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MAYER BROWN CAPITAL MARKETS

TAXQUARTERLY

DON'T TAX YOU. DON'T TAX ME. TAX THAT FELLOW BEHIND THE TREE.*

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Editor's Note

Welcome to the inaugural WFH edition of Mayer Brown Capital Markets Tax Quarterly. Since we last met, lots has changed as we all know. Recognizing that, CMTQ Q1 will stray a bit to cover some of the COVID-19 related federal tax law changes that have occurred with blinding speed since mid-March. As usual we are also going to cover things that haven't changed at COVID-19 speed, like taxation of financial instruments.

We cannot, however, resist a few observations on tax developments outside the capital markets. The federal tax system as we all are painfully aware is designed to transfer money (including income and employment taxes among others) from taxpayers to the government. Historically, this has been its primary role. As we describe below, the system is now being adapted to send money from the government to taxpayers. In fact, we are now finding out that the employment tax has been identified as a potentially effective tool when Congress decides to "reverse the flow." Thus, as described below, the 6.2% employer portion of Social Security taxes is the prime Internal Revenue Code vehicle so far for providing tax relief to businesses during the COVID-19 pandemic. There have even been proposals to repeal the employment tax for

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* As described in the Editor's Note, this quote is attributed to, among others, Sen. Russell Long (D., LA).

a period of time,[1] but so far Congress has not gone quite that far. These are, as we say a lot these days, "unprecedented" (tax) times.

Looking forward, Congress at some point will turn to revenue raising again. In the past few CMTQ's we have covered various proposals by Democratic presidential candidates and others including a super expansion of mark to market taxation (Sen. Ron Wyden), a net worth tax (Sen. Elizabeth Warren) and a securities transactions tax (Sen. Bernie Sanders). This time we cover presumptive Democratic presidential nominee Joe Biden's tax plan as described by the Tax Policy Center. We expect as we go into 2021 and beyond there will be more and more focus on these and other proposals on how to raise lots of tax revenue in new and creative ways.

In this issue, we also discuss a request for additional guidance made by Nareit, NABL, a private letter ruling on reporting the expiration of forward contracts, and more.

Finally, CMTQ would be remiss in not thanking our nation's health care professionals, first responders and essential workers for everything they are doing during the pandemic. We salute their courage and selflessness.

US Tax Relief for COVID-19

The US government has already implemented an array of fiscal relief measures to stabilize markets in response to the COVID-19 pandemic, some of which has been effected through tax legislation and Internal Revenue Service ("IRS") guidance.

On March 18, 2020, the Families First Coronavirus Response Act ("FFCRA") was signed into law, providing certain employers limited payroll tax relief for qualified sick leave wages.[2] On March 27, 2020, the Coronavirus, Aid, Relief, and Economic Security Act ("CARES Act") was signed into law, providing approximately $2.2 trillion of fiscal support to individuals and businesses and contains various tax relief measures.[3] The key business tax relief measures include:

- For taxable years beginning in 2019 or 2020, net operating loss carryovers are no longer subject to an 80% taxable income limitation, and NOLs from 2018, 2019, or 2020 can be carried back five years;

1 See Steve Forbes and Arthur Laffer, "Suspend the Payroll Tax," The Wall Street Journal (April 19, 2020).

2 H.R. 6201.

3 Pub. L. 116-136.

- For taxable years beginning in 2019 or 2020, the interest expense limitation in Code section 163(j)[4] is increased to 50%, and taxpayers can use 2019's adjusted taxable income for purposes of the 2020 calculation;

- Corporate AMT credits are 100% refundable in 2018 and 2019; and

- The creation of an employee retention credit equal to 50% of qualified wages up to $10,000 per employee (subject to certain limitations).[5]

Moreover, the IRS has its own COVID-19 response webpage[6] and has taken various steps to provide additional relief to taxpayers. The IRS has thus far issued the following guidance, in addition to other guidance listed on the webpage:

- Notice 2020-18, as updated by Notice 2020-23, postponing without limitation, the due date for filing US federal income tax returns and making US federal income tax payments (including payments of tax on self-employment income) due on or after April 15, 2020, and before July 15, 2020, to July 15, 2020. These postponements are automatic so taxpayers do not need to file extensions. Taxpayers will have this additional time to file such returns and make such payments without accruing interest, penalties or additional tax for the failure to file or pay such taxes by the original deadlines. (Interest, penalties and additions to tax with respect to such postponed federal income tax filings and payments will begin to accrue on July 16, 2020). This relief is also available for federal estimated income tax payments (including payments of tax on self-employment income) due on June 15, 2020.

- Notice 2020-22, providing penalty relief for failure to deposit employment taxes under Code section 6656 to employers eligible for refundable tax credits under the FFCRA and CARES Act.

- Notice 2020-26, providing an extension of time to file an application for an NOL carryback.

- Rev. Proc. 2020-26, providing relief to REMICs and certain investment trusts for forbearances and related modifications to mortgages on account of the COVID-19 pandemic (discussed in more detail below).

- Rev. Proc. 2020-23, allowing certain partnerships to amend Form 1065 to take advantage of certain CARES Act benefits.

4 Unless otherwise stated, all section references herein are to the Internal Revenue Code of 1986, as amended (the "Code").

5 For a more detailed analysis of the tax related relief measures adopted by the CARES Act, please see https://www.mayerbrown.com/en/perspectives-events/publications/2020/03/cares-act-adds-five-year-carryback-period-and-suspends-80-limitation-for-2018-2019-and-2020-net-operating-losses.

6 The IRS Coronavirus Tax Relief webpage is available at https://www.irs.gov/coronavirus.

- Rev. Proc. 2020-20, providing relief for certain nonresident individuals affected by COVID-19 travel disruptions.

In light of the global pandemic, the IRS has also extended several FATCA related deadlines.[7] First, the deadline to file a FATCA Report (Form 8966) to the IRS for the 2019 tax year was extended. The due date for Forms 8966 which were due on March 31, 2020 were automatically extended to July 15, 2020. (A Form 8809-I (Application for Extension of Time to File FATCA Form 8966) is not required for this extension.) Next, the IRS extended the due date for Model 1 IGA jurisdictions to provide their FATCA data for the 2019 tax year to the U.S. Competent Authority from September 31, 2020 to December 31, 2020. Lastly, the deadline to submit a FATCA certification for an entity with a certification due date of July 1, 2020 will automatically be extended to December 15, 2020.
We expect the government to continue implementing various tax-related relief measures to help individuals and businesses cope with the economic strains created by COVID-19.

REIT Group Asks Treasury for Liquidity Help

Turbulence in the markets, and uncertainty about the impacts of COVID-19, have had a significant impact on several publicly traded real estate investment trusts ("REITs"). The crisis has affected all REITs, in particular lodging, retail and health-care REITs. The downturn has not only driven down the price of REIT stocks but has also caused several REITs to turn to tax strategies to manage cash. REITs may seek to pay dividends in stock and in cash, even where a cash dividend was declared. In these cases, as part of a distribution, investors may be asked to make an election to receive the dividend in cash or stock, or take the a limited amount of a distribution in the form of cash. This strategy, which is approved by the IRS, is discussed below and addresses liquidity needs while also ensuring that the distribution is deductible by the REIT and counts towards the distribution requirement applicable to REITs.

Although a REIT is generally subject to corporate-level tax, the Code provides a special deduction to REITs for dividends paid which can result in a complete elimination of tax at the REIT level. Furthermore, a REIT is generally required to distribute at least 90% of its taxable income to shareholders in order to take advantage of the special rules applicable to REITs. In order for a distribution to be deductible by the REIT, and to count towards the 90% distribution requirement, the distribution must be a "dividend" for federal income tax purposes. REIT distributions paid in cash out of the REIT's current and accumulated earnings and profits are generally dividends that the REIT can deduct. On the other hand, distributions paid entirely in stock are generally not "dividends" and, thus, cannot be deducted by the REIT.

7 This guidance is available on the FATCA FAQ webpage, which is available at https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal.

In the 2000s, the IRS issued multiple private letter rulings that allowed certain REITs to pay out dividends in part-cash, part-stock and still be considered taxable dividends, as long as certain requirements were met. In particular, the IRS required that shareholders be given a choice to receive the distribution in cash or stock, but the REIT could limit the overall percentage of the distribution that was payable in cash. In general, these private letter rulings required that, if the REIT limited the amount of cash payable to shareholders, then the limit could not be less than 20% of the distribution. During the financial crisis of 2008, the IRS extended this guidance to all REITs and allowed cash limitation amounts as low as 10%. This guidance expired at the end of 2011, but in 2017, the IRS issued new guidance that permanently allowed this cash preservation strategy for all publicly-traded REITs and regulated investment companies. However, the IRS returned to the 20% floor on cash limitation percentages as part of the 2017 guidance.

In connection with the current COVID-19 crisis, the National Association of Real Estate Investment Trusts ("Nareit") sent a letter to the Treasury Department on March 18, 2020, requesting the IRS allow cash-stock mixes of 90%/10%, similar to the guidance available to REITs in 2008 through 2011. Nareit requested that the guidance be made applicable with respect to 2020 and 2021 to address capital conservation.

Tax-Exempt Bond Relief Requested

The National Association of Bond Lawyers ("NABL") is another industry group requesting from the IRS and Treasury certain relief in response to the COVID-19 crisis. On March 25, 2020, NABL, which promotes the integrity of the municipal bond market by advancing the understanding and compliance with public finance law, submitted a letter primarily addressing TEFRA hearings and repurchase rules.[8]

One of the requirements for so-called "private activity bonds" to properly qualify as tax-exempt is the satisfaction of a public hearing and approval after public notice in accordance with the applicable tax rules (this is referred to as "TEFRA" because the process was enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982). The public hearing occurs in an applicable geographic location relating to the issuer or the bond-financed project. The current tax rules imply that the public hearing is an in-person event. Naturally, this is difficult, and in some cases perhaps illegal, to accomplish in many jurisdictions. NABL requests guidance that would generally allow a telephone TEFRA hearing. The relief would run through the later of December 31, 2021, or 90 days after the date on which the jurisdiction holding the hearing has no emergency declaration at any level related to COVID-19.

The second issue tackled by the comment letter is certain special tax-exempt rules that relate to so-called qualified tender bonds. These are generally multi-modal variable rate bond instruments with rolling tender rights and features that are already the subject of some special rules residing in IRS

8 The NABL letter is available at https://www.nabl.org/DesktopModules/Bring2mind/DMX/API/Entries/Download?portalid=0&EntryId=1338.

Notice 88-130; IRS Notice 2008-41; and Proposed Treasury Regulations section 1.150-3. During the 2008 financial crisis, in response to market disruption and liquidity constraints, United States Treasury Department and the Internal Revenue Service provided special temporary guidance that alleviated certain of the restrictions contained in the special rules relating to the qualified tender bonds. For example, Internal Revenue Service Notice 2008-88 relaxed the general rules and allowed an issuer to buy and hold its own qualified tender bonds and tax-exempt commercial paper for certain prescribed periods of time without causing the bonds to be reissued or extinguished for federal income tax purposes. That guidance expired. (Current law only allows an issuer to do this only for qualified tender bonds, only pursuant to certain mechanics, and only for a 90-day period of time.) If the IRS adopts NABL's proposal, the relaxed and broader flexibility of Notice 2008-88 would return and apply for a period ending on the later of December 31, 2021, or ninety (90) days after the date on which no United States jurisdiction remains covered by a state or federal declaration of emergency related to the COVID-19 crisis.

Relief Provided for Mortgage Securitizations — Rev. Proc. 2020-26

As mentioned above, certain industries have asked for IRS relief in light of the pandemic. So too did the Structured Finance Association.[9] In Rev. Proc. 2020-26, the IRS provided the mortgage securitization industry with some limited relief for loan forbearance. Specifically, Rev. Proc. 2020-26 provides that for mortgage loans held by real estate mortgage investment conduits ("REMICs"), certain forbearances related to COVID-19 will not generally be treated as affecting REMIC status. Similarly, the Revenue Procedure provides that for mortgages held by a grantor trust, certain forbearances related to COVID-19 will not result in an impermissible power to vary the investment of the trust (which otherwise potentially causes a trust to lose grantor-trust status).

The Taxation of Video Games

If, in your spare time, you or your offspring have turned to video gaming at home, the IRS had some good news during Q1. By way of background, cryptocurrency is generally treated as property for US federal income tax purposes.[10] Thus, when cryptocurrency is sold or exchange or used to purchase goods or services, gain or loss can be recognized if the cryptocurrency has appreciated or depreciated in value. This rule generally only applies to "convertible cryptocurrency," defined by the IRS as virtual currency that has an equivalent value in real currency, or that acts as a substitute for real

9 The Structured Finance Association letter is available at https://structuredfinance.org/wp-content/uploads/2020/04/SFA-letter-IRS-Treasury-Final.pdf.

10 *See* Notice 2014-21.

currency.[11] In December 2019, the IRS virtual currency website listed Bitcoin, Ether, Roblox, and V-bucks as examples of convertible virtual currency. This is perfectly sensible for Bitcon and Ether, two of the biggest names in crypto. However, Roblox and V-bucks are video game currencies that can be purchased for dollars, but not then changed back into dollars once in-game. Mercifully for video game players (and potentially their parents), the IRS deleted these two examples from the IRS.gov website. In a statement released on February 14, 2020, the IRS stated that transacting in virtual currencies that do not leave the game environment (virtual currencies that are not convertible) would not require a taxpayer to indicate those transactions on her tax return.[12]

This alleviates the concern that an in-game currency will be treated as property for US federal income tax purposes. However, this does not cover the full spectrum of payments related to video game currency. For example, in some cases, an individual will accumulate, or "farm," in-game currency, and then attempt to sell/exchange such in-game currency for USD. Presumably, if a US taxpayer sells in-game currency for actual dollars, such taxpayer would still be best advised to include amounts received in income. Unfortunately, this is an area with relatively little guidance, and the dollar amounts involved are typically (but not always!) quite low. Also, the exchange of in-game currency for actual dollars is against the terms of service for most games.

Broker Reporting for Expiration of Forward Contracts – PLR 202004009

In PLR 202004009 (Jan. 24, 2020), the Internal Revenue Service ("IRS") ruled that a dealer must report a transaction under Code section 6045 for a settlement of a forward contract for cash, but does not have to report transactions involving settlements with property other than cash.

In that ruling, the IRS faced the following set of facts. The taxpayer, a dealer, entered into forward contracts pursuant to which customers paid the taxpayer for the right to acquire certain property in the future. The taxpayer set aside the property for future delivery to those customers. With respect to these forward contracts, three scenarios could occur: (i) at the contract's expiration, the customer takes delivery of the property that the taxpayer set aside for the customer; (ii) prior to the expiration of the contract, the taxpayer substitutes the property that was set aside for the customer with different property that the taxpayer set aside for the customer, who then takes delivery of such property at the contract's expiration; or (iii) the customer receives cash equal to the value of the property when the contract expires.

Pursuant to Code section 6045 and the regulations thereunder, dealers are required to file Form 1099-B to report each sale by a dealer's customer if the dealer effects the sale, which is defined as a disposition conducted for cash. Accordingly, the IRS ruled that the dealer is required to file Form

11 The IRS virtual currency website is available at https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies.

12 The IRS statement is available at https://www.irs.gov/newsroom/irs-statement-on-changes-to-virtual-currency-webpage.

1099-B for those situations, such as the above third scenario, in which the customer receives cash equal to the value of the property at the contract's expiration. Further, the IRS ruled that the dealer is not required to file Form 1099-B when a customer takes delivery of property the dealer set aside for the customer under a forward contract, as was the case in the first two scenarios, above.

Limited Withholding and Reporting Relief for Dividend Equivalent Payments Made with Respect to a Derivative Referencing a Partnership

On February 18, 2020, the IRS updated its FATCA General Compliance frequently asked questions to extend relief an additional year for withholding agents who fail to withhold on payments of certain dividend equivalents. General Compliance question 23 provides that a withholding agent will not be subject to interest, penalties or additions to tax with respect to a dividend equivalent payment made with respect to a derivative referencing a partnership interest so long as the withholding agent withholds and reports on Form 1042 and Form 1042-S with respect to the payment by a set deadline in the next year. For payments with respect to the 2019 calendar year, that deadline is September 15, 2020. If the withholding agent withholds after March 15 of the next year (e.g., after March 15, 2020, in the case of a payment made in 2019), the withholding agent should file an amended From 1042 and write "Dividend Equivalent—Partnership" in the top center portion of the Form 1042, as well as an amended Form 1042-S. When ultimately depositing the tax withheld, the withholding agent must designate the payment as being made for the appropriate calendar year in accordance with the instructions to Form 1042.

Section 987 Branch Tax Qualifying PTP Income – PLR 202005011

In PLR 202005011, issued January 31, 2020, the IRS ruled that gain recognized by a limited partnership under Code section 987 constitutes qualifying income under Code section 7704(d)(4), part of the publicly-traded partnership or "PTP" rules.

A foreign limited partnership ("X") was formed for the purpose of making investments in privately held companies ("Portfolio Companies"). X regularly invested in the Portfolio Companies, which were classified as corporations for US federal income tax purposes, indirectly through other entities treated as partnerships or disregarded entities for US federal income tax purposes ("Holding Companies"). X nor the Holding Companies engaged in active trades or businesses and their sole activity was to passively invest in Portfolio Companies. Since X invested globally, it was not uncommon for X to invest in Portfolio Companies with different functional currencies. Thus, X might recognize gain under Section 987 of the Code when X received distributions from Holding Companies treated as partnerships due to exchange rate fluctuations between X's own functional currency and the Holding

Companies' respective functional currencies. X sought a ruling that this Section 987 gain would be qualifying income for purposes of section 7704(d) of the Code.

For context, Code section 987 provides that for taxpayers with one or more qualified business units with a functional currency other than the dollar, taxable income of such taxpayer shall be determined: (i) by computing the taxable income or loss separately for each such unit in its functional currency, (ii) by translating the income or loss separately computed under the section at the appropriate exchange rate, and (iii) by making proper adjustments for transfers of property between qualified business units of the taxpayer having different functional currencies. Further, Code section 7704(d)(4) provides that the term "qualifying income" includes any income that would qualify under Code section 851(b)(2)(A), which relates to the gross income test for regulated investment companies. That section states that In order to be considered a regulated investment company, a corporation must derive at least 90% of its gross income from dividends, interest, payments with respect to securities loans.

The IRS ruled that because the Portfolio Companies held by X were corporations and that X used its Holding Companies solely as pass-throughs to invest in debt and equity of the Portfolio Companies, X's Code section 987 gain was "other income" derived with respect to X's business of investing in stock or securities and is thus qualifying income.

Tax Policy Center Releases Report on Biden Tax Plan

On March 5, 2020, the non-partisan Tax Policy Center released a report (the "Report") on the impact of the tax policy proposals put forth by presidential candidate Joe Biden.[13] The Report outlines the economic impact of proposals issued by the Biden campaign and concludes that, if enacted, the changes would increase federal revenues by about $4.0 trillion over the next decade. Some of the major proposals for both individuals and businesses are described below.

<u>Individuals</u>

Under the Biden plan, individuals with taxable income above $400,000 would see their tax treatment return to the same level as in effect prior to the enactment of the Tax Cuts and Jobs Act of 2017 (the "TCJA"). Thus, the top marginal tax rate would go back up to 39.6% and itemized deductions would begin to phase out at $400,000 (i.e., there would be a return of the so-called "Pease limitation"). Under current law, the changes made by the TCJA are due to expire at the end of 2025.

Taxpayers with over $1 million in income would see their capital gains taxed at ordinary rates. Furthermore, the Biden plan would tax unrealized capital gains at death. Under current law, tax basis is stepped up to fair market value at death, effectively exempting unrealized appreciation from income tax.

13 The Report is available at https://www.taxpolicycenter.org/publications/analysis-former-vice-president-bidens-tax-proposals/full.

The Biden plan also contains increased benefits under the earned income tax credit, a restoration of the electric vehicle tax credit, and a $5,000 credit for family caregivers of people who have certain physical and cognitive needs.

Furthermore, Social Security payroll taxes (which currently only apply to the first $137,700 of earnings) would be made applicable to earnings over $400,000.

Business Taxes

The Biden plan would increase the top corporate rate from 21 percent to 28 percent, and would introduce a 15 percent minimum tax on book earnings. Effectively, this would reintroduce the corporate alternative minimum tax (which was permanently eliminated by the TCJA) in a different form. Furthermore, the tax rate on global intangible low-tax income ("GILTI"), effectively taxed at 10.5% under current law, would increase to 21%.

The Biden plan would establish a new manufacturing communities tax credit for communities that experience mass layoffs or where a major government institution was closed. Fossil fuel tax incentives would be eliminated, and tax incentives would be increased for emissions-reducing activities, including carbon capture, use and storage.

The Biden plan also eliminates tax preferences for the real estate industry, although the exact provisions are unclear. The Report assumes that the tax preferences that are targeted include accelerated depreciation on rental housing and deferral of gain on like-kind exchanges.

Select Foreign Trusts Exempt from Information Reporting – Rev. Proc. 2020-17

Background

Code section 6048 generally requires annual information reporting of a US person's transfers of money or other property to, ownership of, and distributions from, foreign trusts. In addition, Code section 6677 imposes penalties on US persons for failing to comply with this requirement.

Rev. Proc. 2020-17

In March 2020, the IRS issued Rev. Proc. 2020-17 (the "Rev. Proc.") that exempts certain "eligible individuals" from reporting transactions with or ownership of an "applicable tax-favored foreign trust." The Rev. Proc. also exempts eligible individuals from the penalties imposed under Code section 6677 relating to the reporting requirements for these structures. For purposes of the Rev. Proc., an "eligible individual" means an individual who is a US citizen or permanent resident and who is compliant with all requirements for filing its US federal income tax returns. A "tax-favored foreign retirement trust" generally refers to a foreign entity treated as a trust for US tax purposes that is formed under the laws of a foreign jurisdiction with the purpose of (i) earning income to provide for pension or retirement benefits, or (ii) operating exclusively or almost exclusively to provide medical, disability, or educational benefits, in each case, provided that certain additional requirements set forth in the Rev. Proc. are met.

The Rev. Proc. is effective on March 16, 2020, and applies to all prior open tax years, subject to the limitations period in the Code. As a result, the IRS provided a procedure for eligible individuals to request abatement of penalties assessed or obtain a refund of penalties paid under Code section 6677 in relation to these structures.

In the News

RECENT RECOGNITION

Mayer Brown's Tax practice was ranked by *Chambers USA* in 2020 for Nationwide Tax: Corporate & Finance and Nationwide Tax Controversy. Our tax practice also is ranked in the following regions: Northern California, Illinois, New York and Washington DC.

Mayer Brown was named 2019 Tax Group of the Year by *Law360*. Mayer Brown was also named Firm of the Year for the fourth consecutive year in a row. No other firm has received this honor four years in a row.

GlobalCapital has named Mayer Brown "Global Law Firm of the Year – Overall" at *GlobalCapital's* 2019 Global Derivatives Awards. In addition, we were shortlisted in the European Law Firm of the Year (Transactions) and the European Law Firm of the Year (Regulatory) categories.

Earlier this year, we were also named the "Americas Law Firm of the Year – Overall" for 2019 at *GlobalCapital*'s Americas Derivatives Awards. In addition, we were shortlisted in the America's Law Firm of the Year (Transactions) and the America's Law Firm of the Year (Regulatory) categories.

RECENT SPEAKING ENGAGEMENTS

City Bar Justice Center COVID-19 Small Business Remote Legal Clinic Thomas A. Humphreys and Amit S. Neuman worked with the New York City Bar Justice Center to produce a 30 minute training webinar titled "Tax Training for Small Business Assistance (COVID-19)". The webinar will be used to train attorneys that volunteer for the City Bar Justice Center COVID-19 Small Business Remote Legal Clinic. Mayer Brown is tax counsel for the project.

COVID-19 Implications for SEC and CFTC Registrants On March 25, Matthew Kluchenek, Marlon Paz, Ansley Schrimpf and Kyle Swan led a webinar covering the most recent regulatory responses to COVID-19 by the SEC, the CFTC and other regulatory bodies. Specific topics included regulatory relief, topics of interest during times of stress in the financial markets, operational changes, and "essential" businesses under shelter orders.

D&O Insurance: What Life Sciences Companies and their Registrants Need to Know On March 25, Anna Pinedo moderated a webinar on D&O Insurance with Mike Ferraro and Yelena Dunaevsky from Woodruff Sawyer. Specific topics included, the risks to directors and officers, why should one consider purchasing D&O insurance, the basics of D&O coverage for both private and public companies, when to begin D&O insurance discussions, the IPO market – integrating the D&O process into your S-1 timeline and current premium trends for IPOs, recent securities litigation trends and the effect on the D&O insurance market, and how settlement data can help drive the decision to appropriate limits.

Direct Listings: Experiment or New Paradigm? On March 12, Phyllis Korff and Anna Pinedo led a webinar on direct listings. Specific topics included, the basics of a direct listing, legal requirements, timing and costs compared to an IPO, the marketing process, market-making, and liquidity, the stock exchange rules, and capital-raising in connection with a direct listing. Guest speakers included Jeff Hoffmeister, Genevieve Kinney and Ashley MacNeill of Morgan Stanley and Carolyn Saacke of NYSE.

Business Development Companies On March 3, Brian Hirshberg and Remmelt Reigersman along with Larry Herman of Raymond James & Associates participated in a webinar hosted by the *Practicing Law Institute* that covered legal and regulatory requirements applicable to BDCs, formation and organization of BDCs, recent legal updates relating to BDCs, tax requirements for BDCs, and market updates and opportunities for BDCs.

Financial Instruments and Strategies/Accounting Periods and Methods On March 3, James Barry, Mark Leeds, Michael Lebovitz and Steven Garden participated in the Chicago Chapter of the Tax Executive Institute's half day program discussing topics such as: Qualified Opportunity Zones, "The Code § 987 Qualified Business Unit Rules;" "Code § 163(j) and the New Limitations on the Deduction of Interest;" and "The Base Erosion & Anti-Abuse Tax".

All Things Canada On February 27, David Bakst partnered with Sherri Altshuler and Jeffrey Merk of Aird & Berlis to address the rules applicable to US public companies seeking to offer securities into Canada concurrent with a US SEC-registered offering. The webcast covered specific topics such as, an overview of the Canadian securities regulatory system, the framework applicable to Canadian companies that are Multijurisdictional Disclosure System ("MJDS") filers, popular transaction structures for cross-border offerings, the latest Canadian regulatory and transactional developments, and 2019 highlights.

REIT and REIT Offerings On February 26, Thomas Humphreys and Brian Hirshberg led a webinar hosted by the Practicing Law Institute covering legal, regulatory and tax considerations for real estate investment trusts (REITs). Specific topics included, the advantages associated with REITs, the formation and organization of REITs, the tax requirements of REITs, other regulatory advantages associated with REITs, and market opportunities for REITs.

Canadian Bail-In TLAC Requirements On February 24, Anna Pinedo along with Andrew Parker and Wendi Locke of McCarthy Tetrault LLP led a webinar hosted by the WestLegalEdCenter addressing the Canadian federal rules relating to Bank Recapitalization (Bail-in) Conversion Regulations and Total Loss Absorbing Capacity (TLAC). Specific topics included the regulatory framework and capital requirements, how the framework differs from that in Europe and from the TLAC requirements in the United States, securities and instruments excluded from bail-in and ineligible for TLAC, changes to offering documents, program agreements, indentures and legal opinions, issuance trends and what to expect, the impact on structured note offers, and the process for compensating debtholders.

Financing Alternatives for Life Sciences Companies On February 21, Jennifer Carlson and Anna Pinedo led a webinar hosted by the Practicing Law Institute covering financing alternatives for life sciences companies. Specific topics included financing alternatives for pre-IPO companies, the late-stage (or "cross-over") private placements market, considering milestones when planning a financing strategy, and post-IPO alternatives, including registered direct offerings, PIPE transactions, at the market offerings and related financing considerations.

Intelligize Webinar: LIBOR – What to do now On February 19, Bradley Berman and David Duffee led a webinar hosted by Intelligize covering the upcoming cessation of LIBOR quotations and the market's transition to the Secured Overnight Financing Rate (SOFR). Specific topics included, promulgation of spread adjustments methodologies by ISDA and the ARRC, publication of SOFR averages, loans priced at a rate based on SOFR, regulatory demands and a possible legislative solution.

REVERSEinquiries Workshop: SEC's Regulation Best Interest and its Impact on Structured Investments On February 18, Marlon Paz with Thomas Grygiel from the ACA Compliance Group led a webinar on Regulation Best Interest (Reg BI) and the Form CRS requirement, focusing specifically on the anticipated effects for market participants in the structured investments sector. Specific topics included, an overview of the regulation, what types of conflicts specific to this market should be disclosed, what should you focus on if you do not face retail customers, what changes are retail-facing distributors and other intermediaries likely to require from product manufacturers, guidance to date from the SEC and FINRA and proposed changes to FINRA's suitability rule to conform to Reg BI.

NFA Advertising Rules and Related Enforcement Actions On February 4, Matthew Kluchenek and Ansley Schrimpf led a webinar hosted by the Practising Law Institute on NFA advertising rules and related enforcement actions. Specific topics included CFTC part 4 rules regarding calculations and communications, NFA compliance rules 2-29 and 2-36: an overview and what's new, how NFA compliance rule 2-29 affects 4.7 commodity pools and NFA and CFTC advertising-related enforcement actions.

The Road to the IPO: Late Stage Private Placements and IPO Readiness On January 28, Anna Pinedo and Phyllis Korff, along with Rafi Carmeli (Viola Growth) Mike Gould, Derek Thomson and Sam Zytko (PricewaterhouseCoopers) and Tomer Shani (Meitar Liquornik Geva Leshem Tal) held an event on late stage private placements and IPO readiness. The event covered a broad range of topics relevant to issuers contemplating IPOs, venture capitalists and entrepreneurs. Specific topics included, the late stage private market, timing and process for late stage private placements, corporate governance best practices for sophisticated private companies, expectations regarding financial statements and investor communications, pursuing an IPO as a US-domiciled versus a foreign private issuer, IPO readiness and what to do when, and the state of the IPO market.

SPA Panel Discussion: Fixed Index Annuities On January 23, Anna Pinedo moderated a panel discussion hosted by the Structured Products Association which included various industry leaders including, Lisa Cannavino (Bank of America), John Cassano (Nasdaq), Tom Haines (Annexus Group), Philip Pellegrino (UBS Wealth Management), David Rademeyer (J.P. Morgan) and Keith Styrcula (Structured Products Association/Lockton Capital Markets). The event included a broad range of discussions regarding developments in structured products, including the market for fixed index annuities and expected continued growth, considerations for annuity providers relating to licensing indices and marketing annuities, considerations for index manufacturers and sponsors, and regulatory developments to consider.

What You Don’t Know Can Hurt You: Securities Law Issues for Estate Planners On January 17, Brian Hirshberg spoke on the What You Don’t Know Can Hurt You: Securities Law Issues for Estate Planners panel at the 54th Annual Heckerling Institute on Estate Planning. The panel examined some of the most common securities law issues and traps for the unwary that could arise in estate planning.

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