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THE FINANCIAL SERVICES AUTHORITY:A MODEL OF IMPROVED ACCOUNTABILITY?

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ABSTRACT

Prior to the adoption of the FSA (Financial Services Authority) model, supervision of UK banks was carried out by the Bank of England. Although the Bank of England's informal involvement in bank supervision dates back to the mid nineteenth century, it was only in 1979 that it acquired formal powers to grant or refuse authorization to carry out banking business in the UK. Events such as the Secondary Banking Crisis of 1973-74 and the Banking Coordination Directive of 1977 resulted in legislative changes in the form of the Banking Act 1979. Bank failures through the following years then resulted in changes to the legislative framework. This article looks into the claim that the FSA model has improved in terms of accountability in comparison to its predecessor, the Bank of England. It considers the impact the FSA has made on the financial services sector and on certain legislation since its introduction. Through a comparison with the Bank of England, previous and present legislation, reports and other sources, an assessment can be made as to whether the FSA provides more accountability. Evidence provided here supports the conclusion that the FSA is both equipped with better accountability mechanisms and executes its functions in a more accountable way than its predecessor.

INTRODUCTION

This article aims to investigate whether improvements have been made by the Bank of England's successor, the Financial Services Authority – hereinafter referred to as the FSA. Part of the problems encountered by the Bank of England's regime was related to the Financial Services Act 1986. Through an analysis of the legislation operating during the Bank of England and FSA's regimes, an assessment will be made as to whether accountability has been improved within the financial services sector. An analysis of both regulators' approaches to supervision and their regulatory framework will be made to ascertain whether these elements have aided accountability. Segregation of duties and clear delineation of responsibilities and duties being crucial to aiding accountability. Regulatory and supervisory responsibilities were formally passed to the FSA in June 1998 under the Bank of England Act 1998.[ii]

Until the early 1970s, the Bank of England's ability to gather information was limited to the collection of monetary statistics and the informal monitoring of banking institutions.[iii] The intensity of monitoring depended on the type of relationship an institution had with the Bank of England; more attention was given to discount houses and accepting houses.[iv] During the Secondary Banking Crisis in 1973, UK bank supervision was managed by a group which consisted of 15 people. A personal approach to supervision was in existence at that time. However, following the Secondary Banking Crisis, a new Banking Supervision Division was established with the number of staff rising to 70 over three years. Thus the "personal approach" stance to supervision was reduced.

The Banking Act 1979 section 16 gave to the Bank of England "The Bank" power to compel "licensed deposit-takers", the lower tier of institutions authorized under the statute, to disclose any information that might be requested of them or to produce reports on such information by an accountant authorized by the Bank. The Bank was also given powers to appoint investigators who were to examine the affairs of an authorized institution. There was no attempt to depart from established cooperative supervisory practices of the Bank and the Bank's flexible, personal, progressive (tiered) and participative "supervisory style" was maintained despite the fact that under new licensing requirements, large numbers of previously unregulated institutions had been brought for the first time under the Bank's responsibility.[v] Following the collapse of Johnson Matthey Bankers in 1984, the Leigh Pemberton Committee was set up to review banking supervisory arrangements. The "tiered" approach was abandoned and the Bank's power to request information was extended to cover all banks in a move aimed at improving supervision.[vi] There was also increased emphasis on the requirement by authorized institutions to maintain sufficient internal controls and the establishment of audit committees consisting of non-executive directors. A system of occasional on-site examinations was introduced where small review teams of supervisors along with accountants or bankers on temporary secondment from their firms to the Bank , visited usually for a period of a few days the authorized institutions for the purpose of assessing the quality of their lending and control systems or examining particular areas of concern.[vii]

Following the collapse of Johnson Matthey Bankers, the resulting legislation paved way for the establishment of a Board of Banking Supervision in May 1986 to assist the Governor of the Bank of England. The Board consisted of nine members, three of which were *ex officio* members, the Governor, Deputy Governor and Head of Supervision. Six outsiders provided expertise in the areas of banking, accountancy and law. The effectiveness of the Board of Banking Supervision was questioned after the Bingham Report[viii] observed that the Board lacked vital information to perform its duties. Following this incident, the level and detail of information received by the Board was increased. The Board met more frequently and was more involved in every aspect of the Bank's regulatory work.

The Banking Act 1987 vested in the Bank wide powers relating to the collection of information and the monitoring of authorized institutions. Schedule 3 of the Act covers the minimum criteria for authorization of an institution as a bank and provided foundation for the Bank of England's supervisory position. Apart from vesting in the Bank wide powers relating to the collection of information and monitoring of authorized institutions, the Banking Act of 1987 introduced the involvement of bank auditors in the supervisory process. The collapse of BCCI also led to the adoption of a more intrusive supervisory attitude.[ix] The number of on-site bank examinations increased to about 120 to 130 visits per year in 1995.[x] However, supervision remained largely dependent on information received from the authorized institutions themselves and the introduction of bank examinations on a quasi-permanent basis, as is the case in the US supervisory system was strongly resisted. The BCCI crisis also brought further change within the organizational structure of the Bank led to two new divisions within the Bank : that for Monetary Stability and that for Financial Stability. The decision-making process within the Bank was hierarchical - with the junior supervisors being entrusted with day-to-day monitoring of authorized institutions and not being authorized to take corrective action where it appeared to them appropriate.[xi] A critical decision was taken only after full consideration of circumstances of the case and at a higher level by senior regulators – subject to the Governor's approval. The collapse of Barings Bank in 1995 highlighted the fact that no on-site visits had ever been undertaken and that two had been planned for that year. The style of supervision by the Bank was one still based on trust in the “blue blooded banks” that did not require supervision.[xii]

The remaining sections of this paper are organized as follows: In the first section, regulatory approaches and systems of supervision will be considered in order to provide a background of how the Bank of England approached supervision and to ascertain if an optimal way or mix of supervision exists. The second section will then consider the rise of statutory prudential regulation and events which shaped the banking legislative and supervisory framework. This section will also consider major bank collapses and how these have affected the legislative framework and if the styles of supervision adopted by the Bank of England and the Financial Services Authority have been influenced by these bank collapses.

The aims and objectives of the Bank of England will be the next focus of the article and this will lead to introduction of the FSA and its aims and objectives. Comparing the objectives of the Bank of England and the FSA in section three will provide further evidence as to whether the issue of accountability has been given priority and which regulator provides more accountability. Section four will consider issues relating to public accountability, regulatory confidentiality and accountability mechanisms under both regimes of the Bank of England and the Financial Services Authority in order to facilitate discussion of how accountability has been hindered or aided under the separate regimes of the Bank of England and the FSA. Legislation under the separate regimes will then be considered under section five before a conclusion is reached.

REGULATORY APPROACHES AND SYSTEMS OF SUPERVISION IN VARIOUS JURISDICTIONS

Regulation can be carried out through “state regulation” whereby the State carries out regulation and also through “decentred” regulation whereby other actors are involved in regulation. Responsive regulation is another approach to regulation and it involves a combination of state and self regulation. Through the Enforced Self Regulation Model, which is a form of responsive regulation, it will be shown that this form of regulation could greatly improve accountability, if properly implemented. The use of external auditors by regulators such as the Financial Services Authority could also improve accountability within the regulatory system. This is because a system of regulation and supervision whereby too much self-regulation and/or insufficient delegation occur, consequently fosters reduced accountability.

Regulatory Approaches

"Decentring Regulation" is used to express the notion that governments should not and do not have a monopoly on regulation and that regulation is now being carried out by other actors namely: large organizations, collective associations, professions, technical committees etc without government's involvement or even formal approval.[xiii] Decentring also refers to changes occurring within government and administration: the internal fragmentation of the tasks of policy formation and implementation.[xiv] Self-regulation fits into this analysis because it is a form of 'decentred' regulation as it is not state regulation.[xv]

"Responsive regulation is distinguished from other strategies of market governance both in what triggers a regulatory response and what the regulatory response will be".[xvi] Ayres and Braithwaite also propose that regulation be responsive to industry structure – since different structures will be conducive to different degrees and forms of regulation. The Enforced Self-Regulation Model is a form of responsive regulation whereby negotiation occurs between the state and the individual firms to establish regulations that are particularized to each firm.[xvii] In the Enforced Self-Regulation Model, each firm is required to propose its own regulatory standards in order to avoid harder and less tailored standards imposed by the State.[xviii] This individual firm is "enforced" in two senses :[xix]

First the firm is required by the State to do the self-regulation. Second, the privately written rules can be publicly enforced. The proportion of self-regulation and rule-making by the firms permitted by the state is crucial and could lead to promoting or avoiding regulatory capture. Where more self-regulation is allowed than should be the case, then regulatory capture is likely to occur. This situation would not allow for sufficient accountability to the public and would be promoting private interests over public interests. Having delegated more responsibility and control than necessary to the firms, the state would not be monitoring and enforcing rules as effectively as it should. The system in the UK accountancy profession is more of a self-regulatory process – even though there is a mixture of state and self regulation. Regulation is not sufficiently enforced by the state as it should be. Therefore there is likelihood for abuse by the regulated. In reported cases, there has been lack of transparency within several accountancy organizations such as the Association of Chartered Certified Accountants.[xx] In the UK High Court case of *AGIP (Africa) Limited v Jackson & Others (1990)1 Ch. 265,* the lack of accountability by regulators and the Institute of Chartered Accountants in England and Wales was also highlighted.[xxi] In addition, the lack of authority of the Institute of Chartered Accountants in England and Wales (ICAEW) to examine files of accountants and to obtain evidence from non-UK sources was illustrated.[xxii]

Enforced Self Regulation envisions particular situations, more efficacious for regulated firms to take on some or all of the legislative, executive and judicial regulatory functions.[xxiii] Ayres and Braithwaite however stress that whatever particular regulatory functions should be "sub contracted" to the regulated firms would be dependent on the industry's structure and historical performance and that delegation of legislative functions need not imply delegation of executive functions. The issue of monitoring is crucial for Enforced Self-Regulation. In achieving the right mix of regulatory strategies, the right reallocation of regulatory resources would be important.[xxiv] Direct government monitoring would still be necessary for firms too small to afford own compliance groups.[xxv] State involvement would not stop at monitoring as violations of privately written and publicly ratified rules would be punishable by law.[xxvi]

Choosing between state and self regulation is not that simple and there are various arguments for and against using either state or self-regulation. Pigon's 1938 statement on regulation views monopoly power, externalities and informational asymmetries as creating a "constructive role" for the government to help offset market failures and encourage social welfare.[xxvii] This view is known as the helping hand view of government.[xxviii] Those who do not agree with this view argue that governments do not frequently implement regulations to deal with market failures and this theory, known as the grabbing-hand theory also predicts that governments focusing more on strengthening private sector control of financial institutions namely banks, are more likely to promote development within these institutions than governments taking a more hands-on approach to regulation.[xxix] As it is difficult to choose between state regulation and self regulation and seeing that both have their merits, a combination of both would not be such a bad idea. The blurring distinction between banking, securities business and insurance and their global nature make it more difficult now for any regulator to fully comprehend such businesses.[xxx] Good regulatory policy could therefore be said to constitute an acceptance of the inevitability of some sort of symbiosis between state regulation and self regulation.[xxxi] According to Rose – Ackerman,[xxxii] good regulatory policy should be a combination of self – regulation and state regulation. Issue relates to what proportion of self-regulation or state regulation should make up a good regulatory policy.

Polizatto distinguishes regulatory systems into two: moral suasion versus legalism and hands-off versus hands-on approaches.[xxxiii] Britain's system is the persuasive hands-off. The system of supervision adopted by the Bank of England was one based on an informal regulatory approach which was based on influence and trust. A shared sense of hostility towards government bureaucracy and statutory rules in the City resulted in banks submitting to the Bank of England's and the trade associations' persuasive powers.[xxxiv] The Bank also maintained regular contacts with the main banking associations. As a result of the nature of the relationship between the Bank of England and the government – the Bank of England being a representative of City interests, the Bank of England had an informal relationship with the banks. This informal relationship would no doubt have provided the perfect situation whereby the Bank could have been "captured" by the industry it was supposed to have regulated.

According to Roberts,[xxxv] the internationalization of London and the growth of non-bank financial institutions in the 1960s started eroding the Bank's powers of moral suasion. Moran also states that the Bank's approach during the Secondary Banking Crisis was driven by fear of bureaucracy and placed excessive trust in regulatees at a period when internationalization and innovation proved unworkable for a regulatory system based on trust.[xxxvi] In order to find a balance between the perceived benefits of the traditional system and the demands of an innovative market, the Bank introduced a two-tier system of recognition where the traditional system was reserved for the first tier and more intervention envisaged for tier two.[xxxvii] This approach was deemed flexible as preservation of the Bank's informal approach suited and adapted well to the changing market.[xxxviii] However, with the enactment of the 1979 and 1987 banking acts, a trend towards growing formalization and reduction in the personal character of supervision was observed.[xxxix]

According to Vieten[xl], banking regulation has followed two trends namely: that supervision has become increasingly formalized and reliant on quantitative tools and that regulatory duties are pushed down a regulatory pyramid to include external auditors and to enlist the resources of regulatees. According to the Core Principles[xli] for effective Banking Supervision 1997, an effective banking supervisory system should consist of a mix of both "on-site" and "off-site" supervision. The UK system involves both on-site and off-site supervision.[xlii]

Systems of Supervision

Off-site supervision involves the regulator making use of external auditors. Off - site supervision by the FSA (Use of External Auditors by the FSA), is based on the Supervision Manual (SUP). The SUP forms part of the regulatory processes section of the FSA Handbook and SUP 3 of this manual which deals with auditors, states that :[xliii] The FSA must ensure that auditors have the skill, resources and experience to enable them deal with the scale, nature and complexity of the bank and regulatory requirements to which it is subject; A bank must notify the FSA as soon as it has been informed that its audit is likely to be qualified; If the auditor writes to the bank about its internal controls, the bank must inform the FSA promptly if there is anything about which it would reasonably expect to hear; Auditors of banks must co-operate with the FSA by attending meetings and supplying information; The FSA may pass auditor's information relevant to their function as they are bound by the confidentiality provisions of FSMA 2000; Auditors ceasing to audit a bank must notify the FSA, without delay, of any matter connected with their departure which the FSA should know or if there is nothing they need to know about.

On-site work is usually done by the examination staff of the bank supervisory agency or commissioned by supervisors but may be undertaken by external auditors.[xliv] At present, the external auditor assists the FSA through a mixed system of supervision whereby the FSA inspects banks (on-site) and utilizes external auditors (off-site). The FSA expects banks to provide information voluntarily to deal with it in an open and co-operative way and tell it promptly about anything significant.[xlv] If necessary however, the FSA can use its powers to obtain information, require the preparation of reports by skilled persons, appoint investigators and apply for a warrant to enter premises.[xlvi] The FSA can also visit banks – with or without notification and a bank's employees, agents or representatives may be asked to go to FSA's offices and must be available for meetings.[xlvii] Privileged communications need not be disclosed – unless the holder or subject is supervised or the subject gives consent.[xlviii]

THE RISE OF STATUTORY PRUDENTIAL REGULATION

The collapse of banks such as Johnson Matthey Bankers (later rescued), BCCI and Barings, not only led to calls for change in the way in which prudential supervision was carried out but also to changes in the legislative framework. The collapse of Johnson Matthey Bankers caused immense damage on the reputation of the Bank of England and exposed its supervisory practices as complacent – injuring its relationship with major British banks.[xlix] These banks were annoyed at having to bear the costs of the rescue even though there had been lack of a possible systemic threat.[l] Apart from the abolition of the two tier system which had been in operation at that time, weaknesses in the supervision of large exposures and the adequacy of control systems were identified. A recommendation was made for the introduction of statutory arrangements for the exchange of information between auditors and regulators. Calls were made for the introduction of a new Board of Banking Supervision – which was supposed to put the Bank under increased accountability. Other measures by Parliament included the strengthening of the Bank's powers to require information and to commence investigations into the affairs of authorized institutions. The release of bank auditors from their duty of confidentiality to client institutions to the extent necessary for facilitating the communication of information of regulatory evidence to the Bank, was also facilitated.

Shortcomings of the Bank of England were also highlighted during the collapse of BCCI.[li] These included the fact that the Bank had authorized BCCI as a licensed deposit-taker under the 1979 Act even though it did not know or understand the shareholding structure of the institution's group and as a result, could not confirm whether its controllers were fit and proper persons.[lii] In addition, the Bank had not tried to stop BCCI from using a banking name even though it was aware that as a UK based second-tier institution, the institution was not entitled to do so. It was also highlighted that the Bank had not acted at all even though it had been aware of Luxembourg's inability to exercise effective supervision. BCCI's auditor Price Waterhouse was also blamed for failing to communicate fully to the Bank about the situation. After pressure from the US authorities, the Bank commissioned a report which led to the closure of BCCI. The recommendations in the report included:[liii] The imposition on bank auditors of a statutory duty to report to the Bank all information they know or should reasonably know to be relevant to the exercise of its supervisory responsibilities under the Banking Act;[liv] the strengthening of communication systems within the Bank, to ensure that all critical information reached its senior officials;[lv] an increase in the Bank's responsiveness to allegations of wrongdoing and the more active investigation of suspect banks[lvi] and a closer involvement of the Board of Banking Supervision in the supervisory process.[lvii] However, even though it was acknowledged that there had been deficiencies in the BCCI case, none of the Bank's staff was held to account.

A more proactive approach to regulation was suggested by Mr Ronald Baker, an ex Head of Financial Products Group, Barings Investment Bank.[lviii][lix] In a report, Mr Baker gave his experience of working for American banks - that there was a more proactive role taken by the regulators in New York in terms of having people on the trading floor. Even though the failure at Barings was attributed to Nick Leeson and the failure of the management of Barings to implement effective controls whilst appreciating warning signals, the independent members of the Board of Banking Supervision identified certain shortcomings with regard to the Bank of England's supervisory role in Barings. These included a lack of understanding of the non-banking risks undertaken at group level, including particular risks arising from derivatives trading, rules on large exposures and of the supervision of the group on a consolidated basis.[lx]

The issue relating to Barings as well as highlighting the problems and gaps which existed with prudential banking supervision, poor regulation and supervision of multi function firms,[lxi] also highlighted the misleading problem of relying on the capital adequacy ratio as the sole source of determining a financial institution's well-being. Regulators impose liquidity monitoring measures on banks to meet specified minimum levels of withdrawals but such measures are precautionary against short-term cash flow problems rather than a situation of panic outburst.[lxii] The level of confidence reposed in the public by the financial community is what sustains banks in modern times and this is strengthened by external checks which is given by credit agencies through scrutiny of published accounts and by bank regulation through prudential supervision.[lxiii] Prudential regulation however, is not the only way in which the FSA takes interest in the financial management of authorized firms – there is also the principle of ensuring that a firm operates with required minimum level of capital in order to reduce the consequences of failure.[lxiv]

Capital Adequacy

This is the term used to describe the adequacy of a bank's aggregate capital in relation to the risks which arise from its assets, its off balance sheet transactions, its dealing operations and all other risks associated with its business.[lxv] The aim is for a bank to have enough capital in relation to its risks to absorb the highest foreseeable amount of loss and still give allowance in which to realize assets, raise new capital or arrange for arranged disposition of its business.[lxvi]

Statutory requirements govern the minimum amount of capital which a bank must have.[lxvii] These have been established by UK and European legislation and from internationally agreed recommendations of the Basel Committee on Banking Supervision.[lxviii] The FSA's approach to the calculation of the capital base and the capital ratios and the assessment of capital adequacy are set out in chapters of the FSA's Interim Prudential Source book for Banks (IPRU (BANK)).[lxix] This has been supplemented by FSA policy statement Individual Capital Ratios for Banks. In due course this will be replaced by the Integrated Prudential Source book.[lxx] In addition, at the international level, the Basel Committee has issued far-reaching proposals to refine and develop the current approach. When concluded, these proposals will be reflected in European and UK rules currently scheduled for 2005.[lxxi]

In January 2001 the Basel Committee published revised and updated drafts of its earlier proposals in June 1999 to reform the 1988 Basel Capital Accord.[lxxii] A revised framework known as Basel II consists of three pillars namely : capital adequacy requirements, centralized supervision and market discipline and these pillars will form the basis of the reform of the Basel Accord.[lxxiii] The problem with the Basel Accord was that it rewarded risky lending since it required banks to set aside the same amount of capital against loans to shaky borrowers as against those with better credits.[lxxiv] As well as linking capital to credit ratings by agencies such as Moody's and Standard and Poor's, banks' internal credit-ratings were also to be used as determinants of how much capital they should set aside.[lxxv] The reforms also aim to develop the Accord into a more universal framework for use by national banking supervisors and it is hoped that the new framework will take effect in 2005. On the 15th November 2005, the Basel Committee on Banking Supervision issued an updated version of Basel II (updated version of the International Convergence of Capital Measurements and Capital Standards : A Revised Framework) and also an updated version of the Capital Accord to incorporate market risks.[lxxvi] A "post-Enron" directive had been passed in 2002.[lxxvii] The directive aims towards a more effective oversight of financial groups which combine banking, insurance and other activities which had not been adequately covered and accounted for by the EU regulation in operation at that time.[lxxviii] As well as its main aim being the reduction of risk, it aims to ensure adequate capitalization of financial conglomerates by banning practices which inflate a firm's capital base.[lxxix] The deadline for implementation of the directive was January 2005.[lxxx] However some commentators have argued that it is wrong for Europe to try applying these new international rules on bank capital in a uniform way.[lxxxi]

Criticisms have been directed towards Basel 2, including supervisory discretion – that this could result to regulatory capture, that it is excessively risk sensitive, that its capital formula is too prescriptive and complex and that it is not well-suited for 90% of the world's population.[lxxxii] Pillar 2 of the New Basel Accord however recognizes the vital role played by supervisors in the maintenance of adequate bank capitalization.[lxxxiii] With differences in legal and regulatory structures in different jurisdictions, the Basel Committee is conscious of the need to maintain adequate flexibility in the application of Pillar 2 in different jurisdictions.[lxxxiv] The Committee's intention in creating Pillar 2 was to promote and support a more thorough process aimed at internationally active banks to determine the actual capital held and to make this process subject to a more focused supervisory review than may have been the case.[lxxxv] Pillar 2, both in its first principle and in the consideration of several more specific risks, makes it clear that the prime responsibility is on banks to make this determination, taking account of their circumstances.[lxxxvi] While there are linkages between Pillar 1 and 2, the Committee sees clear differences between the two.[lxxxvii] Pillar 1 represents the minimum regulatory requirement whereas Pillar 2 expressly recognizes that banks face risks not included under Pillar 1 and that many banks choose to operate at capital levels which are above those required under Pillar 1.[lxxxviii] Pillar 2 therefore expresses the Committee's intention that internationally active banks should operate above the Pillar 1 minimum.[lxxxix] This principle plays a vital role in the overall Capital Accord, and Pillar 2 provides considerable flexibility as to how that is achieved.[xc]

A formal framework for the measurement of capital adequacy has been constructed over the years.[xci] Some of the factors which encouraged formalization include:[xcii] The need for a consistent framework for the reporting and comparative analysis of bank capital positions; the demand of regulated institutions for transparency and equality in the application of regulatory standards and ; the exigencies of the international convergence process which requires the transparent and uniform implementation of harmonized rules by the regulators of every country. With the formal adoption of minimum standards at European Community level, the ability of national authorities to develop their own capital adequacy policies have been reduced[xciii] - however, the setting of specific standards in this area has raised objections.[xciv] It has been said that capital cover may be insufficient in some cases to deter insolvency - as there will always be situations where banks' losses are so heavy.[xcv] The standards may not prevent losses but they would still act as safeguards.

Other major objections against the structure of the capital adequacy standards in force include:[xcvi] First, that the international minimum ratio of 8% appeared to lack any theoretical justification - that the ratio did not have any particular significance in terms of its effect on the actual risk incurred by the depositing public. Second, for all its complexity, the risk-related measurement of bank assets was deeply flawed and caused substantial distortions in the relative demand for bank assets. Third, now that banks were in direct competition with investment firms so far as securities activities were concerned, the imposition of capital burdens on banks eroded their ability to compete.

Following the collapse of Barings, neither the Board of Banking Supervision Report nor the Andersen Review of Supervision considered a **total** overhaul in the Bank's approach to supervision. The predominantly "off-site" nature of the supervision undertaken by the Bank was lauded by the Andersen Review as being flexible and able to influence banks by persuasion and not just the force of law or detailed rules.[xcvii] The Treasury Committee however noted that it was partly due to the discretionary basis of the Bank's approach to supervision that there was limitation in its ability to detect events at Barings and that some of the measures proposed in the Bank's review would help reduce the scope for flexibility.[xcviii] According to the Bank's Review of Supervision,[xcix] the Arthur Andersen Review (supported by the Bank's Review of Supervision), suggests that the use of formal risk assessment models will mean there is need "to bring the line supervisors into direct contact,on site, with a wider range of management".

Even though the Bank committed itself to addressing the problems posed by evaluation of internal controls at banks and to addressing internal communication at the Bank itself by dedicating an increase in the resources towards supervision, it maintained a defense of retaining a non-rules based judgmental approach to supervision.[c] The Board of Banking Supervision Report identified a number of lessons arising from the collapse of Barings and a series of 17 recommendations for the Bank.[ci] Of the original 17 recommendations, 15 were reviewed in detail with the Board.[cii]

List of Recommendations	Further comments
i) The Bank should go further in its role as consolidation supervisor.[ciii]	Weaknesses in the Bank's supervisory regime as illustrated by Barings included evaluation of internal controls at banks, the internal communication at the Bank itself, and application of existing Bank rules.[civ] The Bank of England in response to these issues, committed itself to significantly increasing the resources dedicated to supervision. Its review noted that from the 1st of September 1996, there would be a major restructuring of its supervision and surveillance divisions and that the Bank would:[cv] a) Clarify the standards and processes of supervision. The Financial Services Authority improves on this through its handbook of rules and guidance. b) Improve and harmonize the assessment of risks to which banks are subject.[cvi] c) Strengthen some of the key tools of supervision. The FSA's supervisory tools include desk-based reviews, liaison with other agencies or regulators, meetings with management and other representatives from a bank, on-site inspections, reviews of past business, issuing individual guidance to the bank and use of skilled persons .

List of Recommendations	Further comments
	d) Restructure and expand its banking supervision divisions, with recruitment of more specialists and experienced bankers from the market.[cvii] e) Develop further co operation with other regulators at home and abroad.
ii) The Bank should seek to obtain a more comprehensive understanding of the non-banking businesses in a group and of how the risks in such businesses are controlled, as part of the task of understanding where the "significant" risks in the group lie. The Bank should meet the management of these parts of the group on a formal basis and the questioning should range widely.	The Treasury Committee in its First Report noted that the Bank of England's discretionary approach to supervision limited its ability to detect events at Barings.[cviii] A more rule-based approach to supervision would help improve application of the Bank's rules. In preparing for the changeover from multiple Self Regulating Organizations /Recognized Professional Bodies rulebooks (which were characteristic of the regime under the Financial Services Act 1986) to the FSA Handbook, the FSA highlighted that its regulatory requirements would be "appropriate, simple, clear and coherent" but stated that UK experience of both prudential and conduct of business regulation meant that the kind of framework which would respond to a system of active supervision and firm enforcement was one which combined high-level principles, rules and guidance.[cix] The Self Regulating Organizations (SROs) were funded and partly managed by investment firms and for this reason, the style of regulation established by the Financial Services Act 1986 was sometimes described as "self-regulation within a statutory framework".[cx] At the beginning there were 5 SROs but by 1994 the number had reduced to three : the Securities and Futures Authority (SFA), the Investment Managers' Regulatory Organization (IMRO) and the Personal Investment Authority (PIA).
iii) The Bank should prepare internal guidelines to assist its staff in identifying "material risks" in a banking group and in protecting depositors.[cxi]	

iv) The Bank should ensure that it understands key elements of the management and control structures of those banking groups where it is responsible for consolidated supervision.[cxii] It should receive prior notice of significant re-organization and of significant new operations being undertaken by such groups together with relevant reporting responsibilities. v) The scope of returns currently submitted to the Bank should be reviewed.
vi) A senior director should take responsibility within each bank for the accuracy of returns and should sign the most important prudential returns. He or she should meet the Bank at least once a year.
vii) Solo consolidation of any active trading entity within a bank should be formally approved by the Executive Director in charge of supervision and surveillance or one of Bank's Governors.
viii) Internal guidelines should be prepared for Bank staff as to the procedures to be followed with respect to the granting and review of solo consolidation.
ix) The Bank should review its Memorandums of Understanding (MOUs) with the Securities and Futures Authority and with other UK regulators.
x) The Bank should extend its international co-ordination where possible signing MOUs and involving non banking regulators.
xi)The Bank should extend its initiative of meeting the internal audit departments of banks and where the Bank is consolidated supervisor, should extend this to include the group internal audit function. The Bank should also meet the chairman of the audit committee in case of large UK incorporated institutions. xii)The Bank should review the number and skills of the staff it considers it needs for on-site visits and consultation on a range of capital market and other issues.
xiii) The scope of section 39 reports should be extended to go outside banks and outside the UK as necessary and could be used more flexibly.[cxiii]
xiv)The Bank should periodically require authorized institutions to widen reports commissioned into systems and controls to cover the preparation and inputting of data in major overseas locations.
xv) The Bank should extend its guidance to managers in relation to large exposures, requiring that existing concessions are formally reported to the relevant Head of Division on an annual basis and that breaches be reported upwards regularly.
xvi)The Bank should complete examination of the extent of issuance of comfort letters and guarantees.
xvii)The Bank should introduce an independent quality assurance review of its supervision of banks and regular reports should be made to the Board of Banking Supervision.

THE AIMS AND OBJECTIVES OF THE BANK OF ENGLAND AND THE FSA.

The Bank of England's 1996 Annual Report identified three core purposes of the Bank namely: maintaining the integrity and value of the currency, maintaining the stability of the financial system, both domestically and internationally and seeking to ensure the effectiveness of the UK's financial services.[cxiv] The Annual Report also goes on to explain that “in exceptional circumstances, the Bank may also provide or organize last resort financial support where this is needed to avoid systemic damage.” Since banks are expected to take risks, it would be expected that the Bank would not aim at eliminating **all** elements of risk within the financial system. From the report on the Barings collapse,[cxv] it was highlighted that the Bank could not fulfil its main objective of protecting the financial system without some assessment of the internal workings of the firms in the market – which included the quality of their management. It was also highlighted that guarding against systemic risk was vital to maintaining the integrity of the financial system. Another vital important evidence – the fact that lack of internal controls could lead to the demise of an institution was emphasized.

The FSA is the renamed Securities and Investments Board (SIB) which was set up under the *Financial Services Act 1986.* The FSA's regulatory objectives include maintaining confidence in the financial system, promoting public understanding of the financial system, securing the appropriate degree of protection for consumers and reducing financial crime.[cxvi] Just a comparison of the aims and objectives of the FSA and the Bank of England highlight where their work and concentration is focussed. The focus on public awareness and consumers by the FSA is a testament to its commitment towards public accountability. The FSA's regulatory principles include : The need to use its resources in the most efficient and economic way,[cxvii] the responsibilities of those who manage the affairs of authorized persons; the principle that a burden or restriction which is placed on a person, or on the carrying on of a regulated activity, should be proportionate to the benefit intended to be conferred in general by that provision;[cxviii] the desirability of facilitating innovation in connection with regulated activities; the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom and the principle that competition between authorized persons should not be impeded or distorted unnecessarily.[cxix]

The statement of these objectives and principles provides for a clearer regulatory framework in comparison to those objectives of the previous regulator, the Bank of England - which was largely opaque as regards its aims. These objectives will be key to holding the FSA accountable as to how it operates. There have been debates relating to the order of priority of the objectives and whether some principles should be given as much priority as objectives. The consumer objective whilst ensuring that some accountability is afforded by the FSA towards consumers, has been considered by some to impose too much a burden on consumers[cxx]. In addition, Goodhart[cxxi] suggests that a single regulator may lack clear focus on the objectives and rationale of regulation.

ACCOUNTABILITY UNDER THE REGIMES OF THE BANK OF ENGLAND AND THE FINANCIAL SERVICES AUTHORITY COMPARED.

Many questions have been raised in relation to the FSA's ability to be held accountable – given the all embracing nature of its role and concentration of powers. Such questions include[cxxii] whether the FSA could be made sufficiently accountable to industry whilst avoiding regulatory capture, whether it could be made properly accountable to consumers without creating false perceptions and possible moral hazard concerns about the extent to which the regulatory system would protect them from financial risks and the mechanisms in place to hold it politically accountable since it is independent of government. Fears particularly relate to the discretion given to the FSA as to how best to meets its objectives[cxxiii] – even though many commentators[cxxiv] have suggested that the regulatory objectives and principles provide a basis for legal accountability. As a result of consolidation of the responsibilities for financial regulation into a single regulator, there are less possibilities for gaps in accountability since there is clearer evidence as to who is responsible for what.

The FSA Chairman suggested that the “prime accountability route” for the FSA would be through Ministers to Parliament but some commentators have doubted the effectiveness of political accountability in relation to the FSA. Even though there is government control in that HM Treasury appoints the FSA board, can order independent reviews of its financial affairs and commission independent inquiries into regulatory failures, the Treasury cannot intervene directly in the FSA's affairs apart from limited situations concerned with competition.[cxxv]

As regards public accountability, the FSA is obliged to maintain arrangements for consultation with consumers and practitioners.[cxxvi] There are also concerns that the independence of the Practitioner and Consumer Panels would be compromised since they have been established by the FSA. However statutory roles were given to both the Practitioner and Consumer Panels and on the 18th June 2001 the commencement order giving these roles came into force. Section 11 of the *Financial Services and Markets Act 2000* brought an important part of the formal accountability of the FSA to the Panel into effect and provides that if the FSA should ever reject formal advice offered by the Panel, it should have to explain its reasons in writing.[cxxvii] In addition, the Practitioner Panel has a measure of independence from the FSA as its chairman cannot be appointed or dismissed without the approval of the Treasury.[cxxviii] A brief account of the mechanisms whereby the FSA is held accountable is summarised as follows:[cxxix]

The Treasury : The chairman and the Board of the FSA are to be appointed and replaced by the Treasury. The Treasury also has the role of approving other appointments in relation to the FSA, such as the independent investigator. The FSA is required to submit an annual report to the Treasury which must also be laid before Parliament. The Treasury will be able to commission independent reports on the economy, efficiency and effectiveness with which the FSA has used its resources. The FSA must also give the Treasury copies of any rules and guidance it makes. Where competition concerns exist about the FSA or its rules, the Treasury can instruct the FSA to remedy the problem.

Parliament : Since the FSA's annual report is to be laid before Parliament by the Treasury, the report will be available for Parliamentary scrutiny.

FSA Board : The FSA will be accountable to its Board. The Board is required to have a majority of non-executive directors. A non-executive committee of the board is charged with keeping under review the efficiency of the FSA's discharge of its responsibilities.

Independent Complaints Investigator : Such an investigator is responsible for investigating complaints about exercise of the FSA's functions. Investigator's appointment and dismissal requires Treasury approval.

The Public : The FSA will hold public meetings on the annual report where there must be reasonable opportunity for questions to be put before the FSA.

Consumer and Practitioner Panels : The FSA is required to consult both panels about how far its general policies and practices conform to its statutory duties. This statutory obligation also includes its regulatory objectives and principles.

Consultation : The FSA is obliged to conduct public consultation on rules which it proposes to make. This provision aims to ensure that rule-making powers are used in a way that is focused and transparent.

Statutory Immunity: The FSA and its staff are given statutory immunity from liability in damages for things done during discharge of their functions. This immunity extends to staff of the compensation scheme and does not apply to actions done in bad faith nor to damages arising under the *Human Rights Act 1998.*

The Bank of England and Public Accountability

At the time of the enactment of the Banking Act 1979, it was expected that parliamentary control over and accountability for the Bank's general direction of regulatory activities would be achieved at various levels.[cxxx] However, the handling of individual cases was realized to be a quasi-judicial matter in which responsibility was assigned to the Bank only – thereby excluding the Treasury.[cxxxi] The form of indirect political accountability whereby the Bank was accountable to Parliament through the Treasury had proved unworkable as Treasury ministers were powerless to intervene in the supervisory process.[cxxxii]

Following the Johnson Matthey affair, relations between the Bank and Treasury were damaged as the Chancellor had provided misleading information to Parliament in failing to mention a direct loan made to Johnson Matthey which went beyond the indemnity under discussion and of which the Chancellor himself was unaware.[cxxxiii] After this incident, a solution was arrived at in which the Bank was always to consult the Treasury prior to committing financial resources to a rescue operation.[cxxxiv] There also followed a more consistent approach to keeping the Treasury informed of impending problems – especially in situations where the failure or closure of an institution could have systemic implications or where a regulatory decision was likely to attract parliamentary questions.[cxxxv] Even though these arrangements did not improve the situation relating to accountability for the Bank's regulatory decisions (in particular since Treasury still declined responsibility to Parliament), the new arrangements improved the preparedness of the Treasury to face inconvenient questions.[cxxxvi,]

The duty of making reports improved transparency so far as the general policies underlying its regulatory decisions were explained in its pages – however, it had serious limitations as a means of increasing accountability to Parliament.[cxxxvii] The figures published in the annual reports, as well as showing that the Bank actually refused authorization only to a small proportion of applicants, also showed that the powers of revocation and restriction were rarely used.[cxxxviii] Investigations by Select Committees, and in particular the Treasury and Civil Service provided the only direct and possibly only effective means for parliamentary scrutiny of the Bank's regulatory activities.[cxxxix] Following the collapse of BCCI, the Treasury Committee was critical of the way the Bank had handled the matter and recommended a stricter supervisory approach.[cxl]

Why Regulatory Confidentiality Can Obstruct Accountability

The most credible reason for keeping regulatory action secret was that confidence in a particular institution could be damaged if restrictive measures against it became known – which may lead to unreasonable termination.[cxli] Under the Banking Act 1987 section 17, the only piece of information that the Bank made available about banking institutions was whether they were authorized by the Banking Act. As well as hindering accountability, regulatory secrecy also undermines market transparency. If it were "reasonably certain" that a financial institution was beyond the stage where it could be rescued, then public should be aware of the impending risks associated with such institutions. Such an institution should be disallowed from trading when it is obvious that it would only be wasting investors' funds. Detecting when to go public about such institutions' affairs and whether such affairs could be discovered on time is crucial. The collapse of BCCI resulted to the Bank of England being more willing to provide information about circumstances leading to the collapse and reduced to some extent the emphasis on confidentiality.[cxlii] However despite the willingness of the Bank to publicize and explain its regulatory practices through speeches of its governors and directors, articles in the *Quarterly Bulletin* and appearances before parliamentary committees, the regulatory system then remained opaque to a large extent.[cxliii] Existence of a statutory duty of regulatory confidentiality presented an impediment towards achieving greater accountability and transparency.

Would it have been difficult to change the culture which had existed between the Bank of England and the City for many decades? This would have required radical reform which may have proved difficult to implement at once. "Rome was not built in one day" and cultural change is always a great challenge. It was clearly vital to transfer banking supervision to an institution which did not have a cosy relationship with the City. The proximity of the Bank with the City was a key factor in the weakening of its regulatory capabilities. In addition to the points mentioned, the extent to which the FSA could be judged to be a better model of accountability will very much depend on its approach to rule-making and enforcement.[cxliv]

LEGISLATION, ENFORCEMENT DURING AND AFTER THE FINANCIAL SERVICES ACT 1986

The original rulebooks of the five self-regulating organizations (SROs) which existed under the Financial Services Act 1986 were perceived as being unduly legalistic and lacking in coherence.[cxlv] The "new settlement" introduced by the Companies Act 1989 helped to resolve these problems by introducing new provisions into the FSA 1986 Act which would help simplify individual rulebooks of the SROs and provide some consistency between them.[cxlvi] The result of the "new settlement" was that the rulebooks of the SIB and the SROs were divided into three tiers namely : 10 general principles; 40 core rules which were a mandatory part of the SRO rulebooks and third tier rules made by the SROs.[cxlvii] However, this three-tier structure changed on the advent of a new SIB Chairman in 1992. A move away from emphasis on rules and the structure of rules to compliance with the spirit of the rules and an emphasis on management responsibility for compliance was realized.[cxlviii]

A number of problems related to enforcement arose from the FSA 1986. These included the relative inexperience of regulators in operating the system combined with the on-going process of development of the rules.[cxlix] Apart from the fact that the SIB/FSA had no power to fine under the FSA 1986, there was also the problem of identifying separate roles of the SIB/FSA and the SROs in enforcement.[cl] Although a number of changes were made by the introduction of the Financial Services and Markets Bill, some provisions were carried over from the FSA 1986 to the FSMB.[cli] Under clause 98 of the FSMB, the FSA was given a general power to fine authorized persons and specific powers to impose civil fines related to market abuse. The FSA's powers of "monitoring and enforcement " are contained within section 6 of Schedule 1 Part 1 - section 6(1) of the FSMA which states that 'The Authority must maintain arrangements designed to enable it determine whether persons on whom requirements are imposed by or under this Act are complying with them.' Part III of Schedule 1 deals with penalties and fees.

The FSA Handbook describes the FSA's risk based approach to supervision. The FSA operates on a risk-based approach whereby it differentiates between regulated institutions and allocates resources to areas of greater perceived risk.[clii] It identifies three sources of risk. namely:[cliii] The external environment ; consumer and industry-wide risks and the regulated institutions themselves. Furthermore, the FSMA 2000 requires the FSA to pursue its objectives by re-enforcing the responsibilities of senior management.[cliv] Risk, in particular risk to its four statutory objectives, is now used as the determinant for all regulatory activity, including overall strategy and development.[clv] It has the following stages :[clvi] Identifying the risks to the statutory objectives ; Assessing and then prioritizing the risks ;Considering the probability of a problem occurring by considering factors such as business risk, external context and the firm's business strategy and decisions; Prioritizing its regulatory position by "multiplying" the impact of the problem (if it occurs) by the probability of the problem occurring.[clvii] Having completed these assessments, the FSA, taking into account the resources at its disposal, will decide on its regulatory response.

CONCLUSION

Overall, the FSA's risk based approach has led to a reduced role for auditors in banking supervision.[clviii] From 1 April 2003 to 31 March 2004, the FSA exercised its power under section 166 of the Financial Services and Markets Act 2000 to require firms to produce a skilled person's report in 28 situations.[clix] This is a considerable reduction in investigations from the number of reporting accountants commissioned under section 39 Banking Act 1987 which frequently exceeded 600 reports annually.[clx]

Although there has been a reduction in the FSA's use of external auditors when compared to the regime of its predecessor the Bank of England, it can still be argued that the FSA not only possesses better accountability mechanisms than the Bank, but that so far, it has used these mechanisms reasonably well. This is evidenced by the FSA operating on a more rules-based regime, providing greater identification of its role in enforcement and having a clearer set of principles. Effective implementation is definitely more important than the sole possession of accountability mechanisms. Issues within the FSA which need to be addressed include funding : The FSA is independent of and does not receive any funding from the government. To finance its work, it charges fees to all authorized firms that carry out activities it regulates.[clxi] Given the way charges are imposed on regulated firms, better accountability mechanisms should be in place for the way the FSA's costs are incurred. It is also arguable that its principle of utilizing its resources in the most efficient and economic way (FSMA s 2 (3)(a)), should be elevated to the status of an objective.

In response to the FSA's ability to levy unlimited fines, the government has agreed that these fines should be set off against the FSA's other finance to reduce any incentive to maximize penalties and that the FSA should not be able to add its own costs to any levied fines.[clxii] On the 27th May 2005, a review of its funding regime was announced with the realization of the need to drive down costs. The period from the 1st April 2004 to the 31st March 2005 saw particularly the review of 2 aspects of the FSA's performance and this has provided sufficient, if not absolute evidence that the FSA has performed well so far. The first of these aspects involved examination of costs imposed on the regulated – this being done jointly with the Practitioner Panel.[clxiii] The second was the examination of the effectiveness and fairness of the FSA's enforcement process.

i Oxford Brookes University, School of Social Sciences and Law. Usual disclaimers apply.
ii See S*tatement by Chancellor of Exchequer, 6 May 1997.* During this announcement, monetary policy independence was given to the Bank of England. However this was followed by another announcement on 20 May 1997 in which transfer of banking supervision from the Bank of England to the FSA, formerly known as the SIB, was made.
iii C Hadjiemmanuil *Banking Regulation and the Bank of England* (Lloyds of London Press 1995)143
iv ibid
v Ibid at p 144
vi ibid
vii See Banking Act 1987 : Annual Report under the Banking Act for 1994-95, pp 35-36.
viii Inquiry into the Supervision of the Bank of Credit and Commerce International
ix C Hadjiemmanuil *Banking Regulation and the Bank of England* (Lloyds of London Press 1995) 146
x ibid
xi HR Vieten *Banking Regulation in Britain and Germany Compared* (1997) 140
xii Treasury and Civil Service Committee (1995)Board of Banking Supervision : Report on Collapse of Barings Bank
xiii J Black 'Decentring Regulation' at p 103
xiv Ibid at p 104
xv Ibid at p 113
xvi Ayres and Braithwaite, *Responsive Regulation* at p 4
xvii Ibid at p 101
xviii Ibid at p 101
xix ibid
xx P Sikka 'Policing Knowledge by Invoking the Law : Critical Accounting and the Politics of dissemination' at p 1
xxi Ibid at p 10
xxii ibid
xxiii I Ayres and J Braithwaite *Responsive Regulation : Transcending the Deregulation Debate* at p 103
xxiv Ibid at p 129
xxvIbid at p 106
xxvi ibid
xxvii See JR Barth, G Caprio Jr, R Levine 'Bank Regulation and Supervision : What Works Best?' at pp 1-2
xxviii ibid
xxix ibid at p 2
xxx See CAE Goodhart 'The Emerging Framework of Financial Regulation' pp 95-96
xxxi I Ayres, J Braithwaite *Responsive Regulation : Transcending the Deregulation Debate*, at p 3
xxxii(1988), ibid at p 3
xxxiii HR Vieten (1997) 73
xxxiv Moran 1986 :18 ; Vieten pp73,74
xxxv (1995) at p 180
xxxvi See Vieten p 75
xxxvii ibid
xxxviii Cooke (1986) at p 89
xxxix Staff numbers having risen from 15 to 249 – Bank of England 1994 p 36, Banking Act Report 1993/94
xl At p 18
xli Basel Core Principles
xlii More information on this : D Singh 'Banking Regulation of UK Financial Markets '.
xliii Also see J Hitchins, M Hogg and D Mallett *Banking : A Regulatory Accounting and Auditing Guide* at p 152
xliv "The Relationship between Bank Supervisors and External Auditors", Basel Committee January 2002
xlv See SUP 2 – Information gathering by the FSA on its own initiative and also J Hitchins, M Hogg and D Mallett *Banking : A Regulatory Accounting and Auditing Guide* at p 152
xlvi ibid
xlvii ibid
xlviii Ibid ; Bank representatives must also give FSA representatives access to premises on demand during reasonable hours. FSA can also ask banks to provide information for other regulators .
xlix Johnson Matthey Plc v Arthur Young and the Governor of the Bank of England [1989] 2 All ER 105
l C Hadjiemmanuil *Banking Regulation and the Bank of England* (Lloyds of London Press 1995) 43
li Bank of Credit and Commerce International (Overseas)Ltd (in liquidation) and others v Price Waterhouse and Another (No3), The Times, Thursday April 2nd 1998)
lii C Hadjiemmanuil *Banking Regulation and the Bank of England* (Lloyds of London Press 1995) 47
liii Bingham Report, *loc.cit.,* n. 183 ; Inquiry into the supervision of the Bank of Credit and Commerce International, London: HMSO Oct 1992 (hereinafter Bingham)
liv paras 3.43 – 3.45
lv paras 3.6
lvi paras 3.9-3.10

lvii para 3.11
lviii *Barings Bank and International Regulation*, Minutes of Evidence, Tuesday 23 July 1996 at p 101
lix Barings Plc v Coopers and Lybrand [1997] 1 BCLC 427
lx Board of Banking Supervision, *loc. Cit.,* n.202, paras. 12.6-12.103 and 14.32-14.62
lxi bank and securities regulation
lxii S Gleeson *Prudential Regulation of Banks under the FSMA* chapter 10 in *A Practitioner's Guide* (2006) 181
lxiii ibid
lxiv ibid
lxv J Hitchins, M Hogg and D Mallet *Banking , A Regulatory Accounting and Auditing Guide* at p 163
lxvi ibid
lxvii ibid
lxviii Ibid; For more information, also see JD Wagster 'Impact of the 1988 Basel accord on international banks
lxix ibid
lxx ibid; Also see MJB Hall 'Banking Regulation in the European Union : Some Issues and Concerns'
lxxi ibid
lxxii ibid at p 195
lxxiii See JP Decamps, J.C Rochet and R. Benoit 'The Three Pillars of Basel II : Optimizing the Mix in a continuous time Model" April 12, 2002 <http://www.bis.org/bcbs/events/b2earoc.pdf>
lxxiv "Basle Bust" *The Economist* April 13th 2000 <http://www.economist.com/displaystory.cfm?story_id=332561>
lxxv "Basle Bust" *The Economist* April 13th 2000 <http://www.economist.com/displaystory.cfm?story_id=332561>
lxxvi See <http:www.bis.org/publ/bcbsca.htm> last visited 24th Jan 2006
lxxvii "A Bit of Give and Take" *The Economist* October 17th 2002
lxxviii ibid
lxxix ibid
lxxx ibid
lxxxi Don't Bank on Brussels" *The Economist* April 19th 2001
lxxxii K Alexander "Corporate Governance and Basel II" paper presented on the 7th October 2004.
lxxxiii See "Continued Progress Towards Basel II : Current Sense of the Committee on the Implementation of the Supervisory Review Process – Pillar 2" 15th Jan 2004 < http://www.bis.org/press/p040115.htm>
lxxxiv ibid
lxxxv ibid
lxxxvi ibid
lxxxvii See "Continued progress towards Basel II : Current sense of the Committee on the implementation of the supervisory review process – Pillar 2" 15th Jan 2004 < http://www.bis.org/press/p040115.htm>
lxxxviii ibid
lxxxix ibid
xc ibid
xci C Hadjiemmanuil *Banking Regulation and the Bank of England* at p 208
xcii Ibid at p 209
xciii ibid
xciv Ibid at pp 209,210
xcv ibid
xcvi Ibid at p 210
xcvii Treasury Committee *Barings Bank and International Regulation* (Report No 1, 1996) p xiv
xcviii ibid
xcix July 1996 para 14
c Treasury Committee *Barings Bank and International Regulation* (Report No 1, 1996) pg xv
ci *Barings Bank and International Regulation* Volume 1 Session 1996 -1997 at pg xiii 12 Dec 1996
cii *Barings Bank and International Regulation* Minutes of Evidence Mon 18 Nov 1996 at p 147
ciii Expertise from different areas (securities, insurance, banking) now operate within the FSA.
civ *Barings Bank and International Regulation* Volume 1 Session 1996 -1997 at pg xv
cv ibid at pg xiv
cvi FSA operates on a risk-based approach.
cvii Main concern relating to the FSA's human resources is whether it can attract and retain a sufficient number of well-qualified staff because of large disparity in pay levels between the private and public sectors – see Ferran pg 19.
cviii *Barings Bank and International Regulation* Volume 1 Session 1996 -1997 at pg xiv
cix See I MacNeil 'The Future for Financial Regulation : The Financial Services and Markets Bill' at p 734
cx See E Ferran 'Examining the UK's Experience in Adopting the Single Financial Regulator Model' (2003) at p 7
cxi Another difficulty detected in the Bank of England's supervisory regime was the role of voluntary codes issued as guidance – see First Report from the Treasury Committee *Barings Bank and Int. Regulation* at pg xv. It wasn't obligatory for all financial institutions to adopt certain codes and there was no formal mechanism to effectively police adherence to the code or punish those who disregarded its requirements.

cxii This highlights the importance of skills-mix which are present in FSA and importance of having a single regulator which benefits from knowledge of many sectors – as opposed to a specialist regulator.
cxiii This is necessary due to the growing multi functional and international nature of firms.
cxiv Bank of England Report and Accounts 1996 , p 8
cxv Treasury Committee First Report 1996 *Barings Bank and International Regulation* at pg x
cxvi *Financial Services and Markets Act 2000 sections 3-6*
cxvii FSMA s 2 (3)(a)
cxviii FSMA s2(3)(c)
cxix FSMA s 2 (3)(e) and (f) ; also see http://www.fsa.gov.uk/Pages/About/Aims/Principles/index.shtml
cxx Research Papers 1999 Houses of Parliament; Research Paper 99/68; Financial Services and Markets Bill p 52
cxxi See C Goodhart et al, *Financial Regulation : Why, How and Where Now?* (Routledge, 1998) ; p 154
cxxii See E Ferran 'Examining the UK's Experience in Adopting the Single Financial Regulator Model' at p 24
cxxiii FSMA section 2
cxxiv First Report from the Treasury Committee 1996 Barings Bank and International Regulation at p 26
cxxv Ibid at p 26
cxxvi FSMA sections 8-9
cxxvii The Financial Services Practitioner Panel – Statutory Role; see www.fs-pp.org.uk/stat_role.html, last visited July 15 2005
cxxviii Research Paper 99/68 p 56
cxxix See Research Paper 99/68 pp 54-57
cxxx C Hadjiemmanuil *Banking Regulation and the Bank of England* (Lloyds of London Press 1995) 404
cxxxi ibid
cxxxii The Bank would keep the Treasury informed about its regulatory activities but Treasury declined to reveal to Parliament the content of its contacts with the Bank. Common practice had it that Chancellors ensured they had been aware of specific actions of the Bank – relating to banking supervision and last-resort lending but they declined to take responsibility for any actions connected to such. The decision to rescue Johnson Matthey was attributed to being that of the Governor of the Bank and not that of the Treasury – even though the then Chancellor of the Exchequer and the Economic Secretary to the Treasury indicated their support of the Governor's decision. For more on this, see C Hadjiemmanuil *Banking Regulation and the Bank of England* (Lloyds of London Press 1995) 404
cxxxiiiibid
cxxxiv ibid
cxxxv ibid
cxxxvi Ibid at p 407
cxxxvii ibid
cxxxviii The Bank also does not give any indication of its activities relating to the informal preliminary vetting of institutions intending to apply for authorization ; ibid
cxxxix Ibid at p 408
cxl Treasury and Civil Service Committee, Fourth Report : *Banking Supervision and BCCI* , H.C. paras 61 -89
cxli See Trade and Industry Committee Third Report: *Company Investigations* , H.C. (1989-90) 36, C.I. 49
cxlii C Hadjiemmanuil *Banking Regulation and the Bank of England* (Lloyds of London Press 1995) 413
cxliii ibid p 414
cxliv See I MacNeil 'The Future for Financial Regulation : The Financial Services and Markets Bill' (1999) p 743
cxlv Ibid at p 731
cxlvi ibid
cxlvii ibid
cxlviiiibid
cxlix Ibid at p 739
cl Ibid at p 740
cli See FSA 1986,s61(1) and FSMB clause 332; FSA 1986, ss 65-68 and FSMB clauses 166-169; FSA 1986,s 28 and FSMB clause 40; FSA 1986, s59 and FSMB clause 113
clii See J Hitchins, M Hogg and D Mallett *Banking : A Regulatory Accounting and Auditing Guide* at pp 120,121
cliii Ibid at p 121
cliv See J Hitchins, M Hogg and D Mallett *Banking : A Regulatory Accounting and Auditing Guide* at p 121
clv J Gray and J Hamilton *Implementing Financial Regulation* 2006 p 25
clvi J Hitchins M Hogg and D Mallett pp 123-124
clvii ibid at p 124; in doing this it takes into account (i) Its confidence in the information on which the risk assessment is based; (ii) The quality of home country supervision – for overseas banks in the UK and (iii) The anticipated direction of change in the impact and probability gradings.
clviii P Dewing and P O Russell at p 107
clix ibid
clx ibid
clxi General powers to raise these fees are set out in Schedule 1, Part III, paragraph 17 of the Financial Services and

Markets Act (FSMA);also see http://www.fsa.gov.uk/Pages/About/Who/Funded/index.shtml
clxii " Financial Regulation : Beware of the Watchdog" *The Economist* June 24th 1999
clxiii Chairman's Statement *FSA Annual Report* (2004/05) 5

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