

Syllabus
Law 247.1
Regulation of Capital Markets and
Financial Institutions
Spring Semester 2013

Instructors:

Mark Perlow (“Mark”)
K&L Gates
4 Embarcadero Center, Suite 1200
mark.perlow@klgates.com
415-882-8220

Prasad Krishnamurthy (“Prasad”)
685 Simon Hall
prasad@law.berkeley.edu
510-643-5822

This course will address the institutional and regulatory framework of the U.S. capital markets and the role that financial institutions—such as banks, bank holding companies, investment banks, and investment funds—perform in these markets.

The course will start with an overview of the functions and regulation of banks, exchanges, over-the-counter markets, broker-dealers, institutional investors, and mutual and hedge funds. We will study in particular the recent crisis, including the rise and fall of securitization, failures in investment banks and the government-sponsored enterprises, credit derivatives, money market funds and hedge funds. We will study the division of regulatory responsibilities after Gramm-Leach-Bliley repealed Glass-Steagall and how these responsibilities correspond, or do not correspond, to the various financial “functions” that GLB intended to regulate. We will consider a range of actual and proposed regulatory responses to the crisis, including the many actions of the banking, securities and futures regulators and the legislative proposals and actions of Congress and the Treasury. We will examine the Dodd-Frank Act of 2010 and the ongoing rulemaking that is shaping its implementation.

The topics for the course are organized by weeks. Each week will consist of a Tuesday class (1 hour) that is primarily lecture and a Thursday class (2 hours) that is part lecture and part discussion. The required readings are intended to give students an introduction to the basic principles involved in these areas. The background readings are suggestions for those with particular interests in a given area. Each class will cover both the current regulatory and institutional framework and recent or proposed changes. We will conclude each topic with a case study—usually focused on the recent financial crisis—that illustrates the major legal and policy issues that we have covered.

The core requirement will be a 20-25 page paper that will be due at the end of the semester. The paper should be an analysis of a particular feature of the institutional framework or regulatory structure governing one of the areas of study, or a comparative analysis, or an

analysis of one or more proposals to address current issues presented by an area of study. A proposal and outline (2-3 pages) for the paper must be submitted to the instructors in advance and discussed by appointment. Class participation will determine the grades of students whose papers are on the margin between two grades.

1. Introduction: Markets, Institutions and Regulators (Week 1, Class 1)
 - a. Purposes: allocation of capital for investments in businesses, real estate, public finance; savings and investment for future plans of businesses, institutions and individuals; managing and mitigating financial risks
 - b. Instruments: loans, securities, derivatives and securitization
 - c. Markets: exchanges, alternative trading systems and over-the-counter
 - d. Institutions: banks, broker-dealers/investment banks, investment and pension funds, insurance companies
 - e. Roots of regulation in prior crises, especially the Great Depression
 - f. Regulators: bank (federal and state), SEC, CFTC, self-regulatory organizations, Dept. of Labor, state banking, securities, insurance agencies
 - g. Gramm-Leach-Bliley, the partial repeal of Glass-Steagall, the mixture of “functional” and “institutional” regulation, and modern financial deregulation
 - h. The Dodd-Frank Act and the new era of regulation
 - i. Themes: the interconnectedness of markets and institutions, the blurring of traditional instruments and institutions, the diminishing role of traditional banking and the rise of capital markets, investment banking and the “shadow” banking system, the fragmentation of regulation and regulatory competition, the tension between the rule of law and the discretion of regulatory bureaucracies, regulatory expertise and industry capture of regulators, the trade-off between innovation and protection, the importance of politics in understanding the regulatory system (through ideology, ambition and interest groups), punctuated evolution in the system (slow and organic change punctuated by crisis-driven partial reforms), the current financial crisis, the failure of the existing system and the emerging new system

Required reading: Securities Regulation, Coffee and Sale (“Casebook”) pp. 1-9, 44-53; Casebook 2010 Supplement pp. 1-11; Conclusions of the Financial Crisis Inquiry Commission pp. xv-xxviii; Dissenting Statements of FCIC Commissioners Hennessey, Holtz-Eakin and Thomas, pp. 413-439; Financial Regulatory Reform: A New Foundation, White Paper, Department of the Treasury (June 2009) pp. 1-18; Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System, Government Accountability Office, GAO 09-216, pp. 1-48 (Jan. 8, 2009).

Background reading: Special Report on Regulatory Reform, Congressional Oversight Panel (Jan. 2009) pp. 8-21; The financial crisis and the future of financial regulation, Remarks of Adair Turner, Chairman of the UK Financial Services Authority (Jan. 21, 2009); Federal Financial Services Regulatory Consolidation: An Overview, W. Eubanks, CRS Report for Congress (Aug. 17, 2005) pp. 1-12; Super-Regulator: A Comparative Analysis, J. Markham (2003) pp. 1-21, 70-87; As Credit Crisis Spiraled, Alarm Led to Action, J. Nocera, N.Y. Times (Oct. 2, 2008); The Current Financial Crisis: Causes and Policy Issues, Financial Market Trends (OECD 2008); Money, Liquidity and Monetary

Policy, Adrian and Shin, Federal Reserve Bank of New York Staff Reports, no. 360 (Jan. 2009); Financial Reform: A Framework for Financial Stability, Group of Thirty (Jan. 15, 2009); Treasury Department “Blueprint for a Modernized Financial Regulatory Structure”.

2. Banks (Week 1, Class 2 & Week 2, Class 1)
 - a. Core functions: deposit-taking, lending, trust, custody, payment systems
 - b. Prudential regulation: safety and soundness (capital, liquidity, and leverage)
 - c. The dual regulatory system
 - d. Federal regulation: the OCC and OTS, the national bank and thrift charters, the Federal Reserve and bank holding companies, the Fed discount window
 - e. Deposit insurance, the FDIC and moral hazard
 - f. Politics: the Senate Banking and House Financial Services Committees and the banking lobbies
 - g. Basel II and global risk-based capital regulation
 - h. The rise and fall of Citigroup

Required reading: Banking Regulation: Its Purposes, Implementation, and Effects, Kenneth Spong, Division of Supervision and Risk Management, Federal Reserve Bank of Kansas City (5th ed. 2000) (“Banking Regulation”) pp. 5-144; Chained but Untamed: A Special Report on International Banking, The Economist (May 14, 2011); What Happened at Citigroup?, C. Rose and A. Sesia, Harvard Business School (July 20, 2009).

Background reading: Banking Regulation pp. 145-200; Managing the Expanded Safety Net, Stern and Feldman, The Region (Federal Reserve Bank of Minneapolis 2007); Risk-Based Capital: Bank Regulators Need to Improve Transparency and Overcome Impediments to Finalizing the Proposed Basel II Framework, Government Accountability Office, GAO 07-253 (Feb. 2007) pp. 9-24, 29-33, 38-40, 50-51, 59-63, 66-68, 73-74, Appendix III (pp. 88-92); Statement by Roger W. Ferguson, Jr., Vice-Chairman, Board of Governors of the Federal Reserve System, Before the Subcommittee on Domestic and International Monetary Policy, U.S. House of Reps. (Feb. 27, 2003) pp. 1-9; Functional Regulation: The Securitization of Banking Law, H. Schooner (Jan. 2002).

3. Broker-Dealers and Investment Banks (Week 2, Class 2 & Week 3, Class 1)
 - a. Business lines: brokerage (retail and institutional), underwriting, market-making, proprietary trading, financial and economic research, M&A advice, investment management and advice, prime brokerage, securities lending
 - b. Leverage, liquidity, funding and capital requirements
 - c. Federal regulators: the SEC and the enforcement culture, FINRA and self-regulation
 - d. Principles of regulation: registration, antifraud, net capital, customer protection (suitability and segregation), professional licensing
 - e. Insider trading and market manipulation: case studies in law made by judges and enforcement actions
 - f. SIPA, SIPC, collateralization, counterparty risk and the consequences of failure
 - g. The SEC’s Consolidated Supervised Entities program: a case study in the gaps in Gramm-Leach-Bliley

h. The failures of Bear Stearns and Lehman Brothers

Required reading: Casebook pp. 53-70; 643-699; Investment Bank Regulation After the Bear Rescue, D. Jaffee and M. Perlow, *Journal of Central Banking* (May 2008); Testimony Concerning the Lehman Brothers Examiner's Report, SEC Chairman Mary L. Schapiro (Apr. 20, 2010); Agency's '04 Rule Let Banks Pile Up New Debt, S. Labaton, *N.Y. Times* (Oct. 3, 2008); Lessons Learned in Risk Management Oversight at Federal Financial Regulators, Testimony of Erik Sirri, Director, Division of Trading and Markets, SEC, Before the Senate Subcommittee on Securities, Insurance and Investment (Mar. 18, 2009); Securities Markets and Regulatory Reform, Remarks of Erik Sirri, Director, Division of Trading and Markets, SEC, Before the National Economists Club (Apr. 9, 2009).

Background reading: Casebook pp. 1173-1195, 1499-1508 (insider trading and market manipulation); How the Thundering Herd Faltered and Fell, G. Morgenson, *N.Y. Times* (Nov. 9 2008); SEC's Oversight of Bear Stearns and Related Entities, Report of SEC Inspector General (Sept. 25, 2008) pp. 1-18.

4. Debt Markets (Week 3, Class 2 & Week 4, Class 1)
 - a. Plethora of issuers, principal markets, opacity and the importance of credit analysis
 - b. The role of the credit rating agencies
 - c. The central role of dealers
 - d. Corporates (investment grade and high yield), municipal, Treasury and US government, foreign sovereign and emerging market bonds, loans and loan participations
 - e. The short-term and overnight markets: commercial paper and repurchase agreements
 - f. Rule 144A and the institutional market

Required reading: Casebook, pp. 10-18; Casebook, pp. 531-537 (rule 144A); Regulation of Fixed Income Securities Markets in the United States, F. Friedman, World Bank Policy Research Working Paper 3283 (Apr. 2004) pp. 10-36, 39-49; Report of the Money Market Working Group, Investment Company Institute (Mar. 17, 2009) pp. 13-18; Slapped in the Face by the Invisible Hand: Banking and the Panic of 2007, G. Gorton, Paper Prepared for Fed. Res. Bank of Atlanta's 2009 Financial Markets Conference (May 9, 2009) pp. 1-6.

Background reading: Slapped in the Face by the Invisible Hand: Banking and the Panic of 2007, G. Gorton, Paper Prepared for Fed. Res. Bank of Atlanta's 2009 Financial Markets Conference (May 9, 2009) pp. 6-43; Debt Watchdogs: Tamed or Caught Napping?, G. Morgenson, *N.Y. Times* (Dec. 7, 2008).

5. Equity Markets and Exchanges (Week 4, Class 2 & Week 5, Class 1)
 - a. Traditional exchanges: from the floor to the screen, from the buttonwood tree to global markets, from member-owned to publicly traded companies
 - b. Liquidity and price discovery: private or public goods?
 - c. Specialists, market makers, the technology revolution and decimalization
 - d. Exchanges as SROs: listing rules, member conduct rules, and enforcement

- e. The “stockivore’s dilemma”: order size, decimalization, information asymmetry and leakage, market impact and front-running
- f. The National Market System, Regulation NMS and market competition
- g. Alternative trading systems, Regulation ATS, ECNs, “dark pools” and the fragmentation of liquidity
- h. Fair access, transparency, the Order Handling Rules and the controversy over “high frequency trading”
- i. The “flash crash” of May 6, 2010

Required reading: Casebook pp. 26-38, 572-605, 626-642; SEC Revisits Market Structure in Concept Release and Rule Proposals, M. Perlow, and D. Peterson, The Review of Securities and Commodities Regulation (May 5, 2010); Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the SEC and CFTC (May 18, 2010) pp. A1-18; Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the SEC and CFTC (September 30, 2010) pp. 1-8; Toxic Equity Trading Order Flow on Wall Street, Where Has All the Volume Gone?, Why Institutional Investors Should Be Concerned About High Frequency Traders, S. Arnuk and J. Saluzzi, Themis Trading White Papers (July 2009); Keynote Speech at the SIFMA 2008 Dark Pools Symposium, Remarks of Erik Sirri, Director, Division of Trading and Markets, SEC (Feb. 1, 2008); Keynote Address to the 2009 SIFMA Market Structure Conference, Remarks of James Brigagliano, Co-Acting Director, Division of Trading and Markets, SEC (May 20, 2009).

Background reading: Address before the New York Financial Writers’ Association Annual Awards Dinner, Remarks of Mary Schapiro, Chairman, SEC (June 18, 2009) pp. 6-7; In re LaBranche & Co. LLC, SEC Rel. No. 34-49500 (Mar. 30, 2004); Super-Regulator: A Comparative Analysis, J. Markham (2003) pp. 45-51; Big Traders Dive Into Dark Pools, D. Bogoslaw, Business Week (Oct. 3, 2007).

6. Institutional Investors, Investment Companies and Investment Advisers (Week 5, Class 2 & Week 6, Class 1)

- a. Public and private pension funds
- b. Mutual funds, money market funds, closed-end funds, exchange-traded funds
- c. Retail investment management: the convergence of investment advisers and brokers
- d. The two 1940 Acts and the principles of fiduciary regulation
- e. ERISA
- f. The Reserve Primary Fund breaks the buck, and the run on money market funds
- g. Reregulating money market funds: shadow banks or market-based alternatives?

Required reading: Casebook, pp. 38-44; The Investment Company Act of 1940: SEC Enforcement and Private Actions, H. Norman Knickle, 23 Ann. Rev. Banking & Fin. Law (2004) pp. 780-87; Manager-Investor Conflicts in Mutual Funds, Paul Mahoney, 18 Journal of Economic Perspectives (2004) pp. 161-72; 2009 Investment Company Fact Book, Investment Company Institute (2009 49th ed.) Appendix A (pp. 170-181); A Guide to Understanding Mutual Funds, Investment Company Institute pp. 1-11; A Guide to Exchange-Traded Funds, Investment Company Institute; A Guide to Closed-End Funds, Investment Company Institute; Report of the

Money Market Working Group, Investment Company Institute (Mar. 17, 2009) pp. 18-39; Keynote Address Before the Annual Policy Seminar of the European Fund and Asset Management Association, A. Donohue (May 26, 2010); Money Market Funds – Preserving Systemic Benefits, Minimizing Systemic Risks, M. Perlow, Berkeley Business Law Journal (Winter 2012).

Background reading: Regulation of Investment Companies, Lemke, Lins and Smith (Sept. 2008) pp. 2-8, 2-9; Fiduciary Duties of Brokers-Advisers-Financial Planners and Money Managers, T. Frankel, Boston Univ. School of Law Working Paper No. 09-36 (Aug. 10, 2009); Money Market Fund Reform, SEC Rel. No. IC-28807 (June 30, 2009) pp. 1-23; Report of the Money Market Working Group, Investment Company Institute (Mar. 17, 2009) pp. 47-67; Money Market Fund Reform, SEC Rel. No. IC-28807 (June 30, 2009) pp. 23-110; The Future of Securities Regulation, Remarks of Brian G. Cartwright, General Counsel, SEC (Oct. 24, 2007).

7. Hedge Funds (Week 6, Class 2 & Week 7, Class 1)

- a. Private funds for sophisticated investors: on-shore and off-shore
- b. Hedge fund strategies and trading activity
- c. Symbiosis with prime brokers, and the consequences of the failure of Lehman Bros.
- d. Exemptions from Investment Company Act
- e. The Investment Advisers Act and the SEC's attempt to regulate hedge funds
- f. The collapse of the Bear Stearns hedge funds
- g. Dodd-Frank and the new drive to regulate

Required reading: Implications of the Growth of Hedge Funds, SEC Staff Report (Sept. 29, 2003) pp. 1-22, 33-103; Increased Regulation of U.S. and Non-U.S. Private Fund Advisers Under the Dodd-Frank Act, K&L Gates Financial Services Reform Alert (July 2010); SEC v. Ralph R. Cioffi and Matthew M. Tannin, Complaint (June 19, 2008); Hedge Funds and the Collapse of Long Term Capital Management, Franklin Edwards, 13 Journal of Economic Perspectives (1999).

Background reading: Implications of the Growth of Hedge Funds, SEC Staff Report (Sept. 29, 2003) pp. 103-113; Hedge Funds: Regulators and Market Participants are Taking Steps to Strengthen Market Discipline, but Continued Attention is Needed, Government Accountability Office, GAO 08-200 (Jan. 24, 2008) pp. 1-39; Goldstein v. SEC, 451 F.3d 873 (D.C. Cir., 2006) (Casebook pp. 1322-1330).

8. Futures and Commodities (Week 7, Class 2 & Week 8, Class 1)

- a. CFTC, CME, FCMs, CPOs, CTAs and DCOs
- b. Exchange-traded options
- c. Principles of CEA regulation: on-exchange, position limits and reporting, anti-manipulation, capital and margin
- d. Deep and transparent markets in futures
- e. Politics: The Congressional Agriculture Committees and competition with the SEC
- f. The CFMA and “principles-based” regulation
- g. Energy derivatives and the “London” and “Enron” loopholes

Required reading: Casebook pp. 20-25; Futures Market Basics, Commodity Futures Trading Commission (2012); The Economic Purpose of Futures Markets and How They Work, CFTC (2012); Industry Oversight: Designated Contract Markets, Exempt Markets, Derivatives Clearing Organizations, and Intermediaries, CFTC, website materials (2012); Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the SEC and CFTC (May 18, 2010) pp. B1-16; CFTC: Trends in Energy Derivatives Markets Raise Questions About CFTC's Oversight, Government Accountability Office, GAO 08-25 (Oct. 19, 2007) pp. 1-31; CFTC Adopts Speculative Position Limits on Physical Commodities, C. Mills, L. Patent, G. Peery, K&L Gates Derivatives Alert (Dec. 8, 2011).

Background reading: Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, CFTC Notice of Proposed Rulemaking (Jan. 26, 2010) pp. 4144-4164; Position Limits for Futures and Swaps, CFTC Final Rule Release, 76 Fed. Reg. 23 pp. 71626-71651 (Nov. 18, 2011); Statement of Dissent, Position Limits for Futures and Swaps, Remarks of CFTC Commissioner S. O'Malia (Oct. 18, 2011); Commodity Index Traders and the Boom/Bust Cycle in Commodities Prices, D. Frenk and W. Turbeville, *Better Markets* (2011) pp. 1-12; Super-Regulator: A Comparative Analysis, J. Markham (2003) pp. 21-45.

9. Derivatives (Week 8, Class 2 & Week 9, Class 1)

- a. Instruments: swaps, options and forwards, credit, interest rate and currency derivatives
- b. Dealer-focused, over-the-counter markets
- c. ISDA agreements and private protection
- d. The Commodity Futures Modernization Act and deregulation of swaps
- e. The rise and fall of the Quants
- f. The failure and rescue of AIG and the consequences for financial stability
- g. The Dodd-Frank Act and the new era of regulation

Required reading: Tools of the Trade: A Basic Guide to Financial Derivatives, Federal Reserve Bank of Boston (undated); What Went Wrong, A. Faiola, E. Nakashima and J. Drew, *Wash. Post* (Oct. 15, 2008); The Beautiful Machine, A Crack in the System, Downgrades and Downfall, O'Harrow and Dennis, *Wash. Post* (Dec. 29-31, 2008); The AIG Bailout, Thomas Sjoström, 66 *Wash. & Lee* (forthcoming 2009); Testimony of CFTC Chairman Gary Gensler Before the Financial Crisis Inquiry Commission (July 1, 2010); Policy Perspectives on OTC Derivatives Market Infrastructure, D. Duffie et al., Federal Reserve Bank of New York Staff Reports (Jan. 2010); Congressional Overhaul of the Derivatives Market in the United States, K&L Gates Financial Services Reform Alert (July 2010).

Background reading: The Man Who Crashed the World, Michael Lewis, *Vanity Fair* (Aug. 2009); Behind Insurer's Crisis, Blind Eye to a Web of Risk, G. Morgenson, *N.Y. Times* (Sept. 28, 2008); In Modeling Risk, the Human Factor Was Left Out, S. Lohr, *N.Y. Times* (Nov. 5, 2008); Credit Derivatives: An Overview, David Mengle, Federal Reserve Bank of Atlanta Economic Review, 92(4), Fourth Quarter 2007; CFTC Staff Report on Commodity Swap Dealers and Index Traders (Sept. 2008); Testimony Concerning Credit

Default Swaps, Erik Sirri, Director, SEC Division of Trading and Markets (Oct. 15, 2008, Nov. 20, 2008) (on central clearinghouses).

10. The Modern Mortgage Market (Wed. April 4 & Thurs. April 5)
 - a. Loans, old and new: fixed, variable and adjustable rate mortgages, ARMs, principal-only, option-ARMs and negative amortization
 - b. The tangled regulatory system: TILA, RESPA, disclosure-by-the-pound, no suitability or fiduciary obligation
 - c. Originate-to-distribute and moral hazard
 - d. Prime, subprime and Alt-A
 - e. The role of mortgage brokers, commissions and “yield spread premiums”
 - f. From Woo-hoo to Boo-hoo: Washington Mutual, New Century, Great Western and Countrywide and OTS oversight
 - g. Dodd-Frank and the Consumer Financial Protection Bureau

Required reading: The Rise and Fall of the U.S. Credit and Mortgage Markets, Barth, Li, Lu, Phumiwasana, and Yago (Milken Institute, Jan. 2009) pp. 1-21; In re New Century TRS Holdings, Inc.: Final Report of Bankruptcy Court Examiner (Bank. Ct. D. Del. Feb. 29, 2008) pp. 23-40 (“New Century Examiner’s Report”); Banking Regulation pp. 201-215, 242-244; Angelo’s Ashes, C. Bruck, *The New Yorker* (June 29, 2009); President’s Working Group on Financial Markets Policy Statement; Saying Yes, WaMu Built Empire on Shaky Loans, P. Goodman and G. Morgenson, *N.Y. Times* (Dec. 28, 2008); Once Trusted Mortgage Pioneers, Now Scrutinized, M. Moss and G. Fabrikant, *N.Y. Times* (Dec. 25, 2008); Banking Regulator Played Advocate Over Enforcer, B. Appelbaum and E. Nakashima, *Wash. Post* (Nov. 23, 2008); Consumer Financial Protection Bureau, Semi-Annual Report of the CFPB (Jan. 30, 2012) pp. 40-47; Consumer Financial Services Industry, Meet Your New Regulator, Hope You Like Plain Vanilla! The Mortgage Reform and Anti-Predatory Lending Act, K&L Gates Financial Services Reform Alert (July 2010).

Background reading: New Century Examiner’s Report pp. 1-11, 40-175; Consumer Financial Protection Bureau, Small Business Review Panel for TILA-RESPA Integration Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered (Feb. 21, 2012) pp. 1-22; More Information about RESPA, U.S Department of Housing and Urban Development, website materials (2009); Design and Testing of Truth in Lending Disclosures for Closed-End Mortgages, Report of ICF Macro, Submitted to Board of Governors of the Federal Reserve System (July 16, 2009) (“ICF Macro Report”) pp. i-vii, 1-25, 85; Truth in Lending, Comptroller’s Handbook (Oct. 2008) pp. 1-55.

11. Securitization (Wed. April 11 & Mon. April 16)
 - a. The ABCs of ABS: MBS, CMOs, CDOs, SIVs
 - b. The tangled web we wove
 - c. The role and the failings of the credit ratings agencies
 - d. Super seniors, toxic waste and “tranche warfare”

- e. Fixing securitization: risk retention, transparency and new rules for the credit rating agencies

Required reading: The Role of Securitization in Mortgage Lending, Chicago Fed Letter No. 244 (Nov. 2007); Understanding the Securitization of Subprime Mortgage Credit, Ashcraft and Schuermann, Federal Reserve Bank of New York Staff Reports, no. 318 (March 2008); MBS Basics, Nomura Fixed Income Research Report (Mar. 31, 2006) pp. 1-7, 26-28; CDOs in Plain English, Nomura Fixed Income Research Report (Sept. 13, 2004); Structuring for Leverage: CPDOs, SIVs, and ARSs, J. Mason (Nov. 17, 2008) pp. 9-16; Summary Report of Issues Identified in the SEC Staff's Examination of Select Credit Rating Agencies (July 2008); "Originate-to-Distribute" Lives on in Securitizations of Plain Vanilla Residential Mortgages: The Securitization Reform Provisions of the Dodd-Frank Act, Financial Reform Bill Strengthens Regulation, Expands Potential Liability of Credit Rating Agencies, K&L Gates Financial Services Reform Alerts (July 2010); Revitalizing the Private Mortgage Market: "Skin in the Game" and Consequences for Future Homebuyers, Knowledge @ Wharton (May 11, 2011).

Background reading: How Did We Get Here? The Story of the Credit Crisis, Sabry and Okongwu, *Journal of Structured Finance* (Spring 2009); Improving the Infrastructure for Non-Agency MBS, Remarks of Federal Reserve Governor Randall Kroszner (Dec. 4, 2008); MBS Basics, Nomura Fixed Income Research Report (Mar. 31, 2006) pp. 7-25.

12. The Government-Sponsored Enterprises (Thurs. April 19)

- a. Ginnie Mae, Fannie Mae and Freddie Mac: history and dual purpose as private enterprises with public missions – affordable housing
- b. The implicit government guarantee and subsidized cost of capital
- c. The GSEs' role in securitization: guarantees and "conforming" loans
- d. Fannie Mae's and Freddie Mac's investment portfolios and leverage
- e. Political influence and its effect on regulation
- f. Takeover and rescue by the Treasury

Required reading: Federal Credit and Insurance Programs: Housing, John M. Quigley, Federal Reserve Bank of St. Louis Review (2006) Intro and pp. 14-26; The Last Trillion-Dollar Commitment: The Destruction of Fannie Mae and Freddie Mac, P. Wallison and C. Calomiros, American Enterprise Institute Financial Services Outlook (Sept. 2008); Did Frannie Cause the Disaster?, J. Madrick and F. Partnoy, N.Y. Review of Books (Oct. 27, 2011); Goldman Sachs and Morgan Stanley analysis; Pressured to Take More Risk, Fannie Reached Tipping Point, C. Duhigg, N.Y. Times (Oct. 5, 2008); The Role of the GSEs and Housing Policy in the Financial Crisis, Dwight Jaffee (FCIC Testimony); Fannie Mae and Freddie Mac: Analysis of Options for Revising the Housing Enterprises' Long-Term Structures, Government Accountability Office, GAO-09-782 (Sept. 2009) pp. 28-49; Fannie Mae and Freddie Mac: What Happened and Where Do We Go From Here?, Testimony of Thomas Stanton Before the Committee on Oversight and Government Reform, U.S. House of Reps. (Dec. 9, 2008) pp. 1-6.

Background reading: Federal Credit and Insurance Programs: Housing, John M. Quigley, Federal Reserve Bank of St. Louis Review (2006) pp. 1-14; Remarks by Treasury Secretary Henry M. Paulson, Jr. on the Role of the GSEs in Supporting the Housing Recovery Before the Economic Club of Washington (Jan. 7, 2009); Fannie Mae and Freddie Mac: Analysis of Options for Revising the Housing Enterprises' Long-Term Structures, Government Accountability Office, GAO-09-782 (Sept. 2009) pp. 1-27, 50-58; Fannie Mae and Freddie Mac: What Happened and Where Do We Go From Here?, Testimony of Thomas Stanton Before the Committee on Oversight and Government Reform, U.S. House of Reps. (Dec. 9, 2008) pp. 6-10.

13. The New Systemic Risk Regulation (Wed. April 18 & Mon. April 23)
- a. The Financial Stability Oversight Council
 - b. The Volcker Rule
 - c. Basel III and new global capital and liquidity standards
 - d. Rules on financial firms' executive compensation
 - e. Resolution authority

Required Reading: The Fundamental Principles of Financial Regulation, M. Brunnermeier et al., Geneva Reports on the World Economy (June 2009); A New Era: Depository Institutions and Their Holding Companies Face a Deluge of Regulatory Changes, The Resolution of Systemically Important Nonbank Financial Companies... Will It Work?, K&L Gates Financial Services Reform Alerts (July 2010); Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships with Hedge Funds and Private Equity Funds, Notice of Proposed Rulemaking (OCC, FRB, FDIC, SEC), (Jan 2012) pp. 1-32; Commentary on Proposed Rulemaking, Paul Volcker, (Feb. 13, 2012); The Volcker Rule Restrictions on Proprietary Trading: Implications for Market Liquidity, Oliver Wyman (Feb. 13, 2012); Basel III, the Banks, and the Economy, D. Elliott, The Brookings Institution (July 26, 2010); Federal Regulators Propose Rule Addressing Incentive-Based Compensation Arrangements for Financial Firms, James Earle and Mark Perlow, Securities Regulation and Law Report (July 2011); Regulating Bankers' Pay, L. Bebchuk and H. Spamann, Harvard/Olin Center Discussion Paper (Oct. 2009) pp. 1-8; Guidance on Sound Incentive Compensation Policies, Dept. of the Treasury, Federal Reserve Board, Federal Deposit Insurance Corporation (June 21, 2010) pp. 34-53.

Background Reading: Basel III: An Overview, Peter King and Heath Tarbert, Banking and Financial Services, Policy Report (May 2011) pp. 1-19, Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems, Bank for International Settlements, (June 2001) pp. 1-10; Basel Committee's Response to the Financial Crisis: Report to the G20, Bank for International Settlements, Oct. 2010; Basel III: Issues and Expectations, KPMG, 2011; The New Basel III Framework: Implications for Banking Organizations, Shearman & Sterling, (March 30, 2011); Regulating Bankers' Pay, L. Bebchuk and H. Spamann, Harvard/Olin Center Discussion Paper (Oct. 2009) pp. 8-47; What's a Bailed-Out Banker Really Worth?, S. Brill, New York Times Magazine (Jan. 3, 2010).