

July 22, 2021



In This Issue:

- [Cybersecurity, Privacy & Data Governance](#)
- [Employee Benefits](#)
- [Financial Services](#)
- [Franchising](#)
- [Retail & Consumer Goods](#)
- [Investment Management and Broker-Dealer](#)
- [Securities](#)
- [Tax](#)
- [Government Relations](#)
- [Energy](#)
- [Technology Transactions](#)
- [Firm News](#)
- [Recent Transactions](#)
- [Welcome New Corporate Attorneys](#)

Cybersecurity, Privacy & Data Governance

DOL's Cybersecurity Initiative: What Employers and Plan Fiduciaries Should be Doing to Protect Participant Data

July 21, 2021

By [Sterling Perkinson](#), [Jon Neiditz](#), [Peter Daines](#), & [Tony Glosson](#)

While all businesses have been grappling with cybersecurity challenges for years, cybersecurity has recently come into focus for retirement plans, health and welfare plans, and other ERISA plans due to a new Department of Labor ("DOL") cybersecurity initiative. As discussed in our previous blog post, the DOL issued several pieces of data privacy and cybersecurity guidance in April. The DOL has quickly followed up on this guidance by incorporating privacy and cybersecurity requests into its audits of employee benefit plans....[read more](#)

Monthly Minute | Trade Secret Protection Best Practices–Exit Interviews

July 16, 2021

By [Joel Bush](#)

Studies in recent years have shown that in over 90% of trade secret cases filed in state court, the misappropriator was an employee or business partner of the trade secret owner. In one survey of 1,000 individuals who had recently changed jobs, over half admitted to taking confidential information from their prior employer...[watch now](#)

Colorado's New Comprehensive Privacy Law: a Downhill Effort for the For-Profit Sector. But, Non-Profits, Welcome to the Slopes!

July 9, 2021

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

The California Consumer Privacy Act ("CCPA") and Virginia's Data Protection Act ("CDPA") have created a snowball effect, encouraging Colorado to be the third state to enact comprehensive data privacy legislation. On July 7, Colorado governor Jared Polis signed the Colorado Privacy Act (the "CPA") into law....[read more](#)

Monthly Minute | Trade Secret Protection Best Practices—Employment and Confidentiality Agreements

June 23, 2021

By [Joel Bush](#)

Any information that is kept confidential--and that has economic value by virtue of its secrecy--can be a trade secret. However, organizations must engage in "reasonable measures" to maintain the confidentiality of their trade secrets, and there is no one-size-fits-all approach....[watch now](#)

Better Than Santa Clauses? New and Improved Standard Contractual Clauses (SCCs)! And a form DPA!

June 10, 2021

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

Long-awaited SCCs for EU Data Transfers Adopted by European Commission with 18-month Transition Period. The EU has a cross-border data transfer framework gift for you! On June 4, 2021, the European Commission ("EC") adopted two sets of standard contractual clauses ("SCCs") that businesses may use as a tool to comply with European cross-border data transfer requirements for transferring data outside of the European Economic Area ("EEA")...[read more](#)

Pitfalls To Avoid When Drafting And Enforcing NDAs

June 4, 2021

By [Sonia Baldia](#) & [Alex Borovsky](#)

Although seemingly commonplace, nondisclosure agreements have been subject to increasing litigation in recent years....[read more](#)

New Federal Cybersecurity Guidelines – How Does Your Organization Stack Up?

JD Supra | June 2, 2021

By [Aaron Gallardo](#)

In the wake of recent cybersecurity incidents of historical significance on May 12, 2021, President Biden issued an executive order to improve the federal government's efforts to "identify, deter, protect against, detect, and respond" to cybersecurity incidents....[read more](#)

Monthly Minute | Protecting Against Data Scrapers

May 4, 2021

By [Jeff Fisher](#)

Data scraping is the process of importing information from a website into a spreadsheet or local file, and in some cases, channeling that data to another website....[watch now](#)

Employee Benefits

Surprise! Biden Administration Releases Surprise Billing Guidance

July 16, 2021

By [Peter Daines](#) & [Mark Stember](#)

The Departments of Health and Human Services, Treasury, and Labor jointly released a package of guidance relating to the surprise billing reforms included in the Consolidated Appropriations Act, 2021 ("CAA"). The guidance package includes an interim final rule with a request for comments, a model notice (for group health plans and insurers), two fact sheets (one for consumers, the other for health plans and insurers), and a press release....[read more](#)

IRS Extends Remote Notarization Relief

June 28, 2021

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

On June 24, 2021, the Internal Revenue Service (“IRS”) released Notice 2021-40, which extended relief from the “physical presence” requirement for witnessing by plan representatives or notaries of spousal consents through June 30, 2022....[read more](#)

Mental Health Parity Compliance Becomes New Once Again

June 24, 2021

By [Mark Stember](#)

Since the passage of the original mental health parity requirements over two decades ago, mental health parity can be described as riding a porpoise as it dives in and out of the waters of compliance. However, with the passage of the Consolidated Appropriations Act, 2021 and new guidance from the Employee Benefits Security Administration, mental health parity can now be described as riding an endless wave of legal compliance....[read more](#)

ACA Survives Latest Supreme Court Challenge

June 17, 2021

By [Peter Daines](#) & [Mark Stember](#)

The Supreme Court released its opinion today in a highly anticipated third challenge to President Obama’s signature health care law, the Patient Protection and Affordable Care Act (“ACA”)....[read more](#)

Health Savings Account Contributions Increase and ACA Maximums Decrease for 2022

May 10, 2021

By [Mark Stember](#)

Today, the Internal Revenue Service announced increases to the health savings account contribution limits for 2022. HSA contributions increased from \$3,600 to \$3,650 for 2022 self-only coverage, and from \$7,200 to \$7,300 for 2022 family coverage....[read more](#)

New MHPAEA Compliance Requirements--FAQs Released

April 18, 2021

By [Karen Martinez](#) & [Peter Daines](#)

The Consolidated Appropriations Act, 2021 amended the Mental Health Parity and Addiction Equity Act (“MHPAEA”) to add several provisions designed to facilitate and strengthen compliance with that law. Among other things, group health plans and insurers are required to perform, document, and disclose comparative analyses of the design and application of non-quantitative treatment limitations (NQTs) for mental health and substance use disorder benefits (“MH/SUD Benefits”) in the plan....[read more](#)

Financial Services

Partner Gary Bronstein Quoted in S&P Global Market Intelligence Article

S&P Global Market Intelligence | July 9, 2021

By [Gary Bronstein](#)

Partner Gary Bronstein was quoted in the S&P Global Market Intelligence article, "US bank M&A bounces back in H1 with advisers expecting even more in H2"....[read more](#)

Franchising

Is Franchising Being Threatened (Again)?

New York Law Journal | June 7, 2021

By [Marc Lieberstein](#), [Kitt Shipe](#) & [Chris Caiaccio](#)

There is new legislation being proposed at state and federal levels that seeks to address a myriad of wage and labor issues resulting from the pandemic. It's important to know what the legislation provides, consider the consequences, and determine the manner in which franchising parties may avoid or mitigate them, if necessary....[read more](#)

5 Key Takeaways | Franchise Laws and Your Trademark Practice

April 26, 2021

By [Marc Lieberstein](#), [Jason Adler](#), [Janaki Parmar](#), & [Peter Snell](#)

On April 14, Marc Lieberstein joined other speakers to present a webinar for the International Trademark Association, providing an overview of U.S., Canadian, and international franchising, the importance of compliance with federal, state, and local laws governing franchising, the valuable role of trademarks and other IP assets for franchisors, and how to spot the "accidental franchise" in other related IP transactions....[read more](#)

Retail & Consumer Goods

5 Key Takeaways | Crown Jewels – The Power of Brand Licensing And Collaborations in the Fashion and Entertainment Industries

April 21, 2021

By [Marc Lieberstein](#), [Jay Dubiner](#), [Avery Fischer](#), [Michael Neuman](#), & [Ricardo Yoselevitz](#)

On April 8, Marc Lieberstein participated in a panel for the Cardozo School of Law FAME Law Center, discussing how licensing has become a crucial growth engine for the fashion and entertainment industries and how licensing collaborations have helped brands achieve market power and increase brand value....[read more](#)

Investment Management & Broker-Dealer

New FINRA Filing Requirements for Private Placement Recommendations; More Private Offering Regulatory Restrictions Likely

July 16, 2021

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

On July 15, 2021, FINRA announced that it has updated its rules regarding the offering of private placement securities to expand the existing requirement that each broker-dealer that issues and/or sells a private placement submit a copy of the offering documents (and any subsequent, materially amended versions thereof) before the document's first use or the securities' first sale or notify FINRA that no such offering documents were used....[read more](#)

SEC Sanctions Firm for Policies that (Theoretically Could Have) Curtailed Whistleblowers

June 25, 2021

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

On June 23, 2021, the U.S. Securities and Exchange Commission (the "Commission") entered an administrative order (the "Order") that, among other things, fined a broker-dealer ("BD") \$208,912 for alleged violations of Rule 21F-17(a)...[read more](#)

Securities Regulators Focus on Forgivable Recruitment Loans/Bonuses, Social Media Influencers, and Rescission Offers

June 9, 2021

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

In recent weeks, we have observed significant new developments in securities regulation related to two enforcement actions by the U.S. Securities and Exchange Commission (the "Commission") and an unexpected (and, to our knowledge, unprecedented) new rule adopted by a state securities regulator...[read more](#)

SEC Expands Focus on ESG-Related Products

June 8, 2021

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

On April 9, 2021, the SEC's Division of Examinations (f.k.a. OCIE) (the "Division") released a risk alert (the "Alert") highlighting observations from exams of registered investment advisers ("RIAs"), registered investment companies, and private funds recommending or offering environmental, social, and governance ("ESG")-related investment products and services...[read more](#)

Insights into the States' 2021 BD Examination, Enforcement Priorities

May 20, 2021

By [Lauren Jackson](#), [Waylon Bryson](#) & [Ali Fenno](#)

The implementation date for Regulation Best Interest (“BI”) has come and gone, and as the leaders of the U.S. Securities and Exchange Commission (“SEC”) have been installed by the new Biden administration, the new SEC’s priorities have emerged...[read more](#)

ICI Releases Form of Fund of Funds Agreement to Assist with Rule 12d1-4 Compliance

April 23, 2021

By [Waylon Bryson](#), [Ali Fenno](#) & [Tom Steed](#)

The Investment Company Institute (“ICI”) recently published a sample form of fund of funds investment agreement (the “Form Agreement”) to assist registered investment companies and business development companies (“Registered Funds”) desiring to operate as funds of funds in compliance with the new Rule 12d1-4...[read more](#)

Securities

Recent Amendments to Exempt Offering Rules Include Significant Updates to “Integration” Framework

May 17, 2021

By [Justin Heineman](#), [Isabelle Dinerman](#) & [Vicky Liu](#)

On March 15, 2021, several previously-announced amendments to the Securities and Exchange Commission’s exempt offering rules took effect. The rule changes, which were first announced in November 2020, are designed, in the SEC’s words, to “harmonize, simplify, and improve the multilayer and overly complex exempt offering framework,” and to “promote capital formation and expand investment opportunities while preserving or improving important investor protections”....[read more](#)

Tax

Mid-Year Tax Update CLE

June 22, 2021

By [Lynn Fowler](#), [Heather Preston](#), [Jeff Reed](#), & [Rob Daily](#)

Join the Kilpatrick Townsend tax team for a CLE webinar as team members discuss issues they have seen in practice during the first half of 2021 and provide practical insights into those issues. Coverage will include tax treatment of international transactions, acquisition structures, and considerations for whether to make pass-through entity tax elections....[watch now](#)

4 Key Takeaways | Practical Insights on New Tax Issues

April 28, 2021

By [Lynn Fowler](#), [Heather Preston](#) & [Jeff Reed](#)

On March 23, Kilpatrick Townsend Tax Partners Lynn Fowler, Heather Preston, and Jeff Reed participated in a webinar hosted by the firm called Practical Insights on New Tax Issues. Here are 4 key takeaways from the webinar....[read more](#)

Government Relations

North Carolina General Assembly Update

July 16, 2021

By [Ches McDowell](#), [Nelson Freeman](#), [Amanda Honaker](#), [Hampton Billips](#), & [John Easterling](#)

Topics included in the most recent update on the activity at the NC General Assembly include proposed legislation to address anti-discrimination in the school curriculum, an energy bill that would speed up NC’s transition away from coal power plants, and criminal justice reform....[read more](#)

U.S. Department of the Treasury's \$350 Billion Coronavirus State and Local Fiscal Recovery Funds Program – Private Sector Support

May 26, 2021

By [John Loving](#) & [Stephen Anstey](#)

Earlier this month, the U.S. Department of the Treasury (Treasury) launched the \$350 billion Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds) program. The program, which is established under the \$1.9 trillion American Rescue Plan Act of 2021 (ARPA), allocates funding directly to state, local, territorial, and Tribal governments...[read more](#)

Small Business Administration's \$28.6 Billion Restaurant Revitalization Fund

May 11, 2021

By [John Loving](#) & [Stephen Anstey](#)

Qualifying restaurants, bars, and related small businesses that serve food or drink are eligible to receive up to \$10 million in grant funding under the \$28.6 billion Restaurant Revitalization Fund (RRF)...[read more](#)

Energy

Financing RNG Projects with Tax Exempt & Commercial Debt

Companies for Net Zero | May 20, 2021

By [Mark Riedy](#), [Allison Larr](#), [Dave Livingstone](#), & Russell Macpherson

Companies for Net Zero curated a very senior level group to speak on investing into Renewable Natural Gas expansion. Panelists discussed how developers can work with investors to make sure projects receive an early green light from the EPA, shared market intelligence and industry best practices, and guided regulators on the right information and data science to make informed decisions about legislation...[read more](#)

We Have the Technology, but Where is the Fuel?

International Cement Review | May 1, 2021

By [Mark Riedy](#), [Gina Lotito](#), Mike Saeger, & [Herb Case](#)

FLSmith arranged a roundtable towards the end of March 2021 among cement producers, fuel suppliers, and other interested parties to discuss alternative fuels (AFs) utilisation in the US...[read more](#)

A Game Changer for Financing Clean Energy Projects

Biomass Magazine | April 27, 2021

By [Mark Riedy](#)

Key changes have been made to the U.S. DOE Title XVII Innovative Technology Loan Guarantee Program...[read more](#)

U.S. Congressional Briefing on Energy Storage Technology

ICC Foundation | April 16, 2021

By [Mark Riedy](#), [Kelly Speakes-Backman](#), [Senator Angus King](#), [Representative Mariannette Miller-Meeks](#), & [Aram Zamgochian](#)

Energy storage technology plays a key role in our clean energy future. Currently Congress is considering a number of legislative proposals as part of the Biden Administration's infrastructure plan that would help boost American manufacturing of sustainable, long duration energy storage platforms as part of grid modernization and resiliency efforts...[watch now](#)

Technology Transactions

Considerations for Establishing an Offshore Captive in India for IT, Software, Engineering and R & D Services

State Bar of Georgia: International Section | [June 17, 2021](#)

By [Sonia Baldia](#)

This program provided a general overview of the current trends in offshore captives in the wake of accelerated digital transformation of enterprises precipitated by the COVID-19 pandemic....[read more](#)

Cloud Licensing Strategies, Risks and Remedies

ACC Colorado | [April 29, 2021](#)

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

In a traditional software licensing or hardware purchase engagement, the service provider installs the software or equipment in the customer's environment. Cloud computing involves accessing a provider's software and infrastructure remotely and often includes storing the customer's data with that provider. Learn why these structural differences mean you need to think differently about how to license, what business risks to prioritize and address in your license agreements, and what contractual remedies you need to ensure business continuity and protection against liability....[watch now](#)

Firm News

[Kim Davis and Stan Blackburn Selected by American Lawyer's The Daily Report as "On The Rise" and "Lifetime Achievement" Award Honorees](#)

[Northeast Community Bancorp, Inc. Announces Second-Step Conversion Offering Results and Expected Closing Date](#)

[Steve Berlin and Lois Colbert were named to Business North Carolina's Power List 2021](#)

[Amanda Witt Elected Secretary and Treasury of the State Bar of Georgia's Privacy & Technology Law Section](#)

[Kilpatrick Townsend Receives Top Rankings in 2021 *Legal 500 US*](#)

[Kilpatrick Townsend Recognized as the Second Largest Law Firm by Number of Triad Attorneys](#)

[Chaniece Mulligan Joins Kilpatrick Townsend in Atlanta](#)

[Law Firms Embrace Juneteenth Holiday As Small Step On Race](#)

[Kilpatrick Townsend Adds Laura R. Biddle in Washington, D.C.](#)

[Dollar Mutual Bancorp Completes Merger with Standard AVB Financial Corp.](#)

[Kilpatrick Townsend's work on Delta's Senior Secured Notes was recognized as High Yield Deal of the Year by IFLR in their 2021 Americas Awards](#)

[Kilpatrick Townsend Achieves Record-Breaking Recognition from Chambers USA 2021](#)

[KT Achieves High Ranking in 2021 American Lawyer Composite Rankings](#)

[Daniel Lord Named a Rising Star](#)

[Ryu Fukuyama Joins Kilpatrick Townsend](#)

[32 Kilpatrick Townsend Attorneys Named to the 2020 North Carolina Pro Bono Honor Society](#)

[Floor & Decor Accelerates its Growth in Commercial Flooring with the Acquisition of Spartan Surfaces](#)

[Monica B. Cunill Joins Kilpatrick Townsend](#)

[Law360 Names Nine Kilpatrick Townsend Partners to 2021 Editorial Advisory Board](#)

[Kilpatrick Townsend Plays Key Role in New Documentary: 'A Fire Within'](#)

[Triad Business Journal | 40 Under 40 2021: Regan Adamson](#)

[Triad Business Journal | 40 Under 40 2021: Ches McDowell](#)

[Atlanta Pro Bono Team Prevents Evictions, Receives AVLF All Star Award](#)

[Georgia Diversity Program Hosts Fall Learning Lab](#)

Recent Transactions

Aquiline Technology Growth Fund Invests in Cape Analytics

June 14, 2021

Represented Aquiline Technology Growth Fund in connection with its investment in Cape Analytics, which uses artificial intelligence to allow investors and insurers to better select properties, evaluate risk, and streamline underwriting processes, in a Series C round financing.

Floor & Decor Acquires Spartan Surfaces

June 4, 2021

Represented Floor & Decor, a leading, high-growth specialty retailer of hard-surface flooring, based in Atlanta, in its approximately \$90 million acquisition of Spartan Surfaces, a leading end-to-end commercial flooring specifying distribution company headquartered in Bel Air, Maryland.

Standard AVB Financial Corp. Merges with Dollar Mutual Bancorp

May 28, 2021

Represented Standard AVB Financial Corp., the parent company of Standard Bank, in its approximately \$156 million merger with Dollar Mutual Bancorp, the mutual holding company for Dollar Bank, Federal Savings Bank.

Aquiline Technology Growth Fund Invests in Corvus Insurance

May 13, 2021

Represented Aquiline Technology Growth Fund in connection with its investment in Corvus Insurance, which uses artificial intelligence and machine learning to develop smarter insurance products, in a Series C round financing.

Millennium New Horizons I, L.P. Sells Indus ai, Inc.

May 10, 2021

Represented Millennium New Horizons I, L.P., which invests in technology companies focused on artificial intelligence, machine learning, autonomous vehicles, and related fields, in connection with the sale of its portfolio company, Indus ai, Inc., to Procure Technologies.

Choice Adhesives Corporation Sells to ICP Construction, Inc.

April 9, 2021

Represented Choice Adhesives Corporation, a leader in specialty adhesive solutions for a variety of industries, in

connection with its sale to ICP Construction, Inc., a portfolio company of Audax Capital Partners, a large Boston-based private equity firm. The principal equity sponsors behind Choice Adhesives were BlueArc Capital Partners and Merit Capital.

AT&T Sells Department of Defense Professional Services Business to Tyto Athene, LLC

March 31, 2021

Represented AT&T in the sale of its Department of Defense professional services business, including AT&T Government Solutions, Inc. and other contracts, to Tyto Athene, LLC, a portfolio company of Arlington Capital Partners.

New Corporate Attorneys



Laura R. Biddle
Counsel | Financial Institutions
Washington, DC
+1 202 508 5812
lbiddle@kilpatricktownsend.com

Laura Biddle advises U.S. and foreign banking organizations, non-depository lenders, and providers of payment and other financial products and services on all aspects of financial services regulations.



Monica B. Cunill
Counsel | Real Estate Finance and
Capital Markets
Washington, DC
+1 202 508 5864
mcunill@kilpatricktownsend.com

Monica Cunill represents clients in the acquisition, disposition, and financing of various types of commercial real estate projects.



Bernie P. Thurman
Real Estate Finance Of Counsel | Real
Estate Finance and Capital Markets
San Francisco
+1 415 273 4397
bthurman@kilpatricktownsend.com

Bernie Thurman has rejoined the firm. His practice focuses on real estate finance and capital markets, and he has extensive experience handling sophisticated multi-million dollar transactions.



Stefanie de Pourbaix
Associate | Nordic Legal Services
Stockholm
+46 8 505 646 12
sdepourbaix@kilpatricktownsend.com

Stefanie de Pourbaix focuses her practice on dispute resolution, primarily within construction and consultant law.



Ryu Fukuyama
Associate | General Corporate, M&A &
Securities
San Francisco
+1 415 273 7556
rfukuyama@kilpatricktownsend.com

Ryu Fukuyama focuses his practice on mergers and acquisitions, venture capital financings, and joint ventures and strategic alliances.



Chaniece Mulligan
Associate | General Corporate, M&A &
Securities
Atlanta
+1 404 815 6096
cmulligan@kilpatricktownsend.com

Chaniece Mulligan advises public and private companies in a variety of corporate matters.

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

© 2021 Kilpatrick Townsend & Stockton LLP

[Manage Subscriptions](#) | [Unsubscribe](#) | [Forward to a Colleague](#) | [Privacy Policy](#) | [Anti-Spam](#)

1100 Peachtree Street Suite 2800, Atlanta, GA 30309-4528