

## **SECURITIES ENFORCEMENT SEMINAR – LAW 441**

Tuesdays @ 8:00-9:50 p.m. – Room 356

### **Instructor:**

Russell G. Ryan, Esq.  
Assistant Director, Division of Enforcement  
U.S. Securities and Exchange Commission  
(202) 942-4660  
[ryanr@sec.gov](mailto:ryanr@sec.gov)

### **I. COURSE DESCRIPTION**

This course will focus on legal and practical issues arising in the context of SEC enforcement investigations. Subject areas will include: the role of the SEC in enforcing compliance with the federal securities laws; statutory authority and limitations regarding the SEC's enforcement authority; investigative tools and techniques; common types of securities fraud investigations (including accounting frauds, insider trading, Internet frauds, and market manipulations); remedies available to the SEC; the role of auditors and other "gatekeepers" in detecting and preventing securities fraud; issues arising from parallel criminal investigations of securities fraud; and recent legislation and issues involving securities enforcement. Class size is limited and basic familiarity with the federal securities law is presumed. Students will be required, among other things, to write a paper addressing a relevant topic, and to make several short classroom presentations on current issues.

### **II. COURSE REQUIREMENTS AND EXPECTATIONS**

Students are assumed to have a working knowledge of basic federal securities law concepts, preferably from prior completion of the Securities Law and Regulation course. In addition, the following will be required of all students in the seminar:

***Preparation, attendance, and participation.*** Students should read all assigned materials before class and be willing and eager to participate in class discussion of the issues. Unexcused absences, lack of preparation, or lack of participation in class will result in a downward adjustment of final grade, whereas consistent attendance, preparedness, and meaningful participation will be rewarded with an upward adjustment of final grade.

***Paper requirement.*** All students will be required to write and submit a paper of law review quality discussing any securities enforcement topic approved by the instructor. Papers should be between 15 and 25 double-spaced pages in length and reflect thorough research and a mastery of the subject matter. Topics should be selected and approved no later than September 9<sup>th</sup>, and comprehensive outlines or first drafts will be due no later than October 7<sup>th</sup>. Final papers will be due on or before 5:00 p.m. on Wednesday, November 26<sup>th</sup>. Failure to meet the deadline

will result in a lower grade. Your paper will account for approximately 85% of your base grade, before any adjustments for class preparation and participation.

***Current issue presentations.*** Each week, one student will be assigned to give 5 to 10 minute presentation at the next class about any securities enforcement case, event, or other development that occurred or received significant media attention in the preceding week. A schedule will be distributed so that students will have ample notice of their assigned dates. Your presentations will account for approximately 15% of your base grade, before any adjustments for class preparation and participation.

### **III. SUBJECT AREAS AND ASSIGNED READINGS**

#### ***August 19, 2003 – Course Introduction and Requirements***

Personal introductions; introduction of course subject matter; discussion of course expectations and requirements; evaluation of class knowledge of securities law; evaluation of students' knowledge about securities trading and markets; roles of SEC and other players in enforcing the federal securities laws; SEC's statutory enforcement authority and limitations; how and where to find relevant precedent in SEC enforcement matters

#### **Required reading:**

*The Investor's Advocate: How the SEC Protects Investors and Maintains Market Integrity*, available at [www.sec.gov/about/whatwedo.shtml](http://www.sec.gov/about/whatwedo.shtml).

Securities Act Section 20 [15 U.S.C. § 77t]

Exchange Act Section 21 [15 U.S.C. § 78u]

*SEC v. Arthur Young & Co.*, 584 F.2d 1018 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979).

***August 26, 2003 – The Investigative Process, Part I: Case Origins and Stages of Investigation***

Sources of cases; stages of investigation (initial intake and review, informal inquiry, formal investigation, charging decision, settlement negotiation, and case filing); real-time enforcement

Required reading:

Form SEC 1662

SEC Rules of Practice regarding “Enforcement Activities,” 17 C.F.R. § 202.5, and “Rules Relating to Investigations,” 17 C.F.R. §§ 203.1-203.8

W. McLucas, J. Taylor, and S. Mathews, *A Practitioner’s Guide to the SEC’s Investigative and Enforcement Process*, 70 TEMPLE L. REV. 53, 53-62 (1997) (Parts I.A. through I.E.)

I. Sorkin and A. Jakoby, *SEC Investigations*, 18 REV. SEC. & COMM. REG. 45 (Feb. 20, 1985)

***September 2, 2003 – The Investigative Process, Part II: Investigative Tools and Techniques***

Public information sources (corporate filings, media reports, Internet sites, etc.); voluntary cooperation and informal interviews; Section 21(a) orders requiring the submission of written information; subpoena power and subpoena enforcement; investigative testimony

Required Reading:

*SEC v. O’Brien*, 467 U.S. 735 (1984)

*RNR Enterprises, Inc. v. SEC*, 122 F.3d 93 (2d Cir. 1997)

*SEC v. Sprecher*, 594 F.2d 317 (2d Cir. 1979)

D. Johnson & P. Pashkoff, *Reviving Old Methods for Real Time Enforcement*, INSIGHTS, Vol 16, no. 6, at 18 (July 2002)

*September 9, 2003 – The Investigative Process, Part III: Charging and Settlement Process*

**[NOTE: Last day for selection and approval of paper topics]**

The “Wells” process; settlement negotiation and strategy; analysis of evidence and prosecutorial discretion; seeking and obtaining Commission authorization; termination of investigations

Required reading:

Securities Act Release No. 5310 (September 27, 1972)

*Report of Investigation and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions* (the “Seaboard Report”), available at [www.sec.gov/litigation/investreport/34-44969.htm](http://www.sec.gov/litigation/investreport/34-44969.htm)

K. Winer and S. Winer, *Effective Representation in the SEC Wells Process*, 34 REV. SEC. & COMM. REG. 59 (March 28, 2001)

H. Pitt, D. Johnson, & A. Renzi, *Settling with the SEC: Hazards and Helpful Hints*, INSIGHTS, Vol. 6, No. 1, at 13 (Jan. 1992)

*September 16, 2003 – Remedies*

Remedies available in federal court (injunctions; accounting and disgorgement of unlawful gains, civil penalties, officer and director bars, penny stock bars) and in administrative proceedings (cease-and-desist orders; accounting and disgorgement of unlawful gains, securities industry bars and suspensions, civil penalties against registered securities industry firms and their “associated persons,” and officer and director bars).

Required reading:

R. Ryan, *Civil Penalties in SEC Enforcement Actions*, INSIGHTS, Vol. 17, No. 6, at 17 (June 2003)

D. Morrissey, *SEC Injunctions*, 608 TENN. L. REV. 427 (2001)

J. Sturc & R. Goin, *Disgorgement: A Primer*, 32 REV. SEC. & COMM. REG. 153 (August 1999)

R. Ferrara, T. Ferrigno, & D. Darland, *Hardball! The SEC’s New Arsenal of Enforcement Weapons*, 47 BUS. LAW. 33 (1991)

*SEC v. Patel*, 61 F.3d 137 (2d Cir. 1995).

***September 23, 2003 – Financial Fraud Investigations Part I: Overview***

Why they do it; how they do it; how they get caught; typical remedies and penalties

Required reading:

Securities Act Section 17(a) [15 U.S.C. § 77q(a)]

Exchange Act Sections 10(b), 13(a), and 13(b) [15 U.S.C. §§ 78j(b), 78m(a), and 78m(b)]

Exchange Act Rules 12b-20, 13a-1, 13a-13, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1, and 240.13b2-2]

R. Sauer, *Financial Statement Fraud: The Boundaries of Liability Under the Federal Securities Laws*, 57 BUS. LAW. 955 (2002)

T. Bishop, *Financial Statement Fraud: Why Do They Do It?*, Business Crimes Bulletin, Jan. 1995, p.1

***September 30, 2003 – Financial Fraud Investigations, Part II: Recent Scandals and Legislation***

Enron, Xerox, WorldCom, and other recent cases; Sarbanes-Oxley Act of 2002

Required reading:

Complaint in *SEC v. Xerox Corp.* (filed April 11, 2002) (available at <http://www.sec.gov/litigation/complaints/compl17465.htm>)

Complaint in *SEC v. WorldCom, Inc.* (filed June 26, 2002) (available at <http://www.sec.gov/litigation/complaints/compl17588.htm>)

***October 7, 2003 – Insider Trading Investigations***

**[Note: Comprehensive outlines or first drafts of papers due]**

Why they do it; how they do it; how they get caught; typical remedies and penalties

Required reading:

*U.S v. O'Hagan*, 521 U.S. 642 (1997)

E. Leefeldt, *SEC Sleuths*, Bloomberg Magazine, Oct. 1996, pp. 8-17

C. Gasparino & J. Opdyke, *SEC Probe Stumbled Onto Porn Star Case*, Contra Costa Times, Jan. 14, 2000, p. B3

***October 14, 2003 – NO CLASS – MONDAY SCHEDULE IN EFFECT***

***October 21, 2003 – Internet Fraud Investigations***

Types of Internet frauds; special investigative tools and techniques; noteworthy cases

Required reading:

J. Stark, *EnforceNet Redux: A Retrospective of the SEC's Internet Program Four Years After Its Genesis*, 57 BUS. LAW. 105 (2001)

***October 28, 2003 – Miscellaneous Securities Fraud Investigations***

Market manipulation and boiler rooms; prime bank frauds; Ponzi schemes; and other cases

Required reading:

To be announced

***November 4, 2003 – Parallel Criminal Investigations and Private Lawsuits***

Comparison and contrast with SEC investigations; cooperation between criminal prosecutors and SEC staff; common issues arising from parallel criminal investigations (5<sup>th</sup> Amendment, double jeopardy, grand jury secrecy and Fed. R. Crim. Proc. 6(e), stay of litigation or investigation); common issues arising from parallel private lawsuits (waiver of privilege, discoverability of SEC testimony, impact on disgorgement and penalties available to SEC)

Required reading:

*SEC v. Dresser Indus., Inc.*, 628 F.2d 1368 (D.C. Cir. 1980)

M. Schroeder, “SEC Welcomes Prosecutions,” Wall St. J., June 11, 2002, p.A2

B. Fernandez, “SEC Wants Jail for Executives in Fraud Cases,” Philadelphia Inquirer, June 18, 2002

W. McLucas, J. Taylor, and S. Mathews, *A Practitioner’s Guide to the SEC’s Investigative and Enforcement Process*, 70 TEMPLE L. REV. 53, 100-05 (1997) (Parts III.J and III.K)

***November 11, 2003 – Role of “Gatekeepers”***

Issues concerning accountants (auditor independence, audit failures, reporting illegal acts under Exchange Act Section 10A), attorneys (limited use of Rule 102(e), new “up-the-ladder” reporting rules), and analysts (conflicts of interest, new responsibilities)

Required reading:

Exchange Act § 10A [15 U.S.C. § 78j-1]

Sarbanes-Oxley Act of 2002, §§ 101-209, 307, and 501

SEC Rules of Practice, Rule 102(e) [17 C.F.R. § 201.102(e)]

Summary of settlements with top investment firms regarding analyst conflicts of interest, available at <http://www.sec.gov/news/press/2003-54.htm>

SEC Rules Implementing Professional Standards for Attorneys, available at <http://www.sec.gov/rules/final/33-8185.htm>

***November 18, 2003 – Defense Perspective on SEC Investigations***

One or more securities attorneys in private practice will be invited to speak and answer questions from the perspective of defending companies and individuals in SEC investigations

Required reading:

H. Pitt & A. Strauss, *A Constructive Appraisal of the SEC's Enforcement Program*, INSIGHTS, Vol. 7, p. 2 (August 1993)

***November 25, 2003 – Current Issues and Course Review***

Miscellaneous issues in recent news headlines and of interest to SEC enforcement attorneys; review of major themes and concepts covered during semester; discussions and questions about papers

Required reading:

To be announced

***November 26, 2003 – Papers due no later than 5:00 p.m.***