

Western State University
College of Law

Professor Dennis A. Stubblefield
Winter 2014

SECURITIES REGULATION §536A

COURSE SYLLABUS

A. Course Materials

Securities Regulation, Cases and Materials, Seventh Edition, Cox, Hillman and Langevoort, Wolters Kluwer, 2013.

Supplementary written materials compiled from books, articles and other sources will be provided to students during the class.

B. Grades

The Course will be graded numerically and will be based entirely on the final exam.

C. Course Prerequisites

None

D. Course Units

Three

E. Course Process

The course will be taught in a combination of lecture and open discussion of securities issues. Students may be required from time to time to download supplemental materials and links to documentation, websites and readings from the Internet. Alerts as to such supplemental readings may be relayed to students through email or given in class. All students will be required to provide an email address for such communications.

All classes will meet at 6:30 pm. on Tuesday evenings.

F. Course Topics

Week 1 – Reading Pages 1-89

I. The Framework of Securities Regulation -- In this part of the course, we will discuss the basic structure of the US securities laws and how they relate to business.

- A. Securities Transactions
 - B. The Legal Framework of Securities Regulation
- II. The Definition of a Security – In this part of the course we will define the term security as it applies to different types of instruments.
- A. Introduction
 - B. The Development of a Framework for Defining an Investment Contract
 - C. Howey Applied
 - D. Associational Formalities: Interests in Corporations, Partnerships, and LLC's as Securities.
 - E. Real Estate as Securities
 - F. Notes as Securities
 - G. Derivative Securities and Synthetic Investments
 - H. Transitional Note on Derivatives, Options, Futures and Beyond

Week 2 – Reading Pages 91-248

- III. Understanding Investors---Here we will discuss the behavior of investors and aspects of market efficiency
- A. The Efficient Market Hypothesis: Implications and Limitations
 - B. Behavioral Economics and Decisions by Individual Investors
 - C. Institutionalization
 - D. Globalization
- IV. The Public Offering –In this part of the course we will discuss the public offering process and how registration with the Securities and Exchange Commission works.
- A. Underwriting and Underwriters
 - B. The Market for Initial Public Offerings
 - C. A Panoramic View of the Registration Statement
 - D. Registration of the Unseasoned Issuer
 - E. Gun Jumping Concerns for the IPO [herein of the Pre-filing Period, the Waiting Period, and the Post-Effective Period]
 - F. Public Offers by Seasoned and Well-Known Seasoned Issuers
 - G. Shelf Registration Under Rule 415
 - H. Updating and Correcting the Registration Statement Problem
 - I. The Trading Practice Rules
 - J. The International Public Offering
 - K. Registration Under State Blue Sky Laws
 - L. The Debate over Mandatory Disclosure

Week 3 – Reading Pages 249-336

V. Exempt Transactions -- In this part of the course we will discuss the rules allowing an exemption from the registration process for certain types of transactions.

- A. Introduction
- B. The Intrastate Offering Exemption: Section 3(a)(11)
- C. The Private Offering Exemption: Section 4(a)(2)
- D. Regulation D and the Limited Offering Exemptions
- E. The Crowdfunding Exemption: Section 4(a)(6) Problems
- F. Employee Benefit Plans and Contracts Relating to Compensation: Rule 701
- G. Regulation A: Mini-Registration
- H. Section 3(b)(2): Regulation A+
- I. Integration of Offerings
- J. State Exemptions

Week 4 – Reading Pages 337-483

VI. Secondary Distributions -- In this part of the course we will discuss the rules relating to the sale of securities that are not part of a public offering sold by the issuer.

- A. The Underwriter Concept and Sales for an Issuer
- B. Purchase from an Issuer
- C. Control Person Distributions
- D. Rule 144 – Safe Harbor for Resales of Control and Restricted Securities
- E. Facilitating an Institutional Market for Unregistered Securities with Rule 144A
- F. The Section 4(1-1/2) Exemption
- G. Resales Under the Blue Sky Laws

VII. Recapitalizations, Reorganizations, and Acquisitions-- In this part of the course we will discuss reorganizations of public companies and how they are accomplished under the securities regulatory framework.

- A. The “For Value” Requirement
- B. Mergers, Acquisitions, and Recapitalizations
- C. Exchanges Under Section 3(a)(9)
- D. Reorganizations Under Section 3(a)(10)

VIII. Exempt Securities-- In this part of the course we will discuss special exemptions from the registration requirements for certain types of securities.

- A. An Overview of Section 3
- B. Municipal Securities
- C. Securities Issued or Guaranteed by a Bank
- D. Commercial Paper
- E. Securities of Nonprofit Issuers

F. Insurance and Annuities

Week 5 – Reading Pages 485-552

IX. Liability Under the Securities Act-- In this part of the course we will discuss in more detail the most significant attributes of the civil liability scheme established under the Securities Act of 1933.

- A. Section 11
- B. Section 12(a)(1)
- C. Section 12(a)(2)
- D. Section 17(a)

Week 6 – Reading Pages 553-693

X. Financial Innovation: Trading Markets, Derivatives and Securitization -- In this part of the course we will discuss the brave new world of technology-driven products and markets.

- A. Technology and the Transformation of the Securities Markets
- B. Derivatives and Synthetic Investments
- C. Structured Financial Products

XI. Financial Reporting: Mechanisms, Duties, and Culture -- In this part of the course we will discuss the financial reporting requirements of public companies and the rules regarding management's discussion of financial results.

- A. The Disclosure Requirements of Public Companies
- B. The "Fairly Presents" Requirement
- C. Internal Controls
- D. Strengthening the Integrity of the Financial Reporting Process
- E. The management Discussion and Analysis Section of SEC Filings: Is Past Prologue?

XII. Inquiries into the Materiality of Information -- In this part of the course we will discuss the meaning of materiality and special rules regarding disclosure of forward looking statements.

- A. Materiality Orthodoxy
- B. Speculative Information and Materiality
- C. The "Total Mix" of Information and Market Efficiency
- D. Forward-Looking Information
- E. The SEC and Corporate Governance

Week 7 -- Reading Pages 695-785

XIII. Fraud in Connection with the Purchase or Sale of a Security -- In this part of the course we will discuss Rule 10b-5 and the rules regarding fraud in connection with the purchase or sale of a security.

- A. Fraud "In Connection With" the Purchase or Sale of a Security
- B. Private Rights of Action Under Rule 10b-5
- C. Scienter: Hochfelder and Beyond
- D. The Affirmative Duty to Disclose
- E. Who is Liable?
- F. Reliance
- G. Loss Causation and Damages
- H. Federalism and Rule 10b-5: the Problem of Corporate Mismanagement
- I. Manipulation

Week 8 -- Reading Pages 787-831

XIV. The Enforcement of the Securities Laws -- In this part of the course we will discuss the various enforcement mechanisms embodied in the federal securities laws.

- A. More on the Private Enforcement of the Securities Laws
- B. Who's Liable for Securities Fraud: Primary and Secondary Liability
- C. Control Person and Respondeat Superior Liability
- D. Rescission and Restitution of Contracts in Violation of the Securities Laws
- E. Responsibility and Its Costs
- F. Statutes of Limitations

Week 9 -- Reading Pages 831-904

XIV. The Enforcement of the Securities Laws -- Contd.

- G. Enforcement Actions by the SEC
- H. The SEC's Power to Discipline Professionals
- I. The Duties of the Securities Lawyer
- J. Enforcement of the Securities Laws in the Criminal Justice System

Week 10 -- Reading Pages 905-954

XV. The Regulation of Insider Trading -- In this part of the course we will discuss the rules restricting insider and related tippee trading.

- A. Introduction
- B. The Source of a duty to Abstain or Disclose
- C. "Outsider" Trading: Corporate connections
- D. The Misappropriation Theory
- E. Tippers and Tippees
- F. Rule 14e-3
- G. Enforcement of the Insider Trading Prohibition

- H. Insider Trading and Section 16
- I. Insider Trading Abroad

Week 11 -- Reading Pages 955-1018

XVI. Shareholder Voting and Going-Private Transactions -- In this part of the course we will discuss proxy filings in relation to shareholder voting and the process of going private.

- A. The Election of Directors and Other Routine Matters
- B. The Reach of the Proxy Rules
- C. "Solicitations"
- D. Proxy Fraud
- E. Going-Private Transactions

XVII. Corporate Takeovers -- In this part of the course we will discuss the rules restricting corporate takeovers through tender offers.

- A. Introduction: the Policy Dilemma
- B. The Early Warning System: Section 13(d)
- C. Tender Offer Regulation: Controlling the Bidder Problem
- D. The Williams Act and the Global Tender Offer
- E. Tender Offer Defense: Controlling Target Management

Week 12 -- Reading Pages 1019-1076

XVIII. Regulation of Broker-Dealers -- In this part of the course we will discuss an overview of how securities broker-dealers are regulated and their obligations to their customers and others.

- A. The Regulation of the Broker-Dealer Industry: Structure and Oversight
- B. The Responsibilities of Brokers to Their Customers
- C. Substantive Regulation: Credit and Financial Soundness

Week 13 -- Reading To Be Announced

XVIII--Part II. A Closer Examination Into Retail Investment Disputes and Related Regulatory Issues.

Class structure/outline/materials to be announced.

Week 14 -- Reading Pages 1077-1151

- XIX. The Investment Advisers and Investment Company Acts of 1940
- XX. Transnational Fraud and the Reach of the U.S. Securities Laws

Final Examination:
