7 Regulatory Issues and Alternatives

Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

Jonathan Swift

The current regulatory treatment of foreign banks in the United States is a patchwork of overlapping jurisdiction in limited areas, juxtaposed against a wide gap at the federal level. Regulation of foreign banking in the United States has developed at an uneven pace, largely as a reaction to a problem situation. The general philosophy in the United States is that banking is sacrosanct, and must be protected (even against itself). Where Britain and the European Continent use suasion, America has substituted statute. In the sections which follow we describe the existing system of regulation, consider the problems perceived in the present regulatory treatment, analyse recent proposals to modify the regulation of foreign banks, and consider possible directions of approach.

A. PRESENT REGULATORY SYSTEM

At present foreign banks are subject to state and federal laws as they apply to domestic banking corporations. For the most part the United States has not applied special legislative or supervisory authority over foreign banks operating within its borders. Only a small number of states specifically authorise the establishment of foreign bank offices. New York and California license branches and agencies of foreign banks. Illinois and Massachusetts also permit foreign bank branches. Foreign banks have chartered state affiliates in New York, California, and Illinois.

The federal government has remained silent on the matter of foreign bank operations. Only in a few areas does existing
federal law designed to deal with domestic banks become applicable to foreign banking institutions. The 1970 Bank Holding Company Act placed a number of foreign banks in BHC status, and simultaneously provided foreign banks with a workable statutory and administrative framework for expanding their operations in the U.S.¹

1. NEW YORK STATE

New York has shouldered a major part of the responsibility for chartering, licensing and supervising foreign banks doing business in the United States. Consequently, the laws, administrative procedures, and experience gained in this direction constitute the most significant body of regulatory control and knowledge presently available in the United States.

While New York embraces a major part of the foreign bank resources located in the United States, its banking laws have attended to this responsibility with scarcely any need for special statutes that address themselves to foreign banking institutions.² Most of the banking laws and administrative processes in New York are applied to domestic and foreign banks alike. In the discussion which follows we concern ourselves with five areas of regulatory jurisdiction, namely de novo operations, capital requirements, lending restrictions, deposit functions, and examinations and related supervisory powers.

De Novo Operations

Chartering procedures and requirements for a bank, trust company, or investment company are similar to those required for all domestic commercial banks. Licenses for agencies and branches are issued by the Superintendent of Banks, with the approval of the Banking Board, for a period of up to one year. State law requires that a foreign banking corporation that maintains a branch office in New York must deposit with the Superintendent specified assets in amounts determined by the Superintendent. In the past all New York branches have deposited assets equal to 5 per cent of total liabilities.

Banking law in New York State also requires that reciprocity be available in the home country of the foreign bank. A foreign bank may be licensed to maintain a branch in New York only if the laws of its native country permit a New York