

Law 745-001 | Selected Topics in Securities & Governance Law: Representing the Public Company Today | Spring 2025 | 1 credit

Professor(s): James O'Reilly

Thurs. 6:05 – 8:05 pm EST | Final Exam: N/A

Reading(s): [REQUIRED] The course materials will be available to students in a course packet. Students must read the materials in advance and come prepared to discuss them during class. In addition to the reading materials referenced below, each student is required to subscribe or obtain access to the Wall Street Journal. We will discuss briefly any items of relevance appearing therein in each class.

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Schedule Announcement(s): The course will meet on Thursday evenings from 6:05 pm to 8:05 pm on the following 2025 dates: February 27; March 6; March 20; March 27; April 3; April 10; and April 17.

COURSE DESCRIPTION

This course will explore the evolution of the in-house securities, governance and disclosure function and the key role this function plays in the ecosystem of a publicly-traded company in the United States. We will explore the key legal and regulatory frameworks within which the role operates; other third-party standards relevant to the role (including stock exchange listing standards, institutional investor and proxy advisory voting policies and sustainability rating firms' criteria); the interaction of the role with internal and external stakeholders such as directors, executive officers, auditors, compensation consultants, attorneys, shareholders, activists, proxy advisory firms and sustainability rating firms; and best practices for addressing legal and stakeholder requirements while also efficiently and effectively supporting the purpose, strategy and operation of the business. The course will focus in particular on the dynamic and evolving nature of the role and its opportunity to contribute to the success of a public company. Securities Law and Regulation is a co-requisite for the course.

COURSE OBJECTIVES

A student who completes this course will demonstrate:

- an understanding of key elements of the legal regimes that apply to U.S. publicly-traded companies;
- an understanding of the differences and interrelationships between legal compliance, corporate governance and stakeholder responsiveness;
- an understanding of the key internal and external stakeholders of a U.S. publicly-traded companies and their fundamental motivations;
- basic competence in balancing multiple and sometimes conflicting stakeholder priorities and considerations in representing a U.S. publicly-traded company; and
- an understanding of the maturity model that applies to the lawyer representing a U.S. publicly-traded company, and how each of the different dimensions of such model serve to advance the interests of the company.

GRADING & PARTICIPATION

1. **WRITING ASSIGNMENTS:** Students will complete a final paper that will be due on the last day of the course. In the paper, students will identify and analyze a discrete issue,

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incorporating a clear thesis. The writing assignment will count for 80% of the course grade.

2. **CLASS PARTICIPATION:** In this course, students should come to class prepared to participate in class discussion, having critically analyzed the readings. Class participation will count for 20% of the final grade.

Class Participation

Although grades will be based primarily on the required paper, your class participation will be factored into your grade. Class attendance is expected and required, with persistent unexcused absences subjecting students to a downward grade adjustment. In addition, each student may be requested to participate in helping lead a portion of a class. Guest speakers may also be invited to participate in the class.

Professional Conduct

My goal is to develop a learning community that is inclusive and respectful, and I ask you to commit to that same goal. A dedication to inclusiveness requires respecting what others say, their right to say it, and the thoughtful consideration of others' communication. Both speaking up and listening are valuable tools for furthering thoughtful, enlightening dialogue.

COURSE SCHEDULE & ASSIGNMENTS

DATE	SUBJECT	ASSIGNMENT
Week 1	INTRODUCTIONS AND OVERVIEW <ul style="list-style-type: none">• Evolution of the in-house securities/governance/disclosure function• Three key pillars<ul style="list-style-type: none">○ Securities law compliance○ Corporate governance○ Stakeholder disclosure and engagement• Maturity model<ul style="list-style-type: none">○ Compliance○ Risk mitigation○ Business enablement○ Competitive differentiation• Disclosure controls and procedures/Internal controls over financial reporting<ul style="list-style-type: none">○ Best practices○ SEC enforcement trends	<i>U.S. Public Company Overview</i> <ul style="list-style-type: none">• International Comparative Legal Guides – Corporate Governance 2023, 16th Edition; contributing editors Adam O. Emmerich & Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz (Sections 1 and 5) <i>Role of Corporate Secretary</i> <ul style="list-style-type: none">• “The Corporate Secretary: An Overview of Duties and Responsibilities”, by the Society for Corporate Governance <i>Disclosure Controls and Internal Controls</i> <ul style="list-style-type: none">• Lynn, Borges & Romanek’s “Executive Compensation Disclosure Treatise and Reporting Guide” (Chapter II, pp. 2-3 – 2-4)• Exchange Act Rule 13a-15• Regulation S-K Items 307 and 308; Item 601(b)(31)• Tenneco Inc. Disclosure Controls and Procedures [note: don’t read word for word; just review enough for a high-level understanding of content]

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		<p><i>Optional</i></p> <ul style="list-style-type: none"> Skadden, Arps, Slate, Meagher & Flom LLP: “Enhancing Disclosure Controls and Procedures Relating to Voluntary Environmental and Social Disclosures
Week 2	<p>THE PUBLIC COMPANY INSIDER: MANAGING COMPLIANCE</p> <p>Equity Compensation and Executive Compensation</p> <ul style="list-style-type: none"> Overview of laws governing equity compensation Executive compensation requirements and disclosure Best practices <p>Section 16 and Insider Trading Compliance Programs</p> <ul style="list-style-type: none"> Best practices SEC enforcement trends <p>Related Person Transactions Compliance</p> <ul style="list-style-type: none"> Disclosure requirements and investor relations considerations Best practices SEC enforcement trends 	<p><i>Equity Compensation</i></p> <ul style="list-style-type: none"> “Global Equity Compensation: A Primer on Key Legal, Regulatory and Tax Considerations”, by Brian K. Wydajewski, Baker & McKenzie LLP, with Practical Law Employee Benefits & Executive Compensation <p><i>Executive Compensation</i></p> <ul style="list-style-type: none"> Lynn, Borges & Romanek’s “Executive Compensation Disclosure Treatise and Reporting Guide” (excerpts from Chapter 1, Sections VIII and X) <p><i>Section 16 Compliance</i></p> <ul style="list-style-type: none"> Chapter I and Chapter II, Section A of “The Section 16 Deskbook” (Peter J. Romeo and Alan L. Dye) <p><i>Insider Trading Compliance</i></p> <ul style="list-style-type: none"> Wachtell, Lipton, Rosen & Katz memorandum: “Liabilities Under the Federal Securities Laws” (Chapter II, Section A, Introduction and Subsections 1, 4-5 and 11) Becton Dickinson Policy re: Insider Trading and Securities Transactions <p><i>Related Person Transactions</i></p> <ul style="list-style-type: none"> “Related Party Transactions Disclosure Handbook,” Editors Liz Dunshee, Emily Sacks-Wilner, Executive Press, Inc. (Section 1, 22-6 – 11; Section III (a) and the following selected sections of (b): What Transactions Must Be Reported; What Must Be Disclosed About Reportable Transactions; What is a “Transaction”?; Transactions In Which Company is “Participant”; Identifying “Related Persons”; Definition of “Materiality”; Overdisclosure Typical Due to Vague Materiality Standard) <p><i>Optional</i></p> <ul style="list-style-type: none"> “Ghost of David Sokol Haunts SEC’s Insider Trading Case against Szymik and Peixoto,” by Brooks Pierce

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		<ul style="list-style-type: none"> Selected public company Section 16 disclosures
Week 3	<p>CORPORATE GOVERNANCE FUNDAMENTALS</p> <p>The Board of Directors</p> <ul style="list-style-type: none"> Purpose/structure of the corporation State law considerations: <ul style="list-style-type: none"> Fiduciary duties Liability and indemnification Board committees and meeting practices Board compensation Stock exchange governance standards US federal securities law considerations: <ul style="list-style-type: none"> Director independence and competency disclosure requirements Best practices <p>Shareholder Rights</p> <ul style="list-style-type: none"> State law considerations: <ul style="list-style-type: none"> Rights of shareholders vs. role of directors Shareholder voting Director nominations Proxy access Derivative actions Stock exchange shareholder rights standards US federal securities law considerations: <ul style="list-style-type: none"> Proxy voting structure Disclosure requirements 	<p><i>The Board of Directors</i></p> <ul style="list-style-type: none"> Perkins Coie memorandum: “The Public Company Handbook” (Chapter 2; also pp. 232-244) International Comparative Legal Guides – Corporate Governance 2023, 16th Edition; contributing editors Adam O. Emmerich & Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz (Section 3) [this is in the folder of materials for Week 1] <p><i>Shareholder Rights</i></p> <ul style="list-style-type: none"> International Comparative Legal Guides – Corporate Governance 2023, 16th Edition; contributing editors Adam O. Emmerich & Sabastian V. Niles, Wachtell, Lipton, Rosen & Katz (Section 2.1-2.3; 2.5) [this is in the folder of materials for Week 1] <p><i>Optional</i></p> <ul style="list-style-type: none"> “The Delaware Way: How We Do Corporate Law and Some of the New Challenges We (and Europe) Face” by Leo E. Strine Jr., pages 673-679
Week 4	<p>INVESTOR RELATIONS AND ENGAGEMENT</p> <p>Investor Relations</p> <ul style="list-style-type: none"> The investor relations function <ul style="list-style-type: none"> Purpose of the function Traditional investor engagement Earnings releases Investor relations legal framework: <ul style="list-style-type: none"> Regulation FD Regulation G and non-GAAP measures Item 2.02 of Form 8-K Best practices <p>Institutional Investor Voting/Governance Engagement Practices</p>	<ul style="list-style-type: none"> “How Investor Relations Contributes to the Corporate Bottom Line,” by Alexander Laskin (pp. 302-308; 319-320) Cleary Gottlieb, “Communication with Financial Analysts and Related Disclosure Issues” (Introduction; Sections I; VII; X-XV) [note: no need to read footnotes] Fidelity proxy voting guidelines (pp. 1-12) <p><i>Optional</i></p> <ul style="list-style-type: none"> Latham & Watkins memorandum: “Giving Good Guidance: What Every Public Company Should Know”

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	<ul style="list-style-type: none"> Institutional investor voting and governance engagement practices Trends Best practices 	
Week 5	<p>PROXY ADVISORY FIRMS; SHAREHOLDER PROPOSALS AND ACTIVISTS</p> <p>Proxy Advisory Firms</p> <ul style="list-style-type: none"> Overview of proxy advisory firms and legal framework Best practices <p>Shareholder Proposals and Activists</p> <ul style="list-style-type: none"> Shareholder proposal legal framework Engaging with proponents and activists Best practices 	<p><i>Proxy Advisory Firms</i></p> <ul style="list-style-type: none"> “The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry,” by David F. Larcker, Brian Tayan and James R. Copland <p><i>Shareholder Proposals and Activists</i></p> <ul style="list-style-type: none"> “The Director’s Guide to Shareholder Activism,” PwC (pp. 6-21) “Shareholder Proposals Handbook,” Editors Liz Dunshee, Emily Sacks-Wilner, Executive Press, Inc. (Sections 1 and 30)
Week 6	<p>SUSTAINABILITY AND THE PUBLIC COMPANY TODAY</p> <ul style="list-style-type: none"> Introduction to sustainability/ESG <ul style="list-style-type: none"> What is sustainability/ESG? Key sustainability/ESG topics Overview of key sustainability/ESG stakeholders Sustainability/ESG: the issuer perspective Sustainability/ESG reporting Best practices 	<ul style="list-style-type: none"> “The Investor Revolution: Shareholders are getting serious about sustainability”, by Robert G. Eccles and Svetlana Klimenko “Seven Myths of ESG”, by David F. Larcker, Brian Tayan, and Edward M. Watts [note: no need to read footnotes or exhibits] “ESG Ratings: A Compass Without Direction”, by David F. Larcker, Lukasz Pomorski, Brian Tayan, and Edward M. Watts <p><i>Optional</i></p> <ul style="list-style-type: none"> Skadden, Arps, Slate, Meagher & Flom LLP memorandum: “ESG in Focus: An Overview of Recent Litigation and Regulatory Developments”
Week 7	<p>SUSTAINABILITY AND THE PUBLIC COMPANY TOMORROW</p> <ul style="list-style-type: none"> Evolution of the sustainability/ESG compliance framework <ul style="list-style-type: none"> Overview of third-party sustainability/ESG rating firms Trend from voluntary/self-regulatory framework to regulated practice (EU CSRD, California, SEC, IISB) <p>RECAP OF KEY COURSE THEMES</p>	<ul style="list-style-type: none"> Sidley memorandum: “EU Adopts First Set of European Sustainability Reporting Standards — Critical Considerations for Companies in Scope of CSRD” Gibson Dunn memorandum: “California Passes Climate Disclosure Legislation”