SECURITIES REGULATIONS – LAW 655

SYLLABUS – FALL 2015

Professor Alan Rosca

LB 207

Monday 8:00pm – 9:40pm

**Required course materials**:

Cox, Hillman, Langevoort, Securities Regulation: Cases and Materials, 7th Ed. (2013), Wolters Kluwer (Aspen Casebook Series).

Occasional supplements (contact me for distributed materials if you miss a class).

**My availability**

You can reach me via email at [arosca@prwlegal.com](mailto:arosca@prwlegal.com) or phone at 216-570-0097. I am available to meet at the law school by appointment.

**Course overview**

The world’s largest-ever initial public offering (“IPO”) took place in September 2014. Alibaba, the Chinese e-commerce juggernaut, raised a record $25 billion and went public on the New York Stock Exchange. An internet business relatively unknown in the US, Alibaba reached a valuation of $228 billion on its first day of trading, more than three times larger than eBay’s valuation of $67 billion and above Amazon.com ($150 billion market cap) and Facebook ($200 billion). A few months later, Alibaba was sued by shareholders represented by some of the largest securities class action law firms in the country. The lawsuits alleged that Alibaba mislead potential investors before its IPO and failed to disclose an investigation by Chinese regulators into alleged illegal sales of counterfeit goods through its websites.

In May this year, hundreds of investors in the United States and around the world were dismayed to learn that the housing units they purchased in a North Dakota project that sought to capitalize on the shale oil boom in that state turned out to be part of a $62 million fraud that was exposed by the Securities and Exchange Commission (“SEC”). Investors rushed to claim the housing units they thought they owned, only to discover that they had purchased something else than what they had thought: securities, in the form of investment contracts. Instead of “brick-and-mortar” real estate, they owned fractions of a business that turned out to be insolvent as well as fraudulent.

Two years ago, investors who follow penny stocks traded on the over-the-counter (“OTC”) market learned of a new investment opportunity: a company that claimed to have invented a handheld device that could scan patients and detect and diagnose a wide variety of medical conditions. A physician’s dream, such a device could bring billions of dollars in revenues for the company that manufactured it, many investors thought. Millions of the company’s shares became available on the OTC market, and thousands of investors started purchasing them. The share price surged from a few pennies to over four dollars within weeks, giving the company a market capitalization of over $200 million. By the time the market regulators realized this was a pump-and-dump scheme and shut it down, its perpetrators had pocketed over $34 million dollars and transferred half of it to offshore accounts.

Last month, Airbnb, the internet startup that, together with Uber, has become synonymous with the “share economy,” announced that it was raising $1.5 billion in a new round of private financing, putting its overall valuation at over $25 billion. The financial media saw this as new evidence of a “private IPO” trend, a new development in the global financial markets made possible to a large extent by the new wealth created in developing countries around the world over the past decade, and the surge of the US financial markets. Pursuant to this trend, successful startups like Airbnb, Uber, or Pinterest have been able to raise through private financing, the same large amounts of capital that in the past could only be raised through an IPO, while avoiding the regulatory and investor scrutiny that accompanies a public listing.

What do these stories have in common? They all touch upon a number of securities rules and regulations that affect the lives of millions of Americans, from average investors who have to rely on the integrity of the markets and trust that the financial industry plays by the rules, to entrepreneurs who dream up new businesses and need to reach out to the capital markets to finance their ideas.

The Securities Regulation course is designed to familiarize future lawyers with the complex and dynamic area of securities law. The course presents the regulatory framework of the securities industry, introduces the important concepts and institutions of that industry, and focuses on its main actors – issuers, investors, and investment professionals – and the rules that govern their conduct.

**Class attendance and preparation**

Attendance at and preparation for class are required. There may be times when, due to personal matters or illness, you will not be able to either attend class or prepare for it. You may miss class or “pass” when called on for up to two times over the course of this semester. If you miss class and/or “pass” more than two times, I reserve the right to lower your grade or withdraw you from the course. If you cannot prepare for class on a particular day, please contact me before class. I will not call on you, but that will count as one of the two absences/pass days.

**Grades**

The grading system for this class attempts to mimic how your performance will be evaluated when you join the legal profession. In your professional life, you will be “graded” in three ways or contexts. First, you will be “graded” every day by your employers, clients, and colleagues, as you interact with them in connection with specific cases. Second, you will have to produce memoranda, briefs, and other documents; the readers of those documents will “grade” you based on the quality of your work product. Third, you will have to bring your “A game” during discrete, short events such as case hearings or negotiations for a settlement or a deal. While your client or employer will probably not change his or her opinion of you if you’re having a bad day during case preparation, and while a deficient brief may be fixed before filing, you will only get one shot before the judge, mediator, or opposing party.

Similarly, in this class your grade will be a function of (1) your ongoing participation in class (20%), (2) a couple of exercises I will assign in advance (20%), and (3) the final exam (60%).

**Assignments**

The assignments below may change slightly depending on how quickly we move through the material for each class.

The chapters & pages below refer to the Cox, Hillman, Langevoort casebook.

Monday, August 24: The Framework of Securities Regulation – Ch. 1, pp. 1-13; pp. 18 (starting at Blue Sky Laws) – 21 (stop at Financing Startups).

The Definition of a Security (1): intro and the *Howey* test – Ch. 2, pp. 27-36; skip *United Housing Foundation v. Froman* and accompanying notes; continue with pp. 42-46.

Monday, August 31: The Definition of a Security (2): interests in corporations, partnerships, and LLCs; real estate as securities; notes as securities – Ch. 2, pp. 52-62; 64-81.

Monday, September 7: Labor Day.

Monday, September 14: The Public Offering (1): underwriting & underwriters; the market for IPOs; the registration statement; public offers by unseasoned issuers – Ch. 4, pp. 107-117; 136-153.

Monday, September 21: The Public Offering (2): “gun jumping” concerns for the IPO; public offers by seasoned and well-known seasoned issuers – Ch. 4, pp. 154-182.

Monday, September 28: The Public Offering (3): shelf registration; updating & correcting the registration statement; registration under state blue sky laws; the debate over mandatory disclosure – Ch. 4, pp. 189- 204 and 234-246.

Monday, October 5: Exempt Transactions (1): intro; intrastate offerings; Section 4(2) - the private offering exemption; Regulation D (part 1) – Ch. 5, pp. 249-255 and 262-284.

Monday, October 12: Exempt Transactions (2): Regulation D (part 2); the Crowdfunding Exemption; Regulation A; integration of offerings – Ch. 5, pp. 285-296; pp. 297-299; pp. 311-313; and pp. 318-332.

Monday, October 19: Secondary Distributions: underwriter sales; issuer sales; Rule 144 safe harbor for resales; Rule 144A – institutional market for unregistered securities; Section 4(1½) exception – Ch. 6 pp. 337-350 and 363-380.

Monday, October 26: Liability under the Securities Act: Section 11 claims (part 1); Section 12(a)(1) claims (part 1) – Ch. 9 pp. 485-514.

Monday, November 2: Liability under the Securities Act: Section 11 claims (part 2 - Damages); Section 12(a)(1) claims; Section 12(a)(2) claims – Ch. 9 pp. 515-546.

Monday, November 9: Fraud in Connection with the Purchase or Sale of a Security (1): “in connection with” requirement; private rights of action under Rule 10b-5; *scienter* – Ch. 13 pp. 695-720.

Monday, November 16: Fraud in Connection with the Purchase or Sale of a Security (2): duty to disclose; reliance – Ch. 13 pp. 721-751.

Monday, November 23: The Enforcement of the Securities Laws: class actions; PSLRA; primary & secondary liability; control person and *respondeat* superior liability – Ch. 14 pp. 787-811.

Monday, November 30: Review.

TBA: Final exam.