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Wal-Mart Bank in Mexico: Money to the Masses and the Home-Host Hole

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Article

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In November 2006 Wal-Mart's Mexican subsidiary received approval to open a bank. The application faced little opposition in Mexico, unlike the company's failed effort to start a bank in the United States. This was partly because in Mexico, Wal-Mart's entry was generally regarded as increasing competition in a historically concentrated banking sector. With over three-quarters of all Mexicans unbanked, the authorities also looked to Wal-Mart to reach the underserved. Along with the promise of competition and exploring access to financial services, Wal-Mart's entry presents a transnational regulatory dilemma with implications beyond Wal-Mart and Mexico. Because it is Wal-Mart's only banking venture, the new institution will have its Mexican host as the sole supervisor. The corporate headquarters in the United States will remain unregulated at home and beyond Mexico's reach. This "home-host hole" is inevitable where supervisory harmonization proceeds against the background of regulatory diversity: the United States has a policy against combining banking and commerce; Mexico does not. The hole presents risks for Mexico; however, this Article argues that patching the hole with more centralization at the international level may come at Mexico's expense.

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I. INTRODUCTION

In August 2006, Wal-Mart applied for a banking license in Mexico.[1] As with all news Wal-Mart, reactions in the United States broke into two camps. Wall Street analysts hailed the brilliant move: consumer credit, the chain's natural niche in Mexico, is growing by over 30% a year.[2] Wal-Mart skeptics said the application was proof of its plans to add a banking arm to its global empire and sneak a bank into the United States.[3]

A coalition of community bankers, consumer groups and labor associations had previously blocked Wal-Mart's attempts to start a bank in the United States.[4] In stark contrast, approval of Wal-Mart's application in

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[1] Joe Adler, *Wal-Mart Discusses Branch Plan for Mexico*, AM. BANKER, Aug. 4, 2006, *available at* LEXIS, News Library, AMBNKR File.

[2] *See* Associated Press, *Wal-Mart's Mexican Unit Plans to Launch Bank*, MSNBC.COM, Aug. 3, 2006, http://www.msnbc.msn.com/id/14171601/ (quoting a Merrill Lynch analyst's discussion of the consumer benefits of Wal-Mart's entry into the Mexican banking market); *see also* Marla Dickerson, *Wal-Mart is Counting on Banking*, L.A. TIMES, Aug. 27, 2006, at C1, *available at* LEXIS, News Library, LAT File (quoting a Morgan Stanley analyst's assessment that the Mexican banking market represents a lucrative opportunity for Wal-Mart). *See, e.g.*, José J. Sidaoui, *The Mexican Financial System: Reforms and Evolution*, *in* BANK FOR INTERNATIOAL SETTLEMENTS, THE BANKING SYSTEM IN EMERGING ECONOMIES: HOW MUCH PROGRESS HAS BEEN MADE? 277, 289 (2006), *available at* http://www.bis.org/publ/bppdf/bispap28.pdf (citing consumer credit growth at over 35% in real terms during the preceding four years); Yolanda C. Courtines & Juan M. Partida, *Mexican Banks 2Q06: Loan Growth and Market Share Analysis* (JPMorgan, Emerging Markets Equity Research), Sept. 21, 2006, at 3 (on file with Connecticut Law Review) (citing growth figures of 48% and 37% for 2005 and 2006, respectively).

[3] *See* Adler, *supra* note 1; Matthew Mogul, *A Wal-Mart Bank? Yes—Sort of*, KIPLINGER FORECASTS, Aug. 24, 2006, http://www.kiplingerforecasts.com/home/stories/a_wal_mart_bank__yes_sort_of__.html; This Little Piggy Went to Wal-Mart, Bank Lawyer's Blog, http://www.banklawyersblog.com/3_bank_lawyers/2006/08/the_only_consta.html (Aug. 3, 2005 4:23AM); Wal-Mart Informative: Wal-Mart's Mexico Unit Eyes Banking, http://www.my3cents.com/showReview.cgi?id=15186 (last visited Feb. 15, 2007).

[4] For reports of opposition to Wal-Mart's U.S. banking efforts, see, for example, Steve Oberbeck, *Retailer, Grocer and Soon Bank of Wal-Mart*, SALT LAKE TRIB., Aug. 20, 2005, at E1, *available at* LEXIS, News Library, SLTRIB File; Bernard Wysocki, Jr., *On the Shelf: How Broad Coalition*

Mexico was a foregone conclusion.[5] Wal-Mart's subsidiary, Walmex, received authorization to open a full-fledged deposit-taking bank in November 2006.[6] Banco Wal-Mart de Mexico Adelante (Adelante) (in English, "forward") will launch operations in late 2007.[7] Some big banks may have grumbled privately on news of Wal-Mart's entry, but no U.S.-style public outcry ensued. Might Wal-Mart bank be good for Mexico?

By emerging markets standards, Mexico's banks are well-capitalized and competently regulated.[8] Yet three out of four Mexicans do not use banking services.[9] Since 1982, the entire banking sector has been nationalized and privatized—twice.[10] Three institutions hold over 60% of all bank assets, control the payments system and the sole private credit bureau; close to 80% of the banking assets are foreign-owned.[11] Bank lending to the private sector in Mexico historically has lagged behind lending in comparable developing economies. Mexican banks have lent at less than one-third the rate of banks in Chile, and at about half the rate of banks in Brazil.[12] In late 2003, lending suddenly took off for reasons that

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Stymied Wal-Mart's Bid to Own a Bank, WALL ST. J., Oct 23, 2006, at A1, *available at* LEXIS, News Library, WSJNL File; NCRC Says "Don't Bank with Wal-Mart!," The Community Investment Network, http://www.communityinvestmentnetwork.org/index.php?id=1047 (last visited Feb. 15, 2007).

[5] In early November 2006, Mexico's Finance Minister Francisco Gil Diaz promised to approve Walmex's license application before leaving office later that month. *See* Carlos Manuel Rodriguez & Valerie Rota, *Wal-Mart de Mexico to Get Banking License Within Days*, BLOOMBERG.COM, Nov. 10, 2006, http://www.bloomberg.com/apps/news?pid=20601086&sid=anVF7F2Vnqf4&refer=latin_america.

[6] Resolución por la que se autoriza la organización y operación de una institución de banca múltiple denominada Banco Wal-Mart de México Adelante, S.A., Institución de Banca Múltiple (2006) [hereinafter Adelante Resolution].

[7] Press Release, Wal-Mart de Mexico, Bank Authorization: Wal-Mart de Mexico Obtains a License to Organize and Operate a Bank (Nov. 22, 2006), *available at* http://media.corporate-ir.net/media_files/irol/13/130639/news/PressReleasebankinglicense.pdf; Elisabeth Malkin, *Warm Welcome for Mexican Wal-Mart Bank*, INT'L HERALD TRIB., Nov. 24, 2006, at 13, *available at* LEXIS, News Library, IHT File.

[8] *See* INT'L MONETARY FUND, IMF COUNTRY REPORT NO. 06/350: MEXICO—FINANCIAL SYSTEM STABILITY ASSESSMENT UPDATE 6 (2006), *available at* http://www.imf.org/external/pubs/cat/longres.cfm?sk=19978 (follow "Free Full Text" hyperlink) [hereinafter 2006 FSSA].

[9] See John P. Caskey et al., *The Unbanked in Mexico and the United States* 32–47 (2004), *available at* http://wbln0018.worldbank.org/html/FinancialSectorWeb.nsf/Search?openform (search for "Caskey" then follow article link) for analysis of the frequently-cited 2002 survey by Istituto National de Estadistica Geografia e Informática (INEGI) on financial services penetration in Mexico. *See also* William Britt Gwinner et al., *From Financial Exclusion to Inclusion: Increasing the Availability of Credit to the Urban Poor in Latin America*, EN BREVE (World Bank), Nov. 2006, *available at* http://siteresources.worldbank.org/INTENBREVE/Newsletters/21217493/Nov06_98_FinExclSolo v2.pdf; Tova M. Solo, *Financial Exclusion: A New Angle to Urban Poverty in Latin America*, EN BREVE (World Bank), Sept. 2005, *available at* http://siteresources.worldbank.org/INTENBREVE/Newsletters/20843573/77SEP05Finan.pdf.

[10] *See, e.g.*, BARBARA STALLINGS & ROGERIO STUDART, FINANCE FOR DEVELOPMENT: LATIN AMERICA IN COMPARATIVE PERSPECTIVE 186–91 (2006).

[11] 2006 FSSA, *supra* note 8, at 11.

[12] *See, e.g.*, STALLINGS & STUDART, *supra* note 10, at 185; FITCH RATINGS, BANK SYSTEMIC RISK REPORT 12 (2007), *available at* http://www.fitchratings.com.

experts continue to debate; the most dramatic growth has come from non-bank loans to consumers.[13]

This simplistic overview highlights the peculiarities of the banking landscape onto which Wal-Mart ventured in August 2006, its avowed mission to "bankariz[e]" the unbanked.[14] Whatever the pros and cons of a Wal-Mart bank might be in the United States, they look quite different in an environment where, despite recent growth, there is little credit, no competition, and a fresh history of political, economic, and legal instability. Wal-Mart is among the few actors capable of dislodging the dysfunctional status quo.

Even though its entry might bring unique benefits for Mexico, the new bank presents a transnational regulatory dilemma. As long as Adelante remains Wal-Mart's only banking venture worldwide, the Mexican authorities will have sole responsibility for regulating and supervising it. Because it is Wal-Mart's first banking venture worldwide, the corporate headquarters in Bentonville, Arkansas will likely take a keen interest in the new bank. But Wal-Mart's Mexican hosts—formally the "home" regulator of its banking operations—have at best indirect leverage over its unregulated U.S. parent. This raises the possibility of a supervisory gap, where no authority has a comprehensive view of the entire corporate structure containing the bank. Wal-Mart's case is unusual: all other foreign-owned banks in Mexico have parents that are themselves regulated institutions in the home country and are subject to comprehensive consolidated supervision by their home authorities.

The anomaly has implications beyond Wal-Mart and Mexico. The emerging transnational regime for bank regulation and supervision, anchored in the Basel Committee on Bank Supervision, is an array of best practices, core principles, and coordination mechanisms that sprung up in response to the spread of financial conglomerates and financial crises. It has inspired a rich academic debate about the efficacy and legitimacy of its approach as a case of global governance.[15] Its work often appears as a progressive march to close supervisory gaps.[16] Wal-Mart's bank in Mexico reveals a particularly challenging gap.

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[13] INT'L MONETARY FUND, IMF COUNTRY REPORT NO. 05/428: MEXICO—SELECTED ISSUES 50, 74–77 (2005), *available at* http://www.imf.org/external/pubs/cat/longres.cfm?sk=18758 (follow "Free Full Text" hyperlink) [hereinafter 2005 SELECTED ISSUES].

[14] Adler, *supra* note 1.

[15] *See generally* DANIEL K. TARULLO, BANKING ON BASEL (forthcoming 2007) (assessing the Basel Capital Accords as a set of internationally-derived norms from the perspective of domestic financial regulation); Michael S. Barr & Geoffrey P. Miller, *Global Administrative Law: The View from Basel*, 17 EUR. J. INT'L L. 15 (2006) (discussing legitimacy and accountability in the work of the Basel Committee on Bank Supervision as an instance of global administrative law).

[16] TARULLO, *supra* note 15, at 154.

The gap looks both intractable and inevitable, a function of the substantive diversity in bank regulation at the national level. Notwithstanding recent efforts to harmonize bank supervision and capital adequacy requirements, states retain considerable autonomy over regulation.[17] For example, while the United States has historically barred commercial firms from owning banks, Mexico has not.[18] This makes it possible for an unregulated entity in the United States to open a bank in Mexico, with Mexico as the home (and only) regulator.

This Article argues that the apparent gap, or the home-host hole, carries risks for Mexico; however, it cautions against rushing in to patch it with more centralized regulation. For now, the hole seems to pose a limited risk to global financial stability. An effort to close it at the international level will likely put the interests of the international financial system and regulators in major financial centers before those of the emerging markets hosts.[19] If the patching exercise redistributes regulatory authority further away from host country regulators, Mexico may come out the bigger loser.

At the time of this writing, Adelante has yet to start operations. One can only speculate about Wal-Mart's intentions based on its public announcements. The discussion that follows is necessarily stylized and hypothetical—the Article tries to identify the potential implications of *a* Wal-Mart bank for Mexico and for transnational regulation, rather than attempting to evaluate the impact of an existing institution. With all parts in motion, the aim is to identify some issues to watch as the scenarios unfold.

Following this introduction, Part II of the Article elaborates on the Mexican banking context. Part III offers background on Wal-Mart's retail presence in Mexico. Part IV draws out the potential implications for Mexico of its expansion into banking. Part V explores Wal-Mart's Mexican banking experiment from the perspective of transnational regulation. Part VI concludes.

II. PERENNIAL PUZZLES IN MEXICAN BANKING

Mexico's financial system has long stumped analysts and policy-makers. It has stubbornly lagged behind counterparts in other developing countries in providing credit to the economy, with bank lending to the

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[17] *See, e.g.*, BASEL COMM. ON BANKING SUPERVISION, BANK FOR INT'L SETTLEMENTS, CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION 6 (2006), *available at* http://www.bis.org/publ/bcbs129.pdf [hereinafter BASEL CORE PRINCIPLES].

[18] *See infra* notes 82–93 and accompanying text.

[19] *Cf.* Raj Bhala, *Tragedy, Irony, and Protectionism After BCCI: A Three-Act Play Starring Maharajah Bank*, 48 SMU L. REV. 11 (1994) (arguing that excessive regulation of international banking in major financial centers such as the United States will disproportionately harm banks from developing countries).

private sector at about 20% of GDP even after the recent lending surge.[20] Chilean banks lend at over 60%; and Mexico's closest counterpart Brazil boasts bank credit to the private sector at over 40% of GDP.[21] Banks in emerging Asian economies often lend at over 100% of GDP.[22] Lending levels in advanced economies range from about 60% for the United States, where capital markets play an important role,[23] to over 100% for France, Germany and Japan, where banks dominate.[24] Until recently, bank lending was low in Russia,[25] but that is hardly comforting for Mexico: Russia's private banks are children of the 1990s transition, whereas Mexico's largest banking institutions go back over 100 years. Each new decade has brought new diagnoses and policy prescriptions, but low lending levels persist.

As part of power consolidation in late 19th century, the federal government awarded bank licenses with special privileges to business magnates. The result was a pattern of monopolies and oligopolies that allowed banks to make profits in exchange for financing the government while it was shut out of the international bond markets.[26] Although the banking sector was effectively nationalized and privatized three times in the 20th century, many of its early features continued for most of its history.[27] These include extreme concentration, close ties between banks

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[20] STALLINGS & STUDART, *supra* note 10, at 185, 195 (citing overall domestic finance to firms at 28% of GDP in Mexico, 82% in Brazil, and 174% in Chile, and bank loans to the private sector at 18% of GDP in Mexico, one-quarter of Chile's levels). See FITCH RATINGS, *supra* note 12, at 12 for less stark but still significant multiples. *Cf.* 2006 FSSA, *supra* note 8, at 13. Estimates cited in this and the following footnotes measure different aspects of financial intermediation; Mexico comes out behind by any measure.

[21] FITCH RATINGS, *supra* note 12, at 12; *see also* INT'L MONETARY FUND, IMF COUNTRY REPORT 06/336: CHILE—SELECTED ISSUES 53 (2006), *available at* http://www.imf.org/external/pubs/ft/scr/2006/cr06336.pdf (citing bank credit to the private sector stable at just over 60% of GDP) and INT'L MONETARY FUND, IMF COUNTRY REPORT 06/335: CHILE—ARTICLE IV CONSULTATION—STAFF REPORT 28 (2006), *available at* http://www.imf.org/external/pubs/ft/scr/2006/cr06335.pdf (citing 80% of GDP for a slightly broader measure of bank credit). The disparities are smaller for domestic capital markets, but there too Mexico lags. *See, e.g.*, STALLINGS & STUDART, *supra* note 10, at 198–201.

[22] *See, e.g.*, FITCH RATINGS, *supra* note 12, at 12.

[23] *See* INT'L MONETARY FUND, IMF COUNTRY REPORT 06/278: UNITED STATES—SELECTED ISSUES 36 (2006), *available at* http://www.imf.org/external/pubs/cat/longres.cfm?sk=19491 (follow "Free Full Text" hyperlink).

[24] *See, e.g.*, FITCH RATINGS, *supra* note 12, at 12.

[25] *Id.*

[26] *See* JAMES BARTH ET AL., RETHINKING BANK REGULATION: TILL ANGELS GOVERN 262–65 (2006); NOEL MAURER, THE POWER AND THE MONEY: THE MEXICAN FINANCIAL SYSTEM, 1876–1932, at 34–47 (2002) (on the political accommodations that structured Mexico's financial sector); *id.* at 115–33 (on early bank-industry ties); Stephen Haber, *Banking with and Without Deposit Insurance: Mexico's Banking Experiments, 1884–2004*, at 6, 10 (2005), *available at* http://www.stanford.edu/~haber/papers.html (follow the "Banking With and Without Deposit Insurance in Mexico" hyperlink). *See generally* JEFFREY BORTZ & STEPHEN HABER, THE MEXICAN ECONOMY, 1870–1930: ESSAYS ON THE ECONOMIC HISTORY OF INSTITUTIONS, REVOLUTION, AND GROWTH (2002).

[27] MAURER, *supra* note 26, at 153–59; *see also* STALLINGS & STUDART, *supra* note 10, at 186–87, 189; OSVALDO SANTIN QUIROZ, THE POLITICAL ECONOMY OF MEXICO'S FINANCIAL REFORM 139–

and the leading industrial families, connected lending and a habit of special deals with the government.[28]

Government-owned development banks are another key part of the Mexican landscape. The oldest, Nacional Financiera (NAFINSA), was established in the 1930s and played a central role in the industrialization drive that followed World War II.[29] These institutions borrow funds in the capital markets and on-lend them for specified policy goals. For much of their history, the development banks have lent to large conglomerates (the country's largest employers) in parallel with commercial banks.[30] Because companies used development banks to finance their riskiest projects, these institutions have suffered disproportionately high default rates.[31] NAFINSA's mandate shifted recently to focus on small and medium-size enterprise (SME) lending.[32]

Historically, the largest Mexican corporations have had better access to international portfolio capital than their counterparts elsewhere in Latin America. These companies rely on U.S. banks and capital markets for their funding needs. However, when international markets close, the top firms turn to Mexican banks. Companies in the next tier get credit from Mexican banks, suppliers, and corporate affiliates. Small and medium-size firms rely less on the banks, and more on suppliers, friends, family, and government programs. All but the wealthiest consumers use cash.[33]

Mexico's debt crisis that began in 1982 wiped out bank capital and prompted a wholesale nationalization of the banking sector. Banks were reprivatized as part of a wave of structural reforms that accompanied Baker and Brady Plan debt restructuring.[34] The privatization process included a requirement that banking institutions be controlled by Mexican nationals

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41 (2001); Haber, *supra* note 26, at 3, 16; Stephen Haber, *Mexico's Experiments with Bank Privatization and Liberalization, 1991–2002*, 29 J. BANKING & FIN. 2325 (2004). Beyond effective ownership changes, the government exercised a high degree of control over private banks at various times, including after World War II. *See, e.g.*, QUIROZ, *supra*, at 85–87; STALLINGS & STUDART, *supra* note 10, at 186.

[28] *See generally* Haber, *supra* note 26 (discussing Mexico's history of bank concentration and connected lending); MAURER, *supra* note 26, at 1 (noting the roots of Mexican bank concentration and its persistence). Although the banking sector has remained concentrated, links between banks and Mexico's large industrial groups—a defining feature of the sector for much of the 20th century—have weakened or disappeared by the mid-2000s. *See* Leonardo Martinez, Waiting for the Barbarians: The Politics of Banking-Sector Opening in Mexico, Brazil, and Indonesia (1988–2005) 235 (2006) (unpublished Ph.D. dissertation, University of Oxford) (on file with author).

[29] *See* Haber, *supra* note 26, at 16.

[30] *See, e.g.*, STALLINGS & STUDART, *supra* note 10, at 197; QUIROZ, *supra* note 27, at 84–85.

[31] *See* Haber, *supra* note 26, at 5; 2006 FSSA, *supra* note 8, at 16; INT'L MONETARY FUND, IMF COUNTRY REPORT NO. 01/192: MEXICO—FINANCIAL SYSTEM STABILITY ASSESSMENT 33 (2001), *available at* http://www.imf.org/external/pubs/cat/longres.cfm?sk=15443.0 [hereinafter 2001 FSSA].

[32] Nacional Financiera, Organization and Objective, http://www.nafin.com/portalnf/?action=Content&sectionID=6&catID=154 (last visited Feb. 17, 2007).

[33] STALLINGS & STUDART, *supra* note 10, at 202–03, 215–17.

[34] For background on the Baker and Brady initiatives, see, for example, LEX RIEFFEL, RESTRUCTURING SOVEREIGN DEBT: THE CASE FOR AD HOC MACHINERY 149–77 (2003).

and another that prohibited control by non-financial companies. The second of these was observed in letter: as before, the banks went to prominent Mexican industrial families, who used them in significant part to funnel money to related enterprises. Related loans accounted for much of the brief lending boom in the early 1990s.[35] Credit to the private sector grew by up to 30% annually, from under 20% of GDP in the late 1980s to 40% by 1995.[36] The 1994 Tequila Crisis ended the boom.[37] Related loans were nearly twice as likely to default during the crisis; recovery values for this group were one-third lower than for arm's length lending.[38]

After multiple failed bank restructuring programs in the late 1990s, the pressing need to inject new capital in the system trumped nationalist sensibilities.[39] Foreigners were invited to buy the banks, and they did. Four of the five institutions that controlled close to 80% of all bank assets went to Spain's BBVA and Santander, Britain's HSBC, and Citigroup. Canada's Bank of Nova Scotia established a significant presence. Of the top five banks, Banorte alone remained in the hands of Mexican nationals; at 5% of total assets, it lags behind the other four. The largest institutions together control the payments system and the sole private credit bureau.[40]

The new owners quickly recapitalized the banks, but lending levels barely budged. This had a host of reasonable explanations. First, the banks may have been reluctant to lend to the private sector as long as they could get a reasonable return from financing the government. A succession of government programs took bad loans off bank books, and replaced them with government bonds that yielded interest rates sufficient to keep banks profitable. Second, new regulatory discipline in the aftermath of the crisis made banks more risk-averse. Lingering worries about macroeconomic instability reinforced the aversion, as did the dearth of credit information. Credit assessment is limited: there is one public and one private credit registry. The public registry, established in the 1960s, has very limited coverage by design and is rarely used. The private one is

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[35] Rafael LaPorta et al., *Related Lending*, 118 Q.J. ECON. 231, 233, 244–50 (2003).

[36] *See, e.g.*, STALLINGS & STUDART, *supra* note 10, at 187.

[37] The crisis involved a steep fall in the value of the Mexican currency, which in turn caused pervasive defaults on dollar-denominated and other debts to Mexican banks. *See, e.g.*, Francisco Gil Diaz, *The China Syndrome or the Tequila Crisis* 8–11 (Center for Res. on Econ. Dev. & Pol'y Reform, Working Paper No. 77, 2000) (describing the circumstances leading up to and economic effects of the Tequila Crisis).

[38] LaPorta et al., *supra* note 35, at 255–59. In contrast to LaPorta et al., Haber and Mauer argue that related lending was a sensible and beneficial strategy pursued by private Mexican banks throughout their history to overcome information asymmetries and shortcomings in the legal and institutional environment. Haber, *supra* note 26; MAURER, *supra* note 26, at 198–99.

[39] *See, e.g.*, STALLINGS & STUDART, *supra* note 10, at 196–97; Martinez, *supra* note 28, at 195–99. Citi has been in Mexico since the 1920s. *See, e.g.*, STALLINGS & STUDART, *supra* note 10, at 195; Martinez, *supra* note 28, at 130.

[40] 2006 FSSA, *supra* note 8, at 35.

jointly owned by the largest banks; it compiles information on the largest corporate borrowers, and limits access for non-members on the margins.[41] Finally, a popular explanation for low lending levels pointed to inadequate laws and institutions. Contract enforcement takes longer and costs more in Mexico than in high-income countries or in the emerging economies of East Asia; Mexico is about average for all of Latin America and the Caribbean.[42] Until recently, secured lending was considered non-viable because of the difficulty in enforcing against collateral.

Following the Tequila Crisis, Mexico overhauled its regulatory apparatus.[43] A unitary financial regulator, the National Banking and Securities Commission (CNBV) was given the mandate to oversee the financial sector. The Ministry of Finance remained in charge of new license applications and the Central Bank retained responsibility for deposit insurance, but CNBV has enjoyed increasing independence. Previously unlimited deposit insurance is now subject to a $130,000 cap.[44] The cap is very high by international standards—for example, it is generally $100,000 per depositor per insured bank in the United States.[45] The deposit insurance agency, the Bank Savings Protection Institute (IPAB), established in 1999, has virtually no assets because of the obligations it inherited from the last crisis.[46]

As noted earlier, the authorities also reoriented the government banks to provide SME and rural credit, and established two new kinds of non-bank financial institutions, *sofoles* and *sofomes*, which take no deposits and focus on specialized lending such as mortgages, consumer and SME loans.[47] Some, but not all of these new institutions are government-financed. Beyond the banking sector, new laws on bankruptcy and secured credit aimed to streamline debt collection and inject more certainty into the process.[48] In parallel with legal and regulatory reforms, the

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[41] *See* Jose Luis Negrin, *Credit Information Sharing Mechanisms in Mexico: Evaluation, Perspectives and Effects on Small Firm Credit* 2 (Center for Res. on Econ. Dev. & Pol'y Reform, Working Paper No. 114, 2001), *available at* http://scid.stanford.edu/pdf/credpr114.pdf.

[42] 2005 SELECTED ISSUES, *supra* note 13, at 56–57.

[43] *See* 2001 FSSA, *supra* note 31, at 18-19; THE REGULATION OF NON-BANK FINANCIAL INSTITUTIONS: THE UNITED STATES, THE EUROPEAN UNION, AND OTHER COUNTRIES 11 (Anjali Kumar et al. eds., 1997).

[44] Sidaoui, *supra* note 2, at 283.

[45] Federal Deposit Insurance Corporation, Insuring Your Deposits, *available at* http://www.fdic.gov/deposit/deposits/insuringdeposits/index.html (last visited Apr. 26, 2007).

[46] CANADA DEPOSIT INS. CORP., INTERNATIONAL DEPOSIT INSURANCE SURVEY: MEXICO 3 (2003), *available at* http://www.iadi.org/html/Default.aspx?MenuID=212 (follow "IPAB—Mexico (Full)" hyperlink); *see also* 2006 FSSA, *supra* note 8, at 8, 27 (noting IPAB's weakened financial position and advocating for improving its financial condition).

[47] 2006 FSSA, *supra* note 8, at 11; STALLINGS & STUDART, *supra* note 10, at 217–18.

[48] 2006 FSSA, *supra* note 8, at 46–48, 63–65.

macroeconomic environment has stabilized since 2001 and inflation has virtually disappeared, now running at an annual rate of just under 4%.[49]

Beginning in 2003, consumer lending took off. According to some estimates in 2005, consumer loans grew by 48% year on year; analysts estimate 2006 growth at 37%.[50] This growth comes on a very low base—consumer lending was less than 10% of total lending in Mexico in 2002, up from less than 3% in 1999.[51] Much of the new credit has come from the new special purpose lenders and non-banks.[52] Among non-banks, large retailers, car and appliance vendors have played a key role, along with *sofoles* and *sofomes*. Unlike the United States, Mexico allows unregulated non-bank commercial and industrial companies to own full-service banks.[53] Aside from Wal-Mart, several other retailers have sought to open banks on the back of the lending boom; one has operated successfully since 2002.[54] On the other hand, small-scale community banking is still virtually nonexistent. Compartamos, a microfinance provider, has expanded the number of borrowers served sixfold over the past seven years, and has recently secured a full banking license; however, it is still a small niche player.[55]

Conventional wisdom attributes the boom in part to demographic trends that in turn point to consumption growth.[56] No doubt structural reforms and macroeconomic stability are important background factors. In addition, government policies targeted at boosting mortgage lending played a part.

On the other hand, fees and interest rates on the new loans are spectacularly high, especially considering that inflation is in the single digits. In 2004, Citigroup charged an annual rate of 85% in Mexico on credit cards whose U.S. counterparts cost 9%; Scotiabank charged 77% in Mexico, 18% in Canada.[57] In recent years, high fees have driven bank

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[49] Patrick Harrington, *Mexico's Inflation Slows to Within Target in January*, BLOOMBERG.COM, Feb. 8, 2007, http://www.bloomberg.com/apps/news?pid=10000086&refer=&sid=alrG8zIT52Uw.

[50] *See, e.g.*, Courtines & Partida, *supra* note 2, at 3.

[51] STALLINGS & STUDART, *supra* note 10, at 210. A JPMorgan report cites consumer loans at almost 30% of all performing bank loans excluding loans to the government in early 2006. Courtines & Partida, *supra* note 2, at 3.

[52] STALLINGS & STUDART, *supra* note 10, at 217–18.

[53] *See infra* notes 81–93 and accompanying text.

[54] *See id.*

[55] *Special Report: Mexico Banking—Changing Landscape*, LATIN FIN., Sept. 2006, *available at* LEXIS, News Library, LAFN File [hereinafter *Changing Landscape*].

[56] *Special Report: Eternal Youth*, LATIN FIN., Sept. 2006, *available at* LEXIS, News Library, LAFN File.

[57] *Banks Aggressively Promote Use of Credit Cards in Mexico*, SOURCEMEX, Apr. 6, 2005, http://retanet.unm.edu/LADB-articles/25954.html. The figures reflect a comparison of total annual costs of credit drawn from a fifteen-month study by the financial sector consumer protection watchdog CONDUSEF (a Mexican government agency), released in September 2004. Press Release, CONDUSEF, Comunicados de Prensa, Cominucado 012 (Sept. 6, 2004), *available at* http://www.condusef.gob.mx/Conoce/comunicados/2004/0012_04.html.

profits.[58] Charges and administrative restrictions make transferring accounts between banks prohibitive even for those Mexicans that have accounts. Large banks still limit lending to the wealthiest individuals. For example, Banamex requires a minimum income of $900 per month for the most basic consumer loan, while 60% of all Mexicans earn less than four times the minimum wage, or $522 per month.[59] Retailers that target lower-income groups charge higher interest rates. Despite complaints about the weakness of legal enforcement systems, default rates on consumer debt are in the low single digits.[60] Some suggest that consumer debt is easier to enforce, partly thanks to recent changes in secured credit laws, but also thanks to "innovative collection techniques" such as sending a company agent to the debtor's home.

In sum, Mexico historically has had trouble achieving substantial levels of intermediation in the economy. A 2002 government survey reported that more than three-quarters of all Mexicans had no access to financial services.[61] Experts have debated the causes, but no prescription to date has offered a durable solution. Government banks have contributed to post-war industrialization, but over time have become a costly subsidy and have not played a big role in intermediating savings. Foreign entry helped recapitalize banks after the Tequila Crisis, but has not altered the extreme concentration of assets in the sector or the large banks' predilection for financing only the largest and wealthiest borrowers. The recent explosion in consumer lending could be a promising breakthrough, a dangerous bubble, or some combination of the two.

III. ENTER WALMEX

Mexico is Wal-Mart's first, largest, and probably most successful international venture; the subsidiary brought in 25% of Wal-Mart's foreign sales in 2005.[62] It started in 1992 as an alliance with Grupo Cifra,[63] which owned an established chain of self-service stores. The experiment was unusually successful: Wal-Mart gained market share and stayed afloat through the Tequila Crisis. When other U.S. retailers left Mexico, Wal-Mart plunged in deeper and bought a controlling stake in Cifra in 1997.[64]

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[58] *Id.*; *Changing Landscape*, *supra* note 55.

[59] *Special Report: Mexico Consumer Finance—Reaching the Base*, LATIN FIN., Sept. 2006, *available at* LEXIS, News Library, LAFN File.

[60] *Id.* (citing a default rate of 2.5%).

[61] Caskey et al., *supra* note 9, at 33.

[62] Douglas E. Thomas & Fernan Gonzalez, *Wal-Mart de Mexico—2005*, *in* FRED R. DAVID, STRATEGIC MANAGEMENT: CONCEPTS AND CASES (11th ed. 2007) (manuscript at 2).

[63] WalMart-México: History, http://www.walmartmexico.com.mx/acercai.html (last visited Feb. 10, 2007).

[64] *Id.*; *see also* Chris Tilly, *Wal-Mart in Mexico: The Limits of Growth*, *in* WAL-MART: THE FACE OF TWENTY-FIRST CENTURY CAPITALISM 195–96 (Nelson Lichtenstein ed., 2006) (noting that the success of the Wal-Mart-Cifra venture has far surpassed that of other retailers in Mexico).

In 2000, the company became Wal-Mart de Mexico, S.A. de C.V.,[65] or Walmex.

By 2001, Walmex controlled half of all supermarket sales in Mexico, was the country's largest private sector employer,[66] and the third largest company in Mexico by market capitalization.[67] At this writing, Walmex owns over 850 retail outlets around Mexico.[68] One study put Walmex's retail market share at 55% in 2005.[69] However, this figure may be misleading considering the prevalence of informal retail outlets such as street stalls.[70] In February 2007, Walmex sales growth remained solidly in the double digits, even as Wal-Mart's U.S. growth slowed.[71] Walmex projected more growth and geographic expansion going forward.[72]

Although it offers several store formats and restaurants in Mexico, including some catering to lower-income groups,[73] Walmex clientele is primarily middle income urban residents. Its presence is concentrated in the country's central region; it has had more trouble in the wealthier north and has only a smattering of outlets in the poorer areas.[74] A recent study suggests that Walmex's wage and benefit practices are in line with the rest of the retail sector.[75] Apart from a high-profile incident surrounding construction of a store near a historic cite, Walmex has drawn minimal controversy in Mexico, especially when compared to its polarizing effect

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[65] WalMart-México: History, *supra* note 63.

[66] Tilly, *supra* note 64, at 189, 196.

[67] *Mexico's Soriana to Spend $300 Million to Expand*, BLOOMBERG.COM, Nov. 29, 2004, http://quote.bloomberg.com/apps/news?pid=10000086&sid=aJO0sK1L0pzU&refer=news_index.

[68] WalMart-México: History, *supra* note 63.

[69] Thomas & Gonzalez, *supra* note 62, manuscript at 4.

[70] Tilly, *supra* note 64, at 203–04.

[71] Press Release, Wal-Mart de Mexico, Wal-Mart de Mexico Reports February 2007 Sales (Mar. 8, 2007), *available at* http://library.corporate-ir.net/library/13/130/130639/items/235104/February07.pdf (reporting that Walmex's sales were up 18.4% in nominal terms, about 14% in real terms over last year); *see, e.g.*, John Lyons, *In Mexico, Wal-Mart Is Defying Its Critics*, WALL ST. J., Mar. 5, 2007, A1, *available at* LEXIS, News Library, WSJNL File (reports "slowing" growth for Wal-Mart in the United States in contrast to rapid growth in Mexico and other emerging markets).

[72] Wal-Mart de Mexico plans to open 125 stores in 2007, compared to 120 in 2006. Associated Press, *Wal-Mart de Mexico Sets 2007 Expansion*, FORBES.COM, Feb. 13, 2007, http://www.forbes.com/feeds/ap/2007/02/13/ap3424024.html. The company expects to increase store space overall by 12%. *Id.*; *see also* JPMorgan, *Wal-Mart de Mexico: Upward Estimates Revision on Analyst Meeting*, Feb. 14, 2007 (on file with Connecticut Law Review).

[73] *Id.*; *see also* Lyons, *supra* note 71 (reporting the political prominence of Wal-Mart's benefits to the poor, but also describing Wal-Mart shopping as a "high-end experience"); Tilly, *supra* note 64.

[74] *Compare* WalMart-México: Geographical Distribution, http://www.walmartmexico.com.mx/acercai.html?id=24.571576473498563 (last visited Feb. 10, 2007) (showing a high concentration of stores in Mexico's central region, fewer stores in the north, and very few stores in the southwest region) *with* WORLD BANK, POVERTY IN MEXICO: AN ASSESSMENT OF CONDITIONS, TRENDS AND GOVERNMENT STRATEGY, at xxvi (2004), *available at* http://www.worldbank.org (follow "Countries" hyperlink, then follow "Mexico" hyperlink, then follow "Publications & Reports" hyperlink, then follow "Poverty in Mexico" hyperlink) (showing that a high concentration of the nation's poorest people live in the southwest region).

[75] Tilly, *supra* note 64, at 190.

in the United States. It has won prestigious corporate social responsibility awards for its business practices and charitable activities, including hurricane response.[76]

Wal-Mart's entry did have a dramatic effect on Mexico's formal retail sector and, in particular, on the relationship between retailers and suppliers. As in the United States, the company has extracted deep discounts from suppliers (many of which are based in Mexico[77]) and passed them on to customers. As in the United States, it has put small shops out of business, though the magnitude of the effect is debated.[78] More visibly, it has forced other large Mexican chains to adopt similar practices. In addition to squeezing suppliers, three of Walmex's largest competitors formed a buyer's cooperative, initially blocked but later sanctioned by the national antitrust authorities.[79]

IV. ON WITH ADELANTE

Before applying to start its own bank, Walmex had a consumer credit program with GE Capital, a credit card program with BBVA Bancomer, and another with American Express.[80] The license application for Banco Wal-Mart de Mexico Adelante proposed to capitalize the bank at about $25 million; official announcements have said that the bank would start by offering savings accounts, credit cards and basic lines of credit, and would expand into mortgages and insurance.[81] When Walmex filed its application, at least one other large Mexican retail chain, Grupo Elektra (Elektra), had been operating a full-service bank for over three years.[82] Several other retailers applied for and received licenses in 2006.[83]

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[76] Thomas & Gonzalez, *supra* note 62, manuscript at 3; WalMart-México, Letter from the Chairman of the Board, Wal-Mart CEO, Feb. 9, 2007, http://media.corporate-ir.net/media_files/irol/13/130639/cg/MessagefromtheCharimanoftheBoard.pdf; WalMart-México, Letter from the Chief Executive Officer, http://media.corporate-ir.net/media_files/irol/13/130639/cg/MessagefromtheChief ExecutiveOfficer.pdf.

[77] Ninety percent of the goods sold in Wal-Mart are sourced in Mexico. Thomas & Gonzalez, *supra* note 62, manuscript at 3.

[78] Tilly, *supra* note 64, at 197–98; *see also* Lyons, *supra* note 71 (describing Walmex's competition with large supermarket chains and smaller specialty stores owned by local power brokers).

[79] Tilly, *supra* note 64, at 199.

[80] WAL-MART DE MEXICO, ANNUAL REPORT 2005: FOCUSING ON PRIORITIES 11 (2005), *available at* http://library.corporate-ir.net/library/13/130/130639/items/189890/2005_ar.pdf. For information on BBVA Bancomer, see BBVA Bancomer, Description, http://www.bancomer.com.mx/nuestrom/nuestromi/nuemu_engli_corin_main.html (last visited Feb. 10, 2007).

[81] Adler, *supra* note 1.

[82] *See* Banco Azteca, Who Are We?: Our History, http://www.bancoazteca.com.mx/PortalBanco Azteca/publica/conocenos/historia/nuestra.jsp (last visited Feb. 17, 2007); Grupo Elektra, What is Grupo Elektra?: Company Profile, http://www.grupoelektra.com.mx/elektra/English/whatis/profile/default.asp (last visited Feb. 17, 2007).

[83] Associated Press, *Wal-Mart's Mexican Unit to Launch Bank: Division Says it Will Open Them as Soon as OK Given by Regulators*, MSNBC.COM, Aug. 3, 2006, http://www.msnbc.msn.com/id/14171601/ (reporting that Grupo Famsa has been licensed to provide banking services and Controladora Comercial Mexicana has announced that it will partner with a French banking group to

The experience of Elektra's bank, Banco Azteca, is instructive. Elektra is part of the large media, telecommunications and retail conglomerate Grupo Salinas.[84] Elektra's stores sell primarily electronics, appliances, furniture and household goods, but the group also has a pension fund and an insurance company.[85] Elektra was among Mexico's largest consumer credit providers even before it started a bank.[86] Banco Azteca's declared mission is to serve the unbanked, whom it puts at 70% of the Mexican population.[87] Since the bank's establishment, business has grown rapidly: in 2006, the company reported over 40% year-on-year growth in the number of accounts, and over 30% growth in net deposits.[88] With over $2.4 billion in savings accounts, over $1.5 billion in credit outstanding and 1500 branches spread among Elektra's retail outlets, Azteca claims to be "among the two largest banks in Mexico in terms of coverage."[89] While it offers a diverse range of products, including savings and investment accounts, credit cards, mortgages, personal and business loans, three-quarters of Azteca's business is consumer credit—installment loans to finance the acquisition of consumer durables sold in Elektra stores.[90] Default rates have been low. Azteca claims to have started operations with over 2800 credit managers,[91] and has reportedly used aggressive collection tactics, including home visits.[92] In addition to Mexico, Azteca has branches in Panama and is planning operations in Honduras.[93]

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offer banking services); Cyntia Barrera Diaz, *Update 4-Wal-Mart Mexico Sees No Bank Profits Until 2011*, REUTERS, Nov. 27, 2006, http://www.reuters.com/article/companyNewsAndPR/idUSN27491794 20061127 (reporting that Wal-Mart's Adelante bank is one of five new retailer-operated banks opening in Mexico).

[84] Grupo Salinas, GS Companies: Grupo Elektra, http://www.gruposalinas.com/english/ companies/elektra.shtml (last visited Feb. 12, 2007).

[85] *Id.*

[86] Lucy Conger, *A Bold Experiment at Banco Azteca*, OUTLOOK J., May 2003, *available at* http://www.accenture.com/Global/Research_and_Insights/Outlook/By_Alphabet/CaseAzteca.htm.

[87] *See* Grupo Elektra, Business Units: Banco Azteca, http://www.grupoelektra.com.mx/elektra/ English/Units/Financial/Brands/Banco/default.asp (last visited Feb. 12, 2007).

[88] *See Grupo Elektra Announces 4Q06 EBITDA Growth of 5% to Record of Ps. 1,835 Million*, DOW JONES MARKETWATCH, Feb. 22, 2007, http://www.marketwatch.com/news/story/grupo-elektra-announces-4q06-ebitda/story.aspx?guid=%7B412CDAB5-2937-482C-9262-A2044CF3E681%7D [hereinafter *Grupo Elektra 4Q06 EBITDA Growth*].

[89] Grupo Salinas, *supra* note 84. Bancomer is ahead of Azteca, with over 1700 branches. *See* BBVA Bancomer, *supra* note 80.

[90] BANCO AZTECA, REPORTE DE COMENTARIOS Y ANÁLISIS DE LA ADMINISTRACIÓN SOBRE LOS RESULTADOS DE OPERACIÓN Y SITUACIÓN FINANCIERA AL 30 DE SEPTIEMBRE DE 2006, at 2 (2006), http://www.grupoelektra.com.mx/elektra/spanish/download/banco/quarter.asp?ban_id=17&emp_id=1& indicator=12&pagina=3.

[91] Elisabeth Malkin, *Wal-Mart Will Offer Retail Banking in Mexico, an Underserved Market*, N.Y. TIMES, Nov. 24, 2006, at C1, *available at* LEXIS, News Library, NYT File.

[92] *Supra* note 57; *see also* Susan H. Preston, *Borrow Now, Repent Later*, LATIN FIN., Sept. 2006, at 1.

[93] *Mexico: Banco Azteca Cleared in Honduras*, EL FINANCIERO, Feb. 2, 2007, *available at* 2007 WLNR 2159640; *Grupo Elektra 4Q06 EBITDA Growth*, *supra* note 88.

Wal-Mart's strategy for Adelante appears roughly similar to Elektra's. In addition, Wal-Mart is ideally positioned to provide remittance services in the U.S.-Mexico corridor, reducing costs for one of the world's largest remittance channels, that is already one of the world's most efficient.[94] Mexican immigrants in the United States send over $13 billion home every year; this figure is nearly 80% of the country's total oil revenues and over 2% of its GDP.[95] The largest number of immigrants sends money to central Mexico, where Wal-Mart's retail penetration is the highest.[96] Since the Citigroup-Banamex acquisition and, even more so, since the introduction of consular identity cards available to documented and undocumented immigrants alike, Mexicans in the United States have increasingly used formal bank channels to send money home. This has helped bring cost of remittances down by 60% between 1999 and 2005.[97] However, a significant portion of Mexican citizens in the United States remain unbanked; they are also an important part of Wal-Mart's customer base.

In sum, Wal-Mart is entering a banking sector that was "Walmartized"—dominated by a few giant private players—100 years before it appeared on the scene. Wal-Mart is among the few firms that can challenge large banks' dominance over payments systems and credit reporting: it has already announced plans to develop credit assessment systems based on its prior consumer lending experience. Expanding credit reporting is especially important against the background of a consumer credit boom. Recent studies suggest that weak credit assessment and the lack of credit information, against the background of government pressure to lend, are key factors behind unsustainable credit booms, such as the one that followed Korea's financial crisis and economic reforms.[98]

Of course Wal-Mart's entry would not by itself create a competitive banking sector. The most likely scenario might be for Adelante, Azteca and one or two others to take some market share from the top five commercial banks and expand service to middle-class consumers. By

[94] Remittance costs in the U.S.-Mexico corridor have dropped significantly since the introduction of a consular identity card (which allows Mexican immigrants to open bank accounts in the United States) and other measures. WORLD BANK, GLOBAL ECONOMIC PROSPECTS 2006: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION 139 (2006). Only remittances from the United States to the Philippines are cheaper. *Id.* at 137.

[95] RAUL HERNANDEZ-COSS, THE U.S.-MEXICO REMITTANCE CORRIDOR: LESSONS ON SHIFTING FROM INFORMAL TO FORMAL TRANSFER SYSTEMS 4–5 (2005).

[96] APEC Remittances Initiative, Map of the U.S.-Mexico Remittances Corridor, http://www1.worldbank.org/finance/html/amlcft/Maps/us-mexico-remittance-map.pdf (indicating that most remittance corridors flow to central Mexico); *see also supra* note 74 and accompanying text (illustrating that most of Wal-Mart's Mexican units are in the center of the country).

[97] WORLD BANK, *supra* note 94, at 139.

[98] 2005 SELECTED ISSUES, *supra* note 13, at 75–76. For a cross-border comparison of credit bureaus and a discussion of their role in the credit markets, see Ronald J. Mann, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS 113–18 (2006).

putting price pressure on the rest, Adelante may become another big player in the still-concentrated market, but one that is more open to consumers. Days after receiving the banking license, Walmex surprised analysts by announcing that it expects no profits from Adelante in the first four years of operation.[99] Analysts generally explained this as a sign that Wal-Mart will first focus on gaining market share with low-cost basic services. Still, on balance, Wal-Mart looks like a force for good. Keeping it out would not help competition, but would simply help preserve market share for Azteca.

V. THE HOME-HOST HOLE

Walmex got its banking authorization on November 16, 2006, in a little over three months.[100] By then, Wal-Mart's deposit insurance application in the United States had been pending for more than a year and was beginning to look doomed.[101] In granting Walmex permission to operate Adelante, the Mexican authorities—the Finance Ministry, in consultation with CNBV and the Central Bank—appeared to focus overwhelmingly on walling off the new bank from the Mexican retail operation and the U.S. corporate parent. The authorizing resolution, which stresses the need to promote competition in the financial sector several times in the preamble and the body, is much more elaborate than the earlier permits for Banco Azteca in 2002 and Banco Ahorro de Famsa in 2006.[102] The Adelante document contains explicit and detailed provisions against tying bank services to the commercial affiliates' operations, safeguards on information exchange, prohibitions on connected transactions, shared management, infrastructure and resources, transfer pricing abuses, and annual reporting requirements related to transfer pricing.[103] The resolution does not grant Mexican authorities access to the Mexican parent or to Wal-Mart's corporate headquarters in the United States. As a subsidiary, Adelante would be separately capitalized, and could be sanctioned,

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[99] *See, e.g.*, Adriana Arai, *Wal-Mart's Bank Gambit Wins Embrace in Mexico*, BLOOMBERG, Feb. 12, 2007, *available at* http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aAQ4K8AIfA7A#.

[100] *See* Adelante Resolution, *supra* note 6.

[101] *See* Arthur E. Wilmarth, Jr., *Wal-Mart and the Separation of Banking and Commerce*, 39 CONN. L. REV. 1539, 1542 (2007).

[102] Resolución por la que se autoriza la organización y operación de una institución de banca múltiple que se denominará Banca Azteca, S.A. (Apr. 4, 2002) (on file with Connecticut Law Review); Resolución por la que se autoriza la organización y operación de una institución de banca multiple denominada Banco Ahorro Famsa, S.A., Institución de Banca Múltiple (Aug. 8, 2006) (on file with Connecticut Law Review). It is possible that the regulators secured privately from the domestic retailers commitments similar to those it required publicly of Wal-Mart.

[103] Adelante Resolution, *supra* note 6. These and most of the other conditions on the authorization are set forth in the sixth paragraph of the resolution; the reporting requirement is in the seventh paragraph.

suspended or shut down by CNBV for failure to comply with its license conditions, or for other violations,[104] like any Mexican bank.

On October 5, 2006, shortly before Walmex got its bank permit, Mexico's Central Bank Governor Guillermo Ortiz gave a keynote address to a conference of international bank supervisors gathered at a Yucatan resort.[105] In a frank and occasionally dour speech, he questioned Mexico's ability to oversee a foreign-owned banking sector and manage the rapid expansion of commercial firms into banking. Adelante straddles both these concerns.

Perennially wary of foreign bank ownership, Ortiz suggested that international conglomerates today make credit policy at the parent level, driven by global strategy and country risk perceptions, with host country interests taking the back seat.[106] Mexico does not permit foreign banks to operate through branches; it requires them to establish separately capitalized subsidiaries that, in theory, give host authorities more control over their supervision.[107] But international banks increasingly book Mexican loans offshore to maximize tax and regulatory advantages.[108] Management trends favor centralization at the parent level, making figureheads of bank subsidiary CEOs in host countries. In crisis, a host country faces domestic political pressure against injecting public money into foreign bank subsidiaries—especially where they are run from abroad—but parent liability is generally limited to its share in the capital.[109]

Addressing the expansion of commercial firms into banking, Ortiz pointedly cited U.S. Federal Reserve Chairman Alan Greenspan's letter to the U.S. Congress on the risks of allowing firms like Wal-Mart to establish banks.[110] Acknowledging such firms' role in boosting credit and

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[104] *Id.*

[105] Guillermo Ortiz, Governor of the Bank of Mexico, Keynote Address at the 14th International Conference of Banking Supervisors: The Participation of International Banks in Emerging Economies (Oct. 5, 2006), *available at* http://www.bis.org/review/r061016b.pdf.

[106] *Id.* at 2–3.

[107] *See, e.g.*, *id.* at 2, 4; *see also* BANK FOR INT'L SETTLEMENTS, EVOLVING BANKING SYSTEMS IN LATIN AMERICA AND THE CARIBBEAN: CHALLENGES AND IMPLICATIONS FOR MONETARY POLICY AND FINANCIAL STABILITY 53 (2007), *available at* http://www.bis.org/publ/bppdf/bispap33.pdf.

[108] *See* Ortiz, *supra* note 105, at 2.

[109] *Id.* at 2, 4.

[110] *Id.* at 5 (citing Letter from Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve, to Rep. Jim Leach, U.S. House of Representatives (Jan. 20, 2006), *available at* http://economistsview.typepad.com/economistsview/files/greenspanlet.1.26.06.pdf). Greenspan did not refer to Wal-Mart by name in the letter, but did explicitly refer to Wal-Mart in an attachment to the letter that responded to specific questions posed by Congressman Leach. Letter from Alan Greenspan, *supra*. Leach, who had requested Greenspan's views in connection with a bill he sponsored, stressed that his concerns went to the loophole in U.S. law that Wal-Mart sought to use rather than to Wal-Mart specifically. *See* Press Release, Former Congressman James A. Leach, U.S. House of Representatives, Greenspan Warns Congress on Industrial Loan Corporations (Jan. 25, 2006), *available at* http://www.ufcw.org/document.cfm?documentID=777.

competition in Mexico, Ortiz flagged three common concerns with letting them buy banks: the risk that unregulated affiliates might abuse the bank safety net, the difficulty of reaching unregulated parts of the corporate group whose condition may determine the bank's safety and soundness, and the heightened risk of anti-competitive behavior, such as tying bank services to customer and supplier relationships.[111]

Following Ortiz's keynote address, the international bank supervisors' gathering approved a revised version of the Core Principles for Effective Banking Supervision, as promulgated by the Basel Committee on Banking Supervision at the Bank for International Settlements in Basel, Switzerland.[112] This was the first revision of the principles since they were first promulgated amid the international financial crises of the late 1990s.[113] The principles themselves and the accompanying Core Principles Methodology (which contains more elaborate guidance on their application)[114] are not binding; however, they are widely understood as the authoritative statement of best practices in the area, and form the basis of national financial sector assessments by institutions such as the International Monetary Fund (IMF).[115]

The Core Principles emerged as a specific response to crises in emerging markets countries and involved an unusual degree of consultation with officials in these countries.[116] The Basel Committee had previously considered minimum standards of supervision from the perspective of major financial centers; however, the ensuing calamity made these efforts appear patently inadequate.[117] The Core Principles focused on harmonizing and coordinating supervision—the process of overseeing bank compliance with substantive regulations. Basel-based efforts stopped far short of regulatory convergence;[118] regulatory harmonization has been generally limited to capital adequacy.[119] As a result, substantive

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[111] Ortiz, *supra* note 105, at 5–6.

[112] *See* BASEL CORE PRINCIPLES, *supra* note 17.

[113] *Id.* at 1; DUNCAN WOOD, GOVERNING GLOBAL BANKING: THE BASEL COMMITTEE AND THE POLITICS OF FINANCIAL GLOBALIZATION 100–22 (2005) (describing the roots of the Core Principles in the 1990s financial crises and efforts to reform the International Financial Architecture).

[114] BASEL COMM. ON BANKING SUPERVISION, BANK FOR INT'L SETTLEMENTS, CORE PRINCIPLES METHODOLOGY (2006), *available at* http://www.bis.org/publ/bcbs130.pdf [hereinafter BASEL METHODOLOGY].

[115] BASEL CORE PRINCIPLES, *supra* note 17, at 1; *see also* 2006 FSSA, *supra* note 8, at 32–38 (applying the Basel Core Principles in a financial system stability assessment of Mexico).

[116] WOOD, *supra* note 113, at 106–08.

[117] MORRIS GOLDSTEIN, THE CASE FOR AN INTERNATIONAL BANKING STANDARD 22, 26 (1997) (criticizing the 1992 Minimum Standards paper and other early BIS efforts as inadequate); *see also* WOOD, *supra* note 113, at 104.

[118] *Cf.* Goldstein's influential proposal for an International Banking Standard. GOLDSTEIN, *supra* note 117.

[119] TARULLO, *supra* note 15, at 1–2 (describing capital adequacy as the focus of international regulatory convergence, and questioning the desirability of detailed harmonized bank regulation).

differences have continued in areas such as universal banking and bank ownership by commercial firms, among others.

The last two of the twenty-five Core Principles are central both to Ortiz's thesis and to the case of a Wal-Mart bank in Mexico. Principle 24 re-emphasizes the importance of prudential supervision of a banking group on a consolidated basis worldwide, including the supervisors' power to oversee both foreign and non-banking activities of the banks incorporated within their jurisdiction, to have timely access to information about such activities, and the capacity to restrict offshore non-financial activities in the interests of safety and soundness.[120] Principle 25 frames the cooperation of home and host country authorities responsible for international banking conglomerates, including communications channels and division of responsibilities.[121]

Consolidated supervision and the home-host relationship were at the center of the Basel Committee's work long before the Core Principles. However, the focus in the most prominent early incidents, such as the ones involving the Bank of Credit and Commerce International (BCCI) and Daiwa Bank, had been on major financial centers as hosts.[122] By the late 1990s, banks from major financial centers were expanding on the periphery.[123] At the same time, the Committee's efforts to harmonize and improve supervision of financial conglomerates were helping to expand the authority of home regulators.[124]

Because Wal-Mart is not regulated in the United States, Mexico would be—at least on paper—the "home" supervisor for Adelante, and would be responsible for comprehensive consolidated supervision of Wal-Mart to the extent relevant for the safety and soundness of the local bank. The U.S. Federal Reserve has recently given Mexico high marks for its capacity to exercise cross-border consolidated supervision of local and foreign-owned banks. But the Fed expressed the judgment in its "host" capacity, when it approved Mexican banks' applications to do business in the United States; none of the cases involved a Mexican bank subsidiary of an unregulated foreign parent.[125] On the other hand, the IMF noted in its otherwise upbeat

[120] BASEL METHODOLOGY, *supra* note 114, at 38–40.

[121] *Id.* at 40–42.

[122] *See, e.g.*, HELEN GARTEN, U.S. FINANCIAL REGULATION AND THE LEVEL PLAYING FIELD 140 (2001) (describing the effect of regulatory failure for better regulated markets); GOLDSTEIN, *supra* note 117, at 26 (describing weaknesses in a supervisory approach based on host-country leverage); Bhala, *supra* note 19 (discussing the impact of U.S. regulation reacting to BCCI on a hypothetical Indian bank seeking to do business in the United States).

[123] *See generally* Martinez, *supra* note 28 (describing foreign bank entry in the aftermath of financial crises).

[124] WOOD, *supra* note 113, at 115–17 (discussing the Joint Forum on Financial Conglomerates).

[125] *See* Grupo Financiero Banorte, Order Approving the Formation of Bank Holding Companies and Acquisition of a Bank (Oct. 13, 2006), *available at* http://www.federalreserve.gov/boarddocs/press/

assessment of Mexico's regulatory capacity that the lack of "full-fledged" consolidated supervision of financial conglomerates "complicates early detection of group-wide risks". The Fund also stressed the need for enhanced cooperation with the home regulators of the foreign-owned banks.[126] All these concerns resonate in the case of Adelante, where despite its formal status as a home regulator, in practice, Mexico is in the position of a host, and one with exceedingly limited leverage over those parts of the corporate bank group located outside Mexico.

The disconnect between its formal and substantive authority is risky for Mexico. For example, a business like Wal-Mart might be tempted to ride the consumer lending boom in Mexico, using its Mexican bank subsidiary in the short term to make up for flagging U.S. sales, pending a new home-based growth strategy.[127] A further rapid, large-scale credit expansion in a sector already growing by over 30% a year could easily turn unsustainable. A rash of consumer defaults could have systemic financial and political consequences in Mexico. Moreover, should the lending boom go bust, or in the event of a macroeconomic shock of the sort that regularly befall the emerging markets, the bank subsidiary may seek liquidity from Mexico's Central Bank. Should the bank fail, it would have a claim against Mexico's deposit insurance fund.[128]

Here the parent retailer's size and political power become all-important. As the country's largest private sector employer, Walmex would be in an unusually strong position to demand support from the Mexican government by threatening to abandon the bank along with its labor-intensive retail operation. Neither foreign banks operating in Mexico, nor Mexican retailers that have opened banks, have similar leverage. Citibank has no shops; Azteca cannot leave.

Mexico's approach to managing such risks in the Adelante authorization looks similar to that of the European Union in regulating foreign financial conglomerates (requiring the establishment of an EU-level subsidiary that could be walled off from the rest of the corporate structure).[129] While technically plausible, isolating the bank would require close monitoring of its financial dealings with both Mexican and U.S. affiliates, a concern partially addressed in the authorization's reporting requirements.[130] But Mexico's practical capacity to detect intra-group

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orders/2006; BBVA Bancomer, S.A., 89 FED. RES. BULL. 146 (2003); Grupo Financiero Banamax Accival, S.A., 82 FED. RES. BULL. 1047 (1996).

[126] 2006 FSSA, *supra* note 8, at 22–23.

[127] *See* Kris Hudson, *Wal-Mart Aims to Stem Soft Sales Performance*, WALL ST. J., Feb. 5, 2007, at B2, *available at* LEXIS, News Library, WSJNL File.

[128] *See supra* notes 44–46.

[129] *Cf.* Council Directive 2002/87, 2003 O.J. (L 35) 1 (EC) (European Council Directive regulating financial conglomerates).

[130] Adelante Resolution, *supra* note 6.

financial maneuvers is untested, and recent IMF reports suggest that its supervisory resources are strained. Sanctioning abuses may require limiting services to the poor or shutting down the bank in an economic downturn. This would take enormous political will and resources to pay off the depositors, and may exacerbate the crisis.

It is also plausible that a large retail operation might act as a stabilizing influence in the event of a financial or macroeconomic crisis: supermarkets are less vulnerable than banks to financial shocks. Wal-Mart used the last major crisis in Mexico to expand when others left.[131] However, to the extent Walmex stores continue to provide higher-end products rather than basic necessities for most Mexicans who shop there,[132] they may be more susceptible in a downturn. Wal-Mart's departures from Germany and South Korea in 2006 suggest that withdrawal is a real option whose benefits can outweigh the reputational harm to the franchise.[133]

Even absent a nefarious plot to exploit Mexico's bank safety net for the benefit of the commercial parent, or cross-border shell games made famous by BCCI in the early 1990s,[134] Wal-Mart's sheer size and its potential dominance in certain market segments[135] (notably immigrant remittances) could make the safety and soundness of its Mexican bank a broader systemic concern. It is possible to envision a chain reaction from the failure of a bank with access to dollar and peso payment systems and handling large volumes of politically sensitive cross-border transfers. Such a failure would have financial and political repercussions on both sides of the U.S.-Mexican border. The existence of a U.S. counterpart could give Mexican regulators an early warning of group-wide vulnerability, and vice versa. On the other hand, such regulatory ties are yet to be tested in the

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[131] *Supra* note 63 (describing initial alliance with Grupo Cifra).

[132] Tilly, *supra* note 64.

[133] *See* Mark Landler & Michael Barbaro, *No, Not Always*, N.Y. TIMES, Aug. 2, 2006, at C2, *available at* LEXIS, News Library, NYT File. Many foreign retailers left Mexico after the Tequila Crisis, although Wal-Mart used it as an expansion opportunity. *See supra* note 64 and accompanying text. Banks often leave emerging markets countries in a crisis. Most recently, a French and a Canadian bank abandoned their Argentine operations during that country's financial crisis in 2001–2002. *See, e.g.*, Tanya Azarchs & Jesus Martinez, *Argentine Crisis Increases Risks for Foreign Banks with Local Operations*, STANDARD & POOR'S, Apr. 26, 2002, *available at* http://www.standardandpoors.com/europe/francais/Fr_news/Argentina-Crisis_26-04-02.html (for Scotiabank's exit); Carina Lopez, *The Argentine Crisis: Chronology of Events After Sovereign Default since April*, STANDARD & POOR'S, June 7, 2002, *available at* http://www.standardandpoors.com/europe/francais/Fr_news/The-Argentine-Crisis-Chronology2_07-06-02.html (for Credit Agricole's exit). For the impact of Argentina's crisis on its banking sector, see MARTIN LAGOS, THE ARGENTINE BANKING CRISIS 2001–2002 (2002) (on file with Connecticut Law Review). The example is instructive because foreign banks had a significant presence in Argentina on the eve of the crisis and played an important role in its run-up and aftermath.

[134] *See, e.g.*, Bhala, *supra* note 19, at 11–21 (analyzing the international banking legislation and regulation implemented in response to the problems experienced with BCCI).

[135] Adelante has not sought approval from Mexican antitrust authorities; its plan to enter the financial sector has not raised asset concentration concerns so far. The provisions on tying in the authorization address some potential concerns with anti-competitive practices. *See* Adelante Resolution *supra* note 6.

case of foreign-owned financial conglomerates such as Banamex and Bancomer, which were acquired after the last financial crisis.

Because Wal-Mart Bank does not yet exist, let alone dominate, in Mexico, these concerns are necessarily speculative. Whether Mexico can effectively introduce new safeguards for an existing bank is an open question.

Some indirect testimony to the challenge facing the Mexican authorities comes from the United States. In separate reports, the Inspector General of the Federal Deposit Insurance Corporation (FDIC) and the U.S. Government Accountability Office (the investigative arm of Congress) concluded that the FDIC has no capacity to exercise comprehensive consolidated supervision over commercial firms that own FDIC-insured industrial loan corporations (ILCs).[136] These reports were issued against the background of several prominent commercial firms, including Wal-Mart, applying for FDIC insurance to open state-chartered deposit-taking ILCs. Elsewhere in this volume, the most in-depth scholarly treatment to date of Wal-Mart's application concludes that allowing commercial firms to open insured deposit institutions expands the bank safety net to unregulated parent firms, and threatens to undermine confidence in the ILCs with potential for broader contagion. The study argues that granting broader oversight authority to the FDIC is undesirable because it lacks the necessary expertise. It would expand government oversight of the economy with uncertain payoff.[137]

U.S. arguments against bank-industry combinations could certainly hold in Mexico, with its troubled history of bank-industry ties and macroeconomic volatility adding a layer of risk. The question is whether Mexico should have the scope to make a different choice despite the risks to its own and, potentially, the international financial system. If danger to the international system (including contagion from a crisis in Mexico) is significant, more centralized regulation may be in order.

At this stage, Mexico would seem to bear most of the risks of Wal-Mart's bank. And Mexico made the decision to allow and even encourage commercial firms to open banks long before the Walmex application. Its dysfunctional banking context and the urgent need for competition and inclusion may help justify the choice. Wal-Mart's FDIC application is not a perfect comparison, since the Mexican financial regulators have more formal leeway to oversee and discipline Walmex (not Wal-Mart): their

[136] FED. DEPOSIT INS. CORP., ANNUAL REPORT 2006, at 128 (2007), *available at* http://www.fdic.gov/about/strategic/report/2006annualreport/index_pdf.html (follow "Appendices" hyperlink); GOV. ACCOUNTABILITY OFFICE, REPORT TO THE HONORABLE JAMES A. LEACH, HOUSE OF REPRESENTATIVES, INDUSTRIAL LOAN CORPORATIONS: RECENT ASSET GROWTH AND COMMERCIAL INTEREST HIGHLIGHT DIFFERENCES IN REGULATORY AUTHORITY 1–2 (2005), *available at* http://www.gao.gov/new.items/d05621.pdf.

[137] Wilmarth, *supra* note 101, at 1543–44.

legal authority is broader, closer to that of the Federal Reserve Board than the FDIC in the United States.[138] The terms of Adelante's license suggest that the authorities' strategy focuses on walling off the bank, rather than extending oversight to the entire corporate group.[139] The fact that Mexican-owned retailers do not have such explicit conditions on their bank licenses may indicate that regulators sought to separate Adelante in response to its foreign ownership or its size more than its retail affiliation. Rather than patch the "home-host hole", Mexico decided to regulate territorially.

Mechanically, patching the hole at the international level would be straightforward. One approach might be to prohibit unregulated entities from owning offshore banks. The argument might be that if Wal-Mart cannot open a bank in the United States, it should not have one in Mexico. This would produce regulatory centralization,[140] expanding the territorial reach of U.S. norms against combining banking and commerce.[141] The policy would help ensure that the "home" regulator has real authority over the true management home, rather than formal authority over a banking outlet, but would constrain establishment choices for international conglomerates and emerging markets hosts.

On the other hand, patching the hole may come at a cost for the emerging markets regulators. It would amount to ceding host country authority where a foreign corporate parent is involved. This approach has its own risks for the host. Home authorities regulate for their own sake; home and host country interests can diverge with disparities in market size,

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[138] *Id.* at 1613–15.

[139] *Cf.* Thomas C. Baxter, Jr. et al., *Two Cheers for Territoriality: An Essay on International Bank Insolvency Law*, AM. BANKR. L.J., Winter 2004, at 57, *available at* LEXIS, News Library, AMBNKR File (advocating a territorial approach to financial institutions' insolvency, including the U.S. approach to BCCI). The approach in the Adelante Resolution appears to fall short of Ortiz's proposal, which in addition to limiting intra-group dealings and requiring board independence, would extend supervisory reach to non-financial parts of a bank-owning conglomerate. Ortiz, *supra* note 105, at 5–6.

[140] *See* Howell E. Jackson, *Centralization, Competition, and Privatization in Financial Regulation*, 2 THEORETICAL INQUIRIES IN L., July 2001, at 16–21.

[141] *See generally* Beth Simmons, *The International Politics of Harmonization*, *in* DYNAMICS OF REGULATORY CHANGE: HOW GLOBALIZATION AFFECTS NATIONAL REGULATORY POLICIES (David Vogel & Robert Kagan, eds., 2002), *available at* http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1000&context=uciaspubs/editedvolumes (arguing that regulatory harmonization privileges the regulatory choices of dominant financial powers). *Cf.* ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2004) (describing more functionally independent transnational networks of government officials). Note that rich-country supervisors would not always be the ones to gain power from such a policy. A growing number of all foreign-owned banks in the emerging markets come from other emerging markets. In this context, Panama could refuse to admit Banco Azteca unless Grupo Elektra had established a properly-supervised bank in Mexico, strengthening the hand of Mexican home supervisors.

wealth and sophistication.[142] For example, recent experience includes cases where the stringent credit standards (reasonably) introduced by the home authorities at the parent level exacerbated credit contraction in a host country crisis.[143] Home country regulators may decline to address group-level credit and risk-management policies that disproportionately impact a host country, but are insignificant for the group as a whole.

In sum, the home-host hole seems unavoidable where supervisory harmonization proceeds in the context of regulatory diversity. It presents risks both for the emerging markets host, and to a lesser extent for the system. However, closing the hole in most cases would lead to centralization of authority with dominant financial powers and loss of autonomy for emerging markets regulators. The loss may be acceptable where systemic risks are great, or where the host regulators have no capacity to manage a foreign-dominated banking sector on their own. Even so, it raises the question of when and how host countries might develop such capacity, and the prospect of long-term regulatory dependence.

VI. CONCLUSION

When the dust settles, Wal-Mart's Mexican banking foray will likely emerge as an important case study in financial globalization. The incident suggests that the project of weaving a seamless supervisory blanket over the global financial system may be fraught. The "home-host hole"—where a supervisor has "home" responsibilities but "host" powers, as in the case of a foreign bank established by an unregulated commercial parent—presents special risks for countries whose financial systems are more vulnerable to shocks and whose administrative capacity may be strained. On the other hand, an international effort to patch the hole preemptively would reduce the scope for regulation by the countries it seeks to protect.

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[142] *See generally* Baxter et al., *supra* note 139; Bhala, *supra* note 19 (discussing the impact of protectionist regulation by major financial market authorities on financial institutions from developing countries). *See also* Jackson, *supra* note 140, at 16–21 (discussing attempts at global regulation of financial institutions and how differences in national regulatory regimes may create competition among nations).

[143] *See* Ortiz, *supra* note 105, at 2–5 (outlining the challenges presented by home country regulation for host country supervisors). On the other hand, foreign-owned banks forced to write down bad loans quickly by their home supervisors may rebound more quickly after a crisis than their locally owned counterparts that benefit from years of regulatory forbearance. Another approach—favored by Ortiz—would emphasize "market discipline" such as requiring diversified local ownership of the bank subsidiaries and public trading in their subordinated debt. *Id.* at 3. The market discipline approach has many prominent supporters and detractors. See, for example, BARTH ET AL., *supra* note 26 for a recent study favoring market discipline. In the emerging markets setting, shallow and volatile capital markets are an important obstacle to efficient market signals. For a giant like Wal-Mart, any bank-related signal risks being drowned out (perhaps properly so) if the bank's condition is seen essentially as a function of its corporate parents.

At this writing, the story of Adelante could support three different conclusions about transnational financial governance. First, it might be read as a transitional moment in the steady march to regulatory and supervisory centralization: if Mexico's bid to regulate the new bank as a stand-alone entity fails, it might prompt a hole-patching exercise that would favor home-country priorities, potentially at the expense of the host country. Second, the story could be about a triumph of private "transnational financial structures" over national and public international governance:[144] a giant corporation looks poised to exploit cross-border differences in substantive regulation and the resulting supervisory holes to the detriment of weaker states. Third, Adelante could represent Mexico's claim to regulatory autonomy. Wal-Mart has conceded defeat in its latest attempt to open a bank in the United States; some of the most powerful arguments against it concerned the *inability* of U.S. financial regulators to oversee banks embedded in commercial conglomerates.[145] By licensing a Wal-Mart bank, the Mexican authorities appear to reject the need to import U.S. regulation and supervision, asserting instead their capacity to regulate territorially. To be sure, their decision comes in the context of a historically dysfunctional financial sector already dominated by large foreign players, and is premised on a view of Wal-Mart as a force for competition, at least in the near term.

Acknowledging the substantial risks for Mexico, this Article suggests that the jury is still out on the import and implications of the home-host hole—it is too early for policy prescriptions. At least in the case of Wal-Mart's bank in Mexico, the hole does not seem to present an immediate threat to the international system. Patching the hole now for the sake of Mexico's financial stability may come at a cost of developing Mexico's regulatory capacity. The test will come in a crisis, when Mexico is called upon to isolate and resolve the new banks owned by commercial firms, which also serve vulnerable segments of the population. The regulatory response will depend on how Wal-Mart fares relative to foreign financial conglomerates and Mexican retailers, on any cross-border and systemic effects from its presence, and on who pays the costs of the next crisis. Until then, Mexico's bid to regulate Wal-Mart's bank may be a risk worth taking.

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[144] PHILIP G. CERNY, FINANCE AND WORLD POLITICS: MARKETS, REGIMES AND STATES IN THE POST-HEGEMONIC ERA 156–57 (1993) (describing autonomous "transnational financial structures" transcending the constraints of a state-centered governance system).

[145] *See* Wilmarth, *supra* note 101; *see also* FED. DEPOSIT INS. CORP., *supra* note 136; GOV. ACCOUNTABILITY OFFICE, *supra* note 136.