

The Financial Stability Board: The New Politics of International Financial Regulation

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Abstract

In response to the 2007–08 financial crisis, the G20 forged the Financial Stability Board, a new international body dedicated to promoting regulatory standards that best ensure the stability and soundness of the financial system. The FSB is an umbrella organization; its membership includes representatives from international standard-setters like the Basel Committee and the International Accounting Standards Board, alongside domestic regulators, such as central banks and representatives from national finance ministries and treasury departments. This Article argues that the participation of political appointees in the FSB sets it apart from other international bodies in financial regulation. Through the FSB, elected politicians can shape international financial regulation in ways not available to them in the past. This Article has identified three ways in which the G20 governments intervene in international financial regulation: through promoting specific amendments in international rulemakers' existing standards, setting entirely new policymaking initiatives, and intensifying efforts to monitor compliance with international rules at the domestic level. The Article offers extensive evidence from the interaction between the G20, the FSB, other international bodies, and domestic authorities.

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INTRODUCTION

In the ever-changing world of financial regulation, where new markets, new instruments, and new players continuously challenge established practices, few principles are as widely accepted as the need for independent regulators.¹ The financial system is thought to be best served by highly sophisticated technocrats, protected from the distorting influence of politics.² Yet, the 2007–08 financial crisis saw political leaders fighting to save fledgling financial institutions while burdening sovereign budgets with additional debt. When the crisis abated, legislative reforms around the world tightened banking supervision by creating many new regulatory powers. However, legislators granted these new powers not to independent agencies, as past regulatory paradigms would suggest, but to political leaders directly accountable to voters.³ Effectively, politicians are now responsible for some of the most momentous decisions in a financial institution's life, such as whether it is in default or whether to extend credit to it. As a result, these reforms mark a clear departure from the paradigm of regulatory independence and have strengthened politicians' influence over financial regulation.

This Article claims that the growing influence of politicians over financial regulation characterizes not only domestic regulatory reforms, but international developments as well. In the midst of the 2007–08 financial crisis, as governments and central bankers were struggling to contain the turmoil, the Group of Twenty Finance Ministers and Central Bank Governors (G20) established a new entity, the Financial Stability Board (FSB). The FSB's core mission is to promote the regulatory standards that best ensure the stability and soundness of the financial system.⁴ To achieve this mission, the G20 asked various international rulemakers, such as the Basel Committee and International Organization of Securities Commissions (IOSCO), to participate in a single board, the FSB.⁵ Apart from international rulemakers, the FSB also includes domestic decision makers mostly from G20 countries: independent regulators, such as central bankers and securities commissioners, as well as

1. See Fabrizio Gilardi, *The Formal Independence of Regulators: A Comparison of 17 Countries and 7 Sectors*, 11 SWISS POL. SCI. REV. 139, 140 (2005) (“[T]he OECD recently described [independent regulatory agencies] as ‘one of the most widespread institutions of modern regulatory governance’ . . .”).

2. See Lisa Schultz Bressman & Robert B. Thompson, *The Future of Agency Independence*, 63 VAND. L. REV. 599, 612 (2010) (discussing the view that keeping agencies independent from politics could promote expertise and improve problems).

3. See Stavros Gadinis, *From Independence to Politics in Banking Regulation*, 100 CALIF. L. REV. (forthcoming Apr. 2013) (claiming there has been a “shift away from regulatory independence and towards greater political involvement in post-crisis banking regulation around the world”).

4. *Mandate*, FIN. STABILITY BD., <http://www.financialstabilityboard.org/about/mandate.htm> (last visited Aug. 24, 2012).

5. Chris Brummer, *Origins of the Financial Crisis and International/National Responses: An Overview*, 104 AM. SOC'Y INT'L L. PROC. 435, 436 (2010) [hereinafter *Origins of the Financial Crisis*]; see also G20, *Declaration on Strengthening the Financial System*, at 1 (Apr. 2, 2009) [hereinafter *Declaration*] (detailing the establishment of the FSB by the G20).

representatives of elected politicians, such as finance ministers.⁶ Thus, the FSB's reach spans multiple areas of financial activities and covers some of the most important regulatory players globally.

How does the establishment of the FSB affect international financial regulation? Some academic commentators underlined the FSB's potential to better coordinate the initiatives of its participants, who had previously operated largely independent of one another.⁷ According to this account, the G20 and the FSB act as "executive coordinators" who can rally the troops to better confront complex problems, often involving multiple countries and multiple types of financial activity.⁸ Others doubted whether the FSB's efforts bring real change to financial laws on the ground, since the FSB lacks any formal, binding authority on its participants.⁹

This Article argues that both proponents and critics of the FSB seem to underestimate one of its key attributes: its deeply political character. What sets the FSB apart from other international finance rulemakers is the direct participation of political leaders either elected by voters or immediately accountable to elected officials. Finance ministers and treasury secretaries constitute about one quarter of the FSB's Plenary, a significant bloc in an organization operating on the basis of consensus.¹⁰ This strong relationship between the G20 and the FSB—between elected governments and independent financial regulators—determines the FSB's priorities, the intensity of its implementation efforts, and its ultimate effectiveness. Through the FSB, elected politicians can shape international financial rulemaking in ways not available to them in the past. This Article argues that there are three main ways in which the G20 governments intervene in international financial regulation: through promoting specific amendments in international rulemakers' existing standards,

6. *Origins of the Financial Crisis*, *supra* note 5, at 436–37.

7. See Sungjoon Cho & Claire R. Kelly, *Promises and Perils of New Global Governance: A Case of the G20*, 12 CHI. J. INT'L L. 491, 527 (2012) (discussing the FSB's role as a coordinator amongst various financial networks); Enrique R. Carrasco, *The Global Financial Crisis and the Financial Stability Forum: The Awakening and Transformation of an International Body*, 19 TRANSNAT'L L. & CONTEMP. PROBS. 203, 217 (2010) (discussing how the FSB was founded to "more effectively assist and collaborate with national authorities, standard setting bodies (SSBs) and international financial institutions in addressing vulnerabilities and implementing strong regulatory, supervisory, and other policies in the interest of financial stability"); *Origins of the Financial Crisis*, *supra* note 5, at 437 ("[The FSB] has helped set the basis for deeper coordination in the future between supervisory agencies, central banks, finance ministries, and political elites."); Robert B. Ahdieh, *Imperfect Alternatives: Networks, Salience, and Institutional Design in Financial Crises*, 79 U. CIN. L. REV. 527, 548 (2010) (evaluating how the transition to the FSB "increased [the] ability to serve the coordination functions necessary for financial stability").

8. See Cho & Kelly, *supra* note 7, at 493 (discussing the G20's unprecedented role as an "executive coordinator over pre-existing transgovernmental regulatory networks (TRNs)").

9. See Douglas W. Arner & Michael W. Taylor, *The Global Financial Crisis and the Financial Stability Board: Hardening the Soft Law of International Financial Regulation?* 12–13 (Asian Inst. Of Int'l Fin. Law, Univ. of H.K., Working Paper No. 6, 2009) (discussing future FSB reforms aimed at creating an "enforcement mechanism" that goes beyond the current voluntary system); Bessma Momani, *The IMF and the FSB: Intractable Political Reality and Organizational Mismatch*, in THE FINANCIAL STABILITY BOARD: AN EFFECTIVE FOURTH PILLAR OF GLOBAL ECONOMIC GOVERNANCE? 36, 38 (Stephany Griffith-Jones et al. eds., 2010), available at http://www.cigionline.org/sites/default/files/FSB%20special%20report_2.pdf (discussing how the FSB does not have "the power to challenge a country's sovereignty" and must "remain dependent on moral suasion").

10. See *Members of the Financial Stability Board*, FIN. STABILITY BD., available at <http://www.financialstabilityboard.org/about/plenary.pdf> (last updated Jan. 21, 2013) (listing current members of the FSB and their representatives, including finance ministers and treasury secretaries).

through setting entirely new policymaking initiatives, and through intensifying efforts to monitor compliance with international rules at the domestic level.

A key element of the G20/FSB program consists in proposing specific amendments to prevalent international standards. For example, the G20 promoted the amendment of the capital adequacy rules so as to include a leverage ratio, previously required only in the United States and Canada.¹¹ Similarly, the FSB introduced specific proposals for accounting rules, to be incorporated in the long-standing convergence effort between the two main global standard-setters, the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB).¹²

The FSB has also begun implementing G20 calls for entirely new regulations, typically by assigning one or more of its participant international rulemakers to the task. Primary examples of FSB-led reforms include two of the most important initiatives emanating directly from the 2007–08 financial crisis: the global regulatory framework for systemically important financial institutions and the new standards on over-the-counter derivatives markets.¹³ In both cases, the FSB created working groups, including various independent international rulemakers, provided them with guidance, and monitored their progress.¹⁴

Besides proposing new directions for standard setting, the FSB has also redoubled efforts to ensure the domestic implementation of these standards by adopting measures that increase peer pressure among jurisdictions to comply.¹⁵ Responding to a G20 request, the FSB introduced a peer review program, which subjects an FSB member's financial regulatory system to review by a team that includes regulatory officials from other FSB member countries.¹⁶ The resulting report becomes publicly available in an effort to have FSB member jurisdictions "lead by example."¹⁷ Involving one country's regulatory officials in assessing another country's system is a delicate proposition, which arguably requires political backing. The peer review program expands the FSB's reach beyond the agenda of a regulatory network towards a more holistic approach to international financial regulation.

These FSB activities show the increased interest that political leaders are showing toward financial regulation. Because of its inherently political nature, this

11. Katia D'Hulster, *The Leverage Ratio: A New Binding Limit on Banks*, CRISIS RESPONSE NOTE NO. 11, 1–2 (Dec. 2009), available at <http://rru.worldbank.org/documents/CrisisResponse/Note11.pdf>.

12. Fin. Stability Bd., *Overview of Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability*, at 21–22 (June 19, 2012), available at http://www.financialstabilityboard.org/publications/r_120619a.pdf.

13. Fin. Stability Bd., *Policy Measures to Address Systemically Important Financial Institutions*, at 1 (Nov. 4, 2011), available at www.financialstabilityboard.org/publications/r_111104bb.pdf; Fin. Stability Bd., *Implementing OTC Derivatives Market Reforms*, at 1 (Oct. 25, 2010) [hereinafter *OTC Derivatives Market Reforms*], available at http://www.financialstabilityboard.org/publications/r_101025.pdf.

14. Fin. Stability Bd., *Overview of Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability*, at 6 (June 18, 2010) [hereinafter *G20 Recommendations (2010)*], available at http://www.financialstabilityboard.org/publications/r_100627c.pdf; Fin. Stability Bd., *Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability*, at 2 (Apr. 10, 2011), available at http://www.financialstabilityboard.org/publications/r_110415a.pdf.

15. Fin. Stability Bd., *FSB Framework for Strengthening Adherence to International Standards*, at 1 (Jan. 9, 2010) [hereinafter *Strengthening Adherence*], available at http://www.financialstabilityboard.org/publications/r_100109a.pdf.

16. *Id.* at 2.

17. *Id.*

development represents a reevaluation of the earlier paradigm; whereas in the past, independent regulators were left to their own devices, they must now operate under close surveillance by political superiors. While recognizing the value of past regulatory efforts and the technical expertise and capabilities of independent rulemakers, governments around the world want to steer these rulemakers' efforts towards certain goals, oversee their progress, and intervene where necessary. In the past, international meetings at the heads-of-state level had little to say about financial regulation; after the 2007–08 financial crisis, these meetings show interest in measures as technical as accounting standards.

The Article proceeds as follows. Part I outlines briefly the highly decentralized mode of rulemaking in international finance, fragmented along sectorial, national, and professional lines. Part II argues that the composition of the FSB, which brings diverse international and domestic decision-makers together under the watch of G20 finance ministers, emphasizes the FSB's political underpinnings. Part III traces political influence on some of the most important initiatives of the FSB in the last few years, by highlighting connections with the G20. It shows that the G20's frequent and critical interventions constitute a stark departure from the paradigm of networks of independent regulators that was prevalent in international financial regulation in the last few decades.

I. INDEPENDENT INTERNATIONAL RULEMAKERS IN FINANCIAL REGULATION

International financial regulation famously lacks a central international organization, similar to the World Trade Organization, to launch regulatory initiatives, streamline governmental negotiations, and resolve any arising inter-governmental disputes.¹⁸ In the absence of international commitments, each jurisdiction retains full domestic policymaking capacity; however, efforts to harmonize, or at least to coordinate, regulatory policies have found increasing success in the last two decades.¹⁹ These efforts typically center on sets of standards covering specific areas of regulatory interest, such as capital adequacy, accounting, or disclosure obligations. While these standards do not generate any legally-binding obligation for compliance by domestic legislators, many governments willingly adopted them as part of their domestic laws.²⁰ As a result, these standards gained the moniker of "soft law" among legal academics.²¹

How do these standards come to life? Often, soft law instruments are the product of so-called transnational regulatory networks (i.e., meetings between independent regulators from various states who agree to a common set of standards on a specific

18. See CHRIS BRUMMER, *SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM: RULE MAKING IN THE 21ST CENTURY* 61 (2012) (discussing how the production of rules and standards in the international financial system arises through informal institutional arrangements with non-binding bylaws and charters).

19. See DAVID ANDREW SINGER, *REGULATING CAPITAL: SETTING STANDARDS FOR THE INTERNATIONAL FINANCIAL SYSTEM* 21 (2007) (noting the attractiveness of international regulatory harmonization to financial regulators because it allows them to strike a balance between stability and competitiveness domestically).

20. See Stavros Gadinis, *The Politics of Competition in International Financial Regulation*, 49 HARV. INT'L L.J. 447, 449–50 (2008) [hereinafter *The Politics of Competition*] ("In finance, as in other fields, governments adopt regulatory reforms to satisfy the demands of their constituencies.").

21. See, e.g., Chris Brummer, *How International Financial Law Works (and How It Doesn't)*, 99 GEO. L.J. 257, 261 (2010–11) (describing how international financial regulation has a "soft law" quality since international financial rules are promulgated through non-binding agreements).

topic).²² The priorities, choices, and implementation strategies of these networks reflect the preferences of the participating regulatory officials, with very little input from their elected governments. In other cases, global standards originate in non-state entities whose membership includes prominent professionals, such as the IASB,²³ or key industry participants, such as the International Swaps and Derivative Association (ISDA).²⁴ These private standard-setters are free to set their own course, regardless of the preferences of various governments. Finally, standards and policies produced by powerful domestic regulators can also be influential internationally, even though they do not result from any negotiation between governments. Overall, then, international financial regulation is the premise of decentralized rulemaking, which takes place away from the central political stage, with regulatory agencies and market participants in the key roles.

According to leading academic accounts, the insulation of international financial regulation from politics has a plethora of advantages in addressing global challenges. The soft law model invites participation from multiple countries, multiple levels of policymakers, and multiple market players, sidestepping concerns about the feasibility and legitimacy of a world government.²⁵ Moreover, soft law instruments benefit from the collective knowledge of industry experts. Transnational regulatory networks rely on independent agencies from around the world, which focus on technical regulatory priorities rather than political agendas.²⁶ Private firms and professional associations bring to the policymaking table their deep understanding of market mechanisms and outcomes. As critics were quick to point out, these favorable portrayals of decentralized policymakers reflect the dominant ideology of the last two decades, which prioritized technical expertise but ignored experts' biased perspectives.²⁷

22. See Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503, 518 (1995) (addressing the generation of transnational voluntary norms that govern transnational networks); David Zaring, *Rulemaking and Adjudication in International Law*, 46 COLUM. J. TRANSNAT'L L. 563, 576 (2007–08) (discussing how international regulators initially create broad general principles and then attempt to harmonize substantive regulatory practices through harder rules or best practices).

23. See Andreas M. Fleckner, *FASB and IASB: Dependence Despite Independence*, 3 VA. L. & BUS. REV. 275, 277, 283 (2008) (detailing how policymakers rely on private entities such as the IASB, whose members include accountants, businesspeople, financial analysts, and academics, to set financial accounting and reporting standards); *The Politics of Competition*, *supra* note 20, at 478 (describing the IASB as not being formally attached to any particular jurisdiction).

24. See Anna Gelpern, *Commentary, Contracts as Organizations*, 51 ARIZ. L. REV. 57, 60, 63 (2009) (defining the ISDA as a private trade group with members worldwide, including service providers, large financial intuitions, commercial banks, etc.).

25. See ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 4–7 (2004) (discussing government networks as a means to accomplish the soft law model, which can achieve the functions of a world government by, for example, connecting foreign officials and creating multinational support systems, without sovereign states losing their domestic authority).

26. See Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT'L L. 1, 24 (2002) (“[P]olitical deference to agency actions in international affairs appears justified by a sense that the issues are narrowly technical . . . rather than broadly political . . .”); David Zaring, *International Law by Other Means: The Twilight Existence of International Financial Regulatory Organizations*, 33 TEX. INT'L L. J. 281, 282 (1998) (“The regulatory cooperation studied here—involving banking, securities, and insurance regulators—is not the product of state arrangement, but of international agreement among domestic regulatory agencies that claim to be working for themselves, rather than for their governments.”).

27. See Philip Alston, *The Myopia of the Handmaidens: International Lawyers and Globalization*, 8 EUR. J. INT'L L. 435, 441 (1997) (discussing the disturbing nature of the theory that a global agenda should be set and implemented by “special interest groups”); David Kennedy, *The Politics of the Invisible College: International Governance and the Politics of Expertise*, 5 EUR. HUM. RTS L. REV. 463, 471 (2001) (describing

However, international financial regulation faces many dilemmas that present distributional consequences, which technical experts alone are ill-equipped to address.²⁸ Regardless of these criticisms and limitations, soft law instruments have become the prevailing regulatory paradigm in international financial regulation over the last twenty years.

The 2007–08 financial crisis—which saw giant financial institutions around the world collapsing in days, retail deposits being threatened, and sovereign debtors facing bankruptcy—revealed major weaknesses in the regulatory framework of the global financial sector. To fight financial turmoil of tremendous proportions, the governments of the most important financial markets in the world convened as the G20.²⁹ Together, they launched the first serious attempt to bring some order to the decentralized policymaking sphere of international finance by creating a new international body: the FSB.³⁰ The FSB is an umbrella organization that comprises the diverse players active in international financial policymaking—international institutions, regulatory networks, private associations, and domestic regulators.³¹ In addition to these bodies, the FSB also has representatives from all G20 governments—including finance ministers and treasury secretaries.³² The FSB’s mandate is not to overhaul existing rulemakers but to coordinate their actions and remedy any gaps arising from their separate missions.³³

Will the FSB alter the profile of international financial regulation? This question has sparked a heated debate among academic commentators. Some welcomed the G20’s choice to “leverage” prior standards and saw the G20/FSB arrangement as creating an “executive coordinator over pre-existing transgovernmental regulatory networks.”³⁴ In this light, the FSB formalizes and invigorates long-standing G20 efforts to coordinate regulatory networks. Although governments had tried in the past to achieve this coordination through the issue of non-binding “blueprints” or “frameworks,”³⁵ they had not been very successful.³⁶ Instead, this “network of networks” proved essential in addressing the 2007–08 financial crisis, which spanned many different aspects of the financial system at once.³⁷ Others emphasized that the FSB’s wide membership ensures that emerging economies’ voices will also be heard,

how international policy professionals leave national politics behind and “think in terms of ‘best practices,’ practical necessity, [and] efficiency”); Sol Picciotto, *Networks in International Economic Integration: Fragmented States and the Dilemmas of Neo-Liberalism*, 17 NW. J. INT’L L. & BUS. 1014, 1036 (1996–97) (discussing the growth of international networks made up of both private and social actors, such as academics, professionals, scientific experts, etc., in which issues are increasingly resolved without direction from the state and national interest).

28. Pierre-Hugues Verdier, *Transnational Regulatory Networks and Their Limits*, 34 YALE J. INT’L L. 113, 115 (2009).

29. Cho & Kelly, *supra* note 7, at 516–17.

30. *Id.* at 521.

31. *Origins of the Financial Crisis*, *supra* note 5, at 436; *FSB Member Institutions*, FIN. STABILITY BD., http://www.financialstabilityboard.org/about/fsb_members.htm (last visited Oct. 27, 2012).

32. *Origins of the Financial Crisis*, *supra* note 5, at 436–37.

33. *Mandate*, *supra* note 4.

34. Cho & Kelly, *supra* note 7, at 493, 495.

35. *Id.* at 504–06.

36. See Carrasco, *supra* note 7, at 207 (stating that the Financial Stability Forum’s work was initially underwhelming in addressing problems in the financial regulatory system).

37. *Origins of the Financial Crisis*, *supra* note 5, at 436–37.

and thus signals greater cross-border commitment to comply with FSB decisions.³⁸ Still others praised the increased salience of the FSB's actions, resulting from the increased transparency of its governance structure.³⁹

Other commentators were more reluctant to see the FSB's impact in international financial regulation. After all, the FSB does not have any legally-binding powers and still relies heavily on the same tools that pre-crisis rulemakers used, such as soft law instruments and peer pressure.⁴⁰ As a result, the FSB lacks any meaningful means to hold its members accountable if they violate their promises to comply.⁴¹ Even in terms of soft law instruments, some critics viewed the FSB's agenda as incomplete, complaining that it prioritized certain weaknesses underlined by the 2007–08 financial crisis but avoided others,⁴² and lacked a mechanism for revising its agenda to adjust to future challenges.⁴³

II. FSB: INSTITUTIONAL STRUCTURE

As an organization that brings together international standard-setters with domestic government executives and independent regulators, the FSB borrows the membership setup of an earlier institution, the Financial Stability Forum (FSF). More specifically, the international bodies that participated in the FSF included the Basel Committee on Banking Supervision, the IASB, and the IOSCO, along with the International Monetary Fund (IMF) and the World Bank.⁴⁴ In terms of domestic policymakers, the FSF initially included finance ministers, central bank governors, and

38. Mario Giovanoli, *The Reform of the International Financial Architecture After the Global Crisis*, 42 N.Y.U. J. INT'L L. & POL. 81, 111 (2009); see also Pierre L. Siklos, *The FSB: Where Do We Go From Here?*, in THE FINANCIAL STABILITY BOARD: AN EFFECTIVE FOURTH PILLAR OF GLOBAL ECONOMIC GOVERNANCE?, *supra* note 9, at 57, 58 (stating that "several economies have emerged as powerful players . . . to challenge the 'old' economic powers," and that those economies hold their positions in part because they "agree[d] on several aspects of . . . a desirable economic policy strategy").

39. See Robert B. Ahdieh, *Imperfect Alternatives: Networks, Salience, and Institutional Design in Financial Crises*, 79 U. CIN. L. REV. 527, 548–50 (2010) (citing the institutional design changes of the FSB, such as the appointment of a secretary-general, the mandate for balanced representation on the steering committee, and the adoption of a formal charter, as factors increasing the organization's salience and legitimacy).

40. Arner & Taylor, *supra* note 9, at 14; Momani, *supra* note 9, at 38.

41. See Domenico Lombardi, *The Governance of the Financial Stability Board*, BROOKINGS INSTITUTION ISSUES PAPER 6 (Sept. 2011) (stating the FSB lacks "any formal power" and that it implements decisions through peer pressure rather than through the enforcement of legal obligations).

42. See Cally Jordan, *Does 'F' stand for Failure: The Legacy of the Financial Stability Forum 28* (Melbourne Law Sch., Legal Studies Research Paper No. 429, 2009), <http://ssrn.com/abstract=1478527> (arguing that while the FSB attempts to reform the financial system through tasks such as conducting "early warning exercises" and implementing "regulatory standards," it has failed to "adequately address issues associated with the capital markets, the instrument of propagation of systemic risk on a transnational scale").

43. See Douglas W. Arner, *Adaptation and Resilience in Global Financial Regulation*, 89 N.C. L. REV. 1579, 1626 (2011) (contending that the FSB's agenda "largely parallels the agreed causes of the global financial crisis and the necessary elements of regulation to address systemic risk," but that the FSB has not yet successfully established the "core elements of a new financial regulatory framework," and has thus not yet established future resilience).

44. Carrasco, *supra* note 7, at 206. There were other international organizations that were also members of the FSF, such as the Bank for International Settlements (BIS), the Organization for Economic Cooperation and Development (OECD), the International Association of Insurance Supervisors (IAIS), the Committee on Payment and Settlement Systems (CPSS), and the Committee on the Global Financial System (CGFS). *Id.* For a full discussion of the FSF membership and development, see *id.* at 204–08.

heads of key financial regulators from the G7 countries (Canada, France, Germany, Italy, Japan, the U.S., and the U.K.).⁴⁵ Australia, Hong Kong, the Netherlands, and Switzerland, along with the recently established European Central Bank (ECB), joined the FSF at a later date.⁴⁶

The FSF's mission was ambitious, but its parameters were vague and evasive. Back in 1999, the G7 governments asked the FSF to assess the vulnerabilities of the financial system, identify and coordinate action to address these vulnerabilities, and promote coordination and information exchange among authorities responsible for financial stability.⁴⁷ However, this mandate lacked direction regarding any means available to the FSF or any concrete deliverables that would satisfy the mandate's general objectives.⁴⁸

By 2008, governments around the world had decided to assign to the FSB many tasks that go beyond generally-expressed objectives. Thus, the FSB must "advise on and monitor best practice in meeting regulatory standards,"⁴⁹ assuming a direct role in assessing how various countries implement global rules in their domestic legal order. Moreover, the FSB must "undertake joint strategic reviews of the policy development work of the international standard setting bodies."⁵⁰ This represents a coordinated effort by political leaders around the world to influence the agenda of global rulemakers that they do not control directly. Other parts of the FSB's mandate provide it with even more concrete responsibilities, such as "set[ting] guidelines for and support[ing] the establishment of supervisory colleges"⁵¹ and "support[ing] contingency planning for cross-border crisis management, particularly with respect to systemically important firms."⁵² In this way, the FSB can influence the handling of a crisis by domestic regulators.

How can the FSB achieve these objectives? Compared to its predecessor, the FSF has two main institutional advantages: an expanded membership and a tighter governance structure. The FSF's membership has expanded to include representatives from all G20 countries and Spain.⁵³ Emerging economies such as China, India, and Brazil are now part of a global coordinated effort on financial regulation.⁵⁴ Moreover, the FSB now counts among its members the European Commission, the jurisdictional reach of which extends well beyond that of the E.U.

45. *Id.* at 206; Cho & Kelly, *supra* note 7, at 516.

46. Carrasco, *supra* note 7, at 206.

47. *Id.* at 205–06.

48. See *Origins of the Financial Crisis*, *supra* note 5, at 436–37 (chronicling the FSF's transition from an organization with no mandate to generate standards to an organization, renamed the FSB, with the mandate to "monitor global financial stability and promote medium-term reform"); Carrasco, *supra* note 7, at 207–08 (explaining that the standards the FSF implemented prior to the 2007–08 financial crisis often contained inconsistencies, were not transparent, and produced no effective results due to the FSF lacking any means to ensure adherence).

49. Fin. Stability Bd. Charter § I, art. 2(1)(d) [hereinafter Charter], available at http://www.financialstabilityboard.org/publications/r_090925d.pdf.

50. *Id.* § I, art. 2(1)(e).

51. *Id.* § I, art. 2(1)(f).

52. *Id.* § I, art. 2(1)(g).

53. Lombardi, *supra* note 41, at 5.

54. Charter, *supra* note 49, Annex A.

Member States that are also part of the G20.⁵⁵ As a result, the FSB now offers a negotiation forum for a wider set of interests.⁵⁶

The governance structure of the FSB establishes a series of institutional mechanisms that distinguish between setting high-level objectives and pursuing policy reforms on the ground, thus allowing the FSB to be more effective. These institutional mechanisms give politicians a significant role in shaping the reform agenda and determining the priorities of international standard-setters. The FSB Charter accomplishes this goal through two main FSB organs: the Plenary and the Steering Committee.

The Plenary is the central organ of the FSB and the one in which political appointees—finance ministry officials—have the most distinct presence.⁵⁷ The Plenary is a meeting of all FSB members that convenes at least twice a year.⁵⁸ While most standard-setting bodies and international organizations have one or two seats at the Plenary, individual countries have up to three seats, which reflect the size of their national economy and financial sector.⁵⁹ Countries with three seats are represented by their banking regulator (in the U.S. case, the representative of the Federal Reserve), their finance minister (in the U.S. case, the representative of the U.S. Treasury), and their securities regulator (in the U.S. case, the representative of the Securities and Exchange Commission (SEC)).⁶⁰ Countries with two seats are represented by their banking regulator and their finance minister, while countries with one seat participate only with their banking regulator.⁶¹ In total, eighteen out of seventy Plenary members are political appointees.⁶² Arguably, these eighteen politicians are the most important component of the FSB Plenary, as the remaining members—the independent central bankers and securities regulators—regularly meet in other forums, such as the Basel Committee or IOSCO,⁶³ without the participation of any political appointee. Thus, it is the presence of the politicians that distinguishes the FSB from the other international bodies in financial regulation.

The importance of politicians' presence through the Plenary becomes clear once one considers the wide span of the Plenary's powers. According to the FSB's charter,

55. *Id.*; Lombardi, *supra* note 41, at 5; *About the European Commission*, EUROPEAN COMMISSION, http://ec.europa.eu/about/index_en.htm (last updated Oct. 11, 2012).

56. *See* Lombardi, *supra* note 41, at 5, 9 (discussing the wider membership process of the FSB in comparison with that of the FSF, thus fulfilling one of the FSB's original objectives).

57. Charter, *supra* note 49, § III, arts. 7(1), 8(1).

58. *Id.* § III, arts. 8(2), 9(1).

59. *Id.* § III, art. 10(1); *see generally* *Members of the Financial Stability Board*, *supra* note 10 (listing current FSB members, including countries, standard-setting bodies, international organizations, and their representatives).

60. Charter, *supra* note 49, § III, art. 8(1); *Members of the Financial Stability Board*, *supra* note 10, at 4.

61. *See* *Members of the Financial Stability Board*, *supra* note 10, at 1 (listing the member countries of the FSB along with their representatives, such as Australia, which has two representatives, one from its reserve bank and one from the treasury, and Argentina, which has one representative from the country's central bank).

62. *See id.* (counting as political appointees all members that work for a ministry or treasury, which totals fifteen, plus the heads of monetary authorities in authoritarian regimes—Hong Kong, Singapore, and Saudi Arabia).

63. *See* *Fact Sheet—Basel Committee on Banking Supervision*, BANK FOR INT'L SETTLEMENTS, <http://www.bis.org/about/factbcbs.htm> (last visited Sept. 11, 2012) (detailing the membership of the Basel Committee, which includes "[s]enior officials responsible for banking supervision or financial stability issues"); *Ordinary Members of IOSCO*, OICV-IOSCO (2012), http://www.iosco.org/lists/display_members.cfm?memID=1&orderBy=none (listing the members of the IOSCO).

the Plenary is the FSB's main decision-making authority; it "adopts reports, principles, standards, recommendations and [other] guidance . . . appoints the Chairperson," and generally holds the ultimate responsibility for any matter concerning the FSB.⁶⁴ Moreover, the Plenary reaches decisions by consensus.⁶⁵ As a result, any international standard-setter who wishes to gain the FSB's seal of approval must now convince the G20 governments about the value of its proposed regulatory framework. More importantly, the Plenary is not simply a passive international body, waiting around for the various international standard-setters to submit their newly minted rules for evaluation. Rather, the FSB is proactive; it often asks international standard-setters to develop rules in a specific direction, either in response to a G20 request or of its own initiative.⁶⁶ In subsequent meetings, the Plenary can easily assess the progress of such initiatives, as the most important international standard-setters are themselves Plenary members.

Overall then, the composition and powers of the Plenary allow politicians to gather first-hand information about how international standard-setters are rethinking their rules and how individual countries are implementing these rules. This information is useful because it allows politicians to understand the content of international rules and the risks that other countries pose to the global financial system. However, it also allows politicians to intervene in these standard-setters' work. The FSB can express G20 governments' desire to attain a certain objective, underline the importance of previously-overlooked regulatory goals, and push for a more timely regulatory solution to a pressing problem. As FSB members, the international standard-setters are on notice—governments are watching over their shoulders.

This continuous information gathering might also help build a sense of accountability and commitment to a common cause as standard-setters and individual states present their progress or their setbacks to the Plenary. Formally, FSB member states are under no legal obligation to comply with FSB decisions, for example, by adopting FSB-proposed standards.⁶⁷ However, FSB members recognize that non-binding legal rules can be hugely influential and that participation with the FSB increases peer pressure "to align domestic policies with the views of the consensus."⁶⁸ By providing information to other governments about each member's progress in

64. Charter, *supra* note 49, § III, art. 7(3)(c), (e), (g).

65. *Id.* § III, art. 7(2).

66. Andrew Baker, *Mandate, Accountability and Decision Making Issues to be Faced by the FSB*, in THE FINANCIAL STABILITY BOARD: AN EFFECTIVE FOURTH PILLAR OF GLOBAL ECONOMIC GOVERNANCE?, *supra* note 9, at 19, 20.

67. See Legal & Monetary & Capital Mkts. Dep'ts of the Int'l Monetary Fund (IMF), *IMF Membership in the Financial Stability Board*, at 3, 6 (Aug. 10, 2010) [hereinafter *IMF Membership*], available at <http://www.imf.org/external/np/pp/eng/2010/081010.pdf> ("The FSB Charter is an informal and non-binding 'memorandum of understanding' for cooperation adopted by its 'members' that 'incorporates the possibility for the FSB to make recommendations to its members on policy issues' and allows the FSB to 'advise[] on the implications of market developments for regulatory policy . . .').

68. *Id.* at 6. For a discussion on the pressure emanating from the adoption of a policy by other countries and from the recommendations of international organizations, see Katerina Linos, *Diffusion Through Democracy*, 55 AM. J. POL. SCI. 678 (2011) (arguing that information about these adoptions helps gain voter support for reforms); Ryan Goodman and Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004) (arguing that countries become acculturated into certain norms).

implementing commonly agreed upon regulatory standards, the FSB institutionalizes peer pressure at a level that non-governmental regulators could not reach.

In implementing its decisions, the Plenary gets significant support from the Steering Committee, as well as additional ad hoc committees that it can create. The Steering Committee includes participants from all member states and international standard-setters, all at a seniority level equal or lower than that of the Plenary.⁶⁹ Some countries participate in the Steering Committee only with their central banks, while others include finance ministry representatives.⁷⁰ The Steering Committee meets more often than the Plenary (at least four times a year) and takes steps necessary to move forward with the implementation of the Plenary's decisions.⁷¹ For example, the Steering Committee monitors the progress of the international standard-setters in implementing the Plenary's recommendations and provides related information to FSB members.⁷² Through its preparatory work for FSB meetings, the Steering Committee can influence decision-making at the Plenary.⁷³ Also, the Steering Committee supervises the work of other committees and working groups set up by the Plenary.⁷⁴ Chief among these are the Standing Committee on Standards Implementation, the Standing Committee on Assessment of Vulnerabilities, and the Standing Committee on Regulatory Cooperation.⁷⁵ This governance structure is designed to help the FSB establish a strong presence in the international financial architecture and see that other international bodies follow the FSB's directions and guidance.⁷⁶

III. FSB'S RELATIONSHIP WITH THE G20

In redesigning the FSB's mission and governance structure, the G20 envisaged it as the institutional mechanism that would shape international financial regulation according to G20 decisions.⁷⁷ Through the FSB, the G20 reclaims for national governments some of the policymaking ground previously left to networks of independent regulators and private industry associations. However, the FSB does not replace pre-crisis regulatory networks; rather, it orchestrates their actions and directs their initiatives towards objectives determined by political leaders.⁷⁸

69. See *FSB Steering Committee*, FIN. STABILITY BD. (Sept. 28, 2012), <http://www.financialstabilityboard.org/about/steeringcommittee.pdf> (listing all members of the Steering Committee and designating their seniority by providing their positions and home countries).

70. *Id.*

71. Charter, *supra* note 49, § III, arts. 9(1), 13(1)–(2).

72. *Id.* § III, art. 13(4)(a), (c).

73. See Lombardi, *supra* note 41, at 11–13 (“Although the Plenary is the formal decisionmaking body, in practice, the Steering Committee plays a very influential role . . . [It] shapes and in effect manages the FSB’s agenda.”).

74. *Id.* at 11.

75. *Id.* at 10.

76. *Overview*, FIN. STABILITY BD., <http://www.financialstabilityboard.org/about/overview.htm> (last visited May 24, 2012). Just like the FSF, the FSB also has a small permanent secretariat, hosted by the Bank of International Settlements (BIS) in Basel, Switzerland. *Id.* Staff are either paid by the BIS or are on loan from another international organization (such as the IMF or the World Bank). *IMF Membership*, *supra* note 67, at 5–6.

77. See Lombardi, *supra* note 41, at 5 (discussing how the FSB, which was established to promote financial stability, had a stronger institutional basis than the FSF and was made accountable to G20 leaders).

78. See Stephany Griffith-Jones, Eric Helleiner & Ngaire Woods, *Introduction*, in *THE FINANCIAL STABILITY BOARD: AN EFFECTIVE FOURTH PILLAR OF GLOBAL ECONOMIC GOVERNANCE?*, *supra* note 9, at 6, 6–7 (detailing the

The G20 achieves these goals by assigning various missions to the FSB. In some instances, G20 governments are looking to introduce reforms in standards already established by international rulemakers, such as the Basel capital adequacy rules.⁷⁹ In this case, the FSB focuses on monitoring rulemakers' progress and suggesting directions they can take. In other instances, the G20 might be looking to create a new regulatory framework, perhaps because it has identified a gap in pre-existing standards, or because it intends to coordinate government action more closely. Once the G20 wants to initiate a policymaking effort in a specific area, the FSB carries forward the implementation.⁸⁰ It typically sets up a special preparatory committee, enlists the help of one or more of its participating regulatory networks (such as the Basel Committee or IOSCO), provides input during the drafting stage, and monitors its progress.⁸¹ Finally, the G20 recognized that to build robust financial systems across borders, not only does it have to endorse global standards, but it should also ensure that domestic regulators implement these standards.⁸² Thus, the FSB heads efforts to examine whether governments actually implement these standards domestically.⁸³

In carrying forward its mission, the FSB interacts regularly with the G20. The G20 receives regular reports from the FSB regarding developments in international financial regulation. The FSB also submits full progress reports to the G20, typically twice a year.⁸⁴ In the interim, the FSB Chairman often submits letters to the G20, informing it of any developments.⁸⁵ This common interaction with the G20 is a key characteristic of the period after 2008, which marked the transition from the FSF to the FSB. Indeed, such interactions between the G20 and the FSF were much more rare before 2008.⁸⁶ The FSB also takes part in G20 summits, where leaders have created a special Finance Track.⁸⁷

FSB's responsibilities as a coordinator which reports to the G20 and orchestrates the work of national financial authorities and international standard-setting bodies).

79. See Basel Comm. on Banking Supervision, *Progress Report on Basel III Implementation*, at 2–5, 8 (Oct. 2012), available at <http://www.bis.org/publ/bcbs232.pdf> (stating that G20 governments asked jurisdictions to implement Basel III, which enhances the regulatory framework of Basel II and Basel 2.5 that has already been established in multiple jurisdictions).

80. See, e.g., Cho & Kelly, *supra* note 7, at 527, 540 (discussing how, during the 2007–08 financial crisis, the G20 instructed the FSB to coordinate exit strategies for bailout plans and to urge the United States and the European Union to resolve inconsistencies among their CRA regulations).

81. See Charter, *supra* note 49, § III, art. 11 (detailing the ability to establish committees to support its missions); e.g., *infra* text accompanying notes 96–99 (discussing the FSB's monitoring of efforts by international rulemakers concerning the convergence of accounting standards).

82. See *Declaration*, *supra* note 5, at 1 (discussing the G20's principles of "strengthening transparency and accountability, enhancing sound regulation, promoting integrity in financial markets and reinforcing international cooperation" and how the G20 is establishing the FSB to "pursue the maintenance of financial stability . . . and implement international financial standards"); Charter, *supra* note 49, § I, art. 2(1)(d) ("As part of its mandate, the FSB will . . . monitor best practice in meeting regulatory standards.").

83. Fin. Stability Bd., *Improving Financial Regulation*, 12 (Sept. 25, 2009) [hereinafter *Improving Financial Regulation*], available at http://www.financialstabilityboard.org/publications/r_090925b.pdf.

84. See *Publications*, FIN. STABILITY BD., http://www.financialstabilityboard.org/list/fsb_publications/index.htm (last visited Aug. 24, 2012) (listing the FSB's progress reports that are available to the public).

85. *Id.*

86. For example, there were only three progress reports from the FSF to the then G7 from 1999 to 2007. *Id.*

87. *The Finance Track*, G20, <http://www.g20.org/index.php/en/financial-track> (last visited Oct. 27, 2012).

The paragraphs below outline briefly some of the most important initiatives the FSB has undertaken since its establishment. While the discussion below is not exhaustive, it showcases the various modes of cooperation between the FSB and other international rulemakers, domestic regulators, national governments, and the G20.

A. *FSB Action Concerning Pre-existing Sets of Standards*

The 2007–08 financial crisis revealed significant weaknesses in many banks' risk profile assessment and capital reserves. Thus, the revision of the Basel Committee's capital adequacy framework is one of the centerpieces of post-crisis reforms. Since its inception, the FSB has worked with the Basel Committee towards revising these standards. In its first report to the G20, the FSB described its cooperation with the Basel Committee and highlighted the directions in which they have agreed to act.⁸⁸ They decided to increase minimum capital requirements over time and to harmonize the definition of Tier 1 capital across borders while raising transparency.⁸⁹ More importantly, the report states that the Basel Committee has agreed with the FSB to introduce a leverage ratio as part of its capital adequacy requirements.⁹⁰

The introduction of the leverage ratio in the Basel framework is an example of how government politicians have increased their influence on the work of independent regulatory networks, such as the Basel Committee. The leverage ratio, which represents the ratio of Tier 1 capital to a bank's assets, was previously used only in the U.S. and Canada.⁹¹ The proposal for including a leverage ratio in the Basel rules was put forward by the G20, which first called for expanding the use of the leverage ratio across borders in its April 2009 Declaration on Strengthening the Financial System.⁹² The FSF responded to the G20's call by including this recommendation in its 2009 report on procyclicality.⁹³ By September 2009, the Basel Committee had agreed to follow this recommendation.⁹⁴ Indeed, the Basel Committee fully endorsed the leverage ratio in the public announcement of its proposals for banking sector reforms in December 2009.⁹⁵ The trajectory of the leverage ratio proposal demonstrates how, in post-crisis international financial regulation, a network of independent regulators—the central bankers of the Basel Committee—adjusts to recommendations by political entities, such as the political leaders of the G20 and the finance ministers participating in the FSB.

Another area where the FSB's approach consists mostly of closely monitoring international rulemakers' efforts is the convergence of accounting standards. Since its

88. *Improving Financial Regulation*, *supra* note 83, at 4–5.

89. *Id.* at 4.

90. *Id.* at 4–5.

91. D'Hulster, *supra* note 11, at 2.

92. The Declaration states: "risk-based capital requirements should be supplemented with a simple, transparent, non-risk based measure which is internationally comparable, properly takes into account off-balance sheet exposures, and can help contain the build-up of leverage in the banking system." *Declaration*, *supra* note 5, at 2.

93. Fin. Stability Forum, *Report of the Financial Stability Forum on Addressing Procyclicality in the Financial System*, at 2 (Apr. 2, 2009), available at http://www.financialstabilityboard.org/publications/r_0904a.pdf.

94. *Improving Financial Regulation*, *supra* note 83, at 4–5.

95. See Basel Comm. on Banking Supervision, *Strengthening the Resilience of the Banking Sector*, at 2 (Dec. 2009) available at <http://www.bis.org/publ/bcb164.pdf> (stating the Committee will introduce a leverage ratio as a supplementary measure to the Basel II risk-based framework).

establishment, the FSB has called for IASB and FASB to reinforce their efforts for convergence and to take measures to limit the procyclicality of accounting methods.⁹⁶ In its follow-up report to the G20, the FSB provided a detailed discussion of the specific issues that present challenges to the IASB/FASB convergence effort, such as addressing different approaches on impairment of financial assets and valuation uncertainty in fair value measurement guidance.⁹⁷ Later, the FSB continued to provide follow-up to this report.⁹⁸ That accounting inspires this level of detail in a report to government leaders is, on its own, a fascinating development. Before the 2007–08 financial crisis, politicians had very little interest in accounting convergence, an issue handled exclusively by low-level officials in domestic regulators.⁹⁹ This reporting suggests that IASB and FASB do not operate in an institutional vacuum, as was the case before, but rather under the watchful eye of political actors, who are eager to see results from these rulemakers.

B. FSB Policymaking Initiatives at G20's Request

One of the most important initiatives that the FSB undertook as the leading policymaker concerns the establishment of a regulatory framework for global systemically important financial institutions, or G-SIFIs. The FSB developed the G-SIFI framework in response to a request by the G20 to address the “too big to fail” problem that became so evident during the 2007–08 financial crisis.¹⁰⁰ The G-SIFI framework showcases the FSB's importance because addressing this regulatory issue requires the cooperation of regulators from different sectors—banking, securities, and insurance—in different countries as well as at the international level. Only a body with the FSB's wide membership could bring such a project to fruition.¹⁰¹

To put together the G-SIFI framework, the FSB first developed a set of recommendations that outline the framework's key components.¹⁰² These recommendations demonstrate the multiple levels that need to work together for such a project. From a substantive law standpoint, the FSB calls for stricter capital

96. *Improving Financial Regulation*, *supra* note 83, at 7.

97. *G20 Recommendations (2010)*, *supra* note 14, at 8.

98. *See, e.g.*, Fin. Stability Bd., Overview of Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability, at 22–23 (Nov. 4, 2011) [hereinafter *G20 Recommendations (2011)*], available at http://www.financialstabilityboard.org/publications/r_111104gg.pdf (detailing the strides that have been made upon the FSB's recommendations to address the issues of the IASB and FASB convergence effort).

99. For example, the Roadmap that initiated the convergence effort between U.S. GAAP and IFRS was proposed by an SEC official, the agency's Chief Accountant, rather than the Commission itself. *The Politics of Competition*, *supra* note 20, at 479. For a discussion of the decision for convergence between US GAAP and FASB, *see id.* at 477–80.

100. Fin. Stability Bd., *Reducing the Moral Hazard Posed by Systemically Important Financial Institutions: Interim Report to G20 Leaders*, at 2 (June 18, 2010), available at <http://www.fsa.go.jp/inter/fsf/20100702/05.pdf>.

101. In fact, the United States showed strong support for the introduction of the G-SIFI framework through the FSB. *See* Michael S. Barr, *The Financial Crisis and the Path of Reform*, 29 *YALE J. ON REG.* 91, 113–14 (2012) (stating that the United States is implementing the Dodd-Frank Act to address the problems created by SIFIs and should continue to do so).

102. Fin. Stability Bd., *Reducing the Moral Hazard Posed by Systemically Important Financial: FSB Recommendations and Time Lines*, at 2 (Oct. 20, 2010), available at http://www.financialstabilityboard.org/publications/r_101111a.pdf.

requirements for G-SIFIs to ensure higher capital-loss absorbency, and for laws outlining swift resolution procedures for G-SIFIs that face default.¹⁰³ From a supervisory perspective, the FSB calls for more intense supervision efforts by domestic regulators and for the creation of supervisory colleges over G-SIFIs with regulators of different national origins.¹⁰⁴ To ensure implementation of these recommendations, the FSB sets specific deadlines for member states and requires them to participate in a specialized G-SIFI peer review process.¹⁰⁵

The FSB's initial recommendations left many open questions, which the FSB addressed by enlisting the cooperation of various regulatory bodies, both domestic and international. To help the FSB determine which financial institutions qualify as G-SIFIs, various sectorial international bodies, such as the Basel Committee and the IAIS, have proposed methodologies.¹⁰⁶ Moreover, the FSB established specific working groups and committees to develop various elements of the framework, such as the working groups for developing *Key Attributes of Effective Resolution Regimes* and for developing *Essential Elements of Effective Recovery and Resolution Plans*.¹⁰⁷ After reviewing the recommendations of its working groups, the FSB recognized that implementation of the framework would require legislative changes in many jurisdictions to ensure that national authorities have all the necessary powers.¹⁰⁸ In effect, jurisdictions would have to establish regulatory bodies that bring many domestic regulators around the same table, similar to the Financial Stability Oversight Council in the United States. Thus, the FSB established a Peer Review Council in order to monitor the full and consistent implementation of the G-SIFI measures across borders.¹⁰⁹ Meanwhile, the G20 showed great interest in the FSB's progress, asking for regular updates on the progress of reforms and endorsing the FSB's recommendations.¹¹⁰

Another important policymaking initiative launched by the FSB concerns the regulation of over-the-counter derivatives markets. During the 2007–08 financial crisis, derivatives were blamed for magnifying uncertainties regarding the health of financial institutions because the extent of a financial institution's exposure to other institutions' failure was hard to ascertain. To address this problem, the G20 endorsed in 2009 a proposal to mandate the trading of standardized derivatives on exchanges or other trading platforms and the clearing of these trades through central counterparties.¹¹¹

103. *Id.*

104. *Id.*

105. *See id.* at 11–12 (outlining peer review and other processes for implementing the FSB's recommendations and listing respective timelines for completion of these processes).

106. Fin. Stability Bd., *Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability*, at 2 (Apr. 10, 2011), available at http://www.financialstabilityboard.org/publications/r_110415a.pdf.

107. *Id.* at 3.

108. G20 Recommendations (2011), *supra* note 98, at 2.

109. *Id.* at 6.

110. *See* Press Release, Fin. Stability Bd., *FSB Issues International Standard for Resolution Regimes*, (Nov. 4, 2011), http://www.financialstabilityboard.org/press/pr_111104dd.pdf (stating that FSB SIFI policy measures have been “endorsed by the G20 leaders”); G20, *G20 Leaders Declaration*, para. 42 (June 18–19, 2012), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131069.pdf (stating the G20 request that the FSB report on further progress on its SIFI reforms).

111. G20, *Leaders' Statement: The Pittsburgh Summit*, at 9 (Sep. 24–25, 2009) http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.

To implement this proposal, the FSB followed a process similar to the one developed for the G-SIFI measures described above. First, the FSB created a working group led by representatives of the Committee on Payment and Settlement Systems, IOSCO, and the European Commission.¹¹² The working group developed a framework with regulatory recommendations, which were included in the FSB's October 2010 report.¹¹³ Again, the FSB recognized that implementing these recommendations would require significant regulatory changes, and asked its working group to monitor the progress of domestic legislators.¹¹⁴ While domestic legislators moved quickly in some respects, there were delays in others. For example, by November 2011, only the United States had enacted legislation on organized platform trading, one of the FSB's recommendations.¹¹⁵ The FSB's most recent report shows that there has been significant progress since, particularly in the United States, the European Union, and Japan.¹¹⁶

C. FSB and Standard Implementation at the Domestic Level

While global standards mark an important step in the effort to coordinate financial laws around the world, implementation of these standards may vary from country to country. Recognizing this problem, international organizations, such as the IMF and the World Bank, spearheaded initiatives to monitor the implementation of standards in jurisdictions around the world, such as the World Bank's Financial Sector Assessment Program (FSAP).¹¹⁷ However, these organizations did not always make their findings public. Recognizing the need to follow up with the implementation of regulatory standards at the domestic level, the G20 asked the FSB to create a framework that would strengthen compliance with the standards.¹¹⁸

The FSB responded to the G20's request by proposing reforms that reinforce peer pressure among jurisdictions to comply. In the new system, FSB member jurisdictions are expected to "lead by example"¹¹⁹; they should be quick in implementing global standards. To provide to other jurisdictions credible evidence of their commitment to international standards, FSB member states will not only be subject to FSAP assessments, but they will also publish the detailed IMF and World Bank analyses of their domestic regulatory systems.¹²⁰ As the goal of the program is to increase compliance among countries that are not necessarily members of the FSB, the FSB proposed to revisit the FSAP program by reshaping the selection criteria for

112. *G20 Recommendations (2010)*, *supra* note 14, at 6.

113. See *OTC Derivatives Market Reforms*, *supra* note 13, at 1–2 (summarizing the recommendations made by the FSB OTC Derivatives Working Group).

114. See *id.* ("[G]iven the continuous innovation in the OTC derivatives markets, this report identifies areas where monitoring will need to continue and exploration of additional measures is recommended. The FSB OTC Derivatives Working Group will monitor implementation of these recommendations.")

115. *G20 Recommendations (2011)*, *supra* note 98, at 17.

116. Fin. Stability Bd., *OTC Derivatives Market Reforms, Third Progress Report on Implementation*, at 1 (June 15, 2012), available at http://www.financialstabilityboard.org/publications/r_120615.pdf.

117. Paul Hilbers, *The IMF/World Bank Financial Sector Assessment Program*, INT'L MONETARY FUND (Feb. 2001), <http://www.imf.org/external/np/vc/2001/022301.htm>.

118. See generally *Declaration*, *supra* note 5.

119. *Strengthening Adherence*, *supra* note 15, at 1.

120. *Id.*

participating jurisdictions and improving the evaluation process.¹²¹ As the program goes into effect, the FSB has selected and plans to have reviewed about sixty jurisdictions between 2010 and 2011.¹²²

Apart from relying on programs led by other international institutions, the FSB also put together its own program.¹²³ FSB members will take part in a peer review effort, led by experts from other FSB member jurisdictions and international bodies.¹²⁴ The peer review has two features. First, it is complementary to FSAPs as it expands the assessment process into areas not previously covered.¹²⁵ Second, it creates a new, highly interactive process of cross-border reviews among regulators in the leading markets in the world, since many reviewers are themselves agency officials in their home countries.¹²⁶ The FSB experts collect information primarily on the basis of questionnaires completed by the authorities of the country under review, and may hold interviews with them.¹²⁷ The expert team submits a preliminary report for comments first to the country under review,¹²⁸ and then to the FSB's Standing Committee on Standards Implementation (SCSI),¹²⁹ which is comprised of regulatory officials from most FSB member jurisdictions.¹³⁰ After discussion and feedback by the SCSI, the revised draft report goes to the Plenary, which discusses it again and approves it.¹³¹ Having received the Plenary's vote, the report becomes publicly available.¹³²

This multi-stage process provides many opportunities for the exchange of information among regulators and can spark discussions about regulatory failures, successes, and appropriate responses. Repeated interactions allow domestic regulatory officials to acquire hands-on experience on another country's regulatory framework, help build mutual trust, and can come in handy at moments of crisis. The fact that FSB member jurisdictions become accountable not just to an international organization but also to each other aims to deepen the commitment to international standards among the ranks of domestic officials—the ones responsible for enforcing these standards on the ground.

121. *Improving Financial Regulation*, *supra* note 83, at 12.

122. Fin. Stability Bd., *Global Adherence to Regulatory and Supervisory Standards on International Cooperation and Information Exchange*, at 2 (Nov. 2, 2011) available at http://www.financialstabilityboard.org/publications/r_111102.pdf.

123. See *Improving Financial Regulation*, *supra* note 83, at 12 (“The FSB will put in place by the end of 2009 a framework to strengthen adherence to international regulatory and prudential standards.”).

124. *Strengthening Adherence*, *supra* note 15, at 2.

125. See Fin. Stability Bd., *Handbook for FSB Peer Reviews*, at 3 (Dec. 19, 2011) [hereinafter *Handbook*], available at http://www.financialstabilityboard.org/publications/r_120201.pdf (“FSB peer reviews will build on—and avoid duplicating—existing assessment mechanisms, such as FSAPs . . .”).

126. See *id.* at 3–6 (describing the teams who conduct the peer reviews and how they will be composed of experts from FSB members, including both state authorities and international bodies, and describing the prioritization, preparation, consultation, and evaluation processes they participate in during the peer reviews).

127. *Id.* at 8.

128. *Id.* at 10.

129. *Id.*

130. See *Members of Standing Committee on Standards Implementation* 1–2, FIN. STABILITY BD. (2012), <http://www.financialstabilityboard.org/about/scsi.pdf> (listing members of the SCSI, which include regulatory officials, and their respective countries).

131. *Handbook*, *supra* note 125, at 11–12.

132. *Id.* at 12.

While the review process ends with publication of the reports, the FSB's role extends beyond that. The SCSI continues to monitor each jurisdiction's progress in implementing the reforms suggested to remedy the weaknesses identified in the peer review report.¹³³ In addition to peer reviews, which analyze a jurisdiction's overall regulatory framework, the FSB can also conduct thematic reviews, which focus on a specific regulatory problem and study how it has been addressed in various jurisdictions.¹³⁴

CONCLUSION

This Article argues that by creating the FSB, governments in the most important jurisdictions in the world have sent a strong signal about the future of international financial regulation. Before the 2007–08 financial crisis, political leaders had typically shied away from the technical intricacies of the financial system, assigning the role of regulator to independent agencies composed of industry experts and praising the work of private non-profit entities in standard setting. When independent regulators and industry professionals from various jurisdictions formed transnational regulatory networks and associations, politicians readily incorporated their rulemakings into the domestic legal order. After the crisis, the G20 combined diverse regulatory networks, private entities, and independent regulators that have dominated rulemaking in the past thirty years into one council, the FSB, under the watchful eye of domestic finance ministers. In the few years of its existence, the FSB has successfully channeled G20 preferences into international financial regulation. It has asked networks of independent regulators, such as the Basel Committee, to incorporate specific measures in their body of standards. It has launched completely novel rulemaking initiatives, such as the G-SIFI framework, requiring independent regulators and regulatory networks to work closely with each other. And it has reinvigorated assessments of individual jurisdictions' implementation efforts, so as to provide better information to the international community and increase peer pressure towards non-complying countries.

This Article argues that the shift away from the ideals of regulatory independence towards a model of greater political intervention in financial regulation mirrors developments in domestic laws. As argued elsewhere, many jurisdictions reformed their domestic laws to address shortcomings brought to light by the 2007–08 financial crisis and granted more powers to politicians directly elected by voters or other officials accountable to them. This trend shows the salience and urgency that financial regulation has gained after 2008, which triggered an increased political commitment to better safeguard the financial system. This greater involvement of political leaders in international financial regulation suggests a fundamental change in the creation of global rules in this area and a new political economy for finance. Watching the next moves of the FSB will be fascinating.

133. *Id.* at 13.

134. *Id.* at 1–2.