Complex Securities Investigations
Fall 2016

Syllabus
(Updated August 28, 2016)

Professors: Kevin Muhlendorf and Albert Stieglitz
Location: [Redacted]
Class Days: Thursdays 7:55- 9:55 p.m.

General Information:

Course overview and objectives: This course is designed to provide students with an understanding of issues faced by parties to complex securities investigations. Relevant statutes, rules, and significant and illustrative cases (particularly recent ones), as well as SEC and DOJ policy initiatives will be examined, along with practical problems faced by those conducting and subject to investigations. In addition, a limited amount of criminal and civil procedure will be discussed in connection with the various phases of complex securities investigations.

Grading and Final Exam: Your grade for the course will be based on attendance, class participation and a final exam. The final exam will be a take-home, open-book exam to be completed during the exam period (which runs December 6-17, 2016).

Readings: Assigned readings will be identified on this syllabus, which will be updated periodically and posted on the CANVAS site for this course. Please check CANVAS regularly for additional and/or updated materials. Nearly all assigned readings will be available at a URL identified in the syllabus; to the extent an assigned reading is not available as such, it will be provided directly to students via handout and/or email. Please do not read more than two weeks ahead as readings may change based on the availability of guest speakers.

Class Participation: The classroom setting for this course will be interactive, with students assigned to present various aspects of cases, or sometimes entire cases. Students are also encouraged to raise issues and questions on topics covered during class sessions.

Contact information: [Redacted] We will be available after class for meetings and before class on request.
PART I: THE “WHAT”

September 1: Introduction  
- Expected topics to include:  
  - Administrative matters:  
    - Who’s who  
    - Goals for the class  
    - Structure and expectations  
    - Exam  
  - Basics/Background:  
    - What is a “complex securities investigation?”  
    - What players are involved?  
    - What violations are at issue?  
    - Notable cases and how they have evolved  
- Assignment for this class:  
  - There is no specific reading assignment, but to get class participation started, we would appreciate it if you would identify a securities case (criminal or civil) of the past 5-10 years you believe is notable, and explain why.

September 8: Statutory Framework  
- Expected topics to include:  
  - Frequently charged Title 18 offenses  
  - Frequently charged Title 15 violations  
- Reading assignments for this class:  
  - Statutes (and regulations):  
    - Title 15:  
      - 15 U.S.C. 77h-1  
      - 15 U.S.C. 77x  
    - Title 18:  
      - 18 U.S.C. 1341  
      - 18 U.S.C. 1343  
      - 18 U.S.C. 1348  
      - 18 U.S.C. 371 & 349  
      - 18 U.S.C. 1001  
      - 18 U.S.C. 1505  
      - 18 U.S.C. 1956/7  
      - 17 C.F.R. § 240.10b–5  
  - Cases:  
    - Flannery v. SEC, 810 F.3d 1 (1st Cir 2015)  
    - United States v. Litvak, 808 F.3d 160 (2d Cir. 2015)  
September 15: Companies & Whistleblowers

- Expected topics to include:
  - Basics of company structure
  - Role and importance of internal controls, legal, and compliance
  - Significance/impact of regulators

- Reading assignments for this class:
  - SOX:
    - 18 U.S.C. §§ 1519, 1520
  - Whistleblower FAQ from SEC website: https://www.sec.gov/about/offices/owb/owb-faq.shtml
  - *Berman v. Neo@Ogilvy LLC*, 801 F.3d 145 (2d Cir. 2015)

September 22: The FCPA

- Expected topics to include:
  - Anti-bribery provisions
  - Accounting provisions
  - Cases

- Reading assignments for this class:
  - 15 U.S.C. §§ 78m
  - *United States v. Esquenazi*, 752 F.3d 912 (11th Cir. 2014)
PART II: THE “WHO”

September 29: The SEC
• Expected topics to include:
  o Introduction to structure and role of the SEC
  o Other relevant federal and state regulators
  o Current SEC enforcement initiatives

• Reading assignments for this class:
  o SEC Enforcement Manual, Sections 3.12-3.26; 3.2.7.4; 3.3 – 4.1; 4.5-4.7; 5.1 – 5.2.2; available at https://www.sec.gov/enforce
  o Tilton v. SEC, 2016 WL 3084795 (2d Cir. June 1, 2016)
  o SEC v. Dresser Industries, 628 F. 2d 1368 (D.C. Cir. 1980)

October 6: The Department of Justice
• Expected topics to include:
  o Introduction to the structure and role of the Department of Justice
  o Typical tools of criminal investigations (including grand jury practice and immunity)
  o Law enforcement partners
  o Current DOJ enforcement trends

• Reading assignments for this class:
  o DOJ Organizational Charts:
    ▪ Department-wide (available at https://www.justice.gov/agencies/chart)
    ▪ Criminal Division (available at https://www.justice.gov/criminal/sectionsoffices/chart)
  o United States Attorneys’ Manual
  o Federal Rule of Criminal Procedure 6
  o “Yates Memo” (available at https://www.justice.gov/dag/file/769036/download)
PART III: THE “HOW”

October 13: Enforcement Challenges
• Expected topics to include:
  o Conducting parallel investigations
  o Gathering evidence abroad
• Reading assignments for this class:
  o United States v. Stringer, 535 F. 3d 929 (9th Cir. 2008)

October 20: Mechanics of Internal Investigations
• Expected topics to include:
  o Considerations for counsel
• Reading assignments for this class:
  o Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission In the Representation of an Issuer; 17 C.F.R. 205.1 – 205.7; https://www.law.cornell.edu/cfr/text/17/part-205
  o May 20, 2015 speech by DOJ Fraud Section Chief Andrew Weissmann (available at https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/06/08/06-02-2015-aci-keynote.pdf)

October 27: Privileges
• Expected topics to include:
  o Identification of relevant privileges and exceptions
• Reading assignments for this class:
  o United States v. Rehule, 583 F. 3d 600 (9th Cir. 2000)
  o In re Grand Jury Subpoena, 415 F. 3d 334 (4th Cir. 2005)
  o United States v. Schwimmer, 892 F. 2d 237 (2d Cir. 1989)
PART IV: THE END

November 3: Corporate Charges and Resolutions

- Expected topics to include:
  - Forms of criminal resolutions (charges, DPAs, NPAs, declinations)
  - Forms of civil resolutions
  - Calculating penalties
  - Monitorships
  - Judicial scrutiny

- Reading assignments for this class:
  - SEC Enforcement Manual §2.4-2.5.2.3 (Wells Process and Action Memos);
  - SEC Enforcement Manual §§ 6 – 6.3 (Cooperation, DPAs, NPAs, Immunity)
  - U.S. v. Fokker Services B.V., 818 F.3d 733 (D.C. Cir. 2016)
  - DOJ Fraud Section FCPA Enforcement Plan and Guidance (available at https://www.justice.gov/opa/file/838386/download)

November 10: Individual Charges and Pretrial Resolutions

- Expected topics to include:
  - Types of charging instruments
  - What happens after a charge (arrest/extradition, initial, bail, etc.)
  - Types of pretrial resolutions (pleas/cooperation, NPAs, DPAs)

- Reading assignments for this class:
  - Federal Rules of Criminal Procedure 4, 5, 5.1, 7, 9, 10, 11
  - 18 U.S.C. §§ 3141, 3142, 3145
November 17: Trial and Sentencing

- Expected topics to include:
  - Speedy Trial
  - Evidentiary considerations
  - Discovery
  - Common subjects of pretrial litigation
  - Presentation
  - Jury instructions
  - Sentencing (including Sentencing Guidelines)

- Reading assignments for this class:
  - Selected pretrial briefing in *United States v. Mitchell J. Stein* (via handout/email)
  - *United States v. Mahaffy*, 693 F.3d 113 (2d Cir. 2012)
  - Selected sentencing briefing in *United States v. Mitchell J. Stein* (via handout/email)

November 24: NO CLASS (THANKSGIVING)

December 1: Exam review