The global financial crisis of 2008 has given way to a proliferation of international agreements aimed at strengthening the prudential oversight and supervision of financial market participants. Yet how these rules operate is not well understood. Because international financial rules are expressed through informal, non-binding accords, scholars tend to view them as either weak treaty substitutes or by-products of national power. Rarely, if ever, are they cast as independent variables that can inform the behavior of regulators and market participants alike.

This book explains how international financial law “works” – and presents an alternative theory for understanding its purpose, operation, and limitations. Drawing on a close institutional analysis of the post-crisis financial architecture, it argues that international financial law is often bolstered by a range of reputational, market, and institutional mechanisms that make it more coercive than classical theories of international law predict. As such, it is a powerful, though at times imperfect, tool of financial diplomacy and poses novel opportunities and challenges for the evolving global economic order.

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Soft Law and Global Financial System

RULE MAKING IN THE 21ST CENTURY

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Acknowledgments

The prospect of writing a book on any subject can be daunting for just about anyone, law professors included. Indeed, unlike the eighty-page law review articles that dominate our field and are structured along consistent (and at times repetitive) patterns, books place unfamiliar demands on the academic lawyer. Not only are we tasked with pushing the boundary of knowledge, as we do in our more traditional scholarly journals, but we are also charged with doing so while writing for a broader, generalist audience. It thus opens new opportunities to have an impact on, and potentially even help to shape, policy debates, though it also places new demands on those of us more comfortable with shorter and more technical exercises.

Fortunately, I have benefited enormously from a wide range of support that has made the leap a little less forbidding. I owe an enormous debt of gratitude to my former colleagues at Vanderbilt University, where I started my career, who provided the perfect intellectual climate for learning how to execute large-scale projects, affect the course of scholarly debates, and nurture hazy hunches into full-blown academic theories and policy prescriptions. Subsequently, my new colleagues at Georgetown have provided invaluable input during the writing process and have both cheered and challenged my thinking and assumptions about markets, regulation and global governance. Finally, my research has benefited from my association with the Milken Institute’s ever-expanding community of economic and financial policy thought leaders who have consistently helped me to maintain the energy and sense of purpose required to complete a project of this scope.

The book builds on earlier scholarship, including articles first published in the California (Berkeley), Chicago, Georgetown, Southern California (USC) and Vanderbilt law reviews, as well as Oxford’s Journal of International
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Key Abbreviations

BIS  Bank for International Settlements
CPSS  Committee on Payment and Settlement Systems
EU  European Union
FATF  Financial Action Task Force
FSAP  Financial Sector Assessment Program
FSB  Financial Stability Board
FSF  Financial Stability Forum
G-20  Group of Twenty Finance Ministers and Central Bank Governors
GAAP  Generally Accepted Accounting Principles
IADI  International Association of Deposit Insurers
IAIS  International Association of Insurance Supervisors
IASB  International Accounting Standards Board
IASC  International Accounting Standards Committee
IFAC  International Federation of Accountants
IFRS  International Financial Reporting Standards
IMF  International Monetary Fund
IOSCO  International Organization of Securities Commissions
ISDA  International Swaps and Derivatives Association
OECD  Organisation for Economic Co-operation and Development
WTO  World Trade Organization