



## U.S. Securities Law and Litigation

Visiting Lecturer: H. Michael Semler

September 18-22 and 25-29, 2017, 11:00AM – 12:30PM

Vilnius University Faculty of Law K. L. Sapiega room (302)

**Subject:** This two-week lecture series will provide an overview of current US securities law and litigation. The lectures will discuss the regulatory framework, the policies behind the securities laws, the Securities and Exchange Commission (SEC), how securities violations are investigated by the SEC and litigated in U.S. courts, lessons from the 2008 credit crisis, recent Supreme Court decisions, insider trading, brokers and investment advisors, class action litigation, whistleblower protections, arbitration of investor claims, high-frequency trading, and "crowd-funding." The course will also address the international reach of US securities laws and the anti-bribery provisions of the Foreign Corrupt Practices Act.

**Format:** Ten lectures of 1.5 hours each. The classes will be informal and focused on policy rather than technical requirements. Student questions and discussion will be encouraged.

**Visiting Lecturer:** Mr. Semler is visiting the Faculty of Law under the auspices of the Center for International Legal Studies in Salzburg, Austria. Mr. Semler graduated from Georgetown University in Washington, D.C. and earned his law degree at the University of Chicago School of Law. He has practiced law in Washington for more than 40 years, including with the Civil and Environmental divisions of the Department of Justice and, since 2004, with the Enforcement Division of the Securities and Exchange Commission. (Mr. Semler is visiting the Law Faculty in his personal capacity. The views expressed here and during lectures are solely his own and do not necessarily reflect the views of the Securities and Exchange Commission or the Commission staff.)

<p style="text-align: center;">Lecture 1 – September 18, 2017, 11:00AM – 12:30PM</p> <p><b><u>Securities Fraud and the Tools Available to The SEC</u></b></p> <ul style="list-style-type: none"> <li>• "Securities;" role of capital markets; the enduring problem of fraud</li> <li>• 1929 Wall Street collapse and the Great Depression</li> <li>• Congressional response – Securities Act of 1933</li> <li>• Broadened response – Securities Exchange Act of 1934</li> <li>• Securities and Exchange Commission</li> <li>• Dimensions of the modern financial sector</li> <li>• Opportunities and temptations: from Ponzi to Madoff</li> <li>• Section 10(b) and Rule 10b-5</li> <li>• "Materiality" and the reasonable investor</li> </ul>	<p style="text-align: center;">Lecture 2 – September 19, 2017, 11:00AM – 12:30PM</p> <p><b><u>Investigations, the Federal Courts, and Jury Trials</u></b></p> <ul style="list-style-type: none"> <li>• Key concepts and actors in the securities markets</li> <li>• The path of an SEC investigation</li> <li>• Traditional focus: False statements and misleading omissions</li> <li>• Beyond misstatements: deceptive conduct ("scheme liability")</li> <li>• "Scienter:" intent to defraud or recklessness</li> <li>• Injunctions, disgorgement, penalties, and industry bars</li> <li>• The federal courts</li> <li>• Motion practice and "discovery" in civil litigation</li> <li>• Juries and jury trial strategies</li> </ul>
<p style="text-align: center;">Lecture 3 – September 20, 2017, 11:00AM – 12:30PM</p> <p><b><u>Hard Lessons from the 2008 Financial Crisis</u></b></p> <ul style="list-style-type: none"> <li>• The credit crisis – from Wall Street to the world</li> <li>• Bonus culture, "moral hazard," and toxic securities</li> <li>• Failures, bailouts, and the Great Recession</li> <li>• Obstacles to establishing individual liability in the corporate setting</li> <li>• Who "made" the false statement? <i>Janus</i> decision</li> <li>• Too late to file – <i>Gobelli</i> decision</li> <li>• "Lawyering up" – attorney/client privilege; advice of counsel defense</li> <li>• Aiding and abetting</li> </ul>	<p style="text-align: center;">Lecture 4 – September 21, 2017, 11:00AM – 12:30PM</p> <p><b><u>The International Reach of U.S. Securities Law</u></b></p> <ul style="list-style-type: none"> <li>• What role for US securities laws internationally?</li> <li>• Long jurisdictional arm of American courts</li> <li>• What foreign conduct is subject to Section 10(b)?</li> <li>• <i>Morrison</i> (2010) – out with the "conduct or effects" test</li> <li>• Is the <i>Morrison</i> bright line workable?</li> <li>• Foreign Corrupt Practices Act</li> <li>• Prohibition on bribery abroad</li> <li>• Sweeping investigations and controversial settlements</li> <li>• Should US companies be allowed to follow local customs?</li> </ul>

<p>Lecture 5 – September 22, 2017, 11:00AM – 12:30PM</p> <p><b><u>Insider Trading Law – Handiwork of the Judiciary</u></b></p> <ul style="list-style-type: none"> <li>• Misuse of material non-public information</li> <li>• Perceived unfairness, but why?</li> <li>• Case-by-case struggle to articulate theory</li> <li>• <i>Chiarella</i> (1980) – duty only from special relationship</li> <li>• Classical theory – <i>Dirks</i> (1983)</li> <li>• Misappropriation theory – <i>O'Hagan</i> (1997)</li> <li>• Downstream tippees – limits of derivative liability</li> <li>• The <i>Newman</i> scare (2014)</li> <li>• Is there a good alternative to the "personal benefit" test?</li> </ul>	<p>Lecture 6 – September 25, 2017, 11:00AM – 12:30PM</p> <p><b><u>Computers Remake the Market: Flash Trading and Crowd-Funding</u></b></p> <ul style="list-style-type: none"> <li>• Traditional stock-picking and the "open outcry" exchanges</li> <li>• Program trading and electronic markets</li> <li>• "Flash trading" and the need for speed</li> <li>• Dark pools and speed bumps</li> <li>• Are high-frequency trading practices fair?</li> <li>• The 2010 "flash crash" – is the system safe?</li> <li>• "Crowd-funding" – bow to power of the internet</li> <li>• JOBS Act (2012): unregistered sales to Mom and Pop</li> <li>• A foot in the door toward broad exemption?</li> </ul>
<p>Lecture 7 – September 26, 2017, 11:00AM – 12:30PM</p> <p><b><u>Investment Advisers: From Fiduciary Duty to Robo-Advisers</u></b></p> <ul style="list-style-type: none"> <li>• Managing other people's money</li> <li>• Demographics, retirement accounts, "common pool" funds</li> <li>• Who is "investment adviser" under the Act?</li> <li>• Registration and qualifications</li> <li>• Anti-fraud prohibitions in the 1940 Act</li> <li>• "Fiduciary duty" – duties of care and loyalty</li> <li>• Conflicts of interest: avoidance or disclosure</li> <li>• What is adequate disclosure?</li> <li>• What can "fiduciary duty" mean in a world of robo-advisers?</li> </ul>	<p>Lecture 8 – September 27, 2017, 11:00AM – 12:30PM</p> <p><b><u>Broker/Dealers: Is There Still a Role for The Middleman?</u></b></p> <ul style="list-style-type: none"> <li>• "Broker" and "dealer" under the 1934 Act</li> <li>• Registration, qualifications, demographics</li> <li>• Role of the industry association (FINRA)</li> <li>• "Shingle theory" – fair and equitable business practices</li> <li>• "Suitability" standard in securities selection</li> <li>• Industry dynamics: brokers "follow the money" into advisors' space</li> <li>• Dual registration: "two hats" and two standards</li> <li>• Should there be a uniform standard?</li> <li>• Future of the advisory fee: Are brokers chasing a shrinking pot of gold?</li> </ul>
<p>Lecture 9 – September 28, 2017, 11:00AM – 12:30PM</p> <p><b><u>Arbitration and Class Actions: Closing The Door On the Retail Investor?</u></b></p> <ul style="list-style-type: none"> <li>• Implied private right of action</li> <li>• Mandatory arbitration clauses</li> <li>• Arbitration procedures</li> <li>• Practical barriers to individual litigation</li> <li>• Is mandatory arbitration good public policy?</li> <li>• Class actions, Due Process issues, and efficiency</li> <li>• "Stock drop" cases and the race to the courthouse</li> <li>• Congressional and Supreme Court restrictions</li> <li>• Contemporary securities class action practice</li> <li>• Efforts to bar investors from class actions</li> </ul>	<p>Lecture 10 – September 29, 2017, 11:00AM – 12:30PM</p> <p><b><u>Gatekeepers, Whistleblowers, and Executive Pay</u></b></p> <ul style="list-style-type: none"> <li>• Accountants as "gatekeepers"</li> <li>• Common internal accounting frauds</li> <li>• The independent auditor – theory and reality</li> <li>• State licensing versus SEC standards</li> <li>• Auditors as corporate monitors?</li> <li>• Attorneys: "up the ladder" reporting of client violations</li> <li>• "Whistleblower" protections against retaliation</li> <li>• Whistleblower monetary awards</li> <li>• The expanding SEC role in corporate governance</li> <li>• Executive pay: clawbacks; compensation ratio; "say on pay"</li> </ul>

**Pre-registration is required before the 11th of September, 2017 via <https://goo.gl/forms/5qnYOWdtmkxCbgYD3>**