

Fundamental Forces Driving United States and International Financial Regulation Reform*

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I. INTRODUCTION

Over much of the past three to five years following the Global Financial Crisis of 2008 (Crisis) the media has tended to focus on specific events, allegations of blame, and scandals. Yet the Crisis was one of huge, systemic proportions, involving so many intertwining elements that even now we cannot be sure about all the paths leading to such massive financial instability. As in the case of all systemic crises, multiple factors appear to have combined to create a catastrophe.

This paper will review some of the less immediate or proximate, more fundamental, forces driving financial reform in the United States and, I would venture to suggest, across the Globe. For this purpose I will be taking a step back from the detail of regulatory reform in order to look at the “bigger picture” that I believe is really shaping progress in improving the safety, fairness and efficiency of global financial markets. The paper primarily addresses banking regulation (that part of financial services with which I am most familiar); the observations, however, would also have relevance to securities markets, insurance and the so-called “shadow banking” system.

II. FORCES INFLUENCING FINANCIAL REFORM

Specifically, the paper will focus on seven fundamental factors, some of which might be obvious but some of which are often ignored in the debates surrounding financial reform. Together they combine in different ways to drive the momentum toward a new order of global finance and its regulation. These factors are the:

1. Impact of financial crises and the cycles of recovery that follow major crises.
2. Growth of “financialization,” in which the role of financial services has expanded quite disproportionately to the real economy in recent decades.

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3. Dramatic increase in financial interconnectedness worldwide, which has in turn promoted huge financial scale and, many would say, an unmanageable complexity for both financial institutions and their regulation.
4. “Human factor” in finance, which makes our understanding of market behavior much more difficult and complex when compared with the neoclassical economic model of rational choice.
5. Complex interaction of banks and the broader financial ecology, including the “shadow banking system.”
6. Fundamental transformation of the modern global economy as a result of the deep, ongoing technology revolution.
7. “Next Convergence” between Western and rapidly emerging large economies changing the global profile and presenting profound new challenges to the effectiveness, equity and balance of global financial regulation.

A blend of these various forces is making the possibility of global financial harmonization and regulatory reform very challenging indeed. They make the challenge of creating a rational system of finance and its corresponding regulatory framework much more daunting than might first have been anticipated in the wake of the first emergency meeting of the G20 during the Crisis.

A. Financial crises and recovery cycles

Asian readers have experienced two major financial crises in the past 25 years. From the first, commonly referred to as the Asian Banking Crisis,¹ Korea and other Asian countries learned important lessons that helped the region weather the Crisis of 2008 better than the United States and Europe. Such readers will know well the huge and long-term damage that such crises inflict. National gross domestic product is impaired by anything from 15% to 20% in ensuing years, cumulative output losses can range from 63% to 302%,² and the recovery takes many years—in some cases decades,³ as Japan may have experienced.⁴

¹ See, e.g., PHILIPPE DELHAISE, ASIA IN CRISIS: THE IMPLOSION OF THE BANKING AND FINANCE SYSTEMS 1 (1998); SHANKER SATYANATH, GLOBALIZATION, POLITICS, AND FINANCIAL TURMOIL: ASIA'S BANKING CRISIS 1 (2006).

² Falko Fecht, Hans-Peter Grüner, Philipp Hartman & Marco Lo Duca, *Financial Globalization and Stability*, in GLOBALIZATION AND SYSTEMIC RISK 53, 72 (Douglas D. Evanoff et al eds., 2009).

³ See generally CARMEN M. REINHART & KENNETH S. RÓGOFF, THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY 162-71 (2009).

⁴ There is some debate about whether the “lost decade,” an epithet used to describe Japan's economic travails since the Asian Crisis, is either accurate or fair, but the economic devastation Japan has suffered is generally

Yet this reality is not generally acknowledged or at least appreciated, by either the public or our political leaders. One can see from the rhetoric of the current U.S. presidential campaign, in which the incumbent President is being attacked for not already having “fixed” the economy after the 2008 Crisis,⁵ that governments are expected by their public and politicians to repair the damage to unemployment and economic welfare much more quickly than one might realistically expect. We tend to react rather shortsightedly to such events, insisting on instant solutions to what are deep and far ranging problems.⁶

Indeed, the history of financial regulatory reform, certainly in the U.S., is that of reaction to crisis rather than strategic planning. Nearly all the major legislation addressing financial regulation in the U.S. is the product of reactions to crisis.⁷ This means that reform inevitably comes too quickly and without the full information, analysis and reflection necessary to produce a viable long-term framework. Ironically, even if we believe we know what should be done, the kinds of institutions we need to develop more thoughtful and effective reform take a very long time to set up: For example, more than two years after the Dodd-Frank Act created the Office of Financial Research (OFR),⁸ a key unit within the United States Treasury Department, this office is still only in the process of implementation and is starting to prove a disappointment to many commentators.⁹

acknowledged. See, e.g., *Yoshio Okubo, Rethinking Japan's "Lost Decade: Some Post-Crisis Reflections*, in THINK TANK 20: NEW CHALLENGES FOR THE GLOBAL ECONOMY, NEW UNCERTAINTIES FOR THE G20, 54-58 (June 2012), available at <http://www.brookings.edu/~media/research/files/reports/2012/6/think%20tank%2020/tt20web.pdf>; R.A., *Lost Decades: The Japanese Tragedy*, ECONOMIST FREE EXCH. BLOG (Aug. 3, 2012, 4:32 PM), <http://www.economist.com/blogs/freeexchange/2012/08/lost-decades>; Matthew Yglesias, *Japan's Lost Decade: All Too Real*, SLATE MONEYBOX (Jan. 9, 2012, 4:09 PM), http://www.slate.com/blogs/moneybox/2012/01/09/japan_s_lost_decade_all_too_real.html.

⁵Karl Rove, *Obama and the Economic Blame Game*, WALL ST. J., July 26, 2012, at A11.

⁶The major vehicle for financial reform in the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Pub. L. No. 111-203, 124 Stat. 1376 (2010), was signed into law many months before the report commissioned by Congress and the President in 2009 had completed its hearings and delivered its report, FIN. CRISIS INQUIRY COMM'N, FINANCIAL CRISIS INQUIRY REPORT (2011). The Financial Crisis Inquiry Commission was established by the Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617. The Dodd-Frank Act also preceded, by almost two years, the extensive report of a key Congressional subcommittee that set out to investigate the causes of the Crisis, *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse: Hearing Before the Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. And Gov't Affairs*, 112th Cong. (2011) (report and appendix).

⁷For diverging, in-depth reviews of the impacts of this “crisis-driven” approach, see, e.g., Lawrence A. Cunningham & David Zaring, *The Three or Four Approaches to Financial Regulation: A Cautionary Analysis Against Exuberance in Crisis Response*, 78 GEO. WASH. L. REV. 39 (2009); Charles W. Calomiris, Briefing Paper #8: Banking Crises Yesterday and Today (2009), <http://www0.gsb.columbia.edu/faculty/ccalomiris/EP%20Calomiris%20Banking%20Crises%200910168.pdf> (summarizing a longer paper: Charles W. Calomiris, *Banking Crises and the Rules of the Game* (Nat'l Bureau of Econ. Research, Working Paper No. 15403, 2009), available at <http://www.nber.org/papers/w15403.pdf>).

⁸Dodd-Frank Act §§ 151-56.

⁹See, e.g., Jeff Horwitz, *Grand Vision for New Data Agency Meets Bureaucratic Reality*, AM. BANKER (Sept. 10, 2012, 12:26 PM), http://www.americanbanker.com/issues/177_175/grand-vision-for-office-of-financial-research-meets-bureaucratic-reality-1052490-1.html.

Efforts at international coordination, for example through the Basel Committee on Banking Supervision and the Financial Stability Board, are cumbersome and painfully slow, with serious questions now being raised as to whether Basel III can even be “saved.”¹⁰

The result is that the process of global financial reform has turned into a long, tortuous and combative trail of negotiations, enactments, threats of repeal, convoluted rulemaking and inevitable legal uncertainty. Given that significant financial crises have been occurring on average at the rate of once every two years,¹¹ the world’s largest economies seem particularly ineffective at producing reforms that are anything more than transient and that might well be outdated and ineffective in the face of new forms of crisis.

B. “Financialization”

The proportion of wealth produced by banking and finance has grown far more rapidly over the two decades. This process, sometimes called “financialization,”¹² has both increased the impact of the industry on general welfare and attracted enormous public attention. Big banks and financiers have asserted that we are witnessing a global “financial deepening” that merely reflects the prosperity of emerging economies and the greater need for sophisticated finance.¹³ At the same time, however, questions have been raised in various quarters about the value and accountability of large banks and financial companies.¹⁴ The associated debates have intensified scrutiny of the banks, simultaneously turning each new report of financial malfeasance into a major scandal, and in the process making financial reform efforts more difficult to implement as such debates have in turn generated an atmosphere of mutual mistrust between bankers and the public.

¹⁰ See, e.g., Donna Borak, Can Basel III Be Saved, AM. BANKER (Sept. 7, 2012, 4:40 PM), http://www.americanbanker.com/issues/177_174/can-basel-iii-be-saved-karen-shaw-petrou-believes-it-can-1052468-1.html (discussing a new white paper by a Washington consultant: Karen Shaw Petrou, *Basel’s Burst Bubble: How Basel Has Broken Apart and What Should Now Be Done to Fix Bank Regulation* (Aug. 27, 2012), available at http://www.fedfin.com/images/stories/client_reports/Basel’s%20Burst%20Bubble.pdf).

¹¹ Andrew G. Haldane, *Fixing Financial Crises in the Twenty-First Century*, in *FIXING FINANCIAL CRISES IN THE TWENTY-FIRST CENTURY* 1, 1 (Andrew G. Haldane ed., 2004); Fecht, Grüner, Hartman & Duca, *supra* note 2.

¹² ÖZGÜR ORHANGAZI, FINANCIALIZATION AND THE US ECONOMY 5-6 (2008); Jean-Louis Arcand, Enrico Berkes & Ugo Panizza, *Too Much Finance?* (Int’l Monetary Fund, Working Paper 12/161, 2012), available at <http://www.imf.org/external/pubs/ft/wp/2012/wp12161.pdf>.

¹³ For a critical assessment of the progress of “financial deepening,” see, e.g., Peter L. Rousseau & Paul Wachtel, *What Is Happening to the Impact of Financial Deepening on Economic Growth*, 49 *ECON. INQUIRY* 276 (2011). For an analytical model, see Nohiburo Kiyotaki & John Moore, *Financial Deepening*, 3 *J. EURO. ECON. ASS’N* 701 (2005).

¹⁴ See, e.g., Arcand, Berkes & Panizza, *supra* note 12; Andrew Haldane, Simon Brennan & Vasileios Madouros, *What is the Contribution of the Financial Sector: Miracle or Mirage?*, in *THE FUTURE OF FINANCE: THE LSE REPORT 87* (Adair Turner et al. eds., 2010), available at <http://harr123et.wordpress.com/download-version/> (unedited).

Representatives of both ends of the political spectrum in the US, for example, have joined in their condemnation of big banks.¹⁵

These short-term popular pressures have intensified the urgency for reform, because financial failures now have proportionately greater impact on economies. At the same time, they have intensified the differences between industrial participants, financial centers, regulators and the various constituents of the general public. What was once a field shaped and governed by the proverbial “club for gentlemen” has now become an arena of political combat in which stable reform is much harder to achieve.

1. Scandals

There seems to have been dramatic increase in the level of scandal surrounding the financial industry, and this is having an effect on efforts to reform. During the past six months the public has learned that the most revered of financial risk managers, JPMorgan Chase & Co., lost perhaps as much as \$7 billion as a result of derivatives trades that took the bank beyond risk management into speculation.¹⁶ Significantly, the losses appear not merely to have been the product of actions by a “rogue trader;” rather, they may well have been the result of systematic efforts to assume greater risk than the company should have undertaken in order to generate more profits.¹⁷ We also learned that large banks around the world have fraudulently manipulated LIBOR rates, and that some of the largest global companies have failed to comply with anti-money-laundering (AML) laws and regulations.¹⁸ Currently, an investigation is also underway concerning

¹⁵ For example, elements of the right wing of the Republican Party, known as the Tea Party, and elements of the left wing of the Democratic Party, known as Occupy Wall Street, tend to have parallel views on the need to break up the big banks. See, e.g., Dunstan Prial, *Occupy Wall Street, Tea Party Movements Both Born of Bank Bailouts*, Fox BUS. (Oct. 20, 2011), <http://www.foxbusiness.com/markets/2011/10/19/occupy-wall-street-tea-party-born-bank-bailouts/>.

¹⁶ Jessica Silver-Greenberg, *New Fraud Inquiry as JPMorgan's Loss Mounts*, N.Y. TIMES DEALBOOK (July 13, 2012, 11:49 AM), <http://dealbook.nytimes.com/2012/07/13/jpmorgan-says-traders-obscured-losses-in-first-quarter/>.

¹⁷ Francine McKenna, *The JPMorgan Whale's Disastrous Trades Were No Hedges*, AM. BANKER (May 17, 2012, 12:20 PM), <http://www.americanbanker.com/bankthink/JPM-hedge-accounting-Bruno-Iksil-1049398-1.html>.

¹⁸ James O'Toole, *Explaining the LIBOR Interest Rate Mess*, CNNMONEY (July 10, 2012, 12:07 PM), <http://money.cnn.com/2012/07/03/investing/libor-interest-rate-faq/index.htm>. On AML and related violations, see, e.g., *American Express Bank International Enters into Deferred Prosecution Agreement and Forfeits \$55 Million to Resolve Bank Secrecy Act Violations*, AM. BANKER (Aug. 8, 2007, 1:19 AM), <http://www.americanbanker.com/syndication/-326822-1.html>; Suzanne Kapner, *Wachovia Settles Drug Cartel Laundering Case*, FIN. TIMES (Mar. 18, 2010, 1:25 PM), <http://www.ft.com/intl/cms/s/0/3eba475c-3219-11df-b4e2-00144feabd0.html#axzz29N4NZ690>; Tiffany Kary & Greg Farrell, *HSBC in Settlement Talks with U.S. Over Money Laundering*, BLOOMBERG (Aug. 24, 2012), <http://www.bloomberg.com/news/print/2012-08-24/hsbc-in-settlement-talks-with-u-s-over-money-laundering.html>; Annie Lowey, *ING Bank to Pay \$619 Million to Settle Inquiry into Sanctions Violations*, N.Y. TIMES (June 12, 2012), <http://www.nytimes.com/2012/06/13/business/ing-bank-to-pay-619-million-over-sanctions-violations.html?>; Jessica Silver-Greenberg, *Standard Chartered Signs Pact with New York Regulator*, N.Y. TIMES DEALBOOK (Sept. 21, 2012, 10:38 AM), <http://dealbook.nytimes.com/2012/09/21/standard-chartered-set-to-sign-pact-with-new-york-regulator/> (Standard-Chartered Bank); Isabella Steger, *Tallying Up U.S. Regulator*

whether a large bank has been attempting to manipulate energy prices.¹⁹

These events have provoked various reactions. First and most obvious is that of populist anger at bankers.²⁰ In the United States this anger might have slightly impeded numerous, powerful political efforts to roll back Dodd-Frank,²¹ yet it might also have deepened polarization within the U.S. on approaches to financial regulation.²² Second, the focus on regulatory laxness might have begun to generate new frictions in international cooperation among regulators, even between the closest of allies, the United States and United Kingdom.²³ It is possible that new forms of unilateralism may be emerging.²⁴

These developments may have the effect of stalling or substantially impeding further progress on the development of global standards for promoting financial stability.

2. Ideology

Far from generating a consensus on how to promote financial stability and harmonize international banking regulation, the Crisis seems to have unearthed deeper ideological divisions. These divisions include differences concerning the most effective ways to regulate the global financial system and to prevent or reduce the damage caused by systemic bank failures.

Money-Laundering Fines, WALL ST. J. DEAL J. (Aug. 15, 2012, 3:05 AM), <http://blogs.wsj.com/deals/2012/08/15/tallying-up-u-s-regulators-money-laundering-fines>.

¹⁹ Agustino Fontevecchia, *JPMorgan Potentially Manipulating Energy Markets Using Abusive Bidding Strategies*, FORBES (July 3, 2012, 5:56 PM), <http://www.forbes.com/sites/afontevecchia/2012/07/03/jpmorgan-potentially-manipulating-energy-markets-using-abusive-bidding-strategies/>.

²⁰ See, e.g., Gary Fields & Maya Jackson-Randall, *Footnote to Financial Crisis: More People Shun the Bank*, WALL ST. J., Sept. 12, 2012, at A1; Kevin Wack, *Big-Bank Breakup Popular with Rank and File of Both Parties*, AM. BANKER (Sept. 5, 2012, 2:21 PM), http://www.americanbanker.com/issues/177_172/big-bank-breakup-popular-with-rank-and-file-1052378-1.html?

²¹ Republicans in Congress have consistently attempted to repeal elements of Dodd-Frank and opposed funding necessary to implement the statute. See, e.g., Phil Mattingly, *Wall Street Supporters in Congress Unmoved by LIBOR Probe*, BLOOMBERG (July 3, 2012, 10:29 AM), <http://www.bloomberg.com/news/2012-07-03/wall-street-supporters-in-congress-unmoved-by-libor-probe.html>.

²² For example, Republicans used the recent LIBOR scandal as a reason to attack Dodd-Frank. See *id.*

²³ Simon Nixon, *Standard Chartered Fuels U.K. Siege Mentality*, WALL ST. J. (Aug. 8, 2012, 12:56 PM), <http://online.wsj.com/article/SB10000872396390444900304577577192165652480.html>; Tom Braithwaite, Shahien Nasripour & Brooke Masters, *US Watchdog Hits at 'Risky' London*, FIN. TIMES (June 19, 2012, 11:16 PM) (U.K.), <http://www.ft.com/intl/cms/s/0/fbcff850-ba2a-11e1-84dc-00144feabdc0.html#axzz1yL23ZkOE>; Kevin Crowley & Ambereen Choudhury, *Made-in-London Scandals Risk City Reputation as Money Center*, BLOOMBERG (July 6, 2012, 4:35 AM), <http://www.bloomberg.com/news/2012-07-05/made-in-london-scandals-risk-city-s-reputation-as-finance-center.html>.

²⁴ As seems to be illustrated by various U.S., European and U.K. legislation and regulations that would have unilateral effect on the financial regulatory systems of other countries. For a very helpful memorandum on growing extraterritoriality in financial regulation, see, e.g., Memorandum from the Inst. of Int'l Fin. [IIF] to the Fin. Stability Bd.: Containing Extraterritoriality to Promote Financial Stability (Oct. 2, 2012) (on file with author). The author is grateful to the Executive Director of the IIF for permission to cite this proprietary material).

The positions of the candidates in the impending United States presidential election highlight, at least in rhetoric if not in substance, the different approaches.²⁵ On the one hand, the Obama Administration, placing its confidence in the ability of government to prevent crises, has valiantly attempted to erect a complicated regulatory system under the auspices of the Dodd-Frank Act. Regulators have published thousands of pages of new or proposed rules. Some agency structures have been changed: The Board of Governors of the Federal Reserve System (FED) has acquired enormous new powers; a whole new, cumbersome, “regulator of regulators,” the Financial Stability Oversight Council (FSOC), has been established; and an entirely new consumer protection agency (the CFPB) has been created.

On the other hand, Republicans Mitt Romney and Paul Ryan have pinned their campaign rhetoric on faith in the free market economic policies fathered by Milton Friedman and Friedrich Hayek. Paul Ryan has been vocal in insisting that large banks be allowed to fail, and in wanting to roll back excessive regulation.²⁶ While it is unlikely that these positions will be pushed too vehemently into action if the Republican ticket is elected, since large financial institutions have been major contributors to the Romney-Ryan campaign, the rhetoric has certainly helped form a deep divide within public perceptions of the role of big banks and the proper roles of government in regulating large scale finance.

3. Market Stirrings

Although many have dismissed the ability of the markets to apply effective discipline to very large banks—protected by government regulation and subsidized by various public supports as they are—there are signs that private investors are starting to question the value of large financial conglomerates. Prominent investment analysts have warned that investors may walk away from bank stocks if banks cannot show greater efficiency and profitability.²⁷ Most recently, investors in Barclays, whose share value has been pummeled

²⁵ For convenient summaries of the party platforms on financial reforms, see *Top 15 Points of Democratic Party's 2012 Finance Platform*, SEVEN PILLARS INST. FOR GLOBAL FIN. AND ETHICS (Sept. 11, 2012), <http://sevenpillarsinstitute.org/news/top-15-points-of-democratic-partys-2012-finance-platform>; *Top 15 Points of G.O.P.'s Finance Platform*, SEVEN PILLARS INST. FOR GLOBAL FIN. AND ETHICS (Sept. 5, 2012), <http://sevenpillarsinstitute.org/news/top-15-points-of-gops-finance-platform>.

²⁶ For analyses of the sometimes contradictory positions on financial reform, held by Romney and Ryan, see, e.g., Kevin Wack, *What Romney Victory Would Mean for Banks*, AM. BANKER (Aug. 30, 2012, 4:31 PM), http://www.americanbanker.com/issues/177_169/what-romney-victory-would-mean-for-banks-1052289-1.html?; Kevin Wack & Rob Blackwell, *Romney's Muddled Message on Dodd-Frank*, AM. BANKER (Aug. 26, 2012, 7:37 AM), http://www.americanbanker.com/issues/177_168/romneys-muddled-message-on-dodd-frank-1052217-1.html?; Neil Weinberg, *Why Paul Ryan Is Bad News for Bankers*, AM. BANKER (Aug. 13, 2012, 8:10 AM), <http://www.americanbanker.com/bankthink/why-paul-ryan-is-bad-news-for-bankers-1051767-1.html?>; Andrew Ross Sorkin, *Everything Wall Street Should Know About Ryan*, N.Y. TIMES DEALBOOK (Aug. 13, 2012, 10:26 PM), <http://dealbook.nytimes.com/2012/08/13/paul-ryan-and-what-wall-street-should-know/>.

²⁷ Lawrence Baxter, *Has the Great Big-Bank Die-Off Begun?*, SEEKING ALPHA (July 11, 2012), <http://seekingalpha.com/article/715801-has-the-great-big-bank-die-off-begun>.

by the LIBOR scandal, began openly to ask whether the company might be better broken up into smaller parts.²⁸

This trend, unthinkable only a year or two ago, might well portend the revival of market discipline as a serious mechanism for regulating financial excesses.²⁹ If so, then we could see a substantial restructuring of the large banking environment over the next few years—one that is diametrically opposed to the aspirations expressed by some of the biggest bankers.

C. *Financial interconnectedness*

Among the many consequences of the growing “financialization” of the world has been an increasing intensity of links between ever-large financial companies. The growth in financial interconnectedness in recent years has been exponential and quite stunning.³⁰ Interbank exposure has created a situation in which the financial networks are now very tightly coupled.³¹ Because of the cascading effects when a financial institution fails within the network created by these connections, this in turn appears to have increased greatly the systemic impact of failures, which highlights in turn the escalating importance of each large financial institution as it grows in scale and as it spawns increasingly complex connections. The public debate surrounding the “too big to fail” (TBTF) banks really obscures a more discreet concern about both the scale and complexity of these institutions.³²

1. Scale

Modern global banks operate at scales that were only dreamed of two decades ago.³³ While their architects defend the benefits of scale by pointing to the possibilities that large-scale operations offer and the alleged efficiencies of scale, they tend to ignore the

²⁸ Aaron Kirchfeld, *Barclays Cheaper Than Peers Fuels Breakup Talk: Real M&A*, BLOOMBERG (Aug. 13, 2012, 1:30 PM), <http://www.bloomberg.com/news/2012-08-13/barclays-cheaper-than-peers-fuels-breakup-talk-real-m-a.html>; Giles Turner & Matthew Attwood, *Diamond Exit Could Herald 'Sea Change' at Barclays*, FIN. NEWS (July 3, 2012), <http://www.efinancialnews.com/story/2012-07-03/bob-diamond-exit-heralds-sea-change-at-barclays>; Charlie Gasparino, *Gasparino: Barclays Could Break Up*, FOX BUS. (July 9, 2012), <http://video.foxbusiness.com/v/1727389575001/gasparino-barclays-could-break-up/>; Robert Preston, *Could Barclays Review Spur Break-up of Bank?*, MONEYSOURCE (July 24, 2012, 8:34 AM), <http://www.moneyscience.com/pg/blog/RobertPestonBlog/read/392035/could-barclays-review-spur-breakup-of-bank>.

²⁹ See Baxter, *supra* note 27 and links accompanying the text.

³⁰ See, e.g., Monica Billio, Andrew W. Lo, Mila Getmansky, & Liorana Pelizzon, *Econometric Measures of Connectedness and Systemic Risk in the Finance and Insurance Sectors* (Mass. Inst. of Tech. Sloan Sch. of Mgmt., Research Paper No. 4774-10, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1963216##.

³¹ CHARLES PERROW, *NORMAL ACCIDENTS: LIVING WITH HIGH-RISK TECHNOLOGIES* 182 (1999). See also, Lawrence G. Baxter, *Betting Big: Value, Caution and Accountability in an Era of Large Banks and Complex Finance*, 31 REV. BANKING & FIN. L. 765, 848-67 (2011-2012).

³² Claudio J. Tessone, Antonios Garas, Beniamino Guerra & Frank Schweitzer, *How Big is Too Big? Critical Shocks for Systemic Failure Cascades* (Sept. 25, 2012), available at <http://arxiv.org/pdf/1209.0959v2.pdf>.

³³ Baxter, *supra* note 31, at 778-821.

consequences of scale. As they increase in size, there appears to be some evidence that competition from smaller financial institutions is diminished. And when they get into trouble, the impact of failure is correspondingly greater than is the case with smaller institutions, which of course creates great political pressure for governments to act to prevent failure—in other words, through bailouts. Hence the “TBTF” moniker: Because of the sheer scale of these institutions, the collapse of any one would have disastrous consequences for financial stability. Because of the specter of such dire consequences, its government would inevitably bail out the institution.

The TBTF status that such institutions therefore acquire, however, creates a class of institutions that are, in effect, “protected” by government. They are able to borrow at lower cost because creditors do not believe they will be allowed to fail, and moral hazard is correspondingly increased as their managers become less sensitive to the costs of potential failure.

2. Complexity³⁴

Size is not the only concern, however. Over the past twenty years many very large banks have striven to diversify their operations, to become “universal banks.” By embracing widely different types of financial business—for example, by putting traditional commercial banking and investment banking or insurance under one financial conglomerate, or both—their leaders assert that they are able to create diversified operations that are either mutually supportive or, in difficult economic times, complementary such that losses experienced by one line of business can be offset by profits gained in others.

The problem is that when these businesses are each very large in their own right, the range of different operations each business brings under the conglomerate structure also diversifies the risks that have to be managed. This in turn raises the question whether such institutions have become too complex to manage. Coupled with great scale, even initially small failures in operations can quickly ripple in unexpected ways across the conglomerate as a whole if there is not sufficient corporate insulation between the business lines. Given that the whole point of creating a universal bank is to create synergies between these different lines of business, the degree of insulation between corporate units bearing widely diverse risk profiles can in practice be dangerously insufficient.³⁵

³⁴ *Id.* (reviewing at length the phenomenon of growing complexity).

³⁵ Hence proposals for “subsidiarization” and “walls” between entities with different risk profiles. This is a form of “modularity,” a tool adopted by systems engineers to seal off failure once it begins. See, e.g., Lawrence Baxter, *Size, Subsidiarization and Stability*, THEPARETOCOMMONS (Jan. 24, 2011), <http://www.theparetocommons.com/2011/01/size-subsidiarization-and-stability/>; Andrew Haldane, *Regulation or Prohibition: The \$100 Billion Question*, J. REG. & RISK N. ASIA, Summer/Autumn 2010, at 101, 110-14. It is also the basis for criticism by Paul Volcker, after whom the Dodd-Frank “Volcker Rule” is named, of the British plans to impose “ring-fencing” to

There is also an entirely different and even more recent danger generated by complexity. This is the reaction by governments to the very complexity of large scale banking itself. Legislation and rules designed to cover all the various types of risks involved, and regulatory agencies designed to be large enough to supervise these operations, have become so complex that some commentators have rightly criticized the process as creating regulatory complexity that could well generate, in turn, confusion within financial institutions and even regulatory dysfunction on the part of regulators to the point that they might miss dangerous developments entirely.³⁶ It is not at all clear, from a scientific point of view, that the best way to regulate complexity is through even more complex rules.³⁷

D. The Human Factor in Finance

The body of research being generated by neuroscience and behavioral economics is profoundly changing our understanding of financial decision making and risk taking. For most of the past hundred years, we have assumed that human choices were, at least in aggregate, generally rational. The neo-classical economic model of homo economicus, the rational man, rendered inquiries into actual human motivation and the actual process of reaching decisions largely irrelevant as it was assumed that individuals make choices based on rational calculations of their self-interest. Ensuring that such decisions were in service of society or particular companies was merely a matter of identifying and adjusting incentives.

The work of great behavioral scientists such as Daniel Kahneman has shown such assumptions to be not only false but also downright unsafe.³⁸ Neurobiology has recently dramatically increased our understanding of human behavior under stress, including when markets start to “move.”³⁹ The behavior of the crowd in bubble situations, which even Sir Isaac Newton confessed was beyond his immense skills of computation,⁴⁰ is

protect the insured depository business of banks: He rightly notes that without complete separation such “firewalls” are often breached. Helia Ebrahimi, *Paul Volcker: Ring-Fencing Banks Is Not Enough*, TELEGRAPH (Sept. 23, 2012, 9:15 PM) (U.K.), <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9561624/Paul-Volcker-ring-fencing-banks-is-not-enough.html>.

³⁶ Baxter, *supra* note 31, at 863-66 and the references there cited.

³⁷ Andrew G. Haldane, Exec. Dir. for Fin. Stability, Bank Eng., Address at the Federal Reserve Bank of Kansas City’s Economic Policy Symposium: The Dog and the Frisbee (Aug. 31, 2012), *available at* <http://www.bankofengland.co.uk/publications/Documents/speeches/2012/speech596.pdf>.

³⁸ Amos Tversky & Daniel Kahneman, *Judgment under Uncertainty: Heuristics and Biases*, 185 SCI. 1124, 1124 (1974); DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011).

³⁹ John M. Coates, Mark Gurnell & Zoltan Sarnyai, *From Molecule to Market: Steroid Hormones and Financial Risk-Taking*, PHIL. TRANS. R. SOC 365 (B 2010); JOHN COATES, THE HOUR BETWEEN DOG AND WOLF: RISK-TAKING, GUT FEELINGS AND THE BIOLOGY OF BOOM AND BUST (2012).

⁴⁰ After he and his sister had lost a substantial personal fortune as a result of the collapse of the South Sea Company in the South Sea Bubble, Sir Isaac Newton, then Master of the Mint, is famously quoted as saying in 1720 “I can calculate the motions of heavenly bodies, but not the madness of people.” CHARLES P. KINDLEBERGER & ROBERT ALIBER, MANIAS, PANICS AND CRASHES: A HISTORY OF FINANCIAL CRISES 47 (5 ed. 2005).

slowly coming to be much better understood.⁴¹

These developments will have long-term implications for how we devise regulation that is intended to prevent excessive risk taking leading to financial instability. A current example is the work being undertaken on “countercyclical” regulation, which has as its purpose a dampening of exuberant growth, on the one hand, and cushioning market declines, on the other. No doubt such science will also influence our expectations or the behavior of risk managers, even regulators, and the measures taken to improve the effectiveness of their efforts.

E. Broader Financial Ecology

Traditionally the focus of concern in financial risk has centered on traditional banks, investment banks, insurance companies and broker-dealers. Yet we have come to realize, with failures of nonbank financial institutions such as major mutual funds⁴² and AIG,⁴³ that there is a dense ecology of infrastructure (exchanges or financial market utilities), and other repositories of money (hedge funds, mutual funds, specialized trading operations), upon which modern finance depends. Part of this ecology is called the “shadow banking” system.⁴⁴ Another dimension is the web of networks and exchanges called the financial market utilities (FMUs).⁴⁵

Each of these elements can carry major systemic risk in itself. The failure of an entity providing credit default swap insurance to banks can bring the entire banking system down. A failure of an exchange, perhaps through a flash crash,⁴⁶ or a payments clearing network, perhaps through a technology breakdown,⁴⁷ can set off a panic that could

⁴¹ See also, e.g., MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1971) (classic study on the differences between individual and collective action).

⁴² See, e.g., Michael Mackenzie & Paul J. Davies, *Money Markets Fund Sector Shocked*, FIN. TIMES (Sept. 17, 2008, 8:39 PM) (U.K.), <http://www.ft.com/intl/cms/s/0/8bcf03ac-84e1-11dd-b148-0000779fd18c.html#axzz28v25Ai97> (reporting on one of the key events of the Crisis, namely the “breaking of the buck” by a money market fund run by Reserve Management Company (RMC)).

⁴³ E.g., RODDY BOYD, *FATAL RISK: A CAUTIONARY TALE OF AIG’S CORPORATE SUICIDE* (2011).

⁴⁴ “Shadow banking,” has now spawned a vast literature, was initially analyzed in ZOLTAN POZSAR, TOBIAS ADRIAN, ADAM ASHCRAFT & HAYLEY BOESKY, *SHADOW BANKING* (2010) (revised 2012), available at http://www.ny.frb.org/research/staff_reports/sr458.pdf.

⁴⁵ Anna L. Paulson & Kirstin E. Wells, *Enhancing Financial Stability: The Case of Financial Market Utilities*, CHI. FED LETTER no. 279 (Oct. 2010).

⁴⁶ For a vivid example of a sudden financial market collapse, or “flash crash,” see U.S. COMMODITY FUTURES TRADING COMMISSION & U.S. SECURITIES & EXCHANGE COMMISSION, *FINDINGS REGARDING THE MARKET EVENTS OF MAY 6, 2010: REPORT OF THE STAFFS OF THE CFTC AND SEC TO THE JOINT ADVISORY COMMITTEE ON EMERGING REGULATORY ISSUES* (Sept. 30, 2010), available at <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>.

⁴⁷ For a discussion of recent regulatory concerns stemming primarily from a systems breakdown at a subsidiary of the Royal Bank of Scotland, see Brooke Masters & Sharlene Goff, *FSA Challenges Bank Chairmen over IT*, FIN. TIMES (Sept. 4, 2012, 12:30 AM) (U.K.), <http://www.ft.com/intl/cms/s/0/175a075e-f5be-11e1-a6bb-00144feabdc0.html#axzz28v25Ai97>.

instantly threaten market confidence and even market liquidity. And, as failures of money market funds and hedge funds have demonstrated, banks are themselves immediately impacted.⁴⁸

The recognition that this large and complicated ecology is itself systemically important to the stability of global financial markets has added a major new dimension to the quest for modern financial regulation. With the advent of universal banking, bank regulators are no longer able to ignore what their securities and insurance counterparts are doing. But just as much so they cannot ignore the operations of securities and derivatives exchanges, the actions of so-called “dark pools” of money in hedge and private equity funds are shaped by the actions of banks and their regulators.

F. The “Technology Revolution”

Financial services, as much if not more than any other area of economic activity, have been impacted profoundly by the ongoing technology revolution. Banks can now operate on a scale hitherto undreamed of because they run on global technology platforms, process their transactions at lightning speed, manage risks through advanced modeling systems, and engage with customers using burgeoning warehouses of “big data” and mobile and Internet channels of communication.⁴⁹ Yet these great advances have also drawn banks into a world of global competition in which risks have increased and margins have shrunk. It is harder than ever to generate profits, avoid competition and scrutiny by regulators, the media and consumers.

Signs of the stress banks are finding themselves under can be found in the widespread layoffs banks are having to make all over the world and even on Wall Street.⁵⁰ Banks are able to sustain their aspirations to high returns on equity mostly by cutting back on expenses, particularly payrolls, and attempting to find new areas of revenue growth.⁵¹ Yet in the latter pursuit technology is exposing banks to entirely new competitors that have appeal to modern consumers. Paypal is a long-standing example. Facebook, Apple and Wal-Mart offer the potential of eliminating banks from the value

⁴⁸ When the fund managed by RMC “broke the buck,” *supra* note 42, this was a key governmental concern at the start of the Crisis in 2008. Numerous other “nonbank” failures, from that of Drexel Burnham Lambert in 1990 to Long-Term Capital Management in 1998 to the collapse of MF Global in 2011, have triggered grave banking concerns.

⁴⁹ Baxter, *supra* note 31, at 812-16.

⁵⁰ For reviews of some of the hundreds of thousands of employees laid off in recent years by the financial industry, see Kelly Eggers, *Layoffs up 20% in First Five Months*, FINS FIN. HIRE WIRE (May 31, 2012), available at <http://www.fins.com/Finance/Articles/SBB0001424052702303640104577438281779949796/Layoffs-up-20-in-First-Five-Months>; Max Abelson & Ambereen Choudhury, *Wall Street Unoccupied with 200,000 Job Cuts*, BLOOMBERG (Nov. 21, 2011, 8:01 PM), available at <http://www.bloomberg.com/news/2011-11-22/wall-street-unoccupied-with-200-000-job-cuts.html>. Layoffs have continued at a similar pace worldwide since these reports were published.

⁵¹ Lawrence Baxter, *The Widening Financial Gyre*, THEPARETOCOMMONS (Sept. 19, 2011), <http://www.theparetocommons.com/2011/09/the-widening-financial-gyre/>.

chain altogether.

Over the years banks have faced competition from various nonbank sources. They appear on the surface to have survived these intrusions into their domain. Closer inspection, however, reveals that those nonbank forces have already profoundly changed the banking landscape, and not always for the better. Universal banking, primarily involving the combination of traditional and investment banking, was partly a reaction to the fact that the lines between products had become blurred to the point of incoherence. Multibank alliances, such as the SVP payments network,⁵² were a reaction to the growing presence of technology companies in the payments system. Yet the changes likely to be wrought as a result of the churning impact of the deep information technology revolution the world is experiencing may well be more far reaching than we can imagine and may well make the deep changes experienced by banks seem mild by comparison.⁵³

At the same time, the competitive squeeze on financial services is not the only negative to the IT revolution: As noted above, IT dependency also makes financial systems more vulnerable to failure. Recent high profile outages with the subsidiary of a major U.K. bank has led the Financial Services Authority to insist upon the production of disaster plans by major U.K. financial institutions.⁵⁴ Since the bombing of the World Trade Center on September 11, 2001, expensive business continuity plans are already a fact of life for banks in the United States. Yet it is unlikely that even such plans yet take adequately into account the high speed, high volume load on technology systems that modern finance now creates, or that they ever can.

It seems that the global financial system, along with everything else in economic and social life, is experiencing the uncertainty, even trauma, of being in the midst of a long, deep, technology-driven revolution, of which bubbles and crises are a “normal” element as we move uncertainly from the heady, gilded age of initial deployment of exciting new technology to what Carlota Perez calls the two to three decade “deployment period,” and finally toward stable usage of technology in a predictable post-revolutionary world.⁵⁵ At the present stage of our development, it is difficult, perhaps even unknowable, to see what the final, stable result will look like. What this means in practical terms is that we are far from a situation in which complex technology and big data is sufficiently developed for reliable risk management, and this in turn merely renders the problem of large bank regulation even more complex.

⁵² <http://www.svpco.com/home.php>.

⁵³ ERIK BRYNJOLFSSON & ANDREW MCAFEE, *RACE AGAINST THE MACHINE* (2011); JOHN M. JORDA, *INFORMATION, TECHNOLOGY AND INNOVATION: RESOURCES FOR GROWTH IN A CONNECTED WORLD* (2012).

⁵⁴ *See supra* note 47.

⁵⁵ CARLOTA PEREZ, *TECHNOLOGICAL REVOLUTIONS AND FINANCIAL CAPITAL: THE DYNAMICS OF BUBBLES AND GOLDEN AGES* (2002) (available with Korean translation).

G. The “Next Convergence”⁵⁶

The past three or four decades have been an era in which Western financiers ruled the roost, after two centuries of rapid divergence in which the Industrial Revolution propelled Western economies into a state of hegemony over the rest of the world. With the exception of Japan’s own rise to prominence after World War II, this hegemony was substantial (notwithstanding ruinous wars) for the entire 20th Century. This global framework, however, is now rapidly changing as phenomenal economic growth in Asia has switched the status of debtor and creditor nations, begun to eliminate Western financial dominance and helped to generate what Michael Spence has called an “Inclusiveness Revolution,” leading in turn to the “next convergence” between East and West and North and South.⁵⁷

Implications for banking are emerging. First, at the regulatory level Asian and other nations have increasing access to the G20, Basel Committee on Banking Supervision and the Financial Stability Board. These “Clubs,” once peopled and controlled by a small group of central bankers from the West and Japan, are now more open to and influenced by China and other countries. A Chinese bank is among the list of G-SIFIs identified by the FSB as critical to global financial stability;⁵⁸ no doubt there will be more. Some Asian governments and banks learned lessons through their experience with the Asian Crisis and as a result were perhaps not as badly hurt during the Global Financial Crisis as their Western counterparts.⁵⁹ And, although such predictions and their methodology are highly contested, Chinese GDP was recently projected by the World Bank, International Monetary Fund⁶⁰ and a leading consulting firm⁶¹ to surpass that of the United States in a few short decades or even years.⁶²

There is no doubt that these developments will slowly yet deeply change the global balance of power when it comes to the regulation of banks and financial companies. As

⁵⁶ Here I adopt the term used by Michael Spence in his recent book. MICHAEL SPENCE, *THE NEXT CONVERGENCE: THE FUTURE OF ECONOMIC GROWTH IN A MULTISPEED WORLD* (2011).

⁵⁷ *Id.* at 5.

⁵⁸ FIN. STABILITY BD., *POLICY MEASURES TO ADDRESS SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS* (2011), available at http://www.financialstabilityboard.org/publications/r_111104bb.pdf.

⁵⁹ This is one of the arguments made by those who assert that the 21st Century will belong to the Asian, and particularly the Chinese, economies. See, e.g., Kishore Mahbubani, *The Chinese Century*, AM. REVIEW (May 2010), available at <http://americanreviewmag.com/stories/The-Chinese-century>. See also *Emerging Markets and Recession: Counting Their Blessings*, ECONOMIST (Jan. 2, 2010), available at <http://www.economist.com/node/15172941>.

⁶⁰ See, e.g., Brett Arends, *IMF Bombshell: Age of America Nears End*, WALL ST. J. MARKETWATCH (Apr. 25, 2011, 7:21 PM), <http://www.marketwatch.com/story/imf-bombshell-age-of-america-about-to-end-2011-04-25>.

⁶¹ PRICEWATERHOUSECOOPERS, *THE WORLD IN 2050: THE ACCELERATING SHIFT OF GLOBAL ECONOMIC POWER? CHALLENGES AND OPPORTUNITIES* (Jan. 2011) (U.K.), available at http://www.pwc.com/en_GX/gx/world-2050/pdf/world-in-2050-jan-2011.pdf.

⁶² For a graphical depiction of the trends, see Larry Elliott, *GDP Projections from PwC: How China, India and Brazil Will Overtake the West by 2050*, GUARDIAN DATABLOG (Jan. 6, 2011, 7:01 PM), <http://www.guardian.co.uk/news/datablog/2011/jan/07/gdp-projections-china-us-uk-brazil>.

Professor Spence has put it, we are all learning to play “a cooperative game on a giant scale . . . a complex one because of the asymmetries among the players.”⁶³ Furthermore, as we delve deeper into the nature of this giant “convergence,” it is also becoming apparent that *new divergences in wealth distribution*, between the richest and poorest citizens of the world, far from receding are accelerating,⁶⁴ and that might in turn escalate the pressures on institutions such as the G20 for broader representation and greater focus on redistribution of wealth.⁶⁵ The pressures emanating from such divergences of wealth distribution will surely continue to pose further challenges to the quest for uniformity, or at least harmonization, of global financial regulation.

III. PROSPECTS FOR GLOBAL FINANCIAL REFORM

Each of these broad forces would by itself already be wielding profound change on both the financial system and its regulation. Each of course is interacting with all the others, so in reality they are combining to all but guarantee that the financial system and its regulatory framework will be very different by the end of the second decade of the 21st Century. Yet in which direction is far from clear.

The aftermath of the Crisis of 2008 seemed to indicate that there might evolve a global convergence of regulatory principles. The partners of the G20 in a series of biannual summits made grand, harmonious statements and commitments.⁶⁶ The Basel Committee and the FSB have been working indefatigably to produce a set of standards under the general framework of Basel III and on related discreet subjects.⁶⁷ In Europe the Eurozone Crisis has pressured the European Commission to propose radical reforms that would even lead to the creation of a direct, transnational bank supervisor for the banks operating within the Eurozone.⁶⁸

⁶³ SPENCE, *supra* note 56, at 268.

⁶⁴ Kemal Dervis, *World Economy: Convergence, Interdependence, and Divergence*, FIN. & DEV., Sept. 2012, at 10, available at <http://www.imf.org/external/pubs/ft/fandd/2012/09/dervis.htm>.

⁶⁵ JAKOB VESTERGAARD, THE G20 AND BEYOND: TOWARDS EFFECTIVE GLOBAL ECONOMIC GOVERNANCE (Danish Inst. for Int'l Studies, Rep. 2011:04), available at http://www.diiis.dk/graphics/_Staff/jve/Vestergaard%202011%20-%20The%20G20%20and%20beyond.pdf. For a defense of the G20, see, e.g., Mark Beeson & Stephen Bell, *The G-20 and International Economic Governance: Hegemony, Collectivism, or Both?*, 15 GLOBAL GOVERNANCE 67 (2009), available at <http://www.academia.edu/539147/G-20>.

⁶⁶ For the valuable G20 update newsletters and Dropbox maintained by the Heinrich Böll Stiftung: *Foundation Newsletter and Resources on the G20*, HEINRICH BÖLL STIFTUNG N. AM., <http://www.boell.org/web/index-G20-Update-Newsletter.html> (last visited Oct. 13, 2012); *G20 Database & E-Mail Listserv*, HEINRICH BÖLL STIFTUNG N. AM., http://boell.org/downloads/G20_Dropbox_Info.pdf (last visited Oct. 13, 2012).

⁶⁷ These materials are all posted online: *Basel Comm. on Banking Supervision*, BANK FOR INT'L SETTLEMENT, <http://www.bis.org/bcbs/index.htm> (last visited Oct. 13, 2012); FIN. STABILITY BD., <http://www.financialstabilityboard.org>.

⁶⁸ *European Commission, Communication from the Commission to the European Parliament and the Council: A Roadmap Towards a Banking Union*, COM (2012) 510 final (Sept. 9, 2012), available at http://ec.europa.eu/internal_market/finances/docs/committees/reform/20120912-com-2012-510_en.pdf.

This is a development that would have been unthinkable only a decade ago. It heralds the possibility of a global banking regulator, designed to match the global nature of modern financial institutions—an idea considered even recently by most commentators and scholars to be no more than pure fantasy.⁶⁹ The contours of the global regulator idea have been traced in a most thoughtful and quiet way by one of Europe's leading scholars on the subject, Emiliós Avgouleas.⁷⁰

Yet the opposite trend is also very possible. It is not implausible that global bank regulation will recede into a Balkanized crazy quilt of protectionist regimes. Indeed, there is evidence that this process is taking place. Rivalries between London and Europe have broken out in the past two years. Sometimes outright hostility has even surfaced between the long time partners, London and New York, ironically as a direct result of regulatory enforcement actions and scandals involving global banks with operations in both financial centers.⁷¹

My own hope is that we succeed in developing a set of “rules of the game,” set at the level of strongly agreed upon general standards but not detailed regulations. Detailed regulations, and even significant variations in local standards, would be left for individual countries to implement in their own way, subject to monitoring and reporting by central bodies such as the IMF,⁷² FSB and Basel Committee. The objection to this approach is that regional variations inevitably impose additional costs on the operation of global institutions, and such costs are considered “inefficient.” But such costs might well be necessary in order to create a resilient framework within which individual nations can protect their own interests while allowing a relatively free flow of finance.

⁶⁹ See, e.g., HEIDI MANDANIS SCHOONER & MICHAEL W. TAYLOR, GLOBAL BANK REGULATION: PRINCIPLES AND POLICIES 292 (2010).

⁷⁰ EMILIOS AVGOULEAS, GOVERNANCE OF GLOBAL FINANCIAL MARKETS: THE LAW, THE ECONOMICS, THE POLITICS ch. 8 (2012).

⁷¹ Dana Cimilluca & Victoria McGrane, *Trans-Atlantic Tensions Increase*, WALL ST. J. ONLINE (Aug. 13, 2012, 7:52 PM), <http://online.wsj.com/article/SB10000872396390444042704577587394162992700.html>; Jim Rickard, *British MPs Accuse US of Anti-City Agenda*, FIN. TIMES (Aug. 7, 2012, 7:19 PM) (U.K.), <http://www.ft.com/intl/cms/s/0/4425bcea-e0b2-11e1-8d0f-00144feab49a.html#axzz22mxDhfc>; Louise Armitstead, *George Osborne calls Tim Geithner to demand “fair treatment” of Standard Chartered*, TELEGRAPH (Aug. 9, 2012, 7:05 PM) (U.K.), <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9465367/George-Osborne-calls-Tim-Geithner-to-demand-fair-treatment-of-Standard-Chartered.html>; Max Colchester, Liz Rappaport & Damian Paletta, *In U.K., a Backlash over Standard Chartered Probe*, WALL ST. J. ONLINE (Aug. 9, 2012, 11:19 AM), <http://online.wsj.com/article/SB10000872396390443991704577577154126976234.html>; Landon Thomas, Jr., *In London, Censure of an Elite Bank Draws Harrumphs*, N.Y. TIMES (Aug. 8, 2012), http://www.nytimes.com/2012/08/09/business/global/censure-of-standard-chartered-draws-harrumphs-in-london.html?_r=1; Walter Ellis, *America Is Turning on British Banks in Order to Protect Wall Street*, TELEGRAPH BLOGS (Aug. 8, 2012) (U.K.), <http://blogs.telegraph.co.uk/news/walterellis/100175525/america-is-turning-on-british-banks-in-order-to-protect-wall-street/>. See also Richard Blackden, *Standard Chartered: Why the Anti-British Conspiracy Theory Doesn't Add up*, TELEGRAPH (Aug. 9, 2012, 2:56 PM) (U.K.), <http://www.telegraph.co.uk/finance/comment/9464560/Standard-Chartered-Why-the-anti-British-conspiracy-theory-doesnt-add-up.html>.

⁷² In particular, the Financial Sector Assessment Program established jointly by the IMF and the World Bank in 1999: *Supporting Documents Country FSAPs*, INT'L MONETARY FUND, <http://www.imf.org/external/NP/fsap/fsap.aspx> (last updated Sept. 26, 2012).

Amidst this swirl of developments, many of which are zigzagging within the space of only a few months, it would be foolish to make strong predictions. It is safe to conclude, however, that the sheer force of circumstance—whether from global banking activities, failures, sovereign debt defaults, or a combination thereof—is likely to drive radical changes over the next few years, changes that will produce a global financial market and a transnational system of financial regulation that is quite different from the ones we have now. It is also no longer safe to assume that such a system will have realized the dream of a seamless financial system through which financial transactions could flow free from the “friction” of local concerns. “Globalization” itself is far from the stable concept we might have imagined just a few short years ago.⁷³

KEYWORDS

International Financial Regulation Reform, Financialization, Financial Reform, Financial Crisis, Technology Revolution

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⁷³ Consider the discussion by Niall Ferguson, thoughts that turned out to be dramatically more prophetic than he could have realized at the time. Niall Ferguson, *Sinking Globalization*, 84 FOREIGN AFF. 64 (2005).