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INTRODUCTION TO THE 2011 ANNUAL SURVEY

Noah J. Nelson, Annual Survey Editor

“Ah, but a man’s reach should exceed his grasp,
Or what’s a heaven for?”¹

It is with great pleasure that I introduce the third edition of the *Richmond Journal of Global Law and Business*’ Annual Survey. The goal of the Annual Survey is to provide a yearly review of an issue pertinent to the Journal. Additionally, the Annual Survey contains the winning entry of the Daniel T. Murphy writing competition that is centered on the topic of the Annual Survey.

This year’s Annual Survey focuses on financial regulation, which is particularly relevant today when the world is slowly emerging from the aftermath of its most recent financial crisis. It is with that crisis firmly fixed in our collective conscience that leaders around the world look to draft legislation aimed at averting a subsequent crisis. In the wake of such crises, contemporary academics are often the first to analyze causes, suggest logical explanations, and propose new mechanisms to curtail future crises. In analyzing the causes of the most recent financial crisis, leaders, as always, run the risk of proposing a cure to a disease with which no one is afflicted.² Market rationality may correct the causes of the crisis, but such a wager has proven to be a historically risky investment.³ The articles that follow examine one aspect of the most recent response to the financial crisis, a historical case displaying the fallout of a crisis, and an examination and comparison of how the United States makes regulations.

The first article is a comprehensive discussion of hedge fund regulation by Anne C. Rivière. Ms. Rivière recently finished her LL.M. at Harvard Law School and has a Master’s degree in Regulation and Markets Law from the Institut d’Etudes Politiques de Paris. She is currently an attorney with Cleary Gottlieb Steen & Hamilton, LLP in its Paris office. Ms. Rivière’s article focuses on the publicly perceived “bully” of the financial industry and the regulatory scapegoat: hedge funds. Ms. Rivière presents two arguments for hedge fund regulation: systemic risk and investor protection. Ms. Rivière begins by providing

¹ BROWNING, ROBERT, *Andrea Del Sarto in ENGLISH POETRY III: FROM TENNYSON TO WHITMAN*, Vol. XLII. (P.F. Collier & Son, 1909–14), available at www.bartleby.com/42/675.html.

² KINDELBERGER, CHARLES, *MANIAS, PANICS, AND CRASHES: A HISTORY OF FINANCIAL CRISES* 248 (2d ed. 1989).

³ *Id.*

a much-needed definition of the ambiguous term “hedge fund,” a feat not yet accomplished by the Securities and Exchange Commission.⁴ Ms. Rivière then provides a detailed review of the regulatory framework for hedge funds in the United States and the European Union. Next, Ms. Rivière discusses the misunderstanding and scapegoating of hedge funds in relation to the recent financial crisis, and the subsequent efforts to rein in the funds. Ms. Rivière reviews the current initiatives in the United States and the European Union addressing hedge funds before making her own recommendations on the criteria that governments should use to regulate hedge funds.

Robert Ziff, who completed his LL.M. at the London School of Economics, authored the second article. Mr. Ziff's article examines the sovereign debt crisis in Argentina. In particular, Mr. Ziff examines the tribunals following the Argentine debt crisis of 2002 and the conundrum that led Argentina to default on its obligations to foreign investors. The tribunals focus on bilateral investment treaties between Argentina and foreign investors. Mr. Ziff first places Argentina's default into historical context before explaining the similarities and differences of the arbitrations. Mr. Ziff then provides some tools for understanding the economics of the cycles of crises throughout history. Next, Mr. Ziff outlines the juxtaposition of protecting property interests and protecting a government's need to regulate. Finally, Mr. Ziff closes with his own conclusions regarding how to strike the proper balance between protecting foreign direct investment while preserving a country's right to regulate, all the while parsing the equitable positions of investors and the sovereign.

The last article is the winner of 2011 Annual Survey writing competition, named in honor of Professor Daniel T. Murphy, whose more than thirty years of teaching at the University of Richmond School of Law have provided a plethora of prospective attorneys with a vast array of anecdotal and legal knowledge in the areas of international law and business. This year's winner is Matthew Curtis, a second year law student at the University of Richmond School of Law and an Associate on the *Richmond Journal of Global Law and Business* recently selected to serve as next year's Articles Editor. Mr. Curtis authored a compelling examination tracing the similar trajectories of financial and environmental regulation. After recounting the history of recent financial and environmental regulatory changes, Mr. Curtis comments on the reactionary nature of regulations and their consequent ineffectiveness. Mr. Curtis then concludes that regulators must

⁴ *Registration Under the Advisers Act of Certain Hedge Fund Advisers*, 69 Fed. Reg. 72054 (Dec. 10, 2004) (codified at 17 C.F.R. pts. 275 & 279) (“There is no statutory or regulatory definition of hedge fund, although many have several characteristics in common.”).

employ a root cause examination of disasters to construct better regulations that will prevent future disasters.

Apart from the articles, I would like to extend my deepest gratitude to the entire staff of the *Richmond Journal of Global Law and Business* for their hard work in helping to bring together this year's Annual Survey. In particular, I would like to thank Katie Amaro, our Editor-in-Chief, and Elizabeth Myers, our Executive Editor, for their guidance and patience. In addition, I would also like to thank Catharyn Teplansky for her help and advice with the articles. Finally, I would like to thank next year's Annual Survey Editor and my partner in planning this year's Annual Survey, Timothy Wiseman, for his hard work and vision to create a robust and sustainable Annual Survey for years to come. Without the support of my peers, I could not possibly have completed this Annual Survey. Thank you.