REGULATION OF FINANCIAL INSTITUTIONS

Fall 2016

Professor Howell E. Jackson
Harvard Law School

&

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Class Meetings:
Mondays, Tuesdays, and Wednesdays: 10:20 am to 11:50 am
(Except for 9/12, 9/13, 10/19 & 12/5)

This course explores the regulation of financial institutions in the United States, covering insured depository institutions, such as banks and thrifts, as well as other types of financial intermediaries, including insurance companies, securities firms and investment companies. While the course will review both the history of financial regulation in this country as well as the distinctive features of regulation in each sector of the industry, our central focus will be on the implementation of the Dodd-Frank Act as well as the design and administration of a supervisory system for a multi-sectored financial services industry. In addition to introducing students to the structure of regulation in this field, the course is intended to assist students in learning how to conduct legal research on financial regulation, as would be expected for lawyers working in either private practice or government positions.

During the semester, each student enrolled in the course will be assigned to work – either alone or with one or two other students -- to prepare a short research paper on a topic of current interest and importance in the field. There will also be an in-class examination, tentatively scheduled for the morning of Monday, December 19th. Grading will be based on the research paper and the examination, with a possible upward adjustment for on-line commentary towards the end of the semester on the research papers of other students.
A preliminary list of potential topics for research papers appears below. An updated version of this list will be posted to the Course Materials section of the course’s Canvas site and will be supplemented from time to time. Students should review this list early in the semester and, if possible, meet with Professor Jackson and Ms. Tahyar to discuss research interests during the first three weeks of the semester. These preliminary meetings are especially important for those proposing to undertake topics beyond those listed. Students will be asked to submit a list of several research topics by Monday, September 26th. Formal assignments of research topics will occur shortly thereafter. First drafts of research papers will be due by the end of October and final drafts should be submitted and posted to the Canvas site by the last day of Fall semester classes, Monday, December 5th. Students are welcome to meet with Professor Jackson or Ms. Tahyar throughout the semester to discuss their research projects (or anything else).

Readings for the course will primarily be from Michael Barr, Howell Jackson & Margaret Tahyar, Financial Regulation: Law and Policy (Foundation Press 2016). Additional readings will be distributed through the course site on Canvas or H2O. For students interested in a recent text offering a more academic treatment of financial regulation, copies of John Armour et al., The Principles of Financial Regulation (Oxford University Press 2016) will be available in the Law School Coop with a copy also available on reserve in the library. The Armour et al. text is scheduled for release in early September and may not be available at the start of the semester.
Course Syllabus

Background Reading: The first two chapters of Financial Regulation – Chapters 1.1 and 1.2 -- are assigned as background reading. They will not be the direct focus of classroom discussion, but offer important background on course materials. Students should read over these chapters early in the semester and certainly by the end of the second week of classes.

This course syllabus offers an outline of the full course, with chapter assignments from the Financial Regulation text for each class. For a number of classes, the assignments will also include an HLS case study. These supplemental assignments, which are highlighted in yellow, are designed to offer students to explore important issues of financial regulation in a more institutionally rich context. These case studies are also intended to comply to with the ABA’s new requirements for experiential learning.

Supplemental guidance on assignments will be posted to the course’s Canvas website on a weekly basis.

Week One  Introduction to Financial Regulation (w/ MET)

Class One (9/6)  Chapter 1.3: Regulatory Frameworks. [Note that Chapter 1.2, The History of U.S. Financial Regulation: A Thematic Overview, would be helpful background for this class.]

Class Two (9/7):  Chapter 1.4: Regulatory Perimeters plus HLS Case Study on Preemption.

Week Two  Introduction Concluded (w/ MET)

Class Three (9/14)  Chapter 1.5: A Tour of the Balance Sheet. Note that Chapter 1.1, Finance Today) would be helpful background for this class.]

Week Three  Prudential Regulation (w/ MET)


Class Five (9/20)  Chapter 2.2: Activities Restrictions and the Business of Banking; Chapter 2.3: Portfolio Diversification and Restrictions on Transactions with Affiliates

Class Six (9/21)  Chapter 2.4: Bank Deposits

Week Four  Capital Regulation (w/ MET)
Class Seven (9/26)  Chapter 2.5: Capital Regulation: An Introduction. **Plus First National Bank Case Study.** [Note: Students must submit a list of several potential research topics by this date.]

Class Eight (9/27)  Chapter 2.6: Capital Regulation: Pre-Crisis to Basel III)

Class Nine (9/28)  Chapter 2.7: Capital Regulation: Basel III and beyond

**Week Five**

**The Regulation of Insurance**

Class Ten (10/3)  Chapter 3.1: Introduction to the Regulation of Insurance

Class Eleven (10/4)  Chapter 3.2: The Protection of Consumers in Insurance Regulation. **Plus Case Study on Genetic Testing.**

Class Twelve (10/5)  Chapter 3.3: Federal Interventions in Insurance Regulation

**Week Six**

**Introduction to Securities Firms and Capital Markets**

Class Thirteen (10/12)  Chapter 4.1: Introduction to the Regulation of Securities Firms. **Plus Case Study on Lending Club.**

**Week Seven**

**Securities Firms and Capital Markets Continued**

Class Fourteen (10/17)  Chapter 4.2: Securities Firms and Retail Investors; Chapter 4.3: Securities Firms in Corporate Transactions

Class Fifteen (10/18)  Chapter 4.4: The Regulation of Capital Markets.

**Week Eight**

**Financial Conglomerates (w/ MET)**

Class Sixteen (10/24)  Chapter 6.1: The Regulation of Holding Companies.


Class Eighteen (10/26)  Chapter 6.3: Foreign Banks. [Note: Draft research papers are due by the end of October.]
Week Nine  Consumer Protection and the CFPB

Class Nineteen (10/31)  Chapter 5.1: The Consumer Financial Protection Bureau Plus CFPB Case Study.

Class Twenty (11/1)  Chapter 5.2: Mortgages; Chapter 5.3: Consumer Financial Products and Services. [Note: As Background, students can read Chapter 5.4: Comparing Consumer Financial Protection Models Across Sectors] [Short Coverage of Christmas Eve Closing]

Class Twenty-One (11/2)  Chapter 7.1: Introduction to Payment Systems; Chapter 7.2: Examining Critical Issues in Payment Systems. [Short Coverage of BSA Application to Blockchain.]

Week Ten  Governance/Enforcement, Lender of Last Resort and Resolution (w/ MET)

Class Twenty-Two (11/7)  Chapter 8.1: Corporate Governance; Chapter 8.2: Supervision and Enforcement

Class Twenty-Three (11/8)  Chapter 9.1: Lender of Last Resort; Chapter 9.2: Traditional Toolkit for Bank Failures. [Problem in Text as Case Study]

Class Twenty-Four (11/9)  Chapter 9.3, After the Crisis: From Orderly Liquidation to Bail-in

Week Eleven  Investment Companies and other Investment Vehicles

Class Twenty-Five (11/14)  Chapter 10.1: Introduction to Asset Management and its Regulation; Chapter 10.2: Mutual Funds: Fiduciary Duties and Structural Restraints

Class Twenty-Six (11/15)  Chapter 10.3: Mutual Funds, Disclosure and its Limitation. [Case Study on Closed End Fund].

Class Twenty-Seven (11/16)  Chapter 10.4: The Regulation of Hedge Funds and Other Private Funds; Chapter 12.3;

Week Twelve  Derivatives (with Gabe Rosenberg of Davis Polk)

Class Twenty-Eight (11/21)  Chapter 11.1: Overview of Derivatives; Chapter 12.2: Derivatives Market Infrastructure

Class Twenty-Nine (11/22)  Chapter 11.3: Derivatives: Business Conduct and Market Integrity
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<tr>
<th>Week Thirteen</th>
<th>Securitization, GSE and Wholesale Finance (with MET)</th>
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<td>Class Thirty (11/28)</td>
<td>Chapters 12.1; 12.2: Securitization. <a href="#">Plus Madden Case Study.</a> Markets and Government Sponsored Enterprises</td>
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<td>Class Thirty-One (11/29)</td>
<td>Chapter 12.3: Money Market Funds;</td>
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<td>Chapters 12.4: Short-Term Wholesale Funding</td>
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**Week Fourteen**  
No Classes

Final Research Papers should be submitted and posted to the Canvas iSite by Monday, 12/5.
Expanded List of Research Paper Topics
Fall 2016 (revised as of 9/21/16)

This list of potential topics for research papers will be posted to the Course Materials section of the course’s Canvas site and will be supplemented from time to time. Students should review this list early in the semester and, if possible, meet with Professor Jackson and Ms. Tahyar to discuss research interests during the first three weeks of the semester. These preliminary meetings are especially important for those proposing to undertake topics beyond those listed. Students will be asked to submit a list of several research topics by Friday, September 30th. Formal assignments of research topics will occur shortly thereafter. First drafts of research papers will be due by the end of October and final drafts should be submitted and posted to the Canvas site by the last day of Fall semester classes, Monday, December 5th. Students are welcome to meet with Professor Jackson or Ms. Tahyar throughout the semester to discuss their research projects (or anything else). Note: An asterisk indicates a topic that has been added since the preliminary list circulated with the original syllabus; bold faced topics are ones the instructors judge to be especially timely and appropriate for student research.

Introduction/Structural:


An Assessment of Secretary Clinton’s Financial Reform Proposals – Evan & Carol

Using Trade Agreements to Establish Dispute Resolution Procedures to Resolve Conflicts between National System of Financial Regulation -- Isabel

Post-Brexit Implications for European Banking Markets -- Atanas

Post-Brexit Implications for European Capital Markets -- Ben (swaps); Yasmin (asset based)

*Is the Mutual Form a Viable Structure for the 21st Century: Benefits and Costs

Banking Topics:

Designing an Optional OCC Charter for Market-Place Lenders -- Done in a Case Study

The Evolution of Bank Anti-Trust Policies in the Twenty-First Century -- Caroline

*Application of CRA Requirements in an Era of Internet Banking/FinTech Innovations - Like

The Rise of and Long-term Viability of Lottery Based Savings Programs

Pre-paid Cards as a Solution for the Unbanked – Rebecca

*Challenging Stress Tests Under the Administrative Procedures Act -- Ed and Kyra

Fintech/AML Topics:

The Impact of State Licensing Laws on Peer-to-Peer Lending

The Application of AML Rules to Bitcoin and Other Innovative Payment Systems – Hussein &
Hyewon Kim (Korea) – Plus a Case Study

Comparing US and UK Fintech Regimes -- Jay

The Regulation of Blockchain Ledgers -- Done in a Case Study

Challenges in Rolling Back AML/Anti-Terrorism Sanctions on Foreign Banks Doing Business in Iran

Insurance Topics:

Is the ACA Unraveling: Causes and Implications of Insurance Industry Exits from ACA Exchanges - Cameron

How Important is Federal Coordination in the Regulation of Reinsurance in Global Markets? -- Riley

How Big a Role Do Mutual Firms Play in Modern Insurance Markets and Why? [repeated above]

Issues in the Regulation of Captive Insurance Companies

Securities Law Topics:

The Rise and Impact of Robo-Advisers

Duties of Broker-Dealers to Institutional Investors as opposed to Retail Investors -- Yixuan

Recent Developments on the Oversight of HFTs and Related Trading Issues

“Should Securities Firms, including HFTs, Be Required to Share their Algorithms with Regulatory Authorities?” -- Christian

ERISA Topics:

The Impact of ERISA litigation against Plan Sponsors -- Part of Karl’s topic

The Evolution and Impact of Defaults for 401(k) Plans

The Case for and against Including Actively Managed Funds in Retirement Plans -- Karl

How will the DOL’s New Fiduciary Duties Impact Investment Advice for Retirement Accounts?

CFPB Topics:

How credible are lingering challenges to the constitutionality of the CFPB. -- Done in a Case Study

How have the FTC and the CFPB allocated Responsibility over Consumer Products that Border Commerce and Finance?

How has the CFPB Deployed its UDAAP Authority? -- Stephanie

An Assessment of the CFPB’s Proposal for Regulating Payday Loans?
An Assessment of the CFPB’s Proposal on Arbitration? – Yixuan

Other Arbitration Topics:
A Comparison of the CFPB and SEC Approaches to Arbitration?
A Literature Review on the Efficacy of Arbitration versus Judicial Litigation?

The Use of Proxies and Testers in Public Enforcement of Fair Lending Requirements

Financial Conglomerates and Financial Stability Topics:

An Overview and Assessment of Different Approaches to Grandfathering When Activities Restrictions are Tightened Limitations on Changes in Financial Contracts – Travis but focused more on emergencies

Implications of the MetLife Litigation for the Asset Management Industry? -- Luca

Does the Federal Reserve Have Sufficient Authority to Police Short-Term Lending Markets without Resort to FSOC Designations? -- Jen

Supervision and Enforcement:

*Wisdom of DFS efforts to impose personal liability on compliance officers
  *Policing Misappropriation of Confidential Supervisory Information by Government Personnel* – Part of Christian’s (with HTF focus)
  *The Supervision of Cyber-Security

The Resolution of Distressed Financial Firms

Implications of the Latest Round of Fed/FDIC Rulings on Living Wills -- Shuting

Interactions between ISDA and the Federal Reserve Over ISDA Protocol Reforms

Mutual Funds/Asset Management:

Soft Dollar Reforms in the UK and EU [HEJ research interest] -- John

The Evolution of SEC Oversight of Soft Dollars [HEJ research interest]

New Pricing Paradigms for Fixed Income Securities

Problems with ETFs and Liquidity -- Qi

What is the Impact of the SEC's 2014 MMF Proposal

SEC Enforcement Actions Against Private Equity -- Brooks

Derivatives Topics:

Developments in Substituted Compliance at the CFTC and SEC with an Administrative Angle -- Travis
Securitization/GSEs/Shadow Banking:

The Impact of DFA Reforms on Mortgage Securitization – Potential Winter Term for Kyra

Analyzing Fannie and Freddie's Recent Efforts to De-risk its Portfolio: Is it a Long-Term Solution? - Dan

How Does the FSOC Approach to Systemic Risk Determinations Differ from those of the FSB? -- Ahson
Other Sources of Information on the Regulation of Financial Institutions

The Harvard Law School Library maintains an excellent and up-to-date catalog of resources on financial regulation. A link to these materials is available on the course iSite. Included among those resources and of particular value in finding regulatory guidance on financial institutions from leading law firms is the Securities Mosaic Service, which is available at http://nrs.harvard.edu/urn-3:hul.eresource:knldgmsc.

For those seeking definitions for technical terms that will appear from time to time in our readings, the following two online glossaries may be helpful:

1. Lexicon in Financial Times: http://lexicon.ft.com/
2. Investopedia: http://www.investopedia.com/

Statutory materials, including the Dodd Frank Act, are available on-line in a number of locations, including Westlaw and Lexis. CCH has a particularly useful and complete library of materials, which are available to HLS students. To set up a CCH account, you will need to register using your HLS email; registration:


Once you are in logged in to CCH, follow this link to see the Dodd-Frank tables: