DISCLOSURE UNDER THE FEDERAL SECURITIES LAWS

GRADUATE DIVISION, GEORGETOWN UNIVERSITY LAW CENTER
2016 FALL SEMESTER

Professor:
Stephanie Tsacoumis

This course is scheduled to meet on Mondays, 7:55 p.m. to 9:55 p.m. in McDonough 160. Class credit will be based on take-home, open book final examination. Class participation is encouraged.

The course is predicated on federal securities law statutes, regulations, forms and other materials which are found at www.sec.gov. Supplemental materials are noted below, and will be posted if not otherwise publicly available.

A basic course in Securities Regulation is a prerequisite and a general familiarity with the federal securities laws is assumed.

First Class Monday, August 29


Our first class will consist of a condensed review of the framework of the federal securities laws and related disclosure obligations. Topics to be covered will include:

- Securities Act registration process, including disclosure during the pre-filing period, waiting period and post-effective period;
- Securities Exchange Act periodic disclosure requirements; and
- Overview of the impact of the JOBS Act

Reading:
Securities Act of 1933 (“Securities Act”) Sections 2, 5, 6, 7, 8, 10 and 19 (JOBS Act Section 101(a)(definition of “emerging growth company”)
Securities Act Schedule A
Securities Exchange Act of 1934 (“Exchange Act”), Sections 12(a), 12(b), 12(g), 13(a), 13(b) and 15(d)

Second Class Monday, September 12

Duty to Disclose

This class will focus on the duty to disclose and the critical concept of materiality. The concepts of periodic and current reporting will be addressed. Different categories of registrants will be explained, including the new category of “emerging growth companies.” The consequences for failing to disclose material information will be discussed.
Reading:
Securities Act Rule 405 (definitions of "ineligible issuer," "material," and "well-known seasoned issuer") and Rule 408, which correspond to Exchange Act Rules 12b-2 and 12b-20
Staff Accounting Bulletin 99
Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27 (2011)
Exchange Act Forms 10-K and 10-Q (skim for general background)
Exchange Act Form 8-K (review line items)
Securities Act Sections 11 and 12
Securities Act Rule 176
Exchange Act Rule 10b-5

Third Class Monday, September 19
Registration and Reporting
This class will focus on the Securities Act registration, Exchange Act registration and the Exchange Act reporting system.

Reading:
Securities Act Forms S-1, S-3 and S-8
Securities Act Rules 460, 461 and 473
Exchange Act Sections 2, 16(a) and 16(b)
Exchange Act Rules 12g-1 (as amended by JOBS Act Section 601(a)), 12g-4, 12h-3, 13a-1, 13a-11, and 13a-13
Exchange Act Forms 8-A, 10 and 15
Exchange Act Forms 10-K, 10-Q and 8-K
Exchange Act Rule 12b-2 (definition of accelerated filer, large accelerated filer, and smaller reporting company)
Exchange Act Rules 12b-23, 12b-25, and 12b-32

Fourth Class Monday, September 26
Regulation S-K: Business, Management and Beneficial Ownership Disclosure
This is the first of several classes devoted to Regulation S-K, the cornerstone of the integrated disclosure system. This class will focus on disclosure relating to business, management, security holders, and corporate governance.

Reading
Business: Regulation S-K Items 101, 102, 103
Securities of the registrant: Regulation S-K Items 201 and 202
Management and security holders:
Exchange Act Rule 13d-3
Regulation S-K Items 401, 403 and 404
Fifth Class  Monday, October 3

Regulation S-K: Financial Disclosure

This class will focus on the financial statements and related disclosure requirements of Regulation S-X and Regulation S-K (other than management’s discussion and analysis).

Reading:

Financial Disclosure Requirements
- Regulation S-X: Rules 1-02, 3-01, 3-02 and 3-12
- Regulation S-X: Items 301, 302, 304, and 305
- JOBS Act Section 102(b)

Controls and Procedures
- Exchange Act Rule 13a-14, 13a-15(e)
- Regulation S-K: Items 307, 308, and 308T
- Regulation S-X: Rules 2-02 and 2-02T
- JOBS Act Section 103

Non-GAAP
- Regulation G
- Regulation S-K: Items 10(a), 10(e), and 10(f)
- Form S-1: Items 9 and 11
- Form 10-K: Items 1, 2, 3, 5, 6, 7A, 8, 9 and 9A

Sixth Class  Tuesday, October 11

Regulation S-K: Executive Compensation

This class will focus on the requirements of Regulation S-K relating to executive compensation, including recent regulatory developments.

Reading:

Regulation S-K: Item 402
- JOBS Act Section 102(a)
- Form S-1: Item 11
- Form 10-K: Items 10, 11, 12, and 13

Seventh Class  Monday, October 17

Regulation S-K: Management’s Discussion and Analysis

Most of this class will be devoted to Item 303 of Regulation S-K: Management’s Discussion and Analysis, which deserves special focus and emphasis. Related disclosure items also will be covered.

Reading:

Regulation S-K: Items 303, 304 and 305
- In the Matter of Caterpillar Inc., SEC Release No. 34-30532 (March 31, 1992)*
Litwin v. Blackstone, 634 F. 3d 706 (2d Cir. 2011)
Form S-1: Item 11(h)
Form 10-K: Item 7

**Eighth Class  Monday, October 24**

**Regulation S-K: Registration Statements and Prospectuses**

*This class concludes the in-depth review of Regulation S-K, focusing on the provisions relating specifically to registered offerings.*

**Reading:**

- Securities Act Rule 174
- *Prospectus Disclosure*
  - Regulation S-K: Items 501, 502, 503, 504, 505, 506, 507, 508, 509, 512
- *Registration Statement Provisions – Part II*
  - Regulation S-K: Items 601, 701(a)-(d), and 702
- Form S-1: Items 1-8, 14, 15, 16 and 17
- Form 10-K: Item 15

**Ninth Class  Monday, October 31**

**Communications, Projections, Forward-Looking Disclosures, Selected Disclosure and Free Writing Prospectuses**

*Forward-looking disclosures present special issues and will be addressed. Discussion also will review free writing prospectuses and communications that are not deemed to be a prospectus.*

**Reading:**

- Securities Act Rules 134, 135, 163, 163A, 168, 169
- Section 27A of Securities Act, Section 21E of Securities Exchange Act
- Item 10(b) of Regulation S-K
- Securities Act Rules 134, 135, 164, 175 and 433
- Regulation FD
- In the Matter of Raytheon Company & Franklin Caine, Rel. No. 34-46897 (November 25, 2002)

**Tenth Class  Monday, November 7**

**Shelf Registration Statements and Post-Effective Filings**

*Post-effective disclosure requirements for registered offerings will be addressed. This class also will focus on the concept of delayed and continuous offerings, including automatic shelf registration, and will address disclosure requirements in the pre- and post-effective period for these offerings, including incorporation by reference.*

**Reading:**

- Securities Act Rules 415, 421, 424, 430, 430A, 430B, and 430C
- Regulation S-K: Item 512(a) and (b)
- Form S-3 (General Instructions and Item requirements)
**Eleventh Class  Monday, November 14**

**Going Public**

*Initial public offerings will be discussed in this class. Topics to be covered will include:*

- Preparation of registration statement;
- Due diligence;
- Special disclosure issues in the IPO context; and
- Case study/example.

**Reading:**

IPO Time and Responsibility Schedule (to be provided)
Securities Act Rules 155 and 477

**Review:**

Securities Act Sections 5 and 11
Securities Act Rules 134, 135, 163, 163A, 169 and 433
Securities Act Rules 421, 424 and 430A
Regulation S-K: Item 500 series
Exchange Act Rule 15c2-8
Exchange Act Form 8-A

**Twelfth Class  Monday, November 21**

**Proxy Statements, Director Compensation, “Say-on-Pay” Votes; Voting Procedures**

*This class will focus on proxy statement disclosure requirements, including director compensation, corporate governance disclosures, proxy voting for shareholder meetings (including “say-on-pay” votes), and annual reports to shareholders.*

**Reading:**

Regulation S-K: Items 405, 406 and 407
Exchange Act Sections 10C, 14(a) and (c), 14A, and 14B
Exchange Act Regulations 14A and 14C (skim 14C), focusing on Rules 14a-3, 14a-4, 14a-5, 14a-6, 14a-8, and 14a-21
Schedules 14A and 14C (skim 14C)

**Thirteenth Class  Monday, November 28**

**Overview and Review of Past Exams**