Syllabus

Regulation of Derivatives - Fall 2015
Georgetown University Law Center
LAWG-2054-09 (CRN#: 27693)
LAWJ-2054-09 (CRN#: 2793)

Course Description
This course will focus on history and current regulation of derivatives in the United States, primarily financial and commodity futures, options, and swaps markets. Topics include the jurisdiction of the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. Securities and Exchange Commission (SEC), analysis of commodities and securities (to a lesser extent) statutes and regulations, registration and regulation of commodity market participants, administrative and injunctive enforcement powers involving violations of the Commodity Exchange Act, developments in self-regulation, and foreign market access. Overview of Dodd-Frank Act of 2010 and current derivatives market regulation and reform in the U.S. and overseas. Most importantly, in addition to teaching the black letter law and derivatives and commodities industry practices, professors will stimulate an active and creative discussion in class of current topics in derivatives regulation and risk mitigation generally.

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Course Materials / Textbook
Regulation of Derivative Financial Instruments (Swaps, Options and Futures) Cases and materials (Ronald H. Filler, Jerry W. Markham, 2014). The textbook will be available at the Law Center bookstore. In addition to the reading materials in the textbook and this syllabus, professors will distribute additional reading materials in class. Each class will feature a PowerPoint presentation that will cover the entire class materials for each class session and will be posted to Courseware before the next class.

Meeting Times and Places
Thursdays 11:10 am – 1:10 pm. The final paper is due on December 21, 2015.

Course Grading
Your final grade for this 2-credit course will be based on a take-home paper that must be at least 15 pages in length; there is no extra credit for the length of the paper, but thoughtful, publication-ready and well researched papers will be viewed with preference. The focus in grading the papers will be: (a) identification of an interesting and relevant issue; (b) grasp of the relevant area of law and citation to relevant sources of law; (c) analytical discussion; and (d) suggested solutions to an issue or an insightful conclusion. Professors will distribute suggested paper topics in the middle of the semester. Active participation in class is encouraged (e.g., questions, comments, observations or volunteering to cover a particular case / topic) and will count for a ½ grade increase for the final grade. There is no downside to participation – we do not lower your grade for lack of participation (i.e., there is no extra credit for being an A-type personality!).
Class 1:  Introduction To Derivatives and Risk Mitigation  
(Thursday, September 3) 

Reading Assignment:  text, pp. 1 – 16

Defining futures and other derivative instruments; history of derivatives generally and the Commodity Exchange Act (CEA) and agricultural futures trading; creation of futures exchanges in the United States; Commodity Exchange Authority under United States Department of Agriculture; 1974 development of Commodity Futures Trading Commission (CFTC); advent of financial futures trading in the United States; overview of the current domestic derivatives marketplace; cash and forward markets; federal interest in regulation of risk management markets; exclusive jurisdiction of CFTC; Congressional oversight of securities and derivatives markets.

Class 2: Derivative Products Subject to CFTC Regulation  
(Thursday, September 10) 

Reading Assignment:  text, pp. 16 - 34

Current issues relating to definition of futures contract and scope of CFTC jurisdiction; distinguishing futures from forwards, OTC products; elements of futures contracts; swaps vs. insurance contracts; examples of risk management transactions; hedging v. speculation; margin and leverage in commodities markets; considerations affecting the application of the Commodity Exchange Act (CEA) to swaps, hybrids, bank products and other derivatives products.

Class 3: Options and Delineation of CFTC and SEC Jurisdiction Over Derivatives  
(Thursday, September 17)

Reading Assignment:  text, Chapters 2 and 5
Suggested Paper Topics Distributed

Continued analysis of SEC and CFTC jurisdiction; Shad/Johnson Accord; stock v. futures margin; portfolio margining concepts under securities and commodities laws.

Class 4: Regulation of Trading Platforms  
(Thursday, September 24) 

Reading Assignment:  text, Chapter 3

Role of exchanges and clearinghouses; governance and membership in self-regulatory organizations (SROs); regulation of SROs; membership denial actions; vertical and horizontal
models of SROs; products traded and fungibility issues; customer protections and financial responsibility rules; swap execution facilities (SEFs); high frequency traders.

Class 5: Regulation of Intermediaries and Market Participants (Part I)
(Thursday, October 1) [Guest Speaker. Prof. Malyshev travelling]

Reading Assignment: text, pp. 119 – 148
Students to Submit Abstracts for Their Papers and Describe Why The Topic Was Chosen

Registration of intermediaries (broker dealers and futures commission merchants); forms and fitness standards; recordkeeping and reporting requirements; introducing brokers.

Class 6: Regulation of Intermediaries and Market Participants (Part II)
(Thursday, October 8)

Reading Assignment: text, pp. 148 – 197

Net capital requirements, disclosures, reporting recordkeeping, customer asset protections; customer segregation v. SIPC protections and bankruptcy Code applications, clearing and non-clearing member firms; omnibus v. fully disclosed clearing arrangements; regulation of swap dealers and major swap participants; retail foreign exchange dealers.

Class 7: Commodity Pools and CPOs and CTAs
(Thursday, October 15)

Reading Assignment: text, Chapter 7

Asset Manager regulation (investment advisers (IA) v. commodity trading advisors (CPOs)); opening account requirements; order placement, block trades, fiduciary requirements; obtaining and holding customer assets; ’40 Act regulation v. CEA regulation; Dodd/Frank effects on IAs and commodity trading advisors (CTAs).

Class 8: Litigation (Part I) – General Antifraud Provisions under the CEA
(Thursday, October 22)

Reading Assignment: text, Chapter 8

Fraud under the CEA; scienter requirement; suitability requirement in securities laws; churning and other sales practice abuses.

Class 9: Litigation (Part II) – Manipulation and Trading Abuses under the CEA
(Thursday, October 29)
Reading Assignment: text, Chapter 9, Chapter 10 (skim)

Manipulation and trading abuses in derivative markets; standards of manipulation, including new standards implemented under the Dodd-Frank Act and CFTC rules thereunder; Wash trades and fictitious transactions, insider trading, front running, spoofing and “banging the close.” Litigation procedures in derivatives markets; private rights of action, arbitration procedures by FINRA and NFA, civil and injunctive actions, coordinated criminal actions with DOJ.

Class 10: Case Studies – Individual Commodity Markets
(Thursday, November 5)

Reading Assignment: TBD

Analysis of specific commodity markets: (1) energy; (2) foreign exchange and precious metals; (3) agricultural; (4) emissions and cap & trade; (5) interest rates, credit default swaps and various indices.

Class 11: Swaps and OTC Trading
(Thursday, November 12)

Reading Assignment: text, pp. 251 - 291

History of OTC trading and growth of hybrid transactions in the US; CFMA of 2000 and deregulation of OTC markets; effects of OTC deregulation.

Class 12: Clearing, Margining and the End-User Exception
(Thursday, November 19)

Reading Assignment: text, pp. 291 - 321

Dodd-Frank Act regulation of OTC markets, development of legislation and implementation of regulations; entity and product definitions; swap data repositories (SDRs); mandatory clearing and trading requirements, end user exception, external and internal business conduct standards.

Class 13: Cross Border Application of the CEA, Non-US Regulation of Derivatives, Class Summary
(Thursday, December 3)

Reading Assignment: text, Chapter 12

Analysis of various cross-border issues post-Dodd/Frank; CFTC cross border guidelines; (EMIR, ESMA, MiFID); comparison of global responses to the 2008 global economic crisis.

[Work on your take home papers. Papers are due on December 21, 2015]