Annex – Publications Abstracts

1. *When "Skin in the Game" is not Enough: the Re-mutualization of Systemically Important Financial Market Infrastructures* 34 Yale J. on Reg. __ (forthcoming 2017)

A central question for corporate law scholarship has revolved around the ownership structure of enterprises. Why are some businesses owned by employees, some by customers, and some by investors? Until now, the question has centered on the relative benefits offered to these stakeholders by one form or another. This article explores how ownership structure can be a matter of public importance. It pursues this reframing of the field through a case study of immense importance and timeliness: clearinghouses, a critical financial market infrastructure.

Clearinghouses process, settle, and guarantee the performance of several trillions dollars in securities and derivatives trades daily. By operating as central counterparties, they act as private stability mechanisms, reducing counterparty credit risk and sharing default risk. They achieve this result via a unique economic structure, which includes a double layered capital: the traditional equity capital and the so-called mutual guaranty fund (the clearinghouse's loss sharing mechanism). Historically, clearinghouses have been mutual enterprises owned by their members (customers), who also contributed to the mutual guaranty fund. But most clearinghouses have recently demutualized, transforming into investor-owned public corporations, while keeping members on the hook for losses. This structural evolution has catalyzed new agency costs between the now coexisting and "competing" stakeholders: members and shareholders (investors). These costs, which have been further exacerbated by the post-crisis systemic role of clearinghouses, are exemplified by shareholders with control and economic rights, but limited "skin in the game," who do not bear the final losses if things go south. This article identifies how the systemic importance of investor-owned clearinghouses exacerbates member-shareholder conflicts and argues that aligning the role of members and shareholders in mutual enterprises creates a safer and sounder organizational model for clearinghouses.

2. *The Liquidity Dilemma and the Repo Market: A Two-step Policy Option to Address the Regulatory Void*, 22 Stan. J. of L., Bus. & Fin __ (forthcoming 2016)

A repurchase agreement ("repo") is the sale of financial assets coupled with a promise to repurchase them at a later date. Repos have similar economic characteristics to those of secured loans and bank deposits and are one of the main sources of liquidity for the U.S. financial system. Having developed free from the watchful eyes of regulators, the repo market has flourished. During the 2007-2009 financial crisis, however, that market grounded to a halt, triggering a severe liquidity crunch. Financial institutions such as Lehman Brothers and Bear Stearns were brought to the brink of ruin because of their overreliance on repo financing. This Article identifies three weaknesses of the repo market that led to market failures: opacity, conflicts of interest, and systemic risk. The Dodd-Frank Act, though aimed at creating a safer financial system, essentially failed to address this important source of systemic risk. This Article challenges the passive regulatory approach to the repo market and proposes a two-step policy reform that envisions a pivotal role for financial market infrastructures. It argues first for greater transparency through trade repositories and, second, for the reduction of conflicts of interests and the mitigation of systemic risk through the use of trading venues and central clearinghouses.

3. *Governance and Organization of Trading Venues: The Role of Financial Market Infrastructure Groups*, *in* Regulation of EU Financial Markets: MIFID II (Danny Bush & Guido Ferrarini eds. Oxford University Press, forthcoming 2017) (with Guido Ferrarini)

The scenario of trading venues has undergone significant reforms and transformation over the last twenty years. Particularly in the European Union, through integration – at a firm level – and consolidation – at a geographical level –, traditional financial exchanges have developed into pan-European and global financial market infrastructure (FMI) groups. However, European financial regulation has not kept pace with these market developments. Despite more than 70% of market transactions being handled by infrastructural groups, the regulatory approach is overly siloed, creating separate sets of regulations for trading and post-trading entities and services. This paper questions whether and to what extent FMI groups may (i) affect competition in the trade and post-trade industry and (ii) pose systemic stability threats because of their structural role in providing a primary service for the functioning of the financial markets.

4. *Regulating Financial Market Infrastructures*, *in* Oxford Handbook of Financial Regulation 568 (Niamh Moloney et al. eds., Oxford University Press, 2015) (with Guido Ferrarini)

Cognizant that post-crisis financial reforms have transformed securities and derivatives markets, this article uncovers the role of financial market infrastructures (FMIs) in the expansion of "public" markets, in place of "private" OTC markets. As multilateral networks that provide trading, clearing, settlement, and reporting services for securities and derivative transactions, FMIs support financial markets by providing essential services, connecting counterparties, reducing transaction costs through economies of scale, managing systemic and counterparty risks, and fostering transparency. The article dissects the policy approaches underlying the international crisis-era reforms imposed on FMIs, and focuses on the dichotomy between the "systemic risk" and "transaction costs" approaches in financial regulation.

5. *Reforming Securities and Derivatives Trading in the EU: From EMIR to MIFIR*, 13(2) Journal of Corporate Legal Studies (2013) (with Guido Ferrarini)

This paper critically examines the extent to which the (at that time proposed) European Market Infrastructure Regulation and the Markets in Financial Instruments Directive and Regulation expand "public" securities and derivatives markets, while correspondingly reducing the scope of "private" OTC markets. Questioning whether these reforms will ultimately reduce the systemic risks and transaction costs involved in trading securities and derivatives in Europe, this article formulates conjectures based in part on the experience of past reforms in equity trading.

6. *Private Regulation in the Credit Default Swaps Market: The Role of ISDA in the New Regulatory Scenario of CDSs*, *in* The Governance And Regulation Of International Finance 32 (Geoffrey P. Miller & Fabrizio Cafaggi eds., 2013)

The derivatives market speedily sailed along the deregulatory waves rocking the early 90s financial markets. This article assesses the central role of the International Swaps and Derivatives Association (ISDA), the private-standard-setting body of the derivatives industry, which ruled in the absence of public regulation. Specifically, through six different lenses – legitimacy, accountability, quality, effectiveness, enforcement, and independence – the article examines ISDA's role in increasing efficiency and reducing transaction costs in the derivatives market, as well as the pivotal role ISDA played in the transition between the pre- and the post-crisis derivatives market. Finally, this article evaluates whether greater coordination and cooperation between public regulators and private-standard-setting bodies is needed to assess financial innovation.

7. *OTC Derivatives and Credit Default Swaps: Taxonomy and Regulation pre and post the 2008 Financial Crisis* (2013) (unpublished Ph.D. dissertation, University of Genoa, Law School, Italy)

Market opacity, market participants' moral hazard, systemic instability, and ineffective counterparty risk management mechanisms, were the negative traits that destabilized the OTC derivatives system. By mandating the development of financial market utilities, including trading venues, central counterparties, and trade repositories, the post-crisis regulatory agenda revolutionized the OTC derivatives market. This dissertation challenges the evolution of the OTC derivatives market from a purely privately regulated to a publicly (internationally and domestically) regulated enterprise and evaluates how the transnational public regulatory dialogue coupled with cooperation between public and private regulators contributed to the creation of a more stable derivatives market.

8. *La trasparenza proprietaria sulle posizioni in derivati cash-settled: un contributo al dibattito*, 1 Strumenti Finanziari e Fiscalità 123 (2010) ("The transparency of cash-settled equity swaps: a contribution to the debate") (with Guido Ferrarini and Paolo Giudici)
9. *Partecipazioni rilevanti e catene di controllo*, 1 Le Società 10 (2010) ("Relevant holdings and pyramidal structures")

Equity derivatives have evolved over the last twenty years as tools for corporate governance and control and have dismantled the traditional corporate law concept that economic rights follow and are generally proportional to voting rights. Comparatively analyzing a few international cases, these articles evaluate the regulatory and judicial responses to derivative contracts as sophisticated tools to avoid transparency regulation and dodge takeover rules, and argue in favor of a non-formalistic concept of "beneficial ownership" as a benchmark for public disclosure and mandatory takeover rules.