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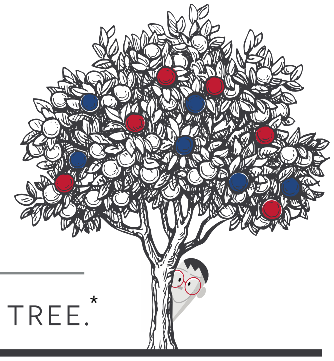
MAYER BROWN CAPITAL MARKETS

TAXQUARTERLY

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



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Editor's Note

After the Georgia Senate elections were decided in early January, CMTQ could see that 2021 would be a busy year tax-wise. As we told you in our last issue, with a new administration and a 50/50 US Senate, and with Vice President Kamala Harris as tiebreaker, there are more chances for President Joe Biden's ambitious tax agenda to become law. This could mean big changes for US capital markets taxation.

Front and center would be tax-rate increases. Most importantly, as we reported in CMTQ Vol. 3, Issue 1, and discuss in the article below, the Biden plan would eliminate the difference between ordinary income and capital gain tax rates. Both would be taxed at the maximum ordinary income rate which would go back to the pre-TCJA 39.6% rate. The new rate for capital gains would only apply to taxpayers with taxable income greater than $1,000,000. One other note: if one adds in the 3.8% Medicare tax on investment income, capital gains subject to that tax would apparently be taxed at an all-in 43.4% rate, higher than the rate on ordinary income. Of course, no one knows what any actual legislation might look like.

Equally important in our little world is the potential for mark to market taxation. Although not quite formalized as of this writing, Democratic Senator Ron Wyden will likely be the new chairman of the Senate Finance Committee. For a look at what he thinks capital markets tax-wise, see his 2019 paper: Treat Wealth Like Wages.[1] That plan also would eliminate preferential rates for long-term capital gains. It would go farther and require that gains and losses on publicly traded stock and debt (i.e.,

In This Issue

1 Available at https://www.finance.senate.gov/imo/media/doc/Treat%20Wealth%20Like%20Wages%20RM%20Wyden.pdf.

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

tradable assets)[2] be recognized each year, i.e., a mark to market system. Wyden's plan would subject recognized gains on non-traded assets to retrospective taxation. That is, when gain was recognized, say on the sale of a business held for five years, the taxpayer would be required to pay an additional amount to compensate for the gain deferral. Wyden's plan asks for input on how this additional amount should be computed. Interestingly, one possibility is to impose a surtax on gain from the sale of assets with longer holding periods (thus wholly reversing the current tax system's capital gain preference). The new anti-deferral system would only apply to taxpayers with over 1 million in taxable income or $10 million in assets. According to the Wyden plan the revenue raised from this new anti-deferral system would be used to provide additional funding for Social Security.

Needless to say, these would be big changes in the US federal income tax system as it relates to capital markets and financial instruments. Of course, the new administration has many other priorities in 2021 so it will be interesting to see how they prioritize tax law changes over the next several months.

CMTQ, as always, will keep you up to date.

In this issue, we also cover a Revenue Procedure with extended relief for certain entities owning mortgages, insight into a couple of SPAC tax issues, and more.

Tax Plans of the New Administration

As discussed in a previous issue of CMTQ, President Joe Biden has put forward a variety of tax proposals.[3] With Democratic majorities in the House and a 50/50 Senate (with Vice President Kamala Harris as the tie-breaker), a path has potentially been cleared to advance Biden's tax proposals through Congress into law. Here, we touch on some of the new president's major tax proposals from the campaign trail.

CORPORATE AND BUSINESS TAX PROPOSALS

Biden's tax plan would increase the corporate income tax rate from its current 21% to 28%. In addition, Biden would institute a 15% minimum tax on book profits, or reported annual income net of annual expenses, for corporations with at least $100 million in annual income. When calculating this new minimum tax liability, corporations would still be allowed to claim deductions for losses carried forward from previous years and foreign taxes paid. The tax would function as an alternative

2 Tradable assets are those "for which there is a readily ascertainable fair market value including actively traded property." For this the Wyden plan refers to Treas. Reg. section 1.1092(d)-1 (personal property traded on an established financial market).

3 For the Biden tax plan, see A Tale of Two Tax Policies: Trump Rewards Wealth, Biden Rewards Work (available at https://joebiden.com/two-tax-policies/); The Biden Plan to Ensure the Future is "Made in All of America" by All of America's Workers (available at https://joebiden.com/made-in-america/); and Committee for a Responsible Federal Budget, Understanding Joe Biden's 2020 Tax Plan (July 20, 2020, available at http://www.crfb.org/sites/default/files/CRFB%20USBW%20Biden%20Tax%20Plan%20Analysis_FINAL%20DRAFT_07302020.pdf)

minimum tax, replacing one that was in effect until it was eliminated by the Tax Cuts and Jobs Act of 2017 (the "TCJA").

Under Biden's plan, the effective tax rate on global intangible low-taxed income ("GILTI") would double from 10.5% to 21%. GILTI would be calculated on a country-by-country basis, rather than using a worldwide average, which would, in general, prevent taxpayers from offsetting GILTI amounts between high-tax and low-tax jurisdictions. Further, Biden's plan would eliminate GILTI's exemption for deemed returns under 10% of qualified business asset investment.

Biden also proposes completely phasing out the qualified business income ("QBI") deduction under Code section 199A for filers making more than $400,000. Biden's plan would maintain the current QBI deduction for those making under $400,000 per year. Importantly, REIT dividends are currently eligible for the QBI deduction. One wants to see the fine print, of course, but presumably such dividends could be affected by these changes.

INDIVIDUAL TAX PROPOSALS

Biden's tax plan calls for restoring the top individual income tax rate for taxable income above $400,000 from 37% under current law to the pre-TCJA level of 39.6%. Biden proposes to cap the value of itemized deductions at 28% for those with taxable incomes exceeding $400,000 and restore the Pease limitation on itemized deductions, which was repealed under the TCJA through 2025. Biden would also eliminate the preferential treatment of capital gains and dividends for higher earners. Specifically, capital gains and dividends would be taxed as ordinary income at a rate of 39.6% for individuals and couples earning more than $1 million.

Biden's plan would also impose a 12.4% old-age, survivors, and disability insurance payroll tax on income earned above $400,000, evenly split between employers and employees. Under current law, this payroll tax only applies to wage income up to $137,700.

Finally, Biden's plan would eliminate the Code section 1014 basis step up at death and would return estate and gift tax exemptions to 2009 levels.

Mark-to-Market?

As noted above, in this, the 117th Congress, Senator Ron Wyden (D-Ore.) is poised to become the next chairman of the Senate Finance Committee. On September 12, 2019, Senator Wyden the then ranking Democratic member on the Senate Finance Committee, released his Treat Wealth Like Wages - a tax plan that would establish a mark-to-market tax regime.[4] This plan, which would only apply to

4 For further discussion of the 2019 plan, see Capital Market Tax Quarterly Vol. 2 Issue 3, available at https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2019/10/capital-markets-tax-quarterly-volume-2-issue-3--oct-2019.pdf.

high income or high-net worth taxpayers, would generally impose annual "mark-to-market" accounting and taxation for tradable assets such as publicly traded stock and lookback taxation upon sale for assets that are less easily valued, such as real estate, closely held businesses and valuable collectibles. Wyden recently stated that he plans to move forward with this proposal now that there is a tie in the Senate with a tie-breaker from the vice president.[5]

Mark-to-market taxation currently only applies to dealers in securities under Code section 475 and regulated futures contracts under Code Section 1256. While there have been proposals going back to former Representative Dave Camp (R, MI) in 2013, mark-to-market was not included in the TCJA.

Select US Tax Considerations for SPACs

Special purpose acquisition companies ("SPACs") had an unprecedented run in 2020 which continues in 2021. At the close of 2020, more than 230 SPACs had raised more than $78 billion through initial public offerings ("IPOs"), surpassing the $13.6 billion raised through approximately 59 SPACs in 2019. While the SPAC profile is straightforward (typically, an IPO for cash followed by an acquisition), there are nevertheless US federal income tax issues in each SPAC offering and acquisition.[6]

For example, one question relates to the timing and character of tax imposed on receipt of founders shares. In a typical SPAC structure, the sponsors contribute nominal cash in exchange for founders shares, which ultimately become a 20 percent equity interest in the SPAC after its IPO. Thus, the sponsors effectively have a zero tax basis in their founders shares while receiving 20 percent of the SPAC's equity. Is this taxed at the time of the IPO, at the time a target is acquired, or when the sponsors sell their founder shares?

In a properly structured SPAC, Sponsors rely on the "realization" principle and determine that receipt of founder's shares does not result in gross income. Thus, under the current US tax system gain on an asset is not realized until the asset is disposed of. With founder's shares even though the SPAC does an IPO (thereby establishing value for the shares) no gain is generally recognized because the founder is not disposing of its shares in the IPO. Moreover, case law suggests that if a sponsor acquires its founders shares before the SPAC has taken any meaningful actions (i.e., when the value of the shares is most speculative), then the interest would not be characterized as compensation.[7] To bolster this position, founders shares should ideally be issued to sponsors as soon as possible in

5 Colin Wilhelm, Incoming Finance Chair Wyden to Move on Capital Gain Changes , Bloomberg Tax (January 13, 2021).

6 For a more in depth analysis of the mechanics of a SPAC, please see our article "*What's the Deal? – Special Purpose Acquisition Companies*" available at https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/08/whats-the-deal--spacs.pdf.

7 *See Berckmans v. Commissioner*, T.C. Memo. 1961-100 (supporting the position that fair market value of stock purchased at par value ($1 per share) was not worth more at the time of a taxpayer's purchase since at the time of purchase the corporation had no assets and only speculative future plans); *but see Husted v. Commissioner*, 47 T.C. 664 (1967) (concluding that a taxpayer was permitted to acquire shares of stock of a corporation for less than its fair market value and that the difference was compensation income for his services in arranging the acquisition of a trailer business by the corporation.

advance of the IPO. Of course, if Senator Wyden's mark-to-market proposal described above becomes law appreciation in a sponsor's founders shares might be taxed at the end of the first taxable year after the IPO because the shares would be traded on an established market at that point.

Note that the acquisition of a target (i.e., the de-SPAC transaction) is generally (although not always) structured as an acquisition by the SPAC of a target company with a business. In this case, the founders do not exchange their shares but continue to hold them so, again, there is no realization event to the founders at the time of the acquisition. Putting this all together, under current law gain on founders shares is only recognized when the founder sells or exchanges the shares.

Another SPAC question relates to the taxation of a "unit." One of the common features in a SPAC is that the IPO is of a unit consisting of common stock and a fraction (e.g., one-third or one-half) of a redeemable warrant. One whole warrant allows the holder of the warrant to acquire additional common stock. The stock and the warrant trade together initially but then, after a period of time, the warrant detaches and the common stock and the warrant trade separately. How is that treated for US federal income tax purposes?

For example, assume that in an offering a unit is offered for $10. Further assume that a few months after the IPO, the unit traded up to $18 and the warrant detached when the common stock price was $12 and the warrant price was $6. To understand the tax consequences of the acquisition, possession, and subsequent disposition of the unit to a holder, the holder must understand when and how the tax basis is allocated between the common stock and the warrant.

When an option or stock is coupled with a debt instrument, Treas. Reg. Section 1.1273-2 provides that—

(h) **Investment units**

(1) *In general*. Under section 1273(c)(2), an investment unit is treated as if the investment unit were a debt instrument. The issue price of the investment unit is determined under paragraph (a)(1), (b)(1), or (c)(1) of this section, if applicable. The issue price of the investment unit is then allocated between the debt instrument and the property right (or rights) that comprise the unit based on their relative fair market values . . . .

(2) *Consistent allocation by holders and issuer*. The issuer's allocation of the issue price of the investment unit is binding on all holders of the investment unit. However, the issuer's determination is not binding on a holder that explicitly discloses that its allocation is different from the issuer's allocation. Unless otherwise provided by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed Federal income tax return for the taxable year that includes the acquisition date of the investment unit . . . .

However, there is no such regulation dealing with the common stock and warrants that are issued as an investment unit. In Rev. Rul. 88-31, the IRS considered the tax characterization of an investment unit issued by a corporation, which consisted of common stock and a contingent payment right (the value of which varied inversely with the value of the common stock). Similar to the units issued by SPACs, the investment unit in the revenue ruling initially could not be separated. After a short period of time, however, the parts could be separately transferred and traded on a national exchange. First, the IRS established that the contingent payment rights were property separate from the common stock. Then, the IRS quickly concluded that the tax basis should be allocated between the common stock and the contingent payment right on the basis of the fair market value of the common stock on the date of issuance. Note, however, that at the time the investment units were issued by the corporation, the corporation's common stock was widely held and publicly traded on a national securities exchange. Thus, the relative fair market values of the common stocks and the contingent payment rights were readily ascertainable.

When trying to allocate tax basis between the common stock and the warrant in a unit issued by a SPAC, one approach, as in Rev. Rul. 88-31, would be to allocate the purchase price initially between the common stock and the warrant based on their relative fair market values. For example, one SPAC that adopted this approach included the following disclosure regarding the tax basis of a unit—

"No statutory, administrative or judicial authority directly addresses the treatment of a unit or instruments similar to a unit for U.S. federal income tax purposes and, therefore, that treatment is not entirely clear. The acquisition of a unit should be treated for U.S. federal income tax purposes as the acquisition of one share of our [common stock] and [one-half of one warrant] to acquire one share of our [common stock]. For U.S. federal income tax purposes, each holder of a unit must allocate the purchase price paid by such holder for such unit between the one share of [common stock] and the one-half of one warrant based on the relative fair market value of each at the time of issuance. Under U.S. federal income tax law, each investor must make his or her own determination of such value based on all the relevant facts and circumstances. Therefore, we strongly urge each investor to consult his or her tax adviser regarding the determination of value for these purposes. The price allocated to each share of [common stock] and the one-half of one warrant should be the stockholder's tax basis in such share or warrant, as the case may be. Any disposition of a unit should be treated for U.S. federal income tax purposes as a disposition of the share of [common stock] and one-half of one warrant comprising the unit, and the amount realized on the disposition should be allocated between the [common stock] and the one-half of one warrant based on their respective relative fair market values (as determined by each such unit holder on all the relevant facts and circumstances) at the time of disposition. The separation of shares of [common stock] and warrants comprising units should not be a taxable event for U.S. federal income tax purposes.

The foregoing treatment of the shares of [common stock] and warrants and a holder's purchase price allocation are not binding on the Internal Revenue Service ("IRS") or the courts. Because there are no authorities that directly address instruments that are similar to the units, no assurance can be given that the IRS or the courts will agree with the characterization described above or the discussion below. Accordingly, each prospective investor is urged to consult its own tax advisors regarding the tax consequences of an investment in a unit (including alternative characterizations of a unit). The balance of this discussion assumes that the characterization of the units described above is respected for U.S. federal income tax purposes."

However, unlike Rev. Rul. 88-31, the ability to correctly allocate tax basis between the common stock and warrant at the time of issuance by a SPAC is not necessarily apparent to the naked eye because there is no separate trading at such time. Put another way, it would be much easier to allocate tax basis between the two pieces when they begin trading separately. For example, in our illustration above, $12 would be allocated to the common stock and $6 to the warrant. Unfortunately, the answer, as in so many financial instrument tax issues, is not clear. Moreover, as can be seen from the above disclosure, it appears that many issuers take the position that the allocation must be done at the time of issuance rather than separation.

PLR 202035003 – Guidance on Settlement Payments to REMIC Regular Interest Holders

On August 28, 2020, the Internal Revenue Service ("IRS") issued a private letter ruling offering guidance on the tax treatment of settlement payments to former real estate mortgage investment conduit ("REMIC") regular interest holders.

As background, the Code generally defines a REMIC as any entity that (i) has made an election to be treated as a REMIC for the current taxable year and all prior taxable years; (ii) all of the REMIC's interests are residual interests or regular interests; (iii) the REMIC only has one class of residual interest; and (iv) substantially all of the REMIC's assets consists of qualified mortgages and permitted investments. For purposes of satisfying the asset requirement, "substantially all" of a qualified entity's assets are qualified mortgages and permitted investments if the qualified entity owns no more than a de minimis amount of other assets. Further, the amount of other assets is considered de minimis if the aggregate of the adjusted basis of such assets is less than one percent of the aggregate of the adjusted basis of all of the REMIC's assets.

The Code also imposes a 100 percent tax on a REMIC's net income derived from a "prohibited transaction." A "prohibited transaction" is defined as one of the following transactions: (A) disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to (i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation), (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation; (B) the receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment; (C) the receipt by the REMIC of any amount representing a fee or other compensation for services; or (D) gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

The settlement agreement at issue in the ruling arose from a dispute where investor plaintiffs that were holders of the REMIC's regular interests sued the trustee of the REMIC for breach of fiduciary duty. The parties eventually settled out of court and entered into a settlement agreement. In the PLR, the REMIC trustee requested guidance regarding the tax consequences from the execution of the settlement agreement and the distribution of a settlement amount in accordance with the agreement's terms. The IRS ruled that such amounts paid pursuant to the agreement, with respect to each taxpayer that made a timely REMIC election: (i) is a direct payment between trustee and the investor plaintiffs and will not result in a deemed payment to or made by the REMIC for federal income tax purposes; (ii) will not be treated as a "prohibited transaction"; and (iii) will not be treated as an asset of the taxpayers.

In making its determination, the IRS pointed out that, "the distribution of the Settlement Amount is consistent with its treatment as a settlement of direct claims between the [t]rustee and investors because: (i) [t]rustee paid the Settlement Amount into an escrow account for direct distribution to [i]nvestor [p]laintiffs who are eligible class members; (ii) no portion of such Settlement Amount was, or will be, taken from, or reimbursed from, the assets of any [t]axpayer; and (iii) no portion of the Settlement Amount will be paid to or through [t]axpayers."

CIC Services v. IRS: Injunction on Reportable Transaction Reporting?

The Supreme Court heard arguments in the case of *CIC Services v. Internal Revenue Service* on December 2, 2020, regarding the limits of the Anti-Injunction Act (the "Act"). The Act, contained in Section 7421 of the Internal Revenue Code and originally enacted in 1867, prevents persons from suing to enjoin the collection of tax. The primary consequence of the Act is that generally a person seeking to challenging a tax statute must first pay the tax and then sue for a refund.[8]

CIC Services LLC (the "Petitioner") acted as a material adviser to certain captive insurance arrangements. In 2016, the IRS issued Notice 2016-66 (the "Notice") which designated such captive insurance transactions as "reportable transactions" subject to enhanced reporting requirements and penalties. The penalty for failing to report a reportable transaction applies to both taxpayers and material advisors and is labeled by the Code as a "tax."[9]). The Petitioner sought to challenge the Notice on the basis that the issuance of the Notice did not comply with the notice and comment procedures provided for in the Administrative Procedures Act. Both the district court and the U.S. Court of Appeals for the Sixth Circuit ruled against the Petitioner, and the Supreme Court granted certiorari.

8 A major exception to the Act is Section 6213, which allows a taxpayer to litigate a tax in Tax Court prior to assessment. This exception does not apply to penalties under section 6707, at issue in this case.

9 Section 6671(a).

At oral arguments, the Petitioner sought to draw a distinction between challenging the collection of tax (which is prohibited by the Act) versus challenging the Notice itself. The injury in the latter case, according to the Petitioner, was not the payment of a tax but rather the cost of complying with the Notice's reporting requirements. The Petitioner also argued that, if the Act applied to bar a challenge to the Notice, then the Petitioner's only path to challenging the Notice would be to risk large penalties and potential criminal sanctions. The government, on the other hand, argued that the Petitioner could avoid criminal liabilities by filing a good-faith letter with the IRS stating the Petitioner's belief that the Notice was unlawful. The Petitioner could then sue for a refund of the penalty.

According to one commentator, "While predicting an outcome from an argument is always tough, CIC seemingly has a slightly better chance at prevailing."[10] A decision in the case is expected by June 2021.

Rev. Proc. 2021-12: Extended Relief for Mortgages

The IRS previously issued Rev. Proc. 2020-26, which provided safe harbors to protect the federal income tax status of REMICs and investment trusts that provide certain forbearances of mortgage loans they hold or that acquire mortgage loans that have received certain forbearances. Additionally, the IRS issued Rev. Proc. 2020-34, which provided safe harbors to protect the federal income tax status of certain investment trusts whose trustees request or agree to certain forbearances of mortgage loans, make certain modifications of real property leases, or accept certain cash contributions.

The safe harbors, however, were set to expire and would not apply to forbearances and related modifications entered into after December 31, 2020. Due to the ongoing financial hardships posed by the COVID-19 pandemic, the Structured Finance Association submitted a letter to the United States Treasury and the IRS, requesting an extension of tax relief relating to forbearances and related modifications. In response to these comments, the IRS released Rev. Proc. 2021-12, which extends the expiration date relevant to the application of the safe harbors in Rev. Proc. 2020-26 and Rev. Proc. 2020-34 to September 30, 2021.

In the News

Mayer Brown announced the launch of its 10Hundred Series portal, which provides global legal and business guidance on the top 10 key issues and pivotal developments that could affect businesses during a rolling 100-day period. The portal will feature thought leadership, legal updates, videos, podcasts, webcasts and live newsfeeds on global legal and business issues.

10 Blaine Saito, Argument analysis: Justices struggle to define boundaries of Anti-Injunction Act, SCOTUSblog (Dec. 2, 2020, 5:37 PM), https://www.scotusblog.com/2020/12/argument-analysis-justices-struggle-to-define-boundaries-of-anti-injunction-act/.

The portal will showcase a series of 'Spotlights,' which will highlight key issues, historic moments or pivotal change events which clients should be aware of in the next 100-day period.

RECENT RECOGNITION

- Mayer Brown is pleased to announce that we have been shortlisted for *GlobalCapital*'s 2021 Americas Derivatives Awards in the "Americas Law Firm of the Year—Overall", "US Law Firm of the Year—Regulatory", and "US Law Firm of the Year—Transactions" categories. We were named the European Law Firm of the Year—Transactions and US Law Firm of the Year—Transactions by *GlobalCapital* in 2020.

- Mayer Brown named a finalist in the "Finance — unlocking capital" category in Financial Times' 2020 "North America Innovative Lawyers" report - December 10, 2020

  The Mayer Brown Structured Finance Practice was recognized as a finalist in the *Financial Times'* "Finance – unlocking capital" category for representation on the $6.8bn financing plan through United Airlines' loyalty program, MileagePlus, to help the airline increase revenue.

- Mayer Brown named a *Law360* 2020 "Structured Finance Practice Group of the Year" - December 21, 2020

  Mayer Brown was named a *Law360* 2020 "Structured Finance Practice Group of the Year," honoring the major deals that resonated throughout the legal industry throughout the year, including our groundbreaking transaction involving United Airlines and the financing of their frequent flyer program, MileagePlus.

  LAW360 STRUCTURED FINANCE GROUP OF THE YEAR 2020

- Mayer Brown ranked in *Asset Backed Alert's* "Law Firm" 2020 rankings, including #1 in "Top issuer counsel for US ABS/MBS" list on January 15, 2021 Mayer Brown was ranked in *Asset Backed Alert's* "Law Firm" 2020 rankings as #1 in "Top Issuer Counsel for US Asset- and Mortgage-Backed Securitizations" for the fifth consecutive year. The #1 spot holds with our highest number of deals stands at 85, while the #2 firm comes in at 56.

- Jennifer Keating and Anna Pinedo named "Top 20 Women in Dealmaking" by *The Deal* on January 26, 2021, Mayer Brown partners Jennifer Keating and Anna Pinedo were named in *The Deal's* "Top 20 Women in Dealmaking" for 2020. The list identifies U.S.-based women who have displayed excellence in their respective legal field, have shown the ability to navigate complex transactions, and who maintain strong client relationships and/or lead in and out of the boardroom. The list recognizes these women as doing great things in the world of dealmaking, as well as in mentorship, advancing gender diversity and thought leadership.

- Ryan Castillo named a *IFLR* 2020 "Rising Star Americas" honoree in "Capital Markets" category on January 28, 2021 Mayer Brown partner Ryan Castillo was named by IFLR a "*Rising Star Americas*" honoree in the "Capital Markets" category for 2020. The list recognizes future legal leaders.

RECENT SPEAKING ENGAGEMENTS

- ***Upcoming*** – Preparing Your 20-F Filing. Brian Hirshberg and Christina Thomas will address the modernization of the requirements applicable to SEC reporting companies on February 10, 2021. During this webinar, they will discuss SEC Staff guidance on COVID-19 disclosures; changes to Risk Factor disclosures; risk factors that are Staff areas of focus, including LIBOR, cybersecurity, Brexit, tariff issues, sanctions issues, etc.; key performance indicators and non-GAAP measures, including COVID related non-GAAP measures; amendments relating to financial statement requirements for acquired businesses; and disclosures for PRC-based companies. *Register for this session here.*

- Commercial Paper Programs. On February 1, 2021, Jerry Marlatt was joined by Stewart Cutler of Barclays to review the considerations relating to the establishment and operation of the commercial paper financing tool used by investment grade corporate issuers. They will discuss the legal framework for commercial paper programs; the US commercial paper and Eurocommercial paper markets; market practice and documentation that is widely used; the US Federal Reserve's commercial paper funding facility; and investor base for commercial paper.

- De-SPACing: Overview, Special Securities Law and Financial Statement Considerations and Derisking the Process with a PIPE Transaction. Hosted by PLI on January 27, 2021, Anna Pinedo and Eddie Best went through the process of a de-SPACing transaction, covering the differences to consider from negotiating the letter of intent (LOI) to the definitive merger agreement and the various ancillary agreements. Specifically, they discussed the SPAC IPO market and notable de-SPAC transactions; negotiating the LOI; key considerations in connection with the definitive agreement; PIPE and other capital raising transactions in connection with de-SPACing; securities law and financial statement requirements; and the proxy statement, its forecasts and related considerations.

- Debt Capital Markets Seminar: 2021 DCM Developments in the Shade of the COVID-19 Pandemic. On January 26, 2021 we held the 4th annual DCM Seminar, led by Patrick Scholl, Barry Cosgrove, Anna Pinedo, James Taylor, Bradley Berman, Berthold Kusserow and Alexei Döhl. The panel covered many topics including electronic and crypto securities in Germany; updates on the IBOR transition, government actions, use of RFR in DCM products, new ISDA Euribor fallbacks and EURIBOR fallback consultation; bonds and Schuldscheine and COVID-19 restructuring; and sustainability-linked bonds and EU green bond regulation.

- The Next Phase of Financial Regulatory Reform: What's Ahead for Nonbank Financial Companies. On January 21, 2021, Andrew Olmem and Laurence Platt participated in a Global Financial Markets Initiative teleconference to talk about the regulatory spotlight on nonbank financial services companies. They discussed prospects of regulatory reform for nonbank financial companies and what it could mean for the future of US financial markets, especially the US mortgage market.

- ESG Investing: How to Do Well by Doing Good. A webinar event with The American Friends of Hebrew University and Professor Ronen Feldman on January 14, 2021 kicked the new year off. Paul Forrester, Stephanie Hurst, Phyllis Korff, Anna Pinedo and James Taylor were panelists for a discussion on ESG related developments. After Professor Feldman covered text mining, AI and natural language processing, Mayer Brown speakers focused on what ESG and ESG investing is; regulatory and other frameworks for ESG reporting; green, social and sustainable bonds and loans, as well as sustainability-linked bonds; ESG indices; ESG investors' expectations; and benefit corporations and corporate structures that incorporate ESG and other mission-oriented objectives with corporate purposes.

- Ethics for the In-House Tax Professional – Part II. On January 13, 2021, Mayer Brown hosted with TEI Silicon Valley Chapter the second part of the Ethics for the In-House Tax Professional seminar. Partners Paul DiSangro and Marjorie Margolies discussed "Common Ethical Issues Faced by the In-House Tax Professional" and associate Anthony Pastore participated in a panel discussion titled "Records Management for Tax Professionals (Including Privilege Policies)".

- A New Era for Qualified Mortgages: CFPB Finalizes QM Rules. On December 17, 2020, Kris Kully and Laurence Platt participated in a Global Financial Markets Initiative teleconference to give insight and an analysis on the finalized rules by the Consumer Financial Protection Bureau (CFPB) that reshaped boundaries for Qualified Mortgages (QMs).

- Mortgage Market Developments and Becoming a Public Company. Hosted by Mortgage Bankers Association (MBA) on December 14, 2020, Brian Hirshberg, Anna Pinedo and Remmelt Reigersman joined Michael Fratantoni of MBA to speak to mortgage originator and servicers that joined the ranks of SEC reporting companies. They discussed the 2020 US IPO market and its expectations; US IPO dynamics, aftermarket performance and IPO trends; assessing IPO readiness and IPO considerations; disclosure and governance; SPAC IPOs and what's been driving the trend; merging with a SPAC to become a public company; and mortgage market developments and learnings from recent deals.

- Time to Get Ready: Preparing for the 2021 US Proxy & Annual Reporting Season. On December 9, 2020, Intelligize invited Candace Jackson, Christine McDevitt, Anna Pinedo and Christina Thomas to discuss prep for success in proxy and annual report season. They covered SEC COVID-19 guidance and disclosures; changes affecting 2020's 10-K, including MD&A and other Regulation S-K changes; virtual meetings; pay ratio and say-on-pay; human capital and ESG disclosures; shareholder proposals; and proxy voting advice amendments.

- Becoming a US Public Company: The New Three-Track Process. On December 1, 2020, following IFLR's publication of *A Deep Dive into Capital Raising Alternatives*, IFLR partnered with us for a webinar to discuss the US IPO market in 2020. Anna Pinedo and John Ablan were joined by Brian DiCaprio and Zachary Dombrowski of BMO Capital Markets, Jennie Dong of the NYSE and Greg

McDowell of ICR Strategic Communications & Advisory to speak to the significant increase in SPAC IPOs and high-profile mergers of unicorns with SPACs. Due to popular demand, panelists discussed US IPO dynamics, aftermarket performance, and IPO trends; foreign private issuers, and potential actions affecting PRC-based companies; how direct listings work, and which types of issuers should consider a direct listing; how merging with a SPAC to become a public company works; and SEC developments that may facilitate capital formation.

- Every 10 Years I Have to Relearn Section 382. On November 16, partners Thomas Humphreys and Remmelt Reigersman with members of TEI New York Chapter discussed the net operating loss carryover provisions of Internal Revenue Code Section 382. They reviewed Section 382's basic rules and explored how its limitations on NOLs and NOL usage operate. They then applied the rules to examples, walking through some interesting current structures and transactions.

- Interesting Transactions of the Past Year. On October 15, Mayer Brown tax partner Thomas Humphreys participated on a panel for PLI's Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings virtual conference. Tom discussed the federal income tax issues surrounding special purpose acquisition companies.

Authors

Steven Garden
Chicago
+1 312 701 7830
sgarden@mayerbrown.com

Remmelt Reigersman
San Francisco
+1 650 331 2059
rreigersman@mayerbrown.com

Juan Lopez Valek
New York
+1 212 506 2471
jlopezvalek@mayerbrown.com

Stephanie Wood
New York
+1 212 506 2504
swood@mayerbrown.com

Thomas Humphreys
New York
+1 212 506 2450
thumphreys@mayerbrown.com

David Goett
New York
+1 212 506 2683
dgoett@mayerbrown.com

Amit Neuman
New York
+1 212 506 2263
aneuman@mayerbrown.com

Brennan Young
New York
+1 212 506 2691
byoung@mayerbrown.com

Russell Nance
New York
+1 212 506 2534
rnance@mayerbrown.com

Minju Kim
New York
+1 212 506 2169
mikim@mayerbrown.com

Andre Smith
Chicago
+1 312 701 8890
andresmith@mayerbrown.com