

**ENVIRONMENTAL GOVERNANCE and the Private Sector**  
**(Class satisfies the ABA experiential Course requirement)**

**Class is scheduled to meet on Mondays and Wednesdays from 4:30 to 5:45. In some cases, we will meet longer on Monday (until 5:50) and shorter on Weds. (til 5:40)**

Professor Victor Flatt, 713-922-0392, vflatt@central.uh.edu

Textbook: None – materials will be posted on blackboard; 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.*

*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 consists of you accessing and all of us discussing online resources.*

This class first examines the economic underpinnings for environmental law and for the power of markets. It then 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.

***Reading assignments are made by the week and should be prepared before the first class unless you are told otherwise.***

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 2000 words) 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].

Students may consult with each other on practical document drafting ideas but need to do their own work

### **There are no course pre-requisites**

### **Grading and Curve**

Grades will be based on both the in house email memo (40%) and the draft and explanation of one of the above practical document drafting exercise (60%)

All UH courses are graded on a mandatory mean (3.2-3.4).

### **Attendance and Participation**

Class attendance and preparation will be counted in computing the final grade for this course. Poor attendance can affect your grade negatively. Preparation, as evidenced by class participation, may affect your grade positively (or in extreme cases have a negative effect). I generally refer to you by your surname and your chosen title (Mr., Ms. Dr. Rev. Mx.) If you have a particular way you would like to be addressed that best reflects your identity, please let me know.

### **Honor Code and Other Information**

The Honor Code is in effect in this class and in all others at the University. I am committed to treating Honor Code violations seriously and urge all students to become familiar with its terms set out at <http://www.law.uh.edu/student/HONOR-CODE-AND-PROCEDURES.pdf?>

If you have questions, it is your responsibility to ask me about the Code’s application. All exams, written work, and other projects must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects of the submitted work.

**COUNSELING:** From the University: Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands

of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)

**DISCRIMINATION AND SEXUAL HARRASMENT/ Misconduct POLICY:**

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system’s Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d7.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d7.pdf) (antidiscrimination)

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d8.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d8.pdf) (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

**Modifications to the Syllabus**

The instructor reserves the right to make modifications to this syllabus as necessary over the course of the semester.

**Weeks 1 and 2 (3 classes – MLK holiday on Jan. 18)**

**“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

Garrett Hardin, Tragedy of the Commons (excerpt)

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>

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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 Blackboard)

## DISCUSSION OF CLASS, ASSIGNMENTS AND GRADING

### Week 3

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

Assignment – **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 (blackboard):

Sustainability Planning Guide (on blackboard)

please review Sustainability Accounting Standards Board (SASB – Bloomberg; online materials; using your own search methods);

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

## DISCUSSION OF FIRST ASSIGNMENT

**Week 4 (Classes on Feb. 8 and Feb. 10 will be asynchronous for you to watch on your own and post questions)**

Watch first 2 hours of Sustainability Accounting Board Feb 26, 2020 meeting recording –

<https://www.youtube.com/watch?v=RBhTCQ17IXU>

Prepare 2 written questions, and email to me by Friday, Feb. 12.

#### Week 5

- IV. Discussion of SASB meeting
- V. 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 blackboard)

#### Week 6

Financial Disclosure Requirements Continued – Materiality and Litigation

**Asynchronous class on Mon. Feb. 22 (video of Flatt, et al.)  
shareholder litigation and greenhouse gas issues**

**Please email 2 questions about the presentation to me by Weds., Feb. 24 at Noon ([vflatt@central.uh.edu](mailto:vflatt@central.uh.edu))**

Assignment:

SASB Materiality Assessment Grid at <http://materiality.sasb.org/>

#### Week 7

Financial Disclosure Cont./An attorneys rule and attorney ethics

Print out text of proposed Climate Change Financial Disclosure Act and review

Securities and Exchange Commission Reporting – Form 10-K

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

(all on Blackboard)

IN CLASS - The story of Exxon Mobil and New York and Massachusetts attorney general

## Week 8

**First ASSIGNMENT DUE AT BEGINNING OF CLASS (March 8) (email to [vflatt@central.uh.edu](mailto:vflatt@central.uh.edu))**

Catchup

Discussion Review

WORKSHOP ON DOCUMENT DRAFTING AND EXPLANATIONS (for second assignment)

SPRING BREAK (March 15-19)

## Week 9

- VI. Using the Private Sector and Private Economic Behavior- Are Markets Moral?
- VII. Commodity Trading Primer

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];

(on blackboard)

## Week 10

- VIII. Problems with Environmental Markets (standardizing the commodity; irreversible loss)

Pappas and Flatt. "The Costs of Commodification," 9 U.C. Irvine L. Rev. 731 (2019) (Flatt edit);  
David Takacs, *Are Koalas Fungible?*[Flatt edit] from 26 NYU Envtl. L. J. 161(2018)

(all on blackboard)

**[Weeks 11, 12, 13, and 14 will involve in class work sessions and discussions on final assignment]**

### **Weeks 11 and 12**

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 blackboard]

### **Weeks 13 and 14**

- IX. 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2120083) (and on blackboard)

**SECOND ASSIGNMENT DUE by 5 PM CDT on Monday, May 10, by email to  
vflatt@central.uh.edu**