

# **Ph. D. Examiner's Report**

**Candidate:**

**Katarzyna Parchimowicz**

**Title of Dissertation:**

**REGULATION OF GLOBAL SYSTEMICALLY IMPORTANT BANKS IN THE USA AND IN THE EU**

**Faculty of Law, Administration and Economics**

**University of Wrocław**

**2021**

**Examiner:**

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**Faculty of Law, Administration and Economics**

**University of Wrocław**

**Date of Report:**

**April 17, 2021**

Katarzyna Parchimowicz (hereinafter referred to as “the candidate”) has produced a very good dissertation. Although she has not yet reached the habilitation stage, the work already compares with the Ph.D. and S.J.D dissertations I regularly supervise and otherwise read here in the United States (US). With her apparent sound knowledge of the field, in both Europe (I defer here to my European colleagues) and her unusually strong knowledge of the complexities of US financial law and large financial institution regulation, coupled with her penetrating critique of the system we have developed for regulating systematically important large institutions, the candidate’s work provides a lucid and, in many areas, original contribution to the field, with many proposed improvements.

In this report, I will organize some of my comments according to the requirements of the Act of 14 March 2003.

### **General Observations**

I find the methodology adopted by the candidate to be entirely appropriate to the doctrinal nature of her study. She uses a comparative law methodology (the US and European Union (EU), leaving out China with sound reasoning). Her approach is dogmatic, focusing on that which is of systemic importance, and empirical (up to the beginning of the pandemic period). Her defined terms (for example “G-SIBs,” “regulators,” “legislators,” “supervisory discretion”) are well delineated (pages 15-16).

A few minor infelicities of English aside, the dissertation is clearly and well written throughout. The candidate’s sound command of English made it easy for me to read. This will have the added benefit of reaching a very wide audience—as should be the case given the global nature of the institutions addressed by the law and regulation of systemically important banks. Covering both the US and the EU, the candidate has defined her study within a manageable scope while also covering the two most important jurisdictions. This analysis is very valuable for European and American scholars and regulators alike.

The dissertation is also very well structured. The candidate begins with a taxonomy that one seldom sees in this field, namely an examination of the differences in funding and business models between the various global systemically important banks (G-SIBS) that are her primary subject. This approach is unusual: many scholars make the mistake, in my view, of assuming that these institutions are very homogenous when in fact they are very heterogeneous, different and dynamic or evolving entities. Having written myself on the subject after returning to the academy from some years in the industry, I am particularly attracted to such analyses, yet they are rare. Reviewing the candidate’s resume, it does not appear that she has worked inside one of the G-SIBs, yet she displays well an ability to understand their dynamics.

These large institutions present widely differing profiles which change significantly, for each institution, over time. What is remarkable in this candidate’s work, is that she appears to understand the dynamics from an “internal” and business perspective. I do not know if she has worked inside a large bank, for example, but her perception reveals more understanding of



how things really work and how risks really present themselves than I see with very many distinguished commentators. For example, it is very important to know that different institutions derive their funding and serve other institutions in very different way, because this greatly affects the risk profiles of such institutions and, therefore, the proper approach to their regulation and supervision.

Having identified well the nature of these institutions, the candidate is then able to analyze many of the origins of the Great Financial Crisis (GFC) of 2008. Even after all these years and a focus on the event itself, I learned more about the Goldman/Abacus event from the candidate's discussion (page 93), and about one of our chief competitors when I was in business, namely Bank of America (and Fortis) (pages 76-78).

With an understanding of why each institution faced peril, in many cases for different reasons from each other, we gain a deeper understanding of the strategies pursued by the Financial Stability Board, Basel Committee on Bank Supervision, Federal Reserve System, and EU regulators and their member nation counterparts.

Particularly helpful is the candidate's analysis of the various systemic indicators that should prompt greater supervisory focus (pages 115-116). We also are presented with a clearer analysis than one is used to seeing of the limitations and defects of the approaches that have been adopted. Regulators and supervisors tend to have this understanding, but it is not so evident among scholars and policy makers.

Next, the candidate explores and highlights the post-Crisis system(s) of regulation designed to prevent a future crisis. The key elements of this general system—capital buffers, leverage ratios, large exposure limits, the Pillar 2 powers, and the methodology of orderly resolution, are each delineated and analyzed in turn. The candidate then goes on to treat the system as a whole, which is itself a little novel, albeit it very important. Pillar 2 powers are usually addressed by scholars independently from orderly resolution; the candidate's approach is much more akin to how supervisors really think about applying the overall Basel standards.

This clear discernment of the field of options and actual implementation sets the stage for the candidate to promote her proposed solutions, mainly of supplementing the excessive generality of the regulatory framework with strong exercises of discretion by supervisors. In providing this normative aspect of her dissertation, the candidate is not sanguine; to the contrary she recognizes the limitations and dangers of supervisory discretion. This lends force to her arguments for making supervisory discretion work. I agree with the direction of her proposed remedies, but the dissertation also realistically makes it clear why they are not so easy to implement, and the candidate exhibits an understanding of those who would take a different view.

In summary, the dissertation is coherently structured and organized.



## Original solution to a scientific problem

It is difficult to write anything in the field of G-SIB regulation, one which has attracted many scholars, both economists and lawyers, in the wake of the GFC. The candidate's originality is displayed in various aspects of the dissertation.

First, as noted above, the candidate provides enormous insight into how large financial institutions really operate and how their risk profiles differ significantly from one to another. This understanding is a vital antidote to the "one size fits all" approach adopted by so many policy makers and politicians. Even when she addresses the "too big to fail" debate, the candidate does not fall into the facile trap of joining one side or the other, and she avoids doing so precisely because she understands that there are no simple means for averting the dangers of very large bank failure. Like this examiner, the candidate prefers to rely on nuanced solutions, coupling regulation with discretion for an optimal result. She advocates how we can learn to live with G-SIBs rather than try to eliminate them.

Second, and perhaps even more important and impressive, is the candidate's careful weaving of the interaction between prophylactic/precautionary rules and the application of orderly resolution standards. In doing so, however, the candidate retains a clear-eyed vision of the differences between the *professed* rules and how they are *really* and often *incoherently* applied. A result is an analysis containing fresh insights that reach beyond the rhetoric of published speeches and declarations of action. This applies to the candidate's critique of US SIB regulation, and it seems to me to be correct as far as EU regulation is concerned as well.

One of the areas in which the candidate adds insight is in the dimensions of discretion that regulators and supervisors possess. She identifies many areas where discretion could enhance the generality of regulations by adapting the regulations to the specific characteristics of particular institutions. In an ideal world, the combination of regulation and supervisory discretion would probably provide the right framework for ensuring that G-SIBs remain safe.

At the same the candidate recognizes the challenges associated with the exercise of discretion on the scale she advocates: the uncertainty and corresponding undermining of the Rule of Law that vague standards and changing actions present themselves to the regulated entities; the inevitable pro-industry bias caused by the "revolving door" between regulators and industry experts; and the pro-national bias that seems to result when regulators supervise entities based in their own countries and favor these over those headquartered elsewhere. The candidate offers various normative recommendations for countering these traps: adequate funding and other forms of compensation to regulators to encourage independence from the industry; external audits that can correct for supervisory failures; final decision-makers to resolve conflicts and competition between agencies; and greater transparency that would subject supervisory actions to public criticism.

Here, however, the candidate confronts an inherent shortcoming in the discretionary approach. Discretion can be used for good or evil, and just as one administration can use



discretion to impose stricter regulation, another administration can use that same discretion to deregulate. We have just seen this take place with the Trump Administration's reversal of many aspects of the Obama Administration's control over the financial industry. No legislation was needed, nor in some cases even new regulations. Yet the discretion of supervisors freed financial institutions from the restrictions of prior regulation and supervision. The Biden Administration is now doing exactly the same thing in reverse. Discretion, therefore, can be a double-edged sword, and the candidate does not, in my opinion, fully succeed in producing a set of normative principles that resolve this dilemma. For this reason, a common phrase regarding US administrative law is that "elections have consequences."

Furthermore, at least as far as the US is concerned, the sheer lobbying power of large financial institutions, including all the G-SIBs, cannot be underestimated. Even if regulation and supervision is applied as they should be, lobbyists are often able to use congressional representatives to obstruct or even reverse the results. A review of the relationship between Congress and the regulatory agencies and industry is probably beyond the scope of the dissertation, but it is something that the candidate should, indeed must, more fully take into account when explaining supervisory failure to exercise discretion.

Nevertheless, the taxonomies developed by the candidate are immensely helpful in focusing where solutions need to be provided.

#### **Demonstrates general knowledge of the candidate in the field of financial law and regulation**

The candidate demonstrates a comfortable familiarity with law, regulation and practice, and associated scholarship and literature, across the field of big bank regulation. Leading commentators such as Admati, Hellwig, Wilmarth and many others are handled with a sound degree of familiarity and comprehension. Her technical analyses of the mechanisms of Basel III-based regulation and supervision, both in the US and EU, are excellent. She understands at the technical level far better than do most of the scholars in the field, in the US at least. My only criticism here is that sometimes the candidate relies on (accurate) secondary sources when it would have been better to cite directly to the primary ones. Perhaps this reflects the difficulty of access from a distance.

I would add that the breadth of the candidate's work is remarkable. It is difficult enough to understand the EU framework, particularly the capital and Pillar 2 requirements, let alone those in the US. I teach these subjects to graduate level students (2L and 3L JDs and foreign LL.Ms), and I find them very tricky. The candidate appears to traverse the US rules with a fluency that would serve a teacher in the United States well. Furthermore, her analyses are incisive and sometimes very perceptive. I assume the same applies for her analysis of the EU framework.



### **Ability to conduct her own research**

Given her sound assessment of highly technical and complicated US regulation, the candidate seems to me to be an expert, independent researcher who knows where to go for an understanding of the law, regulation and policy that is her subject matter. She has used American sources well.

On the occasions in which the candidate spoke with or wrote to me about areas of her research, I was struck by the thoughtful and penetrating nature of her questions, some of which I could not even answer and had to make referrals. Her questions revealed a sensitivity to the subtle nuances of actual application of law and regulation. The same is true for the candidate's questions about individual banks: the kinds of questions she asked made me assume she had actually worked in some of these institutions.

There is no doubt in my mind that the candidate has demonstrated a sound ability to conduct her own research.

### **Possible Shortcomings and Proposed Subsequent Work**

There are inevitable areas that could be expanded upon. I have noted above the political and institutional obstacles to the exercise of discretion along the bold lines the candidate proposes. These obstacles are addressed, albeit rather obliquely, in the capture, revolving door and national bias sections (pages 197-200). They loom large, however, in the US and I would not be surprised if the same were true in the EU and member states themselves. Without a deeper analysis of such factors, one is left with the feeling that the discretionary remedies proposed by the candidate are nice ideals but unlikely to be adopted or applied with the force necessary to cure the ills she aptly identifies with the current framework. This does not mean that her study is defective, but there is much more to say. I would strongly recommend that this subject be one the candidate begins to build as she proceeds beyond the dissertation stage.

Very large, albeit belated, factors that will now heavily influence the candidate's thinking about G-SIB regulation, and particularly the stress test aspects, are Pandemic impacts and Climate Change. Focus has only really now begun to turn to these critical aspects of supervision of large financial institutions, so it is understandable that they have not really been addressed in the dissertation. Indeed, the candidate carefully excluded them from the parameter of her study. Given how quickly these important subjects have become, given the use by central banks of G-SIBs as channels for applying Pandemic-driven emergency measures, and given the involvement of central banks in the Network for Greening the Financial System, the problem of stranded assets, financing the fossil fuel and alternative energy industries, and the length of mortgages in endangered areas, I would encourage the candidate to address this subject as a direct offshoot of her dissertation. She has laid the framework with her incisive analyses, so she is well placed to do this.

In my view the candidate and her supervisor are to be congratulated on her dissertation.

**The dissertation fulfills the requirements established by Art. 13 of the Act of 14 March 2003 on academic ranks and the academic title and on ranks and the title in the field of arts.**

**The Examiner recommends award of the Ph.D. with distinction.**

A handwritten signature in purple ink, reading "Lawrence Baxter". The signature is fluid and cursive, with the first name "Lawrence" written in a more legible script and the last name "Baxter" in a more stylized, cursive form.

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Lawrence G. Baxter  
Examiner  
April 17, 2021