Aston Business School
Birmingham

BLM144 LAW OF BANKING AND FINANCIAL REGULATION

Academic Year 2013/14

Number of Aston Credits: 15

Number of ECTS Credits: 7.5

Staff Member Responsible for the Module:

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Pre-requisites for the Module:

None.

Mode of Study:

On Campus.

Module Objectives and Learning Outcomes:

This module provides students with the opportunity to explore the legal and regulatory framework governing banking and financial services in the United Kingdom. At the end of the module, students will:

- Understand the history and development of the UK framework governing the regulation of banking and financial services, and the proposals for structural reform of the banking sector building on the Vickers report.

- Understand the operation and effect of the principal Acts in this area, including the Financial Services and Markets Act 2000, the Banking Act 2009, the Financial Services Act 2012 and the Financial Services (Banking Reform) Bill 2012.

> Understand the powers and remit of the new UK regulatory authorities (the PRA, FPC and FCA) and the manner in which they seek to achieve their regulatory objectives.

> Understand the significance of the European System for Financial Supervision and the role and responsibilities of the new European regulatory authorities and their relationship with banking and financial services regulators within Member States and internationally.

> Be able to critically appraise and evaluate the operation of the regulatory framework, demonstrating a thorough understanding of the justifications offered to support the regulation of banking and financial services

> Be able to reflect critically upon the pressures and influences driving worldwide and pan-European regulation of banking and financial services and understand the difficulties this brings.

Contribution of the module to relevant programme level objectives and outcomes:

MSc Business and Management: A1, A2, A3, B1, B2, B3, C1, C2, C3, D3, D4, D7.
MSc Finance and Financial Regulation: A1, A2, A5, A6, B1, B2, B3, C2, C1, D2, D3.

Module Content:

Week 1: Introduction: legal concepts; sources of regulation; justifying and classifying regulatory intervention; macro-prudential and micro-prudential regulation; overview of current issues and debates; the financial crisis and the Turner Review; European and G20 recommendations and responses; overview of international (e.g. the US Dodd-Frank Act 2010) and European developments (e.g., the ESFS).

Week 2: Banking and financial services policy and law within the European Union; The European System of Financial Supervision; the role of the new European Authorities (the European Systemic Risk Board, European Banking Authority, European Insurance and Occupational Pensions Authority, and European Securities and Markets Authority); the role of Member States' regulators under the ESFS and the powers and responsibilities of the new European Authorities. The European Markets in Financial Instruments Directive (MiFID): the Framework Directive (2004/39/EC), Implementing Directive (2006/73/EC) and Implementing Regulation (No. 1287/2006). The supervision of credit rating agencies by the European Securities and Markets Authority.

Week 3: The UK framework: introduction and historical review; the Turner Review; the failure of the tripartite framework; the abolition of the Financial Services Authority and the move towards a 'twin peaks' model of prudential regulation with a greater role for authorities acting under the auspices of the Bank of England (the FPC and PRA).

Week 4: Core provisions within the Financial Services and Markets Act 2000, the Banking Act 1998, the Banking Act 2009, the Financial Services Act 2010, Financial Services Act 2012 and Financial Services (Banking Reform) Bill 2012; regulatory responsibility for macro-prudential regulation, micro-prudential regulation; trends in the development of regulatory frameworks in Europe and worldwide.

Week 5: The nature of banking and the meaning of 'bank'; the regulation of banks; the role of the new Prudential Regulatory Authority; the role of the Bank of England with regard to financial stability; the role of the Bank for International Settlements; the Basel Committee on Banking Supervision's *Core Principles for Effective Banking Supervision*; supervisory colleges under European law.

Week 6: Bank governance and the Walker Report 2009; the role of the risk committee and risk oversight; the chief risk officer's function; the relationship between the statutory auditor and financial regulators; reform proposals, including Banking Commission suggestions.

Week 7: The Capital Adequacy Directive (2006/47/EC and 2006/48/EC) and the European Commission's proposed reforms (2010). UK prudential standards for banks. Basel III.

Week 8: Conduct of business regulation: the authorisation regime; the High Level Principles for Businesses; the approved persons regime; consumer protection. The role of the Financial Conduct Authority.

Week 9: Revision

Week 10: **Exam**

Corporate Connections:

The module will draw on the experience of practitioners and market participants where possible.

International Dimensions:

This course is explicitly international in focus. The development of the UK's financial regulatory framework cannot be understood without knowledge of the European and international forces which continue to shape it, particularly following the recent financial crisis and, on 1 January 2011, the creation of the new European System of Financial Supervision. References are made throughout the course to other jurisdictions and much of the academic literature considered is international in focus.

Contribution of Research:

This module draws upon research conducted by the lecturer as well as colleagues throughout the Business School.

Ethics, Responsibility & Sustainability:

Issues of ethics, responsibility and sustainability run throughout the module, in particular as part of the discussion of the reasons and justifications for regulatory intervention in banking and financial regulation. Several codes of best practice, and regulatory standards, are considered in the module. The actions of those within banks, and responsible for their management, are considered in order to better understand the national, European and international regulatory responses that have followed the financial crisis in 2007. The sanctions available for wrongdoing by financial market participants are also considered.

Method of Teaching:

Lectures will introduce students to the core principles. Seminar style discussion will be held throughout the module, enabling students to draw upon their experiences of financial services, banking and regulation in their respective jurisdictions. Students must undertake reading and research between lectures and this work is essential if students are to gain the most from the teaching and do well in the examination. This independent reading and research will build on the lecture materials and is essential. Students will not pass the exam by relying only on the lecture slides. The learning hours below indicate how much time students should be spending on this module.

Method of Assessment and Feedback:

The module outcomes are assessed through examination and coursework completed individually. Each component is weighted 50%. The coursework will consist of an essay question providing the opportunity for in depth research. A choice of essay questions will be provided enabling students to focus on what interests them and to reflect on current developments in securities market regulation.

The examination will require students to answer several essay questions, covering the learning outcomes. The examination is 3 hours in length and closed book in format, although legislative and regulatory materials will be provided.

All students have the option of submitting practice essays throughout the course, based on past exam questions, in order to get feedback on their writing style and guidance on how to improve their work. It is important that all students make use of this opportunity. Individual feedback is also available on students' performance in the examination and coursework.

Further details about both forms of assessment will be provided at the start of the course. Students will receive individual feedback on their coursework and exam performance. Feedback and guidance is also provided throughout the module in the weekly sessions, in the lecturer's office hours and by e-mail.

Learning Hours:

Pre-reading	10
Lectures and discussion sessions	24
Revision session	3
Coursework research and preparation	40
Private study, directed reading and research	73
Total	**150**

Pre-reading:

Parliamentary Commission on Banking Standards, *Changing banking for good*, volume one, 2012 (here: http://www.parliament.uk/documents/banking-commission/Banking-final-report-volume-i.pdf).

The following readings are subject to change. Students should not therefore purchase textbooks prior to commencing their course. If students wish to undertake background reading before starting the course, many of the chapters/readings are available in electronic form via on-line library catalogues and other resources.

Essential Reading:

The most useful books and other materials for the course are:

- Ferran, E., *Principles of Corporate Finance Law*, Oxford, Oxford

University Press, 2008.

- Financial Services Authority, T*he Turner Review: a regulatory response to the global banking crisis*, London, 2009 (here http://www.fsa.gov.uk/pubs/other/turner_review.pdf).

- HM Treasury, *A new approach to financial regulation: judgement, focus and stability*, London, 2010 (here: http://www.hm treasury.gov.uk/consult_financial_regulation.htm).

- HM Treasury, *A new approach to financial regulation: building a stronger system*, London, 2011 (here: http://www.hm-treasury.gov.uk/d/consult_newfinancial_regulation170211.pdf).

- HM Treasury, *Banking reform: delivering stability and supporting a sustainable economy*, London, 2012 (here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32556/whitepaper_banking_reform_140512.pdf).

- Hudson, A., *The Law of Finance*, London, Sweet and Maxwell, 2013.

- MacNeil, I., *An Introduction to the Law on Financial Investment*, Oxford, Hart Publishing, 2012.

In addition to the essential reading from textbooks, articles and other material is provided through Blackboard and students will be referred to this throughout the course. Students are advised to read a good quality UK newspaper each day – ideally the Financial Times – because many of the topics covered in the course feature within the press on a regular basis.

Indicative Bibliography:

Avgouleas, E., The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis, Oxford, Oxford University Press, 2005.

Avgouleas, E., *Governance of Global Financial Markets: the Law, the Economics, the Politics*, Cambridge: Cambridge University Press, 2012.

Bamford, C., Principles of International Financial Law (Student edition), Oxford, Oxford University Press, 2011.

Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision, BIS, 2006 (available here: http://www.bis.org/publ/bcbs129.htm).

Bazley, S. and Haynes, A., Financial Services Authority Regulation and Risk Based Compliance, Tottel Publishing, 2006.

Benjamin, J., Financial Law, Oxford, Oxford University Press, 2007.

Blair, M., Walker, G. and Purves, R., Financial Services Law, Oxford, Oxford University Press, 2009.

Blair, M. and Walker, G., *Financial Markets and Exchanges Law*, Oxford, Oxford University Press, 2012.

Blair, M., Blackstone's Guide to the Financial Services and Markets Act 2000, Oxford, Oxford University Press, 2009.

Boatright, J., Ethics in Finance, Oxford, Blackwell Publishing, 1999.

Casey, J-P. et al.., The MiFID Revolution, Cambridge, Cambridge University Press, 2009.
Centre for Policy Studies, The Leviathan is still at large: an open letter to Mr. John Tiner, Chief Executive, FSA, London, Centre for Policy Studies, 2005.

Cheffins, B., Company Law: Theory, Structure and Operation, Oxford, Oxford University Press, 1997.

Clarke, M., Citizens' Financial Futures – The Regulation of Retail Investment Financial Services in Britain, Aldershot, Ashgate, 1999.

Davies, P. and Worthington, S., Gower and Davies' Principles of Modern Company Law, London, Sweet and Maxwell, 2012.

Dewatripont, M., The Prudential Regulation of Banks, Cambridge (USA), MIT Press, 2010.

Ellinger, E. et al., Ellinger's Modern Banking Law, Oxford, Oxford University Press, 2010.

Faure, M. and Stephen, F., Essays in the Law and Economics of Regulation: in honour of Anthony Ogus, Intersentia, 2008.

Ferran, E., Principles of Corporate Finance Law, Oxford, Oxford University Press, 2008.

Ferran, E., Building an EU Securities Market, Cambridge, Cambridge University Press, 2004.

Ferrarini, G. and Wymeersch, E., Investor Protection in Europe: Corporate Law Making, the MiFD and Beyond, Oxford, Oxford University Press, 2006.

Fisher, J et al., The Law of Investor Protection, London, Sweet and Maxwell, 2003.

Frase, D., *Law and Regulation of Investment Management,* London, Sweet and Maxwell, 2011.

Faure, M. and Stephen, F., *Essays in the Law and Economics of Regulation: In Honour of Anthony Ogus*, Intersentia, 2008.

Ferran, E. et al., *The Regulatory Aftermath of the Global Financial Crisis*, Cambridge, Cambridge University Press, 2012.

Gleeson, S., *International Regulation of Banking: Capital and Risk Requirements*, Oxford, Oxford University Press, 2012.

Goodhart, C., *The Regulatory Response to the Financial Crisis*, Edward Elgar Publishing, 2009.

Gray, J. and Hamilton, J., *Implementing Financial Regulation*, John Wiley & Sons, 2006.
Grote, R. (ed.), *The Regulation of International Financial Markets*, Cambridge, Cambridge University Press, 2009.

Gullifer, L. and Payne, J., *Corporate Finance Law: Policy and Principle*, Oxford, Hart Publishing, 2011.

Haynes, A., *Financial Services Law Guide* (3rd edition), Tottel Publishing, 2006.

Haynes, A., *International Banking: Law and Practice*, Bloomsbury Professional, 2010.

Hollington, R., *Shareholders' Rights*, London, Sweet and Maxwell, 2010.

Hopt, K. and Wymeersch, E., *Capital Markets and Company Law*, Oxford, Oxford University Press, 2003.

Hudson, A., *The Law of Finance*, London, Sweet and Maxwell, 2009.

Katz, E. (ed.), *Financial Services Regulation in Europe*, Oxford, Oxford University Press, 2008.

Kokkoris, I. and Olivares-Caminal, R., *Antitrust Law amidst Financial Crises*, Cambridge, Cambridge University Press, 2010.

Koslowski, P., *The Ethics of Banking: Conclusions from the Financial Crisis*, Springer, 2012.

Kurnatowska, M. et al., *A Practitioner's Guide to Law and Regulation of Financial Crime*, London, Sweet and Maxwell, 2010.

Lowry, J. and Reisberg, A., *Pettet's Company and Capital Markets Law*, London, Longman, 2008.

MacNeil, I., *An Introduction to the Law on Financial Investment*, Oxford, Hart Publishing, 2005.

MacNeil, I. (ed.), *The Future of Financial Regulation*, Oxford, Hart Publishing, 2010.

McVea, H., *Financial Services Law and Regulation: Text and Materials*, London, Sweet and Maxwell, 2013.

Mayes, D. and Wood, G., *Reforming the Governance of the Financial Sector*, Routledge, 2012.

Moloney, N., *EC Securities Regulation,* Oxford, Oxford University Press, 2008.

Moloney, N., *How to Protect Investors: Lessons from the EC and the UK (International Corporate Law and Financial Market Regulation)*, Cambridge: Cambridge University Press, 2010.

Montagu, G. and Weston, M., *Banking and Capital Markets Companion,* Bloomsbury Professional, 2010.

Morgan, B. and Yeung, K., *An Introduction to Law and Regulation: Text and Materials*, Cambridge, Cambridge University Press, 2007.

Mwenda, K. *Legal Aspects of Financial Services Regulation and the Concept of a Unified Regulator*, World Bank, 2006.

Nelson, P., *Capital Markets Law and Compliance: The Implications of MiFID*, Cambridge, Cambridge University Press, 2008.

Newton, A., *Compliance: Making Ethics Work in Financial Services,* London, Pitman Publishing, 1998.

Ogus, A., *Regulation*, Oxford, Hart Publishing, 2004.

Panasar, R. and Boeckman, P., *European Securities Law*, Oxford, Oxford University Press, 2010.

Perry, J. and Toube, D., *The Financial Services and Markets Act: A Practical Legal Guide*, London, Sweet and Maxwell, 2006.

Proctor, C., *Law and Practice of International Banking*, Oxford, Oxford University Press, 2010.

Rider, B., Alexander, K. and Linklater, L., *Market Abuse and Insider Trading*, London, Tottel Publishing, 2009.

Russen, J., *Financial Services: Authorisation, Supervision and Enforcement – A Litigator's Guide*, Oxford, Oxford University Press, 2006.

Scott, H., *International Finance*, London, Sweet and Maxwell, 2004.

Shiller, R., *Finance and the Good Society*, Princeton University Press, 2012.

Tison, M. (ed.), *Perspectives in Company Law and Financial Regulation*, Cambridge, Cambridge University Press, 2009.

Turner, A., *Economics after the Crisis*, MTT Press, 2012.

Usher, J., *Law of Money and Financial Services in the EC,* Oxford, Oxford University Press, 2011.

Wood, P., *Law and Practice of International Finance*, London, Sweet and Maxwell, 2007.

Wood, P., *Regulation of International Finance*, London, Sweet and Maxwell, 2011.

Web based Reading:

Robert Goddard's website contains updates on many of the topics covered in the course and links to relevant websites and materials:
http://www.corporatelawandgovernance.blogspot.com

Further links are provided on Blackboard.