REGULATED MONEY MANAGEMENT: 
MUTUAL FUNDS AND INVESTMENT ADVISERS 

GEORGETOWN UNIVERSITY LAW CENTER 
SYLLABUS AND READING LIST 

FALL 2015 
TUESDAYS 5:45 P.M. - 7:45 P.M. 
ROOM 160 

Professor Barry P. Barbash 
Professor Kenneth J. Berman 

General notes on class readings: 

(1) Many reading selections set out below are excerpted. Excerpting generally is indicated by three asterisks at the location of the omitted text; deleted footnotes are not marked. 

(2) You should review the sections of, and rules under, the statutes cited below as you read the other selections, instead of trying to read the sections and rules first. 

(3) All reading selections set out below are designed to help you understand the topics to be discussed in class. All sections of statutes and rules under those sections are important and should be read. 

(4) The area of law and practice we will be studying may be subject over the course of the semester to new developments that may be reflected in additional reading selections throughout the semester. 

(5) Supplemental readings related to the materials to be discussed during class over the semester are set out in the Appendix to this Syllabus and Reading List. Materials set out in the Appendix are not required to be read for class, but are provided for your reference and optional use. 

(6) The professors reserve the right to raise a student’s grade in recognition of class participation of high quality shown throughout the semester. 

Class 1: Introduction, Overview and History 
(Sept. 1) 

- Section 1 of the Investment Company Act of 1940 (“ICA”) 
- Section 201 of the Investment Advisers Act of 1940 (“IAA”). Compare and contrast this provision with Section 1 of the ICA. 
- Statement of Robert E. Healy, then Commissioner, Securities and Exchange Commission (“SEC”) (June 13, 1940) 
- Alfred Jaretzki, Jr., The Investment Company Act of 1940, 26 Wash. U. L. Q. 303-311, 346-347 (1941)
Class 2: Investment Advisers I -- The Definition of Investment Adviser; Fundamental Regulatory Concepts
(Sept. 8)

What (Who) is an Investment Adviser?

- Sections 202(a)(11) and 202(a)(26) of the IAA
- U.S. v. Lay, 612 F.3d 440 (6th Cir. 2010)
- Persons Who Provide Advice Solely Regarding Matters Not Concerning Securities, SEC Division of Investment Management Staff Issues of Interest (Mar. 27, 2012)
- Study on Investment Advisers and Broker- Dealers as Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, SEC Staff (Jan. 2011) (pp. 6-46, focus on pp. 13-29 and 35-44)

Registration and Treatment of Related Entities

- TL Ventures Inc., IAA Release No. 3,859 (June 20, 2014)

Fraud and Fiduciary Status: An Introduction

- Sections 206(1) and 206(2) of the IAA
- Rule 206(4)-8 under the IAA

Hypotheticals for Discussion During Class 3 to be Provided to Students

Class 3: Investment Advisers II -- Core Substantive Requirements
(Sept. 15)

Discussion of Hypotheticals Previously Provided

Dealing with Conflicts of Interest

- Section 206(3) of the IAA
- Joan Conan, IAA Release No. 1,446 (Sept. 30, 1994)
- Blackrock Advisors, LLC, IAA Release No. 4,065 (Apr. 20, 2015)
- Gardner Russo & Gardner, SEC No-Action Letter (June 7, 2006)
Class 4:  
**Investment Advisers III -- Other Substantive Requirements**  
(Sept. 22)

**Disclosure**

**Best Execution**
- Pekin Singer Strauss Asset Mgmt., Inc., IAA Release No. 4,126 (June 23, 2015)

**Aggregation/Allocation**

Class 5:  
**Investment Advisers III -- Other Substantive Requirements (Continued)**  
(Sept. 29)

**Soft Dollars**
- Section 28(e) of the Securities Exchange Act of 1934 (“SEA”)

**Compliance**
- Rule 206(4)-7 under the IAA

**Provisions in Investment Advisory Contracts**
- Sections 202(a)(1) and 205(a) of the IAA
- Rule 205-3 under the IAA

**Anti-Fraud**
- Sections 206(1) and 206(2) of the IAA (Included in Class 2 materials)
- Section 206(4) of the IAA
- Rule 206(4)-8 under the IAA (Included in Class 2 materials)
- Michael G. Thomas, IAA Release No. 4,102 (June 3, 2015)
Investment Company Status -- Definition of an Investment Company

Definition of Investment Company

- Sections 3(a) and (b) of the ICA
- Rules 3a-1, 3a-2 and 3a-3 under the ICA
- SEC v. National Presto Indus., Inc., No. 05-4612 (7th Cir. 2007)

Hypotheticals for Discussion During Class 7 to be Provided to Students

No Class October 13, 2015

Classes 7 and 8: Investment Company Definition and Structure
(Oct. 20 and Oct. 27)

Discussion of Hypotheticals Previously Provided

Overview of Investment Company Structure

- Sections 4 and 5 of the ICA

Multiple-Class and Master-Feeder Fund Structures

- Sections 12(d)(1)(A)-(D), 12(d)(1)(F) and 18 of the ICA
- Rule 18f-3 under the ICA
- Series Investment Companies: Affiliated Transactions, SEC Division of Investment Management, Guidance Update No. 2014-06 (June 2014)

Exchange-Traded Funds


Senior Securities

- Sections 18(f) and (g) of the ICA

The Concept of Assignment

- Sections 2(a)(4) and 15(f) of the ICA
- Rules 2a-6 and 15a-4 under the ICA
- Section 202(a)(1) of the IAA (Included in Class 5 materials)
- Rule 202(a)(1)-1 under the IAA
Practicum I Hypotheticals to be Provided to Students

Class 9:  Practicum I: The Process of Evaluating a Registered Investment Company’s Investment Advisory Agreement (Nov. 3)

Setting the Context: Shareholder Voting

- Sections 2(a)(42), 8(b), 13(a), 15(a) - (c), and 16 of the ICA
- Protecting Investors: A Half-Century of Investment Company Regulation, Chapter 7
- Investment Company Institute, SEC No-Action Letter (Nov. 6, 1992)
- Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms, SEC Division of Investment Management and SEC Division of Corporation Finance, Staff Legal Bulletin No. 20 (June 30, 2014)
- Stan Choe, Figuring Out How Your Mutual Fund Manager Votes, Bloomberg Businessweek (May 9, 2014)

Setting the Context: Boards of Directors

- Sections 2(a)(19), 10(a)-(e) and (g), and 36(a) and (b) of the ICA
- Commonwealth Capital Mgmt., LLC, ICA Release No. 31,678 (June 17, 2015)
- Deloitte & Touche LLP, ICA Release No. 31,703 (July 1, 2015)

Discussion of Practicum I Materials

Practicum II Hypotheticals to be Provided to Students

Class 10:  Practicum II: Entering into a Mutual Fund Distribution Agreement (Nov. 10)

Setting the Context: An Overview of Distribution

- Sections 22 and 23 of the ICA
- Thomas P. Lemke and Gerald T. Lins, How to Read a Mutual Fund Prospectus, (1999) (pp. 182-189)

Setting the Context: Rule 12b-1 and Related Issues

- Section 12(b) of the ICA
- Rule 12b-1 under the ICA

Discussion of Practicum II Materials
Investment Company Portfolio Valuation and Related Concepts

- Sections 2(a)(32) and 2(a)(41) of the ICA
- Sections 22(c), (d) and (e) of the ICA
- Rules 2a-4, 22c-1, 22d-1 and 22e-2 under the ICA
- Norm Champ, then Director, Division of Investment Management, SEC, Remarks to the Practising Law Institute, Private Equity Forum (June 30, 2014)

Investment Company Disclosure and Related Issues

- Sections 7(a), 7(d), 8(a) and 8(b) of the ICA
- Rules 30a-1 and 30b1-1 under the ICA

Investment Related Provisions of the ICA

Diversification, Investment Objectives and Industry Concentration

- Sections 13(a) and 35(d) of the ICA
- Rule 35d-1 under the ICA
- Northstar Financial Advisors Inc. v. Schwab Investments et al., No. 11-17187 (9th Cir. Mar. 9, 2015)

Investing in Securities-Related Issuers

- Section 12(d)(3) of the ICA
- Rule 12d3-1 under the ICA

Fund of Funds Investments

- Section 12(d)(1)(A)-(D) of the ICA (Included in Class 7 materials)
- Red Rocks Capital, LLC, SEC No-Action Letter (June 3, 2011)

Class 12: Investment Company Affiliated Transactions

Overview

- Diagrams of Affiliated Transactions Provisions
- Examples of Prohibited Transactions
Section 17(a)

- Sections 2(a)(3), 17(a), and 17(b) of the ICA
- Rules 17a-6 and 17a-7 under the ICA
- Western Asset Mgmt. Co., ICA Release No. 30,893 (Jan. 27, 2014)

Section 17(d)

- Section 17(d) of the ICA
- Rule 17d-1 under the ICA
- SEC v. Talley Indus., Inc., 399 F.2d 396 (2d Cir. 1968)
- Massachusetts Mutual Life Insurance Co., SEC No-Action Letter (June 7, 2000)
- Gerald Osheroff Retirement Notice (Jan. 1, 1994)

Hypotheticals for Discussion During Class 13 to be Provided to Students

Class 13: Investment Company Affiliated Transactions (Continued) (Dec. 1)

Section 17(e)

- Section 17(e) of the ICA
- U.S. v. Ostrander, 999 F.2d 27 (2d Cir. 1993)
- Acceptance of Gifts or Entertainment by Fund Advisory Personnel – Section 17(e)(1) of the Investment Company Act, SEC Division of Investment Management Guidance Update No. 2,015-01 (Feb. 2015)

Section 10(f)

- Section 10(f) of the ICA
- Rule 10f-3 under the ICA

Discussion of Hypotheticals Previously Provided

Final Exam on December 16, 2015 at 6:00 p.m.
REGULATED MONEY MANAGEMENT:
MUTUAL FUNDS AND INVESTMENT ADVISERS

SYLLABUS AND READING LIST

APPENDIX

Class 1:  Introduction, Overview and History

- *The Organization and Operation of a Mutual Fund*, Investment Company Institute (June 1997)
- *An Introduction to Mutual Funds*, SEC Invest Wisely (July 2, 2008)

Class 2:  Investment Advisers I -- The Definition of Investment Adviser; Fundamental Regulatory Concepts

What (Who) is an Investment Adviser?

- *Financial Planning Association v. SEC*, No. 04-1242 (D.C. Cir. 2007)
- *Abrahamson v. Fleschner*, 568 F.2d 862 (2d Cir. 1977)
- Letter to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, from Robert Plaze, then Associate Director, SEC Division of Investment Management (Dec. 16, 2005)
- *SEC v. Triton Financial, LLC*, No. 09-924 (W.D. Tex. 2009)
- *U.S. v. Ogale*, No. 08-00320, slip op. (11th Cir. 2010)

Registration and Treatment of Related Entities

- E*TRADE Advisory Services, Inc. Disclosure Brochure (Feb. 9, 2001)

Fraud and Fiduciary Status: An Introduction

Class 3: Investment Advisers II -- Core Substantive Requirements

Dealing with Conflicts of Interest

- Bane of America Investment Services, Inc., IAA Release No. 2,733 (May 1, 2008)

Class 4: Investment Advisers III -- Other Substantive Requirements

Disclosure


Best Execution


Aggregation/Allocation


Class 5: Investment Advisers III -- Other Substantive Requirements (Continued)

Solicitation

- Credit Suisse AG, SEC No-Action Letter (May 20, 2014)

Custody

- Section 223 of the IAA

Compliance

- Frequently Asked Questions about Liability of Compliance and Legal Personnel at Broker-Dealers under Sections 15(b)(4) and 15(b)(6) of the Exchange Act, SEC Division of Trading and Markets (Sept. 30, 2013)
Class 6: Investment Company Status -- Definition of an Investment Company

Definition of Investment Company

- Analyzing Issues Relating to Investment Company Status
- Tonopah Mining Company of Nevada, 26 SEC 426 (July 21, 1947)
- HOLDRs, SEC No-Action Letter (Sept. 3, 1999)
- ABA Retirement Funds Program, SEC No-Action Letter (June 7, 2010)
- Accor Services, SEC No-Action Letter (June 7, 2010)

Status of Advisory and Other Investment Programs

- Rule 3a-4 under the ICA
- Letter to Craig S. Tyle, then General Counsel, Investment Company Institute, from Jonathan G. Katz, then Secretary, SEC (Aug. 23, 2001) (portfolio investment programs)

Investment Company Status – Private Investment Vehicles

- Sections 3(c)(1) and 3(c)(7) of the ICA
- Section 2(a)(51)(A) of the ICA
- Hilary L. Shane, SEA Release No. 51,839 (June 14, 2005)
- Andrew J. Donohue, then Director, SEC Division of Investment Management, Testimony Concerning Initial Public Offerings of Investment Managers of Hedge and Private Equity Funds Before the House Domestic Policy Subcommittee of the Oversight and Government Reform Committee (July 11, 2007)

Classes 7 and 8: Investment Company Definition and Structure

Overview of Investment Company Structure

Multiple-Class and Master-Feeder Fund Structures

- “Hub-and-Spoke” Funds, (a report prepared by the Division of Investment Management, SEC, enclosed with a letter to then Chairman John Dingell, Committee on Energy and Commerce of the U.S. House of Representatives, from then SEC Chairman Richard Breeden) (Apr. 15, 1992)
- Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple-Class and Master-Feeder Funds; Class Voting on Distribution Plans, ICA Release No. 20,915 (Feb. 23, 1995)

Senior Securities

- Memorandum from the Division of Investment Management, SEC, to then SEC Chairman Arthur Levitt regarding Mutual Funds and Derivative Instruments (Sept. 26, 1994)

The Concept of Assignment


Class 9: Practicum I: The Process of Evaluating a Registered Investment Company’s Investment Advisory Agreement

Setting the Context: Boards of Directors

- Fundamentals for Newer Directors, Independent Directors Council (2011)
- Gartenberg v. Merrill Lynch Asset Mgmt., 694 F. 2d 923 (2d Cir. 1982)
- Moses v. Burgin, 445 F.2d 369 (1st Cir. 1971)
- Rosenfeld v. Black, 445 F.2d 1337 (2d Cir. 1971)
- Chamber of Commerce of the United States of America v. SEC, No. 04-1300 (D.C. Cir. 2005)
- Chamber of Commerce of the United States of America v. SEC, No. 05-1240 (D.C. Cir. 2006)
- Northern Lights Compliance Services, LLC, ICA Release No. 30,502 (May 2, 2013)
Class 10: Practicum II: Entering into a Mutual Fund Distribution Agreement

Setting the Context: An Overview of Distribution

- Smith v. Franklin Templeton, No. 09-4775 (N.D. Cal. June 08, 2010)

Setting the Context: Rule 12b-1 and Related Issues

- Letter from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management, to Craig S. Tyle, then General Counsel, Investment Company Institute (Oct. 30, 1998)
- E*Trade, SEC No-Action Letter (Nov. 28, 2005)
- Memorandum from Paul Roye, then Director, SEC Division of Investment Management, to William H. Donaldson, then Chairman, SEC, Regarding Correspondence from then Chairman Richard Baker, House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises (June 9, 2003)
- Andrew J. Donohue, then Director, SEC Division of Investment Management, Luncheon Address Before a Meeting of the Business Law Section of the American Bar Association Committee on Federal Regulation of Securities (Apr. 24, 2010)

Setting the Context: Variations in Sales Charges

- Exemption from Section 22(d) to Permit the Sale of Redeemable Securities at Prices That Reflect Different Sales Loads, ICA Release No. 14,390 (Feb. 22, 1985)
- Linsco/Private Ledger Corp., SEC No-Action Letter (Nov. 1, 1994)

Setting the Context: Deferred Sales Loads/B Shares

- Sections 2(a)(35) and 6(c) of the ICA
- Rule 6c-10 under the ICA

Setting the Context: Exchanges of Fund Shares

- Sections 11(a) and (c) of the ICA
- Rule 11a-3 under the ICA
- Alexander Hamilton Funds, SEC No-Action Letter (July 20, 1994)
Class 11: Investment Company Portfolio Valuation and Related Concepts; Disclosure and Related Issues; Investment Related Provisions of the ICA

Investment Company Portfolio Valuation and Related Concepts

- Letter to Craig S. Tyle, then General Counsel, Investment Company Institute, from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management (Dec. 8, 1999)
- Letter to Craig S. Tyle, then General Counsel, Investment Company Institute, from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management (Apr. 30, 2001)
- UBS Financial Services Inc. of Puerto Rico, SA Release No. 9,318 (May 1, 2012)

Investment Company Disclosure and Related Issues

- Thomas P. Lemke and Gerald T. Lins, How to Read a Mutual Fund Prospectus (1999) (pp. 2-14)
- Fidelity Consumer Staples Sector Prospectus (Apr. 29, 2014)
- Form N-1A under the ICA and SA
- Registration Form used by Open-End Management Investment Companies, ICA Release No. 23,064 (Mar. 13, 1998) (amending Form N-1A)
- Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, ICA Release No. 25,870 (Dec. 18, 2002)
- Operating Local 649 Annuity Trust Fund v. Smith Barney Fund Mgmt. LLC, No. 07-5125 (2d Cir. 2010)
- State Street Bank and Trust Co., SA Release No. 9,107 (Feb. 4, 2010)
- SEC v. Daifotis, No. C 11-00137 WHA (N.D. Cal., June 12, 2012)
- Yu v. State Street, No. 08 civ 8235 (RJH) (S.D.N.Y. 2011)
- OppenheimerFunds, Inc., ICA Release No. 30,099 (June 6, 2012)
- Janus Capital Group v. First Derivative Traders, 131 S. Ct. 2296 (2011)

Investment Related Provisions of the ICA

Diversification, Investment Objectives and Industry Concentration

- The First Australia Fund, Inc., SEC No-Action Letter (July 29, 1999)
- Charles Schwab Corp., No. 08-01510 (N.D. Cal. 2010)
Investing in Securities-Related Issuers

- Goldman Sachs press release (Mar. 8, 1999)

Fund of Funds Investments

- Fund of Funds Investments, ICA Release No. 27,399, 71 Fed. Reg. 36,640 (June 20, 2006)

Investment Company and Investment Adviser Performance and Advertising

- The TCW Group, Inc., SEC No-Action Letter (Nov. 7, 2008)
- Valicenti Advisory Services, Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999)
- MassMutual Institutional Funds, SEC No-Action Letter (Sept. 28, 1995)
- Nicholas-Applegate Mutual Funds, SEC No-Action Letter (Aug. 6, 1996)

Class 12: Investment Company Affiliated Transactions

Section 17(a)

- Rule 17a-8 under the ICA

Section 17(d)

- Chase Manhattan Bank, SEC No-Action Letter (July 24, 2001)

Class 13: Investment Company Affiliated Transactions (Continued)

Section 17(e)

- Fleet Investment Advisors Inc., IAA Release No. 1,821 (Sept. 9, 1999)