

PUBLIC ENFORCEMENT OF BANKING LAW IN THE US:
A Comparison between Formal Enforcement Actions against
Foreign and Domestic Banks

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Professor Daniel Kessler

By
Bashir Assi
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Abstract

Globalization has markedly altered the way international financial institutions operate today. Banks, for instance, have become increasingly global: now a major player in the international financial industry, they provide multiple services, as depositaries, lenders, and investment intermediaries. Moreover, domestic banks have expanded their services and operations to foreign markets, leading to a proliferation of international banking and cross-border transactions and operations. Foreign banks can enter the US markets in a number of ways. For example, they can open representative offices, branches, agencies and subsidiaries. And over the last 20 years, there has been a clear evidence of the increased presence of foreign banks in the US.

The internationalization of banks has led to various advancements in the financial sector, including improved efficiency, better diversity and greater liquidity. At the same time, however, this phenomenon has imposed some costs, mainly monitoring costs and systemic risks. The magnitude of risks posed by this internationalization became clear after the recent financial crisis. Following the financial crisis, attempts were made to achieve better coordination between national supervisors and to introduce standards aimed at preventing additional crises. Nevertheless, the supervision of banks remains largely national: in the US, for instance, state and federal authorities are in charge of regulating and supervising both domestic and foreign banks.

In this study, I take a closer look at the manner in which the internationalization of the banking sector has affected the law and the means by which national supervisory authorities deal with both foreign and domestic banks.

The study focuses on the formal enforcement actions that were taken by the Federal Reserve Banks and the Office of the Comptroller of the Currency in the US between 2005 and 2010, examining the treatment of foreign banks, in comparison with domestic banks. My main purpose is exploratory; insofar I hope to extract the fundamental elements of the enforcement actions by those regulatory authorities during this period. The main questions of this thesis are: do enforcement actions against foreign and domestic banks share similar elements and legal basis? And, if not, then in what way do they differ (e.g., in the quantity, severity, or substance of these actions)?