

April 22, 2021



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Practice Spotlight

M&A and Securities Practice



Investment Management & Broker-Dealer

SEC Division of Examinations Releases 2021 Examination Priorities

April 12, 2021

By [Jeffrey Skinner](#), [Lauren Jackson](#), [Thomas Cain](#), & [Ali Fenno](#)

Each year, the SEC's Division of Examinations (f.k.a. OCIE) (the "Division") releases its priorities for the upcoming year, providing SEC registrants with a helpful tool to assist in managing, reviewing, and updating their compliance programs...[read more](#)

Investment Advisers, Mark Your Calendars: Effective Date Set for SEC's New Marketing Rule

March 5, 2021

By [Ali Fenno](#) & [Lauren Jackson](#)

The SEC's new marketing rule for investment advisers was published in the Federal Register today, making the effective date of the New Marketing Rule May 4, 2021...[read more](#)

Securities Offerings Involving Interests in Real Estate Left Out of New York's Reg D Modernization

March 2, 2021

By [Lauren Henderson](#), [Lauren Jackson](#) & [Tom Steed](#)

In December 2020, New York adopted new rules to update its blue sky securities registration requirements as part of an ongoing effort to "streamline and enhance the oversight of the securities industry in New York," modernize regulation, and harmonize New York regulations with federal and national standards...[read more](#)

SEC Sharpens Focus on RIA Compliance Programs, Part 2

February 5, 2021

By [Jeffrey Skinner](#), [Lauren Jackson](#) & [Ali Fenno](#)

In November 2020, the staff of the SEC's Division of Examinations issued two risk alerts that, in our view, offer particularly helpful information that is important reading for anyone who is responsible for regulatory compliance of a federally-registered investment adviser...[read more](#)

SEC Sharpens Focus on RIA Compliance Programs, Part 1

January 25, 2021

By [Jeffrey Skinner](#), [Lauren Jackson](#) & [Ali Fenno](#)

Throughout the year, every year, the SEC's Divisions of Examinations and Enforcement each respectively release guidance, observations, and priorities explanations, most of which cover recurrent themes and perennial topics...[read more](#)

Cybersecurity, Privacy & Data Governance

Supreme Court Clarifies and Narrows the Definition of an Autodialer under the TCPA

April 13, 2021

By [Barry Benjamin](#) & [Alex Barovsky](#)

Over the past 20 years or so, if your marketing team has deployed or wanted to deploy text messaging to communicate with consumers, and you – as legal counsel – pushed back, you are probably familiar with the Telephone Consumer Protection Act, its rigid opt-in requirements for commercial text messaging, and the thousands of cases and millions of dollars in fines and settlements paid out for TCPA violations...[read more](#)

New Class Action Trend: Website Session Replay Tools Alleged to Violate All-Party Consent Recording Requirements

April 2, 2021

By [Barry Benjamin](#), [Amanda Witt](#), [Vita Zeltser](#), & [John Brigagliano](#)

"This call may be recorded for quality assurance or training purposes." We have all heard the outgoing announcement while on hold...[read more](#)

Cross-Border Data Transfers: Spain's Data Protection Authority Imposes Its Largest Fine

March 23, 2021

By [Amanda Witt](#), [John Brigagliano](#) & [Alex Borovsky](#)

On March 11, 2021, the Spanish Data Protection Authority, imposed the regulator's largest ever fine, totaling €8.15 million (\$9.378 million), upon Vodafone España, S.A.U, a telephone operator, for violating multiple data protection laws while Vodafone carried out marketing campaigns...[read more](#)

Virginia Can No Longer Say Whom It's For Without Consent, Thanks to Its New Comprehensive Consumer Privacy Law

March 4, 2021

By [John Brigagliano](#), [Jon Neiditz](#), [Amanda Witt](#), & [Vita Zeltser](#)

Virginia knocked off California's crown as the only U.S. state to have a comprehensive, general consumer privacy law when Governor Ralph Northam signed the Virginia Consumer Data Protection Act into law on March 2, 2021, unless you count Nevada which we warned you would stay in Vegas...[read more](#)

Technology Transactions

Risks and Remedies: Cloud Computing and Software Licensing

ACC Docket | February 5, 2021

By [Farah Cook](#), [Jeff Connell](#), [Sarah Beisheim](#), [William Eipert](#), & [Stacie Greskowiak McNulty](#)

A shift to cloud computing has altered how the world does business, providing cost-effective alternatives to traditional on-premise solutions while continuing to offer flexibility and security...[read more](#)

Employee Benefits

DOL Releases Cybersecurity Guidance

April 19, 2021

By [Sterling Perkinson](#) & [Peter Daines](#)

On April 14, 2021, the Department of Labor issued several pieces of guidance on cyber security best practices, including: (1) a press release, (2) Online Security Tips for retirement plan participants, (3) a Tips for Hiring a Service Provider with Strong Cybersecurity Practices, and (4) Cybersecurity Program Best Practices...[read more](#)

COBRA Subsidy - Part II

March 19, 2021

By [Martha Sewell](#) & [Mark Stember](#)

The American Rescue Plan Act of 2021 includes a provision amending the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to provide COBRA premium assistance to eligible individuals...[read more](#)

DCFSA Limit Increases for 2021

March 15, 2021

By [Mark Stember](#)

The American Rescue Plan Act of 2021 increases the dependent care flexible spending arrangement annual limit from \$5,000 to \$10,500...[read more](#)

DOL Issues Non-Enforcement Policy for ESG and Proxy Voting Rules

March 10, 2021

By [Sterling Perkinson](#) & [Peter Daines](#)

As 2020 drew to a close, the Department of Labor finalized a number of regulations relating to the fiduciary duties that apply to ERISA plan investments, including: (1) a final rule generally restricting fiduciaries from selecting plan investments on the basis of "non-pecuniary" factors...[read more](#)

Department of Labor Extends and Expands COVID-19 Regulatory Relief for Employee Benefit Plans

March 1, 2021

By [Sterling Perkinson](#), [Martha Sewell](#) & [Mark Stember](#)

In May 2020, the Department of Labor jointly with the Department of Treasury and the Internal Revenue Service released guidance delaying and extending many common deadlines for employee benefit plans...[read more](#)

Action Steps for Employers that Received Exempt W-4s in 2020

February 23, 2021

By [Jeff Reed](#) & [Carl Toppin](#)

Employees falling on hard times during the 2020 pandemic may in some instances have sought to increase their net take home pay by filing a revised Form W-4 to claim more allowances than they were entitled to or claiming a complete exemption from tax withholding...[read more](#)

Financial Services

Monthly Minute | Holding Cryptocurrency: Best Practices for Your Company

February 26, 2021

By [Michael Breslin](#)

Many companies are considering whether to hold a balance of cryptocurrency...[watch now](#)

Real Estate

Court Order Nullifies Guidance Issued by the New York State Department of State Regarding the Collection of Brokerage Fees from a Tenant by a Landlord's Agent

April 12, 2021

By [Gene Caiola](#) & [Richard Galati](#)

At the request of several brokerage advocacy groups, on February 4, 2020, the New York Department of State issued a memorandum entitled "Guidance for Real Estate Professionals Concerning the Statewide Housing Security and Tenant Protection Act of 2019 and the Housing Stability and Tenant Protection Act of 2019"...[read more](#)

Moratorium on All New York Commercial Evictions and Mortgage Foreclosures Extended to February 26, 2021 as New York State Legislature Approves Legislation to Extend Moratorium to May 1, 2021 for Small Businesses

February 9, 2021

By [Gene Caiola](#) & [Richard Galati](#)

On January 27, 2021, New York Governor Andrew Cuomo issued Executive Order 202.92, which continued through February 26, 2021, all directives made by Executive Order 202, which was the initial COVID-19 disaster declaration issued on March 7, 2020, and all successor orders to Executive Order 202...[read more](#)

CDC Orders Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

February 4, 2021

By [Gene Caiola](#) & [John Livingston](#)

On January 29, 2021, the CDC issued Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2 providing that "[s]ubject to applicability a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property...[read more](#)

Governor Cuomo Proposes Conversion of Hotels and Commercial Office Buildings

January 26, 2021

By [Gene Caiola](#)

On January 19, 2021, Governor Andrew Cuomo proposed an amendment to the New York State Multiple Dwelling Law with the stated purpose of “authoriz[ing] flexibility in zoning to address high commercial vacancy rates and underutilized hotel properties located within specified areas in New York City, particularly in response to the COVID-19 pandemic”...[read more](#)

General Corporate

EU Technology Agreements | Ten of the Biggest Surprises In Cross-Border Commercial and IP Transactions

March 17, 2021

By [Siegmar Pohl](#)

Kilpatrick Townsend Partner Siegmar Pohl explains key provisions that all cross-border agreements have in common. Siegmar gives examples of choice-of-law clauses and choice-of-forum provisions that unknowingly change the economics of a deal completely...[watch now](#)

Takeaways | Practice Pointers for German Companies Doing Business in the U.S.

February 19, 2021

By [Siegmar Pohl](#) & [John Jett](#)

German companies are often surprised when they get sued in the U.S. (a) that U.S. courts even have jurisdiction; (b) about the exorbitant amount of damages that are claimed; and (c) about the power U.S. courts have to compel witnesses and documents as evidence...[read more](#)

Corporations v. “B Corps:” What Are They and Why Do They Matter?

February 8, 2021

By [Siegmar Pohl](#)

Benefit Corporations, Certified B-Corps™ and similar social purpose entities are gaining traction, especially with Generation Z aging into the prime consumer and investor generation...[read more](#)

German Companies before the US courts, Practical Tips to Protect Your Business Before It Is Too Late

German American Chamber of Commerce | February 3, 2021

By [Siegmar Pohl](#) & [John Jett](#)

On February 3, Siegmar Pohl and John Jett presented to over 20 German companies sharing practical tips for these organizations as they assess risk mitigation, corporate structure, and contract negotiations in the United States...[watch now](#)

One Size Does Not Fit All: Tailoring IP Due Diligence to the Transaction

Association of Corporate Counsel | January 25, 2021

By [Siegmar Pohl](#) & [Paul Haughey](#)

Investing in, acquiring, or partnering with companies requires a due diligence investigation in which intellectual property will play a role. An IP diligence review basically determines if a company has good title to its IP, and whether third-party IP might be asserted against the company's products or services...[read more](#)

Energy

RENEWables Podcast Episode 24: A Big Legislative Win for the Bioeconomy

BioStar Renewables | March 25, 2021

By [David Smart](#) and [Mark Riedy](#)

RENEWables welcomes back Mark J. Riedy of Kilpatrick Townsend & Stockton LLP, an international project finance lawyer with over 45+ years in the energy, chemical and infrastructure space...[listen now](#)

EcoStrat - Panel Discussion on Derisking Capital Market Investment in Biomass

BioRenewable Deployment Consortium | [March 23, 2021](#)

By [Mark Riedy](#), [Jordan Solomon](#), [John Plaza](#), & [Chris Tindal](#)

Ecostrat is currently driving the new BDO Zone Program to unlock new sources of capital for biogas, biochemical, biofuel and biomaterial plants by using the Biomass Supply Chain Risk (BSCR) Standards and Ratings to certify Opportunity Zones that have the best potential for bio-based economic development...[watch now](#)

AFCC announces cost breakthrough in DOE loan guarantees

Biodiesel Magazine | [January 19, 2021](#)

By Alternative Fuels & Chemicals Coalition, including co-founder, [Mark Riedy](#)

The Alternative Fuels & Chemicals Coalition, worked closely with policy makers and appropriators this year to provide changes to the U.S. Department of Energy's Title XVII Innovative Technology Loan Guarantee Program, which were realized through the recent enactment of the Consolidated Appropriations Act of 2021...[read more](#)

Franchising

The Trademark Modernization Act of 2020 What Will Its Impact Be on Franchising

The Franchise Lawyer | [March 21, 2021](#)

By [Chris Bussert](#)

The final months of 2020 were punctuated by a well-publicized debate between the executive and congressional branches on legislation involving COVID-19 related stimulus funding and the Consolidated Appropriations Act, 2021, which included funding necessary for the federal government to operate into 2021...[read more](#)

What Does the 2020 Trademark Modernization Act Have in Store for Franchising?

New York Law Journal | [February 16, 2021](#)

By [Chris Bussert](#) & [Marc Lieberstein](#)

With all of the legislation about COVID-19, the attack on the U.S. Capitol, the Inauguration, and the NFL playoffs, you might have missed the passing of the Trademark Modernization Act of 2020 into law...[read more](#)

Securities

ISS Benchmark Policy Changes for 2021 Proxy Season

[February 16, 2021](#)

By [Bobby Seifter](#)

On October 14, 2020, Institutional Shareholder Services Inc. (ISS) released for comment its proposed voting policy changes to be applied to shareholder meetings taking place on or after February 1, 2021...[read more](#)

The Competing Factors Driving ESG Disclosures

[February 2, 2021](#)

By [Sabrina Rodrigues](#)

There has been mounting pressure on mandatory ESG disclosure in recent years that may reach a precipice in 2021 with a new SEC Chairman. The forces driving this pressure include institutional investors, fiduciary duties, proxy advisers and demographic changes...[read more](#)

Tax

NH Remote Tax Case Could Upend NY's Income Sourcing Rule

Law360 | [February 5, 2021](#)

By [Maria Koklanaris](#), with quotes from [Jeff Reed](#)

A U.S. Supreme Court case concerning New Hampshire's complaint against a Massachusetts regulation imposing income tax on remote workers during the coronavirus pandemic could have a profound effect on states with similar income sourcing rules, especially New York...[read more](#)

Firm News

[Kilpatrick Townsend's Private Equity Team Has Banner First Quarter in 2021](#)

[Kilpatrick Townsend Makes IFLR Americas Awards Shortlist 2021](#)

[Roger Wylie appointed to Law360's Legal Industry Editorial Board](#)

[Ex-BlueLinx GC Rejoins Kilpatrick As Corporate Partner](#)

[Kilpatrick Townsend Attorneys Honored With 2021 JD Supra Readers' Choice Awards for Thought Leadership](#)

[Four Kilpatrick Townsend Attorneys Named 2021 Franchise Times Legal Eagles](#)

[Kilpatrick Townsend Counsels William Penn Bancorporation](#)

[Kilpatrick Townsend Announces 2020 Pro Bono Awards](#)

[Law360's 2021 Access To Justice Editorial Advisory Board](#)

[Mike Grace Selected to The National Black Lawyers Top 40 Under 40 – North Carolina](#)

[Yendelea Holston Quoted re: How Firms Can Address Violence Against Asians](#)

[Kilpatrick Townsend Rides Client Demand to Revenue, Profit Jumps](#)

[Statement Against Racism | Standing in Support of Asian Pacific Americans](#)

[Robert Daily Joins Kilpatrick Townsend's Employee Benefits Team](#)

[Kilpatrick Townsend Earns Top Marks in Corporate Equality Index](#)

[Henry Walker and Wab Kadaba Named to the 2021 Atlanta Magazine 500](#)

Recent Transactions

OneTrust LLC Completes Series C Fundraising

[April 8, 2021](#)

Represented OneTrust LLC, a privacy, security and third-party risk technology platform, in a recent Series C round of funding, raising a total of \$510 million.

Upsider AI Acquired by Recruiter.com

[March 25, 2021](#)

Represented Upsider AI, a portfolio company of Newark Ventures, in connection with its acquisition by Recruiter.com, a publicly traded company listed under RCRT, in a stock for asset transaction.

William Penn Bancorporation Completes Second-Step Conversion

March 24, 2021

Represented William Penn Bancorporation in connection with its second-step conversion and reorganization. The gross offering proceeds raised from the public offering were \$126.4 million.

Source Capital Credit Opportunities IV, LP Acquires SCAPath Services, LLC and Spinnaker Services, LLC

March 22, 2021

Private Equity Funds, Source Capital Credit Opportunities IV, LP (represented by Kilpatrick Townsend) and Black Lake Capital, have acquired SCAPath Services, LLC, a supply-chain solutions company, and Spinnaker Services, LLC, a supply chain staffing company.

Google Unveils Major Engineering Hub Planned for Durham

March 18, 2021

Represented Duke University in connection with a major sublease of office space to Google in downtown Durham, North Carolina, which will be the site of Google's new engineering hub that could eventually grow to more than 1,000 new jobs.

Delta Air Lines, Inc. Strikes Agreement with IBM

February 18, 2021

Represented Delta Air Lines, Inc. ("Delta") in the structuring and negotiation of a multi-year agreement with International Business Machines Corporation (IBM) to support Delta's large-scale digital modernization program to move most of Delta's data and software applications to the cloud. Kilpatrick Townsend also assisted with the selection of the cloud services provider and the entire negotiation process.

Georgia Oak Partners Invests in Aditi Staffing, Inc.

February 5, 2021

Represented Georgia Oak Partners, an Atlanta-based private equity firm, in connection with its strategic growth equity investment in Aditi Staffing, Inc., a talent-on-demand and project solutions services company assisting organizations to accelerate business growth.

American CyberSystems, Inc. Makes Series of Acquisitions

January-April 2021

Represented American CyberSystems, Inc., an IT consulting and services company, in connection with a series of acquisitions, including ONIS Solutions, LLC, an IT solutions consulting and technology services firm; ERP Logic, LLC, a global SAP cloud-based solutions company; Data, Inc., an IT service management company; Monarch Information Technology Solutions, a multinational-based services business; and ASAP Solutions, LLC, an Atlanta-based business consulting service for talent acquisition within the technology market.

New Corporate Attorneys



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To view our latest Quarterly IP Digest, please click [here](#).