

Law & Business of Microfinance: Lessons for Impact Investment
Professor Ana Demel
Wednesdays 4-5:50
Furman Hall 120

Course Goals:

Modern microfinance, a movement that began about thirty years ago to provide financial services to the poor as a means to address poverty, has grown into a diverse sector. Microfinance now serves more than 130 million clients through institutions ranging from large for-profit, regulated commercial banks to small unregulated non-profits. However, what began as the darling of the development community has evolved into a more complex narrative where success has been tainted by doubt about impact, accusations of profiteering and client abuse, and the inability of some financial institutions to weather the financial crisis. Nonetheless, microfinance institutions (MFIs) represent some of the earliest and arguably most successful examples of social enterprise. Similarly, investment in the sector represents some of the earliest and most successful examples of impact investing.

The goal of this course is twofold. First, you will learn about the legal and business issues that arise in the creation, operation and financing of MFIs and the key challenges that MFIs face when seeking financing. We will analyze various financing structures (and related legal documentation) used to finance MFIs, including loans, guaranties, off-balance sheet financing, private equity and public offerings, and the legal and business issues that these financing techniques raise for all microfinance participants. Second, drawing heavily from the experience of the microfinance sector, we will explore the legal and business issues that arise when structuring cross-border “impact investments” and when forming and financing social enterprises. The seminar will be organized around a series of case studies and role playing exercises through which students will develop negotiating and contract interpretation skills necessary to advise both entrepreneurs and investors in the social sector. Guest speakers active in the field will join us from time to time and the schedule will be adjusted as necessary to accommodate these presentations. Grades will be based on class participation, including presentations, and a 12-15 page research paper.

Week One: Introduction

What is microfinance and how did the microfinance sector evolve into the diverse industry it is today? What is the definition of a social enterprise?

Readings:

How Microfinance Really Works by Jonathan Murdoch (2013)

http://www.financialaccess.org/sites/default/files/publications/How%20Microfinance%20Really%20Works_April%202013.pdf

Microfinance as a Business by David Roodman and Uzman Qureshi (Nov. 2006)
http://www.cgdev.org/files/10742_file_Microfinance_as_Business.pdf

The New Yorker, Millions for Millions, October 30, 2006 by Connie Bruck
http://www.newyorker.com/archive/2006/10/30/061030fa_fact1

In Search of the Hybrid Ideal, Stanford Social Innovation Review, by Battilana, Lee, Walker & Dorsey, Summer 2012,
http://www.ssireview.org/articles/entry/in_search_of_the_hybrid_ideal

The New York Times, Banks Making Big Profits From Tiny Loans, April 13, 2010,
<http://www.nytimes.com/2010/04/14/world/14microfinance.html>

Microfinance Matures by Elizabeth Rhyne and Maria Otero
<http://centerforfinancialinclusionblog.files.wordpress.com/2011/10/microfinance-matures-opportunities-risks-and-obstacles-for-an-emerging-global-industry.pdf>

Week Two: Introduction to Impact Investment and Funding of Microfinance

What is Impact Investing? How has the funding of microfinance evolved? What does this evolution teach us for the funding of social enterprise?

Readings:

Impact Investments, An Emerging Asset Class, J.P. Morgan Global Research, 29 November 2010 (pgs. 7-23, 60-63 and 66-72)
http://www.jpmorgan.com/cm/BlobServer/impact_investments_nov2010.pdf?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1158611333228&blobheader=application%2Fpdf

Counter(Imp)acting Austerity: The global trend of government support for impact investment, J.P. Morgan, Nov. 2011
http://www.jpmorganchase.com/corporate/socialfinance/document/counterimpacting_austerity.pdf

Investing for Impact: A Case Study Across Asset Classes
<http://www.socialfinanceus.org/sites/socialfinanceus.org/files/Investing%20for%20Impact.pdf>

“Rich IPO Brings Controversy to SKS Microfinance” by Stephanie Strom and Vikas Bajaj (New York Times, July 29, 2010)
<http://www.nytimes.com/2010/07/30/business/30micro.html>

Presentation: MFI Case Study

Week Three: Funding of Social Enterprise

We will discuss the options and issues to consider when raising capital to reach scale.

CGAP Brief: MFI Capital Structure Decision Making: <http://www.cgap.org/publications/mfi-capital-structure-decision-making-call-greater-awareness>

CGAP Cross-Border funding Survey

<http://www.slideshare.net/CGAP/2012-survey-on-crossborder-funding-for-microfinance>

Presentation: Social Enterprise Case Study

Role Play: MFI Board of Directors considers funding options

Week Four: Legal Forms

We will review how the choice of corporate form for MFIs and the restraints imposed by the regulation applicable to different legal forms have affected the evolution and growth of microfinance institutions. We will also review and discuss the new corporate forms (e.g., L3Cs, Public Benefit Corporations) available for social enterprise.

Social Entrepreneurship, For Love or Lucre, by Jim Fruchterman, [Stanford Social Innovation Review](http://www.ssireview.org/articles/entry/for_love_or_lucre), Spring 2011

http://www.ssireview.org/articles/entry/for_love_or_lucre

The Truth about Ben and Jerry's, by Antony Page & Robert A. Katz, [Stanford Social Innovation Review](http://www.ssireview.org/articles/entry/the_truth_about_ben_and_jerrys), Fall 2012

http://www.ssireview.org/articles/entry/the_truth_about_ben_and_jerrys

A Guide to Social Enterprise Vehicles, by Rosemary Fei, [Taxation of Exempts](http://www.adlercolvin.com/pdf/tax_treatment/Beyond_Taxation_A_Guide_to_Social_Enterprise_Vehicles_(00302967).pdf), Jan/Feb 2011

[http://www.adlercolvin.com/pdf/tax_treatment/Beyond_Taxation_A_Guide_to_Social_Enterprise_Vehicles_\(00302967\).pdf](http://www.adlercolvin.com/pdf/tax_treatment/Beyond_Taxation_A_Guide_to_Social_Enterprise_Vehicles_(00302967).pdf)

Delaware General Corporations Law, Sections 361-368

Presentation: Benefit Corp

Role Play: MFI Counsel and CFO consider alternative legal forms

Week Five: Transforming an NGO into a Social Enterprise

We will discuss the issues to consider when transforming from an NGO to a Social Enterprise.

Women's World Banking: [Stemming the Tide of Mission Drift: Microfinance Transformations and the Double Bottom Line](#), Christina Frank, 2008

http://www.swwb.org/sites/default/files/pubs/en/stemming_the_tide_of_mission_drift_microfinance_transformations_and_the_double_bottom_line.pdf

Lauer, Kate, CGAP Occasional Paper, Transforming MFIs: Critical Ownership Issues to Consider: <http://www.cgap.org/sites/default/files/CGAP-Occasional-Paper-Transforming-NGO-MFIs-%20Critical-Ownership-Issues-to-Consider-Jun-2008.pdf>

Role Play: MFI Counsel and CFO present transformation to the Board of Directors

Week Six: Debt Financing

We will take an in-depth look at the various ways of borrowing money (e.g., syndicated loans, bonds, securitizations, online platforms) and the issues to consider when tapping different sources of debt financing.

Annotated Loan Agreement:

<http://www.cgap.org/publications/commercial-loan-agreements-technical-guide-microfinance-institutions>

Calvert Foundation Community Investment Notes Prospectus, April 1, 2013

<http://www.calvertfoundation.org/storage/documents/CF-Community-Investment-Note-Prospectus.pdf>

Microfinance Managers consider Online Funding, Deborah Burand, April 2009,

<http://www.cgap.org/publications/microfinance-managers-consider-online-funding-it-finance-marketing-or-something-else>

Role Play: Negotiation of Conditions and Covenants in a commercial bank loan to an MFI

Week Seven: Innovative Finance; Public-Private Partnerships

We will discuss the role of the public sector in the growth of microfinance and funding of social enterprise as well as the intersection of the public, non-profit, and commercial players in innovative financings for the Microfinance Sector.

Social Innovation, Let's Hear Those Ideas, The Economist (Aug 2010)

<http://www.economist.com/node/16789766>

World Bank, Program for Results: an Overview

http://siteresources.worldbank.org/EXTRELENDING/Resources/7514725-1313522321940/PforR_Overview_12.2011.pdf

Week Eight: Innovative Finance, continued

We will take a close look at Social Impact Bonds.

The Promise of Social Impact Bonds, Tina Rosenberg (June 20, 2012):

<http://opinionator.blogs.nytimes.com/2012/06/20/the-promise-of-social-impact-bonds/>

Social Impact Bonds: An Overview by Social Finance, Inc.

<http://www.socialfinanceus.org/sites/socialfinanceus.org/files/small.SocialFinanceWPSingleFINAL.pdf>

Commissioning Social Impact Bonds:

http://www.socialfinance.org.uk/sites/default/files/technical_guide_to_commissioning_social_impact_bonds.pdf

Week Nine: Maintaining Mission

We will discuss controversies and challenges facing the microfinance sector, focusing on the tension between striving for scale and adherence to mission.

CGAP Focus Note No. 29, September 2011, Responsible Finance: Putting Principles to Work
<http://www.cgap.org/sites/default/files/Focus-Note-Responsible-Finance-Putting-Principles-to-Work-Sep-2011.pdf>

Background on the Smart Campaign <http://www.smartcampaign.org/>

Role Play: Negotiation of Shareholder Agreement

Week Ten: Governance and Risk Management

We will discuss the importance of good governance and the challenge of ensuring good governance in social enterprises.

OECD principles of Corporate Governance pgs. 17-25

<http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>

Katherine McKee, CGAP Focus Note 79, May 2012, Voting the Double Bottom Line: Active Governance by Microfinance Equity Investors

<http://www.cgap.org/sites/default/files/Focus-Note-Voting-the-Double-Bottom-Line-Active-Governance-by-Microfinance-Equity-Investors-May-2012.pdf>

The Practice of Corporate Governance in Shareholder- Owned Microfinance Institutions, Consensus Statement of the Council of Microfinance Equity Funds, May 2005, revised 2012
<http://www.cmfef.com/document.doc?id=1026>

Governing Banks: MFI Edition, Center For Financial Inclusion, July 2013,
<http://centerforfinancialinclusionblog.files.wordpress.com/2013/07/governing-banks-mfi-edition-part-1.pdf>

Week Eleven: Private Equity

We will focus on the steps necessary to prepare an MFI for a private commercial equity investment and the challenges and opportunities posed by the new ownership structure.

CGAP: Negotiating an Equity Capital Infusion from Outside Investors, October 2010, David A. Carpenter: <http://www.cgap.org/sites/default/files/CGAP-Technical-Guide-Negotiating-an-Equity-Capital-Infusion-from-Outside-Investors-Oct-2010.pdf>

Role Play: Negotiation of Term Sheet for Equity Investment in an MFI

Week Twelve: Public Equity

We will focus on the steps necessary to prepare an MFI for a public equity offering and the challenges and opportunities posed by the new ownership structure.

CGAP Note 65 Indian Microfinance Goes Public: The SKS Initial Public Offering
<http://www.cgap.org/sites/default/files/CGAP-Focus-Note-Indian-Microfinance-Goes-Public-The-SKS-Initial-Public-Offering-Sep-2010.pdf>

“Rich IPO Brings Controversy to SKS Microfinance” by Stephanie Strom and Vikas Bajaj (New York Times, July 29, 2010)
<http://www.nytimes.com/2010/07/30/business/30micro.html>

SKS Microfinance the Inside Story (*Livemint*, Feb. 2013):
<http://www.livemint.com/Industry/hvWN2IbllrX5hXKj3keERL/SKS-Microfinance-The-inside-story.html>

Presentation: SKS or Compartamos

Week Thirteen: Issues in Cross Border Financings

We will discuss issues arising in the context of cross border financing of social enterprise, including foreign exchange and political risk.

CGAP Focus Note 31 Foreign Exchange Risk in Microfinance: What is it and how can it be managed: <http://www.cgap.org/sites/default/files/CGAP-Focus-Note-Foreign-Exchange-Rate-Risk-in-Microfinance-What-Is-It-and-How-Can-It-Be-Managed-Jan-2006.pdf>

Deborah Burand, *Globalizing Social Finance: How Social Impact Bonds and Social Impact Performance Guarantees Can Scale Development*, 9 N.Y.U. J.L. & Bus. ____ (2013)

Week Fourteen: Wrap-up Discussion and Student Presentation of Research Topics