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Future Trends and Scenarios

REPORT

Blurring Boundaries: (In)formality and the Governance of Global Financial Markets

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Lead beneficiary:	Institut Barcelona d'Estudis Internacionals (IBEI)
Authors:	Fulya Apaydin & Charles Roger

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Abstract

Over the past 50-60 years, a complex infrastructure of multilateral rules and organizations has emerged to govern cross-border capital flows. This regime has often been characterized as one that relies heavily on soft law and informal institutions. In this paper, we argue that a more complex picture is emerging. Overall, while the number of informal institutions has grown, many have been intertangled with formal ones. In other cases, more independent informal bodies have undergone a complex process of formalization, as their organizational and legal bases have been strengthened over time. As a result, the global financial regime is rapidly becoming a palimpsest of overlapping institutions, where the distinction between formality and informality is less and less clear. We unpack these developments by identifying and conceptualizing four distinct legal dynamics: entanglement, nesting, absorption, and conversion. We then offer theory that explains the patterns we find by observing: a) perceptions of the informal institutions vis-a-vis the problems they seek to address and how these change over time, generating demand of legal change; and b) the availability of actors that are willing and able to supply it. The nature of a problem explains the timing of the “shifts” that occur, while the type of actors seeking and supplying formality explains the form of change we observe. We explore the plausibility of this approach by examining four important cases: the Basel Committee on Banking Supervision; the International Organization of Securities Commissions; the Forum for European Securities Commissions; and the Committee of Central Bank Governors. The paper offers a new way of thinking about the relationship between legal formality and informality, a novel framework to explain these dynamics, and has important policy implications as well.

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1. Introduction

Since the 1960s and 70s, a complex set of multilateral rules and organizations has emerged to govern global capital markets. In this regard, the financial regime has followed a more general pattern seen across an array of areas, like international trade, taxation, and investment. Across all these fields, interdependence is increasingly being governed by a diverse array of institutions and organizations. However, in comparison with other domains of global economic governance, the bodies found in the field of global finance have been unique in an important respect: they have generally been informal, or "soft" in nature.[1] That is, rather than relying on legally-binding international treaties and formal international organizations (IOs), the regulatory community has deployed non-binding agreements and organizations that exist in a "twilight zone" beyond the traditional boundaries of international law.[2] This trend toward legal informality is not restricted to global finance alone. It has been found in a growing number of issue areas, from the nuclear non-proliferation regime to cross-border regulation of data privacy and the governance of climate change. Yet the dominance of these arrangements in this field has been particularly striking. Indeed, according scholars like David Zaring, the area stands out as an example of how states can achieve "governance without law."[3]

This fact—frequently taken for granted—has been the focus of a number of empirical, theoretical and policy studies. Scholars have tracked the rise of informality, explained how informal institutions operate, and argued about why their growth matters. A robust literature has developed. Yet, we argue that emerging patterns of global financial governance present a more complex picture than current studies admit. While it is true that informal institutions have increased over time, many have formed tight-knit relationships with formal ones that blur the boundaries between them. A number of others have undergone a complicated process of *formalization*, where the legal nature of informal institutions has been partially or wholly transformed. As a result, the global financial regime has become a palimpsest of overlapping and interconnected institutions and arrangements where the distinction between formality and informality is becoming less and less clear. So far, though, this important development has only rarely been remarked upon or investigated. Conceptually, empirically, and theoretically, our understanding of these processes remains limited, and their broader policy implications for the governance of global finance and other areas beyond have gone unexplored.

[1] Brummer 2012; Newman and Posner 2018.
[2] Zaring 1998.
[3] Zaring 2020, p.3.

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In this article, our aim is to make progress along each of these fronts. We begin by unpacking the different processes unfolding within global finance by describing and mapping four dominant varieties of "blurring" that have appeared with increasing frequency: *entanglement,* where informal bodies form interlocked relationships with formal organizations; *nesting,* where informal bodies have embedded themselves, or become embedded within more formal legal frameworks, typically at the national or sub-national levels; *absorption*, where informal bodies have been incorporated into pre-existing formal IOs; and, finally, processes of legal *conversion*, where informal bodies are entirely reconstituted as independent formal IOs. In the next section, we offer a detailed account of how these varieties of blurring differ from one another, and we track their occurrence within the global financial regime using a recently-created dataset of institutions operating in the field of global finance. In doing so, we demonstrate that these varieties of blurring are surprisingly common: many informal institutions tend to formalize in one way or another.

These patterns of formalization present an empirical puzzle: when and why do these different varieties of blurring occur? In the second part of the article, we advance a theory that can account for these outcomes. This theory builds on the existing literature on informality and unfolds in three steps. First, we argue that the *timing* of a change is linked to perceptions of the issue that an institution seeks to address. Those involved in an informal body—above all, its members—may come to believe that a problem has changed or their regulatory goals may shift. Either way, when this occurs, a mismatch appears between an institution's current design and the problem it is designed to solve, generating "demand" for higher levels of formality at a particular point in time. Second, we argue that the specific types of actors involved affects the *pathways* an organization will follow. If the perceptions of financial regulators change, for instance, we claim they will tend to prefer entanglement or nesting. However, if political leaders become dissatisfied and choose to intervene this tends to make absorption or conversion more likely. Finally, we argue that choices between these pairs of *outcomes* are shaped by the broader institutional context: specifically, whether or not an existing formal international organization can provide the benefits of formality at an acceptable cost.

The third part of the paper probes the plausibility of this theory using four important cases: the Basel Committee on Banking Supervision (BCBS); the International Organization of Securities Commissions (IOSCO); the Forum for European Securities Commissions (FESCO); and the Committee of Central Bank Governors (COG). These

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organizations are drawn from the dataset that we use to track formalization patterns in Section 2. In each case, we demonstrate how an organization exemplifies a particular variety of blurring and then examine the processes that produced the outcomes in question. We follow decision-makers' changing perceptions of the problems they confront in an issue area, showing how they become dissatisfied with a particular institutional design and begin to call for change at a particular point in time. We then show that the actors in each case mattered: their institutional preferences shape the set of pathways to change that are considered. Finally, we show how the broader institutional context shaped choices within these pathways and led to the specific varieties of blurring we observe in each case. Overall, empirical analysis demonstrates that our theory provides a compelling account of the causal processes at work. Future efforts to extend our approach to other areas of financial governance—as well as other fields of global governance where informality has predominated—should be rewarding.

Finally, in the conclusion, we summarize our findings and draw out the policy implications that follow. In recent years, there has been a vigorous debate about the desirability of informality in this area. Without access to the traditional instruments and oversight arrangements that formal varieties of cooperation typically offer, regulators have leveraged a range of less direct means to ensure compliance and provide public goods.[4] Some prominent observers have viewed this fact with trepidation: the emphasis on informality, in their eyes, leads to an inadequate level of governance. Thus, repeated calls have been made for new, more formal, and more integrated approaches, including the creation of a World Financial Authority.[5] Others, by contrast, have argued that this system has unappreciated merits and can supply a higher level of governance than these critics admit.[6] According to this group, informality and the fragmented financial governance landscape are not problems, but virtues—features, not bugs. In contrast with slower, less efficient treaties and formal IOs, informal arrangements are thought to be faster, more flexible and better tailored to the challenges generated by globalized financial markets. The conclusions we reach turn this debate on its head: informal organizations may be more successful than the pessimists admit, yet, in contrast with the claims made by more optimistic observers, their success may well be linked to the degrees of *formality* they have achieved in practice.

[4] Brummer 2012.
[5] Eatwell and Taylor 2000; Eichengreen 2011.
[6] Slaughter 2004; Grabel 2017; Zaring 2020.

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2. Conceptualizing and Mapping Patterns of Governance in Global Finance

Cross-border capital flows have grown tremendously in the postwar period, and, as this has occurred, states have confronted a range of new challenges, from financial crises to international securities fraud and money laundering. These flows had been limited under the Bretton Woods system established in the mid-1940s. In the 1960s, though, capital began to flow across borders to a much greater extent, fueled by the Euromarkets and, later, by a broad-based opening of capital markets, initially within advanced industrial states.[7] As capital markets integrated, and associated problems grew, a complex system of governance took shape. Institutions proliferated. This occurred, first, in the monetary arena, as states created new bodies to manage exchange rates, such as the Group of 10 (G10), Group of 7 (G7), and the COG within the context of the European Economic Community (EEC). Next, a number of institutions arose to regulate global banking, a field which immediately encountered new foreign exchange risks in the period after the Bretton Woods system collapsed in 1972. These included the Groupe de Contact (within the EEC) and the BCBS, as well as a host of analogous regional institutions. Following this, cross-border governance extended to the securities sector, insurance, pension funds, and other areas, like money laundering, sovereign wealth funds, and over-the-counter derivatives.

The system that has emerged has two key features. First, it has a highly fragmented structure.[8] Governance of global financial markets has not been centralized in a few large, overarching institutions, but is instead distributed across a variety of smaller bodies focused on specific, often sectoral issues. In this regard, global financial governance is very different from the international trade regime, for instance, where the World Trade Organization (WTO) plays a pivotal role. Second, and most relevant to our argument, global financial governance is often characterized as being highly informal in nature. States have chosen to work through organizations that are non-binding in nature, and where secretarial services are provided either on a rotating basis, or by a few dedicated state-based officials acting on the behalf of a group. The rules they create have been set out in non-binding “soft law” standards, like Basel III or IOSCO’s Multilateral Memorandum of Understanding. These represent distinct modes of cross-border governance but are united by the fact that they only rarely commit states in the way that treaties do.[9] In this regard, the institutions governing

[7] Helleiner 1994; Abdelal 2007.
[8] Eichengreen 2011; Grabel 2017.
[9] Newman and Posner 2018; Quaglia 2019.

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global finance contrast sharply with those active in the fields of international trade and investment, where legalization is especially high.[10]

This image of governance has generally been taken as given.[11] And, in relative terms, the regulation of global finance *is* highly informal. Overall, these bodies and rules are quite different from the kinds of arrangements that states have relied on in other fields of governance. This is an important and striking fact. Yet, there are ways in which the process has increasingly become more complex. Indeed, over the past 20-30 years, an important transition has taken place wherein the boundaries between legal formality and informality have blurred.[12] A closer look reveals that informal institutions have often formed complex relationships with formal ones, and, in some places, have undergone a complicated process of partial or total *formalization*. Through these mechanisms, otherwise informal arrangements are attaining or being granted many of the features and legal perquisites of more formal bodies, shifting their basic natures and governance capabilities quite considerably. These processes have played out in a number of distinct ways, which have yet to be conceptualized or theorized in detail. Here, through a case-by-case analysis of a recent database of all the public international institutions (both formal and informal) active in the governance of global financial markets, we have identified four distinct patterns—or varieties of "blurring"—that we label entanglement, nesting, absorption and conversion.[13] Consider each in turn.

Entanglement is arguably the oldest and most widely appreciated of the patterns we describe. It refers to instances where an informal institution establishes an interlocking relationship with a formal one and thereby attains some of the benefits of legal formality while remaining essentially non-binding in nature. In a strictly legal sense, the two institutions remain distinct. They have their own charters and rules, which entail very different types of legal obligations for members, which will often differ as well. Nevertheless, a mutually-rewarding and relatively permanent exchange occurs that locks them together, blurs their boundaries, and can transform the capabilities of an informal body quite substantially. Through this exchange, the resources and advantages that formal IOs typically possess are combined with those of an informal one, extending to the latter some of the benefits that legal formality typically offers.

[10] Brummer 2010; Schill 2009.
[11] Giovanoli 2000; Roger 2020; Zaring 2020.
[12] It has, perhaps, most commonly been observed by those approaching the topic from the perspectives of global administrative law and global legal pluralism.
[13] Roger 2020.

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The G10, one of the most important informal bodies in the field of global monetary and financial affairs, offers a prime example. Created in 1962, it has been one of the central forums for meetings between elite financial officials. The G10 is an independent group that operates according to its own set of rules. It was established, initially, to coordinate the General Arrangements to Borrow, which amplified the resources of the International Monetary Fund (IMF) in response to mounting pressures on the Bretton Woods system. However, its remit has expanded well beyond this initial focus. Today, it has its own committees, and decision-making procedures. It remains legally independent of any other body. Yet, since its creation, it has been based at the Bank for International Settlements (BIS), one of the central formal IOs in the field. The BIS provides a secretariat for the G10, and its staff are officially BIS employees. The BIS also devotes considerable institutional resources to the G10 and provides a legal umbrella that effectively extends to it many of the privileges that would normally only be afforded to a more formal body. The site that G10 meetings take place on, for example, is covered by the BIS headquarters agreement with Switzerland, and the secretarial staff possess the privileges and immunities typically granted to international bureaucrats. The G10 may be informal in nature, but it attains many of the benefits of formality through this critical relationship.

This is hardly an isolated instance. In fact, such symbiotic relationships are pervasive in the financial arena. The BIS has served as a platform for a range of other groups, such as the Financial Stability Board, the International Association of Insurance Supervisors (IAIS), and the International Association of Deposit Insurers. Beyond the BIS, organizations like the Organization for Economic Cooperation and Development (OECD) have played an identical role, hosting groups like the Financial Action Task Force and the International Organization of Pension Supervisors. In all of these cases, the relevant institutions remain officially independent. But, by entangling themselves with formal organizations, their capacities are augmented quite considerably.

Nesting. Entanglement may be quite common, but many informal institutions stay independent. This is usually deliberate choice. For instance, although IOSCO has worked with the BCBS and IAIS and held joint meetings at times—and even works with both through other bodies, like the Joint Forum, the Monitoring Group and the Financial Stability Board (FSB)—it has explicitly chosen *not* to entangle itself in the BIS framework they are a part of. This course of action was considered at various points in the 1980s and 1990s, but was rejected in each instance. In this and many similar instances where bodies have remained independent of other IOs, a blending of formality and informality has nevertheless taken place. Unlike in the previous cases,

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though, this has occurred most prominently through a process of legal *nesting*, where formality has been attained through partnerships with national and subnational governments, not formal IOs.

Many national ministries have supplied secretarial services for informal groups. The Paris Club offers a classic example of this: the French Ministry of Finance has, since the early 1980s, supplied a secretary general and a small team to serve on the behalf of the group as a whole. Such an arrangement is typical of informal bodies.[14] However, some have gone a step beyond this, attaining certain legal privileges and immunities from national or regional governments that might not otherwise be afforded to an institution, along with access to a range of resources and services, which make them much more like a formal IO in practice. Indeed, among legal scholars there is an ongoing debate about whether some of these bodies have, in fact, *become* formal IOs.[15] Certainly, they are similar. The EGMONT Group—an organization comprising national financial intelligence units—offers a useful illustration of this fascinating pattern. EGMONT was first established in 1995, and its constitutive agreement is non-binding in nature. It initially involved only periodic meetings between officials, operating like a classic informal IO. Eventually, however, an independent secretariat was formed in Toronto, Canada. Initially, it was a non-profit entity. This gave the organization a distinct legal personality that allowed it to hire staff, hold property, and operate more like a "normal" organization. But, in 2007, this was taken a step further when the secretariat received official recognition from the Canadian government as an international organization. Effectively, EGMONT signed a headquarters agreement that grants it all of the same privileges and immunities that designation normally affords under the Foreign Missions and International Organizations Act of 1991.

In such cases, informal bodies have been granted legal standing, either as non-profits or limited liability companies, or they have attained a status where they are essentially treated *as if* they were a formal IO. Arguably, from the standpoint of public international law, such bodies should still be regarded as being informal in nature—their charters do not generate legal obligation in the way that treaties do. Functionally, though, they attain many of the benefits that formality typically offers. And, from a domestic legal perspective, they may even attain nearly identical legal protections. When nesting occurs, then, the boundary between formality and informality blurs quite considerably, again, and the implications for an organization can be quite transformative.

[14] Vabulas 2019.
[15] Lapaš 2019.

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Absorption. In the two previous cases, informal institutions maintain distinct legal identities. They may form close relationships with states or other IOs. But they remain independent. In a number of instances, however, informal organizations have been in one way or another subsumed by or integrated with a larger, more formal one. We refer to this variety of blurring as "absorption." One example of this is the Groupe de Contact. Created in 1972, the Groupe brought together banking supervisors from within the EEC and it even provided the template for the better-known BCBS, established shortly afterward.[16] It was, originally, intended to operate separately from the European Commission (EC). However, following the first European Banking Directive in 1977, its activities were steadily integrated with those of the EC. Meetings continued, but the Groupe lost much of its distinctiveness, evolving into a technical committee of the EC's Banking Advisory Committee and, later, the main working group within the Committee of European Banking Supervisors.[17] It maintained a good measure of its earlier informality, but it now fitted within the legal framework of a more formal institution. The Eurogroup, a more recent European institution, offers another riff on this dynamic. It was originally established in 1998 as an informal organization, serving as a meeting place for ministers of finance within the eurozone.[18] At this stage, it maintained a distinct identity, independent of the EU itself. Today, however, it has been given an official place within the EU architecture through Protocol 15 of the Lisbon Treaty. Under this Protocol, the Eurogroup's basic informality is asserted, yet its activities are officially recognized and incorporated into the EU's decision-making processes.

From the outside, these relationships may appear similar to instances of entanglement. However, what has occurred in each case goes beyond the kinds of symbiotic relationships described earlier because informal bodies have been more fully incorporated into the legal structures of a formal IO. Operational independence and a degree of informality may persist, but they now occupy a more definite, legally-defined position within the decision-making structures of another institution. They are no longer separate. At the same time, it should be said, this falls short of a complete formalization or legal "conversion"—the process that will be discussed next. In cases of absorption, organizations have not been entirely reconstituted on the basis of a treaty. The do not *become* formal IOs. But they are no longer entirely informal either, since their legal standing within is more clearly established.

[16] Goodhart 2011; Roger 2020.
[17] Committee of European Banking Supervisors 2004, pp.8-11.
[18] Puetter 2006.

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Conversion. Finally, there are cases where the legal nature of an informal organization *has* changed entirely—that is, where informal bodies have been fully transformed into formal ones. This typically occurs when states sign a treaty that puts a previously informal institution on entirely new legal footing. In such instances, the independence of an organization usually remains in place—the body is not absorbed into the official decision-making structures of another IO, as above—but its legal nature changes completely. This, correspondingly, represents the most dramatic departure from the trend toward informality, signaling the greatest shift in the nature of the institutions active in the field of global finance. A particularly clear and recent example of this comes from the experience of the ASEAN +3 Macroeconomic Research Office (AMRO). AMRO was designed to engage in economic surveillance in support of the Chang Mai Initiative Multilateralization (CMIM), a currency swap arrangement established in 2010. In keeping with a long-standing regional pattern, it was initially established as a "nested" informal organization, having been incorporated as a limited liability company in Singapore in 2011.[19] States did not rely on international law, but instead used domestic legal frameworks to give AMRO legal personality. In 2014, however, a major revision to the CMIM was negotiated and the original arrangement was deemed insufficient to meet the goals of states. In 2016, AMRO was then converted into a formal IO using an international treaty. Its standing, capacities, privileges and immunities were correspondingly transformed.

Mapping Patterns of Governance in Global Finance

How common are these different forms of blurring? This is an important question for our argument because it may be that these dynamics are relatively rare. If so, then we could safely assume that they are peripheral to the main trend toward informality. While some blurring may occur in a few instances, the boundaries between formality and informality would be relatively stable and clear. This is not the case, however. In fact, when we look across a large number of institutions active in the regulation of global finance, between 55-60 percent exhibit blurring of one kind of another.

To measure the amount of blurring that has occurred, we rely on a recent database of all the public international institutions involved in the regulation of global financial markets.[20] These bodies are drawn from a larger database of formal and informal

[19] Kahler 2000; Henning and Katada 2016.
[20] Roger 2020. Private regulatory bodies, like the International Accounting Standards Board, the Institute for International Finance, and other transnational associations of the kind described by McKeen-Edwards and Porter (2013), are excluded. Though relevant, they constitute a quite different type of entity and, we argue, must be treated separately.

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institutions developed by Roger (2020), and includes all of those that are either directly concerned with global finance (e.g. the Financial Stability Forum or the Islamic Financial Services Board) or which may not be solely dedicated to financial regulation but nevertheless play a particularly prominent role (e.g. the Group of Twenty [G20], World Bank, or OECD). Using this dataset as a baseline, we parsed through the histories of every institution to determine which had undergone some kind of blurring and when. We coded an organization as being "entangled" when formal and informal bodies maintained distinct corporate identities and memberships, but formed a close bond with one another, usually signalled by the fact that an informal institution has located its secretariat on the premises of a formal IO. An instance of "nesting" occurs either when an informal body was legally registered as a non-profit or company, or when a headquarters agreement was reached, or both. We distinguish between these two varieties as Type I and Type II nesting, since the latter seems to represent a more profound variety of formalization.[21] "Absorption" occurs when an informal body is legally integrated into a formal IO, either fully or in part. In the former case, an informal body may no longer be fully distinct from one of the formal IOs in the dataset, however it is maintained as separate observation for our purposes here. Finally, an instance of conversion occurs when an informal body is reconstituted via an international treaty.

[21] In practice, there is some overlap between these categories. Most examples of Type II nesting are—or were—also instancing of Type I.

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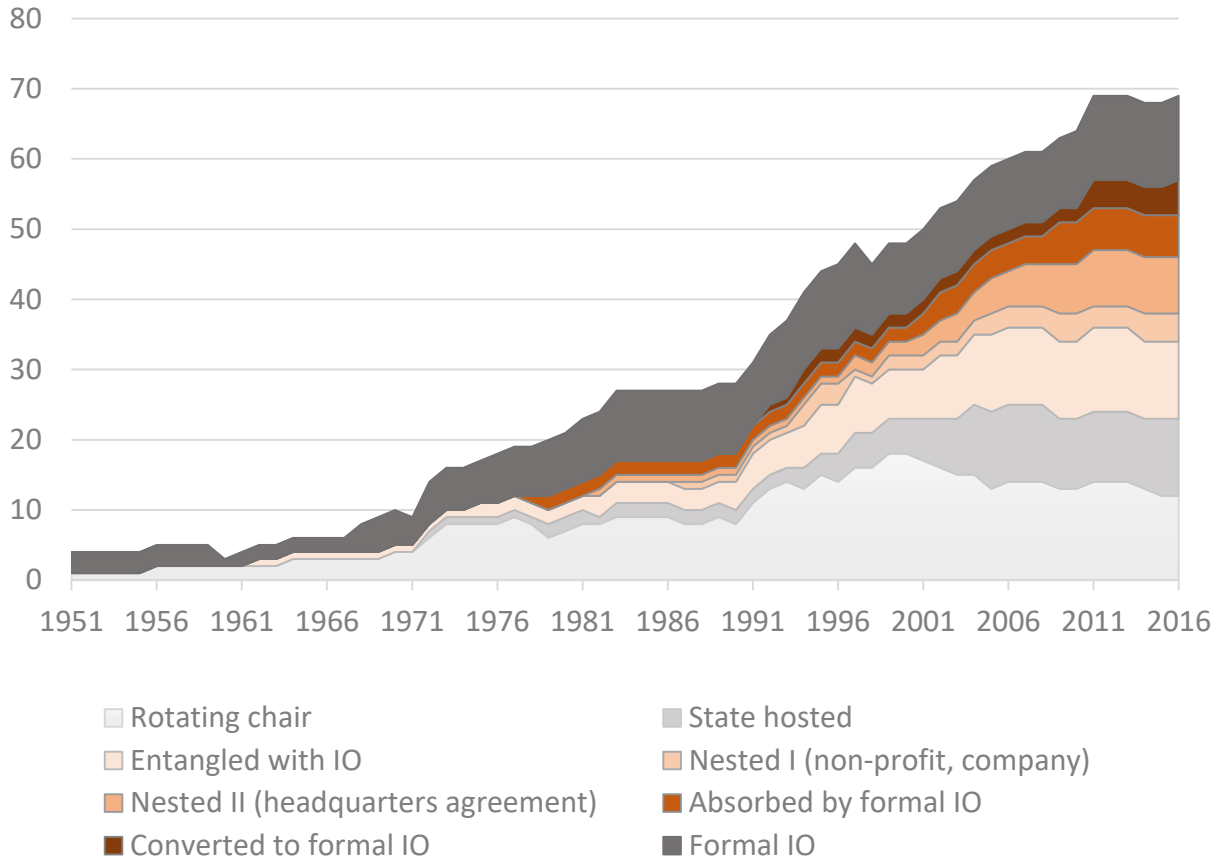
Figure 1 The Blurring of Boundaries in Global Financial Governance, 1950-2016



The results are displayed in Figure 1. The two light grey blocs show "basic" informal organizations, which have either a rotating chair arrangement (like the G7) or a secretariat provided by a single member state (like the Paris Club). Formal IOs, like the BIS and OECD, are shown in dark grey. Cases where some form of blurring occurs are shown in shades of red.[22] The figure demonstrates, first, that the number of institutions involved in regulating global finance has increased significantly, starting with just four in 1940 and rising from the 1970s onward to nearly 70 in 2016. Second, it shows that informal bodies have grown both in number and as a share of all the institutions active in the field of global finance. Fully formal IOs presently constitute only a small share of the total number. However, third, a significant degree of "blurring" has indeed occurred. From 1950 to the mid-1970s, most informal institutions were

[22] Note that some institutions pass between these categories. AMRO, for example, starts out as an example of a "nested" institution (type I) in 2011 and then enters the "converted" category in 2016. A few organizations also cease operations. When this occurs, they drop out of the dataset.

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"minimal" arrangements. Today, they still account for roughly 30 percent of all the currently active organizations. But, beginning in the 1980s, blurring increased. This occurred slowly, at first, and primarily involved instances of entanglement and absorption. Beginning in the 1990s, though, cases of nesting and conversion began to rise. Ultimately, instances of conversion and absorption remain relatively limited, which makes some sense given the comparative challenge of creating and changing formal IOs.[23] There has been no wholesale return to governance by law. But a growing number of informal institutions have nevertheless attained some legal status and capacity, either through an association with a formal IO, through registration as a non-profit or company, or, even more substantially, through the signing of a headquarters agreement. In these ways, the landscape of global financial governance has undergone a profound shift.

3. Theorizing Formalization Processes

How can we account for these different varieties of blurring? Many explanations of the legal make-up of prevailing governance arrangements are broadly functionalist in nature. Early on, pioneering scholars like Tony Porter emphasized how the design of institutions, like the BCBS and IOSCO, were shaped by the contrasting structures of the global banking and securities sectors.[24] Others, drawing more on ideas from the "rational design" school of international relations, have argued that reliance on informality is linked to the unique problem structures prevailing in the field of global finance, where frequent financial crises, rapidly changing technology, and the need to exchange highly sensitive information, put a premium on speed, flexibility, and confidentiality.[25] Informal institutions are thought to possess these properties, and their growth is attributed to the fact that they are better "matched" with the kinds of issues generated by globalized financial markets. More recently, others have advanced complementary explanations that focus more on domestic politics and institutions within powerful states. This type of argument accounts for informality by pointing to either the domestic constraints that political *executives*—such as a head of state or a minister of finance—face when creating a governance arrangement, which may take a more-demanding formal approach off the table; or the heavy involvement of independent *regulators*, who cannot typically negotiate treaties on their own and prefer

[23] Jupille, Mattli, and Snidal 2013.
[24] Porter 1993.
[25] Koremenos, Lipson, and Snidal 2001; Karmel and Kelly 2009; Moschella 2012.

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non-binding varieties of cooperation that better preserve, and even enhance, their policymaking autonomy when they enter the international arena.[26]

So far, these accounts largely focus on explaining the legal design of institutions at the "constitutional moment" when a body is first established rather than accounting for change over time. To unpack these more complex patterns, we develop an integrated account where *both* the preferences of actors and the problems they wish to solve will matter.[27] As functionalists suggest, cross-border problems will often create "demand" for different institutional designs—including higher or lower levels of legal formality—which policymakers are responsive to.[28] But these problems are not static: they can sometimes change over time as technologies shift and regulatory objectives evolve. At one point, actors may regard informality as an entirely suitable institutional solution, given their regulatory aims; later on, when issues or objectives change, they may be less convinced. When the match between current arrangements and the demands emanating from cross-border problems shifts—specifically, when a perceived gap emerges between the capabilities of existing arrangements and regulatory goals—this may lead relevant actors to call for reform, and the timing of such shifts can help to account for *when* certain types of blurring will occur.

We expect the main actors involved in international financial regulatory organizations—mainly, political executives and independent agencies—to devise institutions that respond to the problems they face. However, the preferences of these actors may be partially independent of such considerations. They may recognize that formality would be advantageous given the nature of an issue, for instance, yet still prefer solutions that fall short of *full* legal formality, such as the signing of a treaty or cooperation through a formal IO. Thus, when independent agencies recognize the need for greater formality they may still prefer institutional designs that preserve their discretionary authority as much as possible.[29] Generally, this means avoiding solutions that give a larger role to more political "outside" actors. Based on this premise, we argue that when a problem creates an incentive for greater legal formality, informal institutions typically like to avoid absorption or conversion. Both of these options put the modalities of cooperation in the hands of others that may not share the

[26] Bach 2010; Verdier 2013; Ruffing 2015; Seddon 2017; Newman and Posner 2018; Roger 2020.
[27] Note that we do not aim to explain the frequency of the patterns we observe—why blurring has increased over time. It is, instead, to explain what happens in individual instances. We reflect on the broader historical implications of our theory in the conclusion.
[28] Existing work offers a range of conjectures explaining which kinds of problems will generate higher or lower levels of "demand" for formality/informality, see Eberlein and Newman 2008; Karmel and Kelly 2009; Roger 2020. But, generally speaking, as the potential for opportunism grows and as distributional issues rise, the need for formality appears to be greater.
[29] Zaring 1998; Verdier 2013; Roger 2020.

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same regulatory goals, and who may subordinate policymaking to broader political objectives. Under these circumstances, agencies are more likely to prefer entanglement or nesting as a way of supplying a higher level of formality, since these options preserve their policymaking independence more effectively. In each of these solutions, an informal body retains the benefits of formality but without sacrificing authority to any great extent: the states and formal IOs that they choose to entangle themselves with or nest within remain entirely separate. This may enable them to arbitrage across various possibilities to achieve a more favourable outcome: if one state or IO refuses to provide the formal "benefits" they seek, perhaps another, with more similar aims, will do so.[30]

Political executives defer, in many instances, to decision-making by independent agencies, particularly in highly technical issue areas like financial regulation.[31] So long as governance appears to be minimally satisfactory, we expect them to go along with the design choices agencies make.[32] However, this can shift, particularly when agency preferences are at odds with the functional demands emanating from a cross-border problem. Even after changes occur, a design could remain "mismatched." And, if this leads to repeated crises, this may lead executives to question the authority of regulators and the suitability of existing institutions.[33] However, the issue that regulators aim to solve may also be redefined or expanded at the political level, often as a result of pressures stemming from domestic economic shifts.[34] Either way, when political executives begin to perceive a gap of some kind, the likelihood that they will engage in "top down activism" should increase.[35] To some degree, the mere threat of intervention may be enough to prompt agencies to increase formality in response. Growing calls for change by politicians may be what pushes them toward entanglement or nesting in an effort to thwart further moves to formalization.

However, when executives engage in policymaking more directly, the strategies they pursue can diverge quite significantly from those preferred by agencies. Indeed, in comparison, executives are likely to more readily embrace legalized arrangements (e.g. absorption and conversion), since their concerns about maintaining "discretionary authority" and limiting politicization are lower.[36] In fact, as David Bach, Abraham Newman and Burkhard Eberlein have each argued, they tend to become

[30] Alter and Meunier 2008.
[31] Singer 2007; Bach 2010; Khademian 2011.
[32] Bach 2010; Verdier 2013.
[33] Damro 2006; Singer 2007.
[34] Moravcsik 1998; Pagliari 2012.
[35] Eberlein and Newman 2008.
[36] Seddon 2017; Roger 2020.

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involved in regulatory policymaking once issues are *already* highly politicized and significant distributional problems emerge, so this factor is itself a driver of action.[37] Equally importantly, these strategies have an added advantage because they place executives at the centre of the design process and can produce much more sweeping institutional innovations. Opting for a more legalized approach, like absorption or conversion, means that executives can ensure that institutional outcomes produce a steady stream of benefits to the constituencies they depend on.[38]

Thus, changing perceptions about the "demand" for formality is likely to determine the *timing* of reform efforts. The specific actors whose perceptions change and who take the initiative to promote reform will, in turn, matter for choices about the ways of "supplying" it. In each case, however, the relevant actors still have a decision to make regarding their formalization strategies: for agencies, entanglement and nesting are the most preferred options; and, for executives, absorption and conversion may be preferable. Importantly, these choices are contingent on the prevailing regulatory context: notably, the presence or absence of a focal formal IO that is suitable to entangle or absorb an existing arrangement matters.[39] Assessments of "suitability" may be based on complementarities between the resources of the institutions in question, compatibility between their objectives, and similar bureaucratic cultures and outlooks. However, if existing arrangements are not suitable because they lack one or several of these attractive features, then a "costlier" option—nesting or conversion—becomes a more likely choice.

4. Case Studies as Plausibility Probes

In this section we present four cases that offer preliminary support to the framework we outline above. The cases involve a discussion on important institutions in the field of global finance, and cover the three most important areas: global banking, securities and monetary policy. In each case, we provide a brief historical overview of the shift that has led to the *type* of blurring that occurred. Then, we show that the causal processes that produced this outcome. Our analysis is, ultimately, not intended to constitute a rigorous test of the framework we propose, nor offer a generalizable explanation of the broader temporal patterns we map. Instead, we seek to reveal the causal mechanisms that lead to diverse blurring patterns, and generate testable hypotheses in small-N or large-N studies.

[37] Eberlein and Newman 2008; Bach 2010.
[38] Vaubel 1986; Richards 1999.
[39] Jupille, Mattli, and Snidal 2013.

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Entanglement: The BCBS-BIS Relationship

The BCBS is one the most important institutions involved in the governance of global banking. Over the years it has produced a number of consequential standards and rules, such as the Concordat of 1975, the Basel Accord of 1988, and its updates (Basel II and III), which have each played important roles in the evolution of domestic regulatory institutions.[40] The BCBS itself has its own charter, rules and members. It operates independently of other international institutions. And, yet, since its creation in 1975, it has been based at the BIS. The BIS has provided the BCBS with a legal umbrella that extends to the BCBS many of the formal perquisites that, as an informal institution, it would otherwise lack. These benefits include the provision of a secretariat, housed within the BIS structure, and facilities and staff that are protected by the headquarters agreement with Switzerland and the founding treaty of the BIS, which grants the staff and premises international legal protections. Both the BCBS and the BIS benefit from this relationship. But the fact of this relationship presents something of a puzzle.

This is particularly so when we consider the fact that the BCBS initially grew out of an earlier institution that had no such arrangement: the Groupe de Contact.[41] As explained earlier, the Groupe was established in 1972 and initially involved regulators from the EEC. They created the institution as informal body for many of the reasons that earlier theories would expect: regulators preferred informality, since this allowed them to maintain their autonomy from more political actors. “Informal organization,” officials explained at the time, “allows ministers to be informed but prevents them from participation.” This rationale even extended to EC itself. Officials were wary of the EC for much the same reasons—fearing that its involvement, as the “European executive” would come at the expense of their regulatory autonomy—and deliberately chose not to form a close association, despite the fact that mutual involvement in the EEC was the major link between the supervisory bodies involved. The EC was evidently *not* viewed as a suitable option for entanglement.[42] However, at first, there was little need. The initial rationale for the Groupe was simply to exchange information and foster mutual understanding and awareness of regulatory practices. Harmonization was not on the agenda.

[40] Kapstein 1994; Singer 2007; Goodhart 2011.
[41] Goodhart 2011.
[42] Later on, as noted earlier, the Groupe was folded into the EU—an instance of “absorption.”

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Thus, with the Groupe, the preferences of regulators seemed to be broadly aligned with functional demands. There was little need to attain the benefits that greater formality might provide. But this changed. In 1974, international financial markets were rocked by crises associated with the failures of the Franklin National Bank (in the US) and Herstatt (in Germany) and the Israel-British Bank (in London).[43] These crises highlighted problems with existing supervisory practices and led central bankers and supervisors to search for new solutions, spurring them to create a new institution that would be much more ambitious in its goals. Two were particularly important at first: the creation of an international "early warning system" and rules that would divide up responsibility for regulating financial institutions to ensure that none went unsupervised when they entered international markets. This represented a step change in the governance activities of these regulators and even prompted them to consider the idea of creating a new, more formal institution to undertake these tasks. Evidently, then, there was some greater demand for formality at this point. However, the most ambitious version of this idea was swiftly rejected, as it would have unduly politicized the activities of these regulatory authorities. It was decided, instead, that the committee would simply operate informally at the BIS, which could extend its legal umbrella to the newly created institution and provide a secretariat to serve on the behalf of its members, funded by the Bank of England.

The BIS constituted a fairly natural partner for entanglement. It had long served as a relatively discreet forum for central bank officials. It had considerable resources and international legal protections, and, despite its formal basis, had even acquired significant independence from elected officials. Its capacity for and willingness to support informal institutions was also already demonstrated through earlier instances of entanglement with informal bodies like the G10, which was itself instrumental in establishing the BCBS. All of this confirms the basic expectations of our theory. Throughout, regulatory agencies preferred informality that helped to preserve domestic autonomy. When this was aligned with functional demands, as with the Groupe de Contact, there was little impetus for entanglement or formality of any kind. However, as the problems that regulators confronted changed and their needs increased, some degree of formality was desirable. This did not mean that regulators wanted to establish a formal IO. Indeed, this path was considered and explicitly rejected. But the BIS had considerable resources and an amiable culture, and its mission was closely aligned with that of regulators in the BCBS. It could extend some of the benefits of formality at much lower cost. Our theory therefore offers a compelling explanation of the timing and type of outcome that we observe in this case

[43] Schenk 2014; Mourlon-Druol 2015.

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Nesting: The Formalization of IOSCO

IOSCO is the leading international institution involved in the regulation of global securities markets and is often seen as a companion to the BCBS. Yet, interestingly, it has evolved in a very different fashion. Unlike the BCBS, IOSCO has deliberately chosen *not* to entangle itself with another IO. It has, nevertheless, managed to attain a considerable degree of formality. And, in this regard, its relationship with several states has been critical. Through these relationships it has steadily increased its formality, attaining a range of legal privileges and immunities that are analogous to those typically enjoyed by formal IOs. It represents, therefore, a notable instance of nesting at the national level, and a close look at the process through which this has occurred demonstrates that the case accords with our theoretical expectations.

The precursor to IOSCO was a conference of securities regulators in the Americas, supported by the capital markets program of the Organization for American States. This conference had been taking place annually since 1974. Over time, however, it had acquired additional members (and a large number of observers, especially from Europe, many of whom wished to join) and was increasingly becoming a forum for discussion of common definitions and standards, which were thought essential for cooperation in the area. The demand for cooperation had grown steadily after the "fund of funds" scandal in the mid-1970s, and, by the early 1980s, it was clear to members that a more substantial organization with a wider membership base was desirable. Some, such as SEC Chair Harold Williams, even argued in favour of a treaty-based institution. However, only an informal one was created at first.[44] Regulators signed the IOSCO charter in Quito, Ecuador, in 1983. And, in his speech on the occasion, the leading official from the SEC, Commissioner John Evans, emphasised the non-binding nature of the organization being established.[45] Ultimately, this choice was more in keeping with regulators' desires to preserve their discretionary authority and independence from more political actors. As Paul Guy, one of members of the group that drafted IOSCO's charter and the first chair of IOSCO, later observed, "we did not want to make this into a political organization."[46] "If there was a governmental international organization" he said, "we would get involved in all the politics of the government." And, "most members," in the end, "want to keep their governments at bay."

[44] Williams and Spencer 1981.
[45] Evans 1983.
[46] Quoted in Underhill 1995.

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The first iteration of IOSCO was a "minimal" institution. It had a charter and various committees, but no permanent secretariat. This was almost immediately perceived to be a problem, however. At the next meeting, in 1984, the delegates in Toronto noted the institution's "growing pains" and called for a report to gauge its expanding needs.[47] At the subsequent meeting of IOSCO, members then call for the creation of a secretariat. Despite the model of the BCBS, which the members of IOSCO were well acquainted with, this did not lead them toward the model of entanglement that it had followed. The BIS was, above all, an organization dominated by central bankers, and there was little appetite among securities regulators to be involved in framework where they would be "second class" citizens. The OECD might have offered another possibility, but it was primarily a forum for advanced industrial states and many of IOSCO's members were from Latin America. IOSCO's members chose, instead, to base the secretariat within the territory of one if its own members. The SEC was, initially, asked to consider basing the body's secretariat in Washington, D.C. However, at the 1986 annual meeting in Paris it was decided that the secretariat would be supplied by the Commission des Valeurs Mobilieres du Quebec, in Canada—a more neutral territory between Europe and the Americas. The organization would also attain legal personality at this point through a private member's bill in the National Assembly, enabling it to act very much like a formal IO.

Thus, securities regulators chose to cooperate, initially, through a minimal informal organizational arrangement. However, once they realized that this would be insufficient for meeting their cooperative objectives, they aimed to create an institution that was more like a formal body. Entanglement might have been an option, but no suitable formal IO was available. Instead, regulators chose to pursue greater formality by nesting at the national level, embedding the institution within existing public bodies and laws. This confirms our initial expectations. But the subsequent history of IOSCO has further probative value. The arrangements that have just been described persisted until the late 1990s. However, at this point, these were deemed insufficient and a search was conducted (in collaboration with PricewaterhouseCoopers) for a new location for the secretariat. Members eventually settled on Madrid, where the organization remains. The demands of the organization have expanded considerably in the period after 9/11, especially, and there has been increasing emphasises on the need for greater formality to ensure adequate regulation of global securities markets. In a meeting of the Atlantic Council, for instance, the secretary general of IOSCO David Wright called for a new institutional framework, "probably established by International Treaty, that has some enforcement authority, binding disputes settlement and

[47] IACSC 1984.

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sanctioning possibilities" to meet the needs to global securities markets.[48] While a dispute settlement mechanism has not come to pass yet, formality was increased in response. In 2011 IOSCO, with support from the CNMV, attained official recognition as an international organization through the signing of an official headquarters agreement with Spain. Thus, the body—though still informal—has managed to nest itself further within a layer of national laws, attaining most the privileges and immunities that would normally be afforded to a formal IO. The degree of blurring, in this case, has come to be quite significant. While the organization was purely informal when it was first created in 1983, it now has most of the trappings of a more formal institution.

Absorption: FESCO and the European Union (EU)

The regulation of financial markets in Europe have formalized as well, but in a different fashion. There, changes in technology and market sophistication had gained speed throughout the 1990s, and these trends were amplified by the integration that occurred after the creation of the Single Market. In European securities markets, in particular, these dynamics raised a host of new issues related to investor protection and financial stability. French and Italian regulators were among the first to respond, taking the initiative to establish the Forum for European Securities Commissions (FESCO) in 1997. Its central aim was to unite European securities regulators to address the common issues they faced through the exchange of information, the development of shared standards, and through mutual assistance.[49] Despite bringing together regulators from across the EU, however, it operated independently of institutions like the EC. The Commission was invited as an observer, but the agencies involved hoped to avoid EC control over their activities.[50] As elsewhere, informality helped them to achieve this. But this state of affairs did not last long. Only four years after its creation, FESCO was folded into the EC, becoming the Committee of European Securities Regulators (CESR), one of the new "Level 3" Lamfallusy committees created in 2001. Under this scheme, formality increased considerably and independence was diminished: CESR would act as an official advisory group to the EC and coordinate implementation of EU directives. It became a cog in the larger decision-making mechanisms of the EU. In this case, then, formalization occurred through the absorption of an informal IO.

[48] Wright 2012, p.8.
[49] Demarigny 2000; FESCO 2000.
[50] Thatcher and Coen 2008, p.820.

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The process through which this happened accords well with our theoretical expectations. Independent agencies moved first in response to the market changes that were occurring. Predictably, they created a "minimal" IO on the basis of their discretionary authority. FESCO was a non-binding, technocratic initiative, serviced by a small Paris-based secretariat provided by the French Autorité des Marchés Financiers and made up of officials seconded from member agencies. In the words of one senior member, it was just "a club of nice persons working together."[51] And, in short order, it achieved some successes. Soon after its creation, however, political actors became more directly involved. The integration and regulation of financial markets had been delayed for some time due to the marked differences between the financial systems of Europe states.[52] But the issue became a major focus of discussion during the European Council meetings in Cardiff and Vienna in 1998. New leaders in Germany, France and the UK now saw integration as a way of promoting their respective financial centres, and the topic was made all the more salient in the wake of the East Asian financial crisis and growing competition emanating from the rapidly expanding American market.[53] In Cardiff, leaders invited the EC to "table a framework for action… to improve the single market in financial services."[54] On this basis, the EC then worked alongside representatives of ECOFIN ministers to develop an "aspirational programme" for completing a single financial market in Europe: the Financial Sector Action Plan (FSAP).[55] The FSAP was published in 1999 and endorsed by leaders at the European Council meetings in Cologne and Lisbon, setting an ambitious legislative agenda over the next five years.

Securities markets were identified as one of the most important areas of reform. Cooperation between European securities regulators lagged behind that prevailing in the banking and insurance sectors, and there was a large "backlog" of legislation that needed to be agreed upon if the targets set out in the FSAP were to be met on time.[56] Following a French proposal, ECOFIN ministers decided to set up an independent Committee of Wise Men in July 2000—named after its chair, Alexandre Lamfallusy—to diagnose key issues and propose solutions. The committee's report confirmed the benefits of deepening integration, but also the growing problems that were arising that existing institutions were not prepared to address. FESCO, in particular, was identified as a valuable "first initiative"—it had published useful reports and standards, and had

[51] Quoted in Quaglia 2010, p.70.
[52] Story and Walter 1997.
[53] Quaglia 2010.
[54] European Council 1998.
[55] European Commission 1999, p.2.
[56] Bergström et al. 2004, p.3; Quaglia 2010.

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concluded a multilateral MOU to establish a mutual assistance mechanism, FESCOPOL—but was deemed insufficient. “However useful this work is,” the initial report stated, “it has no official status, it works by consensus, and its recommendations are not legally binding.”[57] The *informality* of FESCO was, therefore, a key issue. At the same time, existing European institutions, like the Council and the Commission, had made valuable inroads through the FSAP initiative, but the committee regarded them as problematic as well. The current system was “too slow” and “too rigid” and would not be able to deliver the FSAP in a timely fashion.[58] “If the EU is to capture the benefits of an integrated European capital market,” the Committee wrote, “it must have a regulatory system that works more efficiently and flexibly, and one which is more comprehensive in scope.” Change was needed.

The Lamfallusy Committee considered several ways forward. The most ambitious, by far, involved the creation of a new European “super-regulator”, modelled on the American Securities and Exchange Commission (SEC) and the ECB.[59] This idea was originally proposed by Laurent Fabius, the French minister of finance who had called the committee into being. He hoped that it would embrace the idea, and aimed to lobby for the “ESEC” to be based in Paris. However, creating a new, formal institution was costly and controversial, particularly among ministers from Germany and the UK. The committee concluded that creating an ESEC would require years of negotiations and was not practical for the time being. Its proposed alternative would be to draw on the strengths of both the EU and FESCO.[60] Under existing treaty arrangements, the EU had many of the legal capabilities that were required. Given this complementarity, it constituted an obvious starting point. FESCO lacked this, but had other advantages: it could move faster, more flexibly, and officials possessed considerable expertise. A new approach would rely on binding framework legislation through the existing community method to develop broad framework legislation (“Level 1”). This would involve input through a “Level 2” European Securities Committee, composed of finance ministries and operating on the basis of existing comitology procedures and principles of mutual recognition. “Most importantly,” though, this would “be supported by a *committee composed EU regulators*, in a format similar to that of FESCO, but with a precisely defined role and status.”[61] Integrating FESCO with the EU would, in the committee’s view, result in “enhanced and strengthened cooperation and

[57] Committee of Wise Men 2001, p.86.
[58] Ibid, p.88.
[59] Financial Times 2000, July 22, p.15.
[60] Note: the FSAP originally envisioned the two working alongside one another. The Committee evidently considered this insufficient.
[61] Committee of Wise Men 2001. p.94.

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networking between [national] regulators" and ensure "consistent and equivalent transposition of Level 1 and Level 2 legislation."

The final report of the Lamfallusy Committee was published in February 2001 and resulted in a significant reorientation of financial governance in the EU. The recommendations were endorsed by the European Parliament and by leaders at the European Council meeting in Stockholm, in March. FESCO was reconstituted as the CESR and absorbed into EU structures later that year, and the model was even extended to the banking and insurance sectors. The process through which the Lamfallusy architecture was established demonstrates that when political actors become involved the dynamics changed quite significantly. Here, they recognized a governance gap and proved more willing to consider formal solutions, including the creation of an independent regulatory authority. However, a suitable IO—the EU—was readily available. Its treaty frameworks could be used to strengthen FESCO, and vice versa, and this represented a much lower cost approach. Interestingly, though, the case shows that this was not sufficient in the end. The Lamfallusy committee framework lasted for several years. In the wake of the 2008 crisis, however, its problems became evident and prompted states to create the kind of more independent regulatory institutions that people like Laurent Fabius first envisioned. In 2011, new institutions were established in the securities, banking and insurance sectors, representing a fascinating instance of institutional conversion. In order to explore processes of conversion more fully, though, we look to the monetary arena and the events that lead to the creation of the ECB.

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Conversion: COG and the Creation of the ECB

The initial motivation behind the formation of Committee of Governors was driven by a concern over coordinating monetary policy within the European Economic Community. Beginning in 1964. as initial steps towards European integration were laid down, the national differences over exchange rate policy and inflation adjustment emerged as key points of concern (James, 2012, 25). In particular, overcoming exchange rate imbalances that favored some countries (such as Germany) over others appear to be at the heart of these debates, and conflict over growing German surplus as the rest of the EEC members were reporting deficits seem to have occupied Central Bank governors greatly during the first decade and a half since CoG emerged on the scene.

During the initial stages of CoG meetings, some participants favored creating a European Monetary Union to address these issues, including France, Luxemburg, Belgium, Italy and the Commission, while Germany and Netherlands appeared more skeptical of proposed measures to accelerate such unification. To that end, an ambitious report was prepared under the leadership of Pierre Werner, which proposed a highly centralized planning and implementation of monetary policy, including coordination of exchange rates, as well as interest rates and credit policy. Despite some objections, the plan was approved by the EEC Commission in 1970, including a roadmap for monetary unification (James 2012).

Still, CoG members remained divided over the proposed measures. Since the group's initial mandate favored coordination, the strict guidelines for the creation of a common monetary policy was met with skepticism among some of the Central Bank governors. Behind the scenes, such divisions were strongly informed by the politicians with strong convictions about the role of national governments in monetary policy. Notably, German and French counterparts found themselves in the opposing camp, where the French—under the influence of then President Pompidou—sought to exert greater political control over the monetary policy reform agenda.

The national divisions among member states also had another dimension: mutual support mechanisms at times of crisis or downturn were very slow. This was most notable during the inflow of US dollars into the German market in 1971, where the Bundesbank unilaterally decided to float the Mark in a move that shocked other member states. In response, CoG's tasks and responsibilities were simultaneously expanded to avoid uncoordinated policy responses, giving way to further proliferation

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of informal arrangements such as the establishment of Theron group for coordinating foreign exchange policy, another group for the harmonization of monetary policy led by the Nederlandsche Bank, in addition to the EC Monetary Committee who had a similar mandate. These were complemented by setting up of the European Monetary Cooperation Fund (EMCF), and Groupe de Contact, who would be responsible for Banking Supervision (James 2012, 112-113).

As monetary policy debates were carried in a highly informal environment, bureaucratic priorities have gradually lost focus and spread along a wide array of subjects, including stabilization of exchange rates, controlling inflation, preventing dollar from becoming too influential in the European market and establishing a monetary union. Among these, the issue of a monetary union was the least important during the beginning of 1970s. However, following the OPEC oil crisis hit the European markets, this issue gradually began to occupy a more central space. During the crisis, the EMCF has proven itself to be very limited and restrictive to act as an emergency funding body and ensure financial stability. The growing criticism against the EMCF was even more politicized when Italy began to experience a major balance of payment problem. At the same time, the political conflict on the terms of credit to be extended to Italy led some member states (such as Germany) to push for IMF intervention rather than an EEC led bail-out program (James 2012, 124), revealing the limited capacity of informal organizations under the CoG to manage a crisis of such scope.

Similar troubles emerged over debates on exchange rate policy as well. The use of snake, a currency band that was set up to prevent major fluctuations in member states, seemed to be causing problems due to structural differences among the economies of the EEC. In particular, fiscal policy divergences stood as a major problem, preventing attempts to maintain stability of exchange rates within the market. Moreover, monetarist group that pushed for an overall reform agenda had also failed, as central bankers and politicians viewed such proposals with greater skepticism in light of growing US dominance in global finance (James 2012, 144). Further, some central bank governors also had a heavy political baggage as they had their political preferences as well.

The conversation drifted towards the creation of a common currency only gradually, once politicians saw that it is very difficult to govern a shared monetary policy without a political push. Still, the CoG continued to serve as the platform to carry these debates since all options could be easily laid on the table without a formal political commitment. Nevertheless, by the end of the 1970s, the entire mission of monetary policy

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coordination under the CoG had hit several roadblocks on the way to achieving its organizational goals. The Governors were well aware of the political conflicts behind the problems they faced, and explicitly recognized the fact that technocratic solutions ahead of political ones would not prove to be viable (James 2012, 161).

The informal platform and other committees formed under the CoG proved largely insufficient to coordinate monetary policy across the EEC countries also during the 1980s. The global volatilities induced by financial liberalization made it very difficult to use shared instruments for shared goals. In the meantime, inflation rates in EEC area began to diverge widely and exchange rate fluctuations against the dollar made collective commitment to currency stability nearly impossible. These difficulties were at times seized by national politicians seeking out new opportunities for partisan gain, as it was evident in Francois Mitterand and French socialists' growing skepticism vis-à-vis the EMS (James 2012, 192).

The proposal to move towards a common currency was still seen as a solution to multiple problems generated by nationally driven monetary policy measures under varying market structures. To that end, the Delors Committee was set up with the participation of the governors towards the end of the 1980s. Eventually, the final report issued by the committee following a series of meetings laid the groundwork of a currency union along with the preliminary statutes of an independent central bank. Additional pressures following the decision on German unification hastened the process. With such an ambitious move, member countries would not be able to devalue their currencies when they ran balance of payment deficits. Further, under a shared currency, maintaining a fixed or quasi fixed exchange rate would no longer be an issue. However, this required a strong political commitment by all member states to coordinate monetary and fiscal policy at once. Following the endorsement of the Delors report, CoG began "to transform itself from a committee…for the exchange of ideas and information into the skeleton apparatus of a central bank" (James 2012, 265). After the signing of the Maastricht treaty in 1992, the CoG entered a final stretch towards formalizing its existence under a new institutional framework.

When the ECB was founded in 1998 and Euro was announced in 1999, CoG has finally fulfilled its long and difficult task. The creation of this new unit of account and its later adoption by the citizens of member countries in the form a fiat currency was a ground-shifting change. Clearly, the governance of this new currency would no longer be possible on an informal platform. Even though the planning was led by an informal body, the process of creating the Euro inevitably turned CoG to ECB. Unlike the

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experience of BIS-BCBS entanglement where parties are primarily concerned with the creation and governance of money-as-credit, the story of CoG to ECB is one about how public money creation with money-as-unit-of-account demands formal institutional structures.

5. Conclusion

The distinction between formality and informality within the governance of financial markets is more complex than previously thought. Over time, informal institutions have acquired a range of new features and capacities that blur the boundaries between them and more legalized approaches to international cooperation. This calls for new concepts and a more integrated theoretical approach. To that end, we conceptualize four different varieties of blurring, show how they have grown over time, and propose a tentative explanation for why states have chosen these different paths by observing processes of formalization in these key instances of financial governance. The cases we examine demonstrate the theoretical approach we propose has considerable merit and could be used to explain governance patterns in other areas of global finance and beyond. Further efforts to refine and extend it would be valuable. The financial arena offers a useful laboratory for exploring these dynamics, but they may well apply more broadly.

At the same time, our findings have important policy implications. As noted in the introduction, there are presently two diametrically opposed views on the merits of informal order in the global financial arena. On the one side, there are those that see informality as a highly effective; on the other, there are detractors who have argued that informal arrangements are often mismatched with underlying problem structures. Our approach begins from the latter premise: that informality can frequently be inadequate. As the discussion demonstrates, informality often prevails, despite being suboptimal, either because this design aligns with the preferences of the regulators or it seems politically more attractive at the time. However, regulators are not entirely ignorant of the institutional mismatch that acting on this preference can generate, and, often, this has led them to opt for a design that partially bolsters their capacities. In some instances, political activism has led to interventions and reforms of various kinds. Ultimately, our main contribution reveals that financial governance is a dynamic process rather than being static. Informal institutions, on their own, are frequently not as advantageous as some might lead us to believe. In contrast with more optimistic takes, however, it is precisely the *blurring* of formality and informality that leads to this conclusion.

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6. Works Cited

Abdelal, Rawi. 2007. *Capital Rules: The Construction of Global Finance*. Cambridge, MA: Harvard University Press.

Alter, Karen J, and Sophie Meunier. 2008. The Politics Of International Regime Complexity. *Perspectives on Politics* 70 (1): 13–24.

Bach, David. 2010. Varieties of Cooperation: The Domestic Institutional Roots of Global Governance. *Review of International Studies* 36 (3): 561–589.

Bergström, Carl-Fredrik, Josefin Almer, Frédéric Varone, and Christian de Visscher. 2004. Governance and the EU Securities Sector. New Modes of Governance Project.

Brummer, Chris. 2012. *Soft Law and the Global Financial System*. Cambridge: Cambridge University Press.

Brummer, Chris. 2010. Why Soft Law Dominates International Finance—And Not Trade. *Journal of International Economic Law* 13 (3): 623–643.

Committee of European Banking Supervisors. 2004. Annual Report 2004. London: Committee of European Banking Supervisors (CEBS). Available at <https://eba.europa.eu/sites/default/documents/files/documents/10180/16106/b1ff8d97-8fd1-4154-b58a-93a2cf76edd6/Annual_report_04.pdf>.

Committee of Wise Men. 2001. Final Report of the Committee of Wise Men on the Regulation of European Securities Markets. Brussels.

Damro, Chad. 2006. Transatlantic Competition Policy: Domestic and International Sources of EU-US Cooperation. *European Journal of International Relations* 12 (2): 171–196.

Demarigny, Fabrice. 2000. The Forum of European Securities Commissions (Fesco): An Answer to the Needs of a European Single Market for Financial Services. *Revue D'économie Financière* 60: 125–133.

Eatwell, John, and Lance Taylor. 2000. *Global Finance at Risk: The Case for International Regulation*. Cambridge: Polity Press.

Eberlein, Burkard, and Abraham L. Newman. 2008. Escaping the international governance dilemma? Incorporated transgovernmental networks in the European union. *Governance* 21 (1): 25–52.

Eichengreen, Barry. 2011. Out-of-the-box thoughts about the international financial architecture. *Handbook of Central Banking, Financial Regulation and Supervision: After the Financial Crisis*: 354–382.

European Commission. 1999. Implementing the Framework for Financial Markets: Action Plan. Brussels.

European Council. 1998. Presidency Conclusion. Cardiff.

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Evans, John. 1983. Speech By Mr. John Evans, The Commissioner of the Securities and Exchange COmmission of the United States of America. In *Report: Eight Interamerican Conference of Securities Commissions and Similar Organizations (April 17-23)*, 31–32. Quito: IACSC.

FESCO. 2000. Report, 1999-2000. Paris.

Financial Times. 2000. London's Nightmare: A Gendarme for Europe's Markets. *Financial Times*. London.

Giovanoli, Mario. 2000. A New Architecture for the Global Financial Market: An Outline of Legal Issues. In *International Monetary Law: Issues for the New Millennium*, edited by Mario Giovanoli. Oxford: Oxford University Press.

Goodhart, Charles. 2011. *The Basel Committee on Banking Supervision: A History of the Early Years 1974–1997*. Cambridge: Cambridge University Press.

Grabel, Ilene. 2017. *When Things Don't Fall Apart: Global Financial Governance and Development Finance in an Age of Productive Incoherence*. Cambridge, MA: MIT Press.

Helleiner, Eric. 1994. *States and the Reemergence of Global Finance: From Bretton Woods to the 1990s*. Ithaca: Cornell University Press.

Henning, Randall C., and Saori N. Katada. 2016. Cooperation without Institutioons: The Case of East Asian Currency Arrangements. In *Asian Designs: Governance in the Contemporary World Order*, edited by Saadia M. Pekkanen. Ithaca: Cornell University Press.

IACSC. 1984. Minutes of the President's Committee Meeting. In *9th Annual Conference of the International Association of Securities Commissions and Similar Organizations: Conference Report, Volume One*. Toronto: Ontario Securities and Exchange Commission.

Jupille, Joseph, Walter Mattli, and Duncan Snidal. 2013. *Institutional Choice and Global Commerce*. Cambridge: Cambridge University Press.

Kahler, Miles. 2000. Legalization as Strategy: The Asia-Pacific Case. *International Organization* 54 (3): 549–571.

Kapstein, Ethan B. 1994. *Governing the Global Economy: International Finance and the State*. Cambridge: Harvard University Press.

Karmel, Roberta S., and Claire R. Kelly. 2009. The Hardening of Soft Law in Securities Regulation. *Brooklyn Journal of International Law* 34 (3): 883.

Khademian, Anne M. 2011. *Checking on Banks: Autonomy and Accountability in Three Federal Agencies*. Washington, DC: Brookings Institution Press.

Koremenos, Barbara, Charles Lipson, and Duncan Snidal. 2001. *The Rational Design of International Institutions*. Cambridge: Cambridge University Press.

Lapaš, Davorin. 2019. Diplomatic Privileges and Immunities for IGO-like Entities.

Funded by the Horizon 2020 Framework Programme of the European Union. Grant agreement number 822654

International Organizations Law Review: 1–29.

McKeen-Edwards, Heather, and Tony Porter. 2013. *Transnational Financial Associations and the Governance of Global Finance: Assembling Wealth and Power*. New York: Routledge.

Moravcsik, Andrew. 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca: Cornell University Press.

Moschella, Manuela. 2012. Designing the Financial Stability Board: a theoretical investigation of mandate , discretion, and membership. *Journal of International Relations and Development* 16 (3): 380–405.

Mourlon-Druol, Emmanuel. 2015. 'Trust is Good, Control is Better': The 1974 Herstatt Bank Crisis and its Implications for International Regulatory Reform. *Business History*.

Newman, Abraham L., and Elliot Posner. 2018. *Voluntary Distruptions: International Finance, Soft Law, and Power*. Oxford: Oxford University Press.

Pagliari, Stefano. 2012. The Domestic Foundations of International Regulatory Networks: IOSCO and the Reassertion of National Authority in Global Securities Regulation. Paper presented at the Workshop 'Remaking Globalization' at Temple University, May 5-7.

Porter, Tony. 1993. *States, Markets and Regimes in Global Finance*. New York: St. Martin's Press.

Puetter, Uwe. 2006. *The Eurogroup: How a Secretive Circle of Finance Ministers Shape European Economic Governance*. Manchester: Manchester University Press.

Quaglia, Lucia. 2010. *Governing Financial Services in the European Union: Banking, Securities and Post-trading*. New York: Routledge.

Quaglia, Lucia. 2019. The politics of state compliance with international "soft law" in finance. *Governance* 32 (1): 45–62.

Richards, John E. 1999. Toward a Positive Theory of International Institutions: Regulating International Aviation Markets. *International Organization* 53 (1): 1–37.

Roger, Charles B. 2020. *The Origins of Informality: Why the Legal Foundations of Global Governance are Shifting, and Why It Matters*. Oxford: Oxford University Press.

Ruffing, Eva. 2015. Agencies between two worlds: information asymmetry in multilevel policy-making. *Journal of European Public Policy* 22 (8): 1109–1126.

Schenk, Catherine R. 2014. Summer in the City: Banking Failures of 1974 and the Development of International Banking Supervision. *English Historical Review* 129 (3): 1129–1156.

Funded by the Horizon 2020 Framework Programme of the European Union. Grant agreement number 822654

Schill, Stephan. 2009. *The Multilateralization of International Investment Law*. Cambridge: Cambridge University Press.

Seddon, Jack. 2017. History matters: How international regimes become entrenched-and why we suffer for it. *International Studies Quarterly* 61 (2): 455–470.

Singer, David Andrew. 2007. *Regulating Capital: Setting Standards for the International Financial System*. Ithaca: Cornell University Press.

Slaughter, Anne-Marie. 2004. *A New World Order*. Princeton: Princeton University Press.

Story, Jonathan, and Ingo Walter. 1997. *Political Economy of Financial Integration in Europe: The Battle of the Systems*. Cambridge, MA: MIT Press.

Thatcher, Mark, and David Coen. 2008. Reshaping european regulatory space: An evolutionary analysis. *West European Politics* 31 (4): 806–836.

Underhill, Geoffrey R. D. 1995. Keeping Governments out of Politics: Transnational Securities Markets, Regulatory Cooperation, and Political Legitimacy. *Review of International Studies* 21 (3): 251–278.

Vabulas, Felicity. 2019. The Importance of Informal Intergovernmental Organizations: A Typology of Transnational Administration with Independent Secretariats. In *The Oxford Handbook of Global Policy and Transnational Administration*, edited by Diane Stone and Kim Moloney. Oxford: Oxford University Press.

Vaubel, Roland. 1986. A Public Choice Approach to International Organization. *Public Choice* 51 (1).

Verdier, Pierre-Hugues. 2013. The Political Economy of International Financial Regulation. *Indiana Law Journal* 88: 1405–1474.

Williams, Harold M., and Lee B. Spencer. 1981. Regulation of International Securities Markets: Towards Greater Cooperation. In *Proceedings of the Conference on the Internationalization of the Capital Markets*, edited by Joan B. Ellsworth, Robert H. Mundheim, and Douglas W. Hawes. Amsterdam: North-Holland Publishing Company.

Wright, David. 2012. Remarks by David Wright Secretary General of IOSCO at the Atlantic Council. Washington, DC: IOSCO.

Zaring, David. 1998. International Law by Other Means: The Twilight Existence of International Financial Regulatory Organizations. *Texas International Law Journal* 33 (1): 282–330.

Zaring, David. 2020. *The Globalized Governance of Finance*. Cambridge: Cambridge University Press.

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