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Regulatory Responses to the Financial Crisis from the Issuers' Point of View

Carmine Di Noia

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Index

- ✓ Issuers regulation and supervision: more harmonized but still very fragmented
- ✓ Increasing role of banks as issuers
- ✓ Macro and Micro Financial Crisis (Keep it simple, 2009)
- ✓ Increasing role of banks as issuers (again!): crowding out of non financial issuers?
- ✓ What we need
- ✓ Financial regulation and supervision
- ✓ Conclusion

Regulation and supervision

- ✓ More harmonized but still very fragmented
- ✓ The mad MAD (see ESME, Riv. Soc. 4/2009)

1. Notion of inside info: fatal flaw
2. Delay disclosure (if not misleading public)
3. Disclosing delay to competent authority
4. Internal dealing
5. Rumors
6. Group disclosure obligation

Member states and competent authority simply don’t care: Ita, UK, Fra, Spain, …

Cesr? See level 3 no-guideline

Regulation and supervision 2

- The obscure TOD (ESME again)
- Issuers disclosure obligation: everything different: what, how, when and to whom report
- Filing, dissemination and storage of corporate info: where is it? How to find info? Any public role?
- Disclosure obligation on the press
- Disclosure vs. approval of annual and half year report

Regulation and supervision 3

✓ MIFID: competition ok, investor protection maybe ok but:

1. Where are the prices?
2. What's left for the listing? (MTF are for listing or trading purposes)

✓ Prospectus: reign of uncertainty despite a Regulation.

1. Home country rule and opaque procedures of approval
2. Useless simplified procedures of document because no passport
3. No use of register of qualified investor for issuers direct offerings

Regulation and supervision 4

✓ The no-shareholder rights

1. Many rules to facilitate cross border shareholding but…
2. No definition of shareholder due to national jealousy of company law
3. No harmonization of record date
4. No shareholder identification
5. No common rule on diverging vote

New role of financial issuers

- Banks compete in raising funds on regulated markets: listed securities (equity and non equity) WERE MAINLY from banks; Implicit guarantee
- Bonds bought by retail and banks (!): Less transparency on bonds; Basle 1 and 2 asymmetry
- What would you buy if you were an investor?
- The listing of banks created bad incentives for managers. Unlisted banks: less problems, greater Tier1
- Private equity, venture capital buy distressed companies and list them: now the other way round. Less information available for retail investors. Investment funds are all listed

Bank financing (for corporate) should be alternative to market financing

Financial Crisis (Keep it Simple)

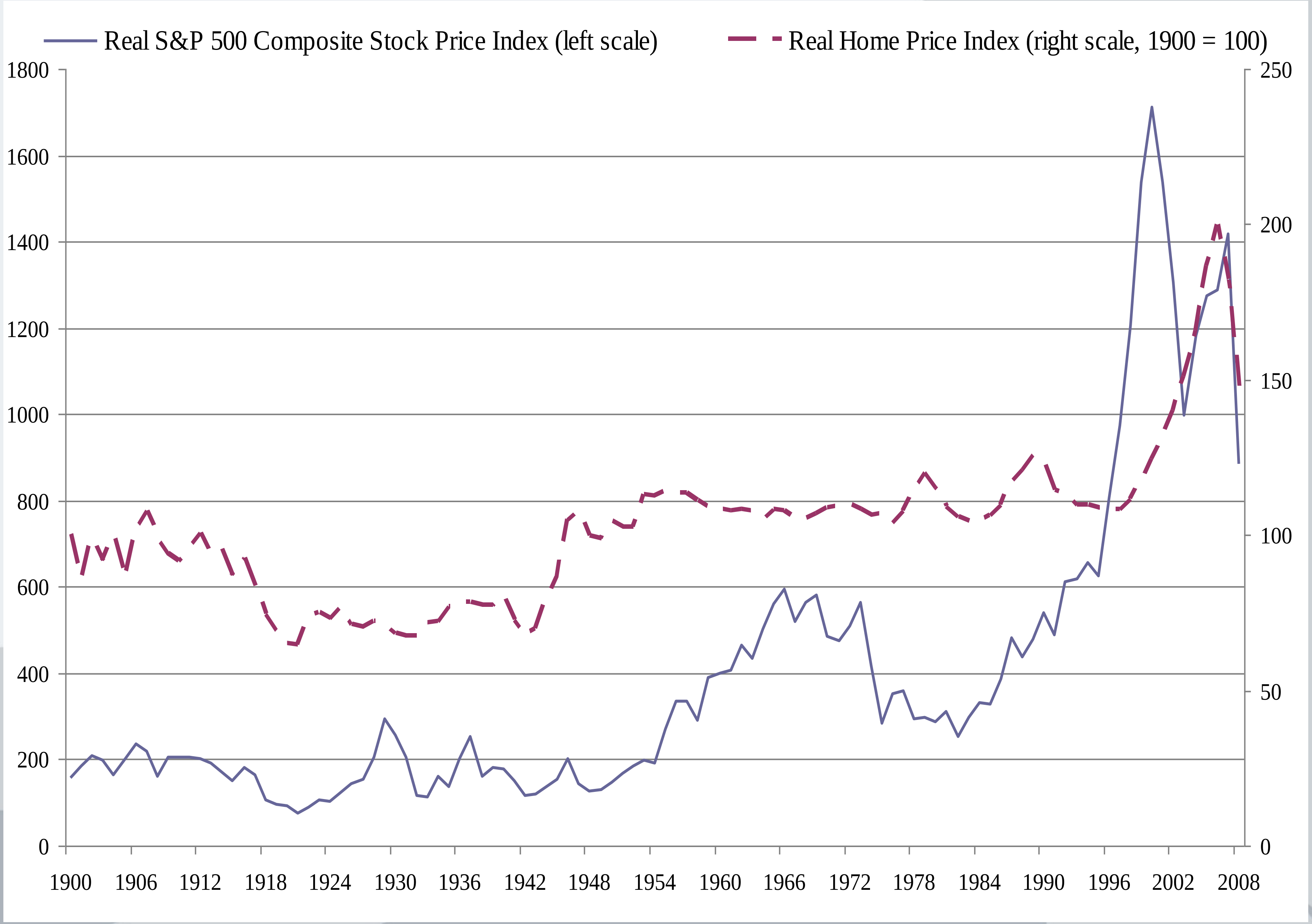
✓ Macroeconomic Causes

1. Global imbalance
2. Stock market bubble
3. House bubble

✓ Microeconomic reason

1. Excessive leverage due to Basle 1 and 2 (role and (EU and national) definition of capital, Ponzi game of CDS)
2. Loose supervision (SEC and European bank supervisors rushing to approve internal models)

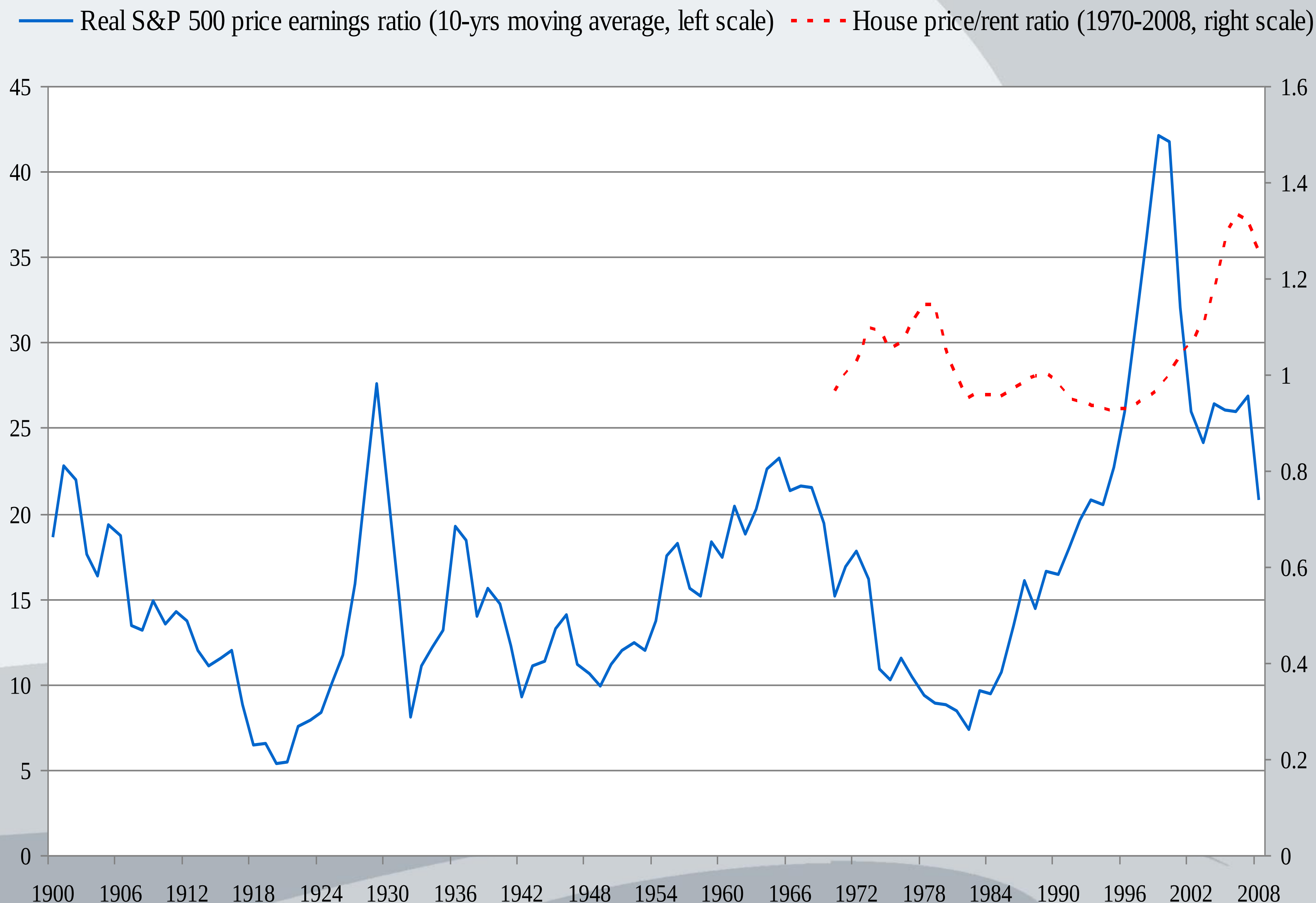
Stock Price and Home Price Indexes in the United States, 1900-2008



Annual data. For stock price index value for 2008 as of December.

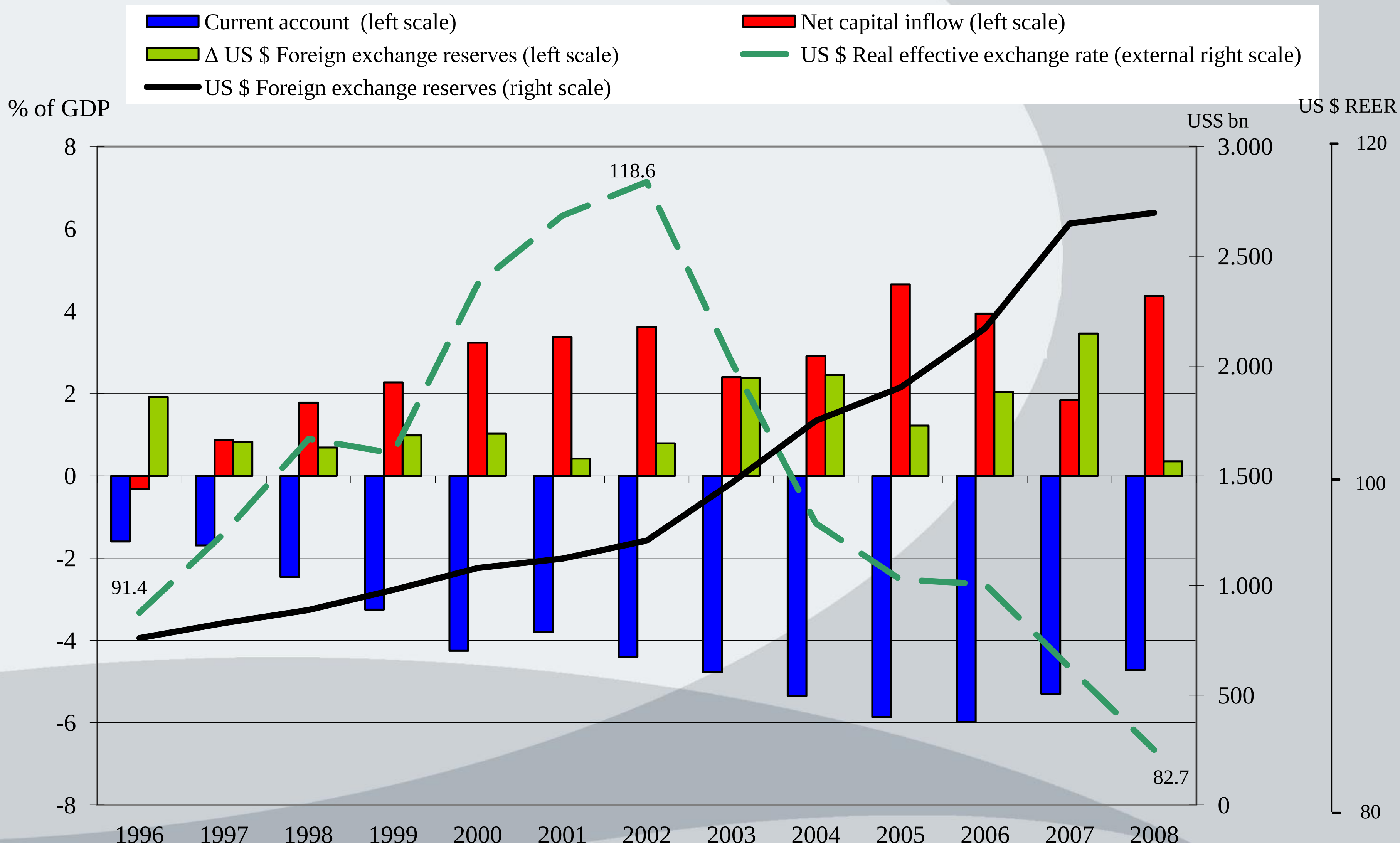
Data sources: own calculations based on Shiller 2009.

Price Earnings and Price Rent ratios in the United States, 1900-2008



Data sources: own calculations based on Shiller 2009 for price earnings and on Gros 2009 for price rent ratio.

US balance of payments, official reserves and real effective exchange rate (REER), 1996-2008



Notes: Net capital inflow calculated as residual. For real effective exchange rate, 100 = average of sample period.
Data sources: Bureau of Economic Analysis 2009 for current account and GDP; IMF 2009 for official foreign exchange reserves and real effective exchange rate.

Leverage and short-term liabilities of selected financial institutions, 2007

Institution	Total assets/equity	Deposits and short-term funding/total assets (%)
ABN Amro	33	78
Bank of America	12	73
Barclays	38	71
Bear Stearns	34	13
BNP Paribas	29	79
Citigroup	19	66
Credit Suisse	24	55
Deutsche Bank	53	80
Goldman Sachs	22	16
HSBC	17	74
JPMorgan Chase	13	68
Lehman Brothers	31	19
Merrill Lynch	32	29
Morgan Stanley	33	30
RBS	21	75
Société Générale	34	70
UBS	52	91
Avg. EU banks	33	75
Avg. US banks (excl. investment banks)	14	69
Avg. US investment banks	30	22

Data source: Bankscope, 2008.

New role of financial issuers 2

- ✓ Bail out of all banks (and AIG) but Lehman and hedge funds: terrific moral hazard
- ✓ What's the problem? Crowding out of non financial issuers, fake investor protection
- ✓ Banks compete in raising funds on regulated markets: listed securities (both equity and non equity) – and deposits – ARE ONLY from banks explicitly guaranteed or government-owned
- ✓ New "public" role of banks: "obligation" to lend, salary caps
- ✓ What would you buy if you were an investors? Even more bank deposits and securities

After crisis even worse

- Public insurance from only (part of) deposits to all liabilities
- Debate on systemically relevant institutions
- Mad review of MAD: *the issuer may be exempted from disclosing inside information in situations when that information concerns emergency measures being prepared in case the issuer's financial stability is endangered.*
- Mad review of prospectus
- Useless rules on rating: not IN regulation but OUT (from Basle 2, MAD)

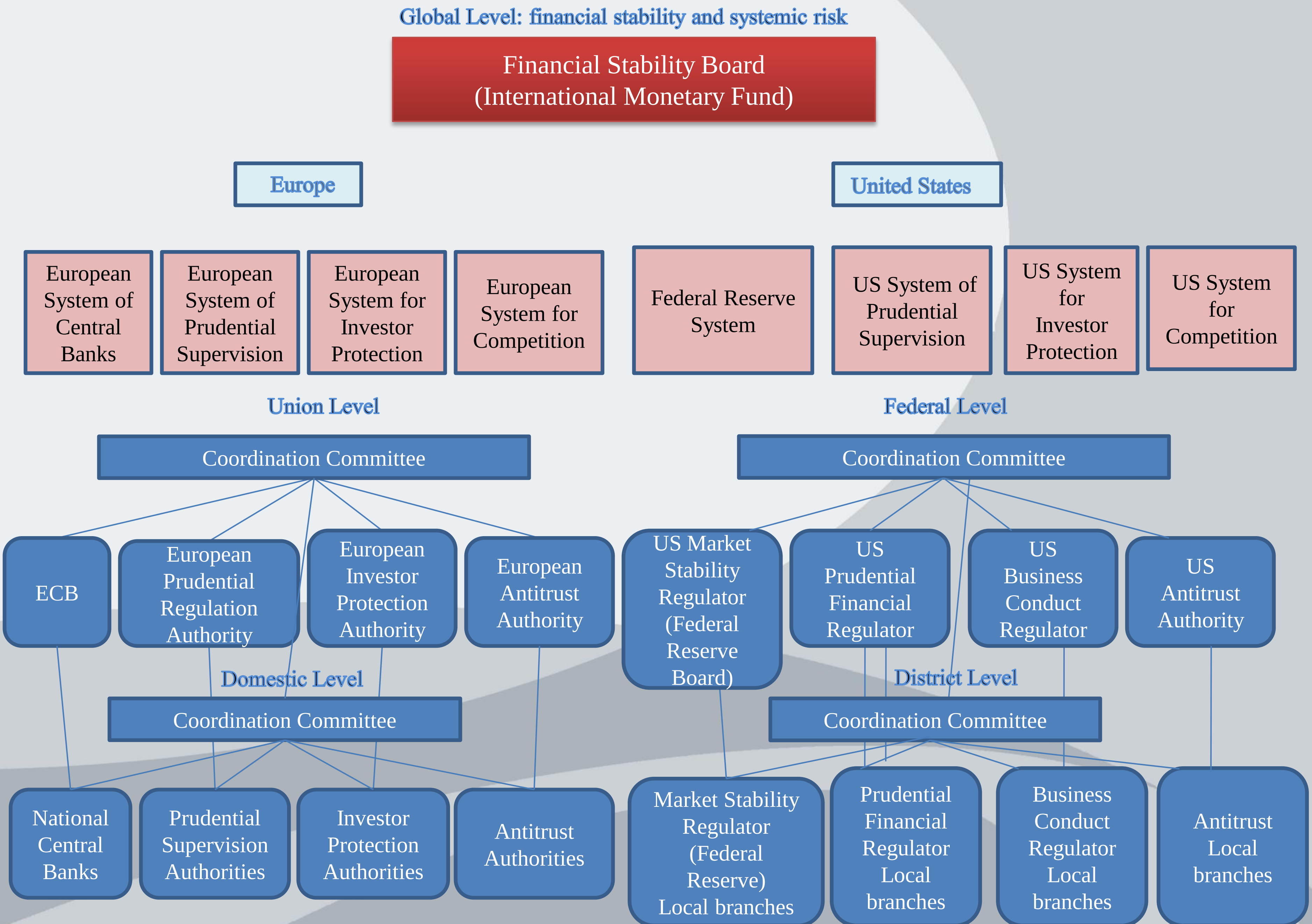
What we do need

- ✓ Integrated financial markets: even if still minimum harmonization directives, need of maximum harmonization rules
- ✓ Capital requirements: need of harmonized definition of shares
- ✓ Definition of shareholder
- ✓ Issuers disclosure obligations: what to do with controlling and controlled entities?
- ✓ Introduction of a simple, non-risk based leverage ratio to supplement risk-based capital requirement
- ✓ More disclosure on compensation of listed companies (limits on financial institutions)

Regulatory/supervisory structure

- ✓ Still high degree of cross-country diversity
- ✓ Different role and involvement of central bank in prudential supervision
- ✓ September 23 package: still based on banks, insurance, capital markets
- ✓ No real power (level 2) of agencies
- ✓ What to do for ESMA? NO: Shrd, VIII, IAS, IV and VII, CG recommendations, 2006/46,...
- ✓ Need of rulebook for issuers
- ✓ Need of standards but how if the board is all made by national authorities? (see Cesr letter to EU Commission on MAD review!)

A Global System of Financial Regulation



Conclusion

- ✓ EU regulatory status for listed companies and financial institution with national supervision
- ✓ No more national company and bank law?
- ✓ No more listed banks?
- ✓ …or let them fail?