

Foreword

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In September 2010, US Federal Reserve Board Chairman Ben Bernanke declared that '[i]f the [financial] crisis has a single lesson, it is that the 'too-big-to-fail' (TBTF) problem must be solved'.¹ Notwithstanding the enactment of reform legislation on both sides of the Atlantic during the past two years, many policy-makers and analysts believe that TBTF banks still pose a major threat to financial stability and fiscal policy. On 9 May 2012, former US Federal Reserve Board Chairman Paul Volcker affirmed that '[t]he greatest structural challenge facing the financial system is how to deal with the wide-spread impression – many would say conviction – that important institutions are deemed “too large or too interconnected” to fail’.² The very next day, JPMorgan Chase disclosed a multibillion US dollar loss from a massive ‘hedging’ strategy that badly misfired. In response to that disclosure, journalist Gillian Tett warned that ‘the swelling size of [banking] groups such as JPMorgan is making the [financial] system ever more concentrated, in a dangerous way’.³

At the same time, the spreading sovereign debt crisis in Europe revealed the close linkages between government bailouts of banks and fiscal insol-

¹ B.S. Bernanke, ‘Causes of the Recent Financial and Economic Crisis: Statement before the Financial Crisis Inquiry Commission’ (2 September 2010), available at <http://www.federalreserve.gov/newsevents/testimony/bernanke20100902a.htm> (last accessed 1 October 2012).

² Statement of P.A. Volcker before the Subcommittee on Financial Institutions and Consumer Protection of the Committee on Banking, Housing, and Urban Affairs, United States Senate (9 May 2012), available at http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=082d377a-5fd9-4e98-892b-26d80120d684&Witness_ID=f4bb09ce-b788-4746-9506-d030eadc62b8 (last accessed 1 October 2012).

³ G. Tett, ‘Size can be deadly in a low-rate world’, *FT.com*, 17 May 2012; see also C. Hopkins and C. Sala Gage, ‘JPMorgan So-Called Hedge Is Awkward for Fed Knowing Its Meaning’, *Bloomberg.com*, 3 June 2012 (questioning whether JPMorgan’s strategy, which the bank described as ‘portfolio hedging’, actually amounted to ‘proprietary trading’ that Congress intended to prohibit under the Volcker Rule).

veny. On 11 June 2012, EU governments announced that they would lend up to USD125 billion to enable Spain to support its deeply troubled banks.⁴ The EU's rescue package for Spain followed similar bailouts totalling more than USD500 billion for Greece, Ireland and Portugal, which the EU and the International Monetary Fund organized after all three nations were overwhelmed by the costs of shoring up their banking systems. At the end of 2011, sovereign debt in the 17 euro-area nations exceeded 87 per cent of gross domestic product, the highest level recorded since the euro was introduced in 1999.⁵ The Eurozone's sovereign debt situation has steadily deteriorated since 2008, because most euro-area governments have assumed heavy debt burdens in order to prop up TBTF banks, stabilize their financial systems and cushion the impact of severe economic recessions.⁶ As I write this Foreword, the euro's survival is in grave doubt.⁷

This volume includes papers presented at the Banking Law Symposium organized by John Raymond LaBrosse, Rodrigo Olivares-Caminal and Dalvinder Singh and hosted by the Organization for Economic Cooperation and Development (OECD) in October 2011. The organizers of the conference (who also edited this volume) deserve high praise for their prescience in focusing on the issues of (a) containing systemic financial crises, (b) limiting moral hazard and other economic distortions created by government support for financial institutions, and (c) resolving Europe's sovereign debt problems. All three issues dominate today's headlines and preoccupy policy-makers, industry officials and scholars. The conference organizers and editors should also be congratulated for assembling a distinguished group of experts from government, industry and the academy to address these issues. I hope this book will attract a wide readership, because its important research findings and sound policy advice could help us to avoid a recurrence of the global crisis we currently struggle to escape.

⁴ C. Penty, 'Spain's Bailout Gives Rajoy His Best Chance to Fix Banks', *Bloomberg.com*, 12 June 2012; see also C. Penty, 'Goirogolzarri's Aid Demand Helped Push Spain to Bailout', *Bloomberg.com*, 12 June 2012 (reporting that the EU's support programme was triggered by Spain's admission that it would need USD24 billion to recapitalize Bankia, the nation's third-largest lender).

⁵ A. Davis, 'Euro-Region Debt Rises to Highest in Currency's History', *Bloomberg.com*, 23 April 2012.

⁶ A. Mody and D. Sandri, 'The Eurozone Crisis; How Banks and Sovereigns Came to be Joined at the Hip', *Economic Policy*, April 2012, at 201–30.

⁷ See, for example, P. Boone and S. Johnson, 'The End of the Euro: A Survivor's Guide', *The Baseline Scenario* (blog), 28 May 2012.