

# A Global Body and a Global Problem: The Curious Case of the G-20 and Securities Regulation

Tamilla Nurizada†

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## Introduction

The global financial crisis of 2008 demonstrated the need for an urgent and comprehensive revision of financial market products, instruments and players.<sup>1</sup> The root of the crisis stemmed from mortgage lending in the United States: a lot of loans were given out to borrowers with questionable credit histories.<sup>2</sup> A number of these risky loans were pooled together to become securities and were sold as such to investors worldwide.<sup>3</sup> The securitization of these mortgages was meant to spread the risk

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† J.D. Candidate, Cornell University, 2018; B.A. in Psychology, New York University, 2014. I would like to thank the Cornell International Law Journal Editorial Board for their invaluable help and feedback. I am dedicating this Note to the loving memory of my father Eldar Nurizada.

1. See Adrian Blundell-Wignall, Director, Financial and Enterprise Affairs, and Special Adviser to the Secretary General for Financial Markets, OECD, Keynote Address at ESMA Financial Innovation Day 2015 (Dec. 16, 2015).

2. See *The Origins of Financial Crisis: Crash Course*, THE ECONOMIST (Sept. 7, 2013), <http://www.economist.com/news/schoolsbrief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article> [https://perma.cc/H68D-RH8P].

3. *Id.*

among many investors and prevent a future crisis.<sup>4</sup> However, the measure only ignited instability because many global investors acquired these American securities to make high profits.<sup>5</sup> Therefore, when the housing market in the United States sharply declined, the mortgage-based securities also experienced a sudden and steep decrease in value.<sup>6</sup> The global investors tried to get rid of their securities, which then led to market panic because everyone started to resell their securities, decreasing the value of the underlying loans even further.<sup>7</sup>

Thus, securities were identified as one of the financial market instruments requiring broader regulation worldwide.<sup>8</sup> Although some central banks in Japan, the United Kingdom, and the United States took immediate action to resolve the securities problem (such as increasing the purchase of long-term government securities), these measures were only short-term solutions.<sup>9</sup> Additionally, the global nature of the crisis required global cooperation, with a body or organization setting the same (or equivalent) standards for the global markets.<sup>10</sup> In the absence of international cooperation, countries will engage in a race-to-the-bottom: they will try to limit regulation as much as possible to attract investors, issuers, and other market participants.<sup>11</sup> Deregulation does not work in securities area, and the global financial crisis vividly showed its inefficiency.<sup>12</sup>

The Group of Twenty Finance Ministers and Central Bank Governors (also known as the G-20) was created to organize international economic cooperation in financial sphere.<sup>13</sup> Comprised of the national leaders or ministers of the member states, the G-20 is not a formal international organization.<sup>14</sup> In other words, the G-20 resembles a network because it does not have formal requirements of membership, and the states have not delegated decision-making authority to the group.<sup>15</sup> The members of the

4. See Brian Perry, *Credit Crisis: What Caused the Crisis?*, INVESTOPEDIA, <http://www.investopedia.com/university/credit-crisis/credit-crisis4.asp> [<https://perma.cc/2MBL-UZ6B>].

5. See Manav Tanneeru, *How a "Perfect Storm" Led to the Economic Crisis*, CNN, <http://www.cnn.com/2009/US/01/29/economic.crisis.explainer/index.html?iref=newssearch> [<https://perma.cc/7YHX-QUSL>].

6. Perry, *supra* note 4.

7. Tanneeru, *supra* note 5.

8. See *World Economic Outlook April 2009: Crisis and Recovery*, INT'L MONETARY FUND 5-6 (2009).

9. *Id.* at 6.

10. See Itai Grinberg, *The New International Tax Diplomacy*, 104 GEO. L.J. 1137, 1147 (2016).

11. See Eric C. Chaffee, *Finishing the Race to the Bottom: An Argument for the Harmonization and Centralization of International Securities Law*, 40 SETON HALL L. REV. 1581, 1597 (2010).

12. *Id.*

13. See Chris Brummer, *Post-American Securities Regulation*, 98 CAL. L. REV. 327, 357 (2010).

14. See Pierre-Hugues Verdier, *The Political Economy of International Financial Regulation*, 88 IND. L.J. 1405, 1462 (2013).

15. Leonardo Martinez-Diaz & Ngaire Woods, *The G20 and the Developing World*, GLOBAL BRIEF (Feb. 19, 2010), <http://globalbrief.ca/blog/2010/02/19/the-g20-and-the-developing-world/> [<https://perma.cc/2S3D-KT6V>].

G-20 are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union.<sup>16</sup> The decisions that the G-20 produces are based on consensus and are not legally binding.<sup>17</sup> Despite the absence of a formal legal force, the organization can still have a profound effect on international financial regulation.<sup>18</sup> Firstly, the G-20 members control the majority of the votes in the International Financial Institutions.<sup>19</sup> Secondly, these member states make up eighty-five percent of the world's GDP; therefore, they can exert great financial pressure to force compliance with their rules.<sup>20</sup>

Although securities regulators do not participate in the G-20 meetings, the organization still expresses a number of opinions and communiqués regarding macroprudential regulation of securities firms and products.<sup>21</sup> In the light of the global financial crisis, the G-20 has announced a series of agreed-upon reforms that involved important issues of securities regulation.<sup>22</sup> These reforms include required registration of hedge funds, regulation of Credit Rating Agencies, regulation of derivatives, and enhancement of the accounting recognition of loan loss provision.<sup>23</sup>

While it is true that the G-20 does not have the power to enforce its policies and communiqués under the international law,<sup>24</sup> the organization still defines the objectives for the global financial regulation.<sup>25</sup> For example, the G-20 can establish monitoring bodies, enforcement measures and technical assistance providers (also known as “enablers”) to aid the countries in their compliance with the newly promulgated rules and standards.<sup>26</sup>

This Note will argue that the G-20 has achieved certain evident successes in the area of securities regulation; although there is a lack of regulatory action in shadow banking and a number of structural factors affecting the organization's efficiency in achieving all of its goals, the organization's efforts make a difference. Part A of this note will discuss the G-20 and the Local Currency Bond Market Initiative and evaluate its success on the example of ESMID program. Part B will discuss the creation of the Financial Stability Board (reorganizing of the Financial Stability Forum as the Financial Stability Board (FSB)) and the board's achievements. Part C will discuss the relationship between the International Organization of Securi-

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16. G20 Members, G20, <http://g20.org.tr/about-g20/g20-members/> [https://perma.cc/CTW5-RPQC].

17. See Verdier, *supra* note 14, at 1462.

18. *Id.*

19. *Id.*

20. *Id.*

21. Brummer, *supra* note 13, at 358.

22. *Id.*

23. *Id.* at 358-59.

24. *Id.* at 359.

25. Grinberg, *supra* note 4, at 1147.

26. *Id.*

ties Commissions (IOSCO) and the G-20 and IOSCO's efforts to encourage compliance with securities regulations. Parts A through C will evaluate the effectiveness of each initiative as well as its shortcomings and reasons behind these weaknesses.

Part D will discuss the role of the G-20 in the cross-border securities investments area. Parts A through D will analyze the factors affecting the G-20's ability to achieve uniform and voluntary compliance with the promulgated policies and standards regarding securities regulation. One of such factors lies in the ultimate nature of the G-20: the organization can set standards and encourage the members to comply with them, but it cannot internationally enforce its own laws. Additionally, it is important to keep in mind that securities regulators do not participate in the G-20 meetings because they assume that the systemic risk presented by securities cannot be properly assessed.<sup>27</sup> Part E will discuss credit default swaps, their role in the global financial crisis and the actions taken at the G-20's request. Part F will discuss the crowdfunding, which prominently emerged after the crisis, and its connection to securities regulation. Finally, Part G will conclude with the suggestions for the improvement of the G-20's efficiency in the area of securities regulation and evaluation of the organization's strengths. This Note will conclude by explaining the complexities of securities and securities regulation that complicated the work of the G-20.

## I. Background

The need for more uniform international standards in the area of securities regulation was evident even before the global financial crisis of 2008.<sup>28</sup> Moreover, this was not the first time that the G-20 was trying to harmonize securities regulation.<sup>29</sup> The Finance Ministers addressed the topic of securities regulation at the G-7 Finance Ministers Meeting in February 2007 (the G-7 is similar to the G-20 in its mission and structure and includes the leaders of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States).<sup>30</sup> Ironically, the goal of that meeting was to encourage free trade in securities to liberalize cross-border capital markets.<sup>31</sup> The G-7 leaders failed to realize the riskiness of certain securities, such as the US "subprime" household debt, which was greatly securitized

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27. Brummer, *supra* note 13, at 358.

28. See Cristie L. Ford, *New Governance, Compliance, and Principles-Based Regulation*, 45 AM. BUS. L.J. 1, 2 (2008).

29. Clyde Stoltenberg, Barbara Crutchfield George, Kathleen A. Lacey, & Michael Cuthbert, *The Past Decade of Regulatory Change in the U.S. and EU Capital Market Regimes: An Evolution from National Interests toward International Harmonization with Emerging G-20 Leadership*, 29 BERKELEY J. INT'L L. 577, 617 (2011).

30. See *G7/8 Finance Ministers Meetings*, G7 INFO. CTR. (Feb. 10, 2007), <http://www.g8.utoronto.ca/finance/fm070210.htm> [<https://perma.cc/6EKU-9BYU>]; see also *G7 and G20*, GLOBAL NETWORK, <http://www.globalnetwork.org/g7-and-g20> [<https://perma.cc/R6EG-UHGT>].

31. G7 INFO. CTR., *supra* note 30.

and partly exported to the European Union and other countries.<sup>32</sup> As a result of the domino effect, there was hardly a country left that was not affected by the crisis.<sup>33</sup>

This failure and the subsequent crisis as well as a number of other reasons demonstrated that a more inclusive international body needs to supervise harmonization of securities regulation.<sup>34</sup> The G-20 has several advantages over the G-7. Firstly, it includes rapidly developing countries such as China.<sup>35</sup> Secondly, although the global financial crisis came from the most developed countries, its consequences were felt by less developed and poorer countries as well.<sup>36</sup> Therefore, the G-20 is better positioned to create a set of regulations that will accommodate not only a select number of the most developed countries in the world, but also more vulnerable countries.<sup>37</sup>

## II. Analysis

### A. The G-20 and the Local Currency Bond Market Initiative

Local Currency Bond Market initiative was the G-20's way to encourage financial deepening after the global financial crisis.<sup>38</sup> Financial deepening is the expansion of the range of instruments, actors, liquidity, and risk sharing capacity to enhance the stability of the international monetary system.<sup>39</sup> Although this initiative was not directed specifically at securities regulation, securities were a part of the financial deepening.<sup>40</sup> For example, the G-20 proposed that the World Bank Group (WBG) would provide technical assistance to the countries with the highest vulnerability due to the size of capital flows relative to the ability of their financial markets to absorb these inflows.<sup>41</sup>

As part of this technical assistance, the WBG created Efficient Securities Markets Institutional Development program (ESMID) in Kenya, Rwanda, Tanzania, Uganda, and Nigeria to develop non-government bond markets.<sup>42</sup> Although these sub-Saharan countries were not responsible for the global financial crisis, they had an estimated loss of fifty billion dol-

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32. E. Philip Davis, *The Evolution of Financial Structure in the G-7 over 1997-2010*, 221 NAT'L INST. ECON. REV. 11, 14 (2012).

33. Marc F. Plattner, *From the G-8 to the G-20*, 22 J. DEMOCRACY 31, 33 (2011).

34. See James Wolfensohn, *G-20 Should Supplant the G-7*, 26 NEW PERSP. Q. 13, 13 (2009).

35. *Id.*

36. *Id.*

37. *Id.*

38. *G20 Action Plan to Support the Development of Local Currency Bond Markets*, paras. 1-2, (Nov. 3-4, 2011), [https://www.bundesbank.de/Redaktion/EN/Downloads/Tasks/Financial\\_and\\_monetary\\_system/Conferences/2011\\_11\\_17\\_frankfurt\\_action\\_plan.pdf?\\_\\_blob=publicationFile](https://www.bundesbank.de/Redaktion/EN/Downloads/Tasks/Financial_and_monetary_system/Conferences/2011_11_17_frankfurt_action_plan.pdf?__blob=publicationFile) [https://perma.cc/8M8K-H6M8].

39. *Id.* at para. 7.

40. *Id.*

41. *Id.*

42. *Developing Domestic Securities Markets*, WORLD BANK GROUP, [http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/SecuritiesMarkets\\_Brochure\\_Final.pdf](http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/SecuritiesMarkets_Brochure_Final.pdf) [https://perma.cc/MS65-P923].

lars.<sup>43</sup> The founders of the program realized that securities contribute to financial and private sector development.<sup>44</sup> Despite their importance for economic development, securities markets are underdeveloped in many emerging countries.<sup>45</sup> Thus, the program facilitated the establishment of a regional Securities Industry Training Institute to train local specialists and enable financial self-sufficiency of the countries.<sup>46</sup> This program also involved the regulators to provide a framework for licensing of market participants in the region.<sup>47</sup>

At the end of ESMID program, the WBG Management conducted the assessment of the outcomes of the program.<sup>48</sup> The program produced a number of successful achievements.<sup>49</sup> For example, ESMID helped the participating countries acquire \$950 million in new bond issues by streamlining approval and regulatory processes.<sup>50</sup> As a result of the enhancement of financial regulation, the time taken to approve bond issues in Kenya and Tanzania was reduced to forty-five and sixty days, respectively.<sup>51</sup>

The ESMID program was especially critical in the emergence of Nigeria's bond market providing affordable medium-to-long term capital to governments and businesses.<sup>52</sup> The program sponsored a number of reforms in the bond-market area (such as streamlining bond issuance procedures, reducing transaction costs, etc.) that produced a number of positive outcomes.<sup>53</sup> The domestic bond market capitalization increased to \$36.42 billion, consisting of federal, state and corporate bonds.<sup>54</sup> As a result of increased capitalization, the bond market is more efficient in supplying the long term capital needed to close Nigeria's infrastructure gap which has been estimated at \$350 billion over the next ten years.<sup>55</sup>

It is fair to say that the WBG's program was a success, considering the results and outcomes in the participant countries. The bond markets of

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43. Dirk Wellem te Velde, *Economic Policies in G-20 and African Countries during the Global Financial Crisis: Who's the Apprentice, Who's the Master?*, 23 AFR. DEV. REV. 380, 382 (2011).

44. *Id.*

45. *End-Of-Program Evaluation Of The Efficient Securities Markets Institutional Development Program In Africa (ESMID Africa)*, DEVEX (Mar. 28, 2013), <https://www.devex.com/funding/tenders/1887/1887> [<https://perma.cc/Z8B4-FLJT>].

46. World Bank Group, *supra* note 42.

47. *Id.*

48. Devex, *supra* note 45.

49. *ESMID Home*, INT'L FIN. CORP., [http://www.ifc.org/wps/wcm/connect/Reg-Projects\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/ESMID\\_Home/](http://www.ifc.org/wps/wcm/connect/Reg-Projects_Ext_Content/IFC_External_Corporate_Site/ESMID_Home/) [<https://perma.cc/R8PA-RX9P>].

50. *Id.*

51. *Id.*

52. Arunma Oteh, *Building a Vibrant Domestic Bond in Nigeria*, AFR. FIN. MKT. INITIATIVE (Oct. 8, 2014), <http://www.africanbondmarkets.org/en/news-events/african-bond-market-review/article/building-a-vibrant-domestic-bond-market-in-nigeria-61665/> [<https://perma.cc/GZT2-RG68>].

53. *Id.*

54. *Id.*

55. *Id.*

Nigeria and Kenya continue their healthy development.<sup>56</sup> The fact that ESMID is planning expansion into the countries of Latin America and the Caribbean region highlights the success of the program.<sup>57</sup>

## B. The Financial Stability Forum/Financial Stability Board, the G-20 and Securities

The Financial Stability Board (FSB) was founded in 2009 (through the expansion of the already existing the Financial Stability Forum) to supervise the global financial system.<sup>58</sup> Notably, the FSB's membership is not limited to G-20 membership; the board also includes Hong Kong, Singapore, and Switzerland.<sup>59</sup> The G-20 asked the FSB to support countries in their effort to strengthen financial regulation.<sup>60</sup> First, the G-20 asked the FSB, together with the International Monetary Fund (IMF), to review regulatory and supervisory actions concerning local currency bond markets that affect financial stability and make necessary recommendations.<sup>61</sup> Second, the FSB was appointed to support countries in strengthening financial regulation and supervision to facilitate domestic capital markets.<sup>62</sup> Third, the FSB assumed responsibility for raising the financial stability issues regarding the emerging and developing economies to the G-20.<sup>63</sup>

The board's 2009 charter lists the mandates and tasks of the FSB in the context of international financial regulation.<sup>64</sup> Although the list does not specifically mention securities regulation, review of the charter's remainder reveals that securities regulation is one of its implicit goals.<sup>65</sup> First, the list of the FSB members included securities commissions of a number of countries and IOSCO.<sup>66</sup> Second, after the Seoul Summit in 2010, the G-20 leaders requested the FSB to recommend a set of regulations for the shadow banking industry.<sup>67</sup> Securities form an important part of this industry because the shadow banking system uses securities

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56. Katharine Jackson, *Pension-Funding the Future: Encouraging the Sustainable and Socially Responsible Development of Securities Market in Sub-Saharan Africa*, 44 INT'L LAW. 791, 793 (2010).

57. INT'L FIN. CORP., *supra* note 49.

58. *FSB Raises Concerns over Implementation of G-20 Reforms*, FOW MAG. (Apr. 18, 2011), <https://globalinvestorgroup.com/articles/2809313/fsb-raises-concerns-over-implementation-of-g-20-reforms> [https://perma.cc/4TFY-UDUK].

59. Daniel E. Noelle, *Who's in Charge of Fixing the World's Financial System? The Un[?]der-Appreciated Lead Role of the G-20 and the FSB*, 24 FIN. MKTS. INST. & INSTRUMENTS 1, 5 (2015).

60. G20 Action Plan to Support the Development of Local Currency Bond Markets, *supra* note 38.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Cecilia C. Lee, *Reframing Complexity: Hedge Fund Policy Paradigm For the Way Forward*, 9 BROOK. J. CORP. FIN. & COM. L. 478, 526 (2015).

lending and repo transactions to fund hedge funds.<sup>68</sup> Shadow banking involves not only big commercial and investment banks, but firms of different sizes.<sup>69</sup> Although securities regulation was never the sole and explicit goal of the FSB, a careful review of its tasks in the context of international financial regulation demonstrates the importance of securities regulation to the board.

One of the FSB's unique advantages is that the board could identify the data gaps revealed by the global financial crisis and close those gaps.<sup>70</sup> Although the FSB has been regularly tracking financial data in a number of sectors, including securities, it expanded its work in response to the G-20's request.<sup>71</sup> The FSB joined forces with the IMF and, after extensive consultations with the experts from different sectors, they produced twenty recommendations regarding four areas, one of which includes cross-border financial linkages.<sup>72</sup> This investigative work has a great potential in securities regulation due to the comprehensive information of both domestic and foreign entities.<sup>73</sup> For example, information on the exposure of domestic banks to securities of nonbank financial institutions of foreign jurisdiction is useful in the event a nonbank financial institution shows signs of struggle.<sup>74</sup>

The FSB as an organization is useful in securities regulation because it not only sets the standards, but coordinates other standard-setting bodies.<sup>75</sup> The board is also responsible for supervising the actions required to realize the improvements of the global financial system.<sup>76</sup> The FSB launched a peer review program in 2010 to test the effectiveness of the regulations developed by standard-setting bodies.<sup>77</sup> This measure encourages countries to conform to the promulgated standards.<sup>78</sup> Although the FSB's membership is limited, it includes the largest and fastest growing economies.<sup>79</sup> Thus, peer review by these countries reduces the risk of non-members' failure to regulate securities to affect the board's members.

However, the FSB's efficiency is not uniform. For example, the board struggled to timely report the progress on over-the-counter (OTC) deriva-

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68. *Id.* at 508.

69. Daniel K. Tarullo, *International Cooperation in Central Banking*, 47 CORNELL INT'L L.J. 1, 6 (2014).

70. Robert Heath, *Why are the G-20 Data Gaps Initiatives and SDDS Plus Relevant for Financial Stability Analysis?*, 4 (Int'l Monetary Fund Working Paper No. WP/13/6, 2013).

71. *Id.*

72. *Id.* at 3.

73. *Id.* at 6.

74. *Id.*

75. Emilius Avgouleas, *Berle IV: The Future of Financial and Securities Markets The Fourth Annual Symposium of the Adolf A. Berle, Jr. Center on Corporations, Law & Society: Rationales and Designs to Implement an Institutional Big Bang in the Governance of Global Finance*, 36 SEATTLE U.L. REV. 321, 348 (2013).

76. Noelle, *supra* note 59, at 5.

77. Peer Reviews, FIN. STABILITY BOARD (Mar. 12, 2015), [http://www.fsb.org/what-we-do/implementation-monitoring/peer\\_reviews/](http://www.fsb.org/what-we-do/implementation-monitoring/peer_reviews/) [<https://perma.cc/Z27C-QS57>].

78. *Id.*

79. Brummer, *supra* note 13, at 361.



tives market reform among the G-20 nations.<sup>80</sup> Certain countries' failure to cooperate due to their inability to move from the market analysis stage of the reform caused this delay.<sup>81</sup> Additionally, individual countries had their own visions of the required reforms in the OTC derivatives market, which often conflicted with the uniform regulatory framework.<sup>82</sup> For example, India refused to enforce electronic platform trading of OTC derivatives because India believed that it could retain the flexibility of OTC transaction by requiring reporting through a central trade reporting platform and central clearing.<sup>83</sup> This refusal undermines the goals of the G-20 because the countries like India do not conform to a uniform set of standards and expectations.<sup>84</sup>

There are a number of ways the FSB can improve its performance and, as a result, increase its efficiency in the OTC derivatives market. First, the FSB needs to engage its members and encourage their participation to ensure open, inclusive discussions that will lead to homogenous and balanced regulation standards.<sup>85</sup> Otherwise, the discrepancy in the countries' compliance with the promulgated rules will create regulatory arbitrage.<sup>86</sup> This arbitrage will reduce the credibility of the FSB as organization and will further alienate the members.<sup>87</sup>

### C. The G-20 and IOSCO

The G-20 was one of the first organizations that reacted to the global financial crisis by addressing the possible solutions to securities regulation at the Pittsburgh G-20 Summit.<sup>88</sup> The goal of the summit was to update international securities regulation.<sup>89</sup> The leaders of the member states asked their Finance Ministers to propose recommendations regarding "reviewing and aligning global accounting standards, particularly for complex securities in times of stress."<sup>90</sup> In addition to these discussions, the G-20 also proposed that issuers of risky securities (which were the root of the problem in the global financial crisis) must hold a proportion of those securities on their own account.<sup>91</sup> This proposal was approved and implemented into domestic regulation; for example, the European Parliament set

80. FOW MAG. *supra* note 58.

81. *Id.*

82. *Id.*

83. *Id.*

84. Angeliqe Leondis, *The Global Financial Crisis: The G-20's Most Recent Action Plan*, 25 BANKING & FIN. L. REV. 315, 322 (2010).

85. Olin Wethington, *G-20's Stability Board Needs Firmer Footing*, AM. BANKER: BANKTHINK (Aug 2, 2011 7:24 PM), <https://www.americanbanker.com/opinion/g-20s-stability-board-needs-firmer-footing> [<https://perma.cc/9MLB-PVZL>].

86. *Id.*

87. *Id.*

88. See Stoltenberg et al., *supra* note 29, at 643.

89. *Id.*

90. Joseph J. Norton, *NIFA-II or 'Bretton Woods-II'? The G-20 (Leaders) Summit Process on Managing Global Financial Markets and the World Economy- Quo Vadis?*, 11 J. BANKING REG. 261, 283 (2010).

91. Andre Gabus & Alexander Hawthorne, *The G-20's First Timid Steps to Prevent Crises?*, 34-35 FIN. & BIEN COMMUN 1, 2 (2009).

five percent retention on the accounts of issuers.<sup>92</sup>

One of the ways the G-20 can regulate securities is by exerting pressure directly on IOSCO, an international organization devoted specifically to securities regulation.<sup>93</sup> IOSCO is the only world organization that contains almost all securities commissions.<sup>94</sup> In that regard, the connection between the G-20 and FSB should not be underestimated because the FSB oversees the work of a number of standard-setting bodies, including IOSCO itself.<sup>95</sup> The FSB also acknowledged the role of IOSCO as international standard-setting body in the board's charter in 2009.<sup>96</sup>

As a reaction to the global financial crisis, IOSCO set three main goals in its 2010 principles report: (1) to protect investors; (2) to ensure fairness, transparency and efficiency of the markets; and (3) to reduce systemic risks.<sup>97</sup> The organization stated these goals rather generally; that is why it produced a number of papers and reports with more specific objectives.<sup>98</sup> For example, IOSCO's paper *Mitigating Systemic Risk: A Role for Securities Regulators*, prepared by the organization's Technical Committee, explained the sources of the systemic risks and encouraged the regulators to be mindful of the gaps created by lightly regulated products.<sup>99</sup> The paper pointed out the tools available to the regulators (such as prudential and governance requirements) and reminded them that IOSCO can help with disclosure in international securities markets.<sup>100</sup>

In addition, IOSCO realized that the global financial crisis mainly stemmed from financial innovations such as collateralized debt obligations, credit default swaps, and so on.<sup>101</sup> Therefore, IOSCO urged regulators to devise regulation with particular attention to the risks attached to financial innovations.<sup>102</sup> The organization recommended that the securities regulators review regulation of financing activities to ensure that evolving products do not escape regulatory coverage.<sup>103</sup>

IOSCO also provided noticeable guidance in the regulation of hedge funds.<sup>104</sup> Hedge funds are pools of assets, which are usually securities, professionally managed through the use of investing techniques.<sup>105</sup> However, hedge funds are not registered—and therefore, not regulated—as usual

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92. *Id.*

93. See Roberta S. Karmel, *IOSCO's Response to the Financial Crisis*, 37 IOWA J. CORP. L. 849, 900 (2012).

94. *Id.*

95. See Arie C. Eernisse, *Banking on Cooperation: The Role of the G-20 in Improving the International Financial Architecture*, 22 DUKE J. COMP. & INT'L L. 239, 242 (2012).

96. *Financial Stability Board Charter*, FSB, [http://www.fsb.org/wp-content/uploads/r\\_090925d.pdf?page\\_moved=1](http://www.fsb.org/wp-content/uploads/r_090925d.pdf?page_moved=1) [<https://perma.cc/3GTL-MR4B>].

97. Karmel, *supra* note 93, at 851.

98. *Id.* at 852.

99. *Mitigating Systemic Risk: A Role for Securities Regulators*, OICU-IOSCO, Technical Committee of the International Organization of Securities Commission (Feb. 2011).

100. *Id.*

101. *Id.* at 18-19.

102. *Id.* at 20, 51.

103. *Id.*

104. *Id.* at 54.

105. Karmel, *supra* note 93, at 851.

investment companies in a number of countries, such as the United States.<sup>106</sup> The harms that hedge funds contributed to the global financial crisis were so significant that the funds became a point of discussion of several G-20 meetings.<sup>107</sup> Finally, the G-20 decided that the hedge funds should be registered by the national regulators and the funds' managers must report systemically important data to these regulators.<sup>108</sup>

As a response to this decision, IOSCO issued a report on hedge fund regulation, which incorporated the organization's own research and comments from the public and the industry members.<sup>109</sup> This report included six recommendations aimed at investor protection and avoidance of systemic risks posed by hedge funds, such as disclosure of managers' conflicts of interests and ways managers deal with those conflicts.<sup>110</sup> The United States and the European Union followed this report and responded with legislation. For example, the Dodd-Frank Act requires hedge funds to register with the Securities and Exchange Commission (SEC).<sup>111</sup> The European Union also produced two pieces of legislation: one for Alternative Investment Fund (AIF)—which includes hedge funds—and Alternative Investment Fund Managers (AIFM).<sup>112</sup> Major cross-border financial institutions with presence in both the United States and the European Union will have to conform to the Dodd-Frank and AIF/AIFM.<sup>113</sup>

IOSCO offers a number of advantages in securities regulation.<sup>114</sup> First, as a standard-setting body, it can encourage the members to enter into agreements to address issues such as sharing of data and coordinating action on risks.<sup>115</sup> Second, the organization can highlight the areas in securities regulation that need urgent reform through its Technical Committee.<sup>116</sup>

The problem with analyzing the efficiency of the G-20 securities regulation through IOSCO is that IOSCO includes members besides the G-20 countries.<sup>117</sup> These members are often emerging markets; thus, IOSCO needs to formulate general principles that can accommodate these markets as well as the developed ones.<sup>118</sup> Considering the challenge IOSCO faces, it is difficult to determine whether the G-20 exerts enough pressure on the IOSCO to promulgate certain securities policies or IOSCO simply cannot

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106. *Id.*

107. *Id.* at 858.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 861.

112. *Id.* at 864.

113. Peter Green & Jeremy Jennings-Mares, *Comparison of Dodd Frank Act and EU Regulatory Reform*, MORRISON FOERSTER (2011), <http://media.mofo.com/files/uploads/Images/Reg-Reform-PPT.pdf> [<https://perma.cc/W65E-YXQT>].

114. Karmel, *supra* note 93, at 855.

115. *Id.*

116. Jane Diplock, *The Global Financial Architecture: Twenty-First Century Solutions*, 19 AUSTL. ACCT. REV. 155, 157 (2009).

117. *Id.*

118. *Id.*

implement these policies without hurting the emerging markets. On the other hand, the G-20 itself includes emerging markets (such as Mexico),<sup>119</sup> which means that some of the emerging market countries participated in the production of the regulations.<sup>120</sup> Therefore, it is much more likely that these participants will conform to the regulations in comparison to the markets that are forced to comply with these regulations.

Although the cooperation between the G-20 and IOSCO is not always perfect, a number of instances that demonstrate uniformity of goals in securities regulation.<sup>121</sup> For example, IOSCO has a program to help the members evaluate their own securities regulation against the principles promulgated by IOSCO.<sup>122</sup> The G-20 endorsed these principles by recommending its members submit to the Financial Sector Assessment Program (FSAP) and undergo periodic peer review using IOSCO Principles.<sup>123</sup> Another example of cooperation between the G-20 and IOSCO is that IOSCO Principles reflect the goals of the G-20 leaders.<sup>124</sup> These principles pursue three main objectives: (1) protection of investors; (2) promotion of market's fairness, efficiency and transparency; (3) reduction of systemic risk.<sup>125</sup> These objectives resemble the G-20's goals discussed during the Seoul Summit in 2010.<sup>126</sup> Although the G-20's goals targeted financial regulation in general, securities regulation is a concrete example of financial regulation. The G-20 paid a particular attention to the issue of systemic risk; in fact, this issue was addressed almost immediately after crisis at the Washington Summit in 2008.<sup>127</sup>

Despite IOSCO's shortcomings and challenging diversity of its member body, the organization has capacity to become more efficient in securities regulation.<sup>128</sup> For instance, IOSCO's cooperation with various bodies such as the World Bank can be used to help IOSCO become a supervisory convergence organization rather than a simple harmonizer of standards.<sup>129</sup>

Additionally, the diversity of the markets within the G-20 presents a challenge for devising a common set of regulations because different markets have their own understanding of the necessary regulation.<sup>130</sup> For example, the United States and the United Kingdom prefer greater market

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119. *The Group of Twenty: A History*, OFFICIAL G-20 PUBLICATIONS (G-20 Info. Ctr., Toronto, Can.), Nov. 2008, at 8.

120. Verdier, *supra* note 14, at 1420.

121. Diplock, *supra* note 116, at 157.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. Badar Alam Iqbal, *G-20: Global Issues and Challenges*, 4 *TRANSNAT'L CORP. REV.* 72, 76 (2012).

127. Hank Boerner, *Global Capital Markets and Corporate Compliance Reforms Ahead: The G-20 Tackle the Issues*, 13 *CORP. FIN. REV.* 33, 34 (2009).

128. Daniel Broby, *The Case for a Roadmap towards Financial Regulatory Convergence*, 21 *J. FIN. REG. & COMPLIANCE* 397, 401 (2013).

129. *Id.*

130. See Eswar Prasad, *The G-20 and The World Economy: Sink or Swim*, *BROOKINGS INSTITUTION REP.*, 3 (2009).

freedom, whereas countries of the continental Europe, such as France, think it is important to have tighter regulation system, especially in the aftermath of the crisis.<sup>131</sup> Considering these differences, the difficulties in achieving common objectives are no longer surprising.

Another commonly shared critique of the G-20 is that despite the G-20's diversity of the members, the organization still faces the same problems as the G-7: too many leaders present in the same room and weak political mandate.<sup>132</sup> The increased number of leaders means that the time that could have been spent discussing solutions is dedicated to the rehearsed speeches of the leaders.<sup>133</sup> Additionally, the structure of the organization (consisting mainly of finance ministers) ignores the political reality that some countries' regulation systems are more complex.<sup>134</sup> For example, the U.S. regulatory authority does not consist only of ministers, but also of several agencies that often have to share their authority; such system complicates compliance with the promulgated rules of the G-20.<sup>135</sup>

Ultimately, the G-20 communiqués are not enforceable and that is why the G-20 relies on the reputation of its members to conform to the promulgated standards and policies.<sup>136</sup> For example, if a G-20 country does not conform to the communiqués, it will have a difficulty promoting its own policies in the future.<sup>137</sup>

#### D. The G-20 and Cross-Border Securities Investments

The amount of cross-border securities investments had been steadily increasing until the global financial crisis took place.<sup>138</sup> For example, the share of debt securities held by cross-border investors jumped by eight percent from 2001 to 2007, whereas the share decreased by three percent from 2009 to 2012.<sup>139</sup> Although the IMF's Coordinated Portfolio Investment Survey (CPIS) has tracked cross-border securities investments, policy makers have largely ignored these data.<sup>140</sup> The global financial crisis demonstrated the global significance of the cross-border securities investment and the need for the G-20 to closely monitor the investments' rates and issuance of securities globally.

The *Handbook on Securities Statistics (Handbook)*, joint work of the IMF, the European Central Bank (ECB) and the Bank for International Set-

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131. *Id.*

132. Jonathan Burks, *Improving International Policy Coordination in the Wake of the Financial Crisis*, 20 J. PUB. & INT'L AFF. 144, 146-47 (2009).

133. Nouriel Roubini, *It is a G-Zero, Not a G-20, World*, 28 NEW PERSP. Q. 27, 29 (2011).

134. *Id.*

135. *Id.*

136. See Brummer, *supra* note 13, at 359.

137. *Id.*

138. Branimir Gruic & Andreas Schrimpf, *Cross-Border Investments in Global Debt Markets Since the Crisis*, BANK INT'L SETTLEMENTS (Mar. 9, 2014), [https://www.bis.org/publ/qtrpdf/r\\_qt1403y.htm](https://www.bis.org/publ/qtrpdf/r_qt1403y.htm) [<https://perma.cc/SSZ3-5UC5>].

139. *Id.*

140. Heath, *supra* note 70, at 5, 10.

lements (BIS), represents an attempt to track securities information.<sup>141</sup> The G-20 endorsed the development of the *Handbook* through the FSB and IMF's 2009 report "The Financial Crisis and Information Gaps."<sup>142</sup> The global crisis demonstrated that more stringent supervision of securities is crucial to restoration of financial health worldwide.<sup>143</sup> The three parts of the *Handbook* provides data on debt and equity securities.<sup>144</sup> One of the benefits of the *Handbook* is that its data is internationally comparable because the central banks and financial experts of a number of countries contributed information.<sup>145</sup> The availability of internationally comparable securities data allows countries to come up with more efficient fiscal policies.<sup>146</sup> The *Handbook* contains comprehensive information on securities, including institutions dealing with debt and equity securities, differences between subtypes of debt and equity securities, and so on.<sup>147</sup>

The IMF's work in the area of cross-border securities also deserves recognition.<sup>148</sup> In response to the criticism that information from the Coordinated Portfolio Investment Survey (CPIS) was relatively obscure, the IMF decided to conduct the CPIS twice instead of once a year.<sup>149</sup> Semi-annual reporting should decrease delay in the release of results.<sup>150</sup> However, there are still a number of weaknesses in the conduction of the survey. For example, the CPIS should increase the number of countries covered because at the moment only twenty-five countries that the IMF considers to have systemically important financial sectors participate.<sup>151</sup> However, the global financial crisis demonstrated the interconnectedness of the global financial system. Although a particular country might not be systemically important, the decline of such country's financial health can severely affect a systemically important country.

### E. Credit Default Swaps

Credit default swaps (CDS) are instruments supposed to cover holders against default on an underlying security.<sup>152</sup> In other words, CDS are conceptually insurance contracts against the cost of default of a company.<sup>153</sup> They are considered as a type of OTC credit derivatives.<sup>154</sup> Issuers of these

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141. *Handbook on Securities Statistics*, INT'L MONETARY FUND (2015), <http://www.imf.org/external/np/sta/wgsd/pdf/hss.pdf> [<https://perma.cc/2ST5-WC4W>].

142. *Id.*

143. Diplock, *supra* note 116, at 155.

144. INT'L MONETARY FUND, *supra* note 141.

145. *Id.*

146. *Id.*

147. *Id.*

148. Heath, *supra* note 70, at 15.

149. *Id.*

150. *Id.*

151. *Id.*

152. Gabus & Hawthorne, *supra* note 90, at 3.

153. Rene M Stulz, *Credit Default Swaps and Credit Crisis*, 24 J. ECON. PERSP. 73, 74 (2010).

154. Rama Cont & Andreea Minca, *Credit Default Swaps and Systemic Risk*, 247 ANNALS OPERATIONS RES. 523, 524 (2016).

instruments have no obligation to retain reserves for potential liabilities and, therefore, could issue unlimited quantities of swaps; it is not surprising that these instruments contributed to market destabilization in the global financial crisis.<sup>155</sup> The downfall of AIG is a concrete example of swaps' destructive role in the crisis.<sup>156</sup>

Thus, it is not surprising that CDS were on the agenda at the G-20 Washington Summit in 2008.<sup>157</sup> The need for immediate regulatory actions was so obvious that CDS were listed in "Immediate Actions by March 31, 2009," stipulated by all the G-20 leaders at the summit.<sup>158</sup> The fear of CDS' systemic risk motivated some of the regulators to propose a ban on the swaps; however, the majority of leaders (such as the United States President George W. Bush) opposed complete banning and offered more stringent oversight and regulation of the instrument.<sup>159</sup> Additionally, CDS can be useful means of risk allocation.<sup>160</sup> However, the opacity of the CDS markets destroyed its utility and contributed to the crisis; therefore, the need for restorative regulation was obvious.<sup>161</sup>

Although everyone at the Washington Summit understood that urgent action was required, there was little consensus on which particular course of action to pursue.<sup>162</sup> The G-20 realized that they would need help from a standard-setting body and, as in a number of issues in securities regulation, they requested that help from IOSCO.<sup>163</sup> After the Cannes Summit in 2011, the G-20 asked IOSCO to prepare a report assessing "the functioning of credit default swap (CDS) markets and the role of those markets in price formation of underlying assets."<sup>164</sup> This report was due by the next G-20 summit in Los Cabos.<sup>165</sup> This report addresses issues raised at the Cannes Summit, such as a need to harmonize policies across borders and increase cooperation between regulators.<sup>166</sup> In addition to these issues, IOSCO's report discusses recent changes and trends in CDS markets as well as provides information about trading, pricing and clearing of CDS.<sup>167</sup>

155. Gabus & Hawthorne, *supra* note 91, at 3.

156. Cont & Minca, *supra* note 154, at 524.

157. *G-20 Wants Quick Action on Credit Default Swaps, but Bush Talks Them into Toothless Regulation*, WASHINGTON'S BLOG (Nov. 15, 2008), <https://georgewashington2.blogspot.com/2008/11/g-20-wants-quick-action-on-credit.html?m=0> [<https://perma.cc/W6MQ-GENG>].

158. *Id.*

159. *Id.*

160. XAVIER FREIXAS, MATHIAS DEWATRIPONT & RICHARD PORTES, *MACROECONOMIC STABILITY AND FINANCIAL REGULATION: KEY ISSUES FOR THE G20* 115 (2016).

161. *Id.* at 116.

162. *Id.*

163. *IOSCO Publishes a Report for the G20 on the Credit Default Swap Market*, OICU-IOSCO (June 16, 2012), <https://www.iosco.org/news/pdf/IOSCONEW5243.pdf> [<https://perma.cc/MV2Q-4NDH>].

164. *Id.*

165. *Id.*

166. Edward F. Greene & Joshua L. Boehm, *The Limits of Name-and-Shame in International Financial Regulation*, 97 CORNELL L. REV. 1083, 1085 (2012).

167. OICU-IOSCO, *supra* note 163.

## F. Crowdfunding and Securities Regulation

Although the global financial crisis played a big role in attracting the attention to securities regulation, new financial issues have emerged since the crisis that require not only attention, but also regulation and legislation.<sup>168</sup> Crowdfunding is an example of such issues; although the phenomenon existed before the crisis, its growth has been expanding since the 2010s.<sup>169</sup> Crowdfunding operates on web or mobile based platforms; its operating nature can present significant cross-border issues.<sup>170</sup> Lending and investment-based crowdfunding is not regulated, although banks and investment firms performing the same functions are heavily regulated.<sup>171</sup> Some authors propose that lack of regulation in shadow banking allowed a phenomenon such as crowdfunding escaping regulation for the most part.<sup>172</sup> Additionally, securities in investment crowdfunding projects are not listed, which can create a number of problems such as the risk of dilution, capital loss, and so on.<sup>173</sup>

Although the G-20 never officially requested a standard-setting body to intervene into the issue of crowdfunding regulation, the organization definitely paid attention to this expanding area.<sup>174</sup> The G-20 realized that the aftermath of the global financial crisis forced banks to lend less and on much stricter terms, and many SMEs suffered as a result.<sup>175</sup> Crowdfunding as an alternative source of financing helps SMEs that lack collateral or credit history to satisfy banks' requirements for lending.<sup>176</sup> Crowdfunding is also crucial to entrepreneurs because it provides an alternative source of funding; entrepreneurial companies can be found in every single member of the G-20.<sup>177</sup> Crowdfunding is especially important in the G-20 member

168. Klaus Peter Follak, *Crowdfunding in International and National Regulatory Frameworks*, 32 *BANKING & FIN. L. REV.* 167, 167 (2015).

169. Giuliana Borello, Veronica de Crescenzo & Flavio Pichler, *The Funding Gap and the Role of Financial Return Funding: Some Evidence from European Platforms*, 20 *J. BANKING & COM.* 1, 2 (2015).

170. The Board of the International Organization of Securities Commissions, *Statement on Addressing Regulation of Crowdfunding*, OICU-IOSCO (Dec. 2015), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD521.pdf> [https://perma.cc/5YYE-NYBE].

171. Follak, *supra* note 168, at 167.

172. Roy Girasa, *Shadow Banking: Nature, Regulation, and Developments*, 35 *BANKING & FIN. SERV.'S POL'Y REP.* 1, 4 (2016).

173. *Advice: Investment-based Crowdfunding*, ESMA (Dec. 18, 2014), [https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560\\_advice\\_on\\_investment-based\\_crowdfunding.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf) [https://perma.cc/7KCP-NQJZ].

174. *G20/OECD Support Note on Diversification of Financial Instruments for SMES*, OECD (July 2016), <https://www.oecd.org/g20/topics/financing-for-investment/G20-OECD-Support-Note-on-Diversified-Financial-Instruments-for-SMEs.pdf> [https://perma.cc/QL7T-K5MX].

175. *Id.*

176. *Id.*

177. *G20 Funding the Future*, EY, [http://www.ey.com/Publication/vwLUAssets/EY\\_G20\\_-\\_Funding\\_the\\_future:\\$FILE/EY-g20-Funding-the-future.pdf](http://www.ey.com/Publication/vwLUAssets/EY_G20_-_Funding_the_future:$FILE/EY-g20-Funding-the-future.pdf).



countries with lack of available finance such as China.<sup>178</sup>

However, the G-20 also realized the risks associated with crowdfunding, primarily the concern about financial safety of investors.<sup>179</sup> Once the G-20 openly addressed crowdfunding, the need to take at least some kind of monitoring action was obvious.<sup>180</sup> Thus, several standard-setting bodies decided to approach regulation of crowdfunding out of their own initiative.

For example, the IOSCO, duly noting the advantages of crowdfunding, urged to strengthen regulation in this area to protect investors.<sup>181</sup> Its survey findings from twenty-three IOSCO members in the “*Crowdfunding 2015 Survey Responses Report*” (“Survey Report”) highlight major risks for investors that invest in crowdfunding.<sup>182</sup> One of the biggest problems is the absence of secondary market for crowdfunding securities, which may limit the investor’s ability to sell or liquidate these securities.<sup>183</sup>

However, IOSCO refrained from proposing international standards, explained that most regulatory regimes have just been implemented, and therefore preferred wait-and-see approach.<sup>184</sup> This approach might be the most optimal one at this stage because the G-20 member countries differ greatly in their approach to the role crowdfunding plays in their respective financial markets.<sup>185</sup> For example, the U.S. strongly favors crowdfunding; the Jumpstart Our Business Startups (JOBS) Act provides venues for expanding the use of crowdfunding.<sup>186</sup> On the other hand, countries such as Italy and Germany prefer to restrict crowdfunding through stricter regulation.<sup>187</sup> For example, Italian legislation requires its crowdfunding platforms to partner with banks and other financial institutions licensed to operate on traditional regulated market.<sup>188</sup> In the light of these differences and comparative recency of crowdfunding as alternative funding, IOSCO’s reluctance to propose universal standards and rules becomes understandable.

#### G. What Can Be Improved about the G-20’s Work and the Achievements of the G-20 in Securities Regulation

One of the areas of securities regulation that has not seen many real

178. *GPII 2016 Progress Report to G20 Leaders*, GPII, <https://www.gpii.org/sites/default/files/documents/GPII%202016%20Progress%20Report%20to%20G20%20Leaders.pdf>.

179. OECD, *supra* note 174.

180. GPII, *supra* note 178.

181. OICU-IOSCO, *supra* note 170.

182. *Id.*

183. *Id.*

184. Follak, *supra* note 168, at 170.

185. See, e.g., Therese Torris, *Global Crowdfunding and Local Regulation: From Light Touch to Prescriptive Bespoke Rules*, CROWDFUND INSIDER (May 18, 2016, 11:10 AM), <http://www.crowdfundinsider.com/2016/05/85762-global-crowdfunding-local-regulation-from-light-touch-to-prescriptive-bespoke-rules/> [<https://perma.cc/5VQF-TTSG>].

186. GPII, *supra* note 178.

187. See Torris, *supra* note 185.

188. *Id.*

changes is shadow banking, particularly securities financing.<sup>189</sup> Shadow banking involves non-banking entities, but these entities are also prone to runs and contagions due to the leveraged nature of the financial product involved.<sup>190</sup> After the Seoul Summit of 2010, the G-20 requested the FSB to produce recommendations on shadow banking.<sup>191</sup> Although the FSB responded to the request by proposing a framework of numerical haircuts on securities financing in 2013, there was no regulatory action taken.<sup>192</sup> Two years later, the BIS also produced their recommendations on haircut floors for non-centrally cleared securities financing transactions. However, there is no legislative response up to this date from the members of the G-20.<sup>193</sup>

The members provide various explanations for the absence of legislative action to bring recommendations to life. For example, the European Systemic Risk Board (ESRB) highlights the fact that there is no harmonized definition of procyclicality or leverage in the current European Union legislation, and this fact complicates the attempts to implement the FSB's proposal.<sup>194</sup> The ESRB also blames a lack of consensus on the difficulty of designing a system-wide framework to tackle the build-up of leverage specifically applicable to securities financing transactions.<sup>195</sup> On the other hand, the ESRB admits that the FSB's recommendations are internationally agreed proposals.<sup>196</sup> Thus, the absence of a harmonized definition of procyclicality or leverage cannot explain the lack of legislation in the European Union, while three years have passed since the FSB's proposal.<sup>197</sup>

Besides the lack of action in securities financing, the crux of the G-20's criticism comes from its ultimate structure.<sup>198</sup> Therefore, the recommendations for improvement will target the organization itself instead of particular initiatives concerning securities regulation. G-20's positive experience with the ESMID program suggests that the G-20 can meaningfully affect securities regulation if the measure is targeted at particular countries. However, it does not mean that the regulations aimed at diverse group of countries such as the G-20 are doomed to be inefficient. The G-20

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189. Tarullo, *supra* note 69, at 13.

190. *Strengthening Oversight and Regulation of Shadow Banking: Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos*, FSB (Aug. 29, 2013), [http://www.fsb.org/wp-content/uploads/r\\_130829b.pdf?page\\_moved=1](http://www.fsb.org/wp-content/uploads/r_130829b.pdf?page_moved=1). [<https://perma.cc/L599-92GZ>].

191. Basel Committee on Banking Supervision, *Haircut Floors for Non-Centrally Cleared Securities Financing Transactions*, BANK FOR INTERNATIONAL SETTLEMENTS (Nov. 5, 2015), <http://www.bis.org/bcbs/publ/d340.pdf> [<https://perma.cc/VG8W-5J28>].

192. *Id.*

193. *Id.*

194. *ESRB Opinion on ESMA on Securities Financing Transactions and Leverage under Article 29 of the SFTR*, ESRB (Oct. 2016), [https://www.esrb.europa.eu/pub/pdf/other/20161004\\_esrbopinion.en.pdf?eb4c21d49897bfc6f7036b502eb631c2](https://www.esrb.europa.eu/pub/pdf/other/20161004_esrbopinion.en.pdf?eb4c21d49897bfc6f7036b502eb631c2) [<https://perma.cc/9DPU-56DC>].

195. *Id.*

196. *Id.*

197. *Id.*

198. See, e.g., Homi Kharas, *The G-20 Has Disappointed on International Financing*, BROOKINGS INSTITUTION REP., 18 (2012).

needs to focus on factors that are common for both developed and developing economies.<sup>199</sup>

For example, the organization should prioritize increasing resources for infrastructure development because it is useful both for the developed economies as well as emerging markets.<sup>200</sup> The G-20 should also ensure that the organizations that were asked to provide cooperation (such as the IMF) actually comply with the set deadlines to promote credibility and trustworthiness of these organizations.<sup>201</sup> The Group should also keep in mind that when several organizations, such as the IOSCO, FSB and IMF work on the same issue upon the G-20's request, their actions can be poorly coordinated.<sup>202</sup>

Despite numerous criticisms of the G-20, the organization has several noteworthy achievements in the area of securities regulation.<sup>203</sup> For example, at the G-20's request, the FSB has been conducting annual monitoring exercises among its twenty four members in the area of shadow banking.<sup>204</sup> Overall, the FSB's role in developing specific measures to tackle the consequences of the global financial crisis has strengthened since 2008.<sup>205</sup> At the very least, the G-20 meetings resulted in providing frameworks for securities regulation, which later were used to devise specific measures.<sup>206</sup> The organization's reports follows the work of standard-setting bodies such as IOSCO to ensure that the framework the G-20 developed is used to produce actual results.<sup>207</sup>

The cooperation between the G-20 and the IOSCO deserves special attention as another testimony to the G-20's achievements in securities regulation.<sup>208</sup> Firstly, the IOSCO's Technical Committee created a task force to help the G-20 in mitigating the consequences of the global financial crisis.<sup>209</sup> This task force collaborated with the BCBS and the IAIS to produce a report *Differentiated Nature and Scope of Financial Regulation*.<sup>210</sup> This report includes recommendations to reduce differences in regulation of different sectors, including securities regulation.<sup>211</sup> The report explicitly acknowledges that, "This report is part of a global effort to reform and

199. See, e.g., *id.*

200. *Id.*

201. *Id.*

202. Annelise Riles, *Managing Regulatory Arbitrage: A Conflict of Laws Approach*, 47 CORNELL INT'L L.J. 63, 79 (2014).

203. Noelle, *supra* note 59, at 1.

204. *Id.* at 62.

205. Eric Helleiner, *What Role for the New Financial Stability Board? The Politics of International Standards after the Crisis*, 1 GLOBAL POL'Y 282, 285 (2010).

206. Sungjoon Cho & Claire R. Kelly, *Promises and Perils of New Global Governance: A Case of the G20*, 12 CHI. J. INT'L L. 491, 521 (2012).

207. *Id.* at 523.

208. *Id.* at 537.

209. *Id.*

210. *Id.*

211. Basel Committee on Banking Supervision, *Review of Differentiated Nature and Scope of Financial Regulation: Key Issues and Recommendations*, BANK FOR INTERNATIONAL SETTLEMENTS (Jan. 2010), <http://www.bis.org/publ/joint24.pdf> [<https://perma.cc/665Y-P8T2>].

strengthen financial regulation by the G-20 Leaders.”<sup>212</sup>

Finally, it is worth remembering that although the standards promulgated by the G-20 and its partners (such as the IOSCO and the FSB) are soft standards in the majority of the times, it does not mean that the leaders of the member countries will ignore the rules.<sup>213</sup> A number of factors (such as the fact that people in charge of implementing securities regulation domestically are not always political appointees) demonstrate that there is more hope to the organization’s efficiency.<sup>214</sup> Another advantage of the G-20 is that the organization can provide unique supervision of the regulations through peer review.<sup>215</sup> Often, international financial regulation requires cooperation between two sets of bodies: sectoral standard-setting body such as the IOSCO and a broader organization such as the G-20.<sup>216</sup>

## Conclusion

Although the G-20’s efforts and initiatives in securities regulation were not flawless, it should be kept in mind that the global financial crisis brought unprecedented amount of instability and uncertainty.<sup>217</sup> It is not surprising that the G-20 leaders could not state more specific goals, especially at the first summits, because they did not have a full understanding of the details involved in securities regulation.<sup>218</sup> For example, the G-20 did not realize the significance of cross-border securities immediately.<sup>219</sup> However, once the G-20 would realize the extent and complexity of a phenomenon, they would take an immediate action. The example with cross-border securities serves as a proof; the G-20 endorsed the development of the *Handbook on Securities Statistics* as early as in 2009.<sup>220</sup>

Additionally, securities regulation involves a number of subgroups and issues, such as cross-border securities, credit default swaps, OTC derivatives, and so on.<sup>221</sup> As time passed, new related areas emerged, such as crowdfunding.<sup>222</sup> It is hard to produce the same high level of efficiency in regulation of these numerous areas because of the diversity of the G-20’s member body. Sometimes wait-and-see approach, although not ideal, might be the only workable solution when the regulatory regimes of the member countries cannot be reconciled, as is the case with crowdfunding

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212. *Id.*

213. Cho & Kelly, *supra* note 206, at 551.

214. *Id.*

215. *Id.*

216. Tarullo, *supra* note 69, at 9.

217. JOHN J. KIRTON, G20 GOVERNANCE FOR A GLOBALIZED WORLD 32 (2016).

218. *Id.*

219. Heath, *supra* note 70, at 15.

220. *Handbook on Securities Statistics*, IMF (2015), <http://www.imf.org/external/np/sta/wgsd/pdf/hss.pdf> [<https://perma.cc/GQ5U-QRNH>].

221. See, e.g., Karmel, *supra* note 93, at 854.

222. See, e.g., Giuliana Borello, Veronica de Crescenzo & Flavio Pichler, *The Funding Gap and the Role of Financial Return Funding: Some Evidence from European Platforms*, 20 J. INTERNET BANKING & COM. 1, 2 (2015).

at the moment.<sup>223</sup>

Despite criticisms, the G-20 was instrumental in strengthening the authority of standard-setting bodies such as IOSCO and the FSB in securities regulation. Both organizations provided projects at the G-20's direct requests, as was the case with the *Handbook on Securities Statistics* and the FSB's recommendations on shadow banking.<sup>224</sup>

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223. See, e.g., Torris, *supra* note 185.

224. See, e.g., Lee, *supra* note 67, at 526 (2015); see also *Handbook on Securities Statistics*, *supra* note 220.

