SSRN: New Paper on “Regulating Offshore Finance”

William J. Moon has published an article titled “Regulating Offshore Finance” on SSRN. It can be accessed @ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3153121. The abstract is reproduced below:

From the Panama Papers to the Paradise Papers, massive document leaks in recent years have exposed trillions of dollars hidden in small offshore jurisdictions. Attracting foreign capital with low tax rates and environments of secrecy, a growing number of offshore jurisdictions have emerged as major financial havens hosting thousands of hedge funds, trusts, banks, and insurance companies.

While the prevailing account has examined offshore financial havens as “tax havens” that facilitate the evasion or avoidance of domestic tax, this Article uncovers how offshore jurisdictions enable corporations to evade domestic regulatory law. Specifically, recent U.S. Supreme Court cases restricting the geographic scope of federal statutes have created a space for commercial actors to circumvent regulation by incorporating in offshore jurisdictions. Under this jurisprudence, financial transactions completed through offshore commercial entities are often, albeit not categorically, seen as “extraterritorial” transactions beyond the reach of federal statutes. This makes it increasingly difficult for private litigants to bring statutory claims designed to protect the workings of the market, even in cases that are predominantly connected to the United States. After documenting how offshore jurisdictions enable commercial entities to opt out of federal regulatory statutes, this Article critiques the Supreme Court’s recent extraterritoriality jurisprudence that risks breeding a cottage industry of private regulatory evasion.