In the United States, financial institutions are facing an increasing securitization of financial products brought on by the enormous change in communications and technology. These institutions are subject to the same trends in globalization and integration as the financial services firms in the European Community and the rest of the world. U.S. banks and securities firms increasingly compete with each other. The different regulatory regimes under which they operate result in market distortions, and there are pressures being brought to bear by some parties to harmonize the rules across industries and across the U.S. states.

In sum, the financial institutions want to develop a level playing field, but the results have been very different in the United States than in the European Community. From the perspective of the U.S. observer, the results in the European Community have been dramatic. A single banking license has been in effect since January 1993. Similarly, the European Community already has a single insurance license. A single securities firm license is effective from January 1996, along with the Capital Adequacy Directive.

In coming to these agreements, the European Community has dealt with a number of significant issues. One is intercountry branching, in which the banks and the securities firms will be able to branch Unionwide under the rules of the country in which they are chartered. The agreements deal with how the home countries are going to regulate the banks and the securities firms and with the aspects for which the host countries are to be responsible. Furthermore, they have determined who is going to deal with such issues as consumer protection.

In the United States, many of the same issues are being faced, but less progress has been made. Until the recently enacted interstate branching law goes into effect in 1997, U.S. banks cannot branch interstate. They could have affiliates interstate, but that is only because states entered reciprocal agreements among themselves. Under the new act, nationwide affiliations are permitted for bank holding companies in all states.

The securities companies, on the other hand, do operate nationwide under federal rules and regulations. They are subject to some state rules, but the federal rules prevail. Insurance companies operate statewide. They have no federal regulation at all. They are regulated by each state;
therefore, the insurance companies have to comply, if they operate nationwide, with 50 different sets of laws. That may seem strange compared with the European Community where 12 different countries with different cultures have managed to set up one set of laws.

The U.S. structure is very different. The United States does not have the capital adequacy problems in terms of deciding how to deal with differences between banks and securities firms and putting them under the same rules, because banks and securities firms cannot be affiliated, with some exceptions. Generally speaking, banks cannot be in the securities business, and securities firms cannot be in the banking business; thus, the capital adequacy rules that apply to the banks are irrelevant to the securities firms and vice versa. The United States does not allow affiliations between banks and insurance companies either; therefore, the rules that apply to banks and insurance companies tend to be very different, and there is no reason in the U.S. structure to harmonize those rules.

Furthermore, contrary to what the European Community is attempting to set up, the United States still has a dual banking system. The states establish the rules for banks that are chartered by the states, and the federal government sets up rules for banks that are chartered by it. Those rules may differ. As a result, banks that operate in a state with a state charter may be permitted to engage in different activities from those that are permitted to banks with federal charters. The United States is far from the harmonization toward which the European Community is tending.

Among the key issues that the United States is still addressing is that of "firewalls." The U.S. concern, especially if banks were to be allowed to be affiliated with securities firms, is how to avoid implicitly extending U.S. deposit insurance to the securities affiliate of the bank, and how to make sure that conflicts of interest do not occur between the bank and its nonbank affiliates. It is very difficult to convince U.S. legislators, and not everybody wants to convince the legislators, that this will not be a problem if closer affiliations between banks and nonbank financial companies are allowed.

A second concern, which seems to be unique to the United States, is that it is afraid that the combination of banks and other nonbank affiliates will result in a concentration of economic power leading to a monopoly of financial services. That concern still exists despite the globalization of the financial services industry, foreign competition, and the nonbank competition for all the financial services.

A third concern relates to "tying," which raises antitrust issues in this country. The United States is concerned that if a bank is affiliated with an insurance company or a securities company it will tie its products to the products of its affiliates. For example, if a prospective borrower wants to
get a loan from the bank, the bank will refuse to grant the loan unless the borrower buys insurance from the bank’s affiliated insurance company. That is still a real concern, even though there are antitrust laws to mitigate that concern and even though there is plenty of competition for financial services and products.

Another major concern relates to the availability of credit to local communities and small businesses. This was one of the reasons that agreement on interstate branching was held up. Legislators were very concerned that if a bank, by branching interstate, became large, it would no longer lend to local communities. Small business lending and local community lending are very important legislative concerns in the United States.¹⁰

One of the results of the statutes is that U.S. consumers do not have the same one-stop shopping as their European counterparts. European customers can buy their insurance, securities, and other financial services products from their bank. Americans cannot yet do that. Currently, there is political debate about whether that should be allowed.

Perhaps the issues discussed above had to be dealt with in the European Community or, alternatively, they may be uniquely American. The United States may be able to learn from the experience of the European Community as changes are contemplated in its statutory framework for financial institutions.