THE PRESENT AND FUTURE OF THE FINANCIAL SERVICES INDUSTRY: CONVERGENCE, CONSOLIDATION, CONGLOMERATION, AND COLLABORATION

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I. INTRODUCTION

Today the financial services industry plays a fundamental role in economic growth and development. The global financial services industry is already a multi-trillion dollar industry with exponential anticipated future growth.[1]

"Significant advances in information, transportation, and telecommunications technologies have transformed global capital markets."[2] Particularly, enhanced information technology (IT) has electronically linked financial markets all over the world by "facilitat[ing] instantaneous world-wide access" to necessary financial information[3] with economies of scale,[4] and thus propelled "global market interconnectedness."[5] The increasing cross-border relationships between countries have intensified competition, and triggered traditional market players to "rethink their business strategies and

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1. J. Steven Jarreau, *Interpreting the General Agreement on Trade in Services and the WTO Instruments Relevant to the International Trade of Financial Services: The Lawyer's Perspective*, 25 N.C. J. INT'L L. & COM. REG. 1, 8 (1999).

2. J. WILLIAM HICKS, INTERNATIONAL DIMENSIONS OF U.S. SECURITIES LAW § 1:11, at 11 (2007).

3. *Id.*

4. Neil McCarthy, *M&A in the Banking Industry Investment Banking Perspective*, 1 FORDHAM FIN. SEC. & TAX L.F. 17, 21 (1996) ("Computers continue to allow for more efficient information processing with economies of scale."). "Economies of scale" or "increasing returns to scale" refers to a situation in which the cost of producing an additional unit of output of a product decreases as a volume of output increases. *See Economies of Scale Definition*, THE LINUX INFO. PROJECT (Sept. 19, 2006), http://www.linfo.org/economies_of_scale.html.

5. Margaret Chew, *Reform of Financial Services: The Effect on the Regulator*, 5 SING. J. INT'L & COMP. L. 569, 569 (2001).

rework their operations." [6] The three-"C" buzzwords of the sea of change in the financial industry are "convergence," "consolidation"[7] and "conglomeration."

In the meantime, the development of the financial services industry has "increase[d] risks that often result in financial distress and crisis."[8] The occurrence of financial crises and the "subsequent reshaping of the financial services landscape provide[s] a stark reminder of the industry's fiercely evolutionary nature."[9] The global financial crisis of 2007–2010 is the most recent financial crisis at the time of this writing. Like other financial crises, this financial crisis is expected to change the landscape of the financial services industry.

This Article outlines the organization of the present financial services industry and hypothesizes about the industry's makeup in the future. The Article first discusses the current three-"C" features of the financial services industry and conducts related case studies. Then, the paper suggests a necessary feature for the future financial services industry by analyzing the implications of the global financial crisis of 2007–2010 for the convergence, consolidation, and conglomeration of the financial services industry.

II. THE PRESENT OF THE FINANCIAL SERVICES INDUSTRY: CONVERGENCE, CONSOLIDATION, AND CONGLOMERATION

A. *Introductory Remarks*

The convergence, consolidation, and conglomeration have widely occurred over the entire financial services industry in the international, domestic, and interface contexts. Globalization, homogenization, and demutualization are keywords that represent main features of each context, respectively.

The following *Figure 1* illustrates the interrelations among the features of the convergence, consolidation, and conglomeration of the financial services industry in Country *A*, a hypothetical country. The big arrows in the figure indicate the chronological evolvement of the features. Although each feature is separately distinguished according to

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6. *Id.*

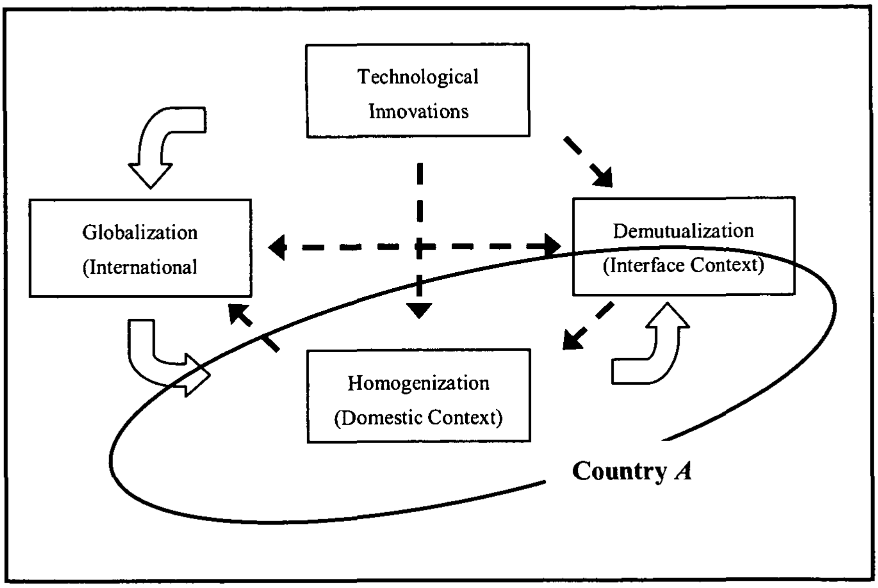
7. *Id.*

8. INT'L MONETARY FUND, FIN. SECTOR ASSESSMENT 318 (2005), *available at* http://www.imf.org/external/pubs/ft/fsa/eng/.

9. WORLD ECON. F., THE FUTURE OF THE GLOBAL FIN. SYS. 12 (2009), *available at* http://www.weforum.org/pdf/scenarios/TheFutureoftheGlobalFinancialSystem.pdf.

the context of territorial jurisdiction, in effect, a line of demarcation among those features is less distinctive. Today, all of the features occur mutually and somewhat overlap with one another. This correlation makes it difficult to determine causality among those features. Technological innovations, of course, cannot be counted to be the one and only cause of the whole process, but such technological advances can be considered an absolute driving force of the flow.

FIGURE 1: CONVERGENCE, CONSOLIDATION, AND CONGLOMERATION PROCESS OF THE FINANCIAL SERVICES INDUSTRY IN COUNTRY *A*



The Article discusses each feature separately in the order of the flow of the big arrows, and then conducts a case analysis on selected countries.

B. The Convergence, Consolidation, and Conglomeration of the Financial Services Industry

1. International Context: Globalization

Globalization is one of the "predominant conceptual constructs for understanding the tendencies of our age."[10] The financial services industry is no exception because, internationally, the convergence, consolidation, and conglomeration of the financial services industry appear in the form of globalization. For example, "[g]lobally, foreign ownership of financial assets reached US$67 trillion at the beginning of 2008, roughly one-third of total global financial assets, up from just US$17 trillion, or one-fifth of global financial assets, a decade earlier."[11]

Globalization is an erosion of geographical borders among nations in the form of cross-border exchange of goods, services, and IT along with cultural transfers.[12] Particularly, financial globalization, defined as an "integration of domestic financial systems with international financial markets, has allowed corporations to avail themselves of foreign capital markets where the domestic market is unable to meet their needs for capital,"[13] and has further facilitated the process of financial liberalization and deregulation.[14]

Increasing competition challenges regulators to re-evaluate their financial regulatory regimes and adopt more efficient regulations.[15] "The recent globalization of the financial markets has increased the need for some form of regulation at the global level and cooperation between regional financial centers" to avoid conflicts and confusion associated with different regulatory regimes.[16] The Basel Committee on Banking

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10. Robert Howse, *The End of the Globalization Debate: A Review Essay*, 121 HARV. L. REV. 1528, 1528 (2008) (book review).

11. WORLD ECON. F., *supra* note 9, at 14.

12. Roman Terrill, *What Does "Globalization" Mean?*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 217, 218 (1999).

13. Paul J. Keenan, *Chapter 15: A New Chapter to Meet the Growing Need to Regulate Cross-Border Insolvencies*, 15 NORTON J. BANKR. L. & PRAC. 2 art. 4 (2006). The Article confines further discussions regarding globalization to financial globalization.

14. Lawrence L. Lee, *Integration of International Banking Supervisory Standards: A Blueprint for the Taiwanese Banking System*, 19 ANN. REV. BANKING L. 455, 536 (2000). Liberalization and deregulation are often used interchangeably. Liberalization, however, leads to more than simple deregulation because liberalization also "creates pressure for re-regulation to enable government to maintain influence over economic actors in a liberalized environment." R. Daniel Kelemen & Eric C. Sibbitt, *The Americanization of Japanese Law*, 23 U. PA. J. INT'L ECON. L. 269, 278 (2002).

15. Nicolas Grabar, *Achieving More Efficient Capital Markets Regulation (An Introduction and Overview of the IIF-SIFMA Work)*, *in* FOREIGN ISSUERS & THE U.S. SECURITIES LAWS 2008, at 447, 449 (PLI Corp. Law & Practice Course Handbook Series No. 14926, 2008), *available at* Westlaw 1669 PLI/Corp 447.

16. Patrick B. Griffin, *The Delaware Effect: Keeping the Tiger in Its Cage: The European Experience of Mutual Recognition in Financial Services*, 7 COLUM. J. EUR. L. 337, 346 (2001).

Supervision (BCBS), [17] the International Organization of Securities Commissions (IOSCO), [18] and the International Association of Insurance Supervisors (IAIS) [19] are representative organizations, purporting to promote cooperation among, and to set international standards for member countries in banking, securities, and insurance sectors, respectively.

2. *Domestic Context: Homogenization*

Changes in underlying market conditions, including technology development and globalization, have brought a systematic change in the financial services industry—diminution in the demand for indirect financing[20] and augmentation in the demand for direct financing. In the process, the steep barrier between commercial banking and other types of financial activities started to diminish. Homogenization is the word, summarizing this domestic convergence, consolidation, and conglomeration of the financial services industry.

Traditionally, indirect financing[21] was a main pillar of the financing system, and commercial banks played an essential role in financial intermediation.[22] Advanced technologies, however, have allowed users

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17. The BCBS provides a forum for regular cooperation on banking supervisory matters. Its members are from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. *See About the Basel Committee*, BANK FOR INT'L SETTLEMENTS, http://www.bis.org/bcbs/ (last visited Apr. 1, 2011).

18. The IOSCO sets international standards for securities markets. Its 110 member countries regulate more than ninety percent of the international regulatory benchmarks for all securities markets. *See IOSCO Historical Background*, OICV-IOSCO, https://www.iosco.org/about/index.cfm?section=history (last visited Apr. 1, 2011).

19. The IAIS represents insurance regulators and supervisors of 190 jurisdictions. *See About the IAIS*, INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS, http://www.iaisweb.org/index.cfm?pageID=28 (last visited Apr. 1, 2011).

20. Jonathan R. Macey & Geoffrey P. Miller, *Corporate Governance and Commercial Banking: A Comparative Examination of Germany, Japan, and the United States*, 48 STAN. L. REV. 73, 98 (1995) ("Technological changes and changes in underlying market conditions have caused a systematic diminution in the demand for banks' services.").

21. Robert B. Edesess, Jr., *The End of Innocence: An Actual Knowledge Threshold for Intermediaries Holding Fiduciaries'/Clients' Assets*, 2 DEPAUL BUS. & COM. L.J. 377, 377 (2004) ("Financial markets, mostly the indirect financing market, play an essential role in the function and growth of our [U.S.] economy." (citing Colin Mayer, *Financial Systems, Corporate Finance, and Economic Development*, *in* ASYMMETRIC INFORMATION, CORPORATE FINANCE, AND INVESTMENT 307, 307–32 (1990), *available at* http://www.nber.org/chapters/c11477.pdf)).

22. Financial intermediation is a process where financial intermediaries place

of capital to bypass indirect financing via commercial banks and to access direct financing via other types of financial intermediaries, by making it possible to adopt derivatives and financial innovation such as securitization.

"Securitization is a financing technique whereby a company transfers rights in receivables or other financial assets to a special purpose vehicle . . . which in turn issues securities to capital market investors and uses the proceeds of the issuance to pay for the financial assets."[23] Securitization has accelerated the pace of financial innovation by serving as a bridge between direct financing and indirect financing and thus triggering the development of new financial instruments.

"[C]ommercial banks [have found] themselves faced with increasing competition from brokerage firms in what have traditionally been commercial banking activities"—for instance, investment banks have intruded on traditional commercial banking territory by offering money market mutual funds.[24] In response to the additional competition with other financial intermediaries, commercial banks have also become multi-functional.[25]

The financial revolution, including securitization,[26] has brought up

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themselves between suppliers and demanders of the capital by managing financial risks in the financial system. *See* Edmund M.A. Kwaw, *The Evolving Law on the Eurobank—Customer Relationship and the Common Law: The Need for Clarity*, 32 SYRACUSE J. INT'L. L. & COM. 87, 91 (2004); *see also* Cassandra Jones Havard, *"Goin' Round in Circles" . . . and Letting the Bad Loans Win: When Subprime Lending Fails Borrowers: The Need for Uniform Broker Regulation*, 86 NEB. L. REV. 737, 744–45 (2008).

23. Steven L. Schwarcz, *The Universal Language of Cross-Border Finance*, 8 DUKE J. COMP. & INT'L L. 235, 236 (1998). Securitization generally takes two separate forms:

> First, business corporations increasingly are raising funds by issuing commercial paper and corporate bonds directly to investors, rather than borrowing from banks. . . . The second form of securitization involves pooling large numbers of outstanding loans already issued by banks and others, and then selling shares in such pools to investors in the open market.

See Peter J. Ferrara, *The Regulatory Separation of Banking from Securities and Commerce in the Modern Financial Marketplace*, 33 ARIZ. L. REV. 583, 593–94 (1991). Corporations often use the two forms of securitization together to raise and lend funds completely outside of indirect financing. *Id.*

24. Brian Arthur Pomper, *The Japanese Financial Reform of 1993: Will Reform Spark Innovation?*, 28 CORNELL INT'L L.J. 525, 541 (1995).

25. ROSS CRANSTON, PRINCIPLES OF BANKING LAW 3 (1997) ("[L]arge banks are typically multi-functional institutions, engaged not only in core banking but in a range of other activities.").

26. "The impact of securitization is possibly the most significant development in finance over the last decade." McCarthy, *supra* note 4, at 21. Securitization has made it possible for companies that otherwise could not obtain funds from commercial banks to finance, and for companies that could obtain funds to do so at lower cost. Schwarcz, *supra*

two accompanying issues: (1) homogenization of financial services sectors;[27] and (2) homogenization of financial supervision.[28] In many cases, homogenization of financial services sectors and homogenization of financial supervision tend to go together, but not always.

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note 23, at 236.

27. Banking, securities, and insurance are the primary three financial services sectors. *See* *High Growth Industry Profile*, U.S. DEP'T LAB., http://www.doleta.gov/Brg/pdf/Financial.pdf (last updated May 2007).

28. Although no two jurisdictions regulate the financial system in exactly the same manner, the current financial supervision adopted worldwide can be categorized into five distinct approaches: (1) the institutional approach, (2) the functional approach, (3) the integrated approach, (4) the twin peaks approach, and (5) the fragmented approach. *See* GROUP OF THIRTY, THE STRUCTURE OF FINANCIAL SUPERVISION: APPROACHES AND CHALLENGES IN A GLOBAL MARKETPLACE 23–24 (2008), *available at* http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_fsi_banking_G30%20Final%20Report%2010-3-08.pdf [hereinafter G30, STRUCTURE OF FINANCIAL SUPERVISION]. First, the institutional approach is a legal-entity-driven approach. *Id.* at 24. Firms are classified according to their primary businesses and regulated by a regulator focused on that business. *Id.* China, Hong Kong, and Mexico have adopted the institutional approach. *Id.* at 25–26. Second, the functional approach determines supervisory oversight by an entity's function or business, not by its legal status. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra*, at 24. If a single entity conducts multiple businesses including banking, securities, and insurance activities, a separate functional regulator might oversee each of those distinct lines of business both from a safety-and-soundness and a business-conduct perspective. *Id.* Brazil, France, Italy, and Spain have adopted the functional approach. *Id.* at 26–28. Third, "[u]nder the integrated approach, there is a single universal regulator that conducts both safety and soundness oversight and conduct-of-business regulation for all the sectors of the financial services business." *Id.* at 24. Representative countries of this approach are Canada, Germany, Japan, Qatar, Singapore, Switzerland, and the United Kingdom. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra*, at 28–30. Fourth, the twin peaks approach separates regulatory functions between two regulators by objective. *Id.* at 24. One is prudential supervision, which has the primary goal of ensuring safety and soundness, and the other is market and business conduct, which has the goal of consumer protection. *Id.* Australia and the Netherlands use the twin peaks approach. *Id.* at 30–32. Fifth, the fragmented approach is based on the idea that competition among regulators will promote more efficient regulatory practices and involves multiple overlapping regulators in all of the main sectors. *See* G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra*, at 30–32; WORLD ECON. FORUM, *supra* note 9, at 75. For example:

> [The United States has] four sets of norms issued by different regulators: (1) federal laws passed by the U.S. Congress, (2) state laws passed by State legislatures, (3) regulations enacted by agencies (e.g., the U.S. Securities and Exchange Commission), and (4) regulation enacted by self-regulatory organizations ("SROs," e.g., Nasdaq, the NYSE, the Chicago Board Options Exchange, and the Chicago Mercantile Exchange).

Ioannis Kokkoris & Rodrigo Olivares-Caminal, *Some Issues on Cross-Border Stock Exchange Mergers*, 29 U. PA. J. INT'L L. 455, 470–71 (2007). The U.S. structure is functional with institutional aspects, with the added complexity of a number of federal- and state-level agencies and participants. *See* G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra*, at 32–33.

First, "several leading financial regulation policymakers have proposed fundamental reforms to allow banks to combine with securities and other financial institutions, and even general commercial enterprises, under varying institutional arrangements and constraints."[29] In major economic jurisdictions, the evolvement of large and complex banking organizations has[30] "pave[d] the road to even more powerful and diverse financial institutions in the form of 'financial holding companies.'"[31] Second, as a reactionary response to significant, local financial and political factors, including demands arising from a perceived integration of financial markets and perceived deficiencies in traditional supervisory and regulatory systems, a number of countries have formed a unified mega-financial regulator.[32]

Relevant regulatory reforms of homogenization of financial services sectors and homogenization of financial supervision in major

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29. Ferrara, *supra* note 23, at 583.

30. Financial conglomerates, a group of companies "which undertakes at least two major financial services activities," result, in part, from mergers and acquisitions (M&A). Clive Briault, *The Rationale for a Single National Financial Services Regulator*, FIN. SERVS. AUTH., 12–13 (May 1999), http://www.fsa.gov.uk/pubs/occpapers/OP02.pdf. M&A "frequently [occur] between banks and securities firms and between banks and insurance companies, but also involv[e] purchases of fund managers by banks and by insurance companies." *Id.* at 13. The growth is also a "result of financial services firms extending through internal growth into new areas (for example, insurance companies setting up banks and vice-versa, insurance companies selling investment products, and banks setting up securities and fund management operations)." *Id.*

31. Joseph J. Norton, *A Perceived Trend in Modern International Financial Regulation: Increasing Reliance on a Public–Private Partnership*, 37 INT'L LAW. 43, 44 (2003). "In Europe where so-called 'universal banking' exists, financial institutions have been permitted to more directly engage in both the securities and banking businesses." Kelemen & Sibbitt, *supra* note 14, 284 n.38. Universal banking means expanded powers for banks. Germany typically is the archetypal example of a universal banking system:

> In Germany, corporations with banking licenses cannot only take deposits and make loans, but they also are permitted to underwrite and trade securities, to operate mutual funds, to engage in investment counseling, and even to hold large equity shares in commercial, industrial, and insurance companies if these activities are kept within different departments of the bank.

Jonathan R. Macey, *The Inevitability of Universal Banking*, 19 BROOK. J. INT'L L. 203, 203 (1993).

32. Joseph J. Norton, *Global Financial Sector Reform: The Single Financial Regulator Model Based on the United Kingdom FSA Experience—A Critical Reevaluation*, 39 INT'L LAW. 15, 16 (2005). An important argument supporting the single financial regulator model is that the model matches the nature of current financial markets, where "the emergence of financial 'supermarkets' and increased use of sophisticated techniques, such as securitization and derivatives trading, have broken down the traditional sectoral distinctions." Eilis Ferran, *Examining the United Kingdom's Experience in Adopting the Single Financial Regulator Model*, 28 BROOK. J. INT'L L. 257, 258 (2003).

developed countries are as follows. First, the trend of blurring the sectoral boundaries within financial services sectors has intensified since the late 1980s.[33] The primary structural catalyst that triggered international attention to relevant regulatory reforms was the United Kingdom's financial "Big Bang"[34] reforms, the Financial Services Act 1986 (FSA 1986). The Financial Services and Markets Act 2000 (FSMA), enacted in June 2000, replaced the FSA 1986,[35] by strengthening the regulatory regime introduced by the previous Act.[36]

Relevant notable regulatory reforms in other major industrial countries, which have consolidated their financial markets, besides the United Kingdom, include: (1) the Gramm-Leach-Bliley Act of 1999 (GLBA) in the United States; (2) the Financial Services Reform Act 2001 in Australia; (3) Securities and Futures Act in Singapore, enacted in 2001; (4) the Securities and Futures Ordinance in Hong Kong,[37] enacted in 2003; (5) the Financial Instruments and Exchange Law in Japan, enacted in 2006; and (6) the Financial Investment Services and Capital Markets Act (FSCMA) in South Korea, effective in February 2009.

Second, "[w]hereas in the past, financial supervision tended to be organized around specialist agencies for banking, securities, and insurance sectors, in the last few years a number of industrialized countries have moved to integrate these different supervisory functions

33. CHARLES GOODHART ET AL., FINANCIAL REGULATION 181 (1998).

34. The phrase "Big Bang" here refers to:

> [D]rastic deregulation that triggers big changes in the financial market. The term was first coined to describe the British government's 1986 abolition of the distinction between stockjobbers and stockbrokers on the London Stock Exchange. The abolition of fixed commission charges resulted in drastic changes in the structure of the stock market in the U.K. Other reforms were enacted at the same time, and it was the aggregation of the measures plus the expected increase in market activity that led to the event being called the big bang.

Sung-jin Kim, *Big Bang to Reshape Financial Industry*, KOREA TIMES, Apr. 26, 2006, *available at* 2006 WLNR 23487342.

35. Denis T. Rice, *International Securities Transactions*, 35 INT'L LAW. 555, 566 (2001).

36. Gerard McCormack, Book Review, 21 BANKING & FIN. L. REV. 353, 354 (2006).

37. On July 1, 1997, Hong Kong became the Hong Kong Special Administration Region (HKSAR) of the People's Republic of China. *See* Rob Francis, *Hong Kong—The Critical Bridge: Despite, Even Because of, the Handover in 1997 to Chinese Administration, Hong Kong Looks Set to Continue as a Valuable Market for UK Publishers—School, Academic and Trade*, BOOKSELLER, Apr. 12, 2002, at 24, *available at* 2002 WLNR 14279039.

in a single agency."[38] The trend of creating a unitary regulator started on a limited and particularized basis in Scandinavia in the mid-1980s.[39]

The United Kingdom, however, was the first major international financial center to adopt the single regulator model, establishing the Financial Services Authority (FSA) in 1997 and follow-up measures.[40] The FSMA completed the transfer of supervisory responsibilities for financial services institutions, banks,[41] and insurance companies in the United Kingdom to the new, single national regulator, FSA.[42] Other major economic countries where a unified agency has recently assumed regulatory responsibilities for all financial institutions include Japan, Singapore, and South Korea.[43]

"Although the model of multiple regulators and supervisors prevails in most regions in the world, in the last 20 years an increasing number of countries" have adopted the unified or integrated supervision model by either creating a single mega-regulator or by merging two main supervisory authorities.[44] Even since the year 2002, at least three countries—Kazakhstan in 2004,[45] Poland in 2006,[46] and Indonesia in

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38. Michael Taylor & Alex Fleming, *Integrated Financial Supervision: Lessons from Northern European Experience* 1 (World Bank, Working Paper No. 2223, 1999), *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1999/12/11/000094946_9912020634345/Rendered/PDF/multi_page.pdf.

39. Professor Norton describes the trend:

> Norway established an independent unified banking and insurance regulator in 1986; Denmark in 1988; and Sweden in 1991. Finland followed in 1993, but linked their FSA [Financial Supervisory Authority] to the central bank, Bank of Finland. The Nordic countries have small and consolidated financial markets, have some prior experience with regulatory consolidation, and suffered a series of financial crises in the 1980s and early 1990s. In terms of impact on the deposit insurer, in Norway the Guarantee Fund is a legally separate organization from other public and private bodies; the Danish Fund is a self-governing body, supervised by its FSA; the Swedish Deposit Guarantee Board is independent from its FSA; and the Finnish Fund is operationally independent, though supervised by its FSA.

Norton, *supra* note 32, at 16 n.1.

40. Ferran, *supra* note 32, at 258.

41. Julia Bracewell & Neil Foster, *A View from the United Kingdom: New Financial Services and Markets Act Takes Effect*, 119 BANKING L.J. 364, 364 (2002).

42. William Goddard, *The Revolution of the Times: Recent Changes in U.K. Insurance Insolvency Laws and the Implications of Those Changes Viewed from a U.S. Perspective*, 10 CONN. INS. L.J. 139, 143 (2003).

43. Ferran, *supra* note 32, at 257–58.

44. José de Luna Martínez & Thomas A. Rose, *International Survey of Integrated Financial Sector Supervision* 4 (World Bank, Working Paper No. 3096, 2003), *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2003/08/23/000094946_03080904015686/Rendered/PDF/multi0page.pdf.

45. Bryan D. Stirewalt, *Unification of Financial Sector Regulators: The Case of*

2007[47]—have established a single financial regulator for their entire financial sectors.

3. *Interface Context: Demutualization*

"The obverse result of financial globalization is that the role of the government in the economy eventually decreases . . . shifting power to the private sector."[48] Capital markets are especially remarkable for this privatization movement that facilitates the convergence, consolidation, and conglomeration of the financial services industry in the interface context.

Traditionally, stock exchanges have been organized as a form of mutual, not-for-profit association by their members[49]—brokers and dealers "managed 'their' stock exchange like an exclusive club, with high barriers for new entrants and a regional or even national monopoly."[50] "Today, domestic and international competition increasingly compels stock exchanges to give up their exclusivity, undergo restructuring, and become publicly traded, for-profit companies, a process referred to as demutualization."[51]

Demutualization here means a process of converting exchanges from non-profit, member-owned organizations to for-profit, investor-owned stock corporations[52] with a further step of becoming publicly traded companies.[53] Demutualization changes the regulatory

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Kazakhstan, *in* CENTRAL BANK MODERNISATION 93, 93 (Neil Courtis & Peter Nicholl eds., 2005).

46. M Furtek i Wspolnicy, International Briefing, *Poland: Financial Supervision*, INT'L FIN. L. REV., Sept. 2006, at 97, 97, *available at* http://www.iflr.com/Article/1977595/Financial-supervision.html.

47. BT Partnership, International Briefing, *Indonesia: New FSA*, INT'L FIN. L. REV., Feb. 2007, at 42, 42, *available at* http://www.iflr.com/Article/1977347/New-FSA.html.

48. Robert Bejesky, *The Evolution in and International Convergence of the Doctrine of Specific Performance in Three Types of States*, 13 IND. INT'L & COMP. L. REV. 353, 395 (2003).

49. Anastassia Chtaneva, *Alternative Trading Systems: Impact of Technology on Securities Market Structure*, 17 BANKING & FIN. L. REV. 341, 357 (2002).

50. Andreas M. Fleckner, *Stock Exchanges at the Crossroads*, 74 FORDHAM L. REV. 2541, 2541–42 (2006).

51. *Id.* at 2542.

52. Jake Keaveny, Note, *In Defense of Market Self-Regulation: An Analysis of the History of Futures Regulation and the Trend Toward Demutualization*, 70 BROOK. L. REV. 1419, 1438 (2005).

53. Reena Aggarwal, *Demutualization and Corporate Governance of Stock Exchanges*, 15 J. APPLIED CORP. FIN. 105, 105 (2002), *available at* http://www.set.or.th/setresearch/files/demutualization/ResearchPaper_2002_Reena.pdf.

framework of stock exchanges "to emphasize shareholder value and customer focus,"[54] and incurs the tension between an exchange's role as a self-regulatory organization (SRO) and, at the same time, being a for-profit entity.[55]

Major driving forces of demutualization of stock exchanges are a changing business environment, globalization of markets, government deregulation, competitive pricing pressure, concentration of investment capital,[56] and the introduction of electronic communication networks and alternative trading systems. In 2007, seventy-six percent of the then fifty-three member exchanges of the World Federation of Exchanges[57] were for-profit, and forty-one percent were publicly traded.[58] Listed exchanges represent about $300 billion in market capitalization, of which around $100 billion was the subject of mergers, and eight of the twenty-seven regulated exchanges publicly listed since 2001 have been targets of mergers and acquisitions (M&A).[59]

The first exchange to adopt the private corporation format, or to demutualize, was the Stockholm Stock Exchange in 1993.[60] Since then, a number of exchanges have followed suit[61]: "Helsinki followed

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54. Alan Shaw, *Singapore Stock Exchange—Demutualization and Listing of the Singapore Exchange Limited*, *in* DEMUTUALIZATION OF STOCK EXCHANGES 265, 267 (Shamshad Akhtar ed., 2002), *available at* http://www.adb.org/documents/books/demutualization_stock_exchanges/demutualization.pdf.

55. Reena Aggarwal & Sandeep Dahiya, *Demutualization and Cross-Country Merger of Exchanges*, 18 J. FIN. TRANSFORMATION 145, 146 (2006), *available at* http://www.capco.com/sites/all/files/JOURNAL18_Web.pdf.

56. Keaveny, *supra* note 52, at 1438.

57. For a list of the sixty-eight members of the World Federation of Exchanges as of April 2011, see *Member Exchanges*, WORLD FED'N OF EXCHS., http://www.world-exchanges.org/member-exchanges/member-exchanges (last visited Apr. 5, 2011).

58. WORLD FED'N OF EXCHS., ANNUAL REPORT AND STATISTICS 2008, at 52 (2009), *available at* http://www.world-exchanges.org/files/statistics/excel/WFE%20Annual%20Report%20140509.pdf.

59. *Id.* at 61.

60. Roberta S. Karmel, *The Future of Corporate Governance Listing Requirements*, 54 SMU L. REV. 325, 348 (2001).

61. As Professor Fleckner describes:

> At the 1999 Annual Meeting of the World Federation of Exchanges, as many as fifteen out of fifty-two exchanges had demutualized, fourteen exchanges had member approval for demutualization, and another fifteen were thinking about demutualization, which means that only eight exchanges were committed to retaining the mutual form. In another survey in 2003, forty-two out of eighty-five exchanges were demutualized, sixteen were in the process of demutualization, and twenty-seven had no plans to demutualize. Eighteen out of the forty-two demutualized exchanges were listed.

Fleckner, *supra* note 50, at 2555 (footnotes omitted).

Stockholm in 1995, Copenhagen in 1996, Amsterdam and Borse Italiana in 1997, Australian Stock Exchange in 1998, Athens in 1999, and London, Deutsche Börse (Frankfurt) and Euronext (Amsterdam, Brussels and Paris) in 2000."[62]

After the grant of exchange status to the National Association of Securities Dealers Automated Quotations (Nasdaq), now the NASDAQ OMX, and the completion of the merger between the New York Stock Exchange and Archipelago to form the NYSE Group, Inc. (NYSE) in 2006, most major stock exchanges in the world are now demutualized.[63]

Demutualization of stock exchanges has frequently led to consolidation among stock exchanges[64] not only within the border but also across the border. For example, exchanges in Amsterdam, Brussels, and Paris have recently combined to form the Euronext N.V. (Euronext).[65] Also, "the Singapore Stock Exchange has an existing alliance with the Australian Stock Exchange and has recently announced plans to pursue such a linkage with the Tokyo Stock Exchange [(TSE)];

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62. Eric J. Pan, *A European Solution to the Regulation of Cross-Border Markets*, 2 BROOK. J. CORP. FIN. & COM. L. 133, 135 (2007).

63. Stavros Gadinis & Howell E. Jackson, *Markets as Regulators: A Survey*, 80 S. CAL. L. REV. 1239, 1257 (2007).

64. Special Study Group of the Committee on Federal Regulation of Securities, American Bar Association, Section of Business Law, *Special Study on Market Structure, Listing Standards and Corporate Governance*, 57 BUS. LAW. 1487, 1552 (2002) [hereinafter Special Study Group].

65. The history of the Euronext N.V. can be summarized as follows:

> Euronext NV is a holding company for the exchanges incorporated under Dutch law operating as a pan-European exchange with a single platform for cash products and one for derivative products and is the result of a merger in 2000 of the Paris Bourse, the Amsterdam Stock Exchange, and the Brussels Stock Exchange. The three exchanges from France, the Netherlands, and Belgium, respectively, became subsidiaries under the merger with Euronext NV acting as the holding company. Additionally, in 2002 Euronext expanded further by acquiring LIFFE [the London International Financial Futures and Options Exchange] and merging with BVLP [the Bolsa de Valores de Lisboa e Proto].

Christopher Osborne, Note, *A Look at the Globalization of the Exchanges and Its Effects on the United States Market Through an Analysis of the NYSE and Euronext Merger*, 1 J. BUS. ENTREPRENEURSHIP & L. 447, 450–51 (2008) (footnotes omitted). BVLP is a Portuguese exchange, also known as Proto Stock Exchange. *Id.* at 450 n.38. LIFFE, founded in London in 1982, mainly deals with derivatives. *Id.* at 450 n.37. "Its combination with Euronext was to move all of the derivative products that are a part of Euronext to a single platform with a state-of-the-art trading platform." *Id.* BVLP became Euronext Lisbon after the merger with Euronext N.V. Osborne, *supra*, at 450 n.38. "These additions brought Euronext's presence across most of Europe by establishing subsidiaries in France, Belgium, the Netherlands, England, and Portugal." *Id.* at 450–51.

and the Hong Kong Exchange is currently expanding its linkages with the Chinese exchanges."[66]

Cross-border mergers have been active, particularly between the U.S. and European exchanges, and between European exchanges.

> Recent financial market mergers have included the link between the New York Stock Exchange and Euronext in April 2007; the Chicago Mercantile Exchange and the Chicago Board of Trade in July 2007; the London Stock Exchange and Borsa Italiana in October 2007; Deutsche Borse and the International Securities Exchange in December 2007; Nasdaq and OMX Nordic exchanges in February [2008]; the mergers between the stock exchanges and futures exchanges in Canada and Brazil in May [2008]; and the August [2008] link-up between the Chicago Mercantile Exchange and Nymex futures markets.[67]

Even after the completion of the major mergers between the NYSE and the Euronext to form NYSE Euronext in 2007 and the Nasdaq and the OMX to form NASDAQ OMX in 2008, each exchange has sought further possible mergers. For example, the NYSE Euronext has "been in communication about cooperation, and even possible integration, with Borsa Italiana, the National Stock Exchange of India, and the Tokyo Stock Exchange."[68]

"As the world moves toward a global economy, the movement of capital through the stock exchanges is no longer limited by national boundaries."[69] This movement has accelerated even further "with the development of demutualized exchanges, leading to international consolidations and alliances among exchanges."[70] In this regard, demutualization features the convergence, consolidation, and conglomeration of the financial services industry in the interface context.

C. *Case Studies*

1. *Overview*

The three "C" features—convergence, consolidation, and

66. Special Study Group, *supra* note 64, at 1552.

67. Glenda Korporaal, *ASX Door Awaits Bid Knock*, AUSTRALIAN, Sept. 27, 2008, at 35, *available at* 2008 WLNR 18338023.

68. Osborne, *supra* note 65, at 447.

69. Norman S. Poser, *The Stock Exchanges of the United States and Europe: Automation, Globalization, and Consolidation*, 22 U. PA. J. INT'L ECON. L. 497, 498 (2001).

70. Bo Harvey, Note, *Exchange Consolidation and Models of International Securities Regulation*, 18 DUKE J. COMP. & INT'L L. 151, 179 (2007).

conglomeration—have been in the center of the changing landscape of the financial services industry. Globalization has transformed financial institutions that were previously focused on a specific region or market into global institutions. "Deregulation has allowed financial institutions to extend beyond their traditional boundaries and combine banking, investment, and insurance activities in one organization. These conglomerates carry out a wide range of activities, rather than being specialized into a single line of business."[71] As the industry continues to consolidate and conglomerate to achieve economies of scale, many stock exchanges have demutualized, because "the eventual winners in the process would be exchanges that attract order flow and so provide liquidity to investors."[72] Some demutualized exchanges have become public companies and listed on their own or other boards.[73] "Others have remained privately held companies but intend to go public in the future."[74]

This Article examines such industry trends in Australia, Hong Kong, Japan, Singapore, South Korea, the United Kingdom, and the United States,[75] because these countries present distinctive examples of those "C" trends in the financial services industry. They are all members of the BCBS, the IOSCO, and the IAIS. Each case study introduces the overall financial system and the globalization, homogenization, and demutualization of the financial services industry in each selected country.

2. *Australia*

Australia had the thirteenth highest nominal gross domestic product (NGDP)[76] in 2010 with $982 billion according to the IMF's estimates,[77]

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71. Wolf Wagner, *The Homogenization of the Financial System and Financial Crises*, 17 J. FIN. INTERMEDIATION 330, 330 (2008), *available at* http://www.sciencedirect.com/science/article/B6WJD-4RM1KV5-1/2/2ff6394ed7e149731f003381f4779a0e.

72. Aggarwal, *supra* note 53, at 105.

73. Roberta S. Karmel, *Motivations, Mechanics and Models for Exchange Demutualizations in the United States*, *in* DEMUTUALIZATION OF STOCK EXCHANGES, *supra* note 54, at 59.

74. *Id.*

75. In the following case studies, "$" refers to the U.S. dollar unless otherwise noted.

76. The GDP is "the total value of goods and services produced in a country over a period of time." Amy Ochoa Carson, *East Timor's Land Tenure Problems: A Consideration of Land Reform Programs in South Africa and Zimbabwe*, 17 IND. INT'L & COMP. L. REV. 395, 395 n.6 (2007).

77. *World Economic Outlook Database, October 2009*, INT'L MONETARY FUND, http://www.imf.org/external/pubs/ft/weo/2009/02/weodata/download.aspx (follow "By

the fifteenth highest with $924 billion according to the World Bank's estimates in 2009[78] and the thirteenth highest with $1236 billion according to the CIA's World Factbook in 2010.[79] According to the 2011 IMD World Competitiveness Scoreboard, Australia is the ninth most competitive country among fifty-nine countries in the world.[80] According to the 2011 KOF Index of Globalization, Australia ranked twenty-second in terms of overall globalization and forty-fifth in terms of economic globalization, among 208 countries in the world.[81] Australia has the third freest economy among 183 countries in the world, according to the 2011 Index of Economic Freedom from The Heritage Foundation and The Wall Street Journal.[82]

Countries" hyperlink) (last visited Apr. 6, 2011) (row 236, column AL).

78. *World Development Indicators Database: Gross Domestic Product 2009*, WORLD BANK (Dec. 15, 2010), http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf [hereinafter WORLD BANK].

79. *The World Factbook: GDP (Official Exchange Rate)*, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/fields/2195.html (last visited Apr. 8, 2011).

80. *The World Competitiveness Scoreboard 2011*, IMD, http://www.imd.org/research/publications/wcy/upload/scoreboard.pdf (last visited May 26, 2011). IMD's definition of competitiveness is how nations and businesses are managing the totality of their competencies to achieve greater prosperity. *See Just Released: IMD World Competitiveness Yearbook 2010*, IMD (May 19, 2010, 6:00 PM), http://www.imd.org/research/publications/wcy/upload/PressRelease.pdf. Competitiveness considered here is not only about growth or economic performance but also about environment, quality of life, technology, knowledge, and so on.

81. *2011 KOF Index of Globalization: Detailed Rankings*, KOF, http://globalization.kof.ethz.ch/static/pdf/rankings_2011.pdf (last visited Apr. 8, 2011). Overall, the KOF Index of Globalization covers the economic, social, and political dimensions of globalization:

> Globalization is conceptualized as a process that erodes national boundaries, integrates national economies, cultures, technologies and governance and produces complex relations of mutual interdependence.
>
> More specifically, the three dimensions of the KOF index are defined as:
>
> - economic globalization, characterized as long distance flows of goods, capital and services as well as information and perceptions that accompany market exchanges;
> - political globalization, characterized by a diffusion of government policies; and
> - social globalization, expressed as the spread of ideas, information, images and people.

2011 KOF Index of Globalization: Method of Calculation, KOF, http://globalization.kof.ethz.ch/static/pdf/method_2011.pdf (last visited Apr. 8, 2011) (emphasis omitted). Because, as previously mentioned, this Article confines discussions regarding globalization to financial globalization, only the economic globalization among those three dimensions of the KOF Index is discussed here.

82. THE HERITAGE FOUND., 2011 INDEX OF ECONOMIC FREEDOM EXECUTIVE HIGHLIGHTS 4 (2011), *available at*

The financial services industry in Australia has had an average annual real growth rate of 4.7% over the past 20 years, and comprised 7.3% of Australia's GDP between 2006 and 2007.[83] Sydney, Australia's financial capital, ranked the eleventh most competitive financial center[84] and the twelfth most competitive commercial center[85] among seventy-five centers in the world, according to the latest Global Financial Centres Index and Worldwide Centers of Commerce Index, respectively, at the time of this writing.[86]

"Banking services in Australia are provided by Authorized Deposit-Taking Institutions . . . which include banks, building societies, and credit unions."[87] As of October 21, 2009, there were fifty-eight banks, including 14 domestic banks, 19 foreign subsidiary banks and 35 foreign bank branches, 113 credit unions, and 17 building societies. Australia's securities and futures services are mainly operated by the Australian Securities Exchange (ASX), the representative SRO in Australia. As of May 26, 2011, the ASX had 2238 listed companies with domestic market capitalization of A$1.426 trillion.[88] Life insurance, general insurance, and private health insurance are three components of

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http://www.heritage.org/index/PDF/2011/Index2011_ExecutiveHighlights.pdf.

> The 2011 *Index of Economic Freedom* reports on economic policy developments since the second half of 2009 in 183 economies. Based on 10 measures that evaluate the rule of law, and competitiveness, the *Index* ranks economies according to their economic freedom. The principles of economic freedom emphasized in the *Index* are individual empowerment, non-discrimination, and the promotion of competition.

Id. at 1.

83. *About Australia: A Global Economy*, DEP'T FOREIGN AFF. & TRADE, AUSTL. GOV'T 3, http://www.dfat.gov.au/facts/global_economy.pdf (last updated Mar. 2008).

84. Z/YEN GROUP, THE GLOBAL FINANCIAL CENTRES INDEX 6, at 19 tbl.8 (2009), *available at* http://www.zyen.com/PDF/GFCI6.pdf. This sixth edition of the Global Financial Centres Index provides ratings and rankings for seventy-five financial centers in the world in terms of five overarching areas of competitiveness: (1) people, (2) business environment, (3) infrastructure, (4) market access, and (5) general competitiveness. *Id.* at 1.

85. MASTERCARD, 2008 WORLDWIDE CENTERS OF COMMERCE INDEX 20 (2008), *available at* http://www.mastercard.com/us/company/en/insights/pdfs/2008/MCWW_WCoC-Report_2008.pdf. The 2008 Worldwide Centers of Commerce Index evaluates seventy-five cities across seven dimensions: (1) legal and political framework, (2) economic stability, (3) ease of doing business, (4) financial flow, (5) business center, (6) knowledge creation and information flow, and (7) livability. *See id.* at 2.

86. The Global Financial Centres Index from Z/Yen Group in September 2009 and the Worldwide Centers of Commerce Index from MasterCard in 2008 were the latest available releases at the time of this writing.

87. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 188.

88. *The Australian Market*, AUSTL. SEC. EXCH., http://www.asxgroup.com.au/the-australian-market.htm (last visited May 26, 2011).

insurance services in Australia. There were thirty-two life insurance companies managing A$232 billion in assets as of March 31, 2008, 130 general insurance companies managing A$91 billion in assets as of June 30, 2008, and thirty-eight private health insurance companies with A$8.4 billion in total assets as of June 30, 2007.[89]

"Technological developments such as globalisation and increased competition have . . . blurr[ed] traditional boundaries between institutions and products, and [have] present[ed] greater choice for consumers."[90] In order to enhance Australia's international competitive position[91] and to properly govern the greater choice for consumers by providing a harmonized financial regulatory regime, Australia passed the Financial Services Reform Act in 2001. The Act, which commenced on March 11, 2002, "completely overhauls the regulation of financial markets and licensing, distribution and disclosure for financial services and products, including investment funds, superannuation, insurance, and bank deposit products."[92] The act harmonizes the regulatory framework by replacing previously existing piece-meal regulations.

The Australian financial regulatory structure can be described as a twin peaks system, with the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC).[93] The APRA is the prudential regulator overseeing authorized deposit-taking institutions, insurers, and most members of superannuation market,[94] and the ASIC is the corporate, markets, and financial services regulator,[95] "responsible for market conduct relative to

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89. *Data Alert: Australia's Insurance Industry—Export and Investment Opportunities*, AUSTL. TRADE COMM'N (Dec. 16, 2008), http://www.austrade.gov.au/ArticleDocuments/1358/Data-Alert-081216-Insurance-Industry-Business-Opportunities.pdf.aspx.

90. Ian Ramsay, *Financial Services Reform in Australia*, 5 SING. J. INT'L & COMP. L. 485, 485 (2001).

91. PARLIAMENT OF THE COMMONWEALTH OF AUSTL., PARLIAMENTARY JOINT STATUTORY COMM. ON CORPS. & SEC., REPORT ON THE FINANCIAL SERVICES REFORM BILL 2001 ¶ 5.49 (2001), *available at* http://www.aph.gov.au/SENATE/committee/corporations_ctte/completed_inquiries/1999-02/fin_services_bill01/report/report.pdf.

92. Walter Douglas Stuber et al., *International Financial Services*, 37 INT'L LAW. 359, 385 (2003).

93. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 188.

94. *About APRA: Who We Are*, AUSTL. PRUDENTIAL REG. AUTH., http://www.apra.gov.au/aboutAPRA/ (last visited Apr. 8, 2011).

95. *About ASIC: Our Role,* AUSTL. SEC. & INV. COMM'N, http://www.asic.gov.au/asic/asic.nsf/byheadline/Our+role?openDocument (last visited Apr. 8, 2011).

financial services and general corporate and business legal standards."[96] The APRA broadly supervises Australia's banking and insurance sectors, while the ASIC oversees its securities sector. The other main Australian financial regulators are the Reserve Bank of Australia (RBA), the Australian central bank and sole currency-issuing authority, and the Commonwealth Treasury.[97]

The legislation granting authority to the APRA, ASIC, and RBA includes the Australian Prudential Regulation Authority Act of 1998, the Australian Securities and Investments Commission Act of 2001, the Reserve Bank Act of 1959, the Banking Act of 1959, and the Financial Sector (Collection of Data) Act of 2001.[98] The RBA, APRA, ASIC, and the Australian Treasury cooperate with each other through the Council of Financial Regulators, "the coordinating body for Australia's main financial regulatory agencies."[99]

There are three groups operating stock and futures exchanges in Australia under the supervision of the ASIC: the ASX Limited, the National Stock Exchange of Australia (NSX) Limited, and Asia Pacific Exchange (APX) Limited. The ASX Limited, the primary stock exchange in Australia, was formed following the merger between the Australian Stock Exchange and the Sydney Futures Exchange in December 2006.[100] The NSX Limited owns and operates the NSX and the Bendigo Stock Exchange.[101] Both ASX Limted and NSX Limted are listed on the ASX.[102]

3. *Hong Kong*

Hong Kong's nominal GDP in 2010 placed it between the thirty-eighth and thirty-ninth highest in the world with $220 billion according to the IMF,[103] between thirty-seventh and thirty-eighth with

96. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 189.
97. *Id.* at 191–92.
98. *Id.* at 189–90.
99. *Id.* at 194.
100. *NeoNet Down Under*, SEC. INDUS. NEWS, Jan. 21, 2008, *available at* 2008 WLNR 1225520.
101. *NSX Markets: Description*, NAT'L STOCK EXCH. AUSTL., http://www.nsxa.com.au/products.asp (last visited Apr. 8, 2011).
102. *Price, Research & Announcements: Company Research*, AUSTL. SEC. EXCH., http://www.asx.com.au/research/companies/index.htm (last visited Apr. 8, 2011).
103. *World Economic Outlook Database, October 2009*, *supra* note 77 (row 2348, column AL).

$210 billion according to the World Bank in 2009[104] and between thirty-eighth and thirty-ninth with $225 billion according to the CIA in 2010.[105] Hong Kong tied for first place in the 2011 IMD World Competitiveness Scoreboard.[106]

In 2007, the Hong Kong's financial services industry contributed 19.5% of its GDP: banking, 11.6%; insurance, 1.5%; and other financial services, including stock brokerage, asset management, finance leasing, and investment and holding companies, 6.3%.[107] Hong Kong[108] is the third most competitive financial center[109] and the sixth most competitive commercial center[110] in the world. Hong Kong has been ranked first in terms of economic freedom for sixteen years since 1995, according to the 2011 Index of Economic Freedom.[111]

Hong Kong's banking sector maintains a three-tier system of deposit-taking institutions—licensed banks, restricted license banks, and deposit taking companies—operating as either locally incorporated or branches of foreign banks.[112] "[A]t the end of July 2010, there were 146 licensed banks, 22 restricted [license] banks and 27 deposit-taking companies in Hong Kong, together with 70 local representative offices of overseas banking institutions. These institutions come from 34 countries and including 70 out of the world's largest 100 banks."[113]

Hong Kong's securities and futures sectors are operated by the Stock Exchange of Hong Kong and the Hong Kong Futures Exchange,

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104. WORLD BANK, *supra* note 78.

105. *The World Factbook: GDP (Official Exchange Rate)*, *supra* note 79.

106. *The World Competitiveness Scoreboard 2011*, *supra* note 80.

107. *Hong Kong Statistics*, CENSUS & STAT. DEP'T, GOV'T H.K. SPECIAL ADMIN. REGION, http://www.censtatd.gov.hk/hong_kong_statistics/statistical_tables/index.jsp?subjectID=12&tableID=189 (last visited Apr. 8, 2011).

108. The KOF Index of Globalization is not available for Hong Kong.

109. Z/YEN GROUP, *supra* note 84, at 19 tbl.8.

110. MASTERCARD, *supra* note 85, at 20.

111. THE HERITAGE FOUND., *supra* note 82, at 4.

112. Only licensed banks may operate current accounts, and accept deposits of any size and maturity. GOV'T OF H.K. SPECIAL ADMIN. REGION, HONG KONG YEARBOOK 68 (2008), *available at* http://www.yearbook.gov.hk/2008/en/index.html [hereinafter HONG KONG YEARBOOK]. Restricted license banks are principally engaged in merchant banking and capital market activities, and may take deposits of any maturity of HK$500,000 or above. *Id.* Deposit-taking companies are mostly owned by or, otherwise associated with, licensed banks and engage in a range of activities, in particular consumer finance, and may take deposits of any maturity of HK$100,000 or above with an original maturity of at least three months. *Id.* These deposit institutions are collectively known as authorized institutions under the Banking Ordinance. *Id.*

113. *Hong Kong Factsheets: Financial Services*, GOV'T H.K. SPECIAL ADMIN. REGION 1 (Oct. 2010), http://www.gov.hk/en/about/abouthk/factsheets/docs/financial_services.pdf.

respectively.[114] "The transactions on the two exchanges are cleared and settled through their three associated clearing houses, namely, the Hong Kong Securities Clearing Company, the Stock Exchange of Hong Kong Options Clearing House Company, and the Hong Kong Futures Exchange Clearing Corporation . . . ."[115] The Hong Kong Exchanges and Clearing Limited is a holding company of the two exchanges and the three clearing houses.[116] "As [of] the end of June 2010, 1344 companies were listed in the Stock Exchange of Hong Kong . . . with a market capitalisation of HK$17,131 billion."[117]

As for the insurance sector, "[i]n July 2010, there were 169 authorised insurers, 88 of which were incorporated in Hong Kong and the remaining 81 were incorporated in 21 countries, with Bermuda taking the lead."[118] "The gross premium for 2008 was about HK$189 billion."[119]

"Hong Kong's financial regulatory system can be characterized as an institutional system with functional characteristics."[120] The principal financial services regulators are the Hong Kong Monetary Authority, the Securities and Futures Commission, the Office of the Commissioner of Insurance, and the Mandatory Provident Fund Schemes Authority.[121] "They are responsible respectively for regulation of the banking; securities and futures; insurance and retirement scheme industries,"[122] subject to the supervision of the Financial Secretary of the HKSAR Government.[123] Examples of representative SROs include the Hong Kong Association of Banks, the Hong Kong Federation of Insurers, the Hong Kong Investment Funds Association, and the Hong Kong Securities Institute.[124]

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114. HONG KONG YEARBOOK, *supra* note 112, at 70.
115. *Hong Kong Factsheets: Financial Services*, *supra* note 113, at 1.
116. *Id.*
117. *Id.*
118. *Id.* at 2.
119. *Hong Kong Factsheets: Financial Services*, *supra* note 113, at 2.
120. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 69.
121. *Hong Kong Factsheets: Financial Services*, *supra* note 113, at 2.
122. *Id.*
123. *See* G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 69.

> All four regulatory authorities . . . are subject to the supervision of the Financial Secretary of the HKSAR Government in terms of achieving policy objectives set by the Financial Secretary, appointment of the chief executives and independent advisory committees, business and budget plan approval, financial reporting and auditing, and coordination of resources.

Id.

124. *Id.*

Globalization of the international financial markets, advancement in IT, and the increasing sophistication of both investors and investment products have created challenges to Hong Kong's securities and futures markets.[125] In order to answer these challenges and strengthen Hong Kong's competitiveness as an international financial center, the Financial Secretary announced a three-pronged reform program for the securities and futures markets in his budget speech on March 3, 1999.[126]

The reform program comprised: (1) "enhancement of the financial infrastructure to improve risk management, increase efficiency, and reduce cost;"[127] (2) modernization and rationalization of the legal framework for the regulatory regime[128] "to improve the supervisory framework and protection of market participants;"[129] and (3) modernization of the market structure through "the demutualization and merger of exchanges and associated clearing houses."[130]

Besides the ongoing technological enhancement of the financial infrastructure,[131] for the regulatory reform, Hong Kong enacted the Securities and Futures Ordinance on March 13, 2002, and it came into force on April 1, 2003 with all the subsidiary legislation.[132] The Ordinance consolidated and modernized ten existing ordinances governing the securities and futures markets[133] into one, "introduc[ed] . . . a new licensing regime and new provisions on

125. H.K. FIN. SERVS. & TREASURY BUREAU, INFORMATION NOTE FOR THE FINANCIAL AFFAIRS PANEL OF THE LEGISLATIVE COUNCIL: SECURITIES AND FUTURES MARKET REFORM ¶2 (1999), *available at* http://www.legco.gov.hk/yr98-99/english/panels/fa/papers/fa0806_4.htm.

126. William Pearson, *Hong Kong Securities and Futures Commission—The Conversion to a Demutualized Exchange: The Hong Kong's Regulator's Experience*, *in* DEMUTUALIZATION OF STOCK EXCHANGES, *supra* note 54, at 247, 247.

127. *Id.*

128. *Hong Kong Factsheets: Financial Services*, *supra* note 113, at 3.

129. Pearson, *supra* note 126, at 247.

130. *Id.*; *Hong Kong Factsheets: Financial Services*, *supra* note 113, at 3.

131. For example, "[t]he derivatives market [in Hong Kong] has become fully electronic with the migration of the trading of Hang Seng Index Futures and Options to the Hong Kong Futures Automated Trading System in June 2000." *Hong Kong Factsheets: Financial Services*, *supra* note 113, at 1.

132. S.H. Goo, *Corporate Dimensions of the Securities and Futures Ordinance*, 33 H.K. L.J. 271, 271 (2003).

133. Those ten ordinances were: Securities and Futures Commission Ordinance, Commodities Trading Ordinance, Securities Ordinance, Protection of Investors Ordinance, Stock Exchange Unification Ordinance, Securities (Insider Dealing) Ordinance, Securities (Disclosure of Interests) Ordinance, Securities (Clearing Houses) Ordinance, Leveraged Foreign Exchange Trading Ordinance, and Exchanges and Clearing Houses (Merger) Ordinance. *Id.* at 272 n.2.

misconduct, standards, and authorization of investment products offered to the public," and established rules on investment offering, price stabilization, and disclosure of interests.[134]

Regarding the market structure reform, the merger of the two exchanges and their three associated clearing houses[135] into a single holding company, the Hong Kong Exchanges and Clearing Limited, was completed on March 6, 2000 under the Exchanges and Clearing Houses (Merger) Ordinance, enacted on February 24, 2000.[136] The Hong Kong Exchanges and Clearing Limited was subsequently listed on its own marketplace three months later on June 27, 2000.[137]

4. *Japan*

"Japan is the second largest economy in the world after the [United States] and is high on the league table of per capita GDP as well."[138] Japan had the third highest nominal GDP in 2010 with $5187 billion according to the IMF,[139] $5068 billion according to the World Bank in 2009,[140] and $5459 billion according to the CIA in 2010.[141] Japan ranked twenty-sixth in the 2011 IMD World Competitiveness Scoreboard.[142]

According to the 2011 KOF Index of Globalization, Japan ranked forty-fourth in the world in terms of the overall globalization and ninety-second in terms of the economic globalization.[143] Tokyo, the capital city

134. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 68.

135. The two exchanges are the Stock Exchange of Hong Kong and Hong Kong Futures Exchange, and the three clearing houses are the Hong Kong Securities Clearing Company, Hong Kong Futures Exchange Clearing Corporation, and Stock Exchange of Hong Kong Options Clearing House Company. *Hong Kong Factsheets: Financial Services*, *supra* note 113, at 1.

136. *Id.* at 3.

137. *Id.*; *see also* Lawrence Fok, *Hong Kong Exchanges and Clearing Limited—Demutualization, Merger and Listing: The Hong Kong Exchanges' Experience*, *in* DEMUTUALIZATION OF STOCK EXCHANGES, *supra* note 54, at 235, 239.

138. *Japan*, OXFORD ECON. COUNTRY BRIEFINGS, Apr. 16, 2009, at 1, *available at* 2009 WLNR 15794632. The latest data suggests that China is poised to overtake Japan as the world's second-biggest economy. *See* Geoff Foster, *Fear of a US Double Dip Haunts Traders*, DAILY MAIL (U.K.), Aug. 31, 2010, *available at* 2010 WLNR 17324608.

139. *World Economic Outlook Database, October 2009*, *supra* note 77 (row 2711, column AL).

140. WORLD BANK, *supra* note 78.

141. *The World Factbook: GDP (Official Exchange Rate)*, *supra* note 79.

142. *The World Competitiveness Scoreboard 2011*, *supra* note 80.

143. *2011 KOF Index of Globalization: Detailed Rankings*, *supra* note 81.

of Japan, is the seventh most competitive financial center[144] and the third most competitive commercial center[145] in the world. Japan has the twentieth freest economy in the world according to the 2011 Index of Economic Freedom.[146]

Traditionally, the Japanese financial system is notable for the deposit-taking institutions in financial intermediation.[147] As of January 25, 2011, there were five city banks and eighteen trust banks in Japan, along with fifty-eight foreign banks from twenty-two countries as of December 13, 2010.[148] There were sixty-three regional banks as of May 10, 2010 and forty-two tier-two regional banks, as of March 5, 2010,[149] as well as 272 credit depositories and 160 credit cooperatives, as of February 2010.[150]

Securities companies in Japan operate mainly as dealers including retail stock subscriptions and trades rather than engage in investment banking activities.[151] In January 2010, there were 307 securities companies registered in Japan.[152]

As of May 12, 2010, in terms of the life insurance sector, forty-three domestic companies, five holding companies, and four foreign companies were registered in Japan.[153] Of the forty-three companies, fifteen were foreign controlled, and nine were subsidiaries of non-life insurance companies.[154] In terms of the non-life insurance sector, thirty domestic companies and twenty-two foreign companies were operating.[155] Of the thirty companies, four were foreign controlled,

144. Z/YEN GROUP, *supra* note 84, at 19 tbl.8.

145. MASTERCARD, *supra* note 85, at 20.

146. THE HERITAGE FOUND., *supra* note 82, at 6.

147. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 146.

148. *List of Licensed (Registered) Financial Institutions: City Banks and Trust Banks*, FIN. SERVS. AGENCY, JAPANESE GOV'T, http://www.fsa.go.jp/en/regulated/licensed/city.pdf (last updated Jan. 25, 2011).

149. *List of Licensed (Registered) Financial Institutions: Regional Banks & Regional Banks II*, FIN. SERVS. AGENCY, JAPANESE GOV'T, http://www.fsa.go.jp/en/regulated/licensed/reg.pdf (last updated May 10, 2010).

150. STATISTICS BUREAU, JAPAN, STATISTICAL HANDBOOK OF JAPAN 2010, at 49 tbl.4.8 (2010), *available at* http://www.stat.go.jp/english/data/handbook/pdf/c04cont.pdf.

151. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 146–47.

152. STATISTICS BUREAU, JAPAN, *supra* note 150, at 49 tbl.4.8.

153. *List of Licensed (Registered) Financial Institutions: Life Insurance Companies*, FIN. SERVS. AGENCY, JAPANESE GOV'T, http://www.fsa.go.jp/en/regulated/licensed/ins_life.pdf (last updated May 12, 2010).

154. *Id.*

155. *List of Licensed (Registered) Financial Institutions: Non-Life Insurance Companies*, FIN. SERVS. AGENCY, JAPANESE GOV'T, http://www.fsa.go.jp/en/regulated/licensed/ins_nonlife.pdf (last updated July 2, 2010).

two were subsidiaries of life insurance companies, and two were reinsurance companies.[156]

"The Japanese financial regulatory structure is characterized as an integrated approach led by the Financial Services Agency, with the Ministry of Finance, and the Bank of Japan."[157] The Securities and Exchange Surveillance Commission, a commission under the Financial Services Agency, "conducts market surveillance and on-site inspections of securities companies."[158] The Deposit Insurance Corporation of Japan is a "quasi-autonomous governmental organization established in 1971 for the purposes of operating the deposit insurance system."[159] Japan has various SROs, such as the Japanese Bankers Association, the Regional Banks Association of Japan, the General Insurance Association of Japan, the Japan Securities Dealers Association, the Commodity Futures Association of Japan, the Japan Financial Services Association, and the Japan Securities Investment Advisers Association.[160]

As a way to strengthen the competitiveness of its financial services industry, Japan has initiated several financial reforms over the years. Two major reforms, among others, are the implementation of the so-called Japanese "Big Bang" reforms beginning in April 1998[161] and the adoption of the Financial Instruments and Exchange Law (FIEL) into law in June 2006.[162]

The "Big Bang" reforms toward creating a free, fair, and global market,[163] named after the financial market reforms undertaken in the United Kingdom during the late 1980s, "deregulat[ed] the Japanese financial markets by, *inter alia*, abolishing the 'fire walls' that exist among the banking, securities and insurance sectors."[164] In 1998, a new

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156. *Id.*

157. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 149.

158. *Id.* at 150.

159. *Id.* at 151.

160. *Id.* at 149.

161. Art Alcausin Hall, *International Banking Regulation into the 21st Century: Flirting with Revolution*, 21 N.Y.L. SCH. J. INT'L & COMP.L. 41, 79 (2001). The initiation of the reforms was the former Prime Minister Hashimoto's directions to the Minister of Finance and the Minister of Justice to commence the overall reform of the financial system in 1996. *See* G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 148. Also see Ernest T. Patrikis, *Japan's Big Bang Financial Reforms*, 24 BROOK. J. INT'L L. 577, 582 (1998), for an outline of the reforms.

162. Michael Doyle et al., *Asia and Pacific Law*, 41 INT'L LAW. 711, 718 (2007).

163. Gregory D. Ruback, Comment, *Master of Puppets: How Japan's Ministry of Finance Orchestrates Its Own Reformation*, 22 FORDHAM INT'L L.J. 185, 187 (1998).

164. Yoshiki Shimada et al., *Regulatory Frameworks for Pooled Investment Funds: A Comparison of Japan and the United States*, 28 VA. J. INT'L L. 191, 192 n.2 (1998).

integrated financial supervisor, the Financial Supervisory Agency, which later changed its name to the current Financial Services Agency, "took over from the Ministry of Finance the authority to inspect deposit-taking institutions . . . securities firms, and insurance companies."[165]

The FIEL, which took effect incrementally between July 2006 and April 2008,[166] is a broadly revised version of the former Securities and Exchange Law, and "presents a uniform legal infrastructure for financial market transactions."[167] The statutory amendments to the FIEL, which Diet, Japan's national legislature, passed on June 6, 2008, constitute Japan's first main attempt to overhaul its markets since the Big Bang, aiming at "greater diversification of financial products" and the creation of "more flexible and vibrant financial market[s]."[168]

The TSE is the largest stock exchange among several securities and futures exchanges in Japan.[169] Also, the TSE is the second largest in the world with market capitalization of more than $4 trillion.[170] The market capitalization of companies listed on the First Section of the TSE was ¥251.67 trillion on March 31, 2009.[171]

The TSE was demutualized on November 1, 2001,[172] but has not yet been listed. At first, the exchange's planned listing was postponed "partially due to disagreements between the exchange and the Financial Services Agency . . . over the exchange's management structure as a listed entity. The regulator had demanded that the exchange separate[] its regulatory division from the stock trading-related division."[173] Later, the exchange planned to conduct an initial public offering (IPO) by the end of 2009.[174] On March 25, 2009, however, the exchange announced its decision to delay going public until the fiscal year starting April 2010

165. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 148.

166. Doyle et al., *supra* note 162, at 718 n.58.

167. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 149.

168. Walter Stuber et al., *International Securities and Capital Markets*, 43 INT'L LAW. 613, 620 (2009).

169. *See* Ayai Tomisawa, *Tokyo Stock Exchange on IPO: "It's Just Not the Right Timing,"* WALL ST. J., Mar. 25, 2009, at C2, *available at* http://online.wsj.com/article/SB123789200663024141.html.

170. *Japan*, *supra* note 138.

171. *Tokyo Stocks Record 2nd Biggest Fiscal Year-End Percentage Fall*, JAPAN WKLY. MONITOR, Apr. 6, 2009, *available at* 2009 WLNR 10626848.

172. *About TSE: History*, TOKYO STOCK EXCH., http://www.tse.or.jp/english/about/history.html (last updated Nov. 5, 2001).

173. Aggarwal & Dahiya, *supra* note 55, at 149.

174. Tomisawa, *supra* note 169.

or later, because the global financial crisis caused the Tokyo stock market to tumble.[175]

The other securities and futures exchanges in Japan are: the Fukuoka Stock Exchange, the JASDAQ Securities Exchange, the Nagoya Stock Exchange, the Osaka Securities Exchange, the Sapporo Stock Exchange and the Tokyo Financial Exchange.[176] The Osaka Securities Exchange Co., Ltd., the operator of Japan's second-largest stock market,[177] is the only listed securities exchange in Japan.[178]

5. *Singapore*

Singapore had the thirty-ninth highest nominal GDP in 2010 with \$178 billion according to the IMF,[179] was ranked thirty-eighth with \$182 billion according to the World Bank in 2009[180] and thirty-ninth with \$222 billion according to the CIA in 2010.[181] Singapore ranked third in the 2011 IMD World Competitiveness Scoreboard.[182].

According to the 2011 KOF Index of Globalization, Singapore ranked eighteenth in the world in terms of the overall globalization and first in terms of the economic globalization.[183] Financial services sectors shared eleven percent of Singapore's GDP, amounting to S\$132.16 billion, in 2006.[184] Singapore is the fourth most competitive financial center[185] and the fourth most competitive commercial center[186] in the world. Singapore has been ranked second in terms of economic freedom for sixteen years since 1995, according to the 2011 Index of Economic Freedom.[187]

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175. *Id.*

176. *See About TSE: History*, *supra* note 172.

177. *IPO Outlook: Feb. 27, 2004*, DAILY DEAL, Feb. 27, 2004, *available at* 2004 WLNR 4565222.

178. *See Jasdaq Makes Listings Play*, VIET. INV. REV., May 23, 2005, at 22, *available at* 2005 WLNR 25955158. "The Osaka Securities Exchange Co. became the first Japanese stock exchange to go public with a \$17.45 million stock flotation in April 2004, following the example of bourses in Singapore, Hong Kong and Australia." *Id.*

179. *World Economic Outlook Database, October 2009*, *supra* note 77 (row 4691, column AL).

180. WORLD BANK, *supra* note 78.

181. *The World Factbook: GDP (Official Exchange Rate)*, *supra* note 79.

182. *The World Competitiveness Scoreboard 2011*, *supra* note 80.

183. *2011 KOF Index of Globalization: Detailed Rankings*, *supra* note 81.

184. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 162.

185. Z/YEN GROUP, *supra* note 84, at 19 tbl.8.

186. MASTERCARD, *supra* note 85, at 20.

187. THE HERITAGE FOUND., *supra* note 82, at 2.

As of April 8, 2011, there were 120 commercial banks including 6 local banks and 114 foreign banks, 47 merchant banks, 10 money brokers, 35 Singapore Government Securities Market dealers, 252 holders of capital markets services license, 150 registered insurers, 6 authorized reinsurers and 64 insurance brokers.[188] "The remainder of the market comprises finance companies and trust companies."[189]

The Singapore Deposit Insurance Corporation (SDIC), established in 2006,[190] is a company limited by guarantee that administers the Deposit Insurance Scheme in Singapore.[191] The SROs in Singapore include the Association of Banks in Singapore, the Investment Management Association of Singapore, the Securities Association of Singapore, the Life Insurance Association, the Singapore Reinsurers Association, the General Insurance Association of Singapore, and the Singapore Exchange Limited ("SGX").[192]

As roles in financial services are converging, Singapore has consolidated its regulatory regimes.[193] Singapore has an integrated financial regulatory structure[194] comprised of the Ministry of Finance, the Monetary Authority of Singapore (MAS), and the SDIC. "Singapore has had a unitary regulatory authority for the financial sector" ever since the establishment of the MAS as a statutory board[195] on January 1, 1971 under the Monetary Authority of Singapore Act of 1970.[196]

Apart from being the de facto central bank of Singapore responsible for monetary policy and currency issuance,[197] the MAS is also responsible for the supervision of banks, financial institutions,[198]

188. *Number of Financial Institutions and Relevant Organisations in Singapore*, MONETARY AUTH. OF SING., http://www.mas.gov.sg/fi_directory/index.html (last updated Apr. 8, 2011).

189. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 162.

190. *Id.* at 165.

191. *SDIC: Organization*, SING. DEPOSIT INS. CORP., http://www.sdic.org.sg/ (last visited Apr. 8, 2011).

192. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 164.

193. Chew, *supra* note 5, at 588.

194. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 162.

195. Chew, *supra* note 5, at 569.

196. Ashish Lall & Ming-Hua Liu, *Liberalization of Financial and Capital Markets—Singapore Is Almost There!*, 28 LAW & POL'Y INT'L BUS. 619, 634 (1997).

197. Following its merger with the Board of Commissioners of Currency on October 1, 2002, the MAS also assumed the function of currency issuance. *See About Us: Introduction to MAS*, MONETARY AUTH. OF SING., http://www.mas.gov.sg/about_us/Introduction_to_MAS.html (last visited Apr. 8, 2011).

198. "The MAS Act gives MAS the authority to regulate all elements of monetary, banking, and financial aspects of Singapore." *Id.*

insurance companies,[199] and securities[200] and futures markets.[201] "The 2007 amendments to the Banking Act of 1970 . . . enhanc[ed] the MAS's role in bank resolutions," and extended "the MAS's regulatory scope to all credit card issuers targeting the Singapore market, not just banks and financial institutions."[202]

The Securities and Futures Act, which has been in effect since July 2002,[203] is an "omnibus Act consolidating the rules previously located in different statutes" and updating the provisions.[204] The Act "created the existing framework for authorization of markets and licensing of intermediaries, the scope of regulated activities, and an enforcement mechanism to enable MAS to carry out its enforcement function more efficiently."[205] The Financial Advisers Act, which went into operation as of October 1, 2002,[206] "consolidated previous legislation governing financial advisory services in respect to securities, futures, and life insurance products."[207]

The SGX was inaugurated on December 1, 1999, following the merger of two financial institutions—the Stock Exchange of Singapore and the Singapore International Monetary Exchange—and became "Asia-Pacific's first demutualised and integrated securities and derivatives exchange."[208] "The impetus for the demutualization and merger was due largely to increasing competition, both by foreign exchanges as well as non-exchange trading alternatives."[209] The SGX was listed via a public offer and a private placement on November 23, 2000.[210]

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199. "In April 1977, the Government decided to bring the regulation of the insurance industry under the wing of the MAS." *Id.*

200. "The regulatory functions under the Securities Industry Act (1973) were also transferred to MAS in September 1984." *Id.*

201. Chew, *supra* note 5, at 569–70. The Futures Trading Act, which was implemented in 1986, is administered by the MAS. *See* G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 162.

202. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 163.

203. Sherry M. Shore, *SEC Hedge Fund Regulatory Implications on Asian Emerging Markets: Bottom Line or Bust*, 13 CARDOZO J. INT'L & COMP. L. 563, 583 n.120 (2005).

204. Alexander F H Loke, *The Internet and Antifraud Regulation of Securities Markets*, 5 SING. J. INT'L & COMP. L. 647, 671 (2001).

205. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 163.

206. Shore, *supra* note 203, at 583.

207. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 163.

208. *About SGX: Overview*, SINGAPORE EXCHANGE LIMITED, http://www.sgx.com/wps/portal/corporate/cp-en/about_sgx (last visited Apr. 8, 2011).

209. Chew, *supra* note 5, at 581.

210. *About SGX: Overview*, *supra* note 208.

6. *South Korea*

Korea had the fifteenth highest nominal GDP in 2010 with $855 billion according to the IMF,[211] the fourteenth highest with $832 billion according to the World Bank in 2009,[212] and the fifteenth highest with $1007 billion according to the CIA in 2010.[213] Korea ranked twenty-third in the 2011 IMD World Competitiveness Scoreboard.[214]

The Korean financial markets have become globalized in parallel with the process of its financial system liberalization since the 1990s.[215] Particularly the Asian financial crisis in 1997 caused momentum that further accelerated the pace of Korea's financial globalization.[216] According to the 2011 KOF Index of Globalization, Korea ranked fifty-fourth in the world in terms of the overall globalization and seventy-ninth in terms of the economic globalization.[217] Korea has the thirty-fifth freest economy in the world according to the 2011 Index of Economic Freedom.[218] The financial services industry's share of the country's total GDP is at around 1.5% on average, according to the statistics from the Bank of Korea.[219] Seoul, the capital of Korea, has ranked the thirty-fifth most competitive financial center[220] and the ninth most competitive commercial center[221] in the world.

As of the end of June 2008, financial institutions in Korea consisted

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211. *World Economic Outlook Database, October 2009*, *supra* note 77 (row 2876, column AL)

212. WORLD BANK, *supra* note 78.

213. *The World Factbook: GDP (Official Exchange Rate)*, *supra* note 79.

214. *The World Competitiveness Scoreboard 2011*, *supra* note 80.

215. *See* Cho Whan-Bok, *Globalization and Outlook for Korea's Economic Diplomacy*, KOR. FOCUS, http://www.koreafocus.or.kr/design1/layout/content_print.asp?group_id=600 (last visited Apr. 8, 2011).

216. For example, the share of foreign investment in total stock market capitalization in Korea has increased from 4.9% since the Korean stock market opened to foreign investors for the first time in January 1992, subject to ceilings of ten percent on each issue and three percent on each investor. Kyuyung Chung, *The Effects of Financial Globalization on the Korean Financial Markets and Monetary Policy*, *in* BIS PAPERS NO. 23: GLOBALISATION AND MONETARY POLICY IN EMERGING MARKETS 186, 186 (2005), *available at* http://www.bis.org/publ/bppdf/bispap23p.pdf. The Korean government raised the ceilings gradually in eight stages, and finally opened its stock market fully to foreign investors in May 1998 by completely abolishing the ceilings. *Id.* at 186 n.2.

217. *2011 KOF Index of Globalization: Detailed Rankings*, *supra* note 81.

218. THE HERITAGE FOUND., *supra* note 82, at 4.

219. *Economic Statistics System*, BANK OF KOREA, http://ecos.bok.or.kr/ (last visited Apr. 9, 2011). The Korean financial services industry's share of the country's total GDP was calculated by the author.

220. Z/YEN GROUP, *supra* note 84, at 19 tbl.8.

221. MASTERCARD, *supra* note 85, at 20.

of three categories by substance and function: (1) a central bank, the Bank of Korea; (2) 57 banking institutions, including 52 commercial and 5 specialized banks; and (3) 4539 non-bank financial institutions, including 4058 non-bank depository institutions, 53 insurance institutions, 207 securities-related companies, 200 other financial institutions, and 21 financial auxiliary institutions.[222]

The Korean financial regulatory structure can be characterized as an integrated approach led by the Ministry of Strategy and Finance; the Bank of Korea; the Financial Services Commission (FSC), a consolidated policymaking body for all matters pertaining to supervision of the financial services industry as a whole;[223] and the Financial Supervisory Services (FSS), a consolidated financial supervisory organization. The Korea Exchange (KRX) and the Korea Financial Investment Association (KFIA) are major SROs in Korea.[224] Other trade associations are defined as interested or affiliated organizations rather than SROs.[225]

KRX is the sole exchange in Korea and "operates markets for equities, bonds, and various derivatives products including equity index futures and options, commodities, currency and interest rates."[226] The KRX had over 1700 listed companies and ₩1050 trillion of the total market capitalization as of the end of 2007.[227] As of the end of 2007, "foreign investment accounted for 32.4% of the market capitalization of the Stock Market Division of the KRX and 17.4% of the KOSDAQ Market Division of the KRX."[228] On December 10, 2009,

222. BANK OF KOR., FINANCIAL SYSTEM IN KOREA 4–29 (2008), *available at* http://www.bok.or.kr/eng/index.jsp (follow "Finance & Banking" hyperlink; then follow "Financial System in Korea (2008)" hyperlink; then follow "FinalSyateminKorea_08.134430.pdf" hyperlink).

223. *Establishment*, FIN. SERVS. COMM'N, http://www.fsc.go.kr/eng/ab/ab0301.jsp (last visited Apr. 9, 2011); *see also Main Responsibilities*, FIN. SERVS. COMM'N, http://www.fsc.go.kr/eng/ab/ab0303.jsp (last visited Apr. 9, 2011).

224. FIN. SUPERVISORY SERV., FINANCIAL SUPERVISORY SYSTEM IN KOREA 24 (2007), *available at* http://english.fss.or.kr/fss/en/publications/system/view.jsp?bbsid=1289364537633&category=null&idx=33146 (follow "Financial Supervisory System in Korea 2007" hyperlink); *Chairman's Message*, KOR. FIN. INV. ASS'N, http://www.kofia.or.kr/kofia/index.cfm?event=eng.abo.page01 (last visited Apr. 10, 2011).

225. *Id.*

226. *Korea Exchange, Tokyo Stock Exchange, Inc. and Samsung Investment Trust Management Co., Ltd. Announce Listing of KODEX Japan ETF in Seoul*, TSE NEWS (Feb. 20, 2008), http://www.tse.or.jp/english/news/200802/080220_a.html.

227. *Id.*

228. KOR. SEC. DEALERS ASS'N, SECURITIES MARKET IN KOREA 27–28 (2008), *available at* http://www.ksda.or.kr/UPLOADFILES/Securities%20Market%20in%20Korea%202008%20(KSDA).pdf.

total market capitalization of stocks owned by non-Koreans reached ₩286.3 trillion.[229]

Homogenization of the Korean financial services sectors has proceeded through the introduction of financial holding companies and financial investment companies. In Korea, financial holding companies were allowed for the first time in February 1999 with an amendment to the Monopoly Regulation and Fair Trade Act, and are regulated by the Financial Holding Companies Act (FHCA), enacted in October 2000.[230]

The FHCA, however, limited business activities of financial holding companies to the management of subsidiary units and business activities facilitating the management of subsidiary units, such as providing controls over business objectives establishment, business performance evaluation, corporate governance, financing, joint development of financial products and services, and shared use of facilities.[231] Within this restricted scope, "a financial holding company may only engage in the management of its affiliates and is prohibited from engaging in any business operations of a financial nature itself."[232] As a result, until the implementation of the FSCMA in February 2009, financial investment companies such as investment banks were not allowed in Korea.[233] Nevertheless, despite the limitation, the FHCA has indeed "pave[d] the road to even more powerful and diverse financial institutions in the form of 'financial holding companies.'"[234]

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229. Kim Jae-won, *Foreigners Enjoy W90 Tril. in Capital Gains*, KOR. TIMES, Dec. 13, 2009, *available at* 2009 WLNR 25130850.

230. FIN. SUPERVISORY SERV., *supra* note 224, at 13. Under Article 2 of the FHCA, a "financial holding company" is a company whose "primary business is to control . . . companies engaged in the financial business . . . and other companies related closely to the operations of the financial business." Financial Holding Companies Act, Act. No. 6274, Oct. 23, 2000, art. 2 (S. Kor.), *translated in* 11 STATUTES OF THE REPUBLIC OF KOREA 963 (Korea Legislation Research Inst. 1997 & Supp. 18). In other words, a financial holding company in Korea is a "regulated business entity that hold[s] and exercises controlling interest in financial institutions and other companies whose business is closely related to business activities of financial institutions." FIN. SUPERVISORY SERV., *supra* note 224, at 12.

231. *Id.* at 13.

232. Susan Park, *Holding On*, INVEST KOR. J., July–Aug. 2008, at 3, *available at* http://www.ikjournal.com/InvestKoreaWar/work/journal/content/content_main.jsp?code=4570207.

233. *See* Nam Won-chul, *Improved Investor Protection in the Korean Capital Markets*, FIN. SERVS. COMM'N ENG. BLOG (Feb. 19, 2010), http://fsckorea.wordpress.com/2010/02/19/improved-investor-protection-in-the-korean-capital-markets/.

234. Norton, *supra* note 31, at 44. According to the FSS, as of July 2011, there are twelve registered financial holding companies in Korea: Woori Finance Holdings Co., Ltd.,

The National Assembly approved the FSCMA on July 3, 2007,[235] and it became effective on February 4, 2009.[236] The FSCMA has integrated several financial laws into one[237] and allowed the establishment of financial investment companies[238] to operate business activities across six functions including investment trading, investment brokerage, asset management, discretionary investment, investment advisory, and trust businesses.[239] The FSCMA aims to achieve the so-

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Standard Chartered Korea Ltd., Shinhan Financial Group Co. Ltd,, Meritz Financial Group Inc., Korea Investment Management Holdings Co., Ltd., Korea Investment Holdings Co. Ltd., KDB Group, KB Financial Group Inc., Hana Financial Group Inc., DGB Financial Group, Citigroup Korea Inc., and BS Financial Group Inc. Registered Financial Institutions, FIN. SUPERVISORY SERV., http://english.fss.or.kr/fss/en/eabu/reg/registered/list.jsp?pg=1&business=16&txtFind= (last visited Aug. 22, 2011). Woori Financial Group became the first financial holding company of Korea in 2001 through acquisitions of several banking institutions in financial distress, and shortly after in the same year Shinhan Financial Group also became a financial holding company. *See* Park, *supra* note 232, at 3. "Over the past few years, the various affiliates of these financial holding companies have grown into sophisticated financial services firms.... Woori Financial Group currently has 10 subsidiaries and 19 granddaughter subsidiaries, while Shinhan Financial Group has grown into a financial firm with 12 subsidiaries and 17 granddaughter subsidiaries." *Id.*

235. *Fitch Comments on Korea's Capital Market Consolidation Act*, ASIAN BANKER, July 15, 2007, *available at* 2007 WLNR 13888967.

236. Soo-Jeong Ahn et al., *Asia/Pacific*, 43 INT'L LAW. 1007, 1045 (2009).

237. KOR. SEC. DEALERS ASS'N, *supra* note 228, at 241–42. The FSCMA "consolidated six existing laws regulating the financial and capital markets of Korea (Securities and Exchange Act, Future Trading Act, Indirect Investment Asset Business Act, Trust Business Act, Merchant Bank Act, and Korean Exchange Act)." Kye-Sung Chung, *Banking and Finance Law Trends and Tactics in South Korea*, *in* BANKING AND FINANCE CLIENT STRATEGIES IN ASIA 7, 8 (Michael Falls ed., 2009), *available at* 2009 WL 2511993. As a result, major financial laws in Korea after the FSCMA "are the Bank Act, FSCMA, Insurance Business Act, Credit Specialized Finance Business Act, and other retail financing related laws." *Id.*

238. Actually, the FSCMA uses the term "financial investment business" instead of the term "financial investment company." *See* Financial Investment Services and Capital Markets Act, Act. No. 8635, Aug. 3, 2007, art. 6 (S. Kor.), *translated in* 18 STATUTES OF THE REPUBLIC OF KOREA 665 (Korea Legislation Research Inst. 1997 & Supp. 49), *available at* http://www.fsc.go.kr/eng/lr/list3.jsp?selection=a37@a.a&bbsid=BBS0085. Article 6 of the FSCMA defines a "financial investment business" as a person who continuously or repeatedly conducts financial investment business of investment trading, investment brokerage, collective investment, investment advisory, discretionary investment, or trust for the purpose of earning profits. *Id.*

239. KOR. SEC. DEALERS ASS'N, *supra* note 228, at 258–59.

> As *the Financial Investment Services and Capital Markets Act (FSCMA)* was implemented on February 4, 2009, securities companies under *the Securities and Exchange Act*, futures companies under *the Futures Trading Act*, asset management companies, investment advisory companies, discretionary investment companies under *the Act on Business of Operating Indirect Investment and Assets*, and trust companies under *the Trust Business Act* are consolidated into 'Financial Investment Business Entities' under the *FSCMA* which governs entry and business activities.

called "Big Bang" financial reform, leading to the emergence of large, multi-service investment banks,[240] by implementing a "comprehensive regulatory system based on the financial function of an activity and the degree of consumer risk."[241]

The growing convergence of financial markets and the blurring of distinctions among various financial services sectors since the late 1980s have pointed to a need for a single integrated regulator in order to ensure effective and efficient supervision of all financial services sectors.[242] In principle, the Ministry of Finance, which became the Ministry of Finance and Economy in 1998 and the Ministry of Strategy and Finance[243] in 2008, was ultimately responsible for supervising "all" financial institutions in Korea but was unable to do so in reality, and thus delegated most of its supervisory authorities down to different regulatory subsidiaries.[244] This supervisory structure caused many complications, confusions, and loopholes due to the lack of efficient coordination or an information sharing system between each financial supervisory subsidiary.[245]

As a way to consolidate financial supervisory authorities into a single supervisory agency, the Korean government established the

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FIN. SUPERVISORY SERV., FINANCIAL SUPERVISORY SYSTEM IN KOREA 16 (2008), *available at* http://english.fss.or.kr/fss/en/publications/system/view.jsp?bbsid=1289364537633&category=null&idx=33147 (follow "v3.System in Korea 2008.pdf" hyperlink).

240. *South Korea: Financial Services Forecast*, INDUS. BRIEFING & FORECASTS, Jan. 21, 2008, at 2, 2, *available at* 2008 WLNR 25894472.

241. Ahn et al., *supra* note 236, at 1045.

> The main objective of this revolutionary transformation initiated by the Korean government to consolidate those six laws into the FSCMA was to move from the previous "prescriptive" [or positive] regulatory system to a more "prospective" [or negative] regulatory system, and provide for further deregulation of regulations governing financial institutions in Korea.

Chung, *supra* note 237, at 8. Furthermore, the FSCMA changed the principle of financial regulation in Korea from institutional regulation to functional regulation, "by applying different sets of regulations for the different categories of financial investment businesses." Kyung Jin Kim, *Adapting to Change in the Korean Banking and Finance Markets*, *in* BANKING AND FINANCE CLIENT STRATEGIES IN ASIA, *supra* note 237, at 79, 81, *available at* 2009 WL 2511998.

242. *See* FIN. SUPERVISORY SERV., *supra* note 224, at 2.

243. The Ministry of Finance and Economy merged with the Ministry of Planning and Budget, and became the Ministry of Strategy and Finance from March 2008, under the new administration since 2008. Jane Han, *Ministry Names Puzzle Foreigners*, KOR. TIMES, Mar. 4, 2008, *available at* 2008 WLNR 4320153.

244. Seonuk Park, *Reforming the Korean Banking System After the IMF Era—A Proposal for a Market Driven Approach*, CURRENTS: INT'L TRADE L.J., Summer 2007, at 23, 24.

245. *Id.* at 24–25.

Financial Supervisory Commission on April 1, 1998 for tasks of reforming financial institutions including chaebols[246] and restructuring finance sectors in the aftermath of the Asian financial crisis.[247] In the process, "the Securities and Exchange Commission, which supervised the securities market in Korea, was absorbed into the [Financial Supervisory Commission] as Securities and Futures Commission . . . to oversee the securities and futures markets. The Insurance Supervisory Commission, which regulated the insurance market, was also dissolved."[248]

In addition, "[t]he Financial Supervisory Service (FSS) was established in January 1999, consolidating the Banking Supervisory Board, Securities Supervisory Board, Insurance Supervisory Board, and the Credit Management Fund . . . to ensure sound and fair trading practices in the Korean financial markets, and to protect depositors and investors."[249] Since then the FSS has been responsible for supervising and inspecting all financial institutions operating in Korea.[250]

Until recently, however, the Ministry of Finance and Economy was still responsible for drafting financial regulations and policies, while the Financial Supervisory Commission undertook supervision of the Korean financial markets.[251] In order to overcome inefficiency from this dual regulation structure over market participants,[252] "Korea's financial supervision structure underwent another major change on February 29, 2008, when the Financial Supervisory Commission was integrated with the Financial Policy Bureau of the former Ministry of Finance and Economy (Ministry of Strategy and Economy) to become the Financial Services Commission."[253] "The FSC thus has the statutory authority to

246. "[M]ost large publicly held Korean corporations are affiliated with a business group, the so-called 'chaebol.'" Jae Yeol Kwon, *Corporate Governance from a Comparative Perspective: Specific Applications of the Duty of Loyalty in Korea*, 22 UCLA PAC. BASIN L.J. 1, 25 n.147 (2004). "The term 'chaebol' is not statutory." *Id.* A chaebol refers to "a group of formally independent firms under single common administrative and financial control, owned and controlled by certain families." *Id.* (quoting Sea Jing Chang & Unghwan Choi, *Strategy, Structure and Performance of Korean Business Groups: A Transactions Cost Approach*, 37 J. INDUS. ECON. 141, 141 (1988)).

247. FIN. SUPERVISORY SERV., *supra* note 224, at 14.

248. *Id.* at 14–15.

249. KOR. SEC. DEALERS ASS'N, *supra* note 228, at 246–47.

250. *Id.* at 247.

251. *Id.* at 243.

252. *Id.* at 243–44.

253. FIN. SUPERVISORY SERV., *supra* note 224, at 15.

draft and amend financial laws and regulations and issue regulatory licenses to financial institutions."[254]

In consequence, at present, "[a]ll financial institutions in Korea are subject to the oversight of the FSC and its market surveillance partner, the FSS."[255] The FSS acts as the FSC's executive supervisor, and "principally carries out examination of financial institutions along with enforcement and other oversight activities as directed or charged by the FSC."[256]

Along with the homogenization of government organizations, homogenization of SROs has also proceeded in the Korean financial markets. Until 2004, the Korean stock market consisted of the Korea Stock Exchange, established in February 1956, the Korean Dealers Automated Quotations ("KOSDAQ"), a specialized exchange catering to technology stocks with relatively small market capitalizations, established in July 1996, and the Korea Futures Exchange ("KOFEX"), established in April 1999.[257] Then, on January 19, 2005, the Korea Exchange Inc. was created through the merger of the Korea Stock Exchange, the KOFEX, and the KOSDAQ, and is now the sole exchange in Korea.[258]

"The KRX is a demutualized and consolidated exchange, in which its general meeting of shareholders is the highest decision-making body."[259] The KRX, however, is not yet regarded as a commercial enterprise because the exchange is an unlisted public company whose shares are held by a broad range of banks, financial intermediaries, and listed companies.[260] The KRX launched its IPO plan on September 22, 2006[261] but announced on August 28, 2007 to indefinitely delay the plan

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254. *Id.*

255. KOR. SEC. DEALERS ASS'N, *supra* note 228, at 244.

256. FIN. SUPERVISORY SERV., *supra* note 224, at 15.

257. Economist Intelligence Unit, *South Korea: Financial Services Report*, FIN. SERVICES FORECAST, Oct. 31, 2008, at 1, *available at* 2008 WLNR 22178344; *KRX History*, KOR. STOCK EXCH., http://eng.krx.co.kr/m9/m9_1/m9_1_3/UHPENG09001_03.html (last visited Apr. 10, 2011) (stating that the Korea Stock Exchange was established in February 1956); *Derivatives: Overview*, KOR. FIN. INV. ASS'N, http://www.ksda.or.kr/english/invest/derivatives_overview.cfm (last visited Apr. 10, 2011) (stating that the KOFEX opened in April 1999).

258. *Mous the Time*, FUTURES CHI., Jan. 1, 2006, at 16, *available at* 2006 WLNR 636810.

259. KOR. SEC. DEALERS ASS'N, *supra* note 228, at 248.

260. SWATI R. GHOSH, EAST ASIAN FINANCE: THE ROAD TO ROBUST MARKETS 123 tbl.5.12 (2006).

261. Seo Jee-yeon, *Korea Exchange to Go Public Next Year*, KOR. TIMES, Sept. 24, 2006, *available at* 2006 WLNR 23491008 ("Korea Exchange (KRX), the nation's stock

after failing to resolve differences on several key issues with the Ministry of Finance and Economy and the FSC.[262]

One of the controversial issues is the revision of securities regulation to detach from the KRX the exchange's market oversight commission, which monitors irregularities in stock trading before the KRX gets listed on the main stock bourse.[263] The KRX, however, has been against the idea because of the fear that the exchange would be nothing more than a simple mediator of stock transactions in that case.[264] Also, the exchange wants to decide stock trading commissions on its own, while the ministry argues that a public operation committee should play that role.[265] In addition, "[t]he federation of unions of securities firms is strongly opposing the exchange's IPO plans, saying that [the KRX] is not ready for such a task yet and the listing will expose it to merger and acquisition (M&A) threats."[266]

The KFIA, the other major SRO in Korea, was established on February 4, 2009, which was the enforcement date of the FSCMA, in response to the Act's implementation.[267] The KFIA was created through the integration of the Korea Securities Dealers Association, established in November 1953, the Asset Management Association of Korea, established in May 1996, and the Korean Futures Association, established in December 1996, as a non-profit organization.[268] The KFIA aims to coordinate conflicts of interest among market participants, establish a consolidated self-regulatory system, and advance the Korean capital and derivative markets.[269]

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market operator, Friday said it would list its shares on the main stock bourse in the first half of next year as part of its globalization efforts.").

262. Park Hyong-ki, *Brokerage Stocks Fall on Delayed KRX Listing*, KOR. TIMES, Aug. 29, 2007, *available at* 2007 WLNR 16876599.

263. Yoon Ja-young, *KRX Listing Should Follow Law Revision: Vice Minister*, KOR. TIMES, Aug. 30, 2007, *available at* 2007 WLNR 17009359.

264. *Id.*

265. *Id.* The reasoning behind the ministry's arguments is "that as a profit seeking corporation monopolizing the market, the KRX shouldn't be in charge of judging listing of companies," because public interest could be damaged if the KRX continuously has such power even after getting listed. *Id.*

266. Park Hyong-ki, *KRX Unions Split over Listing Plan*, KOR. TIMES, Aug. 26, 2007, *available at* 2007 WLNR 16651119.

267. *Chairman's Message*, KOR. FIN. INV. ASS'N, http://www.kofia.or.kr/kofia/index.cfm?event=eng.abo.page01 (last visited Apr. 10, 2011); *see also Chronology*, KOR. FIN. INV. ASS'N, http://www.kofia.or.kr/kofia/index.cfm?event=eng.abo.page04 (last visited Apr. 10, 2011).

268. FIN. SUPERVISORY SERV., *supra* note 239, at 24; *see also Chronology*, *supra* note 267.

269. Lee Hyo-sik, *Universal Financial Investment Firms to Be Established*, KOR. TIMES,

7. *United Kingdom*

The United Kingdom had the sixth highest nominal GDP in 2010 with $2353 billion according to the IMF,[270] $2174 billion according to the World Bank in 2009[271] and $2247 billion according to the CIA in 2010.[272] The United Kingdom ranked twentieth in the 2011 IMD World Competitiveness Scoreboard.[273]

Financial services accounted for 7.6% of UK GDP in 2007.[274] As of March 31, 2009, the FSA in the United Kingdom licensed and regulated approximately 27,340 financial services firms in total, including 397 banking institutions, 929 securities and futures firms, 1051 insurance companies, 6923 general insurance brokers, and 510 credit unions.[275]

The London Stock Exchange (LSE) is the main exchange for the trading of UK securities with £1288 billion market value, and is comprised of 1174 companies trading on its Main Market.[276] Trading in many UK equities is also facilitated by the PLUS Markets Exchange, which is a small and mid-cap stock recognized exchange, and a number of multilateral trading facilities,[277] which have captured a growing share of secondary trading since the introduction of Markets in Financial Instruments Directive[278] in 2007.[279]

Dec. 24, 2008, *available at* 2008 WLNR 24676720.

270. *World Economic Outlook Database, October 2009*, *supra* note 77 (row 5681, column AL).

271. WORLD BANK, *supra* note78.

272. *The World Factbook: GDP (Official Exchange Rate)*, *supra* note 79.

273. *The World Competitiveness Scoreboard 2011*, *supra* note 80.

274. INT'L FIN. SERVS. LONDON, ECONOMIC CONTRIBUTION OF UK FINANCIAL SERVICES 2008, at 1 (2008), *available at* http://www.thecityuk.com/media/2330/Economic%20contribution%20of%20UK%20fin%20servs%202008.pdf.

275. FIN. SERVS. AUTH., ANNUAL REPORT 2008/09, app. 8 at 187 (2009), *available at* http://www.fsa.gov.uk/pubs/annual/ar08_09/Appendix8.pdf.

276. INT'L FIN. SERVS. LONDON, EQUITY MARKETS 2009, at 6 (2009), *available at* http://www.thecityuk.com/media/2192/CBS_Equity%20Markets%202009.pdf.

277. A "multilateral trading facility" means "a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments." Emilios Avgouleas, *A Critical Evaluation of the New EC Financial-Market Regulation: Peaks, Troughs, and the Road Ahead*, 18 TRANSNAT'L LAW. 179, 194 n.59 (2005).

278. The Markets in Financial Instruments Directive, which came into force on November 1, 2007, is a major part of the European Union's plan to create a single market in financial services. Simon Dodds, *Current Regulatory Issues: Selected Materials*, *in* SIXTH ANNUAL INSTITUTE ON SECURITIES REGULATION IN EUROPE 109, 174 (PLI Corp. Law & Practice Course Handbook Series No. 8691, 2007), *available at* Westlaw 1580 PLI/Corp 109.

According to the 2011 KOF Index of Globalization, the United Kingdom ranked twenty-first in the world in terms of the overall globalization and twenty-second in terms of the economic globalization.[280] The United Kingdom has the sixteenth freest economy in the world according to the 2011 Index of Economic Freedom.[281] London is ranked the most competitive financial center[282] and the most competitive commercial center[283] in the world. "London has long been one of the world's major financial centers."[284] In order to maintain London's position as a world financial center and to enhance its competitiveness,[285] the United Kingdom has implemented several financial reforms.

The first main reform was the so-called "Big Bang" in 1986,[286] which involved the "deregulation of the London Stock Exchange . . . and the introduction of international integrated financial services firms into this formerly-closed and functionally-segmented marketplace."[287] The Big Bang constituted a major overhaul of the UK financial regulation system by establishing a comprehensive scheme of regulation covering the entire financial services industry under the FSA 1986,[288] which came

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279. INT'L FIN. SERVS. LONDON, *supra* note 276, at 6.

280. *2011 KOF Index of Globalization: Detailed Rankings*, *supra* note 81.

281. THE HERITAGE FOUND., *supra* note 82, at 4.

282. Z/YEN GROUP, *supra* note 84, at 19 tbl.8.

283. MASTERCARD, *supra* note 85, at 20.

284. Christopher K. Roberts, *A United Kingdom Perspective*, *in* BANKING LAW AND REGULATION 815, 822 (PLI Commercial Law & Practice Course Handbook Series No. A4-4201, 1987), *available at* Westlaw 436 PLI/Comm 815.

285. *Id.*

286. "On October 27, 1986, Prime Minister Thatcher initiated the Big Bang, which abolished restrictions on financial markets and led to a dramatic increase in finance-related activity and the legal work to support [the reform]." Eric L. Martin, *Liberalization and Cravathism: How Liberalization Triggered the Reorganization of the Legal Profession in Germany and Japan*, 43 STAN. J. INT'L L. 169, 179 (2007) (footnote omitted).

287. James J. Fishman, *Enforcement of Securities Laws Violations in the United Kingdom*, 9 INT'L TAX & BUS. LAW. 131, 132 (1991).

288. Katharina Pistor & Chenggang Xu, *Incomplete Law*, 35 N.Y.U. J. INT'L L. & POL. 931, 994 (2003).

> FSA 1986 created three levels of authority to regulate the financial services industry. The first and highest level of authority is a governmental body called the Department of Trade and Industry (DTI). DTI transferred primary regulatory responsibility to the second level, a non-governmental regulatory body called the Securities and Investment Board (SIB). The SIB developed a framework of rules and regulations and granted recognition to SROs and certain professional bodies, the third level of regulatory authority, which directly monitored the activities of their members, the financial services firms.

Cory Alpert, *Financial Services in the United States and United Kingdom: Comparative* into force on April 29, 1988.[289]

After the collapse of a major UK bank, Barings, in 1995,[290] the UK financial regulatory structure underwent another significant reform in 1997 that led to the passing of the FSMA,[291] the creation of the FSA,[292] and a Memorandum of Understanding between Her Majesty's Treasury (HM Treasury),[293] the Bank of England, and the FSA.[294]

Approaches to Securities Regulation and Dispute Resolution, 5 BYU INT'L L. & MGMT. REV. 75, 78–79 (2008) (footnotes omitted). In 1997, FSA replaced the SIB. *Id.* at 79.

289. Robert W. Helm & Federick B. Lohr, *Creating, Managing and Distributing Offshore Investment Products: A Legal Perspective*, *in* NUTS & BOLTS OF FINANCIAL PRODUCTS 2004, at 471, 636 (PLI Corp. Law & Practice Course Handbook Series No. B0-026S, 2004), *available at* Westlaw 1412 PLI/Corp 471.

290. Sydney M. Cone, III, *International Legal Practice Involving England and New York Following Adoption of the United Kingdom Legal Services Act 2007*, 28 NW. J. INT'L L. & BUS. 415, 423 (2008).

291. The FSMA came into effect on December 1, 2001. Brooks White, *Access to Records Clause in U.S. Reinsurance Contracts*, *in* REINSURANCE LAW 27, 34 n.8 (PLI Commercial Law & Practice Course Handbook Series No. 14317, 2008), *available at* Westlaw 907 PLI/Comm 27.

292. The FSA, replaced the SIB on October 28, 1997:

> The FSA combined nine agencies including the Building Societies Commission, supervising building societies; the Registry of Friendly Societies, supervising credit unions and registering mutual societies; the Friendly Societies Commission, supervising friendly societies; the Supervision and Surveillance Division of the Bank of England, supervising banks (including the wholesale money market regimes); the Insurance Directorate of the Department of Trade and Industry, supervising insurance companies; the Investment Management Regulatory Organization, regulating investment management; the Personal Investment Authority, regulating retail investment business (pensions, life assurance etc.); the Securities and Futures Authority, regulating securities and derivatives business; and the FSA, overseeing the regulatory system, regulating investment business, and supervising exchanges and clearing houses.

Lawrence L. Lee, *supra* note 14, at 521 n.320.

293. The Memorandum of Understanding had several effects:

> The FSA, [HM] Treasury, and Bank of England signed a domestic MOU providing a general division of responsibilities in which the Treasury maintains overall responsibility for policy and the adoption of statutory instruments, while the FSA has primary responsibility for the supervision and regulation of all financial business, and the Bank of England conducts monetary policy and surveillance of international financial markets.

Kern Alexander, *UK Corporate Governance and Banking Regulation: The Regulator's Role as Stakeholder*, 33 STETSON L. REV. 991, 1021 (2004) (footnote omitted). The Memorandum of Understanding set out "their respective responsibilities and arrangements to ensure coordination of their activities. One element of these arrangements was the creation of a Tripartite Standing Committee comprising representatives of [HM Treasury], the BoE, and the FSA." G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 180 (footnotes omitted).

294. Andrew Campbell & Rosa Lastra, *Revisiting the Lender of Last Resort*, 24 BANKING & FIN. L. REV. 453, 473 (2009).

Following the implementation of FSMA and the consolidation of financial supervision and regulation,[295] the FSA, a private company limited by guarantee,[296] is now responsible for supervision of securities, banking and insurance sectors in the United Kingdom.[297] Thus the current regulatory structure in the United Kingdom is characterized as an integrated structure involving the Bank of England, FSA, and HM Treasury.[298] The FSA has also replaced a number of SROs and undertaken many powers that the LSE previously monopolized, including the power to decide on listing applications for the stock exchange's markets.[299]

The LSE became demutualized in 2000 and listed on its own Main

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295. The FSMA provided the framework within which the FSA may operate with a full range of powers. *See* Helm & Lohr, *supra* note 289, at 636. "Pursuant to the Bank of England Act, regulatory and supervisory authority over the banking industry [was] transferred from Bank of England to the FSA [in 1998]." N. Adele Hogan, *Speech by SEC Staff: Interim Report of the Committee on Capital Markets Regulation*, *in* CONDUCTING DUE DILIGENCE IN M&A AND SECURITIES OFFERINGS 2007, at 229, 300 tbl.I.1 (PLI Corp. Law & Practice Course Handbook Series No. 10830, 2007), *available at* Westlaw 1606 PLI/Corp 229. In 2000, "the FSA [took] over LSE's role as UK Listing Authority, consolidating responsibility for exchange regulation and banking supervision in a single regulator." *Id.* The implementation of FSMA formally transferred to the FAS the responsibilities of Building Societies Commission, Friendly Societies Commission, Investment Regulatory Organization, Personal Investment Authority, Register of Friendly Societies, and Securities and Futures Authority in 2001. *Id.*

296. Caroline Bradley, *Demutualization of Financial Exchanges: Business as Usual?*, 21 NW. J. INT'L L. & BUS. 657, 687 (2001).

297. Colleen P. Mahoney, *International Enforcement of U.S. Securities Laws*, *in* GLOBAL CAPITAL MARKETS & THE U.S. SECURITIES LAWS 2009, at 861, 894 n.84 (PLI Corp. Law & Practice Course Handbook Series No. 18228, 2009), *available at* Westlaw 1743 PLI/Corp 861.

> [The FSA] has been given a wide range of rulemaking, investigatory and enforcement powers in order to meet its four statutory objectives: maintaining confidence in the financial system; promoting public understanding of the financial system; securing the appropriate degree of protection for consumers; and reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.

Abigail Arms, *Global Perspectives on Corporate Governance*, *in* PREPARATION OF ANNUAL DISCLOSURE DOCUMENTS 2009, at 69, 77 (PLI Corp. Law & Practice Course Handbook Series No. 18393), *available at* Westlaw 1711 PLI/Corp 69. *See also* Mushfique Shams Billah, *Arab Money: Why Isn't the United States Getting Any?*, 32 U. PA. J. INT'L L. 1055, 1091 ("The FSA deals with banks, insurance companies, securities dealers, partnerships, and all financial institutions and regulated activities.").

298. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 178.

299. Gadinis & Jackson, *supra* note 63, at 1266; *see also* Simon Gleeson & Harold S. Bloomenthal, *The Public Offer of Securities in the United Kingdom*, 27 DENV. J. INT'L L. & POL'Y 359, 361 (1999) (stating that all of the SROs were scheduled to merge into the FSA).

Market in July 2001.[300] In October 2007, the LSE merged with Borsa Italiana, creating London Stock Exchange Group.[301] The PLUS Markets Group Plc, a group engaged in the operation of the PLUS Markets, is listed on the Alternative Investment Market[302] of the LSE.[303]

8. United States

The United States had the highest nominal GDP in the world in 2010 with $14,704 billion according to the IMF,[304] $14,119 billion according to the World Bank in 2009[305] and $14,660 billion according to the CIA in 2010.[306] The United States tied for first in the 2011 IMD World Competitiveness Scoreboard.[307]

According to the 2011 KOF Index of Globalization, the United States ranked twenty-seventh in the world in terms of the overall globalization and fiftieth in terms of the economic globalization.[308] The United States has the ninth freest economy in the world according to the 2011 Index of Economic Freedom[309] with four of the top twenty-five global financial centers and six of the top twenty-five global commercial centers. According to the 2009 Global Financial Centres Index, New York has ranked the second most competitive financial center in the world, Chicago the eighth, Boston the eighteenth, and Washington, D.C. the twentieth.[310] Also, according to the 2008 Worldwide Centers of Commerce Index, New York has ranked the second most competitive

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300. *Our History*, LONDON STOCK EXCH., http://www.londonstockexchange.com/about-the-exchange/company-overview/our-history/our-history.htm (last visited Apr. 10, 2011).

301. *Company Overview*, LONDON STOCK EXCH., http://www.londonstockexchange.com/about-the-exchange/company-overview/company-overview.htm (last visited Apr. 10, 2011).

302. The Alternative Investment Market, launched by the LSE in 1995, "is a lightly regulated, alternative public market established primarily as an exchange for small, capitalized issuers." Steven M. Davidoff, *Regulating Listings in a Global Market*, 86 N.C. L. REV. 89, 107 (2007).

303. PLUS MARKETS GROUP PLC, LONDON STOCK EXCH., http://www.londonstockexchange.com/exchange/prices-and-markets/stocks/summary/company-summary.html?fourWayKey=GB0032654641GBGBXAIM (last visited Apr. 10, 2011).

304. *World Economic Outlook Database, October 2009*, *supra* note 77 (column 5714, row AL).

305. WORLD BANK, *supra* note 78.

306. *The World Factbook: GDP (Official Exchange Rate)*, *supra* note 79.

307. *The World Competitiveness Scoreboard 2011*, *supra* note 80.

308. *2011 KOF Index of Globalization: Detailed Rankings*, *supra* note 81.

309. THE HERITAGE FOUND., *supra* note 82, at 4.

310. Z/YEN GROUP, *supra* note 84, at 19 tbl.8.

commercial center in the world, Chicago the fifth, Los Angeles the seventeenth, Philadelphia the eighteenth, Boston the twenty-first, and Atlanta the twenty-fifth.[311]

"The U.S. financial services system accounts for approximately 8 percent of the country's [GDP], and by assets is the largest financial system globally."[312] The United States has more than 31,000 regulated financial services providers—"approximately 9,000 banks and bank or financial holding companies, 8,000 credit unions, 7,600 insurance providers, 5,000 brokerage firms, 1,300 thrifts and thrift holding companies, and 500 investment management firms."[313]

The two primary stock exchanges in the United States are NYSE Euronext and NASDAQ OMX. As of December 31, 2008, 2447 issuers were listed on the NYSE Euronext (U.S.), including a cross-section of large, mid-size, and small-cap U.S. and non-U.S. companies that represented a total global market value of $15 trillion. Four hundred ninety six closed-end funds and 509 exchange traded products, with an aggregate market capitalization of approximately $306 billion, were also listed on the NYSE Euronext (U.S.).[314] NASDAQ OMX is the largest U.S. electronic stock market with approximately 3200 listed companies.[315]

"The structure of the U.S. financial services regulatory regime is admittedly complex, and reflects such factors as the federalist nature of the United States, responses to financial crises, solutions to specific problems, developments or regulatory gaps, and efforts to modernize the financial system over time."[316] The complexity of the U.S. financial

311. MASTERCARD, *supra* note 85, at 20.

312. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 208; *see also Gross-Domestic-Product-by-Industry Accounts*, BUREAU ECON. ANALYSIS, http://www.bea.gov/industry/gpotables/gpo_action.cfm?anon=817832&table_id=26752&format_type=0 (last visited Apr. 11, 2011).

313. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 208.

314. NYSE Euronext, Form 10-K: Annual Report for the Fiscal Year Ended December 31, 2008, at 1 (Feb. 27, 2009), http://www.sec.gov/Archives/edgar/data/1368007/000119312509041093/d10k.htm.

315. *Site Map*, NASDAQ, http://www.nasdaq.com/help/sitemap.stm (last visited Apr. 11, 2011).

316. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 208. During its history, the United States has experienced several financial panics and economic disruptions, and federal regulations have evolved through a series of piecemeal response to crises in its financial markets. MARK JICKLING & EDWARD V. MURPHY, CONG. RESEARCH SERV., WHO REGULATES WHOM? AN OVERVIEW OF U.S. FINANCIAL SUPERVISION 2 (2009), *available at* http://assets.opencrs.com/rpts/R40249_20090224.pdf. For example, partially in response to the Panic of 1857, a financial crisis in which the value of state bank notes became uncertain and the wider economy suffered a recession, "the United States established a single national

regulatory system is created, in part, by the differences in the regulatory oversight of banking, securities, and insurance.[317] In the United States, federal and state agencies provide oversight and guidance for banking and securities, while states supervise insurance.[318] In addition, different federal and state agencies regulate each financial services sector.[319]

The U.S. financial services system is characterized as a fragmented approach with multiple overlapping regulators in all financial services sectors,[320] and comprises both functional regulation of activities and consolidated supervision, in which the following institutions have a role[321]: Federal Reserve System ("Fed"), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), National Credit Union Administration, Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), and the Federal Housing Finance Agency.[322] "Over the years numerous proposals called

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currency, coordinated through a system of federally chartered banks." *Id.* at 3. In 1863, the Office of the Comptroller of the Currency was established to regulate the safety and soundness of these banks and as part of banking reforms designed to ease funding of the Civil War. *Id.* The Federal Reserve was created in 1914 as a system of federally regulated bank reserves, partially in response to the Panic of 1907, a series of runs on banks, and financial trusts with inadequate reserves. *Id.* at 3–4. The Federal Deposit Insurance Corporation was created in 1933 as a federal insurance program for bank deposits, after fear that banks would not be able to honor their commitments to depositors during the Great Depression caused a series of bank runs in 1931 and 1933. JICKLING & MURPHY, *supra*, at 4. The Securities and Exchange Commission was created in 1934 to restore confidence in securities markets by standardizing disclosures and requiring regular reporting after the Great Depression. *Id.* at 4 tbl.1.

317. *See* G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 208.

318. *Id.* at 32–33.

319. *Id.*

320. WORLD ECON. FORUM, *supra* note 9, at 75.

321. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 208.

322. *Id.* at 208–10. The Fed is the lender of last resort to member banks and regulates bank holding companies, state banks that are members of the Fed, U.S. branches of foreign banks, and foreign branches of U.S. banks. JICKLING & MURPHY, *supra* note 316, at 6 tbl.2. The OCC regulates national banks and U.S. federal branches of foreign banks. *Id.* The FDIC regulates federally-insured depository institutions, including state banks that are not members of the Fed. *Id.* The Office of Thrift Supervision regulates federally chartered and insured thrift institutions and savings and loan holding companies. *Id.* The National Credit Union Administration regulates federally-chartered or insured credit unions, and serves as a liquidity lender to credit unions experiencing liquidity shortfalls. JICKLING & MURPHY, *supra* note 316, at 6 tbl.2. The SEC regulates securities exchanges, brokers and dealers, mutual funds and investment advisers, and registers corporate securities sold to the public. *Id.* at 7 tbl.2. The CFTC regulates futures exchanges, brokers, pool operators, and advisers. *Id.* The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, and has acted as conservator since September 2008 for Fannie Mae and Freddie Mae. *Id.*

for reducing number of financial regulators by merging some or all of them."[323] Accordingly Section 312 of the Dodd–Frank Wall Street Reform and Consumer Protection Act mandated merger of OTS with the OCC, the FDIC, the Fed, and the CFPB as of July 21, 2011.[324]

In addition, the United States has various SROs, including the Financial Accounting Standards Board, the International Swaps and Derivatives Association, the Securities Industry and Financial Markets Association (SIFMA), the Financial Industry Regulatory Authority ("FINRA"), the National Association of Insurance Commissioners, the Conference of State Bank Supervisors, and the North American Securities Administrators Association.[325]

"The U.S. financial services industry has changed significantly during the twentieth century."[326] Despite the separation of commerce and banking under the Banking Act of 1933, otherwise known as the Glass–Steagall Act, and the Bank Holding Company Act of 1956,[327] financial services sectors in the United States have integrated across "geographical, functional, and sectoral lines."[328] "The convergence, which took place between banks, insurance companies, and securities firms, and the trend toward consolidation of these industries to create 'one-stop-shop' financial centers, is best illustrated by the 1998 merger

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323. Saule T. Omarova, *Rethinking the Future of Self-Regulation in the Financial Industry*, 35 BROOK. J. INT'L L. 665, 680 n.53 (2010).

324. *See* Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 312(b)(2)(B), 124 Stat. 1376, 1522 (to be codified at 12 U.S.C. § 5412) (transferring supervisory authority over federal savings associations from the OTS to the OCC).

325. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 213–15. The SEC supervises numerous securities-related SROs. *See* Richard G. Wallace & Benjamin R. Dryden, *Self-Regulation: Background and Recent Developments*, *in* BROKER-DEALER REGULATION 333, 336 (ALI-ABA Course of Study, June 18–19, 2009), *available at* Westlaw SP054 ALI-ABA 333.

326. Katherine E. Howell-Best, Note, *Universal Charter Options: Providing a Competitive Advantage for State Financial Institutions*, 6 N.C. BANKING INST. 487, 488 (2002).

327. Sarah Smith, Note, *Gramm–Leach–Bliley: The Effect of Interim Rulings on German Banks*, 8 ILSA J. INT'L & COMP. L. 663, 663 (2002) ("In 1933, the Glass–Steagall Act created a 'complete divorcement' between commercial and investment banking. Under this legislation, commercial banks were prohibited from engaging in the underwriting of securities. In addition, the Bank Holding Company Act of 1956 restricted the ability of bank holding companies to enter into various business arenas or to purchase other banks. However, over the years, banks have found loopholes to expand their business and to avoid such banking regulations." (footnotes omitted)).

328. Howell-Best, *supra* note 326, at 488.

of two large United States banks, Citicorp and Travelers, into the conglomerate, Citigroup."[329]

In 1999, the GLBA,[330] also known as the Financial Modernization Act of 1999,[331] repealed the Glass–Steagall separation of commercial and investment banking[332] and "permit[ted] consolidations among insurance companies, banks and securities firms under a new type of regulated holding company called a Financial Holding Company (FHC)."[333] "[GLBA], however, did not eliminate restrictions on direct securities activities of commercial banks."[334]

> GLBA . . . created a new arrangement for the effective supervision of FHCs—designating the [Fed] as their "umbrella" supervisor, with the [OCC], the fifty state banking departments, the SEC, and the fifty state insurance authorities serving as the "functional regulators" of the banking, securities, and insurance subsidiaries of the Fed-supervised FHCs.[335]

"In outsourcing its equity business and establishing PCX Equities, Inc., as a corporate subsidiary in 1999, the Pacific Exchange [("PCX")] created the first demutualized for-profit marketplace for stocks in the United States."[336] In August 2000, the PCX, together with Archipelago Holdings, Inc., created a new, fully electronic stock market, Archipelago Exchange.[337] The Pacific Exchange demutualized in August 2004, after

329. Smith, *supra* note 327, at 672.

330. *See* Gramm–Leach–Bliley Financial Modernization Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999).

331. GLBA was signed into law on November 12, 1999 and became effective on July 1, 2001. *See* Xinguang Sheng & Lorrie Faith Cranor, *An Evaluation of the Effect of US Financial Privacy Legislation Through the Analysis of Privacy Policies*, 2 I/S: J.L. & POL'Y FOR INFO. SOC'Y 943, 946 (2006).

332. Alan R. Palmiter, *Staying Public: Institutional Investors in U.S. Capital Markets*, 3 BROOK. J. CORP. FIN. & COM. L. 245, 277 (2009).

333. Stacie E. McGinn, *Impact of the Gramm-Leach-Bliley Act on the Insurance Industry*, *in* AFTER THE GRAMM–LEACH–BLILEY ACT: A ROAD MAP FOR INSURANCE COMPANIES (PLI Corp. Law & Practice Course Handbook Series No. B0-00QU, 2000), *available at* Westlaw, 1185 PLI/Corp 113.

334. Saule Omarova & Adam Feibelman, *Risks, Rules, and Institutions: A Process for Reforming Financial Regulation*, 39 U. MEM. L. REV. 881, 889 n.22 (2009).

335. John R. Dearie, *Reform and Modernization of U.S. Financial Supervision: A Competitive and Prudential Imperative*, 39 U. MEM. L. REV. 793, 800 (2009).

336. Fleckner, *supra* note 50, at 2557.

337. Roberta S. Karmel, *Turning Seats into Shares: Causes and Implications of Demutualization of Stock and Futures Exchanges*, 53 HASTINGS L.J. 367, 380 (2002); *see also* Brandon Becker et al., *An Overview of Online Securities Trading*, *in* SECURITIES LAW & THE INTERNET: DOING BUSINESS IN A RAPIDLY CHANGING ENVIRONMENT 2000, at 431, 445 (PLI Corp. Law & Practice Course Handbook Series No. B0-00JT, 2000), *available at* Westlaw 1188 PLI/Corp 431.

the demutualization of its PCX Options, Inc. in June 2004.[338] Archipelago Holdings went public in 2004,[339] acquired PCX's parent company in early 2005, and later that year, merged with NYSE.[340] "Following the merger in March 2006, the NYSE . . . became a for-profit corporation with shares listed on its own exchange."[341] In the meantime, NASDAQ demutualized in 2001[342] and became a national exchange in January 2006.[343]

While the PCX became the first U.S. stock exchange to demutualize, the Chicago Mercantile Exchange became "the first US financial exchange to demutualize in November 2000, converting its membership interests into shares of common stock in the Chicago Mercantile Exchange, Inc. that can trade separately from exchange trading privileges."[344] The Chicago Mercantile Exchange went public in December 2002[345] and acquired the Chicago Board of Trade to create the

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338. Fleckner, *supra* note 50, at 2557.

339. *Id.*

340. John Hintze, *Exchange Dreams Move Closer to Reality for BATS*, SEC. INDUS. NEWS, Nov. 12, 2007, *available at* 2007 WLNR 22350166.

341. Stavros Gadinis, *The Politics of Competition in International Financial Regulation*, 49 HARV. INT'L L.J. 447, 495 n.152 (2008).

342. Reena Aggarwal & Sandeep Dahiya, *Demutualization and Public Offerings of Financial Exchanges*, J. APPLIED CORP. FIN., Summer 2006, at 96, 98 tbl.1, *available at* http://faculty.msb.edu/aggarwal/183final.aggarwal.pdf.

343. Frederick Wertheim & Richard Pullano, *Broker–Dealer and Associated Person Registration*, *in* THE ABCS OF BROKER–DEALER REGULATION 2006, at 45, 66 (PLI Corp. Law & Practice Course Handbook Series No. 9832, 2006), *available at* 1540 PLI/Corp 45.

> Until recently, the Nasdaq stock market was a for-profit, but wholly-owned subsidiary of the nonprofit National Association of Securities Dealers, Inc. (NASD) [(now FINRA)], the largest self-regulatory organization (SRO) for the securities industry. In 2000, in a strategic response to an increasingly competitive securities trading market, the NASD membership approved spinning off the for-profit NASD-owned Nasdaq and converting it into a for-profit shareholder-owned market that later planned to issue publicly traded stock. The process [had] three broad stages: (1) issuing privately place stock; (2) converting to technical exchange status; and (3) issuing publicly-held stock.

See GARY SHORTER, CONG. RESEARCH SERV., NASDAQ'S PURSUIT OF EXCHANGE STATUS AND AN INITIAL PUBLIC OFFERING 1 (2005), *available at* http://www.policyarchive.org/handle/10207/bitstreams/3593.pdf. "In March 2001, Nasdaq submitted an application for exchange status to the Securities and Exchange Commission (SEC) to proceed to . . . . its conversion to an independent shareholder owned market—a public stock offering." *Id.*

344. Pamela S. Hughes, *Background Information on Demutualization*, *in* DEMUTUALIZATION OF STOCK EXCHANGES supra note 54, at 33, 35.

345. Jonah Keri, *Chicago Mercantile Sets Up in Long Base*, INVESTOR'S BUS. DAILY, Jan. 16, 2004, at B06, *available at* 2004 WLNR 21818747.

CME Group, Inc., the world's largest futures exchange, in July 2007.[346]

> Following more than two decades of various cross-border trading linkages and other alliances between U.S. and foreign exchanges, 2007 finally brought the first true merger of a U.S. exchange with a foreign one. The combination of NYSE Group, Inc. and Euronext N.V. produced NYSE Euronext [in April 2007], though each exchange involved in the merger continues to operate in, and remains subject to regulation in, its home jurisdiction.[347]

Also, in December 2007, the Eurex exchange, a derivatives exchange operated jointly by Deutsche Börse AG and the SWX Swiss Exchange, completed its acquisition of the International Securities Exchange.[348]

In the meantime, the Nasdaq Stock Market reached a deal with Börse Dubai Ltd. that resulted in Nasdaq's eventual acquisition of the OMX Group, which is based in Stockholm and operates a number of exchanges in the Nordic and Baltic regions,[349] and the creation of NASDAQ OMX in February 2008.[350] Later in 2008, the NASDAQ OMX acquired Boston Stock Exchange, Inc. and Philadelphia Stock Exchange, Inc.[351]

9. Summary of Remarks

The following Table 1 summarizes the case studies on the convergence, consolidation, and conglomeration of the financial services industry in Australia, Hong Kong, Japan, Singapore, South Korea, the United Kingdom, and the United States, and provides a brief comparison chart.

346. Matthew Leising, *Nymex Shares Rise After Sale Talks Are Disclosed*, INT'L HERALD TRIB., Aug. 23, 2007, at 12, *available at* 2007 WLNR 16398343.

347. Brandon Becker & Christie Farris Öberg, *A Model in Transition?: The SEC's Approach to the Regulation of Cross-Border Trading*, *in* FOREIGN ISSUERS & THE U.S. SECURITIES LAWS 2008, *supra* note 15, at 555, 560 (footnote omitted).

348. *Id.*

349. *Id.*

350. *Financial services report: Exchanges*, FIN. SERVICES FORECAST, Feb. 16, 2011, at 8, *available at* 2011 WLNR 5115473 ("Nasdaq is also now part of a profit-making firm, Nasdaq OMX, formed as a result of its merger with OMX, the Nordic bourse operator, in February 2008.").

351. *Self-Regulatory Organizations; Proposed Rule Changes: American Stock Exchange LLC and New York Stock Exchange LLC*, REGALERT, Oct. 3, 2008, *available at* 2008 WLNR 18868986.

TABLE 1. SUMMARY AND COMPARISON CHART OF THE CONVERGENCE, CONSOLIDATION, AND CONGLOMERATION OF THE INTERNATIONAL FINANCIAL SERVICES INDUSTRY

		Australia	Hong Kong	Japan	Singapore	South Korea	United Kingdom	United States
Nominal GDP Rankings	IMF (2010)	13	38-39	3	39	15	6	1
	World Bank (2009)	15	37-38	3	38	14	6	1
	CIA (2010)	13	38-39	3	39	15	6	1
IMD World Competitiveness Rankings (2011)		9	1	26	3	23	20	1
GDP Percentage Share of Financial Services Industry		7.3	19.5	N/A	11	1.5	7.6	8
Memberships of International Financial Institutions		BCBS, IOSCO, IAIS	BCBS, IOSCO, IAIS	BCBS, IOSCO, IAIS	BCBS, IOSCO, IAIS	BCBS, IOSCO, IAIS	BCBS, IOSCO, IAIS	BCBS, IOSCO, IAIS
KOF Index of Globalization (2011)	Overall	22	–	44	18	54	21	27
	Economic	45	–	92	1	79	22	50
Index of Economic Freedom World Ranking (2011)		3	1	20	2	35	16	9
Global Financial Centres Rankings (Sept. 2009)		Sydney (11)	3	Tokyo (7)	4	Seoul (35)	London (1)	New York (2), Chicago (8), Boston (18), Washington D.C. (20)
Worldwide Centers of Commerce Rankings (2008)		Sydney (12)	5	Tokyo (3)	4	Seoul (9)	London (1)	New York (2), Chicago (5) Los Angeles (17), Philadelphia (18), Boston (21), Atlanta (25)
Homogenization of Financial Services Sectors		Financial Services Reform Act (2001)	Securities and Futures Ordinance (2003)	Financial Instruments and Exchange Law (2006)	Securities and Futures Act (2001)	FSCMA (2009)	FSMA (2000)	GLBA (1999)
Homogenization of Financial Supervision		Twin-Peak: APRA, ASIC, RBA	Institutional: Hong Kong Money Authority, Mandatory Provident Fund Schemes Authority, Office of the Commissioner of Insurance, Securities and Futures Commission	Integrated: Bank of Japan, Deposit Insurance Corporation of Japan, Financial Services Agency	Integrated: MAS	Integrated: MOF, Bank of Korea, FSC, FSS	Integrated: Bank of England, HM Treasury, FSA	Fragmented: CFTC, Fed, FDIC, Federal Housing Finance Agency, National Credit Union Administration, OCC, OTS, SEC
Demutualization of Exchanges		Yes	Yes	Yes	Yes	Yes	Yes	Yes
IPO/Listing of Exchanges		Yes	Yes	No	Yes	No	Yes	Yes
Transnational Integration of Exchanges		No	No	No	No	No	Yes	Yes

D. *Concluding Remarks*

Improvements in technology, "coupled with efforts by governments to ease restrictions on investment and capital accounts, have closely integrated financial markets around the world."[352] Advances in IT along with deregulation and globalization have further spurred financial innovations that break down traditional barriers between banking, securities, and insurance services sectors and create new financial products that homogenize among the financial services sectors.[353]

For example, "sophisticated computer systems and new financial instruments . . . [have] made it feasible to 'securitize' many types of business and consumer debt. . . . [as well as] to offer low-cost cash management and investment management services to the general public" through direct financing or other investment vehicles linked to financial markets.[354]

In combination, these developments have caused increasing competition; decreasing profit margins in the markets traditionally served by banks, securities firms, and life insurance companies; and increasing pressure to consolidate.[355] In response to the homogenization trend of financial services sectors, some governments have integrated their financial supervisory agencies. Particularly, Singapore has experienced an all-embracing regulatory approach in respect of financial services.[356]

In the meantime, globalization, blurring of financial product dictions, development of technology, sophistication of market participants, and international competition have also brought about the consolidation of exchanges.[357] Furthermore, the emergence of electronic communication networks or alternative trading systems has put additional pressure on exchanges to adopt more efficient trading systems, to migrate to electronic trading, and to convert themselves into publicly-listed entities that enable exchanges to undertake M&A.[358]

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352. Sarah M. Brooks, *Social Protection in a Global Economy: The Case of Pension Reform in Latin America*, NAFTA: L. & BUS. REV. AM., Spring 1998, at 91, 95.

353. Arthur E. Wilmarth, Jr., *The Transformation of the U.S. Financial Services Industry, 1975–2000: Competition, Consolidation, and Increased Risks*, 2002 U. ILL. L. REV. 215, 222 (2002).

354. *Id.*

355. *Id.*

356. Chew, *supra* note 5, at 569–70.

357. *See* Shaw, *supra* note 54, at 265–67.

358. Aggarwal & Dahiya, *supra* note 342, at 100.

The demutualization and self-listing of the NYSE "marks the final phase of a remarkable organizational transformation wave that has swept across most of the major financial exchanges in the last ten years."[359] Of the world's five largest stock exchanges,[360] only the TSE still remains unlisted, but this exchange demutualized in 2001 and plans to list its shares in the near future.[361] "[T]he demutualization of the world's major stock exchanges has resulted in widespread consolidation of stock exchanges (most notably the merger of the . . . NYSE with Euronext and Nasdaq with OMX), investment in electronic trading platforms by former floor-based trading exchanges, and the cross-ownership of securities and derivative exchanges."[362]

The inclination of exchanges to demutualize and to form cross-border alliances with other exchanges,[363] in addition to the homogenization trend among financial services sectors, have fueled further globalization of the financial services industry.[364]

III. THE FUTURE OF THE FINANCIAL SERVICES INDUSTRY: COLLABORATION

A. *Introductory Remarks*

As mentioned earlier, propelled by innovation in IT, over the past several decades the financial services industry has witnessed a remarkable increase in cross-border capital flows around the globe.[365] This financial globalization which has brought about financial liberalization and deregulation, however, has turned out to be a double-edged sword. Financial globalization, on the one hand, has provided new investment and financing opportunities to firms, but on

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359. *Id.* at 96.

360. In 2008, the world's five largest stock exchanges ranked by domestic equity market capitalization in order were NYSE Euronext (United States), Tokyo Stock Exchange Group, NASDAQ OMX (United States), NYSE Euronext (Europe), and London Stock Exchange. *See* WORLD FED'N OF EXCHS., *supra* note 58, at 36. The world's five largest stock exchanges ranked by total value of share trading in order were NASDAQ OMX (United States), NYSE Euronext (United States), London Stock Exchange, Tokyo Stock Exchange Group, and Deutsche Börse. *Id.* at 39.

361. Aggarwal & Dahiya, *supra* note 342, at 98.

362. Eric J. Pan, *Single Stock Futures and Cross-Border Access for U.S. Investors*, 14 STAN. J.L. BUS. & FIN. 221, 224–25 (2008).

363. Becker & Öberg, *supra* note 347, at 559.

364. *See* Pan, *supra* note 362, at 225.

365. Insop Pak, *International Finance and State Sovereignty: Global Governance in the International Tax Regime*, 10 ANN. SURV. INT'L & COMP. L. 165, 165 (2004).

the other hand, has led to "overborrowing, higher vulnerabilities, exposure to volatile international financial markets, and eventually [financial] crises."[366]

The global financial crisis of 2007–2010 resulted from unintended consequences of deregulation and innovation in financial markets[367] and is evaluated as potentially the world's worst financial crisis among any other financial crises since the Great Depression of 1929.[368] Since the financial crisis began in 2007, in only the United States, "more than 100 financial institutions have failed, and business bankruptcy filings increased almost 50 percent by the end of 2008."[369] In response to this global financial crisis, numerous financial reform proposals have been suggested to prevent future financial crises.

A detailed discussion of the global financial crisis of 2007–2010 is beyond the scope of this paper. The paper discusses the implications of this global financial crisis for the trends of the convergence, consolidation, and conglomeration of the financial services industry and then suggests the expected trend of the financial services industry in the future.

B. The Global Financial Crisis of 2007–2010 and its Implications for the Convergence, Consolidation, and Conglomeration of the Financial Services Industry

1. Short-Term Outlook

In general, under the influence of the recent global financial crisis of 2007–2010, the pace of globalization, homogenization, and demutualization temporarily slows down. First, "[t]he expectation of a sustained global economic slowdown threatens the pace of financial market globalization and, thus, future growth opportunities for

366. Sergio Schmukler & Esteban Vesperoni, *Globalization and Firms' Financial Choices: Evidence from Emerging Economies* 15 (Int'l Monetary Fund, Working Paper No. 01/95, 2001), *available at* http://www.imf.org/external/pubs/ft/wp/2001/wp0195.pdf.

367. James F. Bauerle, *Technology, Law, and Banking*, 125 BANKING L.J. 563, 567 (2008).

368. "[U.S.] President Barack Obama has said that the current crisis is the worst since the Great Depression." *GM, Chrysler Asking for More Bailout Money; Preview of the President's Housing Plan; Facebook Reverts Back to Old Policy*, CNN: AM. MORNING (Feb. 18, 2009), http://transcripts.cnn.com/TRANSCRIPTS/0902/18/ltm.01.html.

369. Phil Weeber et al., *Market Practices for Settling Derivatives in Bankruptcy: Part I*, AM. BANKR. INST. J., Oct. 2009, at 26, 26.

wholesale financial institutions."[370] "Signs of a slowdown in economic globalization are already evident in cross-border capital flows and trade volumes."[371] The Institute of International Finance forecasted in 2009 that the volume of private capital flows to emerging economies would be likely $141 billion, which is less than one-half of $392 billion in 2008 and far below the record of $888 billion seen in 2007.[372] This presumption turned out to be correct, as provided by the IMF that the world trade volume grew by 8.7% in 2006, 7.5% in 2007, 2.7% in 2008, -10.9% in 2009, 12.4% in 2010.[373]

The global financial crisis of 2007–2010 is partly seen as a function of premature capital account liberalization.[374] "[A]s damage from the financial crisis works its way through to newly open economies, the threat of increased capital controls becomes a distinct possibility."[375] In addition, "[d]ebates regarding the role of 'hot money'[376] flows in international financial crises, having already received significant

370. WORLD ECON. F., *supra* note 9, at 19.

371. *Id.*

372. Wu Ye, *IIF: Private Capital Flow to Emerging Markets to Drop Hugely*, CHINA VIEW (June 12, 2009), http://news.xinhuanet.com/english/2009-06/12/content_11530266.htm.

373. INT'L MONETARY FUND, WORLD ECONOMIC OUTLOOK APRIL 2011, at 196 tbl.A.9 (2011), *available at* http://www.imf.org/external/pubs/ft/weo/2011/01/pdf/text.pdf.

374. Timothy A. Canova, *The Failing Bubble Economy: American Exceptionalism and the Crisis in Legitimacy*, 102 AM. SOC'Y INT'L L. PROC. 237, 242 (2008). "[I]t has been the United States and other developed countries that were not yet ready for such high levels of capital liberalization because of a systematic lack of transparency in mortgage lending, the securitization of mortgages, and [international financial institution] holdings of collateralized debt obligations . . . and other mortgage-backed securities." *Id.* at 242–43.

375. WORLD ECON. F., *supra* note 9, at 19.

376. "'Hot money' is the money that flows regularly between financial markets in search for the highest short-term interest rates possible." *See* Dongwook Lee, *The Hidden Bombs Are Ready to Tick: China's Banking Market for Foreign Investors After the WTO Accession*, 35 H.K.L.J. 205, 214 n.57 (2005). Financial globalization has brought "a huge increase in cross-border capital flows, and an increased dependence on certain volatile types of capital inflows—most specifically, short-term portfolio investment," often referred to as hot money capital flows. Timothy A. Canova, Commentary, *The Disorders of Unrestricted Capital Mobility and the Limits of the Orthodox Imagination: A Critique of Robert Solomon, Money on the Move: The Revolution in International Finance Since 1980*, 9 MINN. J. GLOBAL TRADE 219, 223 (2000). Hot money capital flows usually take the form of stocks and bonds, and have the short-term nature, "which can be quickly liquidated, thereby transforming euphoric inflows into panic-driven outflows and financial crises with little or no warning." *Id.* Hot money can undermine "exchange rate stability, the effectiveness of central bank intervention in foreign exchange markets, and the feasibility of full employment, while bringing on the global currency contagion that has decimated economies throughout much of the world, including Latin America, East Asia, and Russia." *Id.*

attention in the wake of the Asian and Russian default crises, may once again return to the forefront of public debate."[377]

"[A]rguments for limiting the exposure of domestic economies to external crises are also likely to regain their former prominence."[378] In fact, as a result of increasing government interference in economic activity in many countries, overall progress toward greater economic freedom has already been interrupted.[379]

Second, the homogenization of financial services sectors will be intervened by enhanced government regulation and supervision. "In the face of this global financial crisis, governments worldwide have an unprecedented stake in their economies,"[380] and "[i]n order to avoid a complete collapse of global financial markets, central banks and governments have already provided almost $9 trillion of support . . . for major banks, securities firms and insurance companies" in the form of emergency liquidity assistance, capital infusions, asset purchase programs, and financial guarantees.[381] Thus, government intervention in financial markets is only expected to grow.[382]

Over the past two decades, "regulators in developed nations encouraged the expansion of large financial conglomerates and failed to restrain their pursuit of short-term profits through increased leverage and high-risk activities."[383] This deregulation is considered to be one of causes that brought about the credit boom at first and then the financial crisis in the end.

Furthermore, the global financial crisis of 2007–2010 has proved "that financial institutions are not only too big to fail, but too interconnected to fail."[384] The bankruptcy filing of Lehman Brothers

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377. WORLD ECON. F., *supra* note 9, at 19.

378. *Id.*

379. *See* THE HERITAGE FOUND., 2010 INDEX OF ECONOMIC FREEDOM EXECUTIVE HIGHLIGHTS 4 (2010), *available at* http://www.heritage.org/index/PDF/2011/Index2010_ExecutiveHighlights.pdf at 4. "The average economic freedom score for the 2010 *Index* is 59.4, down 0.1 from 2009. This is only the second time in the history of the *Index* that average scores for countries measure in successive years have been declined." *Id.* at 2.

380. Wentong Zheng, *The Pitfalls of the (Perfect) Market Benchmark: The Case of Countervailing Duty Law*, 19 MINN. J. INT'L L. 1, 7 (2010).

381. Arthur E. Wilmarth, Jr., *The Dark Side of Universal Banking: Financial Conglomerates and the Origins of the Subprime Financial Crisis*, 41 CONN. L. REV. 963, 1050 (2009).

382. Zheng, *supra* note 380, at 7.

383. Wilmarth, *supra* note 381, at 1049.

384. Jonas Monast, *Climate Change and Financial Markets: Regulating the Trade Side of Cap and Trade*, 40 ENVTL. L. REP. NEWS & ANALYSIS 10051, 10061 n.105 (2010).

Holdings in September 2008 "sparked a chain reaction that sent credit markets into disarray. It accelerated the downward spiral of... American International Group Inc. [(AIG)] and precipitated losses" around the world.[385] This incident has revealed how painful it was to let a large complex financial institution go in "an age where markets, banks and investors are linked through a web of complex and opaque financial relationships."[386] As a result, AIG, a major U.S. insurance company, received financial assistance from the Federal Reserve, despite not being a bank,[387] because it was too interconnected to fail.

Under these circumstances, there is a pressing need of financial regulatory reform to eliminate or at least greatly reduce side effects of financial institutions' being too big to fail or too interconnected to fail and to establish effective control over large complex financial institutions.[388] Consequently, financial institutions will likely be held to heightened disclosure requirements and higher capital and liquidity ratios.[389]

"Once commercial banks were permitted to enter the riskier and more lucrative businesses previously reserved for [securities firms and insurance companies,] ... bank holding companies shifted away from consumer lending."[390] "In the wake of the reregulation anticipated over the next few years, financial institutions engaged in investment banking" may go back to basics in banking, by "orient[ing] their strategies towards core competencies that prioritize client businesses over ring-fenced proprietary trading activities."[391]

Usually too big to fail goes together with too interconnected to fail, but not always. For example, Bear Stearns was bailed out by the Federal Reserve not because of being "too big" to fail, but because of being "too interconnected" to fail. Donald A. Bendernagel et al., *Credit Derivatives: Usage, Practice and Issues*, *in* ADVANCED SWAPS & OTHER DERIVATIVES 283, 428 (PLI Corp. Law & Practice Course Handbook Series No. 14074, 2008), *available at* Westlaw 1700 PLI/Corp 283.

385. Carrick Mollenkamp et al., *Lehman's Demise Triggered Cash Crunch Around Globe: Decision to Let Firm Fail Marked a Turning Point in Crisis*, WALL ST. J., Sept. 29, 2008, at A1, *available at* http://online.wsj.com/article/SB122266132599384845.html.

386. *Id.*

387. Campbell & Lastra, *supra* note 294, at 474 n.45.

388. Wilmarth, *supra* note 381, at 1050.

389. WORLD ECON. FORUM, *supra* note 9, at 24.

390. Damon Silvers & Heather Slavkin, *The Legacy of Deregulation and the Financial Crisis—Linkages Between Deregulation in Labor Markets, Housing Finance Markets, and the Broader Financial Markets*, 4 J. BUS. & TECH. L. 301, 341 (2009).

391. WORLD ECON. FORUM, *supra* note 9, at 25. "Proprietary trading is a generic term that refers to a financial institution's risk positions in a market and its corresponding accounts as separate from client business." Vincent Presti, *Barings Bar None: The Financial Service*

For instance, after the collapse of Lehman Brothers:

> Four other major investment banks [in the United States] moved into the traditional banking industry, through acquisition or a change in structure: Merrill Lynch was taken over by Bank of America; Bear Stearns was acquired by JPMorgan Chase; and Morgan Stanley and Goldman Sachs converted to traditional bank holding companies.[392]

As a number of nationalized banks continue to rise, governments will adopt nationalistic banking policies, which not only might place more restrictions on foreign banks in domestic markets but could also lead to "greater fragmentation of the banking sector, with banks increasingly focused on their domestic markets."[393] "[G]overnments will assume the risk from their national banking sectors in exchange for significantly increased levels of financial regulation and oversight."[394]

"[R]egulatory reform objectives generally fall into three key categories . . . . Those categories are: investor protection, market integrity and prudential regulation, including registration of advisers to private pools of capital; systemic risk regulation; and regulation of market-wide issues, such as short selling."[395] In particular, "[m]uch of the debate surrounding 'systemic risk' and financial regulatory reform has focused on [the creation of] new 'macro-prudential' oversight and regulation."[396]

Third, plans for demutualization and self-listing will be postponed for the time being in the wake of global financial turmoil. Under the

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Agreement of the GATS and Its Potential Impact on Derivatives Trading, 21 MD. J. INT'L L. & TRADE 145, 165 n.139 (1997).

392. INS. INFO. INST., THE FINANCIAL SERVICES FACT BOOK 1 (2009), *available at* http://www.fsround.org/publications/pdfs/fact_book121808.pdf.

393. WORLD ECON. FORUM, *supra* note 9, at 19.

394. *Id.* at 17.

395. Stuart J. Kaswell & Paul N. Roth, *The Changing Regulatory Framework for Hedge Funds and Managers*, *in* HEDGE FUNDS 2009, at 91, 118 (PLI Corp. Law & Practice Course Handbook Series No. 18643, 2009), *available at* Westlaw 1764 PLI/Corp 91. Short selling means "selling securities which the seller does not own at the time of the trade." Aparna Viswanathan, *An Introduction to India's Capital Markets—Who's Who and What's What*, *in* DOING BUSINESS IN INDIA 2009, at 99, 119 (PLI Corp. Law & Practice Course Handbook Series No. 18730, 2009), *available at* Westlaw 1720 PLI/Corp 99. A naked short means selling a security before the seller has paid for the security, and a covered short means selling a security after the seller has paid but before the seller has possession. *Id.*

396. Alan L. Beller et al., *Testimony Concerning Regulation of Systemic Risk, Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission, Before the Committee on Banking, Housing and Urban Affairs, United States Senate, July 23, 2009*, *in* 41ST ANNUAL INSTITUTE ON SECURITIES REGULATION 233, 236 (PLI Corp. Law & Practice Course Handbook Series No. 19278, 2009), *available at* Westlaw 1773 PLI/Corp 233.

influence of the global financial crisis, the demutualization, including self-listing and integration of exchanges, was less active in 2009 than before. The TSE actually brought its plans to go public to a halt, and any notable demutualization or integration of exchanges was not known for the year 2009.[397]

2. Long-Term Outlook

In the long run, however, the trends of convergence, consolidation, and conglomeration of the financial services industry will continue to develop.

First:

> There is significant uncertainty as to the extent to which the current crisis could result in a full-blown reversal of the trend towards globalization. While some economies may attempt to inoculate themselves from future global contagions, others are likely to recognize that the potential damage from such policies outweighs the upside. Much of the impact of globalization, such as the emergence of global banks, the integration of [financial] markets and the connectivity of financial data and communication systems, would be extremely difficult to reverse. However, some degree of reversal remains a distinct possibility.[398]

Second, in the same sense, the financial services industry would hardly go back to the era of separation of banking and commerce. Even "[d]uring this period of continued instability, financial intermediaries and advisers continue to recommend that issuers consider a variety of hybrid financing alternatives, such as private investment in public equity (PIPE) transactions, registered direct offerings, at-the-market offerings and rights offerings."[399]

Because "costs stemming from the new regulatory framework are [usually] overlooked, while benefits are overestimated," during and immediately following a crisis,[400] reregulation after the crisis could be much stricter than necessary. Such restrictions would significantly limit

397. *See TSE Might Not Be Able to Go Public This Year After All*, JAPAN TIMES (Mar. 9, 2009), http://search.japantimes.co.jp/cgi-bin/nn20090309a5.html.

398. WORLD ECON. FORUM, *supra* note 9, at 19–20.

399. Anna T. Pinedo & James R. Tanenbaum, *Rights Offerings: Right for Right Now, in* 41ST ANNUAL INSTITUTE ON SECURITIES REGULATION, *supra* note 396, at 651, 653.

400. Luca Enriques, *Regulators' Response to the Current Crisis and the Upcoming Reregulation of Financial Markets: One Reluctant Regulator's View*, 30 U. PA. J. INT'L L. 1147, 1152 (2009).

growth and investment opportunities of financial institutions[401] — financial institutions under excessive reregulation might lose their competitive advantage. For example:

> As the worldwide financial crisis drove many Wall Street financial institutions into bankruptcies and government bailouts, Japanese banks reemerged on the international stage, moving with uncharacteristic speed to snap up major franchises and prized assets in the United States and Europe, and reshaping, almost overnight, the global financial landscape to their advantage.[402]

Third, the fact that almost all "major exchanges have demutualized and become public companies shows the necessity to have such a structure that allows the exchange to respond to challenges in the industry."[403] Moreover, "[i]n order for exchanges to survive, it may be necessary for them to enter into alliances with other exchanges globally."[404]

To sum up, the convergence, consolidation, and conglomeration of the financial services industry would slow down in the short term, but continue to break out in the long term. Thus, it is not surprising to find a study arguing, even in the middle of this crisis, that the current global financial crisis provides an ideal reason for accelerating the integration of ASEAN Economic Community, because the "single market will provide a highly competitive economic region to attract foreign direct investments and facilitate greater trade flows in the region."[405]

C. *The Collaboration of the Financial Services Industry*

The convergence, consolidation, and conglomeration of the financial services industry will continue to evolve in the long term, despite the occurrence of the global financial crisis. Furthermore, in this era of globalization, close and efficient international collaboration are

401. WORLD ECON. FORUM, *supra* note 9, at 19.

402. Mattia Colonnelli de Gasperis et al., *International M&A and Joint Ventures*, 43 INT'L LAW. 367, 403 (2009).

403. Isaac Otchere & Khaled Abou-Zied, *Stock Exchange Demutualization, Self-listing and Performance: The Case of the Australian Stock Exchange*, 32 J. BANKING & FIN. 512, 513 (2008).

404. David Holthouse, *The Structure of a Demutualized Exchange—The Critical Issues*, *in* DEMUTUALIZATION OF STOCK EXCHANGES, *supra* note 54, at 73, 77.

405. Shandre M. Thangavelu, *Global Financial Crisis: Impact on Singapore and ASEAN* 13 (E. Asian Bureau of Econ. Research, Paper No. 49, 2008), *available at* www.eaber.org/intranet/documents/80/1037/WPS_2008_49.pdf.

more important than ever for the internationally interconnected financial services industry. Accordingly, in addition to the existing three "C" trends of the financial services industry—convergence, consolidation, and conglomeration—one more "C", collaboration[406] should be added in terms of the comprehensive context.

First, the importance of global regulatory collaboration is clear in this incoming post-crisis era.[407] The globalization of financial markets has added a new dimension to financial regulation because different regulatory standards of each country can also lead to the creation of systemic risk.[408] "Without effective [collaboration] between regulators in the key financial markets, there is a possibility that market participants will engage in regulatory arbitrage by (re)incorporating in regions that offer the path of least resistance."[409]

Accordingly, the Financial Stability Board was established in April 2009, succeeding the Financial Stability Forum, with an expanded membership and a strengthened mechanism for "national authorities, standard setting bodies and international financial institutions to address vulnerabilities and to develop and implement strong regulatory, supervisory and other policies in the interest of financial stability."[410] Also, on December 17, 2009, the Basel Committee on Banking

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406. The terms "cooperation," "coordination," and "collaboration" are often interchangeably used to mean that people need to work together. Even international organizations and governments use those terms in a mixed way in their financial reform proposals. The terms should be used distinctly, however:

> [T]hese three activities require different levels of commitment and rest on a continuum going from the least formal—cooperation—to the most intense—collaboration. By definition, cooperation implies a shorter term informal relationship without a clearly defined mission, structure, or planning effort. Coordination involves a more formal understanding of mission, with a more defined timeline centered on a specific project or program. Collaboration steps up the involvement level, as participants bring separate groups or entities into a new structure with a commitment to a common mission with shared resources, risk, and reputation.

Jean M. Holcomb, *Plays Well with Others?*, 101 LAW LIBR. J. 409, 409 (2009).

407. WORLD ECON. F., *supra* note 9, at 24.

408. Griffin, *supra* note 16, at 347.

409. WORLD ECON. F., *supra* note 9, at 24–25.

410. *History*, FIN. STABILITY BD., http://www.financialstabilityboard.org/about/history.htm (last visited Apr. 11, 2011). The member jurisdictions are Argentina, Australia, Brazil, Canada, China, France, Germany, Hong Kong, India, Indonesia, Italy, Japan, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Spain, Switzerland, Turkey, the United Kingdom, and the United States. *See* FIN. STABILITY BD., FSB FRAMEWORK FOR STRENGTHENING ADHERENCE TO INTERNATIONAL STANDARDS annex A at 5 (2010), *available at* https://www.financialstabilityboard.org/publications/r_100109a.pdf.

Supervision issued a package of proposals entitled "Consultative Proposals to Strengthen the Resilience of the Banking Sector Announced by the Basel Committee."[411] The proposals, so-called Basel III rules on bank capital requirement,[412] were open for public comments until April 16, 2010.[413] "Central banks governors and heads of supervision published changes to the draft Basel III accord" on July 26, 2010.[414]

Second, the removal of competitive barriers or deregulation has been a political response to global competitive pressure of internationalization.[415] Deregulation, however, creates not only expanded investment opportunities, but also increased risks. Thus, an appropriate set of rules is vital to facilitate investor confidence and capital formation.[416] Lack of appropriate regulation sometimes causes a catastrophe, such as the current global financial crisis. Reregulation usually follows such a disturbance, at which time a regulatory authority modifies its rules to cope with new challenges that have arisen in a deregulated environment.[417] Reregulation, later, works as pressure towards deregulation.[418] In order to determine and maintain the optimal level between deregulation and reregulation, collaboration between regulators and market players, including issuers, investors, and intermediaries, is vital.

The collaboration of the financial services industry is necessary not only in the international context but also in the domestic and interface contexts among participants of the financial services industry, flowing

411. *Consultative Proposals to Strengthen the Resilience of the Banking Sector Announced by the Basel Committee*, BANK FOR INT'L SETTLEMENTS (Dec. 19, 2009), http://www.bis.org/press/p091217.htm [hereinafter *Consultative Proposals*].

412. Pamela Tang, *Selloff in Global Credits Offers Asia Opportunities*, ASIAMONEY, Feb. 1, 2010, *available at* 2010 WLNR 4413602.

413. *Consultative Proposals*, *supra* note 411.

414. Huw Jones, *Relaxation on Banking Controls Still Threatens Drawbacks*, DAILY POST (Liverpool, U.K.), July 28, 2010, at 15, *available at* 2010 WLNR 14964374.

415. Manning Gilbert Warren III, *Global Harmonization of Securities Laws: The Achievements of the European Communities*, 31 HARV. INT'L L.J. 185, 187 (1990).

416. Bryan Thomas Shipp, *Filling Gaps in European Union Securities Law: Contractually Organized Supervision & the College of Euronext Regulators*, 23 AM. U. INT'L L. REV. 387, 395 (2008); *see also* Norman S. Poser, *Automation of Securities Markets and the European Community's Proposed Investment Services Directive*, LAW & CONTEMP. PROBS., Autumn 1992, at 29, 33–35 (noting that U.S. exchanges failed to adapt technology to trading as quickly as the London exchanges despite the fact that deregulation in the United States originally was a catalyst for deregulation in Europe, which then brought pressure to bear on the European exchanges to employ technology to lower their costs and compete effectively).

417. Shipp, *supra* note 416, at 394.

418. Enriques, *supra* note 400, at 1155 ("Indeed excessive reregulation today is the best guarantee of effective pressure towards deregulation tomorrow.").

both horizontally and vertically. In this regard, the collaboration of the financial services industry has its implications in the comprehensive context. Therefore, collaboration is a necessary fourth "C" feature for the future financial services industry in the post-crisis era.

D. Concluding Remarks

Financial globalization, combined with advances in technology, has resulted in a substantial increase in cross-border trade in financial services and portfolio capital flows.[419] The changing structure of global financial markets, however, not only has created more opportunities for profits, but has also introduced a higher level of risk in financial transactions that may influence the financial system stability."[420]

The global financial crisis of 2007–2010 has revealed that dark side of the convergence, consolidation, and conglomeration of the financial services industry. The trends of the convergence, consolidation, and conglomeration of the financial services industry will slow down in the short term, under the influence of crisis, but will continue to break out in the long term. This global financial crisis, and its depressing effect on the world markets, demonstrates how interconnected the world has become.[421] The intertwined markets and the global financial crises require serious international and domestic collaboration to avoid or overcome.[422]

IV. CONCLUSION

Over the past several decades, the convergence, consolidation, and conglomeration that take the form of globalization, homogenization, and demutualization in the international, domestic, and interface contexts, respectively, have transformed the financial services industry. The consolidation, convergence, and conglomeration are all coming together at one time and contributing to dramatic changes across all financial services sectors.[423]

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419. KERN ALEXANDER, RAHUL DHUMALE & JOHN EATWELL, GLOBAL GOVERNANCE OF FINANCIAL SYSTEMS: THE INTERNATIONAL REGULATION OF SYSTEMIC RISK 14 (2006).

420. *Id.*

421. Henry F. White, Jr., *The Alabama State Bar Provides Rich Heritage of Support for the American Bar Association*, 70 ALA. LAW. 60, 60 (2009).

422. Ran Hirschl, *The "Design Sciences" and Constitutional "Success,"* 87 TEX. L. REV. 1339, 1364 (2009).

423. Edward D. Herlihy et al., *Materials Submitted by Craig M. Wasserman*, *in* GRAMM–LEACH–BLILEY UPDATE; NEW REGS, NEW PROBLEMS, NEW OPPORTUNITIES 397, 417 (PLI

Financial globalization and technology development has allowed financial institutions "to expand their operations into new markets in both the advanced and the emerging economies."[424] Over the past several decades, the financial system has become more and more capital market centered. Banking, securities, and insurance sectors are linked through financial innovation including securitization, where banks engage more in financial conglomerates activities,[425] and where more and more exchanges are demutualized and integrated. A broad range of complex and leveraging financial products offered by financial conglomerates across the globe has not only "enhanced the profitability of the financial sector for a period of time, but it has also created significant challenges in managing the risks of these cutting-edge products,"[426] which ended up causing the global financial crisis of 2007–2010.

A challenge for regulators in this climate "is to devise a flexible regulatory framework which on the one hand, addresses risk and maintains market stability, whereas on the other hand, fosters market innovation and growth."[427] With the three "C" features of the financial services industry, regulators should "marry specialist knowledge with a holistic though not generalist approach, and never lose sight of the big picture, a complex web of cause and effect."[428]

As a way to achieve profit maximization,[429] financial institutions will keep pursuing economies of scale even after the crisis. Because many financial institutions have collapsed or filed bankruptcy during the crisis, financial activities after the crisis might converge on those few financial institutions that succeed in surviving the crisis. The consolidation and expansion of business areas by financial institutions are not inherently evil, although it is true that such practices increase systemic risk. Thus, effective and efficient prudential oversight and

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Corp. Law & Practice Course Handbook Series No. B0-00ZO, 2001), *available at* Westlaw 1232 PLI/Corp 397.

424. WORLD ECON. F., *supra* note 9, at 19.

425. Joseph J. Norton, *Comment on the Developing Transnational Network(s) in the Area of International Financial Regulation: The Underpinnings of a New Bretton Woods II Global Financial System Framework*, 43 INT'L LAW. 175, 180 (2009).

426. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 19.

427. Chew, *supra* note 5, at 569.

428. *Id.*

429. "The maximization of profits is an important objective of corporate activity, but should not be regarded as the sole or primary purpose of the corporation." Susanna Kim Ripken, *Corporations are People Too: A Multi-Dimensional Approach to the Corporate Personhood Puzzle*, 15 FORDHAM J. CORP. & FIN. L. 97, 104 (2009).

regulation are pivotal to financial stability, but government intervention should not reach such a level as to harm profitability and autonomy of financial institutions.

Regulatory reform in each country is the "result of a complex interaction of external economic factors and national political battles, making it impossible to give simple casual priority to either domestic or international variables."[430] Fundamental principles of financial regulations, however, do not change with technological development.[431] New IT such as the Internet simply "invites a consideration of how fraudulent schemes take new forms and whether regulations need updating."[432] Accordingly, on the regulatory front, "reactionary reforms are required to cope with the supervision and management of a changing financial landscape."[433]

Such dynamics and challenges "unleashed by financial services convergence, globalization, and growth of financial conglomerates continue to drive financial supervisors and regulators to seek" greater international and domestic collaboration.[434] Likewise, financial institutions that survive the crisis should collaborate with other participants of the financial system both vertically and horizontally. Hence, collaboration is an additional necessary feature for the further development of the financial services industry. Consequently participants of the financial system should take four "C" features of the financial services industry into consideration in the post-crisis era.

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430. Henry Laurence, *Spawning the SEC*, 6 IND. J. GLOBAL LEGAL STUD. 647, 648 (1999).

431. Loke, *supra* note 204, at 672.

432. *Id.*

433. Chew, *supra* note 5, at 569.

434. G30, STRUCTURE OF FINANCIAL SUPERVISION, *supra* note 28, at 73.