Caroline Bradley **SPRING SEMESTER 2011**

INTERNATIONAL FINANCE

ANSWER 2 OF THE FOLLOWING 5 QUESTIONS.

Your answers should be no longer than 6 pages (per question) (at approximately 250 words per page).

EACH QUESTION WILL COUNT FOR 50% OF THE EXAM GRADE.

The course materials should provide sufficient material for your answers. Please provide brief citations to the course materials for your examples (e.g. Materials packet 2, p. 10).

Note that there is some potential for overlap in answers to these questions. Avoid substantial overlap in your answers, because, as a general rule, you will only get credit once for each piece of information you give me. If you incorporate information in one answer into the other answer, for example by writing "see above", or "see answer to Question x" in your second answer, your grade for the second answer may suffer.

1. In October 2010 the Securities and Exchange Commission issued a Request for Comments for its Study on Extraterritorial Private Rights of Action (Materials for the first week, pp 34-37) which contained the following invitation:

> Propose the circumstances, if any, in which a private plaintiff should be allowed to pursue claims under the antifraud provisions of the Exchange Act with respect to a particular security where the plaintiff has purchased or sold the security outside the United States. Does it make a difference whether the security was issued by a U.S. company or by a non-U.S. company?
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> Does it make a difference whether the security was purchased or sold on a foreign stock exchange or whether it was purchased or sold on a non-exchange trading platform or other alternative trading system outside of the United States? Does it make a difference whether the company's securities are traded exclusively outside of the United States?
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> Should there be an effects test, a conduct test, a combination of the two, or another test? Address whether any such test should be limited only to certain types of private plaintiffs, such as United States citizens or residents, or such as institutional investors. How would such investors be defined?

How would you respond?

2. "Financial markets are global in scope and, therefore, consistent implementation of international standards is necessary to protect against adverse cross-border, regional and global developments affecting international financial stability." (Financial Stability Board Framework for Strengthening Adherence to International Standards, Materials Chapter 1, p. 62)

Discuss, with examples from the course materials.

3. "Given the background of the crisis, regulatory effort on financial institutions has focused on banking, but there is important work underway also for other financial institutions." (Claude Trichet, Materials Chapter 6, p. 2).

"...[I]t is noteworthy that while the term "shadow banking system" has taken its place in the lexicon of policymakers alongside "systemic risk" and "financial stability," comparatively little has been done to regulate the channels of capital flows in which one or both transacting parties lie outside the perimeter of prudentially supervised institutions. This despite the often considerable degree of leverage and maturity transformation associated with many of these channels." (Daniel Tarullo, Materials Chapter 6, p. 2).

Discuss.

4. "The risk that a contract will not be enforced by courts in the way that parties to the contract intend is an aspect of legal risk (which also includes the risk that statutes and regulations may be interpreted in surprising ways). Legal risk also includes risks associated with changes in circumstances, such as bankruptcy, as bankruptcy laws change the legal rights of parties to contracts." (Materials Chapter 3, p. 18).

Using examples from the course materials, discuss the problem of legal risk. Is legal risk inevitable? Should judges avoid making decisions which conflict with the expectations of parties to contracts?

5. Discuss how the Credit Agreement between International Assets Holding Corporation, Intl Global Currencies Limited and Bank of America, N.A. allocates risks between the parties to the Agreement.