

# Corporate Governance and Finance Law

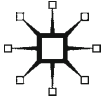
**Also by Roy Girasa**

*Cyberlaw: National and International Perspectives*

# Corporate Governance and Finance Law

Roy Girasa

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CORPORATE GOVERNANCE AND FINANCE LAW

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Dedication to my Grandchildren

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# Preface

The events of the latter part of the first decade of the new century are reminiscent of the turmoil that occurred in the aftermath of October 1929 when the stock market collapsed and the Great Depression overtook the nation. Albeit mild in comparison, with unemployment substantially less than half that of the 1930s, they created widespread anxiety and questioning concerning who and what caused the latest shock and what steps are to be taken to restore U.S. global leadership. The major political parties have debated on separate rails that do not intersect, thus preventing any discussion that could lead to possible solutions that benefit the nation. The placement of blame has become the mantra of the left and the right of the political spectrum fueled by extremist commentators and new political actors rather than reasoned moderation among leaders of the diverse parties.

This text is designed to assist students and persons interested in the complex world of finance to learn about the legal bases of finance, especially in the light of congressional enactments that are reminiscent of the major pieces of legislation of the 1930s. The Sarbanes-Oxley Act, passed under the auspices of a conservative Republican president with the concurrence of both political parties, and the Dodd-Frank Act, passed in the face of unanimous opposition in Congress by the Republican Party, have profoundly affected the financial world today. The debate has now turned on whether either or both of the statutes are too stifling to businesses seeking to compete in a very difficult global environment. Laws, in part, are created to correct perceived abuses. Whether the two acts plus the enactment of the health care legislation have exacerbated the financial crisis and its aftermath remains to be determined. This text is designed to acquaint the readers of the many but not all aspects of finance affected by the said legislation.

Inasmuch as this author wrote every word of the text with heavy reliance on the works of leading scholars and commentaries to the said legislation, all errors are, of course, his. The author would deeply appreciate comments from other scholars, which will be reflected in any later edition of the text should it be published. My indebtedness is profound to the authors and works of the following authors whose volumes were examined and learned from by this author. They include the following texts:

*Corporate Finance* by Jeffrey J. Haas

*Securities Regulation* by Thomas Lee Hazen

*Investment Adviser Regulation* by Jeffrey J. Haas and Steven R. Howard

*Broker-Dealer Regulation* by Thomas Lee Hazen

*Mergers and Acquisitions* by Dale A. Oesterle

*Antitrust Law and Economics* by Ernest Gellhorn, William E. Kovacic, and Stephen Calkins

*Banking and Financial Institutions Law* by William Lovett

*Real Estate Finance* by Jon W. Bruce

*Bankruptcy and Related Law* by David G. Epstein

Also notable is *Corporate Governance: Principles and Practices* by Walter A. Effross

The said texts were recommended readings for my graduate class on the Law of Finance given for the first time in spring 2012. Having taught MBA courses at the University of Shanghai and at the University of Applied Sciences, Fachhochschule, Stralsund, Germany, lectured at numerous other locales, and having attended the College of Europe in Bruges, Belgium, decades ago, I added both Chinese and European Union components to the text.

I am deeply grateful to numerous persons without whose assistance I would not have entered into the teaching field at age 42 but would have remained a litigator without time to learn about the many advances of the law and the events in the political universe. The most important person in the academic world is my colleague Dr. Richard J. Kraus, who has influenced my life as an instructor and on a deeply personal level, having initially hired me to teach full-time when I had no such ambition. The person most instrumental for this text is Dr. P.V. Viswanath, the chairperson of the Finance Department at my university who first requested that a law course be created that would be devoted to finance. It was the lack of such a text that brought about this volume.

I am also grateful to Dr. Michael Ulinski of the Accounting Department with whom I have coauthored a number of articles; Dr. Bel Raggad who had me lead a number of conferences in Tunisia where the “Arab Spring” began; Dr. Emilio Collar of Western Connecticut State University with whom I have had many conversations concerning this text; Gary Tidwell of FINRA and IOSCO, who retained me to give a series of lectures to the Saudi Arabia Capital Markets Authority and its Institute of Banking, which opened the floodgates for this writer to the vast area of securities law on a global basis; Dr. Surendra Kaushik of my university’s Finance Department who is a remarkable Professor of Finance who had me share in his creation of a women’s college in India named after his wife, Helena Kaushik. From Palgrave Macmillan, this work would not have proceeded without the initial referral by the publisher’s representative Christina Mastrogiovanni, the extensive assistance of senior editor Brian J. Foster, the nitty-gritty work of Leila Campoli, and the much needed editing by Flora Kenson.

My many thanks to my colleague Dr. Sharlene McEvoy of Fairfield University for her cooperation; Professor Philip Cohen for our many conversations; Professor George Pappas for his input on taxation and related areas; Dr. David Nabirahni for his unending support; Dr. Victor Lopez of Hofstra University whose textbooks and encouragement in part inspired the writing of this text; Dr. William Raynor for his review and input; and the many professors I have

intersected with in over three decades of teaching. Thanks to the Dean of the Lubin School of Business of Pace University, Neil S. Braun, who gave me a grant to allow total devotion to writing this text in the summer of 2012. I have been blessed with the kindness and assistance of program coordinators at Pace University, namely, Lucille Kenny and Patricia Saviano. Thanks to Megan Burke who assisted in the technological aspects of setting the text in a coordinated format. My son James Girasa, a day trader, gave me insights into the practical aspects of executing trades; my son Roy John Girasa, who is both a marketer and finance expert, lent his advice, and my son George Girasa aided in research and much practical assistance. Finally, my profound thanks to Camille D'Agostino without whose encouragement this text would not have been written.

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# Acronyms

AIFM	Alternative Investment Fund Managers
AIG	American International Group
ARM	Adjustable Rate Mortgage
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CBRC	China Banking Regulatory Commission
CCP	(Derivatives) Central Counterparties
CEA	Commodity Exchange Act
CFPB	Consumer Financial Protection Bureau
CFTC	Commodity Futures Trading Commission
CIRC	China Insurance Regulatory Commission
CRA	Community Reinvestment Act
CRD	Central Registration Depository
CRO	Credit Repair Organization
CSR	Corporate Social Responsibility
DCGL	Delaware General Corporation Law
EDGAR	Electronic Data Gathering Analysis and Retrieval System
EU	European Union
FACT Act	Fair and Accurate Credit Transactions Act
FCM	Forex Capital Markets
FCPA	Foreign Corrupt Practices Act
FCRA	Federal Credit Reporting Act
FDCPA	Fair Debt Collection Practices Act
FINRA	Financial Industry Regulatory Association
FNMA	Federal National Mortgage Association
FSA	Financial Services Authority
FSB	Financial Stability Board
FTC	Federal Trade Commission
GNMA	Government National Mortgage Association
ILO	International Labor Organization
IOSCO	International Organization of Securities Commissions
LBO	Leveraged Buy-Out
LIBOR	London Interbank Offered Rate
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LLL	Limited Liability Limited Partnership

M&As	Mergers and Acquisitions
MBLA	Model Business Corporation Act
MERS	Mortgage Electronic Registration System
MiFID	Markets in Financial Instruments Directive
MOFCOM	Ministry of Commerce (of People's Republic of China)
NDA	Nondisclosure Agreement
NRSRO	Nationally Recognized Statistical Rating Organizations
NYSE	New York Stock Exchange
OECD	Organization for Economic Cooperation and Development
OHC	Office of Housing Counseling
OSHA	Occupational Safety and Health Administration
OTC	Over-the-Counter
PC	Professional Corporation
PCAOB	Public Company Accounting Oversight Board
PIPE	Public Equity Transactions
PLLC	Professional Limited Liability Company
PRC	People's Republic of China
PSLRA	Private Securities Litigation Reform Act
RESPA	Real Estate Procedures Act
RMBCA	Revised Model Business Corporation Act
RMB	Renminbi
SBSA	Security-Based Swap Agreement
SEC	Securities and Exchange Commission
SLUSA	Securities Litigation Uniform Standards Act
SOX	Sarbanes-Oxley Act
SRO	Self-Regulatory Organization
TARP	Troubled Assets Relief Program
TR	Trade Repository
WKSI	Well-Known Seasoned Issuer