

October 13, 2020



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Coronavirus (COVID-19) Task Force

Kilpatrick Townsend's COVID-19 Task Force is closely monitoring developments with regard to the Coronavirus (COVID-19) as well as the recommendations of federal, state, and local authorities. [See latest updates](#)

Mergers & Acquisitions

Regulatory Considerations for M&A Investors During COVID-19 Era

September 29, 2020

By [Mick Cochran](#)

The COVID-19 pandemic and the corresponding economic volatility has dramatically impacted the US and the Indian M&A market. While many high-profile companies have abandoned proposed deals, various other companies have expressed or maintained interest in pursuing strategic acquisitions during this time...[read more](#)

Franchising

Deciphering the USPTO's Material Alteration Standard for Amending Marks

Intellectual Property Strategist | October 1, 2020

By [Christopher Bussert](#)

As brands mature over time, their owners often seek to update marks that are subject to a federal registration or registration application...[read more](#)

The Case for Doing Well by Doing Good in Franchising

New York Law Journal | October 1, 2020

By [Marc Lieberstein](#) & [Kitt Shipe](#)

Marc Lieberstein and Kitt Shipe discuss franchise opportunities and whether they are doing enough to combat climate change with sustainability environmentally safe policies...[read more](#)

New York Federal Court Strikes Down Key Provisions of DOL Joint-Employer Rule

September 11, 2020

By [Kathleen Dodd Barton](#), [Christopher Caiaccio](#), [Leah Farmer](#), [Marc Lieberstein](#), & [Kitt Shipe](#)

On Tuesday, September 8, 2020, Judge Gregory Woods, a federal judge sitting in the Southern District of New York, struck down, in a 62-page opinion, key provisions of the recently released Department of Labor rule that narrowed when an entity is a “joint employer”...[read more](#)

Trademark Law and Franchising: Five of the Most Significant Developments

Franchise Law Journal | September 1, 2020

By [Christopher Bussert](#)

Trademarks are at the very heart of franchising. Indeed, at the core of every franchising relationship is the license of a trademark...[read more](#)

Financial Services

US fintechs could look “seriously” at banking charters amidst OCC uncertainty

bobsguide | August 21, 2020

By Emma Olsson ([Michael Breslin](#) quoted)

US fintechs may seek out full purpose banking licenses as litigation continues to cloud the Office of the Comptroller of the Currency’s (OCC’s) fintech charter...[read more](#)

Banking on the “Business of Banking”: How the 2nd Circuit’s Ruling in *Lacewell v. OCC* Could Change the Future of Fintech Regulation

August 13, 2020

By [Michael Breslin](#) & [Bennett Gillogly](#)

Despite often operating on a nationwide scale, fintech companies rarely meet the stringent requirements for obtaining a national banking charter. Under the current regulatory landscape, these companies must therefore secure individual state licenses and conform to a patchwork of inconsistent state-specific regulations...[read more](#)

Video | U.S. Department of Defense Awards Contract to Secure Sensitive Data with Blockchain

July 30, 2020

By [Michael Breslin](#)

If you missed our last blog post, check out this quick video summary to get up to speed...[watch](#)

Main Street Lending Program Update: Lenders Accepting Applications

July 16, 2020

By [Bennett Gillogly](#), [Mick Cochran](#) & [David Stockton](#)

The Boston Federal Reserve Board (Fed) announced that the Main Street Lending Program (MSLP) is fully operational. Approved lenders across the country are now accepting MSLP applications for loans ranging from \$250,000 to \$300 million...[read more](#)

Real Estate

New York Executive Orders 202.64 and 66 and the Tenant Safe Harbor Act

October 8, 2020

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

On September 18, 2020, New York Governor Andrew Cuomo issued Executive Order 202.64, which continued through October 20, 2020 the moratorium on initiating a proceeding or enforcement of a) an eviction of any commercial tenant for nonpayment of rent or b) a foreclosure of...[read more](#)

Broad Moratorium on Residential Evictions Issued by the CDC Faces Judicial Challenge

September 21, 2020

By [Ron Raider](#), [John Livingston](#) & [Gene Caiola](#)

On September 4, 2020, the Center For Disease Control (the “CDC”) issued a broad, nationwide, moratorium on residential evictions on the basis that it is an effort to prevent further spread of the COVID-19 virus...[read more](#)

Securities

The SEC Adopts Amendments to the Shareholder Proposal Rule

October 9, 2020

By [Isabelle Dinerman](#), [Giovanna Soto](#) & [David Stockton](#)

On September 23, 2020, the Securities and Exchange Commission adopted amendments to Exchange Act Rule 14a-8, also known as the “shareholder proposal rule”...[read more](#)

The SEC Amends Whistleblower Rules in Attempt to Bring Added Efficiency and Transparency to Program

September 25, 2020

By [Bobby Seifter](#)

On September 23, 2020, the Securities and Exchange Commission (SEC) adopted amendments to the rules of its whistleblower program in a 3-2 vote split along political party lines...[read more](#)

SEC Amends Disclosures of Human Capital Resources Under Regulation S-K

September 9, 2020

By [David Stockton](#), [Vicky Liu](#) & [Isabelle Dinerman](#)

On August 26, 2020, the Securities and Exchange Commission (SEC) announced the adoption of several amendments to take effect 30 days after publication in the Federal Register, including an amendment to Item 101(c) of Regulation S-K...[read more](#)

SEC Amends Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K

September 1, 2020

By [Vicky Liu](#)

On August 26, 2020, the Securities and Exchange Commission (SEC) adopted amendments to update the description of business (Item 101), legal proceedings (Item 103), and risk factor (Item 105) disclosures that registrants are required to make pursuant to Regulation S-K...[read more](#)

The SEC Modernizes the "Accredited Investor" Definition

August 31, 2020

By [Sabrina Rodrigues](#)

On August 26, 2020, the Securities and Exchange Commission (SEC) adopted amendments to the definition of “accredited investor” to add new categories of natural persons and entities eligible to participate in our private capital markets and to make certain other modifications to the existing definition in Regulation D...[read more](#)

Liu v. SEC: The U.S. Supreme Court Upholds SEC’s Power to Disgorge Profits Obtained Through Fraud, with Limits

July 9, 2020

By [Bobby Seifter](#)

On June 22, 2020, in a Securities and Exchange Commission (SEC) enforcement action, the U.S. Supreme Court ruled that the SEC may disgorge profits obtained by companies through fraudulent practice, provided that such award does not exceed net profits and is awarded for victims of such fraud. In Liu v. SEC...[read more](#)

Tax

COVID Dislocation and State Income Tax

Journal of Multistate Taxation and Incentives | October 1, 2020

By [Jeff Reed](#)

The COVID-19 pandemic has resulted in mandatory nationwide office closures, leading many Americans to work from new locations...[read more](#)

5 Key Takeaways | New York Tax Litigation Update

September 10, 2020

By [Jeff Reed](#)

On August 19th, Kilpatrick Townsend State and Local Tax Partner Jeff Reed presented on a panel entitled New York Tax Litigation Update during a HalfMoon webinar. The panel discussed reported New York tax decisions from 2019 and 2020...[read more](#)

IRS Issues Guidance on Payroll Withholding Deferral

September 2, 2020

By [Lynn Fowler](#) & [Heather Preston](#)

The IRS has issued Notice 2020-65, which implements President Trump's August 8 memorandum calling for a deferral of withholding of the employee portion of payroll taxes attributable to certain wages...[read more](#)

Investment Management & Broker-Dealer

UPDATE: SEC Adopts Amendments to Accredited Investor Definition

October 12, 2020

By [Lauren Jackson](#) & [Lauren Henderson](#)

The amended accredited investor definition will become effective December 8, 2020...[read more](#)

Under Proposed Exemptive Order, Finders Need Not Register with a Broker-Dealer to Receive Transaction-Based Compensation

October 9, 2020

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

On October 7, 2020, the Securities and Exchange Commission released a Notice of Proposed Exemptive Order that would create a conditional exemption from the broker registration requirements for certain activities of Finders...[read more](#)

SEC Fines Broker-Dealer \$100,000 for Failing to Retain Text Messages

September 24, 2020

By [Lauren Jackson](#)

The Securities and Exchange Commission entered an order yesterday against a broker-dealer for failing to retain text messages relating to the firm's business...[read more](#)

SEC Adopts Amendments to Accredited Investor Definition

August 31, 2020

By [Lauren Jackson](#) & [Lauren Henderson](#)

On August 26, 2020, the SEC adopted amendments to its definition of "accredited investor" that adds new categories of qualifying persons and entities...[read more](#)

OCIE Releases Risk Alert on Compliance Risks During COVID-19

August 13, 2020

By [Jeffrey Skinner](#) & [Lauren Henderson](#)

Yesterday, the Office of Compliance Inspections and Examinations issued a risk alert related to COVID-19 compliance risks...[read more](#)

Fiduciary Rule 2.0: A Quick Overview

August 6, 2020

By [Sterling Perkinson](#), [Tom Steed](#), [Lauren Jackson](#), [Peter Daines](#), & [Lauren Henderson](#)

On June 29, 2020, the day before Reg BI became effective, the Department of Labor announced its new approach to the standards for financial institutions and investment professionals who provide investment advice on a nondiscretionary basis to 401(k) plans, pension plans, or other plans covered by ERISA or to IRAs...[read more](#)

Adjusting for Inflation: The SEC Proposes Raising the Form 13F Reporting Threshold from \$100 million to \$3.5 Billion

July 24, 2020

By [Jeffrey Skinner](#) & [Waylon Bryson](#)

On July 10th, the SEC proposed amendments to Exchange Act Rule 13f-1 that would raise the Form 13F reporting threshold from \$100 million to \$3.5 billion...[read more](#)

OCIE's Focus on Private Fund Advisers Continues in Recent Risk Alert

July 16, 2020

By [Jeffrey Skinner](#), [Tom Steed](#), [Lauren Jackson](#), [Kate McCurry](#), & [Ali Fenno](#)

While the financial industry was busy enjoying family vacations and a relaxing break for the July 4th holiday, the SEC stayed busy releasing new guidance for industry participants...[read more](#)

Government Relations

North Carolina Legislative Update: Part II

October 7, 2020

By [Amanda Donovan](#), [Nelson Freeman](#) & [Ches McDowell](#)

Kilpatrick Townsend invites you to hear about legislation from the last North Carolina General Assembly. Government Relations team members Amanda Donovan, Nelson Freeman, and Ches McDowell discussed some of the public bills passed by the General Assembly in the most recent Session and what to expect next...[listen](#)

Energy

Cutting Edge Funding And Contractual Structures For Successful Bioeconomy Project Financing

RNG Works 2020 - Technical Workshop & Trade Expo | [September 30, 2020](#)

By [Mark Riedy](#)

Mark Riedy presented at the Coalition for Renewable Natural Gas' Technical Workshop & Trade Expo, "RNG Works 2020"...[read more](#)

Enabling the Bio-Circular Economy through Project Finance and Insurance

Scaling Up 2020: Virtual Live | [September 15, 2020](#)

By [Mark Riedy](#)

Kilpatrick Townsend Partner, Mark Riedy, spoke on a panel in a webinar entitled, "Enabling the Bio-Circular Economy through Project Finance and Insurance"...[listen](#)

Video | California Ethanol + Power: Inside the ultra low-carbon sugarcane project and the financing of the California Green Rush

Biofuels Digest | [August 13, 2020](#)

By [Mark Riedy](#)

The \$850 million California Ethanol + Power project has been years in the making - no wonder, there's ultra low-carbon fuels, sugarcane and biomass-to-power in the complex value mix...[watch](#)

Employee Benefits

IRS Extends Transitional Relief for 2020 ACA Reporting

October 12, 2020

By [Karen Martinez](#), [Martha Sewell](#) & [Mark Stember](#)

The Internal Revenue Service released Notice 2020-76 on October 2, 2020, announcing a delay in the deadline for distribution of Forms 1095-B and Forms 1095-C to participants by employers, health insurers and other reporting entities from January 31, 2021 to March 2, 2021...[read more](#)

DOL Issues Guidance for Including Lifetime Income Disclosures in Defined Contribution Benefit Plan Statements

[September 15, 2020](#)

By [Sterling Perkinson](#) & [Carl Toppin](#)

As required by the SECURE Act of 2019, the U.S. Department of Labor published an interim final rule requiring plan administrators of individual account plans (including 401(k) plans, 403(b) plans and other defined contribution plans) to express a participant's current account balance as both a single life annuity...[read more](#)

Overview of the DOL's New Fiduciary Rules for Retirement Plan Investment Advice

[August 4, 2020](#)

By [Peter Daines](#), [Lauren Jackson](#), [Sterling Perkinson](#), & [Tom Steed](#)

On June 29, 2020, the Department of Labor announced its new approach to the standards for financial institutions and investment professionals who provide investment advice on a nondiscretionary basis to 401(k) plans, pension plans, or other plans covered by ERISA or to IRAs after its prior 2016 regulations were struck down...[read more](#)

IRS Relaxes Some Requirements for Midyear Changes to Safe Harbor Plans

July 15, 2020

By [Todd Castleton](#)

Qualified 401(k) and 403(b) retirement plans that are designed with certain minimum matching or nonelective contribution formulas are deemed to pass annual ADP and ACP nondiscrimination testing requirements applicable to those plans...[read more](#)

Questions on 2020 Required Minimum Distributions Answered in New IRS Guidance

July 13, 2020

By [Todd Castleton](#)

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), enacted on March 27, 2020, to provide relief from the coronavirus pandemic, allowed defined contribution plans, participants in those plans, and owners of individual retirement accounts ("IRAs") to waive required minimum distributions ("RMDs") from those accounts in 2020...[read more](#)

Technology Transactions

3 Key Takeaways | Tailoring IP Due Diligence for Usefulness Efficiency

September 18, 2020

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

San Francisco Partners Paul Haughey and Siegmar Pohl recently gave a presentation to the IP Chapter of the Association for Corporate Counsel (ACC), entitled "Making IP Due Diligence More Tailored, Useful and Efficient"...[read more](#)

Regulatory Concerns For US Cos.' Offshore Service Centers

Law360 | August 4, 2020

By [Sonia Baldia](#)

COVID-19 will hyperaccelerate digital transformation of enterprises. The pandemic has amplified the crucial role of technology for businesses worldwide, from supporting remote workforces and triaging supply chains, to scaling digital channels for customer engagement...[read more](#)

Cybersecurity, Privacy & Data Governance

The Privacy Shield Sunk, but Is There a Life Raft for the Standard Contractual Clauses? Strategies for Transferring Personal Data Across the Atlantic from a Post-Schrems II Europe

October 7, 2020

By [John Brigagliano](#) & [Amanda Witt](#)

Schrems II requires parties relying on the SCCs to implement additional measures ensuring that transferred personal data is adequately protected. The *Schrems II* decision did not affirmatively invalidate the SCCs, but also made clear that the SCCs alone, without additional measures, often do not sufficiently protect...[read more](#)

LGPD In Effect: First Civil Action Filed in Brazil

September 24, 2020

By [Nathalie Machado](#)

After a tumultuous legislative history, as noted in our previous alerts, the Brazilian Senate finally passed into law a revised proposal to remove any delays of the LGPD's effectiveness...[read more](#)

Delay Denied: Brazil Senate Sets Immediate Effective Date for the LGPD

August 28, 2020

By [Amanda Witt](#), [Nathalie Machado](#), [John Brigagliano](#), [Tony Glosson](#), & [Jon Neiditz](#)

Earlier this week, the Brazilian Chamber of Deputies voted on an amendment to an executive order, MP 959/2020, which would have postponed the LGPD's effective date to January 1, 2021. However, on August 26, 2020, the Brazilian Senate revised MP 959/2020 to remove that delay...[read more](#)

Lower Your Privacy Shield, But Max Out Your Options for Maintaining Transatlantic Data Flow

July 21, 2020

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

Any organization that relies on certification under the EU-U.S. Privacy Shield framework and/or entering into the Standard Contractual Clauses to effectuate personal data transfers from the European Economic Area to the United States should reevaluate the organization's data transfer strategy...[read more](#)

Recent Court Decision Carries Lessons for Retaining and Using Cybersecurity Consultants to Investigate a Breach

July 17, 2020

By [Tony Glosston](#), [Ray Aghaian](#), [Doug Gilfillan](#), [Clay Wheeler](#), [Reuben Goetzl](#), & [Jon Neiditz](#)

A recent federal district court decision underscores the importance of structuring breach investigations with the attorney work-product doctrine in mind...[read more](#)

How Privacy Can Become Antiracist

July 8, 2020

By [Jon Neiditz](#)

Privacy contains some of the wellsprings of antiracism. The privacy profession in the U.S. may well be racist, but we can make it antiracist by taking off the blinders that have protected us against dealing with the real privacy crises that surround us...[read more](#)

Firm News

[Kilpatrick Townsend Advises Delta Air Lines on \\$9 Billion SkyMiles Financings](#)

[Dollar Mutual Bancorp to Acquire Standard AVB Financial Corp \(Kilpatrick Townsend noted as counsel for Standard AVB Financial Corp.\)](#)

[Kilpatrick Townsend Receives Luminary Award from Southern Center for Human Rights](#)

[Kilpatrick Townsend Adds High-Profile Partner to Growing Technology, Privacy & Cybersecurity Team](#)

[Jeffrey Connell Joins Kilpatrick Townsend in Atlanta](#)

[Leading Finance Partner Shannon Baxter Joins Kilpatrick Townsend](#)

[Mick Cochran | Daily Report's Georgia Legal Awards 2020: Most Effective Deal-Maker](#)

[Kilpatrick Townsend Adds Counsel in New York](#)

[Record-Breaking Recognition for Kilpatrick Townsend in The Best Lawyers in America© 2021](#)

[Top-Tier Recognition for Kilpatrick Townsend in Inaugural 2021 Best Lawyers: Ones to Watch](#)

[iVision Receives Investment from CIVC Partners \(Kilpatrick Townsend noted as counsel for iVision\)](#)

[Kilpatrick Townsend Founds Pro Bono Clinic for Small Businesses and Nonprofit Organizations Affected by Pandemic](#)

[Jeff Reed Quoted in Law360 re: 3 Takeaways From NY's False Claims Act Tax Law](#)

[Ches McDowell and Nelson Freeman Named Top 25 Lobbyists](#)

[Ford Robertson Quoted in 'Uncertainty clouds Triangle CRE market as trends shift toward working from home, more space'](#)

[Kilpatrick Townsend Earns Top 2020 Rankings from Leaders League](#)

[Preeminent Private Equity Partner Michael Cochran Joins Kilpatrick Townsend](#)

Recent Transactions

Kilpatrick Townsend Advises Delta Air Lines on \$9 Billion SkyMiles Financings

September 23, 2020

Represented Delta Air Lines on its \$9.0 billion aggregate amount of financings secured by Delta's SkyMiles Program. The financings included a private offering of \$6.0 billion of senior secured notes under Rule 144A, with Delta and its subsidiary, SkyMiles IP Ltd., as co-issuers, and a \$3.0 billion senior secured term loan facility, with Delta and SkyMiles IP as co-borrowers. The transaction was referred to by Bloomberg News as the largest airline industry debt financing ever completed.

Millennium New Horizons, L.P. Invests in Appdiff, Inc.

August 25, 2020

Represented Millennium New Horizons, L.P., a fund dedicated to investing in advanced technologies, such as Artificial Intelligence, Autonomous Driving, Drones, Robotics, Sensors, Big Data, and other innovations that are increasingly shaping the future of work and business, in connection with a secondary investment in Appdiff, Inc., one of the leading providers of artificial-intelligence-powered software.

iSolved Acquires Payroll Providers

July 20-31, 2020

Represented iSolved, a FinTech software payroll and benefits company (and a portfolio company of Accel-KKR, an equity fund based in Menlo Park, California, with over \$8 billion invested), in connection with its acquisition of assets of Professional Payroll Solutions, LLC and Performance Payroll, LLC.

New Corporate Attorneys



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Sonia Baldia brings business and technology savvy to her global practice, which encompasses U.S. and international commercial, transactional, and intellectual property (IP) expertise across multiple industries.



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Shannon Baxter has nearly 25 years of experience representing creditors and borrowers in financing transactions. Her clients include large U.S. and non-U.S. banks, finance companies, private equity and hedge funds, and public and private companies.



Mick Cochran

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Mick Cochran's practice is primarily focused on private equity and venture capital with a concentration on mergers and acquisitions, corporate finance, and distressed transactions.



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Richard Galati focuses his practice on the representation of financial institutions, including investors and servicers of commercial mortgage-backed securities.



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Marcus Carlsson focuses his practice on real estate and transactions, commercial law, mergers and acquisitions, and general corporate and commercial law.



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Jeff Connell focuses his practice on cybersecurity, data privacy, information technology, business outsourcing agreements, systems integration, software as a service (SaaS) transactions, technology licensing, and other technology and commercial transactions.



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Leah Petersen is a member of the firm's commercial finance team. She assists clients in a broad spectrum of financing transactions, ranging from widely syndicated to single-lender and club deals.

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

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