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Ronald Filler
New York Law School, ronald.filler@nyls.edu

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Recommended Citation
Ronald Filler, Book Review on From the Great Recession to the Covid-19 Pandemic by Professor Jerry W. Markham, 18 FIU L. Rev. 555 (2024).
DOI: https://dx.doi.org/10.25148/lawrev.18.3.5

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BOOK REVIEW ON FROM THE GREAT RECESSION TO THE COVID-19 PANDEMIC BY PROFESSOR JERRY W. MARKHAM

Ronald Filler*

Professor Jerry Markham is unique. No one, and I mean no one, has published as much as he has that involves all aspects of the financial services industry. He stands alone. His latest publication, “From the Great Recession to the Covid-19 Pandemic” is his seventh volume of “The Financial History of the United States.” These seven volumes started twenty years ago with Volume One. These seven volumes are a must read for any and every academic and student of our country’s financial history. In addition to these seven volumes, Professor Markham has written more law treatises, books, law review articles, and many other works relating to the financial services industry than any other academic or person.

I consider Professor Markham a very close friend so I will call him Jerry for this review. I have had the honor and privilege of co-authoring with Jerry a law book, a law review article, and an Amicus Brief filed before the U.S. Supreme Court for a criminal case dealing with the trading strategy known as spoofing. Equally as important, although we did not know each other then, Jerry and I just happened to grow up about thirty miles apart. He grew up in a small town in Southwest Kentucky while I grew up in a small town in Northwest Tennessee. He kept his southern accent; I did not. I always found it interesting that the two of us became professors at different U.S. law schools, teaching a variety of courses relating to the financial services industry throughout our careers, yet we grew up in small towns in the South.

So, to be honest, this book review is somewhat biased, but is completely true. Jerry is just an amazing academic.

Now, as to the book review, Jerry covers this twelve-year period—a time during which our financial services industry went through many highs and lows—in depth and addresses all of the key legislative and regulatory changes and important cases that took place during this period. His book has three parts and eleven chapters. I will now try to address them.

* Professor Emeritus, New York Law School. Member of numerous Industry and Regulatory Boards, including the NFA, and Advisory Committees. Member, FIA Hall of Fame. Has taught courses on Derivatives Law and other financial services law subjects over the past 45+ years at four different U.S. law schools.
Part One covers the years through 2016. Chapter One, entitled the “Post Dodd-Frank Issues,” has particular significance to me. Just think about the Dodd-Frank Act, a law that revolutionizes the financial services industry through over 2,000 pages of text. This was a massive piece of legislation that, to be honest, had very little congressional debate and discussion. True, the House of Representatives held several meetings; the Senate did not. During the conference sessions, many changes were added with little to no debate or discussion. Here we are, some thirteen years later, and there have been few legislative changes from the original Dodd-Frank Act. Jerry carefully and properly covered this massive piece of legislation and its aftermath.

In Chapter Two, Jerry focused on major economic conditions and the market turmoils that took place following the great recession. He then analyzed the MF Global failure which was also of particular interest to me. Led by former Senator and Governor Jon Corzine, MF Global, one of the largest commodity brokerage firms at that time, somehow caused tremendous losses to its customer assets, which was something the Dodd-Frank Act had tried to prevent. The repercussions from MF Global, and then the failure by PFG Best a few months later, have changed the derivatives industry and now require greater daily reporting of customer assets held by FCMs. Why do we need disasters to force new regulations? Why haven’t other countries enacted new laws to protect their citizens and residents when a financial firm fails? I concur with Jerry’s views on this financial crisis.

Part Two, entitled “Post-Financial Crisis Regulatory Actions,” has four chapters that focus on prosecutions and enforcement actions, or the lack thereof. Chapter Four, entitled “The ‘Too Big to Jail’ Prosecution Model” correctly addresses the lack of governmental actions to tackle the major wrongdoings. I agree with Jerry. Why not set an example of the senior executives at the financial firms that have created the financial woes by holding these key people liable for their firm’s acts. Bringing actions against key executives for their failure to supervise will ensure greater compliance by all financial firms in the future.

Chapter Seven, entitled “More Post Dodd-Frank Regulations and Market Developments,” properly addresses how our federal regulatory agencies often fail in adopting new regulations. Jerry highlights how the CFTC aggressively adopted new and imposing regulations on swap dealers, then, at the very last minute, delayed their effective date, and then delayed the second effective date and so on. I have never understood, like Jerry, why there is such a rush to add many new regulations without the respective agency considering the costs by financial firms to comply with them. Technology drives the ability of financial firms to comply with all regulations as market reports are drastically needed to allow key personnel at the
financial firms to receive requisite reports to ensure that the firm has indeed complied. However, such IT changes take time and need to be reviewed before they take effect, and firms are often dependent on third parties to deliver such changes. European regulators recognize this and typically make the effective date of any new regulation or law one year later or even longer. U.S. regulators state that their new regulations take effect in thirty to sixty days, a time that does not permit financial firms to comply with these new regulations.

Part Three, entitled “Trump Administration (2017–2019),” has four chapters that focus properly on the impacts of the Covid-19 pandemic and how U.S. and global regulators had to relax their respective regulatory regimes. Jerry does an excellent job of addressing these regulatory ups and downs, just like the ups and downs of the market. These chapters also address the market turmoil that occurred as a result of the pandemic. Granted, a pandemic like the Covid-19 pandemic, is highly unusual. As Jerry noted in his conclusion section, an inquest is needed at the judicial level to remove politics from finalizing how well the U.S. performed during the pandemic.

As to my conclusion, Jerry is just an amazing academic and a very good friend. We are so lucky and fortunate that he has educated so many of us regarding the financial history of the U.S. and in other areas. We are all blessed that Jerry chose academics over a long career at a large law firm. His students at FIU are the real winners.