

REGULATION OF FINANCIAL INSTITUTIONS

Fall 2017

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&
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**Class Meetings:
WCC B010
Mondays, Tuesdays, and Wednesdays: 10:20 am to 11:45 am
(Except for 11/29, 12/4 & 12/5)**

This course is designed to expose students to the field of financial regulation in a manner substantially similar to the experiences of lawyers representing and advising clients today, whether those clients are in the private or public sector. This course will explore the regulation of a range of financial institutions in the United States, including insured depository institutions, such as banks and thrifts, as well as other types of financial intermediaries, such as 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 different parts of the financial sector, we will focus our attention on on-going debates over reforms implemented through the Dodd-Frank Act of 2010 as well as recent efforts to roll back or rebalance elements of those reforms. The course will also discuss the primary vehicles for the coordination of financial regulation across national boundaries and alternative approaches to financial regulation in leading economies around the world. 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 in government positions.

Each week's assignments will include at least one HLS case study exploring legal issues of current interest involving problems that private practitioners, government attorneys, and others working in the field are facing today. Students enrolled in the course will be asked to take the lead in responding to one or more these problems over the course of the semester. In addition, each student will be assigned to work—either alone or with one or two other students—on a short research paper on a topic of current interest and importance in the field, again addressing the topic in a format and from the perspective that would be expected of a practicing lawyer today. At the end of the semester, there will be a two-hour, open-book examination (in class) focused on the basic doctrinal structures of the field with which lawyers practicing in the area would be expected to be familiar. The examination is provisionally scheduled for the afternoon of Tuesday, December 12th. Grading will be based on the research paper (40%), class presentations of the HLS case studies and commentary on the work of other students (25%), and the final examination (35%). Students will also receive personal feedback from the instructors on both presentations of the HLS case studies and preliminary drafts of their research papers.

A preliminary list of potential topics for research papers appears at the end of this syllabus. 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 the end of September. 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, Tuesday, December 5th. The final class will take place on Tuesday, November 28th, freeing up time at the end of the semester for students to complete their papers. Students are welcome to meet with Professor Jackson or Ms. Tahyar throughout the semester to discuss their research projects (or anything else). Ms. Tahyar will be available for office hours to meet in person for the weeks she is physically at HLS and will also schedule conference calls with students at any time.

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.

Week Four **The Regulation of Insurance**

Class Nine (9/25)

Reading:

- Chapter 3.1: Introduction to the Regulation of Insurance

Class Ten (9/26)

Reading:

- Chapter 3.2: The Protection of Consumers in Insurance Regulation
- **Case Study on Discrimination in Automobile Insurance Markets**, explored from the perspective of a consumer advocacy group and an insurance industry trade group.

Class Eleven (9/27)

Reading:

- Chapter 3.3: Federal Interventions in Insurance Regulation

Week Five **Introduction to Securities Firms and Capital Markets**

Class Twelve (10/2)

Reading:

- Chapter 4.1: Introduction to the Regulation of Securities Firms
- **HLS Case Study: Case Study on Lending Club**, explored from the perspective of legal counsel to a FinTech startup.

Class Thirteen (10/3)

Reading:

- Chapter 4.2: Securities Firms and Retail Investors

Class Fourteen (10/4)

Reading:

- Chapter 4.3: Securities Firms in Corporate Transactions

Week Six **Securities Firms and Capital Markets Concluded**

Class Fifteen (10/11)

Reading:

- Chapter 4.4: The Regulation of Capital Markets

Week Seven **Financial Conglomerates (with Ms. Tahyar)**

Class Sixteen (10/16)

Reading:

- Chapter 6.1: The Regulation of Holding Companies

- **HLS Case Study on Walmart Bank Proposal**, from perspective of attorney working on the Senate Banking Committee.

Class Seventeen (10/17)

Reading:

- New Chapter on Bank Antitrust to be Distributed Separately
- Introduction to Chapter 6.2: Systemically Important Financial Institutions

Class Eighteen (10/18)

Reading:

- Complete discussion of Chapter 6.2: Systemically Important Financial Institutions
- Summary Discussion of Chapter 6.3: Foreign Banking

Week Eight

Consumer Protection and the CFPB

Class Nineteen (10/23)

Reading:

- Chapter 5.1: The Consumer Financial Protection Bureau
- **HLS Case Study on CFPB Litigation**, from the perspective of various private and government entities responding to CFPB litigation.

Class Twenty (10/24)

Reading:

- Chapter 5.2: Mortgages
- Chapter 12.2 (recommended for useful background)

Class Twenty-One (10/25)

Reading:

- Chapter 5.3: Consumer Financial Products and Services
- Chapter 5.4 Comparing Consumer Protection Models Across Sectors

Week Nine

Payments, Corporate Governance and Supervision

Class Twenty-Two (10/30)

Reading:

- Chapter 7.1: Introduction to Payment Systems
- Chapter 7.2: Examining Critical Issues in Payment Systems

- **HLS Case Study on BSA Application to Blockchain**, from perspective of regulatory agencies considering proposals for regulatory reform.

Class Twenty-Three (11/1)

Reading:

- Chapter 8.2: Supervision and Enforcement

Chapter Twenty-Four (11/2)

Reading:

- Chapter 8.1: Corporate Governance
- **HLS Case Study: Problem on Wells Fargo**, exploring issues surrounding the bank's retail banking scandal from the perspective of Federal Reserve Board considering an enforcement activity with respect to Wells Fargo directors.

Week Ten

Lender of Last Resort and Resolution (with Ms. Tahyar)

Class Twenty-Five (11/6)

Reading:

- Chapter 9.1: Lender of Last Resort

Class Twenty-Six (11/7)

Reading:

- Chapter 9.2: Traditional Toolkit for Bank Failures
- **Bank Failure Case Study in Text**, from the perspective of the FDIC choosing among potential bids.

Class Twenty-Seven (11/8)

Reading:

- Chapter 9.3: After the Crisis: From Orderly Liquidation to Bail-in
- **HLS Case Study: Section 23A/Section 13(3) Case Study**, from the perspective of Federal Reserve Board Staff attempting to deal with impending failure of a Systemically Important Financial Institution.

Week Eleven

Investment Companies and other Investment Vehicles

Class Twenty-Eight (11/13)

Reading:

- Chapter 10.1: Introduction to Asset Management and its Regulation

Class Twenty-Nine (11/14)

Reading:

- Chapter 10.2: Mutual Funds: Fiduciary Duties and Structural Restraints

Class Thirty (11/15)

Reading:

- Chapter 10.3: Mutual Funds, Disclosure and its Limitation
- **HLS Case Study on Closed End Fund**, from the perspective of the SEC

Week Twelve

Asset Management Concluded

Class Thirty-One (11/20)

Reading:

- New Chapter on Retirement Savings to be Distributed Separately

Class Thirty-Two (11/21)

Reading:

- Chapter 10.4: The Regulation of Hedge Funds and Other Private Funds

Week Thirteen

Tahyar).

Derivatives, Securitization and Shadow Banking (with Ms.

Class Thirty-Three (11/28)

Reading:

- Chapters 12.1: Securitization
- 12.2: Mortgages and the Government-Sponsored Enterprises
- **HLS Case Study on Asset Securitization**, from the perspective of counsel to financial firms.

Class Thirty-Four (11/29)

Reading:

- Chapter 12.3: Money Market Funds
- Chapter 12.4: Short-Term Wholesale Funding

List of Research Paper Topics

Fall 2017 (preliminary and incomplete)

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. Between that date and the date of the final examination (preliminary scheduled for December 12th), students will be asked to post at least three comments on other papers. Students are welcome to meet with Professor Jackson or Ms. Tahyar throughout the semester to discuss their research projects (or anything else).

Introduction/Structural:

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

Are State Level Regional Compacts or Passporting a Viable Structure for FinTech?:
Benefits and Costs

Banking Topics:

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

Bank Chartering Topics:

The Public Bank Movement: Pros and Cons

Banking for the Cannabis Sector: Legislative Solutions Short of
Decriminalization

Fintech/AML Topics:

Locating FinTech Solutions to Deal with Income Volatility

Credit: Extension versus Factoring, Savings, Insurance, Hybrids, and Mental Accounting

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

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

Insurance Topics:

Debates over Setting Capital Standards for Insurance Companies

Issues in the Regulation of Captive Insurance Companies

Securities Law Topics:

Initial Coin Offerings

The Rise and Impact of Robo-Advisers

Recent Developments on the Oversight of HFTs and Related Trading Issues

Payment for Order Flow Litigation

ERISA Topics:

Litigation and its Impact on the Decline of 401(k) fees

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

CFPB Topics:

How Have the FTC and the CFPB Allocated Responsibility over Consumer Products that Border Commerce and Finance?

An Assessment of the CFPB's Proposal for Regulating Payday Loans

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

Auto Lending Oversight at the CFPB

The Litigation Strategy to Challenge the CFPB Arbitration Rule (or if briefs are filed, the Defense)

Solutions for Student Loan Lending

Financial Conglomerates and Financial Stability Topics:

Supervision and Enforcement:

The Professional Responsibilities of Law Firms Conducting Investigations of Financial Firms

Wisdom of NYDFS efforts to impose personal liability on compliance officers

The Supervision of Cyber-Security

Should Supervisory Ratings (CAMELS) remain Confidential Supervisory Information?

The Resolution of Distressed Financial Firms:

What to make of recent bank closures in the EU

Interactions between ISDA and the Federal Reserve Over ISDA Protocol Reforms

How Might OLA and OLF be Amended to Answer the Concerns of Those who Believe They are a Bailout?

Mutual Funds/Asset Management:

New Pricing Paradigms for Fixed Income Securities

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

Index Funds: Problem or Solution?

Are Smart Beta Funds Investor Friendly?

Securitization/GSEs/Shadow Banking:

Assessing the Proposed Solutions for GSE Reform

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:

<https://selfreg.intelliconnect.cch.com/saas/selfregIPLogin.do?ipAddress=140.247.226.229&refer=http://www.law.harvard.edu/library/research/databases/index.html>.

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

[http://prod.resource.cch.com/resource/scion/toc/atlas-toc/\(WKUS_TAL_14426\)CA6CF1167C14F8E8:WKUS_TAL_14426%2320130626T1740522650500d3e255728?cfu=Legal&cpid=WKUS-Legal-IC](http://prod.resource.cch.com/resource/scion/toc/atlas-toc/(WKUS_TAL_14426)CA6CF1167C14F8E8:WKUS_TAL_14426%2320130626T1740522650500d3e255728?cfu=Legal&cpid=WKUS-Legal-IC).

The Maine Bureau of Financial Institutions supervises all state-chartered financial institutions including banks, credit unions, and nondepository trust companies. The Bureau maintains and promotes safe and sound financial practices; strength, stability and efficiency of financial institutions; security of deposit and share funds; reasonable and orderly competition; and development and expansion of financial services advantageous to the public welfare. 02-029 CHAPTER 101 Regulation #1 RETENTION OF RECORDS - FINANCIAL INSTITUTIONS. SUMMARY: On October 19, 1977, the Bureau of Banking promulgated Regulation #1 (Retention of Records - Trust Companies and Savings Regulatory Framework for Financial Institutions) a Zambian Perspective introduces, illustrates, and discusses the many aspects of financial institution regulation. The book is unique in that, it explains how the different segments of financial markets are regulated using Zambia as a case study. The book introduces theory on financial systems' regulation and explains the various boundaries that exist within the financial system for the purpose of enforcing regulation. The book also looks at how money laundering and financial crime are prevented around the world. Content. Overview of the Financ...