



HARVARD LAW SCHOOL

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TO: Professors Adopting Barr, Jackson & Tahyar, *Financial Regulation: Law and Policy* (Foundation Press, 2d ed. 2018)
FROM: Howell E. Jackson
RE: HLS Case Studies on Financial Regulation
DATE: April 2018

In connection with the publication of the second edition of *Financial Regulation: Law and Policy*, I wanted to provide an updated a set of case studies on financial regulation. These studies are a collaboration with my co-author Meg Tahyar as well as many of our students at Harvard Law School. After several years of beta testing, we have now assembled more than a dozen of these case studies that are published in the Harvard Law School Case Studies Series and available for download free of charge at <https://casestudies.law.harvard.edu/howell-e-jackson/>. In our four-credit course in the Fall of 2017, we assigned one case study per week, which qualified the course for experiential-learning credit under recently established bar requirements. I would be happy to explain our approach to the accreditation process to anyone who is interested.

A short summary of each of these published case studies follows, but a few introductory words on the structure of the studies and our pedagogical goals may be helpful. For the most part, the studies are designed to give students a deeper look into some emerging and contested area of financial regulation and provide students an opportunity to dig into statutory and regulatory materials that are summarized in more general terms in our textbook. A number of professors adopting our casebook have expressed a desire to have supplementary materials of this sort. The case studies are also intended to introduce students to the kind of work that they might actually be expected to do as young attorneys in private practice, government work, or other financial settings where lawyers work. Accordingly, each case study is structured as an assignment that a young lawyer might receive, typically in the form of a cover memorandum in the range of 15 to 25 pages plus additional background materials that can run up to 100 pages or more. In our classes, Meg and I typically assign a small team of students—usually two or three—to prepare each case for presentation to the class. Those students are expected to read over the full set of materials carefully and work up a PowerPoint presentation of the issues and their analysis. Other students need only read the cover memorandum and come to class prepared to respond the team's presentation. In addition to introducing students to a number of important and challenging legal issues, this approach also gives students a chance to develop their presentation skills.

For the latter half of 2018, Meg and I have plans to develop a number of new case studies—several of which explore new FinTech issues—in preparation for teaching a new FinTech module in January of 2019. If any of you have ideas for additional case studies or (even better) would like to contribute a case study to the series, we would be delighted to hear from you.

HLS Case Studies on Financial Regulation

April 2018

(available at <https://casestudies.law.harvard.edu/howell-e-jackson/>)

Part I: Introduction to Financial Regulation

Federal Preemption of State Consumer Protection Laws: The Office of the Comptroller of the Currency's Dodd-Frank Act Implementation Rules (Aug. 2017) (exploring OCC's preemption regulation of 2011 through the eyes of a public interest lawyer seeking to bring class-action litigation regarding refund-anticipation loans under state law; could be used in connection with Chapter 1.4 or Chapter 5.1)

Unidentified Financial Institutions Exercise (Apr. 2018) (short-form exercise on unidentified financial statements designed to help students understand simple financial statements; several of the illustrations align with the coverage of Chapter 1.5).

Part II: Insured Depository Institutions

The OCC's FinTech Charter: Testing the Scope of the OCC's Chartering Powers (Aug. 2017) (exploring the merits of a recent proposal for a new national bank charter for marketplace lenders from the perspective of a lawyer at the OCC; could be used in connection with Chapter 2.1)

Alternative Strategies Exercise (Apr. 2018) (short-form exercise to consider from the perspective of a bank shareholder the desirability of bank investment strategies with different risk return characteristics; design to illuminate the problem of moral hazard in highly leveraged version; could be used in connection with Chapter 2.2).

Part III: Insurance

Ames' Auto Insurance Regulations — Racial Disparities in Insurance Premiums (Aug. 2017) (exploring from the perspective of an attorney at a state AG's office the ongoing debate over racial disparities in automobile insurance premiums and the regulation of insurance rates more generally; could be used in connection with Chapter 3.2)

Part IV: Securities Firms and Capital Markets

Lending Club (Aug. 2017) (exploring from the perspective of in-house counsel the application of securities laws to an early form of marketplace lender as it contemplated a refinement in its business model; could be used in connection with Chapter 4.1) (Note: For an HBS case study providing additional information on the economics of the Lending Club business

model prepared at the same time, see Lending Club (HBS Case Study 9-210-052) (Dec. 17, 2010).

Part V. Consumer Protection and the CFPB

Cost-Benefit Analysis at the CFPB (2013) (four-part series of case studies exploring the implications of the D.C. Circuit's *Business Roundtable* decision of 2011 from the perspective of policy makers at the CFPB; could be used in connection with Chapter 5.1)

Consumer Financial Protection Bureau: Responding to the PHH Litigation (Aug. 2017) (exploring the implications of the District Court's 2016 decision from the perspective of an advisor to the director of the CFPB focusing on the likely reactions of other parts of the federal government; could be used in connection with Chapter 5.1).

Part VI. Financial Conglomerates

Walmart and Banking (Aug. 2017) (exploring efforts on the part of Walmart in early 2010 to establish an ILC, viewed from the perspective of staffers on the Senate Banking Committee; could be used in connection with Chapter 6.1)

Part VII. Payment Systems

Bank Secrecy Act, Anti-Money Laundering Law Compliance, and Blockchain Technology (August 2017) (exploring the complexities of applying BSA rules to new financial products, viewed from the perspective of a FinTech entrepreneur; could be used in connection with Chapter 7.1)

Part VIII. Corporate Governance, Supervision, and Enforcement

Wells Fargo Corporate Governance (Oct. 2017) (exploring from the perspective of a Federal Reserve Board attorney recommendations that Wells Fargo directors be removed from their positions under 12 U.S.C. 1818(e) as a result of the bank's retail sales practices; could be used in connection with Chapters 8.1 and 8.2)

Part IX. Lender of Last Resort and Resolution

The Future of Affiliate Transaction Restrictions for Banks and the Federal Reserve's Emergency Intervention Authority (Oct. 2017) (exploring from the perspective of a Fed attorney the extent to which section 23A & 23B as well as Section 13(3) impose binding constraints on the Federal Reserve Board in the event of a failure of a SIFI with substantial losses in a securities affiliate; could be used in connection with chapter 9.3)

Part X. Mutual Funds and Other Investment Vehicles

Closed-End Fund Regulation (Aug. 2017) (exploring potential regulatory responses to persistent conflicts associated with the distribution of closed-end funds from the perspective of attorneys at the SEC; could be used in connection with Chapter 10.3)

Part XII. Shadow Banking

Asset Securitization, Marketplace Lending, and the Future After the Madden Decision (Aug. 2017) (exploring, from the perspective of an industry trade group, the implications and possible responses to recent court decisions that question the efficacy of “rent-a-charter” business models for marketplace lenders and the securitization of financial assets; could be used in conjunction with Chapter 12.1)