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BRITISH BANKS' ROLE IN U.K. CAPITAL MARKETS SINCE THE BIG BANG

PHILIP N. HABLUTZEL*

In the Fall of 1986, two legal events occurred in the United Kingdom which became known as the "Big Bang." First, on October 27, the actual "Big Bang" was a reform in the operation of the Stock Exchange in the form of a settlement between the Exchange and the Government regarding claims that the Exchange had been anticompetitive. Particular practices complained of were the fixed brokerage commissions and the separation of brokers (who could not act on their own account) and jobbers (market-makers could not act for customers). The Big Bang abolished fixed commissions and the distinction between brokers and jobbers.¹

Then, on November 7, 1986, the Financial Services Act began coming into force, a process completed by April 29, 1988. The new Act reorganized the securities and investments business, created a new government agency, the Securities and Investments Board ("SIB"), and provided for the delegation of duties and powers to some self-regulating organizations ("SROs").²

These two events were intended³ to reform the legal regulation of capital markets in the UK and to expand them. This Essay will explore a portion of the experience since 1986 by looking at the availability of capital to small and medium-sized British firms, the bond market and the banks' role in that market, and the non-legal character of the regulation of that market.

I. BEFORE BIG BANG

A brief description of some aspects of the British capital markets prior to 1986 should be given in order to show the role of banks and bank

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1. CLIFFORD CHANCE, *DOING BUSINESS IN THE UNITED KINGDOM* ¶ 44.02[3] (1991) [hereinafter CLIFFORD CHANCE].

2. *Id.* at ¶ 46A.01. The text of the statute will be cited from BUTTERWORTHS COMPANY LAW HANDBOOK 2431-3000 (Keith Walmsley ed., 8th ed. 1991) [hereinafter BUTTERWORTHS].

3. MARGARET REID, *ALL-CHANGE IN THE CITY: THE REVOLUTION IN BRITAIN'S FINANCIAL SECTOR* 11 (1988) [hereinafter REID].

lending in that market. One difficulty facing an American observer is that many of the ordinary financial terms have different or even opposite meanings in Britain.

The Bank of England was organized in 1694 as a private institution in which subscribers would invest £1,200,000, and the Bank would in turn lend that amount to the government at 8 percent interest.⁴ The Bank, as one of its numerous functions, acts as the government's banker and borrows on behalf of the government by issuing government securities.⁵ These government bonds (or rather bonds of the Bank of England issued on behalf of government) are called "Gilt-edged," or simply "gilts," and can be undated, or due in 5 years or less ("shorts"), from 5 to 15 years ("mediums"); or over 15 years ("longs").⁶

These bonds, like all bonds in British markets, are called "stock." In contrast, an equity investment in a private corporation is called a "share." Shareholders receive dividends (they hope) and have a vote (usually) at the General Meeting. Long before it was ordinary for private corporations to issue shares to investors, there was a need to create a secondary market in government-issued "stock" and hence a Stock Exchange developed. "There was, and still is, more dealing volume on the Exchange in gilt-edged stocks than in British shares and this was particularly so in the 1970s and early 1980s when British governments were churning out new gilts to finance big [b]udget deficits."⁷

Keeping in mind that the Stock Exchange is primarily a secondary market for government securities, providing their holders with liquidity, one should look at a second development, the rise of bank deposits. As banks, particularly the "big four" Clearing Banks,⁸ solicited deposit accounts from customers, practices developed differently than in the United States. An individual or business may have a "current account," which in the United States would be a "demand deposit," or more popularly a "checking account." No interest is paid on current accounts, and the fee for maintaining one is normally about £12 (about \$20) per month.

4. BANK OF ENGLAND, BANK OF ENGLAND MUSEUM (Sandra Lea ed., 1989). This was the beginning of England's "national debt." The bank was nationalized under the Bank of England Act of 1946.

5. This function is performed in the United States by a department of the government, the Treasury.

6. CLIFFORD CHANCE, *supra* note 1, at ¶ 45.02 [2][c].

7. REID, *supra* note 3, at 24.

8. In order of size, ranked by Tier 1 capital in 1992: Barclays (\$11,637m), National Westminster (\$10,453m), Lloyds (\$4,822m), and Midland (\$4,272m). Ranked by assets size, the four are: Barclays (\$258,339m), National Westminster (\$229,272m), Midland (\$111,126m), and Lloyds (\$95,971m). All data as of December, 1991. *Cloudy on the Continent*, THE BANKER, Sept. 1992, at 68, 70, 87.

Proposals made in September, 1992 were to double these fees. Withdrawals may be made at the bank or one of its many "service tills" (ATMs). Checks can be written and used, but checks are not used as widely as in the United States. Retail purchases are made with credit cards, and bills such as utility bills can be paid at any branch Post Office, using its National Girobank system. A current account customer can also arrange for overdraft authority, paying an agreed "base rate" percentage interest on any such funds borrowed, a rate which is calculated daily by the bank. One is impressed by the seeming casualness in distinguishing between the customer as a creditor of the bank (a depositor) and as a debtor to the bank. A 1974 standard banking law text casually advises "[w]hen such an overdraft is to be substantial in amount, and is to be available over a long period, it is usually considered advisable that it should be provided by means of a separate account which will be described as a 'loan account.'"⁹

A third area to examine is the development of "bills" as a source of capital for businesses. The trading houses in the eighteenth century, particularly those facilitating foreign trade, provided the credit for their customers by endorsing, or "accepting" bills of exchange.¹⁰ As these trading houses then became the "merchant banks," their status as "accepting houses" obtained some special privileges from the Bank of England. Anthony Sampson¹¹ lists the Accepting Houses by year of founding and gives their 1982 assets:

<u>Year</u>	<u>Name</u>	<u>Assets £ Million</u>
1763	Baring Brothers	622
1804	Rothschild's	830
1804	Schroder Wagg	2,477
1810	Brown Shipley	302
1830	Kleinwort, Benson	3,155
1831	Hill Samuel	1,904
1836	Guinness Mahon	378
1838	Morgan Granfell	1,766
1839	Hambros	1,640
1853	Samuel Montagu	1,821
1870	Lazard Brothers	931
1880	Charterhouse Japhet	593
1907	Singer & Friedlander	318
1919	Rea Brothers	142
1932	Robert Fleming	242
1946	S.G. Warburg	2,137

9. LORD CHORLEY & J. MILNES HOLDEN, *LAW OF BANKING* 217 (6th ed. 1974).

10. CLIFFORD CHANCE, *supra* note 1, at ¶ 45.02[c][i].

11. ANTHONY SAMPSON, *THE CHANGING ANATOMY OF BRITAIN* 315 (1983).

There are about twenty other merchant banks in addition to the "accepting houses." Some from each group are also "issuing houses," which specialize in bringing new issues of shares to the Stock Exchange for sale. In the United States, the corporation issuing the new shares would be termed the "issuer," while the role these "issuing houses" play would be termed "underwriting."¹² A narrower group of banks are the "discount houses" which discount bills of exchange and other bills [hence doing lending] using short-term deposits from other banks and balancing through a special privilege of borrowing at the bank rate from the Bank of England.¹³ The Bank uses this as one of the mechanisms of informal control: "In the 1930s there began a practice which still persists: The Governor [of the Bank] or his deputy meet representatives [of the eleven discount houses] weekly."¹⁴ A much wider group of banks, some 110, rediscount "eligible bills," which must be drawn in pounds by a U.K. company in relation to a domestic trading transaction.¹⁵

Given these diverse and active "bills" markets plus the ability to overdraft, one can then question how much British businesses used the two traditional sources of debt capital in the United States: formal bank loans and the issuance of corporate bonds.¹⁶ The loan business would seem basic to the business of banking. The bank obtains funds through deposits in either "current accounts" or "deposit accounts."¹⁷ A 1970s text describes the business and the legal consequences:

[F]rom the banker's point of view, the whole of this business is carried on so that the bankers may make available the sums which he borrows from one group of his customers to finance the business and the other operations of another group—the first group being his creditors, the second group being his debtors

This latter aspect of banking [loans], basic as it is, gives rise to few legal problems, except on the side of the security aspect: That is in respect of the various types of security which bankers are prepared to accept for the repayment of the loans which they make. As a result of this it is only the subject of security for advances which receives substantial treatment in textbooks on banking¹⁸

12. While the British use of "underwriter" has a narrower, more traditional meaning of a guarantor.

13. In U.S. terminology, by using the Fed's discount window.

14. MICHAEL CLARKE, *REGULATING THE CITY: COMPETITION, SCANDAL AND REFORM* 14 (1986).

15. CLIFFORD CHANCE, *supra* note 1, at ¶ 45.02[1][iii].

16. We will leave aside the third and now expanding area of commercial paper.

17. Deposit accounts are longer term bank deposits, sharing many characteristics with pre-1970s U.S. savings accounts: interest is paid, no checks may be written on them, and some notice may be required for withdrawals. See CLIFFORD CHANCE, *supra* note 1, at ¶ 45.03 [1][b].

18. CHORLEY & MILNES, *supra* note 9, at 215. For such an extensive treatment, see L.C. MATHER, *SECURITIES ACCEPTABLE TO THE LENDING BANKER* (2d ed. 1966). Mather describes a

Generally, corporations have looked to banks and their funds derived from deposits as the source of debt capital.¹⁹ And corporations, "limited companies" in Britain, have been the large borrowers of such bank funds.²⁰ Nevertheless, British banks were faulted for not channeling enough funds to British industry:

With the growth of Eurodollars the City has rediscovered some of its nineteenth-century cosmopolitanism and a little of its daring. But the bankers have much less connection with British life on the other side of the moat—with the endless, slow problems of industry, technology, labor and unions. Viewed from the old City boardrooms, Britain's industrial effort looks like a phenomenon which has come and gone, while banks go on forever

Were the bankers to blame for not investing in British industry? It is an old argument, going back to the bleak years of the thirties, or to the post-war years when the Japanese and Germans were putting all their capital into their industry, which was leaping ahead of the British. The British banks preferred to provide credit for ordinary customers who could repay their loans quickly;

A forceful case against the banks was made in 1980 by Lord Lever, the former cabinet minister, and George Edwards, a post office economist. "Many of Britain's economic ills," they said, "can be traced in whole or in part to the historic distortion in our credit system . . . the financial arrangements which enabled us to buy and confidently maintain our houses are not available to our factories."²¹

Available bank funds, primarily from the "second tier" of banks (not the Big Four clearing banks), were lent to real estate developers. The ensuing banking crisis provided insights on how the Bank of England would handle a banking liquidity crisis.²² The first step in re-

type of security not commonly used in the United States: A life insurance policy. "Compared with the average guarantee a life policy, providing it has an adequate surrender value, is a much more tangible, reliable and acceptable banking security." *Id.* at 79. From a later legal text: "A detailed discussion of all doctrines applying to loans is outside the scope of this work. They fall within the domain of the general law of contract." E.P. ELLINGER, *MODERN BANKING LAW* 488 (1987).

19. "For centuries, the vast majority of externally financed investments have been funded by banks, for which demandable-debt instruments (bank notes and checking accounts) have been the principal source of funds." Charles W. Calomiris & Charles M. Kahn, *The Role of Demandable Debt in Structuring Optimal Banking Arrangements*, *AMER. ECON. REV.*, June 1991, at 497.

20. "In modern times most of the large borrowers from the banks are limited companies." J. Milnes Holden, *Securities for Banker's Advances*, in 2 *THE LAW AND PRACTICE OF BANKING* 345 (5th ed. 1970).

21. SAMPSON, *supra* note 11, at 315-316. Sampson then refers to "the vacuum left by the disappearance of corporate bonds." *Id.* at 317.

22. "The most recent period of difficulties in the United Kingdom occurred in 1973-76, as a result of the sharp fall in property prices. This development triggered off the secondary bank crisis, which led to the failure of a number of fringe houses in the City, and exercised a good deal of pressure on some medium sized and even substantial banks. To prevent a general loss in trust in financial institutions, the Bank of England launched the 'lifeboat operation,' joining fronts with the sound banks in order to bail out the endangered bodies." ELLINGER, *supra* note 18, at 25. A book-length description is given in MARGARET REID, *THE SECONDARY BANKING CRISIS, 1973-75: ITS CAUSES AND COURSE* (1982).

forming the British Banking System was the Banking Act of 1979. "The Banking Act of 1979 was proclaimed as an instrument to regularize the position of these new banks ['the so-called secondary banks'], to establish a formal basis for depositor protection, and to formalize the supervision of banking."²³

One of the structural problems was the role to be played by London as an international financial center. New York serves as the financial center of the world's largest economy. Whatever "foreign" business is done in New York was, until recently, mere icing on the cake. Tokyo served as the financial center of the world's second largest economy. Until the 1980s, this made it important no matter how much or how little "foreign business" it did. London has been a different case, at least since the first World War.²⁴ To serve as the third of the world's major financial centers, London needs to deal in foreign business: the small size of the U.K. economy does not, by itself, provide the base. To compete on price, London must persuade its national and local taxing authorities to keep transaction taxes low or non-existent. To keep the markets quick and efficient, government regulation is kept informal and non-legal. The Bank of England "guides" its regulatees informally. Formal legal rules slow things up: one must seek lawyers' opinions and one must on occasion litigate. The genius and success of the London market was no laws and no lawyers. On the other hand, as the London market opened up to second tier and "fringe" banks, even to foreign banks, these aggressive players, not of the Old Boy network, became harder to guide by informal processes. For the Banking Act of 1979,

... the traditionally highly informal relationship between the Bank of England and the other banks was supposed to have been modified in the light of the proliferation of the new secondary banks and of the influx of foreign banks establishing themselves in the City. In fact, the Bank of England, jealous of its independence from the Government and Whitehall and keen to preserve the speed and flexibility involved in its informal style of control, took steps to limit severely the formalization of control and accountability implied by the 1979 Act, and the consequences of this became evermore embarrassingly plain in the wake of a failure of a bank in 1984.²⁵

The other developments which set the stage for Big Bang were Britain's becoming a full member of the European Economic Community in January, 1973 and the abolition of controls over foreign exchange at the

23. CLARKE, *supra* note 14, at 12.

24. "[T]here was no net rise in the country's real wealth between 1913 and 1951 because a 50 percent increase in domestic assets was offset by sales of foreign assets and the shouldering of more debt to finance war and recovery needs." REID, *supra* note 3, at 7.

25. CLARKE, *supra* note 14, at 12.

end of 1979.²⁶

II. BIG BANG

The actual form of the Big Bang reform of the Stock Exchange was an accord between the Exchange and the Government. The immediate cause was rooted in antitrust law. The Restrictive Trade Practices Act of 1956 abolished "resale price maintenance." The Fair Trading Act of 1973 extended the concept to services, and the concept was implemented by the Restrictive Trade Practices (Services) Order of 1976. The Stock Exchange had tried but failed to be exempted from the Order. Thus the Exchange rules on fixed commissions and its separation of brokers from jobbers (market makers) became an issue for the Government's Director General of Fair Trading. The Office of Fair Trading (OFT) began the case in 1979.²⁷ As the case wended its way through investigations, discoveries, depositions and change of Government, some feeling developed that a negotiated settlement short of trial would serve all interests better. The settlement was effected by a new Act of Parliament, the Restrictive Practices (Stock Exchange) Act, effective March 13, 1984.²⁸

The terms of the settlement provided that the new arrangements would take effect two and one half years later, thus providing for a transition period during which the various financial institutions could make necessary adjustments. October 27, 1986, a Monday, was agreed as "Big Bang" day when the major changes would go into effect. "Single capacity," with brokers representing customers only and jobbers dealing on their own account only, would be abolished. The rules requiring fixed commissions on brokered transactions would end. Brokerage firms could become up to 29.9% owned by foreign interests, which percentage would be increased later to 100%. Additional members would be allowed onto the Stock Exchange, including foreigners. With no Glass-Steagall Act,²⁹ banks could purchase brokers and jobbers. The government blessed the event by cutting the Stamp Tax, the tax on securities transfers.

During the two years between March, 1984 and March, 1986, an explosion of mergers and acquisitions took place.³⁰ Most of the larger banks (but not Lloyds) bought jobber firms, gaining the expertise in deal-

26. ELLINGER, *supra* note 18, at vii.

27. This entire story is described in REID, *supra* note 3, at 23-50.

28. *Id.* at 49.

29. While the Glass-Steagall Act was the name of the Banking Act of 1933, now the core of the National Banking Act, 12 U.S.C., the term usually refers to those sections of the 1933 compromise act which require that commercial banks stay out of most parts of the securities business, particularly underwriting.

30. Described in REID, *supra* note 3, at 51-70.

ing in shares and stocks while providing the larger capital necessary to do so. The banks also bought brokerage houses, with their customer networks. The government bond market (the "gilts") was also restructured. In the early 1980s, most gilts were placed through a few jobbers, 80% through only two houses. A new system of "primary dealers," patterned after U.S. practice, was established. Thirty-one of the largest British and foreign houses applied to the Bank to become gilt market-makers and after two withdrawals, twenty-nine were so designated.

The total price tag the banks and the foreign firms paid for the broker and jobber firms has been estimated at £1.5 billion.³¹ An almost equal amount was needed to capitalize the new broker-dealer firms and to invest in the new computer technology necessary to deal with a new computerized trading system³² and an expanded market.

The second leg of Big Bang reform was the Financial Services Act of 1986 ("FSA"), initially coming into force on November 7, 1986. Before that Act, there was little legal control of the investments industry, in stark contrast with the U.S. or France.³³ Three directives of the EEC³⁴ had been issued which were designed to further the process of "harmonization" of corporation law and securities law throughout the EEC. The directives required certain disclosures for the initial listing of stock, ongoing disclosure requirements of listed companies, and that each EEC member State have a "competent authority" to enforce the requirements.³⁵

The key provision of FSA is Section 3:

No person shall carry on, or purport to carry on, investment business in the United Kingdom unless he is an authorized person under Chapter III or an exempted person under Chapter IV of this Part of this Act.³⁶

Schedule 1 of the Act lists "Investments and Investment Business"

31. *Id.* at 66. The bulk of this money went personally to the partners of the selling firms who took it at capital gains rates. It was therefore "lost" as capital to the financial services sector.

32. The London Stock Exchange was the first traditional exchange to become computerized. *Id.* at 90.

33. GEOFFREY MORSE, CHARLESWORTH & MORSE COMPANY LAW 484 (14th ed. 1991).

34. Council Directives Nos. 79/279/EEC, 80/390/EEC, and 82/121/EEC. See CLIFFORD CHANCE, *supra* note 1, at ¶ 44.01, n.4.2. Regarding the EEC endeavor: "In 1985, the Commission of the European Community (EC) put forward 282 proposals for the completion of the internal market By the end of November, 1991, the Commission had formulated all proposals, 217 of them have been approved by the Council and around 70% of those have been implemented in national laws." Damien J. Neven, *Regulatory Reform in the European Community*, AMER. ECON. REV., May 1992, at 98.

35. CLIFFORD CHANCE, *supra* note 1, at ¶ 44.01.

36. Financial Services Act (FSA), 1986, Sec. 3, in BUTTERWORTHS, *supra* note 2, at ¶ 2433. The FSA runs 158 pages, with 43 pages of 17 schedules and 13 pages of an Appendix of effective dates. See generally MORSE, *supra* note 33, at 485-90.

and defines "investments" to include shares, debentures ("including debenture stock, loan stock, bonds, certificates of deposit . . ."),³⁷ government securities, warrants, options on any security or on currencies or precious metals, futures, contracts for differences, long term insurance contracts and various rights.³⁸ The "Activities Constituting Investment Business" include the buying, selling or underwriting of any "investments," arranging deals in investments, managing investments, giving or offering investment advice, and establishing collective investment schemes.³⁹ A violation of Section 3 is a criminal offense,⁴⁰ as is providing false or misleading statements in any application under or in compliance with any requirement of the Act.⁴¹

There are a number of ways a person may become "authorized." One is authorized if one is a member of one of the self-regulating organizations (SROs) under the Act.⁴² Also authorized is a member of a recognized professional body,⁴³ an authorized insurance company,⁴⁴ a registered friendly society,⁴⁵ or the operator or trustee of a collective investment scheme.⁴⁶ The Secretary of State may grant authorization directly.⁴⁷ Beginning April 29, 1988, a person is authorized if authorized in another member state of the EEC.⁴⁸

A third, but minor leg of the reforms centered around Big Bang was the Banking Act of 1987 which replaced the Banking Act of 1979. "The Act provides for two types of deposit-taking institutions, namely, (a) recognized banks, and (b) licensed deposit takers. This division was not

37. The British use of "debenture" is opposite of its use in the United States. In Britain, debenture refers to a bond which is backed by a security of some kind. In United States usage, a debenture is an unsecured corporate bond.

38. FSA, Schedule 1, Part I, in BUTTERWORTHS, *supra* note 2, at ¶ 2640.

39. FSA, Schedule 1, Part II, *id.* at ¶ 2641.

40. FSA Sec. 4, *id.* at ¶ 2434.

41. FSA, Sec. 200, *id.* at ¶ 2627.

42. The five sector SROs are: The Securities Association (TSA), the Association of Futures Brokers and Dealers; the Investment Management Regulatory Organization (IMRO); the Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA) and the Life Assurance and Unit Trust Regulatory Organization (LAUTRO). The umbrella body for the sector SROs is the Securities and Investment Board (SIB), a private company with up to eighteen board members, appointed by the Secretary of State for Trade and Industry (a Government Minister) and the Governor of the Bank of England. See REID, *supra* note 3, at 248-50. See FSA, Secs. 7-14, in BUTTERWORTHS, *supra* note 2, at ¶ 2437-2444 and FSA, Schedule 2, *id.*, at ¶ 2644.

43. See FSA, Secs. 15-21, in BUTTERWORTHS *supra* note 2, at ¶ 2445-51. An example is the Institute of Chartered Accountants.

44. FSA, Sec. 22, *id.* at ¶ 2452.

45. FSA, Sec. 23, *id.* at ¶ 2453. A "friendly society" is a type of mutual insurance group, whose "members are pledged to provide assistance to one another in old age, in illness, and in similar situations." NORMAN W. SCHUR, BRITISH ENGLISH, A TO ZED 146 (1991).

46. FSA, Sec. 24, in BUTTERWORTHS, *supra* note 2, at ¶ 2454.

47. FSA, Secs. 25-30, *id.* at ¶ 2455-60.

48. FSA, Secs. 31-34, *id.* at ¶ 2461-64. For effective date, see FSA Appendix, *id.* at ¶ 3000.

required by the EEC Banking Directive."⁴⁹ The Act continued the Deposit Protection Board and the Deposit Protection Fund.⁵⁰ Meanwhile, the basic law of corporations had been reformed and consolidated in the Companies Act of 1985⁵¹ which implemented various EEC Directives. Two additional directives were implemented in the amendments of the Companies Act of 1989.⁵²

III. SINCE BIG BANG

There have been two distinct periods since Big Bang. The first, almost exactly one year long, lasted until the world-wide stock market crash of October, 1987.⁵³ The second period is the slow recovery since then to the present day. During the first period, all accounts of the effect of Big Bang were that it was successful.⁵⁴ Share transaction volume increased, customers paid less in commissions, international transactions increased. The British experience could be pointed to as an example for other EEC countries to follow:

As a generalization, it is probably true to say that the UK financial system's exposure to the impact of international integration began earlier, and has so far been greater, than in the case of the other major European countries. The case of the UK therefore incites more interest because of the possibility that certain features of its experience may be repeated in other countries where, under the particular influence of the 1992 programme, deregulation and integration are now proceeding at a greater pace.⁵⁵

Nevertheless, by 1992, the general recession had hit UK banks and they were suffering. "More than two-thirds of London's foreign bank branches are not making much money."⁵⁶ Domestic UK banks also had problems: "Awash with bad debts, the big four UK clearers [clearing banks] are paying the price for over-enthusiasm and weak controls during the unprecedented boom of the 1980s."⁵⁷

After Big Bang, the larger banks headed conglomerate financial services entities, with a wide mix of businesses. An official at the largest

49. J. MILNES HOLDEN, 1 *THE LAW AND PRACTICE OF BANKING* 14 (5th ed. 1991).

50. MARK HAPGOOD, *PAGET'S LAW OF BANKING* 18 (10th ed. 1989). Deposits are insured up to £20,000 (about \$32,000). *Id.* at 19.

51. BUTTERWORTHS, *supra* note 2, at ¶ 1-875.

52. *Id.* at ¶ 1001-2000. See MORSE, *supra* note 33, at 12-16.

53. "Black Monday," October 19, 1987.

54. See REID, *supra* note 3, at 89-96.

55. John Young, *The Consequences of European Financial Integrations for the UK*, in *EUROPEAN FINANCIAL INTEGRATION AND MONETARY CO-OPERATION* 127-47 (Paul Van den Bempt & Marc Quinty eds., 1989).

56. *The Bottom Line*, *THE BANKER*, July 1992, at 168.

57. Michael Blanden & Giavin Shreeve, *All at Sea*, *THE BANKER*, Mar. 1992, at 7.

reported: "Barclays has some 275 different services on offer. I suspect some of these are little used."⁵⁸ The larger UK banks found that much of their business was international, and there were also many foreign banks operating in London.⁵⁹ As globalization continues, worldwide "five major players now have more than 50% of their assets outside their home countries: a further ten have over 40%."⁶⁰ It will become increasingly more difficult to regulate such banks using regulatory systems based upon national borders and according to sector boundaries, industry by industry.⁶¹

Within this success story, one can now turn to the bond markets. As for the gilts, there was "a threefold increase in the number of market makers . . ."⁶² Meanwhile, the Eurobond market had been developing since 1949.⁶³ Today the larger UK corporations have ready access to debt financing in this Eurobond market. It is the middle-level and smaller firms who would need to turn to debt financing through corporate bonds or bank loans. Corporate bonds are still not popular:

An interesting feature, reflecting the growing integration of the international and domestic capital markets, is that the growth in the sterling bond markets that has occurred has been in the sterling sector of the Eurobond market, rather than in traditional domestic and 'Bull-dog' issues. Sterling Eurobond issues rose from U.S. \$845m in 1982 to US \$21.7bn in 1988. Traditional domestic issues rose from £527m in 1985 to £1.2bn in 1986, but since then the market has virtually disappeared.⁶⁴

Bank loans would be for smaller corporations: "But the lending decisions most bankers will make are at a far more modest level: £100,000 for a small business rather than £100m for a stock market giant."⁶⁵ In addition, many banks do not see this as part of their current mix of profitable businesses: "An increasing number of banks and financial institutions are formulating strategies which apparently do not include lending

58. *Id.* at 9.

59. The Bank of England reported that as of February, 1992, 529 foreign banks had a presence of some kind in London: branches, subs, stakes in consortium banks or a representative office, employing some 42,000 people. *The Bottom Line*, *supra* note 56, at 168.

60. James Alexander & Colin Jones, *Global Gamble*, THE BANKER, Feb. 1992, at 8.

61. Albert Bressard, *Wealth Creation and the Role of Financial Markets in the Early Twenty-First Century*, in FINANCE AND THE INTERNATIONAL ECONOMY: THE AMEX BANK REVIEW PRIZE ESSAYS 35 (John Calverley & Richard O'Brien eds., 1987).

62. James M. Steely, *Deregulation and Market Efficiency: Evidence from the Gilt-edged Market*, APPLIED FINANCIAL ECONOMICS, Sept. 1992, at 125, 139.

63. As normal "offshore instruments," pioneered by the London merchant bank S.G. Warburg in 1962. In 1987, these were some \$650 billion in face value outstanding and a yearly 1987 turnover of \$4.7 trillion. REID, *supra* note 3, at 9.

64. Young, *supra* note 55, at 134.

65. Michael Brett, *Lies, Damned Lies, and Accounting*, BANKING WORLD, Nov. 1992, at 45 (reviewing TERRY SMITH, ACCOUNTING FOR GROWTH).

as a part of their business.”⁶⁶

The domestic-based criticism coming from portions of the Labour Party is still valid in Britain: the UK banks do not have a ready or accessible funding mechanism for small and medium-sized business firms. The banks are too international-minded, and the Eurobond market has replaced bank lending and corporate bonds for the larger corporations.

66. Brenda Jenna, *Lending An Unfashionable Activity*, BANKING WORLD, Nov. 1992, at 15.