

October 28, 2011

New York University
JD-LLM/MBA
Spring 2012
LAW-LW.11682.001
B40.3354.20
The Law and Business of Microfinance

Course Goals:

Microfinance currently serves an estimated 100 million borrowers; the total potential demand is estimated to reach one billion. As microfinance institutions (MFIs) seek to reach greater scale and outreach, they are looking to a growing pool of cross-border financing, as well as to local sources of capital, to fund their growing business operations. The total foreign MFI funding is expected to reach \$25 billion by 2015.

The goal of this course is to introduce you to the legal and business issues that arise in the creation, operation and financing of MFIs and to the deal structuring, negotiating, and drafting skills necessary to advise MFIs seeking the capital necessary to reach scale. We will identify key challenges that MFIs face when seeking financing and the requirements of finance providers, including those seeking both financial and social returns. 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.

Course Requirements:

This course is a highly interactive class that will include several requirements:

- a) Readings and classroom participation;
- b) Class presentations; and
- c) Closed book, final examination.

Performance Evaluation:

Your grade in this course will be based on class participation (including class presentations) (1/2) and a final examination (1/2).

A. Class Attendance and Participation

Class meets Mondays and Wednesdays from 10:30 to 11:50. I expect each member of the class to attend class regularly and actively participate in our classroom discussions. You will

be requested to volunteer to make presentations and to help co-lead in-class discussions during the semester.

B. Final Examination

The final examination will cover materials presented and discussed throughout the semester. It will be a closed book, in-class, exam. Material covered by guest speakers and student presentations may be included in final exam.

Materials:

All materials will be available on the internet or distributed in class. Additions or changes to required readings will be posted on blackboard. Students are encouraged to supplement the assigned materials with the many sources available on the internet, including the sites of MFIs.

Some suggestions:

www.microlinks.org, www.cgap.org, www.themix.org, www.microfinancegateway.org,
www.swwb.org, www.accion.org, www.villagebanking.org, www.opportunity.org,
www.seepnetwork.org

Guest Speakers:

Guest Speakers with experience in microfinance will be joining us from time to time. The syllabus will be adjusted to accommodate the speakers' schedules.

Course Schedule

Week One – Introduction to Microfinance

Introduction. What is microfinance? (1/30, 2/1)

Introduce microfinance and the challenges MFIs face when trying to reach scale; identify variations among distribution methodologies, business models, products and legal forms characterizing providers of microfinance. We will also discuss the different participants in the industry and the roles they each play.

Case Studies

Volunteers will present MFIs from different regions of the world. Presentations will include the mission, legal form and business model of each MFI as well as present economic, social and commercial issues affecting each MFI.

Required Reading:

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

Microfinance: an Emerging Investment Opportunity, Deutsche Bank Research (December 19, 2007) (available online at www.dbresearch.com)
http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD000000000219174.pdf

CGAP Focus Note 59 Does Microcredit Really Help the Poor?
<http://www.cgap.org/p/site/c/template.rc/1.9.41443/>

The New York Times, Microlenders, Honored With Nobel, Are Struggling (January 5, 2011),
http://www.nytimes.com/2011/01/06/business/global/06micro.html?_r=1&emc=eta1

Week Two – Investor Motivations (2/6, 2/8)

Who is investing in microfinance and why? What is the ideal source of funding for an MFI?

Discuss various forms of funding: donations/debt/equity and the different types of investors and their requirements. Analyze differences in investor motivations (such as between founder capital and growth capital).

Case Studies

Volunteers will present examples of funders in different MFIs. Presentations will include type of investor, performance and role in the MFI industry.

Required Reading:

For MBAs: Walters, Ingo and Krauss, Nicolas A., Can Microfinance Reduce Portfolio Volatility? (January 30, 2008)
<http://www.microfinancegateway.org/p/site/m//template.rc/1.9.31008>

All students: CGAP Brief: MFI Capital Structure Decision Making:
<http://www.cgap.org/p/site/c/template.rc/1.9.2735>

CGAP Cross-Border funding Survey
http://www.cgap.org/gm/document-1.9.55343/Cross_Border_Funder_Survey_2011_Results_Table.pdf

Guest Speaker: Joan Trant, Executive Director of The International Association of Microfinance Investors (2/8)

Week Three (2/13, 2/15)

Due Diligence- Introduction to Due Diligence

What is the purpose of a due diligence process? What is the role of each participant in the process? We will discuss how to prepare to conduct due diligence and what to expect if you are an MFI preparing to undergo a due diligence review.

We will review a diligence request list as well as the criteria used by rating agencies and market leaders when evaluating MFIs, highlighting what is unique in the diligence process for MFIs.

Required Reading:

Microfinance Banana Skins 2011: The CSFI Survey of Microfinance Risk,
http://www.cgap.org/gm/document-1.9.49643/Microfinance_Banana_Skins_2011.pdf

Legal Due Diligence Request list (posted on Blackboard)

Deutsche Bank Loan application and Due Diligence Questionnaire:

<http://www.microfinancegateway.org/gm/document-1.9.47454/DB%20Loan%20Application%20ENGLISH%20v8.pdf>

<http://www.microfinancegateway.org/gm/document-1.9.47452/DB%20HO%20Due%20Dili%20with%20Loan%20App%20version%205.pdf>

Guest Speaker: Eileen Fusco, former Senior Partner at Deloitte and Member of The Board and Chair of Governance Committee of Pro Mujer (2/21)

Week Four and Five– Debt Financing (2/21, 2/22, 2/27, 2/29)

Introduction to loan agreements.

Overview of Credit Documentation. Detailed review of key provisions of commitment papers and loan agreement. We will discuss the process of securing credit and the negotiation of critical terms (e.g., affirmative and negative covenants, events of default).

Students will play the role of Borrower, Lender and counsel to Borrower and Lender as we review key provisions of the commitment papers and the credit agreement. Emphasis will be placed on provisions critical to MFIs.

Required Reading:

Annotated Loan Agreement:

<http://www.cgap.org/p/site/c/template.rc/1.9.2994/>

Selections from *How to Negotiate Eurocurrency Loan Agreements* by Lee C. Buchheit, posted on Blackboard

Class Documents posted on Blackboard

Week Six – Credit Enhancements and Off-Balance Sheet Financing (3/5, 3/7)

Introduction to credit enhancement.

How can credit enhancements be used to mitigate risk in MFI financings? Which credit enhancements are most effective for MFIs? Overview of credit enhancement mechanisms: Guaranties, Mezzanine Financing, Exchange Risk Protection, Transfer Risk Protection and Political Risk Insurance.

Required Reading:

CGAP Focus Note 31 Foreign Exchange Risk in Microfinance: What is it and how can it be managed: <http://www.cgap.org/p/site/c/template.rc/1.9.2522>

CGAP Focus Note 40 Guaranteed Loans to Microfinance Institutions: How do they add Value? <http://www.cgap.org/p/site/c/template.rc/1.9.2580/>

CGAP: Provisions of Standard Commercial Guarantee Agreements, October 2010, Sandra M. Rocks http://www.cgap.org/gm/document-1.9.48112/GuaranteeAgreements_TG.pdf

Class Documents posted on Blackboard

Case Studies

We will discuss off-balance sheet and structured finance and review credit enhancement techniques used in this context.

Week Seven – Legal and Regulatory Risk (3/19, 3/21)

Introduction to Regulation.

Review how microfinance is regulated.

Volunteers will present the regulation of MFIs in previously assigned countries and lead discussion of impact of regulation on MFIs.

Required Reading:

Microfinance Consensus Guidelines: Guiding Principles on Regulation and Supervision of Microfinance Institutions (CGAP Publication)

http://www.cgap.org/gm/document-1.9.2787/Guideline_RegSup.pdf

CGAP Brief: AML/CFT Regulations: Balancing Security with Access

DOJ opinion: <http://www.justice.gov/criminal/fraud/fcpa/opinion/2010/1002.pdf>

Week Eight – Transformation (3/26, 3/28)

What is transformation?

Discussion of alternative structures for achieving transformation and implications on governance, operations, organization of networks, and capital raising.

Required Reading:

Womens World Banking: Stemming the Tide of Mission Drift: Microfinance Transformations and the Double Bottom Line

http://www.swwb.org/files/pubs/en/stemming_the_tide_of_mission_drift_microfinance_transformations_and_the_Double_Bottom_Line.pdf

Aligning Interests Addressing Management and Stakeholder Incentives During Microfinance Institution Transformations by Calmeadow and The Center for Financial Inclusion

http://resources.centerforfinancialinclusion.org/publications/Aligning_I_240.asp

Guest Speaker: Professor Deborah Burand, University of Michigan Law School, former executive vice president of Grameen Foundation (3/26).

Week Nine & Ten – Governance Issues & Private Equity (4/2, 4/4, 4/9, 4/11)

Analyze the governance issues that are unique to MFIs, including the role of founders, mission drift, crisis management, role of the board of directors, fiduciary duties. Discuss the challenges of public-private partnerships.

Students will play the role of MFI shareholders, MFI management, prospective investor and counsel as we review key issues among shareholders in an MFI and governance. We will also review a model subscription agreement.

Required Reading:

Lauer, Kate, CGAP Occasional Paper, Transforming MFIs: Critical Ownership Issues to Consider <http://www.cgap.org/p/site/c/template.rc/1.9.4213>

CGAP: Negotiating an Equity Capital Infusion from Outside Investors, October 2010, David A. Carpenter, http://www.cgap.org/gm/document-1.9.48113/Equity_TG.pdf

Principles and Practices of Microfinance Governance:

[http://www.ifc.org/ifcext/corporategovernance.nsf/AttachmentsByTitle/Microfinance%2BGovernance%2BPractices.pdf/\\$FILE/Microfinance%2BGovernance%2BPractices.pdf](http://www.ifc.org/ifcext/corporategovernance.nsf/AttachmentsByTitle/Microfinance%2BGovernance%2BPractices.pdf/$FILE/Microfinance%2BGovernance%2BPractices.pdf)

The Practice of Corporate Governance in Shareholder Owned Microfinance Institutions, Consensus Statement of Microfinance Equity Funds

<http://www.cmef.com/Document.Doc?id=571>

IFC matrix:

[http://www.ifc.org/ifcext/corporategovernance.nsf/AttachmentsByTitle/CG_Matrix_Fin_Inst_Oct07/\\$FILE/Matrix_Fin_Inst_Oct2007.pdf](http://www.ifc.org/ifcext/corporategovernance.nsf/AttachmentsByTitle/CG_Matrix_Fin_Inst_Oct07/$FILE/Matrix_Fin_Inst_Oct2007.pdf)

Class Documents posted on Blackboard

Week Eleven – Equity Financings (4/16, 4/18)

Introduction to Issues in Public Equity Investments.

What are the challenges and opportunities for MFIs accessing the public capital markets and for retail equity investors in microfinance institutions?

Volunteers will present the SKS or Compartamos IPO

CGAP Note 65 Indian Microfinance Goes Public: The SKS Initial Public Offering

<http://www.cgap.org/p/site/c/template.rc/1.9.47613/>

Additional Readings to come

Week Twelve – Microfinance Funds and Review for Final Exam (4/23, 4/25)

Introduction to Funds.

Review of structure of funds and discussion of issues such as regulatory requirements, categories of investors, diversification of risk, impact of limited exit options. Review of a sample Offering Memorandum for a debt fund targeting socially responsible investors.

CGAP-Symbiotics 2011 MIV Survey

<http://www.syminvest.com/download/Symbiotics-2011-MIV-Survey.pdf>

Week Thirteen – (4/30, 5/2) (exam 5/7)

Responsible Finance: Growth and the Bottom Line v. Client Protection and Mission; and Concluding Discussion We will discuss controversies and challenges facing the microfinance

sector, focusing on the tension between striving for scale and adherence to mission, as well as how funding strategies have changed in light of the financial crisis and the issues that have arisen with the consolidation among MFI's and convergence with other finance providers.

Required reading:

CGAP Focus Note No. 29, September 2011, Responsible Finance: Putting Principles to Work
<http://www.cgap.org/gm/document-1.9.54128/FN73.pdf>

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

Students will play the role of different members of a board of an MFI on the cusp of great change and try to arrive at a consensus on the MFI's direction.

Microfinance Managers Consider Online Funding: Is It Finance, Marketing, or Something Else Entirely? April 2009, Deborah Burand.
<http://www.microfinancegateway.org/p/site/m//template.rc/1.9.34339>

The Global Financial Crisis and Its Impact on Microfinance
Feb 2009, Littlefield, E. & Kneiding, C.
<http://www.microfinancegateway.org/gm/document-1.9.31235/56071.pdf>