks to their skill, experience and self-interest. (Greenspan 1997, 1; Levitt 1998, 3) As is to be expected, Greenspan was quite vocal on the matter testifying before the House Committee on Banking and Financial Services:

> "In conclusion, the Board continues to believe that […] regulation of derivatives transactions that are privately negotiated by professionals is unnecessary […] participants in financial futures markets are predominantly professionals that simply do not require the customer protections that may be needed by the general public […] The primary source of regulatory effectiveness has always been private traders being knowledgeable of their counterparties." (Greenspan 1998, 4–5)

Greenspan delivered these remarks five weeks before Born herself was called before Congress to testify on the market downturn of the Russian ruble that had caused the U.S. government to rescue the hedge fund Long-Term Capital Management (LTCM). At that time, a third of hedge funds worked only with the funds provided by its affluent investors and roughly half of all hedge funds borrowed one USD for every dollar they owned as capital. With the rest operating with leverage ratio of around 10:1, LTCM owned only five cents of every dollar borrowed. This situation worsened when investors fled emerging markets into secure German or American treasury bonds, which in turn vaulted LTCM's laverage up to 50:1. (Edwards 1999, 198) In general, the investment strategy of such funds was and still is to find spreads in certain assets and determine correctly their future development and buy and sell accordingly beforehand. In its third October issue of 1998, The Economist already called this a form of betting – albeit in the magazine's opinion a useful one at that. (The Economist 1998, 22) LTCM's business model got into dire straits because its mathematical models had not accounted for investors' herd behavior. Its bets were running on the spread between newly issued and slightly undervalued American treasury – so-called on-the-run – bonds, and older – off-the-run – bonds. (The Economist 1998, 23) Failing to anticipate that markets also represent social systems, LTCM had heavily invested in this strategy and when investors around

the globe started fleeing into safer bonds, the mathematically computed spread vanished and LTCM went under water.

A time complaisant to the call for private regulation, the LTCM crisis never pushed observers to rethink a more active role for government in financial regulation. Investment banks – the only providers of OTC derivatives – had vested interests in beneficial legal protections and were able to capture the U.S. administration. Hence, their business was never accompanied by risk-adequate regulations protecting the society at large from the potential externalities and market failure that loomed. LTCM was not understood to convey a larger regulatory lesson, but provided a clear culprit for the President's Working Group investigating the bail-out of the hedge fund. In its April 1999 report on the LTCM crisis, the authors somewhat incoherently concluded that LTCM was an exceptional case and that as a whole the financial system did not warrant strengthened regulatory boundaries. The PWG rested its case on the "[…] general effectiveness of private market discipline […]" The confidence this betrayed was only surpassed by the implicit assurance that markets are rational on average, because hedge funds "[…] and other financial institutions cannot achieve significant leverage without the credit and clearing services of the large banks and securities firms that are at the center of the securities and derivatives markets." (PWG 1999a, 30) What is surprising about the report – and therefore justifies incoherence as a qualifier – is that in the paragraph following the assertion of self-regulating markets, the authors do note: "LTCM appears to have received very generous credit terms, even though it took an exceptional degree of risk." (PWG 1999a, 30) However, the believe in the rationality of markets was strong enough that the CFTC's proposal of introducing more transparency into these markets was still disregarded. Instead on November 9 that same year, the PWG published a report that used a fig leave and went in exactly the opposite direction. The group recommended to set an incentive by excluding electronic trading platforms from the CEA "[…] provided that the systems limit participation to sophisticated counterparties […]" Without regulatory requirements, this was nominally thought to establish favorable conditions for transparent exchange trading. Yet, it was designed to be an empty provision, because "[…] bilateral transactions between sophisticated counterparties […]" were also excluded from the CEA. (PWG 1999b, 2) In short, this amounted to derivatives traders who wanted the extra burden could trade on exchanges. But it was alright, too, if they did not. The November report on OTC derivatives is less conflicted philosophically and this should come as no surprise, because the former report (PWG 1999a) included work the CFTC contributed under the aegis of Chairwoman Born, while the latter was worked out after her replacement made for more coherence within that group of regulators. (PWG 1999b)

Overall, the PWG understood the LTCM debacle to be an isolated event. The reasoning for the hedge fund to be so massively over-leveraged, was not seen in the lack of transparency that came with derivatives markets. Instead, the group resorted to an explanation that readers might recognize from the official language used after the most recent financial crisis: "Complacency during favorable economic times also contributed to an atmosphere which gave rise to inadequate review and excessively liberal credit terms." (PWG 1999a, 30) Consequently, the CFTC's proposition to put more trade on exchanges and have clearing become a frequent aspect of trade in OTC derivatives was kicked to the curb. This had five beneficiaries: JPMorgan Chase, Citigroup, Bank of America, Wachovia, and HSBC. Thanks to the competition between the U.S. and the UK, these five banks were able to continue selling their products without customers having the benefit of competitive pricing. As already insinuated above, the oligopolistic character of the OTC derivatives trade did not bare the marks of collusion, but of organized intransparency and, naturally, no one in the industry had any interest in sacrificing their handsome profits for financial stability. (Coffee 2014, 1273; FCIC 2011, 46) The degree to which this form of regulatory capture had risen is truly astonishing. The CFTC's proposal was sidelined, and the chairwoman who had called – not for skin-in-the-game, mind you – but for transparency was ultimately:

> "[…] driven from office. In the fall of 1998, in the conference committee on that year's agricultural appropriations bill – which settled the CFTC's budget – a provision was mysteriously added, one that had never been discussed before or hadn't been in any of the bills before. No one knew exactly who introduced it, but the language was clear: the CFTC could take no action in the OTC derivatives market for six months. It just so happened that Born's term was up in six months. It had all been orchestrated to quash the concept release and ensure that Born no longer had any say. She was replaced by Bill Rainer, the cofounder of Greenwich Capital Markets and an old Clinton crony from Arkansas." (Hirsh 2010, 16–17)

Hirsh choses the tone of a widespread conspiracy, when in fact, everybody knew who put the screws to a wayward CFTC intend on regulating opaque markets. The Commission investigating the 2008 financial crisis made it clear, who it saw as the driving force for regulatory capture. While it might remain a mystery who exactly put the language in the appropriations bill, it was Rubin, Greenspan, and Levitt who – contrary to the semblance of constructive discourse they chose for their official press release (Rubin, Greenspan, and Levitt 1998) – "[…] proposed a moratorium on the CFTC's ability to regulate OTC derivatives." (FCIC 2011, 47) It did not take investigative efforts to make this connection. In the late 1990s, today's culprits were yesterday's heroes. And so, like a duck takes to water, a more philosophically coherent PWG frankly reported that it took action precisely because market participants had lobbied against the CFTC's concept release (PWG 1999b, 12) and was first to admit that it was a con-

certed effort that had put the freeze on the CFTC until the expiration of Born's term in office:

> "Legislation enacted at the request of Treasury, the Federal Reserve Board, and the SEC in 1998 limited the CFTC's rulemaking authority with respect to swaps and hybrid instruments until March 30, 1999, and froze the pre-existing legal status of swap agreements and hybrid instruments […] The legislation reduced legal uncertainty but did not provide a permanent clarification of the legal status of these instruments." (PWG 1999b, 13)

By clarifying the legal status of derivatives markets the authors indicated the prevalence of self-regulating markets. Conceptualized as a means to attain market efficiency, private regulation became the leading principle in the 27 page-long section 101, in which the Commodity Futures Modernization Act comprehensively exempted vast parts of the derivatives industry from regulation. (Ewing 2000, 4–31) This regulatory failure set the stage for derivative markets to assume a breathtaking, yet predicted, size. Belatedly recognized for her efforts in the late 1990s, Brooksley Born was given the 2009 John-F.-Kennedy Profiles in Courage Award and chose this moment to remind her audience that with over USD 600 trillion in outstanding derivatives in both 2007 and 2008 (IMF 2010, 93) the markets for derivatives had exceeded "[…] more than 10 times the amount of the gross national product of all the countries in the world." (Roig-Franzia 2009, 6)

Derivatives Markets and the Global Financial Crisis

Pushing Markets into the Open: Transparency

Even to expert regulators, the role derivatives played during the crisis appears to have initially been as cryptic as these markets were opaque. Pushing for an international initiative, McCormick and Kohn remained consequently vague and included some aspects of the derivatives trade in all the topical suggestions for FSF recognition. (McCormick and Kohn 2007) Risk management was connected to all: accounting procedures, credit rating, and even prudential oversight of BHCs was seen "[…] especially in terms of exposures to structured products and counterparties." (McCormick and Kohn 2007) While McCormick at the same time focused his initiative for financial reforms more explicitly on banking institutions (McCormick and Steele 2007), the letter to the G-7 deputies of FSF member jurisdictions suspected: "[…] it appears that the risks associated with certain structured credit products may not have been fully understood." (McCormick and Kohn 2007)

Why derivatives were part and parcel of the credit crisis became clearer when observers finally started to understand how the transfer of risk (Law 2014) was tied to the areas mentioned by McCormick and Kohn. Instead of making it manageable, leveraged derivatives trade contained risks which appeared to be dispersed amongst market participants just to eventually hit

the wider economy even harder when the sheer size of built-up risk could no longer be contained. In October 2009, the already mentioned Steven Eisman[168] poignantly reminded Senate aide Julie Chon that any form financial regulation necessarily had to include "[…] a tough derivatives bill," since without it "[…] you might as well not show up for work, it's going to be pointless." (Kaiser 2013, 289) Eisman's point was shimmed analytically during an interview the Financial Times' Henny Sender did with Rodgin Cohen, senior chairman of the financial law firm Sullivan and Cromwell. Asked about what caused the financial crisis, Cohen identified the tendency to assume risk and that too much of the U.S. financial system "[…] was either unregulated or under-regulated." However, Cohen clearly assigned blame to one tangible cause: "[…] perhaps the most important […] was massive over-leveraging in every phase: financial institutions, other businesses, consumers, governments. Everyone was misled by the mistake of leverage."[169] Further into the interview, Sender encouraged Cohen to talk about derivatives since these were "[…] obviously part of the leverage that you referred do."[170] Cohen outlined that "[…] regulators simply were not aware of the true explosion of the derivatives market […]" and, to make matters worse, how leverage was instrumental in "[…] how much risk was being created at certain institutions."[171]

The feeling of having missed an enormous part of the financial system also informed the 2009 hearing of the Senate Subcommittee on Securities, Insurance, and Investment. Its chairman, Jack Reed, stressed the size of the markets in derivatives. In so doing, Reed explicitly chose to follow the line of argumentation the CFTC and Chairwoman Born had established ten years earlier. Instead of referring to the existing market both had outlined the growth rate of derivatives trading to legitimize their call for action. (Born 1997a, 3; CFTC 1998, 26115) On June 22, 2009, Reed opened the year's only Senate hearing exclusively dedicated to OTC derivatives by outlining that between 2000 and 2008 "[…] the notional amount of over-the-counter contracts outstanding rose by 522 percent […] representing trillions of dollars of trading." (Reed 2009, 1) After the shock of the crisis, all witnesses concurred that, going forward, exchange trading, mandatory clearing, as well as heightened capital and margin requirements had to be part of the regulatory approach. Speaking for the SEC and for "[…] U.S. regulatory authorities […]" in general, chairwoman Mary Shapiro attested that the consensus amongst regulators:

[168] Eisman was the eccentric hedge fund manager, turned icon, who was one of the few to early on bet against the mortgage market. Christian Bale starred as him in Adam McKay's 2015 film "The Big Short".
[169] See: (Cohen 2010) from 00:00:16-1 to 00:01:18-2.
[170] See: (Cohen 2010) from 00:07:41-4.
[171] See: (Cohen 2010) from 00:08:00-8.

> "[…] covers all of the basics of sound financial regulation in the 21st century, including record keeping and report requirements, appropriate capital and margin requirements, […] clearing and settlement systems that monitor and manage risk […] The SEC is also strongly supportive of ongoing initiatives to promote the standardization and central clearing of OTC derivatives." (Reed 2009, 6)

Patricia White for the Board of Governors of the Federal Reserve System as well as Gary Gensler as head of the CFTC echoed their support for these initiatives, with Gensler insisting that the "[…] entire over-the-counter marketplace […]" needed to be regulated (Reed 2009, 7) and White making the case on behalf of the Fed that the "[…] Board believes that moving toward centralized clearing for most or all standardized OTC products would have significant benefits." (Reed 2009, 8)

To differing degrees, witnesses called from the private sector also pushed for toughened regulation. Kenneth Griffin, CEO of Citadel Investment, reinforced the case for transparency. Moving from the assumption that firms were in fact too interconnected to fail – not too big –, his argument made a case to prioritize transparency: "Now is the time to put an end to the antiquated practice of bilateral trading […] to end the era of too interconnected to fail. The use of central clearinghouses will bring considerable value to society in the form of far greater price transparency […]" (Reed 2009, 27) Of course, Griffin made the case for more regulation from the viewpoint of the existing oligopolistic structure of the market. For him, transparency was a means to force open market-entry while avoiding a discussion about mandatory and increased reserve assets:

> "Customers do not have access to high-quality market data in today's paradigm, such as transaction prices […] The large dealers earn extraordinary profit from the lack of transparency […] and from the privileged role they play as credit intermediaries in almost all transactions. The current market structure suits their interests and leaves their customers at a significant disadvantage." (Reed 2009, 28)

Griffin singled out CDS and other swap arrangements in particular, since these were often declared to be too customized to be traded on exchanges as this would require standardized terms. Factually, the industry's argumentation was highly misleading. With the advent of derivatives trading and long before CFMA was enacted, the International Swaps and Derivatives Association (ISDA) had stepped in as a private regulator. Founded in 1985 and with 850 members as of today[172], it served market participants to voice and organize their interests and streamline an otherwise unsupervised trade in derivatives. A study by Gabriel Rauterberg and Andrew Verstein, as well as Kathry Collard, emphasize that ISDA was one of two organizations – alongside the British Bankers Association (BBA) – that early on had given structure to these markets. (Rauterberg and Verstein 2013; Collard 2015) For the matter at hand – stand-

[172] See: http://www2.isda.org/about-isda/. Accessed December 12, 2016.

ardization – it was ISDA's initiative to create so-called "Master Agreements" for most OTC contracts, through which parties could "[…] select the specific terms, such as product and price, using ISDA schedules, which are incorporated into the Master Agreements by reference." (Collard 2015, 883) Today, such ISDA macros facilitate over 90 percent of executed trades. (Knox 2011; Rauterberg and Verstein 2013, 21) It is important to note that this trend started even before CFMA. In 1998, Tamar Frankel outlined how repeated negotiations over ad hoc contracts lead to "[…] 'vanilla' documents, […] which, in turn, are adopted as model contracts and rules by trade and professional associations […]" Stressing ISDA's exclusive role in developing master agreements for swap trades, Frankel pointed out that the organization was responsible for creating "[…] a modern 'law merchant' […]" (Frankel 1998, 275) Sean M. Flanagan approached ISDA's influence and vast membership in 2001 from the view point that master agreements save time and resources since with "[…] hundreds of simultaneous swaps between the parties […]" standardization significantly reduces transaction costs. (Flanagan 2001, 230–31) However, ISDA also used its market position to lobby against "[…] disclosure of credit default swap documentation, insisting that this information is proprietary." (Skeel and Partnoy 2007, 1036) There is a reasonable argument to be made that disclosure would eat into the profits generated from OTC derivatives in general and, specifically, into the enormous profits generated from CDS covered spreads. In 2006, the Federal Reserve Bank of New York (FRBNY) had started an international initiative cooperating under Timothy Geithner's leadership with the UK's FSA. ISDA's efforts for derivatives to remain unregulated had born fruit strange enough that in February 2005 the FSA informed Geithner's Fed about backlogs in trade confirmations. Investigations of the activities in both the marketplaces in London and New York revealed "[…] a potentially more serious problem: one firm would 'regularly assign its part of a trade to another firm, without notifying its counterparty on the trade. As a result firms didn't know who they owed, or who owed them, on a particular trade." (Ip and Mollenkamp 2006, C5)

### Self-Regulatory Myths and Risk-Creating Dispersion

ISDA's lobbying had a meaningful impact on the on risk-development of interconnected finance and the organization's Executive Director and CEO, Robert Pickel, saw no reason to get ahead of broader re-regulation efforts. Instead, he continued his incremental approach and made the case for central clearing and transparency before the Senate Subcommittee. Just like Griffin, he was unenthused about higher reserves for trading and he deliberately addressed his members when he assured the subcommittee that ISDA was committed to making markets

more thoroughly accessible and to engage "[…] with supervisors globally to expand upon the substantial improvements that have been made in our business since 2005." (Reed 2009, 30) This does read like an empty phrase and Pickel had every reason to believe in his tactics of avoiding much by giving a little. Talking about "substantial improvements", he referred to a successful form of self-regulation to which U.S. authorities had prodded ISDA during the mid-2000s.

The steep increase in OTC derivatives trades created backlogs in confirmed trading. When two parties agree on the terms of a derivative agreement, both parties "capture" the trade in a second step and enter the data into their operations systems. A third step can, but does not necessarily involve, verification between the back offices. Since OTC trades are bilateral and used to occur with no public supervision, step two and three serve "[…] to maintain the operational integrity, such as by identifying data entry errors and to minimize fraud and other violations." (GAO 2007, 9) Confirmation of trades, as a fourth step, finalizes the agreement. The dealer issues a reviewed and signed confirmation document and the counterparty to the trade equally reviews and signs the document. Particularly time-consuming, communication during the confirmation process was predominantly facilitated via fax and telephone and the resulting backlog became a problem, because trades are already legally enforceable after step two. However, as Elisabeth Ledrut and Christian Upper have pointed out, with no officially signed documentation "[…] potential disagreement about their precise terms can result in lengthy and costly litigation. Similarly, knowledge of a firm's precise positions is a precondition for successful risk management." (Ledrut and Upper 2007, 87) This last part is crucial. Data entry and accounting needs to happen immediately after the negotiations concluded, because as part of the company's fiduciary responsibility towards investors, shareholders, but also to counterparties, the accounts must reflect the potential exposure of a company. Between 1995 and 2007, OTC trading grew by an average 20 percent yearly. (Ledrut and Upper 2007, 83) That increase steepened between 2003 and 2005, when trading more than doubled with the average number of trades conducted at large firms increasing from 644 trades a week in 2004 to 1,450 trades a week in 2005. (GAO 2007, 11) In 2003, Alan Greenspan commented on this development at a conference in Paris, signaling strongly by his standards (Listokin-Smith 2013, 195), that regulators expected progress in that area or even his Fed would rethink its hands-off approach. Theoretically instrumental in risk-diversion, regulators did not accept confirmation-backlogs of derivatives trading simply because market actors were reluctant to invest in infrastructure:

> "[…] the way that OTC derivatives are traded and settled clearly could be significantly improved […] Systems for the electronic execution and confirmation of trades require a degree of standardization […] the derivatives industry has a long history of cooperating to standardize documentation, and it is disappointing that so little progress has been made in adopting efficient and reliable means of executing and confirming trades." (Greenspan 2003, 1)

By September 2005, deals connected to the 14 largest dealers in derivatives were still backlogged significantly. It took up to 30 days for 37 percent of trades to be confirmed. 63 percent needed over a month, of which 41 percent took even longer than three months to be finalized. (GAO 2007, 11) Therefore, it fell to Timothy Geithner, then president of the Federal Reserve Bank of New York (FRBNY), to spearhead a process that addressed the systemic risks inherent in this collective action problem. (FRBNY 2005; Bank of America et al. 2005) On September 19, 2006, Thomas Huertas of the UK's Financial Services Authority (FSA) held a presentation at ISDA's regional conference reportedly outlining that regulators' patience was at an end, that "[…] enough was enough […]", and that regulators would not accept that the industry refused to invest in an infrastructure that would clarify in a timely manner "[…] whether they had a deal in place, who their counterparty was, and whether that deal would settle." Speaking directly to ISDA members and associates, Huertas emphasized that "[…] all the ISDA documentation in the world is of little value if market participants cannot fulfil the basic operational steps of confirming transactions and obtaining approvals […]" (FSR 2007, 25) With regulatory pressure increasing, the industry reduced the backlog "[…] to an average of 12.9 days in 2006 and 4.9 days in 2007 (with some seasonal anomalies)." (Listokin-Smith 2013, 196)

### You Break it, You Own it: Speculation and Skin in the Game

The key message ISDA CEO Robert Pickel wanted the Senate subcommittee to take away from referring to established patterns of cooperation was that the industry could be trusted to successfully cooperate with regulators. After being virtually unregulated up until the financial crisis, the industry had to expect that regulators were coming for more than increased transparency. (Cerulus 2012, 217) Ignoring the existence of market failure and its externalities, market-based regulation had been promised to be the "[…] more flexible solution, capable of preserving financial stability without stifling innovation or posing unnecessary costs that could damage the competitiveness of financial firms." (Pagliari 2012, 48) Now, with the crisis still in full swing, established arguments against speculation were rendered toothless. One of the most referenced points in favor of speculation was that it supported the pricing of products. By using funds to exploit price differences, professional financial actors would force markets

to adjust to a harmonized and more accurate price. Otherwise known as the "speculative efficiency hypothesis," public policy has been designed according to a theory "[…] that expected asset prices [to] accurately reflect currently available information.'" (Poitras 2002, 166)
Poitras points out that there are two notions usually subsumed under speculation. He positively assesses the first notion of creating arbitrage-profits upon tangible assets. And, indeed, why should the market accept that U.S. Treasury bonds are cheaper on-the-run than they are off-the-run? An asset's age is not a reasonable category to measure risk, which is what prices are supposed to reflect. However, Poitras maintains a critical position when it comes to "speculative profits," the variables of which "[…] are uncertain when the trading decision is initiated." (Poitras 2002, 167) The bet-like character of such speculation makes pricing irrelevant because unlike arbitrage there are only very limited fundamentals upon which to decide whether or not prices will fall or rise[173] and as "[…] a consequence, it is not possible to systematically earn returns that are 'abnormal." (Poitras 2002, 166) The efficiency of speculation was under siege due to the crisis and it became increasingly clear that regulators wanted market participants to carry more of the systemic risk elicited by both the sheer trading volume as well as the individual risk that each product created.
The one product that met the most profound rejection, both with the wider public and to some degree with technocrats, were naked credit-default swaps. Naked CDS are a product class in which the investor has no "[…] associated commercial business exposure to the borrower named in the CDS." (Duffie 2009, 15) One of the biggest providers of such hedging and betting products was the London-based Financial Products Group (Collard 2015, 884), a legally separate conduit owned by AIG, which sold USD 446 billion in CDS "[…] without the liquid resources to cover potential cash calls." (Cecchetti 2013, 2) Naturally, one idea was to prohibit the trade of naked CDS. (Duffie 2009, 15, 2010, 2–3; Moloney 2010, 1330) However, with fierce resistance from various interest groups and due to legal concerns about the feasibility of curbing speculative trade through the prohibition of speculative products like naked CDS (Duffie 2009, 15), American regulators promoted an approach to hold market participants structurally more accountable for the risk they assume. (U.S. Treasury 2009, 44–51) The idea was simple and rested on a combination of vastly increased transparency where possible, heightened margin and capital requirements for all, and even steeper requirements for products that due to their customized nature could not be traded openly. Again, the larger principle

[173] For more studies on the matter of speculative pricing and market efficiency see Asher Curtis, who complicates the debate on what constitutes a fundamental (Curtis 2012, 143), Ariane Szafarz, whose research emphasizes the different effects of long-term and short-term interests in relation to financial crises (Szafarz 2012, 110), and Xuanming Su, whose research has suggested that under certain conditions "[…] speculative behavior may enhance profits […]" rather than lead to more accurate pricing due to competitive pressure. (Su 2010, 36)

already identified in Dodd-Frank came to bear: "[…] capital, capital, capital."[174] (Leonhardt 2010, 9) The Treasury Department's White Paper outlined a design for the categorical connection of increased transparency with risk-related collateral standards. All trades would have to "[…] include conservative capital requirements […] and conservative requirements relating to initial margins on counterparty credit exposures." High-risk non-standardized products – i.e. those too customized and, hence, too complex for open trading – "[…] should not be accepted by a CCP [and] would be addressed by this robust regime covering derivative dealers […] [R]egulatory capital requirements on OTC derivatives that are not centrally cleared also should be increased for all banks and BHCs." (U.S. Treasury 2009, 48)

In 2013, an international study on the repercussions of such a regulatory framework outlined that reforms would come with a net benefit for the global economy. (MAGD 2013) Stephen Cecchetti, head of the monetary and economic department at the Bank for International Settlements (BIS), had been put in charge of a group called MAGD, or Macroeconomic Assessment Group on Derivatives. Shortly after it published a report, Cecchetti spoke in Johannesburg to attendees of the BIS' emerging markets dialogue on OTC derivatives and outlined why CDS "[…] should be centrally cleared and collateralized." (Cecchetti 2013, 1) Since AIG's massive exposure had in fact triggered "[…] one of the biggest corporate bailouts ever" (The Economist 2008d), Cecchetti used the example of this insurer to make a point he presented as a matter of obviousness:

> "The lesson from the AIG example is less about central clearing than it is about collateralisation and information. Would AIG have been able to write nearly half a trillion dollars face-value of insurance if they had been forced to post cash or other collateral? And, if counterparties had been informed about the scale of the position on an exchange, would they have continued to do business with AIG? These examples illustrate the rationale for the new regulatory framework now being implemented. *No wonder that authorities have pushed for the combination of central clearing, margining and capital requirements in both the new international standards and the new national regulations* [emph. ad.]." (Cecchetti 2013, 2)

The MAGD-report had developed three scenarios that classified reform efforts according to the expected costs in those scenarios either being high, medium/central, or low. Depending on its design and implementation schedule, collateralization poses differing short term adjustments as well as ongoing standing costs that negatively influence the spread from which firms generate revenue. (MAGD 2013, 12–13) Transparency, on the other hand, works in the opposite direction. Depending on how much jurisdictions push OTC derivatives into clearing houses, counterparty exposure is significantly impacted, because a clearing house assumes much of the risk that would be left to the bilateral trade without it. Hence, the transparency

[174] Author's interview on October 01, 2015. Comments not for attribution. Reference code: SFAZ5H.

that comes with CCPs also saves on collateralization. (MAGD 2013, 5) With these influencing factors to balance, MAGD computed the three scenarios. Each assumes that regulatory reforms would create a net benefit of 0.16 percent of worldwide GDP (MAGD 2013, 2) as measured against the "[…] reduction in forgone output resulting from a lower frequency of financial crises propagated by OTC derivative exposures." (MAGD 2013, 1) The differing relative balance between central clearing and collateralization led MAGD to suggest a net benefit of 0.13 percent for the low-cost scenario, as well as 0.12 percent for the central and 0.09 percent for the high cost scenario. (MAGD 2013, 14)

Considering these findings, it is not surprising that Cecchetti confidently made the case for combining transparency and collateralization. His remarks distinctly assert the existence of an international consensus, which is also reflected in the composition of MAGD. In addition to the BIS, the involvement of "[…] 29 member institutions of the Financial Stability Board (FSB), working in close collaboration with the IMF […]" (MAGD 2013, 1) could convey the impression of a truly international approach. However, the pacemaker of regulatory financial reform was the United States and its leadership-role was yet again largely based on the technocratic expertise it had accumulated during years of exposure as the largest market for derivatives and the regulatory discussions this had generated.

Congressional efforts in the Senate to comprehensively regulate derivatives, and particularly CDS, experienced a meaningful pushback by the industry. The motive for such meddling was clear. According to the Comptroller of the Currency (OCC), derivatives had created unprecedented record earnings in 2009 of USD 22.6 billion. (OCC 2010, 2) Therefore, the markets' big five – JPMorgan, Goldman, Morgan Stanley, Bank of America, and Citigroup –, lobbied Democratic Senators with one common goal as The Wall Street Journal's Damian Paletta and Scott Patterson reported on April 14, 2010:

> "To thwart or dilute proposals that would push trading in most derivatives onto exchanges or to 'clearinghouses,' […] their main concern: Trading on exchanges or via clearinghouses could reveal more details about the pricings and structures of the deals, potentially benefitting rivals and clients, and in the process eating into profits. Banks have also argued that any requirements that their customers use standardized derivative products, instead of individually customized deals, would limit customers' flexibility." (Paletta and Patterson 2010b)

In the end, banks' efforts were unsuccessful (Paletta and Patterson 2010a), because meaningful domestic momentum gave legislators enough incentive to stand firm against Wall Street. It is important to note that just as the U.S.' domestic intellectual consensus on derivatives reform was a protracted process, so was the international debate not without its – if only more nuanced – dissents. The IMF, in fact, published its 2010 Financial Stability Report in April

when Dodd-Frank had already passed the House of Representatives. While it critically assessed the impact derivatives had had within the crisis, the report warily eyed potential reform measures. For one thing, the IMF did not even consider heightened standards for initial and variation margins. What is more, it remained unconvinced about a prompt move for OTC-derivatives onto exchanges and CCPs. The IMF based its hesitation on the argument that "[…] CCPs can reduce systemic risks related to counterparty risks […], but […] the short-run costs of moving contracts to CCPs are indeed far from trivial […]" This is not to say that the IMF opposed reforms, but heeding its own analysis about the lack of credit that ailed the post-crisis world as it does after every financial contraction, the IMF would have labelled its hesitation as caution: "[…] because the relevant institutions are already challenged to raise funds and capital in the post-crisis period, a gradual phase-in period is warranted." (IMF 2008, 91)[175]

With the IMF's attempt at squaring financial reforms with its task to stabilize the global economy, actors in the U.S. experienced the reconciliation of political momentum with the expert-consensus that has been mentioned at the beginning of this chapter. In his interview with The Financial Times, Rodging Cohen was asked whether he thought the administration's reforms were addressing critical issues. His response unequivocally stressed transparency: "It is to me almost impossible to argue against transparency. It's true that the more secretive something is the more money can be made. That's true, but also the more money can be lost. And so, it's pretty close to a zero-sum game."[176]

Cohen's point of view reflected thoroughly the assessment by regulators and many in the industry about the externalities of derivatives markets. Ten months before the interview, the Subcommittee's hearing had pointed towards the economic benefits that competitors would be able to reap if the market got more transparent and risk was priced more accurately. Speaking as a witness, Christopher Whalen, managing director of a Los Angeles-based risk analytics company, put into perspective the abovementioned trade increase to which Born as well as Reed had referred. Singling out CDS as a product-class particularly removed from the real economy, he emphasized that the change in quantity was also accompanied by a change in quality. Whalen outlined that these products realize profits far beyond investors' expectations and used this to contradict the industry's narrative that this was related to the products' ingenuity or innovative potential. Promoted as insurance and therefore allegedly risk-minimizing,

[175] The IMF feared that sudden financial reforms would do more harm than good. Regarding the mandatory use of clearing-houses, the IMF reflected on a bad situation gone worse when it emphasized: "Moving a critical mass of OTC derivatives to CCPs in order to realize the benefits associated with systemic risk reduction will be costly. Based on estimates of the degree of undercollateralization in OTC markets, dealers will be required to post substantially more collateral at CCPs than they currently do in the OTC context." (IMF 2010, 113)

[176] See: (Cohen 2010) from 00:08:55-3.

CDS had been instrumental in bolstering the ratings of financial products and, hence, pushed the securitization of mortgage backed securities into a bullish frenzy. (The Economist 2008a) Echoing Poitras' analysis about the impossibility of continued above-average returns (Poitras 2002, 166), Whalen insisted before the committee that CDS disguised gambling as a risk-free enterprise:

> "[…] the entire exercise is pointless in terms of price discovery. The only purpose is to allow the large dealer banks to extract supranormal returns and increase systemic risk. Again, it is just as easy to speculate on the outcome of a horse race as on the price of a CDS since there is no mechanistic connection between the wager and the actual reference 'asset' or event." (Reed 2009, 167)

The increase in systemic risk of course emanated from the consequential effect which speculating on differences inevitably had on risk development. Seeing as it could reasonably be argued that these products create risks "[…] where there were none before" (Stout 2009, 2), it added to a public debate already adversarial towards synthetic derivatives. (The Economist 2008a) In defiance to the industry's most common argument about CDS usage, it turned out that relying on CDS sometimes had, in fact, adverse pricing effects. Not backed by collateral to a degree equivalent with real insurance, swaps had created an immense confidence with investors that, consequently, distorted prices upwards and reinforced the investment bubble. (IMF 2010, 46)[177] With pricing and risk out of balance, even industry representatives stood fast as it related to the most infamous of derivative products. Asked by The Financial Times' Henny Sender whether regulators were "[…] out to kill the credit default swap market […]", Cohen made the case for what he thought are appropriate risk charges: "The idea that somehow CDS was not nearly different from a loan, but was totally different from a loan and no capital, basically, or minimal capital should be charged was a mistake. There is always a balance here and we got the balance wrong in the last few years […]"[178]

The American discourse on risk-weighting the trade instantly became part and parcel of the larger international approach. This can be adequately illustrated by looking at the intellectual network of the already mentioned Senate aid Julie Chon, who ran point on derivatives regulation for Senator Christopher Dodd. (Atlantic Council 2017) Her point of view was not only influenced by Steven Eisman, but also by BIS official Stephen G. Cecchetti. As Chon revealed in an interview with Robert Kaiser, she first met Cecchetti in 2009 when she attended

[177] In its Financial Stability Report, the IMF, however, warned that given the vast interconnectedness in financial markets a prohibition of naked shorting could come with unintended consequences: "The correlation of risk factors defines economic exposure, not just ownership of a specific asset. As such, a portfolio manager may have an 'insurable interest' in shorting an asset because of the portfolio's risk exposures, even if that asset is not included in the portfolio." (IMF 2010, 47) Other observers also questioned the practicability of a flat-out ban and called for the more structured regulatory approach as proposed in the White Paper. (Duffie 2009, 19)

[178] See (Cohen 2010) from 00:09:32-1.

the annual meeting of IMF and World Bank in Istanbul, Turkey. Here she "[…] realized that there was an emerging international consensus in favor of stiff new regulation of the financial sector generally, and the derivatives markets specifically. One of the people she met was Stephen Cecchetti, […]" (Kaiser 2013, 289)

Before joining the BIS, Berkley graduate Cecchetti had been a professor for global finance at Brandeis University as well as an associate at the U.S. National Bureau of Economic Research. He had widely published on the connection of financial stability and risk-taking in global markets. One article in The National Institute Economic Review bears a title sceptic of modern finance's potential externalities: "The Brave New World of Central Banking Policy, Policy Challenges Posed by Asset Price Booms and Busts." (Cecchetti 2006) In his article, Cecchetti linked synthetic finance to systemic risk and an excerpt of his work emphasizes that the expert-consensus on necessary regulatory reform was by no means a subaltern movement, but had to be taken seriously as an evolving intellectual norm:

> "Financial innovation reduces cost and improves efficiency of risk shifting. Risk goes to those best able to bear it, and the result is smoother consumption. At least, that's what will normally be the case. The difficulty is that with the ability to sell risk comes the ability to buy it, so individuals who wish to concentrate risk can do it. In addition, this concentration of risk, especially inside leveraged financial institutions, can have externalities. It has the potential to create financial fragility. The result is that during normal times things will be smoother, but when things go badly, they go very badly." (Cecchetti 2006, 108)

In 2009, Cecchetti argued that Bear Stearn's rescue by JPMorgan Chase had been unavoidable due to the bank's wide ranging exposure and inability to use commensurate collateralization of its portfolio to withstand its asset crisis. (Cecchetti 2009, 69–70) A year later, The Financial Times called Cecchetti's idea for "'[…] some form of product registration that would constrain the use of instruments according to their degree of safety' […] among the most innovative suggestions so far on how […] to safeguard the wider financial system." (J. Grant 2010) In his role as an academic, Cecchetti has continued to make the case for increased collateralization. (Cecchetti, Domanski, and Peter 2011, 29–30; Cecchetti 2015, 133) Not only did he bring this mindfulness for social costs from the U.S. to the BIS, together with Eisman and Nigel Bolton – a BlackRock analyst who helped winding down AIG's CDS portfolio and whom Chon got in contact with via her network from Cornell University (Kaiser 2013, 290) – he also provided academic substance for, as well as legitimacy to, U.S. reform efforts.

More recently, unidimensional arguments about the benefits of derivatives have experienced a strange reviviscence through acting CFTC-chairman Christopher Giancarlo. (Giancarlo 2015, 672–73) Favoring a libertarian agenda seemingly destitute of the crisis-experience, Giancarlo omits any serious recognition of the economic repercussions of risk-mispricing and confessed

to be literally "praying" for the American public "[…] to always reject the false promise of government provided safety and a riskless future […]" (Giancarlo 2015, 679) Such blatant clientele politics notwithstanding, even vocal intellectual opponents of DFA supported the domestic momentum behind derivatives regulation in 2010. David Skeel critically engaged with the financial reform act right from the start. Asking whether there was anything to like, he did, however, outline that – just like Eisman had stipulated – the regulatory regime for derivatives and the Consumer Financial Protection Bureau (CFPB) "[…] could genuinely improve the regulatory landscape." (Skeel 2010, 13) This assessment was also shared by one of the experts interviewed for this study, who exposed significant partisan fault-lines before highlighting common ground:

> "Republicans are working to undermine all or some of Dodd-Frank; and financial reform, generally. This is not working constructively. Now, there are some parts that they will work constructively. Gallagher and Piwowar support titles of derivatives regulation. We don't always agree on every detail, but they're not opposed to that overall."[179]

### The Internationalization of Derivative Reforms

With such support from the home front, Title VII of the Wall Street Reform Act became a blueprint for the international efforts at the G-20 level. Economic and legal scholars alike have emphasized America's first-mover advantage in re-shaping the international rules for the trade in derivatives. Greene and Potiha, as well as Stan Cerulus, have stressed the U.S.' first-mover advantage particularly in contrast to the European politico-economic rival. Both contributions have argued that by setting legal guidelines comparatively early, Congress was able to give SEC and CFTC a head start in designing specific regulations. (Greene and Potiha 2013, 340; Cerulus 2012, 220) The authors, however, fall short in naming the reason for this strategic advantage. Both analyses, rather than seeing the U.S. position strengthened from a combination of timing, market position, and expertise, start from a legalistic understanding and link the extraterritorial reach of DFA's derivatives reform to its Section 722 (d), which states that the:

> "[…] provisions of this Act relating to swaps […] shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in […] commerce […] or (2) contravene such rules or regulations as the Commission may prescribe or promulgate […]" (Dodd and Frank 2010, 298)

This is a clear-cut acknowledgement of the intended international reach of the Wall Street Reform Act, but Cerulus as well as Greene and Potiha fail to engage with how Dodd-Frank limited competing international reform options. For example, a plausible hypothetical would

[179] Author's interview on October 08, 2015. Comments not for attribution. Reference code: IO8S4J.

have been the introduction of a financial transaction – or Tobin – tax (FTT). (Eichengreen and Tobin 1995, 163–66) The idea was brought up again after the financial crisis and Sweden's experiment with FTT emphasized that a comprehensive approach via the G-20 would have been necessary for its success. (Dullien et al. 2012, 447) The European Commission had planned to introduce such a tax (EC 2011) and to use the G-20 Summits in Pittsburgh and Toronto to generate a broad consensus. (EC 2012b) Yet, the idea of the Tobin tax – still considered a plausible reform by some scholars[180] – failed to gain traction due to British opposition (Macleod and Gaut 2013, 65; Dullien et al. 2012, 448) and the G-20 never even considered the issue. (G-20 2009b, 2010a) Hence, DFA should be understood academically as a vehicle used to sidestep any form of re-regulation not in America's interest.

Other analyses have tried to make sense of derivatives reform using the global angle provided by the G-20 meetings. Outlining how derivatives regulation, by virtue of the intangible assets involved, is prone to free-riding, John Coffee equally ignores the U.S.' powerful position when he proposes that transatlantic cooperation would solve this issue: "[…] [B]y simply denying their own financial institutions the ability to trade in markets that do not comply with their standards […] the United States and the EU together have the market power to achieve this result." (Coffee 2014, 1270) Coffee avoids the abovementioned legalism by applying a market-size logic. But approaching reforms from the communal or collaborative logic that comes with a lens focusing on the tragedy of the commons, he falls into an internationalist narrative: "[…] G-20 leaders recognized the need to address OTC derivatives as a special priority at their 2009 summit in in Pittsburgh, where they agreed to impose clearing, reporting, and risk-mitigation requirements on OTC derivative transactions." (Coffee 2014, 1273) In light of the stated hypothetical of a FTT and the EU's failed attempt to reach a consensus on the issue, Coffee displays a clear sovereign equality bias and ignores the political process through which summit declarations reflect the power asymmetry among G-20 members. And he is hardly alone. In publications about the reform of the international trade in derivatives, its inception is often traced back to the Pittsburgh Summit of November 2009. (C. M. Baker 2015, 439; Collard 2015, 885; Ferrarini and Saguato 2013, 321; Janda and Rausser 2011, 5; Pagliari 2012, 54)

As outlined before, McCormick and Kohn had already called for the international community to be veritably preoccupied with credit derivatives. The FSF's preliminary and intermediate reports of October 2007 and February 2008 provided little substance on the matter. But, the

[180] In 2016, Aleksander Berentsen, Samuel Huber, Allessandro Marchesiani published an econometric study in the European Economic Review, in which they argued that an FTT imposed on the secondary bond market of 1.6 percent would be optimal in causing acceptable levels of friction, lowering trading volume by 17 percent, while having a positive welfare effect on pre- and post-trading consumption levels. (Berentsen, Huber, and Marchesiani 2016, 319–20)

FSF's April 2008 report included a section on strengthening the operational infrastructure for OTC derivatives trading by introducing a six-point agenda that clearly translated into an endorsement of clearing houses. (MIR 2008b, 21) One month earlier, the Paulson Treasury's Blueprint had been published. Paulson wanted to reform the regulatory architecture in the U.S., because its statics – i.e. multiple and overlapping jurisdictions – were unsupportive in providing sufficient oversight. The Blueprint applied the same rationale as did the FSF, but went into much more detail in outlining the potential regulatory application of CFMA's clearing house provisions. At the same time, the Blueprint was not intended as an avant-garde agenda for international reform, which explains why – with a liquidity crisis just weathered and unaware of the looming crash – Treasury put its remarks on "Core Principles for Derivative Clearing Organizations" at the very end of the appendix to the report. (U.S. Treasury 2008a, 217–18)

The Geithner White Paper outlined a clear regulatory agenda that already contained most of what would become chapter VII of DFA, which is also known as the Wall Street Transparency and Accountability Act (WSTAA). Aside from "conservative capital requirements" and initial margins, it called for mandatory clearing for all standardized OTC-derivative contracts and a consequential regulation of clearinghouses as part of the macro-prudential approach to secure systemically important market infrastructure. Furthermore, Treasury stipulated that "customized transactions" should be reported to trade repositories to achieve equivalent transparency standards outside of standardized OTC-derivatives markets. (U.S. Treasury 2009, 47–48) WSTAA realized these goals by making Central Counterparty (CCP) clearing for standardized derivatives mandatory (Sec. 723-726), requiring customized trades to be reported to trade repositories (TRs) (Sec. 727-730), and directing SEC and CFTC to develop rules for initial as well as variation margins (Sec. 736). (Dodd and Frank 2010, 300–347)

Capital and Transparency in One: Clearinghouses

Existing American Market Interests

By moving standardized derivatives through clearinghouses – sometimes described as the plumbing of the financial system (Cerulus 2012, 214) – , regulators resorted to a practice that had been long-established in the previously self-regulated derivatives business. Clearing of derivatives traded beyond varying quantity thresholds has been mandatory since 1923. (CFTC 2017) One of the oldest clearinghouses in the U.S. dated back to 1925, before a consortium of almost all major derivatives dealers in the U.S. established "The Clearing Corporation" on December 20, 2007. (Manns 2013, 1607–8) CCPs significantly reduce what is called counter-

party risk. Sellers and buyers – also known as (major) swap-dealers and (major) swap-participants throughout DFA – might not always meet their contractual obligations. A clearinghouse can assume the risk as an intermediary in such a deal and "[…] practically eliminate counterparty risk […]" (Cadmus 2012, 206) Because of its market position and fees charged for its services, a clearinghouse commands a pool of resources enabling it to step in for the defaulting party. (CPMI and IOSCO 2013, 7–9) What is more, a "[…] CCP can also reduce systemic risk by vetting its members and imposing various financial requirements on them." (Collard 2015, 881)

Some authors have warned that by taking on counterparty risk clearinghouses might enhance systemic risk, because mandatory clearing could potentially lead to a competitive race for paying members. Jeffrey Manns, Eduard Cadmus, and Paul McBride have argued respectively that this could lower standards in the process and, thereby, make clearinghouses prone to defaults that would vastly surpass the systemic risk posed by the individual default of any one member. (McBride 2010, 1105–6; Cadmus 2012, 222-223; Manns 2013, 1609) Contradicting this claim, the IMF has outlined that clearinghouse failures are extremely rare with three defaults since 1974 in France, 1983 in Malaysia, and 1987 in Hong Kong. (IMF 2010, 108) But as an account published as a paper in the Bank of England's 1999 financial stability report outlines, this is by no means reason for complacency. By taking risks from market participants, a clearinghouse concentrates risk and, hence, poses a potential systemic threat:

> "In general, there are good reasons to suppose that a central counterparty can insulate a market against crisis. But this requires the risks arising to be identified, priced fully and backed by adequate capital, and the procedures for allocating losses to be clearly defined and made transparent." (Hills et al. 1999, 131)

Recognizing systemic dangers might arise outside of banking institutions or insurance companies, Section 803 DFA puts clearinghouses into the more general category of Financial Market Utilities (FMUs). The law defines FMUs as any "[…] person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transaction among financial institutions or between financial institutions and the person." (Dodd and Frank 2010, 430) As this definition shows, particularly the aspect of transferring and concentrating risk – much like most analysts thought derivatives would efficiently transfer risk to those best suited and willing to handle it – poses a systemic threat. And with clearing becoming mandatory, more actors and products will be cleared and, hence, the risks concentrated within clearinghouses increases.

The financial crisis and its repercussions underpinned such theorizing with fact. One of the effects of the U.S. provision of mandatory clearing was that it created a vested interest by

those operating clearinghouses and preparing to expand into a now-growing demand. And this trend started immediately after the crash in October 2008. As the Wall Street Journal reported on October 31, 2008, Intercontinental Exchange (ICE) bought the Chicago-based The Clearing Corporation (TCC) with support from Deutsche Bank, Credit Suisse, Goldman Sachs, and JPMorgan Chase. The main objective of ICE's merger-bid was an industry wide commitment "[…] to support the $55 trillion credit-default-swap market *ahead of tighter regulation* [emph. ad.]" What is more, ICE's acquisition was met by a rival exchange operator CME Group. CME's executive chairman Terry Duffy had announced the group's own clearinghouse and trade repository as early as November 10, 2008 and was confident in CME's ability to get in on the ground-floor of a business bound to be growing: "There is room for multiple parties to enter into this space to clear […]" derivatives. (Bunge and Cameron 2008, c2) ISDA backed this market-friendly development politically. In a letter to SEC Commissioner Elizabeth Murphy, ISDA CEO Pickel – initially wary of capital charges – now even lobbied for higher capital standards for Clearinghouse Members (CMs) and urged Murphy to adopt a CM minimum net worth of USD one billion as opposed to the USD 50 million at which the SEC had aimed. Pickel argued that the lower amount could pose a potentially systemic risk with CMs being part of multiple clearing agencies also running the risk of multiple callings on its trades:

> "At this significantly larger minimum capital requirement size, there would be less of a need for this ongoing regulatory scrutiny to address call risk across Clearing Agencies as much larger CMs are able to absorb these potential assessment costs whereas small CMs are more leveraged entities in the sense that the sum of their potential Clearing Agency assessment liabilities will be a larger number relative to their capital base." (Pickel 2011, 3)

Using a rhetoric and logic anchored in the administration's campaign against systemic financial threats, Pickel sided with protecting those larger firms which got into the market early and impose a higher entrance threshold for companies that – just like in the early days of CDS contracts – could potentially siphon off profits by virtue of their competition. In the end, the joint work of CFTC and SEC effectuated a final ruling giving clearinghouses permission to levy minimum requirements of USD 50 million, which – as was noted in the federal register – ICE did on March 23, 2012 with CME Group following on April 20, 2012. (CFTC 2012e, 74293) ISDA's efforts did not lead regulators to stomp out competition. Instead, they consequently pursued the hybrid solution that clearinghouses offer as market-based institutions sanctioned by regulation. As Glenn Morgan has outlined, this pursuit "[…] reflects the introduction of a powerful new set of interests into the debate on changes in regulating governing OTC markets […] regulators find themselves with a new and powerful set of globally organised allies (the exchanges) to make this new system work." (Morgan 2012, 408)

The International Protection of Financial Infrastructures

As already noted, using the exchanges comes with set of problems all too familiar from the global financial crisis these reforms were set to remedy. The U.S. led the international efforts by addressing the issue of systemic risk posed by CCPs along the internal macroprudential logic of DFA. The case made before by McBride and Manns rivets on the reasonable danger that market participants, who were unwilling to use clearinghouses before, now put FMUs in the very plausible danger of being liable for their new customers' more risky business. Therefore, America had a vested interest not only in setting-up clearinghouses, but in globally settling the issue of standardizing how such FMUs would operate. Again, the U.S. pushed for an international regulatory floor that would limit potential arbitrage of its regulatory reforms.

In a 2012 report, the Committee on Payments and Settlements Systems (CPSS) at the BIS in Basel issued a report together with IOSCO. CPSS changed its name into CPMI (Committee on Payment and Market Infrastructure in 2013) and gave itself a new charter that became effective September 2014. (CPMI 2014) While both committees adhered to the Basel rule of non-competitive and consensus-seeking decision-making, a notable over-representation of U.S. institutions[181] helps to understand how CPSS/CPMI created a definition of Financial Market Infrastructures (FMIs) very much alike to the one found in DFA:

> "[…] an FMI is defined as a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing, or settling payments, securities, derivatives, or other financial transactions […] Some FMIs are critical to helping central banks conduct monetary policy and maintain financial stability." (CPSS and IOSCO 2011, 7, 2012, 7)[182]

With Manns', Cadmus', and McBrides' caveat in mind, particularly the last sentence is of critical importance. CPSS and IOSCO built on existing expertise in developing a set of standards called "Core Principles for Systemically Important Payment Systems" (CPSIPS). CPSIPS goes back to work CPSS conducted during the early 2000s and which resulted in a ten point agenda that recognizes that "[m]arket forces alone […] will not necessarily achieve the objective of safety and efficiency sufficiently […]" (CPSS 2001, 4) However, systemic threats were seen quite differently back in 2001. CPSIPS was less concerned with the overall financial resilience of infrastructures when facing credit events, but rather looked to improve the processing of trades in derivatives. (CPSS 2001, 6–9) In light of the backlog issue that

[181] Continuing from CPSS to CPMI, the Federal Reserve Bank of New York (FRBNY) and the Board of Governors of the Federal Reserve System are listed as a member. Chairmanship during the years of the financial crisis was American, too. Timothy Geithner served as chairman in his role as President of the FRBNY from 2005 to 2009 and was followed by William C. Dudley, Geithner's successor at FRBNY, between 2009 and 2013. See: https://www.bis.org/cpmi/info.htm.

[182] Of course, DFA includes not remarks as to explaining the reasoning of the law: "The term 'financial market utility' means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person." (Dodd and Frank 2010, 430)

ailed derivatives markets until the mid-2000s and the legal fact that using a clearinghouse was voluntary, this interest in regulating international processing made sense.

Of course, regulatory attention shifted in derivatives markets just as it did in banking institutions after 2008. In a consultative report published in 2011, and more fundamentally a year later, CPSS and IOSCO revamped the CPSIPS framework up to 24 standards. (CPSS and IOSCO 2012, 140) Major additions have been made explicitly regarding credit and liquidity risk management. To strengthen financial resilience of critical infrastructure, CPSIPS four to seven call for FMIs to increase their institutional capacities in identifying potentially threatening exposure (CPSS and IOSCO 2012, 36–37), increase requirements for collateral posted by market participants (CPSS and IOSCO 2012, 47–49), and improve the liquidity of assets traded, posted and kept on as reserves. (CPSS and IOSCO 2012, 57–63) What is more, the report also strengthened individual, product-specific trading fees – or margins – that go structurally beyond capital requirements – the abovementioned difference between "defaulter-" and "survivor-pay." (BCBS and IOSCO 2015, 4)

Reflecting a diverse set of risks, margin requirements support the structural integrity of an FMI. An entrance fee, called initial margin, is due upfront to any trade cleared. Changes in the price of a respective trades – and therefore changes to the risk it poses – are valued on a mark-to-market basis and are imposed as variation margin. (CPSS and IOSCO 2012, 50)[183] The work presented in the reports of 2011 and 2012 was instantly tied to the larger regulatory nexus of the FSB. (FSB 2010c, iii) With IOSCO as an FSB member and CPSS/CPMI being part of the FSB-hosting BIS, it is unsurprising that the FSB has adopted CPSIPS as part of its compendium on "Key Standards for Sound Financial Systems." (CPSS and IOSCO 2012, 6)[184] However, there have been no plans for SIFI determination equivalent to the board's effort in listing G-SIBs and G-SIIs. The 2012 report kept to the distinct tradition of soft-law conciliation among central bankers at the BIS and outlined that such an additional governance layer was considered unnecessary. (CPSS and IOSCO 2012, 12)

Again, the United States doubled down on its role as a global leader in financial regulation. As was outlined above regarding SIFIs in the United States, FSOC was endowed with comprehensive powers in determining financial institutions of any kind to be systemically important; hence, they apply to FMUs as well. Section 805 a (2), D DFA constitutes that "[u]pon an affirmative vote by not fewer than 2/3 of members then serving on the Council […]", FSOC has the authority to determine an FMU to be systemically important with all the

[183] Collard has elaborated on the difference between capital and margin requirements outlining that while capital is dealer-specific, margin requirements are product-specific. (Collard 2015, 886)

[184] See also the FSB's own webpage: http://www.fsb.org/what-we-do/about-the-compendium-of-standards/key_standards/. Accessed February 10, 2017.

measures its members deem necessary to be imposed for the FMU's protection. (Dodd and Frank 2010, 435) Indeed, in a unanimous decision on July 18, 2012, FSOC found eight FMUs to be systemically important, mandating them to make among other things capital and liquidity levels more resilient. (FSOC 2012b, 145, 2012a, 119)

The EU took two years longer to arrive at the same practice-level of designation. The Commission issued its fourth Capital Requirements Directive (CRD IV) in June 2013 institutionalizing higher-funds requirements "[…] in order to compensate for the higher risk that G-SIIs [Global Systemically Important Infrastructures] represent for the financial system and the potential impact of their failure on taxpayers." (EC 2013, par. 90)[185] 14 months later, the European Central Bank (ECB), charged with developing standards protecting Europe'a financial system, published an oversight framework for retail payment systems to replace the old version, which had been in effect based on the 2001 CPSIPS. (ECB 2014b, 1–2) In its 2014 version, the ECB listed four key considerations for FMIs to ensure safety from credit risks. (ECB 2014b, 10) These four considerations were and still are (ECB 2016, 8) exact copies from the more comprehensive work CPSS and IOSCO presented in 2012. (CPSS and IOSCO 2012, 36–37) Before this background, the ECB determined in June 2014 that four European payment systems qualify for heightened standards of oversight, echoing America's focus in DFA on systemic relevance and the international efforts conducted to make them apply comprehensively. (ECB 2014a)

Asserting U.S. Interests Through the Extraterritorial Application of Domestic Law

While the sequence of clearinghouse provisions serves as tangible evidence furthering the argument about America's global regulatory reach, it makes sense to end this chapter in depicting the confidence with which America forced the regulatory hands of its G-20 partners. While Section 722(d) is overall indeterminate on the actors involved and procedures to be followed, Section 715 DFA institutionalized specifically the unabated influence of American market power. It outlines that if CFTC or SEC – concerned with swaps or security-based swaps respectively – find regulation outside of the U.S. wanting so as to undermine:

> "[…] the stability of the United States financial system, either Commission in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities." (Dodd and Frank 2010, 272)

Before this background, it becomes clear that America not only relied on its first-mover ad-

[185] Note the identical abbreviation used by the FSB for global insurers and by the EU for both, insurers as well as infrastructures, to which there is no equivalent internationally.

vantage in pushing for its preferred set of rules, but intentionally set up the statics of its reregulation pursuing a strategy of enabling its regulators to leverage the full market-power – i.e. other nations' interest in doing business with the U.S. – to follow suit with their own reregulation and, ultimately, appreciate the wiggle room given by the U.S. through international negotiations at the FSB and BIS.

That form of latitude was, in effect, created by both SEC and CFTC based on Section 715 DFA. Charged with objectives-based research and final rule-creation by Dodd-Frank, both agencies engaged internationally by pursuing a strategy that mirrored the broader approach the Obama Administration chose with its partners. Building on the U.S.' first-mover advantage, the CFTC took charge and presented the G-20 with a fait accompli. Then the commission gave its partners time to catch-up so that, eventually, particularly the European partners arrived at regulatory regimes in line with both FSB consensus and Title VII of Dodd-Frank. (FSB 2017b, 8–9)

International Competition Yet Again?

Despite the obvious interest in limiting adjustment costs, the U.S. wanted to avoid regulatory arbitrage. In a paper published in November 2011, Karel Janda and Gordon Rausser wearily eyed endeavors by the European Securities and Markets Authority (ESMA), the relevant regulatory counterpart to CFTC and SEC, to pass a European Market Infrastructure Regulation (EMIR). Even before EMIR was passed on July 4, 2012 and became law on August 16, 2012 – that is, 20 days after its publication in the Official Journal of the European Union on July 27, 2012. This time-lapse notwithstanding, the authors warned that European clearing-house requirements were likely to become "[…] easier on end-users than under US legislation" (Janda and Rausser 2011, 8) and diagnosed a more general imbalance from the coexistence of DFA and EMIR. Specifically, they saw a problem in the twofold approach with which some of the regulations concerning OTC derivatives markets were addressed in the EU. While EMIR requires clearance of standardized OTC derivatives (EP and Council 2013, 17), a post-crisis version of the 2004 Markets in Financial Instruments Directive (MiFID) separately requires "[…] the execution of OTC derivatives subject to the clearing obligation on a swap execution facility or designated contract market, real time post-trade transparency for cleared derivatives trades[,] and position limits […]" (Janda and Rausser 2011, 8) The fragmentation of the U.S. regulatory system has been discussed and while the institutional separation of actors plausibly suggests difficulties in meeting administrative challenges efficiently, Janda and Rausser's argument about that same effect when legal texts are stored individually is much

less convincing. Colleen Baker, on the other hand, has made the case for institutionalized dispute settlement where the collision of regulatory regimes designed to forestall systemic risks ironically becomes a "[…] latent source of systemic risk […]" as incoherencies between those new regimes create blind spots where risk can accumulate undetected. (C. M. Baker 2015, 434)

Baker's point intuitively makes sense and it seems that particularly the CFTC understood how to leverage its influence to avoid such loopholes. The commission effectuated the internationalization of its rules by deploying a carrot-and-stick-policy. The groundwork for this was laid on May 23, 2012 when the commission defined the "entity-level" of who precisely would be targeted by its actions. First, a person or entity involved in the business of trading swaps is labeled a "Swap Dealer" (SD). On the buy-side of derivatives trading, not all entities need to be regulated the same way, since there are likely to be private participants involved whose influence on systemic stability is negligible. Therefore, the CFTC defined the term "Major Swap Participant" (MSP) as including (a) persons that hold "[…] a 'substantial position' of any of the major swap categories […]", (b) generate "[…] substantial counterparty exposure that could have serious adverse effects […]" on financial stability, and (c) any financial entity with a leverage ratio high relative to the assets that it holds, that also owns "substantial positions" of swaps, and is "[…] not subject to capital requirements established by an appropriate Federal banking agency […]" (CFTC 2012a, 2–3) Thirdly, a so-called "de minimis" threshold for SDs and MSPs was adjusted. In excess of these levels, any SD or MSP has to register with the CFTC. SDs can hold USD three billion worth of assets over the course of 12 months, with associated "special entities" not allowed to hold swaps exceeding USD 25 million within the course of that year. (CFTC 2012a, 3) MSPs must register once they hold assets larger than the de minimis level of USD one billion in their "[…] daily average current uncollateralized exposure […]" and create an uncollateralized counterparty exposure of either USD five billion "[…] or a sum of current uncollateralized exposure and potential future exposure of $8 billion, across the entirety of a person's swap positions." (CFTC 2012a, 5)

With the entity level defined and the threshold of how to become such an entity clarified, the CFTC presented derivatives users around the globe on July 12, 2012 with the cross-border application of its refined specifications concerning entity- as well as transaction-level requirements. (CFTC 2012b) The entity requirements included, for example, that certain capital reserves had to be in place, risk management had to be disclosed, certain preconditions met by the SD's or MSP's Chief Compliance Officer, as well as record-keeping and swap-data reporting maintained. (CFTC 2012b, 41224-25) Transaction-level requirements were mainly

about clearing duties and reporting standards. (CFTC 2012b, 41225–28) All in all, the CFTC's message was that its regulations apply as soon as business conduct has "[…] a direct and significant connection with activities in, or effect on, commerce of the United States […] or contravenes such rules or regulations as the Commission may prescribe or promulgate […]" (CFTC 2012b, 41217) In such a case, any:

> "[…] non-U.S. person who meets or exceeds the de minimis threshold […] would be required to register with the Commission […] Once registered, the non-U.S. swap dealer or non-U.S. MSP would become subject to all of the substantive requirements under Title VII of the Dodd-Frank Act […] In other words, the requirements under Title VII of the Dodd-Frank Act related to swap dealers and MSPs apply to all registered swap dealers and MSPs, irrespective of where such dealer or MSP is based." (CFTC 2012b, 41223)

Throwing in that last sentence for good measure emphasizes the scope that the CFTC deliberately applied to a market that is reasonably global. At literally the same time, the commission's exemptive order – the carrot to the original order's stick – eased the adjustment costs and motivated an orderly development towards a U.S.-led standard. The CFTC was adamant that it would not ease transaction-level requirements (CFTC 2012c, 41118–19), i.e. the way derivatives are traded, but allowed:

> "[…] non-U.S. SDs and non-U.S. MSPs to delay compliance with certain Entity-Level Requirements […] [N]on-U.S. SDs and non-U.S. MSPs would be afforded additional time to prepare for the application of the Entity-Level Requirements with assurances that they would not be in violation of the CEA as a result. This would, in turn, facilitate an orderly transition to the Entity-Level Requirements of the Dodd-Frank Act regulatory regime […]" (CFTC 2012c, 41112)

Several weeks later, the CFTC issued a "no-action letter," in which the commission's staff assured Utility Special Entities (USEs) that it would recognize the public service they provide and not seek judicial action against apparent violations of its regulations on certain conditions. (CFTC 2012d) USEs were defined as vital to the maintenance of electrical grids and services, which is why any entity that "[…] owns or operates electric or natural gas facilities […], supplies natural gas and/or electric energy to other utility special entities, [or] has public service obligations […]" (CFTC 2012d, fn. 6) was allowed to enter into swaps-agreements directly and physically related to their regular business conduct of up USD 800 million (CFTC 2012d, 4) and do so "[…] with persons that are not registered swap dealers [, because it] is not likely to raise the types of risks that the Commission's swap dealer registration requirements are intended to prevent […]" (CFTC 2012d, 4)

Of course, one of the reasons for the CFTC's relief was the strategic importance that energy services have internationally. Another, more political, reason for regulatory leniency shown by both U.S. commissions was that this form of exemption legitimized their approach in regu-

lating ahead of other jurisdictions. On October 17, 2012, CFTC Chairman Gary Gensler received a letter from George Osborne, the UK's Chancellor of the Exchequer, Japan's finance minister Ikko Nakatsuka, his French counterpart Pierre Moscovici, and the EU's Commissioner for the Internal Market Michel Barnier. Their request was straightforward: with all that had been achieved by the partners within the G-20 forum "[…] we would urge you before finalising any rules, or enforcing any deadlines, to take the time to ensure that US rulemaking works not just domestically but also globally." (Osborne et al. 2012) With international pressure for a more collaborative approach mounting, the U.S. found its politics vindicated. Few weeks later the G-20 regulators met and the joint press release that followed the negotiations betrays that America's fundamental advantage had not been altered, but rather reinforced. Recognizing that regulatory harmonization is impossible given "[…] differences in law, policy, markets and implementation timing […]" (OIA 2012, 2), the agencies proposed that all G-20 regulators would engage in setting up a system of mutual recognition by substituted compliance. In a situation in which the U.S. had already set up a system of how it would regulate OTC derivatives and with Europe's EMIR-regime a whopping two years junior to DFA, a determination of whether a foreign-regulated entity is observant of any regulatory regime would have to pass that exact test with the only existing game in town: Dodd-Frank's Title VII. Aware of this reality, two G-20 dignitaries spoke before a Congressional hearing nine days later. Masamichi Kono of Japan's Financial Services Agency and Patrick Pearson of the EC's DG Internal Market delivered statements urging the U.S. to ease the pressure it created by making its rules apply globally. With some difference in tone, both officials objected to the aggressive extraterritorial application of U.S. regulatory authority. Both emphasizing the cooperative G-20 process to which the U.S. had committed itself in Pittsburgh (Conaway 2012, 13 & 18), Kono's remarks were measured, but nevertheless clear, in the way that they criticized the extraterritorial application of U.S. law:

> "[…] our view is that the scope of application of substituted compliance can be further extended to a broader set of regulated entities and transaction requirements. And of course as a national regulator, we would like to be recognized as a primary regulator of the entities established in Japan." (Conaway 2012, 13)

Kono's European counterpart was less congenial in the tone he chose to make the same argument. Using the Tacitean allegory of the desert called peace, Pearson put the EU's full economic weight behind his reminder to Congress that only if the U.S. got back to a more cooperative approach in derivatives regulation would the crucial task of reaching an agreement on cross-border regimes bear fruit:

> "And why is this crucial? It is because that $640 trillion OTC derivatives market is global. The Euro, the dollar, are the most important underlying currencies for derivatives. And the global nature of OTC markets with the two counterparties to transactions frequently located in different jurisdictions to each other or in a different location to the infrastructure being used makes the effective use of regulation absolutely critical. So we need rules that work not only for a national jurisdiction but also rules that work between jurisdictions." (Conaway 2012, 18)

With Kono relying on notions of sovereignty, Pearson employed the material reality of international finance as a matter of regulatory course. Clearly, both regulators were upset about what they had to perceive as judicial overreach. Regarding the substance of U.S. regulation, however, Kono and Pearson agreed that the global scope of a regulation that targets any business venture with a direct effect on "[…] commerce of the United States […]" (CFTC 2012b, 41217) – i.e. the largest market for derivatives trading internationally – was counterproductive. Therefore, Pearson concluded with a stern warning:

> "[…] if we don't reach agreement on a sensible cross-border approach, then conflicts, inconsistencies, and gaps will persist. Trades won't take place. It won't be cleared. It will be reported in a fragmented way. Companies in our economies will not be able to hedge risks they have to hedge to do business, commercial or financial." (Conaway 2012, 19–20)

The CFTC answered this call and extended its exemptive order – originally setting a sunset date for December 31, 2012 (CFTC 2012c, 41119) – temporarily to July 12, 2013 (CFTC 2013a, 859) and substantively enlarged the circle of those commercial actors relieved of its entity-level requirements for registration. (CFTC 2013a, 861)

Yet again, American pressure moved its partners to intervene as diplomatically as possible. In April, and with only a couple of weeks left until the final exemptive order's sunset date on July 12, 2013, an even larger number of leaders approached Treasury Secretary Jack Lew, who had replaced Geithner at the beginning of President Obama's second term. In this letter, nine G-20+ finance minister and the EC's Michel Barnier almost implored Lew that they did everything in their power to meet the Pittsburgh goals, that they were "[…] implementing rules across very different markets with different characteristics and different risk profiles […] We believe the basic principles on which cross-border rules should be based are clear […]" (Mantega et al. 2013) Again, Americans were reminded that theirs was the largest market and that their regulators had the ability to politically leverage other economies:

> "An approach in which jurisdictions require that their own domestic regulatory rules be applied to their firms' derivatives transactions taking place in broadly equivalent regulatory regimes abroad is not sustainable. Market places where firms from all our respective jurisdictions can come together and do business will not be able to function under such burdensome regulatory conditions." (Mantega et al. 2013)

However, Europeans calling for exemption and the goals of both commissions were only two

parts of an equation, in which the U.S. Senate also had a stake; and Democratic Senators were not having the ongoing bartering by their mostly European colleagues. Reminding both SEC and the CFTC of their responsibility as national regulators, Senators Merkley, Levin, Harkin, Warren, Shaheen, Boxer, Blumenthal, and Feinstein gave vent to their discontent with what they regarded as a sluggish international approach to rule-making which in their view defied the very purpose of Dodd-Frank:

> "Both of your agencies' proposals would allow U.S. firms to skirt the entire U.S.-based swaps regulatory regime (including any U.S. requirements for substituted compliance) simply by engaging in 'non-guaranteed' trading through foreign subsidiaries. The history of the financial crisis tells us that drawing regulatory distinctions based on narrow criteria, including over what today is believed to be 'guaranteed' or not, is a recipe for creating, not reducing, systemic risk." (Merkley et al. 2013, 4)

With Merkley and his colleagues publishing the letter less than two weeks before the end of the self-set deadline, it is, of course, doubtful that any regulator took the substance of this argument all too serious. The part about "non-guaranteed" trading referred to non-registered, non-U.S. SDs either trading on behalf of an American counterpart or doing business with it. Since the window for such regulatory relief was already closing fast, the Senators' allusion that the exemptive order was somehow a permanent systemic threat was merely a symbolic gesture by Democratic lawmakers. Still, as the sunset date approached the Senatorial caveat to concessions is unlikely to have made American regulators more susceptible to European demands. In the weeks approaching the deadline, Europeans had lobbied the CFTC and its five commissioners for an extension, which is why Jill Sommers and Scott O'Malia, the two Republicans serving the CFTC at that time, proposed a more flexible negotiating position towards the EU. Arguing to extent for another six months O'Malia outlined: "There are a number of reasons why the commission should not be forced into implementing a take-it-or-leave-it solution tied to an arbitrary deadline." (Meyer 2013) With a Democrat, Mark Wetjen, also criticizing a timing that could potentially alienate regulators in jurisdictions who responded with a time-lag to the global financial crisis, European lobbying appeared to have meaningfully swayed the CFTC: "We should not allow ourselves to careen toward an arbitrary and self-imposed deadline, especially when that deadline does not coincide with the implementation of other comparable regimes." (Meyer 2013)

But, eventually, the U.S. stayed its course and an agreement was reached on July 11, 2013. The Canadian Newspaper The Globe and Mail quoted EU Commissioner Michel Barnier capturing the relief felt after months of intense negotiations: "[…] our discussions have been long and sometimes difficult but they have always been close, continuous and collaborative talks between partners and friends." (Meyer and Barker 2013) Of course, the main American ad-

vantage remained the difference in actual implementation. The Financial Times, however, outlined this difference as an issue of cooperation, because the main difficulty continued to be: "[…] synchronising when and how common principles were translated into law, through legislation such as Dodd-Frank in the US and its EU equivalents: Emir, which has been passed, and Mifid, which is still being negotiated." (Barker, Meyer, and Stafford 2013) Of course, MiFID was already a couple of years old in 2013 – as Janda and Rausser have been quoted to report. (Janda and Rausser 2011, 8) MiFID I was published in 2004 and took full effect in November 2007. (EP and Council 2004; The Economist 2006) Its 2014 post-crisis replacement was split in two complementing regulations called MiFID II and MiFIR. (EP and Council 2014a, 2014b) While EMIR, ESMA's larger systemic directive, was explicitly extra-territorial in its reach (EP and Council 2012, 4), directive MiFID II and its accompanying regulation MiFIR intends "[…] to optimise the transaction costs of securities and derivatives trading, while also taking systemic stability goals into consideration." (Ferrarini and Saguato 2013, 320)

All this institutional complexity – and mind you MiFID II will not take full effect before September 2018 (EP and Council 2014a, 479) – shows that it was America's strategic advantage that focused the parties on one common understanding on derivatives trading on July 11, 2013. As stated in the CFTC's press release: "As a result of the joint collaborative effort, in many places, final rules are essentially identical, even though the regulatory calendars are not always synchronized." (CFTC 2013c, 1) An illustrative example of such time-lag is provided with regard to the ESMA's and the CFTC's risk mitigation rules – i.e. those regulations that "[…] basically apply to over-the-counter derivatives, including swaps." (Coffee 2014, 1280) Issuing its no-action relief letter on the same day the CFTC and the European Commission successfully concluded their negotiations, the CFTC recognized that its political pressure resulted in Europeans adopting in parts literally identical regulations in a crucial sub-set of their derivatives regime:

> "The Division has determined to provide the relief described herein to certain registered SDs and MSPs because […] the Division believes Regulation §§23.501, 23.502 […] are essentially identical to provisions set forth under Article 11 of EMIR and the related EMIR Regulatory Technical Standards […]" (CFTC 2013b)

It might have helped that international pressure by the private sector for Europeans to meet the U.S. fait accompli was considerable; and while ISDA did raise concerns about minor differences in the transatlantic regulatory regime (Metcalfe and Johannes 2012), when we look to negotiations over clearinghouse provisions, we encounter a procedure following an almost identical sequence.

This last part started with Colleen Baker's warning that regulatory collisions could lead to gaps, hence, to opportunities for arbitrage even absent any race-to-the-bottom developments. Implying that the economic weight of the U.S. and the EU was relatively similar, Baker noted that such a collision could remain unresolved. She noted: "As this article is written, the USA and EU remain 'on a collision course' and 'deadlocked' in the area of clearinghouse recognition." (C. M. Baker 2015, 435) Then acting CFTC-Chairman Timothy Massad spoke before the European parliament and outlined that the U.S. preferred lower requirements for margins to be posted by customers of derivatives trades – those users that do not qualify for MSP status – and higher requirements for SDs using clearinghouses. (Massad 2015, 3) In the end, both sides agreed to adopt each other's highest standards with some exceptions for agricultural users of derivatives hedging against crop shortfalls. (EC and CFTC 2016; Massad 2016)

# Chapter Five
## Market Power – Built on Size, Driven by Interest
## The Limits of Dodd-Frank and the Limits for Global Reform

The empirical data used in previous chapters depicted clearly that U.S.-based technocrats, lawmakers, aides, as well as experts more generally were predominantly outlining the benefits of Dodd-Frank's international reach. Where material concerns were formulated, as in the case of SEC commissioner Daniel Gallagher, they were informed by the isolationist conviction that the U.S. should generally dial back its international vanguard role. On the other hand, European technocrats as well as the documentation attained via FOIA-like requests in Germany, either did not agree with the substance of the U.S. reform agenda or, more fundamentally, with the American claim to leadership. As was mentioned in the previous chapter, one German official repudiated what s/he saw as a set of regulations forced upon Europe that would put the cart before the horse.[186] Another European official, who served in a leading capacity in one of the FSB's member organizations, questioned the appropriateness of the U.S.' agenda setting role, since that essentially meant "[…] putting those in charge who got us into this mess."[187] And while most U.S. observers tried to extenuate the significance of Dodd-Frank's extraterritorial reach, none of the interview evidence gathered from European experts points remotely into a direction that would suggest anything but a dominant leadership role for Washington's agenda. In fact, part of the apparent frustration Europeans felt – if only anecdotally – was due to the fact that if Dodd-Frank did not prescribe swift regulation or action was slowed down due to Washington's domestic considerations, the agenda pursued by the FSB also decelerated.

In this chapter, I am going to present two cases: one on shadow banking reform and the other on the projected harmonization of international accounting standards. Despite having been on the agenda of both American and global regulators from the early beginnings of the GFC or, as in the latter case, even dating back as far as the early 2000s, the results of these cases differ from those illustrated so far. These two cases do not provide evidence of the respective subject matter undergoing meaningful progress. Both cases are qualitatively significant, because they defy two seemingly plausible theoretical arguments competing for how to explain the nature of change inherent in global post-GFC financial regulations. The case dealing with shadow banking invalidates the hypothetical of an independently regulating FSB. As a concept market power relies on a combination of size, capacity, and most importantly interest to

[186] Author's interview on March 22, 2016. Comments not for attribution. Reference code: YNVQSI.
[187] Author's interview on June 3, 2016. Comments not for attribution. Reference code: C5IGY2.

apply both in pursuit policy goals. With only minor regulatory reform in the shadow banking sector and negligible competition from abroad, particularly regarding securitized assets, the U.S. had no interest in streamlining international rules. First, it lacked domestic momentum to meaningfully address the issue, which meant that, second, an internationalization of standards higher than those in Dodd-Frank would have curtailed overall securitization, distribution of risk, and hence availability of credit. The case on accounting standards closes a bracket opened by Elliot Posner's research. Crossing historical institutionalism with a realist ontology, Posner's argument about centralization fails to go anywhere beyond Drezner-like market-size theorizations; mamely that the United States and the European Union, due to the size of their markets, are equally great powers using their predominance to force upon others the rules and regulations of their club-like organizations and institutions. Showcasing the deadlock on accounting standards will serve to illustrate that size has had no such influence, but rather that U.S. market-power enabled it to withstand any pressure to streamline rules from a massive coalition of 133 jurisdictions worldwide.

Fourth Case: The Shadow Banking Sector and American Disinterest in Meaningful Reform

As part of the post-crisis agenda, shadow banking first entered the limelight because of international concerns about underwriting standards. Given that CDOs and CDSs were backed by ramshackle contractual obligations signed by debtors often more likely to re-finance or to default, the G-20 picked up the issue in its November 2008 declaration. As we have seen, already during the fall of 2007 the Bush administration was well aware of the substantial underlying difficulties facing the non-banking financial industry. (Bush 2007) As a matter of course, the G-20's first declaration following the crisis corresponded with the American assessment, put the issue front and center, and outlined:

> "[…] weak underwriting standards, unsound risk management practices, increasingly complex […] financial products, and consequent excessive leverage combined to create vulnerabilities in the system. Policy-makers, regulators and supervisors, in some advanced countries, did not adequately appreciate and address the risks building up in financial markets, keep pace with financial innovation, or take into account the systemic ramifications of domestic regulatory actions." (G-20 2008, 1)

Then as now, underwriting standards are central to shadow banking in the U.S. and elsewhere, because they determine a large part of the risk investors incur through the origination of mortgages – or any other loan granted by a non-bank entity –, their securitization, and eventual distribution. Drawing on the quality of assets signed, shadow banking has taken on an important role for credit intermediation. Hence, the industry's lending practices impact the quality of risk to which individual customers, financial institutions, and investors are exposed. Of

course, dependence on shadow banking differs by jurisdiction. In its 2015 Global Shadow Banking Monitoring Report, the FSB presented data for G-20 countries. Classic liberal market economies have strong non-banking sectors. Cases in point are the UK, the Netherlands, and Switzerland. However, no G-20 member has a shadow banking sector as diverse and sophisticated as the United States (FSB 2015f, 57–59), the only country where "[…] shadow banking assets exceed those of the conventional banking system." (IMF 2014, 66)

As a term, shadow banking entered gained public attention through a blogpost Paul McCulley wrote about the Kansas City Federal Reserve Bank's annual symposium. As early as 2005, McCulley and his colleagues at PIMCO, one of the largest investment management companies worldwide, had detected "[…] 'serious signs of bubbles' […]" Further investigations by PIMCO ended with the devastating diagnosis of an widespread and "[…] outright degradation of underwriting standards […]" and, as a result, PIMCO "severely limited" its exposure to mortgage securities. (FCIC 2011, 4) For its 2007 symposium, the Kansas Fed had chosen a distinctly seasonable topic: "Housing, Housing Finance, and Monetary Policy." Based on PIMCO's analyses, McCulley expounded on the shadow banking industry's exposure to bad mortgages and documented how most signs acutely pointed to a massive systemic crisis. Alluding to Schumpeter's bon mot on creative destruction, he summarized participants' wariness that such destruction could become untargeted "[…] with not just the foolish being taken out and shot, but the innocent, too. Technically, that's called systemic risk. And in the current circumstance, it's called a run on […] the whole alphabet soup of levered up non-bank investment conduits." (McCulley 2007, 2) Consequently, he defined shadow banking by its distinction to regulated banks, which have access to the discount window, i.e. the Federal Reserve System's mechanism providing temporarily liquidity to institutions experiencing shortages that are either self-inflicted or due to outside circumstance:

> "[…] shadow banks fund themselves with un-insured commercial paper, which may or may not be backstopped by liquidity lines from real banks. Thus, the shadow banking system is particularly vulnerable to runs – commercial paper investors refusing to re-up when their paper matures, leaving the shadow banks with a liquidity crisis – a need to tap their back-up lines of credit with real banks and/or to liquidate assets at fire sale prices." (McCulley 2007, 2)

Shadow banking is an impressive force by size alone. The sector grew from USD 26 trillion in assets in 2002 to USD 62 trillion in 2007 (Greene and Broomfield 2013, 10), a value which declined during the crisis by USD three trillion, just to bounce back to USD 67 trillion at the end of 2011. In 2007, shadow banking accounted for 27 percent of total worldwide financial intermediation, merely declined to a quarter of that by 2009 (Kodres 2013, 43), and has since held that share. (The Economist 2016a; FSB 2012d, 9) According to the FSB's 2015 report,

the U.S.' share of overall shadow banking experienced a negligible decline from 41 percent at the end of 2011 to 40 percent at the end of 2014. (FSB 2015f, 11) (The Economist 2016a, 2012; FSB 2015f, 9)

Since the industry lacks access to the discount window, supervision relies on market-discipline alone and signing credit risk has almost no immediate regulatory consequences. By extension, economic stress hits the wider economy unmitigated by financial safety precautions. And, so far, the industry has eluded the public pressure that caused stricter new regulations on banks and systemically important financial institutions. For the United States, as one expert for mortgage securitization has pointed out, shadow banking can hardly be overrated:

> "It's quite remarkable how unimportant banks are in the U.S. relative to their importance in the rest of the world. A typical European economy will have a few large banks and then many small- to medium-sized banks. If you want to get a mortgage or start a business you're talking to a bank. In the U.S., those same people might go their whole financial lives where the only time they ever see a bank is some place to keep their money for like five minutes while they write checks on it. And everything else in a mutual fund money market mutual fund, they get their mortgage ultimately from Fanny or Freddie or from non-bank investors, their auto-loan is funded via AVS markets. So, when we think about credit provision and intermediation: in the U.S. context we really have to think about these non-bank markets."[188]

Despite continental Europeans' exposure to systemic fallout from in combination with the negligible share of shadow banking, the access of the American electorate to housing credit has translated into a European inability to drive meaningful reform.

Surely, the size of countries' shadow banking sectors differs. In its first monitoring report on the issue, the FSB established three categories named after the respective ideal type country proponent. Countries following the German model rely heavily on the regulated banking sector for credit provision. At the other end of the spectrum, a second group naturally led by the United States relies much stronger on credit not originated by banks, but by public financial institutions, insurance companies and pension funds, as well as other financial intermediaries (OFIs), the latter serving as a residual category covering all remaining entities engaging in maturity and liquidity transformation, leveraging, and credit risk transfer (also known as originate-to-distribute). (Kodres 2013, 42) The third group is headed by Saudi Arabia and serves as a category particularly geared towards emerging economies, in which the central bank plays a much bigger share in financing assets. (FSB 2012d, 13) While much has been said about capital requirements and the systemic relevance of banks and their holding companies, the FSB warned that capital requirements might become irrelevant if regulated banking is too exposed to the sum of so-called non-bank financial companies (NBFCs):

[188] Author's interview on September 18, 2015. Comments not for attribution. Reference code: DKS848.

> "A mapping of the network of intra financial sector exposures reveals a certain degree of interconnectedness of the NBFCs with the rest of the financial system. Bank funding, in particular, constitutes an important source of funds for NBFCs. Between 2010 and 2011, NBFC borrowing from banks increased by 54.7% while credit extended by NBFCs grew by 30.4%. Similar trends were observed during 2011-12." (FSB 2012d, 41)

This is astonishing. For one, exposure still threatens companies that were thought to be safer after Dodd-Frank and its tremendous effect on FSB-dispersed policies. More importantly, however, the G-20 recognized the Achilles' Heel of shadow banking as early as the Washington Summit and, still, global leaders failed to address shadow banking before the Seoul Summit in November 2010 when they called upon the FSB to develop a regulatory proposal. Roughly a year later in October, the FSB published its set of recommendations on the matter (FSB 2011a), with progress and monitoring reports not published before 2012. (FSB 2012b, 2012d) Aside from the timetable, the Seoul summit document is noteworthy because it follows the bank-centric thrust (Greene and Broomfield 2013, 26), around which much of DFA's reforms were centered:

> "With the completion of the new standards for banks, there is a potential that regulatory gaps may emerge in the shadow banking system. Therefore, we called on the FSB to work in collaboration with other international standard setting bodies to develop recommendations to strengthen the regulation and oversight of the shadow banking system by mid-2011." (G-20 2010c, 10)

Stabilizing OTD, Strengthening Underwriting: Capital. Capital! Capital?

In its prioritization, the FSB followed the agenda set in DFA – meaning that the lack of American leadership on the matter resulted in sustained international soul-searching for policies that could potentially deal with the industry's externalities. Of course, some regulations were in place due to the wider regulatory net that had been cast to avoid systemic crises in the future. As mentioned, non-bank market actors above the asset threshold of USD 50 billion are strictly supervised. Such companies face the same SIFI – and, on the level of FSB determination, G-SIFI – requirements as do BHCs or insuring companies. (Adrian 2011, 4; Greene and Broomfield 2013, 7–8)

While the SIFI determination structure accounts for interconnections and financial activity, it is largely size-based and, therefore, might only do little to prevent the development of systemic risk. As one interviewee emphasized:

> "Domestically, people were very worried, too. People would ask: 'So, what about subprime mortgages?' And we would go look at subprime mortgages and we'd say: 'Gosh,

> you know, it's like five percent of the mortgage market. (laughter) It's just not that big 'a deal.' How could this blow up the world?"[189]

Hence, Dodd-Frank comes with a second re-regulation relevant to non-banking financial activity. The credit risk retention requirement in section 941(b) DFA mandates "skin-in-the-game" for the originators of asset-backed securities. (Adrian 2011, 3) Requiring originators to keep an economic interest in the development of the securities they put on the securitization market. this provision had the potential to complement the larger framework of capital requirements. However, conflicting political interests macerated a more systematic approach. DFA's provisions include securitized assets in general and specifically highlight residential mortgages. In both cases, issuers and distributers of asset-backed securities (ABSs) are required to retain a risk of no less than five percent for securitized assets that are non-qualified residential mortgages. (Dodd and Frank 2010, 516–17)

The devil, it turns out, is in the details. And since they can be distributed without financial interest retained, the concept of qualified residential mortgages (QRM) requires clarification. According to the U.S. Consumer Financial Protection Bureau (CFPB), residential mortgages can only be qualified if they exclude certain risky lending practices and feature two characteristics. First, QRM borrowers have to meet a debt-to-income ratio. Second, costs hidden in extra-contractual obligations – i.e. servicing fees, fees for credit background checks, provision of necessary documentation (CFPB 2016a) – have to be disclosed. (CFPB 2016b) Establishing certain standards to provide safer loans, and hence increase the stability of mortgage-backed securities, seems like an almost natural post-crisis matter of course. And as Jason Johnston has argued "[…] Dodd-Frank has contributed to a sea change in the American mortgage market, a change that has meant the virtual elimination of mortgage borrowing by poorer and higher risk borrowers." (Johnston 2016, 678) At the same time, however, the joint regulators – FDIC, OCC, FRB, SEC, Federal Housing Finance Agency (FHFA), and the Department of Housing and Urban Development – were reluctant to generally limit access to the credit necessary for home-ownership. Therefore, a provision that would have realized a QRM scheme requiring a minimum down-payment ratio was never realized. (Lynn 2014, 5) The reasoning for this was explained by the SEC itself, which experienced serious headwinds with its more tightened proposal:

> "The majority of commenters opposed the QRM definition in the original proposal, expressing concerns over the 20 percent down payment requirement in particular. These commenters stated that the proposed definition of QRM was too narrow and would constrain credit availability, especially for low- and moderate-income (LMI) borrowers or first-time homebuyers." (SEC 2014, 347–48)

[189] Author's interview on September 18, 2015. Comments not for attribution. Reference code: DKS848.

Suspecting any fixed equity-to-asset-ratio, i.e. down payments, would rather freeze than stabilize markets, the joint regulators went along with concerns voiced by commenters on the final rule and abandoned the down payment requirement they had proposed in a new and more secure mortgage segment. (SEC 2014, 556) The reason for this clearly was rooted in public reservations disguised as a fear of strangling the market: "Although mortgage lending conditions appear to have been easing gradually for several quarters, standards overall remain tight, especially for borrowers with lower credit scores or fewer funds for a down payment." (SEC 2014, 358) However, Johnston himself argues that the sea-change, which he attributes just as much to overall market-conditions as to regulatory reforms, came at a cost. Still not incentivized to increase the overall savings rate, subprime lending was crowded out and has since gone into other economic areas:

> "During the first eleven months of 2014, 50 million consumer loans (and credit cards) totaling more than $189 billion went to subprime borrowers. The social desirability of policies that have diverted subprime borrowing away from homes and toward borrowing for automobiles and other types of consumption is at the very least questionable." (Johnston 2016, 679)

This process continued well into 2017. The Economist cautioned against drawing parallels too quickly, but insisted that with car loans climbing to a total of USD 565 billion in 2016 "[…] subprime lending makes up an even bigger share of car loans (21.1%) than it did of mortgages in 2006 (13.6%, compared with just 3.6% in 2016)." (The Economist 2017b) However aside from the size of the market for car-loans, the main qualitative difference appears to be that so far "[…] only a fifth of subprime car loans are turned into ABSs." (The Economist 2017b, 61) This reveals the bigger problem shadow banking continues to pose to the wider financial system. Not only has regulatory pressure in one lending area increased demand for credit in other consumer-areas. But, risk-retention in the shadow banking sector might not even be the most efficient measure to forestall the next crisis. As Paul Willen of the Boston Federal Reserve has outlined, risk retention has minor influence on market behavior. Should regulators again prove to be unwilling to take away the punch bowl early, risk-retention could actually be irrelevant:

> "While economics is unclear about whether risk retention prevents bubbles, a different link between the two emerges quite robustly: bubbles can prevent risk retention from working. The problem is that optimism about the value of collateral reduces the benefits of exerting effort in underwriting." (Willen 2014, 82)

This leads us to a more fundamental issue regarding shadow banking. In recent years, an academic consensus has developed about how poor underwriting standards in the shadow banking sector have caused the GFC. (Adrian and Ashcraft 2012, 9–10; Poszar et al. 2012, 1; Hel-

gadóttir 2016, 916) This consensus hints at a larger politico-economic issue in regulating an industry that services an existing demand for credit that cannot be provided by insured, and hence more stable, banking. Naturally, such lending is more likely to create systemic risk than insured banking. Having issuers keep a stake in their business seemingly provided a political alternative to requiring borrowers have fixed capital resources. And since recent lending practices appeared to vindicate the joint regulators' decision (Johnston 2016), Guillermo Ordonez has attempted to tackle the continuing crowding-out of credit. Ordonez argues explicitly for strengthened reputational approaches to apply a regulatory lever to an industry that is structurally different from banking and, hence, requires a new regulatory approach. But his analysis fails to provide innovative answers. Instead, he relies on transparency and is confident that where public scrutiny is intensified, for example via adequate credit risk evaluations, actors are subject to more strictly applied market-discipline. (Ordonez 2013, 31–32) Of course, market-discipline is of no use in a scenario – like Willen's – where actors will prove to be unrestrainable due to their confidence in market conditions, which after the next crisis might yet again be described as benevolent.

Some scholars have gone a third way. Analyzing some shadow banking truisms, Viral Archarya and his colleagues at the National Bureau of Economic Research have outlined how insured banking institutions arbitraged the system by sponsoring special investment conduits or vehicles (SIVs). This, of course, is common knowledge. Yet, their specific contribution was that during the crisis banks were not moved by reputational considerations when taking financial responsibility for their SIVs, but because of guarantees that were: "[…] explicit legal commitments to repurchase maturing asset-backed commercial paper in case of disruptions to liquidity in the market for such paper, not a voluntary form of implicit recourse." (Acharya, Schnabl, and Suarez 2010, 2) The authors strongly advocate to close the loopholes that allowed for legally solidified interconnections between banking and more speculative finance. Also questioning fond and long-held notions, Cornel Ban and Daniela Gabor have questioned the arbitrage narrative that they find to be most pervasive in post-crisis economic research. Assuming a distinct politico-economic point of view, their intention is to go one step further and ask "[…] why governments and central banks allowed […] shadow banking [to] pose such a systemic risk to global finance." (Ban and Gabor 2016, 904) Hinting at a more fundamental power asymmetry that has kept the state from regulating stronger economic interests, Ban and Gabor's account is matched by Oddný Helgadóttir, who argues that a structural bias has been conducive to the demand driving credit provision outside of banking. Helgadóttir questions the enticing call for pulling shadow banking out into the open and to extend public

backstops created for banking proper. In her view, this would be treating a symptom of inequality without addressing the more basic societal wealth structures that have made cheap, and hence risky, credit origination necessary in the first place. (Helgadóttir 2016, 933)

With such seminal concerns unaddressed, the practice of signing loans with little or no collateral remains an unresolved issue with potential externalities for the wider originate-to-distribute model around the globe. As we have seen, the SEC was lobbied because home-ownership in the U.S. has created interests that are tied to the necessity of available credit. Despite Johnston's assurances, systemically endangering underwriting practices perdure in America's mortgage market. There are still no loan-to-value (LTV) requirements and while depository institutions were forced to accumulate CET1 capital in excess of 1.6 trillion USD – that excludes lesser Tier 1 as well as all Tier 2 –, a recent study conducted by The Economist found that CET 1 capitalization of America's mortgage industry was negative in 2014 and recovered only slowly in 2015 (The Economist 2016b, 15–16), which would significantly inhibit liquidity under strained conditions.

What is more, by performing two conflicting roles at once, the purpose of the mortgage system remains unclear. (The Economist 2016b, 17) In fact, mortgage markets are subsidized to serve a socio-economic agenda; after all, home-ownership has long been part of the American Dream and essential to its promise of middle-class ascension. (Kolko 2014, 1) As shown in a 2012 study by Zoltan Poszar and his colleagues at the New York Fed, such socio-cultural reasoning has an institutional politico-economic correspondent. They classify the industry into three categories. The so-called internal sub-system of shadow banking refers to how the business started out by circumventing existing rules in search for a higher return-on-equity (RoE). (Poszar et al. 2012, 15) One step further from the classic arbitrage explanation, however, Poszar and colleagues have also defined an external sub-system that evolved from the need to specialize in a market created by the internal sub-system. (Poszar et al. 2012, 17) The third category, however, is surprising and fits neatly into the argumentation presented above, namely, that political support for home-ownership has created structures dangerously close to bailing-in the wider public in the absence of effective rules regulating what is a government-sponsored shadow banking sub-system. (Poszar et al. 2012, 13) In total, this sub-system owns or guarantees USD 6.4 trillion – or three times the exposure of JPMorgan Chase in 2016. The Federal Housing Administration (FHA) even "[…] tripled its guarantee book since the crisis." (The Economist 2016b, 16) Deleteriously perpetuating a pre-crisis-like accrual of risk, these policies fail to align with the reforms the Obama administration advocated. In a speech in

2013, Barack Obama specifically outlined how his administration envisaged changing the cultural momentum behind a bloated mortgage industry:

> "It's important for us to encourage homeownership, but a lot of people rent and there's nothing wrong with renting. And we got to make sure that we are creating affordable opportunities when it comes to rental properties. In the run-up to the crisis, banks and governments too often made everybody feel like they had to own a home, even if they weren't ready and didn't have the payments. That's a mistake we should not repeat." (Obama 2013, 9)

To be fair, there are minor indications of change, but the overall trend has hardly been reversed. At 62.9 percent, homeownership in the United States is at its lowest point since 1965. (U.S. Census 2016) Contrary to traditional readings, this is not indicative for a deterioration of the economy and renting appears more often to be a deliberate lifestyle choice. With millennials in particular staying home or choosing more-generation arrangements in the aftermath of the crisis, construction on rental units was on a 15-year peak at the time of President Obama's speech. (Kolko 2014, 4) Now, while this trend indicates a stabilization of the mortgage market and suggests that those taking out a home-loan are more likely to be able to service their financial obligations, it also speaks to the incentives the mortgage industry had in lobbying for more lenient rule-making by the joint regulators. This matches findings by The Economist, which outlined that the societal value of homeownership goes hand in hand with maintaining a highly liquid mortgage bond market. (The Economist 2016b, 16)

According to the numbers, the presumed stabilization of the housing market has not materialized at all. To the contrary, failing to prescribe more restrictive provisions for qualified residential mortgages exempt from the five percent risk-retention requirements has led to a market yet again creating questionable assets that threaten to bring back the risk of contagion to the entire financial system:

> "[…] risky lending is booming, with a fifth of all loans granted since 2012 having LTV ratios of 95%, meaning homeowners are underwater if house prices fall by more than 5%. Most of these sit with the FHA. One big bank admits that it is selling at face value high-risk loans to the government that it expects will make a 10-15% loss due to homeowners defaulting." (The Economist 2016b, 17)

Considering the reforms in the banking sector and the fact that most bad debt is government owned, the immediate systemic risk could very well be manageable. But, at USD 26 trillion, America's housing stock is the single biggest asset class on the globe. The country's "[…] mortgage finance system, with $11 trillion of debt, is probably the biggest concentration of financial risk to be found anywhere" – with USD one trillion owned abroad. (The Economist 2016b, 15) The negligible political progress made regarding shadow banking is reflected in a

significant lack of international American leadership, which so far has forestalled meaningful progress within both FSB and G-20.

### International Reforms of the Shadow Banking Sector

Looking at the FSB's development of shadow banking policies consequently reveals an agenda largely incomplete and without critical momentum. Matching the late commencement of international coordination on the issue, the FSB's first publications remained unclear as to what policy could be pursued in limiting potential risks. In 2011, recommendations on strengthening oversight and regulation outlined that authorities should have an "[…] appropriate system-wide oversight framework in place to gain a comprehensive picture of the shadow banking system […]" (FSB 2011a, 7) Admittedly, this certainly is a starting point, but in 2011 that was the full extent of what the FSB was able to push its membership into accepting. Several more items followed. However, none of these were developed beyond the larger – and commonplace – insight that better and more accessible information is key in dealing with the shadow banking industry. (FSB 2011a, 9–10) Most of the eleven recommendations in the report were limited to calls for further review, re-assessment, or revamped monitoring. (FSB 2011a, 16–26)

### Risk-Retention: Skin-in-the-Game and no Players

The lack of a comprehensive agenda is illustrated further when we look at risk retention as one of the more substantial proposals. But, incentivizing actors to disperse risk more sustainably was only half-heartedly pursued. It was not before 2011 that FSB members agreed that keeping the overall potential for risk contagion at bay would require "[…] to incentivise suppliers of securitisation (e.g. originators, sponsors) to retain part of the risk associated with securitisation (i.e. retention requirements)." (FSB 2011a, 21) This is all the more striking if one looks back at both the work of the FSF working group on market and institutional resilience (MIR) and at the Geithner White Paper. As early as October 2007, MIR expounded on the necessity that structured investment vehicles – the essential legal underpinning for non-banking activity – and markets associated with their activity needed to share more of the responsibility when originating financial products. (MIR 2007, 2) Also, in its preliminary report the FSF has insisted that the originate-to-distribute model needed to be changed:

> "The underpinnings of the OTD model – including origination and underwriting standards, transparency at each stage of the securitisation process, the role and uses of credit ratings – need to be strengthened. Originators, underwriters, rating agencies and investors are working to this end. Authorities must ensure that an appropriate incentive structure comes into place." (MIR 2008a, 6)

The claim that those involved in the business of creating their own business, particularly originators and underwriters, would be working towards enhancing the foundation of the OTD model is not plausible; but somewhat fair enough considering how the last sentence puts the ball into supervisors' court. Given that the GFC took down healthy as well as purely speculative business models, even firm believers in free markets pointed to the systemic problems a complete absence of self-discipline had created. (McCulley 2007) Before this background, it is not surprising that MIR in its eventual report singled out the flaws of risk origination in more detail and called for strengthening "[…] the underpinnings of the OTD model […]" (MIR 2008b, 10) Yet, the issue went on the backburner after MIR's report was published in April 2008 and pressing issues regarding insured banking came to the fore. Therefore, the next consequential step on the matter did not occur before the Geithner paper was published, in which treasury named credit-risk-retention as its go-to policy in stabilizing the largest market for shadow banking activity:

> "The federal banking agencies should promulgate regulations that require loan originators or sponsors to retain five percent of the credit risk of securitized exposures. The regulations should prohibit the originator from directly or indirectly hedging or otherwise transferring the risk it is required to retain under these regulations. This is critical to prevent gaming of the system to undermine the economic tie between the originator and the issued ABS." (U.S. Treasury 2009, 44)

Bar the exceptions that were granted regarding QRMs, this approach is largely congruent with the eventual provision in DFA's section 941(b). However, considering the intense banking-focus of both DFA- and the FSB-agenda one can assume that the unevenly distributed market share forestalled the necessary peer pressure the FSB relies on to push global reform policies. At year-end 2010, the market share held by the Anglophone economies of the United States, the United Kingdom, and the non-FSB member Ireland was at 61 percent. Four years later, this share had dropped by only two percent. During the same period, the transatlantic share in shadow banking assets dropped from 15 to 13 percent. (FSB 2016b, 44, 2012d, 17) Given that during this time, the U.S. market not only remained by far the largest at 41 and 40 percent respectively, but that the overall banking focus of DFA reforms aligned with the public pressure that had singled out banks as the main culprits responsible for the crisis (Kaiser 2013, 82–83), the lobbying efforts by the industry could draw on established practices of non-bank credit provision to the broader public.

The outcome was a lack of U.S. leadership. And with no tangible political stake – aside from overall financial stability –, interest in prodding the issue along was rather minor. This is reflected in the way the G-20 approached the issue of risk retention at their Pittsburgh Summit.

Obviously feeling the need to emphasize that one year after the crisis "[…] our work is not done […]" leaders committed to vague diplomatic language:

> "We call on banks to retain a greater proportion of current profits to build capital, where needed, to support lending. Securitization sponsors or originators should retain a part of the risk of the underlying assets, thus encouraging them to act prudently. It is important to ensure an adequate balance between macroprudential and microprudential regulation to control risks […]" (G-20 2009b, 7–8)

Again, while it was literally the first thing that world leaders had identified after the September 2008 collapse, real reforms of global finance's seminal mechanism were framed in banking reform terms only. In Washington, leaders had unequivocally insisted that much of the financial crisis originated in "[…] weak underwriting standards, unsound risk management practices, increasingly complex and opaque financial products, and consequent excessive leverage […]" (G-20 2008, 1) Yet, an explicit mentioning of shadow banking by the G-20 did not occur before the summits in Seoul and Cannes held respectively in 2010 and 2011. In Seoul, leaders touched upon the topic in the manner already established. Promising to strengthen oversight (G-20 2010b, 3), leaders recognized that "[w]ith the completion of the new standards for banks, there is a potential that regulatory gaps may emerge in the shadow banking system." (G-20 2010c, 10) Consequently, the G-20 called the FSB to action. The ensuing report delineated eleven aspects that mostly identified areas for further inquiry.

. The lukewarm commitment to this particular area for reform mirrored the lack of significant regulatory progress at the FSB. At their Cannes summit, leaders limited the full range of their actions to having "[…] decided to develop the regulation and oversight of shadow banking" (G-20 2011c, 4) and subsequently committed to "[…] strengthened regulation and oversight […]" mentioning shadow banking as the eighth of eight reform areas. (G-20 2011a, 7) In a third document of the Cannes summit, the G-20 was then more outspoken on the matter, yet, with only limited interest in advancing a substantive proposal expeditiously:

> "The shadow banking system can create opportunities for regulatory arbitrage and cause the build-up of systemic risk outside the scope of the regulated banking sector. To this end, we agree to strengthen the regulation and oversight of the shadow banking system and endorse the FSB initial eleven recommendations with a work-plan to further develop them in the course of 2012, building on a balanced approach between indirect regulation of shadow banking through banks and direct regulation of shadow banking activities, including money markets funds, securitization, securities lending and repo activities, and other shadow banking entities." (G-20 2011b, 8)

Given the dilatory pace of reform at the G-20, the FSB was left alone in creating momentum for its agenda. First, it devised five work streams, two on shadow banking activity – that is, interaction with the insured banking sector (WS 1) and on securities lending and repurchase agreements (WS 5) – and three on involved entities: money market funds (MMFs) (WS 2),

which because of their short maturation and buy-out provisions are susceptible to runs, on entities other than MMFs (WS 3), and on securitization (WS4). Such descriptive detail is important because the FSB is almost entirely member-driven due to its institutional commitment to reaching a consensus and its comparatively minimal command over institutional resources. Rather than setting and implementing a specific agenda, the FSB's rudimentary approach served to gain a sense of direction. The 2011 recommendations fed the G-20's indecisiveness, because regulators started at the very beginning outlining seven principles on how to gather data before "[…] developing an effective monitoring framework […]" (FSB 2011a, 6) Outlining what authorities should focus on, the 2011 report declared that the data was insufficient to attain the goal of "mapping" the shadow banking industry and therefore called upon jurisdictions to provide better information:

> "The FSB thus recommends that member jurisdictions improve the granularity of the Flow of Funds data […] At a minimum, authorities should be able to segregate 'banks' that are subject to prudential regulatory standards and supervisory oversight from other financial intermediaries such as 'central banks' and other non-bank financial intermediaries. Also, authorities should obtain breakdown information on different types of non-bank financial intermediaries such as insurance companies, pension funds, MMFs, structured finance vehicles and investment/hedge funds." (FSB 2011a, 9–10)

The FSB apparently felt the need to remind members that it required data to gain insights into the systemic risk. Striking is, moreover, that the Board emphasized such data would have to meet some qualifying criteria. The call for a differentiation between banks, non-banks, and central banks is a reminder that without an agenda set beforehand, international rule-setting can assume rather rudimentary beginnings.

The FSB developed five economic functions (EFs) "[…] for classifying other," meaning non-MMF, "shadow banking activity." (FSB 2013b, 6) These EFs include collective investment vehicles prone to liquidity shortages during stressed conditions via runs (EF 1), loan provision that is dependent on short term funding – for example, through re-financing arrangements – (EF 2), the intermediation of such loan provision (EF 3), the facilitation of credit creation[190] (EF 4), and securitization-based credit intermediation and funding of financial entities (EF 5). (FSB 2013b, 6–11) These EFs are the foundation in developing a larger regulatory strategy. Depending on the function performed, regulators can assess the respective non-bank financial activity by its economic purpose, use the guidance of four so-called overarching principles (FSB 2013b, 14–15), and then rely on the policy toolkit regulators devised in response to the potential threat posed by actors fulfilling one or more of the EFs stated above. (FSB 2013b, 14–22)

[190] Here, the classic example would be products that insure assets, hedge against risks, or bet on their default.

The four overarching principles are the following: First, there is the so-called "regulatory perimeter" that featured heavily in the initial 2011 report and serves regulators to assess whether or not a financial company or activity is within their jurisdictional grasp. (FSB 2011a, 6, 2013b, 13) The remaining three principles derive from the larger question of whether or not a certain financial activity is actually regulated. Principle two reminds regulators to focus on the potential risks of activities within the perimeter, principle three calls for disclosure to inform market participants about those risks, and principle four takes it all back to the beginning: "Authorities should assess their non-bank financial entities based on the economic functions and take necessary actions drawing on tools from the policy toolkit." (FSB 2013b, 13–14) This last point relates to the more substantive proposals of the toolkit. Referring to each EF, the report makes a set of policy options available. Especially regarding EF 1, risk-retention promises a genuine approach. But just as Willen has outlined for the U.S., retention is unlikely to prevent the build-up of risk before the burst of a bubble when economic conditions lead to deteriorating market-discipline. (Willen 2014, 82)

Since their short maturity makes MMFs and other collective investment vehicles (CIVs) prone to runs on their uninsured deposits, regulators proposed to complicate their redemption. Some of these measure are tightening access windows, install gates to "[…] constrain the redemption amounts to a specific proportion on any one redemption day" (FSB 2013b, 14), impose fees on redemption during stressed periods, or "[…] by legally separating the impaired or illiquid portions of an investment portfolio to prevent them from impacting a CIV's returns." (FSB 2013b, 15) While the last issue is likely to raise questions of market integrity – after all, how do you draw the legal distinction between assets that lose their value due to normal market behavior and genuinely vulnerable assets –, it remains an approach that pushes for solutions distinctive to the problems found in banking. However, somewhat indifferent that shadow banking exists exactly because it is not banking and, hence, constitutes a more flexible source of credit, the rest of the toolkit makes recourse to limiting the access to funds, relies heavily on capital and liquidity buffers, and mentions the retention of risk only with regard to the insurance against credit risk. (FSB 2013b, 21)

American Disinterest Makes for a Rudderless Status Quo

All in all, the thrust of the agenda was rather vague and stayed true to the FSB's initial diagnosis that its framework would have to find access points in many jurisdictions, since there "[…] is no unique way to monitor the shadow banking system as it varies across jurisdictions and evolves over time." (FSB 2011a, 6) It was to be expected that with no leadership from the

largest market, reform development would be secured in broad and diplomatic terms promising shelter to vested interests. Relying on largely agreed upon concepts from banking reform was also thought to streamline efforts and prevent a myriad of potentially conflicting regulatory tools. Irrespectively, the slow pace of the FSB – and that means primarily its members – is noteworthy all the same. In 2013, with two years already spent on defining a regulatory north, first attempts at a larger information sharing regime were announced for "[…] March 2014 so that the FSB would be in a position to start a peer review process of national implementation of the framework by 2015."

Taking its time, the FSB was unable to deliver on the implicit promise of gaining comprehensive oversight and use this as the starting point for regulatory action. Following the information sharing exercise, in 2014 the FSB masked the collective failing to make headway by broadening the scope of the international analysis and, consequently, calling for more data. (FSB 2014c, 8–9) Spinning the fact that a full grasp on the industry was still out of its reach, the FSB used the final rule-making by the joint regulators in the U.S. as a sign of substantial reform. Yet, keeping in mind the potentially vast loopholes the formulation of section 941(b) has left, the irony of using it as a reference for the following was unlikely to be lost on the FSB:

> "The preliminary findings, based on self-assessments as of June 2014, indicate that there has been good progress in implementing the recommendations [of the 2013 report], with a majority of responding jurisdictions having adopted measures or taken some actions to implement the recommendations." (FSB 2014c, 5)

Self-assessment points to a larger puzzle analysts are confronted with when looking at an otherwise often effective FSB. In a monitoring report published around the same time, the Board initially claimed that it "[…] includes data from 25 jurisdictions and the euro area as a whole, bringing the coverage of the monitoring exercise to about 80% of global GDP and 90% of global financial system assets." (FSB 2014b, 1) Obviously, these numbers aim at instilling confidence in the common regulatory endeavor. But, two issues are tied this statement and they plausibly suggest that what little real progress can be referenced might only be window dressing. First, this last quote builds empirically on the aforementioned report by the IMF, in which the U.S. shadow banking market was singled out at some length for its immense and unparalleled contribution to systemic risk:

> "Nonbank financial intermediaries contribute substantially more to systemic risk in the United States than in the euro area or the United Kingdom […] In the euro area and the United Kingdom, the banking sector contributes relatively more to systemic risk because of its size and direct and indirect interlinkages […] In the United States at the end of 2013, the shadow banking sector accounted for about 30 percent of systemic risk, about as much as the banking sector. However, for the euro area and the United Kingdom, the

> shadow banking sector MCSR[191] amounts to only 13 percent and 7 percent, respectively. The contribution of different sectors to systemic risk is fairly stable over time." (IMF 2014, 84)

With American shadow banking at 40 percent in 2014 continuing to claim the biggest market share internationally (FSB 2015f, 11) and its mortgage market – "[…] the largest asset class in the world […]" (The Economist 2016b, 16) – critically underfunded, the low-interest-rate policy by central banks in the transatlantic has further deteriorated incentives to re-regulate a business that is among the few financial services providers with substantial RoE. While this could change in the future, and first tepid steps to that effect have been taken by the Fed, if not by the ECB, (Russell 2017) it might be too late yet again.

Without Leadership Progress Remains Elusive

The window of opportunity that created momentum in the United States and fueled the international reform efforts has closed rendering meaningful reform unlikely. Put differently, the FSB had to concede in 2014 that it did not make relevant progress aside from finding "[…] evidence of risk-taking through non-bank credit intermediation […]" What is more, preparing to "[…] refine the information-sharing process as necessary […]", the FSB announced to "[…] launch a more comprehensive exercise next year that covers all FSB member jurisdictions. The results of the information-sharing exercise will provide the basis for a peer review regarding member jurisdictions' implementation of the policy framework." (FSB 2014b, 37) Skipping a year in this thickening description of regulatory standstill, it is unsurprising that the main finding of the "Thematic Peer Review on the Implementation of the FSB Policy Framework for Shadow Banking Entities" published in May 2016 covered the lack of progress in language more euphemistic than diplomatic:

> "Notwithstanding the progress that has been made, the peer review findings indicate that implementation of the FSB Policy Framework *remains at a relatively early stage* [emph. ad.] across its four overarching principles. From the perspective of jurisdictions, more work is needed to review the regulatory perimeter; enhance data collection and remove impediments to cooperation and information-sharing for the assessment of shadow banking risks; and ensure the adequacy of public disclosures by non-bank financial entities." (FSB 2016b, 33)

To widen the appeal of the argument that American disinterest prevented real international progress, I want to shine a light on strategic considerations by the administration that go hand in hand with claims of vested material interests imposed by lobbyists. Asked for how the structure of international regulatory cooperation was amended in 2009, one U.S.-based inter-

[191] MCSR refers to the "marginal contribution to systemic risk" a value that indicates the respective subsector's probability to incur losses for the larger system "[…] with a probability of 1 percent or less." (IMF 2014, 84)

viewee responded at length describing a development that also informs one of the main conclusions of this thesis, namely that the system of regulatory competition was not replaced by international cooperation but American interest-projection:

> "There are really two different levels of international cooperation. There is cooperation and there is coordination. The coordinative side has always been a technical exercise that everyone, kind of, agrees with. It often proves difficult around cooperative mechanisms, that is in the sharing of information – and this actually is a key thing. It's like all the regulators and supervisors think they don't really need to share information."[192]

Interviewee U8JESC then delved into an illustrative narrative outlining that cooperation had to transcend legalistic statutory authority. The work of regulators also required cooperation on a personal level with officials maintaining regular communication, because with limited resources and companies connected worldwide: "You do need to rely on the other guy and some of it is often much more touchy-feely than you think." Describing that an awareness and appreciation for global interpersonal networking started before the GFC, my interviewee emphasized that the crisis underscored the necessity to continue cooperation on such a level, because:

> "[…] a tendency of supervisors of all sorts – and this is particularly true of banking supervisors, but you see it in securities and insurance, too – is they don't like to share. They're seeing really powerful financial data: proprietary information. They're scared to death that it leaks. So, they don't want anybody outside involved in it. The Federal Reserve doesn't even like to share with other U.S. regulators."[193]

Seeing as the FSB's raison d'être was to connect regulators and facilitate international cooperation, therefore, providing information relevant to their work, the logical follow-up question was whether this tendency of excessive secrecy was reduced since the FSB's inception: "Oh, they work on it. It's somewhat persistent. You listen to my boss; he would candidly admit that sometimes it's easier to get information from the ECB than it is from the Fed. Some of that is just legal." However, U8JESC outlined that legal provisions were standing in the way of cooperation on both sides of the Atlantic. While cooperation with supranational EU organs like the European Central Bank (ECB) or the European Systemic Risk Board (ESRB) were unproblematic, agencies in member states were another matter:

> "You go to a single supervisor and they say: 'Let me go and talk to my lawyers.' It's because of the nature of what they're doing. It makes sense, but it is a barrier. If you had gone before the financial crisis to the bank of England: Their supervisory people would

[192] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.
[193] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

> not share information even within the same building. Now, it seems that the financial crisis broke those barriers – to a degree! You know, to a degree. There are still problems. It's better, though, then it was before."[194]

This assessment was supported by an international high-level official, outlining that one of the major political challenges during the crisis was countries' reluctance to enshrine cooperation as a legal domestic principle and ascribed this to a political unwillingness to engage in long-term commitments:

> "I think, a key problem has always been that each regulator is legally obliged to do certain things in a certain way in their home countries and they are also not supposed to share information. They have a lot of proprietary information and that has hampered collaboration, because even if people had wanted to collaborate, they were sometimes limited in the amount of information they could give away."[195]

Fifth Case: Accounting Standards – Aspiring Harmony, Locked in a Transatlantic Stalemate

From the very beginning, the harmonization of accounting standards was part of the global agenda for regulatory reform. (MIR 2007, 3; U.S. Treasury 2008a, 109; G-20 2008, 4; U.S. Treasury 2009, 18; G-20 2009a, 5–6; MIR 2008b, 26; G-20 2009b, 10) Moreover, America and Europe can look back at significant collaborative efforts in streamlining how assets are recorded, exposure is registered, and receivables are billed. Accounting standards make an interesting case, because it illustrates two things. First, the market working with non-American accounting standards was already staggeringly larger[196] before the crisis gave even more reason to agree on a common set of rules. Still, the U.S. has withstood the pressure at standard harmonization. This shows that market-power – as the interest-driven leverage of size and standard-setting expertise – is not a function of market-size. Second, Treasury's Blueprint and White Paper favored an internationalization of standards and, what is more, found an international community eager to collaboratively meet America's wishes. Without the political capital to include a correspondent legal provision in DFA to that extend, however, the U.S. administration was unable to press home what would have for once required an American adaptation of standards only.

Accounting standards are like economic languages. They contain information connecting companies, businesspeople, and stakeholders. Within one realm of accounting, standards make market signals comparable so that investors can rank the information they receive about individual companies. The importance of such a business-language is particularly apparent

[194] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.
[195] Author's interview on September 24, 2015. Comments not for attribution. Reference code: MSSLXW.
[196] Today, 119 jurisdictions require the use of one common set of standards, with another 14 expected to implement the full array within the next years. (Pacter 2016, 4)

when it comes to publicly owned companies. (Mattli and Büthe 2005, 400–401) Since the last recession, regulators can use this information to relate individual performance to overall system-wide risk-taking. (Novoa, Scarlata, and Solé 2009, 27) Two standards have evolved over the years: International Financial Reporting Standards (IFRS) and its older counterpart U.S. Generally Accepted Accounting Standards (GAAP). Since 1973, the SEC has deferred authority to develop its GAAP to the Financial Accounting Standards Board (FASB), a private not-for-profit standard setting foundation. (Herdmann 2002) IFRS on the other hand have been developed in the United Kingdom by the International Accounting Standards Board (IASB) since 2000. Moreover, it is important to note that IASB's predecessor was also established in 1973 and from its beginning aimed at the development of standards that could be applied globally. (Pacter 2016, 9)

As we have seen in the first chapter, GAAP used to be very attractive internationally due to the U.S.' deep and liquid financial markets. Using its supranational authority, the European Union pronounce IFRS to be its accounting norm and negotiate a mutual recognition agreement with the U.S. (Posner 2009, 2010a, 2007) On September 18, 2002 both FASB and IASB passed a memorandum of understanding (MoU) called the Norwalk Agreement. Both sides "[…] pledged to use their best efforts to (a) make their existing financial reporting standards fully compatible as soon as is practicable and (b) to coordinate their future work programs to ensure that once achieved, compatibility is maintained." (FASB and IASB 2002)

Given that these efforts predate the financial crisis, Dodd-Frank – and with it American leadership in internationalizing any respective domestic re-regulation – has remained silent on convergence. However, FSB-related activity peaked in 2010 with three reports being issued to the board quarterly. (IASB and FASB 2010a, 2010b, 2010c) In 2011, the FSB was not officially updated and in April 2012 a short update note informed the FSB that 2013 – once sought as a starting date for a converged standard by both parties – had receded into the distance: "Delays in completing these much-needed improvements to financial reporting are unfortunate, but necessary to ensure that any changes are operational and will bring about an improvement to financial reporting in these important areas." (IASB and FASB 2012, 2)

At their Moscow meeting in February 2013, the G-20 Finance Ministers and Central Bank Governors – as the organizational level superior to the FSB – were provided a summary of remaining critical long-term issues. In its annex, FASB and IASB attached a presentation delineating the major roadblocks to convergence. At that point in time cooperation was all but over and it probably did not help that IASB passed the buck to FASB declaring its loan-loss model to be excessive and generally referring to parts of GAAP as "[…] complex and confus-

ing." (IASB and FASB 2013, 19–20) Thereafter, overall collaboration and reporting to the FSB ended abruptly making clear that the cooperation of the Norwalk process was unable to take advantage of the larger momentum for post-crisis reforms.

Closing Loopholes, Improving Translation

Today, both standards are still in place. During the financial crisis, both disclosure systems failed to signal the sheer magnitude of individual and systemic risks to which market participants had exposed themselves. The abovementioned report by the IMF was published in March 2009 and was particularly concerned with fair-value accounting's procyclicality – that is, "[…] risk being underestimated in booms and overestimated in recessions." (Borio, Furfine, and Lowe 2001, 1) Fair value means that an asset of any kind is recorded not at the price for which it was acquired, but at the amount for which it "[…] could be exchanged, and a liability settled, between knowledgeable, willing parties, in an arm's length, orderly transaction." (Novoa, Scarlata, and Solé 2009, 5) It is easy to see that starting with the liquidity crisis in 2007 this principle amplified herd behavior, demand and supply got skewed, and assets of all qualities came under pressure. When the housing bubble burst, liquidity was gone. This meant that meeting outstanding credit obligations created fire sales, in which even solid assets went for market prices far below their worth under more stable economic conditions. Therefore, fair value accounting made:

> "[…] more transparent the effects of economic volatility on balance sheets that, under certain risk management frameworks, could exacerbate cyclical movements in asset and liability values. Exaggerated profits in good times create the wrong incentives. Conversely, more uncertainty surrounding valuation in downturns may translate into overly tight credit conditions, and negatively affect growth at a time when credit expansion is most needed." (Novoa, Scarlata, and Solé 2009, 27)

Since the alternatives would be far worse, Novoa et al. do not question fair value accounting as such. But, they do recommend that companies be forced to strengthen their economic resilience. Doing so means to systemically ease the pressure on balance sheets by forcing firms, much like banks and BHCs, to accumulate more liquid capital. That way, volatile asset prices would not be the only signifiers in determining a company's market position. (Novoa, Scarlata, and Solé 2009, 29)

In September 2009, the BIS published a study on the role special purpose entities (SPEs) played during the crisis. SPEs are legal entities that own the assets or debts of a sponsoring company. These sponsors, in turn, keep the respective SPE entirely off their balance sheet. Except for some SIVs, these sponsors generally have no legal claim or responsibility regarding the SPE's assets and debts. (Tabibi 2013, 3) The relevant connection between SPEs and

accounting issues became apparent in 2009 when the BIS noted that the OTD business, rather than disperse, created inherently contagious risk:

> "[…] tranches initially retained at deal inception can be subsequently sold or else transformed through re-securitisation processes. Originating firms also have an asymmetric informational advantage in knowing more about the exposures than investors, which could potentially allow them to structure a deal to most efficiently transfer risk away from themselves." (BIS 2009a, 3)

As with so many causal relations regulators delved into, it took a while for this mechanism to be properly understood. Novoa et al. had touched upon the link between SPE's and the informational deficit that led to the 2008 financial crisis. The link between accounting regimes and SPEs was incrementally unveiled. Initially, McCormick and Kohn had called for a reappraisal "[…] of risk management issues, involving in particular firms' accounting, relationships, and disclosure of structured credit products and investment vehicles." (McCormick and Kohn 2007)

Transcending the distinction between legal obligations and real-economic exposure, it became clear how the extensive use of off-balance-sheet entities incurred meaningful reputational costs that forced sponsoring companies to assume liability for obligations they had formally outsourced (MIR 2007, 3, 2008a, 3; PWG 2008, 17; SSG 2008a, 10; MIR 2008b, 5); and in some cases had a legal obligation to resume, after all. (Acharya, Schnabl, and Suarez 2010, 2)

Regarding the significance of SPEs for accounting regimes, the BIS concluded that reputational considerations were not only leveling the targeted profits of SPEs, but that prior to the crisis and into 2010 transforming debts and assets was "[…] easier to achieve under US GAAP than under IFRS." (BIS 2009b, 13) On the other hand, while the legal proceedings of outsourcing liabilities were simpler under U.S. accounting rules, in Europe risk-based capital requirements, which turned out to be insufficient financial buffers, were "[…] not as closely tied to accounting as in the US." (BIS 2009b, 18) With favorable conditions for sponsoring in the U.S., IFRS made it easier to keep investors in the dark about exposure. Hence, the informational deficit that precedes and accompanies all financial crises was amplified by the individual deficits of both IFRS and U.S. GAAP.

### Regulatory Movement with No Political Momentum

Considering that merging the two dominant accounting languages could be a stepping stone in regulators' endeavors to achieve a more thorough comprehension of how to avoid systemic risk, it is somewhat surprising that U.S. GAAP and IFRS are still two separate systems. Particularly so, as the Norwalk MoU was signed in 2002. (FASB and IASB 2002) The SEC itself

encouraged cooperation when it proposed a roadmap in November 2008. Its aim was to require the use of IFRS "[…] by U.S. issuers as part of its consideration of the role a single set of high-quality accounting standards plays in investor protection and the efficiency and effectiveness of capital formation and allocation." (SEC 2008, 9) Noting that IFRS was used in jurisdictions representing over 30 percent of global market capitalization (SEC 2008, 14), the SEC's goal was clearly to encourage more global and, ipso facto, less correlated investment behavior. Using one common accounting standard would augment "[…] U.S. investors' ability to evaluate investment alternatives as their level of investment in non-U.S. companies has increased over time." (SEC 2008, 16)

The G-20 supported convergence starting with the group's first international summit in Washington D.C. Heads of states and governments even decided on language calling for standard conversion in the medium-term: "The key global accounting standards bodies should work intensively toward the objective a single high-quality global standard." (G-20 2008, 6) While states were preoccupied at the London Summit with short-term questions like fair-value accounting and grappling with the role of SPEs during the crisis, during their meeting in Pittsburgh the parties already signaled that they were expecting FASB and IASB to make progress more expeditiously: "We call on our international accounting bodies to redouble their efforts to […] complete their convergence project by June 2011. The International Accounting Standards Board's institutional framework should further enhance the involvement of various stakeholders." (G-20 2009b, 10) This last caveat was included explicitly on behalf of U.S. representatives, who were skeptical about the EU's potential political influence on the IASB without considering – as FASB does extensively – input provided by the private sector.[197] Talking with stakeholders in Washington in March 2011, then-Chairman of the IASB, Sir David Tweedie, tried to strike a conciliatory tone in mitigating transatlantic disagreements: "I will not deny that we get out share of pressure." (A. Jones 2011b) However, at that same meeting Tweedie did touch upon a critical difference in opinion that one of the interviewees clearly found to unnerving and elaborated on less diplomatically:

> "[…] the U.S. was very critical – very critical – of the Europeans interfering in the IFRS/IASB standard setting. So, we had this big problem with hedge accounting […] And in Europe, we carved out a little bit of the standards and everybody said how evil it was, when in fact it was a very good decision because we managed to get an international accounting standard agreed in Europe. In fact, I had the President of France on my back among others, but particularly him. So, we did make some changes to the standards, but pretty minor, really, when you look at the whole and the U.S. said 'Oh, we can never join this system while there is political interference.'

[197] Author's interview on June 3, 2016. Comments not for attribution. Reference code: C5IGY2.

> Well what happened in the middle of the crisis? What happened in the middle of the crisis was that Congress pressured FASB to change its available-for-sale mark-to-market rules, because an awful lot of lousy assets were in the available to sale category and they wanted to be able to book those at (laugh) historical cost as opposed to mark-to-market […] So that was deliberate political interference, which the FASB complied with and Europe actually did the same thing […] So, I'm not saying it was good, but it is a total illusion to say that the U.S. has a completely independent standard setting system."[198]

In addition to Tweedie and interviewee C5IGY2, academic research has discarded the notion that IFRS was somewhat more or less politicized than U.S. GAAP. (Cunningham 2008; Leblond 2011; Shelton, Owens-Jackson, and Robinson 2011; Barth et al. 2012; Pöschke 2012; Pologeorgis 2012; CPA 2013; Wade 2013; Katz 2014; Burnett et al. 2015; Schmid, Martino, and Anraku 2016) Leblond's account on merging the two accounting systems has been particularly illuminating regarding the politicization of IASB standards. In short, his argument is that there is political influence, of course, but that this influence exists in all instances of standard-setting and that the IASB has been successful not despite, but because it was able to balance the political pressures of both its largest stakeholder – the EU – and its largest prospective market – the U.S. In so doing, the IASB insisted that only independence and transparency could ensure high-quality standards, which led to the creation of a Monitoring Board at the level of IASB's governing body, the International Accounting Standards Committee (IASC). Already in 2007, the European Commission, the SEC, Japan's Financial Services Agency, and IOSCO had called for a body representing IFRS' global interest- and stakeholders. This Monitoring Board represented all those parties and gave IASB an institutional lever in averting unwanted and politically motivated solicitation for standard alteration. (Leblond 2011, 455)

To understand why American stakeholders remained entrenched behind their opposition despite IASB's far-reaching institutional inclusion of the SEC, it is necessary to take a closer look at the policy-side of the politicization debate. As touched upon by interviewee C5IGY2, the IASB made changes in 2008 so that instead of using their mark-to-market – or fair – values assets could be reported "[…] at amortized costs, which means they will not have to report any further falls in market prices and any gains will be spread evenly over the lifetime of the asset." (Hughes 2008) Intense lobbying by the European Union had led to these changes and Tweedie explained that the decision was a hard one to make, since the organization wanted to keep the rule as was. Alluding to a necessary endorsement of IFRS – the mechanism through which the EC retains authority over the standards used in its jurisdiction – Tweedie stressed: "[…] it was better if the changes were made by accountants rather than politicians";

[198] Author's interview on June 3, 2016. Comments not for attribution. Reference code: C5IGY2.

particularly so, since the new rules also came with beefed up disclosure requirements that made it possible to "[…] find details of which assets were transferred." (Hughes 2008) Such tweaking notwithstanding, standard convergence was persistently criticized "[…] the widely used (and known) practice under which countries' regulators 'carve out' parts of IFRS they find to be offensive […]" (Miller and Bahnson 2015, 20) Under the headline "MUCH PAIN, NO GAIN," Paul Miller of the University of Colorado and Paul Bahnson of Boise State University raged against the idea of uniform accounting standards and about:

> "[…] SEC leaders' fixation on international standards [as] not supported by rational analysis. We are also puzzled by the chair's persistence in this unattainable quest despite the uproar created by her pressuring the Financial Accounting Foundation to contribute to the IASB's coffers in 2014." (Miller and Bahnson 2015, 20)

To set this development in perspective, it is necessary to point out, first, that the optional carve-out to the relevant international accounting standard (IAS) 39 is planned to be temporary. IAS 39 deals with fair value accounting as it pertains to the recognition and measurement of financial instruments. Therefore, concerns about risk development are certainly reasonable. However, IAS 39 is the chosen fair value method of "[…] fewer than two dozen out of the 8,000 listed companies in the EU." (Pacter 2015, 12) What is more, starting January 2013 the IASB implemented its new standard IFRS 13, which across all standards has streamlined what is to be considered fair value. (Pacter 2016, 181; PwC 2012) It was endorsed to be implemented without delay by the European Commission in June 2012. (EC 2012a, 3) Ironically, it was the American standard that allowed for more flexibility in mark-to-market accounting in the first place and, therefore, "[…] it is worth noting that the IASB's decision actually led to greater convergence between IFRSs and US GAAP." (Leblond 2011, 455) In fact, it did not surprise observers in 2011 that FASB – faced with China's and India's more serious engagement with IFRS – toned down "[…] controversial 'fair value' elements to bring it more into line with the IASB approach." (A. Jones 2011a) Lastly, and to give some perspective to the internal divisions in American regulatory politics, IFRS 13 was the result of close FASB–IASB collaboration and completed "[…] a major project of the boards' joint work to improve IFRSs and US GAAP and to bring about their convergence." (FASB 2011)

### American Divisions: Globalism vs. Economic Nationalism

This joint development of one fair-value standard speaks to the larger strategy the SEC has pursued in achieving greater comparability. With parts of the American public remaining opposed to convergence, the SEC continued its support. In 2010, it had published an official "Statement in Support" as well as a more technical "Work Plan" for how to incorporate IFRS

into the U.S. accounting system. (SEC 2010b, 2010a) In the wake of the global financial crisis, FASB and IASB had commissioned a report by the Financial Crisis Advisory Group that eventually led to the joint creation of IFRS 13. Like the IMF's report, the group maintained that differences and weaknesses in international accounting did not cause the crisis. However, some weaknesses were exposed:

> "(1) the difficulty of applying fair value ("mark- to-market") accounting in illiquid markets; (2) the delayed recognition of losses associated with loans, structured credit products, and other financial instruments […] (3) issues surrounding the broad range of off-balance sheet financing structures, especially in the US; and (4) the extraordinary complexity of accounting standards for financial instruments […] Some of these weaknesses also highlighted areas in which [IFRS] and [US GAAP] diverged." (Goldschmid and Hoogervorst 2009, 3)

The SEC made full reference to these findings (SEC 2010b, 12) and pointed out that despite the difficulties still facing harmonization it was committed to a single set of global standards because "[…] IFRS is best-positioned to be able to serve the role as that set of standards for the U.S. market […]" (SEC 2010b, 2)

Obviously, the question here is why the project has not been concluded by now. The technocratic answer is straightforward and does not preclude convergence as such. However, the political agenda behind these arguments bears the regalia of economic nationalism rather than cost-efficiency considerations. When reading the officially submitted comments to the SEC's technical Work Plan it is hardly surprising that internationally active firms argue strongly in favor of harmonization, since it would reduce their cost of preparing disclosure forms. (Illiano 2011; Ackermann and Dallara 2011; Stahlin and Melancon 2011) U.S. firms with no international business on the other hand have no interest in investing time and resources into learning the a new language. (Pologeorgis 2012) One commentator warned, for example, "[…] that the move to IFRS will further solidify the oligopoly position of the Big Four Accounting firms." (Heesen 2011, 5) While it would be challenging for small- and medium-sized businesses to switch standards, the oligopoly argument seems logically incoherent. Especially economies of scale, as represented in the capabilities of accounting giants like Deloitte, Pricewaterhouse-Cooper, Ernst&Young, and KPMG, find no issue in the cross-jurisdiction specialization necessary to prepare disclosure statements in several accounting languages. It seems counterintuitive to assume that domestic firms having weathered the adjustment to IFRS would be in a worse position towards big players than they are now.

Opposition for reasons of adaptation costs makes sense; and the SEC adjusted its transition plans due to concerns in the private sector in May 2011. Hence, it published the update to the Work Plan with the intention to explore a "Possible Method of Incorporation," which then-

Deputy Chief Accountant Paul Beswick had spontaneously termed “condorsement” at a conference of the American Institute of Certified Public Accountants (AICPA). (Beswick 2010) With this combination of *convergence* and *endorsement*, the SEC answered calls for a more careful transition of standards as well as concerns about U.S. sovereignty. Regarding the latter, Lawrence Cunningham, a legal scholar at George Washington University, formulated a carefully weighed critique of the SEC’s vision as early as 2008. (Cunningham 2008) Overall, Cunningham supports the goal of convergence and following a Weberian argumentation “[…] takes universal accounting as a pre-condition to global capitalism in the 21st century […]” (Cunningham 2008, 3) However, he is also concerned about the role that the legitimate authorities would play in controlling standards for the world economy, because: “[…] SEC delegation to IASB would represent a non-trivial relinquishment of US sovereignty to an international non-governmental organization.” (Cunningham 2008, 25)

Where concerns for American autonomy were not embedded in mostly polite academic discourse, things got bewilderingly crude. The entire comment of W. Anderson Bishop, CFO at Hallador Energy, came with an undertone clearly betraying his concerns for U.S. sovereignty: “Bad idea. We did not switch to the metric system so why switch to IFRS. Keep US GAAP but make it optional for public companies to file supplementary IFRS data. Do not, i [sic!] repeat [sic!] do not force this on US public companies.” (Bishop 2010) And private sector opposition on these grounds continued. So much so, in fact, that Chris Barnard, a regular commentator on regulatory provisions, felt the need to emphasize: “In some cases there are perceptions that incorporating IFRS is like ‘giving in’ to the IASB, or weakening US sovereignty in this area. I disagree with these perceptions.” (Barnard 2011) Endorsement – a practice the SEC adopted explicitly from the role the European Commission plays when it comes to IFRS implementation in the EU (SEC 2011a, 5–6) – was supposed to remedy sovereignty issues while helping the American economy to ease into the new accounting regime. The practice had already been an integral part of the initial considerations by the SEC, which envisioned that FASB would be the U.S.’ technocratic bridgehead into the IASB and “[…] that role would remain critical after adoption of global standards.” (SEC 2010b, 24–25) The SEC specified this vision in 2011, outlining that FASB would continue to serve the interests of the U.S. market albeit with the significant difference that “[…] FASB would participate in the process for developing IFRS, rather than serving as the principal body responsible for developing new accounting standards or modifying existing standards under U.S. GAAP.” (SEC 2011a, 8) Instead of the SEC, FASB would become the gatekeeper responsible for integrating final IFRS into the U.S. accounting system. (SEC 2011a, 10) In the words of Lawrence Cun-

ningham, even such a non-trivial relinquishment of sovereignty to the U.S. private sector failed to appease the opposition.

Regarding the convergence-part of "condorsement", the SEC proposed that it would prefer to rely on the technical expertise of FASB to develop a plan of transition that could reduce "[…] cost, effort, and other transition obstacles." (SEC 2011a, 2) At this point it is important to note that the SEC also wanted the U.S. standard setter in such a prominent role, because as a private-sector organization it is uniquely positioned to mitigate the fierce opposition and in many instances uncalled-for criticism the SEC received. Therefore, in its 2011 update to the work plan the SEC emphasized that its final decision for IFRS adoption was still pending and that any eventual transition would proceed in close collaboration with, again, the private sector:

> "Subsequent to a Commission decision to incorporate IFRS, the FASB would need to develop a transition plan in a relatively short period to allow for U.S. constituents to plan appropriately. To develop the transition plan, the FASB would evaluate IFRSs individually in order to determine how and when to incorporate the standards into U.S. GAAP during the transition period. The FASB would need to study whether the incorporation should be staged, phased, or occur all at once." (SEC 2011a, 14)

All this notwithstanding, within the large corpus of 158 submissions[199] many commentators remained quite outspoken about how they felt about any form of standards change, despite purported facts oftentimes not matching reality. A pointedly voiced case comes from Anthony H. Catanach and Edward Ketz of "Grumpy Old Accountants," who entitled their submitted comment: "IFRS is for criminals." (Catanach and Ketz 2011) Substantively, this comment aimed at the cultural difference between U.S. GAAP and IFRS to respectively depend on rules-based or principle-based provisions. However, in their own voice the criticism sounds significantly less balanced:

> "IFRS is an elixir for unscrupulous managers. These imps will be able to skim assets from their firms and cover their tracks […] Principles-based accounting produces value only when managers and their advisers are principled […] Sadly, hundreds and hundreds of restatements and many SEC litigation […] prove that society does not have enough principled managers to make it work […] So here we are with our so-called leaders in DC and in Connecticut[200] escorting us down this primrose path. If they continue to inflict IFRS on the American investment community, they will find more thorns than flowers. IFRS truly is a charade and the only ones who will benefit are those with criminal intent." (Catanach and Ketz 2011)

Regarding the language chosen, this is as bad as it gets. However, Catanach and Katz do have two points. The main issue comes down to difference in transatlantic philosophy. Rules-based regulation can be understood as referring to a set of more or less clear prescriptions and proscriptions intended to unequivocally guide accountants in the way they conduct their work.

[199] All submissions can be found under https://www.sec.gov/comments/4-600/4-600.shtml.
[200] FASB is headquartered in Norwalk, Connecticut, USA.

Conversely, principles-based regulation provides companies with a function their individual systems of accounting is intended to serve. Reminiscent of the Blueprint's thrust for regulations that are flexible enough to keep up with ever-changing financial services (U.S. Treasury 2008a, 137–38), the means necessary to achieve these goals are left to the companies themselves. As Phillips has pointed out, the supervisors' task in this system is to "[…] scrutinize the substance of the entity's activity to determine if it comports with the spirit of the objective embodied by the principle. So characterized, principles often require an ex post determination of compliance." (Phillips 2010, 616–17) As Pöschke, a law-scholar and expert in both GAAP and IFRS, has pointed out, ex post determinations are not a natural fit in a "[…] litigation prone environment […]" such as the United States. (Pöschke 2012, 67) Even some of the most enthusiastic proponents of merging standards agreed that it would take market participants some time to get accustomed to the legal practice required under IFRS. (Quaadman 2012) This however notwithstanding, Pöschke himself challenges the qualitative difference between rules and principles when it comes to judicial review since both rely on interpretations of regulations after the fact. (Pöschke 2012, 68)

This leads us to an issue subordinate to the difference in legal culture, namely the "[…] hundreds and hundreds of restatements […]" about which Catanach and Ketz speak. In a lengthy quantitative study, Shelton and her colleagues demonstrated that restatements under IFRS displayed no significant difference in value than under GAAP. This means that the ability to cheat under IFRS' principles cannot be empirically substantiated. However, the study admitted that the single most important qualifier for this assertion is that the quality of the Rule of Law in the respective jurisdiction must be high. If this is the case, Shelton et al. were also able to provide evidence that companies that have themselves above average law enforcement – for example via autonomous compliance departments – fare better under IFRS than under GAAP. Finally, the study submits that it is precisely this Rule-of-Law qualifier that should have observers be wary of precipitous IFRS implementation in the U.S. where the "[…] deregulation of U.S. financial markets and the increased incidence of financial restatement and fraud have significantly reduced the confidence in the U.S. rule of law." (Shelton, Owens-Jackson, and Robinson 2011, 191) Not a cautionary tale, both arguments rather speak to the incremental approach the SEC decided to pursue when it proposed to leave FASB in charge of easing the American economy into the new regime; an approach the SEC advocated right from the start when it called GAAP an ideal "mechanism for incorporation" of IFRS rules (SEC 2010a, 30), something Pöschke has described as a plausible "standard-to-standard phase-in". (Pöschke 2012, 55)

Despite the efforts of standard setters, supervisors, and experts, the fight over IFRS continued vehemently. In a 2011 comment, Jack Ciesielski, President of R.G. Associates in Baltimore, mirrored the skepticism voiced by former SEC commissioner Daniel Gallagher (Gallagher 2015c) when he called for less reliance on international cooperation:

> "Why is this perceived as necessary mop-up action after the financial crisis? The G-20 started pushing for more global convergence of accounting standards, after the crisis - yet no study (at least, none of which this writer is aware) laid any blame for the financial crisis on U.S. - or any other - accounting standards. Apparently, the G-20's suggestions have been taken very seriously in Washington, without any evidence that it caused the financial system breakdown nor any evidence that it would prevent another one." (Ciesielski 2011, 3)

While the search for a monocausal explanation for a systemic crisis should present significant methodological concerns in general, both the IMF as well as the BIS studies strongly suggested, as detailed above, that accounting standards at least failed to prevent the lack of information investors suffered from in the run-up to the crisis. (Novoa, Scarlata, and Solé 2009; BIS 2009b) Even more significantly, the above-mentioned joint IASB/FASB study conducted by the Financial Crisis Advisory Group pointed to "[…] issues surrounding the broad range of off-balance sheet financing structures, especially in the US […]" and concluded that in general differences in accounting standards amplified informational asymmetries in the markets. (Goldschmid and Hoogervorst 2009, 3)

Another commentator chose to remind the SEC of the high standard of GAAP and urged the SEC not to "dilute" (Sprenger 2011) American accounting standards. In yet another comment, the respondent was even more outspoken. One can clearly delineate how the lack of knowledge about the work of IASB only re-inforced the nationalist weariness of a foreign standard:

> "Upon further review, I conclude that US GAAP is in fact superior to IRFS [sic!] for many reasons. Therefore eliminating GAAP and replacing it with IRFS would be a mistake. GAAP has been refined carefully for many years. IRFS is relatively new, and is still in an early evolving state […] having the SEC mandate that US firms be forced to switch to the less developed IRFS has it backwards. IRFS should be the one adapting to US GAAP." (Sullivan 2011)

While one could easily dismiss these comments individually because of their abysmal orthography, their baseless pretension, or crude line of argumentation – Sullivan mentions many reasons for his dismissal without providing them –, one must take this opposition seriously. Standards are still a long way from becoming harmonized and a look towards private sector proponents of "condorsement" illuminates how overwhelming and mobilizing the antagonism towards such cooperation has been. Paul Kepple and Tom Gaidimas of PwC noted in an almost defeatist manner: "We realize that many inside and outside of the US are tiring of con-

vergence. We are as well. It is a difficult process." (Kepple and Gaidimas 2011, 2) Nevertheless, Kepple and Gaidimas go on for pages providing reasons for why they believe in the vision of a single set of standards and think that the SEC's endorsement approach "[…] provides the best basis for achieving this vision." (Kepple and Gaidimas 2011, 5)

While it seems astounding that this degree of high-level private sector support failed to create political momentum, it is unsurprising that critics even dispute the usefulness of having one accounting regime at all. Given the diverse quality of knowledge about the convergence process, the critics' strategy to dispute the core argument is certainly astute. Already in 2011, Miller and Bahnson positioned themselves as vocal opponents of the project. Regarding the claim that joint standards would create a more efficient global market, both authors employed skepticism about foreign judicial systems to support their main argument about general American superiority:

> "In making their specious claim, IFRS/IASB lobbyists ignore the obvious problem that the U.S. has enforcement powers and capabilities that are orders of magnitude stronger than those elsewhere […] it's totally clear that the U.S. must not sacrifice its longstanding commitment to and dominant position in standard-setting in order to advance a will-o'-the-wisp goal that cannot be achieved for many decades, if ever." (Miller and Bahnson 2011, 20)

It is ironic that Shelton et al.'s study was published in the same year as this article. And, it is disconcerting that its authors failed to discuss opposing research when delivering a substantially identical repudiation of international cooperation in 2015. (Miller and Bahnson 2015, 3–4) To be sure, it did not help that Miller and Bahnson used their contribution to announce "[…] that our latest book, the Fifth Edition of The FASB: the People, the Process, and the Politics, has been published by Sigel Press." (Miller and Bahnson 2015, 1)

Factually, however, it appears that fundamentally questioning conversion by contesting the efficiency of joint standards fails to be convincing. Empirical evidence is, in fact, available that supports Cunningham's invocation of Weber as an authoritative guideline in designing capitalism in the 21st century. Claire Wang published a study in 2014, in which she submitted that when accounting standards are more comparable "[…] investors can extract additional value-relevant information embedded in the foreign firm's earnings signal." (Wang 2014, 956) Wang studied the comparability of IFRS and their implications for the efficiency assumption by creating two sets of analyses. In her first set, she studied 575 earnings announcements between 2001 and 2008. She found that abnormal reactions to earnings signals – that is: a firm makes its business record publicly available, declares that revenue increased or decreased, and market-participants react by selling or buying shares – are significantly higher for companies "[…] using the same standards compared with nonannouncing firms using dif-

ferent standards." Corroborating Shelton et al.'s findings, Wang insists that this effect is stronger the stricter the law enforcement in the respective jurisdiction. (Wang 2014, 958) Using a second set of 834 earnings announcements from firms that voluntarily adopted IFRS, Wang found that this effect even holds using a difference-in-differences approach, i.e. by introducing a control group. Wang's study corroborated the assumption that firms, which adopted IFRS voluntarily at an earlier stage, got the same reaction on their earnings signals after their jurisdictions made IFRS mandatory. Concomitantly when non-adopting firms were forced to use IFRS, the information transfer on marked changes in their earnings intensified when forced to use IFRS. (Wang 2014, 959)

In light of public opinion, the overwhelming academic consensus still is that IFRS' quality is at least equivalent to U.S. GAAP (Cunningham 2008, 50; Shelton, Owens-Jackson, and Robinson 2011, 191; Leblond 2011, 454; Pologeorgis 2012, 3; M. E. Barth et al. 2012, 90; Pöschke 2012, 53; Burnett et al. 2015, 244; Schmid, Martino, and Anraku 2016, 21–22) Comparing IFRS with GAAP, even the SEC went to some lengths to emphasize its differentiated stance on the matter:

> "[…] we generally noted that U.S. GAAP contains more detailed, specific requirements than IFRS. In some instances, IFRS does not contain any corresponding guidance and, in others, IFRS contains higher-level or general guidance that is not directly comparable to the U.S. GAAP requirement […] Our analysis allowed us to identify differences between IFRS and U.S. GAAP in terms of the existence (or absence) of guidance, but it was not informative as to the effect that the differences have or may have in practice. Some of the differences – whether in terms of the amount of guidance provided or actual language used in a standard – may not have significant practical accounting implications […] Conversely, some of the differences may be of greater significance. The differences included in this paper may not necessarily be presumed to have a direct or consistent correlation to the quality of IFRS." (SEC 2011b, 8–9)

One critical scholarly contribution, however, comes from Grace O'Farrell and Chunhui Liu. They published a paper in 2015, in which they found that IFRS over-values the worth of a company. (O'Farrell and Liu 2015, 104) While assure their readers of "[…] the quality of IFRS and its widespread acceptance […]" (O'Farrell and Liu 2015, 105), they deduce from their empirical data that GAAP is held in higher regard because reactions by market participants suggested it to be a conservative corrective of IFRS. (O'Farrell and Liu 2015, 109) While these findings appear to offer a plausible explanation for why convergence has been unsuccessful and U.S. private-sector opposition rather fierce, the study has massive methodological shortcomings. O'Farrell and Liu's sample consists of a segment of Siemens' 2007 accounting record, which nominally declared a higher return on assets under IFRS than under U.S. GAAP – 4.41 percent as opposed to 2.59 percent. (O'Farrell and Liu 2015, 108) Given that Siemens share prices after the company's respective fiscal year were noted at 70.35 EUR

in Frankfurt and at 70.82 in New York, the authors assume that knowing about potential IFRS overvaluation the "[…] price similarities in the two markets reveal that GAAP earning measures are considered more value relevant by the market." (O'Farrell and Liu 2015, 108) It is astonishing that the authors assume that market participants would actively cushion the effects of potential stock market arbitrage on the grounds of earnings signals from two different accounting systems. Stock prices are a relational, which means that investors buy and sell them according to their expectations of how the company's value will develop within the respective market. That includes other companies and their market performance. Nevertheless, O'Farrell and Liu decided to compare what two accounting languages said about the very same performance. Comparing one company with itself is methodologically unsound, because it is not a comparison at all. It would have made more sense to set Siemens in relation to those competitors operating exclusively within IFRS or GAAP respectively and then expound on potential within-field valuation differences.

The Failure to Compromise and the International Backlash

Given that cooperation between IASB and FASB had been consistent and that some authors have noted that the interests between the U.S. and the EU "[…] are very much aligned […]" (Pöschke 2012, 73), it is difficult to understand why the convergence project has remained unsuccessful. In 2012, the SEC published its final work plan and laid out six major areas where it had identified meaningful technical differences between IFRS and GAAP. Generally, the SEC chose to strike a rather cautious tone in its evaluation. Regarding "Human Capital Readiness" for example, the report points out that some companies were well-prepared for a transition, while others had "[…] little or no knowledge about IFRS requirements […]" At the same time, the staff noted a continuing interest in convergence by the private-sector seeing as costliness of the transition process was also driven by demand: "[…] the pool of qualified candidates is limited and increasingly costly to the extent that demand for such individuals exceeds the available talent." (SEC 2012, 121) All in all, however, the SEC took stock in this last report and found that regarding its most important indicator – "Sufficient Development of IFRS for the U.S. Domestic Reporting System" – the convergence project was on halt. The staff underscored its commitment "[…] to improve consistency in the application and enforcement of IFRS on a global basis […]" (SEC 2012, 8) But, that is quite a step back from the optimism with which the Commission had initially started its effort. Even the fruitful technocratic cooperation between IASB and FASB leading to IFRS 13 failed to push the project meaningfully: "[…] there are several projects that both Boards acknowledge are in need

of improvement, but the Boards are not currently devoting resources toward completion of those projects (e.g., financial instruments with the characteristics of equity).” (SEC 2012, 7) Clearly, the level of frustration about the process was and is very high on both sides of the transatlantic. Sharon Bowles, a liberal-democrat and Member of the European Parliament, warned US officials on a visit in Washington in 2013 “[…] that ‘Parliament’s patience is at an end.’” She told SEC officials “[…] ‘I am not bothering to ask anymore [about convergence] because I have to come to the conclusion that they aren’t ever’.” Bowles went even further and threatened to request IASB remove all participating U.S. representatives. (Europolitics 2013) With no direct effect on decision-making, US representatives still constitute over 20 percent of personnel on the IASB’s Board. (Pacter 2016, 23) Some American private sector stakeholders urged SEC officials to strike a tone more conciliatory then public opinion:

> “We must be represented on the Monitoring Board for effective oversight of IFRS, but we can’t participate on the Monitoring Board without first deciding to use IFRS. We agree with those users who believe that the continued effectiveness of the Boards working together under the current structure is cause for concern […] Reducing the influence of the FASB on IFRS development is not in the best interests of U.S. investors and other participants.” (Illiano 2012, 4–5)

The conflict, which Grant Thornton’s Gary Illiano refers to in his comment, was about the funding of IASB and, hence, about the standard setter’s independence from political interests. The SEC’s staff paper engaged with that criticism and outlined the significance of independent funding by quoting Senator Chris Dodd, who went on the record in 2002 by drawing his conclusions from a FASB report:

> “[…] the FASB Board said the following, that ‘the debate on accounting for stock-based compensation unfortunately became so divisive that it threatened the board’s future working relationship with some of its constituents. The nature of the debate threatened the future of accounting standards-setting in the private sector.’ This is an extraordinary document and everybody should read it so people understand the kind of pressure that not only that board was under – hopefully, the newly independently funded board will not be under – but the kind of pressure which exists in this Congress. We have, in essence, a new board, because it has an independent source of funding.” (SEC 2012, 54–55, at footnote 262)

FASB’s funding is provided by Section 109 of the Sarbanes-Oxley Act, which regulates financial contributions and makes them mandatory for all publicly traded issuers of securities. (Oxley and Sarbanes 2002, 769–71) IASB is financed differently, since as an international organization it is left without the protection and the law enforcement of one jurisdiction. However, the sources providing financial support are diverse in at least two dimensions. First, funds are drawn from all members internationally and, drawing on Leblond’s argument about the diverse range of interest being balanced by the IASB (Leblond 2011, 444), one can expect

the foundation to exploit the cacophony of contributors to maintain its independence. Second, Contributions are drawn from private-sector members as well as from governments via ministries, central banks, or supervisory authorities. In some instances, as in the case of the Republic of Korea, the United Kingdom, or the Federal Republic of Germany, the national standard setters collect contributions from its members on a statutory basis. (IFRS 2016, 42–46)

Transatlantic Interest Divergence

Just like with stakeholder participation, the analysis of why convergence has been such a protracted and unsuccessful process is confronted with a settled institutional issue that, nevertheless, has failed to advance the larger project. Readers are, however, given a plausible rationale for failing cooperation in the SEC's somewhat hidden comment on IFRS 9, the standard on financial instruments. (SEC 2012, 7) Published as a final version in July 2014, the new standard is set to become effective in 2018 and tackles the ramifications of the originate-to-distribute business model; i.e. "[…] the delayed recognition of credit losses on loans […]" (IASB 2014) IFRS 9 allows companies to recognize a financial asset at amortized, or historical, costs only if it satisfies the following two conditions: the asset in question is part of a "hold-to-collect" business model and passes a so-called "cash-flow-characteristics" test. (IFRS 2015, 21) "Hold-to-collect" means that the respective asset generates a contractual cash flow rather than being held "[…] with a view to selling the asset to realise a profit or loss." (BDO 2016, 10) The "cash-flow-characteristics" test, on the other hand, is intended to ensure that the contractual obligations specify set dates for those cash flows and that these "[…] are solely payments of principal and interest on the principal amount outstanding." (Pacter 2016, 178) The global accounting network BDO linked IFRS 9 to distinct practices of risk-assumption that this analysis has already encountered in derivatives reform: "[…] if the contractual cash flows are linked to features such as changes in equity or commodity prices, they would not pass the […] test because they introduce exposure to risks or volatility that are unrelated to a basic lending arrangement." (BDO 2016, 12) This describes in one sentence how risk piled up before the global financial crisis. Forcing assets that do not qualify to be recognized at fair-value means that these assets can come under pressure more easily and, hence, rank lower in the company's portfolio of available liquidity. This is a crucial aspect of IFRS 9, because it sets an incentive to also pursue less speculative investment strategies.

In October 2014, CFO magazines David Katz noted that IFRS 9 tilted the cost-benefit calculation even more towards large and internationally active companies – nominally a minority of FASB stakeholders. For smaller, domestically active U.S. firms the convergence project

meant to invest money in a project that would force on them more transparency and from which they were unlikely to generate a return. (Katz 2014, 5–6) This rationale provides the analysis with a reliable link between rational self-interest and the harsh reactions U.S. market participants voiced in opposition towards standards convergence. According to several speeches held in June 2014, former SEC Commissioner Christopher Cox reproached the IASB for being distant and unfriendly: “On the few occasions when IASB members did appear at U.S. roundtables and meetings, they seemed aloof. They simply weren’t accustomed to the more relaxed and supple interactions that FASB has been able to have with stakeholders over the years.” (Cox 2014, 5; Katz 2014) Seeing as IASB and FASB developed standards together – with European and American representatives keeping regular contact –, one could surmise that this comment is an oversimplification. Despite fraught with emotional conjecture, Cox’ comment irritates to the degree that after praising FASB’s virtues he is on the record calling FASB “[…] increasingly obedient […]” – just to then venture into the psychoanalytical unknown invoking “[…] the IASB’s passive-aggressive response to the seeming U.S. indifference to the prospect of domestic use of IFRS.” (Cox 2014, 5; Katz 2014, 1) To be clear, the use of charged language cuts both ways. A seasoned international technocrat and intimately familiar with the politics and the diplomacy required in international standards negotiations, interviewee C5IGY2 stroke a tone somehow comparable to that of Christopher Cox:

> “There will not be perfect convergence, because I don’t think the U.S. is ready and never will be to completely conform to an international system. This is not new to financial services. The U.S. is not a member of the international court in The Hague, it – as far as I know – wasn’t a member of the WHO, it is trying to break up the WTO with its bilateral trade arrangements. So, the U.S. is not comfortable with multilateral institutions unless it completely dominates them.”[201]

Of course, there is little cause to liken the U.S.’ legitimate concerns about international criminal justice and the continuous commitment and membership in the World Health Organization to the economic globalization the U.S. has been supporting in the WTO, the IMF, and more recently within the FSB. What interviewee C5IGY2 refers to is a one-sided description of the so-called building-block/stumbling stone debate in international trade politics. The existing scholarly consensus that the myriad of free-trade agreements has been a stumbling stone for emerging economies to participate fairly in global trade is built on an empirical corpus which essentially revolves around U.S.-EU trade policies.[202]

[201] Author’s interview on June 3, 2016. Comments not for attribution. Reference code: C5IGY2.

[202] Since it is the prerogative of governments to conduct foreign trade and facing developing countries’ opposition in before the WTO, the U.S. as well as the European Union have heavily engaged in negotiating trade agreements individually claiming this approach to be promoting trade in the absence of a multilateral accord. There is an academic consensus beyond aca-

Given the results of the last presidential elections in the United States and the current White House's nationalist "America-first" strategy, one would still have a hard time making the case that the U.S. is withdrawing from globalization. Pandering to the latest political developments would obscure how the U.S. was able to internationalize its re-regulation by using the FSB as a forum, in which their expertise was a highly-valued commodity. However, the case of accounting standards puts on display the creative limits of American market power. The U.S. has been able to withstand those market forces that have made IFRS a relevant and mostly singular standard in 143 jurisdictions. (Pacter 2016, 4) Accounting exemplifies the pains that accompany globalization in a world with multiple dominant markets. The struggle over standards has a time dimension that allocates the benefits of cooperation unevenly, which is to say that in the long run convergence is good for all parties involved. But, in the short- to medium-term convergence would create relative gains for larger international companies and the 119 jurisdictions committed to a mandatory use of IFRS. (Pacter 2016, 28) While there are strong indications of a nationalist twist that could potentially corroborate C5IGY2's evaluation of a U.S. strategy aiming at complete domination, it appears to be more fruitful analytically to recognize the political salience of adaptation costs in the U.S. Europeans chose their standards with the explicit goal of creating a standard that could compete with U.S. GAAP for global recognition. (Véron 2007, 29–33) Hence, accusing those unwilling to incur the lion's share of switching to a global standard by framing them as isolationist is itself slanted and lopsided. In the end, the convergence project was not the only mechanism to eliminate informational asymmetries. Surely, one common set of standards would have accelerated the access to various pools of capital around the world for IFRS as well as U.S. GAAP users alike.

demia that Preferential Trade Agreements (PTAs), or Regional Trade Agreements (RTAs), and the system of Rules of Origin (ROOs) with which they work, have been following a relative gains logic benefitting the western hemisphere while constraining trade for developing regions. In an interview with Michael Reiterer, then EU Ambassador to Switzerland and Liechtenstein in 2011, the experienced negotiator frankly commented on his and the EU's role in international trade: "Bhagwati must be triumphant in his Italian kitchen […] Back in the day, I negotiated those Rules of Origin treaties. And once you look at it you'll find that if you fail to reconcile the myriad of bilateral agreements multilaterally, you'll create a restriction to free trade by using free trade agreements." (Reiterer 2011) In 1995, Jagdish Bhagwati first coined the notion of the spaghetti-bowl effect to describe an effect that in his opinion causes trade diversion. (Bhagwati and Panagariya 1996, 25; Bhagwati, Greenaway, and Panagariya 1998, 1139) The effect is based on the Rules of Origin principle. The concept is meant to allow for preferential trade agreements without bearing the costs of free riding in a globalized market. (Krishna and Krueger 1999, 543) For a product to be able to qualify for preferences, it has to satisfy the condition that its components are to a certain degree from or transformed in one of the PTA's contracting countries. Normally ROOs presuppose that a certain value of the final product is added within the PTA. Another requirement can be that a product has to include components from a specific country. And a third ROO commonly used prescribes that a good imported into the territory of the contracting parties is transformed to "[...] cause it to move to another tariff classification." (Wonnacot 1996, 91) Now, the problem with ROOs is that they can be easily used for protectionist purposes. A product's components might be cheaper to get in a country outside a PTA. Nevertheless, the producer might be forced to buy more expensive materials, as only these make the final product qualify for preferential tariffs – and this then is exactly what is meant by trade diversion. Instead of facilitating trade on market conditions, ROOs can nullify the price mechanism needed for efficient and growth-facilitating production and trade (Bhagwati, Greenaway, and Panagariya 1998, 1131), which is why Bhagwati has identified PTAs as stumbling stones instead of building blocks to trade. (Bhagwati 1999, 13)

# Conclusion
## Market Power – Now What?

> "Everybody's got a magic lever they want you to push. I studied economics all my life but in this job only a fool is ever certain. You don't push any one lever; you wanna push a little on them all."
>
> (Josiah "Jed" Bartlet, S05, E04 *The West Wing*)

It has been said and written numerous times: the global financial crisis led to the worst recession in recent memory and to an economic downturn comparable only to the Great Depression that followed in the wake of October 24, 1929. This fact puts into perspective how American leadership and the ensuing level of international cooperation have shielded the world economy, and particularly the Transatlantic, from dire consequences. But, herein also lies a fallacy. While the crisis necessarily called for collaboration, structural events do not force specific actor choices. (Blyth 2003) The analysis presented here, therefore, recognizes the historicity of the post-crisis reform agenda. Considering the relative timeliness of this work, it is impossible to plausibly claim that the crisis itself or the political reactions it entailed could be considered as "critical junctures," or to have posed a sea change in international regulatory politics. Indeed, we are witnessing the latest U.S. administration forcefully pushing the pendulum to swing back. Talk of 1980s-like deregulation – and, consequently, regulatory competition – has started making the rounds again. (The Economist 2017, 54) Hence, one is left to critically appreciate that under the leadership of President Barack Obama, aided by a corps of expert regulators, and backed by the largest market for financial services, the United States successfully pursued its self-interest through a globalist agenda; not for structural reasons, but because key decision-makers deemed this to be their most promising option.

### Towards a productive combination of Structure and Agency

If we take seriously research stating that not much has changed after the crisis (Baker 2010; Buckley and Arner 2011; Ebner 2014; Kay 2015; Reinhart and Rogoff 2009; Wigger and Buch-Hansen 2014), the findings of this thesis have to be situated. Has the agenda of the G-20 come to nothing more than a strengthening of the levees when faced with an ever-growing sea of financial risk? Employing the sentiment of those who shook the political confidence of liberal democracies in 2016, we might also ask: "[…] is any party, or combination of parties, able to do more than the bidding of transnational elites?" (Lambie 2011, 45) Or, we could ask the same question with more academic depth and apply the nomenclature of historical institu-

tionalism. Have international financial reforms died in a process of small marginal adaptations and, hence, "[…] fallen short of initial (and proclaimed) expectations of rapid and revolutionary transformation […]"? (Moschella and Tsingou 2013, 3) To sum up, what kind of change has the present dissertation observed and why is it relevant?

When confronted with criticism like the above, it seems that only a massive second-order overhaul would have been satisfactory. Therefore, to evaluate the change this thesis observed requires re-visiting the first chapter's debate on structure and agency; and it is at this conjunction that we find the main theater of a conflict unnecessarily pitting one against the other. This is particularly remarkable since negotiations of the relationship between agents and structures can easily make recourse to productive debates that significantly precede historical institutionalism's status quo bias.

Asking why the United States was able to internationalize the 2010 Dodd-Frank Act, I encountered a puzzle that reflects how my research is squarely situated at the interstices of American Studies, Political Economics, and International Relations. At this point, I think few words on the genesis of this project are in order. Coming from the politics of international trade and dispute resolution, I started out with an interest in the newly established regulatory body of the G-20; an organization re-formed and re-named in 2009 as Financial Stability Board. I approached this body of regulators from a perspective of international relations. However, looking at the FSB, I found a striking resemblance between the U.S.' agenda and the reform proposals discussed at leaders-summits and on the level of technocrats. With America the driving force behind this organization's reform, I am convinced that is was necessary to understand why domestic developments in the U.S. were the drumbeat of reform in international financial market regulation. If America had played, indeed, such a central role in the international governance-reform of financial services, this opened my research up to a puzzle that manifested similarly in two distinct, yet connatural forms. To put this up front: the puzzle expounds on the problem structural frameworks beget when confronted with the behavior and decisions of actors.

Debating agency and structure in 1978, Scott McNall argued that scholars have fretted over the conceived distinction between subject and object since the Enlightenment. Referring to Durkheim's dissociation of the two, contemporary scholarship, he asserted, "[…] has carried this method to its logical extreme." (McNall 1978, 3) Likewise refusing to recognize object and structure as stand-ins, Alfred Kroeber found the arbitrary use of the term structure to be a nuisance. Publishing thirty years before McNall, his is a useful reminder of how old debates and rehashed negotiations become alleged new pathways for analysis: "'Structure' appears to

be just a yielding to a word that has a perfectly good meaning but suddenly becomes fashionably attractive […] – like 'streamlining' – and during its vogue tends to be applied indiscriminately because of the pleasurable connotations of its sound." (Kroeber 1948, 325) Analytically, Kroeber's comment emphasizes how calling for change is different from, first, working out how change occurred and then arguing why it took place and what it signifies.

This is not to deny the importance of structures or to naively claim fundamental reforms have changed the way finance operates in global capitalism. Rather, it requires thinking about how observed changes can be evaluated. In 1990, David Easton dedicated a monograph to the topic, in which he defined structure as something bridging the dichotomy between subject and object, "[…] as a generalized property of a political system as a whole; and as a property typically thought of in relation to the behavior of individuals and the operation of institutions." (Easton 1990, 45) The difference between first- and second-order changes was used in the empirical chapters, and it is Easton's contribution to more clearly delineate the role of agency within structure as overarching order, and structure as regular modes of interaction:

> "Once the principle has been established that actor and objective conditions may share an outcome and that the actor is not totally imprisoned by social forces but helps to reshape the prison walls themselves, the relative contribution of each can only be empirically, not theoretically, resolved despite the torrents of ink that continue to be loosed on the subject in favor of one or the other extreme." (Easton 1990, 243)

To conceive of structure as a relational feature visible in empirical observation has kept this dissertation's focus on the interests actors develop. Looking at global financial reforms, these interests have shaped new regulations for banking, systemically threatening financial activity, and derivatives trading. In other cases, like shadow banking and accounting standards harmonization, the lack of American interest in balancing the scale of risks and benefits has, likewise, impeded meaningful international reforms.

Asking why the United States was capable of internationalizing its reform agenda from a position of apparent politico-economic weakness, this dissertation employs a concept of market power that goes beyond the economic value added nationally. In so doing, the combination of size, regulatory capacities, and a political strategy deploying a first-mover advantage has limitations. First among them is that, while built on realist thought, it is not a theory as such. Market power is a concept that has no claim to generalizability. As a heuristic tool, it serves to illustrate why America successfully filled a regulatory void when it decided to more actively oversee financial actors. Under the conditions of globally interconnected finance, a domestically more engaged state required an international equivalent matching authoritative rule-making at home with an effective implementation of its policies abroad. Following the crash-

ing defaults after September 15, 2008, it was in America's interest to reduce systemic risks, at least in some areas, and the Financial Stability Board in Basel proved to be the ideal platform for globally promoting reforms to that effect. As the case studies have shown, America's interests prevailed even when confronting its potential economic rival, a "[…] quote/unquote more bank friendly […]" Europe.[203]

Not attempting to change global finance as such, crucial actors in the U.S. administration successfully pursued meaningful international changes to the way financial firms price-in risks and cover losses that could otherwise have potentially devastating effects on the overall economy. Politically, meaningful international change "[…] to the behavior of individuals and the operation of institutions" (Easton 1990, 45) would not have occurred without U.S. interest projetion. Supported by America's commitment, the FSB has been much more active than its predecessor. Constant peer-reviews ensure that collaborative practices are implemented and have, for the most part, replaced the fragmented, and systemically threatening, approach of regulatory competition. Seeing the extraterritoriality of derivatives regulation, the Dodd-Frank Act is remarkable insofar as it built in, for the first time, the necessity for American regulators to communicate and cooperate with foreign regulators in order to pull in a regulatory floor. Economically, it was an equally big step to require actors in the derivatives business to trade more transparently, create central markets, implement collective burden-sharing, and increase individual resilience through higher demands on capital and liquidity. Traders must cover margins and clearinghouses are regulated as systemically important infrastructures. All this is evidence of how market-based self-regulation, so prominently pursued before the crisis, has been partly relinquished in favor of government policies correcting the massive market failure that surfaced between 2007 and 2008.

That is the good news. The bad news is that this seemingly newfound commitment to responsible regulation and international economic leadership was somewhat half-hearted; it was, because the change experienced applied to the behavior and operations of some but not all players. For example, shadow banking has been addressed superficially at best. This shows America was unwilling to seek domestically painful reforms to credit origination while continuously asking Europeans to do the exact same thing when implementing Basel III. This does not alter the observation of meaningful change. It leaves us, however, with a narrative of economic reform and American global leadership requires lasting commitment in making these changes sustainable. In other words, a continued effort is required in stabilizing this new

[203] Author's interview on September 24, 2015. Comments not for attribution. Reference code: MSSXLW.

mode of regulated global finance. Hence, the problem with this first-order transformation is the agency of subsequent U.S. administrations.

In this regard, policy-ideas floated by the current White House certainly provide reasons for concern. Dodd-Frank has not ended regulatory competition, but has merely replicated the same mechanism in reverse. American public reactions to SIFI-determinations or to accounting standards harmonization were clear indications that the international scope of regulatory reform was not welcomed by all. From a politico-economic point of view, the nationalist movements of late are testament to preconditions still efficacious enough for a regulatory dark-age racing us yet again to the bottom.

This leads us back to the larger narrative this dissertation has created. Arguing against the decline of the American Empire, U.S. financial reforms have set pace and substance in guiding the global effort. By internationalizing re-regulation via the FSB, Dodd-Frank has committed U.S. regulators to their global counterparts and because of the awesome importance of the American financial market those counterparts are conversely committed to the U.S. To be sure, ours have become times when the dernier cri of breaching political taboo is casting reason and accountability to the wind. But, it takes a major legislative win in Congress for a meaningful deregulation to take place in America. So far, a first attempt Republicans had the effrontery to call CHOICE-Act has failed to gain traction in the Senate. (Borak 2017; Rappeport 2017) But, even if it would, FSB member states and G-20 leaders are unlikely to accept that the last decade of reforms was for nothing. Take SIFI-determination, for example. Financial regulators at the FSB and in their home jurisdictions are unlikely to have American financial giants roam their markets without adequate backstops. Companies themselves have invested heavily in their internal risk-management. And while many of them would certainly approve of some regulations being eased, none of them will welcome the chaos and disruptions that a complete reversal would entail.

What is more, a rescindment of American rules would come at the cost of reciprocity, which means that U.S. regulators have become dependent on the cooperation they have made possible. In connection to this, one last piece of evidence supports the larger claim. During my research, I encountered a project called LEI, or Legal Entity Identifier. In their 2011 Cannes Summit final declaration, the G-20 had stated that the leaders supported "[…] the creation of a global legal entity identifier (LEI) which uniquely identifies parties to financial transactions. We call on the FSB to take the lead in helping coordinate work among the regulatory community […]" (G-20 2011, 8) Consequently, in 2012, the FSB published a report outlining that an LEI standard had been issued by the International Organization for Standardization on May

30. (FSB 2012, 5) Accordingly, a global governing system had been put in place facilitating decentralized issuance and the global applicability of such IDs. (FSB 2012, 8) LEIs are unique 20-digit dumb alphanumeric string codes. They are "dumb," because they do "[…] not incorporate any intentional embedded intelligence (such as a country reference) which could lead to the code becoming out of date." (FSB 2012, 36)

As this kind of information enhances transparency and provides tangible orientation in measuring exposure and risk, the purpose of LEIs is obvious. Less clear is why such a system had not been created far earlier. In its abovementioned report, the FSB attributed this lack of international coordination was due to a collective-action problem that had previously impeded the introduction of "[…] a simple idea which offers manifold benefits […]" (FSB 2012, 28) Corresponding to the by now established pattern of financial reform, it was FSOC's think tank, the Office of Financial Research (OFR), that designed a solution. OFR had submitted its LEI proposal as early as November 30, 2010. In its request for comment, the OFR outlined that LEIs would be assigned a central role in regulators' mission to limit the extent of future crises:

> "[…] precise identification of financial firms is necessary to evaluate whether a firm poses a systemic risk, which involves the assessments of the relationships among firms operating across a range of markets. Indeed, the problems that firms face in aggregating exposure are magnified in measuring risk across the system. In addition, securities regulators must often identify parents and affiliates of broker-dealers manually and by name." (OFR 2010, 74147)

LEIs will be complemented with Unique Product Identifiers (ISDA 2011) as well as Unique Transaction Identifiers. (FSB 2017) And, one could interpret this as evidence for tangible multilateralism. However, as this dissertation has shown, regulatory exchange and cooperation are not based on sovereign equality nor are they invariably geared towards preventing systemic risk. Eventually, politico-economic cooperation and the regulation of financial markets is based on power, and the interests of powerful players drive change in this field. Answering a question on U.S. influence at the FSB, one of my interviewees referenced LEIs to make precisely this point:

> "So, there you have it. You wouldn't run into the Lehman problem […] You would know that just by looking at the ID. Everybody in the world is pulling on it together. The focus is put on OTC derivatives. The FSB is behind it. That's not enough. But, if the CFTC and ESMA are behind it – which they are – that's enough. That's all you need. Everybody else will fall in line, because that's 98 percent of the market. In a way, those two players are more important than everybody else in the FSB."[204]

[204] Author's interview on September 30, 2015. Comments not for attribution. Reference code: U8JESC.

Powerful actors solve collective action problems when it is in their interest. America led co-operation at the FSB and created a system intended to identify crises earlier and, at best, have market participants bear the brunt of the externalities of their behavior. Yet, this has not replaced nationalist sentiments, protectionist behavior, or political opportunism. Expecting reforms to create infallible systems of financial stability is to assume that structures can exist independently from the economic agency, and political responsibility, of constituents. Politico-economic research makes apparent and accounts for the reasoning of political decisions shaping economic policies and vice versa. It has been my contribution to shed a light on America's role in the re-regulatory efforts that aimed, for the first time, at addressing systemic financial risks and putting regulators in a position efficacious enough to minimize the effects of the next financial crisis. Policy-makers in the United States deliberately chose to move into the regulatory vacuum made apparent by the market failure that led to the Global Financial Crisis. Leveraging its significance for and its expertise in the workings of global financial markets, America pulled in one regulatory floor to avoid international arbitrage of its tightened financial regime and to stabilize the entire system for its own benefit. To realize a strategy that envisioned a set of global reforms to ascertain the significance of the American financial sector, policy makers used their market power in the G-20 leaders process and at the FSB in order to streamline financial rules internationally. The crisis offered a chance for the state to exert more influence over markets. It will take the political effort of the next market power(s) to either carry on the endeavor of curbing systemic risks, or yet again unleash financial markets and commit us all to incalculable economic consequences.

The Declinist Side of the Puzzle

Hence, the thesis I have written puts the state – an entity challenged by globalization – front and center. In an attempt to bridge the domestic with the international level of my research question, I have used the backdrop of a narrative called "The Decline of the American Empire". Declinist texts flourish in- and outside of America and regardless of their underlying normative or partisan assumptions, they share a commonality in the way they intentionally or unwittingly conceptualize the state in this era of globalization. Whether we look at liberals, like Chalmers Johnson, or conservatives, like Niall Ferguson, making their case for the decline of American influence, their arguments about the role of the state display a decidedly structural thrust. The state becomes an entity limited to the preconditions set by a globalizing world. Hence, government – any government really – is, à la Ferguson, an impediment in a

brave new, and markedly neoliberal, world. And, it will inevitably succumb in its ability to shape and regulate the economies of off which their people live.
The latter argument made by Johnson – or Jim Hanson for that matter – is based on a casual interpretation of Susan Strange's seminal 1996 monograph "The Retreat of the State: The Diffusion of Power in the World Economy". (Strange 1996) I say casual interpretation, because in her work she outlines how the state is not absorbed by globalization, but finds itself sharing some responsibilities of rule-creation with private as well as public-private international governing bodies. Earlier research had already anticipated this diffusion of authority. Robert Keohane and Joseph Nye's 1977 interdependence theory tried to make sense of continued international cooperation and proposed that such cooperation was mutually beneficial. (Keohane and Nye 1977) This ran contrary to research claiming that economics was to be understood as a matter of relative gains – that is, the understanding that what you have, I cannot have. Interdependence turned into regime theory in 1984 when Keohane published "After Hegemony: Cooperation and Discord in the World Political Economy". (Keohane 1984) Approaching apparent cooperative gains from the stagflation experience of the 1970s, his main argument was built on the structural limitations to economies of scale. Rather than leading to indefinitely mounting efficiency, economies of scale encountered diminishing marginal utilities. To increase added value, therefore, production increasingly went global. Keohane argued with Stephen Krasner when he asserted that states' interest would converge around implicit or explicit principles, norms, rules, and decision-making procedures. (Krasner 1982, 185) It was his contribution, to provide an understanding as to why regimes had formed in the first place. Keohane argued, that this way states positioned themselves ideally to both reap nascent benefits as well as reigning in and managing interdependence by taking some tools of governance onto the global stage themselves.
Following this understanding of the interplay of politics with economics, globalization is a process of increasing global economic integration driven by a distinctly neoliberal triad of free trade, deeply capitalized financial markets, and access to competitive labor. Thus, it can be argued that globalization works as a system circumventing the fallacy of diminishing marginal utility by tapping economies of scale along a line of globally diverse, yet intertwined, lines of production. In this understanding, the state – and particularly the United States of America as the jurisdiction with the largest market – becomes the breaking point for increasing efficiency by reducing impediments to this production.
It is here that declinist authors toe the line. Ferguson argues that the descend of the United States is either linked to America's unwillingness to conform with the neoliberal imperative

by retaining domestic impediments to globalization. Or declinists put their finger, like Hanson and Johnson, on the budgetary issues that arise by securing interests abroad by military force while lowering the amount and quality of services provided at home. Declinism, therefore, is a decidedly American part of a wider body of literature that expounds on the difficulties all states face in this era of globalization. As Frank Schimmelfennig emphasizes, this globalization poses a threat not of great power wars or protectionism – even though both have entered the limelight recently – but that states' "voided sovereignty" might lead to a destabilization of statehood and global order. (Schimmelfennig 2017, 37)

The problem my research approaches lies with the structural bias of declinist accounts. The argument too neatly jumps from the threat, to which Schimmelfennig rightly refers, to the fait accompli of a superpower faced with the shambles of its once enormous influence. To me, what seems to be missing is an appreciation of economic politics as a task conducted by actors.

The International Side of the Puzzle

A similar problem occurred when trying to find an answer to my question in the area of international political economics. Were declinists mainly concerned with why America could not continue to lead globally, IPE displayed an equally structural bias. In his monograph "All politics is global", Daniel Drezner formulates a realist theory about the role great powers play in shaping a globalizing world along with their interests. (Drezner 2007) Economically, he identifies the EU and America as great powers because of the size of their respective markets. Drezner makes a plausible and lean case for his great power theory. And, one of his case studies actually analyzes how the U.S. dominated the creation of the Financial Stability Forum (FSF) – the predecessor of the 2009 Financial Stability Board. However, the problem I encountered lay with the seeming equality between the EU and the U.S. The forum had been established in 1999 when America commanded peak economic influence. However, ten years later, Europeans had rather successfully integrated their financial market. Consequently, Elliot Posner suggested in 2009 that the EU had institutionalized a financial regulatory framework capable of breaking what Beth Simmons had called in 2001 the hegemony of American financial standard setting. (Posner 2009; Simmons 2001) Even if one recognized – as Drezner has done – that there are indeed differences in size and quality between the two financial markets in the transatlantic, it was still surprising why American regulatory reform was unrivalled by European policies within the G20 leader meetings, the G20 group of finance ministers, or its regulatory arm, the Financial Stability Board. Why is this surprising? Because on September

25, 2008 – ten days after Lehman's default –, then-German finance minister, Peer Steinbrück, argued that European and Asian banks would replace American finance. Political practice seemed to correspond with Posner's expectation of a more ambitious EU:

> "The USA will lose its status as global finance's superpower; not abruptly, not suddenly, but incrementally. The global financial system will become more multipolar. In this new world of financial banking [...] European universal banks will claim their share – a system which by the way has proven itself to be superior to the U.S.' institutional separation of commercial and investment banking." (Bundesregierung 2008, 2)

If anything, this was a call to arms for European policy-makers to challenge America's ascendancy as a financial market. However, today we can draw clear parallels between the re-regulation of the American banking system and Basel III, between the regulation of systemically important financial institutions in America and at the Financial Stability Board, and between the provisions to safeguard derivatives-trading in the U.S. and the standards implemented and adhered to by the members of the 20 most important industrialized and developing countries. My research tries to solve the question of prevalent American dominance by agreeing with Drezner that size does matter. However, it does not matter to the point where it black-boxes domestic politics and those actors responsible for it.

Market Power

Market power, as an analytical guiding vehicle, borrows from Drezner and supplements it with an actor perspective I have taken from a subset of globalization literature. To understand American prevalence in financial regulation, I followed arguments advanced by Giandomenico Majone about the "Regulatory State" (Majone 1997) or Steven K. Vogel's monograph "Freer Markets, More Rules." (Vogel 1998)[205] Both have argued that state actors retained importance by authority in rule-creation. Doing so allowed governments to control the private provision of services they used to deliver themselves. David Singer (Singer 2007) and Rawi Abdelal (Abdelal 2007) applied this new statism to the governance of global financial markets. Both entitled their 2007 monographs "Capital Rules" and in their own way further substantiated research by David Levi-Faur, whose concept of regulatory capitalism had been published two years earlier. (Levi-Faur 2005a, 2005b) His argument stresses regulators' agency in the development and maintenance of regulations. Levi-Faur emphasizes that by virtue of their very actorness, regulators "[…] transform the neoliberal agenda in unexpected ways." (Levi-Faur 2005a, 13)

[205] See in particular chapters 1 and 11. (Vogel 1998, 9–24, 256–69)

Market power combines structure with agency. It rests on market size as an indicator of the U.S.' importance in terms of the rules it can apply to a relevant share of the market. This influences the regulation of an inherently global business abroad as well. Because of the extra costs it would incur, jurisdictions rarely develop a taste for burdening their companies with rules different from the most integrated and liquid financial markets.

Institutional capacity, as market power's second aspect, describes how actors – those working within regulatory agencies and those setting rules – play a crucial part in formulating policy. These actors indicate a jurisdiction's ability to shape or re-think where government finds its balance between supporting global financial activity and shielding society from the externalities of market failure.

Lastly, timing was an integral part of America's market power. Politicians and technocrats utilized size and capacity at a moment when finding an alternative regulatory approach was critical. What is more, when the crisis hit, American regulators had already developed the outline of some *institutional* reforms, which the incoming Obama administration found to be compatible with its approach of raising the overall level and quality of insured capital. This last aspect is why market power can hardly be understood as a theory. It was not my intention to develop a framework with which past and future regulatory changes could be analyzed or their outcome even be predicted. What was noteworthy at this particular time was that government, that the state, had already been questioning whether systemic risks were being addressed adequately before such systemic risks forced themselves up onto the surface. What I am trying to say is this: size and capacity together had lain the ground for a particular regulatory idea. Both the Republican Paulson and the Democratic Geithner Treasury recognized that prudential regulation – again: the regulation of the financial system as a regulation of its parts – could and turned out to be prone to market failure. The Paulson Treasury, yet unaware of the looming financial bust, made plans to change and centralize the regulatory architecture in the U.S. Under Secretary Geithner, this idea was developed further. In addition to a common systemic regulator, market participants were forced to assume a larger share of the risk they assumed.

### Methodological Approach

Methodologically, the emergence of this new regulatory approach was, in my opinion, best captured empirically by using an interpretive and qualitative approach. Using process tracing, semi-structured interviews, and a considerable amount of reports, statements, and documentation, I have reconstructed how the attitude to prudential and self-regulation changed domesti-

cally in the U.S. and created a first-mover advantage for America interntionally. Regulatory approaches that existed as minority opinions before the crisis became prominent answers in America because of the malfunction of old and explicitly non-statist safeguards to financial market failure. Therefore, it was vital to expound on whether and to what degree alternative regulatory ideas were already available when the crisis made them a plausible alternative to a defective economic philosophy.

Research design and methodological approach were brought together in chapter two, where I have illustrated how clear notions of reform emerged institutionally under the Bush Administration and Secretary Paulson. Commissioning a report about the regulatory system in the U.S. in March of 2007, the Paulson Treasury laid the groundwork for parts of the re-regulation that would follow with Dodd-Frank's enactment in July of 2010. Chapter two, therefore, was an important building block for my argument that America's institutional capabilities, its regulators, its actors had already perceived a potential need for reform. One caveat is important, however. Self-regulation as an economic philosophy remained untouched. The Bush administration wanted to up its game institutionally so that market actors could more confidently assess market risks and adjust individually.

Empirical Findings

In chapter three, process-tracing was combined with extensive interview research. This was instrumental in delineating the inner-workings of the negotiations that led to the reform of the Financial Stability Forum. An important council of U.S. regulators, the President's Working Group on Financial Market, was reactivated as early as October 2006 and started to think about potential regulatory changes. The constellation of this working group – Treasury Department, banking regulator, and securities regulator – became the prototype for all systemic regulators within G-20 member jurisdictions as well as on the level of the FSB. And with the President's Working Group's substantive work geared towards finding the exact weaknesses in global finance, not only did this group anticipate some the Obama Administration's reform efforts. It also became instructive as to what demands a future, more global, regulatory architecture would have to meet.

Documents acquired under Freedom-of-Information-Act requests clearly demonstrated how in 2007 American regulators had a clear vision about the issues facing finance. Interviews showed that perceiving those problems as inherently global had consequences for the reforms Americans wanted to see done at the FSF. By acquiring FOIA documentation from the European Commission, the German Ministry of Finance, the Bundesbank, and BaFin, I was able to

compare American reform-efforts with European positions on, and particularly, German resistance to reforms. Europeans' biggest fear that enlarging the circle of FSB members would diminish their influence. Germany was particularly reluctant to accept American calls for intensified participation in FSB proceedings by Finance Ministries or Treasury Departments. It feared that adjusting the FSF's character as a central-bank-driven technocratic community would jeopardize its policy output.

The U.S. successfully pushed for a central role of Finance Ministries and Treasury Departments in all working groups and decision-making councils at the FSB. Elected governments became active members of the regulatory process where they had been outsiders. What is more, American regulators enlarged the circle of members from a G-7+ to a G-20+ format. They insisted on the implementation of a steering committee, where a smaller circle of members could drive the agenda. They strengthened the peer-review process and enabled the FSB to conduct these reviews constantly. And finally, they build-in a veto position that would leverage larger markets' interest by requiring in all matters that decisions be made by consensus. In short, the United States set up the FSB as an arbiter of a reform agenda that was domestically already under way.

In chapter four, interview research provided access into how the concept, the underlying idea, of regulation was cast into domestic policy essentially giving America a first-mover advantage once the substantial work at the FSB commenced. Matching American policies with proposals and peer-reviewed implementation of FSB-members' policies strongly underscored America's market power.

Quantitative as well as qualitative capital requirements on insured capital holders – that is, banks or insurance companies – were raised in the U.S. under Dodd-Frank and preset the levels required under Basel III. A systemic regulator, called Financial Stability Oversight Council or FSOC, was duplicated at the FSB level. And, FSOC's conceptualization of Systemically Important Financial Institutions (SIFIs) copied internationally as G-SIFIs – Global Systemically Important Financial Institutions. Finally, the policy of raising the amount and value of capital requirements as well as increasing systemic oversight came together in the reregulation of derivatives markets. Today, holders of derivative positions are globally faced with near-to-identical capital requirements. An ID system for individual trades and those trading was developed by the U.S. Office for Financial Research AND has been adopted by the FSB. Lastly, a centralization of larger parts of the derivatives trade in so-called clearing houses is intended to pool risks, make them more noticeable, and provide polder dykes for the regular occurrence of financial stress.

In chapter five, the limits of global reform were tied to the limited ideological change in the United States. Outlining the processes that made re-regulating shadow-banking and the convergence of accounting standards less important for American policy-makers also served as a counterfactual. With shadow-banking reform and accounting conversion high on the list of both the FSB as well as the European Union, these agenda items nevertheless failed to bear fruit. American actors did not complete their about-turn in making all market actors consequently bear the costs of the risks they assume. Process-tracing and interview research, therefore, were ideal instruments in developing an interpretive account about how context and sequence enabled the United States to implement *its* regulatory reform agenda internationally.

What is it that we have learned?

I have positioned my research in the tradition of what Fran Tonkiss and Don Slater have described as the ever-changing and fluid relationship between state and market. And, who wrote in the tradition of Karl Polanyi that "[…] the margin between them is a site of interaction, regulation and mediation. The interface between the state and the market is relative to specific forms of economic government at different political moments." (Slater and Tonkiss 2001, 147) To me, context and sequence of these political moments were central. And, my research understands these moments not as points in time tied to specific occurrences, but as points in time tied to the developments of actor choices – as moments in which the regulators and the regulated employ and creatively utilize existing structures to serve *their* interest while at the same time maintain their autonomy to go beyond the structures implemented by previous actor choices. In short, I think I can say that at least I have learned that with regard to the most globalized financial markets the state has turned out not just as the condemned living longer, but as an assertive force capable of re-balancing society and market. And I, therefore, expect that with further global integration the need for assertive statehood, and constructive U.S. leadership, will not decline, but rather increase.

## Bibliography

Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3): 401–19.

Abbott, Kenneth W., and Duncan Snidal. 2000. "Hard and Soft Law in International Governance." *International Organization* 54 (3): 421–56.

———. 2001. "International 'Standards' and International Governance." *Journal of European Public Policy* 8 (3): 345–70.

———. 2009. "The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State." In *The Politics of Global Regulation*, edited by Walter Mattli and Ngaire Woods, 44–88. Princeton Oxford: Princeton University Press.

Abdelal, Rawi. 2007. *Capital Rules: The Construction of Global Finance*. Cambridge: Harvard University Press.

Acharya, Viral V., Philipp Schnabl, and Gustavo Suarez. 2010. "Securitization without Risk Transfer." Working Paper 15730. National Bureau of Economic Research. http://www.nber.org/papers/w15730.

Ackermann, Josef, and Charles Dallara. 2011. "IFI Comment on SEC Work Plan." Institute for International Finance. https://www.sec.gov/comments/4-600/4600-12.pdf.

Adrian, Tobias. 2011. "Dodd-Frank One Year On: Implications for Shadow Banking." 533. FRBNY Staff Report. New York: FRB New York. https://www.newyorkfed.org/research/staff_reports/sr533.html.

Adrian, Tobias, and Adam Ashcraft. 2012. "Shadow Banking: A Review of the Literature." 580. Federal Reserve Bank of New York. http://EconPapers.repec.org/RePEc:fip:fednsr:580.

Afonso, António, Davide Furceri, and Pedro Gomes. 2011. "Sovereign Credit Ratings and Financial Markets Linkages: Application to European Data." 1347. Working Paper Series. Frankfurt am Main: European Central Bank.

Altman, Edward I., and Anthony Saunders. 2001. "An Analysis and Critique of the BIS Proposal on Capital Adequacy and Ratings." *Journal of Banking & Finance* 25 (1): 25–46.

Amacher, Ryan C. 1980. Review of *Review: Defending the National Interest*, by Stephen D. Krasner. *Southern Economic Journal* 46 (3): 966.

Andrews, Edmund L. 2007. "Democrats Prepare Bills to Tighten Loan Rules." *The New York Times*, September 6, 2007. http://www.nytimes.com/2007/09/06/business/06dodd.html.

Archarya, Viral V., and Matthew Richardson. 2014. "Is the Insurance Industry Systemically Risky?" Washington, D.C.: Brookings Institution. http://www.brookings.edu/~/media/events/2014/10/14-insurance-regulation/acharya_richardson_paper.pdf.

Arner, Douglas W., and Michael W. Taylor. 2009. "The Global Financial Crisis and the Financial Stability Board: Hardening the Soft Law of International Financial Regulation?" SSRN Scholarly Paper ID 1520887. Rochester: Social Science Research Network. https://papers.ssrn.com/abstract=1520887.

Asmussen, Jörg. 2006. "Verbriefungen Aus Sicht Des Bundesfinanzministeriums." *Zeitschrift Für Das Gesamte Kreditwesen* 19 (October): 10–12.

Atik, Jefferey. 2011. "Basel II: A Post-Crisis Post-Mortem." *Transnational Law & Contemporary Problems* 19 (3): 731–59.

Atkinson, Paul. 2008. "The Basel Capital Adequacy Framework Should Be Reconsidered." Policy Brief. Paris: Groupe d'Economie Mondiale de Sciences Po. http://gem.sciences-po.fr/content/publications/pdf/Atkinson_BaselII17112008.pdf.

Atlantic Council. 2017. "Julie Chon." Atlantic Council. 2017. http://www.atlanticcouncil.org/about/experts/list/julie-chon.

Bacevich, Andrew J. 2011. "The U.S. Withdrawal from Iraq Marks the End of American Supremacy." *The Washington Post*, December 12, 2011. https://www.washingtonpost.com/opinions/the-us-withdrawal-from-iraq-marks-the-end-of-american-supremacy/2011/12/12/gIQAStpTyO_story.html.

Bach, David, and Abraham L. Newman. 2010. "Transgovernmental Networks and Domestic Policy Convergence: Evidence from Insider Trading Regulation." *International Organization* 64 (3): 505–528.

Backer, Larry Catá. 2011. "Private Actors and Public Governance Beyond the State: The Multinational Corporation, the Financial Stability Board, and the Global Governance Order." *Indiana Journal of Global Legal Studies* 18 (2): 751–802.

Baily, Martin Neil, and Douglas J. Elliot. 2014. "How Is the System Safer? What More Is Needed?" In *Across the Great Divide: New Perspectives on the Financial Crisis*, edited by Martin Neil Baily and John B. Taylor, 165–95. Stanford: Hoover Press.

Baker, Andrew. 2010a. "Restraining Regulatory Capture? Anglo-America, Crisis Politics and Trajectories of Change in Global Financial Governance." *International Affairs* 86 (3): 647–63.

———. 2010b. "Mandate, Accountability and Decision-Making Issues to Be Faced by the Financial Stability Board." In *The Financial Stability Board: An Effective Fourth Pillar of Global Economic Governance?*, edited by Stephany Griffith-Jones, Eric Helleiner, and Ngaire Woods, 19–22. Waterloo: Centre for International Governance Innovation.

Baker, Colleen M. 2010. "Regulating the Invisible: The Case of over-the-Counter Derivatives." *Notre Dame Law Review* 85 (4): 1287–1379.

———. 2015. "Regulatory Reforms and Unintended Collisions: The Case of the Volcker Rule and the over-the-Counter Derivative Markets." *Capital Markets Law Journal* 10 (4): 433–46.

Bakker, Age F. P. 1996. "The Liberalization of Capital Movements in Europe. The Monetary Committee and Financial Integration, 1958 - 1994." Dordrecht: Kluwer.

Balleisen, Edward. 2011. "The Global Financial Crisis and Responsive Regulation: Some Avenues for Historical Inquiry." *University of British Columbia Law Review* 44 (3): 557–88.

Ban, Cornel, and Daniela Gabor. 2016. "The Political Economy of Shadow Banking." *Review of International Political Economy* 23 (6): 901–14.

Bank of America, Barclays, Bear Stearns, Citigroup, Credit Suisse First Boston, Deutsche Bank, Goldman, Sachs, et al. Letter to Timothy Geithner. 2005. "Letter of 14 Largest Derivatives Dealers Addressing Backlogging of Confirmations," October 4, 2005. https://www.newyorkfed.org/medialibrary/media/newsevents/news/markets/2005/industryletter.pdf.

Barker, Alex, Gregory Meyer, and Philip Stafford. 2013. "US and EU Derivatives Truce Averts Rules Crunch." *The Financial Times*, July, 26.

Barkin, J. Samuel. 2015. "Racing All over the Place: A Dispersion Model of International Regulatory Competition." *European Journal of International Relations* 21 (1): 171–93.

Barnard, Chris. 2011. "Comment on SEC Work Plan." SEC. https://www.sec.gov/comments/4-600/4600-156.pdf.

Barr, Michael S. 2014. "Who's in Charge of Global Finance?" *Georgetown Journal of International Law* 45 (4): 971–1027.

Barth, James R., and Clas Wihlborg. 2016. "Too Big to Fail and Too Big to Save: Dilemmas for Banking Reform." *National Institute Economic Review* 235 (1): R27–39.

Barth, Mary E., Wayne R. Landsman, Mark Lang, and Christopher Williams. 2012. "Are IFRS-Based and US GAAP-Based Accounting Amounts Comparable?" *Journal of Accounting and Economics* 54 (1): 68–93.

Baxter, Lawrence G. 2012. "Understanding Regulatory Capture: An Academic Perspective from the United States." In *Making Good Financial Regulation: Towards a Policy Response to Regulatory Capture*, 53–69. Surrey: Grosvenor House.

Bayazitova, Dinara, and Anil Shivdasani. 2012. "Assessing TARP." *The Review of Financial Studies* 25 (2): 377–407.

Bayoumi, Tamim. 2014. "After the Fall: Lessons for Policy Cooperation from the Global Crisis." WP/14/97. IMF Working Paper. Washington, D.C.: International Monetary Fund.

BBk. 2007a. "Hintergrundinformation: Aktuelle Lage Im Internationalen Finanzsystem." Bundesbank.

———. 2007b. "Vorbereitung Meeting Financial Stability Forum Am 25./26. September in New York." Bundesbank.

———. 2008a. "Financial Stability Forum, Mögliche Beteiligung Der EU-Kommission." Bundesbank.

———. 2008b. "FSF Am 28.-30. September 2008 in Amsterdam." Bundesbank.

———. 2008c. "Weltfinanzgipfel - Positionspapier." Bundesbank.

———. 2008d. "FSF Membership Issues." Bundesbank.

———. 2008e. "Financial Stability Forum Am 16. Dezember in Hong Kong." Bundesbank.

———. 2009. "FSF Meeting Am 11.-12. März 2009 in London. TOP I Membership Expansion and Changes in the Working Methods of the Forum." Bundesbank.

BCBS. 2011a. "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems - Post BCBS Meeting - Revised Version." Basel: Bank for International Settlements. http://www.bis.org/publ/bcbs189.pdf.

———. 2011b. "Basel III Framework for Liquidity, FAQ." Basel: Bank for International Settlements. http://www.bis.org/publ/bcbs199.pdf.

———. 2011c. "Global Systemically Important Banks: Assessment Methodology and the Additional Loss Absorbency Requirement - Rules Text." Basel: Bank for International Settlements. http://www.bis.org/publ/bcbs207.pdf.

———. 2013a. "Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools." Basel: Bank for International Settlements. http://www.bis.org/publ/bcbs238.pdf.

———. 2013b. "Global Systemically Important Banks: Updated Assessment Methodology and the Higher Loss Absorbency Requirement." BIS. http://www.bis.org/publ/bcbs255.pdf.

———. 2013c. "Global Systemically Important Banks: Updated Assessment Methodology and the Higher Loss Absorbency Requirement." Basel: Bank for International Settlements. http://www.bis.org/publ/bcbs255.pdf.

———. 2014a. “Basel III Leverage Ratio Framework and Disclosure Requirements.” Basel: Bank for International Settlements. http://www.bis.org/publ/bcbs270.pdf.

———. 2014b. “Basel III: The Net Stable Funding Ratio.” Basel: Bank for International Settlements. http://www.bis.org/bcbs/publ/d295.pdf.

———. 2014c. “Regulatory Consistency Assessment Programme (RCAP): Assessment of Basel III Regulations – European Union.” RCAP. Basel: BIS. www.bis.org/bcbs/publ/d300.pdf.

———. 2014d. “Regulatory Consistency Assessment Programme (RCAP): Assessment of Basel III Regulations – United States of America.” RCAP. Basel: BIS. www.bis.org/bcbs/publ/d301.pdf.

———. 2015. “Basel III Monitoring Report.” Basel: Bank for International Settlements. http://www.bis.org/bcbs/publ/d312.pdf.

———. 2016. “Revisions to the Standardised Approach for Credit Risk – Second Consultative Document.” Basel: Bank for International Settlements.

BCBS, and IOSCO. 2013. “Margin Requirements for Non-Centrally Cleared Derivatives - Final Document.” Basel: Bank for International Settlements. http://www.bis.org/publ/bcbs261.pdf.

———. 2015. “Margin Requirements for Non-Centrally Cleared Derivatives.” 2. Basel: Bank for International Settlements. http://www.bis.org/bcbs/publ/d317.pdf.

BDO. 2016. “IFRS in Practice 2016, IFRS 9 Financial Instruments.” Zaventem: BDO global. https://www.bdo.global/getattachment/Services/Audit-Accounting/IFRS/IFRS-in-Practice/IFRS9_print.pdf.aspx?lang=en-GB.

Beach, Derek, and Rasmus Brun. Pedersen. 2014. *Process-Tracing Methods Foundations and Guidelines*. Ann Arbor: University of Michigan Press.

Bengston, Tom. 2004. “Regulatory Competition.” *North Western Financial Review* 189 (5): 6–6.

Bennett, Andrew, and Jeffrey T. Checkel. 2015. “Process Tracing: From Philosophical Roots to Best Practices.” In *Process Tracing, From Metaphor to Analytic Tool*, edited by Andrew Bennett and Jeffrey T. Checkel, 1. publ., 3–37. Strategies for Social Inquiry. Cambridge: Cambridge University Press.

Bennetts, Louise C., and Arthur S. Long. 2013. “The New Autarky? How U.S. and UK Domestic and Foreign Banking Proposals Threaten Global Growth.” 743. Policy Analysis. Washington, D.C.: Cato Institute. http://object.cato.org/sites/cato.org/files/pubs/pdf/pa743_web.pdf.

Berentsen, Aleksander, Samuel Huber, and Alessandro Marchesiani. 2016. “The Societal Benefit of a Financial Transaction Tax.” *European Economic Review* 89: 303–23.

Berger, Allen N. 2006. “Potential Competitive Effects of Basel II on Banks in SME Credit Markets in the United States.” *Journal of Financial Services Research* 29 (1): 5–36.

Bernanke, Ben. 2004. “Speech: The Great Moderation.” Federal Reserve Board. http://www.federalreserve.gov/boarddocs/speeches/2004/20040220/.

———. 2009. “Speech: The Crisis and the Policy Response.” Federal Reserve Board. http://www.federalreserve.gov/newsevents/speech/bernanke20090113a.htm.

———. 2013. “Speech: A Century of U.S. Central Banking: Goals, Frameworks, Accountability.” Federal Reserve Board. https://www.federalreserve.gov/newsevents/speech/bernanke20130710a.htm.

Bernstein, Marver H. 1955. *Regulating Business by Independent Commission*. Princeton: Princeton University Press.

Beswick, Paul A. 2010. “Remarks before the 2010 AICPA National Conference on Current SEC and PCAOB Developments.” SEC. https://www.sec.gov/news/speech/2010/spch120610pab.htm.

Bethel, Jennifer E., and Erik R. Sirri. 2015. “Securities Regulation During and After the 2008 Financial Crisis.” In *The New International Financial System: Analyzing the Cumulative Impact of Regulatory Reform*, edited by Douglas D. E. T. Al Evanoff, Andrew G. Haldane, and George G. Kaufman, 215–52. Hackensack, London: World Scientific.

Bezemer, Dirk, and Maria Grydaki. 2014. “Financial Fragility in the Great Moderation.” *Journal of Banking & Finance* 49 (December): 169–77.

Bhagwati, Jagdish. 1999. “Regionalism and Multilateralism - An Overview.” In *Trading Blocks, Alternative Approaches to Analyzing Preferential Trade Agreements*, edited by Jagdish Bhagwati, Pravin Krishna, and Arvind Panagariya, 3–32. Cambridge, London: MIT Press.

Bhagwati, Jagdish, David Greenaway, and Arvind Panagariya. 1998. “Trading Preferentially: Theory and Policy.” *The Economic Journal* 108 (449): 1128–48.

Bhagwati, Jagdish, and Arvind Panagariya. 1996. “Preferential Trading Areas and Multilateralism – Strangers, Friends, or Foes?” In *The Economics of Preferential Trade Agreements*, edited by Jagdish Bhagwati and Arvind Panagariya, 1–78. Washington: American Enterprise Institute.

Bhardwaj, Geetesh, and Rajdeep Sengupta. 2009. “Where’s the Smoking Gun? A Study of Underwriting Standards for US Subprime Mortgages.” St. Louis: Federal Reserve Bank of St. Louis. https://www.fdic.gov/bank/analytical/CFR/bank_research_conference/annual_9th/Sengupta_R.pdf.

Bianchi, Robert J., and Michael E. Drew. 2010. “Hedge Fund Regulation and Systemic Risk.” *Griffith Law Review* 19 (1): 6–29.

BIS. 2009a. “Press Release: Financial Stability Forum Re-Established as the Financial Stability Board.” Bank for International Settlements. http://www.bis.org/press/p090403a.htm.

———. 2009b. “Report on Special Purpose Entities.” Basel: Bank for International Settlements. http://www.bis.org/publ/joint23.pdf.

———. 2010a. “Overview of Basel II Impact Studies.” Basel Committee on Banking Supervision. https://www.bis.org/bcbs/qis/overview.htm.

———. 2010b. “Press Release: Group of Governors and Heads of Supervision Announces Higher Global Minimum Capital Standards.” Bank for International Settlements. http://www.bis.org/press/p100912.pdf.

BIS, and FSF. 2009. “The Role of Valuation and Leverage in Procyclicality.” Basel: Bank for International Settlements. http://www.bis.org/publ/cgfs34.pdf.

Bishop, W. Anderson. 2010. “W. Anderson Bishop Comments on Work Plan.” SEC. https://www.sec.gov/comments/4-600/4600-7.htm.

Black, Lamont K., and Lieu N. Hazelwood. 2013. “The Effect of TARP on Bank Risk-Taking.” *Journal of Financial Stability*, Re-examining the role of the state in the financial sector, 9 (4): 790–803.

Blinder, Alan S. 2013. *After the Music Stopped: The Financial Crisis, the Response, and the Work Ahead*. New York, NY: Penguin Press.

BLS. 2016. “The Employment Situation – January 2016.” USDL-16-0210. Washington, D.C.: Bureau of Labor Statistics, U.S. Department of Labor. http://www.bls.gov/news.release/pdf/empsit.pdf.

Blyth, Mark. 2003. “Structures Do Not Come with an Instruction Sheet: Interests, Ideas, and Progress in Political Science.” *Perspectives on Politics* 1 (4): 695–706.

———. 2009. “An Approach to Comparative Analysis or a Subfield within a Subfield? Political Economy.” In *Comparative Politics*, by Mark Irving Lichbach and Alan S. Zuckerman, Second edition, 193–219. Cambridge: Cambridge University Press.

———. 2013a. *Austerity: The History of a Dangerous Idea*. Oxford, New York: Oxford University Press.

———. 2013b. “Paradigms and Paradox: The Politics of Economic Ideas in Two Moments of Crisis.” *Governance* 26 (2): 197–215.

BMF. 2008a. “Mögliche Teilnahme Der EU-KOM an Sitzungen Des FSF.” Bundesministerium der Finanzen.

———. 2008b. “Erweiterung Des FSF Als Folge Der Beschlüsse Des G20-Weltfinanzgipfels.” Bundesministerium der Finanzen.

———. 2009a. “FSF-Treffen. 11./12. März 2009, London. Leitfaden.” Bundesministerium der Finanzen.

———. 2009b. “FSB-Treffen. Freitag/Samstag 26./27. Juni 2009, Basel. Leitfaden.” Bundesministerium der Finanzen.

Bogner, Alexander, and Wolfgang Menz. 2002a. “Das Theoriegenerierende Experteninterview - Erkenntnisinteresse, Wissensformen, Interaktion.” In *Das Experteninterview - Theorie, Methode, Anwendung*, edited by Alexander Bogner, Beate Littig, and Wolfgang Menz, 33–70. Wiesbaden: VS Verlag für Sozialwissenschaften.

———. 2002b. “Expertenwissen Und Forschungspraxis: Die Modernisierungstheoretische Und Die Methodische Debatte Um Die Experten, Zur Einführung in Ein Unübersichtliches Problemfeld.” In *Das Experteninterview - Theorie, Methode, Anwendung*, edited by Alexander Bogner, Beate Littig, and Wolfgang Menz, 7–30. Wiesbaden: VS Verlag für Sozialwissenschaften.

Borak, Donna. 2017. “House Votes to Kill Dodd-Frank. Now What?” *CNNMoney* (blog). June 8, 2017. http://money.cnn.com/2017/06/08/news/economy/house-dodd-frank-repeal/index.html.

Borio, Claudio, Craig Furfine, and Philip Lowe. 2001. “Procyclicality of the Financial System and Financial Stability: Issues and Policy Options.” BIS Papers chapters. Basel: Bank for International Settlements. http://econpapers.repec.org/bookchap/bisbisbpc/01-01.htm.

Born, Brooksley. 1997a. “‘The Dangers of Deregulation.’ Remarks of Brooksly Born, Chairperson Commodity Futures Trading Commission before the Futures Industry Association’s 22nd Annual International Futures Industry Conference.” Commodity Futures Trading Commission. http://www.cftc.gov/opa/speeches/opaborn-5.htm.

———. 1997b. “Caveat Emptor - Let the Buyer Beware." Remarks before the End-Users of Derivatives Association’s Third Annual Conference.” Commodity Futures Trading Commission. http://www.cftc.gov/opa/speeches/opaborn-8.htm.

———. 1997c. “‘Deregulation of the Futures Markets: Who Protects the Public Interest?’ Remarks before the Association of the Bar of the City of New York and the New York State Bar Association.” Commodity Futures Trading Commission. http://www.cftc.gov/opa/speeches/opaborn-15.htm.

———. 1998a. “Testimony of Brooksley Born, Chairperson Commodity Futures Trading Commission Concerning the Over-the-Counter Derivatives Market Before the U.S. Senate Committee on Agriculture, Nutrition and Forestry.” Commodity Futures Trading Commission. http://www.cftc.gov/opa/speeches/opaborn-34.htm.

———. 1998b. “Testimony of Brooksley Born, Chairperson Commodity Futures Trading Commission Concerning Long-Term Capital Management before the U.S. House of Representatives Committee on Banking and Financial Services.” Commodity Futures Trading Commission. http://www.cftc.gov/opa/speeches/opaborn-35.htm.

———. 2001. “International Regulatory Responses to Derivatives Crises: The Role of the U.S. Commodity Futures Trading Commission.” *Northwestern Journal of International Law & Business* 21 (3): 607.

Bowles, Sharon, Charles Hagel, and Mark Warner. 2010. “The Danger of Divergence Transatlantic Cooperation on Financial Reform.” Atlantic Council. www.atlanticcouncil.org/images/files/publication_pdfs/403/ACUS_TR_Danger_Divergence_Report.pdf.

Bown, Chad P. 2008. “Developing Countries and Enforcement of Trade Agreements: Why Dispute Settlement Is Not Enough.” *Journal of World Trade* 42 (1): 177–203.

———. 2009. “Self-Enforcing Trade, Developing Countries and WTO Dispute Settlement.” Washington, D.C.: Brookings Institution.

Bradford, Colin, Johannes Linn, and Paul Marting. 2008. “Global Governance Breakthrough: The G20 Summit and the Future Agenda.” 168. Brookings Policy Brief. Washington, D.C.: Brookings Institution. https://www.brookings.edu/wp-content/uploads/2016/06/12_g20_summit_bradford_linn.pdf.

Bresser-Pereira, Luiz Carlos. 2010. “The Global Financial Crisis and a New Capitalism?” *Journal of Post Keynesian Economics* 32 (4): 499–534.

Brewer, Elijah, and Ann Marie Klingenhagen. 2010. “Be Careful What You Wish for: The Stock Market Reactions to Bailing out Large Financial Institutions: Evidence from the USA.” *Journal of Financial Regulation and Compliance* 18 (1): 56–69.

Brinkbäumer, Klaus, Hauke Goos, Frank Hornig, Udo Ludwig, and Christoph Pauly. 2009. “Titel Gorillas Spiel.” *Der Spiegel*, March 9, 2009. http://www.spiegel.de/spiegel/print/d-64497194.html.

Brook, Yaron, and Don Watkins. 2012. “Why The Glass-Steagall Myth Persists.” *Forbes* (blog). December 11, 2012. http://www.forbes.com/sites/objectivist/2012/11/12/why-the-glass-steagall-myth-persists/.

Brummer, Chris. 2010. “Post-American Securities Regulation.” *California Law Review* 98 (2): 327–83.

Brzezinski, Zbigniew. 1997. *The Grand Chessboard: American Primacy and Its Geostrategic Imperatives*. 1. ed. New York, NY: BasicBooks.

Buckley, James, and David Howarth. 2010. “Internal Market: Gesture Politics? Explaining the EU’s Response to the Financial Crisis.” *Journal of Common Market Studies* 48: 119–41.

Buckley, Ross P., and Douglas W. Arner. 2011. *From Crisis to Crisis: The Global Financial System and Regulatory Failure*. Alphen aan den Rijn: Kluwer Law International.

Bundesregierung. 2008. “Regierungserklärung Des Bundesministers Der Finanzen, Peer Steinbrück, Zur Lage Der Finanzmärkte Vor Dem Deutschen Bundestag Am 25. September 2008 in Berlin.” http://www.bundesregierung.de/Content/DE/Bulletin/2008/09/97-1-bmf-bt-regerkl.html.

Bunge, Jacob, and Doug Cameron. 2008. “ICE to Buy Clearing Corp. as Big Banks Support Plan.” *Wall Street Journal*, October 31, 2008, CCLII edition, sec. Business.

Burnett, Brian M., Elizabeth A. Gordon, Bjorn N. Jorgensen, and Cheryl L. Linthicum. 2015. “Earnings Quality: Evidence from Canadian Firms’ Choice between IFRS and U.S. GAAP.” *Accounting Perspectives* 14 (3): 212–49.

Bush, George W. 2007. “Press Release – President Bush Discusses Homeownership Financing.” The White House Office of the Press Secretary. http://georgewbush-whitehouse.archives.gov/news/releases/2007/08/print/20070831-5.html.

Büthe, Tim, and Walter Mattli. 2003. “Setting International Standards: Technological Rationality of Primacy of Power?” *World Politics* 56: 1–42.

———. 2011. *The New Global Rulers: The Privatization of Regulation in the World Economy*. Princeton: Princeton University Press.

Byun, Kathryn J., and Bradley Nicholson. 2015. “The U.S. Economy to 2024: Monthly Labor Review.” Washington, D.C.: U.S. Bureau of Labor Statistics. http://www.bls.gov/opub/mlr/2015/article/the-us-economy-to-2024.htm.

Cadmus, Eduard H. 2012. “An Altered Derivatives Marketplace: Clearing Swaps Under Dodd-Frank.” *Fordham Journal of Corporate & Financial Law* 17 (1): 189–226.

Carmassi, Jacopo, and Stefano Micossi. 2012. “Time to Set Banking Regulation Right.” CEPS Paper. Centre for European Policy Studies. http://econpapers.repec.org/paper/epscepswp/6734.htm.

Carney, John. 2012. “The SEC Rule That Broke Wall Street.” CNBC. March 21, 2012. http://www.cnbc.com/id/46808453.

Catanach, Anthony H. Jr., and J. Edward Ketz. 2011. “IFRS Is for Criminals.” Grumpy Old Accountants. https://www.sec.gov/comments/4-600/4600-21.pdf.

Cecchetti, Stephen G. 2006. “The Brave New World of Central Banking: Policy Challenges Posed by Asset Price Booms and Busts.” *National Institute Economic Review*, no. 196 (April): 107–20.

———. 2009. “Crisis and Responses: The Federal Reserve in the Early Stages of the Financial Crisis.” *Journal of Economic Perspectives* 23 (1): 51–75.

———. 2013. “Lunch Remarks Prepared for the Emerging Markets Dialogue on OTC Derivatives: Assessing the Macroeconomic Impact of OTC Derivatives Regulatory Reforms.” Bank for International Settlements. http://www.bis.org/speeches/sp130912.pdf.

———. 2015. “The Road to Financial Stability: Capital Regulation, Liquidity Regulation, and Resolution.” *International Journal of Central Banking* 11 (3): 127–39.

Cecchetti, Stephen G., Dietrich Domanski, and Goetz von Peter. 2011. “New Regulation and the New World of Global Banking.” *National Institute Economic Review*, no. 216 (April): 29–40.

Cerulus, Stan. 2012. “Central Clearing for Credit Default Swaps: A Legal Analysis of the New Central Clearing Regulations in Europe and the US.” *Journal of Financial Regulation and Compliance* 20 (2): 212–44.

CFPB. 2016a. “My Lender Says It Can’t Lend to Me because of a Limit on Points and Fees on Loans. Is This True?” FAQ. Consumer Financial Protection Bureau. September 23, 2016. http://www.consumerfinance.gov/askcfpb/1795/my-lender-says-it-cant-lend-me-because-limit-points-and-fees-loans-true.html.

———. 2016b. “What Is a Qualified Mortgage?” FAQ. Consumer Financial Protection Bureau. September 23, 2016. http://www.consumerfinance.gov/askcfpb/1789/what-qualified-mortgage.html.

CFTC. 1998. “Over-the-Counter Derivatives Concept Release.” Federal Register 63, 91. Washington, D.C.: Commodity Futures Trading Commission. http://www.cftc.gov/foia/fedreg98/foi980512a.htm.

———. 2012a. “Factsheet – Final Rules Regarding Further Defining ‘Swap Dealer,’ ‘Major Swap Participant’ and Eligible Contract Participant".” www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_2_Definitions/ssLINK/msp_ecp_factsheet_final.

———. 2012b. “Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act.” Federal Register 77, 134. http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2012-16496a.pdf.

———. 2012c. “Exemptive Order Regarding Compliance with Certain Swap Regulations.” Federal Register 77, 134. http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2012-16498a.pdf.

———. 2012d. “Staff No-Action Relief: Temporary Relief from the De Minimis Threshold for Certain Swaps with Special Entities.” Commodity Futures Trading Commission. http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/12-18.pdf.

———. 2012e. “Final Ruling: Clearing Requirement Determination Under Section 2(h) of the CEA.” Federal Register 77, 240. http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2012-29211a.pdf.

———. 2013a. “Final Exemptive Order Regarding Compliance With Certain Swap Regulations.” Federal Register 78, 4. http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2012-31736a.pdf.

———. 2013b. “No-Action Relief Letter No. 13-45.” Commodity Futures Trading Commission. http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-45.pdf.

———. 2013c. “Press Release: The European Commission and the CFTC Reach a Common Path Forward on Derivatives.” CFTC. http://www.cftc.gov/PressRoom/PressReleases/pr6640-13.

———. 2017. “US Futures Trading and Regulation Before the Creation of the CFTC.” *History of the CFTC* (blog). April 4, 2017. http://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.

Chui, Michael. 2012. “Derivatives Markets, Products and Participants.” 35. Irving Fisher Committee Bulletin. Basel: Bank for International Settlements. http://www.bis.org/ifc/publ/ifcb35a.pdf.

Chwieroth, Jeffrey M. 2010. *Capital Ideas: The IMF and the Rise of Financial Liberalization*. Princeton: Princeton University Press.

Ciesielski, Jack T. 2011. “R.G. Associates Comments on Work Plan.” R.G. Associates. https://www.sec.gov/comments/4-600/4600-18.pdf.

Cihak, Martin, and Erlend Nier. 2009. "The Need for Special Resolution Regimes for Financial Institutions - The Case of the European Union." WP/09/200. IMF Working Paper. Washington, D.C.: International Monetary Fund. http://www.elibrary.imf.org/view/IMF001/10448-9781451873474/10448-9781451873474/10448-9781451873474.xml.

Clark, Andrew J. C. 1997. "Derivatives Litigation in the United Kingdom." In *Derivatives Handbook, Risk Management and Control*, edited by Robert J. Schwartz and Clifford W. Smith, 178–212. New York: Wiley & Sons.

Coffee, John C., Jr. 2014. "Extraterritorial Financial Regulation: Why E.T. Can't Come Home." *Cornell Law Review* 99 (6): 1259–1302.

Cohen, Rodgin. 2010. April 29: Rodgin Cohen Interview by Henny Sender. Financial Times Video. https://www.ft.com/video/0c8d156c-4965-3cf3-8159-912de9f315cb.

Colchester, Max. 2013. "KPMG Warns Over £50 Billion 'Basel 4′ Capital Hole." Wall Street Journal. *Moneybeat* (blog). September 12, 2013. http://blogs.wsj.com/moneybeat/2013/09/12/kpmg-warns-over-50-billion-basel-4-capital-hole/.

Collard, Kathryn. 2015. "Advantages of a Co-Regulatory OTC Derivatives Regime." *Georgetown Journal of International Law* 46 (3): 877–914.

Collyns, Charles. 2008. "The Crisis through the Lens of History." *Finance and Development*, 2008.

Conaway, K. Michael. 2012. *Dodd-Frank Derivatives Reform: Challenges Facing U.S. and International Markets*. Washington, D.C.: U.S. Government Printing Office. https://archives-agriculture.house.gov/sites/republicans.agriculture.house.gov/files/transcripts/112/112-35New.pdf.

Congress, U. S. 2010. *Congressional Record, V. 153, Pt. 7, April 18, 2007 to April 26 2007*. Government Printing Office.

Council. 2010. "Council Regulation (EU) No 1096/2010 of 17 November 2010 Conferring Specific Tasks upon the European Central Bank Concerning the Functioning of the European Systemic Risk Board." Official Journal of the European Union. https://www.esrb.europa.eu/shared/pdf/ESRB-ECB-en.pdf?1f5fe9a864296a7016cc58e0f10184ee.

Cox, C. Christopher. 2008. "Press Release: Chairman Cox Announces End of Consolidated Supervised Entities Program." SEC. https://www.sec.gov/news/press/2008/2008-230.htm.

———. 2014. "Speech Delivered at the Harvard Law School Forum on Corporate Governance and Financial Regulation: How America's Participation in International Financial Reporting Standards Was Lost." Harvard University. https://corpgov.law.harvard.edu/2014/06/11/how-americas-participation-in-international-financial-reporting-standards-was-lost/.

CPMI. 2014. "Charter of the Committee on Payments and Markets Infrastructures." Committee on Payments and Market Infrastructure. https://www.bis.org/cpmi/charter.pdf.

CPMI, and IOSCO. 2013. "Authorities' Access to Trade Repository Data – Consultative Report." Basel: Bank for International Settlements. http://www.bis.org/cpmi/publ/d108.pdf.

CPSS. 2001. "Core Principles for Systemically Important Payment Systems." Basel: Bank for International Settlements. http://www.bis.org/cpmi/publ/d43.pdf.

CPSS, and IOSCO. 2011. "Principles for Financial Market Infrastructures - Consultative Report." Basel: Bank for International Settlements. http://www.bis.org/cpmi/publ/d94.pdf.

———. 2012. “Principles for Financial Market Infrastructures.” Basel: Bank for International Settlements. http://www.bis.org/cpmi/publ/d101a.pdf.

Crotty, James. 2009. “Structural Causes of the Global Financial Crisis: A Critical Assessment of the ‘new Financial Architecture.’” *Cambridge Journal of Economics* 33 (4): 563–80.

Cunningham, Lawrence A. 2008. “The SEC’s Global Accounting Vision: A Realistic Appraisal of a Quixotic Quest.” *North Carolina Law Review* 87: 2–60.

Curtis, Asher. 2012. “A Fundamental-Analysis-Based Test for Speculative Prices.” *Accounting Review* 87 (1): 121–48.

Cutler, A. Claire. 2010. “The Legitimacy of Private Transnational Governance: Experts and the Transnational Market for Force.” *Socio-Economic Review* 8 (1): 157–85.

Davidson, Adam. 2009. Rep. Barney Frank Checks In.Podcast. http://www.npr.org/sections/money/2009/08/podcast_rep_barney_frank_check.html.

Davies, Howard, and David Green. 2008. *Global Financial Regulation: The Essential Guide*. Cambridge: Polity Press. http://www.amazon.de/Global-Financial-Regulation-Essential-Guide/dp/0745643507.

Denzau, Arthur T., and Douglass C. North. 1994. “Shared Mental Models: Ideologies and Institutions.” *Kyklos* 47 (1): 3–31.

DGIPol. 2017. “Upgrading the Basel Standards: From Basel III to Basel IV? Report of the Directorate General for Internal Policies, Economic Governance Support Unit, to the European Parliament.” European Parliament. http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587361/IPOL_BRI(2016)587361_EN.pdf.

D’Hulster, Katia. 2009. “The Leverage Ratio – A New Binding Limit on Banks.” 11. CrisisResponse. Washington, D.C.: The World Bank. http://www.worldbank.org/financialcrisis/pdf/levrage-ratio-web.pdf.

Dodd, Chris, and Barney Frank. 2010. *Dodd-Frank Wall Street Reform and Consumer Protection Act*.

Donnelly, Shawn. 2012. “Institutional Change at the Top: From the Financial Stability Forum to the Financial Stability Board.” In *Crisis and Control Institutional Change in Financial Market Regulation*, edited by Renate Mayntz, 263–77. Frankfurt am Main: Campus.

Downs, Anthony. 1957. *An Economic Theory of Democracy*. New York: Harper & Row.

Drexler, Marie-Christine. 2015. “Your Dissertation Inquiry,” July 21, 2015.

Drezner, Daniel W. 2007. *All Politics Is Global: Explaining International Regulatory Regimes*. Princeton: Princeton University Press.

———. 2010. “Is Historical Institutionalism Bunk?” *Review of International Political Economy* 17 (4): 791–804.

Duffie, Darrell. 2009. “How Should We Regulate Derivatives Markets?” Briefing Paper 5. PEW Financial Reform Project. Washington, D.C.: PEW Research Center. http://fic.wharton.upenn.edu/fic/Policy%20page/Pew_Duffie_Derivatives_Paper_FINAL-TF-Correction.pdf.

———. 2010. “Is There a Case for Banning Short Speculation in Sovereign Bond Markets?” WP 10105. Economics Working Paper. Stanford: Hoover Institution. http://www.hoover.org/research/there-case-banning-short-speculation-sovereign-bond-markets.

Dullien, Sebastian, Stephan Paul, Christian A. Conrad, and Max Otte. 2012. “Finanzmarkt: Regulierung auf dem richtigen Weg?” *Wirtschaftsdienst* 92 (7): 431–48.

Dyson, Kenneth. 2010. “Krise? Welche Krise? Wessen Krise?” *Aus Politik Und Zeitschichte* 43 (October): 19–25.

Easton, David. 1990. *The analysis of political structure*. New York, London: Routledge.

EBA. 2014. “2014 EU-Wide Stress Test – Aggregate Results.” London: European Banking Authority. https://www.eba.europa.eu/documents/10180/669262/2014+EU-wide+ST-aggregate+results.pdf.

———. 2016. “2016 EU-Wide Stress Test – Results.” European Banking Authority. http://www.eba.europa.eu/documents/10180/1532819/2016-EU-wide-stress-test-Results.pdf.

Ebner, Alexander. 2014. “Vermarktlichung, Finanzialisierung und das Austeritätsparadigma der europäischen Krisenbewältigung: Eine polanyische Perspektive.” In *Politische Ökonomie der Finanzialisierung*, edited by Marcel Heires and Andreas Nölke, 49–61. Globale Politische Ökonomie. Springer Fachmedien Wiesbaden. http://link.springer.com/chapter/10.1007/978-3-658-03778-9_3.

EC. 1999. “Financial Services: Implementing the Framework for Financial Markets. Action Plan.” http://ec.europa.eu/internal_market/finances/docs/actionplan/index/action_en.pdf.

———. 2005. “White Paper Financial Services Policy 2005-2010.” European Commission. http://ec.europa.eu/finance/general-policy/docs/white_paper/white_paper_de.pdf.

———. 2011. “Proposal for a Council Directive on a Common System of Financial Transaction Tax and Amending Directive 2008/7/EC.” European Commission. http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/other_taxes/financial_sector/com%282011%29594_en.pdf.

———. 2012a. “Effect Study IFRS 13 Fair Value Measurement.” European Commission, DG Internal Market and Services. http://ec.europa.eu/internal_market/accounting/docs/ias/effect-study-IFRS13_en.pdf.

———. 2012b. “Press Release: Commission Proposes Green Light for Enhanced Cooperation on Financial Transactions Tax.” European Commission. http://europa.eu/rapid/press-release_IP-12-1138_en.htm.

———. 2013. “Capital Requirements Directive (CRD) IV.” European Commission. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN.

———. 2014a. “Memo 14/64 - Reporting and Transparency of Securities Financing Transactions.” European Commission. europa.eu/rapid/press-release_MEMO-14-64_en.pdf.

———. 2014b. “Proposal for a Regulation of the European Parliament and of the Council on Reporting and Transparency of Securities Financing Transactions.” European Commission. eur-lex.europa.eu/resource.html?uri=cellar:b2522602-8f15-11e3-b19c-01aa75ed71a1.0001.01/DOC_1&format=PDF.

———. 2015. “Why Did the Crisis Happen?” Economic and Financial Affairs. 2015. http://ec.europa.eu/economy_finance/explained/the_financial_and_economic_crisis/why_did_the_crisis_happen/index_en.htm.

EC, and CFTC. 2016. “Press Release: Common Approach for Transatlantic CCPs.” CFTC and EC. http://www.cftc.gov/idc/groups/public/@newsroom/documents/speechandtestimony/eu_cftcstatement.pdf.

EC Council. 1988. "Council Directive 88/361/EEC of 24 June 1988 for the Implementation of Article 67 of the Treaty." European Communities. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31988L0361:EN:HTML.

ECB. 2014a. "Press Release: ECB Identifies Systemically Important Payments Systems." European Central Bank. https://www.ecb.europa.eu/press/pr/date/2014/html/pr140821.en.html.

———. 2014b. "Revised Oversight Framework for Retail Payment Systems." European Central Bank. http://www.ecb.europa.eu/press/pr/date/2014/html/Revisedoversightframeworkretailpaymentsystems-ECBRegulationonoversightrequirements.pdf?7b0d76e028ec69c80e15ebe41078bbfb.

———. 2016. "Revised Oversight Framework for Retail Payment Systems." European Central Bank. https://www.ecb.europa.eu/pub/pdf/other/revisedoversightframeworkretailpaymentsystems201602.en.pdf?bc332d9a718f5336b68bb904a68d29b0.

Edwards, Franklin. 1999. "Hedge Funds and the Collapse of Long-Term Capital Management." *Journal of Economic Perspectives* 13: 189–210.

Eernisse, Arie C. 2012. "Banking on Cooperation: The Role of the G-20 in Improving the International Financial Architecture." *Duke Journal of Comparative & International Law* 22 (2): 239–65.

Eichengreen, Barry, and James Tobin. 1995. "Two Cases for Sand in the Wheels of International Finance." *Economic Journal* 105 (428): 162–72.

Elliot, Larry. 2016. "The EBA's Stress Tests Reveal Their Own Lack of Credibility." *The Guardian*, August 1, 2016, sec. Business. https://www.theguardian.com/business/economics-blog/2016/aug/01/eba-stress-tests-reveal-their-own-lack-credibility.

El-Shagi, Makram, and Logan J. Kelly. 2017. "For They Know Not What They Do: An Analysis of Monetary Policy during the Great Moderation." *Applied Economics Letters* 24 (10): 717–21.

Enderlein, Henrik. 2010. "Die Krise Im Euro-Raum: Auslöser, Antworten, Ausblick." *Aus Politik Und Zeitschichte*, no. 43 (October): 7–12.

———. 2011. "Mehr Mut Beim Euro!" In *Was Denkt Deutschland? Zehn Ansichte Zu Europe Mit Einem Vorwort von Jürgen Habermas*, edited by Ulrike Guérot and Jacqueline Hénard, 26–31. Wiesbaden: KSV.

Engert, Andreas. 2010. "Transnational Hedge Fund Regulation." *European Business Organization Law Review* 11: 329–78.

EP, and Council. 2002. "Directive 2002/87/EC on the Supplementary Supervision of Credit Institutions, Insurance Undertakings and Investment Firms in a Financial Conglomerate." European Union. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0087&from=EN.

———. 2004. "Directive 2004/39/EC on Markets in Financial Instruments Amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and Repealing Council Directive 93/22/EEC." Official Journal of the European Union. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0039&from=EN.

———. 2010. “Regulation (EU) No 1092/2010 on European Union Macroprudential Oversight of the Financial System and Establishing a European Systemic Risk Board.” Official Journal of the European Union. https://www.esrb.europa.eu/shared/pdf/ESRB-en.pdf?c095904bca184e72bda26a6e45789edd.

———. 2012. “Regulation (EU) No 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR).” Official Journal of the European Union. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN.

———. 2013. “Regulation (EU) No 575/2013 on Prudential Requirements for Credit Institutions and Investment Firms and Amending Regulation (EU) No 648/2012.” Official Journal of the European Union. http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32013R0575&from=DE.

———. 2014a. “Directive 2014/65/EU on Markets in Financial Instruments and Amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II).” Official Journal of the European Union. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=DE.

———. 2014b. “Regulation (EU) No 600/2014 on Markets in Financial Instruments and Amending Regulation (EU) No 648/2012 (MiFIR).” Official Journal of the European Union. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0600.

Erdmann, Ulrike, Cordula Heidt, and Reinhold Hölscher. 2017. “Definition » Credit Default Swap (CDS) «.” *Gabler Wirtschaftslexikon* (blog). April 10, 2017. http://wirtschaftslexikon.gabler.de/Definition/credit-default-swap-cds.html.

European Communities. 1957. “The Treaty of Rome.” http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf.

European Union. 2007. “Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community.” http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF.

Europolitics. 2013. “Accounting Standards: Bowles ‘Parliament’s Patience Is at an End’ with U.S.” *European Report*, July, 340110–340110.

Evans-Pritchard, Ambrose. 2006. “Monday View: Paulson Re-Activates Secretive Support Team to Prevent Markets Meltdown.” Online presence of “The Daily Telegraph.” *The Telegraph: Monday View* (blog). October 30, 2006. http://www.telegraph.co.uk/finance/comment/ambroseevans_pritchard/2949861/Monday-view-Paulson-re-activates-secretive-support-team-to-prevent-markets-meltdown.html.

Ewing, Thomas. 2000. *Commodity Futures Modernization Act. 106-554*. http://www.cftc.gov/files/ogc/ogchr5660.pdf.

Fabozzi, Frank J., and Moorad Choudhry. 2004. *The Handbook of European Structured Financial Products*. Hoboken: Wiley.

Farrell, Henry, and Abraham L. Newman. 2014. “Domestic Institutions beyond the Nation-State: Charting the New Interdependence Approach.” *World Politics* 66 (2): 331–63.

Farrell, Henry, and John Quiggin. 2011. “Consensus, Dissensus and Economic Ideas: The Rise and Fall of Keynesianism During the Economic Crisis.” P11_2. RSMG Working Paper Series. Brisbane: University of Queensland at St. Lucia. http://ageconsearch.umn.edu/bitstream/151527/2/RSMG%20Working%20Paper%20P11_2.pdf.

Farruggio, Christian, Tobias C. Michalak, and Andre Uhde. 2013. “The Light and Dark Side of TARP.” *Journal of Banking & Finance* 37 (7): 2586–2604.

FASB. 1999. “IASC-U.S. Comparison Project.” October 1999. http://www.fasb.org/intl/iascpg2d.shtml.

———. 2008. “2008 Memorandum of Understanding (MOU).” FASB. http://www.fasb.org/intl/MOU_09-11-08.pdf.

———. 2011. “Press Release: FASB and IASB Issue Common Fair Value Measurement and Disclosure Requirements.” Financial Accounting Standards Board. http://www.fasb.org/cs/ContentServer?pagename=FASB/FASBContent_C/NewsPage&cid=1176158544944&pf=true.

FASB, and IASB. 2002. “The Norwalk Agreement (MOU).” FASB. http://www.fasb.org/news/memorandum.pdf.

FCIC. 2011. *The Financial Crisis Inquiry Report, Authorized Edition: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*. New York: Public Affairs.

FDIC. 2012. “Financial Institution Letter 27-2012. Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements.” Federal Deposit Insurance Corporation.

Ferguson, Niall. 2005. *Colossus: The Rise and Fall of the American Empire*. London: Penguin Books.

Ferguson, Roger W. 2003. “Speech: The Proposed U.S. Approach to Regulatory Capital.” Federal Reserve Board. http://www.federalreserve.gov/boardDocs/speeches/2003/20031113/default.htm.

Ferrarini, Guido, and Paolo Saguato. 2013. “Reforming Securities and Derivatives Trading in the EU: From EMIR to MiFIR.” *Journal of Corporate Law Studies* 13 (2): 319–59.

Ferraro, Vincent. 1981. Review of *Review of Defending the National Interest: Raw Materials Investment and U.S. Foreign Policy*, by Stephen D. Krasner. *The Journal of Interdisciplinary History* 11 (3): 571–73.

Fichtner, Jan. 2014. “Finanzialisierung und der Offshore-Hedge-Fonds-Nexus.” In *Politische Ökonomie der Finanzialisierung*, edited by Marcel Heires and Andreas Nölke, 115–29. Globale Politische Ökonomie. Springer Fachmedien Wiesbaden. http://link.springer.com/chapter/10.1007/978-3-658-03778-9_7.

Fink, Ronald. 2014. “Unsafe at Any Size.” *Global Finance* 28 (10): 48–49.

Fioretos, Orfeo. 2001. “The Domestic Sources of Multilateral Preferences: Varieties of Capitalism in the European Community.” In *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, edited by Peter A. Hall and David Soskice, 213–44. Oxford: Oxford University Press.

———. 2010a. “Capitalist Diversity and the International Regulation of Hedge Funds.” *Review of International Political Economy* 17: 696–723.

———. 2010b. “Europe and the New Global Economic Order: Internal Diversity as Liability and Asset in Managing Globalization.” *Journal of European Public Policy* 17 (3): 383–99.

Flanagan, Sean M. 2001. “The Rise of a Trade Association: Group Interactions within the International Swaps and Derivatives Association.” *Harvard Negotiation Law Review* 6: 211–64.

Fox, Justin. 2009. "Phil Gramm Says the Banking Crisis Is (Mostly) Not His Fault." *Time*, January 24, 2009. http://content.time.com/time/business/article/0,8599,1873833,00.html.

Franck, Thomas M. 1988. "Legitimacy in the International System." *The American Journal of International Law* 82 (4): 705–59.

Frank, Barney. 2007a. *Hedge Funds and Systemic Risk in the Financial Markets*. Washington, D.C.: U.S. Government Printing Office. https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg35405/pdf/CHRG-110hhrg35405.pdf.

———. 2007b. *Subprime and Predatory Lending: New Regulatory Guidance, Current Market Conditions, and Effects on Regulated Financial Institutions*. Washington, D.C.: U.S. Government Printing Office. https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg35410/pdf/CHRG-110hhrg35410.pdf.

———. 2007c. *Hedge Funds and Systemic Risk: Perspectives of the President's Working Group on Financial Markets*. Washington, D.C.: U.S. Government Printing Office. https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg38388/pdf/CHRG-110hhrg38388.pdf.

———. 2007d. *Recent Events in the Credit and Mortgage Markets and Possible Implications for U.S. Consumers and the Global Economy*. Washington, D.C.: U.S. Government Printing Office. https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg39537/pdf/CHRG-110hhrg39537.pdf.

———. 2007e. *Systemic Risk: Examining Regulators' Ability to Respond to Threats to the Financial System*. Washington, D.C.: U.S. Government Printing Office. https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg39903/pdf/CHRG-110hhrg39903.pdf.

Frankel, Tamar. 1998. "Cross-Border Securitization: Without Law, but Not Lawless." *Duke Journal of Comparative & International Law* 8: 255–82.

FRB. 2014. "Dodd-Frank Act Stress Test 2014: Supervisory Stress Test Methodology and Results." Washington, D.C.: Board of Governors of the Federal Reserve System. https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20140320a1.pdf.

FRB, FDIC, OCC, and OTS. 2004. "Joint Press Release: Agencies Note Issuance of Final Basel II Text and Outline U.S. Implementation Efforts." The Federal Reserve Board. http://www.federalreserve.gov/boarddocs/press/bcreg/2004/20040626/default.htm.

FRB, FDIC, OTS, and OCC. 2006. "Summary Findings of the Fourth Quantitative Impact Study." Washington, D.C.: Board of Governors of the Federal Reserve System. https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20060224a1.pdf.

FRBNY. 2005. "Statement Regarding Developments in the Credit Derivatives Markets." Federal Reserve Bank of New York. https://www.newyorkfed.org/newsevents/news/markets/2005/an051005.html.

Friedman, Jeffrey, and Wladimir Kraus. 2011. *Engineering the Financial Crisis: Systemic Risk and the Failure of Regulation*. Philadelphia: University of Pennsylvania Press.

FSA. 2007. "Principles-Based Regulation - Focusing on the Outcomes That Matter - Principles.pdf." London: The Financial Services Authority. http://www.fsa.gov.uk/pubs/other/principles.pdf.

———. 2009. "The Turner Review: A Regulatory Response to the Global Banking Crisis." London: UK Financial Services Authority. http://www.fsa.gov.uk/pubs/other/turner_review.pdf.

FSB. 2009a. "Charter of the Financial Stability Board."

———. 2009b. “Press Release – Inaugural Meeting of the Financial Stability Board.” http://www.fsb.org/wp-content/uploads/pr_090627.pdf.

———. 2010a. “Interim Report to G20 Leaders: Reducing the Moral Hazard Posed by Systemically Important Financial Institutions.” Basel: Bank for International Settlements. http://www.fsb.org/wp-content/uploads/r_100627b.pdf.

———. 2010b. “Reducing the Moral Hazard Posed by Systemically Important Financial Institutions.” Basel: Bank for International Settlements. http://www.fsb.org/wp-content/uploads/r_101111a.pdf.

———. 2010c. “Report on Implementation of OTC Derivatives Market Reforms.” 1. Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/r_101025.pdf.

———. 2011a. “Shadow Banking: Strengthening Oversight and Regulation.” Bank for International Settlements. http://www.fsb.org/wp-content/uploads/r_111027a.pdf.

———. 2011b. “Policy Measures to Address Systemically Important Financial Institutions.” http://www.financialstabilityboard.org/publications/r_111104bb.pdf.

———. 2012a. “Charter of the Financial Stability Board.” www.financialstabilityboard.org/publications/r_120809.pdf.

———. 2012b. “Strengthening the Oversight and Regulation of Shadow Banking – Progress Report to G20 Ministers and Governors.” Bank for International Settlements. http://www.fsb.org/wp-content/uploads/r_120420c.pdf.

———. 2012c. “A Global Legal Entity Identifier for Financial Markets.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/r_120608.pdf.

———. 2012d. “Global Shadow Banking Monitoring Report.” Basel: Bank for International Settlements. http://www.fsb.org/wp-content/uploads/r_121118c.pdf.

———. 2013a. “Peer Review of the United States.” Basel: Financial Stability Board. http://www.financialstabilityboard.org/publications/r_130827.pdf.

———. 2013b. “Strengthening Oversight and Regulation of Shadow Banking.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/r_130829c.pdf.

———. 2013c. “Peer Review of the United Kingdom.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/r_130910.pdf.

———. 2013d. “Global Shadow Banking Monitoring Report 2013.” Basel: Financial Stability Board. www.financialstabilityboard.org/publications/r_131114.pdf.

———. 2014a. “Peer Review of Germany.” Basel: Bank for International Settlements. http://www.fsb.org/wp-content/uploads/r_140409.pdf.

———. 2014b. “Global Shadow Banking Monitoring Report.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/r_141030.pdf.

———. 2014c. “Progress Report on Transforming Shadow Banking into Resilient Market-Based Financing.” Financial Stability Board. http://www.fsb.org/2014/11/progress-report-on-transforming-shadow-banking-into-resilient-market-based-financing/.

———. 2015a. “First Annual Report: 28 January 2013 - 31 March 2014.” Basel: FSB. http://www.fsb.org/wp-content/uploads/First-FSB-Annual-Report.pdf.

———. 2015b. “Handbook for FSB Peer Reviews – SCSI.” Bank for International Settlements. http://www.financialstabilityboard.org/wp-content/uploads/FSB-Peer-Review-Handbook-12-March-2015.pdf.

———. 2015c. “Thematic Review on Supervisory Approaches to SIBs.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/Thematic-Review-on-Supervisory-Approaches-to-SIBs.pdf.

———. 2015d. “Second Annual Report: 1 April 2014 - 31 March 2015.” Basel: FSB. http://www.financialstabilityboard.org/wp-content/uploads/FSB-2nd-Annual-report.pdf.

———. 2015e. “2015 Update List of Global Systemically Important Banks (G-SIBs).” Bank for International Settlements. http://www.fsb.org/wp-content/uploads/2015-update-of-list-of-global-systemically-important-banks-G-SIBs.pdf.

———. 2015f. “Global Shadow Banking Monitoring Report.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/global-shadow-banking-monitoring-report-2015.pdf.

———. 2016a. “Second Thematic Review on Resolution Regimes.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/Second-peer-review-report-on-resolution-regimes.pdf.

———. 2016b. “Thematic Review on the Implementation of the FSB Policy Framework for Shadow Banking Entities – Peer Review Report.” Thematic Review. Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/Shadow-banking-peer-review.pdf.

———. 2016c. “Second Annual Report: Implementation and Effects of the G-20 Reforms.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/Report-on-implementation-and-effects-of-reforms.pdf.

———. 2017a. “Proposed Governance Arrangements for the Unique Transaction Identifier (UTI).” Financial Stability Board. http://www.fsb.org/wp-content/uploads/Proposed-governance-arrangements-for-the-unique-transaction-identifier-UTI.pdf.

———. 2017b. “Review of OTC Derivatives Market Reforms: Effectiveness and Broader Effects of the Reforms.” Basel: Financial Stability Board. http://www.fsb.org/wp-content/uploads/P290617-1.pdf.

FSB, and BCBS. 2015. “Summary of Findings from the TLAC Impact Assessment Studies – Overview Report.” Basel: Bank for International Settlements. www.fsb.org/wp-content/uploads/TLAC-Summary-of-Findings-from-the-Impact-Assessment-Studies-for-publication-final.pdf.

FSB, IMF, and BIS. 2009. “Guidance to Assess the Systemic Importance of Financial Institutions, Markets and Instruments: Initial Considerations.” Basel: Bank for International Settlements. http://www.fsb.org/wp-content/uploads/r_091107c.pdf.

FSF. 2007. “Update of the FSF Report on Highly Leveraged Institutions.” Basel: FSF. http://www.financialstabilityboard.org/2007/05/r_0705/.

———. 2009. “Press Release – Financial Stability Forum Re-Established as the Financial Stability Board.” http://www.financialstabilityboard.org/press/pr_090402b.pdf.

FSOC. 2012a. “2012 Annual Report.” 2. Washington, D.C.: Financial Stability Oversight Council. https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/2012%20Annual%20Report.pdf.

———. 2012b. “2012 Annual Report: Appendix A Designation of Systemically Important Market Utilities.” Washington, D.C.: Financial Stability Oversight Council. https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf.

FSR. 2007. “Responding to the Regulators’ Challenge.” *Financial Services Research*, April 2007.

FT. 2015. “Credit Default Swap CDS Definition.” *Financial Times Lexicon* (blog). October 13, 2015. http://lexicon.ft.com/Term?term=credit-default-swap--CDS.

Fukuyama, Francis. 2006. *The End of History and the Last Man*. 1. Free Press trade pbk. ed. [with a new afterword]. New York: Free Press.

G-20. 2008. “Washington Summit, Leaders’ Declaration on Financial Markets and the World Economy.” http://g20.org.tr/wp-content/uploads/2014/12/Washington_Declaration.pdf.

———. 2009a. “London Summit, Leaders’ Declaration on Strengthening the Financial System.” http://www.g20.utoronto.ca/2009/2009ifi.pdf.

———. 2009b. “Pittsburgh Summit, Leaders’ Declaration.”

———. 2010a. “Toronto Summit, Declaration.” G-20. http://www.g20.utoronto.ca/2010/to-communique.html.

———. 2010b. “Seoul Summit, Declaration.” http://www.g20.utoronto.ca/summits/2010seoul.html.

———. 2010c. “The Seoul Summit Document.” www.g20.utoronto.ca/2010/g20seoul-doc.pdf.

———. 2011a. “Cannes Action Plan for Growth and Jobs.” http://www.g20.utoronto.ca/2011/2011-cannes-action-111104-en.html.

———. 2011b. “Cannes Summit Final Declaration – Building Our Common Future: Renewed Collective Action for the Benefit of All.” http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html.

———. 2011c. “G-20 Cannes Summit Communiqué.” http://www.g20.utoronto.ca/2011/2011-cannes-communique-111104-en.html.

Gadinis, Stavros. 2013a. “From Independence to Politics in Financial Regulation.” *California Law Review* 101: 327–406.

———. 2013b. “The Financial Stability Board: The New Politics of International Financial Regulation.” *Texas International Law Journal* 48: 157–76.

Gallagher, Daniel M. 2015a. “Bank Regulators at the Gates: The Misguided Quest for Prudential Regulation of Asset Managers: Remarks at the 2015 Virginia Law and Business Review Symposium.” SEC. https://www.sec.gov/news/speech/041015-spch-cdmg.html.

———. 2015b. “Remarks at the Harvard Law School Symposium on Building the Financial System of the 21st Century: An Agenda for Europe and the United States.” SEC. https://www.sec.gov/news/speech/building-the-financial-system-of-the-21st-century.html.

———. 2015c. “Speech: Dodd-Frank at Five, A Capital Markets Swan Song.” SEC. https://www.sec.gov/news/speech/dodd-frank-at-five.html.

Gallagher, Daniel M., and Peter J. Wallison. 2015. “How Foreigners Became America’s Financial Regulators.” *Wall Street Journal*, March 19, 2015, sec. Opinion. http://www.wsj.com/articles/peter-wallison-and-daniel-gallagher-how-foreigners-became-americas-financial-regulators-1426806547.

GAO. 2007. “Credit Derivatives: Confirmation Backlogs Increased Dealers’ Operational Risks, but Were Successfully Addressed after Joint Regulatory Action.” GAO-07-716. Washington, D.C.: Government Accountability Office. https://digital.library.unt.edu/ark:/67531/metadc301856/m2/1/high_res_d/261970.pdf.

———. 2014. "International Financial Reforms: U.S. and Other Jurisdictions' Efforts to Develop and Implement Reforms." GAO-14-261. Report to Congressional Addressees. Washington, D.C.: U.S. Government Accountability Office. http://www.gao.gov/assets/670/662258.pdf.

GDSG. 1993. "Derivatives: Practices and Principles. Appendix I: Working Papers." Global Derivatives Study Group of the Group of Thirty. http://group30.org/images/uploads/publications/G30_Derivatives-Appendix_1.pdf.

Geithner, Timothy. 2009a. "Press Briefing by Treasury Secretary Geithner on the G20 Meetings." The White House Office of the Press Secretary. http://www.whitehouse.gov/the_press_office/Press-Briefing-by-Treasury-Secretary-Geithner-on-the-G20-Meetings.

———. 2009b. *The Administration's Proposal to Modernize the Financial Regulatory System*. Washington, D.C. http://www.nasaa.org/wp-content/uploads/2011/08/103-Senate_Banking_Hearing_6.18.09.pdf.

George, Alexander L. 1979. "Case Studies and Theory Development: The Method of Structured, Focused Comparison." In *Diplomacy, New Approaches in History, Theory, and Policy*, edited by Paul Gordon Lauren, 43–68. New York: The Free Press.

George, Alexander L., and Andrew Bennett. 2005. *Case Studies and Theory Development in the Social Sciences*. BCSIA Studies in International Security. Cambridge, London: MIT Press.

Giancarlo, J. Christopher. 2015. "American Prosperity Requires Capital Freedom." *CATO Journal* 35 (3): 669–81.

Goldbach, Roman. 2012. "The Political Economy of Transnational Regulatory Regimes in Global Finance. Basel II, Financial Stability and Deficient Political Control Mechanisms." Göttingen: Georg-August-University.

Goldbach, Roman, Thorsten Hasche, Jörn Müller, and Stefan Schüder. 2010. "Global Governance of the World Financial Crisis." *Goettingen Journal of International Law* 1: 11–42.

Goldschmid, Harvey J., and Hans Hoogervorst. 2009. "Report of the Financial Crisis Advisory Group." London and Norwalk: IASB and FASB. http://www.ifrs.org/Features/Documents/FCAGReportJuly2009.pdf.

Goldstein, Judith, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter. 2000. "Introduction: Legalization and World Politics." *International Organization* 54 (3): 385–99.

Goldstein, Judith, and Lisa L. Martin. 2000. "Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note." *International Organization* 54 (3): 603–32.

González-Páramo, José Manuel. 2009. "Financial Market Failures and Public Policies - a Central Banker's Perspective on the Global Financial Crisis." Bank for International Settlements. http://www.bis.org/review/r090210e.pdf.

Goodman, Peter S. 2008. "Taking Hard New Look at a Greenspan Legacy." *The New York Times*, October 8, 2008. http://www.nytimes.com/2008/10/09/business/economy/09greenspan.html.

Goodstadt, Leo F. 2011. *Reluctant Regulators: How the West Created and China Survived the Global Financial Crisis*. Digitally print. Hong Kong: Hong Kong University Press.

Grant, Jeremy. 2010. "BIS Wants OTC Derivatives to Be Rated like Drugs." *The Financial Times*, June, 34.

Grant, Wyn, and Graham K. Wilson, eds. 2012. *The Consequences of the Global Financial Crisis, The Rhetoric of Reform and Regulation*. Oxford: Oxford University Press.

Grauwe, Paul De. 2011. "The Banking Crisis: Causes, Consequences and Remedies." In *Systemic Implications of Transatlantic Regulatory Cooperation and Competition*, edited by Simon J. Evenett and Robert M. Stern, 23–46. Hackensack: World Scientific.

Greene, Edward F., and Joshua Boehm. 2012. "The Limits of 'Name-and-Shame' in International Financial Regulation." *Cornell Law Review* 97: 1083–1140.

Greene, Edward F., and E. L. Broomfield. 2013. "Promoting Risk Mitigation, Not Migration: A Comparative Analysis of Shadow Banking Reforms by the FSB, USA and EU." *Capital Markets Law Journal* 8: 6–53.

Greene, Edward F., and Ilona Potiha. 2012. "Examining the Extraterritorial Reach of Dodd-Frank's Volcker Rule and Margin Rules for Uncleared Swaps – a Call for Regulatory Coordination and Cooperation." *Capital Markets Law Journal* 7 (3): 271–316.

———. 2013. "Issues in the Extraterritorial Application of Dodd–Frank's Derivatives and Clearing Rules, the Impact on Global Markets and the Inevitability of Cross-Border and US Domestic Coordination." *Capital Markets Law Journal* 8 (4): 338–94.

Greenspan, Alan. 1997. "FRB: Remarks on Government Regulation and Derivative Contracts at the Financial Markets Conference of the Federal Reserve Bank of Atlanta." Federal Reserve Board. https://www.federalreserve.gov/boarddocs/speeches/1997/19970221.htm.

———. 1998. "FRB: Testimony on the Regulation of OTC Derivatives before the House Committee on Banking and Financial Services." Federal Reserve Board. https://www.federalreserve.gov/boarddocs/testimony/1998/19980724.htm.

———. 2003. "Global Finance - Is It Slowing? Remarks at the Bank of France International Symposium on Monetary Policy, Economic Cycle, and Financial Dynamics." Bank for International Settlements. http://www.bis.org/review/r030311b.pdf.

Griffith-Jones, Stephany. 2010. "Counter-Cyclicality: The New Consensus, How It Could Be Implemented." In *The Financial Stability Board: An Effective Fourth Pillar of Global Economic Governance?*, edited by Stephany Griffith-Jones, Eric Helleiner, and Ngaire Woods, 49–51. Waterloo: Centre for International Governance Innovation.

Hakkio, Craig S. 2013. "The Great Moderation - A Detailed Essay on an Important Event in the History of the Federal Reserve." Federal Reserve Board. http://www.federalreservehistory.org/Events/DetailView/65.

Haldane, Andrew G. 2009. "Why Banks Failed the Stress Test." BIS. http://www.bis.org/review/r090219d.pdf.

Hale, Thomas, and David Held. 2012. "Gridlock and Innovation in Global Governance: The Partial Transnational Solution." *Global Policy* 3: 169–81.

Hall, Ben, and Jean Eaglesham. 2008. "Brown, Sarkozy Seek 'new Bretton Woods.'" *Financial Times*, November 3, 2008, sec. World Economy.

Hall, Peter A., and David Soskice. 2001. "An Introduction to Varieties of Capitalism." In *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, edited by Peter A. Hall and David Soskice, 1–68. Oxford: Oxford University Press.

Hall, Peter A., and Rosemary C.R. Taylor. 1996. "Political Science and the Three New Institutionalisms." *Political Studies* 44 (5): 936–57.

Hall, Peter A., and Kathleen Thelen. 2009. "Institutional Change in Varieties of Capitalism." *Socio-Economic Review* 7 (1): 7–34.

Handelsblatt. 2014. "Banken-Stresstest: „Kein Grund Zum Ausruhen"." *Handelsblatt*, October 26, 2014. http://www.handelsblatt.com/politik/konjunktur/banken-stresstest-kein-grund-zum-ausruhen/10887504.html.

Hanson, Jim M. 1993. *The decline of the American empire*. 1. publ. Westport, Connua: Praeger.

Hardin, Garrett. 1968. "The Tragedy of the Commons." *Science* 162 (3859): 1243–48.

Heesen, Mark G. 2011. "National Venture Capital Association Comments on Work Plan." NVCA. https://www.sec.gov/comments/4-600/4600-22.pdf.

Helfferich, Cornelia. 2004. *Die Qualität Qualitativer Daten*. Wiesbaden: VS Verlag für Sozialwissenschaften.

———. 2009. *Die Qualität qualitativer Daten: Manual für die Durchführung qualitativer Interviews*. 3rd ed. Netzwerkforschung. Wiesbaden: VS Verlag für Sozialwissenschaften.

Helgadóttir, Oddný. 2016. "Banking Upside down: The Implicit Politics of Shadow Banking Expertise." *Review of International Political Economy* 23 (6): 915–40.

Helleiner, Eric. 2010a. "A Bretton Woods Moment? The 2007-2008 Crisis and the Future of Global Finance." *International Affairs* 86: 619–36.

———. 2010b. "What Role for the New Financial Stability Board? The Politics of International Standards after the Crisis." *Global Policy* 1: 282–90.

Helleiner, Eric, and Stefano Pagliari. 2011. "The End of an Era in International Financial Regulation? A Postcrisis Research Agenda." *International Organization* 65 (1): 169–200.

Henkin, Louis. 1995. *International Law, Politics and Values*. Dordrecht: Nijhoff.

Henry, David, and Patrick Rucker. 2016. "Most Big U.S. Banks Pass Fed's Stress Test, Boosting Shareholder Payouts." *Reuters*, June 30, 2016.

Herdmann, Robert K. 2002. *Testimony Concerning the Roles of the SEC and the FASB in Establishing GAAP*. Washington, D.C.: SEC. https://www.sec.gov/news/testimony/051402tsrkh.htm.

Hermes, Judith. 2016. Exploratory Interview with Dr. Judith Hermes, Bundesministerium der Finanzen, Referat VII A 1 Interview by Nikolas Keßels. Telephone.

Herring, Richard J. 2007. "The Rocky Road to Implementation of Basel II in the United States." *Atlantic Economic Journal* 35 (4): 411–29.

Hills, Robert, David Rule, Sarah Parkinson, and Christian Young. 1999. "Central Counterparty Clearing Houses and Financial Stability." In *Financial Stability Report*, by Bank of England, 122–34. London: Bank of England. http://www.bankofengland.co.uk/archive/Documents/historicpubs/fsr/1999/fsrfull9906.pdf.

Hirsh, Michael. 2010. "Capital Offense: How Washington's Wise Men Turned America's Future Over to Wall Street." *The New York Times*, December 13, 2010. http://www.nytimes.com/2010/12/13/books/excerpt-capital-offense.html.

HM Treasury. 2010. "Reform and Regulation [Archived]." Financial Services. November 28, 2010. http://webarchive.nationalarchives.gov.uk/content/20130129110402/http://www.hm-treasury.gov.uk/reform_and_regulation.htm.

Hofmann, Tobias. 2014. “Joseph Jupille, Walter Mattli and Duncan Snidal. 2013. Institutional Choice and Global Commerce (New York, NY: Cambridge University Press).” *The Review of International Organizations* 9 (3): 381–84.

Hogan, Michael J. 1979. Review of *Review of Defending the National Interest: Raw Materials Investments and U.S. Foreign Policy*, by Stephen D. Krasner. *The American Historical Review* 84 (4): 1195–96.

Holmquist, Jörgen. 2007. “Speech at the Institute of International Bankers: Implementation of Basel II, Challenges & Opportunities.” European Commission, DG Internal Market and Services. http://ec.europa.eu/internal_market/speeches/docs/2007/jh05032007.pdf.

Hope, Andrew. 2008. “Basel II Has Become Obstacle to Trade Flows.” *The Financial Times*, November 18, 2008, sec. Opinion and Editorial.

Howarth, David, and Lucia Quaglia. 2013. “Banking on Stability: The Political Economy of New Capital Requirements in the European Union.” *Journal of European Integration* 35 (3): 333–46.

Hryckiewicz, Aneta. 2014. “What Do We Know about the Impact of Government Interventions in the Banking Sector? An Assessment of Various Bailout Programs on Bank Behavior.” *Journal of Banking & Finance* 46 (September): 246–65.

Huang, Jing-Zhi, and Ying Wang. 2013. “Hedge Funds and the Financial Crisis.” In *Alternative Investments*, edited by H. Kent Baker and Greg Filbeck, 521–39. John Wiley & Sons. http://onlinelibrary.wiley.com/doi/10.1002/9781118656501.ch26/summary.

Hughes, Jennifer. 2008. “Fair Value Accounting Rules Eased.” *The Financial Times*, October, 26–26.

IAIS. 2015. “Press Release: IAIS Develops Higher Loss Absorbency (HLA) Requirement for Global Systemically Important Insurers.” IAIS. http://www.iaisweb.org/page/news/press-releases/file/57136/5-october-2015-iais-press-release-iais-develops-hla.

IASB. 2014. “Press Release: IFRS - IASB Completes Reform of Financial Instruments Accounting.” IASB. http://www.ifrs.org/Alerts/PressRelease/Pages/IASB-completes-reform-of-financial-instruments-accounting-July-2014.aspx.

IASB, and FASB. 2010a. “First Quarterly Progress Report – IASB and FASB Commitment to Memorandum of Understanding.” London: IASB. http://www.ifrs.org/Use-around-the-world/Global-convergence/Convergence-with-US-GAAP/Documents/April2010progressreport3.pdf.

———. 2010b. “Second Quarterly Progress Report on Commitment to Convergence of Accounting Standards and a Single Set of High Quality Global Accounting Standards.” London: IASB. http://www.ifrs.org/Use-around-the-world/Global-convergence/Convergence-with-US-GAAP/Documents/MoU_Status_Update_24June_2010_FINAL.pdf.

———. 2010c. “Third Quarterly Progress Report on Commitment to Convergence of Accounting Standards and a Single Set of High Quality Global Accounting Standards.” London: IASB. http://www.ifrs.org/Use-around-the-world/Global-convergence/Convergence-with-US-GAAP/Documents/MoUStatusUpdateNov2010.pdf.

———. 2012. “Joint Update Note from the IASB and FASB on Accounting Convergence.” Basel: FSB. http://www.fsb.org/wp-content/uploads/r_120420d.pdf?page_moved=1.

———. 2013. “Meeting of the G20 Finance Ministers and Central Bank Governors - Update by the IASB and FASB.” Basel: G20. http://www.fsb.org/wp-content/uploads/r_130216b.pdf.

ICBA. 2005. “Basel II: Capital Changes in the U.S. Banking System and the Results of the Impact Study.” Independent Community Bankers of America. http://www.staging.icba.org/files/ICBASites/PDFs/test051105.pdf.

———. 2006. “Basel Capital Accord Update.” Independent Community Bankers of America. https://www.icba.org/files/ICBASites/PDFs/stmt092606.pdf.

IFRS. 2015. “2014 Annual Report – Financial Reporting Standards for the World Economy.” 13. London: IFRS Foundation. http://www.ifrs.org/About-us/IFRS-Foundation/Oversight/Annual-reports/Documents/IFRS-Foundation-Annual-Report-2014.pdf.

———. 2016. “2015 Annual Report – Focusing on the Future.” 14. London: IFRS Foundation. http://www.ifrs.org/About-us/IFRS-Foundation/Oversight/Annual-reports/Documents/IFRS-Foundation-Annual-Report-2015.pdf.

———. 2017. “History of the IASC.” International Accounting Standards Committee (IASC). March 29, 2017. https://www.iasplus.com/en/resources/ifrsf/history/resource25.

Illiano, Gary. 2011. “Grant Thornton Comment on SEC Work Plan.” Grant Thornton. https://www.sec.gov/comments/4-600/4600-95.pdf.

———. 2012. “Grant Thornton Comment on SEC Work Plan.” Grant Thornton. https://www.sec.gov/comments/4-600/4600-162.pdf.

IMF. 2002. “Global Financial Stability Report.” Washington, D.C.: IMF. https://www.imf.org/External/Pubs/FT/GFSR/2002/01/pdf/chp3.pdf.

———. 2007. “Global Financial Stability Report: Market Developments and Issues.” Washington, D.C.: IMF. https://www.imf.org/External/Pubs/FT/GFSR/2007/01/pdf/text.pdf.

———. 2008. “Finance & Development: Cracks in the System.”

———. 2010. “Global Financial Stability Report: Meeting New Challenges to Stability and Building a Safer System.” Washington, D.C.: International Monetary Fund. http://www.imf.org/external/pubs/ft/gfsr/2010/01/index.htm.

———. 2014. “Global Financial Stability Report. Risk Taking, Liquidity, and Shadow Banking: Curbing Excess While Promoting Growth.” Washington, D.C.: International Monetary Fund. https://www.imf.org/external/pubs/ft/gfsr/2014/02/pdf/c2.pdf.

———. 2015. “IMF Factsheets – The Financial Sector Assessment Program.” Washington: IMF. http://www.imf.org/external/np/exr/facts/pdf/fsap.pdf.

IMF, and World Bank. 2000. “Financial Sector Assessment Program (FSAP). A Review: Lessons from the Pilot and Issues Going Forward.” Washington, D.C. http://www.imf.org/external/np/fsap/2001/review.htm.

———. 2005. “The Standards and Codes Initiative - Is It Effective? And How Can It Be Improved? - ROSC Review 2005.” http://www.worldbank.org/ifa/ROSC%20review%202005.pdf.

Investopedia. 2003. “Credit Default Swap - CDS.” *Financial Terms* (blog). November 19, 2003. http://www.investopedia.com/terms/c/creditdefaultswap.asp.

Ip, Greg, and Carrick Mollenkamp. 2006. “U.S. and Britain Team Up to Test Financial Risk.” *Wall Street Journal*, March 2, 2006, sec. Markets.

ISDA. 2011. “Implementation Plan for Unique Product Identifiers.” International Swaps and Derivatives Association. https://www2.isda.org/attachment/MzQyMA==/ISDA%20UPI%20Implementation%20Plan%20Final.pdf.

Ivashina, Victoria, and David Scharfstein. 2010. “Bank Lending during the Financial Crisis of 2008.” *Journal of Financial Economics*, The 2007-8 financial crisis: Lessons from corporate finance, 97 (3): 319–38.

Jacobs, Alan M. 2015. “Process Tracing the Effects of Ideas.” In *Process Tracing, From Metaphor to Analytic Tool*, edited by Andrew Bennett and Jeffrey T. Checkel. Cambridge: Cambridge University Press.

Jacobson, Tor, Jesper Lindé, and Kasper Roszbach. 2005. “Credit Risk Versus Capital Requirements under Basel II: Are SME Loans and Retail Credit Really Different?” *Journal of Financial Services Research* 28 (1–3): 43–75.

Jamroz, Michael P. 1992. “The Net Capital Rule.” *The Business Lawyer* 47 (3): 863–912.

Janda, Karel, and Gordon Rausser. 2011. “American and European Regulation of Over-the-Counter Derivative Securities.” MPRA Paper 35036. University Library of Munich, Germany. https://ideas.repec.org/p/pra/mprapa/35036.html.

Jang, Karen Y. 2016. “The Effect of TARP on the Propagation of Real Estate Shocks: Evidence from Geographically Diversified Banks.” *Journal of Banking & Finance*, December, 1–20.

Johnson, Chalmers A. 2003. *Blowback: The Costs and Consequences of American Empire*. New York: Holt.

———. 2004. *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic*. London: Verso.

———. 2007. Chalmers Johnson: “Nemesis: The Last Days of the American Republic” Interview by Amy Goodman. Webpage. http://www.democracynow.org/2007/2/27/chalmers_johnson_nemesis_the_last_days.

———. 2008. *Nemesis: The Last Days of the American Republic*. New York: Metropolitan Books.

Johnson, Kristin N. 2011. “Things Fall Apart: Regulating the Credit Default Swap Commons.” *University of Colorado Law Review* 82: 167–257.

———. 2013. “Governing Financial Markets: Regulating Conflicts.” *Washington Law Review* 88: 185–244.

Johnston, Jason Scott. 2016. “Do Product Bans Help Consumers? Questioning the Economic Foundations of Dodd-Frank Mortgage Regulation.” *George Mason Law Review* 23 (3): 617–96.

Jones, Adam. 2011a. “Quest for Global Consistency Still Faces Hurdles.” *The Financial Times*, January, 14.

———. 2011b. “IASB Chief Urges US to Adopt Global Accounting Rules.” *The Financial Times*, March, 19.

Jones, Charles I. 2009. “The Global Financial Crisis of 2007-20??: A Supplement to Macroeconomics (W.W.Norton, 2008).” Graduate School of Business Stanford University. http://www.econ.ohio- state.edu/mccafferty/econ502.02/CurrentEvents2009.pdf.

Jordana, Jacint, David Levi-Faur, and Xavier Fernández i Marín. 2011. “The Global Diffusion of Regulatory Agencies Channels of Transfer and Stages of Diffusion.” *Comparative Political Studies* 44 (10): 1343–69.

Jupille, Joseph Henri, Walter Mattli, and Duncan Snidal. 2013. *Institutional Choice and Global Commerce*. 1. publ. Cambridge: Cambridge University Press.

Kaal, Wulf A. 2011. “Hedge Fund Regulation via Basel III.” *Vanderbilt Journal of Transnational Law* 44: 389–463.

Kahler, Miles. 2000. “Conclusion: The Causes and Consequences of Legalization.” *International Organization* 54 (3): 661–83.

Kaiser, Robert G. 2013. *Act of Congress: How America’s Essential Institution Works, and How It Doesn’t*. New York: Vintage Books.

Kambhu, John, Til Schuermann, and Kevin J. Stiroh. 2007. “Hedge Funds, Financial Intermediation, and Systemic Risk.” 291. FRBNY Staff Report. New York: Federal Reserve Bank of New York.

Kapstein, Ethan B. 1989. “Resolving the Regulator’s Dilemma: International Coordination of Banking Regulations.” *International Organization* 43 (2): 323–47.

Katz, David M. 2014. “The Split Over Convergence.” *CFO* (blog). October 10, 2014. http://ww2.cfo.com/gaap-ifrs/2014/10/split-convergence/.

Kay, John. 2015. *Other People’s Money. The Real Business of Finance.* New York: Public Affairs.

Keck, Margaret E., and Kathryn Sikkink. 1998. *Activists beyond Borders: Advocacy Networks in International Politics*. 1. publ. Ithaca: Cornell University Press.

Keene, Elodie. 2009. *Hit Me Baby*. Crime, Drama, Mystery.

Kennedy, Paul. 1987. *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000*. New York: Random House.

Keohane, Robert O. 1984. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press.

Keohane, Robert O., Andrew Moravcsik, and Anne-Marie Slaughter. 2000. “Legalized Dispute Resolution: Interstate and Transnational.” *International Organization* 54 (3): 457–88.

Keohane, Robert O., and Joseph S. Nye. 1977. *Power and Interdependence: World Politics in Transition*. 1. print. Boston: Little, Brown.

Kepple, Paul, and Tom Gaidimas. 2011. “PriceWaterhouseCoopers Comment on SEC Work Plan.” PWC. https://www.sec.gov/comments/4-600/4600-120.pdf.

Kern, Alexander, Rahul Dhumale, and John Eatwell. 2005. *Global Governance of Financial Systems: The International Regulation of Systemic Risk*. Oxford: Oxford University Press.

Keynes, John Maynard. 1963. “Economic Possibilities for Our Grandchildren.” In *Essays in Persuasion*, edited by John Maynard Keynes, 1. publ., 358–73. New York: Norton.

King, Gary, Rober O. Keohane, and Sidney Verba. 1994. *Designing Social Inquiry. Scientific Inference in Qualitative Research*. Princeton: Princeton University Press.

King, Mervyn A. 2010. “Banking: From Bagehot to Basel, and Back Again - Speech by Mervyn King, Governor of the Bank of England given at The Second Bagehot Lecture, Buttonwood Gathering, New York City.” The Bank of England. http://www.bankofengland.co.uk/archive/Documents/historicpubs/speeches/2010/speech455.pdf.

Kirsch, Robert J. 2012. “The Evolution of the Relationship between the US Financial Accounting Standards Board and the International Accounting Standard Setters: 1973-2008.” *Accounting Historians Journal* 39 (1): 27–52.

Kirshner, Jonathan. 1995. *Currency and Coercion: The Political Economy of International Monetary Power*. Princeton: Princeton University Press.

Kling, Arnold. 2010. “The Financial Crisis: Moral Failure or Cognitive Failure?” *Harvard Journal of Law & Public Policy* 33 (2): 507–18.

———. 2012. “Why We Need Principles-Based Regulation.” https://www.aei.org/publication/why-we-need-principles-based-regulation/print/.

Knox, Henry. 2011. “Master Artfulness.” *The Lawyer* (blog). March 6, 2011. https://www.thelawyer.com/issues/7-march-2011/master-artfulness/.

Kodres, Laura E. 2013. “Back to Basics: What Is Shadow Banking?” *Finance and Development*, June 2013. http://www.imf.org/external/pubs/ft/fandd/2013/06/pdf/basics.pdf.

Kolko, Jed. 2014. “Why the Homeownership Rate Is Misleading.” *Economix Blog* (blog). January 30, 2014. http://economix.blogs.nytimes.com/2014/01/30/why-the-homeownership-rate-is-misleading/.

Kotz, H. David. 2008. “Office of Inspector General: SEC’s Oversight of Bear Stearns and Related Entities: The Consolidated Supervised Entity Program.” SEC. http://www.finance.senate.gov/imo/media/doc/prg092608i.pdf.

Krasner, Stephen D. 1978. *Defending the National Interest: Raw Materials Investments and US Foreign Policy*. Princeton: Princeton University Press.

———. 1982. “Structural Causes and Regime Consequences: Regimes as Intervening Variables.” *International Organization* 36 (2): 185–205.

———. 1991. “Global Communications and National Power: Life on the Pareto Frontier.” *World Politics* 43 (3): 336–366.

Krassner, Karsten, and Petra Wassermann. 2002. “Nicht Überall, Wo Methode Draufsteht, Ist Auch Methode Drin - Zur Problematik Der Fundierung von ExpertInneninterviews.” In *Das Experteninterview - Theorie, Methode, Andwendung*, edited by Alexander Bogner, Beate Littig, and Wolfgang Menz, 95–111. Wiesbaden: VS Verlag für Sozialwissenschaften.

Kratochwil, Friedrich, and John Gerard Ruggie. 1986. “International Organization: A State of the Art on an Art of the State.” *International Organization* 40 (4): 753–75.

Krishna, Kala, and Anne O. Krueger. 1999. “Implementing Free Trade Areas: Rules of Origin and Hidden Protection.” In *Trading Blocks, Alternative Approaches to Analyzing Preferential Trade Agreements*, edited by Jagdish Bhagwati, Pravin Krishna, and Arvind Panagariya, 541–57. Cambridge, London: MIT Press.

Kroeber, Alfred L. 1948. *Anthropology: Race, Language, Culture, Psychology, Prehistory*. New ed., . New York: Hartcourt, Brace.

Kroszner, Randall S. 1999. “Can the Financial Markets Privately Regulate Risk?” *Journal of Money, Credit & Banking (Ohio State University Press)* 31 (3): 596–618.

Krugman, Paul. 2009a. *The Return of Depression Economics and the Crisis of 2008*. New York, London: W. W. Norton.

———. 2009b. “Banking on the Brink.” *New York Times*, February 23, 2009. http://search.proquest.com/docview/1030656313/abstract/7921D3B2BEB84147PQ/1.

Kruse, Jan. 2009a. “Die Reflexivität Qualitativer Forschung – Oder: Was Erfahren Wir Über Uns Selbst, Wenn Wir Qualitativ Forschen?” In *Qualitative Forschung in Der Psychosomatischen Frauenheilkunde*, edited by Mechthild Neises, 9–42. Lengerich: Pabst Publishers.

———. 2009b. “Reader „Einführung in Die Qualitative Interviewforschung“.” Freiburg im Breisgau.

———. 2009c. “Qualitative Sozialforschung – interkulturell gelesen: Die Reflexion der Selbstauslegung im Akt des Fremdverstehens.” *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research* 10 (1). http://www.qualitative-research.net/index.php/fqs/article/view/1209.

Lall, Ranjit. 2012. “From Failure to Failure: The Politics of International Banking Regulation.” *Review of International Political Economy* 19 (4): 609–38.

Lam, Bourree. 2014. “The Wasted Workday.” *The Atlantic*, December 4, 2014. https://www.theatlantic.com/business/archive/2014/12/the-wasted-workday/383380/.

Lambie, George. 2011. “The Historical Context of the Global Financial Crisis: From Bretton Woods to the Debacle of Neoliberalism.” In *From Recession to Renewal: The Impact of the Financial Crisis on Public Services and Local Government*, edited by Joanna Richardson, 25–50. Bristol: The Policy Press.

Lamfalussy, Alexandre de. 2001. “Final Report of the Committee of Wise Men on the Regulation of European Securities Markets.” Brussels: European Council. http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf.

Lang, Anthony, Nicholas Rengger, and William Walker. 2006. “The Role(s) of Rules: Some Conceptual Clarifications.” *International Relations* 20 (3): 274–94.

Larosière, Jacques de. 2009. “The High-Level Group on Financial Supervision in the EU.” Brussels: European Union.

Law, Jonathan. 2014. “Structured Finance.” *Oxford Dictionary of Finance and Banking*. Oxford: Oxford University Press. http://www.oxfordreference.com/view/10.1093/acref/9780199664931.001.0001/acref-9780199664931-e-7078.

Lawson, George. 2006. “The Promise of Historical Sociology in International Relations.” *International Studies Review* 8: 397–423.

———. 2012. “The Eternal Divide? History and International Relations.” *European Journal of International Relations* 18 (2): 203–26.

Leblond, Patrick. 2011. “EU, US and International Accounting Standards: A Delicate Balancing Act in Governing Global Finance.” *Journal of European Public Policy* 18 (3): 443–61.

Ledrut, Elisabeth, and Christian Upper. 2007. “Changing Post-Trading Arrangements for OTC Derivatives.” *BIS Quarterly Review*, December 10, 2007.

Leonhardt, David. 2010. “Heading Off the Next Financial Crisis.” *The New York Times Magazine*, March 25, 2010.

Levi-Faur, David. 2005a. “The Global Diffusion of Regulatory Capitalism.” *Annals of the American Academy of Political and Social Science* 598: 12–32.

———. 2005b. “The Political Economy of Legal Globalization: Juridification, Adversarial Legalism, and Responsive Regulation. A Comment.” *International Organization* 59 (2): 451–62.

Levitt, Arthur. 1998. "SEC Testimony Before the Senate Committee on Agriculture, Nutrition, and Forestry, Concerning the Regulation of the Over-the-Counter Derivatives Market and Hybrid Instruments." Securities and Exchange Commission. https://www.sec.gov/news/testimony/testarchive/1998/tsty0998.htm.

Lighthizer, Robert E. 2017. "Summary of Objectives for the NAFTA Renegotiations." Office of the United States Trade Representative. https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf.

Lin, Justin Yifu. 2013. *Against the Consensus Reflections on the Great Recession*. Cambridge: Cambridge University Press.

Lipschutz, Ronnie D. 1992. "Reconstructing World Politics: The Emergence of Global Civil Society." *Millennium* 21 (3): 389–420.

Listokin-Smith, Siona. 2013. "Meta-regulation of OTC Derivatives Contracts Post Reform." *Journal of Financial Regulation and Compliance* 21 (2): 188–200.

Liu, Wei, James W. Kolari, T. Kyle Tippens, and Donald R. Fraser. 2013. "Did Capital Infusions Enhance Bank Recovery from the Great Recession?" *Journal of Banking & Finance* 37 (12): 5048–61.

Lombardi, Domenico. 2011. "The Governance of the Financial Stability Board." Washington, D.C.: Brookings Institution. http://www.brookings.edu/~/media/research/files/papers/2011/9/23%20financial%20stability%20board%20lombardi/fsb_issues_paper_lombardi.pdf.

Luntz, Frank. 2010. "The Language of Financial Reform." The Word Doctors. https://timeswampland.files.wordpress.com/2010/04/languageoffinancialreform.pdf.

Lütz, Susanne. 2011. "Back to the Future? The Domestic Sources of Transatlantic Regulation." *Review of International Political Economy* 18: iii–xxii.

Lütz, Susanne, and Dagmar Eberle. 2008. "Varieties of Change in German Capitalism: Transforming the Rules of Corporate Control." *New Political Economy* 13 (4): 377–95.

Lynn, David M. 2014. "A Closer Look at US Credit Risk Retention Rules." *Harvard Law School Forum on Corporate Governance and Financial Regulation* (blog). November 16, 2014. https://corpgov.law.harvard.edu/2014/11/16/a-closer-look-at-us-credit-risk-retention-rules/.

Lysandrou, Photis. 2011. "The Primacy of Hedge Funds in the Subprime Crisis." *Journal of Post Keynesian Economics* 34 (2): 225–54.

———. 2012. "The Real Role of Hedge Funds in the Crisis." *Financial Times*, April 1, 2012. http://www.ft.com/intl/cms/s/0/e83f9c52-6910-11e1-9931-00144feabdc0.html#axzz3zIgdpKOd.

MacAskill, Ewen, and Suzanne Goldenberg. 2008. "President-Elect to Stay Away from G20 Summit." *The Guardian*, November 12, 2008. https://www.theguardian.com/world/2008/nov/12/obama-white-house-georgebush.

Mackintosh, Stuart P. M. 2015. *The Redesign of the Global Financial Architecture: The Return of State Authority*. London, New York: Taylor & Francis.

Macleod, Neil, and Robert Gaut. 2013. "The Proposed EU Financial Transaction Tax." *Journal of Investment Compliance* 14 (2): 61–65.

MAGD. 2013. "Macroeconomic Impact Assessment of OTC Derivatives Regulatory Reforms." Basel: Bank for International Settlements. http://www.bis.org/publ/othp20.pdf.

Maggetti, Martino, and Fabrizio Gilardi. 2011. “The Policy-Making Structure of European Regulatory Networks and the Domestic Adoption of Standards.” *Journal of European Public Policy* 18 (6): 830–47.

Magnus, Marcel, and Power Cairen. 2016. “Banking Union.” European Parliament. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_4.2.4.html.

Mählmann, Thomas. 2013. “Hedge Funds, CDOs and the Financial Crisis: An Empirical Investigation of the ‘Magnetar Trade.’” *Journal of Banking & Finance* 37 (2): 537–48.

Mahoney, James. 2010. “After KKV: The New Methodology of Qualitative Research.” *World Politics* 62 (1): 120–47.

Maier, Charles S. 2002. “An American Empire?” *Harvard Magazine*, 2002. http://harvardmagazine.com/2002/11/an-american-empire.html.

Majone, Giandomenico. 1997. “From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance.” *Journal of Public Policy* 17 (2): 139–67.

Mandel, Michael. 2007. “Greenspan Speaks His Mind.” Bloomberg.com. https://www.bloomberg.com/news/articles/2007-09-20/greenspan-speaks-his-mindbusinessweek-business-news-stock-market-and-financial-advice.

Mankiw, N. Gregory. 2008. “What Would Keynes Have Done?” *The New York Times*, November 30, 2008, sec. Business / Economy. http://www.nytimes.com/2008/11/30/business/economy/30view.html.

Manns, Jeffrey. 2013. “Insuring Against a Derivative Desaster: The Case for Decentralized Risk Management.” *Iowa Law Review* 98: 1575–1627.

Mantega, Guido, Michel Barnier, Pierre Moscovici, Wolfgang Schäuble, Vittorio Grilli, Taro Aso, Anton Siluanov, Pravin Gordhan, Eveline Widmer-Schlumpf, and Geroge Osborne. 2013. “Letter on Cross Border Derivatives Reform to U.S. Secretary of the Treasury Jack Lew,” April 18, 2013. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192415/Letter_on_cross-border_OTC_derivatives_reform_-_18_April_2013.pdf.

Massad, Timothy. 2015. “Remarks before the European Union Parliament, Committee on Economics, Brussels, Belgium.” Commodity Futures Trading Commission. http://www.cftc.gov/idc/groups/public/@newsroom/documents/speechandtestimony/opamassad-20.pdf.

———. 2016. “Statement of Chairman Timothy Massad Regarding Common Approach for Transatlantic CCPs.” Commodity Futures Trading Commission. http://www.cftc.gov/PressRoom/SpeechesTestimony/massadstatement021016.

Mathew, Jerin. 2014. “36 European Banks Would Have Failed Stress Test Based on Basel III Norms.” *International Business Times UK* (blog). October 28, 2014. http://www.ibtimes.co.uk/36-european-banks-would-have-failed-stress-test-based-basel-iii-norms-1472049.

Matthews, Jessica T. 1997. “Power Shift.” *Foreign Affairs* 76 (1): 50–66.

Mattli, Walter, and Tim Büthe. 2005. “Accountability in Accounting? The Politics of Private Rule-Making in the Public Interest.” *Governance* 18 (3): 399–429.

Mattli, Walter, and Ngaire Woods. 2009a. “In Whose Benefit? Explaining Regulatory Change in Global Politics.” In *The Politics of Global Regulation*, edited by Walter Mattli and Ngaire Woods, 1–43. Princeton Oxford: Princeton University Press.

———. 2009b. “Introduction.” In *The Politics of Global Regulation*, edited by Walter Mattli and Ngaire Woods, ix–xvi. Princeton Oxford: Princeton University Press.

McBride, Paul M. 2010. “The Dodd-Frank Act and OTC Derivatives: The Impact of Mandatory Central Clearing on the Global OTC Derivatives Market.” *The International Lawyer* 44 (4): 1077–1122.

McCormick, David, and Donald L. Kohn. 2007. “Letter to G-7 Deputies Concerning the International Reaction to Recent Market Volatilities,” September 6, 2007.

McCormick, David, and Robert Steele. 2007. “A Framework to End the Market Volatility.” *The Financial Times*, September 13, 2007, sec. Feature Articles.

McCulley, Paul A. 2007. “Teton Reflections.” *Global Central Bank Focus* (blog). September 2007. https://www.pimco.com:443/insights/economic-and-market-commentary/global-central-bank-focus/teton-reflections.

McDonald, Gordon. 2009. “Comparing the Paulson Blueprint with the Geithner White Paper.” Backgound Note 2. PEW Financial Reform Project. Washington, D.C.: PEW Research Center. http://fic.wharton.upenn.edu/fic/Policy%20page/Comparing-the-Paulson-Blueprint-with-the-Geithner-White-Paper-FINAL-1.pdf.

McNall, Scott G. 1978. “On Contemporary Social Theory.” *The American Sociologist* 13 (1): 2–6.

McPherson, James M. 1982. *Ordeal by Fire: The Civil War and Reconstruction*. 1. ed. New York: Knopf.

Mearsheimer, John J. 1983. *Conventional Deterrence*. Cornell Studies in Security Affairs. Ithaca: Cornell University Press.

———. 1994. “The False Promise of International Institutions.” *International Security* 19 (3): 5–49.

Merkley, Jefferey, Carl Levin, Thomas Harkin, Elizabeth Warren, Jeanne Shaheen, Barbara Boxer, Dianne Feinstein, and Richard Blumenthal. Letter to Gary Gensler and Mary Jo White. 2013. “Senators Urge CFTC, SEC to Close Major Swaps Loophole and Prevent Bailouts from Implied U.S. Guarantees on Swaps,” July 3, 2013. https://www.merkley.senate.gov/news/press-releases/senators-urge-cftc-sec-to-close-major-swaps-loophole-and-prevent-bailouts-from-implied-us-guarantees-on-swaps.

Metcalfe, Richard, and Mary Johannes. 2012. “Dodd-Frank Act v. EMIR Confirmation, Reconciliation, Compression and Documentation Rules.” London: International Swaps and Derivatives Association. https://www2.isda.org/attachment/NTM5OQ==/Dodd-Frank%20Act%20v.%20EMIR.pdf.

Meyer, Gregory. 2013. “Fears over CFTC Cross-Border Progress.” *The Financial Times*, June, 32–32.

Meyer, Gregory, and Alexander Barker. 2013. “U.S. and EU Reach Deal on Policing Derivatives Trading.” *The Globe and Mail*, July 11, 2013, sec. news. https://www.theglobeandmail.com/report-on-business/international-business/european-business/us-and-eu-reach-deal-on-policing-derivatives-trading/article13134099/.

Miller, Paul B. W., and Paul R. Bahnson. 2011. “The Top 11 Falsehoods about the IASB, IFRS and U.S. Adoption.” *Accounting Today* 25 (10): 20–21.

Miller, Paul B.W., and Paul R. Bahnson. 2015. “Global Standards Advocates Need to Understand the Problems.” *Accounting Today* 29 (8): 20.

MIR. 2007. "Working Group on Market and Institutional Resilience - Preliminary Report." Basel: Financial Stability Forum. http://www.fsb.org/wp-content/uploads/r_0710a.pdf.

———. 2008a. "Interim Report Working Group on Market and Institutional Resilience." Basel: Financial Stability Forum. http://www.fsb.org/wp-content/uploads/r_0802.pdf.

———. 2008b. "Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience." Basel: Financial Stability Forum. http://www.financialstabilityboard.org/wp-content/uploads/r_0804.pdf?page_moved=1.

Moghadam, Reza, and Janamitra Devan. 2011. "2011 Review of the Standards and Codes Initiative." Washington, D.C.: IMF and World Bank. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/07/07/000333037_20110707002157/Rendered/PDF/631340BR0SecM20e0only0900BOX361502B.pdf.

Mokhtari, Manouchehr, and Doha Abdelhamid. 2008. "Neocapture: Regulatory Competition in an Open Market World." *International Economic Journal* 22 (1): 1–24.

Möller, Klaus, Björn Stein, and Patrick Steinpaß. 2005. "Europäische Finanzmarktintegration: Vorrang Für Wettbewerb Und Vielfalt." *Vierteljahrshefte Zur Wirtschaftsforschung* 74 (4): 63–74.

Moloney, Niamh. 2010. "EU Financial Market Regulation after the Global Financial Crisis: 'More Europe' or More Risks?" *Common Market Law Review* 47: 1317–83.

Momani, Bessma. 2010. "The IMF and FSB: Intractable Political Reality and Organizational Mismatch." In *The Financial Stability Board: An Effective Fourth Pillar of Global Economic Governance?*, 36–38. Waterloo: Centre for International Governance Innovation. www.cigionline.org/sites/default/files/fsb_special_report_2.pdf.

Moravcsik, Andrew. 1997. "Taking Preferences Seriously: A Liberal Theory of International Politics." *International Organization* 51 (4): 513–53.

———. 2002. "Reassessing Legitimacy in the European Union." *JCMS: Journal of Common Market Studies* 40 (4): 603–24.

———. 2008. "The New Liberalism." In *The Oxford Handbook of International Relations*, edited by Christian Reus-Smit and Duncan Snidal, 234–54. http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199219322.001.0001/oxfordhb-9780199219322-e-13.

Morgan, Glenn. 2012. "Reforming OTC Markets: The Politics and Economics of Technical Fixes." *European Business Organization Law Review* 13: 391–412.

Moschella, Manuela, and Eleni Tsingou. 2013. "Introduction: The Financial Crisis and the Politics of Reform: Explaining Incremental Change." In *Great Expectations, Slow Transformations: Incremental Change in Post-Crisis Regulation*, edited by Manuela Moschella and Eleni Tsingou, 1–33. Colchester: ECPR Press.

Mosley, Layna, and David Andrew Singer. 2009. "The Global Financial Crisis: Lessons and Opportunities for International Political Economy." *International Interactions* 35: 420–29.

Münchau, Wolfgang. 2008. *Kernschmelze Im Finanzsystem*. München: Carl Hanser.

Nienhaus, Lisa, and Arne Storn. 2017. "John Cryan: 'Die Bank War Im Zeitgeist Gefangen.'" *Die Zeit*, July 6, 2017, 28 edition, sec. Wirtschaft.

Nölke, Andreas. 2011. "Transatlantic Regulatory Cooperation on Accounting Standards: A 'Varieties of Capitalism' Perspective." In *Systemic Implications of Transatlantic Regulatory Cooperation and Competition*, edited by Simon J. Evenett and Robert Stern, 287–311. Hackensack: World Scientific.

Nolle, Daniel E. 2015. "Who's in Charge of Fixing the World's Financial System? The Un[?]der-Appreciated Lead Role of the G20 and the FSB." *Financial Markets, Institutions & Instruments* 24 (1): 1–82.

North, Douglass Cecil. 1990. *Institutions, Institutional Change and Economic Performance*. Reprint. Cambridge: Cambridge University Press.

Novoa, Alicia, Jodi Scarlata, and Solé. 2009. "Procyclicality and Fair Value Accounting." WP/09/39. IMF Working Paper. Washington, D.C.: IMF. http://www.elibrary.imf.org/doc/IMF001/09879-9781451871876/09879-9781451871876/Other_formats/Source_PDF/09879-9781451916225.pdf.

Nye, Joseph A. 2002. "The New Rome Meets the New Barbarians." *The Economist*, March 21, 2002. http://www.economist.com/node/1045181.

Oatley, Thomas, and Robert Nabors. 1998. "Redistributive Cooperation: Market Failure, Wealth Transfers, and the Basle Accord." *International Organization* 52 (1): 35–54.

Obama, Barack H. 2013. "Remarks by the President on Responsible Homeownership." The White House Office of the Press Secretary. https://www.whitehouse.gov/the-press-office/2013/08/06/remarks-president-responsible-homeownership.

OCC. 2010. "Quarterly Report on Bank Trading and Derivatives Activities Fourth Quarter 2009." 4. Washington, D.C.: Office of the Comptroller of the Currency. https://occ.gov/topics/capital-markets/financial-markets/derivatives/dq409.pdf.

OCC, FDIC, OTS, and FRB. 2007. "Proposed Supervisory Guidance for Internal Ratings-Based Systems for Credit Risk, Advanced Measurement Approaches for Operational Risk, and the Supervisory Review Process (Pillar 2) Related to Basel II Implementation." U.S. Department of the Treasury. http://www.occ.gov/news-issuances/news-releases/2007/nr-ia-2007-11a.pdf.

O'Farrell, Grace, and Chunhui Liu. 2015. "Impact of Differences between International Financial Reporting Standards and Us Generally Accepted Accounting Principles on Perceived Company Performance." *International Journal of Business, Accounting and Finance* 9 (2): 103–12.

OFR. 2010. "Statement on Legal Entity Identification for Financial Contracts." U.S. Department of the Treasury. Federal Register 75 (229). https://www.gpo.gov/fdsys/pkg/FR-2010-11-30/pdf/2010-30018.pdf.

Ogrinz, Georg. 2016. "Willkommen in Der Welt von „Basel IV"." *Www.pwc.at* (blog). February 25, 2016. http://www.pwc.at/branchen/financial-services/willkommen-in-der-welt-von-basel-iv.html.

OIA. 2012. "Joint Press Statement of Leaders on Operating Principles and Areas of Exploration in the Regulation of the Cross-Border OTC Derivatives Market." Securities and Exchange Commission Office of International Affairs. https://www.sec.gov/news/press-release/2012-2012-251htm.

Olson, Mancur. 1971. *The Logic of Collective Action: Public Goods and the Theory of Groups*. BV005882885 124. Cambridge: Harvard University Press.

O'Neill, Thomas Phillip "Tip." 1987. *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill*. New York: Random House.

Ordonez, Guillermo. 2013. "Sustainable Shadow Banking." Working Paper 19022. Cambridge: National Bureau of Economic Research, Inc. http://EconPapers.repec.org/RePEc:nbr:nberwo:19022.

Osborne, George, Michel Barnier, Ikko Nakatsuka, and Pierre Moscovici. Letter to Gary Gensler. 2012. "Subject: U.S. Cross Border Swap Rules," October 17, 2012. http://www.fsa.go.jp/inter/etc/20121018-2/01.pdf.

Oxley, Michael G., and Paul Sarbanes. 2002. *An Act To Protect Investors by Improving the Accuracy and Reliability of Corporate Disclosures Made pursuant to the Securities Laws, and for Other Purposes. H.R. 3763*. https://www.sec.gov/about/laws/soa2002.pdf.

Pacter, Paul. 2015. "A Global Standards Advocate Answers Miller and Bahnson." *Accounting Today* 29 (10): 12.

———. 2016. "2016 Pocket Guide to IFRS." London: IFRS Foundation. http://arabacci.com/wp-content/uploads/2016/05/Pocket-Guide-to-IFRS-2016.pdf.

Pagliari, Stefano. 2012. "Who Governs Finance? The Shifting Public-Private Divide in the Regulation of Derivatives, Rating Agencies and Hedge Funds." *European Law Journal* 18: 44–61.

———. 2013. "A Wall Around Europe? The European Regulatory Response to the Global Financial Crisis and the Turn in Transatlantic Relations." *Journal of European Integration* 35: 391–408.

Pahre, Robert David. 1999. *Leading Questions: How Hegemony Affects the International Political Economy*. Ann Arbor: University of Michigan Press.

Paletta, Damian. 2005. "Fed Study: Basel II Won't Tilt Mortgage Field." *American Banker* 170 (81): 3–10.

Paletta, Damian, and Hannah Bergman. 2005. "On Basel II, Anything But A United Front." *American Banker* 170 (20): 1–5.

Paletta, Damian, and Scott Patterson. 2010a. "Banks Falter in Rules Fight." *Wall Street Journal*, April 14, 2010, sec. Business. http://www.wsj.com/articles/SB10001424052702303695604575182432678421688.

———. 2010b. "Banks Fight to Block Rules." *Wall Street Journal*, April 14, 2010, CCLV (86) edition.

Pan, Eric J. 2003. "Harmonization of U.S.-EU Securities Regulation: The Case for a Single European Securities Regulator." *Law and Politics in International Business* 34: 499–536.

Paulson, Henry M. 2007. Paulson: No "Silver Bullet" in Bid to Ease Mortgage Crisis Interview by Judy Woodruff. http://www.pbs.org/newshour/bb/business-july-dec07-paulson_12-06/.

Pauly, Louis W. 2010. "The Financial Stability Board in Context." In *The Financial Stability Board: An Effective Fourth Pillar of Global Economic Governance?*, edited by Stephany Griffith-Jones, Eric Helleiner, and Ngaire Woods, 13–18. Waterloo: Centre for International Governance Innovation.

Peel, Robert. 1845. *An Act to Amend the Law Concerning Games and Wagers*. *8 & 9 Vict., C. 109*. http://www.legislation.gov.uk/ukpga/1845/109/pdfs/ukpga_18450109_en.pdf.

Peltzman, Sam. 1989. "The Economic Theory of Regulation after a Decade of Deregulation." Brookings Papers: Microeconomics. Washington, D.C.: Brookings Institution. http://www.brookings.edu/~/media/Projects/BPEA/1989-micro/1989_bpeamicro_peltzman.PDF.

Philips, Matthew. 2008. “How Credit Default Swaps Became a Timebomb. How ‘Credit Default Swaps’ – an Insurance against Bad Loans – Turned from a Smart Bet into a Killer.” *Newsweek, Business* (blog). September 27, 2008. http://europe.newsweek.com/how-credit-default-swaps-became-timebomb-89291.

Phillips, Lance J. 2010. “The Implications of Ifrs on the Functioning of the Securities Antifraud Regime in the United States.” *Michigan Law Review* 108 (4): 603–31.

Pickel, Robert. Letter to Elizabeth M. Murphy. 2011. “RIN 3235-AL13 - Notice of Proposed Rulemaking: Clearing Agency Standards for Operation and Governance (File Number 57-8-11),” April 29, 2011. www2.isda.org/attachment/MzA4NQ==/SEC-NPR-042911.pdf.

Piskorski, Tomasz, Amit Seru, and Vikrant Vig. 2010. “Securitization and Distressed Loan Renegotiation: Evidence from the Subprime Mortgage Crisis.” *Journal of Financial Economics*, The 2007-8 financial crisis: Lessons from corporate finance, 97 (3): 369–97.

Poitras, Geoffrey. 2002. *Speculative Trading Strategies*. San Diego: Academic Press. http://www.sciencedirect.com/science/article/pii/B9780125588225500048.

Polanyi, Karl. 2001. *The Great Transformation: The Political and Economic Origins of Our Time*. Boston: Beacon Press.

Pologeorgis, Nicolas. 2012. “The Impact Of Combining The U.S. GAAP And IFRS.” *Investopedia* (blog). October 16, 2012. http://www.investopedia.com/articles/economics/12/impact-gaap-ifrs-convergence.asp.

Porter, Tony. 2010. “Making the FSB Peer Review Effective.” In *The Financial Stability Board: An Effective Fourth Pillar of Global Economic Governance?*, edited by Stephany Griffith-Jones, Eric Helleiner, and Ngaire Woods, 39–42. Waterloo: Centre for International Governance Innovation.

Pöschke, Moritz. 2012. “Incorporation of IFRS in the United States: An Analysis of the SEC’s Options and the Implications for the EU.” *European Company and Financial Law Review* 9 (1): 51–73.

Posner, Elliot. 2007. “Financial Transformation in the European Union.” In *Making History: European Integration and Institutional Change at Fifty*, edited by Kathleen R. McNamara and Sophie Meunier, Eight:139–56. State of the European Union. Oxford: Oxford University Press.

———. 2009. “Making Rules for Global Finance: Transatlantic Regulatory Cooperation at the Turn of the Millennium.” *International Organization* 63 (4): 665–99.

———. 2010a. “Sequence as Explanation: The International Politics of Accounting Standards.” *Review of International Political Economy* 17 (4): 639–64.

———. 2010b. “The Lamfalussy Process: Polyarchic Origins of Networked Financial Rule-Making in the EU.” In *Experimentalist Governance in the European Union: Towards a New Architecture*, edited by Charles F. Sabel and Jonathan Zeitlin, 43–60. Oxford: Oxford University Press.

Posner, Elliot, and Abraham L. Newman. 2015. “Putting the EU in Its Place: Policy Strategies and the Global Regulatory Context.” *Journal of European Public Policy* 22 (9): 1316–35.

Posner, Elliot, and Nicolas Véron. 2010. “The EU and Financial Regulation: Power without Purpose?” *Journal of European Public Policy* 17: 400–415.

Poszar, Zoltan, Tobias Adrian, Adam Ashcraft, and Hayley Boesky. 2012. “Shadow Banking.” No. 458. FRBNY Staff Report. New York: Federal Reserve Bank of New York. https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr458.pdf.

Pouliot, Vincent. 2015. “Practice Tracing.” In *Process Tracing, From Metaphor to Analytic Tool*, edited by Andrew Bennett and Jeffrey T. Checkel, 237–59. Cambridge: Cambridge University Press.

Prabhakar, Rahul. 2013. “Varieties of Regulation: How States Pursue and Set International Financial Standards.” GEG Working Paper. Oxford: Global Economic Governance Programme. http://www.globaleconomicgovernance.org/sites/geg/files/GEG%20WP%202013_86%20-%20Varieties%20of%20Regulation%20%20-%20Rahul%20Prabhakar.pdf.

PwC. 2012. “Mehr Klarheit in Der Definition Des Fair Values.” PricewaterhouseCoopers. 2012. http://www.pwc.de/de/accounting-of-the-future/mehr-klarheit-in-der-definition-des-fair-values.html.

PWG. 1999a. “Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management.” Washington, D.C.: U.S. Department of the Treasury. https://www.treasury.gov/resource-center/fin-mkts/Documents/hedgfund.pdf.

———. 1999b. “Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President’s Working Group on Financial Markets.” Washington, D.C.: U.S. Department of the Treasury. https://www.treasury.gov/resource-center/fin-mkts/Documents/otcact.pdf.

———. 2008. “Policy Statement of the Presidential Working Group (PWG) on Financial Markets for the President of the United States.” Washington, D.C.: U.S. Department of the Treasury. https://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolicystatemktturmoil_03122008.pdf.

Quaadman, Thomas. 2012. “Center for Capital Market Competitiveness Comment on SEC Work Plan.” Center for Capital Market Competitiveness. https://www.sec.gov/comments/4-600/4600-161.pdf.

Quaglia, Lucia. 2013. “The European Union, the USA and International Standard Setting by Regulatory Fora in Finance.” *New Political Economy* 0 (0): 1–18.

———. 2014. “The Sources of European Union Influence in International Financial Regulatory Fora.” *Journal of European Public Policy* 21 (3): 327–45.

Raju, Manu. 2010. “McConnell Doubles down on Obama.” POLITICO. November 3, 2010. http://www.politico.com/news/stories/1110/44688.html.

Rappeport, Alan. 2017. “Bill to Erase Some Dodd-Frank Banking Rules Passes in House.” *The New York Times*, June 8, 2017, sec. DealBook. https://www.nytimes.com/2017/06/08/business/dealbook/house-financial-regulations-dodd-frank.html.

Rauterberg, Gabriel V., and Andrew Verstein. 2013. “Assessing Transnational Private Regulation of the OTC Derivatives Market: ISDA, the BBA, and the Future of Financial Reform.” *Virginia Journal of International Law* 54 (1): 9–50.

Reagan, Ronald. 1988. “Executive Order 12631.” http://www.archives.gov/federal-register/codification/executive-order/12631.html.

Reed, Jack. 2009. *Over-the-Counter Derivatives: Modernizing Oversight to Increase Transparency and Reduce Risks*. Washington, D.C.: Government Publishing Office. https://www.gpo.gov/fdsys/pkg/CHRG-111shrg54589/pdf/CHRG-111shrg54589.pdf.

Reinhart, Carmen M., and Kenneth S. Rogoff. 2009. *This Time Is Different: Eight Centuries of Financial Folly*. Princeton: Princeton University Press.

Reinicke, Wolfgang H. 1995. *Banking, politics and global finance: American commercial banks and regulatory change, 1980 - 1990*. Studies in international political economy. Aldershot: Elgar.

Reisenbichler, Alexander. 2015. “The Domestic Sources and Power Dynamics of Regulatory Networks: Evidence from the Financial Stability Forum.” *Review of International Political Economy*, 1–29.

Reiterer, Michael. 2011. Interview with Michael Reiterer, EU Ambassador to Switzerland and Liechtenstein.

Rieffel, Lex. 2008. “The G-20 Summit: What’s It All About?” *The Brookings Institution* (blog). October 27, 2008. http://www.brookings.edu/research/opinions/2008/10/27-governance-rieffel.

Rixen, Thomas, and Lora Anne Viola. 2014. “Historical Institutionalism and International Relations: Towards Explaining Change and Stability in International Institutions.”

Roig-Franzia, Manuel. 2009. “Credit Crisis Cassandra, Brooksley Born’s Unheeded Warning Is a Rueful Echo 10 Years On.” *The Washington Post*, May 26, 2009, sec. Arts & Living, Style. http://www.washingtonpost.com/wp-dyn/content/article/2009/05/25/AR2009052502108_pf.html.

Romano, Roberta. 1998. “Empowering Investors: A Market Approach to Securities Regulation.” *The Yale Law Journal* 107: 2359–2430.

———. 2001. “The Need for Competition in International Securities Regulation.” *Theoretical Inquiries in Law* 2 (2). http://www.degruyter.com/view/j/til.2001.2.issue-2/til.2001.2.2.1029/til.2001.2.2.1029.xml.

———. 2005. “Is Regulatory Competition a Problem or Irrelevant for Corporate Governance?” *Oxford Review of Economic Policy* 21 (2): 212–31.

———. 2014. “Regulating in the Dark and a Postscript Assessment of the Iron Law of Financial Regulation.” *Hofstra Law Review* 43: 25–93.

Rubin, Robert E., Alan Greenspan, and Arthur Levitt. 1998. “Joint Statement by the Department of the Treasury, the Federal Reserve Board and the Securities and Exchange Commission.” U.S. Department of the Treasury. https://www.treasury.gov/press-center/press-releases/Pages/rr2426.aspx.

Ruggie, John Gerard. 1982. “International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order.” *International Organization* 36 (2): 379–415.

Russell, Karl. 2017. “Why the Fed Raised Rates.” *The New York Times*, March 15, 2017, sec. Business Day. https://www.nytimes.com/interactive/2017/03/15/business/federal-reserve-interest-rates.html.

Sandbrook, Dominic. 2012. “Could This Be the End of America’s Economic Supremacy.” *Mail Online - Dominic Sandbrook* (blog). July 5, 2012. http://www.dailymail.co.uk/debate/article-2021313/US-debt-crisis-Could-end-Americas-economic-supremacy.html.

Sapir, André. 2011. “The Political Economy of Transatlantic Regulatory Cooperation and Competition: A (Unofficial) View from Europe.” In *Systemic Implications of Transatlantic Regulatory Cooperation and Competition*, edited by Simon J. Evenett and Robert M. Stern, 47–61. Hackensack: World Scientific.

Schimmelfennig, Frank. 2017. *Internationale Politik*. 5. aktual. Aufl. Grundkurs Politikwissenschaft 1. Schöningh, UTB.

Schlesinger, Arthur M. 1973. *The Imperial Presidency*. Boston: Houghton Mifflin.

Schmid, David, Ralph Martino, and Takashi Anraku. 2016. "IFRS and US GAAP: Similarities and Differences." New York: PriceWaterhouseCoopers. http://www.pwc.com/us/en/cfodirect/assets/pdf/accounting-guides/pwc-ifrs-us-gaap-similarities-and-differences-2016.pdf.

Schmidt Bies, Susan. 2005. "Speeches: Basel II Developments in the United States." Federal Reserve Board. https://www.federalreserve.gov/boarddocs/speeches/2005/20050926/default.htm.

Schooner, Heidi Mandanis, and Michael W. Taylor. 2009. *Global Bank Regulation: Principles and Policies*. Amsterdam: Elsevier. http://www.sciencedirect.com/science/book/9780126410037.

Schubert, Christian. 2015. "Wegen Griechenland: EZB fordert Finanzministerium für Europa." *Frankfurter Allgemeine Zeitung*, August 27, 2015. http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/europaeische-zentralbank-will-ein-europaeisches-finanzministerium-13772228.html.

Schulz, Martin. 2013. "European Union Foreign Policy in the 21st Century: Vision, Ambition, Reality." European Parliament. http://www.europarl.europa.eu/former_ep_presidents/president-schulz-2012-2014/en/press/press_release_speeches/speeches/sp-2013/sp-2013-february/european-union-foreign-.

Schwarcz, Steven L. 2008a. "Protecting Financial Markets: Lessons From the Subprime Mortgage Meltdown." *Minnesota Law Review* 93: 373–406.

———. 2008b. "Systemic Risk." *Georgetown Law Journal* 97: 193–249.

SEC. 2004. "Final Rule: Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities." SEC. https://www.sec.gov/rules/final/34-49830.htm.

———. 2008. "Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers, Proposed Rule - 33-8982." SEC. https://www.sec.gov/rules/proposed/2008/33-8982.pdf.

———. 2010a. "Appendix: Work Plan for the Consideration of Incorporating International Financial Reporting Standards into the Financial Reporting System for U.S. Issuers." Washington, D.C.: SEC. https://www.sec.gov/spotlight/globalaccountingstandards/globalaccountingstandards.pdf.

———. 2010b. "Commission Statement in Support of Convergence and Global Accounting Standards." SEC. https://www.sec.gov/rules/other/2010/33-9109.pdf.

———. 2011a. "Staff Paper: Work Plan for the Consideration of Incorporating IFRS into the Financial Reporting System for U.S. Issuers - Exploring a Possible Method of Incorporation." Washington, D.C.: SEC. https://www.sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-paper-052611.pdf.

———. 2011b. "Staff Paper: A Comparison of U.S. GAAP and IFRS." Washington, D.C.: SEC. https://www.sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-paper-111611-gaap.pdf.

———. 2012. "Work Plan for the Consideration of Incorporating IFRS into the Financial Reporting System for U.S. Issuers: Final Staff Report." Washington, D.C.: SEC. https://www.sec.gov/spotlight/globalaccountingstandards/ifrs-work-plan-final-report.pdf.

———. 2014. “Final Rule Credit Risk Retention – Rel. No. 34-73407.” https://www.sec.gov/rules/final/2014/34-73407.pdf.

———. 2015. “Key: Financial Responsibility Rules 15c3-1 (1991) and 15c3-3 (2001).” SEC. https://www.sec.gov/about/offices/oia/oia_market/key_rules.pdf.

Sennholz-Weinhardt, Barbara. 2014. “Regulatory Competition as a Social Fact: Constructing and Contesting the Threat of Hedge Fund Managers’ Relocation from Britain.” *Review of International Political Economy* 21 (6): 1240–74.

Shelton, Sandra Waller, Lisa A. Owens-Jackson, and Diana R. Robinson. 2011. “IFRS and U.S. GAAP: Assessing the Impact of Reporting Incentives on Firm Restatements in Foreign and U.S. Markets.” *Advances in Accounting* 27 (1): 187–92.

Shenai, Neil K. 2014. “Saving Glut or Investment Dearth?: Lessons for the SDGs from the High-Performing Asian Economies.” *SAIS Review of International Affairs* 34 (2): 151–63.

Shleifer, Andrei, and Robert W. Vishny. 2010. “Unstable Banking.” *Journal of Financial Economics*, The 2007-8 financial crisis: Lessons from corporate finance, 97 (3): 306–18.

Simmons, Beth A. 2000. “The Legalization of International Monetary Affairs.” *International Organization* 54 (3): 573–602.

———. 2001. “The International Politics of Harmonization: The Case of Capital Market Regulation.” *International Organization* 55: 589–620.

Simmons, Beth A., and Zachary Elkins. 2004. “The Globalization of Liberalization: Policy Diffusion in the International Political Economy.” *The American Political Science Review* 98 (1): 171–89.

Sinclair, Timothy J. 2005. *The New Masters of Capital: American Bond Rating Agencies and the Politics of Creditworthiness*. 1. publ. Ithaca: Cornell University Press.

Singal, Jesse. 2010. “Barney Frank Vs. The Dining Room Table.” New Republic. September 16, 2010. https://newrepublic.com/article/77710/barney-frank-vs-the-dining-room-table-rachel-brown-primary-challenge-lyndon-larouche.

Singer, David Andrew. 2004. “Capital Rules: The Domestic Politics of International Regulatory Harmonization.” *International Organization* 58: 531–65.

———. 2007. *Regulating Capital: Setting Standards for the International Financial System*. 1. publ. Ithaca: Cornell University Press.

———. 2009. “The Subprime Accountability Deficit and the Obstacles to International Standards Setting.” *Global Governance* 15: 23–28.

Sirri, Erik R. 2009. “Remarks at the National Economists Club: Securities Markets and Regulatory Reform.” SEC. https://www.sec.gov/news/speech/2009/spch040909ers.htm.

Skeel, David A. 2010. “The New Financial Deal: Understanding the Dodd-Frank Act and Its (Unintended) Consequences.” Faculty Scholarship. Philadelphia: University of Pennsylvania Law School. http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1328&context=faculty_scholarship.

Skeel, David A., and Frank Partnoy. 2007. “The Promise and Perils of Credit Derivatives.” SSRN Scholarly Paper ID 929747. Rochester, NY: Social Science Research Network. https://papers.ssrn.com/abstract=929747.

Slater, Don, and Fran Tonkiss. 2001. *Market Society: Markets and Modern Social Theory*. 1. publ. Cambridge: Polity.

Slovik, Patrick. 2012. "Systemically Important Banks and Capital Regulation Challenges." OECD Economics Department Working Papers. Paris: Organisation for Economic Co-operation and Development. http://www.oecd-ilibrary.org/content/workingpaper/5kg0ps8cq8q6-en.

Smith, Paul A., and Robert W. Strand. 2007a. "Notice of Proposed Rulemaking on Risk-Based Capital Standards: Market Risk." American Bankers Association (ABA). http://www.aba.com/archive/Issue_Sites/Basel/Documents/1bc0290716c1450f8ebcbb2731b138bdABALetteronAgenciesMarketRiskProposal070123.pdf.

———. 2007b. "Risk-Based Capital Standards: Advanced Capital Adequacy Framework." American Bankers Association (ABA). https://www.fdic.gov/regulations/laws/federal/2006/06c34ac73.pdf.

Smith, Robert, and Lisa Pollock. 2014. *Episode 550: When Salaries Aren't Secret*. NPR's Planet Money. http://www.npr.org/sections/money/2014/07/02/327289264/episode-550-when-salaries-arent-secret.

Sobel, Andrew C. 1994a. *Domestic choices, international markets: dismantling national barriers and liberalizing securities markets*. Ann Arbor: University of Michigan Press.

———. 1994b. "Breaching the Levee, Waiting for the Flood. Testing Beliefs about the Internationalization of Securities Markets." *International Interactions* 19 (4): 311–38.

Soros, George. 2004. The Bubble of American Supremacy Interview by Charlie Rose. http://www.cfr.org/united-states/bubble-american-supremacy/p6787.

Spiro, Peter J. 2004. "Disaggregating U.S. Interests in International Law." *Law and Contemporary Problems* 67 (4): 195–219.

Sprenger, Rodney. 2011. "Rodney Sprenger Comments on Work Plan." SEC. https://www.sec.gov/comments/4-600/4600-16.htm.

SSG. 2008a. "Observations on Risk Management Practices during the Recent Market Turbulence." Basel: FSF. https://www.sec.gov/news/press/2008/report030608.pdf.

———. 2008b. "Senior Supervisors Group: Mission Statement." FSB. http://www.fsb.org/wp-content/uploads/r_0803a.pdf.

———. 2009a. "Report on Risk Management Lessons from the Global Banking Crisis of 2008." Basel: FSB. http://www.fsb.org/2009/10/r_0910a/.

———. 2009b. "Self-Assessment Template. A Supplement to the Report on Risk Management Lessons from the Global Banking Crisis of 2008." Basel: FSB. http://www.fsb.org/2009/10/r_0910a/.

———. 2010. "Senior Supervisors Group: Mission Statement." FSB. http://www.fsb.org/wp-content/uploads/r_1007.pdf.

———. 2014. "Progress Report on Counterparty Data." Basel: FSB. http://www.fsb.org/2014/01/r_140116/.

Stahlin, Paul V., and Barry C. Melancon. 2011. "American Institute of Certified Public Accountants Comment on SEC Work Plan." AICPA. https://www.sec.gov/comments/4-600/4600-144.pdf.

Steil, Benn, and Brad W. Setser. 2008. CFR Conference Call Briefing: Bretton Woods II Interview by Sebastian Mallaby. http://www.cfr.org/world/conference-call-briefing-bretton-woods-ii/p17757#.

Steinberg, Richard H. 2002. “In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO.” *International Organization* 56 (2): 339–74.

Stigler, George J. 1986. “The Theory of Economic Regulation [1971].” In *The Essence of Stigler*, edited by Kurt R. Leube and Thomas G. Moore, 243–61. Stanford: Hoover Institution Press.

Stiglitz, Joseph E. 2009. “The Economic Crisis: Capitalist Fools.” *Vanity Fair*, January 2009.

Stoltenberg, Clyde, Barbara Crutchfiled George, Kathleen A. Lacey, and Michael Cuthbert. 2011. “The Past Decade of Regulatory Change in the U.S. and EU Capital Market Regimes: An Evolution from National Interests toward International Harmonization with Emerging G-20 Leadership.” *Berkeley Journal of International Law* 29 (2): 577–648.

Stout, Lynn A. 1999. “Why the Law Hates Speculators: Regulation and Private Ordering in the Market for OTC Derivatives.” *Duke Law Journal* 48 (4): 701–86.

———. 2009. “Why We Need Derivatives Regulation.” *New York Times*, October 7, 2009, sec. DealBook.

Stowell, David. 2013. *Investment Banks, Hedge Funds, and Private Equity*. 2nd ed. Waltham, Oxford: Elsevier Science.

Strange, Susan. 1996. *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press.

Strauss-Kahn, Dominique, and Mario Draghi. 2008. “Joint IMF/FSF Statement on Strengthening Coordination.” https://www.imf.org/external/np/omd/2008/eng/pdf/111308.pdf.

Su, Xuanming. 2010. “Optimal Pricing with Speculators and Strategic Consumers.” *Management Science* 56 (1): 25–40.

Sullivan, Daniel J. 2011. “Daniel Sullivan Comments on Work Plan.” SEC. https://www.sec.gov/comments/4-600/4600-20.htm.

Szafarz, Ariane. 2012. “Financial Crises in Efficient Markets: How Fundamentalists Fuel Volatility.” *Journal of Banking & Finance* 36 (1): 105–11.

Tabibi, Matt. 2013. “The Last Mystery of the Financial Crisis.” *Rolling Stone*, June 19, 2013.

Thayer, Bradley A. 2007. “The Case for the American Empire.” In *American Empire: A Debate*, edited by Bradley A. Thayer and Christopher Layne, 1–50. New York: Routledge.

The Economist. 1990. “The Death of Drexel.” *The Economist*, February 17, 1990. http://www.economist.com/node/14442572.

———. 1998. “The Risk Business.” *The Economist*, October 17, 1998.

———. 2005. “Alan Greenspan Changes Key.” *The Economist*, September 1, 2005. http://www.economist.com/node/4352087.

———. 2006. “Day of the MiFID.” *The Economist*, September 7, 2006. http://www.economist.com/node/7884663.

———. 2008a. “Caveat Counterparty.” *The Economist*, March 19, 2008. http://www.economist.com/node/10881558.

———. 2008b. “Featured Guest’s Comments | The Economist.” *The Economist*, March 24, 2008. http://www.economist.com/node/10833855.

———. 2008c. “1929 and All That.” *The Economist*, October 2, 2008. http://www.economist.com/node/12342273.

———. 2008d. “Cheque Mate.” *The Economist*, November 13, 2008. http://www.economist.com/node/12607251.

———. 2009a. “Greed—and Fear.” *The Economist*, January 22, 2009. http://www.economist.com/node/12957709.

———. 2009b. “Special Report on the Future of Finance: In Plato’s Cave.” *The Economist*, January 22, 2009. http://www.economist.com/node/12957753.

———. 2009c. “Turf Woes.” *The Economist*, September 3, 2009. http://www.economist.com/node/14379169.

———. 2013a. “Crash Course.” *The Economist*, September 7, 2013. http://www.economist.com/node/21584534/print.

———. 2013b. “Crash Course: The Origins of the Financial Crisis.” *The Economist*, September 7, 2013.

———. 2015. “Glad Confident Mornings.” *The Economist*, October 3, 2015.

———. 2016a. “How Shadow Banking Works.” *The Economist Explains* (blog). February 1, 2016. http://www.economist.com/blogs/economist-explains/2016/02/economist-explains-0.

———. 2016b. “Comradely Capitalism.” *The Economist*, August 20, 2016. http://www.economist.com/node/21705316/print.

———. 2017a. “Economics A-Z Terms Beginning with D.” *The Economist* (blog). 2017. http://www.economist.com/economics-a-to-z.

———. 2017b. “Worries Mount about Car Finance in America and Britain.” *The Economist*, May 6, 2017.

———. 2017c. “Rate Race – Who Will Be the next Chair of the Federal Reserve?” *The Economist*, August 12, 2017.

Tietmeyer, Hans. 1999. “International Cooperation and Coordination in the Area of Financial Market Supervision and Surveillance.” G-7. http://www.financialstabilityboard.org/wp-content/uploads/r_9902.pdf?page_moved=1.

———. 2007. “The FSF Revisited, Dinner Speech.” Bundesbank.

Time. 2009. “25 People to Blame for the Financial Crisis.” *Time* (blog). February 11, 2009. http://content.time.com/time/specials/packages/article/0,28804,1877351_1877350_1877331,00.html.

Tirole, Jean. 2016. “Lessons from the Crisis.” In *Balancing the Banks, Lessons from the Financial Crisis*, by Mathias Dewatripont, Jean-Charles Rochet, and Jean Tirole, 10–77. Princeton Oxford: Princeton University Press. https://www.degruyter.com/view/product/451894.

Tracy, Ryan, and Donna Borak. 2016. “Fed Stress Tests Clear 31 of 33 Big U.S. Banks to Boost Returns to Investors.” *Wall Street Journal*, June 29, 2016, sec. Markets.

Treasury. 2009. “Press Release: Treasury Outlines Framework For Regulatory Reform.” U.S. Department of the Treasury. https://www.treasury.gov/press-center/press-releases/Pages/tg72.aspx.

Treeß, Gabriela. 2015. Exploratory Interview Interview by Nikolas Keßels. Telephone.

Trichet, Jean-Claude. 2011. “Building Europe, Building Institutions – Speech by Jean-Claude Trichet, President of the ECB on Receiving the Karlspreis 2011.” https://www.ecb.europa.eu/press/key/date/2011/html/sp110602.en.html.

Tsingou, Eleni. 2014. “How States Cooperate: Choosing from the Menu of Institutional Options.” *International Studies Review* 16 (4): 671–72.

Turner, Philip. 2010. “Macroprudential Policies and the Cycle.” In , 43–48. Waterloo: Centre for International Governance Innovation. www.cigionline.org/sites/default/files/fsb_special_report_2.pdf.

Underhill, Geoffrey R. D. 1995. “Keeping Governments out of Politics: Transnational Securities Markets, Regulatory Cooperation, and Political Legitimacy.” *Review of International Studies* 21 (3): 251–78.

U.S. Census. 2016. “Homeownership Rate for the United States.” St. Louis: Federal Reserve Bank of St. Louis. https://fred.stlouisfed.org/series/RHORUSQ156N.

U.S. Treasury. 2008a. “Blueprint for a Modernized Financial Regulatory Structure.” Washington, D.C.: U.S. Treasury Department. https://www.treasury.gov/press-center/press-releases/Documents/Blueprint.pdf.

———. 2008b. “Press Release – President’s Working Group Issues Policy Statement To Improve Future State of Financial Markets.” https://www.treasury.gov/press-center/press-releases/Pages/hp871.aspx.

———. 2009. “Financial Regulatory Reform. A New Foundation: Rebuilding Financial Supervision and Regulation.” Washington, D.C.: Department of the Treasury. https://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf.

USSC. 1884. Irwin v. Williar, 110 U.S. 499. U.S. Supreme Court.

Verdier, Pierre-Hugues. 2013. “The Political Economy of International Financial Regulation.” *Indiana Law Journal* 88 (4): 1405–74.

Véron, Nicolas. 2007. “The Global Accounting Experiment.” Bruegel Blueprint Series. Brussels: Bruegel. http://bruegel.org/wp-content/uploads/imported/publications/BP_APRIL2007_The_global_accounting_experiment_.pdf.

———. 2015. Exploratory Interview Interview by Nikolas Keßels. Telephone.

Viñals, José. 2011. “Macroprudential Policy: An Organizing Framework.” Washington, D.C.: IMF. https://www.imf.org/external/np/pp/eng/2011/031411.pdf.

———. 2013. “Key Aspects of Macroprudential Policy.” IMF Policy Paper. Washington, D.C.: IMF. https://www.imf.org/external/np/pp/eng/2013/061013b.pdf.

Virtanen, Marianna, Archana Singh-Manoux, Jane E. Ferrie, David Gimeno, Michael G. Marmot, Marko Elovainio, Markus Jokela, Jussi Vahtera, and Mika Kivimäki. 2009. “Long Working Hours and Cognitive Function, The Whitehall II Study.” *American Journal of Epidemiology* 169 (5): 596–605.

Vogel, Steven Kent. 1998. *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*. 1. printing, Cornell paperbacks. Ithaca: Cornell UnivPress.

Walker, George Alexander. 2013. “International Financial Instability and the Financial Stability Board.” *International Lawyer* 47 (1): 1–43.

Walt, Stephen M. 1990. *The Origins of Alliances*. 1. publ., Cornell paperbacks. Cornell Studies in Security Affairs. Ithaca: Cornell University Press.

Walter, Andrew. 2010. “Can the FSB Achieve Effective Surveillance of Systemically Important Countries?” In *The Financial Stability Board: An Effective Fourth Pillar of Global Economic Governance?*, edited by Stephany Griffith-Jones, Eric Helleiner, and Ngaire Woods, 32–35. Waterloo: Centre for International Governance Innovation.

Waltz, Kenneth Neal. 1959. *Man, the State and War: A Theoretical Analysis*. New York: Columbia University Press.

Wang, Clare. 2014. “Accounting Standards Harmonization and Financial Statement Comparability: Evidence from Transnational Information Transfer.” *Journal of Accounting Research* 52 (4): 955–92.

Warnecke, Steven J. 1979. Review of *Review: Defending the National Interest*, by Stephen D. Krasner. *International Affairs* 55 (2): 339.

Weber, Rolf H., and Dominic N. Staiger. 2014. “Financial Stability Board: Mandate and Implementation of Its Systemic Risks Standards.” *International Journal of Financial Studies* 2 (1): 82–102.

Wendt, Alexander. 1987. “The Agent-Structure Problem in International Relations Theory.” *International Organization* 41 (3): 335–70.

———. 1999. *Social Theory of International Politics*. Cambridge: Cambridge University Press.

Wigger, Angela, and Hubert Buch-Hansen. 2014. “Explaining (Missing) Regulatory Paradigm Shifts: EU Competition Regulation in Times of Economic Crisis.” *New Political Economy* 19 (1): 113–37.

Will, George F. 2008. “Bailout on Wheels.” *The Washington Post*, September 21, 2008, sec. Opinions. http://www.washingtonpost.com/wp-dyn/content/article/2008/09/19/AR2008091903183.html.

Willen, Paul. 2014. “Mandated Risk Retention in Mortgage Securitization: An Economist’s View.” *American Economic Review* 104 (5): 82–87.

Wilson, Graham K. 2012. “The Strange Survival of (Neo)Liberalism.” In *The Consequences of the Global Financial Crisis, The Rhetoric of Reform and Regulation*, edited by Wyn Grant and Graham K. Wilson, 51–66. Oxford: Oxford University Press.

Wilson, James Q. 1980. *The Politics of Regulation*. New York: Basic Books.

World Bank. 2012. *Global Financial Development Report 2013*. Global Financial Development Report. The World Bank. https://elibrary.worldbank.org/doi/book/10.1596/978-0-8213-9503-5.

Wouters, Jan, and Jed Odermatt. 2014. “Comparing the ‘Four Pillars’ of Global Economic Governance: A Critical Analysis of the Institutional Design of the FSB, IMF, World Bank, and WTO.” *Journal of International Economic Law* 17 (1): 49–76.

Wull, Cornelia. 2012. “The Defense of Economic Interests in the European Union: The Case of Hedge Fund Regulation.” In *Crisis and Control Institutional Change in Financial Market Regulation*, edited by Renate Mayntz, 197–211. Frankfurt a. M., New York: Campus.

Zahler, Roberto. 2010. “The FSB: Macroprudential and Counter-Cyclical Regulation.” In *The Financial Stability Board: An Effective Fourth Pillar of Global Economic Governance?*, 52–56. Waterloo: Centre for International Governance Innovation.

Zelditch, Morris. 2001. “Theories of Legitimacy.” In *The Psychology of Legitimacy: Emerging Perspectives on Ideology, Justice, and Intergroup Relations*, edited by John T. Jost and Brenda Major, 33–53. Cambridge, New York: Cambridge University Press.

Summary

The present dissertation asks why the United States of America was able to internationalize its rules in the wake of the credit crunch of 2007/2008. Keeping in mind erstwhile European contestations of U.S. regulatory dominance, this was not a given. Dissociating itself from market-based regulation and with a head start in conceptualizing systemic risk, the U.S. filled the void this market failure had created. Domestic re-regulation in form of the 2010 Dodd-Frank Act was strategically employed internationally by American market power – the deliberate political leveraging of its significance as a market and its regulatory expertise as a solution to systemic risks. As a crucial precondition to this effort, the U.S. dominated the reform efforts surrounding what would later become the Financial Stability Board (FSB) in Basel, Switzerland. Using the G-20 leaders process and the FSB, American reforms to financial markets became a blueprint for the global effort in creating a regulatory floor that prevented arbitrage and entrenched America's politico-economic dominance internationally.

Zusammenfassung

Die vorliegende Dissertation geht der Frage nach, warum die Vereinigten Staaten von Amerika in der Lage waren, nach der Finanzkrise 2007/2008 ihre Finanzreformen zu internationalisieren. Europäischer Wettbewerb und Widerstand gegen die amerikanische Deutungshoheit in Finanzfragen hatte gegenteilige Szenarios plausibel erwarten lassen. Die Arbeit zeigt, dass sich die USA verhältnismäßig früh vom Diktum rein marktbasierter Regulierung entfernt und gleichzeitig systemische Risiken konzeptualisiert hatten. In der Folge war es amerikanischen Regulierern und Gesetzgebern möglich, dem beobachtbaren Marktversagen mit politökonomischen Reformen in Form der Dodd-Frank Gesetzgebung zu begegnen. Die Projektion regulatorischer Interessen wurde international gestützt durch den Einsatz amerikanischer Marktmacht – eine bewusste politische Instrumentalisierung der Bedeutung des U.S. Marktes für den globalen Kontext und der regulatorischen Expertise als einem Wegweiser aus denen der Krise zu Grunde liegenden systemischen Risiken. Entscheidend für diese internationale Dominanz war der Einfluss Amerikas bei der Reform des Finanzstabilitätsrates (FSB) im schweizerischen Basel. Durch das strategische politische Engagement im Rahmen der G-20 Staaten und die regulatorische Deutungshoheit innerhalb des FSBs war es den USA möglich, das Umgehen eigener Regeln international zu verhindern und Amerikas wirtschaftspolitische Dominanz in diesem Politikfeld weiter auszubauen.