

SECURITIES REGULATION

PROSPECTUS

Spring, 2019

Description of Offering

This Prospectus relates to an offering of participation in a class exploring the federal regulation of securities in the United States. This class will focus on the two federal securities statutes (Securities Act of 1933 and Securities Exchange Act of 1934) that are generally applicable to companies seeking to sell their securities and to companies that are already public. We shall emphasize the impact of these statutes on the companies themselves rather than on the various intermediaries in the securities markets (*e.g.*, brokers, exchanges, rating agencies, transfer agents, etc.). We shall start with the Securities Act of 1933 and the definition of a security for purposes of the statutes, then discuss how companies may sell securities both privately and publicly and review certain of the liability provisions of the Securities Act of 1933. We'll then move to a review of certain provisions of the Securities Exchange Act of 1934 dealing primarily with insider trading, shareholder voting, and liability for misstatements and omissions.

Management of the Class; Office Hours; Contact Information

Professor Christopher P. O'Connell. As an adjunct professor, I don't have an office on campus and cannot commit to specified office hours. On the other hand, my firm is located in downtown Los Angeles two blocks from the terminus of Metro's Expo line. I am more than happy to meet with students either one-on-one or in small groups at any time at your convenience in my office so long as you contact me at least a day or two in advance to schedule an appointment. My contact information is: office telephone – 213-683-6678; email – coconnell@pmcos.com. Although I post information on Blackboard, I do not check my law school email with any regularity; so, to ensure that I receive and read your email, please use my office email address.

Objectives of the Class

- Identify a security and distinguish it from other investment vehicles
- Understand the imperative and process of registration of sales of securities
- Analyze a securities transaction to determine whether exemption from registration is available
- Determine whether one is an insider for purposes of strict liability for purchasing and selling securities within a six month period
- Parse the liability rubric under the securities laws: misstatement of material fact or omission of material fact necessary in order to make disclosure not misleading
- Understand the liability for trading on “inside information” and the limitations on that liability
- Distinguish standards for liability between the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended
- Understand how shareholders exercise control over public corporations through proxy solicitations and the limitations in that process

Conditions to Participation

Choi and Pritchard's Securities Regulation, Cases and Analysis, 4th edition (2015) and the supplemental materials. Please note that the casebook does not contain the texts of the statutes nor the texts of the rules cited in the Plan of Operation below. The statutes and the relevant rules are in the supplemental materials. It is imperative that you have these materials with you in class and as you study the casebook because the statutes and the rules provide the context for virtually all of the cases in the textbook. All of the cases specifically identified in the reading assignments are in the supplemental materials. They are in addition to, and not in lieu of, the cases in the assigned readings in the text.

Keys to Successful Participation

Class Conduct

The Securities Regulation text contains a number of hypotheticals that precede the opinions. After we address each concept, we shall, cooperatively,

attempt to apply the pertinent cases, statutes, and rules we've reviewed to those hypotheticals in an effort to understand how the concepts apply to real world problems.

Please be prepared to state the cases and participate in the discussions—particularly as we address the hypotheticals—and do not be afraid to ask questions at any time. Although class will consist primarily of lecture, I shall ask for your assistance on a regular basis.

As noted in the Plan of Operations below, the reading assignments may be rather lengthy because we meet only once a week.

In order to do this collegially, please select a seat in the classroom that makes you comfortable but is relatively close to the front and try to use the same seat for each class so that we can get to know each other.

Final Exam

The final exam will consist of approximately 75 multiple choice questions and 4 short answer questions. It will be open book. You will select the 4 short answer question to which you wish to respond from 2 groups of 3 questions each. You must select 2 questions from each group. Both the multiple choice and short-answer questions will be approximately evenly divided between those addressing the Securities Act of 1933 and those addressing the Securities Exchange Act of 1934. Grades will be based approximately 75% on the multiple choice and 25% on the short answers. There will be no extra credit for answering more than 4 of the short answer questions.

Risk Factors

Securities regulation is highly dynamic. Securities regulation is subject to natural evolutionary changes as well as occasional revolutionary changes. Unlike human evolution and even the evolution of many other areas of the law, these changes occur rapidly and have accelerated over the past several years. Thus, the law today is unlikely to be the law tomorrow; but, if we understand the direction and drivers of the evolution, we should be able to understand the law as it evolves. For this reason and unlike many other texts and courses, the Securities Regulation text spends, and we shall spend, a fair amount of time studying older

cases and then the regulations adopted from time to time to address the issues raised in those cases in order to attempt to understand the arc of the evolution.

Plan of Operations

I. Session 1 - Introduction

A. Reading Assignment – Chapter 1

- B.** We shall discuss the need for, and scope of, securities regulation; identify the various federal securities statutes; identify other sources of securities regulation; identify the various federal and independent agencies responsible for enforcement of the securities laws; and discuss, in general, the evolution of securities regulation and the sometimes competing forces that tend to shape that evolution

II. Sessions 2 and 3 - Definition of a Security; Exempt Securities

A. Reading Assignment –

- 1.** Chapter 3;
- 2.** Sections 2(a)(1) and 3(a)(1) – (8) of the Securities Act of 1933;
- 3.** *Steinhardt Group v. Citicorp*
- 4.** *SEC v. Koscot Interplanetary*
- 5.** *Marine Bank v. Weaver*
- 6.** *Banco Espanol de Credito v. Security Pacific National Bank*

- B.** Before we can begin to deal with the other securities regulation concepts, we must understand what a security is. Most of the law in this area is jurisprudential, rather than statutory or regulatory. With the recent advent of initial coin offerings, this has become a very current topic for the securities bar. We shall address three fundamental issues found in the statutory definition: stock, note, and investment contract.

III. Session 4 - Registration Process

A. Reading Assignment –

- 1.** Chapter 7;

2. Sections 5 and 10 of the Securities Act of 1933
3. Rules 134, 135, 137, 138, 139, 163, 163A, 164, 168, 169, 405, 415, 430A, 430B, 433

B. Now that we have discerned the types of investments that may be considered securities, we address the primary purpose of the Securities Act of 1933, i.e., the registration of the sale of those securities. We shall view the process of offering securities to the public through the lens of Section 5 and discover how the regulation of that process has evolved over the years and continues to evolve. While there are a number of rules to be considered, we shall see that we can break those rules down into categories that should make them more comprehensible. We should understand how these rules work and how they interplay with the registration process.

IV. Session 5 – Exempt Transactions

A. Reading Assignment –

1. Chapter 9
2. Sections 3(a)(9) - (11), 3(b), 4(a)(2), 4(a)(7) and 4A of the Securities Act of 1933
3. Regulations A, D, and S
4. Rules 147, 147A

B. Having discovered how cumbersome, costly, and time-consuming the registration process can be, particularly for new issuers, we turn now to exemptions from this process provided by the Securities Act of 1933. These exemptions are rooted in the statute itself and explicated by an ever changing and expanding set of regulations that have grown out of several seminal cases, which continue to inform the interpretation of the rules.

V. Session 6 – Resales

A. Reading Assignment

1. Chapter 10
2. Sections 2(a)(11) and 4(a)(1) and (3) of Securities Act of 1933

3. Rules 144 and 144A

- B.** Up to this point, we have been concerned with sales of securities by issuers; however, as we've discovered, Section 5 is indifferent as to the identity of the seller and prohibits all sales of securities by any seller that do not comply with the statute. In this session, we'll review what it means to be an "underwriter" under the statute and meet the current iteration of a rule that has alleviated much of the uncertainty that has historically surrounded this issue and has provided much clarity to the ability of investors in exempt offerings to resell their securities.

VI. Session 7 - Materiality

A. Reading Assignment

- 1.** Chapter 2
- 2.** *TSC v. Northway*

- B.** Fundamental to liability under both Sections 11 and 12 under the Securities Act of 1933 and Sections 10 and 14 under the Securities Exchange Act is the concept of materiality. In this session, we'll explore the meaning of this term, which has been defined and refined over the course of considerable jurisprudence, in some depth.

VII. Session 8 – Civil Liability under the Securities Act of 1933

A. Reading Assignment

- 1.** Chapter 8
- 2.** Sections 11 and 12 under the Securities Act of 1933
- 3.** *Ackerman v. Oryx Communications*
- 4.** *Hertzberg v. Dignity Partners*

- B.** What happens if the seller does not comply with the registration requirements of Section 5 and doesn't qualify for an exemption? What happens if, in attempting to comply with the registration

requirements, the seller misstates or omits material information? Who is entitled to assert a claim against a seller or others participating in a sale? Against whom may that claim be asserted? What is the measure of damages? These are the issues discussed in this session.

VIII. Session 9 - Overview of certain provisions of the Securities Exchange Act of 1934; Insider Trading

A. Reading Assignment

1. Chapter 6
2. Sections 10, 12, 13, 14(a), and 16 of the Securities Exchange Act of 1934
3. Rules 16a -1, 16a-2, 16a-3, and 16b-3
4. *Smolowe v. Delendo*
5. *Kern County Land v. Occidental Petroleum*

- B.** The apparent prevalence and unfairness of insider trading was one of the primary drivers for the adoption of the Securities Exchange Act of 1934. The statute addresses insider trading in two sections: 10 and 16, the first subjectively and the second objectively. The Securities Regulation text does not cover Section 16 at all; so we shall limit our discussion to the text of the statute and related rules and to two cases, the first explaining the calculation of damages for violation of the statute and the second containing an exception to a statute that doesn't appear to admit of exceptions.

IX. Session 10 – Insider Trading (cont'd)

A. Reading Assignment

1. Chapter 6
2. Section 10(b) of the Securities Exchange Act of 1934
3. Rule 10b-5
4. *SEC v. Texas Gulf Sulphur* (just the majority opinion)
5. *United States v. Salman*
6. *United States v. Martoma* (2018 opinion)

- B.** Section 10(b) of the statute covers a multitude of sins, prominent among which is trading on the basis of non-public or “insider” information. We’ll examine both the classical and misappropriation theories on which most insider trading prosecutions are based, as well as the concept of insiders tipping outsiders, which has been the subject of very recent Supreme Court jurisprudence, and what constitutes “inside information.”

X. Session 11 – Shareholder Voting

A. Reading Assignment

- 1.** Chapter 11
- 2.** Section 14(a) of the Securities Exchange Act of 1934
- 3.** Regulation 14A
- 4.** *Trinity Wall Street v. Walmart*

- B.** Section 14(a) of the statute prescribes how and to what extent shareholders of public issuers can exercise their state law rights to elect directors, vote on other fundamental questions, and propose their own resolutions. It contains its own anti-fraud rule, which parallels those already covered; and its regulations address both the procedural and substantive rights of shareholders to have their proposals included in the issuer’s proxy statement.

XI. Sessions 12 and 13 - Civil liability under Section 10 of the Securities Exchange Act of 1934

A. Reading Assignment

- 1.** Chapter 5
- 2.** *In re: Time Warner Securities Litigation*

- B.** Section 10 is the catch-all liability section under the securities laws. Although it is somewhat akin to common law fraud in the elements of liability that must be pled and proved, there are very important differences, particularly procedurally. We shall spend these last two sessions seeking to understand the procedural and substantive parameters of this liability.

- XII.** Session 14 – This is a review session. There is no reading assignment. We shall review highlights of the entire semester’s exploration of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Academic Conduct

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems

Student Counseling Services (SCS) – (213)740-7711 – 24/7 on call. Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. engemannshc.usc.edu/counseling.

National Suicide Prevention Lifeline – 1(800)273-8255. Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. www.suicidepreventionlifeline.org.

Relationship and Sexual Violence Prevention Services (RSVP) – (213)740-4900 – 24/7 on call. Free and confidential therapy services, workshops, and training for situations related to gender-based harm. engemannshc.usc.edu/rsvp.

Sexual Assault Resource Center. For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: sarc.usc.edu.

Office of Equity and Diversity (OED)/Title IX Compliance – (213)740-5086. Works with faculty, staff, visitors, applicants, and students around issues of protected class. equity.usc.edu.

Bias Assessment Response and Support. Incidents of bias, hate crimes, and microaggressions need to be reported allowing for appropriate investigations and response. studentaffairs.usc.edu/bias-assessment-response-support.

The Office of Disability Services and Programs. Provides certification for students with disabilities and helps arrange relevant accommodations. dsp.usc.edu.

Student Support and Advocacy – (213)821-4710. Assists students and families in resolving complex issues adversely affecting their success as a student, e.g. personal, financial, and academic. studentaffairs.usc.edu/ssa.

Diversity at USC. Information on events, programs, and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. diversity.usc.edu.

USC Emergency Information. Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus unfeasible. emergency.usc.edu.