"Gas-lighting[1]" Ourselves—A Cinematic Retrospective,[2] version 2.0

by ***Andrea M Corcoran #no filter*** [3]

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The scene is set. It is 2018 and once again we Jurassic period regulatory and market actors find ourselves "commemorating" the anniversary of a ten year old crisis and our respective crisis responses—The scenario is the Great Financial Crisis or GFC—an acronym worthy of Roald Dahl's BFG.

Introduction. As a 40 year participant in the financial markets in the roles of regulator, academic, and policy maker—as well as—as an investor in the equity and debt markets literally since birth, it was with great trepidation that I accepted the invitation this August to reflect on lessons from the GFC with a decade of hindsight. Today's fervent political climate on all regulatory and deregulatory matters and my memory of applauding responses to the 1987 market crash on the eve of the 1997-1998 disruptions in Asia and at home alone warrant extreme caution.

But, if past personal experience with crisis occurring on the cusp of each decade were not enough to make any prognosticator wary, consider also that there have been financial crises in each of 1837, 1857, 1873, 1907, 1929, 1987, 1989, 1997, and 2007/8 and that strangely all of these events, and several others if one takes a global perspective, occurred autumnally in odd-numbered years.[4] You can confirm this for yourself. The economists Reinhart and Rogoff, in their well-reviewed and received tome "This Time is Different," chronicled 800 years of financial folly in 66 jurisdictions and made the spread sheet data on which their conclusions are based publically available for further analysis.[5] Notably among this dispiriting list, almost one hundred percent were coupled with escalating debt and property/asset booms and busts. But then correlation is not causation, right?!

If this history by itself did not give one pause, none of these numbers counts titanic ripples due to major frauds, 9/11 or related geo-political upheavals in Syria, Turkey, Ukraine, Venezuela and elsewhere, taper tantrums (2013), flash crashes (e.g., 2015), or matters, such as, the March 2017 Brexit notice of UK withdrawal from the EU drawing nigh and remaining chaotic despite expected provisional extension in the first quarter of 2019. Indeed, Brexit issues are now dominating discussions and roiling politics and financial institutions in the EU and "the City," over the details and impact, most recently upsetting the Bank of England (BOE) as to the 2019 fate of 41 *trillion pounds Sterling* in derivatives risk's reliance on UK CCPs[6], and intensifying questions as to whether postponing Theresa May's "moment of

truth" date to the last minute is in itself a major known risk factor.[7] Nor do any of the foregoing mention the potential for future algo, cyber or crypto apocalypse or monetary (whether conventional or "unconventional") policy failures, the downstream impact of increased interest rates, re-indexing of exchange index components, or political polarization, among other things. The XMen of finance, then, have yet to write the script that renders crisis and prevention processes alien to finance or renders themselves obsolete.

Further cause for caution. The worries beginning to resurface on this ten year anniversary (if a 10 year recession can be feted) eerily echo prior nightmares on Wall Street. Worse, it is possible that a well-intended myriad of reforms years in the making may constrict available responses to crisis situations or blur who is in charge and who is accountable to whom. These prescriptions may also divert attention from the constants critical to protecting the financial system and its participants. For example, are the essential elements of risk and crisis management now lost in a myriad of detail? Are the regulators and the regulated being honest about how well they can manage these? Will the same misfortune befall today's broad regulatory retractions as happened to those planned in 2007 which were hastily repackaged to address the subprime escalation?

The US Fed reassures that banks that hold 80% of assets in the US are strongly capitalized and can bear a severe economic downturn—or as the Wall Street Journal recently headlined "can withstand the worst!"[8] Should the recent observation by competent authorities belittling the fact that three of our largest banks were apparently unable to pass recent stress tests raise concern? In July 2018, the current Chairman of the Board of Governors of the Federal Reserve opined that no bank is now too big to fail. Is he correct? Are industry advocates, regulators and pundits all gas-lighting[9] —deliberately dismissing, obfuscating, diverting, or understating the lay public's observations of the risks that cause financial crises? Do these diversions and "discounting" prevent the risks from properly being met? Are these risks mere figments of our collective imagination or are we both the purveyors and the victims of a gaslight deception? ***Let's see.***

Background.

First Principles: Despite this history of volatility, upheaval, and surreal correlations, any rear window forecast must begin by acknowledging the continued resilience of the US financial markets, applicable legislation, and the related regulatory framework. Notwithstanding the business cycle and the regulatory pendulum (both of which are notably pro-cyclical), the history of US market regulation and markets is a history of robustness in the face of dramatic evolutions, unforeseen threats, diabolical schemers, and other multiple challenges. It is also the history of a sometimes reluctant but effective community of interest between the regulated and their overseers in a properly functioning market

To prompt your memory, at the outset, in the early 1930's a team of idealistic young lions--the FDR kitchen cabinet and prominent academics[10] set down foundational principles for financial framework legislation over a single weekend. Then, through a longer, more contentious process these legal wordsmiths convinced the politicians of the day to enact them.[11] The foresight-full mandates for securities— and indeed for financial regulation in general--they designed remain the basis of market health and fairness here and aspired to elsewhere today.

These first principles are:

1. *Transparency* based on disclosure sufficient to permit fair evaluation of transactions so that buyers can make informed choices about price and risk—(Joseph Stiglitz owes his much later Nobel prize in economics to documenting the verity that the most transparent price is the most efficient price).[12]
2. *Proper, prompt and comparable accounting* for the financial condition of public companies and the capital strength of financial institutions—(real facts and real numbers to support real investment, risk, and business decisions),
3. *Misconduct prohibitions* on: (i) abuses of market power, (ii) misuse of client information, funds and property, (iii) provision of misleading and intentionally asymmetric information, and (iv) self-dealing due to conflicts—each exhortation intended to promote the integrity of brokered transactions, market prices overall and customer choices—(treating clients—and markets—fairly).[13]
4. *Coupled with, adequate protection of the banking, payment, and settlement system* essential to support the funding liquidity of so-called "mobile property," such as equities, debt and financial instruments, and the integrity of transactions. This fourth existential pillar is designed to uphold the strength of financial institutions, prevent bank runs, support the irreversible transfer of securities and funds (eg., delivery vs. payment), permit prompt monetization of gains and losses, and afford transactors reliable access to entrusted assets without resorting to safe deposit boxes or searching under the proverbial mattress—(transactional integrity).

Iteration of First Principles. Over time as crises in the financial sector recurred, the process begun in the 1930s to protect customers and the investment, market and payment system expanded to new products. Successive policy makers enhanced the framework to mitigate the risk that bank runs or funding illiquidity endemic to the banking business model, and/or settlement uncertainties or failures, would plunge the markets and related payments and financial commitments into disarray or worse.

For example, in 1968, the Commodity Exchange Act extended the statutory trust for customer funds whose segregation buttresses the integrity of futures transactions and markets to bank depositories as well as their brokers to prevent misappropriation of customer funds to cover extensions of credit to brokers by the bank. In 1971, the idea of an account compensation fund (the word insurance was *forbidden*) to prevent abrupt withdrawals of deposits with securities brokers or clearing gridlock from precipitating the failure of multiple intermediaries was adapted from the 1930 banking model. Beginning in 1978 business-friendly revisions to existing bankruptcy law were added. Amendments adopted prevent the reversal of good faith margin transactions, support portability of accounts and facilitate the continuation of payments due the market despite intermediary bankruptcies. These measures aspire to protect the market at large from a sick firm failure becoming a pandemic—that is, to foster continued payment of amounts due by healthy customers that in turn support continued performance of the marketplace as a whole.[14]

The market crash of 1987, and the less precipitous domestic downturn in 1997, highlighted the critical need for these existential domestic protections. Further reforms enhanced data collection, mandated settlement finality, shortened settlement timeframes and augmented confirmation of proper treatment of customer funds (or segregation).[15] Reforms also helped to mitigate potentially destabilizing market moves and later on to halt price cascades using circuit breakers or other limits.

The derivatives case. From the outset, legislation accorded special protections for presumptively risky derivatives products. When first regulated, exchange trading and clearing were mandated parts of domestic contracts. For futures, secure settlement remains critical to pricing integrity and the ability for commercial enterprises to hedge transactions efficiently and reliably. Central clearing typically "deleverages" risk daily, or more frequently, so that at each settlement open exposure is reduced to zero. This risk containment mechanism supports the ability to move positions from a failing to a healthy firm with alacrity in an emergency, has been tested time and again in the marketplace even in the direst of circumstances, [16] and is reputedly the envy of crisis "copers" elsewhere.[17] The central counterparty risk mutualization system incentivizes proper risk management (or as economists would say prudence "commitments").[18] Indeed, the 2009 Pittsburgh declaration by the Group of 20 embraced central counterparty clearing and related novation of bilateral exposures as a means of multi-lateral netting and a remedy to the funding, financial condition, and opaqueness uncertainties that had exacerbated the GFC.

It is within this background that the GFC legacy can be framed.

Crisis characteristics, settings and roles

Cause and effect. In addition to the G-20's primal response, professionals and the public alike, at least on the western front, identified multiple risk factors that exacerbated the GFC. In addition to "externalities" like macro-economic and geo-political risk, these emphasized measurement risks such as undue reliance on untimely data, assumptions and related models leading to flawed values for intermediaries' own and their counterparties' positions.

Supervisory Cassandras avowed shock at the extent of gambling going on and lack of prohibitions on sketchy products that let holders bet on the demise of an entity whose death was the holder's only interest. Groundskeepers rued the weeds among the 1000 flowers their constant gardeners let bloom. Critics queried the puniness in constant dollar terms of reserves, compensation and insurance arrangements. Pundits questioned the integrity and utility of gatekeepers like credit rating agencies and accountants who were hired to evaluate and/or "fair" price products by their promoters. Theorists decried the pro-cyclical need to raise margin to meet increased risks. And, ordinary people pondered whether Collateral Debt Obligations Squared, no-doc loans, and triple A ratings for securitizations of tottering layers of real estate mortgage tranches with questionably qualified borrowers separated in ways never contemplated by real estate conventions affecting junior and senior lenders, failed the Hemingway [19]"bull s---t detector" test. Some commenters questioned whether trader/management compensation was so great that even Adam Smith's self-interested man would remain untroubled by the prospect of his employer's possible financial failure. Michael Lewis, memorably the author of "Liar's Poker" which criticized the "big swinging dicks" of the wolves of Wall Street, documented all of this in his film "The Big Short." That film illustrates for the lay-public how the products "worked" until they didn't and how the potential ruse on the public became a joke on the purveyors themselves. Some market participants were even ready for the Panic Room.

It seems, then, that the basics as laid out in the 1930's and adapted to changing markets over time had been forgotten, mired in impenetrable complexity or, worse, intentionally evaded.

Responses

Urgent actions. The GFC oversight team invented a series of remedial actions on the spot to try to stem the downward spiral of events from "breaking" the system[20]. That they were caught unawares, despite years of heralding risk-based approaches, is indisputable. It is also understandable based on the amount of reserves or mistakenly assumed smallness of questionable operations that informed central bankers' predictions that ultimately caused firms to fail and failures to multiply. Mitigating measures adapted to the moment included:

- ✓ Central Bank acceptance of new categories of non-risk-free assets as collateral, (such as mortgage backed securities),[21] which if valued by auction at the time might have required marking to market in a way that further destabilized and precipitated downward revaluations.
- ✓ Government provision of temporary monetary support to prevent contagion and emergency liquidity to prevent insolvency to entities with clearing and custody roles or otherwise integrally connected to other pillars of the financial system that were not banks.
- ✓ Rescue of institutions with at-risk financial institution counterparties in multiple non-US jurisdictions whose failure could further expand crisis domestically and abroad. And,
- ✓ Quashing the specter of an exponential loss of confidence that would end "trust" and spur fire-sales and capital flight.[22]

These remedies were accommodated by flexible interpretations of market-tested law that allowed, even depended on, inventive responses taken on the ground. Applicable law as then read effectively permitted creation of *ad hoc* coping mechanisms for addressing the hard to predict exigencies of black swan (fat tail) events that seem a plague inherent to markets per the Reinhart-Rogoff litanies. In Europe in discussing monetary policy, Mario Draghi in 2012 made his famous, "whatever it takes," speech relative to protecting the economy and the union during the ongoing crisis.

Longer term policy responses. The politicians of the G-20 endorsed central clearing of standardized OTC products and a medley of other initiatives, wresting the top-down role of setting financial policy from the supervisors. International implementation efforts outdid each other in pronouncements of extraordinary girth[23]. For example, in the US, the Dodd-Frank Wall Street Reform Act was adopted in 2010. The law contains 848 or 849 pages depending on whom you consult or cite and required multiple enormous rule-makings. By comparison, the 1965 act creating Medicare took 138 pages and The Securities Act of 1933, 93. The Volcker Rule is nearly 1,000 pages long. Compare this to the Glass-Steagall Act's 37 pages, which successfully separated traditional commercial banking and investment banking and protected the banking system for 66 years. Volcker himself thought his eponymous rule was too complex and not proportionate.[24]

Additionally, the provisions for an Orderly Liquidation Authority written into the law, added restraints or conditions on the options available to the authorities with which the overseers in 2008 were not burdened and may have constrained for the future, then existing independent measures and powers of the financial authorities who compose the Financial Stability Oversight Council lead by the Secretary of the Treasury.

In the US alone many of the provisions implementing the GFC response have taken a decade and some will take longer if not withdrawn. For example, in October 2013, the law firm of Davis Polk found that regulators had missed 61 per cent of Dodd-Frank deadlines and by 2017, 20.5 percent had yet to be proposed.[25] One 2012 commenter noted that if all the post-crisis requirements in the US and the EU

were fulfilled the resulting six-figures worth of regulatory pages could require fast and furious adoption of policies and procedures, and concomitantly, compliance personnel to execute them.[26] A global project of law that itself appears to be both too big to fail and to promise eternal job security to regulators.

Now, a decade later: has the set and scenario changed?

Back to the Future. Now that the high noon atmosphere is gone and we have walked ourselves back off the ledge, doubt as to the wisdom of the foregoing multiplication of prescriptive rules is waxing and zeal behind decade-old amendments is waning. In that some proposed remedies may have missed their mark, been overly detailed, disproportionate or politically or even turf motivated, advocates that Dodd-Frank and its global cohorts, can be revisited are not surprising. A growing series of whitepapers, position papers and wise men counsels evidence a wish to swing the regulatory pendulum back toward ground zero[27].

The trouble with remakes. In 2007, not content with the dramatic deregulations of 2000, policy makers in the midst of finalizing a 2006 white paper downsizing the Sarbanes Oxley prescriptions enacted to forestall failures like the Enron collapse in December 2001 had to abruptly change course. Promoters hastily retrofitted that report into a more remedial proposal reflecting experts' increasing alarm at the depth of the subprime crisis. Subsequently, Larry Summers, Robert Rubin, Arthur Levitt and the then President's Working Group, conveniently forgot or later publically recanted (at least until the pendulum fully returns) that they supported the 2000 deregulations, which occurred while they were in office.[28]

2018 Intimations

20-20 Hindsight is not foresight. Like portfolios past performance of regulators, regulatory processes and even time-honored legislation is not necessarily predictive of future success. Further the toing and froing itself has a cost as the famous securities academic Louis Loss once lamented.[29] And though any regime can benefit from change the basic "bedrock" principles of capitalism do not as this analysis hopes to confirm.[30]

Recently some global note-worthies sounded a variety of alarms about the current state of the post crisis financial eco-system. While these do not address application of the aforesaid bedrock principles, cited were numerous troubling trends which seem to call the principles into renewed relevance:

- ✓ the size of public and private debt,
- ✓ the return of "covenant free" lending,
- ✓ monetary and fiscal expansion, contraction and related market "tantrums,"
- ✓ "excessive" volatility and volatility aberrations,
- ✓ exposure of emerging markets to dollar debt or more broadly to excessive exchange rate risk,
- ✓ complex synthetic products, and
- ✓ the "inevitable" business cycle.

Additionally, they cited unintended consequences of regulation, compliance overload, decisional paralysis, resource constraints and ambiguities from so-called "boundary" [31] or game of thrones problems related to the profusion of regulators, regulatory initiatives and their authors'

territorial ambitions (viz. money market funds, leverage restrictions, and clearing structures) at home and abroad.[32]

More recently, even the architects of the US's urgent response have questioned our, and our revamped laws', current readiness to deal with the unexpected.[33] Each of these warnings advert to some disheartening statistics which suggest weaknesses reminiscent of, and in some cases more pronounced than, immediately prior to the GFC debacle, such as the current government debt to GDP ratio being twice that of 2007. Nor have regulatory turf wars ceased to wag the dog.

Reform or gas-lighting.

So are we still the way we were? Is it possible that we still have no real answer as to whether new processes and restrictions and changes in assigned government handlers will promote optimal choices to mitigate foreseen and unforeseen crisis if necessary? Will the newly contemplated changes stick? Are we better positioned today than during the calm before prior perfect storms? Did all that rulemaking and its complexity, like a spotlight deception, distract the policy makers from assessing whether they upheld the core principles of securities regulation and properly scaled and mitigated the GFC risks enumerated above?

Below are some broad rules to apply to determine the answer. Using these rules, and reconciling them to the four pillars and stalwarts of regulation we may be able to decide for ourselves whether today we are ready to meet the challenges of the future or whether we are blindsiding ourselves—again.[34]

Rule 1: Know thyself; be transparent, at least to yourself

Not knowing one's own position affected the scope of the GFC. Adequate self-knowledge of today's complex financial structures includes knowing the potential risks from interconnected counterparties, businesses, and strategies. Lay people know that in normal times, one cannot borrow money from others without providing information on one's total credit exposures—shouldn't the same theory apply to indebting oneself?

Allegedly, confidentiality and privacy requirements, proprietary strategies and logistics make this ideal state of knowledge complex to achieve by commercial entities using financial instruments. And on these allegations, perhaps one of the best ideas—and perhaps the most flawed in execution-- of the proposed reforms has foundered.

Position reporting to trade repositories that potentially could provide an aggregate view of credit exposures and leverage across the market is a main unfinished business of the GFC response[35]. The impediments seen to date to achieving an acceptable outcome continue to multiply. Indeed, the likelihood of meeting the objective has been so widely deemed risible for its susceptibility to double counting and miss-counting as to cause a suspicious person to doubt whether the aim is not to fix it but to deem it a train wreck and to derail it altogether. This is true even though arguably, proper means of reporting positions to permit a view of aggregate exposures might be a simpler solution to opaqueness than some chosen priorities. Such reporting would have less potential for (i) creating new kinds of risk than proliferating clearing houses with potentially asymmetric (non-zero-sum) open exposure or for (ii) over-consolidating potential risks as some assert mandated central clearing may do[36].

The market itself views trade price reporting immediacy as critical. Remember, however, that as late as 2007 on the bank trading side, best practice was said to be confirming 85% of transactions within 5 days. Is it any wonder then that some risks were masked and that some losers, in the sense of misplaced or erased trades, were "lost" in big market moves?[37] And do banks still permit traders to keep their trades on individual spread sheets?

The objectors imply that it is simply too complex for financial institutions to know their precise position promptly. This is not very comforting from the perspective of lay market users. Are we only imagining that if individual traders alone know what is at risk in a financial institution handling other people's money that that is a problem? Losing 7.6 billion USD through not knowing has in at least one case been deemed trivial by financial experts, though unlikely to be deemed trivial by such institution's depositors. Have we made "not knowing" excusable, creating a negative incentive from a business, regulatory and public perspective?

Stress testing is supposed to address this. But how can it if positions go unreported? Are our lay intimations correct that not knowing one's own position is risky business? If so, shouldn't this weakness be corrected?

Rule 2: Examine both the forest and the trees

The lay public understands the truth in the criticism of some reforms that collecting data for its own sake is a fool's errand. For example, reformers and the public alike believe that the breadth of the Dodd Frank rulemaking may have reduced the accuracy of its aim.

In financial regulation too much information may obscure likely causes of malfeasance and risk. Noise—like the pervasive music (and related decibel ratings) now found in restaurants—might drown out rational supervisory judgment and thought. For example too much information or untargeted information might frustrate determining how best to adhere to the admirable principles of dealing with customers fairly and promoting price integrity. Will too much data be as useless as none–as in the past when some exchanges designed exception metrics that outed so many false positives that none was capable of effective analysis or use for enforcement purposes?

Opposite the view that the forest can hide weak, problematic, and unhealthily contagious trees from view are the reg-tech and other advocates seeking to persuade us that deluges of information (big data, *petraflops*[38] in a word) together with artificial intelligence ("AI") and algorithmic programs to sort it can substitute for human judgment and grant our desire to know the meaning of everything.

There is no question that risk-based, smart methodologies of oversight both by firms and by regulators are necessary. These require both having a high-level concept of what is risky and then a targeting methodology for determining where to look and how to measure what is found. While everyone agrees smart risk assessment is the goal, the smartest approaches are not that obvious. Indeed too much technologically enabled and/or required data could unduly create access barriers to the market, result in use of impenetrable proprietary methodologies and mire regulators in the matrix. Indeed, even more worrying, technological fixes may encourage regulators to rely on "the machine which goes ping[39]," without understanding what that ping is all about.

While in our information age, many claim more information, better information and more technology is progress— is it? Can we analyze it all or will the AI body snatchers turn against us as the late Stephen Hawking suggested?[40] Are reams of data and regulators who know infinity better than selective prophylactic metrics or financial profiling for describing outlier conduct (such as out of trend activity) that requires further review? And what happens to the regulator who fails to see what lurks in the forest of data he or she or one has in house. In civil law jurisdictions they are at best chastised for turning a blind eye or negligently failing to review the evidence and at worst criminally prosecuted.

To get an idea of the magnitude of assessing all the evidence today, see the brilliant speech entitled "The Dog and the Frisbee." and related tables from 2012 by Andrew G. Haldane, then Executive Director and Chief Economist of the BOE. His underlying analysis suggests we would need centuries to understand[41] big data in a way that is helpful to making optimal choices in "unpredictable" situations if we try to use it all. Haldane is an advocate, like the current Chair of the CFTC, of keeping the regulatory process and regulation simple.

There are those who wish to convince us that more data is more knowledge. But we lay people who are not direct users of the information but beneficiaries of its usefulness to surveil markets and mitigate crisis situations can only conclude that the value proposition remains to be proved. Will more data just mean more phantasms? Will more data for the sake of data make it easier or harder to know what is happening in large institutions? And how will we know if we have too much, too little or the right stuff if we still do not even know what "is" is.[42]

Rule 3. Cure the symptoms; avoid distraction by debates on cause.

Initially the guardians of the public indicated that the aggregate exposure to sub-prime borrowers was so low it *could not* mathematically cause a systemic economic crisis.[43] Unfortunately that assessment rested on evidence primarily based on real economy cash transactions occurring in the "real" housing market. The measurements did not take into account the "derivative" syndication structures which were being churned out by "syndication factories," as one financial institution marketer labeled them. Did supervisors even suspect that no-doc loans were actively solicited specifically to supply these structures for "factory" assembly-liners? Were they aware that that purpose overwhelmed loans undertaken to make the American dream more affordable, to comply with community banking injunctions, or underwritten on their own merits?

Even with the ensuing year' demonstrating that this was the case, the revisionists of which there were, and still are many, allegedly have decided to divert the blame for the crisis to the detestable obligation of community banking and the poor fooling the experts as to the extent of the bad-debt risk in the system.[44] The recent book 'Fragile by Design," by two Hoover Institute Stanford professors, which does have some interesting positions on the odd State/Federal issues in US banking as well as the agrarian Jeffersonian-federalist Hamiltonian divide, seems to take this approach. But as Jon Stewart once, perhaps apocryphally, is said to have quipped: all the mortgages in America could have been paid off for less than what the crisis response initially cost the tax-paying public. So the politics of causation may delay or lead to the wrong solution.

Did these theorists measure which came first the syndication package or the loan? Did they inquire about the feasibility of separating the first and second liens and packaging them in different investments? Did they question the policy of labelling bundled non-investment grade risks as investment

grade so as to sell them to institutions whose investment policies limited them to investment grade investments? Did raters resist a separate category for structured debt to avoid such institutions' boards having to revisit and/or amend their investment policies? The securitizations did supposedly remove problem loans from the initiators' books. But rather than blame the debt or the underlying borrowers should we give more consideration to the fact that even the sellers of some of these complex products were dismayed when called to account. Some issuers even took back some of the worst they sold to good customers reducing their reputational but augmenting their balance sheet risk and the potential for systemic consequences.

Blaming the dream of homeownership itself for the GFC seems not only excessive but also a gaslight deception.[45] Were the victims who took the subprime tease mortgage loans which my smart phone spell checker transmuted into "surprise" loans[46] the wrongdoers not the wronged? The intimation is, the problem was not us, it was you. So no need to deal with the symptoms as there was no agreement as to their cause. Does the EMT need to conduct a physical before applying a tourniquet to a bleeding patient?

Rule 4. Size does matter

Many authorities who have embraced risk-basing use multiple metrics. But, in order to predict the probability and impact of various types of disruptions, they all agree that one must have a view of the size of potential risk (its impact as well as its probability.) There is no argument about this. The basis for its application is in statistics and economics—the soft or dismal sciences. The Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) work illustrates various means to assess size metrics and identifies key risk factors.[47] Nonetheless, it is possible that in the GFC, size was considered an antidote to risk. And inquiries as to the risks posed by exposures of bigger institutions were limited. Either way big is big.

Even now do we know precisely how much risk we shield by mandated protections, such as capital, buffers, emergency liquidity and other measures? While seemingly a justifiable inquiry, at a recent panel on the crisis during the Harvard Bicentennial Celebrations in 2017, when asked about how demonstrable the sufficiency of deposit insurance was today, no-one could say. Participants averred that it was politically impossible to test today's measures against the amount set in the 30s or to assess the validity of the methodology then used, against the potential size and likelihood of run risk impact in the aughts. (As an aside, is there any doubt among us that legislation always involves political judgments? Apart from the view that government sponsored enterprises caused the crisis by driving out private competition and consolidating risk, consider the extent of controversy— whatever one's opinion on the outcome—over the establishment of the Consumer Financial Protection Bureau[48] and probably less notably and more remotely the multiple pages in Dodd-Frank related to conflict mining and extractive fuels.[49]) When established the then deposit insurance amount of 150,000USD covered more than 90% of all existing deposits, reliably keeping deposits sticky and transferable to healthy banks. In constant dollars that amount would be more than two million today. It is not clear what percentage of run risk the increase from 150,000 to 250,000USD deposit insurance covers. Did anyone even ask? If not why not? [50] Politics is a reason, but not an excuse for uninvestigated policies.

For some, the intimation is that the lay public need not worry their lay heads whether their deposits will be safe in a crisis—they are sufficiently covered. Some cynics, however, would say that the politics of depositors finding out that they are unsecured creditors in the event of a bank failure should

bank deposit insurance be insufficient is so politically unpalatable, why pay in advance. Don't worry there will be a "bail out" despite all the rhetoric about moral hazard. In fact, all banks are politically too big to fail if their failure leaves domestic depositors at risk (See Northern Rock) notwithstanding conventional theory to the contrary.

The proof of the pudding is in the eating. Even, former Chairman of the Board of Governors of the Federal Reserve, Alan Greenspan, a noted libertarian, felt that the risk absorbing results of internal capital models should be tested against how well they actually worked in practice, and at one point discussed a charge back to capital where they did not. The original Basel II required non-standard, internal models to produce at least as much capital as the standard system. So some experts, even conservative experts, did not feel that we should take the size risk for granted or delegate counting the chickens to the fox.

Is this even more important in that the "gate keepers" who are accountable for proper valuations and calculations such as accountants and rating agencies who made cameo appearances during the GFC did not contest the integrity of management numbers (accounts and values and size) and were found even by the industry itself to require additional oversight.[51]

Hence our intimations that more certainty as to the potential size at risk, the strength of available remedies and funds in the worst case scenario and the likely response would be desirable are not mere delusions.[52] Systemically Important Financial Institutions, i.e., SIFIs, reflect this thought but how they will be treated in a crisis event remains to be seen.

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Rule 5. Governance watchdogs are critical but no substitute for proper management

Some comics have said that like airline food, independent corporate governance is an oxymoron. At home and abroad, board oversight is now seen as the linchpin of public company protections of shareholder rights and company finances. In the financial sector area proper board composition and action are accepted as the armor against self-dealing and actions taken in conflict to proper exercise of the functions the institution performs as a public interest entity, that is, its public interest role relative to activities undertaken for clients and depositors not just shareholders. Board roles also now explicitly include oversight of cyber-security, risk assumption[53], and anti-money-laundering functions of management. Some jurisdictions even require the Board to take proper approaches to social policies, such as diversity, gender neutrality, conflict mining, climate change—and other interests, including employment/labor protections and social impact concerns.

But are our intimations correct that the degree of deference to the Board could let management off the hook? Or that the Board, at least in the US, can— as some wags have suggested—become the fan not the referee? Can a board that meets four times a year be even remotely capable of managing a company that many pundits believe is too big and too complex to manage by management on a day-to-day basis?

Is the intimation that we are no longer asking corporate Boards, especially financial services boards, to prioritize their fiduciary-like roles—set strategy, be a witness and barrier to bad conduct—correct? And how do we defend an interpretation of independence that permits three Fortune 500 CEOs from other companies to sit on an executive (CEO) compensation committee required to be composed of independent directors?

Rule 6. Business is global, but constituents and crisis politics are national

Magnificent work has been done at the international level to pre-empt the problems that lead to individual firm and systemic failure. This work includes standard-setting, memoranda of understanding on information sharing, IMF and World Bank financial sector assessments, and the development of networks of operational and technical personnel who know each other and can contact each other in the event of emergency. Nevertheless, notwithstanding supervisory colleges and MoUs, so-called accepted wisdoms that there should be limited restrictions on capital flows, that branches are more efficient ways to employ capital than subsidiaries, and prompt, effective information sharing break down when in times of crisis there is uncertainty as to who has the money and who has the law suit.

Despite calls from time to time to work on whether it is possible to develop an international regime for bankruptcy no viable regime has emerged and little progress has been made. Not only do national regimes have different views on the balance of interests in bankruptcy, but also the benefits of preventing a race to the till across borders remains a relatively unexplored legal wilderness.[54]

Now with the resurgence of populism and talk of not just Brexit, but "QItaly," "Euroviderci", and Swexit, not to mention issues related to rule of law, judicial and election tampering, oligarch and boligarch flight, and corruption, are the nationalist challenges to amiable settlement of financial differences lessening? Are our intimations that where a failure occurs, no burden sharing regime exists as a matter of law and there are insufficient assets to satisfy all claims in each jurisdiction, the result will be let's share, or instead *sauve qui peut* or us vs. them?

Rule 7. Barriers to the "everyone's doing it" excuse are not necessarily a bad thing

One commenter on commercial activity used the metaphor of Ulysses lashing himself to the mast and plugging the ears of his crew to drown out the siren song in describing marketplace risks.[55] Millennial texters have a special message for fear of missing out (FOMO). In business the fact that everyone is doing it, if not an incentive, in operational fact *is* an excuse—the dark side of competition. Hence the strategy of many cultures to bring so-called "message" cases—that signal to the regulated community network when what everyone is doing is now "not on" going forward (e.g., phasing out of Libor-- though many still seem not yet to get the message). Or to otherwise provide guidance to the yellow brick road.

In practice, regulation *can* provide protection against risky competition by mandating best practice that for better or worse provides a commercial excuse to sales and profits personnel—a "why" for not doing "bad" things that everyone else supposedly is doing.

By virtue of limiting harmful competition "right-thinking" regulation can also be the solution to the problem that in the marketplace of ideas, people will meet the competition unless warned off by ground rules. Even though companies are commercially leery of competing on capital buffers, leverage limits, synthetic structures et al. they also may be afraid not to if that is where the market of the moment is.

Is our intimation that not all barriers are bad barriers misguided? Is it not true that often more guidance is sought by the industry when attempting to apply principles of good and prudential conduct to actual on the ground situations? Hence the 800 page guide to the principles-based approach to

financial regulation in the UK. Isn't it better for everyone to understand the ground rules applicability to themselves, their products and their actions? Are others seeing these flickers?

Rule 8. Test risk assumptions; don't over trust past behaviors

We have been told that calling for extra margin in a crisis is destabilizing and pro-cyclical. While it is a truth that regulatory and creditor forbearance is often necessary to stem a crisis, pro-cyclical factors, not to mention the business cycle[56] are common market realities—even characteristic. For example, many esteemed arbiters (see the Warren Buffet bet)[57] believe (and demonstrably so) that buying the index passively is preferable performance-wise in terms of long term costs and returns to active management of a securities portfolio. But indexes, at least the large cap, main stock indexes, are unremittingly pro-cyclical and FAANG heavy to boot. The trend has been reliably upwards, albeit with several recent troubling hiccups, that have roused some concerns as to causation. Experience shows that long term holders usually do not roil markets in the short term. BUT…. What goes up can come down. When it does, its downward trajectory is likely to overshoot, potentially confirming the potential negative effects of pro-cyclicality. Additionally, if everyone were to move to indexing instead of doing individual stock management such indexes could become unmoored like a derivative without an underlying further exacerbating inherent volatility, pro-cyclical and miss-pricing effects. After the September/October re-categorizing of tech as communication stocks in sector indexes and other index revisions can anyone doubt how indexes can push prices?

At the same time as advocating passive investing, recently experts have said, we have a new equity bubble and the risk averse should flee to the risk free bond. But is a bond, especially a long term bond really risk free now that the Federal reserve is tightening. Corporate bonds and even some sovereign bonds are not liquid. In today's environment we know that movement to more traditional monetary policies (that is in lay terms, more expensive credit and higher interest rates) is *en train* and hence bonds not only can but are likely to lose principal value.[58] Like what is is, risk judgments depend on what risk is. If risk is the investment risk of losing money and one expects upward readjustments of the interest rates, then low interest longer term bonds are not risk free unless they can be held to maturity without default (not counting opportunity costs) and the government fiscal programs do not heist the value of money. Otherwise, per classic finance, the principal value of the bond will decline in the secondary market—if there even is a secondary market. These principles inform monetary policies, fiscal policies, and investment choices. The initial reactions to what were intentionally "surprise," actions of the Central Banks showed sizable responses as the markets absorbed the policy news and adjusted. Market prices of securities typically and operating normally discount expected trends. Nonetheless, accelerated tightening or even the likelihood thereof may result in rebalancing portfolios and sometimes abruptly shedding instruments. We have seen this in emerging markets.

Futures markets use multi-directional scenario analysis to identify risks, including outlier risks and binary risks. This is a highly useful means of determining where the risks lie and planning and provisioning accordingly. It is much better than the attitude of "not knowing" referred to above.

For the lay public, the intimations are don't think too hard about these issues; we know better than you do. Pro-cyclical is as pro-cyclical does. It is bad when it means more margin to support open positions for us. It is good when it causes you to buy products. But both pro-cyclical realities exist and

can be either reliably positive or negative depending on all the facts, the environment, the scenario and what is overshooting. We should not be gas-lighted out of examining our assumptions and the explanations of others and from using our own heads.

Rule 9. Retain legal flexibility to react to the "unknown unknowns"

We believe that the post GFC reforms at the least have provided a better route and forward planning to permit the wind down of failing businesses without losses to customers due to insolvency. But could we be mistaken about the future availability of money to provide emergency liquidity when needed, of the feasibility of maintaining stable institutions in a major melt-down, of the ability of Central Banks to cope.[59]

The Orderly Liquidation Authority regime goes into place if a bank is insolvent for example. As at least one wag has said—all banks are insolvent all the time. If all depositors demand their money, all their money is not there. The Hank Greenberg case in the US Court of Claims decided both that he was not improperly compensated for the nationalization (claimed expropriation) of AIG but also that the type of actions in the AIG case (bailouts not just of AIG but assistance to its counterparties) were no longer available to resolve market emergencies. Many executive level decisions must be made in crisis situations. But now some of these may be unambiguously foreclosed.

The intimation is that extraordinary problems can be resolved without extraordinary measures. History and the histrionics of the crisis, such as Draghi's do whatever is necessary seem to suggest the exact opposite.

It is hard to understand why foreclosing government (or even industry led rescuers') monetary support is the proffered remedy to the GFC experience. One would submit that the Lehman case failure and the UK's Northern Rock response to depositors lining up for the first time in over a hundred years to withdraw their money seems to demonstrate the exact opposite. Markets are fragile systems of trust. One must do what is necessary to maintain the trust—if not it will not be a wonderful life nor will Mary Poppins save Mr. Banks.

The assumption is that like brokers, banks will be wound down without loss to their depositors. But is that assumption correct? The capital structure of banks typically is different and resolution without money to support it, as someone quipped, may be as unusual as resurrection.

How are lay people to buy the theory that the emergency liquidity support that many believe would have saved Lehman Brothers from its ultimate collapse and mitigated, if not prevented, the impact on the global system of its failure would have been a heinous, moral hazard riven bail out? Some analysts have posited that Lehman was not in fact insolvent and could have survived with some bridge lending support or time to execute a sale of its asset management business to a white knight or to give some leeway for a white knight to turn around a firm in peril.[60] What are lay people to conclude that designating firms as systemically significant means if the government intends to let them fail nonetheless?

More problematically, to the extent Lehman imploded because of dependence on one day financing, the gas lights have not even flickered at the possibility that too much reliance on short term funding continues ongoing as a major risk-- the intimation being that we are deluded to think so.

Some might say in this case the delusion extends to the deluders who may have deluded themselves. Do they really believe that in appropriate circumstances bail-outs, and work-outs and emergency liquidity to assist restructurings and reorganizations and to incentivize White Knights are no longer necessary options despite years of experience that say otherwise? Doesn't the GFC experience demonstrate that the flexibility to react to unpredictable events and even predictable ones is an essential component of crisis management? Do our governments want to acknowledge that doing what is necessary is impossible? As at least since 1907 some type of market or government rescue has been a response to crisis, how can we be so sure?

Rule 10. Do no harm

This speaks for itself. Every action has a reaction[61]—and unintended consequences. The pervasiveness of this phenomenon underscores that policy makers should exercise caution in making changes as should the regulated entities in entering speculations and selling product and the buyers and end-users in making investments and buying from them.

Here is how the pillars of regulation fare when compared against the foregoing 10 proposed rules pertinent to any financial regulatory framework.

Summary Chart: Reconciling ten rules of practice to four pillars of effective financial system oversight and avoidance of gas-lighting*

Rule	Transparency	Proper Accounting	Treating Clients Fairly	Systemic/prudential protections
1-Know thyself	✓	✓	✓	✓
2-See both forest and trees	✓	✓	✓	✓
3-Cure symptoms			✓	✓
4-Size matters				✓
5-Governance matters (but does not substitute for management)	✓	✓	✓	✓
6-Business global; crisis response national	✓	✓	✓	✓
7-Acknowledge barriers combat everyone's doing it excuses	✓	✓	✓	✓
8-Test assumptions; use spectrum of scenarios		✓		✓
9-Retain flexibility				✓

10-Do no harm	✓	✓	✓	✓

*Nonetheless, valid arguments can be made that each pillar is relevant to each rule

Conclusion. Despite all we have learned from the perfect and imperfect storms we have weathered, we still need to continue to be wary of gas-lighters and gas-lighting. We must avoid letting a third party rating or solicitation or academic conclusion override our own good judgment. Now it seems we have new instruments called leveraged debt, having changed the name to protect the innocent and ensure absence of malice. Further, the US Treasury and the US Congress have bonded to enact a number of Dodd-Frank reforms that among other things appear to make it easier to engage in community banking, which is very attractive to many sectors of the country and seems right-minded from a public policy perspective. One question to ask oneself, however, is are the intimations that we are missing the whole story here correct? Who will be selling the "derivatives" now permitted to be purchased on a proprietary basis by banks with assets of less than 10 billion dollars? Isn't leveraged debt subprime debt? Haven't we been here before? Are we crazy to worry that something could go wrong?

But to talk about gas-lighting is only to hint at the real problem. The issues of high finance today are often too complex for the lay public and even some professionals and Boards to call out which fictions serve as truth and what are not fake facts. One cannot speak truth to power if one does not know what the truth is and cannot find out.

None of the longstanding rules that support the four first principles stated above is new. And every manager, board member and compliance person should know what they are.[62] Even Marco Polo in the 14th Century knew he had to know where his credit was coming from. What is interesting is that even though these ten rules are as critical to businesses as well as regulators, customers and the general public, they often continue to be honored in the breach as often as in the observance.[63]

But perhaps all will turn out to be all right in the end— and if it has not yet, it is not the end. (Best Exotic Marigold Hotel-2011) Or perhaps that is the challenge--- to keep in mind all of the questions posed above, to keep our eyes wide open and to flush out the gas-lighters as needed to keep the system going and the benches (bancs) unbroken.

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[1] "Gaslighting," is taken from the movie Gaslight (of which there is more than one version). In the 1944 movie, a husband (Charles Boyer) tries to convince his new wife (Ingrid Bergman) that she is imagining that the gas lights are flickering. Ms. Bergman is saved by Joseph Cotton, the "reliable detective" of noir film fame. The urban dictionary defines the term today as manipulating events (or other matters) in order to make a person think that their version of events is incorrect, indeed even crazy.

[2] Can you identify the movies?

[3] A previous version of this Article was originally published as part of a compendium in the September 2018 Special Edition of the Futures & Derivatives Law Reporter by "Anonymous," and was released to the public at the very moment that "Anonymouses" everywhere were getting a bad name. Of course I did claim responsibility in the final footnote. This version still protects the confidentiality of the several international contacts, I polled to help

me identify intellectually provocative references and to develop points to pursue. Their anonymity is meant to avoid burdening them with what some may consider hyperbolic conclusions and to permit them later to have plausible deniability in other forums. I continue to be grateful to my son Tom Corcoran for his research and Matthew for teaching me what "gas-lighting" means.

[4] Sweden 1991, Norway 1987, Turkey 1995, Spain 1997, Japan 1991 et seq and so forth.

[5] Kenneth S Rogoff and Carmen M Reinhart, "This Time is Different: Eight Centuries of Financial Folly" (September, 2009). Data is available in searchable form at l<http//www/reinhartandrogoff.com/data/>

[6] Note that "equivalence" as interpreted by the EU with respect to third country CCPs is also a front burner issue in the US.

[7] A recent article in the October 10 Financial Times indicated that that moment had come, but observers continue to move "the drop dead date" forward to various pending EU summits. Some who have experienced English negotiation techniques may note that typically the English don't begin to seriously negotiate until the ink is dry.

[8] Page One, Wall Street Journal, Business & Finance section, June 22, 2018; see also Federal Reserve Chairman Powell's remarks from Jackson Hole meeting of the Federal Reserve banks reported in July that today no bank is too big to fail.

[9] Apparently the Geneva Conventions on humanitarian issues take a dim view of gas-lighting as does the #MeToo movement for reasons unrelated to this article.

[10] Many East Coast professors and later Judge Frankfurter's boys from Harvard, including Jim Landis, Ben Cohen and Tommy the Cork Corcoran among others, the latter two gracing the cover of Time Magazine Volume 11 in 1932. All of Wall Street camped out in the Mayflower hotel to oppose the securities market reform proposed so the process of making the legislation took way longer than the design. Corcoran and Cohen were also called the "hot dog" boys—see Washington Post editorial recalling them after Tom's death (December 9, 1981).

[11] In 1937, the cover of the New Republic referred to Corcoran and Cohen as the "Gold Dust Twins."

[12] And the gnomes of Central Banking have now embraced "forward guidance," and greater transparency as to their determinations, largely at the instance of Governor Bernanke.

[13] Conduct principles pertaining to banks are relatively limited as the Core Principles for Effective Banking Supervision focus largely on prudential issues. In 2015 a consultation on issues related to financial inclusion that might include conduct issues was conducted and concluded, but did not materially *expand* their scope beyond anti-money laundering issues. See www.bis.org, Committee on Banking Supervision. In 2018 the European Securities Markets Authority (ESMA) issued a paper detailing risks and supervisory approaches that includes conduct matters, especially related to complex products, binary options and contracts for differences.

[14] The Part 190 Subcommittee of the ABA Derivatives Committee recently submitted proposed modernizations of these rules to the CFTC early this year in response to the Chair's Keep it Simple (KISS) program. The rules package while modernizing and simplifying the rules text, supports the basic policy of mitigating the potential for contagion and retains the concepts intended to facilitate portability and to maximize the return of customer funds and the proper handling of deliveries.

[15] See, Corcoran, A. "The Lessons of 1987: Thinking Back After a Decade of Response," FDLR, Vol.17, No. 17 (October 1997) citing other articles and work on clearing for example; See also < http://www.sechistorical.org/sec/pdf/ar/2007_sechs_ar.pdf> which revisited these issues.

[16] Corcoran, A "Policy Responses to the MF Global Bankruptcy: Approaches to Increasing Certainty in Insolvencies of Dually—Licensed Futures Brokers," FDLR, Vol 35, No. 8 (September, 2015) repeating concern that the treatment of dual bankruptcies recommended to be addressed in the Interim Report on the 1987 crash remain largely unaddressed.

[17] The Market Reform Act of 1990 gave the SEC certain powers that the US CFTC already had, for example, expanded emergency power and authority to obtain large position information on call. In the MF Global bankruptcy, some of the advantages of the CFTC Part 190 were apparent.

[18] Cox, Robert & Steigerwald, Robert, "A CCP is a CCP is a CCP" https://www.chicagofed.org/publications/policy-discussion-papers/2017/pdp-1, in final published in the same publication (June 2018) as the following by same authors: "'Incomplete Demutualization', and Financial Market Infrastructure: Central Counterparty Ownership and Governance after the Crisis of 2008-2009", Journal of Financial Market Infrastructures, Vol. 4, No. 3 (March 2016)

[19] Hemingway actually spoke of a built in, shock proof, “crap” detector and was cited by Haldane, A, Executive Director for Financial Stability, Bank of England, in Jackson Hole Wyoming Kansas City Federal Reserve Bank economic policy symposium , 31 August 2012 in his speech “The Dog and the Frisbee”

[20] A possible irony was that when bankers operated behind a “banc” or bench, breaking the bench actually meant that the bank was insolvent or done.

[21] So-called Large Scale Asset Purchase Programs or LSAPs.

[22] Effectively signaling all deposits (and mutual fund deposits) were insured—as did several other jurisdictions in the exigent circumstances of the moment. In fact this is not unusual, the UK told depositors of Icelandic banks located in the UK that they would insure the deposits when Iceland said that they would only insure domestic deposits.

[23] Patrick McLaughlin and Oliver Sherouse, “The Dodd-Frank Wall Street Reform and Consumer Protection Act may be the Biggest Law Ever, Mercatus Center, George Mason University, July 20, 2015 http://www.mercatus.org/publication/dodd-frank-wall-stree-reform-and-consumer-protection-act-may-be-the biggest-law-ever > See charts included.

[24] https://www.brookings.edu/opinions/toward-a-better-volcker-rule/ Op Ed by Martin Bally at Brookings citing Volcker’s promoting a simple rule (October 28, 2013); Cf: Notice of Proposed Rulemaking (SEC,OCC<CFTC, FDIC, FRB)(June 5, 2018); note also n. 22 below.

[25] www.davispolk.org ;The Davis Polk Full Regulatory Tracker Website is now behind a paywall. . According to the Davis Polk accounting, as of the seventh anniversary of Dodd-Frank, out of 390 total requirements, 280 (71.8%) had been met with finalized rules and for 30 (7.7%) more, a rulemaking was in progress. Rules had not then been proposed to meet 80 (20.5%) rulemakings.

[26] Some changes have been deferred to 2020 and beyond. France recently protested the European Central Bank application of leverage ratio to funds held for banks at the *Caisse de depot*. And in the fall of 2018, it was reported that the various EU authorities were engaging in a turf war as to who has the authority among them to supervise and regulate CCPs.

[27] On July 19, 2018 the media announced a House financial reform act that received overwhelming bilateral support with less than 10 representatives demurring.

[28] They also forgot they solicited a Congressional direction to forbid the USCFTC to inquire too deeply into or to ask too many questions about the possible risks of over-the-counter derivatives.

[29] Professor Louis Loss, formerly of Harvard, the iconic compiler of securities law, now taken up by others.

[30] Book Review Washington Post July 21, 2018, Roger Lowenstein review of “Bad Blood” by John Carreyrou re upheaval of a former darling of Silicon Valley, Theranos.

[31] In futures parlance regulating US futures central counterparties as if they were banks.

[32] See May 14, 2018 20th Anniversary Panel of the Toronto Centre, “Financial Stability and the Post-Crisis Reforms: Are we Done Yet?-- webcast available at www.torontocentre.org. The panelists included Stefan Ingves, Governor of the *Sveriges Riksbank* (Central Bank of Sweden) and Chair of the Basel Committee on Banking Supervision; William (Bill) White, Chairman of the Economic and Development Review Committee at the OECD in Paris; Maureen Jensen, Chair and CEO of the Ontario Securities Commission; Kevin J. Stiroh, Executive Vice President of the Federal Reserve Bank of New York and head of its Supervision Group; Ceyla Pazarbasioglu, Senior Director in the Finance, Competitiveness and Innovation Global Practice of the World Bank Group; the Honorable Kevin G. Lynch, Vice Chairman of BMO; and moderated by John R Palmer, then Chairman of the Board of the Toronto Center.

[33] Bloomberg article by Rich Miller, dated July 19, 2018, citing Geithner, Paulsen, Bernanke, Greenspan and others. <https://www.bloomberg.com/news/articles/2018-07-18/bernanke-geithner-paulson-voice-some-concern-about-next-crisis>

[34] The Chart found at the end of the text compares each rule to the core pillars.

[35] In the last Century, the then iconic CBOT operated a system which had information on a clearing member by clearing member basis as to their margin surplus or deficit across all then operating futures markets daily, weekly, monthly, and quarterly for targeted surveillance of cross market risks.

[36] At a recent symposium (October 2018) at the Chicago Federal Reserve Randall Kroszner established an analogy between the reforms related to the sinking of the Titanic (1912) and the unintended consequences leading in part to the 1915 disaster of the overloading and sinking of the MS Eastland, then docked, in the Chicago River, where 848 people died.

[37] Brokers did not permit trade desks to have drawers to prevent brokers from "drawering" (deep sixing) tickets for their losing trades.
[38] 200,000 trillion calculations per second
[39] Monty Python hospital skit in The Meaning of Life: https://www.youtube.com/watch?v=arCITMfxvEc
[40] Recently the Wall Street Journal cited reports of Alexa turning on and off discussion, music, and appliances at her own discretion rather than on instruction.
[41] See n. 15 above, per Andrew G. Haldane in Jackson Hole. https//www.bis.org/reviews/r120905apdf
[42] Note the Principles for Effective Banking Supervision, as amended/further explicated in December 2015 only address anti-money laundering and potential terrorist financing violations as conduct though they appear to worry

about the impact on conduct of financial inclusion objectives.
[43] This included two respective Chairmen of the Board of Governors of the Federal Reserve: Chairmen Bernanke and Greenspan among others.
[44] Mike Konczal, posting a critical review of Fragile by Design at the Roosevelt Institute http://rooseveltinstitute.org/guest-post-review-fragile-by-design/> (November 3, 2014).
[45] In October 2018, various news programs highlighted the apparently mass program by Bank of America coupled with a community organizer to bring no deposit, below prime interest rate loans to 10,000 potential home buyers. Hmm.
[46] See the Marx Brothers film, Coconuts, about Florida real property boom where buyers were "stucco" for their home loans, also cited by Haldane.
[47] Key Risk Indicators, See several Basel Committee on Banking Supervision reports, www.bis.org.
[48] Why did this conduct oversight not go to the Securities and Exchange Commission?
[49] Some of these have recently been "disappeared."
[50] To our knowledge only Cyprus, Argentina and Russia have considered not paying uninsured depositors affected by a bank failure politically acceptable and in Cyprus the holders of such accounts were not nationals.
[51] The English Parliament recently (May 2018) issued a report on concerns with accounting firm integrity and the paucity of accountants not affiliated with the now Big Four related to collapse of Carillon. Cf. Richard Brooks, Guardian, OpEd, "Carillon Fiasco Shows Why Auditors Must Be Accountable to Parliament,"< https://www.theguardian.com/commentisfree/2018/may/20/carillion-auditors-recklessness-hubris-greed>. Apparently some action is going forward on these measures as of fall 2018.
[52] Simulations as well as stress tests might serve that purpose and a number of have been conducted, with varying results.
[53] I am not fond of the term "risk appetite," for this function as whose "risk appetite" are we talking about: clients (retail and wholesale), shareholders, bond-holders, bonus receivers, tax payers, the general public?
[54] But see, Working Paper, No. 1, "Global Cross Border Insolvency Framework for Financial Institutions," which advocates a mandatory regime and recounts some of the history of a decade of discussion, by Annika Wolf, a Max Weber fellow of the European University Institute (2015) at <www.eui.eu>
[55] Jon Elster, Professor Columbia University, "Ulysses and the Sirens"; republished in broader book by Cambridge University Press, "Ulysses Unbound: Studies in rationality, pre-commitment and constraints," (2000)
[56] See the discussion of the 1920's et seq. economist, Kondratieff's "wave" theory, which some has argued was economic gas-lighting. < https://en.wikipedia.org/wiki/Kondratiev_wave>
[57] Buffet bet was that an active manager could not beat the S&P index returns over a 5 year period. When played Buffet won.
[58] Some jurisdictions with huge rate escalations have resorted to a type of debt kiting due to the loss due to time costs of money.
[59] In this respect, some thinkers have said that it is a mistake to call quantitative easing unconventional policy as that stigmatizes it. In their opinion such measures should be considered just another part of monetary policy makers overall toolkit. See panels on Monetary Policy at Brookings Institution on October 17, 2018.
[60] See Texas Pacific Group's interest in Washington Mutual being lost via FDIC proceeding to a government approved suitor.
[61] See Rudyard Kipling and classic physics.
[62] See Chart above text.

[63] A career of articles on the same issues, including in 1986, with Ken Ackerman, "Ten Cautionary Rules for Institutional Investors," Vol. 3, No. 1; in 1996, "After Barings, What's Next for Risk Managers," European Financial Services Law, Vol 3, No. 7 (Kluwer); in 2009, "In Praise of Markets: Why Confidence Loves Transparency," World Federation of Exchanges, Focus. And many others.