KILPATRICK TOWNSEND

July 27, 2023

Corporate Connection

A quarterly recap of policy, laws & trends

In This Issue:

Financial Services

Legislation Advances to Hold Senior Executives Accountable When Banks Fail

June 26, 2023

By Eric Kracov

The Senate Banking, Housing, and Urban Affairs Committee approved legislation on June 21, 2023 with bipartisan support that would provide federal bank regulators with enhanced powers to hold senior executives directly accountable when their bank falls out of regulatory compliance or fails. The "Recovering Executive Compensation From Unaccountable Practices Act" or the RECOUP Act, creates broader authority for regulators to (i) ban "senior executives" from the industry and (ii) claw back compensation and stock trading profits from senior executives. In addition, the legislation mandates explicit governance standards to promote safety and soundness and responsible bank management...read more

Japan Central Bank Digital Currency (CBDC) – Bank of Japan Completes Proof of Concept and Begins Pilot for Japanese CBDC

June 22, 2023

By Kurtis Anderson, Stephen Anstey & Michael Breslin

The Bank of Japan has completed its two-year proof-of-concept research for its prospective central bank digital currency (CBDC) and has now launched a pilot program. This makes Japan one of the largest economies in the world to advance to the pilot stage of CBDC development. Financial experts predict that $5 trillion in CBDCs will be circulating through the hands of up to 4 billion people by 2030. As the third largest economy, the potential adoption of a digital yen will have significant implications for global financial systems and the advancement of digital asset financial technology...read more

5 Key Takeaways | Risks Facing Banks Today

June 21, 2023

By Gary Bronstein

Kilpatrick Townsend's Gary Bronstein recently joined a panel of other industry leaders at "The Bank Director: Bank Audit and Risk Conference". The panel discussed the countless risks facing banks today and what banks can do to mitigate risks as efficiently and effectively as possible. The conference could not have been scheduled for a better time now that the bank regulators are being more assertive about scrutinizing risk at all banks following the recent bank failures. The audience was primarily comprised of bank directors who sit on audit and risk committees...read more

In Cross River Consent Order, FDIC Focuses on Marketplace Lending and Third Party Lending Issues

May 17, 2023

By Chris Gattuso, Gary Bronstein, Ross Speier, & Agnes Trenche Mora

The Federal Deposit Insurance Corporation ("FDIC") recently entered into a consent order with Cross River Bank ("CRB") addressing what the FDIC considered to be unsafe and unsound banking practices associated with CRB's fair lending compliance...read more

6 Key Takeaways | Succession Planning in the Current Banking Environment

May 17, 2023

By Ed Olifer & Suzanne Walker

Ed Olifer and Suzanne Walker recently presented on "Succession Planning in the Current Banking Environment: Preparing a Game Plan for Unexpected Changes, Retirement, Retention and Regulator" at the Massachusetts Bankers Association 2023 Annual Conference...read more

5 Key Takeaways | Digital Assets (Cryptocurrencies, Stablecoins, Tokenization, and CBDCs) and Distributed Ledger Technology

May 9, 2023

By Stephen Anstey & Michael Breslin

With the rapid expansion and adoption of digital assets (cryptocurrencies, stablecoins, tokenized assets, and central banks digital currencies) and distributed ledger technology, companies of all types are being asked to address and interact with these growing spheres. These interactions, while increasingly necessary, are complicated by opaque compliance requirements, evolving regulations, pending legislation, shifting global standards, and increasing use cases. This piece provides key takeaways arising from our previously published articles: The State of Digital Assets Regulation and Foundational Terminology (the fifth most read article on JD Supra in January 2023) and A Brief Primer on Cryptocurrencies, Stablecoins, Tokenization, and Central Bank Digital Currencies (the twelfth most read article on JD Supra in April 2023)...read more

Regulators Offer Candid Assessment of the Root Causes for SVB and Signature Failures

May 9, 2023

By Eric Kracov, Chris Gattuso, Gary Bronstein, Ed Olifer, & Steve Donahoe

A toxic combination of poor risk management and poor regulatory supervision proved fatal for Silicon Valley Bank ("SVB") and Signature Bank ("Signature"), according to a series of reports released on April 28, 2023 by federal and state regulators. The reports (by the Federal Reserve Board for SVB and the Federal Deposit Insurance Corporation and New York Department of Financial Services for Signature) provide a unique window into the progressive deterioration of each bank, the confluence of events that resulted in failure and the deficiencies in regulatory oversight that contributed to their failure...read more

Technology Transactions

Key Takeaways | Interparty Considerations and Collaborations: Navigating IP Due Diligence and Joint Development Agreements with Third Parties

June 20, 2023

By Farah Cook

Kilpatrick Townsend recently held its annual KTIPS (Kilpatrick Townsend Intellectual Property Seminar). Firm attorneys led a day of interactive discussions with clients on the latest developments in intellectual property law and their impact on patent and trademark strategies. Kilpatrick Townsend attorneys Farah Cook, Edgar Callaway, and Maha Khalaj along with Cecilia Andrews (Director of IP, Assistant General Counsel for Novelis) presented a session on "Interparty Considerations and Collaborations: Navigating IP Due Diligence and Joint Development Agreements with Third Parties."...read more

Multiple Vendors and the System Integrator Role

LexisNexis | *Practical Guidance®* | **June 2, 2023**

By Sonia Baldia

Many companies expand IT infrastructure on an incremental basis by purchasing computers, acquiring software licenses and subscribing to data transport facilities as business needs dictate and as budgets allow. As the IT infrastructure and its configuration become more complex over time, the customer must be assured that new equipment and software will not only meet the customer's functional specifications but will deliver that functionality seamlessly and as part of an integrated system. At some point however, whether due to rapid business expansion, the need to comply with new government regulations or obsolescence, a customer may need to rebuild or significantly augment large segments of its IT infrastructure used to support mission critical business operations. The business strategy may call for sourcing new equipment from multiple vendors. It also may call for having the revamped system up and running within a short period of time...read more

Software Source Code Escrow Agreement Checklist

LexisNexis | *Practical Guidance®* | **June 1, 2023**
By Sonia Baldia

A software source code escrow agreement is a contract that governs the deposit and storage of the source code, documentation, and other essential materials (Deposit Materials) of a specific software application in escrow. This agreement usually refers to a customer (or licensee) as the beneficiary, a software provider (or licensor) as the depositor, and a third party storing the Deposit Materials as the escrow agent. This checklist highlights key issues in drafting and negotiating a software source code escrow agreement..read more

Software Development Agreement Checklist (Pro-Developer)

LexisNexis | *Practical Guidance®* | **May 25, 2023**
By Sonia Baldia

A software development agreement is a contract for the design, development, testing, installation, and implementation of custom software, or maintenance or modification of currently existing software. This checklist highlights key issues, from the developer's perspective, in drafting and negotiating a software development agreement...read more

Software Development Agreement Negotiating and Drafting

LexisNexis | *Practical Guidance®* | **May 24, 2023**
By Sonia Baldia

A software development agreement is a contract for the design, development, testing, installation, and implementation of new or customized software, including modification of currently existing software (collectively, referred to as "custom software"). Ongoing maintenance for the custom software may also be included in the agreement, depending on the scope of the project. This practice note addresses key issues in drafting and negotiating an agreement for the development of custom software between a customer and a company engaged in the business of software development...read more

10 Key Takeaways | Negotiating Data-Related Issues in SaaS PaaS and IaaS Cloud Contracts

May 1, 2023
By Sonia Baldia & Jeff Connell

Kilpatrick Townsend attorneys Sonia Baldia and Jeff Connell recently presented at the "Association of Corporate Counsel Dallas-Fort Worth: 2023 Annual In-House Symposium" in Frisco, Texas. As businesses continue to accelerate cloud adoption and digital transformation efforts, in-house legal counsel must protect one of their company's most valuable assets: data. Data is an increasingly complex topic that permeates throughout various provisions of a potential cloud transaction, and navigating the contractual controls is largely dependent on the applicable cloud solution or technology at hand, whether SaaS, IaaS, or PaaS. Their session offered practical guidance on how to effectively navigate the risks inherent to data and provide strategies to negotiate cloud agreements that better address and protect valuable data...read more

Franchising

As the Marketplace Evolves, is Your Latin American Franchise Ready for the U.S.A.?

JD Supra | **June 16, 2023**
By Marc Lieberstein

Attorneys representing Latin American brands in the United States should understand that entry into the US market requires careful strategy, planning and due consideration for the variety of legal issues that arise from compliance with overlapping or conflicting U.S. federal, state, and local laws. This article will address legal, business, and marketplace considerations for in-bound Latin American franchise systems entering the United States in 2023 and the numerous issues U.S. attorneys should be prepared to address...read more

Energy

North Carolina’s House Bill 130: Energy Choice/Solar Decommissioning Requirement - Now in Effect

June 30, 2023

By John Livingston & Benjamin Smith

As we predicted, North Carolina’s House Bill 130 became law on midnight, June 24, 2023, as a result of Governor Roy Cooper electing not to take action on the ratified house bill. Ben Smith highlights the important facts of this legal alert in this 4-minute video...read more

North Carolina’s General Assembly ratifies House Bill 130: Energy Choice/Solar Decommissioning Requirements – Now it goes to Governor Cooper’s Desk for final review and action

June 15, 2023

By John Livingston & Benjamin Smith

North Carolina’s General Assembly enacted significant two-pronged legislation that restricts the ability of municipalities to regulate the use of energy and places new statewide requirements on decommissioning of utility-scale solar plants. Governor Cooper has ten days from the ratification on June 14, 2023, to veto or sign the legislation. If the Governor takes no action during this time, the legislation will become law despite the inaction. The Governor has not publicly stated his intent with respect to this legislation; however, it passed both chambers with a large, bipartisan majority, meaning it is likely to become law...read more

Regulated Markets, Generation Planning, and Carbon Reduction: The Ongoing North Carolina Case Study

JD Supra | **June 14, 2023**

By Benjamin Smith

Counsel Benjamin Smith presented an ePoster on North Carolina’s Carbon Plan and the future of generation planning in the state during the American Clean Power Association's (ACP) 2023 CLEANPOWER conference in New Orleans...watch now

Cybersecurity, Privacy & Data Governance

A U.S. Data Privacy Law Update: Data Transfers, Delayed CCPA Regulatory Enforcement, and Data Privacy Laws Galore!

July 18, 2023

By Amanda Witt, John Brigagliano & Alex Borovsky

The pace of privacy developments in 2023 has been breathtaking. Since our recent alert regarding Iowa’s comprehensive data privacy law and Colorado’s finalized rules, there have been a number of key developments in data privacy law in the U.S. This article provides a high-level overview of these developments. For any specific questions regarding how these developments may impact your organization, please contact us...read more

The Wild West of Health Data for Sale? Not So Fast!

June 26, 2023

By Jennie Cunningham, Jon Neiditz & Amanda Witt

The pandemic era ushered in exponential growth in the use of remote capabilities for all areas of life, with one of the most critical being the rise in telemedicine. Along with that expansion came an explosion in health-related apps and services, many of which purported to be “privacy-compliant,” “HIPAA-compliant,” or made similar claims. Many did not make any such claims. While the U.S. has a statutory framework in place to protect health information (HIPAA and the HIPAA Rule), HIPAA contains numerous exceptions, does not apply broadly outside the healthcare provider, carrier and health plan contexts, and is considered to be outdated and inadequate in some ways for the purposes of regulating the world of digital health apps and services...read more

5 Key Takeaways | Navigating the New Data Privacy Landscape

May 18, 2023

By Meghan Farmer, Alex Borovsky, Jennie Cunningham, Tony Glosson, & Zain Haq

Kilpatrick Townsend’s Meghan Farmer, Alex Borovsky, Jennie Cunningham, and Zain Haq recently presented “Navigating the New Data Privacy Landscape” at an event sponsored by the Association of Corporate Counsel Nation Capital Region Chapter. Blue Cross Blue Shield Association’s Associate General Counsel for Privacy Devi Mehta participated in the presentation. Companies and their in-house counsel have been preparing for and navigating a significant shift in the data privacy regulatory landscape. With new laws going into effect in multiple states, and others expected to follow, inhouse counsel need to understand the various statutes and implications in order to build strategic data privacy programs that best meet the needs of their businesses. The discussion offered practical guidance on compliance with the comprehensive U.S. data privacy laws with case studies, as well as recent trends in data privacy litigation...read more

Employee Benefits

More Relief from RMD Rules in 2023

July 18, 2023

By Sterling Perkinson & Rob Daily

The IRS provided more transitional relief in Notice 2023-54 (“2023 Notice”) for certain required minimum distributions. The 2023 Notice extends the transitional relief that the IRS previously issued in Notice 2022-53 and provides certain transition relief for participants who were born in 1951 and may have been impacted by recent legislative changes...read more

IRS Issues SECURE 2.0 Guidance on Expanded Availability of Self-Correction

May 26, 2023

By Peter Daines & Sterling Perkinson

The SECURE 2.0 Act of 2022 (“SECURE 2.0”) greatly expands the availability of self-correction of compliance failures involving employer retirement plans and IRAs. On May 25, 2023, the IRS issued Notice 2023-43, which clarifies the scope of the expanded self-correction program before the IRS updates its correction program, the Employee Plans Compliance Resolution System, for the SECURE 2.0 changes. The new notice does not address SECURE 2.0’s overpayment rules or special correction rules for automatic contribution arrangements. Please refer to our prior legal alert for a full description of the SECURE 2.0 correction rules...read more

Retail & Consumer Goods

FTC Updates its Endorsement Guides: How to Engage with Influencers in the Social Media Age

July 13, 2023

By Michele Floyd & Barry Benjamin

On the cusp of the July 4 holiday weekend, the Federal Trade Commission announced revisions to its Endorsement Guides, the first update since its 2009 predecessor. While the revised Endorsement Guides are not vastly different from the previous 2009 version, the FTC did increase the depth of guidance around disclosures, influencer engagement, reviews and testimonials, and how advertisers reach consumers in the new media landscape so dominated by social media...read more

Greenwashing Claims - Fashionable or Fashion Faux Pas?

June 12, 2023

By Barry Benjamin, Bryan Wolin & Shreya Desai

Consumers seem to want to buy products made from sustainable materials or made in sustainable ways. At least, companies seem to think that’s what consumers want, as they continue making claims about how environmentally friendly and sustainable their products and manufacturing processes are. Company claims and pronouncements about how green, sustainable, and eco-friendly they can be, however, are considered “greenwashing” – statements that are vague, overbroad, or subject to misinterpretation...read more

Investment Management & Broker-Dealer

SEC Adopts Amendments to Form PF

July 17, 2023

By Amanda Guarisco & Jeffrey Skinner

On May 3, 2023, the Securities and Exchange Commission (the “SEC”) adopted a new rule (the “Rule”) [i] that amends Form PF, the confidential reporting form for certain SEC-registered investment advisers to privately-offered investment funds, [ii] that provides the SEC and the Financial Stability Oversight Council (the “FSOC”) with information on the basic operations and strategies of the funds. The Rule primarily focuses on expanding reporting requirements in an effort to enhance the FSOC’s ability to monitor systemic risk and bolster the SEC’s regulatory oversight of the private fund industry...read more

Securities

SEC Adopts New Share Repurchase Disclosure Rules

May 18, 2023

By Katherine McClintock & Justin Heineman

On May 3, 2023, the Securities and Exchange Commission adopted amendments to modernize the disclosure requirements relating to repurchases of an issuer's equity securities. The amendments are intended by the SEC to "improve disclosure and provide investors with enhanced information to assess the purposes and effects of share repurchases." Set forth below is a summary of the key aspects of the amendments, along with thoughts and considerations for companies to consider in advance of the amendments' effectiveness...read more

Government Relations

North Carolina General Assembly Updates

July 21, 2023 - May 1, 2023

By Ches McDowell, Fritz Vaughan, Nelson Freeman, Hampton Billips, Ali Briggs, 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

Mergers & Acquisitions

Chinese Investment in the United States Remains Subject to Scrutiny by CFIUS but Advance Planning Can Lead to a Successful Outcome

June 7, 2023

By Gunjan Talati & Sara Fon Miller

Over the last few years, a security review committee for foreign investments into the United States has become almost a household name. Indeed, the Committee on Foreign Investment in the United States—or CFIUS—has even been referenced on popular TV shows such as Succession. Through previous alerts we have provided background on the CFIUS process and developments. Recent media coverage has focused on how CFIUS treats Chinese investments. The short version is that Chinese investment into the United States is still met with substantial scrutiny particular for advanced technology. This scrutiny is not expected to ease any time soon, so this alert provides practical guidance on steps to take during the deal process to improve the chances of a successful security review by CFIUS...read more

Firm News

Kilpatrick Townsend Partner, Mark Wincek, named in *Business Today's* Top 10 Influential Employee Benefits & Executive Lawyers in D.C.

Kilpatrick Townsend ranked among the top 60 firms in the country in *The American Lawyer's* 2023 Pro Bono Scorecard

Kilpatrick Townsend Partner, Justin Heineman, named in BTI Client Service All-Stars 2023

Kilpatrick Townsend Impact Summary with Pro Bono Partnership of Atlanta

Kilpatrick Townsend Earns Top Rankings in 2023 *Legal 500 US*

Kilpatrick Townsend Attorneys Earn Record Number of Rankings in 2023 *Chambers USA*

Kilpatrick Townsend Partner, Farah Cook, is the Feature Story for *Best Lawyers*' 2023 Edition of *Women in the Law*

Kilpatrick Townsend Partner, Lois Colbert, honored in the Class of 2023 "Leaders in the Law" by *North Carolina Lawyers Weekly*

Kilpatrick Townsend Partner, Jon Neiditz, quoted in *The Atlanta Lawyer* article (page 14): "ChatGPT – What's the Buzz?"

Kilpatrick Townsend serves as counsel to Gouverneur Bancorp, Inc. in its Plan of Conversion and Reorganization

President Biden Names Farah Cook in Announcement of Key Appointments to Boards and Commissions

Kilpatrick Townsend Adds Prominent Funds/Specialty Finance Partner, Steven Huttler, to Growing Investment Management & Broker-Dealer Team

Meet New Kilpatrick Townsend Partner, Edwin Garrison | Real Estate Finance & Capital Markets

Kilpatrick Townsend Partners, Steve Berlin and Lois Colbert, named to the *Business North Carolina* "Power List 2023"

Kilpatrick Team brings value to New Fashion Start Up; earns client shout out in *Cosmopolitan*

Recent Transactions

RaceTrac's subsidiary, Metroplex Energy, to Acquire Gulf Oil LLC

July 2023

Represented RaceTrac and its subsidiary, Metroplex Energy, in the pending acquisition of Gulf Oil LLC. As part of the transaction, RaceTrac will acquire Gulf's nationally recognized fuel brand across the United States and U.S. territories, all of Gulf's branded distributor and license agreements for the approximately 1,200 Gulf-branded locations across the United States and Puerto Rico, and the exclusive rights to market fuel at Gulf's retail locations along the Massachusetts Turnpike.

The Community Financial Corporation Successfully Merges with Shore Bancshares, Inc.

July 2023

Represented The Community Financial Corporation in a Merger of Equals with Shore Bancshares, Inc., effectively combining two premier banks to create one of Maryland's top community banks.

Floor & Decor Subsidiary Acquires Salesmaster Flooring Solutions

June 2023

Represented Floor & Decor, a "big box" retailer with locations throughout the United States, and its wholly owned subsidiary, Spartan Surfaces, in the acquisition of Salesmaster Flooring Solutions, a leading flooring and installation supplies distributor servicing the Northeastern part of the United States.

Piedmont Financial Holding Company Agrees to Acquire Wake Forest Bancshares, Inc.

June 2023

Represented Wake Forest Bancshares, Inc. in its pending acquisition by Piedmont Financial Holding Company, bringing together two historic banking institutions to create one of the largest privately sourced community foundations in the Wake Forest area.

Johnson Controls Acquires M&M Carnot

June 2023

Represented M&M Carnot, a leading provider of natural refrigeration solutions with ultra-low global warming potential (GWP) and a portfolio company of Source Capital, in its disposition to Johnson Controls.

CAB Worldwide LLC Completed Growth Recapitalization Led by Heritage Growth Partners LLC

May 2023

Represented CAB Worldwide LLC, a global engineering, manufacturing and supply chain management business that provides precision machined steel, iron and aluminum cast, forged and fabricated components and assemblies to original equipment manufacturers and distributors, in its recent growth recapitalization led by Heritage Growth Partners LLC.

Flow Automotive Acquires Five Dealerships in Virginia

April 2023

Represented Flow Automotive in its acquisition of five dealerships in Charlottesville, Virginia, representing the following automotive brands: Mercedes-Benz, Toyota, Honda, Subaru, and Chrysler, Jeep, Dodge, Ram.

Ankura Trust Completes "Uptier" Credit Facility Transaction with Multi-Level Marketing Skincare Giant

April 2023

Represented Ankura Trust in the completion of an "uptier" credit facility transaction with a multi-level marketing giant specializing in skincare products.

New Corporate Attorneys

Shlomo (Steven) Huttler
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Steven Huttler has extensive experience in corporate, finance, investment fund, securities, and family office matters, including the representation of U.S. and foreign investment funds, large corporate issuers, underwriters and family offices, in various registered public and private offerings of debt and equity securities totaling in excess of $15 billion.

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Catherine Zhu focuses her practice on corporate mergers, acquisitions, and private equity transactions.

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