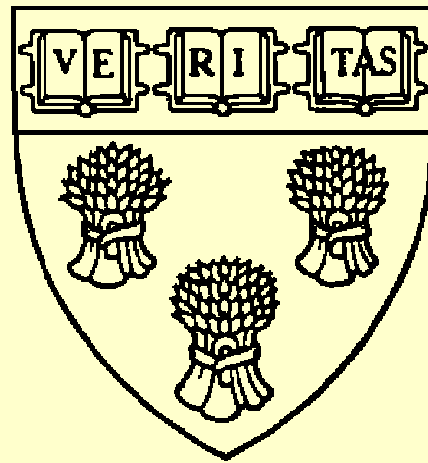


# An American Perspective on the FSA: Politics, Goals & Regulatory Intensity

by

Professor Howell E. Jackson  
Harvard Law School



*American Enterprise Institute Conference on  
How Does the United Kingdom's Financial Services Authority Work?  
Thursday, March 29, 2007  
Washington, D.C.*

# Outline of Presentation

- I. Introductory Remarks
- II. Differences in Political Context
- III. Regulatory Goals: U.S. v. U.K.
- IV. Differences in the Intensity of Regulation
- V. Recent Developments

# Structure of U.S. Financial Regulation

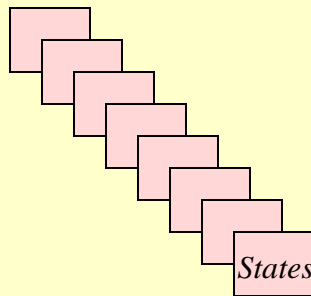
## Banking

*Federal Reserve*

*OCC*

*FDIC*

+ *OTS, NCUA, FFIEC, Treasury Dep't, HUD*

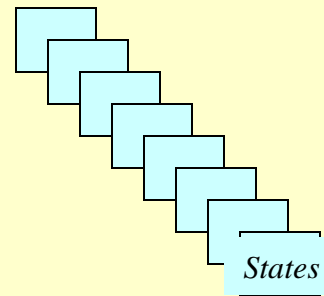


## Securities

*SEC*

*CFTC*

+ *NYSE, NASD, FASB, & ICI, ISDA*



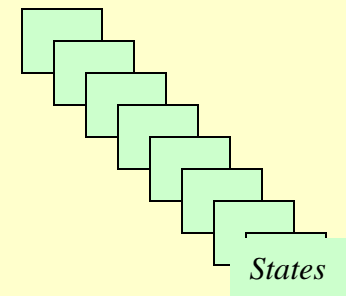
## Insurance

*I.R.S.*

*PBGC*

*Dep't of Labor*

*Medicare*  
+




# Structure of U.K. Financial Regulation

Financial  
Services  
Authority

- + *General Insurance Standards Council*
- Office of Fair Trading (Consumer Credit)*
- Occupational Pension Review Authority*
- Dep't for Trade and Industry (company law)*
- Financial Report Council (audit/accounting)*

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# Political Aspects of the Creation of the FSA

## Parliamentary System of Government

- Blair Government Initiative
- Collaborative Development of Legislation

## External Pressures from the European Union

- Implementation of Numerous Directives
- Application of Human Rights Convention


## Political Culture of the United Kingdom

- Willingness to Muddle Through
- Disinclination to Resort to Litigation
- Acceptance of Professional Expertise

## Cosmopolitan Perspective

- Commitment to Maintaining London's Financial Eminence
- Nationality of Staff and Views on Salaries

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# Justifications for Financial Regulation

[Howell Jackson, Regulation in a Multi-Sectored Financial Services Industry, 77 Wash. U. L. Rev. 319 (1999)]

## Protection of Depositors and Retail Investors

- Deposit Insurance and other Guarantees
- Extensive Fiduciary Duties, Consumer Protections, etc.

## Reduction of Externalities

- Systemic Risk
- Other Social Costs of Financial Failures

## Redistributive Policies and Other Equitable Norms

- CRA and other forms of credit allocation
- Rules designed to promote equality

## Considerations of Political Economy

- Geographic Restrictions on Banking
- Special Anti-Trust Rules for Financial Services

# The FSA Objectives

- I. Maintain Confidence in the Financial System
- II. Promote Public Understanding of the Financial System
- III. Secure the Appropriate Degree of Protection for Consumers
- IV. Reduce the Extent to Which Financial Business Can be Used for Financial Crime

# Principles of Good Regulation (General)

In discharging its general functions, the FSA must have regard to:

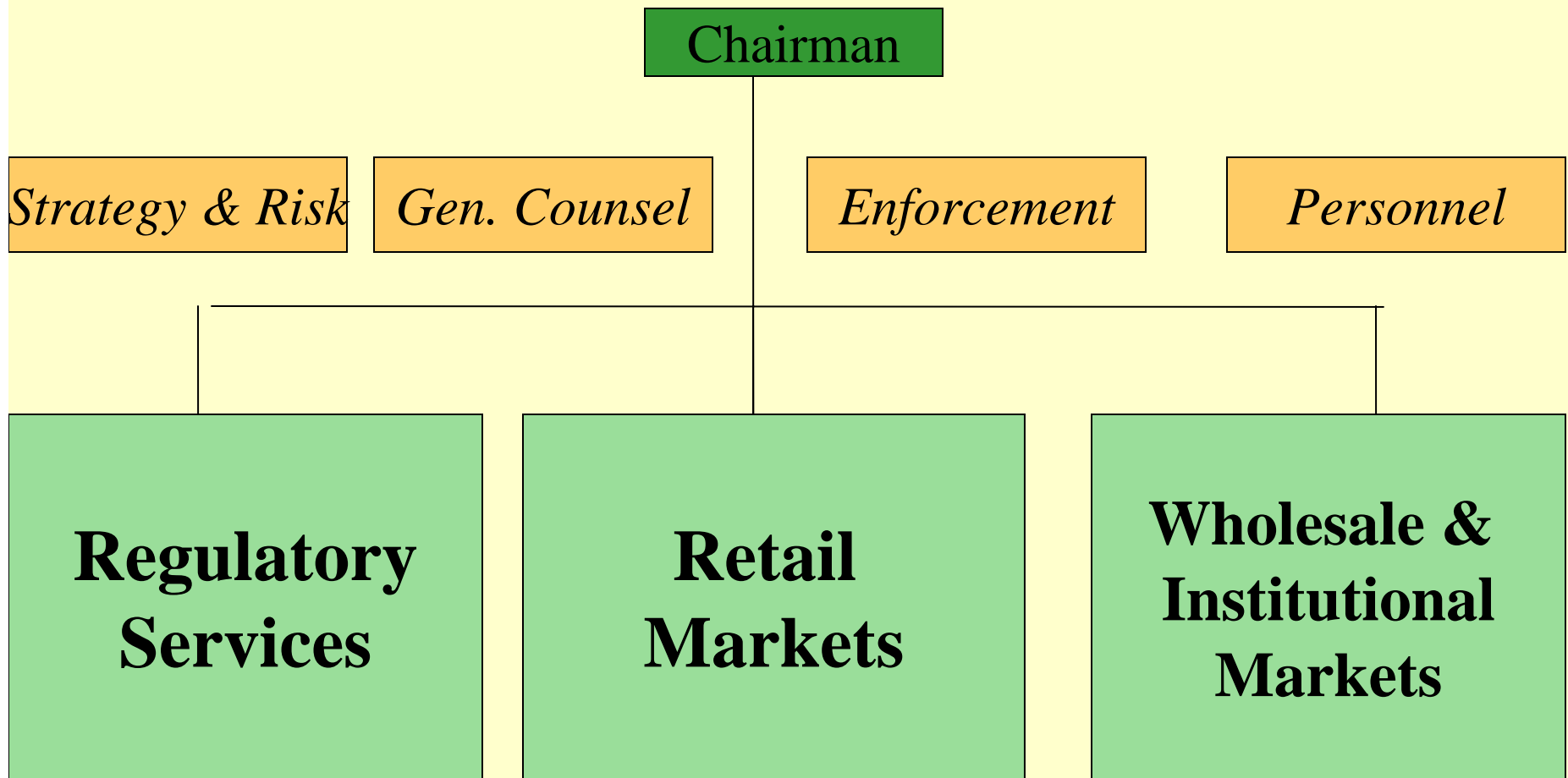
1. Using resources efficiently and economically
2. Responsibilities of firms' management
3. Proportionality between burdens and benefits

*Cost  
Benefit  
Analysis*

4. Desirability of facilitating innovation
5. Desirability of maintaining UK's competitive position
6. Minimize adverse effects on competition
7. Desirability of facilitating competition

*Competitive Concerns*

# The FSA Organizational Structure (2006)



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V. Recent Developments

# U.S. Financial Regulatory Agencies

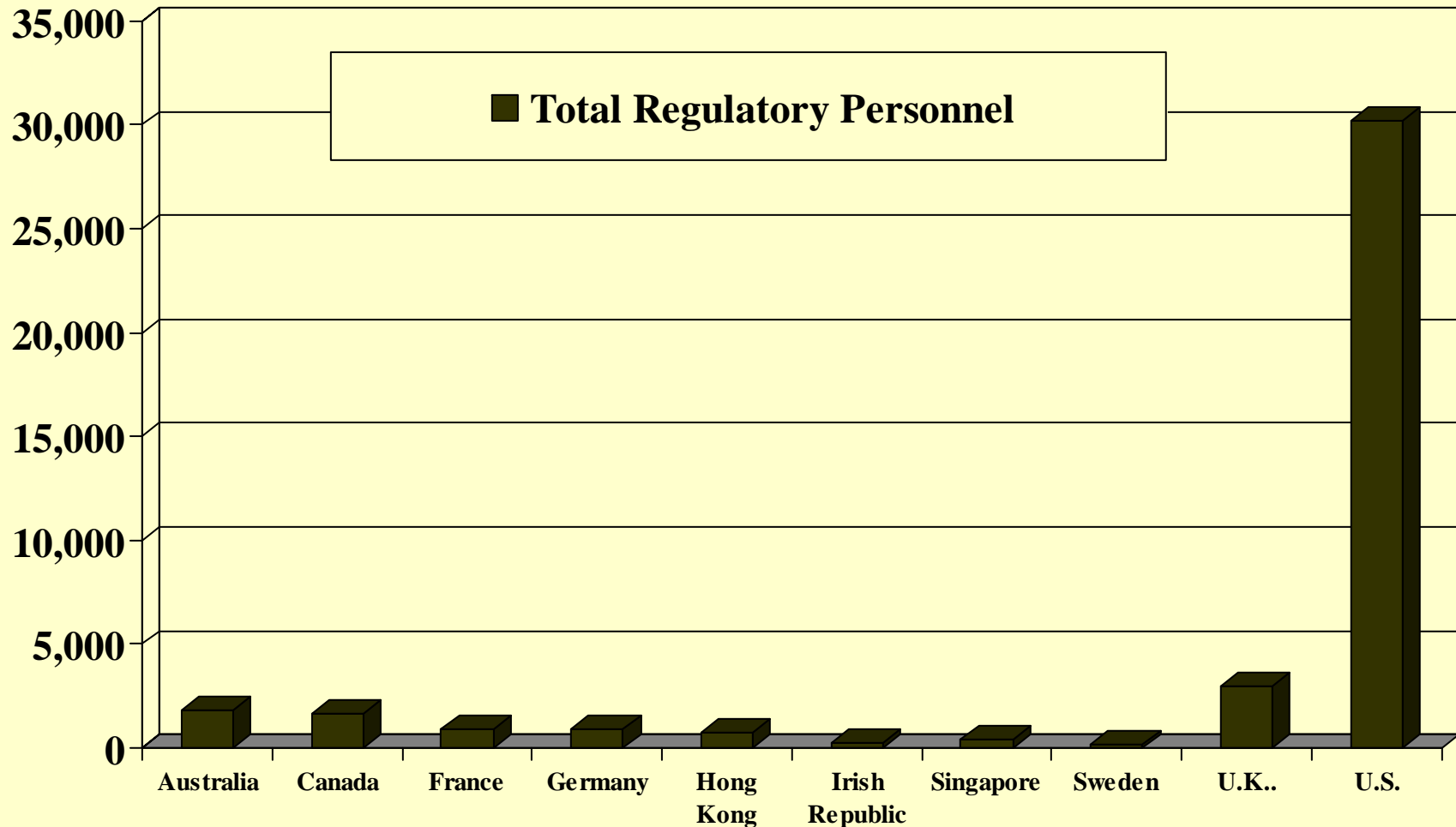
- **Depository Institutions**
  - Federal Agencies
    - Federal Reserve
    - Comptroller of the Currency
    - FDIC
  - State Authorities (51)
- **Insurance Industry**
  - State Regulators (51)
- **Securities Industry**
  - SEC
  - SRO's (NYSE, NASD)
  - State Regulators (51)
- **Futures Industry**
  - CFTC
- **Pensions & Employee Benefits**
  - Three Federal Agencies

# Scale of Financial Regulation in U.S.

(H. Jackson, Variation in Regulatory Intensity, \_\_\_\_  
Yale J. Reg. \_\_\_\_ (2007))

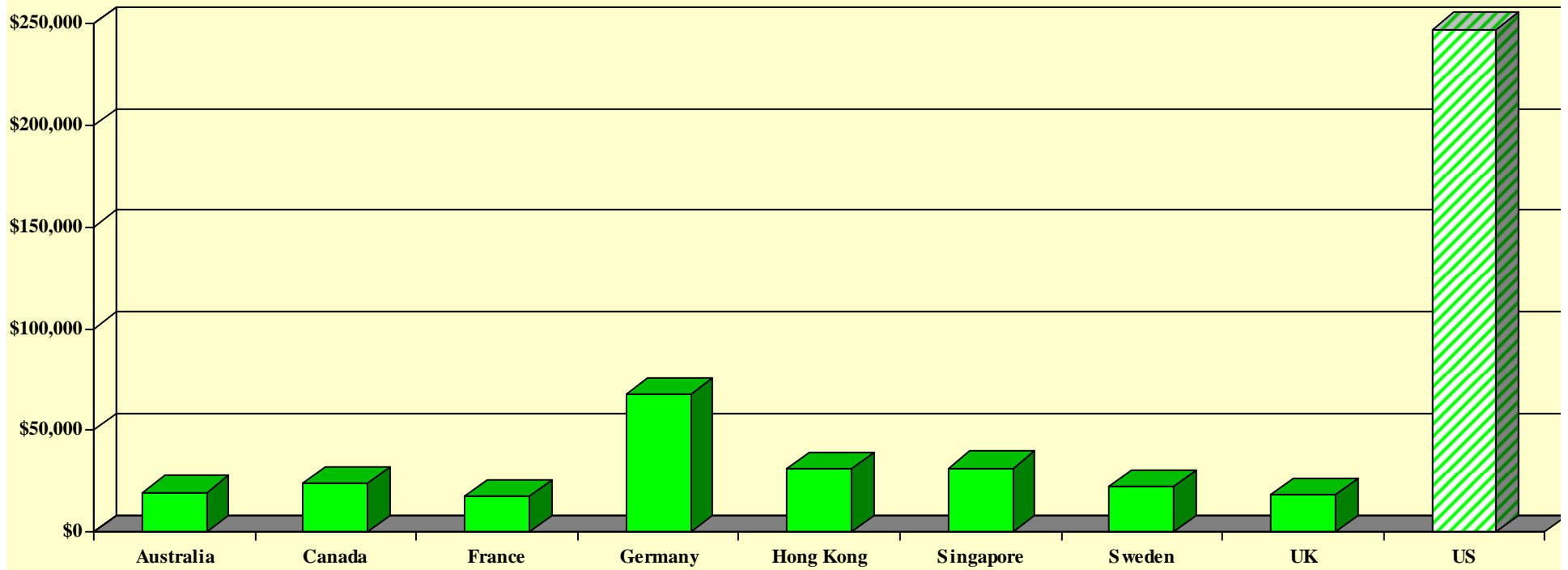
<b>Table One</b>					
<b>U.S. Budgets and Staffing for Financial Regulation</b>					
(Estimates for 2004)					
	<i>Budget</i>	<i>Percent of Total Budget</i>	<i>Staff</i>	<i>Percent of Total Staff</i>	<i>Budget per Staff</i>
Depository Institutions	\$2,706,674,700	45.1%	18,643	42.7%	\$145,184
Securities Industry	\$1,683,712,410	28.1%	7,010	16.0%	\$240,187
Insurance Industry	\$1,028,500,000	17.2%	13,056	29.9%	\$78,774
Private Pensions	<del>\$577,159,605</del>	9.6%	4,982	11.4%	\$115,849
<b>Total</b>	<b>\$5,996,046,715</b>	<b>100.0%</b>	<b>43,691</b>	<b>100.0%</b>	<b>\$137,236</b>

Figure Three  
Total Financial Regulatory Personnel  
in Selected Jurisdictions



Source: FSA 2002/2003 Annual Report Appendix 8, at 205-06.

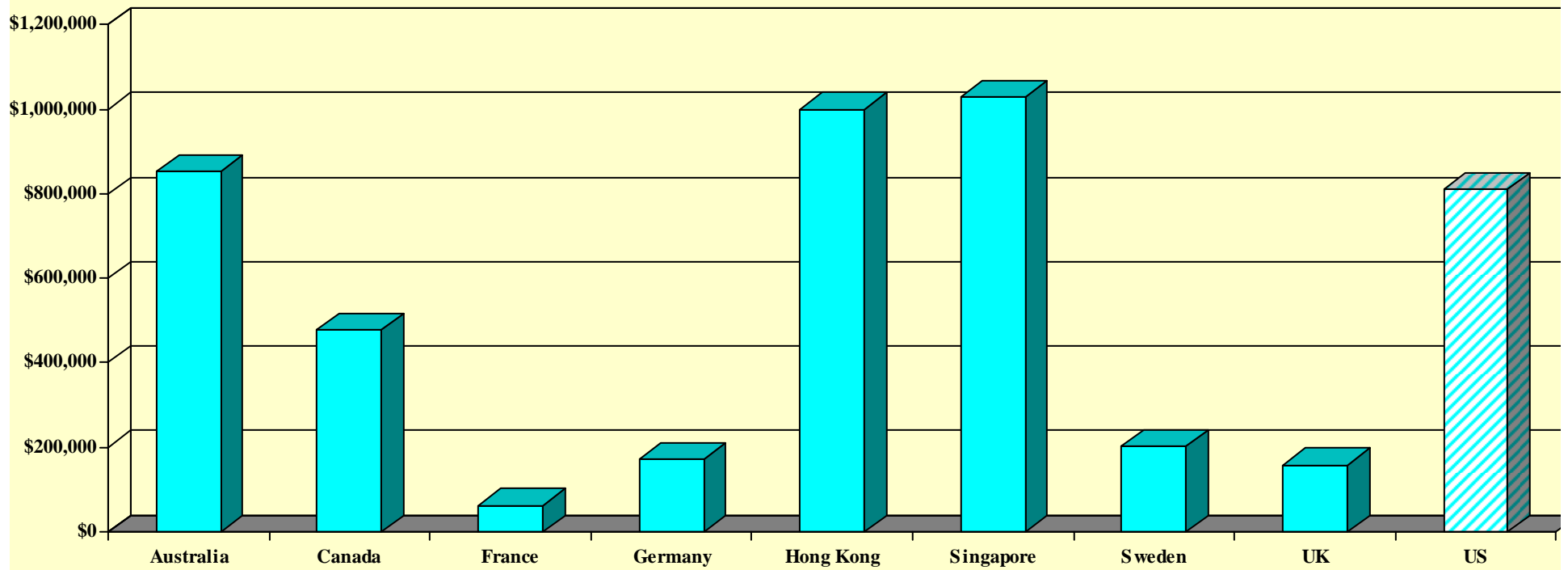
Figure One  
Bank Regulation Costs Per Billion  
Dollars of Banking Assets



Source: FSA 2003/2004 Annual Report Appendix 5..

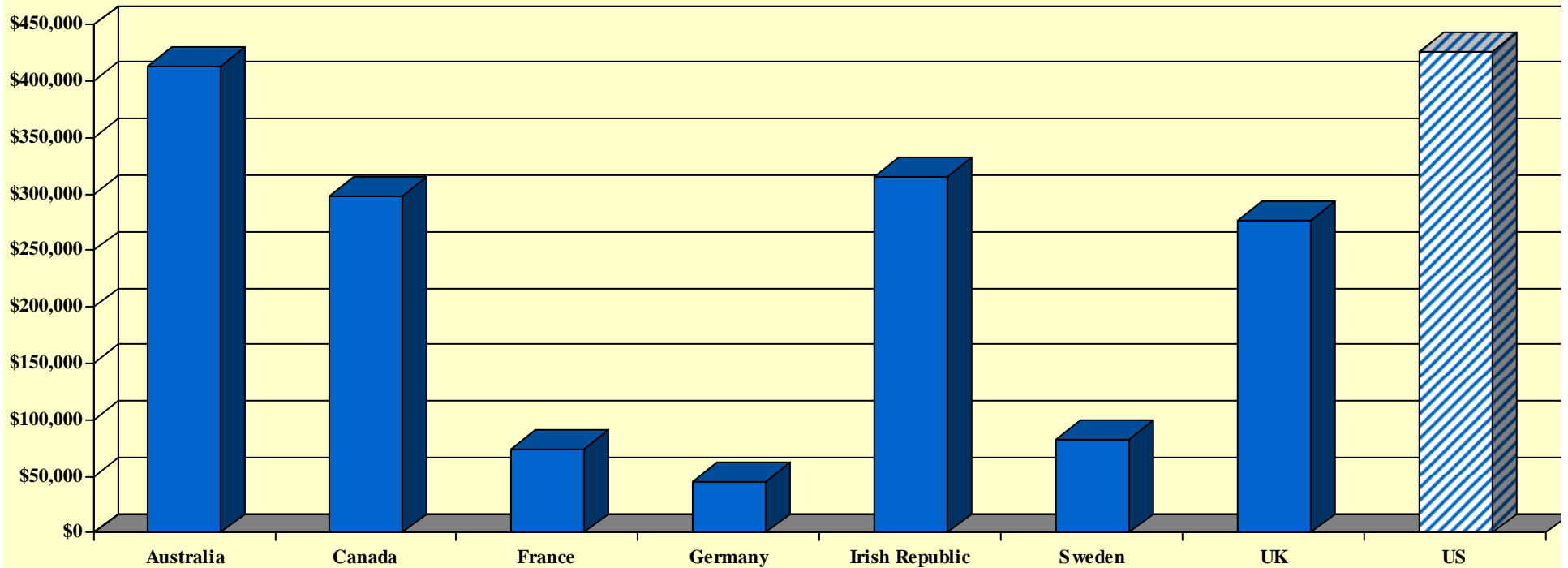
# Figure Two

## Insurance Regulation Costs Per Billion Dollars of Insurance Premia



Source: FSA 2003/2004 Annual Report Appendix 5..

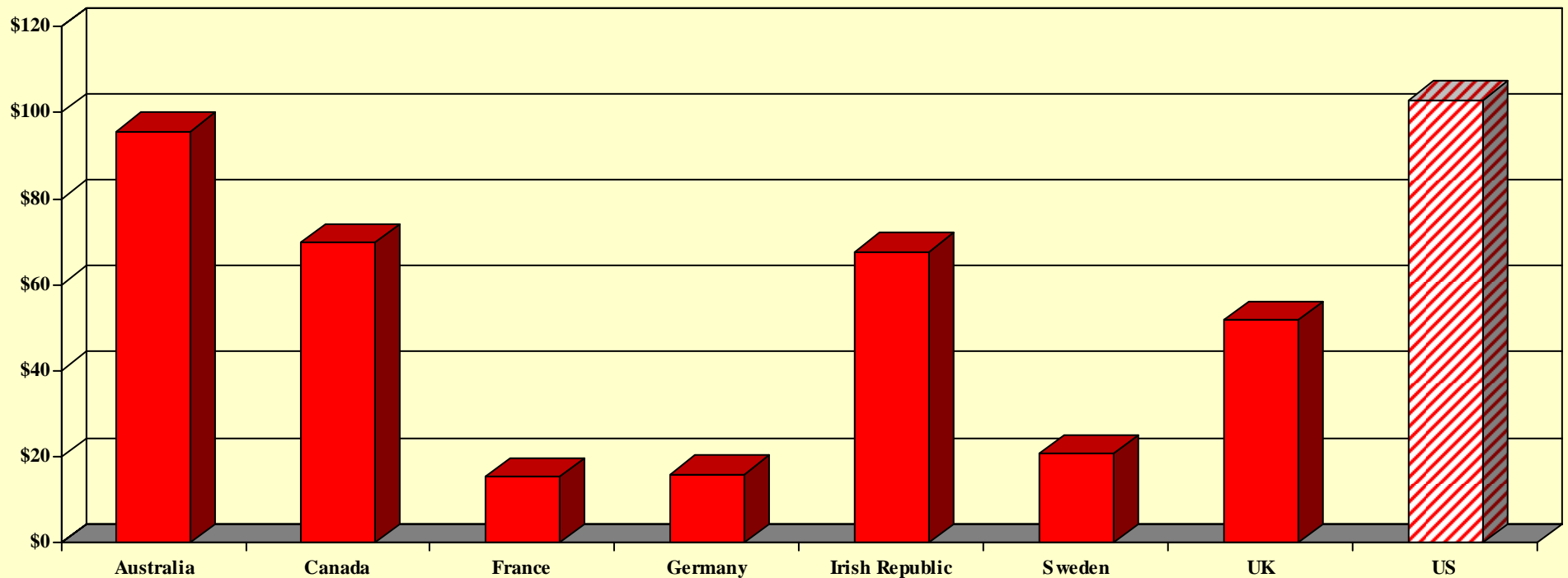
Figure Four  
Total Financial Regulatory Costs  
Per Billion Dollars of GDP



Source: FSA 2003/2004 Annual Report Appendix 5; Author's Compilations.

# Figure Five

## Total Financial Regulatory Staff Per Million of Population



*Source: FSA 2003/2004 Annual Report Appendix 5; Author's Compilations.*

# U.S. Securities Enforcement Activity (2002 to 2004)

Table Fourteen

## Summary of US Enforcement Actions in Securities Regulations

	Actions			Monetary Sanctions				
	Annualized Data: 2002-2004			Annualized Data: 2002-2004 (US Dollars)			2004 Data (US Dollars)	
	Average Number Enforcement Actions	Percentage of Grand Total	Percentage of Total Public Actions	Total Monetary Sanctions	Percentage of Grand Total	Percentage of Total Public Actions	Total Monetary Sanctions	Percentage of Grand Total
<b>Public Actions:</b>								
SEC	639	9.7%	17.6%	\$2,164,666,667	24.6%	40.9%	\$3,100,000,000	29.8%
DOJ	112	1.7%	3.1%	\$766,525,000	8.7%	14.5%	\$16,850,000	0.2%
State Agencies (estimated)	<u>1,482</u>	<u>22.6%</u>	<u>40.8%</u>	\$1,114,949,985	12.7%	<u>21.1%</u>	<u>\$931,212,489</u>	<u>9.0%</u>
Subtotal	2,233	34.1%	61.5%	\$4,046,141,652	46.1%	76.5%	\$4,048,062,489	39.0%
NASD	1,170	17.9%	32.2%	\$1,078,282,572	12.3%	20.4%	\$232,024,058	2.2%
NYSE	<u>227</u>	<u>3.5%</u>	<u>6.3%</u>	<u>\$163,059,260</u>	<u>1.9%</u>	<u>3.1%</u>	<u>\$464,834,281</u>	<u>4.5%</u>
Subtotal	1,397	21.3%	38.5%	\$1,241,341,833	14.1%	23.5%	\$696,858,339	6.7%
Total Public Actions	3,630	55.4%	100.0%	\$5,287,483,485	60.2%	100.0%	\$4,744,920,828	45.7%
<b>Private Actions:</b>								
Class Actions	210	3.2%	n.a.	\$3,336,333,333	38.0%	n.a.	\$5,456,000,000	52.5%
NASD Arbitrations	1,720	26.2%	n.a.	\$162,333,333	1.8%	n.a.	\$186,000,000	1.8%
NYSE Arbitrations	<u>994</u>	<u>15.2%</u>	n.a.	<u>missing</u>	<u>n.a.</u>	n.a.	<u>missing</u>	<u>n.a.</u>
Total Private Actions	2,924	44.6%	n.a.	\$3,498,666,667	39.8%	n.a.	\$5,642,000,000	54.3%
Grand Total -- Private & Public	6,554	100.0%	n.a.	\$8,786,150,151	100.0%	n.a.	\$10,386,920,828	100.0%
Adjusted Grand Total*	n.a.	n.a.	n.a.	\$8,176,733,485	93.1%	n.a.	\$8,616,920,828	83.0%

\* Adjusted to deduct sanctions reported under two or more agencies.

# Three International Comparison

## United States

(2002-2004)

**Sanctions: 3630**

(SEC: 639)

(Other: 2991)

**Penalties: \$ 5.2 bn**

(SEC: \$2.1 bn.)

## United Kingdom

(2004)

**Sanctions: 90**

(Penalties: 31)

(Other Formal: 48)

(Private warnings: 11)

**Penalties: \$ 40.5 mn**

## Germany

(2004)

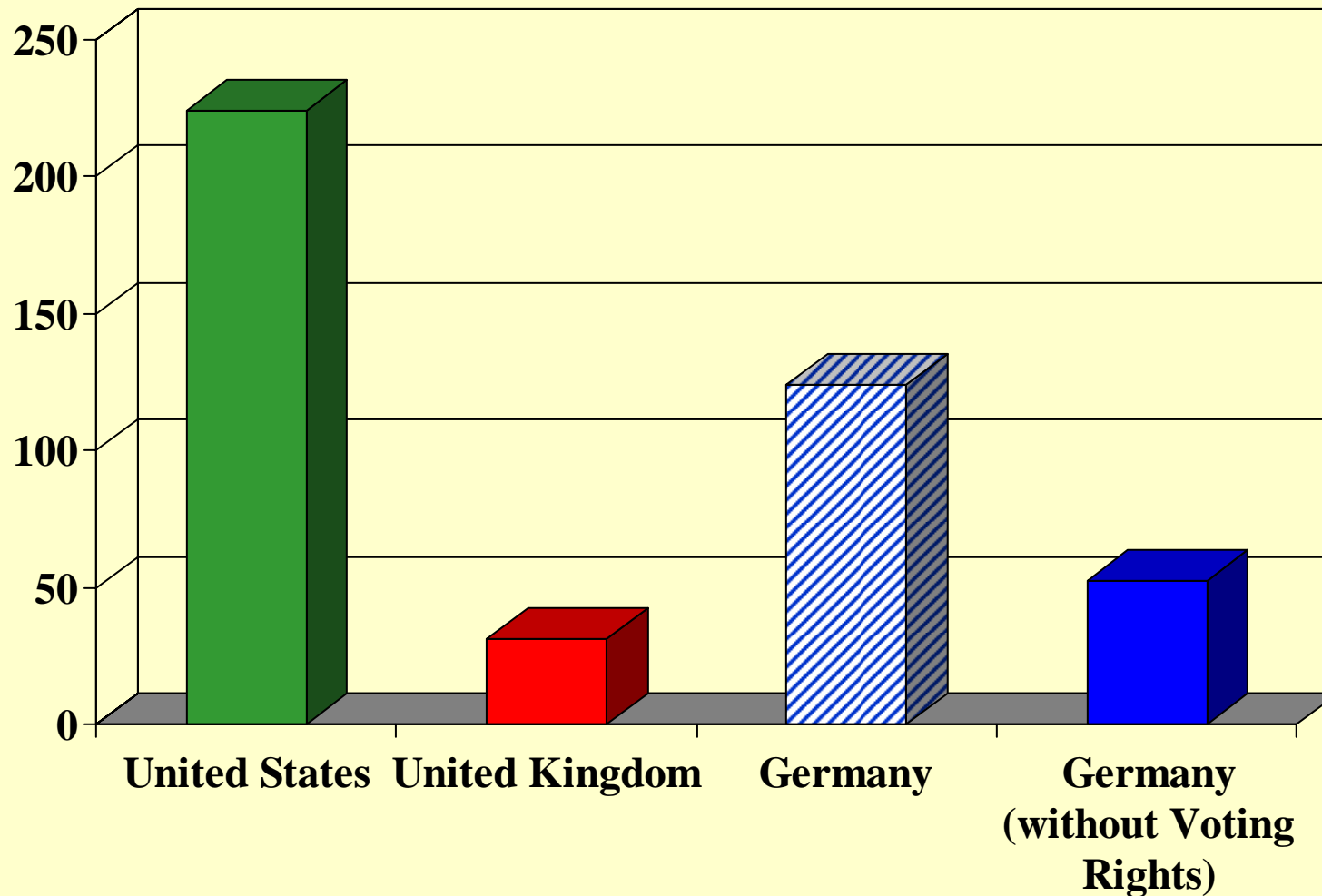
**Sanctions: 149**

(Voting Rights: 86)

(Other Formal: 63)

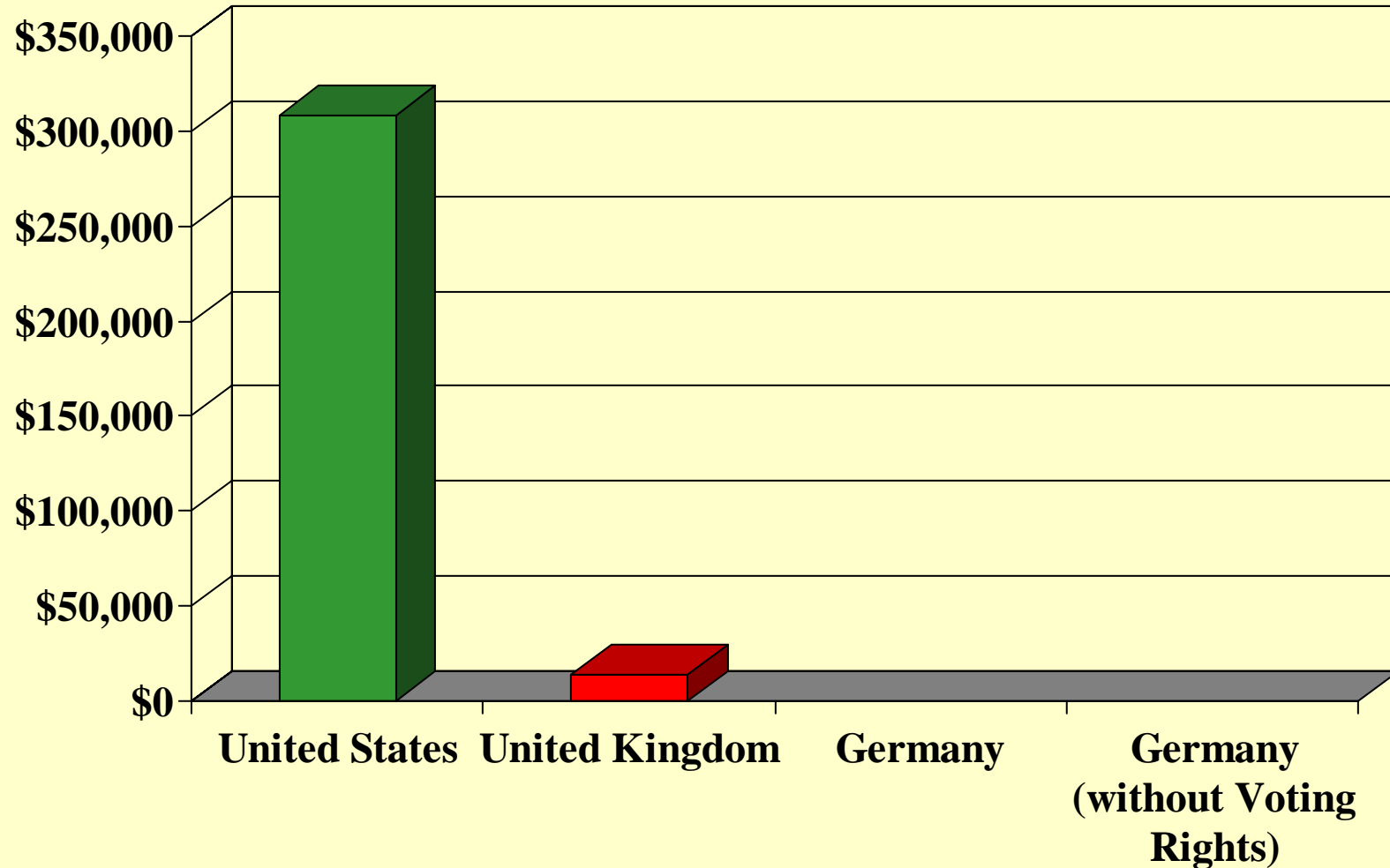
**Penalties: n.a.**

# Public Securities Enforcement Penalties Per Trillion Dollars of Market Capitalization in 2004



*Source: Author's Compilations.*

# Public Securities Enforcement Actions Per Billion Dollars of Market Capitalization in 2004



*Source: Author's Compilations.*

# Challenges in Comparing Sanctions

- Differences in Regulatory Strategies
  - Informal Guidance
  - Relief Outside Regulatory Process
  - Different Emphasis on Enforcement (UK v. US)
  - Fragmentation of Enforcement Agencies
- Different Investigation to Sanction Ratios
  - High in the U.S.
    - 90+ percent at SEC in recent years
  - Lower in Other Jurisdictions
    - 36 percent in U.K.'s FSA
    - 15-55 percent at BaFin since late 1990's
- Differences in Sanction Collections Policy

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# An American Perspective Updated

- Risk-Based Regulation & Cost-Benefit Analysis
- Gradual Accretion of FSA Functions
  - Review of Regulatory Decisions Committee
  - Expansion of staff to 3900+ staff; US\$ 650 million budget
  - Efforts to Increase Use of Criminal Processes
  - Paul Davies Report on Private Litigation
- Industry Cooperation & Advisory Functions
  - Annual Report & Committee Structures
  - Legacy of the City



**Image from Google Earth.**

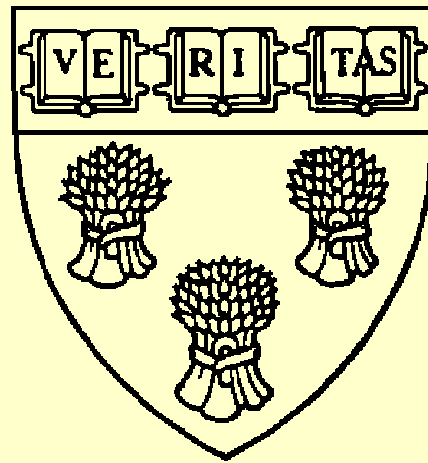
# Considerations Beyond SOX

- Decline of Public Offerings Apparent By 2001
  - Rise in 144A Market
  - Enhancement of European Capital Markets
- Linkages of Secondary Markets
  - U.S. Institutional Investors (& ven Retail)
  - Market Professionals (Accountants, Bankers, Lawyers)
- Rise of European Capital
  - Eurozone
  - Russia
  - New Petro-Dollars

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