The Cultural Mediation of Transnational Regulations: Competing Institutional Forms for Romanian Mutual Funds[1]

Narcis Tulbure, University of Pittsburgh

Introduction

Most of the political and social changes in Romania after 2000 have stood under the aegis of the European Union (EU). As in the case of several other postsocialist countries in Eastern Europe, the intense process of Europeanization has implied radical societal transformations which have stirred numerous forms of resistance to change. The extensive import of laws and institutional forms has not only occasioned frequent debates framed by the antithesis between acceptance and rejection but have generated continuous local adaptations of transnational regulatory practices. A strategy preferred by many of those involved in or affected by the process or legal harmonization has been that of the oscillation between and manipulation of competing regulatory frameworks. The capital market, one of the most prominent social arenas where the alchemy of economic value production has been filtered through shifting social values and moral registers under postsocialism, has been no exception to this social process.

This article analyzes the disputes occasioned by the process of regulatory reform undergone by the Romanian mutual fund industry. Stirred by Romania's accession into the EU in 2007 and prompted by the numerous financial scandals affecting the market right from its creation in 1994, the reform was meant as a reconfiguration of the investment philosophy characterizing the capital market. The emergent values here are intimately connected to and made visible by arguments about new forms of money and financial investment, altered understandings of risk, or changing roles for the state and its regulatory agencies.

I take the contentions generated by this radical transformation as an opportunity to observe the shifting orders of worth (Boltanski and Thévenot 1991*)* and the changing notions of ownership and risk in contemporary Romania. Whereas formerly mutual funds were associative entities which, in spite of the ambiguous ownership, could be controlled by a collective of investors, the legal reforms attribute control over funds to asset management companies and do away with the premises for collective action by investors. The transition from a political order in which the premises for rights, action, and value were defined collectively, as part of a larger community of investors, to a polity in which criteria of worth are premised on the more abstract qualification of investors - as actors able to choose among investment opportunities but no longer to influence the projects they take part in, generates numerous contentions with a direct impact on the legitimacy of the new institutional arrangements.

By focusing on a particular instance in which the "laws of the market" (Callon 1998) are negotiated by state officials, regulators, institutional and lay investors, my paper offers an interpretation of the ambivalent reception of contemporary capitalism in Eastern Europe and

Author Email: nst4@pitt.edu

suggests ways to evaluate such historical transformations in other former socialist societies. The disputes I analyze in my paper engender challenging questions about the promises and failures of finance: How do new types of investment dependent on the erratic behavior of the market fit with previous forms of monetary accumulation seen as something whose value was intimately linked to personal diligence (or any legitimate form of work)? Should the state be concerned with the taming of generalized forms of social risk through direct intervention or should it limit its role to the adoption and enforcement of technocratic rules? Such questions, raised already by scholars dealing with the postsocialist transformations in money and values in Eastern Europe, are made acute and gain global currency because of the financial crisis induced by the subprime credit instruments in the United States in 2007.

Money and financial practices in postsocialist Eastern Europe

Having a rather marginal role in the centralized economy of socialist societies, money and the diverse financial practices blooming in Eastern Europe during the 1990s have become an important object of scholarly investigation. The concern with monetary practices in the literature addressing postsocialist transformations has been has been centered either on monetary aggregates and the policies aimed to control them - in the case of economists or political scientists, or on the role of money in market exchange and the social practices involving cash - in the case of anthropologists and sociologists. Anthropologists of Eastern Europe have studied everyday financial practices by focusing on the declining role of currency (Woodruff 1999a, 1999b; Clarke 2000; Humphrey 2000; Rogers 2005), the emergence of pyramid schemes (Verdery 1995a, 1995b), the production of knowledge and capital (Verdery 1995b, 1996), or the reconfiguration of moral categories (Lemon 1998; Ries 2002; Mandel and Humphrey 2002) in everyday transactions involving cash and barter. Although more attentive to the details and diversity of social situations than their colleagues working with the tools of economics or political science, anthropologists of Eastern Europe have so far shied away from engaging the practices of financial elites.

Few anthropologists (working in Eastern Europe or other parts of the world) have focused on more abstract notions of money, on the social construction of financial schemes, or on the regulatory interventions aimed to govern the processes of monetary accumulation. The notable exceptions are Bill Maurer (1998, 2005, 2006), Annelise Riles (2000a, 2000b, 2001), Hirokazu Miazaky (2006) and Caitlyn Zaloom (2003, 2004, 2005) who focus usually on the speculative practices of financial traders and the activity of regulatory bodies in developed financial systems. This article addresses specifically these kinds of processes, taking them as an ideal context for the study of the concomitant reorganization of monetary practices and social values in a postsocialist context. I am particularly indebted to the literatures that try to understand the conventions grounding economic practice (Juhem 1994; Thévenot 2001; Woolsey, Biggart, and Beamish 2003), the forms of sociality connected to finance capitalism (Knorr Cetina and Bruegger 2002a, 2002b, 2002c), the types of knowledge supporting contemporary financial markets (Callon 1998; Knorr Cetina and Preda 2004; Beunza and Stark 2004a, 2004b), as well as the abstract modalities of commensuration and risk management mediated by modern money (LiPuma and Lee 2002, 2004; Maurer 1999).

The distinctive aspect of my approach is the focus on a specific instance where the regulatory dimensions of capitalism are filtered through the local disputes over value, ownership, and the allocation of risk by those directly affected by the regulations. By trying to come to terms with a particular historical context – Romania's ongoing integration into the European Union, this article shifts focus from the production of knowledge in the heart of high finance (such as the investment banks of London and New York analyzed by many engaged in the social studies of finance) to the negotiation of institutional forms, regulations, and values taking place in a rather peripheral setting currently incorporated in the late capitalist system. Not only it is in such settings that the most elementary ideas related to contemporary forms of money are continuously called into question, but, as the recent crisis of the subprime financial products shows, even the most abstract financial practices build on and directly impact the transactions making up everyday life: buying a house, saving for retirement, or investing in forms of money that promise not to be affected by inflation.

The creation and regulation of Romanian mutual funds

Investment funds were one the most promising areas of the financial sector during the postsocialist period, both from the perspective of institutional creativity and from that of the return on investments. Created both as mutual funds and as risk funds[2], they constituted a repertoire of practice altogether new, distinct from the few opportunities for investing money under socialism, being ambiguously perceived by the public in between the stock exchange, the newly created commercial banks (themselves something different from the sole state savings bank in communism to which lay investors had access), and Ponzi schemes proliferating throughout Romania during the 1990s. While public perceptions of the funds departed considerably from the institutional varieties adopted in Romania as well as from the Western models considered in the process, the promise of enrichment through financial speculation was implicit in such financial practices from the beginning. Like in most of the former socialist countries of CEE, investments funds were meant, at least by the Romanian architects of the economic reform (Vosganian 1999; Anghelache 2000), to support the creation and growth of the capital market, to channel savings into investments for newly privatized companies, to give an opportunity to retail investors to diversify their portfolios, as well as to mediate the access to a promising arena of value creation for those having only a vague knowledge of the stock exchange.

Some of the weaknesses of the Romanian investment fund industry were structurally integrated in its initial architecture. Most of those knowledgeable of the history of the capital market in postsocialist Romania appeal to one form of path dependency theory or another to explain the notorious failures of the investment fund sector. Scholars familiar with Romanian capital market (Vosganian 1999; Markiewicz 2007) or investment professionals keeping track of the events generally consider that the creation of the first mutual funds before a supervisory agency (an independent securities commission) was in place, and prior to the development of an exchange for the quoting of transferable securities, was an institutional mistake that invited fraudulent practices.

By the time the Romanian National Securities Commission (*CNVM*) and the Bucharest Stock Exchange were created in 1995, the Private Property Funds initiated by the state and independently initiated mutual funds had been operating for several years. The Private Property Funds (PPF) were financial investment companies concentrating initially about 30% of the shares of state companies that would undergo privatization. They constitute a peculiarity of the Romanian strategy for privatization (other CEE states adopted similar although not identical institutional solutions). Resident citizens had the possibility to subscribe the vouchers received at various stages of the privatization process either directly for the shares of preferred companies of for the shares of the Private Property Funds. What resulted were mammoths concentrating large chunks of the national economy and having a huge but dispersed ownership (over 3 million stockholders for the five PPF) that pose even today serious governance problems, especially in the areas of managerial structures, political influence of the leadership, and minority shareholder rights. These entities underwent several episodes of portfolio consolidation and restructuring and of institutional reorganization. They are currently classified as a particular type of closed-end fund regulated nationally and not covered by the pan-European regulation, illustrating one of the areas of “creativity” for the Romanian securities regulator.

The history of mutual funds is even more indicative in this sense. Such undertakings were created after 1993 when a special government ordinance was passed to regulate the domain. As the creation of the stock exchange and the other institutions of the capital market was delayed for at least a couple of years (such institutional plans were subsumed by the imperatives of the privatization process), the funds created initially invested most of their portfolio in letters of trade, commercial bills, warrants, and loans extended to companies connected with the initiators of the asset management companies. Furthermore, the administrators of the funds were using an evaluation formula that added to the current value of financial assets the present value of discounted cash flows (not a sound evaluation method in an inflationary transition economy, some claim) thus inflating the reported net asset values.

The regulatory intervention by the recently established securities commission that enforced a new method for the calculation of net asset value in 1996 determined the dramatic reduction in the value of the funds’ shares (by more than half in some cases). Massive requests to redeem the shares followed by long suspensions of the redeeming process determined the near-collapse of several of the funds in operation. The most notorious collapse at the time, Businessmen’s Mutual Fund (*FMOA*), did not only end in significant loss of money by most of the shareholders but was transformed several times and stripped of its most valuable assets by dubious administrators before being turned into a closed-end fund that operates under special provisions by the securities regulator and is currently listed on the over-the-counter market

(*RASDAQ*). The way the securities regulator had managed the entire scandal triggered the reaction of many retail investors protesting against the manipulation of the situation by the asset managers and the infringement of their rights of exit granted by the securities law. The whole event is significant for the dramatic decline in the number of investors and in the value of net assets at the time, being one of the notorious financial scandals constantly given as an example and used to explain the lack of trust in investment funds and asset managers.

The change in government in 1996[3] and the radical measures of reform adopted soon after created the prospects for a functioning market economy and for a rule of law regime in Romania. Although they took off once more capitalizing on the new opportunities offered by Romanian economy, mutual funds were subject again to some of the most notorious collapses in postsocialist Romania due to a combination of poor regulation, weak enforcement of rules, and fraudulent behavior of fund managers. Thus, the National Investment Fund (*FNI*) - a mutual fund reaching a record level of investors (over 300,000 during the months preceding its collapse), very high reported net asset values, and a large share of the market for mutual funds, collapsed right before the general elections of 2000, leaving several hundred thousand investors without their life savings and retirement benefits. The reaction of the supervisory agency (*CNVM*) was typically late, unwise, and did more harm than good to the retail investors.

The precipitated collapse of the National Accumulation Fund (*FNA*), the twin fund of *FNI*, a couple of months later generated massive requests to redeem the shares by retail investors; their attempts, however, were blocked by the repeated suspension of operations of the two mutual funds ordered by the *CNVM*. Public nervousness at the time prompted the redeeming of shares in the rest of the mutual funds by many retail investors, the drastic reduction of the overall number of investment fund shareholders (from over 400,000 to less than 40,000 in a year[4]), and the spread of the confidence crisis to the banking sector.[5]

While the trials initiated by investors against those considered responsible for the financial collapse of 2000 are not over yet and the numerous audit reports by court appointed experts have been at best superficial, substantial information has been disclosed about the wrongdoings that provoked them. Investors soon found out that the fund has functioned without a depositary for most of its life, that the caps on the proportion of the portfolio that could be legally invested in unlisted securities and other risky financial instruments have been constantly broken, and that members of the Council of Trustees have been bribed to ignore the illegal transactions of the asset managers. Reported net asset values have been purposefully inflated, asset managers for the fund have been changed repeatedly to obscure responsibility for mismanagement, and the securities commission has chosen to take only last moment measures in spite of being aware of the situation all the time.

Acting to recuperate the money lost and for the conviction of those responsible, many of the investors affected by the collapse of the investment funds have gathered in civic associations that agitate for the protection of investors and the rights of minority shareholders. Even more consequential than the actions for material and moral reparations have been the increasing calls by institutional and retail investors alike for the revision of the previous regulations governing investment funds and for the improvement of the supervisory activity by state institutions. Grounding their claims on the histories of deception lived during the first years after socialism and on the personal (trial and error) attempts to navigate in a universe of financial uncertainty, investors in mutual funds and financial analysts concluded that the need for a comprehensive reform of the field was pressing. The goals of the reform should have been to tighten regulations regarding investment funds and the activity of asset managers and to reorganize the securities commission (*CNVM*) in order to enhance its supervisory abilities. After the less successful adoption of a new securities law in 2002 (without public consultations and widely contested by the majority of market participants), the opportunity for a more comprehensive market reform was offered by the wider legal harmonization with the EU (the adoption of the *acquis communautaire*) in light of Romania's prospective admission into the Union in 2007.

The capital market reform in Romania: from American to European-type regulations

The Romanian National Securities Commission responded to pressures to harmonize its securities and financial investments regulatory framework with that of the rest of EU members and embarked on a massive exercise in legal reform. It promoted a new statutory law as well as a new regulation for investment management firms, collective investment undertakings and depositories in 2004.[6] A key role in this regulatory reform has been played by the Council of European Securities Regulators (CESR) and its measures towards more integrated capital markets in Europe. CESR is a consultative committee set up to help the European Commission in its initiative to harmonize and integrate European capital markets with the aim of facilitating cross border investments and financial capital mobility in Europe. Its goals are not only to make national governments adopt harmonized regulations and to stimulate better cooperation among national securities regulators but also to promote new modalities for policy making and the adoption of regulatory measures regarding the capital markets. The new policy making mechanisms draws on broad consultations with all market actors (including lay investors) and is premised on the transparent adoption of new regulations. Thus, the model for the regulations currently adopted in Romania was provided by the EU directives and recommendations adopted by the European Commission after having been drafted by the Committee of European Securities Regulators.[7]

According to annual reports published by the Romanian securities commission (*CNVM*)[8] and to assessments by market participants, Romania has transposed, even if somehow "mechanically" and without paying attention to the costs of immediate compliance by market actors, all the key EU directives and recommendations adopted before 2004.[9] Subsequently, new legislative interventions by the Romanian securities commission meant to transpose the post-2004 directives and regulation adopted by the EU were made in 2006 and 2007. Furthermore, new regulations are announced by the *CNVM* that are meant to address the requests by market participants to specify more clearly the procedural aspects of the new rules, to eliminate the overlaps between the law on the capital market, regulations covering banking services, and the

Company Act, as well as to redesign the entire law regarding the capital market (with a possible institutional reorganization of the securities commission itself).

As a consequence of the successive interventions to the regulatory framework, in spite of the efforts to transpose the best European practices through the recent regulatory reform and of the best intentions of all market actors, the results have failed to meet many of the expectations for improved rules and better practices. Even though, based on laws regarding transparency of decision-making in public administration (adopted also under EU pressure) the *CNVM* has organized public meetings and has accepted suggestions from various interested parties (institutional investors, administrators, depositaries) - including associations for the protection of investors, the results have been ambivalent. Areas of improvement alternate with provisions that are either inapplicable or extremely costly when compared to the benefits in terms of market transparency and investor protection.

Not surprisingly, regulations concerning mutual funds and financial investment companies have received a mixed reception from asset managers, brokers, and institutional investors.[10] Although they acknowledge the considerable improvements from the pre-2004 regulations (in terms of institutional clarity; better allocation of responsibility between managers, depositaries and distributors of funds; clear rules regarding prospectus; easier administrative procedures and registration of funds; simplified entry and exist procedures), such institutional actors claim that the existing regulatory framework was already left behind by the current developments in EU regulations and in management practices of European fund administrators (as reflected by EFAMA recommendations and implemented indicators of fund performance/risk).[11] Furthermore, the Romanian securities commission has transposed many of the European regulations overnight, based on poor translations, and without paying enough attention to the practicalities of enforcing the new provisions. This necessitates a lot of "trimming" of the newly adopted laws meant to reduce institutional uncertainty and the costs of compliance with the rules.

At the same time, representatives of retail investors and most of the independent financial analysts and journalists offer a more critical assessment of the recent legal provisions. Thus, with regards to investor protection the new regulatory framework is less comprehensive than the pre-2004 one (developed in the mid-1990s with support from the United State Agency for International Development [USAID] and modeled on the regulations of the Securities and Exchange Commission [SEC] in the United States)[12], especially with regards to the rights of individual investors. The shareholders of mutual funds functioning according to the old regulations voted in a General Assembly on issues pertaining to the activity of the fund and were represented by a Council of Trustees mandated to overlook the activity of asset managers. Although the involvement of the trustees has been a fiasco in the case of the mutual funds that collapsed in the past, many consider this no reason to eliminate it altogether. The new regulations (in tune with those of European-type mutual funds) remove both the General Assembly and the Council of Trustees, allocating the ownership and responsibility of operating investment funds to asset managers. The protection of investors is effected by the more clearly written mandatory provisions of the prospectus and by specifying the entry and exit procedures for holders of fund units (shares) when major changes in management, organizational structure, or investment strategy are made. The attempts by the associations of investors and independent experts to provide more generous entry/exit terms for the shareholders, increased information provision requirements for the asset managers, the possibility for independent oversight of the asset management activity, and even to preserve some of the favorable provisions of the old regulations have met the refusal of the securities commission and the criticism of the asset management industry.

The effect on the governance of these collective entities has also been ambivalent. Asset managers seem to repudiate altogether the issues pertaining to corporate governance from the discussions about the EU harmonized investment funds. For them, corporate governance refers to relations inside asset management companies and, at the most, those inside financial investment companies. From such a perspective, the principles governing relations among the diverse stakeholders of investments funds (especially those among retail investors and asset managers) are obscured when subsumed by the prospectus provisions and the entry/exit provisions. This comes into direct contradiction with the demands of retail investors. The latter claim that, given the histories of deception on Romanian financial markets and the poor record of law enforcement there, the concern of investors with the security of their money cannot simply be relegated to impersonal rules. Retail investors claim that the existence of comprehensive rules did not prevent the previous collapses of mutual funds. In this sense, they do not trust the securities commission with enforcing existing regulations, given both its past record of ambivalent supervision and its current performance during public consultations.

As a consequence, associations of investors accuse the *CNVM* of having organized superficial and formal consultations and of not having incorporated their suggestions meant to enforce the rights of retail investors or to improve corporate governance in investment funds, all to the advantage of professional investors and fund administrators. At least from the point of view of retail investors, so far the process of harmonization with the EU framework has led to deregulation, with ambivalent results and affecting asymmetrically various interested parties. This situation has stirred further public protests from the association of investors and has lead to court action against the Romanian securities commission by market actors intending to force the suspension or modification of the new regulations.

The mediation of European regulations by local disputes on the capital market

The regulatory reforms described above have been prompted by and filtered through the disputes over the notorious financial collapses affecting the mutual fund industry. It has played into some of the very legal and institutional contentions that have made it necessary, complicating the situation further. Such is the case with the two investment funds mentioned in the previous sections: the National Investment Fund (*FNI*) and the National Accumulation Fund (*FNA*).

The disputes described here bring to the fore the implicit principles informing assessments of value and compensation as well as the transforming repertoires of justification used in such disputes. Although assessments of value would seem to be straightforward accounting issues, they are not. Not only do financial theories, legal codes, and securities regulations provide divergent interpretations, but the actors involved in disputes (including lay investors) suggest new and interesting ways of understanding ideas of wealth, monetary gain, profit, risk, and the role of the state. Moreover, there is an intimate relation between arguments about economic value formation and the moral justifications for practices that generate value. Those making a claim to specific commensurations of value use more than technical arguments, trying to manipulate (and even reconstitute) available moral repertoires and actively situate their more or less scientific claims in a moral perspective. Their justifications are meant to present their calculations as not only technically accurate but as being in agreement with the already accepted moral values, something Boltanski and Thevenot (2006) call "orders of worth."

Given the multifaceted contentions over value, it comes as no surprise that the consequences of these disputes are not limited to the recuperation of losses, but aim at redefining the rules of investment and influencing the conditions under which some of the existing financial organizations can be continued. As shown in the previous sections, at least as consequential as investors' actions for material and moral reparations have been their campaigns for the revision of the previous regulations governing investment funds and for the improvement of the supervisory activity by state institutions. Such calls for regulatory interventions have been justified not only by examples of past financial defaults but also by the contemporary trajectory of the collapsed mutual funds. The most notorious such funds (e.g., Businessmen's Fund [*FOA/SAFI*] defaulted in 1996, of National Investment Fund [*FNI*] and National Accumulation Fund [*FNA*] collapsed in 2000) have not been legally dissolved. Rather, they have been repeatedly suspended from operation and later transformed into closed-end funds having increasingly rigid entry/exit procedures. While advocates of such organizational transmogrifications argue that the funds have been given a second chance, lay investors generally feel "trapped" in the new entities (as "serfs on financial estates"). They argue that they have lost control of their money and complain that such measures are meant to conceal the responsibility of those involved in the initial collapse of the funds, administrators and state officials alike.

The legal reform has taken a hasty and chaotic character, as the most immediate goal was that of adopting the European regulations before the closing of the EU accession negotiations in 2005. The suggestions made by lay investors have been consistently neglected without justification from the Romanian securities commission and in spite of the fact that no contrary position on most of the issues in dispute has been officially adopted by any other of the market actors. No wonder, then, that the most vocal contesters of the new laws have been the representatives of retail investors. They argue that the American-inspired regulatory framework was better since it attributed a more important role to non-institutional investors. To blame for the numerous financial defaults are not the rules themselves, representatives of retail investors believe, but different actors responsible for the sound functioning of the capital market. Lay investors argue that, lacking a proper “investment culture,” regulators, administrators, and investors alike have mimicked the American procedures of collective governance without adopting its basic values. According to them, the solution should have consisted of piecemeal regulatory interventions, improved supervision, and proper enforcement of regulations.[13]

The new regulatory framework takes away investors’ ability to *voice* their concerns (by eliminating the Council of Trustees and its attributions) and only leaves them the possibility to *exit* collective investment undertakings (Hirschman 1970). More precisely, investment funds are now initiated and controlled by specialized financial companies and investors are allowed to redeem their shares for a very brief period of time when major changes to their Articles of Incorporation are made.[14] Retail investors fear the new legal infrastructure of the market will become just another “form without substance”- an institutional import devoid of meaning and functionality, if the regulators keep siding with institutional investors and ignoring lay investors.

At the same time, state officials and fund administrators argue that the new regulations are “more modern and harmonized [with European directives].”[15] The emulation of the EU regulatory framework will not only create the premises for Romania’s incorporation into the common market for financial services but, its supporters believe, brings a “new philosophy” for the mutual fund industry. Thus, the intricacies of collective ownership and action generated by the old legislation will be eliminated by a clear allocation of control to administrators and the protection of investors by more clear and transparent procedures. In the long run, Romanian regulators hope the imitation of European institutions and the opening up of Romanian capital market to European financial service providers will increase its soundness and will inculcate the “proper values” to Romanian investors.

While many investors and independent financial analysts would conclude that in Romania mutual funds are a good example of failed institutional import, an attractive financial package that proved instrumental in deceiving lay investors rather than funding the growth of the capital market, a more nuanced account is necessary. A succinct description of the current state of the mutual fund industry in Romania reflecting the diverging opinions of the various market actors (as attempted in the previous section) must integrate at least two perspectives. It might be true that the new regulatory infrastructure can facilitate the circulation of financial capitals (as the Romanian securities regulators argue) but if not enforced properly they offer plenty of leeway to deceptive fund administrators.[16] From a different perspective, lay investors seem entitled to claim that the previous collective ownership provisions were closer to the principles of mutuality and offered better means of control over their money, but their persistence in refusing to accept any kind of change can make them anachronistic and can easily put them in a position to miss the opportunities of a more integrated capital market in Europe.

Social change, capitalism, and transforming orders of worth in contemporary Romania

The attentive examination of the disputes over regulations briefly described above facilitates a better understanding of the processes at play in this situation, all of which are accentuated by the postsocialist changes in economy and society. First, the dispute illustrates well the ways in which transnational processes involving the financial market (in this case, the pan-European harmonization of capital markets) are constituted locally and interpreted through the lens of disputes taking place at the national level. An EU driven regulatory process takes a diversity of forms in national arenas, the specific socio-political contexts that mediate it locally being to a considerable extent responsible both for the end result of the reform, for its practical consequences, and for its subsequent legitimacy.

Although the conflict over the new regulations is the conspicuous phenomenon, at play is a deeper process of mediation through which European regulations are transposed (rather than simply translated) at the national level. While Romanian authorities have no option out of the pan-European harmonization of laws pertaining to the capital market, the process of mediation is visible in the negotiations between diverse institutional actors over the classification of funds in the newly adopted laws, over relations between harmonized and non-harmonized institutional forms, over the understanding of the basic categories and definitions of the new regulations, or over the specific ways in which the new laws are interpreted and enforced. All these elements indicate a process of mediation that is simultaneously more flexible, continuous, and open to an unknown resolution than a simple conflict over regulations. Furthermore, what explain the particular interpretations and choice of legal categories are not necessarily rational arguments formulated in terms of the costs of compliance, long-term effects, or a means to ends rationality. Rather often, issues related to symbolic power or the manipulation of ideologically charged notions (such as that of "Europeanization" described further) are more efficient factors giving the whole process of legal reform a mimetic, non-pragmatic aspect.

Second, actors situated in local milieus manipulate such regulatory processes for their own ends, building in a diversity of meanings that often contradict the intentions of the initiators of the process. The rhetoric used by the actors involved facilitates our understanding of the ways "Europeanization" and "European integration" become powerful argumentative repertoires in contemporary Romania, although ones displaying a remarkable internal diversity. In a polity where the EU accession became the overarching legitimating discourse, hierarchies of power and the endorsement of particular institutional forms are realized through the pragmatic manipulation and the creative redefinition of the meanings of European categories. Glossing over the distinct ways in which actors connect to the normative market models and the suppression of differently situated opinions on the reform by the actors responsible for its implementation, all in the name of Europe, blatantly contradicts the purpose of public consultations (meant to encourage critical assessments of the new regulations in order to eliminate their problematic provisions in a timely manner and to build their legitimacy gradually) - a policy making model on which the creation of CESR was premised. Thus, the Romanian securities commission capitalizes on the involvement of CESR and of the European Commission in the process and uses the motive of Europeanization as a self-understood reason to accept the reform. During the interviews I conducted, directors in the securities commission repeatedly claimed that the new regulations are "more modern and more harmonized" with the European framework, failing to specify what that means exactly and in what respects that is an improvement from the previous situation, in spite of my repeated questions on the issue.[17] A similar rhetoric monopolizes the mass-media interviews and newspaper articles published by specialists affiliated with capital market authorities in Romania.[18]

The discourse about Europeanization, insistently and superficially used by public authorities in Romania during the last years, is performative[19] to the extent that it creates the appearance of unconditional agreement with reforms and de-legitimates alternative critical positions at the moment of their articulation. In this regard, the lay investors I interviewed are relegated to an inferior position characterized by ambiguity (although they know very well what their interests are). This hierarchy of discourses achieved in practice disfavors retail investors for a variety of reasons. Thus, lay investors and actors adopting a critical stance towards the reforms introduced by the state find it hard to question the contemporary political consensus on the necessary Europeanization of Romania. Even more, as the discourse about Europeanization is monopolized by public authorities, it is almost impossible for the lay investors to ground their claims in an equally legitimate grand narrative. Last but equally significant, lay investors appeal to "European values" such as the virtues of transparency and generalized public dialogue on reforms at the same moment they have to argue that the American model of the capital market was better as far as they were concerned.

Third, the situation described further illustrates the negotiations of the various moral/economic/legal criteria according to which a particular perspective on changes affecting the market is accepted as more relevant than competing ones. Alternative regimes of value compete for constituting the legitimating basis for legal-economic disputes. As illustrated in the previous sections, the actors involved in disputes do not only struggle to put their claims in accord to one regime of value or another, but constantly argue over the relevant regime of justification for the new legal infrastructure of the market. In the process they actively renegotiate and reconfigure the prevalent "orders of worth" in which their disputes over value are dynamically situated. In spite of the effort to promote specific regimes of justification meant to naturalize their arguments, most of those I interviewed and observed seem to overlook and even conceal the situatedness of the process of reform. Both critics of rapid institutional import and the advocates of modernization-qua-emulation of European political categories appear to neglect the diversity of the actors on Romanian capital market, portraying them as passive and uncritical receptors of cultural forms, devoid of agency. Consequently, both interpretations ignore the local adaptation of imported forms and, in spite of the numerous allegations of corruption and personal involvement, miss the pragmatics of this mimetic act (Jayussi 1984, 1991).

From a different perspective, the focus on the local process of cultural translation neglects the wider debates in Europe over the varieties of capitalism more compatible with the aims and values of the Union: on the one hand, the more individualistic, more efficient, yet "predatory" Anglo-Saxon model and, on the other hand, the better regulated forms of social capitalism dominant in many countries of Continental Europe. The over-simplifying dichotomy between the two main varieties of capitalism glosses over a situation that is more nuanced, more complicated, and harder to classify then we are lead to believe. The intense debates within "the West" itself over the desirable types of capitalist formation or over the aims and forms of regulations are made more visible by the recent financial crisis of the subprime instruments and the reevaluation of the role of credit rating agencies. Ironically, as various researchers of the phenomenon have shown, with regards to financial regulation and the infrastructures of the financial market, the "Paris [pan-European] consensus" on the matter seems to enforce the neo-liberal dogmas more effectively than the "predatory" American regulatory framework based on self-regulation (Abdelal 2007) and flexible innovation.[20]

Given the multifaceted disputes centered on the contemporary regulatory reform of Romanian capital market, a different approach, one paying attention the diversity of actors involved in the process and meant to shed light on the pragmatics of the observed interactions, can render the entire process more understandable. In this sense, I regard the legal contentions stemming from this process as forms of action situated in context rather than simply as debates over cultural formations. Moreover, negotiations over the social values and moralities permeating the various regimes of monetary accumulation in Eastern Europe play out in disputes over regulations. In this regard, I argue that values should neither be treated as the determinants of social action nor simply the result of it, but rather as constituents of action which themselves take a lot of effort to be negotiated and made to appear as taken for granted.[21]

Consequently, I suggest we should pay attention to the continuous renegotiation and routinization of values occasioned by arguments about new forms of ownership, altered understandings of risk, or changing roles for the state and the regulatory agencies. Several issues seem to generate insoluble disputes among diverse participants in these debates and have consequently organized my approach. First, the (mis)fit between new forms of investment and monetary accumulation dependent on the erratic behavior of the market and the previous notions of money whose value was intimately linked to personal diligence (or any legitimate form of work) is a resilient theme that emerges in most of the scandals generated by financial collapses in postsocialist Romania.[22] This theme becomes more acute with the emerging forms of social inequality based on the manipulation of money and financial practices.

Second, a resilient understanding of risk as a communal category whose effects can be mitigated by the collective action of investors comes into direct contrast to newer conceptions of risk (promoted by champions of the capital market) as a measure associated with a portfolio of previous personal choices, and as an assessment of the situation of individual investors rather than collective subjects. This theme emerges from disputes over the specific form a mutual fund should take as either a collective entity owned by the investors or as an abstract product (very similar to a bank deposit) that can be managed and marketed by an asset manager towards a diversity of individual investors.

Last but not least, this research highlights the ongoing arguments about the role of the state given the accentuated financialization of economic and political processes under late capitalism. On the one hand, critics of financial globalization and supporters of social capitalism argue that the state should be concerned with the taming of generalized forms of social risk through direct intervention (e.g., bailing out bankrupt financial institutions whose collapse would affect many lay investors, offering compensations from the state budget to investors whose savings have been washed away by bank and investment fund managers). On the other hand, supporters of neoliberalism usually claim that the state's regulatory role should be limited to the adoption and enforcement of technocratic rules. The state should avoid and limit direct monetary interventions as bankruptcies and losses are part of the "natural selection" of viable businesses functioning under capitalism.[23] Although the various forms of state intervention in the financial markets are hard to separate in practice, the above distinction between forms of political and regulatory intervention captures well the options available for state authorities during the postsocialist financial crises.

Conclusions

The multitude of social experiences generated by the postsocialist change in Central and Eastern Europe is the most important cultural factor accounting for the way apparently centralized processes are mediated locally. In specific contexts and building on histories of financial disputes, local actors appropriate pan-European initiatives, filtering them through local meanings of money and value and adapting them to their immediate goals. In the process, the very premises of social action get renegotiated. Ideas of ownership, risk, and value are refashioned, generating new orders of worth that further constitute the medium into which new institutional imports are made.

Although specific moral judgments and appeals to certain values are implicitly negotiated in the process of arguing over concrete issues, what seems to have been reinforced over the years and with each scandal in Romania is an attitude of chary (cautious) opportunism in which the appeal of new and risky financial ventures promising unprecedented monetary gains and the prudent option for collectivist institutional solutions known to have worked in the past are combined in creative ways. In spite of the contradictory appearance of such mixed attitudes, the description captures well the simultaneous lack of trust in any formal and abstract solution and the immediate copying of practices and attitudes that both proved to work in previous situations and are adopted by large numbers of those sharing similar experiences. It also explains the peculiar forms of social order and change witnessed in contemporary Romania.

What came out repeatedly during my research is the preference of small investors for a more collective form of action in connection to the funds and to their investments (i.e., something close to the American model of the regulations) at the expense of the more impersonal and individual relations suggested by the EU inspired regulations. Such people know they have recuperated some of their money only when they acted collectively (through investors' associations and various NGOs representing their interests) and believe that the worth of each investor and her monetary gain are premised exactly on the inclusion in such collectivities.[24] At the same time, they are afraid that behind the impersonal regulations and rules of transparency (which are poorly enforced by the securities commission which were brought about by the new regulations), administrators will have enough freedom to defraud new funds since they will no longer be controlled by investors. Such claims of lay investors reflect, in my opinion, a generalized sense of insecurity towards the abstract forms of high finance and the uneasy reception of and lack of trust in undertakings otherwise common in market economies.

My claim is that the uneasy reception of the new institutional arrangement is related to the shifting premises for the formation of value and the deeper changes in the prevalent conceptions of worth (Boltanski and Thévenot 1991) associated with Romania's economic transition. Whereas formerly mutual funds were associative entities which, in spite of the ambiguous ownership, could be controlled by a collective of investors, the European promoted reorganization of investment funds attribute the key role to asset management companies. Asset managers now have control over the funds, being simultaneously the initiators and owners of such investment vehicles. The premises for collective action by lay investors no longer exist as each participant to the fund now has an individual relation to the fund manager rather than one mediated by the General Assembly and the Council of Trustees which were mandatory under the previous regulations. Thus, the transition from a political order in which the premises for rights, action and value were defined collectively, as part of a larger community of investors, to a polity in which criteria of worth are premised on the more abstract qualification of investors - as actors able to choose among investment opportunities but no longer to influence the projects they take part in, generates numerous contentions with a direct impact on the legitimacy of the new institutional arrangements.

Issues such as those addressed by this paper are urgent matters in postsocialist countries where most of the former state run social protection systems are externalized to the market and built on the infrastructure of financial arrangements (e.g. the implementation of private pension systems or the privatization of state ownership). In Romania they are brought to the fore by the ongoing efforts to harmonize regulations as a premise for the better integration of capital markets in the European Union. The connections between knowledge, risk assessment, and value, central for the practices involving money throughout the world, reveal some of the fundamental dimensions of social change in postsocialist Romania. Leaving behind a world in which most of the financial processes tended to be subordinated by central planning and having as an ideal the complete redundancy of money (although in the socialist second economy alcohol, cigarettes, or coffee plaid the role of money substitutes) my informants struggle to make ends meet in a world where money is the pervasive idiom in discussions about value. Departing from a world of monetary stability (there was no inflation, no bankruptcies, only one single state savings bank, and regular payments of salaries in socialism) my informants now experience a world where goods are standardized and abundant, yet money is increasingly fluid, object of manipulation, uncertain, new and diverse, having a lot of possibilities for spending and investment. It is not always easy nor safe to accept reflexive forms of knowledge and value; that is, the logic of late capitalism where the success of financial ventures is as much premised on rational investing as on the mutual belief of investors in the future growth prospects of that enterprise.

The sense of insecurity displayed by people I work with is all the more acute in a social setting where the episodes of deception have been numerous and have usually ended with defeats and losses for lay investors. It is particularly difficult to accept that the value of financial investments or complex forms of money is not necessarily dependent on God, gold, or the patronizing state but rather reflexively linked to the generalized trust of all those interchanging it. This specific outlook makes it easier to understand the ethos of my informants and the specific form of change it makes possible. Change does not come as a result of stable preexisting configurations of value that make possible a new social order but more as a result of accidental arrangements of events in specific situations. Previously tested routines are applied to new situations which often results in misappropriations generating mutations in social meanings and change as unintended consequences. Thus, change happens while many are still looking backwards and the past enters the present not as continuity but as an instance replicated instrumentally in situations of radical uncertainty. The ongoing challenge is to understand how people accommodate such forms of persistent instability and how they routinze the continuous negotiation of values implicit in social action. The understanding of the practical negotiation of values is the key for the scholarly representation and ethnographic writing of processes of social change.

Notes

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This paper is based on observation and interviews among the representatives of lay investors involved in the drafting and evaluation of the new regulations, and interviews with European and Romanian securities regulators, representatives of asset management companies, brokerage companies, and depositaries for investment funds. A focus group organized in July 2008 brought together representatives of all the significant organizations and addressed questions about the opportunity of the regulatory reform in 2004, the role of public consultations in the process and its effects on the governance of the mutual fund industry. The paper also draws on the study of case files of trials initiated by market actors contesting various provisions of the new regulations, and on a comparative analysis of laws and regulations for the capital market in Romania.

[2] Of direct relevance to the questions addressed by this paper, mutual funds (open-end funds) are basically collective investment entities in which investors buy shares. Theoretically, they have several advantages over alternative investment vehicles and especially over risk funds (closed-end funds): 1) They allow people to pool resources and make more efficient and less risky investments with the help of professional administrators; 2) They allow the purchasing and

redeeming of shares (i.e., entry and exit) on an ongoing basis. Administrators are supposed to implement the investments strategies and to calculate and declare publicly the current values of the shares (value of all investments less financial obligations divided by number of shares in circulation). Money and other financial assets of the funds are kept by depositary banks which also keep a separate record certifying or not the public values of the shares declared by administrators. Regulators (in Romania the National Securities Commission - *CNVM*) supervise the activity of administrators and depositaries and issue new regulations regarding the activity of these funds. Mutual funds are in sharp contrast with closed-end varieties of funds characterized by stricter entry/exit rules, higher risk profiles, and a higher sophistication of investors.

Whereas in most of the Western countries mutual funds would be considered relatively safe financial ventures with a passive portfolio administration strategy, in Romania they became the epitome of financial hazards after several notorious collapses that washed away the life-savings of hundreds of thousands of lay investors.

[3] Until 1996 Romania was governed by a socialist party whose cadres were recruited mostly among the former communist elite.

[4] Data on the investment fund industry in Romania from 1996 were generously provided by the Romanian Association of Asset Managers (RAAM).

[5] Rumors led to massive withdrawals from the Romanian Commercial Bank (*BCR*) – the largest state bank in the system, which almost lead to the precipitate collapse of the bank in autumn 2000. The archival collection of the most important daily and weekly newspapers of the time (*Evenimentul zilei, Adevărul, Curentul, Capital, Bursa*) accurately describes both the series of events that led to the near collapse of the bank and the panic of the mass of lay investors.

[6] See Law no. 297 of 2004 regarding the capital market and *CNVM* Regulation No. 15 of 2004 regarding the authorization and functioning of investment management firms, collective investment undertakings and depositories.

[7] See the website of the Committee of European Securities Regulators for more details about the organization and activity of the institution: http://cesr.eu/index.php?page=home&mac=0&id=. Eilis Ferran (2004) realizes a comprehensive analysis of the policy making mechanism introduced with CESR from a legal perspective.

[8] All the CNVM annual reports can be downloaded from the website of the institution at: http://www.cnvmr.ro/ en/raportanual.htm.

[9] The most important directives adopted by the European Commission through the co-decision procedure and after consultation of market actors by CESR are the Prospectus Directive, the Market Abuse Directive, the Transparency Directive, and the Markets in Financial Instruments Directive (MiFID).

[10] Many of the assessments and interpretations of the subsequent sections of the paper are based on the results of a focus group on "Regulatory reform, public consultations and the development of the capital market in Romania" organized in Bucharest in the summer of 2008. The

participants in the focus group formed a diverse group of stakeholders on Romanian capital market, representing institutions such as: the Romanian Senate, The Romanian Brokers' Association, RASDAQ (the over-the-counter securities market in Romania), the Foreign Investors Council in Romania, the Central Depository for the Stock Exchange, several asset management companies, law firms with expertise in securities law and investment fund regulations, journalists from financial newspapers and business dedicated TV stations, leaders of civil society organizations, and independent analysts.

[11] The European Fund and Asset Management Association (EFAMA). More information available at: www.efama.org.

[12] Research papers and policy reports written by USAID employees and affiliated researchers specify the objectives, practical measures taken towards, and results of the policies meant to create efficient capital markets in Romania and other Eastern European countries (Deloitte-Touche 2002; Fox 2000; Lieberson et al. 1998).

[13] Such opinions were expressed by the leaders of the Association for the Protection of Investors (*ANPI*), the most prominent association representing investors in the penal trials against the managers of the defaulted funds and in negotiations with the *CNVM* over the form of the new regulations regarding mutual funds. They were documented during interviews conducted by the researcher in 2007 and 2008 and in the frequent opinion pieces published by the president of *ANPI* in the daily financial newspaper *Bursa*.

[14] All of these are specific provision of Law no. 297 of 2004 and of *CNVM* Regulation no. 15 of 2004 cited above.

[15] The evaluation of the new regulations was made by two *CNVM* directors during an interview conducted by the author in September 2006.

[16] *FNI* and *FNA* were only the most notorious cases of mutual fund collapses in postsocialist Romania. Several other examples of funds that lost important amounts of their values when the fraudulent practices of asset managers were uncovered are less known outside Romania although they feed into the concerns of the investors described by this paper.

[17] See the interview from September 2006 cited above.

[18] Such interviews and opinion articles are published regularly by the financial newspapers in Romania such as *Bursa, Ziarul Financiar, and Săptămâna Financiară* or broadcasted on the *Money Channel* (a TV station dedicated to business programs).

[19] The concept launched by John L. Austin in his *How to Do Things with Words* (1962) is adopted here to describe the effects of the manipulation if the idea of Europe and of the process of Europeanization by Romanian authorities. For a good illustration of the way the concept can be used to describe the effect of financial theories on communities of brokers and their practices

see Donald MacKenzie, *An Engine Not a Camera: How Financial Models shape Markets* (2006).

[20] In spite of the current events in the global financial markets, American regulations, at least those pertaining to the investment fund industry, are more comprehensive than the European ones. Not only do lay investors have more means of controlling the activity of asset managers in the American fund industry, but the issues of corporate governance are treated as an integral part of mutual fund regulations. This is unlike in the European framework (for which CESR is the initiator) where corporate governance is a separate area of policy for the European Commission. This conceptual and political distinction was underlined by Carlo Comporti, CESR Secretary General in an interview realized by the author in Paris on August 1, 2008.

[21] I am indebted to the ethnomethodological literature on values, values-in-use and their social constitution (Jayussi 1984, 1991).

[22] Various anthropologists of Eastern Europe have identified this motive in the case of many other financial scandals happening in most of the former communist countries in the region (Verdery 1995a, 1995b; Humphrey 2000; Mandel and Humphrey 2002; Korovilas 2004).

[23] An interesting inversion of positions could be witnessed in 2008 during the bank failures in the United States and some European countries. At the time, bank owners and managers called for the bailout of the troubled financial institutions while left-wing critics warned the public about the dangers of nationalizing losses without eliminating speculative financial practices and making management more responsible. The choice was framed similarly by state authorities having to decide on the most appropriate forms of state intervention in the banking industry with the purpose of preventing a general collapse of the financial system. *The Financial Times* is a good venue where various propositions for the reform of the financial system made by either political leaders or prominent academics are presented and compared.

[24] This opinion was repeatedly recorded in interviews conducted by the author with lay investors struggling to recuperate the money lost with the collapse of *FNI* and *FNA*. It raises fundamental questions about the catalysts of social action in contemporary Romania. Thus, in spite of the simplistic explanations trying to link the unprecedented success and growth of the two mutual funds to the forms of institutional communication adopted by the asset managers and the banks involved, to the “impersonal” legal forms, or to the aggressive TV commercials at the time, ethnographic research indicates that action was rather situated in overlapping social networks. Such networks of acquaintances, friends, and relatives constitute the medium through which practical examples, information, and knowledge are disseminated and the loci where the bases of collective action are set.

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