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VISITING ASSISTANT PROFESSOR OF LAW

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RESEARCH AGENDA

My research lies at the intersection of law, the financial markets, and corporate governance, with a particular focus on the roles of public regulation and private ordering in enhancing market stability and corporate organization. Private and public entities must make decisions based on imperfect information or arising from conflicting objectives, potentially resulting in less efficient financial markets or a more costly system of corporate governance. My scholarship explores the role of law in steering market actors towards more beneficial outcomes that positively affect markets and corporations.

Financial Regulation

My job talk paper—*Hazardous Hedging: The (Unacknowledged) Risks of Hedging with Credit Derivatives*—questions the presumption that using credit derivatives, like credit default swaps (CDS), to manage risk exposure (known as "hedging") is unequivocally beneficial. The benefits of hedging with CDS are presumed by the Dodd-Frank Act, which excludes hedge transactions from much of the new financial regulation. The paper analyzes new risks that can arise when CDS are used to offset risk exposure, arguing that as managing risk has become more complex, the definition of "hedging" must also adjust to reflect the new, significant risks that can accompany those transactions. For example, a firm may choose to use the best available credit derivative to manage its credit risk, but the instrument may not precisely match the risk to which the firm is exposed. This mismatch between risk and hedge, known as "basis risk," may expose the firm to even greater risks if the hedge does not operate as expected. I propose a new definition of "hedge" that looks not only at whether a transaction offsets risk, but also whether, on balance, the risk that is mitigated, as well as any new risks that arise, are outweighed by the potential benefits. Only those transactions that, on balance, are beneficial should be categorized as hedges. From this perspective, it becomes clear that the far-reaching exemptions applicable to CDS hedges under the Dodd-Frank Act are inappropriate because the parties using CDS typically fail to account for the full costs of those instruments.

A second project, entitled *Private Entities, Public Bulwarks: The Regulation of Too-Big-To-Fail Clearinghouses*, builds on my job talk paper by examining the new role of central counterparty clearinghouses (CCCs) in managing derivatives under the Dodd-Frank Act. A linchpin of new derivatives regulation is mandatory clearing, aimed at reducing the volume of over-the-counter (OTC), bilateral derivatives transactions. A primary risk around OTC derivatives is counterparty credit risk, that is, the risk that the party to the transaction is unable to fulfill its end of the agreement. When derivatives are cleared through CCCs, the CCC interposes itself between the parties to the trade so that they are exposed only to the credit risk of the CCC. The result is a reduction in systemic risk, i.e., the risk that the failure of one entity will have a debilitating impact on the real economy. Although the benefits of CCCs are clear, the new requirement also makes CCCs a new site of risk concentration. The failure of a CCC is itself likely to affect the entire financial markets, implicating thousands of derivatives transactions—potentially making them the newest members of the "too-big-to-fail" club.

The paper considers how the principal objective of CCCs—to minimize systemic risk by reducing counterparty credit risk—can be harmonized with other key goals, namely, fostering innovation in the derivatives markets and encouraging competition among CCCs. The paper develops a framework to balance these competing goals, drawing on principles from public utility regulation, prudential regulation, and self-regulation. Its goal is to assess alternative options around the governance and management of CCCs that decreases the likelihood and impact of a CCC failure.

Corporate Governance

Within the context of takeovers, decisions regarding how to proceed are primarily made by the board, which is charged with representing the interests of the company and its shareholders. But what are the bounds of that discretion, particularly with respect to the use of multiple takeover defenses in response to a hostile bid? In a recent case, *Air Products v. Airgas*, the Delaware courts permitted the target of a hostile takeover to refuse to redeem its poison pill. Coupled with other defenses, the effect was to block the acquirer from going forward with the transaction, removing shareholders from negotiations over the future of the company. In adopting this approach, the Delaware courts empowered directors to defend against hostile advances, but its broadbrush analysis potentially included even those directors who put up defenses simply in order to remain in power.

In this paper, I plan to argue that current Delaware law insulates directors to a large extent, allowing them to maintain control with limited accountability to shareholders. Shareholders effectively are unable to circumvent a board that refuses to redeem its poison pill, thereby leaving control in the hands of the board. Consequently, I propose, the Delaware courts should return to their original guiding principles in determining whether a takeover device is valid—specifically, whether or not the board's actions are motivated simply by a desire to remain in control. In so doing, the courts would provide shareholders with a greater ability to rid themselves of underproductive management teams while recognizing the need for continued board involvement in defending against a hostile bid. By providing shareholders with a voice, agency costs can be reduced as boards are made more accountable to shareholders in responding to a hostile offer.