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TAXTALK

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EDITOR'S NOTE

With the failure of health care legislation to "repeal and replace" the Affordable Care Act, eyes in Washington, D.C. are now turning to tax reform. Since Congress plans to take August off, any real tax reform effort in the public domain will only start up after Labor Day. By then, Congress will only have 65 days left in its 2017 calendar. Not much time for the comprehensive tax reform that people have been talking about. Speaking of tax reform, some progress is being made, albeit in a negative sense. The tax leadership of the House, Senate, and administration announced that plans for a border adjusted cash flow tax are dead. That will make things much simpler and was almost inevitable given the substantial resistance from the U.S. business community (at least the importer side). What, you might ask, is then left? If we focus on areas where there is some consensus we may be looking at a Republican tax reform package that (i) lowers individual and corporate rates (but not as much as the headline 15% rate from the Trump campaign), (ii) includes deemed repatriation or actual repatriation of "trapped" foreign earnings, (iii) includes mark-to-market for derivatives, (iv) includes some small business relief which might even be the special lower tax rate for business income earned through pass-throughs, and (v) includes elimination or reduction of deductions for interest on corporate debt. While these are just guesses at this point, they highlight areas where proposals either from the Congress or the president have taken relatively less flak from the various tax reform constituencies. When we will see actual legislative language, however, is anyone's guess and we still think our prediction of 2018 legislation may be where all this ends up.

Apart from this crystal ball gazing, TT 10.02 includes a discussion of two important Tax Court cases in the financial product and international tax spaces, a summary of the revocation by the IRS of a series of private letter rulings holding commodity-linked notes were securities under the tests for regulated investment companies, and more.

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EXTENSION OF VARIABLE PREPAID FORWARD CONTRACTS NOT A TAXABLE EVENT: ESTATE OF ANDREW J. MCKELVEY V. COMMISSIONER

On April 19, 2017, the Tax Court issued a taxpayer-favorable ruling on an extension of variable prepaid forward contracts ("VPFCs"). The court held in *McKelvey v. Commissioner* that Andrew McKelvey, founder of Monster.com and obligor on a pair of VPFCs, did not have a taxable event when he extended the terms of the contracts.[1] The court's decision was supported by two key conclusions: (1) section 1001 did not apply to the extension because at the time of the extension, the VPFCs represented obligations (and not property rights) of McKelvey, and (2) deferral of taxation was consistent with the open transaction treatment that existing authority generally applies to VPFCs.

In September 2007, McKelvey entered into a VPFC with each of Bank of America and Morgan Stanley. Each VPFC provided for an upfront cash payment to McKelvey and settlement in September 2008. McKelvey was required to settle by delivering Monster common stock or (at McKelvey's election) an equivalent amount of cash. In each case, the number of shares or amount of cash that McKelvey would be required to deliver was subject to a cap and a floor. The IRS and McKelvey agreed that these initial transactions created VPFCs that were subject to open transaction treatment under Revenue Ruling 2003-7.[2]

In July 2008, 10 months after entering the VPFCs, McKelvey paid roughly $11.7 million to Bank of America and Morgan Stanley to extend settlement until early 2010. McKelvey died in 2008 after the extensions were consummated, and his estate reported no gain or loss on the extensions.

The decision focuses on one key inquiry: whether the original VPFCs constituted "property" to McKelvey at the time of the extensions within the meaning of section 1001. Section 1001 provides that gain or loss shall be recognized on the sale or exchange of property. It does not, however, provide a definition of "property," so the court analyzed the term's definition in Black's Law Dictionary and the term's use in Supreme Court case law. The court concluded the original VPFCs did not constitute "property," because the only material property right that the VPFCs provided McKelvey were the initial rights to cash. Accordingly, because McKelvey received the cash prepayments before the extensions, the contracts were "only obligations to deliver the requisite number of shares or the cash equivalent" by the time the extensions occurred. The court rejected IRS arguments that McKelvey had property interests in the VPFCs at the time of the extensions because they gave him the rights to determine method of settlement (*i.e.*, in cash or in shares) and to substitute collateral. Thus, the court held, section 1001 was inapplicable to the extensions because it applies only to exchanges of "property."

The court supported its conclusion by discussing the general applicability of the open transaction doctrine to standard VPFCs and analogizing McKelvey's position to that of a person that has written a call option. According to the court, extensions like McKelvey's are not appropriate times to close an open transaction because they are "only one change to the original [derivative subject to the open transaction]," and "[do] not clarify the uncertainty of which property . . . would ultimately [be delivered] to settle the contracts."

The Tax Court's decision is likely to engender debate among tax advisors. For example, Treas. Reg. section 1.1001-3 addresses modifications of debt instruments under section 1001. Treas. Reg. section 1.1001-3 contains rules for determining when an alteration to a debt instrument—including an alteration to the instrument's term—constitutes an exchange under section 1001. Like McKelvey's case, in the situation where debt is issued for money, the obligor has only obligations left. Nevertheless, the regulations apply to both obligors and holders of the debt instrument.[3] The *McKelvey* court did not mention Treas. Reg. section 1001-3 in its decision.

McKelvey is thus a clear win for taxpayers. The IRS has not announced whether it plans to appeal the decision.

TAX COURT REJECTS IRS REVENUE RULING APPROACH ON ECI AND SALE OF PARTNERSHIP INTERESTS

On July 13, in *Grecian Magnesite Mining, Industrial & Shipping Co., SA v. Commissioner*,[4] the Tax Court rejected IRS Revenue Ruling 91-32.[5] In that ruling, the IRS held that gain realized by a foreign partner upon a sale or

[1] 148 T.C. No. 13 (April 19, 2017).
[2] 2003-1 C.B. 363.

[3] In the Preamble to the section 1.1001-3 Treasury Regulations, Treasury declined to expand the scope of the provisions to cover non-debt instruments.
[4] 149 T.C. No. 3 (July 13, 2017).
[5] Rev. Rul. 91-32, 1991-1 C.B. 107.

disposition of its interest in a partnership engaged in a trade or business in the Unites States should be analyzed asset by asset, such that to the extent there would be effectively connected income ("ECI") with respect to individual asset sales, the selling partner's pro rata share of such gain should be ECI. The ruling's reasoning is that, generally, a foreign person is treated as engaged in a trade or business if such person is a partner in a partnership that is engaged in a U.S. trade or business. Since the trade or business of such a partnership affects the value of its partnership interests, the ruling reasons that income from the sale of such interest should be ECI. Generally, a foreign taxpayer's income treated as ECI is reported on a U.S. federal income tax return as if such foreign taxpayer was a U.S. person with respect to such income.

In *Grecian*, the Tax Court disagreed with that approach. Instead, on *Grecian's* facts, the Tax Court held that the sale of a partnership interest is capital gain not effectively connected with a trade or business. The Court reasoned that, in the case of a sale of a partnership interest, the partnership's underlying trade or business is not an "essential economic element in the realization of income" and gain from the sale is not realized in the ordinary course of business of such partnership. In rejecting the IRS's approach in Rev. Rul. 91-32, the Tax Court stated that the ruling "lacks the power to persuade," and that the IRS treatment of the relevant partnership provisions "is cursory in the extreme."

Some practitioners have long been critical of Rev. Rul. 91-32.[6] The IRS has not announced whether it will appeal the holding in *Grecian* (although Tax Talk will be surprised if it doesn't).

SEAVIEW: DRES AS INELIGIBLE PARTNERS FOR ELECTING OUT OF PARTNERSHIP AUDIT RULES

Section 6231(a)(1)(B) exempts certain small partnerships from the TEFRA audit regime. However, Treas. Reg. 301.6231(a)(1)-1(a)(2) provides that the small partnership exception does not apply if any partner during the taxable year is a "pass-thru partner" as defined in section 6231(a)(9). A "pass-thru partner" is defined in Section 6231(a)(9) as "a partnership, estate, trust, S corporation, nominee or other similar person through whom other persons hold an interest in the partnership...." Section 6231(a)(2) defines a "partner" as including both a partner in the partnership and any other person whose income tax liability is determined in whole or in part by taking into account directly or indirectly items of the partnership. If legal title to a partnership interest is held in the name of a person other than the ultimate owner, the holder of legal title is considered a pass-thru partner within the meaning of Section 6231(a)(9). Section 6231(a)(10) defines an indirect partner as a person holding an interest in a partnership through one or more pass-thru partners.

In Revenue Ruling 2004-88,[7] the IRS addressed whether a partnership with an LLC partner that is treated as a disregarded entity could be exempt from the TEFRA regime under section 6231(a)(1)(B). The Ruling held that such a partnership could not qualify for the exemption because the LLC was a pass-thru partner. The Ruling reasoned, even though the LLC was a disregarded entity for federal tax purposes, the LLC was a partner of the partnership under the law of the state in which the partnership was organized. Furthermore, the Ruling added that although the LLC's owner was a partner of the partnership for purposes of the TEFRA regime under section 6231(a)(2)(B), because the LLC's owner's income tax liability was determined by taking into account indirectly the partnership items, the owner was not a partner of the partnership under state law. Therefore because the owner held his interest through the LLC, the owner was an indirect partner and the LLC was a pass-thru partner under the TEFRA regime.

Recently, the 9th Circuit U.S Court of Appeals addressed the same issue in *Seaview Trading*, *LLC v. Comm'r*, No. 15-71330 (9th Cir. June 7, 2017). The Circuit Court applied *Skidmore* deference to Rev. Rul. 2004-88. Under *Skidmore v. Swift & Co*., 323 U.S. 134 (1944), an agency's ruling "is eligible to claim respect according to its persuasiveness."[8] When exercising *Skidmore* review of agency action, multiple factors are considered, including the thoroughness and validity of the agency's reasoning, the consistency of the agency's interpretation, the formality of the agency's action, and all those factors that give it the power to persuade, if lacking the power to control.[9]

In applying *Skidmore*'s framework for reviewing agency rulings, the Circuit Court found that Rev. Rul. 2004-88 carried persuasive and decisive force, and therefore warranted judicial deference. Thus, the Circuit Court affirmed Rev. Rul. 2004-88's holding that a disregarded single-member LLC constitutes a pass-thru partner.

For taxable years beginning January 1, 2018, new partnership audit rules will apply, passed by Congress in

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6 *See, e.g.,* Kimberly Blanchard, "Rev. Rul. 91-32: Extrastatutory Attribution of Partnership Activities to Partners," 76 *Tax Notes* 1331 (September 8, 1997).

7 2004-2 C.B 165(2004).

8 *Seaview Trading*, *LLC v. Comm'r*, 119 AFTR 2d 2017-2097 (9th Cir. June 7, 2017).

9 *Seaview Trading*, 119 AFTR 2d 2017-2097 at 2017-2101.

the Bipartisan Budget Act of 2015.[10] On June 13, 2017, the IRS issued proposed regulations interpreting the Budget Act.[11] A partnership with 100 or fewer partners can elect out of the Budget Act rules if certain requirements are met, one of which is that all partners of such partnership are "eligible partners." Similar to Rev. Rul. 2004-88 and the TEFRA small partnership exception, a disregarded entity for tax purposes is not an "eligible partner" under the proposed regulations.

IRS REVOKES PLRS HOLDING COMMODITY-LINKED NOTES WERE SECURITIES UNDER RIC TESTS

In April 2017, the IRS released a series of private letter rulings which revoked rulings to regulated investment companies ("RICs") which held that income and gain from commodity-linked notes was qualifying income for a RIC under section 851(b)(2). Generally, in order for a corporation to qualify as a RIC for a taxable year, the corporation must meet the income test of section 851(b)(2) and the asset diversification requirements of section 851(b)(3). In the past, the IRS has addressed whether certain instruments or positions are "securities" for purposes of section 851. In September 2016, the IRS released proposed regulations and Rev. Proc. 2016-50,[12] announcing that it would no longer provide rulings on whether a financial instrument or position is a "security" for purposes the RIC income and asset tests.

In PLRs 201716001, 201716024-201716042, and 201716046, the IRS revoked 20 prior PLRs covering whether a financial instrument is a "security" under the RIC tests. The IRS revoked these rulings pursuant to its authority under Rev. Proc. 2017-1, which generally states that unless a letter ruling was part of a closing agreement, a letter ruling found to be in error or no longer in accordance with the IRS's views can be revoked or modified. The IRS sent letters to RICs holding the prior private letter rulings, and unless those RICs requested relief under section 7805(b) in response to those letters,[13] the April revocation applies retroactively to all years open under the statute of limitations on assessment as of the date of the letter and to all future years.

10 For detailed analysis on the Bipartisan Budget Act, see our client alert, available at https://media2.mofo.com/documents/151106congresspartnershiptaxrules.pdf.
11 For detailed analysis on the proposed regulations, see our client alert, available at https://media2.mofo.com/documents/170620-irs-centralized-partnership-audit.pdf.
12 For a more detailed discussion of the Revenue Procedure and the proposed regulations, see Vol. 9 Issue 3 of Tax Talk, available at https://media2.mofo.com/documents/161012-tax-talk.pdf.
13 Generally, section 7805(b) allows the IRS to limit the retroactive effect of ruling revocations.

REVENUE RULING 2017-09 ON NORTH-SOUTH TRANSACTIONS

On May 3, 2017, the IRS issued Rev. Rul. 2017-9, 2017-21 IRB 1244 (the "Revenue Ruling"), which provides guidance on the federal tax treatment of certain transactions referred to as "north-south" transactions occurring in connection with section 355 spin-off transactions. The Revenue Ruling focuses on two particular situations involving north-south transactions but removes all north-south transactions from the no-rule list in Rev. Proc. 2017-3, 2017-1 IRB 130 (which stated that the topic of north-south transactions was one under study for which the IRS would not issue determination letters or letter rulings until formal guidance was issued).

The Revenue Ruling presents two situations in which a parent corporation (P) owns all the stock of a distributing corporation (D) that owns all the stock of a controlled corporation (C). In Situation 1, P transfers an active trade or business valued at $25X to D (the "southbound" transfer), and, pursuant to the same overall plan, this transfer is followed by a distribution by D of all of the stock of C valued at $100X to P (the "northbound" transfer). In Situation 2, C transfers money or other property to D in pursuance of a plan of reorganization under sections 368(a)(1)(D) and 355 (the "northbound" transfer), followed by a transfer of property by D to C (the "southbound" transfer) with a subsequent distribution of C stock to P. The issue is whether the northbound transfer and southbound transfer in each situation should be respected as separate or be deemed as integrated.

In Situation 1, if P's transfer of an active business or trade to D and D's subsequent transfer of C stock to P are respected as separate transactions, P would be treated as transferring property to D for D stock in an exchange to which section 351 applies, and D would be treated as distributing all the stock of C to P in a distribution to which section 355 applies. If the steps are integrated, however, D would be treated as transferring the C stock in exchange for the assets contributed by P to the extent of the value of such assets. Thus, P and D would each recognize gain or loss under section 1001 upon the exchange of P's assets for 25% of the C stock. Moreover, the distribution by D of the remaining 75% of the C stock would not satisfy the requirements of section 355 because D would not be treated as distributing stock constituting "control" (*i.e.*, at least 80% of the vote and number of shares) within the meaning of section 368(c).

The Revenue Ruling concludes that the southbound and northbound transfers in Situation 1 are respected as

separate transactions governed by section 351 and 355, respectively. In reaching that conclusion, the ruling states that the determination of whether steps of a transaction should be integrated requires review of the scope and intent underlying each of the implicated provisions of the Code. Specifically, the ruling states that the tax treatment of a transaction generally follows the taxpayer's chosen form unless: (1) there is a compelling alternative policy; (2) the effect of all or part of the steps of the transaction is intended to avoid a particular result intended by otherwise-applicable Code provisions; or (3) the effect of all or part of the steps of the transaction is inconsistent with the underlying intent of the applicable Code provisions. After reviewing the scope and intent of sections 355(b)(2)(C) and (D) (which generally permit the acquisition of an active trade or business within the five-year period ending on the date of distribution in a nonrecognition transaction), the Revenue Ruling concludes that the transfer of property permitted to be received by D in a nonrecognition transaction has independent significance when undertaken in contemplation of a spin-off by D, and thus is respected as a separate transaction regardless of whether the purpose of the transfer is to qualify the distribution under section 355(b)(2)(C). Further, the ruling goes on to say that P's transfer of property to D is the type of transaction to which section 351 is intended to apply. Accordingly, the southbound and northbound transfers in Situation 1 are respected as separate steps to which sections 351 and 355 respectively apply.

Similarly, the issue in Situation 2 is whether the distribution by C of money and property to D is treated as separate from the transfer of property by D. If respected as separate, section 301 would apply to D's receipt of money and property, and no gain would be recognized to D upon the transfer of property to C. If C's distribution of money and property to D is treated as made pursuant to the plan of reorganization under sections 368(a)(1)(D) and 355, the money and property distributed to D would constitute boot to D, and, under section 361(a)(1)(B), D would recognize gain to the extent of such boot, provided D does not "purge" the boot through a distribution to P or D's creditors.

Contrary to the ruling in Situation 1, the Revenue Ruling provides that the distribution of money and property by C to D is made pursuant to the plan of reorganization and is thus integrated with D's transfer of property to C. Therefore, the distribution of money and property by C to D constitutes a distribution of boot under section 361(b).

HOCKEY TEAM SCORES WIN IN TAX COURT

In *Jacobs v. Commissioner*,[14] the owners of the Boston Bruins hockey team won a dispute with the IRS over whether pre-game meals provided to the team were fully deductible by the team or subject to a 50% limitation. The Boston Bruins play half of the games in a regular season at their home arena and half on the road at the arena of their opponent. When traveling for away games, the Bruins arrange for hotel accommodations for players and team staff. Part of these accommodations include team meals, which are provided at the hotel to players and staff. At issue in the case was whether the cost of these meals was fully deductible to the team or subject to a 50% limitation under section 274(n)(2).

Generally, costs an employer incurs for providing meals to employees is subject to a 50% limitation on deductibility. However, meal costs are fully deductible by the employer if the meals qualify as "de minimis fringe benefits" under section 132. To qualify as a de minimis fringe benefit, there are several requirements including that the eating facility be (i) owned or leased by the employer, (ii) operated by the employer, and (ii) located on or near the business premises. The Bruins had an arrangement with hotels in "away" cities for banquet or conference rooms where pre-game meals and snacks were served. The food was made available to all traveling employees, not merely the players (thus meeting the section 132 non-discrimination requirement according to the Tax Court). The court found that the Bruins arrangements met all of the requirements under section 132 (the contracts with the hotels were in essence leases of the banquet or conference room, although they didn't physically operate the meal service, the owners of the team contracted with another to operate the facility (which also works)), and that, given the unique nature of a traveling sports team the, hotels were part of the Bruin's business premises.

PLR 201720008: REITS AND CARBON SEQUESTRATION CREDITS

In Private Letter Ruling 201720008, the IRS considered the issue of the tax treatment of carbon sequestration credits (the "Credits").[15] The government of the United

14 148 T.C. 24 (2017).

15 The credit is allowed for qualified carbon dioxide that is captured and disposed of or captured, used, and disposed of by the taxpayer in secure geological storage. Only carbon dioxide captured and disposed of or used as a tertiary injectant within the United States or a U.S. possession is taken into account when figuring the credit. Generally, the credit is $20 (adjusted for inflation) per metric ton for qualified carbon dioxide captured at a qualified facility, disposed of in secure geological storage, and not used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and $10 (adjusted for inflation) per metric ton for qualified carbon dioxide captured at a

States and the governments of certain foreign countries granted a REIT the Credits in exchange for the REIT's commitment to maintain certain land use restrictions designed to reduce carbon emissions. In exchange for the Credits, the REIT agreed to certain land use restrictions for 100 years. Such restrictions are recordable as easements under U.S. law but are not recordable as easements under foreign law. The IRS reasoned that the land use restrictions (both U.S. and foreign) are similar to easements. Therefore, similar to payments received for granting an easement, the IRS held that the Credits are qualifying REIT income. In addition, the REIT was held to recognize income with respect to the Credits on the earliest of when the Credits are earned, received, or due.

ELECTRONIC PAYMENT OF USER FEES FOR LETTER RULINGS BEGAN JUNE 15

As of June 15, taxpayers must use the website Pay.gov to make payments for certain forms and requests, including requests for private letter rulings.[16] Pay.gov enables individuals to make secure electronic payments by credit card, debit card, and electronic bank transfer to federal government agencies.

In addition to private letter rulings, this change affects forms and requests described in Revenue Procedure 2017-1 and sent to the Docket, Records, and User Fee Branch of the Legal Processing Division of the Associate Chief Counsel, including closing agreements and IRS Forms 1128, 2553, 3115, and 8716. Taxpayers submitting one of these forms or requests must submit their user fee on Pay.gov, print a copy of their receipt, and include the receipt with their application package.

From June 15 to August 15, the IRS is providing a transition period allowing taxpayers to make user fee payments either via Pay.gov or via check or money order, previously the only methods through which the IRS accepted user fee payments. After August 15, taxpayers will be required to use Pay.gov.

MOFO IN THE NEWS; AWARDS – TAX TALK – Q2 2017

Morrison & Foerster was named "Best Law Firm in the Americas" by StructuredRetailProducts.com at the 2017 StructuredRetailProducts and EuroMoney Americas Wealth Management and Derivatives Conference. For the third year in a row, *GlobalCapital* has named Morrison & Foerster the Americas Law Firm of the Year at their 2017 Americas Derivatives Awards. We were also named 2016 Global Law Firm of the Year by *GlobalCapital* for its Global Derivatives Awards.

- On June 28, 2017, Partner Paul Borden and Senior Of Counsel Hillel Cohn were joined by Thomas Grygiel (ACA Compliance Group) in hosting an IFLR webinar entitled "Living with the DOL Fiduciary Rule" to discuss the Department of Labor's new fiduciary rule which was implemented on June 9, 2017. Topics included: An overview of the history of the DOL rule; the substance of the rule; the exemptions; changes we're already seeing in how broker dealers interact with clients and organize their offerings; what we can expect in terms of future challenges and changes to the rule; and legal liability and potential litigation.
- On June 22, 2017, Partner Oliver Ireland, Of Counsel Sean Ruff and Associate Adam Fleisher hosted a telephone briefing entitled "Financing Fintech: A Closer Look into State Money Service Business Licensing Issues" to provide an in-depth look into state licensing issues. Topics included: Authorized delegate challenges; partnership challenges; and the Uniform Money Services Act.
- On June 16, 2017, Partner Anna Pinedo spoke on a panel entitled "Regulatory and Legal Roundtable" on day two of the Structured Retail Products' 6th Annual Americas Wealth Management & Derivatives Conference in Boston, MA. Topics included: Has regulation been effective in the post-crisis world?; Is there too much direct regulation; are there other ways?; and Is the cost of regulation a factor in law creation?
- On June 15, 2017, Partner Anna Pinedo and Of Counsel Bradley Berman hosted a teleconference entitled "Keeping up with Regulatory Developments Affecting Social Media Use" to discuss the considerations for issuers, broker-dealers, registered investment advisers, and commodity pools in using social media, whether for corporate communications or in the context of securities offerings. Topics included: Reg FD and other liability concerns; FINRA guidance on communications and social media; social media for "business" versus "personal" use by employees of financial services firms; SEC guidance for investment advisers; general solicitation; and CFTC and NFA guidance for funds.
- On June 6, 2017, Partner Peter Green and Partner Jeremy Jennings-Mares were joined by Mark Schaedel (IHS Markit) and David Cook (IHS Markit) in hosting a teleconference entitled "The New Benchmark for Financial Transactions" to discuss the new EU Regulation on indices used as benchmarks in financial instruments. Topics included: the principal features of the new Regulation and issues that need to be addressed by market participants; the effect on benchmarks administered outside the EU; and the relevant

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qualified facility, used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and disposed of in secure geological storage.

16 Currently, the user fee for a standard private letter ruling request is $28,300.

provisions of the Regulation and its practical implications for benchmark administrators, users and contributors.

- On June 1, 2017, Partner Peter Green and Partner Jay Baris were joined by Gerry Malone (Aberdeen Funds) in leading a Mutual Fund Directors Forum panel entitled "Brexit for Fund Directors: What You Need to Know" to review recent events in the current regulatory environment, and to evaluate how best to assess the risks that Brexit poses to U.S. investment companies. The speakers discussed approaches for directors to monitor and mitigate those risks.
- On May 25, 2017, Partner Oliver Ireland and Of Counsel Sean Ruff hosted an IFLR webinar entitled "Fintech 2017 – Models, Charters and More" to discuss the current state of fintech services in the US, including state licensing requirements, bank partnership arrangements, and the potential for special purpose bank charters at both the state and federal levels. The presenters also discussed the benefits and potential difficulties of these arrangements. Finally, the discussion touched on fintech enhancements to existing bank services, including distributed ledger technology. Topics included: An update on the state of fintech services; lending and payments models; bank partnerships; state licenses; Bank Charters; True Lender; and Madden.
- On May 22-23, 2017, Partner Anna Pinedo served as chairperson for PLI's "Private Placements and Hybrid Securities Offerings 2017" conference in New York, NY. Ms. Pinedo spoke on the "Welcome and Introduction to Private Placements and Hybrid Financings" panel on day one of the conference. Topics included: types of exempt offerings; JOBS Act changes and changes in market environment; and integration, communications and related concerns. Ms. Pinedo also spoke on the "Welcome and Introduction to Conducting Hybrid Offerings" panel on day two. Topics included: What do we mean by hybrid offerings?; and why have hybrid offerings become such a significant financing tool? Senior Of Counsel Marty Dunn spoke on a panel entitled "Overview of 4(a)(2) and Regulation D" panel on day one. Topics included: Section 4(a)(2) overview and conducting a 4(a)(2) offering; basics of Regulation D; changes to accredited investor definition; accredited investor study; and bad actor disqualification and practical steps to address bad actor rules.
- On May 11, 2017, Partner Oliver Ireland hosted a telephone briefing entitled "Distributed Ledger Technology" to discuss recent developments in distributed ledger technology including an overview of the Federal Reserve Board's and Bank for International Settlements' Committee on Payments and Market Infrastructures' published papers on distributed ledger technology.
- On May 4, 2017, Partner Anna Pinedo and Of Counsel Bradley Berman were joined by Oscar Loynaz (Alaia Capital) and Paul Koo (Alaia Capital) in hosting a seminar in New York entitled "Unit Investment Trusts and Structured UITs" to discuss UITs and structured UITs. Topics included: Basic organizational structure and participants; regulation of UITs; filing and other requirements applicable to UITs; structured UITs; benefits associated with Structured UITs; UITs and the DOL's fiduciary duty rule; and fiduciary and advisory issues generally.
- On April 27, 2017, Of Counsel Edward Froelich spoke on a panel entitled "Key Legislative and Regulatory Developments" on day one of the University of San Diego School of Law 5th Annual Transfer Pricing Symposium.
- On April 26, 2017, Partner Anna Pinedo and Partner James Tanenbaum were joined by Kent Nelson (Raymond James) and Justin Roman (Raymond James) in hosting an IFLR webinar entitled "The U.S. IPO Market: Market and Legal Developments" to discuss this year's rebounding IPO market. Topics included: Whether cross-over (or late stage) private rounds still remain an important milestone on the road to the IPO; U.S. IPO activity (sectors, VC- and PE-backed companies, foreign private issuer activity, syndicate structures); disclosure and governance trends among IPO issuers; dual track processes and the legal and business considerations; multiple share classes; and other developments.
- On April 25, 2017, Partner Peter Green and Partner Jeremy Jennings-Mares spoke on a panel entitled "Considerations for Proposed Subordination Rules: Cost, Variations and Impacts" on day one of the Center for Financial Professionals "TLAC & MREL 2017" conference in London, U.K. Topics included: Should there be a subordination requirement?; considerations for structural, statutory and contractual subordination; legal considerations regarding risk of legal challenges; creating tier 3 bail in-able MREL; credit spread development – expectations for?; and single point of entry model: Do other subsidiaries need to be reported?
- On April 20, 2017, Partner Anna Pinedo and Partner Ze'-ev Eiger hosted a Bloomberg BNA webinar entitled "Foreign Private Issuers: SEC Disclosure Issues and Developments" to review the benefits and accommodations available to foreign private issuers, or non-U.S. domiciled companies, that choose to access the U.S. capital markets and to discuss assessing status as a foreign private issuer, the initial and ongoing disclosure requirements for foreign private issuers and liability considerations. Topics included: Recent Staff guidance regarding the foreign private issuer definition; areas of focus for SEC comments, including the use of non-GAAP measures; corporate governance developments; exhibits, HTML and XBRL for foreign private issuers and IFRS filers; and areas of likely SEC focus, including potential rollback of certain specialized disclosure requirements, the disclosure effectiveness initiative and related matters.

- On April 19, 2017, Partner Peter Green and Partner Jeremy Jennings-Mares hosted a teleconference entitled "U.S. and Other Non-EU Issuers Offering Securities in Europe: Update on Legal and Regulatory Developments" to address some of the recent and forthcoming regulatory developments in the EU that are likely to have particular impact for non-EU issuers of securities offering into the EU. Topics included: An update on Brexit and its likely impact in the context of securities regulation in the EU; the progress of the proposed Prospectus Regulation which is expected to be adopted by the EU authorities over the coming weeks and will make significant changes to the existing Prospectus Directive regime; the effect of the recent Markets Abuse Regulation on non-EU entities; and an update on the Benchmark Regulation and the PRIIPs Regulation.
- On April 6, 2017, Partner Oliver Ireland hosted a telephone briefing entitled "Financing Fintech: OCC Fintech Charter–The OCC Responds to its Critics" to discuss how the OCC will respond to the issues raised by the commenters. Topics included: the scope of the charter; consumer protection; financial inclusion; supervisory standards; and the application process.
- On April 6, 2017, Partner Anna Pinedo spoke on a panel entitled "Socially Responsible Venture Investing: Corporate Structure and Special Considerations" on day one of the 2017 ABA Business Law Section Spring Meeting in New Orleans, LA. Topics included: Benefit Corporations, B Corps, and Socially Responsible Corporate Structures; practical considerations for investing in socially responsible companies from the perspectives of company general counsel, outside counsel, and VC counsel perspectives; and measuring success and value beyond profit.
- On April 4, 2017, Partner Lloyd Harmetz, Partner Thomas Humphreys, Partner Oliver Ireland and Of Counsel Bradley Berman hosted a briefing session at the Fairmont Royal York Hotel in Toronto, Canada. Partner Thomas Humphreys led the first session entitled "U.S. Tax Reform, etc." Partner Oliver Ireland led the second session entitled "Regulatory Relief: What to Expect." Partner Oliver Ireland, Partner Thomas Humphreys and Of Counsel Bradley Berman hosted the third session entitled "The FRB's LTD, TLAC and Clean Holding Company Final Rules and Tax Treatment." Partner Lloyd Harmetz and Of Counsel Bradley Berman led the final session entitled "U.S. Securities Law Developments and Canadian Issuers."
- On April 4, 2017, Senior of Counsel Jerry Marlatt participated in a panel entitled "The Regulatory Round Up: Which Regulations Directly Impact the Covered Bonds Market in 2017 and How?" at the 10th Annual IMN Global Covered Bonds Conference in London, U.K. Topics included: What is next from the European Commission's consultation? Covered bonds labelling update: Application potential to non-European products and impact on the label and keeping its sanctity; Post/pre trade transparency requirements; (MAR) Market Abuse Regulator; global evolution of the product: should Basel capture and recognize the significance of the new global CB developments?; MIFID: The end of investment bank market making or just a minor hurdle?; What direction is the ECB headed in? Changes with respect to the repo framework (moving FRN haircuts from 0-1Y maturity bucket to the one corresponding to the actual maturity, haircuts of retained soft bullet and conditional pass through covered bonds, additional reporting requirements for rating agencies); and, Should we still be concerned with covered bond default risk in a BRRD and maturity extension world?

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Because of the generality of this newsletter, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

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