Objectives of this Particular Section of the Course

The purpose of this particular section of Professional Responsibility is to combine some of the basic principles taught in the regular Professional Responsibility course with a broad understanding of the causes and consequences of market failure and the history, structure, and responsibilities associated with the governance of corporations in modern society.

In addition to the Professional Responsibility book of readings, the course will rely on a new book by Prof. Roy C. Smith and Prof. Ingo Walter titled Governing the Modern Corporation (Oxford University Press, 2006) which will be furnished to students in page-proof form at no cost. This book examines the role of corporations, investors, intermediaries and regulators in the events that preceded and followed the build-up and bursting of the financial bubble in 2000-2002.

The syllabus indicates the nature of the material to be covered, and students should familiarize themselves with it before deciding to sign up for this course. Other sections of Professional Responsibility that do not involve the Smith and Walter book are available for those students preferring the more traditional approach to the course.

Preparation for Class

The student's primary obligation in this course is to prepare for class discussion based on a thorough reading and analysis of assigned materials. Case discussions and in-class activities are an essential part of the course. All students are responsible for preparing answers to all the “study questions” raised for each session before coming to class. The instructor will ask some students to provide their answers orally, as a basis for further discussion. In addition, there will be a number of short exercises distributed in class.
Written “Study Questions” Analyses

For full credit, each student must submit a written analysis of one or more of the “study questions” associated with each session, on five different occasions over the course of the term. That is, for 5 sessions of his or her choosing the student should write out his or her analysis for any one of the assigned study questions. These analyses should be 2-3 pages in length. The student may submit up to 3 more than the required 5 written analyses for extra credit.

Student Communications

Course information is posted on Blackboard

Term Paper

Students are responsible for a term paper, described on the next page.

Grading

The weights for the student’s overall grade are:

- Class Participation 30%;
- Written Study Question Analysis 30%;
- Term Project 40%.

Textbook

All cases and readings for this course are found in:

Governing the Modern Corporation (GMC) - page proof distributed in class.

Professional Responsibility: Markets, Ethics, and Law Cases and Readings for 2005-2006 (PR)

The Professional Responsibility book is available in the NYU Professional Bookstore. Note that the edition for the current academic year is different from prior editions. Make sure you have the current edition.
TERM PAPER: GUIDELINES FOR CASE ANALYSES

The purpose of this paper is to allow the student to apply principles of professional responsibility to an actual, specific business situation. The student will describe a situation with which he or she has first-hand familiarity, or a current (or recent) event reported in the press. In any event, the situation should raise ethical or legal issues that require some course of action by the participants.

The paper should have the following major sections:

I. Situation
Provide a description of the situation or practice; this description must be detailed and rich enough to allow the reader to get a clear sense of the issues and circumstances (2-4 pages).

II. Analysis
Apply some method or methods of ethical (or perhaps legal) reasoning to the situation and examine the results of this application. Are the results logical, beneficial, counter intuitive, or in any other way problematic? Here the student should apply, wherever appropriate, concepts from the course and its readings. Also, the student should cite the relevant law (2-4 pages).

III. Resolution & Conclusion
Describe how the situation was actually resolved. Discuss this resolution in light of the ethical analysis introduced in the course (2-4 pages).

In sum, this paper should be roughly 8-12 typed, double-spaced pages.

IMPORTANT: Good performance (hence good grades) on this assignment consists of systematically and thoroughly applying relevant concepts and methods from the course to the situation, and in testing the worth of those concepts and methods in resolving the ethical issues it presents.

NOTE: Written projects are due at Session 10 (December 6th)
SESSION #1  Nov 1, 2005

Introduction - Market Failures & Ethical Theories

Read: “Economic Theories of Regulation: Normative v Positive”
by Linda N. Edwards and Franklin R. Edwards (PR)

“The Coase Theorem,” by Mitchell Polinsky (PR)

“Making an Ethical Decision”
by Terry Halbert and Elaine Ingulli (PR)

“Neutral Omni-Partial Rule Making” by Ronald M. Green (PR)

Study Questions

1. What is “market failure?” Why do market failures tend to bring about law or regulation to counter their effects? What does Coase propose as an alternative?

2. How might ethical methodology help an executive or legislator to make more effective decisions in the presence of market imperfections?

3. Based on the Halbert & Ingulli reading identify at least one market failure that you have observed or read about, and apply the methods of ethical reasoning to this market failure.

SESSION #2  Nov 3, 2005

Truth & Disclosure

Cases: “Today’s Analyst Often Wears Two Hats” by R. Lowenstein (PR)

Read: “Is Business Bluffing Ethical?” by Albert Z. Carr (PR)

“The Numbers Game” by Arthur Levitt (PR)

“Double Agents in the Financial System” by Roy C. Smith (PR)
Study Questions

1. Would Albert Carr voice any objections to the (i) the financial analysts Lowenstein mentions, or (ii) the rest of the financial industry described by Levitt? Do you agree with Carr? Can you identify any market failures resulting from the actions described by Lowenstein and Levitt, or in the Smith reading?

2. How would you assess the long-term effects of bluffing as applied to the job of an equity analyst (Lowenstein & Smith readings)? Would Albert Carr agree?

SESSION #3       Nov 8, 2005

Gifts, Side Deals & Conflicts of Interest

Cases: “Buynow Stores” by Bruce Buchanan (PR)

“Roger Berg” by Ronald M. Green (PR)

“Friends and Family” by Melanie Warner (PR)

“Wall St. and the Nursery School: A New York Story” by Morgenson and Pat McGeehan (PR)

Read: “A Bribe by Any Other Name,” Neil Weinberg (PR)

Study Questions

1. Make a list of all the gift practices described in Buynow Stores. In your judgment, which of these, if any, are inappropriate? Use ethical concepts and methods from the Green and Halbert/Ingulli readings to support your position.

2. Do the Roger Berg and Wall Street Nursery School cases differ materially from Buynow Stores? Use ethical concepts and methods from the Green and Halbert/Ingulli readings to support your position.

3. Contrast Mercer’s action in the Santa Clara Valley Transportation Authority case (the Weinberg article) with that of the employees of Buynow Stores.
SESSION #4  Nov 10, 2005

Governance in Context: Bubbles and Fluid Markets

**Read:** Governing the Modern Corporation (GMC)

Preface and intro to Part I)
Chapter 1  Irrational Exuberance
Chapter 2  New Financial Markets

**Study Questions:**

1. What were the major contributing factors in the massive expansion of traded financial markets in the 1980s and 1990s?

2. What effects did such developments in capital markets have on corporate officers and directors, and on investors, during the 1990s?

3. How could so much damage to investors in financial markets occur during a period of high public transparency, and extensive and detailed regulation intended to protect investors from abusive practices of corporations or unscrupulous individuals?

4. How do the market failures of the 1930s compare with those of the 2000s?

SESSION #5  Nov 15, 2005

Corporations and Their Governance

**Read:** Governing the Modern Corporation (GMC)

Intro to Part II
Chapter 4  The Role and Duties of Corporate Directors
Chapter 5  Evolution and Powers of the CEO

**Study Questions:**

1. How do the powers of a public corporation differ from those of a private partnership and of a closely held corporation?

2. How, and why, did the governance objectives of corporations change from the 1920s to the 1970s to the 1990s?
3. What are the arguments for and against having a majority of directors be independent and in separating the roles of chief executive from board chairman?

SESSION #6     Nov 17, 2005

Corporate Governance and Capital Market Institutions

Read: Governing the Modern Corporation (GMC)

Intro to Part III
Chapter 6     Institutional Investors

Study Questions:

1. How do financial institutions “police” the marketplace? Is their role “effective”?

2. What are the similarities between public corporations and institutional investors? What agency costs can be associated with institutional investors? How can these be kept to a tolerable minimum?

3. What factors bolster fiduciary conduct of financial institutions? What led to the breakdown of such fiduciary conduct during the 1990s?

SESSION #7     Nov 22, 2005:

Corporate Governance and Capital Market Institutions

Read: Governing the Modern Corporation (GMC)

Chapter 7     The Auditors

Study Questions:

1. Describe the basic principles that provide the regulatory framework for the auditing profession?

2. What happened to these principles during the 1990s? What were the consequences of the changes in their application? Who is responsible to defending these principles?

3. After the failure of Enron, its auditor, Arthur Andersen, the firm, was prosecuted by the Federal Government, convicted and forced into
liquidation. A few years later the US Supreme Court overturned the Enron conviction? Was Andersen treated unfairly? What else could the government have done to assert its interest in the case? How are such government interests determined?

SESSION #8       Nov 29, 2005

Corporate Governance and Capital Market Institutions

Read:  Governing the Modern Corporation (GMC)

Chapter 8     The Bankers

Study Questions:

1.  Make a list of the offenses alleged to have been committed by investment banks and brokerage firms during the 1990s, and indicate what laws these offenses might have broken. What were the economic costs to the capital market environment of these offenses?

2. How has the banker/client relationship changed over the past twenty years? What consequences have resulted from these changes?

3. Given their “natural” exposure to penalties (including jail time for some), fines and adverse class action judgments, how do you explain the aggressive conduct of banking firms during the 1990s?

4. What have been the consequences to the bankers and certain individual employees as a result of being caught up in the regulatory “crack down” that followed the market collapse of 2001-2002? Have these consequences been fairly applied, and do you expect them to act as a significant restraint of the actions of bankers in the future?

SESSION #9       Dec 1, 2005

Governance, Restraints and Conflicts of Interest

Read:  Governing the Modern Corporation (GMC)

Intro to Part IV
Chapter 9     Law and Regulation

Study Questions:

1. Discuss the pros and cons of the “Global Settlement” of the top underwriting firms with NY State Attorney General Spitzer and the SEC? What was the evidence upon which the charges were based? Why did the matter end in a settlement rather than go to trial?

2. Discuss the pro and cons of the Sarbanes-Oxley Act of 2002. Was this law equal in scope and intent to the Securities Acts of 1933 and 1934? What effect does the law have on the constitutional jurisdiction of states over issues of corporate governance?

2. How would William Allen explain the current emphasis on corporate governance and tighter regulation of intermediaries?

SESSION #10 Dec 6, 2005 [Term Papers Due]

Control by Law

Read:

“Prosecutors Tough New Tactics Turn Firms Against Employees,” by Laurie Cohen (PR)

“Life in a Federal Prosecutor’s Cross Hairs” by Ann Davis (PR)

“Living with the Organizational Sentencing Guidelines” by Jeffrey Kaplan, Linda S. Dakin, Melinda R. Smolin (PR)

“The revised Corporate Sentencing Guidelines,” by Jeffrey Kaplan (PR)

Study Questions:

1. How do you think the Corporate Sentencing Guidelines (and their recent revisions) will change corporate behavior? How are these guidelines determined, and how do they contrast with the corporate governance requirements of Sarbanes-Oxley?

2. What are the implications of the Corporate Sentencing Guidelines for the individual employee? Consider the situations described in the Cohen and Hogge articles, and recent events at companies like Merrill Lynch, AIG, and Marsh McClennan. Also use your own intended career path as a basis for judgment and be as specific as you can.
3. What do you think of the prosecutors roles in the cases of Arthur Andersen, AIG, Martha Stewart, and HealthSouth? Have the political climate of the times, and the sentencing guidelines shifted too much power into the hands of public prosecutors? Do we otherwise have sufficient regulation of business and fiduciary conduct to make these enforcement powers superfluous? Who is responsible when prosecutors bring charges against businesses and individuals that are later thrown out or overturned?

SESSION #11    Dec 8, 2005

Conflicts of Interest

Read: Governing the Modern Corporation (GMC)

Chapter 10    Conflicts of Interest

Study Questions:

1. What constitutes dangerous conflicts of interest? Give examples. How were they addressed during the 1990s?

2. What causes conflicts of interest to build up and become dangerous to the market system? What sort of conflicts are these?

3. How should conflicts be resolved in a well-regulated, healthy market system? Were they so resolved in the 1990s? Will they be so resolved in the future?

SESSION #12    Dec 13, 2005

The Future of Governance and Social Responsibility of Corporations

Read: Governing the Modern Corporation (GMC)

Chapter 11
Milton Friedman, “The Social Responsibility of Business is to Increase its Profits” (PR)
Jeffrey Seglin, “The Right Thing: When Good Ethics Aren’t Good Business” (PR)
**Study Questions:**

1. Given the nature of the free-market system, what natural roles emerge for corporations, intermediaries, investors and regulators?

2. To whom among the players in capital markets do fiduciary liabilities apply? Are fiduciary liabilities well enforced at present? How and by whom?

3. Are there other governance models that Americans might look to as an alternative to our expensive regulatory capital markets system?

4. After the years of rebuilding confidence in the markets by regulation, enforcement and publicity, what parts of the system have been cured of their previous maladies, and what parts have not?

5. What would Milton Friedman have to say about the corporate and financial scandals of the late 1990s?

6. How do corporations in the late 1990s compare with “institutional corporations” of the late 1960s? What does your crystal ball predict for corporations of the 2020s?

**SESSION #13 Dec 15, 2005**

**Moral Standards Across Borders**

**Cases:** “The Oil Rig” by Joanne B. Ciulla (PR)

“For Cruise Workers, Life is No Love Boat” by Joshua Harris Prager (PR)

“Lives Held Cheap in Bangladesh Sweatshops” by Barry Bearak (PR)

**Read:** “In Praise of Cheap Labor: Bad Jobs at Bad Wages Are Better than No Jobs at All” by Paul Krugman (PR)

**Study Questions**

1. Do you feel that any basic human rights been violated in the “Oil Rig” case? Are the ex-pats justified in getting better treatment than the
Angolans? Who should be the ultimate judge of such issues?

2. Should cruise workers that service US ports enjoy the rights of other US workers? Would Krugman ("Praise of Cheap Labor") or any of the other ethical thinkers we have studied think that this was an unethical situation?

3. How should American investment banks operate in China today? Can they control the conduct of employees, especially if they are in joint ventures with local companies? What risks to such operations pose to American banks?