Is transparency a value on OTC markets? Using displacement to escape categorization

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Is transparency a value on OTC markets? Using displacement to escape categorization

Isabelle Huault & Hélène Rainelli-Weiss

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In this paper, we examine how categorization is resisted. We analyze the way actors draw on cultural repertoires to resist or adapt to changes that will potentially alter the definition and nature of the markets in which they compete. We approach this question through a qualitative study of the heated debate over the new regulation of over-the-counter (OTC) financial markets in Europe between 2010 and 2011. Our paper enriches the existing literature on the political nature of categorization. Our results show that in response to unwanted change, incumbent firms try to create incommensurability with their own industry's standard cultural repertoire. Most importantly, this incommensurability is not argued in the name of any higher-order sets of values. Our main contribution lies in the article's focus on the way powerful actors resist categorization, highlighting the link between forms of commensuration and the status of the actors who attempt to instrument it.

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January 2014

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Abstract

In this paper, we examine how categorization is resisted. We analyze the way actors draw on cultural repertoires to resist or adapt to changes that will potentially alter the definition and nature of the markets in which they compete. We approach this question through a qualitative study of the heated debate over the new regulation of over-the-counter (OTC) financial markets in Europe between 2010 and 2011. Our paper enriches the existing literature on the political nature of categorization. Our results show that in response to unwanted change, incumbent firms try to create incommensurability with their own industry's standard cultural repertoire. Most importantly, this incommensurability is not argued in the name of any higher-order sets of values. Our main contribution lies in the article's focus on the way powerful actors resist categorization, highlighting the link between forms of commensuration and the status of the actors who attempt to instrument it.

Keywords

categories, categorization, commensuration, incommensurability, cultural repertoire, industry register

La transparence est-elle une vertu sur les marchés financiers de gré à gré? Résister aux catégories du régulateur par le saut hors du paradigme

Résumé

Ce papier traite de la résistance à la catégorisation. L'analyse montre comment les acteurs d'un marché utilisent des répertoires culturels pour résister ou s'adapter à des changements susceptibles d'affecter la nature et la définition même des marchés sur lesquels ils se trouvent en concurrence. Nous proposons une analyse qualitative du débat actuel sur la régulation des marchés financiers de gré à gré, en nous concentrant sur le cas européen et sur la période 2010-2011. Ce papier contribue à la littérature académique sur le caractère politique des processus de catégorisation. Nos résultats montrent comment, face à un changement non souhaité, les principales entreprises concernées sont amenées à revendiquer l'incommensurabilité de leur activité avec le répertoire culturel habituel de leur secteur d'activité. Cette incommensurabilité a la spécificité de ne pas prendre appui sur un répertoire de valeurs d'ordre supérieur. Notre principale contribution concerne ainsi l'étude d'une stratégie mise en œuvre par des acteurs puissants pour résister à une catégorisation non souhaitée, ce qui nous permet de souligner le lien entre le statut des acteurs et les stratégies qu'ils ont à leur disposition dans les processus de commensuration.

Mots-clefs

catégories, catégorisation, commensuration, répertoire culturel, incommensurabilité, registre d'industries

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Categorization is crucial to the construction of markets and the way we make sense of the world (Douglas, 1986; Zerubavel, 1991, 1997). Categories impose coherence and create shared understandings (Khaire and Wadhwani, 2010; Lounsbury and Rao, 2004). They are considered as instances of commensuration as they provide a basis for comparison, commensurability and valuation (Espeland and Stevens, 1998; Zuckerman, 1999, 2004). By influencing perception and interpretation, they act as institutions that facilitate trade, influence economic outcomes (Khaire and Wadhwani, 2010) and shape the identities and interests of actors (Lounsbury and Rao, 2004; Zhao, 2005). Categories define social and symbolic boundaries and rules for inclusion (Lamont, 2001; Lamont and Molnar, 2002; Zhao, 2005). When they change, they can significantly alter the nature of the markets in which actors compete. In many organizational fields such as the mutual fund industry (Lounsbury and Rao, 2004), the automobile industry (Rosa *et al.,* 1999), the stock market (Zuckerman, 2000), or the worlds of art (DiMaggio, 1987) and music (Anand and Peterson, 2000), categorization has had a significant impact on social structure and social outcome (Zhao, 2005, p.196-197). Existing research not only demonstrates that categorization is socially constructed (Kennedy, 2008) but also develops arguments as to how it confers social identities, signals actors' social standing and involves political battles between different interest groups (Zhao, 2005, p.179). Categorization always has a socio-political origin, reflecting diverse values and interests. More recently, research on categorization has focused on how shared meanings of new market categories are established (Garud, Gehman and Karnoe, 2010) and how such meanings come to shape collective perceptions of value (Khaire and Wadhwani, 2010, p.1281). All these analyses provide insights for our understanding of categorization from a sociological viewpoint.

Few studies, however, have closely examined the process of contesting attempts at categorization. Some research on change in categorization has concentrated on factors of durability, and argues that powerful actors often attempt to preserve the existing structure of categories (Lounsbury and Rao, 2004). Such research focuses on the political dynamics of market classification (Lounsbury and Rao, 2004; Zhao, 2005), but has not examined the process and means whereby actors resist attempts to establish categorization. In particular, the literature on categorization provides little insight into the role played in the process by values and justifications (Boltanski and Thévenot, 2006). The literature on cultural repertoires, however, (Weber and Dacin, 2011) has emphasized the way actors can draw on various cultural repertoires - or industry registers - for values that will allow them to influence the very categories they use for their self-definition (Rindova *et al.*, 2011).

In this paper, we examine the way different market participants draw on cultural resources to resist or adapt to solutions that have the potential to significantly alter the definition and nature of the markets in which they compete. We analyze the way actors combine values and justifications for their own ends, and the use they make of their own field's industry register. Overall, this study addresses three research questions about contesting categorization in markets, and political dynamics: What resources do actors use to contest categorization and a certain definition of the market? What is the role of industry registers in the contestation process? How do actors use values and cultural resources to attain their goal?

We address these questions through a case study of the proposed changes to OTC markets resulting from recent regulatory endeavours in Europe. Following the recent financial crisis, OTC markets have come under unprecedented worldwide regulatory pressure to move from their opaque bilateral transaction mechanism towards a more *Walrasian* mechanism in which competitive processes should produce greater price transparency. Focusing on the European situation, we analyze the battle over categories involved in this new regulation process.

Our research is based on a qualitative study of the battle observed between 2010 and 2011 over the forthcoming OTC market regulation. The objective is to understand the actors' intentions, their representation of the market, their metrics, their arguments, and their own interpretation of how regulation will change the market and what they think is desirable. We focus on the type of values and definitions used or promoted by various market participants, mainly big investment banks and regulators.

We show that resistance to the proposed regulatory categorization relies mainly on a definition of the market's nature that contradicts the definition put forward by the regulators, suggesting that the financial world's traditional industry register is irrelevant to the issue at stake. Specifically, the resistance-to-regulation period is reflected in opponents' refusal to accept that the values of transparency and liquidity are relevant to promoting OTC market efficiency, in blatant contradiction to traditional market efficiency theory. We analyze this strategy as an attempt to create *incommensurables*. We demonstrate that the instrumentation of incommensurability can take various forms, and their availability to the actors depends on the power they hold.

In terms of contribution, our paper enriches the literature on the political nature of categorization (Lounsbury and Rao, 2004) and the idea that categories are products of political processes (Zhao, 2005). We highlight the importance of cultural repertoires, and more specifically industry registers, in the process of contesting categorization. To resist an exogenous shock, actors drastically change their cultural repertoire by using new cultural resources, which may contradict their traditional industry register. Like Espeland (1998), we find evidence that when facing unwelcome change, incumbent firms try to create incommensurability by challenging the cultural repertoire on which categories are built.

The rest of this paper comprises four parts. First, we focus on the theoretical foundation of our research, mainly the literature on categorization, political action and the role of the cultural repertoires associated with this process. The second part of our paper describes our research method, a qualitative study over the period 2010-2011, based mainly on analysis of secondary data. We then study the case of proposed changes to OTC markets, the disputes over categorization and the way actors resist regulatory change. In the fourth and final part of the paper, we discuss the main conclusions of our research and its contribution.

Theoretical background

The concepts of categories and categorization

According to Kennedy (2003), a category is a group referred to by a label whose meaning is a matter of substantial collective agreement among the audiences who use it. Categorization is often considered as an instance of commensuration (Lounsbury and Rao, 2004, p.973). It presupposes comparison between particular elements in a form that makes equivalence possible (Boltanski and Chiapello, 2005, p.320). Stable, shared meanings are indeed essential to the process of establishing the terms of comparison and commensuration (Khaire and Wadhwani, 2010, p.1283). By listing, classifying and grouping things within a category, commensurability is created, social comparisons are facilitated, and producers and consumers can make sense of the world (Anand and Peterson, 2000; DiMaggio, 1987; Lounsbury and Rao, 2004, p.974). Using the case study of law schools, Espeland and Sauder (2007) explain, for example, why rankings have permeated the legal education system, how they change perceptions, and how they "recreate social worlds". This process requires significant resources and organization. Additionally, some instances of commensuration actually help to constitute what they seek to measure. Grading systems, for example, create explicit categories of relative quality, and hence relative value, that open up the possibility of trade in products that may not yet exist (Cronon, 1991; Espeland and Stevens, 1998; Porter, 1996). Categorization is thus essential to commensuration and market construction. It provides "rules and understandings that are necessary to make structured exchange possible in the first place" (Fligstein, 2001, p.32). As Lounsbury and Rao (2004, p.973) note, the very idea of markets depends on standardization and the comparability of the objects being exchanged (Douglas and Isherwood, 1979). Categorization supplies cognitive frameworks (DiMaggio, 1997) and defines boundaries (Khaire and Wadhwani, 2010; Lamont, 2001; Lamont and Molnar, 2002). These frameworks and boundaries present or confirm a social order with specific meanings and legitimacy (Zelizer, 1988; Zhao, 2005, p.187). To sum up, categorization organizes information, generates shared understanding, affects valuation, and finally facilitates exchange in market settings (Espeland and Stevens, 1998; Khaire and Wadhwani, 2010).

Sometimes categorization and value norms are redefined or reconstituted (Lounsbury and Rao, 2004) and involve transformation of markets. Some scholars highlight that sophisticated forms of commensuration and categorization have truly transformed financial markets (Espeland and Stevens, 1998, p.325-6). Kennedy, Lo and Lounsbury (2010) argue for a vision of market categories as the vocabulary for describing a constantly-changing demand environment.

Categorization and commensuration are not inevitable, however. As social processes (Desrosières, 1990, 1998), they require extensive effort to accomplish, since they integrate disparate value systems or different interests, reconfigure them and change the world in some way (Stevens and Espeland, 2004). As categorization involves not only "framing" (Callon and Muniesa, 2005), that is, a definition of what a market transaction formally includes, but also interplay between different actors with potentially different worldviews (Huault and Rainelli, 2011), we argue that categorization is a contested political process.

Categorization as a contested political process

Categorization is a mode of power; it is highly political (Lounsbury and Rao, 2004) as it reconstructs relations of authority, creates new entities and establishes new interpretive frameworks (Espeland and Stevens, 1998, p.323). Selection of a particular category by social actors is a political action, being negotiated between interest groups, and the final categorization system is often the outcome of political battles between those groups (Zhao, 2005, p.191). Attempts by dominant groups to manipulate the categories so as to maintain the existing order and consolidate their position highlight that categorization is shaped by the politics of markets (Fligstein, 1996; 2001) and driven by political dynamics. Lounsbury and Rao (2004) examine the role of industry media and powerful producers in category changes in the American mutual fund industry. They find that when powerful producers dominate a category, they can counteract the influx of new entrants and encourage industry media to preserve the existing structure of categories. Overall, dominant incumbents always strive to claim the desirable categories for themselves, in order to signal and consolidate their standing (Zhao, 2005, p.188-191). They often take advantage of economic, political and cultural resources (Bourdieu, 1984) to control the categorization system. As Zhao (2005, p.193) illustrates, in the French wine industry, the categorization system embodies the industry's political power: the 1855 classification of Bordeaux wines was controlled by elite winemakers to protect their own interests and exclude other winemakers.

Sometimes, actors show resistance to categorization. We argue that when this resistance is built on arguments against the values underlying the categorization, it can be analyzed using the concept of incommensurability developed by Espeland and Stevens (1998, p.332) and Zelizer (1985). This process of resistance requires work and draws boundaries around the things whose value is to be preserved. In his history of quantification, Porter (1996) shows for example how Victorian actuaries, with their high regard for personal skills and experience, rejected the regulatory authorities' push for "objectification", on the grounds that their own expert judgment was superior.

The political nature of categorization (Lounsbury and Rao, 2004; Zhao, 2005) and the idea that categories are products of practical political processes (Zuckerman, 1999) are now widely acknowledged in the literature. But few studies closely examine the process and resources used by actors to resist categorization. Building on the literature on *cultural repertoires*, we suggest that actors combine resources, namely values and justifications, to achieve their goals. We stress organizations' political use of repertoires for resistance and argue that in the process of categorization, organizations select and use cultural resources drawn from the registers of their industries (Weber, 2005).

Challenging industry registers to contest new categories

As Weber and Dacin (2011) underline, recent research work on *cultural repertoires* attributes greater agency to individuals and organizations that use cultural material as a pragmatic resource or *toolkit*. These toolkits can be defined as a set of symbols, stories, concepts, values and worldviews that actors can draw on to construct their action (Swidler, 1986). Embedded in a view that emphasizes agency in the use of culture (Weber and Dacin, 2011, p.289) with individuals acting as *cultural entrepreneurs* (Lounsbury and Glynn, 2001) or *bricoleurs* (Rao *et al.,* 2005), this conception sees actors as using resources and materials for their own ends. Culture can thus be analyzed as a "combination of resources such as skills, goals, attitudes and theories, that can be variously recombined and differentially employed in different situations (…). It can also be open to reinvention and the elements that constitute it can be recombined" (Leonardi, 2011, p.348).

Generally, organizations draw on the register of their own industry (Weber, 2005). As Rindova *et al* (2011) note, these registers consist of all concepts produced by and available to members of a community to interpret situations and develop action strategies (Weber, 2005). They comprise a set of cultural resources that are understood and accepted as appropriate and relevant for the industry (Porac *et al,* 1989). Some research pays special attention to the process through which organizations can change or reshape the industry register, in conjunction with evolving economic, strategic and institutional contexts (*e.g* Ocasio and Joseph, 2005; Zilber, 2006). In doing so, these organizations also seek to influence the very categories they use for their self-definition (Rindova *et al.,* 2011, p.429; Zuckerman, 1999). Rindova *et al* (2011) analyze the cultural resources incorporated by an organization into its repertoire and the related changes in its practices and strategies. They suggest that organizations change the categories they use in their self-definition in conjunction with their changing strategies, and that identity redefinition is a crucial mechanism enabling organizations to manage the "categorical imperative" (Zuckerman, 1999).

In this paper, we examine the way different market participants distort their industry's main cultural repertoire to draw on values that will enable them to resist new developments, or promote solutions with the potential to significantly alter the definition and nature of the markets in which they compete. Our emphasis will be on the use of values within controversies (Leonardi, 2011), and the industry register of the actors involved. Building on the literature related to cultural repertoires and categorization, we analyse the way dominant organizations combine different resources, namely values and concepts, for their own ends (Weber and Dacin, 2011). We also highlight the political use of repertoires (Kellogg, 2011) for resistance by organizations seeking to reconceptualize the market itself. We examine the way actors change their cultural repertoire to challenge a certain conception of the market. Overall, this study addresses three main research questions: What resources do actors use to contest categorization and a certain definition of the market? What is the role of industry registers in the contestation process? How do actors draw on values and cultural resources to attain their goal?

Methodology

Empirical setting

The setting of our study is OTC markets, in the light of proposed regulatory change. Under pressure from politicians and negative public opinion in the aftermath of the subprime crisis, regulators and public authorities in developed countries have taken spectacular though as yet only preliminary steps towards regulation of OTC derivatives markets. The growing dependence of the whole financial sphere on OTC markets had gone unnoticed for years until the subprime crash suddenly turned the spotlight on this form of market, which had been quietly gaining dominance in modern finance (Huault and Rainelli, 2013). Among the most obvious issues revealed by the crisis, lack of knowledge of basic OTC market features such as their actual size, the exact number and nature of players, the number of transactions involved, the prices quoted, or the liquidity of the products traded came to be acknowledged along with the urgent need for improvement. This may explain why, in a collective move, regulators on both sides of the Atlantic have adopted an approach favouring displacement of as many OTC transactions as possible to organized markets. The September 2009 G20 summit explicitly stated the following: "All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, *where appropriate*, and cleared through central counterparties by end-2012 at the latest." Seen as a means "to tackle less regulated or more opaque parts of the financial system and to improve the organization, transparency and oversight of all market segments"[1], the philosophy of the coming regulations is to be implemented through the Dodd Frank Act in the US, which is still in the Commodity Futures Trading Commission (CFTC) consultation process. In Europe, the project has been developed mostly through MiFID II, the revision of the Markets in Financial Instruments Directive, also currently under European Commission consultation[2]. The aim is to ensure that

[1] MiFID Public consultation document 2011

[2] Appendix 1 provides an overview of the decision-making process in the European Union. Appendix 2 contains extracts from the Directive, its main objectives and relevant sections of the text regarding transparency and OTC markets.

"where appropriate, trading in standardized OTC derivatives moves to exchanges or electronic platforms", which, "at a minimum, would imply that trading on exchanges and electronic platforms becomes the norm when the market in a given derivative is suitably developed[3]".

The change intended by regulators is huge due to the size of OTC markets. The total *notional amounts outstanding*[4] of OTC derivatives stood at $708 trillion at the end of June 2011. Experts from TABB Group[5] suggest that "as much as $40 billion of annual revenues (excluding credit derivatives) [are] at stake in global OTC derivatives for the 20 largest broker dealers" and point out that the likely result of the proposed reform is a risk of compressed margins, and consequently threatened profitability for major players. Unsurprisingly, the industry's reaction has been to resist the regulatory projects; through multi-channel efforts, the incumbent players are seeking to hamper changes in the status quo as far as possible. A report published in 2011 by the TabbForum[6] states that 68% of dealers involved in OTC markets declare they are lobbying against the proposed OTC regulatory reform.

The consultations organized on both sides of the Atlantic provide relevant, publicly accessible data on the justifications large financial institutions put forward for pursuing this goal. In this paper, we propose to use this material to gain insight into the kind of discourse and resources needed for a powerful industry to maintain control over its environment when threatened by outsider-driven regulatory projects. Our main focus is on the use of cultural repertoires, values and categories in this battle, and the role they play in enabling the financial industry to counter criticism from regulatory bodies.

The research is based on a qualitative case study, which is appropriate for many reasons (Greenwood and Suddaby 2006, p.31). First, the process observed in these markets constitutes a complex social setting in which causal dynamics are not immediately apparent. Second, the object of analysis involves processes which are best studied through the use of inductive techniques. Contextualization and dynamic structuring of the worldviews of the people under study (Maguire, Lawrence and Hardy 2004; Lee 1999, p.43) are thus of critical importance. We also chose this case because it provided several benefits as a "theoretical sample" (Eisenhardt and Graebner, 2007; Khaire and Wadhwani, 2010). The time period covered includes a regulatory change which can be analyzed as an attempt to change the way OTC markets are categorized. This made it possible to analyze how the markets' main actors, particularly big banks, make sense of regulators' categorization and how they accept or reject it. Our case is also a good illustration of the use of cultural repertoires in resistance to change, as embodied in the disputes over categories, specifically concerning the definitions of products and markets. Finally, the case studied is particularly appropriate because due to the recent crisis and various public initiatives, banks, experts, regulators, and the media have no hesitation in expressing themselves, and a large number of texts contain their views and arguments on the contributions and limitations of future developments.

Data sources

Our first objective is to offer a description of OTC markets and their recent developments in order to improve understanding of our subject. We then attempt to put forward the views and types of arguments that agents use. To achieve these objectives, we used several sources of empirical evidence, mainly textual sources, which can be divided into three main categories.

Archive materials. We consulted many types of official documents published by national and transnational organizations, such as the studies by the Bank of International Settlements and the International Organization of Securities Commissions (IOSCO), an association of organizations that regulate the world's securities and futures markets. We also tracked down reports and white papers issued by consultants and think tanks, to better understand the OTC market context, confirm the main recent events in those markets, and have textual accounts of debates and discussions. We studied information,

[3] MiFID Public consultation document 2011.

[4] Bank of International Settlements Statistics, 2011.

[5] Founded in 2003, TABB Group is a financial market research and strategic advisory firm focused on capital markets. Its goal is to help "financial actors to gain an understanding of financial markets issues and trends". Their services are offered through research, consulting and the TABBForum. It frequently publishes commentaries on current events in the industry.

[6] European Credit and Rates Dealers 2011- Capital, Clearing and Central Limit Order Books, Tabbgroup.

texts, industry publications, and discourses from major actors' websites such as the International Swaps and Derivatives Association (ISDA) or TABB Group's TabbForum, all concerning the introduction of new rules. TabbForum is a discussion forum for the financial industry, where major financial actors publish their ideas about what is happening in the marketplace, and their opinions about the impact of new events, such as regulation, on the industry. It is a relevant source of data for this study, since it reflects major financial actors' main discourses and justifications.

MiFID consultation. We analyzed contributions to the public consultation organized by the European Commission in a document concerning the review of the Markets in Financial Instruments Directive (MiFID) from 08/12/2010 to 02/02/2011. The consultation's purpose was "to consult market participants, regulators and other stakeholders on possible changes to the regulatory framework established by MiFID in the field of investment services and activities as well as markets in financial instruments". It invited responses to "provide important guidance for preparing a formal Commission proposal". Of the 282 publicly available responses to the consultation paper, the 279 that provided all the information needed for this study were carefully analyzed in order to understand how resistance to change is justified by respondents, what arguments are used and with what expected effect on the regulator. Not surprisingly, the responses devote considerable amounts of space to the issue of the electronic venues or platforms on which OTC derivatives would be exchanged once the regulation is adopted, and the associated transparency requirements. This is a central issue since it concerns the degree of both pre- and post-trade transparency to be imposed on so far opaquely trading OTC markets.

Table I gives a summary description of the contributions to the MiFID Consultation.

These materials provided textual accounts of debates and discussions. Close analysis of the responses provides interesting results, particularly as regards the main investment banks' generally hostile attitude to the proposed regulation and the means they use to resist unwelcome change. As these large financial institutions are at the core of OTC markets and are involved in most of the deals struck on those markets, the consultation responses provide a rich database to observe resistance to the new regulations, and to study the discourses, justifications and values used for that purpose.

Finally, informal discussions with an ISDA member and a MEP's assistant helped us understand their respective views of progress in the MiFID legislative process.

Press articles. To review press articles, we used the Factiva database that contains business news collected from 14,000 international media sources. A total of 150 articles from the years 2008 to 2011 were selected for our database, beginning with searches using the terms "OTC markets"

Table I. Responses to the 2011 MiFID Consultation Paper

	Registered organization or Individual[a]	Public Authority	Total
Total number of responses	137	22	279
Average number of pages	15.7 pages	19 pages	16 pages
Standard deviation	*18*	*15.7*	*17.82*
Average percentage of the response devoted to either venues/platforms or transparency requirements for OTC products (words)[b]	7.13%	9.84%	7.35%
Standard deviation	*0.052*	*0.076*	*0.113*

a. Although participants in the consultation could register as organizations or individuals, all the entities registered as individuals are in fact organizations. As banks and associations are thus included in both categories, all the statistics presented here are based on the total for both.

b. Number of words devoted to questions 8 to 12 or 37 to 42 of the consultation, divided by the total number of words of the response. For the precise wording of consultation questions see Appendix 4.

and “regulation”. These documents enabled us not only to retrace the main events (see appendix 3), but also to focus on the representations and discourses of major investment banks and regulators, regarding OTC markets and recent developments regarding their regulation.

Data analysis

Our analysis was conducted in several stages. Taking the press articles as our basis, we first arranged the data in order to identify the main actors and events in OTC markets from 2008 to 2011. We then set out to capture the “justificatory accounts” of the various actors (Greenwood and Suddaby, 2006; Huault and Rainelli, 2009, 2011) involved in OTC markets and their evolution. We focused on an initial set of narratives from the MiFID consultation, subsequent ISDA comments on MiFID and articles published on the TabbForum, reviewing them carefully and using content analysis to bring out two main fronts in the banks’ resistance to any change: 1/ debates about the virtues of transparency, 2/debates about the nature of the market. We then used the other data sources to verify these recurring themes. In a final stage, we account for these justifications in terms of cultural toolkits, and contrast the industry register used to fight regulatory change with the register usually mobilized in the financial field.

Case study

OTC markets: Challenging the virtues of transparency

The main front opened by the proposed regulation regards the kind of electronic venues on which OTC products should be traded once the reform is adopted. Since the adoption of MiFID I in Europe, financial instruments can be traded either on traditional stock exchanges, called Regulated Markets (RMs), or on electronic platforms called multilateral trading facilities (MTFs), which since 2007 have taken significant market share from the traditional stock exchanges. MTFs allow eligible contract participants to trade a variety of securities via electronic systems operated by market operators or large investment firms. As well as an obligation to establish “transparent and non discretionary rules for fair and orderly trading[7]”, MTFs must meet pre-trade and post-trade transparency requirements. In particular, they must disclose current bid and ask prices and the depth of trading interest at those prices, except for orders of a specific size or type; this places them under the same kind of obligation as any regulated market, “except where justified by the specific nature of the MTF”. As regards post-trade transparency, MTFs must disclose the price, volume and time of the transactions executed through their systems, with possible exemptions that must be duly justified. Requiring OTC derivatives trading to move to electronic platforms raises the question of whether the MTF “regime”, with its post-trade and especially pre-trade transparency obligations, is suited to the kind of products usually traded OTC.

Transparency as a contested value for OTC markets

As regards the venues on which so-far OTC contracts should be traded in the future, the regulators wish to create specific platforms, called SEFs (Swap Execution Facilities) in the proposed US reform, and OTFs (Organized Trading Facilities) in the European Commission Proposal. The debate then focuses on the transparency requirements applicable to these facilities. Post-trade transparency at first entailed limited debate - no one seemed to expect OTC markets to be able to escape that obligation in the long run, although the debate reignited later. But pre-trade transparency became the “hot topic”. The MiFID proposal is that each venue “would be required to make its quote both in terms of price and volume available to the public”, suggesting that the OTF regime is not meant to be significantly different from the MTF regime in terms of transparency obligations. Amendments seem possible, however. The Autorité des Marchés Financiers (AMF-– France’s equivalent of the SEC), for example, suggests a distinction between a sort of “supra-OTF regime”, for which

> “requirements (governance/organization, multilaterality, pre-trade transparency etc.) should be very demanding, and “regular” OTFs, primarily aimed at trading in less liquid financial instruments”.

In a long, detailed report, the IOSCO concludes that both more structured and less structured platforms are necessary, according to the liquidity of the derivatives targeted. Opponents to overstringent regulation, meanwhile, plead for as

[7] MiFID I, art 14.

much flexibility as possible in the electronic trading facilities. According to the January 2010 Tabb report, the legislative proposal to move OTC markets to multilateral trading venues met with

> "more resistance from the major dealer community, than any of the other (financial regulation) proposals", (Tabb Report, January 2010),

a situation the report's authors explain by

> "the resistance to adopting any mechanism that attempts to pierce the veil of opaque pricing currently enjoyed by major dealers" (Tabb Report, January 2010).

This is reflected in the ISDA's insistence that the OTF regime must protect the existing diversity of models for negotiating and executing derivatives trading. It warns that

> "if the OTF regime is inflexible in design and/or promoted too aggressively for products currently traded OTC", (ISDA-MiFID consultation)

- meaning, if the OTF regime requires stringent pre-trade transparency - then the market would

> "concentrate into a narrower range of products, hampering market participants to manage risks appropriately and conducing to loss of market efficiency."

The ISDA is joined in this position by the whole industry, various representatives of which devote a significant portion of their response to the consultation to this issue, as the following quotations illustrate:

> "The pre-trade transparency requirements may play against the market" (ABBL- Association of Bankers Luxembourg- MiFID Consultation)

> "It is considered that trade transparency is not necessary for structured financial instruments as proposed by the European Commission" (ABI- Association of Italian Bankers- MiFID consultation)

> "The public transparency criteria associated with organized venues could prove problematic for market participants" (British Bankers Association (BBA) - MiFID consultation)

> "Pre-trade price transparency is hard to force" (British Bankers Association- MiFID consultation)

> "The EBF opposes the introduction of a pre-trade transparency regime for instruments that are traded OTC" (European Banking Federation- MiFID Consultation)

The very principle of the legislative proposal requiring investment firms executing OTC trades to provide "quotes to a large number of investors at a price close to market value from comparable instruments traded on organized venues" is contested by some:

> "In general terms transparency in markets can help to build confidence, by ensuring that participants have access to information. However, there are products and markets, which are so illiquid, that revealing trade information could actually be detrimental to buyers and sellers. We have to balance the benefits of transparency versus the potential downsides". (Citi- MiFID consultation)

Recent posts on the TabbForum have also argued that the "regulators' aggressive push for near-total transparency" carries with it a "heavy burden of unintended consequences". Larry Tabb, the founder of TABB group, writes for example that it will shift the market toward an agency model where the banks themselves do not hold inventories of products for clients. And as banks bear less risk, more risk will be shifted to investors and issuers. Another contributor to the TabbForum, Andy Nybo[8], expresses his views very directly:

> "Let's also admit that capital markets must operate, to some degree, like a casino where risks are taken, firms go bust from time to time and investors must protect themselves via title to their investments and by avoiding over-concentration of brokerage relationships. If we try too hard to protect all the participants from each other, especially during the trading process, end investors will have to pay the heavy insurance premiums that this protection requires".

The proposed legislation is also depicted as irrelevant given the specificities of the products traded on OTC markets. The ISDA for example contests the term "quote", at least for the more structured (in other words less standardized) products, and proposes that the price of OTC derivatives should be seen as a price for a

[8] Principal and Head of TABB's Derivatives practice, 24 April 2012.

> "solution"

which can

> "take weeks, if not months to finalize".

Highly bespoke products have

> "by definition no benchmark price"

and apparently identical products might differ in price according to the "perceived creditworthiness of the counterparty":

> "A price will always reflect the situation at the time it is made and therefore will not necessarily be comparable".

Overall, the financial industry's defence against pre-trade transparency obligations for would-be OTC markets consists in demanding maximum flexibility for the regimes governing venues on which OTC derivatives will be traded. As the aim is to preserve opacity on some segments of these markets while fostering greater transparency on the segments where it already exists, the proposals from the consultation generate a proliferation of acronyms (MTF, SEF, OTF), regimes (see e.g. the AMF notion of a supra and regular regime for OTFs) and product definitions (structured to different degrees along various dimensions, with special focus on pre-trade transparency requirements), reflecting the demand for flexibility from an industry trying to escape mandatory requirements as far as possible.

Transparency in the cultural repertoire of the financial industry

As we have seen, the regulators' move to turning OTC markets into organized markets originated in discovery of the drawbacks of OTC derivative opacity in times of financial crisis. More implicitly, it also builds on the usual cultural repertoire of finance, the financial theory of efficient markets, which since the early work of Louis Bachelier in 1900 has provided the paradigmatic framework for financial models' theorization and financial innovation. Transparency enjoys the positive status of a virtue in this paradigm, since it is a prerequisite for market efficiency. In short, transparent markets are presumed to provide free and equally accessible information to all investors, allowing them to trade in fair conditions. Transparency thus fosters liquidity, with a large number of investors willing to enter into a large number of transactions, and market competition ensures that privately held information is rapidly translated into prices via the actions of actors buying or selling on the basis of this information. This is how markets attain informational efficiency (prices reflect all available information at any time), which transforms into general efficiency (markets provide economic agents with trustworthy signals on the economic fundamentals). Non-transparent markets, in contrast, nurture information asymmetries which destroy trust in the fairness of transactions and tend to threaten the market's very existence (Akerlof, 1970) by discouraging market participation. In identifying the opacity of OTC derivatives markets as a flaw warranting remedy, the regulators are in line with the classic financial theory paradigm, which derives from a view of ideal financial markets largely inspired by the Walrasian auction market model. This paradigm has been taught all over the world over the last fifty years and provides the theoretical basis for most financial industry practices. As a result, arguing against transparency to fight unwelcome regulatory change is an uncomfortable stance for the industry. It involves demonstrating that transparency is not always a virtue and can in fact, in contradiction to the usual cultural repertoire, have negative effects on market efficiency. While respondents to the consultation have no hesitation in making this assertion, they find themselves short of theoretical resources to back up their opinion. The observed tactic for escaping this difficulty is to invoke the specific nature of OTC markets. A good deal of such arguments consist in emphasizing the difference between OTC markets and more 'traditional markets' or stock exchanges, in order to convey the idea that the standard theory is inappropriate and regulators are wrong to try to force ill-suited mandatory requirements on markets that are different in nature.

The argument of the specific nature of OTC markets

The issue of market nature

The typical attitude of major investment banks towards the proposed regulation of OTC derivatives markets is systematic resistance against change to the status quo, and accordingly their response to the MiFID II consultation document not only explicitly covers technical matters but also questions the relevance of the reform's general goal. In opposition to regulators such as the SEC Chairman who would like derivatives rules to reflect the virtues of the current equities market, *i.e* competition, wide access, liquidity and transparency[9], the banks repeatedly contend that OTC markets belong to a different species of market, and obey a qualitatively and structurally different logic.

> "We are concerned that the approach proposed does not fully take into account the *nature* of the OTC derivatives market. We feel it is essential to understand that execution mechanisms for OTC products must be appropriate" (Deutsche Bank-MiFID consultation).

> "We support the development of a formal regulatory regime, as long as it is sensitive to the nature of the market" (ISDA-MiFID Consultation)

> "There have not been, to the best of our knowledge, any serious academic studies demonstrating that the transposition of the equity model to OTC derivative products will be economically more efficient than the current trading model" (BNP-Paribas- MiFID consultation)

Failure to recognize the "specific nature" of OTC markets, the industry argues, results in regulators' overlooking the fact that on OTC markets, transparency is likely to impair rather than improve liquidity. Concurring with a view expressed in the press before the MiFID consultation,

> "By moving OTC products onto exchanges, we would expect to see a reduction in liquidity that may negatively impact the sought-after price transparency," (Bruce Collins, deputy chairman of Tradition, an interdealer broker based in London) (Source*: Dow Jones Newswires*, 14-5-2009)

respondents to the consultation express concerns over the impact of transparency requirements on market liquidity:

> "Too much transparency will create cost, noise and, as discussed, could have a negative impact on market liquidity, in particular for large OTC trades" (Deutsche Bank- MiFID Consultation)

> "Transparency requirements can result in decreases in order/transaction size and increased trade frequency. These can be signs of an inefficient market, as they can be the result of the unwillingness of market participants to perform effective risk transfer functions" (BBA – MiFID consultation)

The general idea is that requiring too much transparency on OTC markets would in fact reduce incentives to trade OTC products for both buyers and sellers, with a knock-on decrease in liquidity on the markets and consequently a loss of efficiency:

> "Mandatory trading on exchanges without the appropriate flexibility and exemptions could lead to a reduction in competition, a lack of innovation to meet end-user needs, a drying up of liquidity during periods of market stress, a reduction in market efficiency and an increase in costs as end users have to execute a larger number of smaller trades to avoid adverse price movements" (BBA-MiFID Consultation)

> "Enforced transparency requirements could have a detrimental impact on liquidity and potentially the availability of the products to investors as banks would be reticent to trade" (BBA-MiFID)

The idea that on OTC markets, lack of transparency, not to say opacity, provides the necessary incentive to compete, innovate and trade not only runs against the traditional industry register – the classical paradigm of financial theory - but also sketches out an unorthodox mechanism for which no systematic theorization is proposed in the consultation responses and no empirical proof is provided. The consultation responses basically agree that given their "specific nature", OTC markets have more to lose than gain from more stringent transparency requirements, but vary in their explanations of why this should be so. Some insist that the bespoke nature of OTC-traded products makes bilateral transactions necessary:

> "It is also important to understand that the main use of the OTC FX market is to allow corporates to hedge future exposures. They therefore require an ability to trade against specific dates or to cover specific, changing circumstances. Because of the bespoke nature of these transactions it is crucial that the dealer market retains the ability to trade with each other in a bespoke manner. Failure to do this will lead to significant risk mismatch and large PandL swings". (BBA- MiFID Consultation)

[9] Source: Financial Times; 23.9.2010

Larry Tabb also states on the TabbForum that although shifting OTC derivatives to Swap Execution Facilities should increase the turnover of fairly illiquid products, it will reduce the customizability of these products.

As bilateral trading contradicts the notion of a publicly quoted price based on aggregation of supply and demand (reflected in the name MTF, for Multilateral Trading Facilities), this argument indirectly yet forcefully contests the inherent virtuousness of transparency in exchange trading. Others emphasize the current illiquidity of some OTC markets and claim that transparency is not welcome on illiquid markets, again for various reasons:

> "When an instrument becomes illiquid, it should be allowed to trade OTC to ensure continued markets in that instrument." (BBA-MiFID Consultation)

> "Indeed it could include a vast number of illiquid fixed income instruments, and also securities that may have been targeted as a bespoke transaction or not intended to be freely traded in the market, in relation to which enforced transparency requirements could have a detrimental impact on liquidity and potentially the availability of the products to investors as banks would be reticent to trade them." (BBA-MiFID Consultation)

> "The introduction of a prescriptive pre-trade transparency regime could well undermine the functioning of OTC derivative markets, given that there would be a disincentive for liquidity providers to publish prices, particularly on more illiquid products" (ISDA-MiFID consultation)

> "Moreover, the products themselves can be quite illiquid, even those considered more vanilla (eg rates options). Disclosure of the transaction to the market could harm clients since the market would immediately be able to ascertain the client position and move against it, while at the same time likely breaching client confidentiality" (ISDA-MiFID Consultation)

The specific nature of OTC markets is also invoked to assert that besides being potentially harmful, reforming transparency requirements is useless because market players are not retail investors but professionals or "specialists", and for such specialist operators transparency issues do not take the same form as on Walrasian markets.

Markets for specialists

According to many respondents to the consultation, one key feature of OTC markets is that they are of a

> "professional nature (exchanges often have a significant retail level of participation)" (BBA-MiFID consultation).

Accordingly, transparency requirements intended to protect retail investors on organized markets make much less sense on OTC markets, where they can actually be detrimental:

> "We would contend that the proposition that what works in the equity market, where retail participation is significant, must work (or must be able to work) in the non-equity markets, which are predominantly wholesale in nature, is flawed" (Icap-MiFID Consultation)

> "Finally, one should keep in mind that the more transparent the markets, the more difficult it would be to limit their access to all sorts of investors. It may not be wise to let retail investors feel as if it would be good for them to invest in derivative instruments because they are traded on an exchange (or trading platform)" (ABBL Bankers Luxembourg- MiFID consultation)

Certain respondents even consider such requirements useless, as professionals, institutions and specialists have the resources to access relevant information.

> "Market participants are principally institutional and professional in nature and are able to access pre-trade transparency through multiple venues and formats. As a result, end users typically have more data than market makers" (BBA-MiFID Consultation)

> "OTC derivatives are a wholesale, inter-professional market and all interested parties have ready access to the information they require" (BBA-MiFID Consultation)

Overall, analysis of the industry responses to the MiFID consultation evidences strong resistance to change, sometimes expressed bluntly, presenting OTC markets as part of a "brave new world":

> "There are many reasons why clients prefer to trade derivatives OTC in certain

> circumstances, including pricing, confidentiality and operational ease. We do not believe that reducing this consumer choice will represent a positive development for the market."

> "The wide range of sources currently available has emerged specifically as a response to the diverse and idiosyncratic nature of the OTC markets" (BBA-MiFID consultation)

As the proposed reform draws its main arguments from the classic paradigm of modern finance, financial institutions fighting mandatory transparency requirements find themselves cornered into a position where, having asserted that there is no need for more transparency on OTC markets, they have no legitimate cultural repertoire to back up their position. To get out of this corner, they refer to the specific nature of OTC markets, asserting that the mechanisms linking transparency, liquidity and efficiency on those markets differ from the theory applicable to Walrasian markets. In the empirical material we study, the specificities of OTC markets are described in many different ways, but no consistent theory is proposed as regards the distinctive features of "specialist" markets and the mechanisms needed for them to function satisfactorily. The specificity argument is mostly put forward in order to emphasize the irrelevance of the proposed reform; this is ultimately clearly reflected in the battle over the categories proposed by the regulator.

Contesting the relevance of the standard categories

The principle of the MiFID II proposal is that once it is adopted, all "eligible" OTC derivatives should move to organized platforms and be cleared through a clearing house. This should take place, "where appropriate", "when a market in a market derivative is suitably developed", and it should concern all "standardized OTC derivatives". As all these expressions require further definitions, the major industry players devote significant amounts of space in their consultation responses to contesting the definitions and categories proposed by the regulators.

The ISDA, for example, discusses at some length the difficulty of defining which OTC products would be "suitable", or "eligible" for specific pieces of regulation. First, the ISDA advocates,

> "The ssessment of whether a derivative is suitable for trading on a particular trading venue should be made separately to the assessment of its eligibility for central clearing".

As regards trading on a venue, it seems that contrary to the regulator's assertion, product standardization would not provide a clear-cut criterion:

> "It is not always appropriate for derivatives trading to take place on organized trading platforms even if transactions have been become relatively standardized in some respects".

Furthermore,

> "A contract might exhibit the necessary standardization for clearing, but nonetheless be unsuitable for trading on a particular venue, whether Regulated Market, MTF or OTF."

Liquidity is not considered any better as a criterion, because

> "derivatives trade far less frequently than securities, such that many products will not be suitable for trading on a particular venue".

Moreover "a liquidity criterion would be difficult to administer in practice" and the ISDA warns regulators that if they stick to the idea of including a liquidity threshold in the assessment of whether a product should be traded on a venue, the exercise would be fraught with difficulties. It insists the threshold should be:

> "set at a realistic level that differentiates between products, capable of being calculated and predicted, subject to periodic review and able to accommodate temporary changes in the market".

The argument that complexity is an equally irrelevant benchmark for defining categories is emphasized several times in the ISDA, BBA and other investment banks' responses:

> "a false link is sometimes made between product complexity and product risk, which leads to the illusion that complex instruments are automatically high-risk instruments".

The same example, described at length in many banks' responses, is intended to demonstrate how product complexity in OTC derivatives markets often results from products being designed to reduce risks for the customer, which means there is no call for specific risk protection.

Overall, the arguments developed seek to undermine the categorization proposed in the legislation by depicting it as irrelevant and/or impossible to implement in practice given the specific nature of OTC markets. The various criteria of levels of standardization, liquidity or complexity are presented as inoperational, creating a sense that the regulators' proposed categorization, which follows the classic paradigm of finance theory, does not fit OTC products. Suggesting a redrafting of article 7 of the MiFID, the ISDA[10] tellingly proposes:

> "removing the references to 'depth of trading interests' and 'on a continuous basis' or qualifying both by inserting the phrase 'where appropriate'. This would enable an OTF operator to determine the appropriate pre-trade information to be made available to clients, based on the needs of those clients."

To summarize, the empirical material gathered from the publicly available responses to the MiFID consultation provides evidence of the justificatory resources a powerful industry uses to resist unwanted regulatory change. The major players of the field come out against the regulators and their position backed by the classic paradigm of financial theory, predicting dire consequences if the regulation is implemented. They support their view by reference to the specific nature of OTC markets, for which they argue neither the standard theory nor the standard categories apply. Our evidence shows how the battle over regulation requires interest groups, to be capable of using selected items of cultural material to award or deny legitimacy to the concepts used for categorization or assigning value. More fundamentally, we evidence the way the financial industry attempts to resist regulatory change by creating incommensurability. OTC markets, they assert rather than demonstrate, cannot be considered with the standard categories and concepts, and must be understood as incommensurable to more traditional financial markets. They have their own irreducible identity, as markets for specialists that emerge naturally in response to demand from market players, and must not therefore be distorted by unwanted regulation. Interestingly enough, despite the number and length of the documents gathered in response to the MiFID consultation, we observe no consistent argument on the definition of the market for specialists. We find a great variety of arguments converging towards the notion that regulation is inappropriate, but with very little discussion of the general mechanisms driving the operation of OTC markets. Attempts at theorization on the desirability of letting OTC markets function as currently, although developed elsewhere in its documentation, are almost totally absent from the ISDA's lobbying efforts against MiFID. The traditional industry register is rejected, but no alternative is proposed.

Discussion

This paper seeks to build on recent work focusing on the socio-political origin of categorization, and how it involves political struggles. In particular, we examine the process by which attempts at categorizing are contested. To gain insight into this question, we analyze the way incumbents draw on cultural resources and use or challenge their industry register to resist moves to change the nature of the markets in which they operate.

First, our case study highlights the political nature of categorization, an issue that echoes the work of Lounsbury and Rao (2004) and Zhao (2005), among others. We depict the attempts at resisting a new category as a way for incumbents to retain their situation. We agree with Lounsbury and Rao (2004) that existing categorization is shaped by the interplay of interests, and that powerful actors tend to counteract new categorization and attempt to preserve the status quo (which favours them). Categorization thus appears as implicated in a system of power (Fligstein, 2001) where incumbents strive to control the categorization system and definition of desirable or undesirable categories, in order to consolidate their position (Zhao, 2005).

Additionally, our results focus on the processes by which actors resist categorization. Using the literature related to cultural repertoires, and more specifically industry registers, we show that actors draw on values and justifications to achieve their goals. We stress the political use of repertoires for resistance by organizations interested in contesting categories and shaping the market. Our case study confirms that resistance to the new categorization relies mainly on asserting the specific

[10] February 15, 2012 , ISDA paper: MiFID/MiFIR and Transparency for OTC Derivatives.

nature of OTC markets, and disputing the relevance of the financial sphere's traditional industry register to those markets. We specifically analyze the argumentation apparatus developed by regulation opponents as an attempt to create incommensurability. This allows us to build on Espeland and Stevens' view (1998) that incommensurability can be used to make comparisons and standardization impossible. Other scholars have observed this process in several contexts (*e.g* Espeland, 1998; Huault and Rainelli, 2011; Porter, 1996, Zelizer, 1985) and have analyzed the resistance sometimes encountered by attempts at commensuration. For example, land was considered incommensurable by the Yavapaï people whose territory was threatened by a proposed dam (Espeland, 1998). The way bureaucrats represented Yavapaï interests in a rational decision model expressing the market value of the land was at odds with the core values of the Yavapaï. This study highlights the importance of forms of value and shows that efforts to impose a categorization can "revitalize the salience of incommensurable categories" (Espeland, 1998: 210). Similarly, Huault and Rainelli (2011) analyze the attempts of financial actors to create a new market for weather derivatives, examining how they try to impose their metric on other spheres of economic action that did not originally share it. They highlight the different value systems at stake, each rooted in a different worldview, ultimately showing that different metrics continue to co-exist on the market. In both cases, the notion of "incommensurability" relates to the conflict between different modes of valuing (Beunza and Stark, 2004, p. 373) and the confrontation of different paradigms (Kaplan and Murray, 2010).

However, what we observe in this empirical study is an industry innovatively creating incommensurability with its own standard industry register. Moreover, while financial actors resist the new categorization by contesting the traditional values of the financial field, they do not put forward any alternative cultural repertoire. Categorization is resisted, but with no consistent reference to another value system or industry register.

The main contribution of this research is its focus on the way powerful actors in a field resist categorization. While the literature on commensuration has devoted much space to analysis of incommensurability as a means of resistance for weakly-positioned actors in a field, we observe how powerful actors facing unwanted regulation also have to fight categorization to resist threatening changes. Our analysis reveals that the creation of incommensurables as a means to tackle such situations can take more than one form, and points to the link between forms of incommensurability and the status of the actors who attempt to instrument it.

One form of incommensurability creation fairly often depicted in the literature consists in attacking the legitimacy of the commensuration attempt by invoking higher-order alternatives, often moral values, and organizing the battle between alternative incommensurable worldviews (Espeland, 1998; Healy, 2004; Huault and Rainelli, 2011; Quinn, 2008; Zelizer, 1985). Another, which we observe in our empirical setting, seeks no support from existing paradigms, and invokes no alternative worldview as a basis for incommensurability. In fact the most striking feature of our findings is that claims that OTC markets are incommensurable, and therefore cannot and should not be subject to categories from the traditional industry register, are not supported by any attempt to draw on higher-order values or theories, be they moral or scientific. Our study thus identifies a form of incommensurability instrumentation that has received little attention in the literature, and is chiefly characterized by the absence of any clash between worldviews.

The fact that the claim of incommensurability we describe does not seem to involve confrontation of hostile worlds (Zelizer, 2011, p.357) has important consequences, which we believe can be usefully analyzed through the conceptualization provided by Boltanski and Chiapello (2005). In particular, the kind of resistance we observe, with its careful avoidance of any reference to an alternative paradigm, can be interpreted as what Boltanski and Chiapello call a *displacement*. "Displacement dispenses with reference to conventions, and assumes neither exteriority nor generality (…) Displacement is a matter of the local, the factual, the circumstantial (…) It escapes the constraint of justification of a wholly general kind, which assumes reference to a second level - precisely where in a logic of categorization, the convention of equivalence is situated" (2005, p.320). While categorization has to do with clarification, formalization and stabilization, displacement on the contrary feeds on self-nurtured ambiguity. Defining what is commensurate and what is not - using a fuzzy justification apparatus that goes against the traditional industry register - can therefore be viewed not only as a way to resist categorization or escape rules, but most importantly a way to escape the constraint of justification and defuse the critique. It clearly destabilizes regulators seeking to establish some form of value system.

Building on this, it appears that the specific form of incommensurability instrumentation we identify in this paper can be seen as an especially suitable strategy for powerful actors in a field. This bears links with the notion that categorization is sometimes contested because of the loss of elite discretion that it fosters (Espeland and Stevens, 1998, p.330). As the legitimacy offered by standardization diminishes autonomy and discretion is replaced by externally-imposed disciplined methods, "quantitative technologies" can be "resisted by those whose authority depends on expert judgement, character or informal knowledge" (Espeland and Stevens, 1998, p.331). Our work provides support for the idea that the creation of incommensurables as practiced by large financial institutions, rejecting categorization not in the name of higher order values or metrics but referring to undefined "specificities", is probably typical of the kind of strategies favoured by powerful incumbents.

Finally, our study raises the question of whether the creation of incommensurables in the form identified in this paper is sustainable in the long term. Will the financial industry eventually have to offer an alternative paradigm for OTC markets in order to efficiently resist unwanted future regulatory change? The answer depends on the extent to which this industry will be drawn by regulatory pressure and increasing public scrutiny from what Boltanski (2009) calls a *regime of domination* into a *regime of justification*. As Boltanski and Chiapello (2005, p.318) discuss, this regime "obliges people to clarify and limit the grounds for their conflicts" and, as a result, requires them "to sacrifice ambiguity, vagueness, uncertainty, that which is displaced in favour of that *which is stabilized through a process of categorization*".

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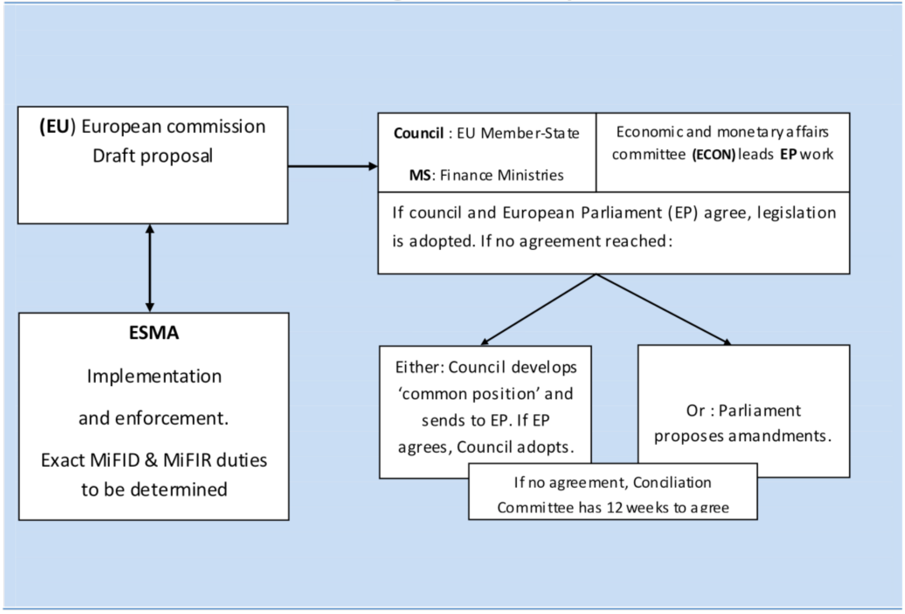
Appendices

Appendix 1: Decision-making process in the European Union

Decision-making in the European Union


(EU) European commission
Draft proposal
Council : EU Member-State
MS: Finance Ministries
Economic and monetary affairs committee (ECON) leads EP work
If council and European Parliament (EP) agree, legislation is adopted. If no agreement reached:
ESMA
Implementation
and enforcement.
Exact MiFID & MiFIR duties to be determined
Either: Council develops 'common position' and sends to EP. If EP agrees, Council adopts.
Or : Parliament proposes amandments.
If no agreement, Conciliation Committee has 12 weeks to agree

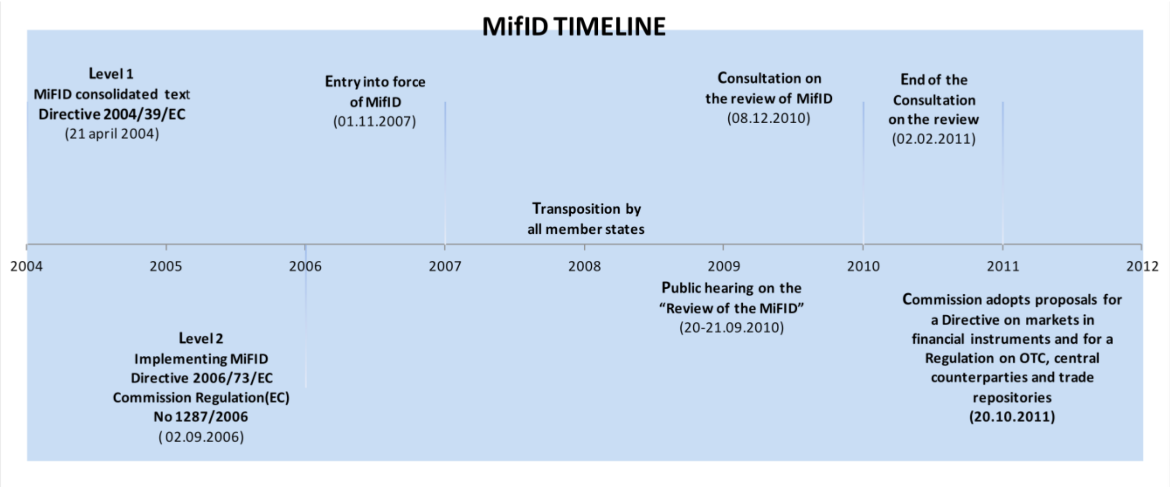
Appendix 2 : Directive of the European Parliament and of the Council amending Directive 2004/39/EC on the Markets in Financial Instruments Directive (MiFID)

Regulation of the European Parliament and of the Council on the Markets in Financial Instruments

Excerpts from the text regarding OTC markets and transparency

Objectives	Indicators of results and impact	Relevant sections and articles
In the light of the general objectives above, the following specific objectives are relevant: - Ensure a level playing field between market participants; - Increase market transparency for market participants; - Reinforce transparency towards and powers of regulators in key areas and increase coordination at European level; - Raise investor protection - Address organizational deficiencies and excessive risk taking or lack of control by investment firms and other market participants ABM/ ABB activity(ies) concerned	A report on the progress made in moving trading in standardized OTC derivatives to exchanges or electronic trading platforms; impact indicators should be the number of facilities engaging in OTC derivatives trading; and the trading volume of exchanges and platforms in OTC derivatives as opposed to volume remaining over the counter;	TITLE II: Authorization and operating conditions for investment firms Chapter II (pages 75-98) Section 3: Market transparency and integrity, Articles 31, 32, 33.

Appendix 3: MiFID 2 Timeline


MifID TIMELINE
Level 1
MiFID consolidated text
Directive 2004/39/EC
(21 april 2004)
Entry into force
of MifID
(01.11.2007)
Consultation on
the review of MifID
(08.12.2010)
End of the
Consultation
on the review
(02.02.2011)
Transposition by
all member states
2004
2005
2006
2007
2008
2009
2010
2011
2012
Public hearing on the
"Review of the MiFID"
(20-21.09.2010)
Commission adopts proposals for
a Directive on markets in
financial instruments and for a
Regulation on OTC, central
counterparties and trade
repositories
(20.10.2011)
Level 2
Implementing MiFID
Directive 2006/73/EC
Commission Regulation(EC)
No 1287/2006
(02.09.2006)

Appendix 4: The MiFID Consultation Paper, Wording of the questions

The MiFID Consultation paper is dated 8 December 2010 and entitled

Public consultation - Review of the Markets in Financial Instruments Directive (MiFID)

It consists of an introduction and 8 sections related to 8 different topics, each section comprising developments and numbered questions proposed for consultation:

1. Introduction.
2. Development in Market structures: Questions 1 to 26
3. Pre and Post Trade transparency: Questions 27 to 42
4. Data Consolidation: Questions 43 to 59
5. Measures specific to commodity derivatives: Questions 60 to 66
6. Transaction reporting: Questions 67 to 83
7. Investor protection and investment services: Questions 84 to 124
8. Further convergence of regulatory framework and of supervisory practices: Questions 125 to 141
9. Reinforcement of supervisory power in key areas: Questions 142 to 148

In the analysis, we focus on questions 8 to 12 from section 2 and 37 to 42 from section 3. The precise wording of these questions is as follows:

2. Development in Market structures:

(8) What is your opinion of the introduction of a requirement that all clearing eligible and sufficiently liquid derivatives should trade exclusively on regulated markets, MTFs, or organized trading facilities satisfying the conditions above? Please explain the reasons for your views.

(9) Are the above conditions for an organized trading facility appropriate? Please explain the reasons for your views.

(10) Which criteria could determine whether a derivative is sufficiently liquid to be required to be traded on such systems? Please explain the reasons for your views.

(11) Which market features could additionally be taken into account in order to achieve benefits in terms of better transparency, competition, market oversight, and price formation? Please be specific whether this could consider for instance, a high rate of concentration of dealers in a specific financial instruments, a clear need from buy-side institutions for further transparency, or on demonstrable obstacles to effective oversight in a derivative trading OTC, etc.

(12) Are there existing OTC derivatives that could be required to be traded on regulated markets, MTFs or organized trading facilities? If yes, please justify. Are there some OTC derivatives for which mandatory trading on a regulated market, MTF, or organized trading facility would be seriously damaging to investors or market participants? Please explain the reasons for your views.

3. Pre and Post trade transparency

(37) What is your opinion on the suggested modification to the MiFID framework directive in terms of scope of instruments and content of overarching transparency requirements? Please explain the reasons for your views.

(38) What is your opinion about the precise pre-trade information that regulated markets, MTFs and organized trading facilities as per section 2.2.3 above would have to publish on non-equity instruments traded on their system? Please be specific in terms of asset-class and nature of the trading system (e.g. order or quote driven).

(39) What is your opinion about applying requirements to investment firms executing trades OTC to ensure that their quotes are accessible to a large number of investors, reflect a price which is not too far from market value for comparable or identical instrument traded on organized venues, and are binding below a certain transaction size? Please indicate what transaction size would be appropriate for the various asset classes.

(40) In view of calibrating the exact post-trade transparency obligations for each asset class and type, what is your opinion of the suggested parameters, namely that the regime be transaction-based, and predicated on a set of thresholds by transaction size? Please explain the reasons for your views.

(41) What is your opinion about factoring in another measure besides transaction size to account for liquidity?

(42) What is your opinion about whether a specific additional factor (e.g. issuance size, frequency of trading) could be considered for determining when the regime or a threshold applies? Please justify. Could further identification and flagging of OTC trades be useful? Please explain the reasons.

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