

ENVIRONMENTAL GOVERNANCE and the Private Sector
(Class satisfies the MELP Environmental Economics core requirement)

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Textbook: None – materials will be posted on TWEN; I do suggest that printing out the materials for classroom discussion may be helpful

Because of the COVID-19 emergency this will be a synchronous online class. It will be taught using ZOOM technology. I will send you the classroom link by email. When you first open it, if you don't have Zoom it will download fairly quickly, and you should connect. You do not have to pay for this. We will spend the first few minutes of class going over the ZOOM features and how it operates. You will need a microphone and camera (most laptops have these built in). I expect you to come into class with both audio and video. As you have probably learned by now, having a good download speed and connectivity is important.

Though we will be online, the class will proceed similarly as it would have otherwise. We will discuss some of the assignments and big ideas and parts of class will consist of you accessing and all of us discussing online resources.

This class examines the push for more private sector accountability and governance in environmental matters (such as ESG (“Environment, Social and Governance”) and CSR (“Corporate Social Responsibility”) policies) and how this relates to legal requirements in the private sector, particularly laws governing financial and risk disclosure.

The class also looks at private sector environmental governance. In particular, the class will examine the concept of business sustainability drivers and practice, private environmental governance, including the growth of market models, and what legal standards apply.

Students will examine 1) the economic and theoretical bases for environmental laws; 2) emerging corporate and private sector behavior in response to these laws, financial disclosure laws, and public opinion; and 3) private environmental governance.

Students will prepare

1) a short in “in house” email memo (less than 5 pages) addressing a specific issue related to a publicly traded company and investor guidance and decisions [i.e. are the company’s environment/climate/social policy consistent with large investor concerns], and

2) undertake a practical exercise in drafting either a private environmental governance agreement, a corporate financial disclosure statement relating to environmental or climate risks, or a corporate sustainability plan [including explanations].

Grades will be based on both the in house email memo (40%) (due Monday, July 13 at beginning of class) and the draft and explanation of one of the above practical document drafting exercise (60%) (due on Sunday, July 19, by 5:00 P.M. E.D.T. by email to vflatt@central.uh.edu).

From VLS Faculty manual:

VLS has a recommended average grade of B in required courses, sectioned courses, and courses with an enrollment over 40.

Students may consult with each other on practical document drafting ideas.

July 6 “How do we do good by the environment and make money?”

- I. Introduction to environmental information demand. Introduction to property, environmental law, environmental externalities, market based solutions and objections

Assignments: – Paul Sullivan, *Wealth Matters, Making it Easier to See your Money’s Halo*, N.Y. Times, May 4, 2019, at <https://www.nytimes.com/2019/05/03/your-money/impact-investing-standards.html>

Garrett Hardin, *Tragedy of the Commons* (excerpt);

Adam Sulkowski, *Beyond Sustainability Reporting*, 10 *Univ. of St. Thomas L. J.* 1060 (2013) [excerpt];

Letter from Larry Fink/ Blackrock CEO –

<https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>

Michael Vandenberg, *Private Environmental Governance* Introduction (excerpted from 99 *Cornell Law Review*)

(all on TWEN)

DISCUSSION OF CLASS, ASSIGNMENTS AND GRADING

July 7

- II. Corporate Disclosure
- III. The Elements of a Corporate Sustainability Plan

Assignment – **Try to have a printed or at least PDF (since I know printing is a bit difficult) of a Fortune 500 Corporate Sustainability Plan (your choice);**

Measuring Intangibles ROBECOSAM’S CORPORATE SUSTAINABILITY ASSESSMENT METHODOLOGY (on TWEN):

Sustainability Planning Guide (on TWEN)

please review Sustainability Accounting Standards Board (SASB – Bloomberg);

IN CLASS EXERCISE – EXAMINATION OF CALPERS HOLDING AND APPLICATION OF sustainability metrics (SASB)

DISCUSSION OF FIRST ASSIGNMENT

July 8

link to Sustainability Accounting Board Feb 26, 2020 meeting recording (On TWEN) – for first half of class we will watch the first hour of the meeting and then return for discussion:

<https://www.youtube.com/watch?v=RBhTCQI7IXU>

IV. Financial Disclosure Requirements Related to the Environment (Practice and Critique)

Assignment –

Jill E. Fisch, *Making Sustainability Reporting Sustainable*, 107 Geo. L. J. 923 (2019) [excerpt];

Rissman and Kearny, *Rise of the Shadow ESG Regulators*, 49 Env’tl. L. Rep. News & Analysis 10155 (2019) [excerpt]
(all on TWEN)

July 9

Financial Disclosure Requirements Continued – Materiality and Litigation

SASB Materiality Assessment Grid at <http://materiality.sasb.org/>
(link on TWEN)

Print out text of proposed Climate Change Financial Disclosure Act (link on TWEN)

Securities and Exchange Commission Reporting – Form 10-K (reading on TWEN)

Hannah Vizcara, *Regulatory Activity and Legal Liabilities Affecting Management of Financial Climate Risk*, blog post, March 24, 2020 (on TWEN)

The story of Exxon Mobil and New York and Massachusetts attorney general

July 13

First ASSIGNMENT DUE AT BEGINNING OF CLASS

Catchup

Discussion Review

WORKSHOP ON DOCUMENT DRAFTING AND EXPLANATIONS (second assignment)

July 14

- V. Using the Private Sector and Private Economic Behavior- Are Markets Moral?
- VI. Commodity Trading Primer
- VII. Problems with Environmental Markets (standardizing the commodity; irreversible loss)

Assignment: E&E News, “Carbon Markets: The Epic Journey of a Modest Proposal,” May 2016;

Victor B. Flatt, *Chapter on Environmental Markets*

Craig Pirrong, *The Efficient Scope of Private Transactions- Cost Reducing Institutions: The Successes and Failures of Commodity Exchanges*, 34 J. Legal Stud. 229 (1995) [excerpt];

Pappas and Flatt. “The Costs of Commodification,” 9 U.C. Irvine L. Rev. 731 (2019);

David Takacs, *Are Koalas Fungible?*[excerpt] from 26 NYU Env'tl. L. J. 161(2018)

(all on TWEN)

July 15

The Private Sector as Primary Environmental Regulatory Body (Absence of Government Policy and Power of Investment and Consumers)

Assignment:

Michael Vandenberg, *Private Environmental Governance* (Flatt edit), 99 Cornell L. Rev. 129 (2013).

BlackRock Letter to CEOs at
<https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>

[all on TWEN]

July 16

- VIII. Private Sector Environmental Governance and Government Control
- Insurance, Investors, Lenders, and Speech

Assignment:

Flatt, *Climate Change Adaptation: The Impact of Law in the Private Sector*, (with Yee Huang), white paper from the Center for Law Environment Adaptation and Resources, and the Center for Progressive Reform, August 2012, available at
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2120083 (and on TWEN)

(on TWEN)

SECOND ASSIGNMENT DUE by 5 PM EDT on Sunday, July 19, by email to vflatt@central.uh.edu