

**PAUL G. MAHONEY**

# **WASTING A CRISIS**

**WHY SECURITIES REGULATION FAILS**

# Wasting A Crisis Why Securities Regulation Fails

**Stuart Banner**



## **Wasting A Crisis Why Securities Regulation Fails:**

**Wasting a Crisis** Paul G. Mahoney, 2015-03-23 In *Securities Regulation Reassessed* Paul Mahoney shows that policy responses to financial crises are broadly similar across place and time political actors hoping to avoid blame for a financial crisis create a narrative of market failure arguing that misbehavior by securities market participants rather than prior policy errors is the primary cause of the crisis Politically obliged regulators craft reforms that purport to solve problems which are either non-existent or only tangentially related to the crisis yet they increase the complexity and expense of compliance resulting in consolidation and concentration of market share in the hands of already leading financial firms *Securities Regulation Reassessed* illustrates these points primarily but not exclusively with evidence from the New Deal era securities reforms in the United States Against the conventional wisdom that regards the New Deal reforms as successful Mahoney provides substantial countervailing evidence showing instead that Congress's diagnoses were systematically inaccurate and its remedies reduced competition in the securities industry Looking farther into history the work treats several key episodes prior to the New Deal including the English financial crises of 1697 and 1720 and the blue sky era of the 1910s and 1920s in the United States Finally Mahoney considers the Sarbanes Oxley Act of 2002 and the Dodd Frank Act of 2010 from the same analytical perspective Mahoney finds a predictable pattern for efforts at securities reform they require huge effort to enact and yield little objectively measurable payoff and some objectively measurable harm *Wasting a Crisis* Paul G.

Mahoney, 2015-03-23 The recent financial crisis led to sweeping reforms that inspired countless references to the financial reforms of the New Deal Comparable to the reforms of the New Deal in both scope and scale the 2 300 page Dodd Frank Act of 2010 the main regulatory reform package introduced in the United States also shared with New Deal reforms the assumption that the underlying cause of the crisis was misbehavior by securities market participants exacerbated by lax regulatory oversight With *Wasting a Crisis* Paul G Mahoney offers persuasive research to show that this now almost universally accepted narrative of market failure broadly similar across financial crises is formulated by political actors hoping to deflect blame from prior policy errors Drawing on a cache of data from congressional investigations litigation regulatory reports and filings to stock quotes from the 1920s and 30s Mahoney moves beyond the received wisdom about the financial reforms of the New Deal showing that lax regulation was not a substantial cause of the financial problems of the Great Depression As new regulations were formed around this narrative of market failure not only were the majority largely ineffective they were also often counterproductive consolidating market share in the hands of leading financial firms An overview of twenty first century securities reforms from the same analytic perspective including Dodd Frank and the Sarbanes Oxley Act of 2002 shows a similar pattern and suggests that they too may offer little benefit to investors and some measurable harm

**The World Crisis and International Law** Paul B. Stephan, 2023-02-09 The knowledge economy a seeming wonder for the world has caused unintended harms that threaten peace and prosperity and undo international

cooperation and the international rule of law The world faces threats of war pandemics growing domestic political discord climate change disruption of international trade and investment immigration and the pollution of cyberspace just as international law increasingly falls short as a tool for managing these challenges Prosperity dependent on meritocracy open borders international economic freedom and a wide open Internet has met its limits with international law one of the first casualties Any effective response to these threats must reflect the pathway by which these perils arrive Part of the answer to these challenges Paul B Stephan argues must include a re conception of international law as arising out of pragmatic and limited experiments by states rather than as grand projects to remake and redeem the world

**Islamic Capital Markets and Products** Simon Archer, Rifaat Ahmed Abdel Karim, 2017-10-16 Ensure Basel III compliance with expert analysis specific to Islamic Finance Islamic Capital Markets and Products provides a thorough examination of Islamic capital markets ICM with particular attention to the products that they offer and the legal and regulatory infrastructure within which they operate Since Islamic banks act as asset managers attention is paid to the regulatory challenges which they face in the light of Basel III as regards both eligible capital and liquidity risk management The authors of the chapters are professionals and practitioners and write from experience The editors also contributed to some of the chapters The markets and products covered include Islamic equities Islamic investment certificates Suk k which are Shari ah compliant alternatives to conventional bonds and Islamic Collective Investment Schemes The coverage of legal and regulatory issues includes an examination of the implications for ICM of securities laws and regulations and of Basel III as well as collateralisation issues Shari ah compliance aspects in terms both of the selection criteria for Islamic equities and of the purification of impermissible components of income are also examined in some detail as are the implications of Basel III for eligible capital in general and for Shari ah compliant capital instruments in particular A similar analysis is also made of the implications of the Basel III requirements for liquidity risk management and high quality liquid assets HQLA including Shari ah compliant HQLA The book concludes with three case studies two describing the ICM in Malaysia and Bahrain and a third which describes Suk k issued as Shari ah compliant capital instruments followed by brief concluding remarks by the editors

**The Oxford Handbook of Legal History** Markus D. Dubber, Christopher Tomlins, 2018-08-02 Some of the most exciting and innovative legal scholarship has been driven by historical curiosity Legal history today comes in a fascinating array of shapes and sizes from microhistory to global intellectual history Legal history has expanded beyond traditional parochial boundaries to become increasingly international and comparative in scope and orientation Drawing on scholarship from around the world and representing a variety of methodological approaches areas of expertise and research agendas this timely compendium takes stock of legal history and methodology and reflects on the various modes of the historical analysis of law past present and future Part I explores the relationship between legal history and other disciplinary perspectives including economic philosophical comparative literary and rhetorical analysis of law Part II considers various approaches to legal

history including legal history as doctrinal intellectual or social history Part III focuses on the interrelation between legal history and jurisprudence by investigating the role and conception of historical inquiry in various models schools and movements of legal thought Part IV traces the place and pursuit of historical analysis in various legal systems and traditions across time cultures and space Finally Part V narrows the Handbooks focus to explore several examples of legal history in action including its use in various legal doctrinal contexts

The Cambridge Handbook of Law and Entrepreneurship in the United States D. Gordon Smith, Brian Broughman, Christine Hurt, 2022-04-14 Law plays a key role in determining the level of entrepreneurial action in society Legal rules seek to define property rights facilitate private ordering and impose liability for legal wrongs thereby attempting to establish conditions under which individuals may act These rules also channel the development of technology regulate information flows and determine parameters of competition Depending on their structure and implementation legal rules can also discourage individuals from acting It is thus crucial to determine which legal rules and institutions best enable entrepreneurs whose core function is to challenge incumbency This volume assembles legal experts from diverse fields to examine the role of law in facilitating or impeding entrepreneurial action Contributors explore issues arising in current policy debates including the incentive effect of legal rules on startup activity the role of law in promoting or foreclosing market entry and the effect of entrepreneurial action on legal doctrine

Darkness by Design Walter Mattli, 2021-06-08 Capital markets have undergone a dramatic transformation in the past two decades Algorithmic high speed supercomputing has replaced traditional floor trading and human market makers while centralized exchanges that once ensured fairness and transparency have fragmented into a dizzying array of competing exchanges and trading platforms Darkness by Design exposes the unseen perils of market fragmentation and dark markets some of which are deliberately designed to enable the transfer of wealth from the weak to the powerful Walter Mattli traces the fall of the traditional exchange model of the NYSE the world's leading stock market in the twentieth century showing how it has come to be supplanted by fragmented markets whose governance is frequently set up to allow unscrupulous operators to exploit conflicts of interest at the expense of an unsuspecting public Market makers have few obligations market surveillance is neglected or impossible enforcement is ineffective and new technologies are not necessarily used to improve oversight but to offer lucrative preferential market access to select clients in ways that are often hidden Mattli argues that power politics is central in today's fragmented markets He sheds critical light on how the redistribution of power and influence has created new winners and losers in capital markets and lays the groundwork for sensible reforms to combat shady trading schemes and reclaim these markets for the long term benefit of everyone Essential reading for anyone with money in the stock market Darkness by Design challenges the conventional view of markets and reveals the troubling implications of unchecked market power for the health of the global economy and society as a whole

*Speculation* Stuart Banner, 2017 What is the difference between a gambler and a speculator Is there a readily identifiable line separating the two If so is it possible for us to

discourage the former while encouraging the latter These difficult questions cut across the entirety of American economic history and the periodic failures by regulators to differentiate between irresponsible gambling and clear headed investing have often been the proximate causes of catastrophic economic downturns Most recently the blurring of speculation and gambling in U S real estate markets fueled the 2008 global financial crisis but it is one in a long line of similar economic disasters going back to the nation s founding In *Speculation* author Stuart Banner provides a sweeping and story rich history of how the murky lines separating investment speculation and outright gambling have shaped America from the 1790s to the present Regulators and courts always struggled to draw a line between investment and gambling and it is no easier now than it was two centuries ago Advocates for risky investments have long argued that risk taking is what defines America Critics counter that unregulated speculation results in bubbles that always draw in the least informed investors gamblers essentially Financial chaos is the result The debate has been a perennial feature of American history with the pattern repeating before and after every financial downturn since the 1790s The Panic of 1837 the speculative boom of the roaring twenties and the real estate bubble of the early 2000s are all emblematic of the difficulty in differentiating sober from reckless speculation Even after the recent financial crisis the debate continues Some chastened by the crash argue that we need to prohibit certain risky transactions but others respond by citing the benefits of loosely governed markets and the dangers of over regulation These episodes have generated deep ambivalence yet Americans faith in investment and by extension the stock market has always rebounded quickly after even the most savage downturns Indeed the speculator on the make is a central figure in the folklore of American capitalism Engaging and accessible *Speculation* synthesizes a suite of themes that sit at the heart of American history the ability of courts and regulators to protect ordinary Americans from the ravages of capitalism the periodic fallibility of the American economy and not least the moral conundrum inherent in valuing those who produce goods over those who speculate and yet enjoying the fruits of speculation Banner s history is not only invaluable for understanding the fault lines beneath the American economy today but American identity itself

**Global Algorithmic Capital Markets** Walter Mattli, 2018-12-20 Global capital markets have undergone fundamental transformations in recent years and as a result have become extraordinarily complex and opaque Trading space is no longer measured in minutes or seconds but in time units beyond human perception milliseconds microseconds and even nanoseconds Technological advances have thus scaled up imperceptible and previously irrelevant time differences into operationally manageable and enormously profitable business opportunities for those with the proper high tech trading tools These tools include the fastest private communication and trading lines the most powerful computers and sophisticated algorithms capable of speedily analysing incoming news and trading data and determining optimal trading strategies in microseconds as well as the possession of gigantic collections of historic and real time market data Fragmented capital markets are also becoming a rapidly growing reality in Europe and Asia and are an established feature of U S trading This raises urgent market

governance issues that have largely been overlooked Global Algorithmic Capital Markets seeks to understand how recent market transformations are affecting core public policy objectives such as investor protection and reduction of systemic risk as well as fairness efficiency and transparency The operation and health of capital markets affect all of us and have profound implications for equality and justice in society This unique set of chapters by leading scholars industry insiders and regulators discusses ways to strengthen market governance for the benefit of society at whole **The Valuation Treadmill** James J. Park, 2022-07-28 Public companies now face constant pressure to meet investor expectations A company must continually deliver strong short term performance every quarter to maintain its stock price This valuation treadmill creates incentives for corporations to deceive investors Published more than twenty years after the passage of Sarbanes Oxley which requires all public companies to invest in measures to ensure the accuracy of their disclosures The Valuation Treadmill shows how securities fraud became a major regulatory concern Drawing on case studies of paradigmatic securities enforcement actions involving Xerox Penn Central Apple Enron Citigroup and General Electric the book argues that corporate securities fraud emerged as investors increasingly valued companies based on their future performance Corporations now have an incentive to issue unrealistically optimistic disclosure to convince markets that their success will continue Securities regulation must do more to protect the integrity of public companies from the pressure of the valuation treadmill

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