

Derivatives Law & Policy: Seminar
Fall 2022, Tuesdays 1:50 pm to 3:50 pm
Professor Gina-Gail S. Fletcher
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Office hours by appointment

Course Description

Modern capital and financial markets rely on a wide variety of complex instruments, including Treasury securities, structured debt and equity instruments, and derivatives of various kinds. Public awareness regarding these instruments has grown since the Financial Crisis of 2008 because they are thought to have played an important role in both the rapid growth of financial markets (“financialization”) and their destabilization. Yet a basic understanding of these instruments has now become important in modern financial law practice and any discussions on financial policy and regulation.

This course will review the workings of derivative instruments in the capital markets and how such instruments themselves are used. We will also consider the numerous public policy issues relating to derivatives, their role in the Crisis of 2008, the history of attempts to regulate these instruments, and the current regulatory structure.

Course Meetings

This course will meet seven (7) times during the semester. Our first class meeting is on Tuesday August 23; our final class meeting is on Tuesday, October 4. Three of our classes will be in-person and we will meet in **Hazel 224**. The dates of our in-person classes are:

- Tuesday August 30th
- Tuesday September 13th
- Tuesday October 4th

Our remaining four (4) classes will be on Zoom. Zoom classes can be accessed using the link embedded in Blackboard or with the following information:

- Meeting ID: 960 3313 8656
- Passcode: 210653

Course Materials

The readings for the course are all open source, publicly available articles. All readings are required for the classes to which they are assigned, unless otherwise indicated. The readings will be uploaded to Blackboard no later than one week prior to class. Please do not hesitate to let me know if there are issues accessing the materials or any other issue.

Grading & Assignments

Students must write a research paper of ten (10) to twelve (12) pages on a topic related to the focus of the course. The final paper will be due by no later than Friday October 28, 2022, at 5 pm.

A small seminar, such as this, cannot function without active student participation. As such, each student is expected to participate actively in class discussions. With the exception of the first and last class, in each class a group of three or four students will lead our discussion. Leading discussions merely means that each group should come to class with a set of questions to frame the discussion. I will interject and assist with the discussions as needed, but to make the classroom more collaborative, the conversation will be student-lead

Regardless of whether you are leading discussion, students must have read each week's assignments. In order to foster collaboration and conversation, each student is required to submit three (3) to five (5) questions by Monday at noon prior to class. All questions must not pertain to the same article/reading assignment, but instead the questions must touch on each of the articles assigned for the week.

The final semester grade will be determined as follows:

- Final paper 50%
- Student Lead Discussion: 30%
- Weekly Questions & Participation: 20%

Class Attendance

Class attendance is required for each student. Unexcused absences are not permitted. Given the short nature of the course, students are permitted no more than one (1) excused absence during the semester. If a student is absent more frequently, s/he may not be able to submit their final paper for the course.

Learning Objectives

- Understand what derivatives are and how they are used
- Learn about the regulation of derivatives, historically and contemporaneously
- Identify emerging themes in the derivatives market and their relation to the broader financial markets

Reading Assignments

Week 1: August 23rd (Zoom)

Introduction to Derivatives

- Christian Hawkesby, [*A primer on derivatives markets*](#), Reserve Bank of New Zealand: Bulletin Vol. 62 No. 2
- Ivana Ruffini & Robert Steigerwald, [*OTC derivatives – A primer on market infrastructure and regulatory policy*](#), FRB of Chicago, 3Q/2014, Economic Perspectives
- US General Accounting Office, [*Financial Derivatives—Actions Needed to Protect the Financial System*](#), GAO/GGD 94-133 (May 1994), pp. 24 – 43

Week 2: August 30th (In person)

Regulatory History of Derivatives

- Lynn Stout, [*Uncertainty, Dangerous Optimism, and Speculation: An Inquiry into Some Limits of Democratic Governance*](#), 97 Cornell L. Rev. 1177 (2012) pp. 1195 – end
- Colleen M. Baker, [*Regulating the Invisible: The Case of Over-the-Counter Derivatives*](#), 85 Notre Dame L. Rev. 1287 (2010) pp. 1309 – 1322
- Jerry W. Markham, [*Super Regulator: A Comparative Analysis of Securities and Derivatives Regulation in the United States, the United Kingdom, and Japan*](#), 28 Brook. J. Int'l L. (2003), pp. 338 – 346; 356 – 366

Week 3: September 6th (Zoom)

Role of Derivatives in the 2009 Financial Crisis

- Readings TBD

Week 4: September 13th (in person)

Clearinghouses—The Way to Manage Derivative Risk?

- Heath Tarbert, [*The Enduring Legacy of the Dodd-Frank Act's Derivatives Reforms*](#), Journal of Financial Regulation 159 (2020)
- Paolo Saguato, [*The Unfinished Business of Regulating Clearinghouses*](#), Colum. Bus. L. Rev. (2020), 514 – 531
- Hester Peirce, [*Derivatives Clearinghouses: Clearing the Way to Failure*](#), 64 Cleveland State L. Rev. 589 (2016), 601 – 610; 652 – 660

Week 5: September 20th (Zoom)

Insider Trading & Manipulation

- Yesha Yadav, [*Inside Trading in Derivatives Markets*](#), 103 Geo. L. J. 381 (2015), pages TBD

- Gina-Gail S. Fletcher, *Engineered Credit Default Swaps*, 94 N.Y. Univ. L. Rev. 1073 (2019), pages TBD.

Week 6: September 27th (Zoom)

Emerging Topics in Derivatives Markets

- Readings TBD

Week 7: October 4th (In person)

Paper Presentations

- No readings.