NEW YORK UNIVERSITY
SCHOOL OF LAW

Securities Regulation
Prospectus

Texts:
Hazen, Securities Regulation, Selected Statutes, Rules and Forms (2005 ed.)

Coverage. This course covers two broad areas, (1) the disclosure systems imposed by federal securities law upon issuers of securities and those acting for them, and (2) the principal remedies provided by federal securities law.

Disclosure obligations are imposed on the issuers of securities, broadly speaking, in two bites. First, the Securities Act of 1933 requires, when securities are marketed to the public, that the issuer go through an administrative process of registering the securities under the 1933 Act; the end product of registration is a disclosure document, called a prospectus, which is required to be delivered to buyers. Second, the interplay of Sections 12, 13 and 15(d) of the Securities Exchange Act of 1934 provides, in general, that issuers whose securities are publicly traded become subject to an on-going obligation to provide information, commonly called the “continuous disclosure system.” The thrust of the first half of this course will be to consider the broad outlines of these administrative regimens.

The applicability of the 1934 Act’s continuous disclosure system is straight-forward. Disputes about the adequacy of disclosure are common, but disputes about the applicability of the regimen are rare: the statute and implementing rules resolve facially almost every coverage question. For that reason, we will be able to deal fairly quickly with 1934 Act coverage issues.

The 1933 Act situation is totally different. Section 5 of the 1933 Act states a broad requirement that all securities be registered before sale. Two exemptive sections, an extensive system of regulations, and an elaborate and ever-developing body of administrative practice then operate to exclude about 99.9% of all transactions from the requirement. Most 1933 Act practice problems involve the availability of exemptions from registration. For that reason the 1933 Act registration requirement and its exemptions will take most of the first part of the course.

One aspect of 1933 Act coverage is likely to be outside your experience and may for that
reason be misleading. In most areas of the law, the difficulty, uncertainty, rate of change, and level of public concern can be measured fairly accurately by the amount of litigation. In the case of 1933 Act registration issues, that is not the situation. Because disputes are almost always resolved administratively rather than litigated, it is a body of law that moves by SEC no-action letters and by opinions of counsel, rather than by cases. Therefore, do not let the relative paucity of case law mislead you into thinking that the 1933 Act registration system is settled and presents few current issues. On the contrary, the system is at present severely stressed and it bristles with problems. Access to these issues, however, is not primarily through cases, but through the statutes and regulations and through the professional literature.

The second part of the course will deal with remedies under the 1933 and 1934 Acts, which is to say, we will be dealing primarily with disclosure disputes. Some of these arise in the context of specific Commission efforts to enforce its disclosure mandates; a larger number arise in private actions, typically brought under Rule 10b-5 or Rule 14a-9. However raised, adequacy of disclosure is frequently litigated and the principal source of law here is the already huge and ever-growing body of cases decided by the Supreme Court and the lower federal courts.

Since the private actions are essentially tort cases, the remedies side may seem somewhat like an advanced and specialized torts course. That, in fact, is the case: historic tort issues (standing, damages, proximate causation, reasonable reliance, joint and/or several liability, contribution and indemnity) are now refought as securities law issues. While all these adjective matters have importance and will necessarily demand our attention, we should not permit them to distract us from our primary concern, the proper operation of the disclosure system.

Background. For about fifteen years, corporations was a prerequisite for this course; logic suggested, and experience confirmed, that students who had completed corporations had an informational advantage. Since the exigencies of scheduling make it impossible to continue this requirement students without relevant academic or practical background will need to do a good deal of collateral reading. A number of items are recommended:

1. Hamilton and Booth, Business Basics for Law Students (3d ed. 2002), is a text whose precise purpose is to fill lacunae in the business literacy of law students. It is strongly recommended that students who do not have a strong background in the topics covered here read chapters 10, 11, 14, and 16 of the Hamilton book fairly soon; other readings will suggest themselves as the course proceeds. Some copies are on library reserve.

2. At very different level of sophistication, Smith and Sylla, The Transformation of Financial Capitalism (N.Y.U. Solomon Center 1993), is a 60 page monograph, informative and well-written, covering the development of the U.S. securities industry. The monograph, whose authors are members of the finance faculty at Stern, will handsomely repay the time of a knowledgeable reader and is must reading for those less well informed. Six copies are on library reserve.

3. There are now many treatises for our area, beginning with the magisterial work of
Professor Louis Loss now continued by Dean Joel Seligman (Loss and Seligman, Securities Regulation, (Vols I-XI (3rd ed. 1989), and supplements through 2004)), as well as plentiful outline and thumbnail material. Given our work program, which is very concerned with detail, there is a significant risk of losing one's sense of the forest. Soderquist and Gabaldon, Securities Regulation (Concepts and Insights Series 2d ed 2003), is a brief, literate, and informative summary. Its comparative advantage to you is the coincidence that the order and weighting of topics correspond rather closely to what we will be doing.

4. Lastly the point, though obvious, should be made that the Cox, Hillman casebook is about 70 percent note material. These notes are thorough, and so far as I am able to judge, up to date and accurate. Do not lose sight of your book's excellence as a source for researching questions which occur to you.

**Assignments.** During the semester we will deal with a series of topics, each covered by an assignment sheet which will be available from my secretary, Mrs. Taylor, in suite 500 of Vanderbilt Hall. Assignment Number 1 is now there, along with a Commission publication, The Work of the SEC. The Work of the SEC should be read before our first meeting.