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Efficiency and Effectiveness in Securities Regulation: Comparative Analysis of the United States's Competitive Regulatory Structure and the United Kingdom's Single-Regulator Model

Joseph Silvia*

I. INTRODUCTION

Does the form of regulatory institutions impact the efficiency and effectiveness of the regulatory structure? While the current status of the multi-level, multi-functional regulatory structure in the United States has developed over many years, the recent adoption of a single-regulator structure by the United Kingdom offers us the opportunity to test the impact of form on substance. To what extent does each system efficiently and effectively monitor and enforce the regulations of the financial markets?

This Article evaluates the current status of the multi-regulator structure in the United States and the single-regulator structure of the United Kingdom for a determinative assessment of to what extent one system offers greater efficiency and effectiveness in achieving its stated mission compared to the other system. Should the United States consider a change in its current regulatory framework?

This analysis begins with a detailed account of U.S. regulation of the financial markets and its participants, with a specific focus on the securities markets. Part II of this analysis examines the U.S. regulatory scheme's origins, development, goals, and major issues. Part III examines the United Kingdom's recently adopted single-regulator system and provides a thorough description of the system's basic structure, development, and major issues confronting the single-regulator model. Part IV evaluates each model based on the following three considerations: (1) safety and soundness in the markets through enforcement and prosecution; (2) costs and benefits derived from the

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regulatory structures; and (3) effectiveness and efficiency offered by each system of regulation. Part V concludes.

II. THE UNITED STATES'S REGULATORY SYSTEM

A. Introduction

The United States is an interesting example of a single monetary area and a common market combined with an extremely fragmented supervisory landscape: a complex regulatory system based upon federal law (initially enacted by Congress in 1933 and 1934); state “blue sky” laws; regulation by agencies with rule-making powers, such as the Federal Reserve and the Securities and Exchange Commission (“SEC”), and self-regulation organizations (“SROs”) with their own rules. Furthermore, Congress created the Commodity Futures Trading Commission (“CFTC”) in 1974 for the purpose of regulating the commodity futures and options markets in the United States. “[C]urrently, there are more than 10 federal, state and industry regulatory bodies in the U.S.” This makes regulation in the industry not only complex but, in many cases, duplicative.

B. Development of the Current Regulatory Structure

The great stock market crash in October of 1929 and the ensuing depression the United States fell into severely damaged public confidence in the capital markets. The political consensus at that time was that public confidence needed to be restored in order for the economy to recover and emerge from the Great Depression. To this end, Congress held hearings to identify the problems and to engage in debate about possible solutions. The Securities Act of 1933 (“1933 Act”) and the Securities Exchange Act of 1934 (“1934 Act”) were the direct result of these congressional hearings. Enactment of these landmark pieces of legislation was designed to restore investor confidence in the

5. Id.
6. Id.
8. Id. §§ 78a-78nn.
capital markets by providing further structure and government oversight in view of the shortcomings and inadequacies of the state “blue sky” laws.9

Two simple notions delineate the purpose of the 1933 and 1934 Acts: (1) “[c]ompanies publicly offering securities for investment dollars must tell the public the truth about their businesses, the securities they are selling, and the risks involved in investing[; and (2)] [p]eople who sell and trade securities – brokers, dealers, and exchanges – must treat investors fairly and honestly, putting investors’ interests first.”10

The 1934 Act established the SEC to enforce the new securities laws, promote stability in the capital markets, and protect investors in those markets.11 The Investment Company Act of 1940 (“1940 Act”),12 which “regulates the organization of companies . . . that engage primarily in investing, reinvesting, and trading securities, and whose own securities are offered to the investing public,” together with the 1933 Act and the 1934 Act broadly establish basic principles and objectives for oversight of the securities markets.13 As capital markets evolve technologically and offer new products, these three key pieces of legislation allow the SEC to engage in rulemaking to maintain fair and orderly markets and to protect investors by altering regulations or creating new ones.14

The laws and regulations governing the U.S. securities industry aim at achieving one simple goal for investors: disclosure.15 All investors, whether large, institutional investors or small, individual investors, should have free and open access to certain basic facts and information about prospective investments before the purchase of such investments, and so long as they hold them.16 The disclosures made by publicly traded companies provide a “common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.”17 The effect of full and fair disclosure is more

9. Lastra, supra note 1, at 68 n.16.
10. Investor’s Advocate, supra note 4.
11. §§ 78a-78nn.
12. Id. §§ 80a-1 to 80a-64.
13. Investor’s Advocate, supra note 4.
14. Id.
15. Id.
16. Id.
17. Id.
transparent capital markets for investors, which is vital for capital formation and success in the U.S. economy.\(^\text{18}\)

**C. Effectiveness in Regulating the Securities Industry**

The SEC has supervisory authority over the key participants in the securities industry.\(^\text{19}\) These key participants include the securities exchanges, securities brokers, securities dealers, investment advisors, and mutual funds.\(^\text{20}\) A comprehensive securities law providing regulatory rules for both primary and secondary markets applicable to issuers, underwriters, brokers and investment advisers characterizes the American regulatory environment.\(^\text{21}\) Its complexity, multiplicity of regulators, and demands for federalism within the Constitution further identify the American structure.\(^\text{22}\) "Crucial to the SEC's effectiveness in each of these areas is its enforcement authority."\(^\text{23}\) Enforcement action by the SEC and other regulators in the United States is perhaps the most effective tool for defining the scope of regulation in the American capital markets. "[A]uthorities in the US... have been very successful in prosecuting major corporate scandals and, in so doing, recognising [sic] that those at the heart of those scandals are criminals and deserve to be brought to justice."\(^\text{24}\) Enforcement is the key method for regulation in the U.S. capital markets.\(^\text{25}\) This is evidenced by the fact that over half of the roughly 3,100 SEC employees are within the Enforcement division of the SEC.\(^\text{26}\)

 While the banking industry in the United States is regulated primarily by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, with supervisory authorities at the state level, the securities industry regulation is a combination of federal law, self-regulation, and state law.\(^\text{27}\) The SEC, a federal agency, oversees the exchanges, and the National Association of Securities Dealers ("NASD") administers the federal system

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19. Id.
20. Id.
21. Id.
22. Lastra, supra note 1, at 53.
27. Lastra, supra note 1, at 53.
for the registration of new issues of securities. The exchanges themselves are SROs with powers to promulgate rules for member firms and listed companies. Moreover:

The NASD . . . is a . . . [SRO] with powers – under the supervision of the SEC – to promulgate rules governing voluntary membership [of] broker-dealers in the over-the-counter ["OTC")] securities markets, such as the NASDAQ . . . . [T]he U.S. Congress intended to strike a balance between the protection of the integrity of the [securities] markets and the flexibility necessary to maintain an economically vigorous capital market. The structure was also intended to balance the need for participation of the market professionals, achieved through SRO self-regulation and the need for an independent watchdog, the SEC.

The American structure creates multiple levels of oversight and regulation, which may have been intended to balance interests and protection of investors, but, in some instances, can be economically inefficient and wasteful. The economic waste involves multiple regulators initiating enforcement actions, thereby creating multiple layers of liability to firms and personnel, resulting in redundant fines and sanctions from more than one supervisory authority.

In addition to the competition the SEC faces from the federal and state courts, the SROs as lawmakers, the CFTC, the Department of the Treasury, and the Federal Reserve Board also compete with the SEC as financial regulators. This competition can be good because it creates debate regarding parameters of jurisdiction to regulate certain securities products and the industry. Thus, the competition should ultimately result in the products and industry being regulated by those who can most effectively and efficiently regulate each specific product or industry. Competition among regulators has its roots in constitutional federalism and involves conflicting philosophies with considerable overlap and inefficient duplication in the industry regulation. However, the main principle in American regulation for investor protection has always been a matter of dual federal and state regulation.

28. Id.
29. Id.
30. Id. (quoting Howell E. Jackson & Edward L. Symons, Regulation of Financial Institutions 753 (1999)).
32. Id.
33. Id.
D. Issues Facing the Future Development of the Securities Industry

Most current issues facing the American capital markets today are those relating to New York’s pre-eminence in the global financial services sector. New York has been losing vital ground to markets in London and Asia as the leader in global capital formation. For example, in 2005, only one of the top twenty-four initial public offerings (“IPOs”) was registered in the United States. Four of these top twenty-four were registered in London, as that market had gained ground in the global financial services sector. The situation had gotten to a point where the City of New York actually hired a consulting firm to issue a report to identify specific variables negatively impacting the United States, specifically New York’s, financial services sector.

Four factors have been identified as requiring close attention moving forward: (1) the globalization of capital markets; (2) overregulation of our capital markets; (3) frivolous litigation in the United States; and (4) incompatible accounting standards across the globe. Along with these factors, industry experts estimate that the gross financial regulatory costs to U.S. companies are fifteen times higher than in the United Kingdom

Many issues the United States currently faces can be linked to the Sarbanes-Oxley Act of 2002, which imposed strict guidelines for reporting, accounting, and liability in the securities markets. The Sarbanes-Oxley Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures, and combat corporate and accounting fraud; it also created the Public Company Accounting Oversight Board (“PCAOB”) to oversee the activities of the accounting profession. The Sarbanes-Oxley Act has placed considerable stress on industry participants due to its civil and criminal liability potential, evidenced by the aftermath of scandals at Enron and WorldCom.

34. Schumer & Bloomberg, supra note 3.
35. Id.
36. Id.
37. Id.
38. Id.
41. Schumer & Bloomberg, supra note 3.
42. Investor’s Advocate, supra note 4.
43. See Schumer & Bloomberg, supra note 3.
III. The Single-Regulator Model of the United Kingdom

A. Introduction

The United Kingdom's model for implementation of a single-regulator model was chosen for comparison over other European counties with this model, such as Germany or the Nordic countries, because London's capital markets' size and attraction in the world is more congruent with that of New York. The United Kingdom is also interesting because its move to a single-regulator model was developed from a merger of about ten regulators. In addition, compared to other European models, the U.K. single-regulator system is more developed and tested; it also offers considerable consideration in comparison to the U.S. model.

The current regulatory regime of the United Kingdom was borne out of the Financial Services and Markets Act of 2000 (FSMA). A single regulator, the Financial Services Authority ("FSA"), aims its activity "at reaching a more efficient organization of supervisory activities, including a reduction in the costs of regulating itself." The operationally independent FSA became fully operational on December 1, 2001 with the enactment of FSMA. Within five short years that the FSA has been at work, the "light touch" philosophy and approach to regulation has helped London become the world's leading center for mobile capital.

Legal scholars in the United Kingdom attribute the adoption of the single-regulator approach in supervision of the capital markets to three specific reasons:

(1) The existing system was failing to deliver the standards of investor protection and supervision that the industry and the public had the right to expect; (2) [t]he two tier structure [of the U.K. regulatory system] under the Financial Services Act [of] 1986 was inefficient, confusing, and lacked accountability and a clear allocation of responsibilities; and (3) [there was a] need for a regulatory structure that would reflect the nature of the markets where the old distinctions between banks, securities firms, and insurance companies had become increasingly blurred.

47. Cole Speech, supra note 24.
48. Id.
49. Ferran, supra note 44, at 271.
B. The Structure of the United Kingdom Single-Regulator Model

"[T]he Single Regulator Model acts as a ‘three-peak’ regulatory model ‘by objective,’ in which the two objectives of microeconomic stability – prudential supervision and investor protection – are assigned to a unique agency."50 Macroeconomic stability is left to the Central Bank.51 The FSA was given authority by the FSMA for a wide range of rulemaking, investigatory, and enforcement powers, as well as certain important responsibilities, including the ability to take action to prevent market abuse and to prosecute offenders for insider dealing.52

A key structural difference between the U.S. regulatory model and the U.K. model is the U.K. model is not an enforcement-led regulator.53 The FSA focuses front line efforts of regulation on supervision and use of on-going relationships with authorized firms in the United Kingdom.54 Furthermore, the United Kingdom implements a risk-based approach, whereby regulation is designed to align the FSA’s finite resources with addressing the big risks that matter most.55 This essentially means the FSA accepts a "non-zero failure regime."56 Accordingly, the FSA must, therefore, accept that some violations of securities law can and will go wrong when regulating the 30,000-plus firms and 165,000-plus individuals under FSA supervision.57 The single-regulator model in the United Kingdom emphasizes listing requirements in the capital markets and the importance of self-regulation by securities industry participants.58

Four statutory objectives determine the umbrella under which the FSA operates: (1) market confidence; (2) public awareness; (3) consumer protection; and (4) reduction of financial crime.59 Use of these basic principles encourages and fosters good business practice through the financial services sector, as they recognize firms’ duties to their owners and their customers. The FSA believes "providing firms with the flexibility to decide more often for themselves what business

51. Id. at 481.
53. Id.
54. Id.
55. Id.
56. Id.
processes and controls should operate so compliance with the [FSA] principles is secured[ ] will better align good regulation with good business practice."60 Furthermore, the FSA operates under the belief that firms who commit to a set of outcome-based principles will be in the best position to judge the detail of how best to deliver those outcomes to the market.61 This hands-off approach assumes "firms can best figure out how they deliver fair treatment to their customers in a way which is aligned to their commercial objectives in terms of customer service and retention."62 This consideration accounts for the fact that just 280 people, eight percent of the staff at the FSA, deal with enforcement actions.63

C. Effectiveness in Regulating the Financial Services Industry

The FSA has a duty to have regard to the international competitiveness in the United Kingdom markets.64 As such, the regulator is currently thought of in the international community as the "thought leader," always seeking new approaches to better regulation.65 This is demonstrated by the FSA's deliberate regulatory shift to a more principles-based supervisory structure.66 The FSA's decision to be a risk-based regulator is conscious and deliberate. Regular reviews of the amount of risk the FSA is prepared to accept are conducted to focus resources on those risks that the FSA considers to matter the most in the current regulatory environment.67 Three strategic priorities are considered in regulation by the FSA: "[1] to promote efficient, orderly and fair markets, both retail and wholesale; [2] to help retail consumers achieve a fair deal; and [3] to improve [the United Kingdom's] own business capability and effectiveness."68

Unlike the approach sometimes adopted by regulators in the United States, the FSA firmly believes regulators must be very wary of overregulation and the damaging effects it can have on creativity, innovation, and competition.69 Recently, the Director of Enforcement

61. Id.
62. Id.
64. Id.
65. Id.
66. Id.
67. Id.
68. Everitt Speech, supra note 60.
of the FSA indicated that “even where empirical analysis shows there
has been a market failure, [the FSA is] not always convinced that reg-
ulatory intervention is the most efficient and cost-effective form of
correction.”70 This contrasts the situation in the United States where
the SEC received almost 72,000 complaints and questions from inves-
tors in 2005.71 Rather than bring an enforcement action, or imple-
menting any regulatory intervention, the Director of Enforcement at
the FSA further indicated market failures may also be addressed with
“competition policy or the FSA using its considerable influence with
market participants . . . to change firms’ policies,” without breaking
out the regulatory rulebook.72

Focus within the FSA’s regulatory function is on the outcome rather
than the prescription of detailed rules.73 The hope is this will act as an
incentive for firms in the United Kingdom to focus on compliance in
return for a “regulatory dividend,” that is, less regulatory interвен-
tion.74 The philosophy is prevention is better than a cure in that it is
more desirable to implement “pro-active surveillance of likely ‘hot
spots’, [sic] up-to-date transaction analysis systems and industry coop-
eration to ensure a steady flow of information.”75

Unlike the United States, the FSA does not actually have legislation
that separately codifies rules in a comprehensive securities act.76 The
securities laws in the United Kingdom are dispersed among the other
laws, such as in corporation law and banking law.77

The enforcement division of the FSA actually has no stand-alone
priorities separate from the rest of the organization.78 Instead, the en-
tire FSA is concentrated on two main priorities: (1) market abuse on
the wholesale side and (2) fair treatment of customers on the retail
side.79 The FSA is able to prosecute insider dealing, market abuse,
and breaches of the “perimeter” (people conducting regulated activi-
ties without authorization) in criminal courts.80 The FSA may also
bring cases in the civil courts to freeze assets and to restrain unautho-

70. Id.
71. U.S. SEC. & EXCH. COMM’N, PERFORMANCE AND ACCOUNTABILITY REPORT 45 (2005),
73. Id.
74. Id.
75. Id.
76. Jackson, supra note 58, at 631-32.
77. Id.
79. Id.
80. Id.
rized behavior, among other things. Procedures for these actions allow the FSA to impose unlimited fines, alteration or withdrawal of a person or firm's ability to conduct regulated activities, or even ban it from the industry altogether. However, in 2005 to 2006, excluding threshold conditions cases, thirty-seven percent of the matters investigated by the FSA concluded with no disciplinary action, and a further nine percent of cases resulted in private warnings issued. Prosecution of white-collar crimes in the United Kingdom, under the FSA's supervision, has been sparse at best.

D. Issues for Consideration in the Single-Regulator Model of the United Kingdom

Initial consideration must first be given to the obvious youth of the regulatory structure in the United Kingdom. The FSA has had only a short time to make its presence felt and the idea of what regulation ought to be implemented on a massive scale. An end-to-end review of the system in 2004 concentrated on improving efficiency and the enforcement process of the FSA. The concerns related to the fairness of the process have led to a focus on how the FSA conducts investigations and how decisions are reached in enforcement cases.

Three challenges have been identified as what the FSA must consider moving forward. The first is how should FSA oversight respond to increasingly international financial institutions? This is an issue for the regulatory community as a whole, but, because of the international nature of London as a capital market center, it is of particular importance to the FSA. The challenge is how to regulate the international financial institutions "in a way which is not either at best, burdensome[,] or at worse, contradictory." Second, the FSA must consider how to become more of a principles-based regula-

81. Id.
82. Id.
84. Id.
85. Id.
87. Id.
88. Id.
89. Id.
tor than it already is.\textsuperscript{90} How can the FSA succeed in making use of the principles, rather than rely on rules?\textsuperscript{91} Decline in the number of rules, combined with the increased use of principles, leads to an issue of adequate prediction under the principles the regulated enjoy with precise rules.\textsuperscript{92} Finally, how will the FSA retain its focus as the single financial services regulator in the United Kingdom?\textsuperscript{93} This includes "both external understanding of what [the FSA does and does not] do, and why; and the internal managerial concentration on a limited number of objectives."\textsuperscript{94}

"[T]he presence of a sole regulator might foment and accelerate collusive relations between the regulator and the regulated," resulting in "regulatory capture" for the FSA.\textsuperscript{95} Furthermore, this model is affected by possible incompatibility among different supervisory objectives, and may also lead to problems of self-contradiction if authority leads to conflicting supervisory objectives.\textsuperscript{96} A single-regulator model "strongly depends on its internal organization: if the numerous areas of competence and specialization are not well-structured and coordinated, the decision-making process risks slowing down."\textsuperscript{97}

IV. THE BETTER REGULATORY FRAMEWORK:
A COMPARATIVE ANALYSIS

A. Three Considerations in an Effective Analysis

Comparison of the two approaches to securities regulation must involve an analysis of the three main components of regulation for the capital markets. First, due consideration must be given to one of the most effective means of deterrence in the securities industry, that of prosecution for violations of the rules and regulations imposed by the supervisory authorities. Second, a simple analysis of the costs associated with each system as well as the benefits borne from those costs must be performed. Finally, we will assess the overall effectiveness and efficiency of each system in relation to each other to correctly determine whether it would be reasonable and prudent for the United States to consider restructuring its regulation system to more closely resemble that of the United Kingdom.

\textsuperscript{90} Id.
\textsuperscript{91} McCarthy Speech, supra note 86.
\textsuperscript{92} Id.
\textsuperscript{93} Id.
\textsuperscript{94} Id.
\textsuperscript{95} Di Giorgio & Di Noia, supra note 46, at 480.
\textsuperscript{96} Id.
\textsuperscript{97} Id. at 479.
B. Safe and Sound Practice in the Markets: Prosecution of Violations

Among several criticisms of the United Kingdom's "light touch" approach to regulation, three stand out: [1] there is a "conspicuous absence of criminal prosecution of securities law violations in the UK[;] . . . [2] the FSA's resources are widely stretched across its huge jurisdiction[; and [3] the FSA's] strategic approach to enforcement sends out selective messages to the markets and allows some illicit activity to go unpunished." Proponents of the U.S. regulatory structure indicate, quite correctly, that the regulators, the investors, and even the regulated firms derive great benefit in the safety and security offered by detailed rules that define the scope of their legal exposure. However, dissenters point out that even this authoritative and enforceable rule-based standard will not fully prevent dishonest practice. The natural and correct response to this is there is simply no conceivable manner in which all illicit activity can be prevented. This basic premise does not change in any regulatory structure.

Most adverse to the current U.S. regulatory scheme is the principle-based approach of the FSA. The enforcement team at the FSA pales in comparison to that of the SEC in terms of the percentage of staff assigned to enforcement responsibilities; the FSA devotes just eight percent of the staff to enforcement, while the SEC devotes over half the staff to the enforcement division. This stark contrast exemplifies the inherent cultural differences between the mindset of the United States's and United Kingdom's regulatory authorities.

Appetite for prosecution in the United States has created a reputation for the United States, good or bad, based on the knowledge that all those who engage in an alternative or borderline activity will minimally be a subject of investigation by the SEC, CFTC, or the Department of Justice in cases where criminal prosecution is warranted, not forgetting the SROs and State securities regulators. For example, the total value of securities class-action lawsuits in the United States has skyrocketed from just 150 million dollars in 1997 to 9.6 billion dollars in 2005.

On the other side of the pond, the FSA has accepted the knowledge that some illegal activity may go unpunished, but focus will be placed

99. Id.
100. Id.
102. Schumer & Bloomberg, supra note 3.
on higher-risk issues in the market.\textsuperscript{103} The current criminal caseload for the FSA and its Securities Fraud Office is comprised of approximately ten cases for trial per year, but essentially more is at stake because the practice of plea bargaining and giving "state's evidence" is not currently allowed in the United Kingdom, unlike in the United States.\textsuperscript{104} However, the FSA has indicated an acceptance that there are some instances that call for criminal prosecution and, furthermore, acknowledges an increased load of cases in the future to solidify the gains London has made on the world stage.\textsuperscript{105}

C. Associated Costs and the Realized Benefits

A choice between a specified, single-regulator model, and a multi-regulator model necessarily hinges on practical considerations of the costs and benefits to the regulators, firms, and market participants. Possible overregulation costs the firms more in compliance, not only in monetary terms, but, in the United States, there "appears to be a worrisome trend of corporate leaders focusing inordinate time on compliance minutiae rather than innovative strategies for growth"; these leaders are fearful of penalties assessed on the firm, but, more importantly, they are fearful of personal financial penalties from overzealous regulators.\textsuperscript{106} U.S. regulators consistently compete to be the "toughest cop on the street," while the U.K. system focuses on collaboration and solutions to problems.\textsuperscript{107}

Although deregulation, or simply less regulation, may help some countries gain short term benefits from an influx of business to the markets, the long-term prospects are less beneficial, as they indicate injury to the stability and reliability of the global marketplace.\textsuperscript{108} A few recent examples identified by industry experts may shed light on the positives of deregulation for the U.S. market.

Recent U.S. financial history provides two specific examples which serve to show the weakness of a multi-level, multifunctional regulatory system. Continental Illinois was one of the top ten banks in this country entering the 1980s expansion. With the slowdown in the Midwest economy during the rust belt era, Continental attempted to grow by attracting wholesale deposits (hot money) nationally, in part, because the state of Illinois did not allow banks to branch outside their

\textsuperscript{103} Cole Speech, \textit{supra} note 24.
\textsuperscript{104} \textit{Id.}
\textsuperscript{105} \textit{Id.}
\textsuperscript{106} Schumer & Bloomberg, \textit{supra} note 3.
\textsuperscript{107} \textit{Id.}
\textsuperscript{108} \textit{Id.}
home county in search of retail deposits.\textsuperscript{109} When it became known that Continental was having some difficulties due to energy lending, these hot money deposits left the bank quickly and Continental was quickly in a liquidity squeeze. Had there been a single national bank regulation with respect to branching, then Continental might have been able to draw deposits from a wider retail base and would have likely avoided a crisis. Eventually, Continental was absorbed into Bank of America.\textsuperscript{110}

On the multi-functional front, the experience of the 1990-1991 experience is useful. At that time, several regulators became concerned about the viability of high yield bonds. Acting on their own, thrift and bank regulators requested that financial institutions liquidate their holdings of high yield bonds and/or limit lending in such deals.\textsuperscript{111} If there were a single, national regulator, then it might have been more likely that a national regulator would have avoided the multiple demands for liquidation of high yield bonds, the subsequent shortage of market liquidity, the closure of some thrifts, and the amplification of economic recession during the 1990-1991 period.\textsuperscript{112}

Advocates of the U.K. model advance the proposition that over-regulation is too costly, inefficient, and leads to inevitable exploitation and abuses along regulatory seams.\textsuperscript{113} Furthermore, "the costs of supervision charged to those regulated and/or to taxpayers decrease, and there is less room for 'regulatory arbitrage.'"\textsuperscript{114} "Industry experts estimate that the gross financial regulatory costs to U.S. companies are 15 times higher than in Britain."\textsuperscript{115} Firms in the United Kingdom benefit greatly from a principles-based approach because it enables them to decide, within reasonability, the most prudent course for the firm and the investors. U.S. firms look at desired courses of business only to find hurdles placed one after another to ensure compliance with all specific rules and regulations. Here, increased cost comes with the benefit of increased certainty, but, in the United Kingdom, the benefit comes with an almost hurdle-free path.

\textsuperscript{110} Id.
\textsuperscript{112} Id.
\textsuperscript{113} Jerry W. Markham, Super Regulator: A Comparative Analysis of Securities and Derivatives Regulation in the United States, the United Kingdom, and Japan, 28 Brook. J. Int'l L. 319, 319 (2003).
\textsuperscript{114} Di Giorgio & Di Noia, supra note 46, at 479.
\textsuperscript{115} Schumer & Bloomberg, supra note 3.
D. Effectiveness and Efficiency Considerations in the United States and United Kingdom Models

The FSA indicates:

[F]our pillars essential to delivering a more effective and efficient retail market: [1] Capable and confident consumers; [2] clear, simple and understandable information available for, and used by, consumers from the industry and the FSA; [3] soundly managed and well capitalized firms who treat their customers fairly and; [4] proportionate, risk-based regulation founded on key principles, including a reliance on the senior management of firms to discharge their obligations.¹¹⁶

The SEC conducts itself according to the mission of protecting investors, maintaining a fair, orderly and efficient market, and facilitating capital formation.¹¹⁷ The goals of each system are congruent, but the efficiency and effectiveness of each is not. Scholars advocating the regulatory system of the United States point to the competitive nature of regulation in the United States as providing the optimal level of regulatory intrusion upon private business interests.¹¹⁸ Advocates of the U.S. competitive model further "contend that competing regulatory bodies will not only govern less, but also more efficiently."¹¹⁹

However, the FSA's "light touch" approach, including a governing emphasis on the principles, has been highly effective.¹²⁰ Backed by bold and strategic enforcement action, this approach has been effective in creating a more collaborative, solutions-oriented regulatory system attracting more business to London's capital markets.¹²¹ For example, by the end of September 2005, "companies had raised more capital on the main market of the London Stock Exchange (the LSE) ($26.7 bn) than the New York Stock Exchange (NYSE) and NASDAQ combined ($26.4 bn) – [these figures do] not include the $6.7 bn raised on the LSE's Alternative Investment Market."¹²² Moreover, the LSE had attracted fifty-nine international IPO deals in the first three quarters of 2005, worth $15.9 billion, whereas the NYSE and NASDAQ together had only attracted 17 deals worth $5.9 billion.¹²³

Additionally, "there is a regulatory dividend that London enjoys under the auspices of the Financial Services Authority," which has

¹¹⁶ Everitt Speech, supra note 60.
¹¹⁷ Investor's Advocate, supra note 4.
¹¹⁸ Karmel, supra note 31, at 496.
¹¹⁹ Markham, supra note 111, at 319.
¹²⁰ Cole Speech, supra note 24.
¹²¹ Id.
¹²² Id.
¹²³ Id.
“bolstered London’s status to establish itself as the world’s leading centre for mobile capital.” Much of the advantage the U.K. system enjoys stems from the economies of scale associated with the FSA’s regulatory structure. These economies of scale produce fixed costs, logistical expenses, administrative personnel costs, and executive management compensation costs which are all considerably reduced in the U.K. universal regulator approach. There is also one single-regulator accountable to the legislative body.

V. Conclusion

While this begins discussion on the economic efficiencies each regulatory system has to offer, there is much more research and observation necessary in future years before any determinative assessment can be made about which system is “better.” Both the United Kingdom’s and the United States’s supervisory authorities maintain similar goals and missions, but implement very different initiatives to achieve these goals. The U.S. system offers competition among regulators, but engages in far greater enforcement. The United Kingdom regulates primarily through principles, with a last resort of bringing enforcement actions, but there may be less certainty in these principles than can be achieved with detailed rules.

Furthermore, effectiveness in each system must be observed in greater detail in the future before alteration to the U.S. system is made. However, “the creation of such a monopoly supervisory authority is extremely unlikely and, according to Greenspan, ‘highly undesirable on both political and economic grounds.’” Fundamental legal change and a fundamental change in the public mindset of the U.S. securities industry would be necessary to accomplish a change to a single-regulator model, and, right now, this seems to be unnecessary and unacceptable to current regulators in the United States. As both regulatory systems continue to achieve their missions, a drastic shift in the U.S. system to look more like the United Kingdom’s does not offer enough advantages at this point. Slowly implemented, small steps of deregulation may be the best way to move towards the principles and ideas inherent in a universal regulatory system, but, for now, the competitive nature of the U.S. regulatory structure is here to stay.

124. Id. (quoting Damian Reece of The Daily Telegraph).
125. Di Giorgio & Di Noia, supra note 46, at 479.
126. Id.
127. Lastra, supra note 1, at 53.