COURSE TITLE: GLOBAL DERIVATIVES LAW AND REGULATORY POLICY  
(2 CREDITS, MEETING ONCE A WEEK FOR TWO HOURS, SEMINAR)

BRIEF COURSE DESCRIPTION
This course explores the global legal and regulatory framework for futures, swaps, options, and other derivatives. Students will learn the overall structure and key provisions of the US regulatory framework and policy perspectives, which will be compared and contrasted with those of other jurisdictions, such as the EU and its member countries, with an emphasis on how the statute, regulations, and precedent are addressing (or not addressing) issues of global regulatory import. Discussion topics will include the ways that technology and innovation are changing how the markets for financial derivatives function and are regulated. High-frequency trading (HFT) firms now use algorithmic trading robots to place trades in futures contracts and other financial instruments in fractions of a second, while the markets for futures and other derivatives are witnessing the rise of digital intermediaries – computers and software programs – that perform the role of traditional intermediaries. Class participation is expected. Students will be graded on one long paper and a few smaller writing assignments.

COURSE MATERIALS
The course will use the following textbook, EU SECURITIES AND FINANCIAL MARKETS REGULATION (Oxford EU Law Library 2016) by Niamh Moloney and Gary E. Kalbaugh, DERIVATIVES LAW AND REGULATION (Wolters Kluwer 2014), along with numerous materials that will be provided by the professor, and will include reading the relevant statutes, regulations, and articles. Several readings will come from the professor’s research and writing about financial regulation. Note that students are expected to read the specific statutes and regulations referenced in the decisions and readings.

COMMUNICATIONS
The instructor for this course is Gregory Scopino, an adjunct professor of law with Georgetown University Law Center and a special counsel with the U.S. Commodity Futures Trading Commission. Please do not hesitate to contact Greg if needed. If, at some point during the course, you find that you would like to meet to discuss questions concerning the material, you can make arrangements to set up a time to either meet before/after class or talk on the phone with Greg.

CLASSES
This class is scheduled for two hours per week on Tuesday from 5:45 to 7:45 p.m.

ATTENDANCE AND PARTICIPATION
Students are expected to attend classes regularly and to prepare for classes conscientiously. If you miss class frequently or are unprepared several times, your grade may be lowered. Alternatively, I may ask the Registrar to withdraw you from the course. Sometimes you cannot avoid missing a class. If you know in advance that you will be missing a class for a compelling reason, or if you have missed a class due to illness or emergency, please send Greg an e-mail, briefly explaining the situation.
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FINAL GRADE FOR THE COURSE

The grade for the course is primarily based on the completion of a final paper, but with consideration of in-class participation (both in the form of specific speaking assignments and normal involvement in class discussions) and a few smaller writing and presentation assignments.

COURSE OUTLINE

(SPECIFIC SUMMARIES OF CONTENT FOR EACH CLASS)

Topic 1: Financial Products 1.0—Types of Derivatives and How They Are Traded [2 classes]

The legal definitions of financial products are critically important to setting the parameters of financial market regulation. That’s because how the relevant laws and regulations define financial products—such as futures contracts, options, and even securities—determines in large part what type of activities fall within the jurisdiction over regulators. Students will learn how to identify the different types of derivatives: forwards, futures, options, and swaps. Students will learn both the financial definitions of common derivatives as well as the legal definitions, with an emphasis on understanding the legal parameters of what constitutes a futures contract, as compared to other financial products, such as securities.

Required Readings:

Part 1 [Jan. 17, 2017]

KALBAUGH, DERIVATIVES LAW 1-23.

MOLONEY, FINANCIAL MARKETS REGULATION, Chapter I.1 & 1.2 (pp. 1-8); I.4.3 (pp.30-36) (skim).


Optional Readings:

MICHAEL DURBIN, ALL ABOUT DERIVATIVES, Chapter 1 to 3. [On Canvas]

Part 2 [Jan. 24, 2017]

Required Readings:

CFTC v. CoPetro, 680 F.2d 573 (9th Cir. 1982).

CME v. SEC, 883 F.2d 537 (7th Cir.1989).

CFTC v. Zelener, 373 F.3d 861 (7th Cir. 2004).

CFTC v. Erskine, 512 F.3d 309 (6th Cir. 2008).

CFTC v. White Pine, 574 F.3d 1219 (9th Cir. 2009).

Topic 2: Introduction to EU Legislative Process & Financial Markets Regulation [2 classes]

Students will learn about the EU legislative process. Additionally, students will learn about the primary EU legislative and regulatory initiatives in connection with the regulation of financial derivatives.
Part 1 [Jan 31, 2017]

Required Readings:
MOONEY, FINANCIAL MARKETS REGULATION, Chapter I.4.3 & I.5 (pp. 36-47)(skim); Chapter X.1 (pp. 854-861), X.3 (pp. 884-898), X.4 (pp. 898-907).

Optional Readings:
UGEUX, INTERNATIONAL FINANCE REGULATION, Chapter 1 (The Multiple Objectives of Financial Regulation). [On Canvas]

Part 2 [Feb. 7, 2017]

Required Readings:
MOONEY, FINANCIAL MARKETS REGULATION, X.5 (pp. 907-941); XI.1.1 (pp. 942-944).

Outlines of Papers Are Due on Friday, February 10

Topic 3: Historical Perspective of US Derivatives Regulation [1 class, Feb. 14]

Students will learn about the history of U.S. and international regulation of futures and derivatives. The US regulation of futures markets dates back to the Grain Futures Act of 1922, and thus is older than the U.S. government’s securities laws. Emphasis will be placed on the theoretical approaches to the financial regulation of derivatives throughout history.

Required Reading:
KALBAUGH, DERIVATIVES LAW 28-62.

Optional Readings: [On Canvas]


Topic 4: Financial Products 2.0—US and EU Legal Definitions of “Swap” and Other Complex Financial Derivatives [1 class, Feb. 21]

As discussed earlier, how financial products are defined by the relevant laws and regulations is a critical threshold issue that determines the scope and parameters of a given country’s financial market regulation. Put simply, how a country chooses to define financial products—from securities to options to swaps—determines what types of activities fall within the ambit of that country’s regulatory framework. While an earlier class analyzed the US legal definition of a futures contract, this class will involve scrutinizing the definitions of more complex derivatives. Students will learn how the Dodd-Frank Act of 2010 defines terms such as “swap” and “security-based swap.” Additionally, students will learn how derivative financial products are defined in the EU, as well as
some of the primary EU legislative and regulatory initiatives in connection with the regulation of financial derivatives.

Required Readings:

KALBAUGH, DERIVATIVES LAW 28-62.

Materials on Canvas site

**Topic 5: Trading Venues, Clearinghouses & Other Market Infrastructures** [1 class, Feb. 28]

This class analyzes the platforms where derivatives trading occurs across the globe, the clearinghouses that serve as the financial backstops of the markets, and the other kinds of infrastructure that enable the markets to functions. Students will examine the US and EU approaches to regulating market infrastructure providers.

Required Readings:

Materials from Canvas

KALBAUGH, DERIVATIVES LAW 91-126.

MOLONEY, FINANCIAL MARKETS REGULATION, Chapter V.1 (pp. 425-435; 438-455); V.5 & V.6 (pp. 460-468).

**Topic 6: Global Approaches to Regulating Market Intermediaries—Registration, Identification, and More** [1 class, March 7]

This class explores the regulation of the intermediaries in the global derivatives markets. How do different jurisdictions, such as the US and EU, categorize and govern the behavior of market intermediaries. For example, in the US, law requires specified categories of intermediaries – such as commodity trading advisors (persons who are compensated to give advice about derivatives) – to register with the CFTC. Compulsory registration of intermediaries is one of the most important parts of any government’s regulatory apparatus because it serves to identify the persons acting as market professionals, subjects intermediaries to numerous regulatory requirements, and provides a mechanism for such persons to undergo background screenings for fitness to work in the industry. Generally speaking, financial regulatory regimes typically require registration for both persons who solicit customers and funds for the purpose of trading derivatives (i.e., salespeople) as well as the supervisors of those who solicit customers and funds. But only humans and business organizations—not computers or software programs—are considered “persons” for purposes of the law. Thus, the existing registration requirements, which are directed at “persons,” would not apply to new digital intermediaries in the futures markets.

Required Reading:

MOLONEY, FINANCIAL MARKETS REGULATION, Chapter IV.1, IV.4, IV.3, & IV.6.1 to IV.6.3.

**Topic 7: International Collective Investment Vehicles and Investment Advisors in Global Derivatives Markets** [1 class, March 21] [Possibly one-and-half or two classes]

Hedge funds and investment advisors that invest and trade in futures, swaps, and derivatives are important actors in the global financial system. This class examines how the US and EU regulate persons that are paid to give trading and investment advice regarding derivatives and persons who operate mutual funds and other collective investment vehicles that place trades in futures, swaps, and derivatives.

Under many regulatory regimes, regulated investment advisors include persons who use the Internet and email to solicit prospective paying clients and to recommend to paying clients when and how to trade futures and derivatives. Of course, in this day and age, having a human send a customer an email is becoming old school. Technology has advanced to such a degree that computers and software programs are capable of (1) soliciting for customers and funds to trade in futures and derivatives and (2) advising others (or simply deciding) when to place trades in derivatives, which means that the regulation of these investment vehicles must adapt to the fact that humans might not be the ones who are soliciting customers and making the decisions about derivative trades and related issues. Students will explore the regulatory significance of these technological advances to the regulation of global collective investment vehicles and investment advisory services.

**Required Readings:**

MOLONEY, *FINANCIAL MARKETS REGULATION*, III.1.1 to III.1.3, III.3.1 to III.3.4, III.4.1 to III.4.4 & IV.1.1 & IV.1.2

KALBAUGH, DERIVATIVES LAW 167-192.

CFTC v. Vartuli, 228 F.3d 94 (2d Cir. 2000).
CFTC v. Equity Financial, 572 F.3d 150 (3d Cir. 2009).
CFTC Staff Letter No. 00-89.
CFTC Staff Letter No. 12-14.
First Drafts of Papers Are Due on Friday, March 24

**Topic 8: Salespeople and Introducing Brokers** [1 class, March 28]
Financial entities act through their employees, officers, directors, and salespeople. Accordingly, how these individuals are regulated and oversee is of vital importance to the global financial system. This class will examine the role of the people who help others to trade and invest in futures and derivatives or who otherwise perform important roles within derivative market intermediaries. The class will start by looking at associated persons (APs), introducing brokers (IBs), and principals. Taken broadly, APs, IBs, and principals are salespeople, officers, owners, employees, or agents of registrants.

**Required Readings:**
- Kalbaugh, Derivatives Law 145-156.
- CFTC Staff Letter No. 00-105.
- CFTC Staff Letter No. 03-19.

**Topic 9: Investor Protection** [1 class, April 4] [Possibly one-and-half or two classes]
One of the primary objectives of financial market regulation, in the EU, US, and elsewhere, is to protect investors from fraud. This class will introduce students to fraud-based violations of US and EU laws and rules. For example, under US decisional law, the definition of fraud encompasses more than just outright lies, also including material omissions—such as failing to mention one’s losing investment track record—and unbalanced communications that exaggerate the likelihood of experiencing profits.

**Required Readings:**
- Kalbaugh, Derivatives Law 373-383.
- CFTC v. Commodity Trend Serv., Inc. v. CFTC, 233 F.3d 981, 993 (7th Cir. 2000).

**Optional Readings:**

**Topic 10: Introduction to Market Abuse Prohibitions** [1 class, April 11]

This class will explore traditional US approaches to combatting market manipulation with those used in the EU. During this class, students will learn the elements of market manipulation claims and the history of market manipulation in connection with the US futures markets. From the beginning of futures trading in the United States in Chicago shortly before the Civil War, rampant market manipulation and other abusive trading practices have threatened derivatives trading. Students will learn how US policies to combat abuse have differed—or mirrored—EU efforts.

**Required Readings:**


KALBAUGH, *DERIVATIVES LAW* 384-424.


**Optional Readings:**


**Topic 11: Disruptive Trading Practices** [1 class, April 11]

Global regulators generally prohibit several specific kinds of trading practices that are considered disruptive or deceptive. While these improper disruptive trading practices originated on the crowded trading floors of futures exchanges, many of these tactics have continued to occur in electronic trading environments. Indeed, electronic trading environments appear to facilitate some disruptive trading practices. These tactics have names such as spoofing, wash trading, and banging (or marking) the close. For example, wash trading is engaging in noncompetitive prearranged trades, or self-dealing. Spoofing means bidding or offering for a trade in a futures contract, stock, or other financial instrument with the intent to cancel the bid or offer before the trade is executed. Spoofing is typically accomplished by placing rapid orders for trades and then cancelling them immediately—often only fractions of second—thereafter. Banging (or marking) the close is the practice of buying or selling large volumes of commodity contracts in the closing moments of a trading day with the intent to move the price of the derivative contract (or contracts). This class will explore how regulators across the global have responded to these problems.

**Readings:**

Materials on canvas

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Second Drafts of Papers Are Due on Friday, April 14.

**Topic 12: Supervisory Failures** [1 class, April 25]

[Note: This topic might be omitted if other topics exceed their projected allotment of time. An announcement will be made in the beginning of April concerning this topic.]

The class will explore the framework by which financial institutions are responsible for supervisory failures that lead to violations of applicable laws and regulations, including whether failure-to-supervise claims (such as those brought under US financial regulations and similar causes of action available to other global regulators) could hold persons accountable for improper trading practices by automated trading systems—that is, by algorithmic robots. The contours of what constitutes reasonable supervision of algorithmic robots will be considered in light of standards set by self-regulatory organizations, exchanges, international regulatory groups, and global market participants as well as industry best practices for supervising automated systems.

**Required Readings:**

MOLONEY, EU SECURITIES AND FINANCIAL MARKETS REGULATION, Chapter XI (Supervision and Enforcement).


Final Drafts of Papers Are Due on Tuesday, May 16.