**SYLLABUS**

**LAW 6560**

**Securities Regulation (Spring 2018)**

PROFESSOR: Steven McNamara

OFFICE: Office # 363

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mcnamara@law.ufl.edu

CLASSROOM: Room 345

CLASS TIME: Tuesday: 2:30 PM to 3:45 PM

Thursday: 2:30 PM to 3:45 PM

OFFICE HOURS: Wednesday: 11:00 AM to 12:00 PM

Friday: 11:00 AM to 12:00 PM

FINAL EXAM: Thursday, May 3, 8:30 AM

**COURSE DESCRIPTION**

Corporate financing transactions are some of the common corporate transactions in the practice of business and corporate law. Whenever a corporation seeks financing, the laws of securities regulation are always involved. This course teaches the basic structure of securities regulation with a focus on federal securities regulation.

Many students find Securities Regulation a challenging course, with legal concepts that require background knowledge in business, economics, finance, and accounting. These concepts will be discussed in class. Your attendance and preparation is essential therefore to your success in this course. You are expected to attend class regularly.

**TEXTBOOK**

James Cox, Robert Hillman & Donald Langevoort, Securities Regulation: Cases and Materials (Aspen 8th ed. 2017)

James Cox, Robert Hillman & Donald Langevoort, Securities Regulation: 2017 Selected Statutes, Rules, and Forms (Aspen 2017)

**COURSE WORKLOAD**

Securities Regulation is a 3-credit course. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Securities Regulation has 3 “classroom hours” of in-class instruction each week, requiring at least 6 hours of preparation outside of class. Accordingly, you will have about 60-80 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, as well as discussion problems that require thoughtful advance preparation, you should spend at least one hour on every 10-15 pages of reading.

**UNIVERSITY POLICY ON ACCOMODATING STUDENTS WITH DISABILITIES**

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to Dean Inman in the College of Law Student Affairs Office when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

**COURSE GRADING**

Your grade will be based on a final exam only. The final exam will be an in-class exam. Exam grades are done on a blind basis. All grades are final. There will be no regrading or revisions from me, except to correct any mathematical or clerical errors in computing the final score. The instructor will adhere to the College of Law’s grade distribution policy in preparing final grades for this course.

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| **Letter Grade** | **Point Equivalent** |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| F (Failure) | 0.0 |

**FINAL EXAM FORMAT**

**The final exam will be open casebook**. There are no restrictions on what you can write into the book. You will also be allowed to bring in an outline or notes with the following restrictions: **10 pages on 8x11 sheets of paper, front and back permitted, handwritten or typed notes permitted, no margin or font restrictions**. If a problem on the exam requires statutes, they will be provided in the exam.

The final exam may have essay, short answer, and multiple choice questions. Short answer and multiple choice questions are fairly self-explanatory. Essay questions will be an issue-spotting, analysis, or problem-solving format typically seen in most law school exams. The issues and topics for exam questions will come from the course readings and class discussions. The exam will fairly reflect the work that is done in the course. This means that the best way to prepare for the exam is to do the class readings and to attend class.

**UNIVERSITY POLICY ON ACADEMIC MISCONDUCT**

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**STUDENT LEARNING OUTCOMES**

Securities Regulation is an upper level course covering securities and corporate financing issues. Students will be expected to:

* Understand the legal framework governing the issuance of stocks and bonds in the United States
* Identify whether an investment opportunity is a “security” subject to Federal regulation
* Understand the underwriting process for securities and how IPOs work
* Understand the information reporting requirements for public companies under the securities laws
* Understand the commonly used exemptions from registration, and how and why businesses use them
* Understand the bases for liability under the securities laws
* Understand insider trading doctrine
* Pay attention to the broader economic and technological factors that have affected the securities industry in the 20th and 21st centuries

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| **Class #** | **Topics, Issues, and Cases** | **Text pages and statutes** |
| 1.1 | CHAPTER 1: SECURITES REGULATION FRAMEWORK   * Securities transactions * Legal framework of securities regulation * Financing startups   CHAPTER 2: DEFINITION OF SECURITY   * Defining “investment contract” * *SEC v. W.J. Howey Co*. | 1-27  29-38  33 Act, § 2(a)(1)  34 Act, § 3(a)(10) |
| 1.2 | CHAPTER 2: DEFINITION OF SECURITY   * Howey applied * *United Housing Foundation, Inc. v. Forman* * *SEC v. Edwards* * Associational formalities * *United States v. Leonard* * Real estate as securities * *Salameh v. Tarsadia Hotel* | 38-71 |
| 2.1 | CHAPTER 2: DEFINITION OF SECURITY   * Notes as securities * *Reves v. Ernst & Young*   CHAPTER 3: UNDERSTANDING INVESTORS   * Efficient market hypothesis * Behavioral Economics * Institutionalization * Globalization | 71-88  89-104 |
| 3.1 | CHAPTER 4: PUBLIC OFFERING   * Underwriting and underwriters * Market for initial public offerings * Panoramic view of the registration statement   **Note:** Briefly review the listed items in Schedule A (statutory supplement) to get a sense of the information requirement of a registration statement | 105-138  33 Act § 5(a)-(c),  § 7(a), § 11(a)-(b), § 12 |
| 3.2 | CHAPTER 4: PUBLIC OFFERING   * Registration of the unseasoned issuer * Gun jumping concerns for the IPO | 138-162 |
| 4.1 | CHAPTER 4: PUBLIC OFFERING   * Gun jumping concerns for the IPO * Public offers by seasoned and well-known seasoned issuers | 162-189 |
| 4.2 | CHAPTER 4: PUBLIC OFFERING   * Shelf registration under Rule 415 * Updating and correcting the registration statement * Trading practice rules | 189-209 |
| 5.1 | FACEBOOK FORM S-1 (amended) (posted on Canvas)   * Front cover materials * Pages 1-150, F-1 to F-6 * Answer posted questions   **Notes:**  1. Review the listed items in Schedule A (see statutory supplement) the information requirement of a registration statement  2. Review table of contents of Regulation C and Regulation S-K (see statutory supplement) | Questions on Facebook Form S-1 posted on Canvas |
| 5.2 | CHAPTER 5: EXEMPT TRANSACTIONS   * Private offering exemption * *SEC v. Ralston Purina Co.* * *SEC v. Kenton Capital, Ltd*. * Regulation D and limited offering exemptions * Mark v. FSC Securities Corp.   Rules 147 and Rule 504 have been amended effective 2017. Rule 147A is new. | 249-285  33 Act, § 3(a)(11), § 4(a)(2)  Rules 147 & 147A, Rule 504 |
| 6.1 | CHAPTER 5: EXEMPT TRANSACTIONS   * Regulation D and limited offering exemptions   + *SEC v. Ishopnomarkup.com, Inc*. * Crowdfunding exemption * Interstate offering exemption * Employee benefit plans and contracts relating to compensation | 285-320  33 Act, § 4(a)(6)  Rule 506  Rule 701 |
| 6.2 | CHAPTER 5: EXEMPT TRANSACTIONS   * Regulation A * Section 3(b)(2) * Integration of offerings * *In the Matter of Kevin D. Kunz* * State exemptions   CHAPTER 6: SECONDARY DISTRIBUTIONS   * Underwriter concept and sales for an issuer * SEC v. Chinese Consol. Benevolent Association * Purchase from an issuer | 320-338  339-358  Rule 251 |
| 7.1 | CHAPTER 6: SECONDARY DISTRIBUTIONS   * Control person distributions * *United States v. Wolfson* * Rules 144 and 144A | 358-387  Rules 144, 144A |
| 7.2 | CHAPTER 6: SECONDARY DISTRIBUTIONS   * Section 4(1-1/2) exemption * *Ackerberg v. Johnson* * Resales under the blue sky laws   CHAPTER 8: EXEMPT SECURITIES   * Overview of Section 3 * Municipal securities * *Dolphin and Bradbury v. SEC* * *SEC v. GLT Dain Rauscher* | 387-398  435-461 |
| 8.1 | CHAPTER 8: EXEMPT SECURITIES   * Securities issued or guaranteed by a bank * Commercial paper * Securities of nonprofit issuers * Insurance and annuities * *Otto v. Variable Annuity Life Insurance Co*.   CHAPTER 9: LIABILITY UNDER THE SECURITIES ACT   * Section 11 * *Hertzberg v. Dignity Partners, Inc.* * *Escott v. BarChris Construction Co*. | 462-486  487-510  Rule 151 |
| 8.2 | CHAPTER 9: LIABILITY UNDER THE SECURITIES ACT   * Section 11 * *In re WorldCom, Inc. Securities Litigation* * *Akerman v. Oryx Communications, Inc*. * Section 12(a)(1) * *Pinter v. Dahl* * Section 12(a)(2)   + *Gustafson v. Alloyd Co.*   + *Hyer v. Malouf* | 510-546  33 Act, § 11,  § 12(a)(1),  § 12(a)(2) |
| 9.1 | CHAPTER 9: LIABILITY UNDER THE SECURITIES ACT   * Section 17(a) * *Aaron v. SEC*     CHAPTER 11: FINANCIAL REPORTING   * Disclosure requirements of public companies * “Fairly represents” requirement   + *United States v. Simons* * Internal controls   + *SEC v. World-Wide Coin Investments Ltd.* | 546-549  577-600  33 Act, § 17(a)  SOX § 404 |
| 9.2 | CHAPTER 11: FINANCIAL REPORTING   * Strengthening the integrity of financial reporting * Management discussion and analysis section of   + *Panther Partners Inc. v. Ikanos Communications Inc.*   FACEBOOK FORM 10-K (posted on Canvas)   * Read the Form 10-K and answer posted questions | 600-617  Questions on Facebook Form 10-K posted on Canvas |
| 10.1 | CHAPTER 12: MATERIALITY OF INFORMATION   * Materiality orthodoxy * Speculative information and materiality * *Basic Inc. v. Levinson* * “Total mix” of information and market efficiency * *Wielgos v. Commonwealth Edison Co.* * *Eisenstadt v. Centel Corp.* * *Omnicare, Inc. v. Laborers’ Dist. Council Pension Fund* | 619-650 |
| 10.2 | CHAPTER 12: MATERIALITY OF INFORMATION   * Forward-looking information * *Kaufman v. Trump’s Castle Funding* * *Asher v. Baxter International, Inc.* * SEC and corporate governance * *In the Matter of Franchard Corp*. | 650-685 |
| 11.1 | CHAPTER 12: MATERIALITY OF INFORMATION   * Materiality of being a “bad” citizen * *SEC v. Jos. Schlitz Brewing Co.*   CHAPTER 13: FRAUD   * Fraud “in connection with” purchase or sale of securities * Private rights of action under Rule 10b-5 * Scienter * *Tellabs, Inc. v. Makor Issues & Rights, Ltd.* * *Makor Issues & Rights, Ltd. V. Tellabs, Inc.* | 686-693  695-719  Rule 10b-5 |
| 11.2 | CHAPTER 13: FRAUD   * Affirmative duty to disclose * *Gallagher v. Abbott Laboratories, Inc.* * Who is liable? * *Janus Capital Group Inc. v. First Derivative Traders* * Reliance * *Affiliated Ute Citizens v. United States* * *Halliburton Co. v. Erica P. John Fund, Inc.* | 719-750 |
| 12.1 | CHAPTER 13: FRAUD   * Loss causation and damages * *AUSA Life Insurance Co. v. Ernst & Young* * *Metzler Investment GMBH v. Corinthian Colleges, Inc.* * Federalism and Rule 10b-5 * Manipulation * *United States v. Mulheren* | 750-781 |
| 12.2 | CHAPTER 14: ENFORCEMENT OF SECURITIES LAWS   * More on the private enforcement of securities laws * Who’s liable for securities fraud * *SEC v. Apuzzo* * Control person and respondeat superior liability * *Donohoe v. Consolidated Operating & Production Corp.* * Rescission and restitution of contracts * *Berckeley Inv. Group, Ltd. V. Colkitt* | 783-817 |
| 13.1 | CHAPTER 14: ENFORCEMENT OF SECURITIES LAWS   * Responsibility and its costs * Statutes of limitations * Enforcement actions by SEC * *KPMG, LLP v. SEC* | 818-847 |
| 13.2 | CHAPTER 14: ENFORCEMENT OF SECURITIES LAWS   * Enforcement actions by SEC * *SEC v. Citigroup Mkts.* * SEC’s power to discipline professionals * Duties of the securities lawyer * *SEC v. National Student Marketing Corp.* | 847-894 |
| 14.1 | CHAPTER 14: ENFORCEMENT OF SECURITIES LAWS   * Enforcement of securities laws in criminal justice system * *United States v. Dixon*   CHAPTER 15: REGULATION OF INSIDER TRADING   * Sources of duty to abstain or disclose * *Chiarella v. US* * “Outsider” trading—corporate connections * Misappropriation theory * *US v. O’Hagan* | 894-904  905-925 |
| 14.2 | CHAPTER 15: REGULATION OF INSIDER TRADING   * Tippers and tippees * *Dirks v. SEC* * Rule 14e-3 * Enforcement of insider trading prohibitions * Insider trading and section 16 * *Huppe v. WPCS International Inc.* * Insider trading abroad | 925-955  Rule 14e-3  Section 16(b) |
| 15.1 | OVERFLOW CLASS |  |
|  | **FINAL EXAM: May 3, 2018, 8:30am to 12:30pm** |  |