KILPATRICK TOWNSEND

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In This Issue:

Investment Management & Broker-Dealer

SEC Boosts its Bandwidth, Nearly Doubles the Size of the Division of Enforcement's Crypto Assets and Cyber Unit

JD Supra | **May 13, 2022**
By Thomas Cain, Kate McCurry & Skyler Shields

On May 3, 2022 the Securities and Exchange Commission announced the addition of 20 new positions to the Division of Enforcement's newly renamed Crypto Assets and Cyber Unit (formerly known as the Cyber Unit), expanding the Crypto Assets and Cyber Unit to 50 positions. With its expanded numbers, the Crypto Assets and Cyber Unit will continue to identify cybersecurity disclosure and control issues and will focus on investigating: crypto asset offerings; crypto asset exchanges; crypto asset lending and skating products; decentralized finance "DeFi" platforms; non-fungible tokens "NFTs"; and stablecoins....read more

SEC's Division of Examinations Releases 2022 Examination Priorities

April 19, 2022
By Jeffrey Skinner, Skyler Shields & Thomas Cain

Each year, the SEC's Division of Examinations releases its priorities for the upcoming year, providing SEC registrants with a helpful tool to assist in managing, reviewing, and updating their compliance programs. The 2022 Examination Priorities which were released last month, indicate a renewed focus on registered investment advisers ("RIAs") who manage private funds; a continued interest in protecting retail investors and ensuring accurate environmental, social, and governance-related disclosure; and a greater focus on the practices of RIAs and broker-dealers relating to emerging issues like information security, emerging technologies, and crypto-assets...read more

Financial Services

Digital Assets Regulation Blog

July 25, 2022 - June 1, 2022
By Stephen Anstey

In the Digital Assets Regulation Blog, we will cover various aspects of digital assets regulation, development, and administration, as well as related topics. Over the last five years, the combined market capitalization for U.S. digital assets has grown from $14 billion to nearly $3 trillion. This tremendous growth has led to increased attention and regulation from regulatory bodies in the United States and across the globe....read more

Webinar | Doing Business in the Metaverse: The Good, The Bad, The Ugly

June 30, 2022

By Mike Breslin, Tony Glosson, Marc Lieberstein, & Rob Potter

In this webinar, we discussed doing business in the metaverse along with how to build a metaverse strategy, transact business within and for the metaverse, various legal issues for brands to consider before they enter the metaverse, and more...read more

4 Key Takeaways | The Outlook for Industry Consolidation and Considerations for Deal-Making Given Uncertain Macro/Industry Backdrop and Potential Regulatory Considerations

May 24, 2022

By Gary Bronstein

Kilpatrick Townsend's Gary Bronstein recently joined Jeffries' Ken Usdin (Large-Cap Banks) and Casey Haire (Mid-Cap Banks) on the "Bank M&A Expert Call" to discuss the outlook for industry consolidation and considerations for deal-making given the uncertain macro/industry backdrop and potential regulatory considerations. The general outlook for industry consolidation, strategic shifts in CEO sentiment around future positioning, and regulatory considerations and prospects for framework changes were featured topics...read more

Cybersecurity, Privacy & Data Governance

Summer 2022 – What Privacy Professionals Need to Know and Do Now – Part II

July 1, 2022

By John Brigagliano, Tony Glosson, Jennie Cunningham, Jon Neiditz, & Amanda Witt

In our second installment of what privacy professionals should know before they start the summer, we provide you with highlights from the draft regulations from the California Privacy Protection Agency and information about recent guidance on data transfers from China and Hong Kong. It will be interesting to see what major privacy development comes next...read more

Summer 2022 – What Privacy Professionals Need to Know and Do Now – Part I

June 27, 2022

By Jon Neiditz, Amanda Witt, John Brigagliano, Jennie Cunningham, & Tony Glosson

It's been a blazing hot summer and privacy professionals have been sweating to keep up with all of the updates from the last few months. We all knew this was going to be a busy year with updating European data transfer mechanisms and reviewing the long-awaited regulations from the California Privacy Protection Agency, but I'm not sure if many of us were prepared for a draft bipartisan federal privacy law that has privacy professionals buzzing with excitement and the California Consumer Privacy Act's impending applicability to California employees...read more

Presentation | Global Privacy Roundup at UT Austin Tech Law Conference

May 27, 2022

By Amanda Witt

Kilpatrick Townsend attorney, Amanda Witt, participated on a panel concerning Global Privacy at the recent UT Austin Tech Law Conference. Amanda spoke alongside others in the industry to provide insight on privacy laws and how they might impact your business...read more

Mystic Privacy: Connecticut's New Law Makes It Clearer

May 13, 2022

By Jon Neiditz, Amanda Witt, John Brigagliano, Jennie Cunningham, & Alex Borovsky

Connecticut's new privacy law, an Act Concerning Personal Data Privacy and Online Monitoring, also known as the Connecticut Data Privacy Act ("CTDPA"), generally continues the pattern of non-California states enacting comprehensive privacy laws of evolving rights and obligations without a private right of action, but some of the differences are interesting. Like the Colorado Privacy Act, the CTDPA will go into effect on July 1, 2023...read more

Guarded Optimism on EU-US Data Transfers: The EU and US Announce Trans-Atlantic Data Privacy Framework

May 9, 2022

By Jennie Cunningham & Amanda Witt

The EU and US recently announced that they have reached "an agreement in principle" on a new framework to enable EU-US data transfers following the highly impactful EU ruling that dismantled the prior Privacy Shield framework...Data privacy observers and practitioners are all too familiar with the Court of Justice of the European Union's (in)famous decision to invalidate the EU-US Privacy Shield in July 2020, in the "Schrems II" case. Organizations have spent nearly two years grappling with the implications of the decision, which are still not fully understood, including, many would argue, by the Court itself...read more

7 Key Takeaways | Coexisting: Synergies and Tensions Among Open Source Software, Privacy, and Patents

April 18, 2022

By Michael Pavento, Stephen Dew & Tony Glosson

Kilpatrick Townsend's Michael Pavento, Stephen Dew, and Tony Glosson, recently spoke on a panel at the firm's annual Kilpatrick Townsend Intellectual Property Seminar on the topic of "Coexisting: Synergies and Tensions Among Open Source Software, Privacy, and Patents." The panel discussed the use and licensing of open source software and the patent and privacy law implications of doing so. Topics covered included the special considerations in open source software licensing. They also addressed data breaches involving open source software and breach response best practices...read more

Employee Benefits

HHS Releases Privacy Rule Guidance Regarding Abortion-Related Disclosures

July 18, 2022

By Martha Sewell & Mark Stember

Following the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, the Department of Health and Human Service (HHS) has issued several pieces of guidance regarding protections for an individual's access to abortion and other reproductive health care. The first piece of guidance, released on June 29, 2022, addresses when the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule allows an unauthorized disclosure of an individual's protected health information (PHI) relating to abortion and other reproductive health care for non-health care purposes...read more

Secure Act 2.0: Summary of Key Provisions

June 27, 2022

By Sterling Perkinson & Peter Daines

The House and Senate are moving forward on several versions of legislation, which are collectively known as the "Secure Act 2.0" because they would build off of the Secure Act, the last major retirement plan legislation enacted at the end of 2019. This Legal Alert describes a number of key provisions in these bills that may affect employers sponsoring qualified retirement plans or 403(b) plans...read more

IRS Announces Pre-Audit Compliance Pilot Program

JD Supra | **June 6, 2022**

By Peter Daines & Sterling Perkinson

On June 3, 2022, the IRS announced a new pre-audit compliance program for retirement plans beginning immediately in June 2022 (the "Pilot Program"). Under the Pilot Program, the IRS will send a pre-audit letter to plan sponsors whose retirement plans have been selected for upcoming audits and the plan sponsor will have 90 days to identify and correct any compliance issues with their plans and to notify the IRS of the corrective actions taken...read more

Understanding the Impact of Russian Sanctions on Retirement Plans

JD Supra | **May 27, 2022**

By Peter Daines & Sterling Perkinson

On February 24, 2022, Russia began a large-scale invasion of Ukraine. In response, the United States and other countries have imposed sanctions on a broad range of financial transactions that affect Russia. Pension and 401(k) plans may have exposure to Russian markets either directly through equity securities or bonds or through emerging market or other collective funds...read more

Brokerage Window Fiduciary Duties in Light of DOL Cryptocurrency Guidance

May 2, 2022

By Peter Daines & Sterling Perkinson

The DOL's recent warning that it is launching a new investigative program aimed at plans that offer investments in cryptocurrency and related products, including through brokerage windows, sent shockwaves through the 401(k) plan community. Apart from much-debated questions about the prudence of investing in cryptocurrency assets, the DOL's statement was alarming because it could be read to suggest that plan fiduciaries may be responsible for particular investments offered through a brokerage window...read more

Retail & Consumer Goods

5 Key Takeaways | Emerging Technology in Retail and Consumer Goods

June 22, 2022

By Farah Cook & Jeff Connell

Kilpatrick Townsend's Farah Cook and Jeffrey Connell recently presented on the topic of "Emerging Technology in Retail and Consumer Goods." Innovative technologies continue to alter the retail and consumer goods space, especially following rapid adoption and advancement during the pandemic. Ms. Cook and Mr. Connell examined three key transformative technologies—facial recognition, voice technology, and virtual reality—that promise to shape business risk allocation through their impact on the regulatory and legal environment...read more

Recent Updates to the Federal Trade Commission's Endorsement Guides

June 16, 2022

By Barry Benjamin & Bryan Wolin

The Federal Trade Commission's crackdown on misleading and deceptive endorsement practices continues, this time with a set of proposed updates to the Endorsement Guides. The FTC's May 19th proposals come hot on the heels of its recent "Notices of Penalty Offenses" issued to hundreds of major companies, and reinforce FTC's ongoing interest in trying to clean up the social media endorsement landscape...read more

U.S. Expands Russia Export Restrictions and Sanctions Targeting Additional Services to Russia

May 16, 2022

By Mauricio Escobar, Raymond Aghaian, Adria Perez, & Gunjan Talati

On Sunday, May 8, 2022, the Secretary of the Treasury issued two determinations pursuant to the authority granted by the U.S. President in Executive orders 14024 and 14071 that extend the prohibitions in those Executive orders to include the accounting, trust and corporate formation services, and management consulting sectors of the Russian economy. Additionally, on May 9, 2022, the U.S. Department of Commerce's Bureau of Industry and Security issued a final rule expanding the scope of export restrictions to sectors of the Russian economy...read more

4 Key Takeaways | The Modern Innovative License: Creative Monetization Strategies for Your Brands

May 13, 2022

By Marc Lieberstein

On May 2, 2022, Marc Lieberstein, a Brand Licensing and Franchising Partner at Kilpatrick Townsend moderated a panel at the International Trademark Association 2022 Annual Meeting titled: **"The Modern Innovative License: Creative Monetization Strategies for Your Brands."**...Marc and the panelists engaged in a lively discussion around new ways brands are monetizing that include traditional and nontraditional values and through unique relationships that did not exist a few years ago – collaborations, celebrities, live and virtual influencers, social media, and the Metaverse...read more

Technology Transactions

Data Licensing | Five Takeaways from the New York City Bar Association's Continuing Legal Education Program on Intellectual Property Licensing 101

May 13, 2022

By Barry Benjamin

Barry M. Benjamin, managing partner of the New York office and chair of Kilpatrick Townsend's Advertising and Marketing group, was honored to present at the New York City Bar Association's continuing legal education program, Intellectual Property Licensing 101. The session covered data licensing, and discussed two primary issues – how to protect data as an asset, and how to license data. The session was intended as a "basics" program, giving a broad, generalized overview of the legal issues involved with licensing data...read more

Drafting & Navigating Dispute Resolution Clauses

April 26, 2022

By Rich Keshian, Chad Hansen & Will Joyner

Courts and litigants are increasingly using Alternative Dispute Resolution procedures, rather than jury trials, to resolve disputes...watch now

Force Majeure Revisited

JD Supra | **April 18, 2022**

By Tom Allen

Recorded at the beginning of the pandemic in 2020, Kilpatrick Townsend Partner Thomas G. Allen discusses the elements of force majeure as seen through the lens of successfully representing a client in a nine-figure force majeure dispute...watch now

Energy

Update – President Biden Pauses Import Duties on Solar Cells and Modules Under Investigation by International Trade Administration

June 15, 2022

By John Livingston, Mark Riedy, Tom Allen, Kurtis G. Anderson, & Stephen M. Anstey

On June 6, 2022, President Biden took executive action to pause antidumping and countervailing import duties on solar cells and modules from countries currently the subject of a circumvention inquiry (Inquiry) by the International Trade Administration (ITA) of the U.S. Department of Commerce. As previously reported, the Inquiry, which was published by the ITA on April 1, 2022, was initiated at the request of U.S.-based solar manufacturer Auxin Solar, Inc. and concerns the assertion that crystalline silicon (c-Si) photvoltaic cells and modules being “completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China” are circumventing “U.S. antidumping duty and countervailing duty orders.”...read more

Government Relations

North Carolina General Assembly Updates

July 8, 2022 - May 16, 2022

By Ches McDowell, Fritz Vaughan, Nelson Freeman, Hampton Billips, John Easterling, Lauren Henderson, & Amanda Honaker

KTS Strategies LLC brings years of experience providing clients in a diverse range of industries with comprehensive policy and advocacy advice before federal, state, and local agencies. In North Carolina, we advise local municipalities, corporate transportation entities, nonprofit organizations, statewide associations, government vendors, and Fortune 500 companies before the North Carolina General Assembly and executive branch. In Washington, D.C. and Atlanta, we bring a wealth of collective knowledge and experience in business and government affairs. Provided are weekly updates covering a variety of topics...read more

3 Key Takeaways | OFAC Enforcement Actions Thus Far in 2022

June 16, 2022

By Mauricio Escobar

The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) has been busy thus far in 2022 implementing regulations and issuing guidance related to sanctions against Russia. Despite that activity, we should not ignore the enforcement actions OFAC has publicly disclosed related to apparent violations of its sanctions programs...read more

Environmental, Social and Governance (ESG)

SEC Settles First Major Enforcement Action Related to ESG Investment Disclosures

JD Supra | **May 26, 2022**

By Thomas Cain & Kate McCurry

The Securities and Exchange Commission (the "SEC") has regularly emphasized its focus on environmental, social, and governance ("ESG")-related investing and the importance of registrants having accurate disclosures on ESG matters, so it is not surprising that the SEC recently issued its first order sanctioning a registrant for misleading ESG-related disclosures and failing to enforce disclosed ESG-policies...read more

The SEC's Proposed Climate Change Rule: What Should Your Next Steps Be?

April 13, 2022

By Todd Roessler

Described as "a watershed moment for investors and financial markets" by Commissioner Allison Herren Lee, on March 21, 2022, the U.S. Securities Exchange Commission released a 506-page proposed rule requiring public companies to disclose their direct and indirect carbon emissions and climate-related physical and transitional risks in their registration statements and annual reports...read more

Franchising

3 Key Takeaways | 2022 Edition: Is Franchising Doomed?

July 12, 2022

By Chris Caiaccio & Marc Lieberstein

On June 28, Kilpatrick Townsend's Marc Lieberstein, Franchise and Licensing Partner, and Chris Caiaccio, Labor and Employment Counsel, spoke to Kilpatrick's Retail and Consumer Goods Industry Team clients, on the topic of whether franchising was doomed in light of the new laws and pending legislation that may significantly impact the manner in which franchising parties operate....read more

Tax

5 Key Takeaways | SALT and Multinational Businesses

June 8, 2022

By Jeff Reed

On June 2nd, Kilpatrick Townsend State and Local Tax partner Jeff Reed participated in a Strafford webinar titled SALT and Multinational Businesses. The webinar discussed state and local tax consequences of international transactions. Here are five key takeaways from the presentation...read more

Firm News

Vita Zeltser Aids Fellow Ukrainians In War Relief Effort

Jeff Reed quoted: "NY Draft Rules Seek Hedge Fund Sourcing Change, Crypto Tax"

Kilpatrick Townsend recognized as Law Firm of the Year by 2022 *Georgia Legal Awards*

Corporate Department attorney, Eric Charity, recognized as On The Rise lawyer by 2022 *Georgia Legal Awards*

Benjamin Smith, Leading Energy Regulatory Attorney, Joins Kilpatrick Townsend

The Law 360 400: Tracking the Largest US Law Firms

Kilpatrick Townsend referenced: "Atlanta Law Firms' Summer Classes Get Big and Busy This Year"

Kilpatrick Townsend Receives Top Rankings in 2022 *Legal 500 US*, including M&A and Outsourcing

Sterling Perkinson and Peter Daines quoted: "Understanding the IRS' New Pre-Audit Letter Program"

Kilpatrick Townsend Receives High Recognition from *Chambers Global* 2022

Nine Kilpatrick Townsend Attorneys Recognized on the 2021 Capital Pro Bono Honor Roll

Gary Bronstein quoted: "Banks increasingly look to noninterest income to bolster revenue"

Kilpatrick Townsend referenced for launching KTS Strategies as a wholly owned subsidiary focused on assisting clients with both advocacy and business strategy across both state and federal governments

Kilpatrick Townsend Attorneys Claim 80 Individual Rankings in 2022 *Chambers USA*

Digital Assets Regulation Blog released on June 1, 2022 Subscribe Today!

[Henry Walker quoted: "What Perks Work? How Law Firms Are Enticing Employees to the Office"]

[Regan Adamson Recognized as Member of Inaugural “Emerging Leaders” Class]

[Kilpatrick Townsend referenced: "With 'Booming' Practices, Georgia's Largest Law Firms Expanded Their Partner Promotions"]

[Kilpatrick Townsend counsels Columbia Bank in RSI Bank acquisition]

[Jeff Reed quoted: "NY Draft Rule Mirrors MTC Stance on Online Biz Tax Buffer"]

[Gary Bronstein quoted: “Increased regulatory scrutiny puts pause on large bank M&A”]

Recent Transactions

Sanctuary Wealth Secures $175 Million Investment
June 30, 2022

Represented Sanctuary Wealth, an independent wealth management platform, in securing a $175 million investment from Kennedy Lewis Investment Management.

Sandy Spring Bancorp Sells Its Insurance Business to Hub International Ltd.
June 1, 2022

Represented Sandy Spring Bancorp, a banking company, in the sale of its insurance business to Hub International Limited, a leading global insurance brokerage and financial services firm.

CRH Divestment of Building Envelope to KPS Capital Partners
April 29, 2022

Advised CRH, plc on the divestiture of its Building Envelope business to KPS Capital Partners, LP for an enterprise value of $3.8 billion. The divested business comprises CRH’s entire Building Envelope business, which provides architectural glass, storefront systems, architectural glazing systems, and related hardware to customers primarily in North America.

Vega Consulting Acquires Volt Information Systems
April 25, 2022

Advised Vega Consulting, Inc. and its affiliate, American CyberSystems, Inc., a global provider of information technology solutions and services, in connection with their acquisition of Volt Information Services (NYSE American: VOLT), a global provider of staffing services, by means of public tender offer. The transaction represented approximately a 2x premium to the prevailing market price at the launch of the tender offer. Financing for the transaction was provided by Bank of America, Bank of Montreal and Fifth Third Bank.

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To view our latest Quarterly IP Digest, please click here.