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Examining Government Reform in the Wake of the Financial Crisis*

FOREWORD

THE UNITED STATES (AND THE WORLD) IS EMERGING FROM AN unprecedented global financial crisis¹ and finding the financial industry forever changed.² Sparked by the subprime mortgage meltdown and the subsequent disintegration of the financial instruments supported by that industry,³ several major financial firms collapsed,⁴ merged under government oversight,⁵ or required substantial federal support to remain operational.⁶ As the government's response to the crisis continues to unfold, it is proving to be, like the crisis itself, unprecedented.⁷

* The views expressed by the authors in this issue do not necessarily represent the views of the editorial board of the *Journal of Business & Technology Law*.

1. Anthony Massucci, *Volcker Says U.S. in Midst of 'Unprecedented' Financial Crisis*, BLOOMBERG.COM, Oct. 22, 2008, http://www.bloomberg.com/apps/news?pid=20601103&sid=aCGOAM_a6kTc&refer=news (quoting former Federal Reserve Chairman Paul Volcker as saying the "current crisis is more complex than any other in U.S. history").

2. Christine Harper & Craig Torres, *Goldman, Morgan Stanley Bring Down Curtain on an Era*, BLOOMBERG.COM, Sept. 22, 2008, <http://www.bloomberg.com/apps/news?pid=20601068&sid=aSfyFs2LTxYs&refer=home> ("The Wall Street that shaped the financial world for two decades ended last night, when Goldman Sachs Group Inc. and Morgan Stanley concluded there is no future in remaining investment banks now that investors have determined the model is broken.").

3. For a comprehensive review of the subprime mortgage meltdown, see *The Subprime Mortgage Meltdown: Causes, Consequences, and Solutions*, in 4 J. BUS. & TECH. L. 261, 261-370 (2009).

4. E.g., Robert J. Rhee, *The Decline of Investment Banking: Preliminary Thoughts on the Evolution of the Industry 1996-2008*, 5 J. BUS. & TECH. L. 75 (2010).

5. E.g., Robert J. Rhee, *Nationalization of Corporate Governance and Purpose During Crisis*, 17 GEO. MASON L. REV. 661 (2010) (detailing the merger between Merrill Lynch and Bank of America, including discussion of the government's role in the merger); Matthew Goldstein, *JPMorgan Buys Bear on the Cheap*, BUSINESSWEEK, Mar. 16, 2008, http://www.businessweek.com/bwdaily/dnflash/content/mar2008/db20080316_356646.htm (discussing the Federal Reserve's role in "engineering" the Bear Stearns buy-out/bail-out).

6. E.g., David Goldman, *'Goodbye and Good Riddance' AIG Directors!*, CNNMONEY.COM, June 30, 2009, http://money.cnn.com/2009/06/30/news/companies/aig_shareholder_meeting/index.htm (noting that AIG's three trustees represent the government's approximately 80% controlling interest).

7. See Ingo Fender & Jacob Gyntellberg, *Overview: Global Financial Crisis Spurs Unprecedented Policy Actions*, BIS QUARTERLY REV., Dec. 2008, at 1; see also David Cho & Neil Irwin, *In Crucible of Crisis, Paulson, Bernanke, Geithner Forge a Committee of Three*, WASH. POST, Sept. 19, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/18/AR2008091804211.html> (discussing the novel collaborative effort between

In the midst of this post-financial-meltdown era, which at times has been both terrifying and exciting, the University of Maryland School of Law's *Journal of Business & Technology Law* invited corporate, bankruptcy, and securities law scholars to write on their reactions to the crisis and the government's response. This issue is an extension of the *Journal's* first issue published this year, *Early Reflections on the Financial Crisis*, and features articles that explore the theme: reform in the wake of the financial crisis.

Professor Eric C. Chaffee of the University of Dayton School of Law urges the federal government to help effect a harmonization and centralization in international securities law.⁸ Without such harmonization and centralization, Professor Chaffee argues that the international securities "race-to-the-bottom will continue, and more financial crises will ensue."⁹ Mr. Jeffrey L. Handwerker, partner at Arnold & Porter, along with Professor Matthew H. Solomson, Mr. Mahnu V. Davar, and Ms. Kathleen H. Harne, analyze the Fraud Enforcement and Recovery Act (FERA) and its effect on the False Claims Act.¹⁰ In addition to providing the history and key provisions of FERA, Mr. Handwerker discusses the controversial issue of FERA's effective date and retroactive application.¹¹

Professor Susan E. Hauser of the North Carolina Central University School of Law tackles a different aspect of reform and proposes a solution to the after-effects of the home mortgage crisis, which are still being felt by "borrowers, communities, creditors, and the national economy."¹² Professor Hauser advocates for "a time-limited amendment to section 1322(b)(2)" of the Bankruptcy Code to "allow bankruptcy judges to oversee the modification of residential mortgages written to borrowers during years when mortgage-lending abuses were most rampant."¹³ Professor Nancy B. Rapoport examines the complex issue of evaluating professional fees in Chapter 11 cases.¹⁴ Professor Rapoport provides a comprehensive discussion regarding the challenges inherently present in evaluating fees and the proposed solutions to those challenges.¹⁵ Mr. Paolo Manganelli, senior associate in the Milan office of Paul, Hastings, Janofsky & Walker LLP, offers a wholly different perspective on bankruptcy law in his comparative analysis of the Italian and United

the Treasury Secretary, Federal Reserve Chairman, and President of the Federal Reserve Bank of New York in response to the financial crisis).

8. Eric C. Chaffee, *The Internationalization of Securities Regulation: The United States Government's Role in Regulating Global Capital Markets*, 5 J. BUS. & TECH. L. 187 (2010).

9. *Id.* at 191.

10. Jeffrey L. Handwerker et al., *Congress Declares Checkmate: How the Fraud Enforcement and Recovery Act of 2009 Strengthens the Civil False Claims Act and Counters the Courts*, 5 J. BUS. & TECH. L. 295 (2010).

11. *Id.*

12. Susan E. Hauser, *Cutting the Gordian Knot: The Case for Allowing Modification of Home Mortgages in Bankruptcy*, 5 J. BUS. & TECH. L. 207 (2010).

13. *Id.* at 211.

14. Nancy B. Rapoport, *Rethinking Professional Fees in Chapter 11 Cases*, 5 J. BUS. & TECH. L. 263 (2010).

15. See generally *id.*

States bankruptcy systems.¹⁶ Mr. Manganelli uses the United States bankruptcy system as an example upon which he bases future recommendations for Italian bankruptcy reform.¹⁷

The *Journal* thanks all of the authors for further enriching the ongoing conversation and scholarship regarding this timely and important topic.

16. Paolo Manganelli, *The Evolution of the Italian and U.S. Bankruptcy Systems—A Comparative Analysis*, 5 J. BUS. & TECH. L. 237 (2010).

17. *Id.*