

Preface

This volume has grown out of collaborative work, instituted by Professor Fabrizio Cafaggi with the generous financial support of the Hague Institute for the Internationalisation of Law (HiiL), that investigates the subtle mix of public and private regulation and enforcement across a spectrum of industries and public policies. The chapters that follow examine one of the most important – perhaps the single most important – sector in which public and private regulation and enforcement intersect: the arena of banking and global finance.

The particular topics of this book were chosen because each, in its own unique way, illustrates the works of the public–private dialectic in regulation and enforcement. Each of the subject areas is regulated – with varying degrees of intensity – by government actors. But each is also regulated by private actors, including self-regulation by individual firms, contractual arrangements with other firms, private standard-setting bodies, self-regulatory organizations operating under government mandate and supervision, and much else besides.

The detailed analysis of these particular areas of finance thus provides a means for investigating aspects of the important topic of private regulation and enforcement in financial markets, with special reference to the following questions: (1) how does private regulation and enforcement enhance or detract from the legitimacy of the process by which these market segments are managed and controlled; (2) how does private regulation and enforcement manifest independence of action and judgment, as compared with public regulation; (3) how does private regulation and enforcement measure up along dimensions of quality, relative to public regulation; and, finally (4) what forms of accountability characterize private as opposed to public regulation and enforcement?

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