TEXTBOOK: M. Steinberg, Securities Regulation (6th Ed. 2013) (“Steinberg”). You should also have available and bring with you to class the current edition of any printed or electronic compilation of the federal securities laws, including statutes, regulations and forms.

Assigned readings for each class discussion are as indicated. All assigned materials (other than statutes and rules) that are not included in Steinberg will be posted on the Courseware website for this course ( ).

OTHER IMPORTANT INFORMATION:

- THIS COURSE REQUIRES AN EXAM THAT IS SCHEDULED TO BE GIVEN ON DECEMBER 15, 2015 AT 6:00 P.M.

- Class attendance is required.

- Class participation is expected. For classes for which problems are assigned (whether from Steinberg or the attachments to this Syllabus), students will be divided into two or more groups for the purpose of class discussion. During the class, each group will present its solution(s) to the problems.

- Discretionary credit may be given for class participation (increase up to one-half of one letter grade).

Unit 1: Anatomy of an SEC Investigation

- Class 1 (8/31/2015): Overview of the SEC Enforcement Process; Statutes and Rules Relating to SEC Investigations

Monday, September 7, Labor Day; no classes meet

• Class 2 (9/14/2015): Witness Testimony; The Fifth Amendment and Other Privileges; Subpoena Enforcement; Parallel Proceedings and Referrals; Wells Notices and Submissions


  Be prepared to discuss Problem 1 in the Attachment to this Syllabus

Unit 2: Varieties of SEC Enforcement Proceedings and Remedies

• Class 3 (9/21/2015): Injunctions, Penalties and Cease-and-Desist Proceedings; Statute of Limitations; Collateral Consequences


  Be prepared to discuss Problem 2 in the Attachment to this Syllabus

Unit 3: Securities Claims and Defenses

• Class 4 (9/28/2015): Common Causes of Action

Be prepared to discuss Problems A and B at Steinberg pp. 377-78

• Class 5 (10/5/2015): Defenses, including the Private Securities Litigation Reform Act of 1995
  
  Assigned Readings: Steinberg pp. 250-72; 568-86; 594-604; Chadbourne & Park, LLP v. Troice, 134 S. Ct. 1058 (Feb. 26, 2014)

  Be prepared to discuss Problem C at Steinberg pp. 378-79

  Monday, October 12, Columbus Day; Monday classes meet on Tuesday, October 13, instead of Tuesday classes

• Class 6 (Tuesday, 10/13/2015): Loss Causation; Secondary Liability
  
  Assigned Readings: Steinberg pp. 559-64, 608-20; 740-53; SEC v. Apuzzo, 689 F. 3d 204 (2d Cir. 2012); Halliburton Co. v. Erica P. John Fund, 189 L. Ed. 2d 339 (June 23, 2014)

  Be prepared to discuss the Problem at Steinberg p. 711

• Class 7 (10/19/2015): The Foreign Corrupt Practices Act; Whistleblowers
  

  Be prepared to discuss Problem 3 in the Attachment to this Syllabus

Unit 4: Internal Investigations and Cooperation

• Class 8 (10/26/2015): Internal Investigations, Cooperation

Be prepared to discuss Problem 4 in the Attachment to this Syllabus

Unit 5: The Role of Counsel in SEC Enforcement Proceedings

• Class 9 (11/2/2015): The Role of Counsel (I)


Be prepared to discuss the Problem at Steinberg pp. 1128-29

• Class 10 (11/9/2015): The Role of Counsel (II)


Be prepared to discuss Problem 5 in the Attachment to this Syllabus

Unit 6: Current Issues in the Pursuit of Insider Trading

• Class 11 (11/16/2015): Insider Trading

Be prepared to discuss Problems A, B, C at Steinberg pp. 828-29.

Unit 7: Ponzi and Pyramid Schemes


Unit 8: Concluding Comments and Review

- Class 13 (11/30/2015)

There are no assigned readings or problems for Class 13.

MONDAY, DECEMBER 7, 2015, IS DESIGNATED FOR “RESCHEDULED CLASSES AND READING DAY”

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*The views expressed by Professor Dorfman during this course are Professor Dorfman’s and do not necessarily reflect the views of the Public Company Accounting Oversight Board, the members of the Board or other Board staff.
Problem 1 (Class 2, 9/14/2015)

Company X and two of its senior executives, Ms. A and Mr. B, have been served with SEC subpoenas calling for the production of documents as well as testimony by A and B, accompanied by copies of SEC Form 1662. Ms. C, in-house counsel at X, contacts the SEC office conducting the investigation to inquire about an extension of time for X’s document production and to coordinate the scheduling of A’s and B’s testimony. In the course of the resulting exchanges of email correspondence between C and Ms. D, one of the SEC attorneys, D forwards to C, as one of the attachments to an email to C, an exchange of emails between D and an Assistant United States Attorney (AUSA), in which AUSA includes the following comments: “Thanks a million, D, for getting those subpoenas out to X, A and B in the form we discussed. Whatever you do, keep my interest in this under your hat until after you get answers to those questions I gave you to ask. We wouldn’t want to tip A and B off and have them take five.” What steps should C take in representing her clients?

Problem 2 (Class 3, 9/21/2015)

After a lengthy investigation, the SEC initiates civil injunction actions in the United States District Court for the District of Colorado against dozens of alleged participants in an insider trading ring, including Mr. R, the CEO of a hedge fund, several of the traders who worked for R, and a number of officers, directors and employees of each of 10 public companies who allegedly leaked material, non-public information to R, seeking injunctions, civil monetary penalties and disgorgement against all named defendants. A few months later, the SEC initiates an administrative cease-and-desist proceeding against Mr. G, a director of one of the 10 public companies in whose stock R allegedly traded illicitly, alleging that G leaked material, non-public information to R, and seeking a cease-and-desist order as well as civil monetary penalties and disgorgement. G’s counsel files an action in the United States District Court for the District of Colorado to enjoin the SEC from proceeding administratively against G rather than in a judicial forum, based on violations of G’s statutory and constitutional rights to due process and equal protection. What result and why?
Problem 3 (Class 6, 10/19/2015)

Lawyer Shapiro retains you to advise her with respect to her rights. After paying you a hefty retainer and signing an engagement letter, Shapiro tells you that until recently she served as an Assistant General Counsel for Humongous Motor Cars (HMC), a large public company based in Detroit, Michigan. HMC manufactures and sells luxury cars in the United States and China. Several months ago, in the course of her duties as Assistant General Counsel, Shapiro learned that during 2012 and 2013, several dozen of HMC’s automobiles had been involved in accidents caused by a defect in the cars’ steering mechanism, resulting in serious injuries and fatalities. HMC did not report the defect to the Department of Transportation as required by applicable law. When Shapiro learned of these facts she promptly reported them to her boss, HMC’s General Counsel, and stated her view that HMC was required to report the defect to DOT and initiate a recall of the defective vehicles. Shortly thereafter, as part of a previously-announced reduction in force by HMC, Shapiro was offered a very generous severance package, which Shapiro accepted. As part of the severance package, Shapiro signed an agreement requiring her not to disclose any facts relating to HMC’s business to any person for five years. Shapiro asks you whether she can report HMC to the SEC and collect a bounty as a whistleblower. What do you tell her?

Problem 4 (Class 7, 10/26/2015)

You represent Company F, a manufacturer of high-tech laser scanning devices with manufacturing and distribution facilities in the United States and many other countries and total annual sales in excess of $500 million. The week before F’s Annual Report on Form 10-K is due, F’s CFO receives a telephone call from F’s Asia sales manager, who advises the CFO that the sales manager has learned, during the course of a weekend retreat for her company sales managers from Japan, China, South Korea and India, that low-level company salespeople in China and India have routinely given small gifts, including some in cash, to the purchasing agents for the company’s largest customers in each of those countries. The total of the gifts in the most recent 12 months are believed to have been approximately $5,000 in China, and $1,000 in India; total sales in the most recent 12 months in those countries have been $20 million and $500,000 respectively. The CFO immediately reports these facts to the CEO, and the two of them have telephoned you and want your advice. What do you advise F to do?
Problem 5 (Class 9, 11/9/2015)

Mega Broker-Dealers, Inc., has 30 offices nationwide and over 500 brokers. Two years ago, Mega’s General Counsel and Chief Compliance Officer, Ms. Do-right, learned that Mr. Rogue, one of Mega’s brokers and one of Mega’s biggest producers, has been accused by several customers of misconduct, including unauthorized trading and misappropriation of customer funds. Rogue vehemently denied all wrongdoing. Do-right advised Mega’s CEO to investigate the customers’ allegations thoroughly and either terminate Rogue if the allegations were true or, even if Rogue was innocent, to set up procedures to supervise Rogue much more carefully. Mega’s CEO agreed to do so. Six months later, Do-right learned that yet another of Rogue’s customers accused Rogue of unauthorized trading. Do-right immediately advised Mega’s CEO to fire Rogue. The CEO told Do-right to “chill.” Do-right decided to do nothing further about Rogue, given that the CEO and two of the CEO’s relatives are three of the five directors who constitute Mega’s board. Twelve months later, Rogue is arrested for stealing customer funds. Mega and Mega’s CEO consent to SEC enforcement actions for failing to supervise Rogue adequately. The SEC also brings an administrative proceeding against Do-right based on inadequate supervision of Rogue. What result and why?