

ASIAN INSTITUTE OF INTERNATIONAL FINANCIAL LAW
FACULTY OF LAW, THE UNIVERSITY OF HONG KONG

Seminar

**Does Agency Structure Affect Agency
Decisionmaking? Implications of the CFPB's
Design for Administrative Governance**

Professor Roberta Romano

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Yale Law School Center for the Study of Corporate Law*

Monday, 19 November 2018, 12:30 - 1:30 pm
New Venue: Room 723, 7/F Cheng Yu Tung Tower
The University of Hong Kong

An extensive literature has analyzed the accountability of administrative agencies, and in particular, their relationship to Congress. A well-established strand in the literature emphasizes that Congress retains control over agencies by their design, with a focus on the structure and process by which agency decisionmaking is undertaken. The paper examines the relationship between agency structure and decisionmaking across four agencies with similar statutory missions but different organizational structures: the Consumer Financial Protection Bureau (“CFPB”), with a uniquely independent and controversial structure, and the Commodity Futures Trading Commission, Consumer Product Safety Commission, and Securities and Exchange Commission with more conventional independent commission structures. It presents data consistent with the contention that agency structure influences agency decisionmaking. More specifically, the statistical analysis is robustly consistent with an agency’s insulation from Congress being related to its choice of regulatory instrument, as the most independent agency in this study, the CFPB, uses significantly less frequently the most publicly accountable regulatory instrument of notice-and-comment rulemaking. The paper concludes with the analysis’ implications for the CFPB’s organization and more broadly for administrative reform proposals and the agency design and administrative law literature.

Roberta Romano is Sterling Professor of Law at Yale Law School and Director of the Yale Law School Center for the Study of Corporate Law. Her research has focused on state competition for corporate charters, the political economy of takeover regulation, shareholder litigation, institutional investor activism in corporate governance and the regulation of securities markets and financial instruments and institutions. Professor Romano is a fellow of the American Academy of Arts and Sciences and the European Corporate Governance Institute, a research associate of the National Bureau for Economic Research, a past President of the American Law and Economics Association and the Society for Empirical Legal Studies, and a past co-editor of the *Journal of Law, Economics and Organization*. She is a recipient of William & Mary Law School’s Marshall-Wythe Medallion, which recognizes those who have demonstrated exceptional accomplishment in law and was honored for exemplary mentorship by the Business Associations section of the Association of American Law Schools. Professor Romano has received the Yale Law Women teaching award three times and is the author of *The Genius of American Corporate Law* (1993) and *The Advantage of Competitive Federalism for Securities Regulation* (2002), editor of *Foundations of Corporate Law*, 2d ed. (2010) and co-editor with Shen Wei, of *Financial Regulation After the Global Financial Crisis: US and China Perspectives* (2017) (in Chinese).

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