The Second Half: Interest Group Conflicts and Coalitions in the Implementation of the Dodd-Frank Act Derivatives Rules[1]

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1. Introduction

The design of the "Dodd-Frank Wall Street Reform and Consumer Protection Act" (hereinafter Dodd-Frank) has been heralded as a turning point in the regulation of derivatives markets. In particular, the provisions included in Title VII of the 2,300 pages long legislation overturned the decision taken a decade earlier by the US Congress to exempt OTC derivatives markets from federal regulatory oversight, a step that was subsequently recognized as contributing to the financial crisis.[2] Dodd-Frank introduced a comprehensive regulatory framework which brought for first time under the direct oversight of US regulators a broad range of actors and products that constitute the modern derivatives markets.

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[2] FCIC, 2011

While the signing of the Dodd-Frank Act into federal law by President Barack Obama in July 2010 has received considerable attention, this represented only an intermediate step in the process of reforming the regulation of derivatives markets in the US after the crisis. Equally important in in defining the true impact and effectiveness of the post-crisis reforms was the implementation of the same Dodd-Frank by US regulatory agencies. In the case of Dodd-Frank derivatives rules, the centrality of the implementation phase was heightened by the significant latitude that the primary legislation designed by the US Congress granted regulators in defining how derivatives markets should be regulated. As a result, before the ink of Dodd-Frank had even dried, critics of the legislation had identified in the implementation stage a key opportunity to amend and potentially turn the clock back on some of the measures introduced by Congress to regulate derivatives markets.

This chapter will investigate the implementation of Dodd-Frank derivatives rules between 2010 and 2015 and argue that this phase brought to a halt the tightening in the regulation of derivatives markets that had been set in motion by financial crisis. In particular, the analysis will highlight how in a number of areas the implementation phase has led to a narrowing of the scope of the regulatory net casted by Dodd-Frank over derivatives markets, by excluding a number of actors and transactions from regulatory requirements mandated by Congress, as well as by watering down the stringency of these requirements. At the same, this whittling down of Dodd-Frank derivatives rules has not been uniform. In a number of instances, regulators have been able to resist pressures to relax the regulatory requirements and to implement Dodd-Frank without departing from their original proposal.

What explains this outcome? Why have regulators implemented the Congressional mandate in narrow ways in some areas while expanding the scope of the regulation in others? In order to answer these questions, this chapter will explore the diversity of interest groups within and outside the financial industry that have mobilized during the implementation stage. The argument put forward in this chapter is that the capacity of regulators to withstand pressures to whittle down the scope and strictness of Dodd-Frank during the implementation phase has been influenced by the breadth and cohesiveness of the opposition front among different interest groups. More specifically, the presence of a cohesive opposition front from different groups from within and outside the financial industry to certain rules has weakened the capacity of regulators to defend to their original proposal and increased the threat of Congress intervening to curtail the autonomy of regulators. By contrast, the presence of disagreements across interest groups has created policy space for regulators to withstand calls for these rules to be watered down.

The chapter is structured as follows. Section 2 will provide an overview of the main trends in the regulation of derivatives markets in the US before and after the signing of Dodd-Frank into federal law. Section 3 will review the ecology of interest groups that have mobilized during the implementation of Dodd-Frank and map the different patterns of conflict and coalitions emerged. The second part of the chapter will illustrate the impact of this mobilization over the rule-making process by analyzing three key sites of conflict that have characterized the implementation of Dodd-Frank' derivatives rules: the definition of swap dealers and major swap participants (Section 4), the regulation of clearinghouses (Section 5) and the regulation of swap trading platforms (Section 6).

2. The political economy of Dodd-Frank derivatives reforms: a tale of two halves

The regulation of financial markets is often far from resembling a linear process. The extent to which policymakers have intervened to regulate different financial sectors and products has often alternated between periods of deregulation and re-regulation. This cyclical characterization of financial regulatory policymaking also describes quite well the evolution of the regulation of derivatives markets in the US over the last few decades.

The regulation of OTC derivatives in the US in the decades preceding the global financial crisis was characterized by a number of regulatory decisions to free different segments of derivatives markets from regulatory constraint, despite the numerous warning signs regarding the potential risks posed by OTC derivatives markets activities remaining outside of the oversight of federal regulators.[3] This trend culminated in the passage of the "Commodity Futures Modernization Act of 2000" when the US Congress eliminated oversight by both the CFTC and SEC over OTC derivatives markets, effectively shielding OTC derivatives from the direct reach of regulators.[4]

As the global financial crisis a decade later led policymakers to question the desirability of this decision, the regulation of derivatives markets has returned on the Congressional agenda. Following the collapse of Lehman Brothers and the bailout of AIG, a number of legislative proposals were introduced within Congress to revise the decisions taken in the 1990s to exclusion derivatives markets from regulatory oversight and - in the words of Sen. Harkin - to "end the unregulated 'casino capitalism' that has turned the swaps industry into a ticking time bomb".[5] The Dodd-Frank Act passed by the US Congress in June 2010 required the main participants and infrastructures in the derivatives markets (such as clearinghouses, trade execution facilities, and trade repositories) to register with federal regulators as well as to be subject to variety of regulatory requirements. Moreover, the scope of the bill was not limited to regulating credit derivatives at the center of the crisis, but rather it encompassed nearly all commonly traded OTC derivatives, including derivatives on interest rates, currencies, commodities, securities, indices, and various other financial or economic interests or property. In so doing, Dodd-Frank represented a reversal of

[3] Spagna (this volume). See also GAO, 1994
[4] Tett, 2009; FCIC, 2011, p. 48
[5] Snow, 2008

the de-regulatory approach that had characterized the fifteen years preceding the crisis.

The signing of the Dodd-Frank Act into law by President Barack Obama in July 2010 did not, however, represent the end of the post-crisis regulation of derivatives in the US. As CFTC Chairman Gensler stated in July 2010, "Even after the President signs the Wall Street reform bill, financial reform will be far from complete".[6] The legislation approved by Congress delegated significant rule-making responsibilities to the hands of federal regulatory agencies, granting them a significant amount of discretion in defining what market actors and products would be covered by the regulatory requirements established in the legislation, as well as the level of stringency of these requirements. As a result, groups that had expressed discontent with the formulation of Dodd-Frank identified in the implementation stage as an opportunity to whittle down or rectify some of the provisions introduced by Congress. As Gensler acknowledged in October 2011, "a year after the Dodd-Frank reforms became law, there are those who might like to roll them back and put us back in the regulatory environment that led to the crisis three years ago".[7]

Gensler's remarks were directed in particular towards those major actors within the financial industry that maintained a vested interest in limiting the regulatory burden imposed upon OTC derivatives markets. In the years before the crisis, key market players and financial industry associations such as the International Swaps and Derivatives Association had played a primary role in lobbying Congress to keep these markets outside of the scope of official regulation.[8] The high political salience that characterized financial regulation during the financial crisis had constrained the influence of the financial industry over the design Dodd-Frank and forced key derivatives markets players to fight largely a rear-guard battle and to endorse many of

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[6] Gensler, 2010
[7] Gensler, 2011
[8] Tett, 2009 Tsingou, 2006 McKeen-Edwards & Porter, 2013

the regulatory proposal presented.[9] Now, the leverage of those groups with an interest in water down of the Dodd-Frank rules was significantly bolstered during the implementation stage as a result of three important changes in the policymaking context in which these rules were created.

A first set of constraints on the implementation of Dodd-Frank derivatives rules can be found in the characteristics of the institutional context in which these rules were implemented. Congress gave the primary responsibility for developing the around 60 pieces of regulations required to implement Dodd-Frank's derivatives rules within a stringent timeline to the Commodity Futures Trading Commission (CFTC), a relatively small regulatory agency with no experience of regulating OTC markets, but denied this agency the resources required to police this market. As Gensler argued, "The CFTC's...staff is just 10% more in numbers than at our peak in the 1990s, yet Congress has now directed the agency to oversee the swaps markets; that is eight times larger than the futures market." [10] The gap between the herculean task involved in implementing Dodd-Frank and the limited resources of regulators has contributed significantly towards slowing down the implementation process as well as increased the reliance of regulators on the expertise of the financial industry.

Moreover, Dodd-Frank required the CFTC to develop a number of rules in coordination with other regulatory agencies. During the implementation phase, the CFTC has found itself clashing with other regulatory agencies such as the SEC (for example, on the threshold for determining swap dealers, the regulatory standards to be applied to swap trading platforms, as well as the application of rules to cross-border transactions), banking regulators (on the application of margin requirements to non-financial end-users) and the Federal Energy Regulatory Commission. As a result, the conflict among the different regulatory agencies involved in the implementation of Dodd-Frank has taken place have created additional opportunities for firms seeking

[9] Young, 2013a
[10] Natural Gas Intelligence, 2012

to whittle down the stringency of these rules by exploiting the divisions among different regulators.

A second change in the context within which regulators have found themselves operating during the implementation stage that was conducive to a watering down of the Dodd-Frank rules is change in the role of Congress. While the involvement of Congress following the bailouts of 2008 played a central role in generating momentum in support of broadening the regulation of derivatives markets, Congress has played an active role during the implementation stage of trying to weaken the regulation of derivatives markets. A key reason for the change were the elections that enabled the Republican Party to to take control over the House of Representatives in January 2011, including the key Congressional Committees (House Financial Services Committee and House Agriculture Committee) overseeing the work of the CFTC and SEC. During this stage, Republican Congressmen have come to identify in the regulation of derivatives - and Dodd-Frank more generally – an important target against the Obama administration.

Overall, at least 29 bills have been introduced within Congress in the period between the passage of Dodd-Frank and June 2015 by Republican Congressmen (but in some cases with co-sponsors from the Democratic Party) to delay the implementation of Dodd-Frank by regulators (for instance requiring regulators to demonstrate they were engaging in real cost-benefit analysis before finalizing rules)[11] or to roll back how regulators were interpreting the Congressional mandate. Rep. Maxine Waters described this as a "death by a thousand cuts approach to undermine financial reform."[12] The fact that the Democratic Party has maintained control of the Senate until the end of 2014 and of the White House until the end of 2016 meant that the large majority of bills seeking to roll-back derivatives rules have failed to be approved or signed into law, but important exceptions remain.

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[11] Garrett, 2011
[12] Zibel & Holzer, 2012

A particularly significant cut to Dodd-Frank was inflicted by the legislation passed by Congress to largely repeal the "push-out" rule - also known as "Lincoln Amendment" from the name of its author Sen. Blanche Lincoln - which required banks that act as derivatives dealers to spin off their derivatives trading activities into independently capitalized entities outside of the government backstop provided by the FDIC deposit insurance and Federal Reserve discount window. This legislation – which included more than 70 out of the 85 lines drafted by a major dealer bank (Citigroup)[13] - was attached in December 2014 into the catch-all $1.1 trillion 1603-page federal spending bill meant to finance the government in 2015. Critics of this legislation highlighted the parallel with the most important episode in the pre-crisis de-regulation of derivatives, the Commodity Futures Modernization Act of 2000, which was also signed into law at the end of the 106th Congress as part of a larger 11,000 page omnibus appropriations bill.[14]

A third set of constraints on the implementation of Dodd-Frank rules that strengthened the hand of the critics of the legislation came from the international context in which US regulators have found themselves operating. The fact that the US has been a first-mover in implementing a regulatory framework for derivatives markets ahead of Europe and other major derivatives markets has exposed US regulators to criticisms from both the financial industry and Congress that the implementation of Dodd-Frank would have put US financial markets at a competitive disadvantage vis-à-vis their foreign competitors.[15] For instance, both the House Agriculture Committee and the House Financial Services Committee held in February 2011 different hearings where regulators were criticized for introducing rules that would cause "hundreds of American companies to take their capital and jobs elsewhere" (Rep. Bachus) and that "would literally spell the end of U.S.-based

[13] Lipton & Protess, 2013
[14] Ackerman, 2014
[15] Coleman, 2003

derivatives markets" (Rep. Garrett).[16] As a result, US regulators have faced strong pressures to avoid the introduction of domestic rules that may undermine the competitiveness of US firms.

Overall, these changes that have occurred in the policymaking process during the implementation phase created conditions that could be regarded as conducive to a weakening of Dodd-Frank and a strengthening of the hands of those voices within the financial industry that had a vested interest in rolling-back derivatives rules. These factors in themselves, however, cannot fully explain the direction in which regulators have implemented the Congressional mandate. For instance, calls upon regulators to avoid introducing rules more stringent than those in place in other jurisdictions have often fallen on deaf hears, such as in the case of the decision of regulators to expand the extraterritorial scope of Dodd-Frank derivatives rules to avoid the risk of regulatory arbitrage.[17] In other words, the changes that occurred in the implementation stage described in this section have constrained the policy space of regulators in implementing Dodd-Frank but they have not completely determined the course of action of regulators and their capacity to stand up to the opponents of Dodd-Frank derivatives rules..

In order to investigate the determinants of the implementation of Dodd-Frank derivatives rules, the next section will explore how patterns of conflict and cooperation among different interest groups that have emerged during the implementation phase have influenced the conduct of regulators.

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[16] Holzer, 2011

[17] See Gravelle and Pagliari in this volume.

3. Mapping Interest Group Conflict and Solidarity in the Regulation of Derivatives Markets

As a burgeoning literature on the politics of financial regulation has recognized, the financial industry is not just a passive recipient of regulatory policies, but it often represents a key force in actively influencing the design of regulatory policies.[18] However, the financial industry is often neither the only voice mobilizing around the design of financial regulatory policies, nor one that is always capable of speaking with a single voice. This insight is particularly important when it comes to analysing the politics of derivatives regulation.

Most analyses of the politics of financial regulation have focused on the lobbying and self-regulatory initiatives by banks that act as dealers in the derivatives markets. This attention is understandable given the significant concentration of OTC derivatives markets, with just five banks accounting in 2014 for 95% of the total notional derivatives of $302 trillion (J.P. Morgan, Citigroup, Goldman Sachs Group, Bank of America and Morgan Stanley).[19] Given the significant stream of revenues generated by derivatives activities[20], it is not surprising that these institutions and dealer-dominated international financial associations such as the International Swaps Derivatives Association (ISDA) have traditionally mobilized significant resources in seeking to shield OTC markets from the reach of regulators.[21]

As different studies have highlighted, however, dealer banks are not the only group that have mobilized over the design of derivatives rules.[22] A second key set of voices within the financial community is represented by large derivatives exchanges such as CME Group and IntercontinentalExchange (ICE), which are also the owners of

[18] For a review of this literature, see Young, 2013b
[19] Data from the Office of the Comptroller of the Currency, cited in Carney, 2014
[20] Greenberger, 2012
[21] Tett, 2009 Tsingou, 2006 McKeen-Edwards & Porter, 2013
[22] Clapp & Helleiner, 2012; Helleiner & Pagliari, 2009; Pagliari & Young, 2013 Helleiner, 2014

important clearinghouses. In fact, the history of the evolution in regulation of derivatives markets has often been characterized as a clash between New York-based dealers and Chicago-based exchanges. While the rise of OTC trades occurring bilaterally among financial institutions since the 1980s tilted the balance of power away from exchanges and in favour of dealer banks,[23] Dodd-Frank's attempt to promote greater central clearing and exchange trading of standardized products has been interpreted as an opportunity for clearinghouses and exchanges to gain a larger share of the derivatives markets.

A third set of financial actors active in the derivatives policy space is inter-dealer brokers such as ICAP, Tullett Prebon, BGC Partners, and GFI Group. These are financial intermediaries mediating between dealers, or between dealers and other wholesale market participants in the markets outside of centralized exchanges, while taking commissions for arranging trades. The position of these firms in the markets has been threatened by the push of Dodd-Frank and the G20 agenda to have standardized transactions executed using electronic platforms, requiring them to transform into more closely regulated trading venues and to enter more directly in competition with derivatives exchanges. As a result, the financial crisis has also led these groups to increase their political mobilization in Washington, as well as encouraged the creation of new sectoral associations such as the Wholesale Markets Brokers Association of America (WMBAA) and the Swaps and Derivatives Market Association (SDMA).[24]

A fourth and final set of voices within the financial industry is represented by "buy-side" financial firms. This category includes financial firms such as hedge funds, asset managers, proprietary trading firms, and insurance companies which trade in derivatives primarily to manage financial risks such as interest rate or currency hedges, or to take a positional bet on these markets. As a result, the interests

[23] Clapp & Helleiner, 2012 Tsingou, 2006; Morgan, 2010
[24] Protess, 2011

of buy-side financial firms have often been in conflict with those of the dealers that occupy the opposite side of their transactions, with the former calling for greater access, protection, and transparency in the derivatives markets.

The ecology of business groups that has mobilized around the implementation of Dodd-Frank derivatives rules is not, however, limited to financial industry groups. A particularly vocal set of interest groups in the post-crisis debates has been non-financial firms that rely on derivatives to hedge everyday risk, such as commodity price swings and interest rate fluctuations. These firms have mobilized in response to the crisis through a variety of existing sectoral associations as well as through a newly created umbrella group called the “Coalition for Derivatives End-Users”. Among non-financial groups, particularly significant has been the lobbying by energy and commodity groups (both producers or large users), including a number of large energy and commodity companies such as BP, Royal Dutch Shell, and Cargill which straddle the line between end-user and swap dealers.[25] While formally supporting the introduction of a new regulatory framework for derivatives markets brought forward by Dodd-Frank, commercial end-users have primarily mobilized to seek exemptions from these same rules. In the word of the National Association of Corporate Treasurers: “Don't throw us in the same paddy wagon as Fannie Mae, Freddie Mac and AIG". [26] But other non-financial groups, in particular agricultural and commodity firms which have been mostly exposed to volatility in the price of agricultural products and other commodities in the years before the crisis, have also lobbied in favour of tougher rules against speculative activities in commodity derivatives markets, thus more directly clashing with the interests of financial firms.[27]

Finally, a sixth set of societal actors that have mobilized during the implementation of Dodd-Frank include voices outside the business community altogether. These voices include a wide and diverse range of consumer protection

[25] Leff & Doering, 2011 Meyer, 2010 Baltimore, 2012
[26] Bunge, 2010b
[27] Helleiner, this volume. see also Clapp & Helleiner, 2012

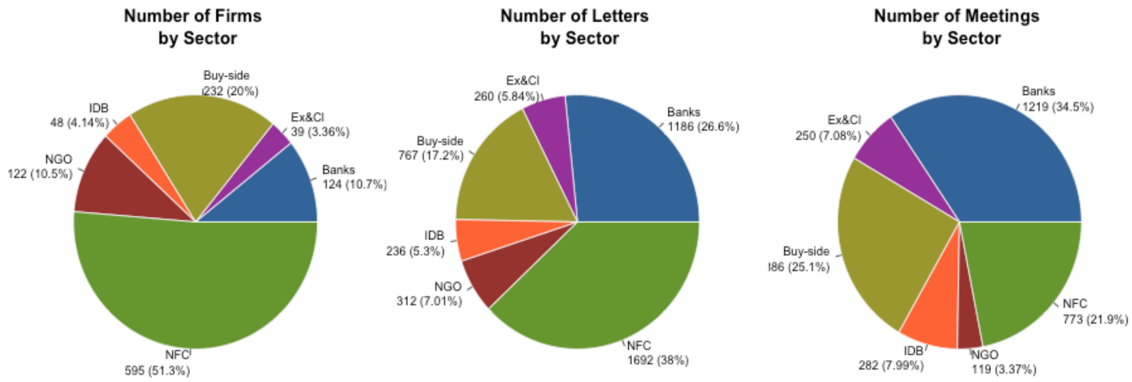
associations, trade unions, faith-based organizations, environmental NGOs, and NGOs with a specific focus on financial reforms, such as Better Markets and Americans for Financial Reforms. These voices have generally mobilized in support of more stringent interpretation of the rules implemented within Dodd-Frank and in opposition to the financial industry.

Existing studies have illustrated how the design of Dodd-Frank by Congress reignited a number of long-standing cleavages within the interest group community as well as generated new ones. To what extent have conflict among different interest groups also characterized the implementation of Dodd-Frank derivatives rules?

Figure 1 below presents a breakdown of the distribution across these six different groups of all the firms and associations that have lobbied the SEC and the CFTC during the implementation of Dodd-Frank derivatives rules between 2010 and 2014. More specifically, this figure maps the identity of the groups that have either sending a comment letter in response to a public consultation or held an official meeting with these regulatory agencies to lobby over a proposed derivative rule.[28] While this data in isolation does not capture the extent to which different groups were listened to by regulators during the implementation of Dodd-Frank derivatives rules, the purpose of this exercise is to provide a systematic map of the diversity of groups that have mobilized during this phase.

[28] This analysis follows on the approach adopted in previous work co-authored with Kevin (Young Pagliari & Young, 2014; Young & Pagliari, 2015; Pagliari & Young, 2015). In order to map the diversity of voices that have between regulators and different stakeholders, I have generated a new database containing 2781 comment letters sent by stakeholders to the SEC and CFTC in response to 100 proposed rules released by these two regulatory agencies between 2010 and 2014 to implement the derivatives rules included in Dodd-Frank, as well as the transcripts of 1331 recorded meetings between representatives of one these two regulatory bodies and stakeholders on the design of these rules. For each of these letters and transcripts of meetings, I have coded the sectoral identity of the group lobbying over derivatives regulation. I have limited my analysis to individual letters and transcripts of meetings from organizations, thus not analyzing the lobbying by individuals writing in an individual capacity (e.g. concerned citizens or independent researchers). Overall, this coding has revealed how 1631 different groups and policymakers have lobbied the CFTC and SEC over derivatives rules, with 1160 groups belonging to one of the 6 categories (71%).

Figure 1 – Firms lobbying CFTC and SEC over derivatives rules (2010-2014)

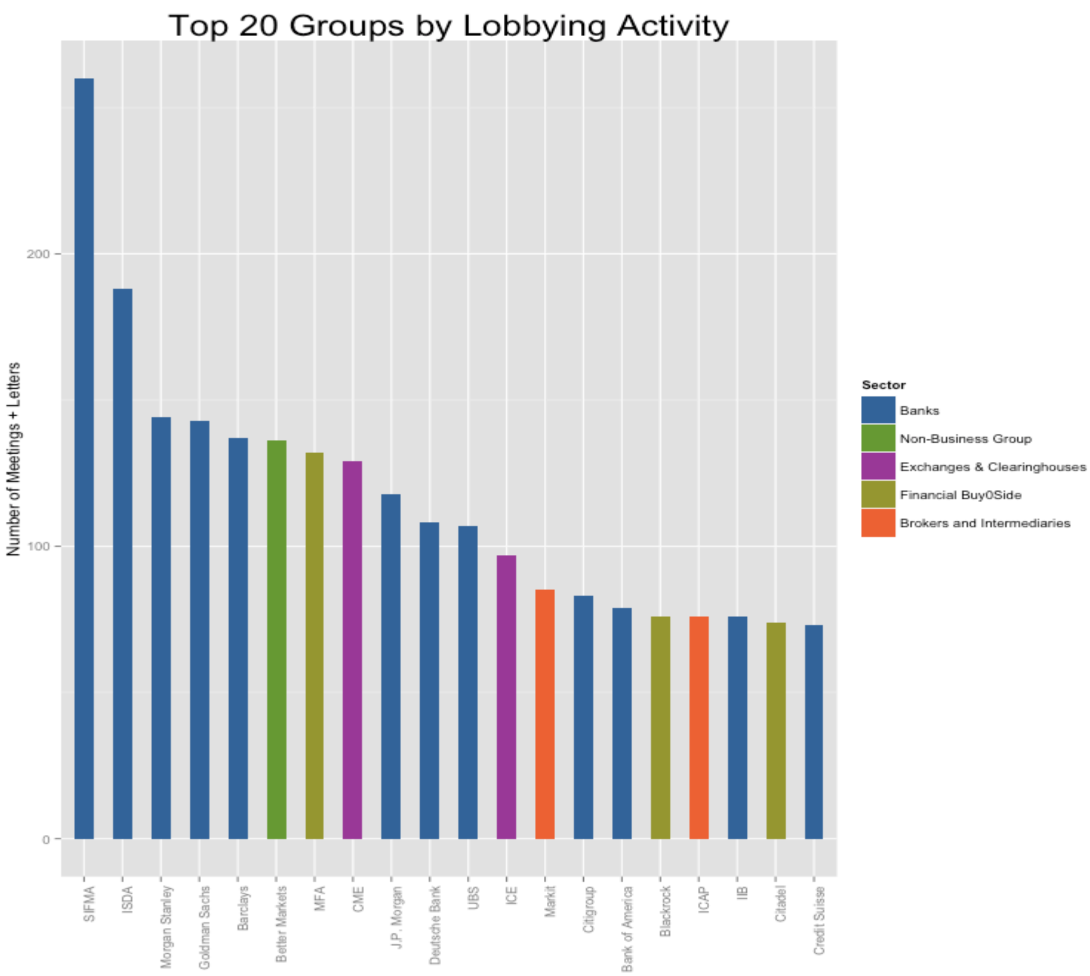


This figure highlights how the mobilization of interest groups in the implementation stage has certainly not been limited to the derivative dealers that have dominated most analysis of pre-crisis derivatives regulation. In terms of sheer number of organizations (Figure 1 on the left), banks represent only 10% of the 1160 different firms and associations across the six different groups that have lobbied regulators over the implementation of Dodd-Frank derivatives rules. In fact, more than half of all the groups that have mobilized in this domain come from outside the financial industry entirely.

While this figure provides a good indication of the population of firms that have mobilized over the implementation of derivatives rules, the resources that different groups have deployed in lobbying regulators has varied significantly across different groups. In particular, this analysis reveals how financial industry stakeholders account for more than half of the comment letters sent in response to a public consultation (Figure 1 in the middle) and almost more than three quarters of all the meetings with regulators (Figure 1 on the right) held by the SEC and CFTC over derivatives rules during this period.

Moreover, when we analyze the groups that have most frequently lobbied the CFTC and SEC during this period (Figure 2), 12 of the top 20 groups are derivative dealers and organizations closely representing this group, while only one group comes from outside the financial industry (the NGO Better Markets).

Figure 2 – Groups most frequently lobbying (meetings + letters) the CFTC and SEC over derivatives rules (2010-2014)



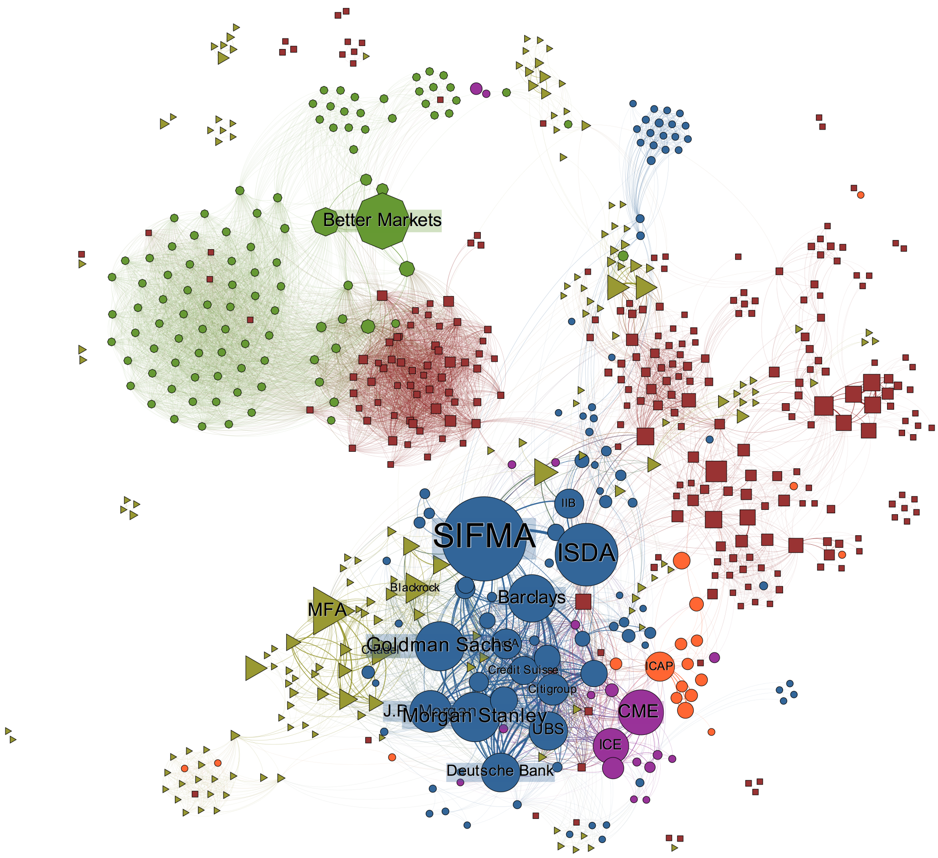
The diversity of actors mobilizing in this domain should, however, not be equated with a diversity of views. In the same way that the post-crisis regulation of derivatives has ignited new and old cleavages among firms and associations from different segments of the derivatives markets, it has also created opportunities for the emergence of new alliances across different segments of the business community. In particular, overlaps in the interests of different groups have emerged around common demands such as delaying the implementation of the requirements and limiting market disruption created by the new rules, as well as more specific regulatory interventions that undermined common sources of profits.

In order to illustrate the alliances that emerged during the implementation of Dodd-Frank derivatives rules, Figure 3 below maps all the instances in which different firms and associations have lobbied together the SEC and CFTC by co-signing a response to a regulatory consultation or jointly meeting a SEC or CFTC official.

Figure 3: Network of groups lobbying over SEC and CFTC derivatives rules[29]

Bank   Exchange/Clearinghouse   Buy-Side   Inter-Dealer Broker   Non-Financial End-User   Non-business groups

[29] This network visualization only presents those groups that have lobbied together with another group at least once during the implementation of Dodd-Frank derivatives rules. The color and shape represents the family the different groups belong to, the size represents the frequency of lobbying. The thickness of the ties between different nodes represent the number of times different groups have lobbied together. Only the labels of the 20 groups lobbying most frequently are included.



While the sectoral identity of a firm or association represent the primary determinant in the choice of allies, this network visualization reveals how a number of groups have reached across the sectoral divide in lobbying regulators. In particular, it is notable how dealer banks occupied a central position in the corporate networks, being able to form alliances both with buy-side actors and with exchanges/clearinghouses.

But alliances have also emerged between financial and non-financial voices. In particular, financial buy-side side firms that enter the market to hedge certain financial positions have in a number of occasions lobbied together with non-financial end-users. More broadly, the opposition of non-financial end-users to measures that would have increased the costs of accessing derivatives markets has brought their demands to often overlap with a number of financial industry voices. Individual firms (such as BP) and associations such as the US Chamber of Commerce, ISDA, and the Working Group of Commercial Energy Firms have played a key role in bridging the lobbying efforts of financial and non-financial groups. The network visualization also reveals how the non-financial end-user community is not a cohesive set of voices. In particular, agricultural and commodity firms that have mobilized in favour of tougher rules against speculative activities in commodity derivatives markets have frequently joined forces with non-governmental organizations (for instance through the "Commodity Markets Oversight Coalition").[30]

The centrality of the banking industry and the relative importance of different groups in the regulatory policymaking over the implementation of derivatives rules has, however, varied significantly across different issues. Figure 4 illustrates the percentage of lobbying initiatives (both meetings and letters) from the six groups across different set of regulatory proposals released by the CFTC and SEC during the implementation of Dodd-Frank derivatives rules. This figure reveals how banking community has represented the largest group mobilizing only on a limited number of issues with significant implications for their profits, such as the cross-border application of derivatives rules. In the majority of consultations, groups outside of the banking community have been the ones lobbying most frequently. For example, inter-dealer brokers have been the most active group on the regulation of trade execution platforms (SEF) and exchanges/clearinghouses have dominated debates on the regulation of clearinghouses, while buy-side firms have been the most active group on the implementation of the trading requirement. The balance between financial and non-financial groups has also varied significantly across issues, with non-financial firms representing the group lobbying most frequently on issues such as the definition of what firms should be covered by the regulation, margin requirements, exemptions from clearing, and position limits for commodity derivatives.

The breakdown of the mobilization of interest groups across different individual issues also reveals the fragility and ad-hoc basis of a number of coalitions

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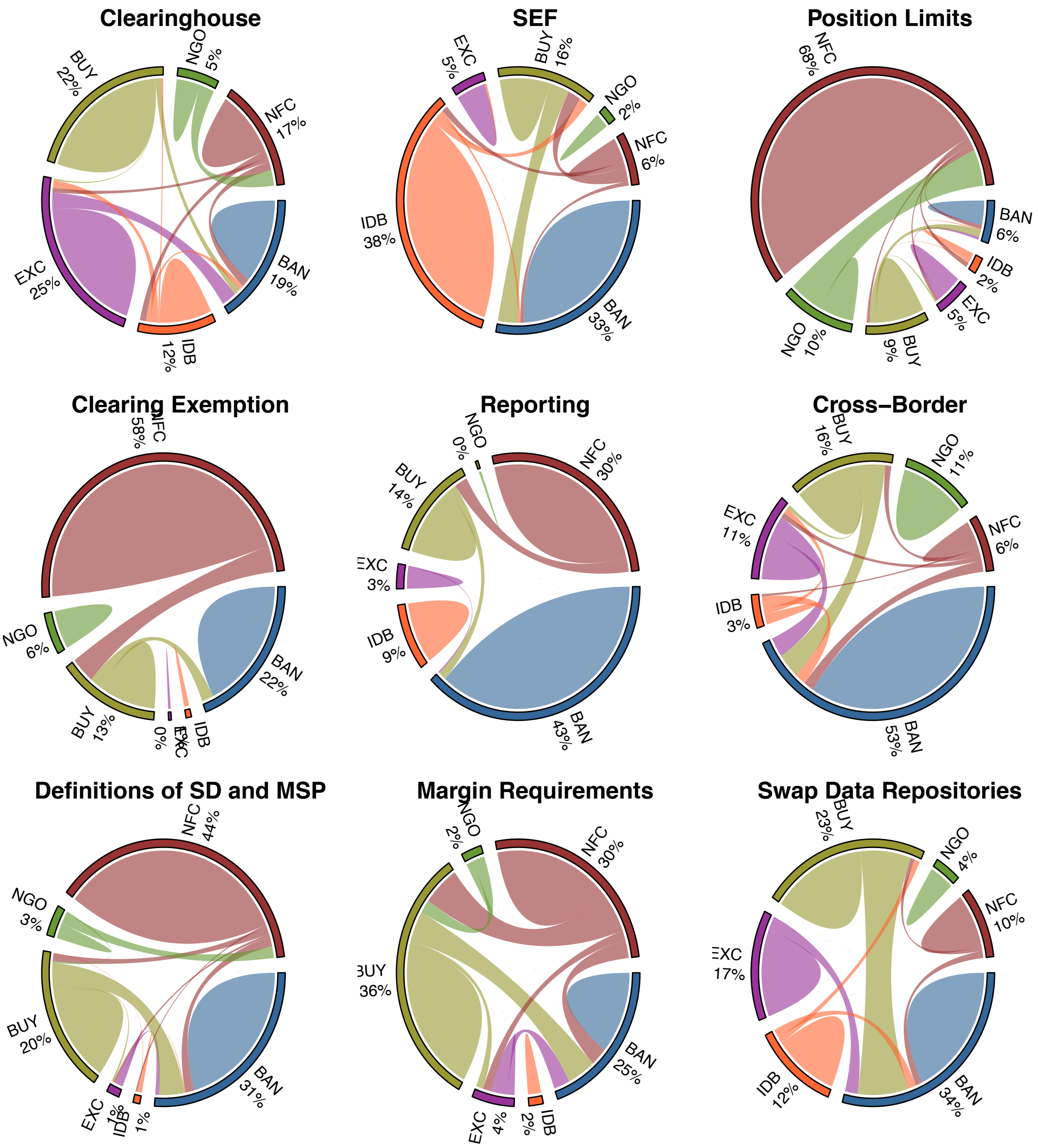
[30] Clapp & Helleiner, 2012

emerged across issues. For instance, while non-business groups have frequently lobbied together with NGOs on the regulation of position limits, the same alliance has not emerged over other issues such as clearing exemptions, reporting requirements and margin requirements, where non-business groups have instead joined forces with financial buy-side users and other financial actors. Similar variations in the choice of lobbying partners can found in the coalitions linking together different segments of the financial industry across different issues related to the regulation of derivatives.

Figure 4 – Numbers and links among groups lobbying the CFTC and SEC (meetings + letters) across different derivatives rule-making (2010-2014)[31]

[31] The external circle in this chord diagram represents the percentage of all the lobbying activities (meetings with regulators and responses to consultations) for each issue conducted from each of the six groups analyzed in the chapter. The links between different groups represent the instances in which each group has lobbied together with a firm or association representing a different group.



How do these findings regarding the variations in the extent of the mobilization of different sectors and the alliances among firms and associations from different sectors matter in shaping the implementation of Dodd-Frank derivatives rules? Neo-pluralist scholarship has theorized how the business community's ability to maintain a cohesive position influences its capacity to shape regulatory policies.[32] In particular, the presence of divisions across different segments of the financial industry as well the opposition from groups outside finance have been understood to constrain the capacity of financial groups to resist the imposition of more stringent

[32] Baumgartner, Berry, Hojnacki, Kimball, & Lebon, 2009; Falkner, 2007; Lindblom, 1977; Roemer-Mahler, 2013

regulatory requirement. As different groups deploying resources battle each other, regulators have greater policy space to exploit divisions across different firms in pursuit of their own agenda and to withstand calls for rules to be watered down.[33] Conversely, the leverage of financial firms over regulators is understood to be augmented by when these firms are able to join forces with other segments of the financial industry and of the broader business community through the creation of formal coalitions or informal alliances.[34]

To what extent can these insights concerning the impact of cohesion and contestation within the business community also shed light on the implementation of Dodd-Frank derivatives rules? In order to probe this hypothesis, the rest of the chapter will investigate three key regulatory policies that have characterized the implementation of Dodd-Frank derivatives rules. The analysis of these three case studies will focus in particular on assessing to what extent the implemention of different Dodd-Frank derivative rules can be linked to to the balance between the different stakeholders that have mobilized in opposition or in support to different regulatory proposals.

4. Definition of Swap Dealers and Major Swap Participants

One of the most fundamental changes to the regulation of derivatives markets brought by Dodd-Frank consisted of the decision to bring a large range of market players involved in the trading of derivatives under the oversight of US regulators. But what market players should be captured within the regulatory net casted by Dodd-Frank's derivatives rules and required to comply with its prudential and business

[33] Young, 2012; Kastner, 2014; Clapp & Helleiner, 2012; Pagliari & Young, 2014
[34] Hula, 1999; Holyoke, 2011; Baumgartner et al., 2009 Pagliari & Young, 2013

conduct requirements? Dodd-Frank instructed regulators to cast the net widely to include both those firms marking a market on swaps (defined as "swap dealers") as well as those firms which maintained "substantial positions" in swap markets that could have "serious adverse effects on the financial stability of the United States banking system or financial markets" (defined as "major swap participants"). The legislation passed by Congress, however, left to the CFTC and SEC the responsibility of jointly defining what entities would be captured by these two categories.

A senior CFTC official declared at the beginning of the implementation stage that these definitions would be "extremely broad" in order to fulfill the Congressional mandate "to decrease risk in the system and improve transparency by trying to make sure that no one's evading the system and that we've got full coverage."[35] This broad interpretation of the Congressional mandate has, however, been challenged by a broad range of firms seeking not to be captured by the regulatory net casted by regulators.[36] As the CFTC Commissioner Chilton commented: "One thing that's been evident […] is that a lot of folks think that the line for regulation starts right behind them".[37] In particular, demands to be excluded from the definition of swap dealer and major swap participant were advanced by a large number of financial firms that included employee benefit plans, farm credit system institutions, Federal Home Loan Banks, small and mid-size banks, life insurance firms, asset managers, and hedge funds,[38] as well as numerous non-financial end-users. For instance, the Coalition for Derivatives End-Users pressed for a "strong, clear exemption for end-users" on the grounds that "end-user hedges do not create risk that demands and justifies the type of regulation imposed upon swap dealers".[39]

Among non-financial companies, energy firms were particularly vocal in mobilizing against the proposal by the CFTC requiring firms with a yearly gross

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[35] Scheid, 2010d
[36] Rampton, 2010
[37] Rampton & Doering, 2010
[38] CFTC & SEC, 2012, p. 30605
[39] Scheid, 2010c

notional amount above $100m to register as swap dealer[40], claiming that a single swap to hedge a large container cargo of crude oil would have exceed this threshold.[41] Energy firms called for this threshold to be increased more than thirty-times.[42] This increase in the threshold was opposed by the CFTC. Its chairman Gary Gensler cited Enron's role in derivatives markets before its 2001 collapse in justifying the extension of the rules also to some non-bank players that acted as dealers, stating that if large energy firms were exempted from these rules, "we could look back to 2012 and call it the BP loophole instead of the Enron loophole".[43]

Despite the opposition from Gensler, the pleading of commercial end-users for a higher threshold found support within Congress.[44] In January 2012, the House Agriculture Committee approved bipartisan legislation (H.R. 3527 "Protecting Main Street End-Users From Excessive Regulation Act") to narrow the definition of swap dealers and explicitly exempt end users. While this bill did not come to a vote in the Senate, the vast opposition to its initial rule and the bipartisan pressures from Congress combined to create significant pressures upon regulators to revise their approach. In March the CFTC 2012 bumped the threshold for mandatory registration from $100 million to up to $8 billion, a threshold comfortably higher than the trading volume of most energy companies. [45]

Beyond increasing the threshold for firms to qualify as swap dealer, additional amendments to the rules initially proposed by the SEC and CFTC have narrowed the regulatory net casted by Dodd-Frank by exempting a number of trades and entities. First, the CFTC had initially introduced in 2012 a lower threshold when trades with "special entities" such as federal agencies, employee benefit plans or state, city, county or municipality (including municipally owned public power systems) would

[40] CFTC & SEC, 2010
[41] Protess, 2012
[42] BP, Constellation Energy and Shell pitched a $3.5 billion threshold, while the Coalition of Physical Energy Companies proposed a $3 billion figure. See Scheid, 2011b
[43] Scheid, 2012a
[44] O'Neil, 2011
[45] CFTC & SEC, 2012. The final rule stated that the threshold would go down to $3 billion after five years unless regulators had suggested a different threshold after a study.

be required to come under the purview of the regulation ($25 million vs. $8 billion). This lower threshold had been opposed by non-bank dealers such as regional utilities, natural gas distributors, and independent power generators,[46] which also convinced the House of Representatives to pass a bill in June 2013 (H.R. 1038 Public Power Risk Management Act of 2013) to exempt firms conducting deals with special entities from mandatory registration as a swap dealer. In May 2014, the CFTC amended its proposed rules to exclude from the de minimis threshold for dealers those swaps concluded with "special entities".

Second, the CFTC revised its earlier proposed rule to exclude from the de-minimis threshold those transactions conducted between affiliates within the same company. This narrowing of the scope of the rules followed the requests not only from financial stakeholders[47] but also from a number of non-financial corporations which centralized derivatives transactions for the different business units within the corporate group in a financial subsidiary that thus face the risk of being designated as swap dealer or major swap participants.[48]

Third, a similar exception was also given for swap transactions conducted by cooperatives on behalf of the members, including cooperative associations of producers and cooperative financial entities such as the Federal Home Loan Banks and the Farm Credit System institutions that are the largest group of lenders to US agriculture which received significant support within the US House and Senate Agriculture Committee.[49]

These different exceptions and changes introduced to the definition of dealer and major swap participants had the effect of significantly limiting the net casted by Dodd-Frank. While at the beginning of the implementation stage Gensler predicted that more than 200 firms would have to register with the CFTC, as of 1 March 2017,

[46] Scheid, 2012b
[47] CFTC & SEC, 2012, p. 30624
[48] Kentz, 2010 NGI's Daily Gas Price Index, 2011
[49] CFTC & SEC, 2012, p. 30625 Stebbins, 2012

only 104 entities had registered with the CFTC as swap dealers and only 2 as major swap participants,[50] including only three energy and commodity firms (BP, Cargill and Shell).

The consumer advocacy group Better Markets described the definitions of dealers and major swap participants set by US regulators as "an indefensible retreat from financial reform" and as "a poster child for ... the influence that the financial industry has at the regulatory agencies".[51] However, as the analysis above suggested, the lobbying leading to a weakening of the scope of the regulation was neither only nor primarily from financial industry groups. On the contrary, major dealer banks remained among the few voices (together with NGOs such as Americans for Financial Reform and Better Markets) cautioning against the narrowing down of the regulatory net and to exclude potential competitors.[52] The analysis in this case suggests that this hollowing out of the definition of which actors should be covered by the Dodd-Frank rules reflected the lobbying efforts from a much larger front which included commercial end-users and financial buy-side firms that successfully opposed an expansive interpretation of the Congressional mandate.

5. Clearinghouses

In order to mitigate the systemic risk emanating from the default of a counterparty in an OTC derivatives transaction, Dodd-Frank mandated that all derivatives recognized as sufficiently standardized should be cleared into clearinghouse. While Dodd-Frank elevated clearinghouses to central players in the new market architecture, concerns soon emerged that clearinghouses might

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[50] The list is available on the CFTC website: http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer
[51] Wagner, 2012
[52] For instance, SIFMA was described in a meeting as advocating "that the exclusion should not be so broad that it permits corporate end users of swaps to accumulate very large swap positions without becoming major swap participants." http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_020411_518

concentrate financial risk rather than mitigating it. As Federal Reserve Chairman Ben Bernanke put it, quoting Mark Twain: if you're going to put all your eggs in one basket, "Watch that basket!".[53] As a result, Dodd-Frank (Section 745b) directed regulators to design a number of regulatory requirements for clearinghouses.

One key policy debate that has emerged during the implementation phase revolved around the issue of who should be given access to clearinghouse. During the design of Dodd-Frank, the dominant position gained by the major dealers in a leading clearinghouse for credit default swaps (ICE US Trust) raised concerns among lawmakers that banks could exploit this position to narrow the scope of products considered eligible for clearing in order to keep these products traded in less transparent and more profitable OTC markets.[54] In order to address this risk, Dodd-Frank mandated regulators to establish eligibility standards for members of clearinghouses to ensure “fair and open access” to clearing services.[55]

In order to achieve this objective, in October 2010 the CFTC prohibited a clearinghouse from requiring more than $50 million in capital from any entity seeking to become a swaps clearing member, a threshold significantly lower than the minimum membership requirements in place in different major clearinghouses.[56] Wall Street derivative dealers mobilized against the proposed threshold, claiming it did not take into account the need to ensure that clearing members were large enough to be able to handle the wind-down of large trading positions in a default scenario. In the words of Deutsche Bank managing director: "A [clearinghouse] is as good as its members … The last one you bring in may actually be increasing the risk”.[57] Large dealers also have opposed opening up clearinghouse membership to smaller members on the ground that these lacked "critical swap-market expertise".[58] As a result, major

[53] Trindle, 2011
[54] Morgenson, 2009; Story, 2010
[55] Greenberger, 2012
[56] Greenberger, 2012
[57] Bunge, 2010a
[58] Greenberger, 2012.

dealer associations called for a much higher threshold than the one proposed by the CFTC ($300 million in the case of SIFMA, or $1 billion in the case of ISDA). On this issue, the position of dealers was supported by the same clearinghouses such as CME, LCH, and ICE,[59] with the latter arguing that the purpose of Dodd-Frank was to "make the financial system more stable", not to promote competition between financial institutions.[60]

The lobbying by dealer banks and clearinghouses in support of restricting the access to CCPs was opposed by a number of voices within the financial industry. For instance, the Swaps and Derivatives Market Association (SDMA) - an association created in 2008 by a number of inter-dealer brokers, futures commission merchants and investment managers - expressed concern about the issue. SDMA argued that in the absence of lower membership requirements large dealers would be able to maintain control of derivatives clearing organizations and effectively exclude smaller dealers and any potential new products they wanted to trade bilaterally, resulting in the continuation of “the same, OTC-style, bilateral, closed, untransparent, opaque, risky system”. [61] Overall, the $50 million threshold rule proposed by the CFTC was supported a number of buy-side actors (such as hedge fund’s Managed Fund Association and Citadel), interdealer brokers (Swaps and Derivatives Markets Association), and voices outside of the financial industry (Better Markets, AFL-CIO).[62]

The divisions that emerged within the financial industry on this issue widened the policy space for regulators to confirm in November 2011 the proposed $50 million threshold. The CFTC rejected the claim by dealers that this “would lead to a [clearinghouse] having to admit clearing members that are unable to participate in the

[59] CFTC, 2011, p. 69355
[60] Scheid, 2010b
[61] Scheid, 2010b
[62] Himaras, 2010

default management process".[63] Moreover, the fact that during this period dealers and clearinghouses were not successful in soliciting action by Congress in favour of a higher threshold than the one proposed by the CFTC allowed regulators to maintain that a higher threshold "would be contrary to the Congressional mandate for open access to clearing".[64]

The debate over the rules governing the access to clearinghouse was not the only contested issue surrounding the governance of clearinghouses that emerged during the implementation of Dodd-Frank. Congress identified the nature of clearinghouses as profit-seeking entities as creating incentives for these firms to bolster the volume of activities by accepting swaps not safe to be cleared or to lower risk management standards. As a result, Dodd-Frank gave regulators the task to define a series of prudential requirements for CCPs to bolster the safety of clearinghouses.

Similarly to the debate on membership criteria, the rules proposed by the CFTC pitted different segments of the financial industry against each other. However, the impact of these prudential requirements in determining the distribution of costs in the event of a failure of a clearing member meant that this cleavage ran primarily between the clearinghouses and its members, rather than between large and small clearinghouse members.

On one side, clearinghouses generally rejected the notion that their activities could create a potential threat to the financial stability and opposed the calls for more stringent prudential requirements. On the other side, clearing members as well as large financial buy-side firms have often called for clearinghouses to have more of

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[63] CFTC, 2011, p. 69356
[64] CFTC, 2011, p. 69356

their own money at risk to backstop potential failures by any of their clearing members, rather than distributing these losses to non-defaulting clearing members.[65]

This cleavage was clearly in display when the CFTC proposed rules requiring clearinghouses to maintain sufficient financial resources to withstand the default by the member creating the largest financial exposure in order to meet their obligations to their clearing members. While this proposal was supported by different clearinghouses,[66] financial industry associations such as the Futures Industry Association and ISDA, as well as pro-reform groups such as Better Markets and Americans for Financial Reform, lobbied the CFTC to increase this requirement and require clearinghouses to maintain resources sufficient to withstand the default of the two clearing members representing the largest financial exposure to the clearing house.[67] Derivative dealers also asked the CFTC to impose capital requirements upon the same clearinghouses, a measure that was opposed by the major clearinghouses that claimed capital requirements would be unnecessary.[68] In both cases, regulators took advantage of the policy space created by the conflict between different key stakeholders and decided not to deviate from their original proposal.

Regulators have been more likely to cave in to financial industry pressures when facing a cohesive opposition front to their proposed rules. For instance, the CFTC revised its proposed rules to allow clearinghouses to include US Treasuries and other high quality sovereign bonds to meet their liquidity obligation, a measure supported both by major clearinghouses and broader industry associations, but opposed only by pro-reform NGOs such as Americans for Financial Reform.

Overall, unlike the previous case, the implementation of the rules governing clearinghouses has not been characterized by a significant backing down of regulators from their initial interpretation of the Congressional mandate. The analysis of this

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[65] Stafford, 2014
[66] CFTC, 2011, p. 69344
[67] CFTC, 2011, pp. 69344–5
[68] CFTC, 2011, p. 69347

case presented in this section highlight the lack of a cohesive front among financial firms opposing the proposed regulation. This fragmentation in the position of the financial industry and the limited involvement of Congress on this issue created the policy space for regulators not to deviate from their original position.

6. Swap Execution Facilities

Another key objective of Dodd-Frank was to inject greater transparency in the derivatives markets by shifting the trading of a greater part of these markets away from the over-the-counter markets and towards centralized trading venues.

Recognizing that most swaps would be unsuitable for trading on traditional exchanges such as those dominating the trading of futures, Section 723 of Dodd-Frank introduced a new category called “swap execution facility” (SEF). At the same time, the vagueness of the definition of SEF provided by Dodd-Frank meant that regulators were left with much of the responsibility of determining what actors would be allowed to compete for a share of the lucrative business of trading and brokering swaps.

It is therefore not a surprise that the definition of SEFs has been the subject of intense lobbying activities. As a market participant stated: "Everyone in the world has got a different view about what a SEF is […] Everyone thinks a SEF definitely includes them, and so [regulators] are getting lobbied in every direction about who's a SEF and who's not a SEF."[69]

The development of SEFs was perceived as a threat to the established position

[69] Lynch, 2010b

of banks that dominated OTC markets by trading directly with their customers or with other banks through interdealer brokers. But it also represented a market opportunity for many other actors. This included not only deep-pocketed derivatives exchanges dominating the trading in smaller market for futures and now coveting a slice of the trading of swaps (in particular interest-rate swaps), but also a variety of platforms that were used for dealer-to-client trades such as Bloomberg, MarketAxess and Tradeweb, as well brokers of swaps between dealers such as such as ICAP, BGC Partners, Tradition, GFI and Tullett Prebon. All these actors set as their priority to ensure that the definition of SEF crafted by regulators would accommodate their business model while limiting competition.

A first conflict among the different dealer banks, trading platforms, inter-dealer brokers, and exchanges competing for the control of the trading of swaps emerged around the definition of what models of trade execution facilities would be consistent with the definition of SEF. High frequency trading firms and pro-regulation NGOs such as Better Markets and American for Financial Reforms supported a definition of SEF that would privilege exchange-like systems where buy and sell orders were matched continuously and prices were live on the bid and offer sides. According to these groups, this model provided the most accurate valuation of the market, reduced systemic risk and resulted in better prices.[70] This view remained, however, was opposed by the majority of groups within the financial industry. Dealer banks, interdealer brokers, and a number of large financial buy-side users that traded swaps in very large sizes and that received from banks the capacity to execute highly customized deals claimed that the limited standardization of swaps compared to future markets made this model unfeasible.[71] These groups called upon for regulators to accommodate in the definition of SEF also "request-for-quote" models where a buy-side firm can request a swap price from only an individual dealer or small number of dealers, rather than making this position visible to the entire market.

[70] CFTC, 2013, pp. 33500–1
[71] van Duyn & Meyer, 2010; Saphir & Younglai, 2010; ISDA, 2011; Mackenzie & Alloway, 2012

The vast opposition front to forcing swaps trading into exchange-like platforms can explain the direction of the policymaking process during the implementation. The CFTC quickly shelved an initial plan requiring swaps trading more than 10 times a day to be executed on SEFs publicly listing bids and offers similar to stock market order books.[72] The rule proposed by the CFTC allowed instead SEFs to adopt a "request for quote" system, thus allowing market participants to access multiple participants but not the entire market. Subsequent amendments to these rules have even further distanced which firms could qualify as a SEF from the type of exchange trading characteristic of the futures markets.

The original CFTC proposal stated that voice-based execution of transactions was inconsistent with the Dodd-Frank mandate to increase pre-trade transparency, and required instead trading to be arranged on open electronic platforms. This proposal saw the emergence of a conflict among trading platforms. On the one hand, the trading platforms parts of Swaps and Derivatives Market Association supported the ban, stating "You can't trade swaps by two paper cups and a string and have pre-trade price transparency". [73] On the other hand, major interdealer brokers such as ICAP, GFI Group and Tullet Prebon, which conducted much of their business in matching buyers and sellers over the phone, claimed that banning voice brokering would cause disruption to the markets.[74] Importantly, the continuation of voice brokering was also supported by dealers as well as large end-users such as the Working Group of Commercial Energy Firms.[75] The mobilization of these groups contributed towards tilting the balance in favour of the continuation of voice brokering, as the CFTC came to revise its previous ruling to allow a SEF to negotiate trades away from screens.

[72] Lynch, 2010a
[73] Lynch, 2010b
[74] CFTC, 2013, p. 33500
[75] Scheid, 2010a

A third key dispute surrounding the definition of SEF regarded the number of counterparties that should be able to access these platforms. Dodd-Frank stated that SEFs should be open to “multiple” participants, while leaving to regulators the responsibility to define how this term should be interpreted. At the beginning of the implementation phase, the CFTC stated that the text of Dodd-Frank was inconsistent with the “one-to-many” platforms on which a single dealer was the counterparty to all swap contracts executed through the system, thus blocking the attempt of dealer banks to have their in-house customer-to-dealer trading systems recognized as SEFs. Instead, the CFTC requested SEFs to send a quote to buy or sell a specific instrument to no less than five market participants.[76]

This threshold was criticized from different sides. On the one hand, pro-reform NGOs, high frequency trading firms, and brokers represented by the Swap and Derivatives Market Association claimed that restricting the requirements to five market participants would allow the continuation of semi-private pre-arranged deals with a few favoured participants to the exclusion of the rest. They demanded instead that a request for quote to be transmitted to all market participants in order to increase price competition.[77]

On the opposite side, major dealer banks and their associations argued that sending out a request for quote to a large number of parties would compromise the liquidity in the swap markets, as market participants would be afraid to make their positions known to others.[78] The opposition to the threshold of five quotes extended well beyond dealer banks and it also included also a large front of platforms and interdealer brokers (Tradeweb, Bloomberg. MarketAxess, WMBAA), buy-side firms (Blackrock, MetLife, Freddie Mac), exchanges (CME), as well as non-financial end-users represented by the Coalition for Derivatives End Users.[79] This coalition was

[76] Mackenzie & Meyer, 2013
[77] CFTC, 2013
[78] Mackenzie, 2011; CFTC, 2013, p. 33494; ISDA, 2013
[79] CFTC, 2013, p. 33495

able to achieve significant support within the House of Representatives Agriculture Committee, which passed unanimously a legislative proposal (H.R. 2586 Swap Execution Facility Clarification Act) that would have prevented regulators from requiring SEFs to have a minimum number of participants receiving a bid or offer.[80]

These pressures from a broad front of interest groups, with the support from Congress, contributed to a change of direction from the CFTC which in May 2013 "recognize[d] commenters' concerns about the proposed five market participant requirement" and amended its rules to require that only two firms bid on swaps orders on "request for quote" platforms.[81]

Overall, despite Gensler 's claim that the reforms would represent "a significant shift toward market transparency from the status quo"[82], the definition of "swap execution facility" crafted during implementation of Dodd-Frank has safeguarded a number of elements that characterized the trading of derivatives before the crisis and which limited the transparency in these markets. The explanation of this outcome presented in this case study highlights how, although the centralization of swaps trading in SEFs has often been described by regulators as shifting the balance of power between banks and users of derivatives and being designed to "tip some of the information advantage from Wall Street to Main Street",[83] the banks and users of derivatives have often joined forces in opposing more radical changes to existing trading practices.

[80] Scheid, 2011a
[81] CFTC, 2013, p. 33497. This threshold would apply only to during a phase-in compliance period and to no less than three market participants, following this period
[82] Gensler, 2013
[83] Scheid, 2011a

7. Conclusion

As argued in the introduction to this chapter, the regulation of financial markets often evolves in a cyclical fashion. alternating between periods of de-regulation and those where financial rules are tightened. In the case of derivatives markets, the passage of Dodd-Frank reversed the direction undertaken by US authorities in the previous two decades and expanded the control of regulatory authorities over these markets. This chapter has investigated to what extent the regulatory pendulum has swung back during the implementation of Dodd-Frank derivatives rules. The analysis of the rules passed by the CFTC to implement the provisions of Dodd-Frank concerning the regulation of derivatives markets suggests that the implementation phase has brought to a halt the tightening in the regulation of derivatives markets that was set in motion by financial crisis.

The chapter highlighted how the process of defining which actors should be covered by the key requirements at the core of Dodd-Frank led regulators to exempt a large number of non-financial as well as financial entities, thus limiting the scope of the regulatory net casted by Dodd-Frank. Along the same lines, the analysis of the definition of the new swap execution facilities demonstrated how a number of pre-crisis trading practices that Congress had challenged in drafting Dodd-Frank will continue under the new rules. At the same, this whittling down of Dodd-Frank derivatives rules have not been uniform, with a number of instances where the rules implemented were not significantly watered down during the implementation. For instance, the analysis of the implementation of the rules governing clearinghouses has not been characterized by a significant departure from the direction set by Congress in the drafting of Dodd-Frank.

In order to explain the uneven pattern in the implementation of Dodd-Frank derivatives rules, this study has investigated the lobbying of different stakeholders within and outside the financial industry during the implementation phase. While most analyses of the regulation of derivatives markets before the crisis have focused on the dealer banks that dominate OTC markets, the analysis in this chapter has highlighted the significant diversity of groups that have competed to influence the action of regulators during the implementation stage. This study has highlighted how the implementation stage has been characterized by the emergence of a number of formal and informal coalitions bringing together different segments of the financial industry, as well as between financial and non-financial actors. The case studies have, in particular, revealed how the capacity of regulators to implement the Congressional mandate in an expansive way has been hindered by the emergence of large opposition fronts linking different sectors that contested the reach of the rules proposed by regulators. Besides signaling the breadth of the opposition to the proposed rules, the presence of a unified front comprising groups from a variety of sectors has increased the likelihood that that Congress would exercise pressures on regulators and would revise their mandate.[84]

At the same time, the analysis revealed that divergences between the interests of different segments of the financial industry as well as between the broader business community varied significantly across different regulatory proposals, as well as on different aspects of the same rules. The presence of disagreements across interest groups in some instances created policy space for regulators to carry forward their preferred policy and to withstand calls for their proposed rules to be watered down.

These results provide empirical support to those studies that have identified a key influence over the design of financial regulation to be the diversity of views within the financial industry and ecology of interests groups. While the competition among different groups within and outside the financial industry often represents an important check on the influence of financial industry players, the centrality of different groups in the lobbying networks represents a key source of influence. From

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[84] Singer, 2004

this perspective, while bank dealers that have dominated the politics of OTC derivatives markets in the years before the crisis have been only one among a wide range groups that have mobilize during the implementation phase, their capacity to link their interests to those of different financial and non-financial groups is an important element explaining the outcome of the regulatory process. For these reasons, the chapter also calls for greater attention to be paid to the origins of the patterns of conflict and solidarity within the financial regulatory policymaking, and in particular the capacity of major financial institutions to gain support from a wide range of voices outside and inside finance.

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