NYU Center for Law & Business
A joint venture of the Leonard N. Stern School of Business and the NYU School of Law

---Tentative---

**LAW & BUSINESS OF INVESTMENT BANKING**
NYU SCHOOL OF LAW
LEONARD N. STERN SCHOOL OF BUSINESS
Professor William T. Allen
Professor Arthur H. Rosenbloom

**Text:** CORPORATE FINANCE AND THE SECURITIES LAWS, by Charles J. Johnson, Jr. and Joseph McLaughlin (Aspen Law & Business 1997); SECURITIES LAW, by Larry Sonderquist and Theresa Gabaldon (Foundation Press 1998)(paper) and various reproduced materials from time to time.

**Class 1** (Law Students only): -- August 27, 1998

**Business Operation of An Investment Banking Firm:**
Review of the multiple functions or products that a large investment banking firm provides. How the firm is organized. The risks the business presents.

Professor Allen, Lucia Swanson, Esq., Deputy General Counsel, Donaldson, Lufkin & Jenrette, Inc., and Theodore Levine, Esq., Senior Vice President and General Counsel, Paine Webber, Inc] (Distribute Merrill Lynch, “How To Read A Financial Report”)

**Readings:** Sonderquist, pp. 23-30
Johnson & McLaughlin, pp. 106-110

**Class 2** (Law students only): -- September 1, 1998

**The Legal Regulation of Investment Banking Activities:** A review, from the perspective of an inside general counsel, of the various regulatory regimes that impact the business operations of the firm.

Professor Allen, Ms. Swanson and Mr. Levine

**Class 3** (Law Students only): -- September 3, 1998

**Financial Statement Review:** Review of how to read a financial statement (balance sheet, income statement sources and applications statement) and of commonly used financial ratios that help the reader determine the financial health of the business under review. This review is the predicate for lectures on transaction pricing (Classes 14-16).

Professor Rosenbloom

**Readings:** Merrill Lynch & Co., Inc., “How to Read A Financial Statement”

**Class 4:** (Law and Business Students) -- September 8, 1998

**Regulation of Capital Markets: the Role of the Securities & Exchange Commission:**
Summary review of the various statutes regulating the investment banking business and the operation of the Securities and Exchange Commission.
Professor Allen and Linda Quinn, Esq., Sherman & Sterling. Formerly Chief of Corporate Finance Division, Securities Exchange Commission, Washington


Class 5: -- September 10, 1998
The First Step: Getting Information : Due Diligence Practices (Introduction) – Hand out team assignment #1 An introduction to legal and business due diligence by considering the key legal, financial and operational questions that need to be addressed in due diligence. Answers to these questions form the bases for determining whether the transaction should go forward and, if so, at what price and terms and with what sort of deal structure.

Professor Rosenbloom
Readings: Johnson & McLaughlin, pp. 257 - 300

Class 6: September 15, 1998
Overview of the Operation of the 1933 Act:
Basic Philosophy
Structure
Definition of “Securities”
Exempt Transactions and Exempt Securities
Requirement of Registration and Prospectus Delivery
Liability Provisions
Issuer Strict Liability
Director and Officer
Underwriter or broker liability
Indemnification

Professor Allen
Readings: Sonderquist & Gabaldon, pp. 33 - 92

Class 7: September 17, 1998:
Overview of Legal System Protections of Corporate Investors (in addition to disclosure required by the 1933 and 1934 Acts)
Equity Investors
1. Voting rights
   What issues?
   When: power to call meetings and “consent solicitations”
   Dual Class voting
   Cumulative voting
   Preferred stock voting rights

2. Transferability of stock: creates possibility of Takeover market

3. Directors Fiduciary duty/ derivative suit : liability possible.

Debt: Viewing sale of debt as sale of firm with an option to repurchase at maturity for principle plus interest. Equity’s incentive thereafter to increase the volatility of expected returns (option pricing theory) “defensive strategies include creating (1)
protected positions with respect to assets; (2) creating early warning systems of insecurity; and (3) early “defaults” that permit creditors to intervene or seek bankruptcy.

1. Negotiated protections
   A. Security interests
      What are they
      How created and administered
      Role of Indenture trustee
   B. Warranties
   C. Covenants (covered later)

2. System (non-negotiated) protections
   A. Fraudulent Conveyance Statute
   B. Piercing the “corporate veil”
   C. Fiduciary duty protection against “looting” when insolvency is in the environment. What are insolvency definitions?
   D. Bankruptcy

Professor Allen
Class 8: September 22, 1998
Overview of the 1934 Act as it Relates to Capital Raising
Filing requirements
Section 10b-5 and insider trading liability—Hand out team problem #2
Professor Allen
Readings: Sonderquist & Gabaldon, pp. 95 - 106 and 108 - 113

Class 9: September 24, 1998
Securities Fraud Case (MGI Pharma) (Hand-in team problem #2) A classic example of the exposure to a securities fraud lawsuit upon the announcement of bad news by a high tech pharmaceutical company. Turn in assignment by teams. Counts for 10% of final grade.
Professor Allen
Reading: MGI Pharma, Inc. NYU Salomon Center Case Series in Finance and Economics

Class 10: September 29 1998
Back to Due Diligence Process (Hand in assignment #1) Due Diligence Case (Tadiran). Through reading the Tadiran Form 20-F (a Form 10-K type document for non-U.S. companies) together with a Coopers & Lybrand due diligence checklist and with written guidelines from the instructor, teams will be asked to prepare, in outline form, a joint legal/financial due diligence memorandum in the context of a proposed minority equity investment/strategic alliance with Tadiran, an Israeli company, by a hypothetical U.S. corporate investor. Turn in assignment by teams. Counts for 20% of final grade.
Professor Rosenbloom

Class 11: October 1, 1998
Due Diligence (con’t) (Hand out Masland Case assignment #3)
Professor Rosenbloom
Class 12: October 6, 1998
Transaction Pricing  A consideration of the traditional forms of transaction pricing used by investment banks in IPO’s, private placements and mergers and acquisitions. Equity pricing techniques covered include comparative company, discounted cash flow and asset based approaches to value determination. Debt pricing includes present value theory, coverage ratios and yield to maturity.
Professor Rosenbloom

Class 13: October 8, 1998
Transaction Pricing (con’t)
Professor Rosenbloom

Class 14: October 13, 1998
Transaction Pricing (con’t)
Professor Rosenbloom

Class 15: October 15, 1998
IPO Transaction Pricing Case: Masland (hand in assignment #3) A consideration of what factors most influenced the underwriters’ pricing decisions in the October 1993 equity IPO of a designer and manufacturer of carpet and vinyl floor systems and related products. Turn in assignment by teams. Counts for 10% of final grade.
Professor Rosenbloom
Readings: Masland Corporation case
NYU Salomon Center Case Series in Finance and Economics

Class 16: October 20, 1998
Overview of IPO Process A review of the most typical kinds of IPO’s. Why do companies decide to go public? Why might they not so choose? Typical uses of IPO proceeds. Types of underwriting (firm commitment versus best efforts). How IPO’s are priced. Picking the managing underwriter. How the prospective managing underwriter evaluates the Company. A typical IPO timetable. The underwriter in the aftermarket
Professor Rosenbloom
Readings: Schneider et al., Initial Public Offering Book (Bowne & Co., 1997)

Class 17: October 22, 1998
Legal Aspects: the Registration Process
Professor Allen and Adam O. Emmerich, Esq., Wachtell Lipton, Rosen & Katz
Reading: Johnson & McLaughlin, pp. 7 - 53 and pp. 144 - 150

Class 18: October 27, 1998
Legal Aspects : The Distribution Process
Professor Allen
Reading: Johnson & McLaughlin, pp. 197 - 250

Class 19: October 29, 1998
Underwriting Agreements
Professor Allen
Reading: Johnson & McLaughlin, pp. 57-103
Form of Underwriting Agreement, Amazon.com, Inc.

Class 20: November 3, 1998
Legal Regulation of the Private Placement of Securities (hand out ICON materials)
Professor Allen
Johnson & McLaughlin pp. 381-426

Class 21: November 5, 1998
Overview of Debt Financing: In this session we analyze the definition and typography of private placements generally. We then review the three most common types of debt offerings, the Reg D private placement, the Rule 144A private placement and the public bond offering. Consideration is given to the advantages and disadvantages of each and their cost.
Professor Rosenbloom

Class 22: November 10, 1998
Case Analysis: ICON Private Placement This session covers the evolution of an actual middle market $47 million private placement of $20 million of asset based revolving credit, $10 million of senior subordinated notes with detachable warrants and $17 million of equity for a specialized finance company specializing in corporate barter.
Professor Rosenbloom

Class 23: November 12, 1998
Bond Financing Documents: Contractual protections against equity opportunism
A. Types of Bonds and extent of covenants
B. Role of the Indenture Trustee in Publicly Distributed Bonds
C. Negotiation/Designing Bond Terms
D. Covenants: Maintenance of financial ratios. e.g.
   a. Liquidity measures
   b. Debt ratios
   c. Coverage ratios
   d. Profitability in relation to sales:
   e. Other standard covenants:
   f. Customized terms defining an “event of default” and its consequences

Professor Allen and Adjunct Professor Richard T.McDermott [Rogers & Wells]

Class 24: November 17, 1998
ICON Private Placement Analysis (con’t)
Professor Rosenbloom
Class 25: November 19, 1998
Venture Capital Overview  This session considers key elements in private equity venture capital. These include a definition of venture capital investments, kinds of venture capital investments, stages of such investment, VC industry trends, desired venture capital returns, VC due diligence, concerns of the VC and of management and the elements of a typical venture capital term sheet.

Professor Rosenbloom

Class 26: November 24 1998
Venture Capital Financing Agreement  (VC Private Placement Contract)
Professor Allen and Adjunct Professor Joseph Bartlett [Morrison & Foerster]

Class 27: December 1, 1998
The Letter of Intent and the Art of Negotiation  Overview of how to negotiate a transaction generally and its specific applications to letters of intent.

Professor Allen and James Freund, Esq. [Skadden, Arps, Slate Meagher & Flom]

Class 28: December 3, 1998
Team Negotiation of Letter of Intent (eight teams of five each in four negotiations.)
Teams will be assigned a case involving a private placement in which the pricing has been determined. Teams will negotiate the other terms of the letter of intent. (eight teams of five each in four negotiations.) Turn in assignment by teams. Counts for 10% of final grade.

Professors Allen, Rosenbloom, Freund and McDermott

Class 29: December 8, 1998
Team Negotiation -- Conclusion
Professors Allen, Rosenbloom, Freund and McDermott

Class 30: December 10, 1998  (Business students only)
Some Elements of Corporation Law
Basic governance structure  Role of Charter, bylaws and shareholder agreements.
  Management power of the board of directors
  Staggered boards
  Cumulative voting
  Rights Plans
  Removal powers
Rights of Shareholders
  Voting rights
  Default rule all stock votes, one share one vote
  Votes on what issues?
  Class votes
  Rights to sell shares
  Restrictions
  Right to sue Directors or managers
Shareholder Suits: Derivative Suits and Class suits
  Theory of Derivative suits
  What kinds of claims
Procedure: How are they brought
How are they terminated?
Settlement: procedures and realistic assessment
Adjudication
Should directors be protected from this risk?
Insurance
Indemnification
“Business Judgment rule”
Class Suits
Theory
What kinds of claims?
Requirements to file.
How are they terminated?
Evaluation of Social Utility?

Professor Allen