Cross-border Derivatives Regulation

Better Markets’ Summary Presentation

June 21, 2013

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Coming to a **U.S.** City Near You? The Cost of the CFTC Not Getting Cross Border Right
Essential to Protect the American People, Financial System, Economy

• Derivatives market was where the last crisis
  – Was invisibly incubated
  – Ignited the financial crisis
  – Acted as a conveyor belt to transmit the crisis throughout the globe
  – Cost trillions of dollars of losses

• That’s why the CFTC was given the statutory mandate to regulate cross border derivatives activities
Costs to U.S. have been staggering

• Too much of financial reform discussion is antiseptic, academic, bloodless & historical

• Financial reform necessary because
  – Worst financial collapse since 1929
  – Worst economy since the Great Depression
  – Report: Going to cost the U.S. $12.8+ trillion

• Money, however, tells only part of the story of lives, families, communities suffering from coast to coast
THE COST OF THE WALL STREET-CAUSED
FINANCIAL COLLAPSE AND ONGOING
ECONOMIC CRISIS IS MORE
THAN $12.8 TRILLION

A Report From

BETTER MARKETS

September 15, 2012
That’s not even close to all the costs

• Doesn’t include all fiscal policy costs:
  – Much of annual $1 trillion deficits due to increased expenditures and decreased tax receipts from the financial & economic crises
    • Most of discussion about budget cuts due to those costs

• Doesn’t include monetary policy & QE costs:
  • Unprecedented zero interest rate policy (ZIRP) AND
  • Unprecedented asset purchases resulting in a $3+ trillion Fed balance sheet

• All necessitated by the financial collapse & economic crisis it caused
SEC Proposed Rule is Inapplicable to CFTC

• The SEC was given statutory authority limited solely to anti-evasion and no mandate regarding cross border jurisdiction

• The CFTC was given the same anti-evasion authority, but also given an affirmative, expansive statutory mandate to regulate cross border derivatives activities
“(c) Rule of construction. No provision of this title [15 USCS §§ 78a et seq.,] that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this title [15 USCS §§ 78a et seq.,] that was added by the Wall Street Transparency and Accountability Act of 2010....”

Section 772(b) of the DFA
CFTC Statute:

“(i) Applicability. The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), **shall not apply to activities outside the United States unless** those activities—

(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are **necessary or appropriate to prevent the evasion of any provision of this Act** that was enacted by the Wall Street Transparency and Accountability Act of 2010.”

Section 722(d) of the DFA
Derivatives Market Jurisdiction:

CFTC 96.5%, SEC 3.5%

- Of the immense derivatives markets, the SEC has jurisdiction for only the tiny securities based swaps portion of the markets
  - This is, at most, 3.5% of the derivatives market
- The CFTC has jurisdiction for 96.5% of the derivatives market
- Plus, the CFTC has the expertise & decades of experience with derivatives
Relative Proportions of Swaps and Security Based Swaps

Source: BIS Annual derivatives market report, 2012. Note, if either DTCC data or CFTC-reported data were used, the SEC portion of the market would be under 3%. Thus, 3.5% is the maximum.
Turning the World Upside Down

The CFTC following the SEC’s views under these circumstances turns the world upside down

- It would be as if CFTC regulations were applied to 100% of mutual funds because less than 1% of mutual funds are also regulated by the CFTC as CPOs
  - Never happen
    - Shouldn’t happen
    - With cross border or anything else
CFTC Should Not Wait for the SEC

- It would be irresponsible for CFTC to wait for the SEC
- SEC at very beginning of their regulatory process
  - Just proposed a rule on May 1, 2013
    - Not even any substantive comments yet
- CFTC has been working on cross border for
  - 2 ½ years, beginning before January 2011
  - Proposed guidance June 2012
    » After 1 ½ years of deliberation, including huge industry input
  - After yet more consideration, further guidance in Dec. 2012
  - After even more input, latest draft circulated May 16, 2013
  - Deadline of July 12, 2013 set 7 months ago
  - Already too many delays
SEC Proposed rule is weak & will be ineffective in achieving CFTC legal mandate

• The SEC proposal will almost certainly be the starting gun for a global race to the bottom
  – Talks a lot about focusing on risk, but the rule itself focuses on the form of entities, making arbitrage relatively easy
  – Recognizes risk from guaranteed affiliates, but then excludes them
  – Takes a territorial approach, but allows substituted compliance even within the territorial United States (as to external bus conduct standards)
SEC Substituted Compliance is weak, nontransparent, fails to protect the U.S. & invites regulatory arbitrage

- SC not in DFA & of questionable legal basis
- SEC proposed rule focuses on so-called “holistic” approach to regulation and purportedly comparable “outcomes,” but in only 4 overly broad broad categories
- SEC proposes to consider irrelevant factors not in the statute & which will put the U.S. at risk
- SEC proposes a process that lacks transparency & fails to ensure public notice or input
Federal Reserve Bank rejecting failed substituted compliance

- Pre-crisis regulation in the U.S. of foreign bank subsidiaries and branches largely left to home country regulation
- Financial crisis revealed that to be total failure
- Now, Fed proposed rule on foreign bank organizations (FBOs) requires them to form an intermediate holding company subject to Fed regulations on capital, etc.
Required harmonization already done

• Congress ensured that the scope did not go beyond U.S. interests by expressly limiting the scope of the law to only certain activities
  – Only duty to “consult & coordinate ... to the extent possible,” which has been done

• Law clear: consult, not subordinate; then act to reduce risk to U.S. from cross border activities as mandated by the law
There are no conflicts with international regulators

- No conflicts b/c no one has passed comprehensive Title VII-like derivatives laws & won’t for **years**
- Plus, 3 comprehensive reviews show no current conflicts:
  - CFTC General Counsel’s office
  - European Commission
  - Financial industry
- CFTC cannot afford to wait years before acting simply to avoid the **possibility** of future conflicts
  - If they materialize, CFTC & foreign jurisdictions can work them out as they have with Japan re clearing
CFTC Should **Not** Wait for Foreign Regulators, Rules or Laws

- The CFTC is years ahead of European regulators & the rest of the world
  - To wait would mean that there are **no** meaningful regulations in place protecting the US
- Finalizing cross border **now** would apply CFTC rules only where appropriate
  - Foreign dealers could apply for substituted compliance where appropriate when foreign rules come into existence
Europe is Years Behind the US

• The EMIR (regulation), which governs clearing and data reporting, was supposed to be effective by now
  – At least one CFTC Commissioner claims that this was the primary/sole reason the December 2012 exemptive order was set to expire July 12, 2013
  – However, EMIR has been delayed – again – and will not become effective until later this year or early next year
    • Assuming no more delays, which isn’t guaranteed
European Title VII-like Comprehensive Derivatives Regulation is 2 to 5 Years Away

• MiFID2/MiFIR, which governs execution, trading, position limits, etc., will not be finalized for years, according to the best estimates currently available
  – EMIR + MiFID2/MiFIR = DFA Title VII-like comprehensive derivatives regulation

• Comprehensive derivatives regulation in Europe might not be in place until as late as 2018
Europe’s Convoluted Process & Timeline

- Europe’s process for regulations & laws makes the US look speedy, streamlined & efficient
- There are level 1 and level 2 requirements
  - Level 1 has 3 steps:
    1: the European Commission (EC)
    2: the European Parliament (EP) and European Council (Council) (acting parallel, but independently)
    3: Trialogue negotiations, votes, etc.
  - Level 2: guidance & national implementation
    • However, even once this is “finalized,” there are objection periods when the Council & EP may (& do) delay the process further
ESMA (European Securities & Market Authority) finished its level 2 technical requirements for EMIR in late 2012 (the equivalent of a CFTC rulemaking).

It was then challenged by the EP, but has now been modified and approved.

- Data reporting will begin later this year.
- Clearing is supposed to begin next year (2014) and will be gradually phased in (ideally in 2014 as well).
  - However, no mandatory clearing determination by ESMA has yet been made.

Bottom line is: EMIR should be fully in effect by the end of 2014.
MiFID2: Where Europe Is & Where It Has to Go

• In June 2013, MiFID2/MiFIR was approved by the Council & EP and now moves to Trialogue negotiations
  – The EP, EC & Council now begin the process of negotiating provisions for the final document
  – ESMA is starting in parallel to work on some technical standards, but will need the final text resulting from EP, EC and Council Trialogue negotiations to complete most of them, which have to then be implemented
    • That could (and almost certainly will) take years
• The EMIR trialogue (which was less controversial than the MiFID2/MiFIR trialogue will be) missed several deadlines and took longer than expected
  – It is therefore virtually certain that estimates of the timeline for finalizing MiFID2/MiFIR are too optimistic
• Bottom line: MiFID2/MiFIR will not be in effect until at least 2015 and may not be until 2018
Cross Border derivatives activities have already cost the U.S. a great deal

- **Shipping jobs, businesses & revenue overseas, but risk & liabilities from foreign operations stay in/come back to the U.S.:**
  - **Bear Stearns**: Cayman affiliates operating in New York with swaps desk in London
  - **Lehman Bros**: swaps book run through London (G)*
  - **AIGFP**: French affiliate operating in London (G)
  - **Citigroup**: Cayman affiliates operating in London (G)
  - **JPMorgan**: “London Whale” = ‘nuf said (G)
  - **LTCM**: Cayman affiliates operated in London

*involved guarantees by U.S. corporate parent or U.S. affiliate
AIGFP risk came home to the U.S.
(blue U.S., red European)

Total Maiden II & III Lane Payouts to AIG Counterparties
($ Billions)

- Goldman Sachs
- Deutsche Bank
- Societe Generale
- Barclays
- Merrill Lynch
- Bank of America
- BNP Paribas
- UBS
- HSBC Bank USA
- Citygroup
- Dresner Kleinwort
- ING
- Calyon
- Morgan Stanley
- Bank of Montreal
- Wachovia
- AIG International Inc
- Royal Bank of Scotland
- Dresner Bank AG
- Credit Suisse
- Rabobank
- Paloma Securities
- Citadel
- Landesbank Baden-Wuertemberg

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Not Just AIG: Citigroup

- Citigroup sponsored several Cayman-incorporated SIVs -- essentially small banks funded with commercial paper, with no capital requirements.
- Nominally “bankruptcy remote”, but with implicit support from Citigroup.
- SIV commercial paper was widely held by MMFs.
- In late 2007 Citigroup was forced to take $59B in assets, from 7 SIVs, onto its balance sheet to avoid asset fire sales and reputational loss.
- The associated write-downs reduced the bank’s capital and began a long-term run on the bank
Not Just AIG: JPMorgan “Whale”

• **London-based JPM** Chief Investment Office made huge, high risk derivatives bets
  – Risk evaluation was manipulated and risk limits were routinely disregarded.

• **NY-based JPM** suffered losses of $6.2+ billion
  – No one in senior management, risk, legal or compliance were aware of the risks or liabilities being assumed by derivatives positions
Global Dealers Are Disasters Waiting to Happen

• Global dealers are so big and so sprawling, it is only a matter of time before there are more disasters that require more U.S. bailouts
  – Moreover, these global banks operate in so many parts of world, shifting business from one place to another takes but a keystroke
• They are structured & staffed by design for regulatory arbitrage & today’s virtual markets make that easy
• That is why the law requires the CFTC to impose strong, effective cross border regulations
Dealer Size & Global Scope Make Cross Border Guidance Critical

- U.S. banks’ dealer activities truly global
- JPMorgan Chase: world’s biggest bank
  - $2.3 trillion in assets U.S. accounting, $3.75 trillion international accounting (conservative numbers)
  - More than 250,000 employees worldwide
  - Operates in more than 60 countries
  - Has thousands of legal entities worldwide
    - Little cost, less time can have legal entities anywhere, doing almost anything
Global Bank Size By Total Assets
Largest banks in the world (blue U.S., red European)
To avoid a misleading impression, the domestic number excludes 656 subsidiaries (all JPM Plymouth Park Tax Services, LLC entities) because they appear to be shell companies that exist solely to hold delinquent property tax liens used to foreclose on homes in the U.S.
JP Morgan Subsidiaries by Country

United States, 1780

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JP Morgan Global Operations
Bank of America Subsidiaries Domestic vs Offshore

UNITED STATES, 1295

OFFSHORE, 1033
Bank of America Subsidiaries by Country

- **United States, 1295
- **United Kingdom, 544
- **Canada, 25
- **Germany, 2
- **India, 17
- **Ireland, 54
- **Jersey, 14
- **Italy, 13
- **Luxembourg, 25
- **Malaysia, 14
- **Mauritius, 8
- **Mexico, 4
- **Saudi Arabia, 5
- **Netherlands, 33
- **Spain, 6
- **Bermuda, 6
- **Belgium, 2
- **Bahamas, 2
- **Gibraltar, 4
- **Brazil, 59
- **China, 7

Bank of America’s European Operations
Goldman Sachs Subsidiaries Domestic vs Offshore
Goldman’s North America Operations
Global banks are experts at moving business activities anywhere in the world.
WASHINGTON — Even as Apple became the nation’s most profitable technology company, it avoided billions in taxes in the United States and around the world through a web of subsidiaries so complex it spanned continents and went beyond anything most experts had ever seen, Congressional investigators disclosed on Monday.

The investigation is expected to set up a potentially explosive confrontation between a bipartisan group of lawmakers and Timothy D. Cook, Apple’s chief executive, at a public hearing on Tuesday.

Congressional investigators found that some of Apple’s subsidiaries had no employees and were largely run by top officials from the company’s headquarters in Cupertino, Calif. But by officially locating them in places like Ireland, Apple was able to, in effect, make them stateless — exempt from taxes, record-keeping laws and the need for the subsidiaries to even file tax returns anywhere in the world.

“Apple wasn’t satisfied with shifting its profits to a low-tax offshore tax haven,” said Senator Carl Levin, a Michigan Democrat who is chairman of the Senate Permanent Subcommittee on Investigations that is holding the public hearing Tuesday into Apple’s use of tax havens. “Apple successfully sought the holy grail of tax avoidance. It has created offshore entities holding tens of billions of dollars while claiming to be tax resident nowhere.”

Thanks to what lawmakers called “gimmicks” and “schemes,” Apple was able to largely sidestep taxes on tens of billions of dollars it earned outside the United States in recent years. Last year, international operations accounted for 61 percent of Apple’s total revenue.

Investigators have not accused Apple of breaking any laws and the company is hardly the only American multinational to face scrutiny for using complex corporate structures and tax havens to sidestep taxes. In recent months, revelations from European authorities about the tax avoidance strategies used by Google, Starbucks and Amazon have all stirred public anger and spurred several European governments, as well as the Organization for Economic Cooperation and Development, a Paris-based research organization for the world’s richest countries, to discuss measures to close the loopholes.

Still, the findings about Apple were remarkable both for the enormous amount of money involved and the audaciousness of the company’s assertion that its subsidiaries are beyond the reach of any taxing authority.

“There is a technical term economists like to use for behavior like this,” said Edward Kleinbard, a law professor at the University of Southern California in Los Angeles and a former director at the Congressional Joint Committee on Taxation. “Unbelievable chutzpah.”
EU banks required U.S. bailouts
(blue U.S., red European)

Twenty Largest Users of Federal Reserve Emergency Lending Facilities
(Daily Peak Borrowing, $ Billions)

Source: Bloomberg.com

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Fed lending to Royal Bank of Scotland (RBS)

Royal Bank of Scotland Group Plc, whose 45.5 billion-pound ($74 billion) emergency capital injection from U.K. taxpayers was the world's biggest announced bank bailout, also got more secret loans from the U.S. Federal Reserve than any other foreign bank. On Oct. 10, 2008, as the bank's stock price plunged 21 percent in a single day, Edinburgh-based RBS was borrowing $62.5 billion from the Fed through its U.S. broker-dealer, $11.5 billion through its New York branch, $10 billion through its RBS Citizens NA bank and $500 million through Citizens Bank of Pennsylvania. The Fed aid exceeded even the 36.8 billion pounds of emergency liquidity the Bank of England supplied in secret to RBS in October 2008. The BOE disclosed the aid package in November 2008, more than a year before the Fed aid was revealed.
Fed lending to Deutsche Bank

Deutsche Bank AG, Germany's biggest bank, navigated the financial crisis without capital injections from the German government. The Frankfurt-based bank, which in 2008 reported its first annual loss since World War II, wasn't so shy about getting liquidity in secret from the U.S. Federal Reserve. The lender tapped the Fed for $66 billion on Nov. 6, 2008 -- $28.2 billion from the Term Securities Lending Facility, $21.8 billion from single-tranche open market operations and $16 billion from the Term Auction Facility. John Gallagher, a Deutsche Bank spokesman, declined to say whether the bank took emergency loans during the crisis from other central banks, such as Germany's Bundesbank.
Fed lending to Barclays

Barclays Plc

$64.9B 724
Peak Amount of Debt on 12/4/2008 Number of Days In Debt to the Fed

$19.1B
Average Daily Balance From 3/1/2007 to 4/30/2010

"There was not a direct subsidy to Barclays" from governments during the financial crisis, Chief Executive Officer Robert Diamond told a U.K. House of Commons hearing in London on June 8, 2011. While the company avoided taking government capital, it was more accepting of emergency cash from the U.S. Federal Reserve. Data show that the London-based bank borrowed $64.9 billion from the Fed on Dec. 4, 2008, more than two months after it agreed to buy the North American unit of Lehman Brothers Holdings Inc. in a bankruptcy auction. The London-based bank was still borrowing more than $40 billion from the Fed as late as June 2009, nine months after the Lehman deal closed. Sarah MacDonald, a Barclays spokeswoman, declined to say whether the bank also got liquidity from the Bank of England.

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Fed lending to Dexia SA

The biggest U.S. banks avoided the discount window, the Federal Reserve’s 97-year-old last-resort lending facility, partly out of concern that tapping it might brand them as weak. Dexia SA, a lender to local governments in Belgium, showed no such reservation. The bank, based in Brussels and Paris, was the discount window’s biggest borrower during the crisis, tapping it for $37 billion in December 2008. Dexia simultaneously borrowed $21.5 billion from temporary Fed programs that were primary sources of emergency funding for U.S.-based Citigroup Inc., Bank of America Corp. and JPMorgan Chase & Co. In all, Dexia owed about 120 billion euros ($168 billion) to central banks at the end of 2008. As of June 30, 2011, it still had 34 billion euros of central-bank funding.
Fed lending to Hypo Real Estate Holding

Hypo Real Estate Holding AG

$28.7B 772
Peak Amount of Debt on 11/4/2008
Number of Days In Debt to the Fed

$11.1B $14B
Average Daily Balance
From 9/1/2007 to 3/30/2010
Capital Raised From Home Governments

Hypo Real Estate Holding AG, a German commercial-property lender with 1,366 employees, borrowed as much as $26.7 billion in November 2008 from the U.S. Federal Reserve through the New York branch of its Depta Bank Plc unit. That’s about $21 million per employee. It borrowed almost one-third as much as Citigroup Inc., which has 190 times as many employees. The Fed aid came in addition to 142 billion euros ($208 billion) of emergency credit lines and debt guarantees from German authorities. Hypo, which invested in mortgage-backed securities in the years before the financial crisis, said in a 2009 report that it lost access to short-term funding after Lehman Brothers Holdings Inc.’s bankruptcy. Hypo didn’t disclose any Fed borrowings until the loans became public in 2011.
But even that’s not all: Costs of Foreign Regulator Failures have been staggering

• In addition to (1) the AIG-like cross border bank/dealer disasters that have come back to cost the U.S. and (2) the trillions in Fed bailouts,
  – There was also massive, widespread and very costly failure of foreign financial regulation even of their own banks and dealers – never mentioned
• The result was many EU banks were nationalized or otherwise bailed out by their own governments during the crisis
## EU bank regulation totally failed

**Foreign depositors, taxpayers and treasuries**

<table>
<thead>
<tr>
<th>EU Banks rescued by their governments during the crisis</th>
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<td><strong>U.K.</strong></td>
<td><strong>Germany</strong></td>
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<tr>
<td>Northern Rock *</td>
<td>West LB</td>
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<tr>
<td>Royal Bank of Scotland *</td>
<td>Landesbank Baden Wurttemberg</td>
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<tr>
<td>Lloyds Banking Group</td>
<td>IKB</td>
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<tr>
<td>Bradford and Bingley *</td>
<td>Hypo Real Estate *</td>
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<td>HBOS</td>
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<td><strong>Belgium</strong></td>
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<td>Dexia *</td>
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<td>KBC Group</td>
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<td><strong>France</strong></td>
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<td>Caisse d'Espargne/Bansque Populaire</td>
<td>Carnegie Bank *</td>
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<tr>
<td><strong>Ireland</strong></td>
<td><strong>Switzerland</strong></td>
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<tr>
<td>Anglo Irish Bank *</td>
<td>UBS</td>
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*Source: Centre for European Policy Studies (2010), Bank State Aid in the Financial Crisis, October*

*government majority ownership*
Banks to get £46bn injection from taxpayers to stay afloat

Fears that bill may rise to £75bn

Bill Treanor
Larry Elliott
Nicholas Watt

The cost to the taxpayer of bailing out Britain’s weakest banks will escalate today when the government announces an injection of more than £40bn in the country’s struggling high street lenders.

This is in the sign of the deepening financial crisis, the government is standing by to take a majority stake in Royal Bank of Scotland and HBOS, owner of the country’s biggest mortgage lender Halifax, and smaller stakes in Barclays and Lloyds TSB.

Top executives from the big banks were in discussions with the Financial Services Authority, Treasury and Bank of England last night about how they would participate in the bailout, originally intended to allow for £25bn to be injected into banks immediately, with a further £25bn later.

But RBS and HBOS are likely to use £25bn alone, and there were estimates last night that the total bill could rise to £75bn.

Sir Fred Goodwin could be ousted as chief executive of RBS, in which the government is ready to take a majority stake.

Three-part package also includes £20bn of fresh funds for interbank lending and a 10% levy on the financial services industry to raise another £20bn.

Europe follows Brown plan for survival

Ian Traynor
Paris
Larry Elliott
Washington

Germany, France, Italy and a further 12 European countries last night unveiled a “comprehensive” plan for salvaging their banking systems from potential ruin, as panicky European leaders met to try to ward off more financial meltdown before the markets reopen today.

An emergency summit in Paris of the 15 countries using the euro single currency was encouraged by Gordon Brown to adopt the rescue plan he launched last week as the template for an increasingly global approach to the financial crisis.

Yesterday’s summit in Paris followed a frenetic weekend of activity in Washington, in which the IMF, the World Bank, the G-7 club of rich western nations and the broader G-20 group, all called for urgent and coordinated action.

Dominique Strauss-Kahn, managing director of the IMF, warned that the global financial system was “on the brink of systemic meltdown”.

The IMF’s main policy committee issued a statement saying that it “recognises that the depth and systemic nature
Good morning, Mr President
Inauguration day: the world wakes up to Obama’s Washington
Analysis Page 11, Editorial Comment Page 12, Plus Special report

RBS plunges despite lifeline

Bank of England
Treasury gives go-ahead to ‘print money’

RBS suffers on the markets

‘Today’s write-off is too much in the good times: the ABN acquisition was an emblem in that...’

Northern Rock: five years on

Rock’s fall has left millions in a hard place

Banking
Jonathan Eley, Elaine Moore and Tanya Powell look at how Northern Rock’s dramatic failure affected investors, savers and mortgage borrowers

When Northern Rock collapsed in September 2007, it was one of the UK’s most respected banks. Its deposit base was strong and many investors regarded it as a safe bet. But its troubles started in 2004, when it began to sell mortgage books to others and turned its lending into a business. By early 2007, the bank had raised £2bn from shareholders and had become one of the UK’s leading mortgage lenders.

Investors
Northern Rock was sold off from its mortgage business. The price was quoted at £1bn, which was less than what it was worth. The bank was then sold to Lloyds TSB for £800m. Investors were left with a loss of £350m.

Mortgages
Northern Rock’s mortgage business was sold to Lloyds TSB. The new owners were expected to pay out millions in compensation to customers who were affected by the collapse. The bank also had to give up its right to sell mortgages to other lenders.

Savings
The bank’s savings business was sold to TSB, with the new owners expected to pay out millions in compensation to customers who were affected by the collapse. The bank also had to give up its right to sell savings products to other lenders.

Outlook
Northern Rock’s collapse was a major blow to the UK’s banking sector. It highlighted the risks of relying too heavily on mortgage lending and underlined the importance of maintaining a strong capital base.

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Foreign financial regulators failed miserably to protect their own taxpayers, depositors, treasuries.
The costs of those failures have been staggering, exceeding GDP.

- Because these costs are ongoing, it’s impossible to calculate how much these failures will ultimately cost the people of Europe.
  - But we know the peak government bailout costs in just one country: the nationalized cost in the UK alone to 2011 was more than $1.15 trillion pounds.
Trillions More in Costs to European Citizens

• Because these banks/dealers were nationalized, their total liabilities have been assumed by the public
  – Just one of the five UK nationalized dealer banks’ RBS, had total assets (& therefore total liabilities) in 2008 of 2.2 trillion pounds
  • The UK’s entire GDP in 2008 was just 1.4 trillion pounds
    – The country’s taxpayers have had to assume private liabilities well above their entire GDP
Foreign financial regulation has failed shamefully in other areas as well

• There has also been massive, wide-spread, multi-year LIBOR rate-rigging throughout the EU by the large dealer derivatives desks

• Plus, there has been massive, wide-spread, multi-year criminal money laundering by Standard Chartered, HSBC and other global bank/dealers, which was also undetected by European regulators

• And, ongoing: ISDAfix markets, FX markets & who knows what other crimes & manipulation going on
Traders at some of the world’s biggest banks manipulated benchmark foreign-exchange rates used to set the value of trillions of dollars of investments, according to five dealers with knowledge of the practice.
Why would the U.S. CFTC outsource the protection of U.S. taxpayers to anyone with such a poor record?

• In addition, foreign governments have a conflict of interest in enforcing effective rules on foreign banks: less or ineffective regulation will attract business & jobs to their country, with limited downside b/c U.S. pays the bill to bailout the global financial system

• That is why the CFTC was explicitly given the statutory mandate & duty to regulate these markets & market participants directly
  – To protect the U.S. financial system, U.S. economy & U.S. taxpayers
  – If substituted compliance is allowed, it must be robust in form, substance, enforcement & over time
No More Delays: already 2 ½ years of CFTC consideration

• First CFTC meeting on cross border Jan. 2011
  – A year & a half of meetings, consideration, deliberation AND endless industry input

• Initial guidance proposed June 2012
  – Followed by yet more meetings, input, consideration, deliberation

• Additional guidance Dec. 2012, setting deadline of July 12, 2013, 7 months later

• After yet MORE input, latest draft circulated on May 16, 2 months before the deadline of July 12
The American People have been waiting years already

- **3 years** since the Dodd Frank financial reform law was passed
  - July 12, 2013 cross border deadline
  - July 21, 2010 Obama signed DFA
- **5+ years** since the financial crisis
  - March 17, 2008 Bear Stearns failed
  - September 5, 2008 Fannie/Freddie receivership
  - September 15, 2008 Lehman Brothers failed
  - 2013 – this year – 5 year anniversary
CFTC Must Finalize By July 12

- After more than 2 ½ years, it is time to finalize
- 4+ weeks left to work out any differences
  - Plenty of time
- SEC’s recently proposed rule is inapplicable & weak
  - No basis for delay
- Objections based on speculation by foreign governments/industry no basis for delay
  - Will take years for them to put rules in place
  - Conflicts, **if any**, can be worked out later
- **The time to protect the American people is NOW**
  - Do not wait & do not start with lower standards
    - Can always change to address concerns; simply won’t be able to increase
Coming to a **U.S.** City Near You? **Not if the CFTC Gets Cross Border Right**
Don’t Let This Happen Again

THE COST OF THE WALL STREET-CAUSED FINANCIAL COLLAPSE AND ONGOING ECONOMIC CRISIS IS MORE THAN $12.8 TRILLION

A Report From BETTER MARKETS
September 15, 2012