Democracy and Diversity in Financial Market Regulation

Nicholas Dorn
Contents

Preface ix

PART I
Historical legacies 1

1 From clubs to herds: private regulation, public façade 3

Four reasons for starting with London 4
Political naturalness of self-regulation: town, country and bank 7
International inclinations, domestic distain: first half of the 20th century 10
Innovation, Europeanisation, reininternationalisation: 1950s onwards 12
A public face for private regulation: 1980s–90s 18
Approaching 2007: cosmopolitan aesthetics 24
Retrospective 1918–2008 25

2 Bail-outs as policy: constructing ‘too connected to fail’ 28

The attractions of TCTF 29
The ‘market for lemons’ in policy concepts 31
Political rhetoric: the making of the Lehman Brothers story 32
Some prior history: normalisation of bail-outs in the US 33
Bankruptcies no more disorderly than bail-outs 36
‘Scarcely a ripple’: failure with reassurance 39
Prospects and problems: connectedness, similarity, contagion 41
Contents

Firewalls within (but not between) banking groups: Volcker and Vickers 44
Special resolution regimes: reimagining Lehman 45
Conclusion 49

PART II
Regulatory hubris

3 Two readings: regulatory insufficiency or depoliticisation 53
Symptoms: risk appetite, Ponzi finance, contagion 53
Ponzi finance not as the exception but as the rule 57
Reading 1: regulatory complicity and forbearance 58
Regulatory forbearance and use of private models 60
Reading 2: depoliticisation, convergence, contagion 64
Jurisdictional arbitrage: friend or foe? 67
Responses in the wake of 2008: conservative ends, radical means 72
Remaking knowledge: from models to judgment 74
Conclusion 75

4 Europe: from single market to multiple mechanisms 77
Approaching the private-public regulatory nexus 78
Private-public regulation 82
Case study: shielding the credit rating agencies 85
‘Technical’ delegation and parliamentary control 87
Regulation as crisis management: ‘burden sharing’ 90
Single market, EU authorities, stability: ECJ Case C-270/12 93
Regulation after markets: ‘mechanisms’ 97
EU governance via shareholdings: the ESM as IMF-style governance 100
Quo vadis EU? 104

PART III
Ways forward 109

5 Limits and distractions of transparency 111
Context 112
Debating complexity 114
Trade data as knowledge flooding 116
Market information as a public straightjacket 121
Bank resolution as focus for policy and information 122
Public information requirement for resolution 124
Resolution, distribution and democracy 125
Resolution, the technical debate and democracy:
    a political menu? 126
Conclusion 129

6 Democracy as driver of global diversity 130
Legacies hard to overcome 132
Limits of subsidiarisation: less connected but still too similar 133
From technical knowledge to political preferences 135
Terms of debate 137
Constitutionalising regulation: locally embedded or
    politically 'offshore'? 138
Ends: taking stock 143
Means: revisiting 1918: democratising financial regulation 144
Means: reviving historical debates on the purposes of
    finance 145
Not an easy sale 148
Finally: international standard-setting, diversity and
democracy 149

Bibliography 153
Index 175