SYLLABUS

FRAUD AND FIDUCIARY DUTIES UNDER THE FEDERAL SECURITIES LAWS

GEORGETOWN UNIVERSITY LAW CENTER

POLICIES

Preparation and participation:

We expect that you will come to class each week having done the reading, and that throughout the class each of you will participate in class discussions. Engaging with the material is critical to understanding it. To that end, Georgetown permits class participation to positively impact your grade and we will consider your participation throughout the semester as we determine final grades. For those students enrolled in the course via the Executive LLM program, class participation can be satisfied by submitting, by 2 pm the day of lecture, at least one question regarding the lecture for the prior week. Questions about the reading for the current week would also be appropriate.

COURSE OUTLINE AND READING ASSIGNMENTS

WEEK ONE:

I. UNIT ONE: FRAUD AND FIDUCIARY DUTIES: AN INTRODUCTION

A. Policies Underlying the Securities Laws


B. The Principal Anti-Fraud Provisions

2. Securities Act of 1933 (“Securities Act” or “‘33 Act”), § 17(a)

3. Securities Exchange Act of 1934 (“Exchange Act” or “‘34 Act”), §§ 9(a), 10(b), 14(a), 14(e) and 15(c), Rules 10b-5, 14a-9 and 14e-3

4. Investment Advisers Act of 1940, § 206

5. SEC Rule 10b-5
C. The Elements of a Claim Under Section 10(b)

**Private Actions:**


**SEC Enforcement Actions:**

7. Exchange Act § 21(d)

8. *SEC v. Rana Research, Inc.*, 8 F.3d 1358 (9th Cir. 1993)

**WEEK TWO:**

II. UNIT TWO: OVERVIEW OF THE EXPRESS REMEDIES FOR “FRAUD”

A. Elements and Scope

9. Securities Act §§ 11 and 12

**The Due Diligence Defense under § 11 of the Securities Act:**

10. *In re Software Toolworks, Inc. Securities Litigation*, 38 F.3d 1078 (9th Cir. 1994)

**The “Seller” Requirement of § 12 of the Securities Act:**


**The Scope of §12(a)(2):**


**Remedy for False Statements in SEC Filings:**

13. Exchange Act § 18


**WEEK THREE**

III. UNIT THREE: THE ELEMENTS OF THE 10b-5 CAUSE OF ACTION

A. Fraud

**False Statement:**


**Non-Disclosures and the Duty Requirement:**


**Statements of Opinion or Belief:**


**WEEK FOUR**

A.  **Projections and Forward-Looking Statements**

22.  Exchange Act § 21E

B.  **Materiality**


C.  **Scienter**

26.  *Sundstrand Corp. v. Sun Chemical Corp.*, 1033 (7th Cir. 1977)

D.  **“In connection with”**


**WEEK FIVE**

E.  **The Purchaser/Seller Requirement**

29.  *O’Brien v. Continental Illinois Bank & Trust Co.*, 593 F.2d 54 (7th Cir. 1979)

F.  **Reliance**

31. *Carr v. Cigna Securities, Inc.*, 95 F.3d 544 (7th Cir. 1996)

**G. Loss Causation**


**H. Damages and Other Remedies**

33. Exchange Act § 28(a)
34. Exchange Act § 29(b)

**WEEK SIX**

**IV. UNIT FOUR: WHO IS LIABLE?**

**A. Primary Liability**


**B. Aiding and Abetting**

39. *Securities & Exchange Commission v. Fehn*, 97 F. 2d 1276 (9th Cir. 1997)

**WEEK SEVEN**

**C. Controlling Person Liability and Agency Theories**

40. Securities Act § 15
41. Exchange Act §§ 20 and 21A

**D. Contribution**

VI. UNIT FIVE: FRAUD IN IMPERSONAL MARKETS – “FRAUD ON THE MARKET” THEORY AND DUTIES TO DISCLOSE

A. Fraud on the Market

47. In re PolyMedica Corp. Sec. Litig., 432 F.3d 1 (1st Cir. 2005)

WEEK EIGHT

B. Duties to Disclose: Duty to Correct and Duty to Update

49. Backman v. Polaroid Corporation, 910 F. 2d 10 (1st Cir. 1990) (en banc)
50. In re Time Warner Securities Litigation, 9 F.3d 259 (2d Cir. 1993)

C. Defenses – “Truth on the Market,” “Bespeaks Caution” and other Defenses

52. Grossman v. Novell, Inc., 120 F.3d 1112 (10th Cir. 1997)

WEEK NINE


VII. UNIT SIX: MARKET ABUSE – INSIDER TRADING AND MANIPULATION

A. Insider Trading: “Disclose or Abstain,” Temporary Insiders, Misappropriation and Tipping

60. United States v. Newman, 773 F.3d 438 (2d Cir. 2014)
61. United States v. Salman, 792 F.3d 1087 (9th Cir. 2015), cert. granted

WEEK TEN

Other Requirements – Relationship of Trust and Confidence; “Use” versus Possession:
62. Securities & Exchange Commission v. Adler, 137 F. 3d 1325 (11th Cir. 1998)
63. SEC Rule 10b5-1 and Rule 10b5-2
64. Securities & Exchange Commission v. Mark Cuban, 620 F.3d 551 (5th Cir. 2010)
66. Securities & Exchange Commission v. Dorozhko, 574 F.3d.42 (2d Cir. 2009)

Prophylactic Provisions:
68. Exchange Act § 16(b)

WEEK ELEVEN

Selective Disclosure and Analysts:
69. Regulation FD
70. State Teachers Retirement Board v. Fluor Corporation, 654 F.2d 843 (2d Cir. 1981)

B. Market Manipulation
72. Exchange Act § 9
75. Sullivan & Long, Inc. v. Scattered Corp., 47 F. 3d 857 (7th Cir. 1995)
C. Fraud by Market Participants and Fiduciaries

**Best Execution:**

76. *Newton v. Merrill, Lynch*, 135 F. 3d 266 (3d Cir. 1998)

**Excessive Mark-Up:**

77. *Grandon v. Merrill, Lynch & Co., Inc.*, 147 F. 3d 184 (2d Cir. 1998)

**Unsuitability:**

78. *Brown v. E.F. Hutton Group*, 991 F. 2d 1020 (2d Cir. 1993)

**Churning:**

79. *Hotmar v. Lowell Listrom & Co.*, 808 F. 2d 1384 (10th Cir. 1987)

**“Sales Practice” Cases:**


**Interpositioning:**

81. *U.S. v. Finnerty*, 533 F.3d 143 (2d Cir. 2008)