PIIE PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS

POLICY BRIEF

17-20 The Financial Stability Oversight Council: An Essential Role for the Evolving US Financial System

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May 2017

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The US legislative response to the financial crisis of 2008 was the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. Among the act's most significant creations was a Financial Stability Oversight Council (FSOC), aimed at improving coordination among US regulators to ensure a more holistic view of dangers to the system. One essential dimension of FSOC's authority is the power to designate nonbank financial institutions as systemically important and therefore subject to greater regulation and scrutiny. FSOC was also given a mandate to propose other ways to mitigate major financial sector risks.

Seven years later and especially since the 2016 election, FSOC faces political pressure from elements of the private sector and their advocates in Washington. One legislative proposal would retroactively repeal virtually all of FSOC's substantive authorities.[1] In President Trump's first weeks, an executive order signaled the intent to reorient FSOC away from its focus on financial stability, and this was followed by a presidential memorandum establishing a review that could also limit FSOC's authority over nonbank firms.[2] Additionally, the 2016 district court decision in *MetLife v. Financial Stability Oversight Council* (now under appeal) could further limit the Council's ability to designate systemically important firms for enhanced supervision.[3] The Trump administration is currently supporting a request from MetLife to delay the appeals court proceedings.[4]

Criticisms of FSOC's activities are generally little more than special pleading by interested parties, and the proposed legislative alternatives would undermine systemic stability. A dangerous weakening of FSOC could also occur without an act of Congress. Most FSOC voting members could be replaced this year by the Trump administration, which has articulated a broadly deregulatory agenda in the financial arena.

This Policy Brief makes the case that FSOC has helped improve the functioning of the US regulatory system as intended by Congress. Before the crisis, individual regulators had difficulty cooperating to ensure appropriate levels of supervision for activities—such as those of Lehman

1. The Financial CHOICE (Creating Hope and Opportunity for Investors, Consumers, and Entrepreneurs) Act (http://financialservices.house.gov/choice/) has passed out of the House Financial Services Committee and will presumably soon be debated on the floor of the House of Representatives.

2. On the broadening agenda, see Presidential Executive Order on Core Principles for Regulating the United States Financial System, February 3, 2017, www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states. The Presidential Memorandum for the Secretary of the Treasury, April 21, 2017 (www.whitehouse.gov/the-press-office/2017/04/21/presidential-memorandum-secretary-treasury), concerns FSOC's designation authority.

3. *MetLife, Inc. v. Fin. Stability Oversight Council*, 177 F. Supp. 3d 219, 230 (D.D.C. 2016), *appeal docketed*, no. 16-5086 (D.C. Cir. April 20, 2016).

4. Ryan Tracy, "Trump Administration Asks for Time to Deliberate MetLife Case," *Wall Street Journal*, May 4, 2017, www.wsj.com/articles/trump-administration-asks-for-time-to-deliberate-metlife-case-1493931891.

Brothers, other investment banks, and insurance company AIG—that jeopardized the economy.[5] And when the system teetered on the brink of collapse, there was a lack of clear accountability: Who exactly among the regulators was responsible for which dimension of what went wrong?

FSOC was created to foster information sharing and promote accountability in a balkanized regulatory system—and it has made progress toward these goals. Any efforts to reform FSOC must make it a more effective guardian of financial stability, not undermine its ability to carry out this critical mission.

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We begin by reviewing the state of systemic risk regulation before the 2008 crisis. The next section explains the legislative intent of FSOC, as laid out in the Dodd-Frank Act: to fill regulatory gaps, coordinate among regulators, and enhance and ensure regulatory accountability. An account of FSOC's actions then illustrates its impacts, in exercising its designation authority, in coordination and information sharing, in recommendations to regulators, in policy analysis and consensus, and in the efforts of its targeted working groups. Notwithstanding (or perhaps because of) its achievements, FSOC faces legal challenges and legislative threats to its authorities. We close with a consideration of prospects for systemic risk without the benefit of FSOC.

Appendix A shows that responsibility for systemic risks in Europe has shifted toward central banks. But, as we illustrate in the following sections, the US regulatory system is inherently more fragmented and needs FSOC for effective and coordinated cross-agency understanding and action.

SYSTEMIC RISK REGULATION BEFORE 2008

Systemic risk regulation in the United States before 2008 was ad hoc and informal.[6] Policies and procedures had evolved over time and made some sense originally, but by the early 2000s regulators were unable to cope with the complex, interconnected structure that the financial system had become.

Like most industrial countries, the United States at the end of the 20th century still relied on a financial regulatory framework developed in the 1930s, focused on the largest banks.[7] The Federal Reserve's legal authority over bank holding companies was clear and its role as lender of last resort also provided the ability to intervene during crises and press private sector entities to act to prevent collapse.

For example, the Fed, Office of the Comptroller of the Currency (OCC) (which regulates national banks), and Federal Deposit Insurance Corporation (FDIC) (which insures bank deposits) jointly addressed the failure of Penn Square Bank in Oklahoma City in 1982.[8] In 1984 the potential failure of the Continental Illinois National Bank and Trust Company raised concerns about its effects on 179 banks that had more than half their equity capital exposed to loss.[9] Again, the Federal Reserve, OCC, and FDIC shared responsibility. These and other cases in the mid-1980s were the high-water mark for bank-only crises in the United States—and for Federal Reserve–led action.

The stock market crash of October 1987 concentrated official attention on the possibility that—perhaps for the first time since 1929—market structure and actions by nonbank

5. Lehman Brothers was under the partial supervision of the Office of Thrift Supervision, which, according to the bankruptcy examiner's report, did express reservations about some activities (https://web.stanford.edu/~jbulow/Lehmandocs/VOLUME%201.pdf). And scrutiny by the New York Fed increased after the near failure of Bear Stearns in early 2008. However, no official or set of officials had a holistic and complete view of the risks posed by a potential bankruptcy. See, for example, Volume III.A.4, section (g)(5) of the bankruptcy examiner's report, "Government Regulators Had No Knowledge of Lehman's Repo 105 Program."

6. Modern use of the term "systemic risk" (and close synonyms) to include banks and nonbanks dates from the 1990s, but drew much more attention in the 2000s. See www.ecb.europa.eu/pub/pdf/scpwps/ecbwp035.pdf and www.iiiglobal.org/sites/default/files/systemicrisk.pdf.

7. The state of financial supervision in 2008 across countries is reviewed in "The Structure of Financial Supervision: Approaches and Challenges in a Global Marketplace," Group of Thirty, 2008, http://group30.org/images/uploads/publications/G30_StructureFinancialSupervision2008.pdf. Compared with other countries, the United States had little by way of formal systemic risk oversight. In light of what happened in 2008, almost all jurisdictions have sought to strengthen their capacity in this regard.

8. "Penn Square Bank, N.A.," chapter 3 in "Case Studies of Significant Bank Resolutions," Volume II of *Managing the Crisis: The FDIC and RTC Experience*, Federal Deposit Insurance Corporation, Washington, August 1998, www.fdic.gov/bank/historical/managing/history2-03.pdf.

9. "Failure of Continental Illinois," www.federalreservehistory.org/Events/DetailView/47 and "Continental Illinois and 'Too Big to Fail,'" chapter 7 in *An Examination of the Banking Crises of the 1980s and Early 1990s*, Federal Deposit Insurance Corporation, Washington, 1997, www.fdic.gov/bank/historical/history/235_258.pdf.

financial firms could disrupt the system and damage the economy.[10] In response, a President's Working Group on Financial Markets (PWG) was established in 1988,[11] conferring on the Treasury Department a leading role to chair and convene the chairs of the Fed, Securities and Exchange Commission (SEC), and Commodity Futures Trading Commission (CFTC), along with the heads of other regulatory agencies. The inclusion of the SEC and CFTC was significant because until that point neither had systemic risk issues high on its list of priorities.

For potentially systemic financial sector disturbances, the Federal Reserve remained the responsible agency. For example, in September 1998 negotiations to save Long-Term Capital Management (LTCM) took place under the auspices of the Federal Reserve Bank of New York, with significant involvement from the Board of Governors.[12] In April 1999 the PWG produced a report on "Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management."[13]

The PWG produced other, intermittent reports,[14] but, at least until Henry M. Paulson became Treasury Secretary in July 2006, Treasury and the PWG were not consistently seen as bearing responsibility for systemic risk issues.[15]

This began to change during 2007, as the extent of problems in US securities markets and the potential global impact became clear. By early 2008 Paulson's Treasury was a colead on systemic risk policy issues,[16] along with the Federal Reserve—although the Fed was still in the driver's seat for operational issues, such as the intervention to deal with the imminent failure of Bear Stearns. Anti-crisis measures were put together as needed by Treasury, the Federal Reserve (including the Board of Governors in Washington and the New York Fed), and—once the crisis became sufficiently severe—the FDIC.

The PWG remained active as a forum for discussions of systemic risk policy issues throughout the crisis and took on some of the early thinking about needed reforms; for example, it published a report on *Money Market Fund Reform Options* in October 2010.[17] But by then the Dodd-Frank legislation had put in place a much more effective model for overseeing systemic risk: the Financial Stability Oversight Council.[18]

LEGISLATIVE INTENT BEHIND FSOC

In crafting a legislative response to the financial crisis, Congress and the administration understood that addressing systemic vulnerabilities would require broader authorities to close regulatory gaps, greater coordination across the regulatory system, and a more flexible, forward-looking approach in which regulators are collectively responsible for identifying and addressing new risks as they arise.[19]

Filling Regulatory Gaps

Gaps in regulatory authority allowed huge risks to arise at firms subject to less comprehensive oversight. The largest banks and bank holding companies, to be sure, played a

10. In US financial history before the 1930s, financial crises had frequently involved banks, nonbanks, and various interactions between them. The stock market crash of 1929 played a significant contributing role in the banking crisis that followed. But after the reforms of the 1930s—particularly the Glass-Steagall Act—the official view was that securities markets could not bring down the core system of financial intermediation, centered on banks. This view held up well until 1987.

11. The working group was created by Executive Order 12631, www.archives.gov/federal-register/codification/executive-order/12631.html.

12. See www.federalreservehistory.org/Events/DetailView/52.

13. Available at www.treasury.gov/resource-center/fin-mkts/Documents/hedgfund.pdf.

14. *Over-the-Counter Derivatives Markets and the Commodity Exchange Act* (November 1998; www.treasury.gov/resource-center/fin-mkts/Documents/otcact.pdf), *Retail Swaps* (December 2001), and *Principles and Guidelines Regarding Private Pools of Capital* (February 2007, www.treasury.gov/resource-center/fin-mkts/Documents/hp272_principles.pdf).

15. Executive Order 12631 authorized the PWG to collect information and to recommend actions, but it did not grant any authority to the PWG to actually change rules or act in any specific way. According to a Treasury report issued in March 2008, "the PWG has continued to serve as an interagency mechanism to facilitate coordination and communication consistent with the mission to enhance market integrity and maintain investor confidence" (see www.treasury.gov/press-center/press-releases/Documents/Blueprint.pdf).

16. Paulson's Treasury Department produced the March 2008 *Blueprint for a Modernized Financial Regulatory Structure*, www.treasury.gov/press-center/press-releases/Documents/Blueprint.pdf. And Timothy Geithner, first Treasury Secretary under President Obama, oversaw the production of *Financial Regulatory Reform: A New Foundation*, in June 2009, www.treasury.gov/initiatives/Documents/FinalReport_web.pdf).

17. See www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf.

18. The PWG still exists and has issued a series of reports on insurance for terrorism risk, with the most recent in April 2014 (www.treasury.gov/initiatives/fio/reports-and-notices/Documents/PWG_TerrorismRiskInsuranceReport_2014.pdf). For information about the broader program, see www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.

19. For more information on the discussion leading to the creation of FSOC, see www.congress.gov/congressional-report/111th-congress/senate-report/176/1.

central role in the crisis and would certainly have caused greater devastation had the government not intervened. But many of the firms that sparked the crisis—and turned a subprime mortgage crisis into a full-blown financial collapse, were not banks, and therefore were not subject to effective prudential oversight. Bear Stearns, Lehman Brothers, and Merrill Lynch were SEC-regulated investment banks; Countrywide, Washington Mutual, and IndyMac were thrifts (savings and loans associations, regulated by the Office of Thrift Supervision); and AIG was an insurance company.[20]

FSOC seeks the best of both worlds by bringing together the collective expertise of state and federal regulators to develop a comprehensive view of the financial system and coordinate to address emerging risks.

The case of AIG is particularly instructive. The insurance company owned a thrift, which was overseen by the federal Office of Thrift Supervision (OTS), and its insurance operations were overseen by state insurance regulators. But AIG was not subject to consolidated supervision. The risks that led to its near collapse, and led the government to intervene and prevent its failure, arose in its Financial Products unit—an effectively unsupervised subsidiary based in London but conducting major operations in the United States in the opaque and unregulated swaps market.

To address this kind of regulatory gap, FSOC was granted the authority to designate nonbank financial companies whose size, complexity, or activities could pose systemic risk and to ensure that those institutions are subject to consolidated supervision.[21] Firms like AIG are now subject to comprehensive oversight and stricter prudential rules tailored to address the risks posed by their particular activities and business models.[22]

Coordinating across Regulatory Silos

The US financial system is vast, dynamic, diverse, and multifaceted. The regulatory structure for oversight of this system is nearly as complex: before the crisis, there were three federal prudential banking regulators (the Federal Reserve, OCC, and FDIC), a separate regulator for national thrifts (OTS), two federal market regulators (SEC and CFTC), the Office of Federal Housing Enterprise Oversight (OFHEO),[23] and state regulatory systems for insurance, banking, and securities.

While this degree of regulatory complexity presented some apparent downsides, Congress chose not to address the fragmentation of the US financial regulatory system as part of its post-crisis reforms. Dodd-Frank eliminated one federal regulator—the OTS—and consolidated, to a considerable degree, consumer protection in the new Consumer Financial Protection Bureau (CFPB). But Congress did not merge the market regulators (the SEC and CFTC), nor did it streamline the overlapping jurisdictions of the banking agencies. Doing so would have reduced the authority of various authorizing committees in Congress, and would have bogged down the effort to pass significant and much-needed substantive reforms in territorial disputes. And when various industry groups also objected, Dodd-Frank's lead authors deemed the regulatory consolidation flame not worth the candle.

It should be noted that, while fragmentation is an easy target, regulatory consolidation is no panacea. Consider the experience of the United Kingdom, which (as discussed in appendix A) moved to consolidate financial regulation under a single roof—the Financial Services Authority (2001–13)—but experienced a crisis no less severe than ours. The US system suffers some inefficiency due to overlapping regulators, but investors and consumers often benefit from such an overlap, and the existing regulatory agencies have developed substantial bodies of specialized expertise and institutional knowledge over decades.

FSOC seeks the best of both worlds by bringing together the collective expertise of state and federal regulators to develop a comprehensive view of the financial system and coordinate to address emerging risks. The Council has ten voting members: the Secretary of the Treasury (as FSOC chair); the Chairs of the Federal Reserve Board of

20. At the end of 2006, Countrywide shifted its charter from being a national bank (regulated by the Office of the Comptroller of the Currency) to being a thrift (regulated by the Office of Thrift Supervision).

21. The consolidated supervision is carried out by the Federal Reserve Board of Governors under enhanced prudential standards; Dodd-Frank Act Section 113(a)(1), www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

22. Section 102(a)(1)(A) of the Dodd-Frank Act states that the purposes of FSOC are "to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace."

23. The OFHEO and the Federal Housing Finance Board (FHFB) were combined under the Housing Economic Recovery Act of 2008 to form the new Federal Housing Finance Agency (FHFA).

Governors, OCC, SEC, FDIC, CFTC, and National Credit Union Administration Board; the Directors of the CFPB and Federal Housing Finance Agency; and "an independent member appointed by the president, by and with the advice and consent of the Senate, having insurance expertise."[24]

As Sheila Bair, then chair of the FDIC, stated in testimony to Congress in July 2009[25]:

> The macroprudential oversight of system-wide risks requires the integration of insights from different regulatory perspectives—banks, securities firms, holding companies, and perhaps others. It is only through these differing perspectives that there can be a holistic view of developing risks to the financial system.

Regulatory Accountability

By bringing together all the actors in the financial regulatory system for the purpose of identifying and addressing potential threats to US financial stability, FSOC puts its members on the hook for protecting the system. This accountability is crystallized most clearly in FSOC's annual report to Congress,[26] which draws on regulatory expertise to evaluate data and produce consensus recommendations. Each Council member, in signing the report, states that he or she believes that regulators and the private sector are taking all reasonable steps to ensure financial stability. The FSOC annual report thus represents the collective judgment of the entire regulatory system regarding risks that could destabilize the financial system, and a commitment by each FSOC member, and by extension each agency, to address those risks.

Perhaps the most potent feature of FSOC's design is the structural change it assures in the conduct of future financial regulation. FSOC signals a shift from regulating in response to the specific drivers of the last crisis to a more forward-looking approach. Its explicit statutory purpose is to "identify risks to US financial stability that *could* arise" and "respond to *emerging* threats to the United States financial system."[27] [Italics added.]

FSOC IN ACTION, 2010–16

Designation

The aspect of FSOC that gets the most attention is the authority to designate nonbank financial companies, including some that were at the heart of the crisis, for heightened oversight by the Federal Reserve.[28] As discussed above, this authority was a direct response to the experience prior to the crisis in which several nonbank financial companies became so large and interconnected that their financial distress threatened the entire system with collapse.[29]

From the outset, FSOC sought input from a wide array of stakeholders about how it would exercise this authority, and its rules and guidance benefited from multiple rounds of public comment. FSOC's review and designation process is thorough (taking approximately two years for a firm to be designated), ensures significant interaction with firms under consideration, and provides ample opportunity for the firms to submit information they deem relevant. It should be no surprise, then, that FSOC has exercised this authority sparingly, acting just four times to designate as systemic a nonbank financial company that was not a financial market utility: AIG (in 2013), General Electric Capital Corporation (in 2013), Prudential Financial (in 2013), and MetLife (in 2014).[30]

24. Dodd-Frank, Section 111(b)(1). There are also five nonvoting members: the directors of the Office of Financial Research and Federal Insurance Office, a state insurance commissioner, a state banking supervisor, and a state securities commissioner.

25. Testimony to the Committee on Banking, Housing, and Urban Affairs, July 23, 2009, www.fdic.gov/news/news/speeches/archives/2009/spjuly2309.html (accessed on May 26, 2017).

26. The 2011–16 reports are available at www.treasury.gov/initiatives/fsoc/studies-reports/Pages/2016-Annual-Report.aspx (accessed on May 26, 2017).

27. Section 112 of Dodd-Frank(a)(1).

28. All banks with assets over $50 billion are designated as systemically important by the Dodd-Frank Act, i.e., FSOC is not involved in the designation process for such banks. The Financial Stability Board (FSB), with input from various US regulators, determines which banks are globally systemically important (G-SIBs). There are eight US banks currently in this category: Citigroup, JPMorgan Chase, Bank of America, Goldman Sachs, Wells Fargo, Morgan Stanley, Bank of New York Mellon, and State Street.

29. Section 113(a)(1) of Dodd-Frank: "The Council, on a nondelegable basis and by a vote of not fewer than 2/3 of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a US nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the US nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the US nonbank financial company, could pose a threat to the financial stability of the United States."

30. The rules, processes, and decisions are available at www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx. There is an annual reassessment of designations.

The designated firms were not previously subject to consolidated supervision, much like AIG before the crisis.[31] Designation brought them under supervision by the Federal Reserve, and they will ultimately be subject to enhanced capital and liquidity requirements that take account of the risks they pose to the system.

FSOC's designation authority provides a baseline assurance that oversight corresponds to the risks that a firm poses, regardless of the firm's particular business structures. Of course, the nature of risks and appropriate risk oversight may vary across types of business, which the Federal Reserve may account for in implementing its enhanced supervision. Indeed, the Federal Reserve has signaled its intent, in proposals released last year, to tailor its enhanced capital and liquidity standards for insurance companies to reflect the regulatory capital regime that applies to insurers' core businesses.[32]

One of the first firms designated by FSOC was GE Capital, a nonbank financial company that nearly collapsed in the crisis largely because of its reliance on short-term wholesale funding. In June 2016, FSOC de-designated GE Capital because its substantial restructuring since the crisis sufficiently reduced the risks it posed that it no longer required enhanced oversight.[33]

FSOC's designation authority over financial market utilities (FMUs) receives significantly less attention, but is just as essential. Indeed, the opacity of financial interconnections and exposures, especially in the swaps market, was one of the main reasons that problems at individual institutions during the crisis spread to create systemwide panic. To address this risk going forward, policymakers made essential reforms to the US derivatives markets and pushed more activity into central clearing, improving the management of counterparty risks and increasing transparency in the market. Recognizing the importance of central counterparties, which would become systemically more critical as a result of the derivatives reforms, Congress also granted FSOC the authority to designate central counterparties and other market utilities for heightened standards and oversight. Eight FMUs have been designated as systemically important under Title VIII of Dodd-Frank.[34]

Coordination and Information Sharing

Over the past six years FSOC has become an essential pillar of the US regulatory architecture. It has brought together the regulators for the US markets, banks, insurers, credit unions, broker-dealers, and commodities traders for regular dialogue on issues of critical importance for our financial system. Since its founding the Council has met over 70 times, and about one third of these sessions were open to the public.[35] Just as importantly, the expert staffs of its member agencies have had hundreds of committee meetings and working sessions to support the Council's deliberations and actions. FSOC has thus institutionalized interagency dialogue, collaboration, and transparency on issues of financial stability in a way that simply did not exist before the crisis.[36]

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When the financial system has experienced periods of volatility, FSOC has been an important venue for regulators to engage in timely dialogue, share information, establish a common baseline of facts, and consult each other on potential responses. For example, FSOC met before and immediately after Superstorm Sandy (October 2012) to identify potential operational vulnerabilities, share critical information about the functioning of essential market infrastructure, and discuss plans for closing certain markets. It also met in anticipation of, and in response to, the UK Brexit vote in June 2016. Neither of those events became "systemic," but they illustrate the preparation that is required to respond

31. For some time, MetLife had been subject to consolidated supervision by the Federal Reserve as a bank holding company, because it owned a bank and bank-held deposits. However, it sold its banking business in January 2013 and as a result was no longer subject to such supervision at the time of its FSOC designation.

32. See "Federal Reserve Board approves advance notice of proposed rulemaking and approves proposed rule", www.federalreserve.gov/newsevents/pressreleases/bcreg20160603a.htm.

33. See www.treasury.gov/initiatives/fsoc/designations/Documents/GE%20Capital%20Public%20Rescission%20Basis.pdf.

34. All eight SIFMUs were designated in July 2012: the Clearing House Payments Company LLC on the basis of its role as operator of the Clearing House Interbank Payments System; CLS Bank International; Chicago Mercantile Exchange, Inc.; the Depository Trust Company; Fixed Income Clearing Corporation; ICE Clear Credit LLC; National Securities Clearing Corporation; and the Options Clearing Corporation. See www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx.

35. The minutes of these meetings are available at www.treasury.gov/initiatives/fsoc/council-meetings/Pages/meeting-minutes.aspx. There were two FSOC meetings in late 2010; FSOC has since met 10–14 times per year.

36. See Transparency Policy for the Financial Stability Oversight Council, www.treasury.gov/initiatives/fsoc/Documents/The%20Council%27s%20Transparency%20Policy.pdf.

effectively to a truly destabilizing event. FSOC makes that preparation possible in a systematic and properly organized fashion.

Recommendations to Primary Regulators

FSOC is also empowered by Section 120 of Dodd-Frank to "provide for more stringent regulation of a financial activity" by issuing a recommendation to a primary regulator when it determines that there is a risk to US financial stability.[37] At times, FSOC has proven critical in cutting a path forward despite industry intransigence and regulatory inertia. Reforming money market mutual funds (MMFs), a financial product that played a major role in the crisis, is a concrete example where FSOC used this authority to strengthen the financial system.

During the financial crisis, the $3.8 trillion MMF industry was subject to destabilizing runs. At the height of the crisis in September 2008, the Reserve Primary Fund "broke the buck" and investors rushed to redeem their MMFs more broadly.[38] With financial institutions and many other firms dependent on short-term commercial paper purchased by MMFs, these strains quickly propagated and exacerbated market stress, threatening the broader economy. A government backstop was necessary to stem the panic.

In light of these widely recognized structural vulnerabilities, FSOC from its inception focused on the need to mitigate financial stability risks associated with MMFs and issued recommendations to this effect in its first two annual reports. Having passed initial reforms in 2010, the SEC was also hard at work on these structural concerns. But amid an onslaught of industry opposition, the Commission appeared unable to move forward with much-needed structural reforms.

FSOC, therefore, issued a proposed Section 120 recommendation and solicited public comment.[39] The proposal laid out several alternatives for the SEC to consider in proceeding with the necessary structural reforms. In the end, the FSOC proposal did not need to be finalized as, responding to external pressure, the SEC moved forward with rule-making in 2013. The changes took effect in October 2016, requiring prime institutional money market funds to deploy a floating net asset value and allowing nongovernment MMF boards to impose liquidity fees and redemption gates during periods of stress.[40]

The real objective—and deeper challenge—going forward is to address vulnerabilities that are less glaring and for which policymakers do not have the benefit of catastrophic near misses to help force action. FSOC's mandate requires that it tackle far more tentative risk hypotheses than those such as MMFs that have already manifested themselves in a financial crisis; indeed, its job is to address those risks *before* they contribute to a crisis.

Policy Analysis and Consensus

FSOC's recent work on asset management highlights the critical benefits of the Council structure and the member agencies' ability to work together to examine aspects of the financial system in detail—while relying on the expertise of the primary market regulator.[41]

Asset management firms did not feature prominently in the financial crisis, but the sector is a large and rapidly growing part of the US financial system and an important channel between savings and investment. In particular, assets in less liquid funds have seen exponential growth. Fixed income funds grew from $1.5 trillion in assets under management (AUM) at the end of 2008 to $3.6 trillion at the end of 2015, and alternative strategy funds grew from $365 million in AUM at the end of 2005 to approximately $310 billion at the end of 2015.[42]

37. Section 120(a) of Dodd-Frank: "The Council may provide for more stringent regulation of a financial activity by issuing recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities."

38. The Reserve Fund, a New York–based money market fund, held $64.8 billion in assets in the Primary Reserve Fund. On September 15, 2008, the latter, which held $785 million in Lehman-issued securities, became illiquid when the fund was unable to meet investor requests for redemptions. On September 16, 2008, the Reserve Fund declared it had "broken the buck" because its net asset value had fallen below $1 per share.

39. Section 120(b)(1) of Dodd-Frank: "The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice."

40. For details, see www.sec.gov/spotlight/money-market.shtml.

41. The Update on Review of Asset Management Products and Activities is available at www.treasury.gov/press-center/press-releases/Pages/jl0431.aspx.

42. See www.sec.gov/rules/final/2016/33-10233.pdf.

From the outset, FSOC took a consultative approach to this review. In May 2014 the Council hosted a public conference with market participants, academics, and other stakeholders to discuss a range of risk management topics.[43] As the Council carried out its analysis of industrywide products and activities, it issued a public request for comment.[44] Following expert analysis across its member agencies, in April 2016 FSOC issued a statement conveying its views on areas of potential risk and next steps for policymakers.[45] These views focused on risks in open-ended vehicles invested in less liquid asset classes as well as leverage in hedge funds.

As FSOC marshaled interagency expertise to determine its collective thinking on financial stability, the SEC as primary regulator initiated a number of rule-making efforts to modernize and enhance the regulatory framework for asset management. In October 2016 the SEC finalized new rules to ensure that mutual funds will have robust programs to manage liquidity risk and meet redemptions in times of stress, and to enhance data collection.[46] The SEC has also proposed, but not yet finalized, important rules on registered funds' use of derivatives, on business continuity, and on transition planning for investment advisors.[47]

Coordinated, Targeted Working Groups

As part of its review of asset management activities, FSOC determined that deeper analysis of potential risks related to the use of leverage by hedge funds was necessary. No single regulator could form a complete picture of such potential risk, so FSOC established an interagency working group to share data and conduct joint analysis. In November 2016 FSOC reported on the efforts of the hedge fund working group.[48]

The hedge fund industry is 15 percent larger now than it was at its peak before the crisis. History has shown the serious risks that can arise in this largely unregulated sector, the best example being the collapse of LTCM in 1998. Could another highly leveraged fund, or set of similarly situated funds, again pose a threat to stability? The working group's analysis found that leverage tends to be concentrated in the largest firms. At the same time, it recognized that the relationship between leverage and risk, and any potential financial stability implications, is complex.[49]

One could argue that hedge fund risk has been mitigated since the LTCM collapse. Prime brokers have reined in fund leverage, Dodd-Frank mandated central clearing for standardized derivatives and margin for uncleared derivatives, and the introduction of Form PF provides important data that were previously unavailable.[50] But it is still the case that no single regulator has the information necessary to assess the potential financial stability risks that may be posed by hedge fund leverage. Take one example: through Form PF, the SEC obtains data on the aggregate derivatives positions of a single fund, but without close collaboration with the CFTC, neither agency fully understands how the fund's activities fit into the broader derivatives market. Moreover, funds' prime brokers collect information for the purpose of understanding their own exposures to funds, yet that information is not aggregated across funds by the Federal Reserve to develop a fuller picture of banking system exposures. Nor are the prime brokerage data consolidated with the derivatives exposures to permit a comprehensive assessment of leverage.

43. The minutes of these meetings are available at www.treasury.gov/initiatives/fsoc/council-meetings/Pages/meeting-minutes.aspx.

44. Notice Seeking Comment on Asset Management Products and Activities, www.federalregister.gov/documents/2015/02/11/2015-02813/notice-seeking-comment-on-asset-management-products-and-activities.

45. "Financial Stability Oversight Council Releases Statement on Review of Asset Management Products and Activities," www.treasury.gov/press-center/press-releases/Pages/jl0431.aspx.

46. See www.sec.gov/rules/final/2016/33-10233.pdf.

47. See www.sec.gov/rules/proposed/2015/ic-31933.pdf (derivatives rules proposal) and www.sec.gov/rules/proposed/2016/ia-4439.pdf (business continuity rule proposal).

48. See "Remarks by Deputy Assistant Secretary Jonah Crane at a Meeting of the Financial Stability Oversight Council," November 16, 2016, www.treasury.gov/press-center/press-releases/Pages/jl0612.aspx.

49. Ibid.

50. The SEC and CFTC issued a joint release in October 2011 adopting new rules for certain advisers to hedge funds and other private funds that are dually registered with SEC and CFTC to report information to the SEC for use by the FSOC in monitoring risks to the US financial system. SEC explains that "Under the new SEC rule, SEC-registered investment advisers with at least $150 million in private fund assets under management (private fund advisers) must periodically file a new reporting form (Form PF) with the SEC." Additionally, "Under [the CFTC] rule, private fund advisers that are also registered with the CFTC as commodity pool operators or commodity trading advisors will satisfy certain proposed CFTC reporting obligations by filing private fund information on Form PF. In addition, such advisers are permitted to report on Form PF regarding commodity pools that are not "private funds" to comply with certain proposed CFTC reporting obligations. As a result, these advisers may consolidate certain of their reporting with respect to private funds and non-private fund commodity pools." For information, see www.sec.gov/rules/final/2012/ia-3308-secg.htm.

ONGOING CHALLENGES

Court Challenges

While designation is but one of FSOC's roles, the challenge currently before the Court of Appeals in the MetLife case is of paramount importance. In December 2014 the Council determined that material financial distress at MetLife could pose a threat to US financial stability.[51] In January 2015 MetLife filed a lawsuit to challenge the decision. In April 2016 the Washington, DC district court unsealed its opinion rescinding FSOC's designation. The Department of Justice appealed that decision on behalf of FSOC, and an appeals court decision is pending.[52]

In exercising its designation authority, FSOC has undertaken extensive analysis and consultation with each firm under review, thoroughly documenting its reasoning. After notifying MetLife in 2014 that it was under review for potential designation, FSOC staff met with MetLife staff more than a dozen times, held multiple meetings with relevant state insurance regulators, and reviewed more than 21,000 pages of materials submitted by MetLife.[53]

The district court rescinded MetLife's designation on the grounds that FSOC had not, according to the judge, assessed the likelihood of MetLife's failure or estimated the potential losses of MetLife's counterparties with sufficient precision. The court also held that FSOC is required to conduct cost-benefit analysis, a requirement that is nowhere to be found in the legislative text or history of Dodd-Frank. Complying with these artificial procedural hurdles would make designations virtually impossible as a practical matter, and the court's reasoning demonstrates a deep misunderstanding of the nature of the decisions FSOC is required to make and the analysis FSOC actually conducted.

The forward-looking nature of designations requires financial regulators to examine thoroughly the potential market impact of direct and indirect exposure to large, highly interconnected financial institutions. The final determinations do not constitute a conclusion by FSOC that a company *is* experiencing financial distress or that it necessarily *will*, but rather that, if distress were to occur, the impact could pose a threat to US financial stability.[54] As became evident in the AIG crisis, risks were allowed to grow unchecked in businesses outside the purview of the company's regulators. It is not that AIG was wholly unregulated—rather, that no regulator was responsible for looking at AIG as a whole.

Using its coordination function and a data-driven approach, FSOC can identify companies whose failure could disrupt the US financial system and can prevent a recurrence of the AIG experience by making sure those companies are under comprehensive supervision.[55] Such companies will be subject to heightened prudential standards—capital, liquidity, resolution planning—which are necessary because of the greater risks they pose to the system. These will be applied in a tailored way that reflects the risks posed by the companies and takes into account existing regulatory protections. Indeed, this is precisely the approach the Fed has proposed with respect to insurance companies designated by FSOC.

Legislative Threats

Many financial firms and trade groups, particularly those under FSOC review or those that anticipate review, have lobbied Capitol Hill. The companies and their lobbyists have succeeded in getting members of Congress to introduce legislation that would restrict FSOC's authorities and make it difficult for the Council to function. In most cases, these bills reflect nothing more than misinformation disseminated by FSOC's opponents.

For example, for a long time certain legislators appeared convinced that designation was a one-way street, with no chance of de-designation, despite annual reviews of prior designations and clear procedures for rescinding an FSOC designation. This myth was exposed with the rescission of GE Capital's designation last year, after GE undertook significant restructuring and FSOC determined that the

51. It is worth noting that MetLife appears systemically risky according to respected academic analyses of systemic risk as well (the systemic risk analysis data produced by NYU Stern School Volatility Institute, for example, is available online: https://vlab.stern.nyu.edu/en/analysis/RISK.USFIN-MR.MES.). These independent analyses did not play a role in the FSOC designation, but do provide support for the idea that MetLife's size, leverage, and interconnectedness merit heightened attention from regulators.

52. For details, see www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx.

53. Basis for the Financial Stability Oversight Council's Final Determination Regarding MetLife, Inc., December 18, 2014, www.treasury.gov/initiatives/fsoc/designations/Documents/MetLife%20Public%20Basis.pdf.

54. Section 113 of the Dodd-Frank Act authorizes the Council to designate a nonbank financial company if "material financial distress at [the] company…*could* pose a threat to the financial stability of the United States" (emphasis added). See also "Statement from Treasury Secretary Jacob J. Lew on MetLife V. Financial Stability Oversight Council," April 7, 2016, www.treasury.gov/press-center/press-releases/Pages/jl0410.aspx.

55. For details, see www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf.

company's financial services operations no longer posed a systemic risk to financial stability.

Nonetheless, legislative threats to FSOC's authorities remain. The House Financial Services Committee recently passed the CHOICE Act, sweeping legislation that would roll back all of FSOC's substantive authorities, resulting in what would amount to a regulatory book club without the ability to address systemic risk in any meaningful way.[56]

Even proposals that appear more benign—for example, purporting to codify improvements FSOC itself has adopted—would in fact undermine or even neutralize the Council's authority. The FSOC designation process already takes two years, and these "reform" proposals would effectively make new designations impossible to carry out in practice.

A particularly insidious version of this red tape approach often ironically appears under the heading of increasing the "transparency" of the FSOC process. The proposition is that creating a check list of criteria for designation and de-designation would be fairer by permitting companies to fix identified vulnerabilities and thereby avoid, or exit from, designation.[57] But FSOC has been exceedingly transparent with respect to the criteria for designation and the specific reasons each designated firm was found to pose potential risks.[58] Moreover, FSOC reformed its process just over two years ago to include even more engagement with firms under consideration and greater transparency to the public.[59] Finally, firms considered for designation are, by definition, large multifaceted financial institutions, and only a holistic approach to assessing risk can be effective. Any fixed list of criteria would be easy to game, and there are not likely to be one or two easy "fixes" for avoiding designation.

These same proposals also impose six-month review periods for primary regulators, further delaying a process that takes at least two years. Primary regulators are already consulted extensively, so the additional review merely throws sand in the gears of FSOC's process. Furthermore, FSOC would be required to review and respond to hypothetical restructuring proposals submitted by companies under consideration, inviting dilatory tactics. The designation and then de-designation of GE Capital shows that the existing process works in a fair, open, and timely manner—including through a great deal of interaction directly with the company.

When congressional opponents of FSOC have been unable to achieve their desired substantive goals, they have resorted to using the power of the purse. FSOC's modest budget of less than $8 million per year is currently funded by de minimis assessments imposed on the largest banks and designated nonbank financial companies. Some members of Congress have contemplated defunding FSOC, which could be accomplished through the budget reconciliation process, i.e., with a simple majority in the Senate (rather than the 60 votes needed to repeal any part of Dodd-Frank more directly). Others have threatened to subject FSOC to appropriations (and therefore to potential micromanagement by Congress)—perversely putting taxpayers on the hook, rather than keeping this minimal cost with the largest and riskiest financial institutions, where it belongs. The reality is that Congress has starved agencies subject to appropriated funding for years—most notably the CFTC and SEC. Independent funding, paid for by the regulated industry, is widely acknowledged as best practice and works well for agencies like the FDIC and OCC.

PROSPECTS FOR SYSTEMIC RISK WITHOUT FSOC

If FSOC were abolished or its powers severely curtailed, what would take its place? The PWG would presumably continue to exist, with authorities similar to those that prevailed before 2008—which is to say, none of consequence. One might also suppose that the Federal Reserve and other regulators would retain certain of their pre-2008 powers.[60] The problem for this arrangement is that it would risk some version of a repeat of exactly what happened in the run-up to the global financial crisis.

All major jurisdictions with modern financial systems face a future in which banks, nonbanks, securities markets, and derivatives transactions are intertwined. Without

56. "Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs." For details, https://financialservices.house.gov/uploadedfiles/hr_10_the_financial_choice_act.pdf.

57. In a May 18, 2017, hearing held by the Senate Banking Committee, Treasury Secretary Steven Mnuchin said, "I do support the concept of transparency. And I do believe that if a company is being designated that they should understand what would be required to be de-designated if they want to derisk their business" (see www.c-span.org/video/?428291-1/treasury-secretary-comes-fire-glasssteagallstance&start=2469; segment starting at the 40:22 minute mark; transcription by the authors).

58. See footnote 51 and accompanying text.

59. For details, see www.treasury.gov/press-center/press-releases/Pages/jl9766.aspx.

60. In fact, Dodd-Frank significantly curtailed regulators' crisis response tools. The authority of the Federal Reserve to lend directly to nonbanks (so-called "section 13(3)" authority) and of the FDIC to backstop banks' non-deposit liabilities were employed extensively in the crisis, but both were limited by Dodd-Frank.

FSOC, four problems would again become apparent in the United States:

1. Major gaps would open up between regulators, allowing space in which financial firms could operate without effective oversight. This would risk a repeat of the AIG Financial Products experience.
2. No regulator would have sufficient authority to deal with systemic risks that developed in the space between banks and nonbanks. Policymakers might wish that the Federal Reserve could deal with these issues, but the Fed's mandate (absent a systemic designation through FSOC) with regard to securities firms and derivatives transactions is very weak—unless these have a direct and obvious impact on bank holding companies.
3. Perhaps most importantly, policymakers should expect and—to the extent that it makes sense—encourage financial innovation while at the same time recognizing that even beneficial innovations create new products that may not fit within existing regulatory frameworks. Policymakers should bear in mind what happened with credit default swaps: a sensible idea for insurance became a weapon of mass financial self-destruction.
4. Designation of systemically important entities is an integral element of international standards established by national regulators and various international bodies. If the United States were to abolish the systemic designation process, this would most likely trigger a race to the bottom across leading international jurisdictions.

FSOC has been an effective forum for interagency coordination and information sharing thus far. However, it has not yet been faced with a shock of truly systemic proportions. If—or rather when—it is, the ability of a council with 15 members, 10 of whom vote, and limited direct authority may be tested. If FSOC is to be reformed, it must be to make it a more effective body, not less.

FSOC's international peers (see appendix A) enjoy substantial direct authority and could serve as a model for useful reforms. For example, FSOC's authority to make recommendations to primary regulators under Section 120 could be strengthened by making its recommendations binding in the absence of action by the regulator.

Abandoning, undermining, or curtailing the powers of FSOC would increase the risks of another major financial crisis—on the scale of what happened in 2008 or worse. No one can predict the precise nature or timing of the next crisis. But FSOC is this country's best and likely only guardian against systemic collapse. It must be preserved, protected, and even strengthened. And FSOC leadership must carry out with vigor the core mandate of identifying risks to the financial stability of the United States. The American people, for whom memories of the last financial crisis remain vivid, are entitled to expect no less.

APPENDIX A

CHANGES IN EUROPEAN SYSTEMIC RISK REGULATION SINCE 2008

Two jurisdictions that faced serious problems during the crisis responded with institutional changes that are relevant for thinking about FSOC: the United Kingdom and the European Union. In both the United Kingdom and the euro area, authority over systemically important financial institutions (SIFIs) has shifted toward central banks. This is true also in the United States, in the sense that the Federal Reserve supervises SIFIs. But in terms of determining who or what is systemically important, in the American political and regulatory system it is very hard to see this working without a separate integrative body, i.e., FSOC.

The global financial crisis of 2008 made it clear that major economywide problems could develop due to failures of management and regulation at the intersection between banks and the nonbank sector, including across international borders. From a regulatory design perspective, the predominant postcrisis idea—and consensus across major industrial countries—was to ensure that the most powerful and appropriate government agencies had clear responsibility for system stability, to close gaps between regulators and to prevent new gaps from developing.

The Bank of England had a strong traditional focus on financial stability, and for a long time senior management regarded this as an essential purpose of the Bank.[61] However, the UK Financial Services and Markets Act of 2000 transferred statutory bank regulation authority to the Financial Services Authority (FSA).[62] The FSA reported to Treasury ministers and, through them, to Parliament. In theory the FSA was supposed to function as an integrated all-powerful regulator, but in practice it proved relatively passive and ineffective.

In 2013, after the crisis, the Bank of England resumed unambiguous authority for systemic risk regulation and the FSA's functions were essentially split in two: an independent Financial Conduct Authority and a Prudential Regulation Authority (part of the Bank of England).[63]

The Bank's Financial Policy Committee (FPC)—a separate entity from the Prudential Regulation Authority—is focused on financial stability and can change key "macroprudential" policy instruments to achieve that goal.[64] The FPC has legislated powers that include the authority to give specific instructions to other "micro" regulators that must be followed and to issue broader recommendations.[65]

There is partial overlap of membership between the Financial Policy Committee and a Monetary Policy Committee (which sets interest rates and is responsible for meeting the inflation target), but both committees have separate part-time members who are not Bank of England staff.[66]

In the European Union governments recognized the need to strengthen the regulatory system, especially at the macroprudential level, and moved accordingly.[67] However,

61. The Bank of England published one of the first central bank financial stability reviews, starting in 1996; see www.bankofengland.co.uk/archive/Pages/digitalcontent/historicpubs/fsr.aspx.

62. The FSA is now defunct but its website is still very helpful: www.fsa.gov.uk/pages/about/what/index.shtml.

63. The FCA does have some prudential responsibility. "The Financial Conduct Authority is the conduct regulator for 56,000 financial services firms and financial markets in the UK and the prudential regulator for over 24,000 of those firms" (www.fca.org.uk/about/the-fca). "The PRA has three statutory objectives: 1. a general objective to promote the safety and soundness of the firms it regulates; 2. an objective specific to insurance firms, to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders; and 3. a secondary objective to facilitate effective competition" (www.bankofengland.co.uk/pra/pages/default.aspx).

64. "The Committee is charged with a primary objective of identifying, monitoring and taking action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system. The FPC has a secondary objective to support the economic policy of the Government" (www.bankofengland.co.uk/financialstability/Pages/fpc/default.aspx).

65. See "Macroprudential Policy at the Bank of England," *Bank of England Quarterly Bulletin* Q3, pp. 192–200, by Paul Tucker, Simon Hall, and Aashish Pattani, www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2013/qb130301.pdf. "The FPC has a distinct set of powers to give Directions to the PRA and FCA to deploy specific macroprudential tools that are prescribed by HM Treasury, and approved by Parliament, for these purposes." And "The FPC can also make Recommendations to the PRA and FCA on a 'comply or explain' basis—in which case, the regulators are required to act as soon as reasonably practical. If one of these regulators were to decide not to implement a Recommendation, it must explain the reasons for not doing so."

66. "The Committee has thirteen members, of which six are Bank staff including the Governor, four Deputy Governors and the executive director for financial stability. Five members of the Committee are independent experts chosen from outside the Bank, and selected for their experience and expertise in financial services. The Chief Executive of the Financial Conduct Authority is also a member. The Committee also includes a non-voting member from HM Treasury" (www.bankofengland.co.uk/financialstability/Pages/fpc/default.aspx).

67. A 2009 report, led by Jacques de Larosière, made a number of recommendations and led to the creation of the European Systemic Risk Board and the European Banking Authority in 2010, http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf.

as in the United States, potential institutional improvements are complicated by the presence of disparate authorities with their own jealously guarded independence.

In 2010, aiming to create a more integrated framework, the European Union established the European Systemic Risk Board (ESRB), as part of the European System of Financial Supervision.[68] The ESRB operates alongside the European Banking Authority (EBA), which is charged with most aspects of the regulation, but not the supervision, of EU banks as well as the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pension Authority (EIOPA). National-level regulators also continue to operate and remain important both in supervision and in some aspects of regulation not governed by EU law.

The ESRB is chaired by the president of the European Central Bank (ECB), which has important de facto responsibilities for system stability in the euro area (accounting for 19 of the 28 EU member states). In addition, in 2014 the euro area created the Single Supervisory Mechanism, which operates under the auspices of the ECB.[69] The ECB is now the licensing authority for all banks in the euro area, and directly supervises banks labelled "significant" (those with more than €30 billion in total assets). Authority over any nonbank element of systemic risk remains more diffuse, but analysis and guidance are centralized in the ESRB.

There is no precise equivalent to FSOC in the United Kingdom, the euro area, or at the level of the European Union. There are close parallels, however, in terms of post-crisis attempts to clean up lines of responsibility—and to put someone in charge. In Europe, it is central banks that now substantially have this responsibility, subject to the caveats explained above. In the United States, the Federal Reserve now has a clearer systemic responsibility, but our regulatory structure is much more fragmented—and FSOC is needed to bring all relevant officials onto the same page.

68. "The ESRB is responsible for the macroprudential oversight of the EU financial system and the prevention and mitigation of systemic risk. The ESRB therefore has a broad remit, covering banks, insurers, asset managers, shadow banks, financial market infrastructures and other financial institutions and markets" (www.esrb.europa.eu/about/background/html/index.en.html).

69. See www.bankingsupervision.europa.eu/about/thessm/html/index.en.html.