*Article*

Politics & Society
1–32

DOI: 10.1177/0032329216638061
pas.sagepub.com

# After Dodd-Frank: Ideas and the Post-Enactment Politics of Financial Reform in the United States

**J. Nicholas Ziegler**
*Brown University*

**John T. Woolley**
*University of California, Santa Barbara*

**Abstract**
The financial crisis of 2008 raised the politics of regulation to a new level of practical and scholarly attention. We find that recent reforms in U.S. financial markets hinge on intellectual resources and new organizational actors that are missing from existing concepts of regulatory capture or business power. In particular, small advocacy groups have proven significantly more successful in opposing the financial services industry than existing theories predict. By maintaining the salience of reform goals, elaborating new analytic frameworks, and deploying specialized expertise in post-enactment debates, smaller organizations have contributed to a diffuse but often decisive network of pro-reform actors. Through the rule-writing process for macroprudential supervision and derivatives trading, these small organizations coalesced with other groups to form a new stability alliance that has so far prevented industry groups from dominating financial regulation to the degree that occurred in earlier cases of regulatory reform.

**Keywords**
financial crisis, implementation, capture, knowledge regime, macroprudential regulation, derivatives

**Corresponding Author:**
J. Nicholas Ziegler, Watson Institute, Brown University, 111 Thayer Street, Providence, RI 02912, USA.
Email: j_ziegler@brown.edu

The financial crisis of 2008 elevated the analytic priority of the politics of financial regulation. The literature on regulation has been dominated by the concepts of business power and the possibility of regulatory capture. Contrary to other major reforms, where public attention subsided quickly after the enactment of new laws, attention to the goals of the Dodd-Frank reforms has been sustained. The ability of incumbent firms to dominate the rulemaking process has been blocked in important ways by the emergence of a new network of interested organizations. As we show in this paper, the changing landscape of regulation is shaped above all by a consensus around a set of key ideas and policy objectives that stand in stark contrast to previously dominant views.

Passed in July 2010, the Dodd-Frank Act[1] resulted from the Obama administration's primary effort to craft a thoroughgoing regulatory reform for financial markets. Even before taking office in January 2009, the Obama team was under intense pressure to supplement the taxpayer-funded bailouts of 2008 with more lasting regulatory changes. The reform effort was an important part of managing public anger over the bank bailouts of October 2008. In addition, the Obama team emphasized reform in order to preserve a measure of U.S. leadership in international efforts to reduce the risk of financial turmoil. Revamping the existing regulatory institutions was second only to health care legislation in the new administration's priorities. Signed by the president in July 2010, the Dodd-Frank Act was hailed as the most far-reaching overhaul of the country's financial structure since the Great Depression. Yet many observers, and much of the press, fear the reforms are being diluted in the implementation process through industry efforts, that they have been "captured" by the very interests the legislation was intended to constrain.[2]

Social scientists have also become attuned to the risk that general interest reforms can be eroded even after legislative passage.[3] Contrary to the image of Dodd-Frank as a well-intended reform that has been subverted by powerful business interests, we argue that the implementation of the law requires a different understanding of post-enactment politics based on a broadened view of business power. We do not claim—nor do the most optimistic observers we have encountered—that the Dodd-Frank reforms can assuredly prevent financial crises in the future. It is too early to gauge the ultimate success of the legislation. Yet in the implementation process to date, regulators have used their new statutory powers to take many actions contrary to the explicitly and strongly expressed preferences of the financial services industry. These actions have imposed significant new costs and limits on industry.

These developments do not mean the financial industry has been tamed.[4] Rather, they mean the post-enactment politics of financial reform are, like the politics of enactment, contingent on an evolving set of coalitions that exploit the procedural features of the rulemaking process to advance their goals. To understand this process, we need a framework quite different from the stark images of regulatory capture and business power that have informed the literature so far.

The fluidity of coalitions and ideas that we document was itself informed by a changing international context. Because the global financial crisis quite clearly originated in the United States, top U.S. officials sought to lead the international effort to regulate financial markets more closely. Policymakers in Europe, particularly Germany, portrayed the Anglo-American penchant for light-touch regulation as a central cause of the crisis.[5] In response, the United States claimed the role of committed if imperfect regulatory pacesetter in the key postcrisis meetings of the G20 leaders in 2008 and 2009.[6]

Although international pressures made U.S. leaders more supportive of regulatory reform, they do not explain the domestic maneuvering among the groups and organizations that wanted to shape the reform measures in the United States. Accordingly, this article focuses analysis on the political strategies of the groups and advocacy organizations that shaped the implementation of new rules within the United States.

We therefore examine how domestic actors used several types of resources including the ability to sustain an issue in the public eye, the articulation of coherent guiding ideas and principles, the capacity to find allied, if not formally coordinated actors, as well as to bring material resources or positional advantages to bear on key decision makers. This approach requires an altered understanding of capture. It implies that business can activate sources of power beyond those described by the contrast between instrumental versus structural power. In particular, the financial services industry provides not only discrete products for its customers, but also produces a body of expert knowledge on which regulators depend as they seek to supervise market competitors. The concepts, frameworks of analysis, and tools supplied by the financial services industry can, over time, grow into a coherent "knowledge regime."[7] When uncontested in the post-enactment process of rulemaking, the industry's ability to shape the prevailing knowledge regime becomes a significant form of political power that can decisively alter the regulatory process. Our argument for these underlying changes in the politics of reform relies on three main assertions.

*First*, the financial crisis was the culmination of a thirty-year period of deregulatory policy that fundamentally altered the underlying principles as well as the competitive boundaries of the finance industry. The deregulatory program from the 1970s to 2008 made financial services ever more central to the U.S. economy. This broad-ranging shift, often termed "financialization,"[8] had the effect of permitting more concentration in certain financial markets while encouraging competition in others. As a result, the customary mechanisms of regulatory capture were slowly transformed. Instead of privileging incumbent firms by creating entry barriers that protected them from competition, federal regulatory agencies increasingly exposed firms to competition and accepted arguments from free-market principles, moving away from prescriptive rules toward greater reliance on industry self-regulation.

*Second*, by changing the basis of regulatory capture from entry-barrier mechanisms to a diffuse but pervasive sort of intellectual capture, the deregulatory interregnum from 1977 to 2007 had cross-cutting effects. It made the industry more dependent on widespread acceptance of its central role in the country's economic life. At the same time, the pervasive role of finance made the industry increasingly vulnerable to intellectual challenge and popular rejection. The shift to new forms of regulatory capture opened the door to policy entrepreneurs and activists who questioned the principles of market self-regulation in finance. Once the crisis of 2008 revealed the potentially disruptive fragility of core financial markets—in securitized mortgages, short-term commercial credit, and derivatives—the proponents of regulatory change gained an immediate forum for their views.

*Third*, the organizations and individuals that joined the debate over financial reform coalesced into identifiable formations that supplied the vocabulary and organizing concepts for legislators and regulators alike. We elsewhere characterize the pre-enactment debates as having a "two-tier" quality: elites in key institutions aligned themselves with powerful strands of popular, grass-roots support.[9] As reform moved from the legislative to the administrative arena, these formations looked less and less like traditional coalitions of constituents and interest groups. They instead took on the form of loose but influential advocacy networks that spanned individual firms, industry groups and their established lobbying organizations, academic experts, think tanks, policy entrepreneurs inside as well as outside government, grass-roots coalitions, and finance specialists turned activists. The advocacy network that emerged to champion more stringent reform we call the "stability alliance"—an interest formation not familiar in the existing literature on regulation or business power. The advocacy network that questioned the reform and instead promoted the industry's preference for continued policing of its own members we call the "self-regulation alliance."

To demonstrate the potentially decisive role of these advocacy networks, we examine the implementation of two far-reaching changes envisioned by the Dodd-Frank Act: (1) the creation of a new superordinate council of regulators, the Financial Stability Oversight Council (FSOC), to grapple with the problem of systemic or "macroprudential" risk; and (2) the dramatic expansion in the mission of one agency, the Commodity Futures Trading Commission (CFTC) for regulating derivatives. Both provisions implied major reductions in the autonomy and operating scope of the largest businesses in financial services. Both examples represent cases in which we would expect the incumbent firms to exert maximum effort to maintain their positions, and are therefore good tests for our argument.

## The Literature to Date: Regulatory Capture and Business Power

In analyzing the post-enactment vulnerability of reform legislation, scholars have revived two key concepts from earlier debates: capture and business power. The notion of regulatory capture grew out of the public choice approach to regulation. As elucidated by George Stigler and Mancur Olson and applied to politics by such scholars as James Q. Wilson, capture theory argued that concentrated industry groups were able to shape regulatory policies to their own advantage. In particular, concentrated industry groups could lobby for barriers to entry, thereby limiting competition and imposing higher costs across less well organized groups of consumers. This view informs much of the recent press coverage on Dodd-Frank and accentuates expert concern that the reforms are being diluted so significantly that the legislation will not achieve its goal of preventing future financial crises.[10]

Despite its elegance, this approach to capture has been critiqued by a number of scholars. Daniel Carpenter and David Moss argue against entry barriers as the only goal of incumbent firms in regulated industries. Rather than a question of "capture" or "no capture," Carpenter and Moss show that industry influence takes a variety of forms. In the same set of studies, James Kwak reviews the evidence for a type of "cultural" capture that rests on career patterns and world views shared by finance executives and regulatory staffs. Nolan McCarty argues that some industries possess a preponderance of specific expertise that makes a kind of "capture through complexity" predictable.[11] In a parallel vein, Gunnar Trumbull has documented cases where diffuse interest groups constrained industry influence far more effectively than the literature on capture predicts. He shows how effective politicking over regulatory policy hinges as much on the articulation of "legitimacy narratives" as on direct lobbying. In this view, industry groups have to compete with others—including consumers and regulators themselves—in defining alternative conceptions of the public interest. In different ways, these arguments all show how intellectual resources of several types can play a key role in debates over regulatory reform. [12]

In contrast to the literature on regulatory capture, debates on business power grew out of a class-based view of politics. To be sure, in the 1960s, business provided important material for the analysis of interest groups in American pluralism.[13] By the mid-1970s, however, scholars grew dissatisfied with the idealized view that saw business as no different in principle from other interests in a democratic polity.[14] Among the earlier proponents of pluralism, Charles Lindblom provided a major reassessment in arguing that business occupied a structurally privileged position in capitalism. Because business provided the preponderance of investment capital and jobs, it could extract anticipatory concessions from politicians by virtue of its positional advantage even without instrumental efforts such as explicit lobbying.[15]

Even as the pluralists were acknowledging the positional or structural power of business, neo-Marxist scholars began to question whether the decisions of state officials were invariably determined by the interests of capital owners. Fred Block showed that state officials often anticipated the long-term needs of the private sector implicitly. At times of major crisis, such as war or economic collapse, however, Block argued that state officials were able to elevate emergency, societywide goals over those of private capital owners.[16]

Subsequent authors have taken up Block's insights by analyzing how business power can vary between structural and instrumental forms.[17] One relevant strand of literature emphasizes how business's ability to exercise power depends on degrees of public attentiveness. Pepper Culpepper has argued that business groups dominate less through the traditional tools of lobbying and campaign contributions than through informal networks that elevate business priorities, especially on low-visibility issues. In the esoteric field of takeover law, therefore, top business managers consistently get what they want in a range of advanced countries. When debate shifts to issues of higher salience, such as executive compensation, business groups experience serious setbacks.[18] Degrees of salience are particularly important for the post-enactment politics of financial regulation. The low visibility of regulatory rule writing makes it easy for industry actors to sustain the status quo by diluting and delaying reform measures. In examining the Dodd-Frank reforms, John Coffee has proposed the notion of a regulatory “sine curve” to describe the high amplitude of populist fervor that accompanies initial reform legislation, only to be followed by the downward slope of public engagement as matters turn to implementation.[19] Such arguments suggest that, in implementation, activist successes depend on maintaining an issue in the public eye as much as on exerting direct pressure on regulatory decision makers.

We build on these insights, but argue that the dichotomy between instrumental and structural power gives too little attention to a range of nonmaterial political resources. Although the literatures on capture and business power certainly make reference to nonmaterial factors, they do not fully incorporate the different types of intellectual capabilities and tools that have been analyzed in other areas of policymaking. The ideas that guide policy decisions range from broad “public philosophies,” “public sentiments,” and overarching “paradigms”[20] to much more discrete or policy-specific recipes described as “programmatic ideas,” “programmatic beliefs,” and “blueprints.”[21]

Between larger public philosophies and the detailed policy recipes that guide specific rulemaking activities, we argue that the concept of a “knowledge regime” is particularly important in illuminating the interdependencies that arise between public regulators and market participants in the realm of finance. As John Campbell and Ove Pedersen describe them, “knowledge regimes produce the ideas that inform what political and economic elites do.”[22] Campbell and Pedersen focus on cross-national differences and show how country-specific knowledge regimes extend across multiple policy domains within single countries. Knowledge regimes in the United States are, they write, typically produced by a set of think tanks, government research institutes and other policy-relevant organizations.

In the realm of finance, however, there have been few public or quasi-public research organizations. Instead, the relevant knowledge that connects broad principles to the practical workings of financial markets has been generated by large banks, consulting firms, and academic specialists in university departments of finance and economics. As Cornelia Woll puts it, the knowledge that governs financial markets is a “joint production” of market participants and public authorities. The result is a knowledge-based resource that operates much like Steven Lukes’s third face of power as a force acting on what actors are doing “and sometimes even thinking.”[23] Woll summarizes this view with the assertion that “the power of finance is best understood as productive power, which operates by shaping the actors’ self-understanding and interests, both on the government side and within the financial industry.”[24]

These different categories of ideas—public philosophies, the knowledge regime for finance, and the policy recipes that define particular rules—make up a major part of the political space in which battles over financial reform are fought. The ability of the financial services industry to mobilize across all three types of intellectual contention is an increasingly important aspect of business power that can operate in either instrumental or structural form. The ability of individual firms or trade associations to propose policy-specific recipes by commenting on particular rules is especially important to the politics of implementing financial reform. The more general battle to shape public philosophies for regulation also remains important. For financial regulation, however, the knowledge regime that informs policy is critical. As a result, contending efforts to remold the knowledge regime for finance became the essential means of coordinating loosely connected actors pursuing similar objectives.

## The Institutional Context of Financial Reform

These different types of intellectual resources animated the key actors in the debate over financial markets and, by so doing, shaped the options available for forming political alliances. In analyzing how actors used ideas within the existing institutional landscape, we focus on the primary participants, their bargaining positions, and the channels of access they have employed in shaping the politics of implementation. Specifically, we review (1) changes in the structure and apparent political power of the financial services industry, (2) the procedural and other institutional features that stipulate how regulatory agencies write new rules and bring them into force, and (3) the opposing advocacy networks that coalesced around different views of financial reform in their efforts to influence particular rule-writing outcomes.

### *Changes in the Structure and Bargaining Position of the Financial Services Industry*

The growing importance of intellectual resources in the politics of financial reform was one of many changes that appeared as inflation emerged in the 1970s and technologies evolved in subsequent decades.[25] Volatility in market interest rates led to new kinds of financial products, which in turn led to a steady increase in the size of the financial services, relative to the rest of the economy and in absolute terms.[26] Along with its dramatic growth, however, the financial services industry became far more heterogeneous and politically less coherent.

It is well known that the relative size of the finance sector increased dramatically in the four decades before the Lehman Brothers bankruptcy of 2008. Measured by gross size, the assets of commercial banks, securities firms, and the securitizations they created increased from a level of 55 percent of GDP in 1980 to a level equal to 95 percent of GDP in 2000. Measured by annual income, the profits of the financial sector grew from an average of 13 percent of all domestic corporate profits over the period 1978–87 to an average of 30 percent for the period 1998–2007.[27] Manufacturing and nonfinancial service firms also came to rely increasingly on investment earnings and related financial activities. As Greta Krippner has shown, by 2000, financial activities accounted for 40 percent of the income earned by nonfinancial companies.

As the finance industry expanded, its power evolved in complex and conflicting ways. In the 1980s, alternative sources of funding became available to large firms and the country's largest money center banks steadily lost their position as a moderating influence in the corporate community.[28] In the 1990s, banks shifted their revenues away from the stable lending business of prior decades to fee-based transactions for a proliferation of new services. Banks and other financial service firms competed by innovating new products and moving into the growing markets that they generated.[29] The largest banks soon argued that the Glass-Steagall Act, one of the Depression Era's central pieces of regulatory legislation, was blocking innovation by prohibiting U.S. banks from engaging simultaneously in commercial and investment banking. When Congress passed the Gramm-Leach-Bliley Act of November 1999, effectively repealing Glass-Steagall, the banking industry had shifted decisively to a faster-moving and more risk-friendly model of business

This newer and more open model of financial services intensified competition and undermined the collective-action capability of the largest firms. The industry's inability to regulate itself or to design private sector rescue plans became especially clear in the United Kingdom and the United States.[30] It was especially conspicuous in the failure of the main Wall Street investment banks to produce a plan for containing the effects of the Lehman bankruptcy as they had done a decade earlier in the case of Long Term Capital Management. Although brought together by Tim Geithner as president of the Federal Reserve Bank of New York for three days of emergency meetings over the weekend of September 12, 2008, the major banks were unable to join in a buyout plan for Lehman.[31] On Monday, September 15, when Lehman filed for bankruptcy, credit markets around the world froze and plunged the advanced economies into the Great Recession.

Together these changes meant the comfortable ties that had sustained the mechanisms of regulatory capture between businesses, legislative committees, and executive branch agencies were no longer available, or, for that matter, particularly relevant. The largest financial firms neither needed nor wanted the kinds of entry barriers that regulators had once supplied. Instead, the banks used their size and their ability to provide customized hedging products for institutional customers and other clients. After creating their own markets in derivatives and other instruments, the major banks insulated their business through the mathematical opacity of the new products and the legal complexities of using them. In addition, the largest banks became massive contributors to election campaigns and built a common knowledge base while also cultivating the cultural affinities that linked their management teams with federal policymakers. As one recent analyst puts it, the banks devoted increasing resources to the goal of "shaping the 'intellectual environment' of Washington."[32]

## *The Procedural and Legal Terrain of the Rule-Writing Process*

The nature of the rule-writing process also put a premium on intellectual capacities of a particular type. Implementing a major reform requires writing technically complex regulations while consolidating an agency's new or expanded powers. Both require formal and informal contact with many outside actors.

Much of this process is governed by the Administrative Procedures Act (60 Stat. 237) as well as the Dodd-Frank Act itself. Agencies are required to publish proposed rules which clarify for the industry segments what kinds of cost burdens they face and say something about how the agency will monitor compliance. Proposed rules must be open to public comment for a reasonable time period. Agencies must respond to comments in justifying the final rules. While large firms and industry groups often comment extensively, smaller market participants might not communicate with agencies until the initial compliance dates are imposed. After the regulation is finalized, companies from the regulated industry may request formal exceptions ("exemptive" orders), and the agency may need to provide advisory guidance to assist industry compliance. All of these steps occur in the shadow of possible litigation. Market participants can and do bring legal challenges when they believe agencies have made procedural errors or otherwise misinterpreted the law.

Congress does not as an institution participate directly in rule writing, but it remains a presence in many ways. All regulatory agencies are subject to congressional oversight and committees use hearings frequently to question agency leaders. Individual members may submit "public comments" to regulatory agencies with the reasonable expectation that they will be carefully noted by agency staff. In addition, while the president nominates the agency directors or chairs (as well as the other commissioners for multimember agencies), those appointments must be confirmed by Senate vote. And the budgets of some regulatory agencies, including the CFTC, are subject to the congressional appropriations process.

Congress has used all of these instruments to shape the implementation of the Dodd-Frank legislation. For example, Senate Republicans prevented the new Consumer Financial Protection Bureau from beginning any legally binding work by blocking the confirmation of a director until July 2013. Similarly, when Republicans took control in the House of Representatives in January 2011, they began what one legal scholar called an all-out campaign to undo the reforms through legislative revision.[33] The House Financial Services Committee, chaired by Jeb Hensarling (R-Texas) consistently cut budgetary appropriations for the CFTC well below amounts requested by the White House. Given the low probability of compromise around the technical changes that were once commonplace in improving legislation, both proponents and opponents of the reform were obliged to redirect their efforts to the administrative arena of the rule-writing process.

## *The Policy Alliances in Post-Enactment Politics*

The politics that followed the enactment of Dodd-Frank in July 2010 were visible to a narrower set of publics but no less hard fought. Within months of the act's passage, a pitched battle appeared to be taking shape over the rules being written to implement the new legislation.

Both sides in this battle take the form of diffuse networks that resist categorization into more familiar types of interest aggregations. These networks are similar to the transnational advocacy networks described by Keck and Sikkink,[34] but domestic in focus. They include a mix of individuals and organizations that share a preference for similar policy outcomes, though they may have quite distinct commitments on other issues.[35] The network we call the stability alliance took shape in direct response to the losses caused by the financial crisis of 2008. Its members share a preference for more stringent regulation.

The stability alliance is opposed by another network of individuals and organizations arrayed around the incumbent industry leaders. Few if any members of this network argue that the industry should be allowed to regulate itself as freely as in the years leading up to the crisis. Nonetheless, the underlying logic of its positions rests on a shared preference for light-handed treatment with a large component of self-regulation. We therefore call this network the self-regulation alliance. Each alliance rests on a distinct set of shared propositions that link together a disparate and asymmetric set of organizations. In this sense, each alliance combines a sharply delimited degree of ideological homogeneity with an unusual degree of organizational diversity among its member groups.

Of the two alliances, the self-regulatory alliance was virtually uncontested through the early 2000s. Its core arguments informed the deregulatory trend in U.S. policy from the late 1970s until 2007. Some of the central propositions came from the field of academic finance, while others emerged from the applied think tanks of Washington. Together, these propositions provided key elements in the knowledge regime for financial services that, by the early 2000s, became widely accepted as the basis for public policy.

These propositions included the theory, elaborated by Eugene Fama, that market prices accurately reflect all the information available to potential market participants. Known as the efficient market hypothesis, this view helped market fundamentalists argue that transparency could ensure market performance better than regulatory oversight.[36] A second key proposition was the shareholder theory of the firm, elaborated by Michael Jensen. Jensen argued that investors as principals were the proper price setters for firms and that managers as their agents would correctly act to maximize the firm's value if they were subjected to well-designed incentives.[37]

These two views jointly buttressed the argument that investors could accurately gauge the value of a firm if financial markets were regulated by the free flow of information rather than by safety-minded officials. Subsequent studies have shown that the requirements for full transparency, especially the monitoring of managerial behavior, were not systematically implemented by firms.[38] The new agency-driven theory of the firm nonetheless proved immensely popular with institutional investors as well as free-market proponents in the policy community.

While these ideas originated in microeconomic theory, they benefited from the resilience of the deregulatory agenda in American politics. As Block and Somers point out, "the seductive persistence of free market ideology is rooted in its promise to reduce the role of politics in civic and social life." Indeed, even after the world collapse of markets that followed Lehman's bankruptcy September 2008, the proponents of deregulation regrouped in the diffuse network we call the self-regulatory alliance. The key assertion that unites this alliance—anticipated by Charles Lindblom and other early critics of business power—is that poorly designed regulation imposes unjustifiable costs on the economy as a whole. According to this alliance, the Dodd-Frank Act has required unduly burdensome regulation and imposed costs on the industry that far exceed any possible benefits. As a result, the Dodd-Frank Act not only impedes efficiency, but depresses growth and economic recovery, thereby causing unemployment and limiting income growth.

Although the force of self-regulatory arguments was blunted in the immediate aftermath of the crisis, the large investment banks and other finance firms benefited from a well developed network of allies working in their favor as well as other factors:

1. An overlapping set of trade associations that emphasize different parts of the business community and different categories of market participants within the financial services. Key associations for the financial services include the Securities Industry and Financial Markets Association, the Financial Services Roundtable, the American Banking Association, and the International Institute of Bankers. Meanwhile, the International Swaps and Derivatives Association and the Investment Company Institute represent both the suppliers of financial instruments and the asset managers who appear on the buy-side of the market. These associations work closely with their law firms to submit public comment letters as well as to meet with agency staff regarding specific market dynamics and the potential effect of different rule variants on incumbent firms.
2. Beyond coordinating among themselves, the trade associations for finance have business allies eager to support their argument against rapid change in the status quo. The broadest cross section of the business community is represented by the U.S. Chamber of Commerce. The Chamber has been a leading opponent of Dodd-Frank initiatives. Its views are often articulated by an issue-specific entity it established in 2007, the Center for Capital Markets Competitiveness, whose work parallels that of the Committee on Capital Markets Regulation.
3. All these organizations have well-established ties to industry-friendly members of Congress, who can try to delay new regulation by blocking the appointment of agency directors or commissioners and press for aggressive oversight hearings.
4. Industry has aggressively exploited the opportunities in the U.S. system to litigate when it objects to new regulations. This strategy further raises costs for regulators at a time of constricted budgets.

Despite the material and organizational resources of the self-regulatory alliance, nonindustry participants have also been regularly and conspicuously engaged in the regulatory process. This is a major change from before the Dodd-Frank era. Not only was the overall visibility of regulatory activity much lower before Dodd-Frank (judged by the number of total comments), but often there were few if any comments offered by any person or organization not representing or employed in the relevant industry segment.

On the basis of documentary and interview research, we argue that these nonindustry voices fall into an identifiable network that we call the stability alliance. In contrast to the self-regulatory alliance, members of the stability alliance share the view that more stringent external regulation of financial markets is necessary. This conclusion is organized around a set of core propositions that directly challenge the knowledge regime advanced by the self-regulatory alliance through the early 2000s. These propositions in effect represent an alternative knowledge regime that the stability alliance proposes as a better way to understand financial markets and to design policy.

The key arguments advanced by the stability alliance rest on the assertion that financial markets *cannot* be invariably trusted to price financial assets appropriately.[39]

Building on this more skeptical view of market pricing, members of the stability alliance argue that the large size and interconnectedness of financial institutions present the risk of widespread market failure with tremendous social costs that reach far beyond the immediate parties to specific transactions. A group of economists working at the Bank of International Settlements (BIS) under Claudio Borio argue that large and complex financial firms therefore need external regulators capable of assessing the systemic consequences of their activities.[40] A further implication of this view—increasingly known as macroprudential regulation—is that complex transactions should be located in market spaces that not only allow competition but also generate reliable information about pricing. Finally, this view implies that the federal government needs a new agency explicitly charged to assess systemwide risk. And, to perform these duties, the new agency needs the power to acquire information about high-risk financial transactions and the analytic capability to assess it.[41]

These ideas had been percolating for over a decade, but they became a force for linking a significant network of well-informed specialists only after 2008, when a set of dedicated organizations emerged to argue in favor of more robust financial regulation. A new coalition of labor and consumer organizations known as Americans for Financial Reform (AFR) was especially important in 2009 and 2010. Accordingly to Barney Frank, AFR was "very helpful" both in providing "good information" and in keeping "grass-roots pressure on the [House] committee."[42] After Dodd-Frank was passed, AFR was joined by the applied think-tank known as Better Markets. Both groups coordinated with established consumer organizations, such as Consumer Federation of America, U.S. Public Interest Research Group (PIRG), and the younger public interest group Demos. Also engaged were number of legal scholars and other unusually well-informed individuals. Further intellectual support came from academic and policy specialists affiliated with the Roosevelt Institute and a number of other progressive policy organizations. Together these groups and individuals demonstrated an ability to enter the rule-writing process through regular comment letters and meetings with agency officials. Their activities showed a level of expertise and credibility unseen among non-industry groups in earlier financial regulation. These groups were further bolstered by new forces that reinforced, broadened, and elaborated the arguments for strengthening financial stability through robust regulatory action. These included:

1. The nonprofit Systemic Risk Council, an organization headed by former chair of the FDIC, Sheila Bair, operating from a charitable foundation, the Pew Memorial Trust, and including figures such as Paul Volcker, Bill Bradley, John Reed, and Simon Johnson.
2. An attentive set of pro-reform members of Congress, such as senators Jeff Merkley (D-Oregon), Carl Levin (D-Michigan), Elizabeth Warren (D-Massachusetts), Sherrod Brown (D-Ohio), and Maria Cantwell (D-Washington).
3. The Bipartisan Policy Center, a think tank founded in 2007 by a group of former senators, that issued several reports urging a balanced approach to new regulatory capabilities in the services of strengthening financial stability.

4. A notable shift in academic research to address causes and solution to financial instability, including public, and international regulatory cooperation.[43]

On the last point, we observe that scholars have been widely drawn to topics relating to financial stability since the crisis. Citation sources show conspicuous increases from 2008 through 2014 in the proportion of relevant scholarly publications addressing topics including: financial stability, systemic risk, shadow banking, and "too big to fail." In addition, the framework of thinking around macroprudential regulation increasingly informed the work of international agencies, particularly the Financial Stability Board, which in 2009 the G20 charged with developing better rules for international financial governance.[44]

These disparate organizations are key parts of the new stability alliance supporting the implementation of robust reforms within the statutory language of the Dodd-Frank Act. They consistently promote financial stability as the highest priority for regulatory reform. Our research indicates that the participants are well aware of one another's activities and self-consciously differentiate their contributions. Moreover, they share a commitment to the ideas of the stability-oriented knowledge regime, and contribute to its elaboration and support.

Since the stability alliance commands far fewer material resources than the self-regulatory alliance, it necessarily relies more heavily on nonmaterial tools and arguments. Nonetheless, the public comment files of the regulatory agencies make it clear that the stability alliance plays a significant role in the contests over implementation. The Dodd-Frank legislation has led to a sharp increase in the number of public comments on proposed regulations that must be received, read, considered, and processed by the agencies. Although the preponderance of thorough, substantive comments submitted to agencies such as the Financial Stability Oversight Council, the Federal Reserve, and the CFTC come from financial services firms and industry associations, their weight is not as dominating as the concept of regulatory capture, and past history, would suggest. Commenters include academic specialists, agencies and regulators from non-U.S. jurisdictions, consumer groups, and other grass-roots organizations. For five of the most contested rules written by the CFTC, nonindustry organizations accounted for just under 19 percent of comments received, whereas unaffiliated individuals accounted for a full 33 percent of all comments. Across the five rules, only 48 percent, or less than half, of all comments came from industry groups and associations—a proportion nowhere near the degree of industry dominance typical of earlier cases.[45]

Given the mismatch in money and positional resources commanded by the two alliances, the stability alliances cannot be expected to drive major reform outcomes by itself. Yet, in cases where its goals align with those of policy entrepreneurs inside the federal government or with counterindustry coalitions that benefit from regulatory change, the stability alliance contributes a combination of broad reform rationales, independent analytic approaches, and detailed policy recipes that can produce significant changes in financial regulation.

The opportunities available to the stability alliance stemmed from international as well as domestic conditions. At key points, the proponents of reform benefited from the need felt by U.S. regulators to appear as globally responsible actors. And members of the stability alliance drew on international sources for several of the ideas and allies that bolstered their position in the United States. These linkages cannot be traced systematically in a paper that focuses on domestic politics, but they provide some of the essential background. In the domestic arena, the different roles played by the stability alliance are well illustrated by the two major institutional changes we examine here: the creation of a new entity, the Financial Stability Oversight Council to regulate systemic risk through a new approach to macroprudential monitoring, and the expansion of the CFTC's jurisdiction to include the regulation of derivatives.

## The Cases

Our two cases of regulatory change are good tests for existing theories of regulatory capture and business power, because they each held high stakes for the financial services industry. In the first case, we examine the Financial Stability Oversight Council (FSOC), established by Dodd-Frank from existing regulators and charged explicitly with the new mission of guarding against system-wide financial risks. The goal of systemic-risk regulation relied on the still emerging body of doctrine known as "macroprudential regulation." As the financial crisis had made clear, policymakers believed they had no choice but to bail out the largest banks, which seemed "too big to fail." The FSOC was the entity created to solve the problem posed by such large institutions, known as systemically important financial institutions (SIFIs). In effect, the FSOC was charged with clarifying a still emerging body of macroprudential doctrine and creating regulatory tools capable of limiting the positional advantages enjoyed by the largest firms. As such, the FSOC embodied a novel public sector experiment in directly managing the structural power of business.

Our second case examines the expanded mission of the Commodity Futures Trading Commission (CFTC) to cover wide swaths of previously unregulated derivatives transactions. As a relatively young agency, the CFTC had been created in 1974 to take over the supervision of options and futures in agricultural and mineral commodities. Its initial mission therefore involved regulating a limited group of specialized trading firms. Under the Dodd-Frank legislation, the CFTC was charged with regulating the huge markets for over-the-counter derivatives which by the early 2000s made up the larger part of the so-called shadow banking system. Largely unregulated, the business of trading financial derivatives had been created virtually from the ground up by a small group of large investment banks. The derivatives business was a near perfect example of the sharply defined interests and information asymmetries that had enabled incumbent firms to achieve a high degree of regulatory capture.

### *The FSOC and the Creation of a Macroprudential Regulator*

The task of systemic or "macroprudential" regulation was recognized well before the bankruptcy of Lehman Brothers in September 2008. The economists in the research department at the Bank of International Settlements had been working on questions of financial stability from the early 2000s onward.[46] The need for a systemic regulatory capability was a central theme in the report commissioned by Henry Paulson shortly after he left the chairmanship of Goldman Sachs in 2006 to become treasury secretary under George Bush.[47] As the magnitude of the financial crisis became clear, few industry voices could argue that financial markets could be trusted to self-regulate. After the Dodd-Frank Act was signed in 2010, the finance industry began to critique the understanding of macroprudential risks that were being built into the legislative design of the FSOC. The debate over implementing macroprudential doctrine was a contest in which intellectual and organizational resources were as important as material resources. It was a clear example where private sector firms and public officials were fighting over the contours of the shared knowledge regime that would constrain their respective institutions and strategies.

At the outset, reformers in the United States did not fully agree on the implications of macroprudential regulation. Existing regulatory agencies were reluctant to cede responsibilities to a new regulatory body. In the Obama administration, primary initiative for reform fell to Treasury Secretary Timothy Geithner, who proposed that systemic stability be assigned to a new interagency council chaired by the Treasury Department with operational responsibility for macroprudential monitoring given to the Federal Reserve.[48] Other agencies protested the primacy of the Fed, which they viewed as too concessive to the industry.[49] After much politicking, the Dodd-Frank Act established the new FSOC as a council whose members included the heads of eight financial regulatory agencies and one independent member with expertise in insurance, along with five nonvoting members.[50] The Federal Reserve is assigned a large degree of responsibility for overall monitoring, but it is layered into a larger council of agencies. To the disappointment of many reformers, the FSOC incorporated rather than resolved the country's patchwork system of financial regulation.

One of the FSOC's main tasks was to designate particular companies as systemically important financial institutions (SIFIs). The legislation explicitly designated banks with assets above a $50 billion threshold. For nonbank holding companies, however, the criteria for designating SIFIs were left to the new council. In this work, the FSOC is supported by an independent research bureau, called the Office of Financial Research (OFR), housed in the Treasury Department but headed by an independently appointed director. The OFR is an important resource for the stability-oriented knowledge regime. It can commission high-quality research from outside experts while also using subpoena powers to elaborate a new disclosure regime for systemically important firms.

More broadly, the FSOC was empowered to resolve disputes among financial regulatory agencies. Even more remarkable, the council may issue specific recommendations "to the primary financial regulatory agencies to apply new or heightened standards and safeguards" to insure against the spread of significant financial turmoil.[51] With these resources, challenges, and ambiguities, the new council moved to establish itself as macroprudential regulator.

*Designating SIFIs.* The new council's central task of designating SIFIs was protracted and the rule specifying the standards for identifying nonbank SIFIs was not finalized until April 2012. The identification process involves three steps: first, a set of thresholds of size and complexity are defined; second, companies believed to be within that scope are identified; third, companies are notified that they fall in this pool and are requested to provide additional information (including materials they think will be relevant). After stage three, the FSOC informs relevant firms of their pending designation, and the firm has an opportunity to request a formal, confidential hearing.

In July 2012 and without much public notice or controversy, the FSOC designated eight "financial market utilities" as systemically important. These were generally clearing houses and exchanges, firms that "manage or operate multilateral systems for the purpose of transferring, clearing, or settling financial transactions."[52]

In June 2013, the FSOC designated three other firms as systemically important: American International Group (AIG), GE Capital, and Prudential Financial Inc.[53] Of these, only Prudential requested a confidential hearing, as permitted by law.[54] In late September, the FSOC voted to uphold the initial designation, thereby identifying Prudential by name.[55]

In late 2014, FSOC designated MetLife as a SIFI. Having tried earlier to reduce its SIFI profile by selling a bank unit to GE Capital, MetLife challenged the FSOC designation in court in January 2015.[56] The Department of Justice filed a vigorous response in May 2015,[57] to which Metlife provided its own aggressive rebuttal.[58] As of August 2015, the case remained unresolved, but it had already attracted a revealing range of outside attention. Three groups of distinguished academics filed amicus briefs in support of FSOC. Together, the 33 signatories, ranging from a Nobel laureate in economics to authorities in finance and insurance, represented a nontrivial fraction of the country's intellectual firepower in matters of business risk.[59] Along with a fourth brief, submitted by Better Markets, these groups vigorously elaborated and defended the use of macroprudential instruments in a highly visible case.

*A legal challenge.* Another step in the FSOC's consolidation of its role came from an unexpected legal challenge. In June 2012, a small Texas bank together with other plaintiffs (including the Competitive Enterprise Institute and eleven state attorneys general) filed suit alleging that the FSOC designation of certain banks and other financial institutions as systemically important would raise the borrowing costs for smaller banks. This challenge was dismissed for lack of standing and failure to demonstrate an actual injury.[60] The plaintiffs had also challenged the constitutionality of the newly established Consumer Financial Protection Bureau (CFPB) on grounds that it violated the Constitution's separation of powers doctrine. The CFPB part of the case was appealed and subsequently remanded to the District Court, but the initial dismissal of the bank's challenge to the FSOC was upheld.[61] Although they were not seen as a major threat, these actions nonetheless meant the FSOC had rebuffed an initial legal challenge to its very existence and was confirmed in its efforts to develop a clear regulatory mission.

*Asserting controversial authority.* The FSOC's overall coordinating role, including the power to recommend actions to other agencies on macroprudential grounds, was especially relevant in its capacity to challenge traditional business power relationships. A key test case involved the regulation of money market funds, in which FSOC action effectively altered prior SEC policy that bore the hallmarks of agency capture.

The safety of money market funds (MMFs) became an urgent issue at the height of the financial crisis in September 2008, when one of the oldest and best respected mutual funds announced that it was going to "break the buck" or deviate from its fundamental commitment to maintain a net asset value (NAV) of one dollar. Combined with the Lehman bankruptcy, this event froze the commercial paper markets—the primary markets for short-term lending among business and financial institutions. It threatened to precipitate the industry-level equivalent of an old-fashioned bank run.

The U.S. Treasury and Federal Reserve responded quickly by creating special funding facilities to guarantee MMF deposits and to support the commercial paper market. Both actions were large and legally controversial. It was not surprising, then, that the risks posed by MMFs figured prominently in the Treasury Department's reform proposals of June 2009.

The mutual fund industry quickly commissioned its own study of the crisis through its trade association, the Investment Company Institute (ICI). The ICI report, issued its report in March 2009, pointed to a set of possible solutions that it supported and others that it argued would do more harm than good.[62] This and related ICI reports were a major source of information for regulators—highlighting the important reality of information asymmetries. In June 2009, the SEC proposed rules consistent with ICI views,[63] and these rules were adopted in January 2010.

Meanwhile, administration appointees were developing a more aggressive set of recommendations which took form in October 2010. The SEC shortly thereafter requested public comment on the new recommendations.[64] Despite support from Mary Schapiro, Obama's SEC chair, the commissioners as a group voted against further SEC action.[65] The outcome looked like a standard "capture" story. At this point, however, the FSOC indicated that MMF reform was of systemic importance and a potential topic for an FSOC official recommendation to the SEC for further prudential action. Using its new Dodd-Frank authority for the first time, the FSOC issued "Proposed Recommendations" concerning MMF reform.[66]

The U.S. Chamber of Commerce issued a detailed statement attacking the FSOC for improperly trying to circumvent long-established decision-making procedures at the SEC.[67] The ICI also attacked the FSOC's proposals with an angry submission, 115 pages long, arguing that the FSOC lacked legal authority for its action. The ICI advanced an argument, subsequently repeated by many in the self-regulatory alliance, that the FSOC was essentially controlled by bank regulators interested in imposing bank-type regulations on nonbank competitors.

With a formal recommendation from the FSOC looming, the SEC took renewed action on its own. SEC staff provided new studies supportive of reform and a new round of public comments began.[68] Highly visible support for robust MMF regulation came from outside experts and former regulators. The nonprofit Systemic Risk Council, chaired by Sheila Bair, exerted steady pressure for tighter money market regulation as its first substantive priority.[69] MMF reform was publicly supported as well by the presidents of the twelve Federal Reserve District Banks. With so many influential voices pushing for stronger regulation, the SEC proposed new rules in June 2013[70] and a year later, voted to finalize the stronger MMF regulations.

The money market fund case reveals how new FSOC gathered external support in challenging a policy that looked a great deal like capture. The "captive" policy was unlikely to be challenged within the SEC itself, but the SEC backed away from direct confrontation with the new superordinate council. The effect was to add to the credibility and stature of the FSOC.

*Summary of the FSOC case.* The FSOC provides an institutionalized expression for the core propositions of the stability alliance and its underlying knowledge regime. Its sweeping mandate to monitor and promote financial stability coincides closely with the elaboration of macroprudential ideas and instruments. Of course the formal establishment of an institution does not mean the underlying ideas are shaping policy unless the new institution affects policy and practices. In this case, both the designation of nonbank SIFIs and the assertion of authority over other agencies, such as the SEC, make it clear that the priorities of macroprudential regulation have had an effect. In both examples, the support of outside experts and organizations reinforced the FSOC's initial assertion of its new statutory powers. Of these outside experts, the most engaged were the particularly august individuals assembled in Sheila Bair's nonprofit Systemic Risk Council. Other groups and university scholars also took explicit positions in support of the FSOC's mission. But the Systemic Risk Council had the closest ties to key decisions makers in the executive branch, especially Treasury and the FDIC. In this sense, the consolidation of the FSOC's mission was facilitated by a tightly knit group of former regulators and selected outside experts. The regulation of money market funds was the exemplary issue where the Systemic Risk Council conspicuously took the lead in repelling industry efforts to capture the SEC's decision process. And the desire of sitting regulators to receive this group's approval was signaled by Treasury Secretary, Jack Lew, when he chose to hold his first major address on financial reform at the Systemic Risk Council's auditorium in December 2013.[71]

## *The CFTC and the Construction of a New Regime for Regulating Derivatives*

Like the FSOC's development of a framework for systemic risk regulation, the task of bringing derivatives within the jurisdiction of the CFTC confronted regulators with a novel set of challenges. Rather than apply a new body of regulatory doctrine, however, the CFTC was asked to master a body of extremely detailed, market-specific knowledge that no regulatory agency had previously possessed. As is now well known, financial derivatives had consistently been left outside the CFTC's jurisdiction during the 1990s, and their exempt status became a matter of law through the Commodity Futures Modernization Act (CMFA) of 2000.[72] The Dodd-Frank legislation effectively repealed the CMFA and assigned responsibility for derivatives regulation to the CFTC. Title VII of Dodd-Frank outlined major tasks for the agency. Derivatives had become a massive business conducted almost entirely through bilateral contracts rather than through open pricing. In effect, the Dodd-Frank Act charged the CFTC with a huge responsibility: to create a new regulatory regime for transactions that made up a large part of the shadow banking system.

In contrast to other reforms of the Dodd-Frank Act—which the financial services industry hesitated to oppose so soon after a major crisis—the main market actors mobilized immediately against derivatives regulation. The Securities Industry and Financial Markets Association (SIFMA), the main trade association for Wall Street, adopted several joint positions against the legislation with the International Swaps and Derivatives Association (ISDA), the trade association for derivatives dealers and users. Simultaneously, the U.S. Chamber of Commerce worked with the Business Roundtable and National Association of Manufacturers to organize a group called the Coalition for Derivatives End-Users, which grouped over 170 firms and associations that sought to minimize the scope of regulation.[73]

At the outset of debate over Title VII of the Dodd-Frank Act, the derivatives question also sparked an upsurge of popular outrage. The view that the banks had used derivatives with impunity while unfairly imposing on ordinary household owners was only slightly less pronounced than the campaign to create a Consumer Financial Protection Bureau on the model advocated by Elizabeth Warren.[74] But the underlying logic—that the industry's inability to safeguard its own stability imposed deeply unfair consequences on ordinary taxpayers—was similar in both cases.[75] Grass-roots groups, led by the Americans for Financial Reform, consistently brought the need for stringent oversight of derivatives into the overall narrative for robust regulation.

In the case of derivatives, the knowledge resources deployed by organizations in the stability alliance shifted noticeably as politics moved from the legislative to the administrative arena. While political actors continued to use arguments that invoked fair treatment as one reason to bolster regulatory oversight of derivatives, the sharpest debates focused on particular rulemaking powers. In October 2010, the applied think tank, Better Markets, started proposing particular policy recipes through commenting on specific rules. Partly because it was led by a former litigator, Better Markets was particularly well positioned to engage in the legal maneuvering that began as soon as an agency published a proposed rule.

The knowledge resources at play in regulating derivatives also reflected the pronounced concentration of the main suppliers. The derivatives business initially grew out of the demand for futures contracts in agricultural commodities. As the need for such instruments increased, banks extended the business by writing contracts for interest-rate swaps, foreign-currency swaps, and other customized trades that their large clients needed. It is interesting that the business of designing and selling derivatives remained heavily concentrated among the most active banks on Wall Street. In the first quarter of 2002, seven banks accounted for 95.8 percent or $44.4 trillion of the total $46.331 trillion (notional values) in derivatives traded. With various shifts in the list of top banks, this degree of concentration persisted and if anything increased over the next decade. By the first quarter of 2012, the top four banks accounted for 93.2 percent or $211.556 trillion of the total $227.982 trillion in derivatives traded.[76]

The oligopolistic structure of supply meant the knowledge regime was created almost entirely by the main market participants. The private nature of the relevant knowledge made it extremely difficult for public officials who lacked industry experience to exercise oversight. Paradoxically, President Obama's nominee to chair the CFTC, Gary Gensler, had been a successful partner at Goldman Sachs before joining the Treasury Department in 1997. Positioned between the rapidly mobilizing industry groups and the grass-roots advocacy organizations, Gensler, exercised a central role. As he and his fellow commissioners began to construct the new regulatory regime, the initial cohesion of financial service firms and major business end-users of derivatives showed certain cleavages. Each step toward a more open but regulated regime reduced the profit margins available to Wall Street banks that had created the opaque pricing system of bilateral contracts through which derivatives had been traded.

After preliminary steps, such as registration and licensing of hedge funds and other market participants, the CFTC introduced its first major change in market infrastructure with rules requiring that derivatives be transacted through clearinghouses. The clearinghouses would register each transaction, make the price information widely available, and guarantee that the counterparties had adequate capital or collateral to fulfill the terms of the transaction.

The response from the Wall Street banks and their primary clients came in early 2012, when two trade associations for financial services launched a legal challenge to the process by which the CFTC set position limits on types of derivatives instruments that had previously been unregulated. The broader purpose of questioning the CFTC's jurisdiction was made clear when a senior official for one of the plaintiffs said, "A lot of what we're talking about here isn't specific to position limits, but more related to the process and analysis that the Commission has gone through."[77]

The suit effectively delayed the imposition of position limits when a district court held for the plaintiffs and sent the rules back to the CFTC to develop a better explanation of why the new limits were necessary.[78] Only in 2015 were revised rules finalized with the expectation that they would stay in place.

While the requirements for clearing most transactions were expected to reduce the margins captured by major banks to a calculable degree, they also began to open the door to new competitors. Top regulators at the CFTC saw that they could find industry support from firms that stood to benefit from the new market rules. Chairman Gary Gensler said the need to build coalitions made the tasks of regulation and legislation so similar that he thought of them as virtually the same thing.[79] As one staff member at the CFTC pointed out, however, while the new firms might agree with many of the Commission's actions, they rarely wanted to confront the established investment banks publicly.[80] These firms included some of the clearinghouses, the larger hedge funds that wanted to bypass the banks in creating their own derivative deals, asset managers, and some mutual fund advisors.[81] Once these actors became known to regulators through the comment process, the CFTC began to cite their comments in justifying its final rules on the procedures for clearing.[82]

As the new participants in market-making for swaps appeared, the incumbent firms in the asset-management business mobilized against the CFTC's new rules. In early

2013, the Investment Company Institute and the U.S. Chamber of Commerce brought suit against the CFTC's rules that required Registered Investment Companies to register along with other commodity traders if their swap transactions exceeded certain thresholds. The opposing alliances that took shape in the rule-writing process were sharpened by the law firms and attorneys who represented different sides in such court cases. The ICI and the Chamber of Commerce retained the same law firm, Gibson Dunn, that represented SIFMA and ISDA on position limits and MetLife in its challenge to the FSOC. According to one former regulatory attorney, this choice was predictable inasmuch as the industry plaintiffs seemed to think the D.C. courts would hesitate to rule against a firm whose lead litigator, Eugene Scalia, was the son of a Supreme Court justice.[83] The CFTC was represented by its own in-house attorneys. The new industry entrants who participated in the public comment process showed little desire to oppose the incumbent firms in the legal arena. Instead of a counterindustry coalition, it was the stability alliance that lent outside support to the CFTC through Better Markets, Inc., the organization that filed amicus briefs against Gibson Dunn in both cases.

In this case, the rules that established the CFTC's jurisdiction over investment companies as well as banks and dealers were upheld by the D.C. Circuit Court in its decision of June 25, 2013.[84] The deciding judge rejected many of the plaintiffs' argument as "nothing more than another policy disagreement"[85] that did not merit any alteration of the CFTC's rules. With regard to the plaintiffs' claim that the CFTC had failed to weigh the costs and benefits of its rule in conformity with prior cases, the court said nothing in previous rulings "prohibits agencies from moving in an incremental manner."[86]

A battle of even higher visibility erupted over cross-border rules governing derivative contracts. The CFTC tried to prevent banks from using overseas deals to circumvent its new rules. In July 2012, the CFTC issued guidance asserting jurisdiction over all transactions involving personnel employed by U.S. based firms, regardless of their physical location. After twice postponing the effective date, Gary Gensler reasserted his expansive view of the CFTC's jurisdiction in November 2013. His approach threatened to narrow the major dealers' revenue so much that their key trade association, SIFMA, quickly joined with ISDA and the IIE in a suit against the CFTC in U.S. District Court.[87] Once again, the industry groups retained their preferred law firm, Gibson Dunn, in challenging the cross-border policies identified with Gensler. Amicus briefs in support of the CFTC were filed by Better Markets and, revealingly, a group of House Democrats who directly challenged the industry's arguments. When in September 2014 the court upheld the agency's ability to limit cross-border transactions through interpretive guidance, the decision confirmed the CFTC's expanded mission and signaled that the court would not be willingly used to unwind regulatory changes initiated by the Dodd-Frank legislation.[88] By the end of 2014, the underlying legitimacy of the CFTC's jurisdiction in a range of swap markets had been challenged, reaffirmed, and formally upheld.

*Summary of the CFTC case.* The CFTC is illuminating because the agency faced such steady opposition from core firms in the financial services industry as it extended its jurisdiction. With the knowledge regime anchored in the self-regulatory contracting practices that had co-evolved with the growth of financial derivatives, the CFTC had only limited opportunity to contest the underlying ideas. Instead, its main opportunity lay in shifting the patterns of competition by opening markets and imposing specific rules on the way transactions would take place. Our interviews and the CFTC's written rules provide good evidence of a latent counterindustry coalition that favored more open markets for derivatives. While industry newcomers may have favored action on particular rules, however, they showed no interest in organizing as a group or in challenging Wall Street's largest incumbent investment banks across the entire field of derivatives. And in the key cases of adjudication, where industry associations made substantial investments in blocking new rules, it was the small think tank, Better Markets, rather than insurgent industry actors, that supported the CFTC's legal arguments.

In these cases, the loosely affiliated experts in the stability alliance supplied much of the key independent information and support that helped the CFTC make the case for its rules. The comment letters and briefs filed by Better Markets were the best example of this pattern, though AFR and Demos also commented and met periodically with CFTC officials. There have, of course, been many such self-appointed public interest organizations in Washington over the last four or five decades. What reason is there to be confident that the groups in the stability alliance had a significant effect? These organizations faced daunting challenges from the proponents of a purely self-regulatory approach. Industry groups and their congressional allies tried continually to alter the parameters of reform through legislative revision. As one example, in budget negotiations in late 2014, congressional Republicans managed to undo the section of Dodd-Frank that required banks to establish separate subsidiaries for derivatives operations that were not covered by the Volcker Rule. While not essential to the CFTC's overall plan for reform, the elimination of this "push out" rule showed how opponents could dismantle significant parts of the reform, even with a Democrat in the White House.[89]

Absent underlying changes in the statutory foundation for reform, however, the smaller groups such as Better Markets were serious opponents for their better-resourced counterparts in the self-regulatory alliance. The best evidence comes from the industry groups that Better Markets decided to challenge. The law firm most regularly retained by the industry associations, Gibson Dunn, clearly took the amicus briefs from Better Markets seriously. In the case on position limits, the attorneys at Gibson Dunn issued a direct reply within twenty-four hours to the amicus brief filed by Better Markets in support of the CFTC. Another prominent law firm, Cadwalader, regularly tracked Better Markets, Inc., in its blog updates for financial services clients. Writing retrospectively about the CFTC's work before Gary Gensler stepped down in December 2013, one of Cadwalader's senior partners wrote of a "tango between the CFTC (under former chairman Gensler) and Better Markets." Through this tango, he contended,

> Regardless of the burden of regulation the CFTC would propose, Better Markets would write a comment letter asserting that the CFTC should impose a greater burden. Then . . . .the CFTC would quote from Better Markets' letters extensively. . . . In effect, under former

> Chairman Gensler, Better Markets served as a device to provide the CFTC with cover for virtually any position.[90]

These assertions indicate clearly that the industry's allies saw Better Markets as an effective opponent. They also reinforce the view that industry newcomers did not alone provide sufficient external support for the agency's efforts to establish its expanded mission. That task also depended upon the provision of independent expertise from the applied think-tank, Better Markets, and the other small but important organizations in the stability alliance.

## Conclusion

The two cases compared in this paper both provide compelling reasons to move toward a new framework for analyzing the politics of financial regulation. The image of regulatory capture portrayed by public choice theorists, in which concentrated business groups successfully manipulate the rulemaking process to protect their markets, no longer describes the dynamics of regulation. Business groups continue to play an outsized role in providing the information and knowledge on which regulators depend. Accordingly, business exercises a significant degree of intellectual capture that varies across policy domains and even particular rules. Accordingly, these cases suggest that the concept of business power needs to be broadened to include the full range of intellectual resources business groups can use in the political arena. Because these resources range across broad public philosophies, analytic frameworks, and rule-specific guidelines, they become politically relevant both as implicitly shared principles and as step-by-step recipes for action.

Although crucial in the political advantages enjoyed by the financial services industry, the intellectual dimension of business power does not invariably dominate the arena of post-enactment politics. Neither the industry incumbents on Wall Street nor the new industry players in other parts of the finance industry dictated the outcomes in these two cases. Instead, industry groups had to contend with a diffuse network of independent experts, advocacy organizations, former regulators, and other actors who also supplied a range of intellectual resources to pro-reform regulators.

After tracing the interplay of the ideas, coalitions, and network formations that shaped two key cases in which the Dodd-Frank Act called for the implementation of major new regulatory missions, this paper leads to a number of conclusions. First, post-enactment politics remain crucial in the process by which agencies define their new missions in practice. Second, regulatory officials increasingly depend on ongoing support from external actors who can wield effective influence through a diffuse network of organizations without necessarily forging the common goals typical of traditional interest-group coalitions. Third, and perhaps most important, both the stability alliance and the self-regulatory alliance that crystallized around the implementation of the Dodd-Frank Act used a combination of intellectual tools and resources that varied according to the challenges raised by specific regulatory tasks. Broad appeals to contrasting public philosophies of fairness or efficiency were a constant. At key points, the advocacy networks battled explicitly over the nature of the knowledge regime that underpinned prevailing practices in financial markets. At other points, the advocacy networks provided highly specific expertise or even legal definitions about the way particular markets should work.

In the case of the FSOC, the legislation assigned the new mission of systemic or macroprudential regulation to a newly created council of preexisting regulatory agencies. Industry groups were in no position after the crisis to argue against the new council in principle. Contestation instead focused on the emerging doctrine of macroprudential regulation. Did it mean that bank size would be capped, or that periodic stress tests would alone suffice to insure resilience? As the FSOC began to elaborate the specific procedures by which it would designate firms as systemically important, industry groups argued that transparency and renewed market discipline were more reliable foundations for financial stability than ongoing external oversight.

The role of outside experts was critical in countering these industry claims. The existing regulatory agencies had little experience elaborating or defending the principles of macroprudential regulation. And the new Office of Financial Research was only beginning to build its capabilities. Some of the necessary ideas had percolated into the regulatory community from the research department of the BIS from the mid-1990s onward. Yet the FSOC clearly benefited from the "near insiders" within the stability alliance, exemplified by the former regulators arrayed in Shelia Bair's Systemic Risk Council. The council's new mission depended on a clear redefinition of the knowledge regime for finance, which had previously left the models and procedures of risk management almost entirely in the hands of the largest incumbent firms. Increasingly after 2010, reform-minded scholars and researchers also provided support for the elaboration and use of macroprudential tools by the FSOC.

In the case of the CFTC, a single relatively small agency was charged with dramatically expanding its jurisdiction from well-understood markets in commodities to the vast and opaque markets in financial derivatives. In this kind of change, a different type of external support was important. The shared knowledge that allowed the derivatives business to function was thoroughly circumscribed within the private sector's professional workforce. Unable to shift the overall knowledge regime for derivatives trading, the CFTC was left with few tools beyond using new rules to shift the boundaries of competition among market participants. Traces of a counterindustry coalition appeared as asset managers and insurgent hedge funds began to benefit from new rules that opened markets previously dominated by the large Wall Street banks. Yet with one or two isolated exceptions, these emerging industry actors showed little interest in mounting a cohesive challenge to the Wall Street dealers. As a result, the CFTC built its own internal capacity and relied on outside groups for rule-specific expertise. The key rules applied to the allowable size of trading positions, the number of price quotes required for a given transaction, the allowable concentration of ownership shares in the new clearinghouses, the amount of margin, and the type of permissible cross-border transactions. For rules at this level, the CFTC relied on several of the organizations in the stability alliance, as best exemplified by Better Markets. The critical type of expertise was a combination of financial sophistication and, in some of the key battles, litigation capability.

In broader terms, these two cases mean that politics continues to matter. The growing significance of the intellectual resources illuminated here does not imply that reformers can always win if they are simply smart enough. Reversal of the reform process remains possible. Yet, if business influence in the implementation of Dodd-Frank remains significant, it is far from determinative. Although ordinary citizens have little opportunity to shape implementation directly, their interests can be served when alliances that link independent experts with policy entrepreneurs inside and outside the executive branch are forged.

Major reforms can require a decade or more to take full effect. In the most significant case of financial reform since the 1930s, much remains up for grabs. The ability of business groups and pro-reform organizations to build broad alliances remains critical to the outcomes now taking shape. The two outcomes compared here mean that we may be witnessing the beginning of a sea change in the relationship between the federal government and the finance industry. At the same time, business groups will keep trying to capture the key venues in the policymaking apparatus. Whether future regulatory leaders can build on the Dodd-Frank reforms and construct a well-integrated framework for regulating financial services will depend on the ongoing battles among contending networks to secure the policies they want. Business's positional advantages and lobbying resources will surely matter. What this analysis shows is that intellectual resources of the different types identified here will play as important a role as material resources in building the alliances that determine the ultimate outcomes.

For several decades, business groups and their allies were able to design the foundations and define the terms of the knowledge regime for finance. When their monopoly over these ideas was punctured, this source of business power became a vulnerability. The small, dedicated groups that offered an alternative knowledge regime were able to assemble a diffuse but influential stability alliance. This new alliance has so far blocked the return of the purely self-regulatory approach and has, in significant ways, given reform a chance.

## Acknowledgments

Earlier versions of this paper were presented at meetings of the International Studies Association, the American Political Science Association, and the Council of Europeanists. The authors gratefully acknowledge helpful suggestions from Fred Block, Mark Blyth, Pepper Culpepper, Jane Gingrich, Vanna Gonzalez, Peter Gourevitch, Peter Hall, Tom Mann, Eric Patashnik, Andrew Schrank, Jim Shoch, Len Seabrooke, Gunnar Trumbull, Jay Varellas, Margaret Weir, Cornelia Woll, and the editorial board of *Politics & Society*. For research assistance, Woolley thanks Raymond Koh, Dani Pietro, and Jason Fisher; Ziegler thanks Luke Elder, Levon Minassian, and Konrad Posch.

## Declaration of Conflicting Interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

## Funding

The authors disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: The authors would like to the Max Planck Institute for the Study of Societies, Cologne; the Travers Department of Political Science, University of California, Berkeley; and the Academic Senate of the University of California, Santa Barbara, for support of the underlying research reported in this article.

## Notes

1. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Public Law 111-203, 124 Stat. 1376, signed into law July 21, 2010.
2. See, e.g., Haley Sweetland Edwards, “He Who Makes the Rules,” *Washington Monthly* 45, no. 3/4 (2013): 27–40.
3. For a forceful statement of this perspective, see Eric Patashnik, *Reforms at Risk: What Happens after Major Policy Changes Are Enacted* (Princeton, NJ: Princeton University Press, 2008).
4. Indeed, as former treasury secretary Geithner, writes, regulatory reform is a “forever war.” Timothy F. Geithner, *Stress Test: Reflection on Financial Crises* (NewYork: Random House, 2014), 505.
5. See, e.g., Hubert Zimmermann, “Varieties of Global Financial Governance? British and German Approaches in Financial Market Regulation,” in E. Helleiner, S. Pagliari, and H. Zimmermann, eds., *Global Finance in Crisis: the Politics of International Regulatory Change* (Abingdon: Routledge, 2010), especially 121, 128.
6. See Renate Mayntz, “Introduction,” in R. Mayntz, ed., *Negotiated Reform: The Multilevel Governance of Financial Regulation* (Frankfurt: Campus Verlag, 2015).
7. John Campbell and Ove Pedersen, *The National Origins of Policy Ideas: Knowledge Regimes in the United States, France, Germany, and Denmark* (Princeton, NJ: Princeton University Press, 2014).
8. Greta Krippner, *Capitalizing on Crisis: The Political Origins of the Rise of Finance* (Cambridge, MA: Harvard University Press, 2011).
9. See John T. Woolley and J. Nicholas Ziegler, “The Two-Tiered Politics of Financial Reform in the United States,” in R. Mayntz, ed., *Crisis and Control: Institutional Change in Financial Market Regulation* (Frankfurt: Campus Verlag, 2012), 29–65.
10. See, e.g., Edwards, “He Who Makes.” Among legal scholars, see especially Arthur E. Wilmarth, “Turning a Blind Eye: Why Washington Keeps Giving in to Wall Street,” *University of Cincinnati Law Review* 81, no. 4 (2013).
11. Daniel Carpenter and David A. Moss, “Introduction,” in Daniel Carpenter and David A. Moss, eds., *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (New York: Cambridge University Press, 2014). See also the chapters by James Kwak and Nolan McCarty in the same volume.
12. J. Gunnar Trumbull, *Strength in Numbers: The Political Power of Weak Interests* (Cambridge, MA: Harvard University Press, 2012).
13. It is often forgotten, for example, that the widely used distinction between distributive, regulatory, and redistributive policies was articulated in a review of research on business. See Theodore Lowi, “American Business, Public Policy, Case-Studies, and Political Theory,” review of Raymond A. Bauer, Ithiel de Sola Pool, and Lewis A. Dexter, *American Business and Public Policy: The Politics of Foreign Trade* (New York: Atherton, 1963), *World Politics* 16, no. 4 (1964): 677–715.

14. See the discussion in David Vogel, *Fluctuating Fortunes: The Political Power of Business in America* (New York: Basic Books, 1989), especially 5–6.
15. Charles E. Lindblom, *Politics and Markets: The World's Political-Economic Systems* (New York: Basic Books, 1977).
16. Fred Block, especially "The Ruling Class Does Not Rule," *Socialist Revolution* 7, no. 3 (May–June 1977): 6–28, and "Beyond Relative Autonomy: State Managers as Historical Subjects" *Socialist Register* 17 (1980): 227–41.
17. See, e.g., John Woolley, *Monetary Politics: The Federal Reserve and the Politics of Monetary Policy* (NewYork: Cambridge University Press, 1984), 185–86. For more recent contributions, see especially Jacob Hacker and Paul Pierson, "Business Power and Social Policy: Employers and the Formation of the American Welfare State," *Politics & Society* 30, no. 2 (June 2002): 277–325; Peter Swenson, "Varieties of Capitalist Interests: Power, Institutions, and the Regulatory Welfare State in the United States and Sweden," *Studies in American Political Development* 18 (2004): 1–19; Tasha Fairfield, *Private Wealth and Public Revenue in Latin America: Business Power and Tax Politics* (New York: Cambridge University Press, 2014); Pepper Culpepper and Raphael Reinke, "Structural Power and Bank Bailouts in the United Kingdom and the United States," *Politics & Society* 42, no. 4 (December 2014): 427–54.
18. Pepper D. Culpepper, *Quiet Politics and Business Power: Corporate Control in Europe and Japan* (New York: Cambridge University Press, 2011).
19. John C. Coffee, "The Political Economy of Dodd-Frank: Why Financial Reform Tends to be Frustrated and Systemic Risk Perpetuated," *Cornell Law Review* 97, no. 5 (2012): 1019–82. A similar idea was earlier articulated by Anthony Downs, "Up and Down with Ecology—the 'Issue Attention Cycle,'" *Public Interest* 28 (Summer 1972): 38–50.
20. For studies of ideas with particular reference to broad policy trajectories, see Margaret Weir, "Ideas and the Politics of Bounded Innovation," in S. Steinmo, K. Thelen, and F. Longstreth, eds., *Structuring Politics: Historical Institutionalism in Comparative Analysis* (New York: Cambridge University Press, 1992), 188; Peter Hall, "Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain," *Comparative Politics* 25, no. 3 (1993): 275–96; and John Campbell, "Institutional Analysis and the Role of Ideas in Political Economy," *Theory and Society* 27 (1998): 377–409.
21. See the sources above as well as Sheri Berman, *The Social Democratic Movement: Ideas and Politics in the Making of Interwar Europe* (Cambridge, MA: Harvard University Press, 1998); Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (New York: Cambridge University Press, 2002); Tobias Schulze-Cleven and J. Timo Weishaupt, "Playing Normative Legacies: Partisanship and Employment Policies in Crisis-Ridden Europe," *Politics & Society* 43, no. 2 (2015): 269–99.
22. Campbell and Pedersen, *The National Origins of Policy Ideas*, 6.
23. Steven Lukes, *Power: A Radical View* (London: MacMillan, 1974), 48.
24. Cornelia Woll, *The Power of Inaction: Bank Bailouts in Comparison* (Ithaca, NY: Cornell University Press, 2014), 6.
25. See John Woolley, "Persistent Leadership: Presidents and the Evolution of U.S. Financial Reform, 1970–2007," *Presidential Studies Quarterly* 42 (March 2012): 60–80.
26. Krippner, *Capitalizing on Crisis*, ch. 2.
27. Simon Johnson and James Kwak, *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown* (New York: Pantheon, 2010), 85, 86. For asset data, see *Federal Reserve Flow of Funds*, as cited in Johnson and Kwak, *13 Bankers*, 252 note 8. For GDP figures and annual profits, see the Bureau of Economic Analysis, *National Income and Product Account*, as cited in ibid., 253 note 13.

28. Mark S. Mizruchi, *The Fracturing of the American Corporate Elite* (Cambridge, MA: Harvard University Press, 2013), 191–97.
29. For the changing markets on which banks depend, see Iain Hardie, David Howarth, Sylvia Maxfield, and Amy Verdun, "Banks and the False Dichotomy in the Comparative Political Economy of Finance," *World Politics* 65, no. 4 (October 2013): 691–728; Stephen Bell and Andrew Hindmoor, *Masters of the Universe, Slaves of the Market* (Cambridge. MA: Harvard University Press, 2015).
30. Woll, *The Power of Inaction*.
31. James B. Stewart, "Eight Days: The Battle to Save the American Financial System," *New Yorker* (September 21, 2009), 59–81.
32. For quoted material and detailed evidence, see Lee Drutman, *The Business of America Is Lobbying: How Corporations Became Politicized and Politics Became More Corporate* (New York: Oxford University Press, 2015), 18.
33. Arthur E. Wilmarth, "Turning a Blind Eye: Why Washington Keeps Giving in to Wall Street," *University of Cincinnati Law Review* 81, no. 4 (2013), 1283–1446. See also Arthur E. Wilmarth, "The Financial Services Industry's Misguided Quest to Undermine the Consumer Financial Protection Bureau," *Review of Banking & Financial Law* 31, no. 2 (Spring 2012).
34. Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998).
35. Advocacy networks therefore display more homogeneous preferences than the specialized policy communities that Hugh Heclo described several decades ago as "issue networks." At the same time, advocacy networks can be more porous and transient than the "advocacy coalitions," that Paul Sabatier said would need to be studied for ten years for reliable results. See Hugh Heclo, "Issue Networks and the Executive Establishment," in Anthony King, ed., *The New American Political System* (Washington, DC: AEI, 1979), 87–124; and Paul Sabatier and Hank Jenkins-Smith, *Policy Change and Learning: An Advocacy Coalition Approach* (Boulder, CO: Westview 1993), ch. 2.
36. Eugene F. Fama, "Agency Problems and the Theory of the Firm," *Journal of Political Economy* 88, no. 2 (April 1980): 288–307. For a discussion of the application of these ideas to finance, see especially Johnson and Kwak, *13 Bankers*, 68–69.
37. Michael C. Jensen and W.C. Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* 3, no. 4 (October 1976): 305–60. See also Eugene F. Fama and Michael C. Jensen, "Separation of Ownership and Control," *Journal of Law & Economics* 26, no. 2 (June 1983): 301–26.
38. Frank Dobbin and Jiwook Jung, "The Misapplication of Mr. Michael Jensen: How Agency Theory Brought Down the Economy and Why It Might Again," in Michael Lounsbury and Paul M. Hirsch, eds., *Markets on Trial: The Economic Sociology of the U.S. Financial Crisis: Part B*, Research in the Sociology of Organizations, vol. 30B (Bingley: Emerald, 2010): 29–64.
39. For a discussion of the leading economic models showing why the efficient markets hypothesis failed to hold in real-world conditions, see Johnson and Kwak, *13 Bankers*, 69–70.
40. Andrew Baker, "The New Political Economy of the Macroprudential Ideational Shift," *New Political Economy* 18, no. 1 (2013): 112–39.
41. These views appeared in numerous reports of the Government Accountability Office through the early 2000s and were clearly articulated in the regulatory review commissioned by

Secretary Henry Paulson, Department of the Treasury, *Blueprint for a Modernized Financial Regulatory Structure* (Washington, DC: Department of the Treasury, March 2008).
42. Interview with Barney Frank, Chicago, IL, August 29, 2013.
43. A possible candidate for inclusion in this list is the ad hoc group known as "Occupy the SEC," descended from the Occupy Movement. Although transitory in organizational terms, this group at least once took formal legal action and submitted several lengthy comment papers, sometimes informed by substantial expertise, to demand regulatory action from the SEC.
44. Mayntz, "Introduction."
45. Figures based on author's calculations from the comment archives for five rules proposed by the CFTC through July 2013. The five rules (with abbreviated titles) include: Interpretive Guidance and Compliance with Certain Swap Transactions (informally known as the "Cross-Border Rule"); End-User Exception to Mandatory Clearing of Swaps; Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities ("Clearinghouse Ownership"); Position Limits for Derivatives; and Prohibitions and Restrictions on Proprietary Trading (the "Volcker Rule").
46. For an overview, see Claudio Borio, "Implementing the Macroprudential Approach to Financial Regulation and Supervision," *Banque de France: Financial Stability Review* 13 (September 2009): 31–41.
47. Paulson, *Blueprint*.
48. Department of the Treasury, *Financial Regulatory Reform: A New Foundation* (Washington, DC: Department of the Treasury, June 2009).
49. Interview with Sheila Bair (by telephone),Washington, DC, December 17, 2013.
50. Chair of the Board of Governors of the Federal Reserve System, Director of the Comptroller of the Currency, Chair of the Securities and Exchange Commission, Chair of the Federal Deposit Insurance Corporation, Chair of the Commodity Futures Trading Commission, Director of the Federal Housing Finance Agency, Chair of the National Credit Union Administration Board, and Director of the (new) Consumer Financial Protection Bureau, along with one independent member with insurance expertise.
51. Section 120 of the Dodd-Frank Act.
52. FSOC, *2013 Annual Report* (Washington, DC: Department of the Treasury, 2013).
53. Department of the Treasury, "Press Release: Financial Stability Oversight Council Makes First Nonbank Financial Company Designations to Address Potential Threats to Financial Stability" (July 9, 2013); online at https://www.treasury.gov/press-center/press-releases/Pages/jl2004.aspx.
54. Arthur D. Postal, "Prudential SIFI Challenge Hearing Held," *LifeHealthPro* (July 23, 2013); online at http://www.lifehealthpro.com/2013/07/23/prudential-sifi-challenge-hearing-held.
55. "FSOC Sticks with Prudential's 'Systemically Important' Designation," *Compliance Week* (September 20, 2013).
56. "Metlife to Ask Federal Court to Review SIFI Designation," Press Release (New York: Metlife, January 13, 2015); online at https://www.metlife.com/about/press-room/index.html?compID=155136.
57. Defendant Financial Stability Oversight Council's Motion for Summary Judgment, *MetLife, Inc. v. Financial Stability Oversight Council*, No. 15-civ-45, U.S District Court for the District of Columbia (May 11, 2015). This case is hereinafter referred to as *Metlife v. FSOC*; online at http://www.wsj.com/public/resources/documents/metvfsoc.pdf.

58. Plaintiff MetLife, Inc.'s Cross-Motion for Summary Judgment, *Metlife v. FSOC*, U.S District Court for the District of Columbia (June 16, 2015); online at https://www.metlife.com/assets/cao/sifiupdate/Motion_for_Summary_Judgment_As_Filed.pdf. MetLife's litigation team in this case included Eugene Scalia, son of Supreme Court justice Antonin Scalia.
59. Brief for Professors of Law as Amici Curiae Supporting Defendant, *MetLife v. FSOC*, No. 15-civ-45, U.S. District Court for the District of Columbia (May 22, 2015); online at http://law.stanford.edu/wp-content/uploads/sites/default/files/publication/953598/doc/slspublic/22May2015-MetLife-v-FSOC-AMICUS-Brief-of-15-LawProfs.pdf. Brief for Professors Viral V. Acharya, Robert Engle, Thomas Philippon, and Matthew P. Richardson as Amici Curiae Supporting Defendant, *MetLife v. FSOC*, No. 15-civ-45, U.S. District Court for the District of Columbia (May 22, 2015); online at http://pubcit.typepad.com/files/economics-profs.pdf. Brief of Scholars of Insurance Regulation as Amici Curiae Supporting Defendant, *MetLife v. FSOCl*, No. 15-civ-45, U.S. District Court for the District of Columbia (May 22, 2015); online at http://guptawessler.com/wp-content/uploads/2012/05/FSOC-Amicus.pdf.
60. Memorandum Opinion, *State National Bank of Big Spring et al., Plaintiffs v. Jacob J. Lew et al., Defendants*, No. 12-civ-1032 (ESH), U.S. District Court for the District of Columbia (August 1, 2013); online at http://business.cch.com/BANKD/State-National-Bank-of-Big-Spring-v-Lew.pdf.
61. *State National Bank of Big Spring et al., Appellants v. Jacob J. Lew et al., Appellees*, No. 13-5247, U.S. District Court for the District of Columbia (July 24, 2015); online at https://www.cadc.uscourts.gov/internet/opinions.nsf/961BA5A070E7A5CF85257E8C0050F258/$file/13-5247.pdf.
62. Investment Company Institute (ICI), "Report of the Money Market Working Group" (Washington, DC: ICI, March 17, 2009); online at http://www.ici.org/pdf/ppr_09_mmwg.pdf. See also the ICI Money Market Working Group for many related documents; online at http://www.ici.org/mmfs/ici_mmwg.
63. 74 Federal Register 129 (July 8, 2009), 32688; online at http://www.sec.gov/rules/proposed/2009/ic-28807fr.pdf.
64. Securities and Exchange Commission (SEC), President's Working Group Report on Money Market Fund Reform, "Request for Comment," Release no. IC-29497; File no. 4-619 (Washington, DC: SEC, October 2009); online at http://www.sec.gov/rules/other/2010/ic-29497.pdf.
65. SEC, "Statement of SEC Chairman Mary Schapiro on Money Market Fund Reform," Press Release 2012-166 (August 22, 2012); online at http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171484078#.UgzqnH_3NyE.
66. FSOC, "Proposed Recommendations regarding Money Market Mutual Fund Reform" (November 13, 2012). Available at https://www.treasury.gov/initiatives/fsoc/Documents/Proposed%20Recommendations%20Regarding%20Money%20Market%20Mutual%20Fund%20Reform%20-%20November%2013,%202012.pdf
67. U.S. Chamber of Commerce, "U.S. Chamber Warns against Flawed FSOC Process, Recommendations on Money Market Regulation," Press Release (November 12, 2012); online at https://www.uschamber.com/press-release/us-chamber-warns-against-flawed-fsoc-process-recommendations-money-market-regulation.
68. SEC, Division of Risk, Strategy, and Financial Innovation, "Responses to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher" (November 30, 2012); available at http://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf.

69. Systemic Risk Council letter of January 18, 2013, to the FSOC; online at http://www.systemicriskcouncil.org/issues/money-market-funds/.
70. "SEC Proposes Money Market Reforms," Press Release (Washington, DC: SEC, June 5, 2013); online at https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171575248.
71. "Remarks of Secretary Lew at Pew Charitable Trusts," Press Release (Washington, DC: Treasury Department, December 5, 2013). Online at http://www.treasury.gov/press-center/press-releases/Pages/jl2232.aspx.
72. See, e.g., Robert G. Kaiser, *Act of Congress: How America's Essential Institution Works, and How It Doesn't* (New York: Knopf, 2013), 168–69.
73. See Brady Denis, "Trade Groups Seek More Limited Plan to Regulate Derivatives Market," *Washington Post* (October 7, 2009).
74. See Lisa Kastner, "Much Ado about Nothing? Transnational Civil Society, Consumer Protection and Financial Regulatory Reform," *Review of International Political Economy* (2014), 1313–45.
75. See Agnes Orban, "The Moral Battle over Derivatives: How Non-financial Actors Shape Financial Reform" (paper presented at the Eleventh Conference of the European Sociological Association, Turin, Italy, August 28–29, 2013).
76. Office of the Comptroller of the Currency, *OCC's Quarterly Report on Bank Trading and Derivatives Activities*: online at http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/derivatives-quarterly-report.html, for the quarters cited, at Graphs 4 and 5A. The top banks for 2002 included: JP Morgan Chase, Bank of America, Citibank, First Union, BancOne, Wells Fargo, and Bank of New York. For 2012: JP Morgan, Bank of America, Citibank, and Goldman Sachs.
77. Robert Pickel, executive vice president of ISDA, quoted in Michael J. McFarlin, "CFTC Sued on Position Limits, "*Futures Magazine* (January 1, 2012); online at http://www.futuresmag.com/2012/01/01/cftc-sued-on-position-limits.
78. *International Swaps and Derivatives Association v. U.S. Commodities Futures Trading Commission*, 887 F. Supp. 2d 259, U.S. District Court for the District of Columbia (September 28, 2012).
79. Interview with Gary Gensler, CFTC, Washington, DC, December 17, 2013.
80. Interview with senior staff member, CFTC, Washington, DC, January 14, 2014.
81. See, e.g., "Dust Starts to Settle on Derivatives Revolution," *Financial Times* (September 11, 2013).
82. "Final Rule on Clearing Requirement 2012-29211," 77 Federal Register 240 (December 13, 2012), 74332 note 46 for a list of such firms, including Alliance-Bernstein, R.J. O'Brien, Citadel, Eris Exchange, CME FIA, DE Shaw, Arbor Research LCH Knight Capital, Jeffries, Coherence Capital, CRT Capital, and Javelin Capital, among others.
83. Interview with former senior counsel to one of the federal regulatory agencies, Washington, DC, December 10, 2013.
84. *Investment Company Institute v. Commodity Futures Trading Commission*, 720 F.3d 370, U.S. Court of Appeals for the District of Columbia Circuit (June 25, 2013). This case is hereinafter referred to as *ICI v. CFTC*.
85. *ICI v. CFTC*, 720 F.3d 370, 380, U.S. Court of Appeals for the District of Columbia Circuit (2013); online at https://www.cadc.uscourts.gov/internet/opinions.nsf/1CEC149BDA2443D285257B95004EB0B8/$file/12-5413-1443082.pdf.
86. *ICI v. CFTC*, 720 F.3d 378; online at https://www.cadc.uscourts.gov/internet/opinions.nsf/1CEC149BDA2443D285257B95004EB0B8/$file/12-5413-1443082.pdf.

87. Peter J. Ryan and J. Nicholas Ziegler, "Patchwork Pacesetter: The United States in the Multilevel Process of Financial Market Regulation," in Mayntz, *Negotiated Reform*.
88. Ben Protess, "Federal Judge Upholds U.S. Effort to Regulate Overseas Trading," *New York Times* (September 16, 2014).
89. For contrasting views of the 2014 budget agreement, see Mike Konczal, "The Financial Regulation Congress Is Quietly Trying to Destroy in the Budget," *The Next New Deal: The Bloc of the Roosevelt Institute* (December 10, 2014); and Patrick Brennan, "What's the Dodd Frank Fight That Could Shut Down the Government?," *The Corner: National Review Online* (December 11, 2014).
90. See blog entry by Steve Lofchie, "Better Markets Amicus Brief Supports CFTC's Cross-Border Guidance," *The Cadwalader Cabinet* (March 20, 2014); online at http://www.cadwalader.com/thecabinet/regulatory_updates.php?&ID=7457&date_filter.

## Author Biographies

**J. Nicholas Ziegler** (j_ziegler@brown.edu) is professor of international and public affairs, Watson Institute, Brown University. His research focuses on comparative politics with an emphasis on economic stability in the advanced democracies and the role of expertise in public policymaking. He has also written on technology policies and has published articles in *Daedalus, World Politics*, and other journals.

**John T. Woolley** (woolley@polsci.ucsb.edu) is professor of political science, University of California, Santa Barbara. His research focuses on financial regulation, monetary policy, and the U.S. presidency. He has published articles in *American Journal of Political Science, Journal of Politics*, and elsewhere. He is co-director of the American Presidency Project, a web resource on the U.S. presidency at the University of California, Santa Barbara.