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Message from the Chair

Dear Fellow Committee Members:

I hope everyone has had an enjoyable winter. I have been seeing lots of television ads for the Masters Golf tournament so I know spring is just around the corner!

The Middle Market and Small Business Committee (MMSB Committee) has been very busy since we last met in Washington, D.C. This newsletter describes some of the projects and programming efforts by the members of our active committee.

We were pleased to sponsor the Small Business Capital Formation mini-theme issue of Business Law Today. Special thanks to past Chair Larry Goldman and Jeffrey Rubin for pulling the issue together.

This is an exciting time for raising capital with new online crowdfunding, peer-to-peer lending, and other capital raising portals popping up every day. But this is a challenging time as well as regulators must balance the desire of entrepreneurs and small businesses to raise money quickly and efficiently with the need to protect consumers from scams. When he spoke us in November, Sebastian Gomez Abero, chief of the Office of Small Business Policy in the SEC’s Division of Corporation Finance, made a point of asking for our assistance in sorting through these tricky issues. To that end the MMSB Committee is working with the Federal Regulation of Securities Committee to comment on the SEC’s proposals to revise Rule 147 and Rule 504 to facilitate intrastate and regional offerings. Bonnie Roe (broe@cohengresser.com) is organizing a group to participate on the comment letter drafting committee.

The ABA Business Law Spring Meeting will be held from April 7-9th in Montreal, Quebec. If you have not already done so, I urge you to register now. The Spring Meeting offers many invaluable programming and networking opportunities for both new and veteran MMSB Committee members. It’s also a great way to stay in touch with colleagues.

In addition to the excellent CLE programs and substantive meetings, I hope you take advantage of the many social opportunities the meeting provides. In particular, don’t miss our Committee luncheon on Thursday, April 7 where we will hear a presentation from the Canadian buyout and growth equity firm NOVACAP, and our Committee dinner that same night at Pointe-a-Calliere, the museum of architecture and archaeology in Old Montreal.

You can always contact me directly at twalsh@brodywikl.com or (203) 319-7145, if you have any questions.

Thank you for your interest and support. I look forward to seeing many of you in Montréal!

Best,

Tom
What is the Middle Market and Small Business Committee, and What Do We Do?

A. Our Mission

The mission of the Middle Market and Small Business Committee (“MMSB Committee”) is to serve, educate, and bring together corporate, transactional, and securities lawyers—in an effort to improve the legal profession—who regularly counsel and advise small and mid-sized entities and business ownership groups controlled by matriarchs and patriarchs of family offices, entrepreneurs, private equity groups, venture capital firms, and other groups, and smaller publicly-held companies.

Read more...

B. Committee Facts

Some interesting facts about the MMSB Committee are:

- The MMSB Committee comprises over 1,300 members, both in the United States and abroad.
- The MMSB Committee holds live and in-person meetings 3 times a year in conjunction with the ABA Business Law Section Meetings.

Read more...

C. Areas of Expertise

Some of the specific areas that are frequently covered by the MMSB Committee in our panel presentations, programs (CLE and otherwise) and workshops include the following:

- Entity organization and owner agreements
- Capital formation, financing, and strategic partnering
- Employment and compensation matters
- Intellectual property protection and transference
- Corporate governance
- Securities law compliance
- International expansion and cross-border transactions
- Business combinations and M&A activities
- Business divorces, breakups, and restructurings

Trans-Border Perspectives
As noted above, a new series was launched with our last issue of the Business Visions Newsletter to include one or more articles from members that discuss and analyze various legal issues facing smaller and mid-sized companies doing business in foreign jurisdictions or involved in cross-border deals. We hope you find these articles informative and helpful.

A. Recent Corporate Law Developments in Switzerland

By: Oliver Blum, Partner, Head of M&A/Corporate, CMS Switzerland

1. New registration obligations for shareholders

Effective July 1, 2015, a new law entered into force in Switzerland which imposes stricter registration obligations on formal shareholders and for the first time also requires beneficial owners of shares to disclose their identity to the company. The new regulations are based on the transparency recommendations of the G7 Financial Action Task Force and are aimed at combating money laundering. The new law does not apply to publicly-listed companies, which are already subject to strict disclosure and registration obligations under Switzerland’s stock exchange laws and regulations.

Read more...

B. Considerations Regarding So-Called Boilerplate Clauses in Cross-Border Commercial Transactions

By: Ava J. Borrasso, Founder, Ava J. Borrasso, P.A., Miami

Litigators called to analyze contract disputes generally look first to the procedural clauses of the underlying agreement to analyze the issues in the proper framework: does the agreement have a forum selection clause, is there a choice of law selection, is there a dispute resolution mechanism? These provisions are central, not only to litigation strategy, but often to the determination of substantive rights. As a result, they usually fall within the initial matters that litigation counsel considers but are often some of the last items considered by transactional lawyers, typically on the eve of closing and following much deliberation on the central “deal” or commercial terms.

Each of the issues mentioned above is critical to evaluating a dispute and the subject of great and detailed analysis. An overview of some of the more timely and pertinent issues to consider when drafting cross-border commercial agreements is provided here in summary fashion.

Read more...

C. Entry Strategies for Investing in India

By: Sanjay Chhabra, Senior Partner, and Disha Mohanty, Senior Associate, Archer & Angel, India

I. FOREIGN DIRECT INVESTMENT

Setting up operations or investing in India by non-residents requires conformity with India’s foreign exchange regulations, specifically, the regulations governing foreign direct investment (“FDI”) in India. Most aspects of foreign currency transactions with India, including investments, are governed by the Foreign Exchange Management Act, 1999 (“FEMA”) and the delegated legislations thereunder.

Up to 100% of FDI is permitted in most sectors in India under the “automatic route.” Under the automatic route, a company investing in India does not require the prior approval of India’s Central Bank or, i.e., the Reserve Bank of India (“RBI”), or the approval of the Central Government-through the Foreign Investment Promotion Board (“FIPB”)—from the FEMA perspective before making such an investment. A brief overview of some of the key sectors, including the quantum of FDI permitted therein, is set out below:

Read more...
New Laws, Proposed Legislation, and Pertinent Case Law

A. Private Placement Broker Updates

Linda Lerner and Eden Rohrer recently published an article on Private Placement Brokers in Business Law Today that discusses, among other things, the NASAA model state rule that would exempt M&A Brokers from having to register as securities brokers at the state level and proposed rules governing firms that fit within the definition of Capital Acquisition Brokers. The proposed rules would permit Capital Acquisition Brokers to engage in no activities other than:

1. Advising an issuer concerning capital raising activities;
2. Advising a company regarding its purchase or sale of assets or restructuring;
3. Advising a company regarding the choice of an investment banker;
4. Assisting in the preparation of offering materials;
5. Providing fairness opinions, valuation services, expert testimony, litigation support, and negotiation and structuring services;
6. Qualifying, identifying, soliciting, or acting as placement agent or finder for private placements to institutional investors as defined under FINRA Rule 2210 or that meet the test for "qualified purchasers" set forth in Section 2(a)(51) of the Investment Company Act of 1940, as amended; and
7. Effecting securities transactions solely in connection with the transfer of ownership and control of a privately held company through the purchase, sale, exchange, issuance, repurchase or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or "no-action" letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act.

The full text of Ms. Lerner and Ms. Rohrer's article can be found here.

Florida is in the process of enacting the NASAA model state rule discussed in their article.

B. Crowdfunding Rules

An Overview by Elesa A. Rectanus, Associate, Sloane & Johnson, PLLC

On October 30, 2015 the Securities and Exchange Commission (the "SEC") adopted the final rules, Regulation Crowdfunding, under the Securities Act of 1933 (the "Securities Act") and the Exchange Act of 1934 (the "Exchange Act") to implement Title III of the Jumpstart Our Business Startups ("JOBS") Act. Title III of the JOBS Act created a new exemption from registration for crowdfunding offerings, Section 4(a)(6) of the Securities Act. Regulation Crowdfunding enables individuals to participate in securities-based crowdfunding transactions pursuant to Section 4(a)(6) of the Securities Act, provided that certain requirements are met by each of the investors, issuer and intermediary participating in the crowdfunding transaction. The impetus behind crowdfunding is to remove the traditional barriers to capital that many small businesses face by providing small businesses with access to the general public through the internet for the purpose of raising capital. The final rules reflect relatively minor modifications to the proposed rules, which were released on October 23, 2013. The final rules will be effective as of May 16, 2016.

Read more...

C. Rule 147 and Rule 504 Small Issue Amendments
In November 2015 the SEC proposed rule changes to two safe harbors aimed at smaller intrastate and regional offerings that are subject to state blue-sky regulation. First, the SEC proposed amendments to Rule 147 under the Securities Act of 1933, as amended (the “Securities Act”), which currently provides a safe harbor under Section 3(a)(11) of the Securities Act from the requirement that every offer and sale of a security must be registered with the SEC, unless another exemption is available. Rule 147, as it is proposed to be amended, would no longer fall within the statutory parameters of Section 3(a)(11). Rather, the SEC has proposed to amend Rule 147 to create an exemption pursuant to the SEC’s general exemptive authority under Securities Act Section 28. As currently proposed, amended Rule 147 would function as a separate exemption rather than as a safe harbor under Section 3(a)(11), and Section 3(a)(11) would remain available as a potential statutory exemption standing alone.

Additionally, the SEC is proposing to amend Rule 504 of Regulation D under the Securities Act to increase the aggregate amount of securities that may be offered and sold in any 12-month period from $1 million to $5 million and to disqualify certain bad actors from participating in Rule 504 offerings.

The proposed amendments to Rule 147 and Rule 504 can be found [here](#).

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**Meetings Information**

A. Recap of Annual Meeting in Chicago, September 2015

1. Thursday, September 17, 2015

(a) **Program:** EEOC, ADA, FMLA and Other Acronyms - Straining the Alphabet Soup of Employment Law (Corporate Counsel Triage Series)

**Chair:** Erik L. Kantz

**Panelists:** Cara Bradley, Luis Pinedo, and E. Jason Tremblay

**Description:** Corporate counsel—both in-house and outside general counsel—wrestle with a myriad of federal and state laws, oftentimes overlapping in their scope and effect. A panel of in-house and outside general counsel tackled a series of common issues and hot topics they face in an increasingly regulated, and often duplicated, employment law environment.

**Co-sponsors:** Corporate Counsel Committee

**Program Materials**

**Read more...**

B. Recap of Fall Meeting in Washington, D.C., November 2015

1. Thursday, November 19, 2015

(a) **SEC Forum on Small Business Capital Formation.**

The SEC hosted its thirty-fourth annual Government-Business Forum on Small Business Capital Formation on Thursday, November 19, 2015, as mandated by the Small Business Investment Incentive Act of 1980. This Forum provides small business executives, venture capitalists, government officials, trade association representatives, lawyers, accountants, academics and small business advocates with an opportunity to share their views and recommendations for government and private action to improve the environment for small business capital formation, consistent with other public policy goals, including investor protection.

The morning session for the 2015 Forum was webcast and featured panel discussions on exempt and registered offerings occurring after the passage of the JOBS Act. The afternoon breakout groups, in which participants worked in groups to formulate specific policy recommendations, were not webcast but
were accessible by telephone conference call to pre-registered members of the public not in attendance. Afternoon breakout groups developed recommendations on exempt securities offerings, smaller reporting companies, and the SEC’s proposed amendments to Rule 147 and Rule 504.

A copy of the program agenda and additional materials for the 2015 SEC Government-Business Forum on Small Business Capital Formation will soon be posted on the SEC website and found here.

Read more...

C. Overview of Spring Meeting to be held in Montreal, April 2016

1. Thursday, November 19, 2015

(a) Business Entities Governance Meeting, 9:00 a.m. - 10:00 a.m.

(b) Program: ADR in Action: How Arbitration and Mediation Clauses Work on Paper and in Practice, 10:30 a.m. - 12:30 p.m.

(c) Middle Market & Small Business Luncheon, 12:30 p.m. - 2:00 p.m.

(d) International Expansion and Cross-Border Transactions Meeting, 2:00 p.m. - 3:00 p.m.

(e) Emerging Companies Meeting, 3:00 p.m. - 4:00 p.m.

(f) Private Placement Broker Task Force Meeting, 4:30 p.m. - 5:30 p.m.

Read more...

Additional Activities of Our Liaisons, Subcommittees, Task Forces and Members

1) Small Business Capital Formation mini-theme issue of Business Law Today

2) Webinar: Basics of Conducting a Securities Offering

Overview: This program presents a basic overview of the legal and practical aspects of issuing stock, membership interests, or other equity securities by a privately-held company. The program includes a discussion of regulatory and practical implications associated with the offer and sale of securities and examines typical fundraising scenarios faced by small and medium-sized businesses.

Moderator: Eric Vendt

Panelists:

- David Lynn
- Bonnie Roe
- Josh Seidenfeld

Additional Information

3) 2015 Annual Committee Report for the Middle Market and Small Business Committee

The following is a list of the MMSB Committee leadership. Please contact the Chairs or Vice Chairs of our MMSB Committee, the Chairs or Vice Chairs of any
Subcommittee or Task Forces, or any of our Liaisons, to get involved in the particular MMSB Committee activities that interest you and which can benefit you, your practice and your clients. All levels are welcome, and we hope to see you in Montreal!

Read more...

Contact Information; Disclaimers

The MMSB Committee prepares and delivers the Business Visions Newsletter to its members and the public to enhance the understanding of, and access to, the MMSB Committee's abundant programs and activities. This is a free service that is continually under development. While we try to keep the information timely and accurate, we cannot make any guarantees. We will and do strive to rectify all errors brought to our attention, and we ask for your vigilance in bringing to our attention any inaccuracies. Readers of our Business Visions Newsletter should be aware that information available in our newsletter may not reflect official positions of the ABA, the Business Law Section, the MMSB Committee or its members, or any regulatory agency or authority. Neither the ABA nor the MMSB Committee is responsible for the content or accuracy of any articles or other submissions included in our newsletter.

The Business Visions Newsletter may contain links to information or websites created and maintained by other public and private organizations. Our newsletter also contains links that direct the reader to other websites, both ABA websites and third-party websites. By clicking on any links provided in the Business Visions Newsletter, you assume any risks associated with accessing a website controlled by a third party, and you further agree to hold the ABA and the MMSB Committee harmless from any damage you may suffer as a result of going on or surfing such third-party websites. Please be aware that the MMSB Committee does not control or guarantee the accuracy, relevance, timeliness, or completeness of any information provided by any source other than the MMSB Committee.

If anyone has any ideas concerning future editions of the MMSB Committee's newsletter, or would like to get more involved with the Newsletter Subcommittee, please contact Mark D. Hobson (at markhobson@hobsonfirm.com) or Evangelos "Andy" Kostoulas (at EKostoulas@ycst.com), Co-Chairs of the Newsletter Subcommittee.

Listserve Protocols

a) Listserv. The MMSB Committee encourages all of its members (especially those who have recently joined) to become active participants in all committee activities, including participating in discussions on our Listserv. It is a great way to learn about current legal issues affecting your practice. The Listserv provided by the MMSB Committee ("MMSB Listserv") is a great medium with which to solicit the advice of your peers, benefit from their experience and participate in an ongoing conversation about relevant topics. To be able to send a message through the MMSB Listserv, however, you must first be a member of the MMSB Committee. Everyone who is a registered member of the MMSB Committee can sign up to begin receiving and sending emails on the MMSB Listserv, by sending an email requesting Listserv access to SMBiZ@mail.americanbar.org.
All Listserv participants must abide by the Rules & Etiquette Guidelines described below.

b) Listserv Archive. Members of the MMSB Committee who are fully signed up for the Listserv, are also able to access the extensive MMSB Listserv archive at the following link: Listserv Archive

c) How to Manage Listserv Emails: The following link provides instructions on how to set up a subfolder on your computer and have all emails that you receive
from the MMSB Committee Listserv automatically filed into that subfolder: Managing Listserve E-Mails

d) Rules & Etiquette Guidelines for Use of the MMSB Listserv.

The MMSB Committee has established Rules & Etiquette Guidelines that will govern all participants’ use of the MMSB Listserv. If a participant fails to adhere to these Rules & Etiquette Guidelines, the MMSB Committee may suspend or terminate that person’s future participation on the MMSB Listserv.

The Rules & Etiquette Guidelines for use of the MMSB Listserv can be found here: MMSB Listserve Rules & Etiquette. If you have questions, contact Evangelos “Andy” Kostoulas at EKostoulas@ycst.com, Co-Chair of the Newsletter Subcommittee.

Requests for Submissions/Sponsors

Dear Middle Market and Small Business Committee Members:

Our Committee is always actively seeking sponsors and volunteers, and we need your continued help. Please continue reading below to learn how you can contribute to our Committee’s success.

Having sponsors will provide a financial contribution to help fund Committee dinners. But perhaps more importantly, sponsors can provide a strategic relationship with our committee and provide substantive content and market intelligence during Committee meetings as well as participate in our CLE programs. Efforts to secure sponsors are being led by Michel Gélinas (mgelinas@stikeman.com). If you have any leads or suggestions, please let Michel know.

We are pleased to announce two new sponsors: IncNOW and Stout Risius Ross, Inc. Please be sure to read about each of them on the following pages and to thank their representatives in person when you see them at our meetings, lunches and dinners.

If you are interested in preparing a short, substantive article on a topic that is relevant for our Committee, please contact contact Evangelos “Andy” Kostoulas (at EKostoulas@ycst.com) or Mark D. Hobson (at markhobson@hobsonfirm.com), Co-Chairs of the Newsletter Subcommittee.

All articles for the newsletter should be minimal in length (up to 2,000 words). In addition to being circulated to our approximately 1,300 members, your article may also be eligible for publishing in the Business Law Section’s Business Law Today, a monthly publication circulated to approximately 37,000 members.

Thanks to everyone for your support!

Thomas J. Walsh, Jr.
Chair, Middle Market and Small Business Committee
Business Law Section

Law Student Committee Associate Program

ABA Committee Associate Program

The ABA’s Committee Associate Program (“CAP”) is designed to build relationships between law students and members of the ABA Business Law Section (the “Section”), by giving students the opportunity to gain experience through substantive and administrative projects with committees of the Section.

The MMSB Committee is seeking on an on-going basis up to 3 associates to write or assist in writing (i) articles and (ii) summaries of the various activities of
the MMSB Committee’s subcommittees and task forces for inclusion in our newsletter. Articles and summaries will be based on live programs from the MMSB Committee's Fall, Spring and Annual Meetings as well as other MMSB Committee meetings, webinars, and lunches that feature one or more speakers. CAP Associate(s) will work with the program presenters and speakers to write certain articles, and may have the opportunity to work with program presenters and speakers to help draft and eventually submit article(s) for publication in the ABA's Business Law Today. Published articles would be drafted primarily by the program presenter or speaker. Attending meetings is required and since travel is not reimbursable, the MMSB Committee is seeking primarily law students who are local to each of the next Fall, Spring and Annual Meetings. The date and location of upcoming meetings are:

- Spring Meeting 2016 - April 7-9, 2016 - Montreal, QC, Canada
- Annual Meeting 2016 - September 8-10, 2016 - Boston, MA

The duration of the position is for at least the applicable meeting and completion of article(s) arising from the same meeting that the CAP Associate(s) attended.

Law students may apply by visiting the CAP website for an application.

If you are interested in participating in the CAP and helping the MMSB Committee, please contact Evangelos "Andy" Kostoulas at EKostoulas@ycst.com.
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njachim@srr.com or +1.312.752.3396

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A. **Our Mission**

The mission of the Middle Market and Small Business Committee (“MMSB Committee”) is to serve, educate, and bring together corporate, transactional, and securities lawyers—in an effort to improve the legal profession—who regularly counsel and advise small and mid-sized entities and business ownership groups controlled by matriarchs and patriarchs of family offices, entrepreneurs, private equity groups, venture capital firms, and other groups, and smaller publicly-held companies. To achieve this objective:

- The MMSB Committee provides a forum for its members to share information, to deliver and receive continuing legal education, to address current and practical legal issues affecting smaller and mid-sized businesses, and to learn best practices concerning relevant areas of law, legal ethics, and technology applicable to the delivery of legal services in the 21st Century.

- The MMSB Committee zealously advocates before various regulatory agencies, and has been doing so for decades. Such advocacy concerns current issues and laws that relate to specific problems and needs of small businesses, including smaller public companies. Agencies before which the MMSB Committee and its members regularly advocate include, among others, the Securities and Exchange Commission (“SEC”), the Internal Revenue Service, the Financial Industry Regulatory Authority (“FINRA”), and the National Association of Securities Dealers. For example, our Private Placement Broker Task Force and some of its individual members lobby the SEC, FINRA, and other regulatory agencies to implement a simplified registration system for finders of financing for early-stage companies.

- The MMSB Committee brings scrutiny and discourse to the entire business “life cycle” of our member’s clients with expert panels focused on highly relevant topics such as:
  
  (i) entity organization and owner agreements  
  (ii) capital formation, financing, and strategic partnering  
  (iii) employment and compensation matters  
  (iv) intellectual property and trade secrets protection  
  (v) corporate governance  
  (vi) securities law compliance  
  (vii) international expansion and cross-border transactions  
  (viii) business combinations, restructuring, and breakups

- The MMSB Committee commenced a new “Corporate Counsel Triage” series at the Spring Meeting in San Francisco in 2015. The first program under this series was titled “Avoiding Hiring and Firing and Wage and Hour Problems: A Program of the Corporate Counsel Triage Series.” This program was subsequently reproduced as a webinar in November of last year and can be accessed [here](#). At the upcoming Spring Meeting in Montreal, the Corporate Counsel Triage Project will conduct a program titled “ADR in Action: How Arbitration and Mediation Clauses Work on Paper and in Practice.” You can find more information about
In the last issue of the *Business Visions* Newsletter, the MMSB Committee launched a new series featuring articles from our members that address legal issues in foreign jurisdictions or cross-border deals facing smaller and medium-sized companies. In this issue, the MMSB Committee is happy to feature three submissions. The first article is from Oliver Blum regarding recent corporate law developments in Switzerland. Ava Borrasso from Miami submitted the second article which addresses boiler-plate provisions for cross-border commercial transactions. The third article is from **Sanjay Chhabra**, Senior Partner, and **Disha Mohanty**, Senior Associate, **Archer & Angel**, regarding foreign direct investment in India. The MMSB Committee is grateful to its members for their contributions. We hope you will read and enjoy all of these articles featured below.
B. **Committee Facts**

Some interesting facts about the MMSB Committee are:

- The MMSB Committee comprises over **1,300** members, both in the United States and abroad.

- The MMSB Committee holds live and in-person meetings 3 times a year in conjunction with the ABA Business Law Section Meetings. For 2016, these meetings include:
  - the Spring Meeting, to be held from April 7-9 in Montreal,
  - the Annual Meeting to be held from September 8-10 in Boston, and
  - the Fall Meeting to be held in November in Washington, D.C.

- Meetings of the MMSB Committee typically feature a mini-presentation on a substantive practice area and provide an opportunity to share practical advice relevant for smaller and medium-sized companies as well as the lawyers who counsel them.

- An area in which a great deal of the MMSB Committee’s efforts are directed involves the federal and state securities regulations that affect smaller public companies and capital-raising activities of private companies, including exemptions from registration, exemptions from registration for private placement brokers, and implementation of scaled disclosure regulations to help smaller and medium-sized businesses be able to raise legally the capital they need to expand their operations and without the need to comply with unnecessary, burdensome, and expensive regulatory requirements.

- Membership in the MMSB Committee provides numerous opportunities to participate in CLE panels and workshops, writing opportunities, and opportunities to comment on regulations proposed by the SEC and other regulatory agencies. Participation is strongly encouraged and the MMSB Committee welcomes all levels of experience. Come learn why the Middle Market and Small Business Committee is called *The Best Damn Committee in the whole ABA!*
A. Recent Corporate Law Developments in Switzerland

By: Oliver Blum, Partner, Head of M&A/Corporate, CMS Switzerland

1. New registration obligations for shareholders

Effective July 1, 2015, a new law entered into force in Switzerland which imposes stricter registration obligations on formal shareholders and for the first time also requires beneficial owners of shares to disclose their identity to the company. The new regulations are based on the transparency recommendations of the G7 Financial Action Task Force and are aimed at combatting money laundering. The new law does not apply to publicly-listed companies, which are already subject to strict disclosure and registration obligations under Switzerland’s stock exchange laws and regulations.

Swiss stock companies may issue registered shares or bearer shares. Before the new law entered into force, holders of bearer shares could remain completely anonymous, even toward the company. Now, the holders of bearer shares are required to be registered with the company. This also applies to shareholders who held bearer shares before July 1, 2015; they were required to register with the company before December 31, 2015.

There are a number of conceivable scenarios where the formal shareholder is not at the same time the ultimate beneficial owner of the respective shares; for instance, if the direct shareholder holds the shares in trust for a third party, or if the formal shareholder is itself a legal entity. The new law requires beneficial owners of shares who, alone or as a group, control 25% or more of the voting or capital rights of a Swiss company to be registered with the company. This applies to all stock corporations, regardless of the type of shares which they have outstanding, and also to limited liability companies. Therefore, any foreign investor who holds his or her Swiss company through an intermediate holding company will have to personally register himself with the Swiss company.

If the registration obligations regarding holders of bearer shares or beneficial owners are not complied with within one month after acquisition of the shares, or if shareholdings in bearer shares existing as of July 1, 2015 were not registered before December 31, 2015, all voting and monetary rights related to the respective shares will be suspended until the registration obligations are satisfied. Monetary rights will only be restored prospectively in such case.

2. Loans to shareholders as impediments to dividend distributions

As in most jurisdictions, a Swiss company may distribute dividends only out of balance sheet surplus. The Federal Court, the highest court in Switzerland, has recently issued a highly controversial decision in which the court held that, for the purposes of calculating the distributable balance sheet surplus, outstanding shareholder loans that do not comply in all respects with market conditions have to be deducted from the balance sheet surplus, thus effectively reducing the dividend capability of the company. The decision has been subject to widespread criticism because it requires deduction of the full face value of the loan, thus effectively treating the whole loan as a constructive dividend distribution, even if the repayment of the loan is not in doubt. Before that decision the common view was that only
the "pricing difference" of the non-arm's length loan to a market loan had to be treated as a constructive dividend distribution. An exception was only made, and the full amount of the loan was treated as a constructive distribution, if the parties in fact did not intend to repay the loan.

In addition, the Federal Court decision defines a market test with unrealistically high thresholds so that in reality most of the group loans granted by Swiss companies that are outstanding today will probably not qualify as arm's length. This applies in particular to cash pool deposits which, from a legal point of view, constitute a loan from the depositor to the owner of the cash pool master account.

Consequently, to be on the safe side the boards of Swiss companies will have to first deduct the amounts of all loans outstanding to shareholders from the balance sheet surplus before determining the amount effectively available for a dividend distribution. If outstanding loans to shareholders exceed the amount of the currently available balance sheet surplus, then such loans will have to be repaid to the extent that the balance sheet surplus fully covers the face value of all loans to shareholders because otherwise capital protection rules may be infringed. Non-compliance with the aforementioned obligations may result in personal liability for members of the company’s board.
B. Considerations Regarding So-Called Boilerplate Clauses in Cross-Border Commercial Transactions

By: Ava J. Borrasso, Founder, Ava J. Borrasso, P.A., Miami

Litigators called to analyze contract disputes generally look first to the procedural clauses of the underlying agreement to analyze the issues in the proper framework: does the agreement have a forum selection clause, is there a choice of law selection, is there a dispute resolution mechanism? These provisions are central, not only to litigation strategy, but often to the determination of substantive rights. As a result, they usually fall within the initial matters that litigation counsel considers but are often some of the last items considered by transactional lawyers, typically on the eve of closing and following much deliberation on the central “deal” or commercial terms.

Each of the issues mentioned above is critical to evaluating a dispute and the subject of great and detailed analysis. An overview of some of the more timely and pertinent issues to consider when drafting cross-border commercial agreements is provided here in summary fashion. In short, the more that is decided up-front - that is, the more that is contained in the contract when the parties are working together - the more predictable resolution of a later dispute will be. While a party may always attempt to avoid the impact of such clauses - by filing suit in the face of a binding arbitration provision or filing a case in a jurisdiction other than one selected as the “exclusive” place of resolution for example - those challenges, if without merit, can result in consequences including increasing the time and expense of resolution, which may result in facing a motion for fees and costs as a result of frivolous tactics.

One recent case highlights the importance and interplay of these so-called “boilerplate” provisions. In *Timothy Wright v. Lewis Silkin LLP*, [2015] EWHC 1897 (QB), the court resolved an action between a law firm and its client, Mr. Wright, former CEO of the Deccan Chargers Sports Venture Limited, an Indian cricket team. Wright, a UK party, was hired by the Deccan Chargers franchise and retained the Lewis Silkin firm to draft and negotiate his employment agreement. The 2008 agreement included a £10 million severance guarantee payable in the event Wright was constructively dismissed. Notably, while the agreement contained an English choice of law provision, it did not contain a choice of forum clause.

In 2009, following his dismissal, Wright sued the franchise in England to recover his guaranteed severance. For the ensuing three years, the Chargers challenged service and the jurisdiction of the English court. Though the Chargers ultimately lost its jurisdictional challenge, Wright spent some £1 million defending it. In 2012, Wright obtained a judgment in excess of £10 million. However, by the time he attempted to collect on the judgment in India, the Chargers franchise was insolvent.

Dissatisfied with the outcome, Wright sued his former counsel for negligence arising, in part, from its failure to include an exclusive forum selection clause in his employment agreement. Following trial, the High Court held in Wright’s favor and awarded him £2 million in damages from the lost opportunity to satisfy the underlying judgment. The failure to include a forum selection clause resulted in tangible damage to Wright highlighting the importance of such provisions.

This article briefly summarizes some of the issues each of these critical determinations may play in connection with cross-border disputes. The factors should be considered comprehensively (rather than independently) in order to tailor them to the particular client’s needs and to obtain the most favorable overall outcome.
A. Which Law Will Govern? Choice of Law

Absent designation or challenge by one of the parties, most jurisdictions apply their own substantive law or have well-established mechanisms through conflicts-of-laws principles to determine which law will apply to a given dispute. Where challenged, the party advocating the use of a foreign law typically bears the burden of proving its application. In jurisdictions applying the Restatements of Laws, a court generally will apply the analysis depending on the type of underlying claim at issue (e.g., contract or tort claims) and may apply different laws to different claims.

Generally, the procedural law of the place where the dispute is heard governs. Choice of law issues can be exceedingly complex depending in part on whether overriding public policy concerns are implicated or applicable statutory provisions conflict with the jurisdiction selected by the parties or otherwise prohibits application of a foreign jurisdiction. Choice of law principles should be considered not only with respect to substantive law but also in relation to the potential impact the law may have as to applicable privileges, immunities, and procedural law.

The failure to select the underlying substantive (non-procedural) law applicable to a matter may result in some unforeseen issues. While transactional lawyers may find comfort in omitting a provision on choice of law in favor of a presumption that it is perhaps covered by the choice of forum clause or is better left open-ended, the failure to include such a provision may lead to uncertainty in a dispute with an aggressive counter-party.

For the most part under traditional analysis, the law selected should bear some relation to the underlying dispute or the parties involved. In addition, parties should consider any mandatory public policy or statutory provisions that may undermine their selection (i.e. consumer protection, employment law statutes, franchise laws, UCC application). In order to increase the likelihood of application of the selected law, the selected law should not run counter to the public policy of the forum as it will not be applied in such cases. Furthermore, certain laws - like U.S. securities regulations for covered transactions - cannot be avoided by contract. In short, the subject matter of the likely dispute, the law of the forum, and the overall procedural framework should be analyzed to select the appropriate law.

The Restatement of Laws, Conflicts of Laws sets forth a traditional established framework to assess the law applicable to a dispute. For example, § 187 Restatement (Second) of Conflict of Laws (1971) “Law Of The State Chosen By The Parties“ generally provides that the law chosen by the parties will be applied unless it bears no relevant relationship to the parties or transaction, has no reasonable basis for application, or is contrary to the fundamental policy of a state. Absent selection of applicable law, the law of the jurisdiction typically applies barring a timely challenge by one of the parties and ensuing analysis of conflict-of-laws principles.

Recent noteworthy developments include the March 2015 Hague Principles on Choice of Law in International Commercial Contracts (the “Hague Principles“). The Hague Principles are non-binding and meant to apply to international commercial transactions for use in courts or before arbitral tribunals but do not apply to employment or consumer-related disputes. The Hague Principles recognize that parties are free to contract with respect to the applicable law and the chosen law is not required to relate to the parties or the underlying transaction. The Hague Principles adopt a delocalized approach to commercial disputes permitting the parties to select a particular law developed or specialized to the nature of the transaction (e.g., well-developed maritime or international banking laws).
If the parties have opted to arbitrate their dispute, a choice of law clause likely will be upheld because the failure to comply with the agreement of the parties may result in a challenge to a subsequent award. Without such a selection, the arbitrators will likely determine the law that will be applied to the merits of the dispute. For example, the European Convention on International Commercial Arbitration of 1961 provides that the parties may select the applicable law but, barring any such selection, the arbitrators apply the law they deem applicable pursuant to conflict principles. Institutional rules should also be examined in assessing the applicable law (e.g., the International Centre for Dispute Resolution Rules provide that the tribunal shall apply the law it deems applicable barring a selection of law by the parties).

One notable caveat with respect to the selection of law in the context of arbitration is the *lex arbitri* or law of the seat of the arbitration. When the parties have selected a seat, the law in that location typically governs procedural and public policy aspects of the arbitration that generally cannot be avoided. For example, issues regarding arbitrability, interim measures, ethical considerations, assistance of the judiciary and ability of the tribunal to determine its own jurisdiction are governed by the *lex arbitri*. Parties selecting arbitration need to be cognizant of the substantive law that applies to their suit, the procedural rules of the arbitration, and the law of the seat.

**B. Where will the Dispute be Resolved? Forum Selection Clauses**

In the absence of a binding forum selection clause and subject to any challenge, a party may file suit in any court with proper personal and subject-matter jurisdiction. Challenges may include improper venue or forum *non conveniens* and may be lengthy and costly. In an attempt to streamline or resolve such issues, parties often include forum selection provisions in their agreements.

An agreement with a forum selection clause may still be subject to challenge. Presuming an otherwise valid clause (not unfair or unconscionable), courts often review a clause to determine whether it is exclusive or permissive. In order to uphold a clause in the face of a challenge, the clause must be exclusive – that is, it must *require* that the action be filed in particular jurisdiction – not just *allow* a suit to be filed in that jurisdiction. The specific language is reviewed and use of the term “shall” is a strong indicator that the forum is exclusive. A forum selection clause may also include consent to personal jurisdiction. The decision as to whether a forum selection clause will be upheld turns on careful drafting.

Generally, forum selection clauses are presumed to be valid unless the party opposing enforcement demonstrates that the clause is somehow unfair or unreasonable. Cross-border transactions between parties of member states may benefit from the recently enacted Hague Convention of June 30, 2005 on Choice of Court Agreements entered into force October 1, 2015 (“Choice of Court Convention”). To date, the Convention has been ratified by nearly 30 countries including Mexico and the EU countries (except Denmark). The United States and Singapore have signed the convention but have not yet ratified it.

The Choice of Court Convention applies to international commercial agreements, but does not apply to employment, consumer, family law, estate, anti-trust, insolvency, intellectual property, torts, personal injury, or other non-commercial matters. Essentially, the Convention provides that: (1) the designated court has jurisdiction over the matter (unless jurisdiction would be void under its law) and cannot decline jurisdiction in favor of an alternate court; (2) a non-designated court cannot exercise jurisdiction over the matter except for limited exceptions; and (3) the resulting judgment by a designated court is
subject to mutual enforcement in any other contracting state.

The Choice of Court Convention attempts to assist contracting states in the enforcement of judgments obtained in national courts similar to that provided for arbitration awards by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). While the New York Convention is well established and much broader in scope (currently ratified by 156 countries), the Choice of Court Convention aims to provide a notable and welcome enforcement mechanism for court judgments to cross-border transactions providing greater forum flexibility to litigants.

C. How will the Dispute be Resolved? Dispute Resolution Clauses

While traditionally, litigation and arbitration each offer distinct advantages, recently, some of those perceived advantages have seemingly been co-opted. For example, the expansive scope of discovery in litigation has been curtailed by recent procedural revisions seeking to impose proportionality. In arbitration, provisions may now increasingly call for mediation or provide an avenue for institutional appeal. In addition, the American Law Institute is drafting a Restatement of the Law for U.S. Law of International Commercial Arbitration addressing enforcement of arbitration agreements, judicial assistance in arbitration, and post-award relief investor-state arbitration. While the viability and utility of recent trends in arbitration are yet to be fully understood, no doubt the single-most significant factor weighing in favor of international arbitration continues to reside with the New York Convention and the ease of enforcement of arbitral awards among member states.

A viable arbitration clause typically provides that any dispute or claim arising out of the underlying agreement shall be determined by arbitration and agreed to in writing by the parties. For example, the International Centre for Dispute Resolution of the American Arbitration Association suggests a variety of clauses but its short form clause for international commercial contracts provides: “[a]ny controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.” The ICDR also advises the parties to consider including the number of arbitrators, place or seat of the arbitration and the language of the arbitration proceeding. See, www.icdr.org. Similarly, the International Chamber of Commerce suggests a sample clause that provides “[a]ll disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the ICC by one or more arbitrators appointed in accordance with the said Rules”, and also recommends that the clause address the applicable law governing the agreement, the number or arbitrators, place and language of the arbitration. See, www.iccwbo.org. For non-institutional or ad-hoc arbitration clauses, generally the clause should address the scope of the issues presented to arbitration, the rules applicable to the dispute, an appointing authority, the number of arbitrations, and place and language of the proceeding.

Unless the parties have entered a binding arbitration agreement, a dispute will be determined by litigation. Arbitration has traditionally been heralded for its flexibility, confidentiality, limited discovery, speed of proceedings, avoidance of unfavorable legal systems, ability to select the decision-makers, and broad enforceability of awards. Some historically praised factors have come under fire as speed is not always assured, the parties are unable to obtain a summary disposition, and the rising costs of arbitration, coupled with a perception that arbitration awards are often compromised. These have become common complaints. Many of these complaints can be addressed, however, through artful drafting of the clause or by experienced arbitration counsel in fashioning the terms of reference or
procedural terms of the arbitration.

Parties drafting dispute resolution clauses also have an opportunity to provide for various types of staged proceedings including pre-dispute mediation or post-award appeal. These are current hot topics in arbitration. Mediation in the context of international arbitration (prior to or after a panel has been seated) is currently generating vigorous debate and raises multiple issues including who should conduct the mediation (the arbitrator or a third party), enforceability of any resulting settlement (if resolved prior to empaneling arbitrators), and confidentiality requirements, to name a few.

Also, while traditionally unavailable, institutional appeals of arbitration awards may also be available in some instances provided that the parties have included an appellate provision in their arbitration clause. See e.g., AAA Optional Appellate Arbitration Rules; JAMS Optional Arbitration Appeal Procedure; CPR Arbitration Appeal Procedure; The International Institute for Conflict Prevention & Resolution (CPR) Appellate Arbitration Rules. Both mediation in arbitration proceedings and institutional appeal of arbitration awards are the subject of much recent debate. These developments highlight the manner in which arbitration seeks to borrow mechanisms more-commonly associated with litigation.

Conversely, in litigation, the expansive discovery traditionally available has been criticized as expensive and unduly time-consuming. However, recent efforts to curtail perceived excesses have resulted in new procedural rules placing limitations on over-broad and unduly expensive document productions by requiring proportionality to the issues presented, amount in controversy, access to information, and resources of the parties, among other factors. E.g. Federal Rule of Civil Procedure 26, effective December 1, 2015. Clearly, the borrowing of practices between these competing forums will continue.

D. Conclusion

The so-called boilerplate clauses included in international commercial transactions are critical components of determining how a dispute that may arise down the road will be resolved. While they often take a back seat to the deal components, the choice of law, forum, and mechanism selected to handle any resulting dispute are crucial provisions necessary to protect a client’s rights if, or when, a deal goes sour. Given the rising globalization and internationalization of commercial deals, it is no longer possible to avoid giving thoughtful analysis to these key dispute-related provisions as well as the main deal terms.
C. **Entry Strategies for Investing in India**

By: Sanjay Chhabra, Senior Partner, and Disha Mohanty, Senior Associate
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I. **FOREIGN DIRECT INVESTMENT**

Setting up operations or investing in India by non-residents requires conformity with India’s foreign exchange regulations, specifically, the regulations governing foreign direct investment (“FDI”) in India. Most aspects of foreign currency transactions with India, including investments, are governed by the Foreign Exchange Management Act, 1999 (“FEMA”) and the delegated legislations thereunder.

Up to 100% of FDI is permitted in most sectors in India under the “automatic route.” Under the automatic route, a company investing in India does not require the prior approval of India’s Central Bank or, i.e., the Reserve Bank of India (“RBI”), or the approval of the Central Government—through the Foreign Investment Promotion Board (“FIPB”)—from the FEMA perspective before making such an investment. A brief overview of some of the key sectors, including the quantum of FDI permitted therein, is set out below:

A. **Sectors with Caps on FDI**

Certain sectors have caps on the amount of FDI allowed, including:

1. Banking-private sector (74%);
2. Commodity Exchanges (49%);
3. Print Media (26%);
4. Insurance (49%);
5. Multi brand retail (51%); and
6. Air transport services, including scheduled air transport service/domestic scheduled passenger airline and regional air transport service (49%).

B. **Sectors where FDI is Prohibited**

There are some sectors where FDI is prohibited, including:

1. Atomic Energy;
2. Lottery business;
3. Gambling and betting; and
4. Manufacturing of tobacco, including cigars, cheroots, cigarillos and cigarettes, or of tobacco substitutes.
C. **Sectors where FDI is Permitted Subject to Approval**

There are some sectors where FDI is allowed only with the approval of the Central Government including:

1. Defense industry (approval required for foreign investment above 49%)
2. Banking-public sector (approval required for foreign investment which is limited to 20%);
3. Banking-private sector (approval required for foreign investment beyond 49% and up to 74%);
4. Broadcasting Carriage Services (approval required for foreign investment above 49%);
5. Print Media (approval required for foreign investment which is limited to 26%);
6. Single brand retail (approval required for foreign investment above 49%);
7. Multi brand retail (approval required for foreign investment which is limited to 51%); and
8. Satellites: establishment and operation (approval required for foreign investment, which extends to 100%)
9. Insurance (approval required for foreign investment beyond 26% and up to 49%)

D. **Sectors with Minimum Capitalization Norms**

Further, certain sectors and businesses in India have minimum capitalization norms for a foreign investor intending to invest in these sectors; in those instances, the foreign investor must invest the minimum prescribed amount. These sectors include:

1. Non-Banking Financial Services; and
2. Multi-brand retailing

In addition to the prescription on investment amount, for few sectors, the FDI norms also contain additional terms and conditions that are required to be complied with by the foreign investor.

II. **ENTRY STRATEGY**

The entry strategy for any entity considering doing business in India will depend on the nature and scope of business activities proposed to be transacted in India. Broadly speaking, there are two ways of establishing business operations in India:
A. Operating through Independent Consultants

The first way is to engage independent consultants located in India. In the event a foreign company decides to operate in India through independent consultants, the need to establish a formal business presence in India would not arise. However, the key here will be to review and structure the contractual arrangement in a manner that would support the contention that the personnel are independent consultants and not employees of the foreign company. Factors relevant in determining the relationship include the nature of operations in India, the degree of control exercised by the foreign company on these consultants, the roles of the consultants in India, etc. This contractor relationship is important in order to avoid any Permanent Establishment (“PE”) related issues. On the whole, this alternative is a relatively simpler and cost effective option for doing business in India.

B. Operating through a Formal Presence

If for commercial reasons it is necessary to employ personnel in India or the actual nature of operations will cause the consultants to be characterized as an employee, then under Indian exchange control laws, the foreign company must set up a formal presence in India. In such cases, it is necessary to obtain appropriate regulatory approvals for establishing a place of business in India.

A place of business in India may be in any of the forms (mentioned below under paragraphs X and Y), depending upon which option suits the foreign company’s objectives, needs and intention better. Paragraph X below deals with different types of unincorporated entities and paragraph Y below deals with incorporated entities, including a wholly owned subsidiary (“WOS”).

X. Unincorporated Entities

Unincorporated entities permit a foreign company to do business in India via offices of certain types. These options include:

1. **Liaison Office**

   Setting up a liaison office requires the prior consent of the Reserve Bank of India (“RBI”). A liaison office acts as a representative of the parent foreign company in India. However, a liaison office cannot undertake any commercial activity and must be maintained by its foreign parent company. The approval for setting up a liaison office is valid for 3 years and can be extended for a further term of 3 years, subject to certain conditions being fulfilled. A liaison office is an option usually preferred by foreign companies that wish to explore business opportunities in India.

2. **Branch Office**

   The branch office of a foreign company is another alternative in India and must be set up with the prior consent of the RBI. The branch office can represent the foreign parent company in India and act as its buying or selling agent in India. A branch office is permitted to remit surplus revenues to its foreign parent company subject to the applicable taxes. Operations of a branch office are restricted due to limitation on the activities that it can undertake. The tax on branch offices is 40% plus applicable surcharges and education fees. It is an option that is useful for companies that intend to undertake research and development activities in India.
3. **Project Office**

A foreign company may set up a project office in India under the automatic route, provided that it has secured a contract from an Indian company to undertake a project in India and fulfills certain other conditions. The activities of a project office must be related to or incidental to the execution of the relevant project in India. A project office is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign parent company. The tax on project offices is 40% plus applicable surcharges and education fees. Project offices are generally preferred by companies engaged in one-time turnkey or installation projects.

4. **Partnership**

A partnership is a relationship created between persons who have agreed to share the profits of a business carried on by all or any of them, acting for all. A partnership is not a legal entity independent of its partners. The partners own the business assets together and are personally liable for business debts, and taxes. In the absence of a partnership agreement, each partner has an equal right to participate in the management and control of the business and the profits and losses are shared equally among the partners. Any partner can bind the firm and the firm is liable for all the liabilities incurred by any partner on behalf of the firm. Foreign investment is permitted in Indian partnership firms subject to prior approval of RBI. A partnership arrangement is certainly not a preferred entry option for a foreign company.

Y. **Incorporated Entities**

After almost 58 years, India has recently enacted a new Companies Act known as The Companies Act of 2013 (the “Act”). This is a new legislation and the government is yet to notify all the sections of the Act, including the rules prescribed under the Act. Therefore, there exists an element of uncertainty with respect to certain provisions of the Act. Nevertheless, a WOS may still be set up by a foreign company in India as a “private limited company” or “public limited company”.

Additionally, with the passing of the Limited Liability Partnership Act of 2008, a limited liability partnership is another new option available to investors, as is explained in greater detail below.

1. **Private Limited Company**

The Act dispenses with the minimum capital requirement. Promoters are free to decide the amount of capital needed to subscribe (earlier private limited companies were required to have a minimum capital of INR 100,000). A private limited company carries out its business in accordance with its charter documents viz., the memorandum of association and articles of association. A private limited company has certain distinguishing characteristics. It must, in its articles of association, restrict the right to transfer shares; restrict the number of its members to 200 (excluding the present and past employees of the company who may have become members during the course of their employment with the company); prohibit any invitation to the public to subscribe to the securities of the company. About 3-4 weeks is required to incorporate a private limited company, but this may vary from one State to another State within India. A WOS incorporated as a private limited company is recommended since it is subject to relatively less regulatory oversight vis-à-vis a public limited company.

2. **Public Limited Company**
A public limited company is defined as a company which is not a private limited company. A public limited company may have more than 200 shareholders, its shares are freely transferable and it may also list its shares on a recognized stock exchange by way of an initial public offering ("IPO").

A WOS is the most preferred option, if the foreign company has long-term business interest in India.

3. **Joint Venture Company**

The establishment of a joint venture arrangement is a suitable option where the foreign company wishes to invest in an existing Indian company or wishes to incorporate a new company where part of the equity is beneficially owned by one or more persons, other than the foreign company.

4. **Limited Liability Partnership ("LLP")**

A LLP is a form of business entity which permits individual partners to be shielded from the liabilities created by another partner’s business decision or misconduct. In India, LLPs are governed by the Limited Liability Partnership Act of 2008. The LLP is a body corporate and exists as a legal person separate from its partners. Foreign investment in LLPs is permitted under the automatic route only in LLPs operating in sectors where 100% FDI is allowed through the automatic route and with no performance linked conditions.

C. **Operating through a Franchise**

India has no specific legislation regulating franchise arrangements. The arrangement between a foreign franchisor and an Indian franchisee is usually captured by way of an agreement, whether it is a binding LOI or a Memorandum of Understanding, a Master Franchise Agreement or an Area Development Agreement. Apart from contract law playing a major role, there are a number of other laws that affect the franchisor-franchisee relationship. Intellectual property, taxation, labor, competition, property, consumer protection, and exchange control regulations, for example, all influence franchising arrangements. A franchisee has to comply also with real estate, and labor laws, and other industry specific laws for running the business.

However, the most important aspect to be considered by foreign franchisors is the law and procedure for transferring money out of India. All the payments under a franchise agreement, including initial franchise fees, royalty, minimum-guaranteed payments, advertising or marketing fees, area development fees, transition costs, and relocation fees to be paid to a foreign party are subject to foreign exchange regulations, which are part of FEMA. It is important to note that there are no restrictions on remittances out of India for use of trademarks in connection with franchise arrangements, and no permission is required from the FIPB in that regard.

However, all such payments out of India are to be made by the Indian party through its bank, which is known as an “authorized dealer” bank. Credit card or cash payments are not permitted for such transactions. Every time an Indian party intends make a payment to a foreign entity, it must complete various formalities with its authorized dealer bank and provide evidence why the payment has to be made. The Indian payer must also simultaneously approach its auditors and obtain certification from them regarding the reason for payment, nature of payment, rate of tax, total tax payable, and
confirmation that the appropriate tax has been withheld and deposited with the Income Tax department. The certificate of the auditor is critical and no bank is permitted to remit money without it. To issue this certificate, the auditors need to review an invoice from the foreign party among other documents.

The onus of deducting and depositing tax is on the Indian franchisee. However, the foreign franchisor may be able to claim the benefit of lower taxes if some specified documents are provided to the Indian franchisee before remittance is made by the Indian franchisee’s bank.

III. SINGLE BRAND PRODUCT RETAILING (“SBPR”)

The regulations pertaining to FDI in Single Brand Product Retailing have undergone numerous changes in the recent past to make the process of investment easier for retail companies, entities that would otherwise typically explore the option of franchising to sell their products in India. At present FDI in SBPR is allowed under the automatic route up to 49% and any FDI beyond 49% would require prior government approval.

The present regime stipulates that FDI in SBPR would be allowed, provided the products to be sold are of a “Single Brand” only, including sold under the same brand internationally. Further, permission for SBPR is given only with respect to products which are branded during manufacturing and not otherwise.

The guideline also envisages that in respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased would have to originate from India, preferably from micro, small and medium-sized enterprises, village and cottage industries, artisans and craftsmen, in all sectors. This procurement requirement would have to be met annually from the commencement of the business i.e. opening of the first store in India.

Further, recognizing the difficulty that would be faced by retailers operating in certain high technology segments in complying with the local sourcing norms, the guidelines provide that sourcing norms can be relaxed in such cases, subject to government approval.

The latest revisions to the FDI policy have also allowed foreign single-brand retailers to sell products through online channels, provided they have permission to sell through brick-and-mortar stores.
B. CROWDFUNDING RULES

An Overview by Elesa A. Rectanus, Associate, Sloane & Johnson, PLLC

On October 30, 2015 the Securities and Exchange Commission (the “SEC”) adopted the final rules, Regulation Crowdfunding, under the Securities Act of 1933 (the “Securities Act”) and the Exchange Act of 1934 (the “Exchange Act”) to implement Title III of the Jumpstart Our Business Startups (“JOBS”) Act. Title III of the JOBS Act created a new exemption from registration for crowdfunding offerings, Section 4(a)(6) of the Securities Act. Regulation Crowdfunding enables individuals to participate in securities-based crowdfunding transactions pursuant to Section 4(a)(6) of the Securities Act, provided that certain requirements are met by each of the investors, issuer and intermediary participating in the crowdfunding transaction. The impetus behind crowdfunding is to remove the traditional barriers to capital that many small businesses face by providing small businesses with access to the general public through the internet for the purpose of raising capital. The final rules reflect relatively minor modifications to the proposed rules, which were released on October 23, 2013. The final rules will be effective as of May 16, 2016.

GENERAL REQUIREMENTS

Limitation on Capital Raised

An issuer may raise up to an aggregate amount of $1 million from a large number of investors (the “crowd”) within any rolling 12-month period in reliance on Regulation Crowdfunding. When determining whether an issuer is within the limitation, the issuer must calculate the amounts sold by the issuer in addition to any amounts sold by any predecessor of the issuer and any entities controlled by or under common control with the issuer.

Investor Limitations

Some of the more notable modifications from the proposed rules appear in connection with the investor limitations. The final rules clarify that the investment limit is an aggregate investment limit, such that the investment limit reflects all investments made by an investor in all crowdfunding offerings in which such investor participated over the course of a 12-month period, and not a single crowdfunding offering.

In addition, the SEC modified the investment limit calculation in order to provide additional investor protections. The SEC specifically focused on those investors who may be less able to bear the risk of loss, as the SEC anticipates startups and small businesses, which have an increased likelihood of failure as compared to growth companies, to rely most heavily on the crowdfunding exemption.

There are two numerical investor limitations. The first is an aggregate investment limit of $100,000 for all crowdfunding offerings during a 12-month period. The second is within the $100,000 limit and employs a “lesser of” approach that is based on the annual income or net worth of the investor. An investor’s investment limit is calculated as follows:

(i) If either annual income or net worth of an investor is less than $100,000, then the investor may invest up to the greater of (x) $2,000 or (y) 5% of the lesser of the investor’s annual income or net worth; or
If both annual income and net worth of an investor are equal to or greater than $100,000, then the investor may invest up to 10% of the lesser of the investor’s annual income or net worth.

For instance, investor X has annual income of $50,000 and a net worth of $105,000. Because X’s annual income is less than $100,000, X may invest up to the greater of $2,000 or 5% of $50,000 ($2,500). X’s investment limit is equal to $2,500, such that X may invest no more than an aggregate amount of $2,500 in all crowdfunding offerings during the course of a 12-month period.

Despite the more restrictive investment limits implemented by the final rules as opposed to the proposed rules, the final rules permit an investor to calculate income and net worth jointly with the investor’s spouse.

Non-Eligible Issuers

An issuer may not be one of the following companies, among others as determined by the SEC, in order to utilize the crowdfunding exemption:

- Foreign companies;
- Reporting companies;
- Investment companies, including hedge funds;
- “Bad actors” that are disqualified from participating in the crowdfunding offering due to certain securities law or fraud-related violations;
- Companies that sold securities pursuant to the crowdfunding exemption but failed to file annual reports with the SEC, and to provide such reports to investors, during the two years immediately preceding the filing of the new offering statement (see below description of reporting requirements for companies engaged in a crowd funding offering); and
- Blank check companies.

Transactions Conducted through an Intermediary

An intermediary may be either a registered broker-dealer or a registered funding portal. In order to conduct a crowdfunding offering in reliance on Section 4(a)(6), an issuer may do so solely through the use of only one intermediary, and such offering must be conducted exclusively through such intermediary’s platform. A “platform” is defined under Regulation Crowdfunding as “a program or application accessible via the Internet or other similar electronic communication medium through which a registered broker or a registered funding portal acts as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6).”

Aggregation and Integration

There is no aggregation or integration with other exempt offerings. The $1 million limitation only applies to the capital raised by an issuer pursuant to the crowdfunding exemption. Similarly, there is no integration with other exempt offerings. An issuer may engage in a Section 4(a)(6) offering while another exempt offering is occurring simultaneously, has occurred prior to or occurs after the Section 4(a)(6) offering. However, each exempt offering must satisfy the requirements of the exemption being relied upon. For instance, if an issuer is conducting a crowdfunding offering while simultaneously
conducting an exempt offering that does not permit general solicitation, the issuer must determine that the purchasers in the other exempt offering were not solicited by means of the crowdfunding offering.

Resale Limitations

The final rules prohibit the resale of securities issued pursuant to the crowdfunding exemption for one year after the date of purchase, except when transferred to the issuer, an accredited investor, piggybacking on a registered offering, or to a family member of the purchaser.

ISSUER OBLIGATIONS

Disclosure Requirements

An issuer engaged in a crowdfunding offering in reliance on Section 4(a)(6) must provide specific disclosures to each of the SEC, investors and the relevant intermediary. The issuer must file these required disclosures with the SEC on the new “Form C.”

Offering Statement Disclosure Requirements: Information About the Issuer and the Offering

An issuer must disclose the following:

- **Officers and Directors.** General information about its officers and directors, such as the period of time that the directors and officers served in their respective positions, and their business experience for the past three years.

- **Use of Proceeds.** A description of the purpose of the offering and the definitive plans or the range of possible uses for the proceeds.

- **Offering Price.** The price of the securities being offered or the method to determine the price, as the offering price is not required to be a fixed price.

- **Types of Securities Offered and Valuation.** The final rules do not limit the types of securities, whether it be equity or debt, that may be offered in a crowdfunding offering, nor prescribed a valuation method for securities.

- **Target Offering Amount and Deadline.** The target offering amount and the deadline to achieve the target offering amount.

A description of the process to cancel an investment commitment, and upon achieving the target amount, to complete the transaction. An issuer must disclose in connection with a description of the subscription process that: (i) the investors have an unconditional right to cancel for any reason until 48 hours before the deadline; (ii) the investors will receive notification from the intermediary that the target amount has been met; (iii) the issuer can close the offering prior to the deadline upon achievement of the target amount (provided the offering has not been open for less than 21 days); provided, however, that if the offering closes early, each investor must have received notification of the new offering deadline no less than five business days before the new deadline. If the investor decides not to cancel, upon the closing of the offering the issuer will receive the funds and the investor will receive securities.
In the event of a material change to the offering, and if the investor does not reconfirm the investor’s commitment, the investor’s commitment will be cancelled and the issuer will return the committed funds. If the target offering amount is not achieved by the deadline, then no securities will be sold, all commitments will be cancelled and all committed funds will be returned to investors.

Oversubscription. An issuer’s ability to accept investments in excess of the target amount is only limited by the $1 million annual aggregate limitation. An issuer must disclose whether it will accept investments in excess of the target amount. At the commencement of the offering, an issuer must provide a description of the purpose, method for allocating oversubscriptions and intended use of such excess proceeds.

Ownership and Capital Structure. An issuer is required to identify the beneficial owners of 20% or more of the issuer’s total outstanding voting securities, as well as provide a description, which includes the number of securities being offered and those outstanding, whether such securities have voting rights and any limitations on such voting rights, and the restrictions on the transfer of securities.

Additional Required Disclosures. An issuer is required to provide additional disclosures including: the intermediary’s name, SEC file number, and CRD number; amount of compensation paid to the intermediary for conducting the offering, including the amount of any referral or other fees associated with the offering; the total number of the issuer’s employees; legends; material risk factors relevant to the issuer, which are similar to risk factors in a prospectus; material terms of the issuer’s indebtedness; any exempt offerings conducted within the past three years; and certain related-party transactions.

Offering Statement Disclosure Requirements: Financial Disclosure

In addition to the above disclosures, an issuer is required to file with the SEC and provide to investors and the relevant intermediary a complete set of its financial statements, which includes a balance sheet, income statement, statement of cash flows and statement of changes in owners’ equity, prepared in accordance with U.S. generally accepted accounting principles covering the shorter of the two most recently completed fiscal years or the period since inception of its business. The financial disclosure requirements applicable to an issuer depend on the amount offered and sold within a 12-month period. The scaled financial disclosure requirement is as follows:

An issuer offering $100,000 or less of securities in reliance on Regulation Crowdfunding is required to provide certain information provided on the issuer’s federal tax return for the most recently completed fiscal year, in addition to the above-described financial statements, all of which must be certified by the principal executive officer.

An issuer offering greater than $100,000 but no greater than $500,000 is required to provide financial statements reviewed by an independent public accountant.

An issuer offering greater than $500,000 (but subject to the $1 million cap) is required to provide audited financial statements, except that a first-time issuer is only required to provide financial statements reviewed by an independent public accountant.

Progress Updates
Upon achievement of the target offering amount, an issuer must file with the SEC “Form C-U” to report the total amount of securities sold in the offering. Progress updates must be made available to investors by the intermediary or the issuer no later than five business days after achievement of each of the following targets: 50% of the target amount, 100% of the target amount, and acceptance of subscriptions in excess of the target amount.

**Amendments to the Offering Statement**

An issuer required to amend its offering statement disclosures if there is any material change in the offer terms or disclosure previously provided to investors.

**Annual Reporting Requirement**

An issuer who sells securities in reliance on Section 4(a)(6) must file an annual report with the SEC no later than 120 days after the end of its most recent fiscal year. In addition, an issuer must post its annual report on its website sells, and is not required to provide to investors copies of the annual report, physical or digital, or refer to the posting via email. The annual report is required to include disclosures that are similar to the disclosures required in the offering statement. The requirement to file an annual report terminates upon the earliest to occur of:

(i) the issuer becoming a reporting company;
(ii) the purchase or repurchase by the issuer or another party of all of the securities issued pursuant to the crowdfunding exemption, including any payment in full of debt securities or any complete redemption of redeemable securities;
(iii) the issuer has filed at least one annual report and has fewer than 300 holders of record;
(iv) the issuer has filed at least three annual reports and has total assets that do not exceed $10 million; or
(v) liquidation or dissolution of the issuer’s business.

**Limitations on Advertising the Offering Terms**

An issuer can advertise an offering in reliance on Section 4(a)(6) solely by publishing notices of the offering terms, which are similar to tombstone ads. The advertising notice may only include the following information: a statement that the issuer is conducting an offering, the intermediary’s name and a link to the intermediary’s platform; the offering terms, which includes the amount, nature, and price of the securities offered and the closing date of the offering period; and certain factual information about the issuer and a brief description of its business.

The final rules do not restrict an issuer from engaging in communications if there is no reference to the offering terms, except as permitted in an offering notice, and such communication pertains to factual business information. Additionally, an issuer may communicate with investors about the offering terms through the intermediary’s platform, provided that the issuer identifies itself as the issuer in all communications.

**Compensation of Persons Promoting the Offering**

Under Rule 205 of Regulation Crowdfunding, an issuer is prohibited from directly or indirectly compensating any person for promoting the offering through the intermediary’s platform unless the
issuer takes reasonable steps to ensure that the person clearly discloses that it receives compensation for such promotion each time such person posts promotional material on the platform. This requirement applies broadly to all persons acting on behalf of the issuer, including any person specifically hired to promote the offering or a founder or employee of the issuer that engages in promotional activities through the platform, regardless of whether the person is compensated for promotional activities.

INTERMEDIARY OBLIGATIONS

General Requirements of Intermediaries

An offering in reliance on Section 4(a)(6) requires an offering to be conducted through an intermediary. An intermediary is either a registered broker-dealer or a funding portal, which is a new type of online investment service provider and which is registered with the SEC and any applicable self-regulatory organization (“SRO”), such as FINRA.

Rule 300(b) prohibits an intermediary’s directors, officers or partners from having any financial interest (meaning a direct or indirect ownership of, or economic interest in, any of the issuer’s securities) in an issuer using its services, and prohibits such persons from receiving a financial interest in an issuer as compensation for its services in connection with the offering. However, an intermediary itself may have a financial interest in an issuer using its services as long as: (i) the intermediary receives the financial interest from the issuer as compensation for the services provided in connection with the offering; and (ii) the financial interest consists of securities of the same class and having the same terms, conditions and rights as those sold in the offering.

Measures to Reduce the Risk of Fraud

An intermediary must have a “reasonable basis” for believing that an issuer has (i) complied with the statutory issuer requirements and all relevant requirements of Regulation Crowdfunding; and (ii) established means to keep accurate records of holders of the securities offered and sold through the platform; provided, that if an issuer engages a registered transfer agent, an intermediary will be deemed to have satisfied the recordkeeping requirement described in item (ii) above. In satisfying either of the above requirements, an intermediary can reasonably rely on an issuer’s representations that it is in compliance and keeps accurate records unless the intermediary has reason to question the reliability of such representations.

As a modification to the proposed rules, the final rules also apply the reasonable belief standard to intermediary requirement to deny access to its platform. Specifically, an intermediary must deny access to its platform if it has a reasonable belief that an issuer or the offering presents the potential for fraud or raises investor protection concerns, or that it is unable to adequately assess such risk of fraud. An intermediary must deny an issuer access to its platform if the intermediary has a reasonable basis for believing that an issuer or any of its directors, officers or beneficial owners of 20% or more is subject to disqualification under Rule 503.

An intermediary must conduct background and securities enforcement regulatory history checks on each issuer listing securities on its platform and on each director, officer and 20% beneficial owners.

Account Openings
Rule 302 prohibits an intermediary from accepting an investment commitment until the investor opens an account with the intermediary and consents to electronic delivery. Upon the opening of an account, the intermediary must provide educational materials to the investor.

**Education Materials.** The educational materials, which are in plain language, must discuss the following: the offering process, the risks associated with a crowdfunding offering and whether such offering is appropriate for the investor; the types of securities that may be offered through its platform and the risks associated with each type, including the risk of limited voting power due to dilution; resale limitations; required issuer disclosures; individual investment limits; and that the intermediary may not continue to have a relationship with the issuer after completion of the offering. An intermediary is required to maintain accurate educational materials. Upon any material revisions to the educational materials, such revised materials must be made available to all investors before accepting any additional investment commitments or effecting any further crowdfunding transactions.

**Promoters.** An intermediary must inform investors, upon opening an account, that any person that engages in promotional activities on the issuer’s behalf on the intermediary’s platform, whether such person is compensated for such promotions or is a founder or employee of the issuer, must clearly disclose in all platform communications the receipt of the compensation and the fact that the person is engaging in promotional activities on the issuer’s behalf.

**Compensation Disclosure.** Separately, an intermediary must disclose, when opening an account, the manner in which it will be compensated in connection with crowdfunding offerings.

**Transaction Obligations**

**Issuer Information.** No later than 21 days before the first sale of securities, an intermediary must make available to the SEC and potential investors any information the issuer must provide under Rules 201 (issuer disclosure requirements) and 203(a) (Form C disclosures). The intermediary must make such information publicly available on its platform, and maintain the public availability of this information and any additional issuer information until the completion or termination of the offering. An intermediary cannot require a person to establish an account with the intermediary in order to access this information.

**Investor Verification.** An intermediary must ensure investors know and comply with the investor limitations. An intermediary can rely on investor self-certification of investor limitations, but it must have a reasonable basis for believing the investor satisfies the investor limitations under Section 4(a)(6)(B) before allowing an investor to make an investment commitment.

**Acknowledgement of Risk.** Prior to accepting each investment commitment from an investor, an intermediary must obtain from the investor a representation and a completed questionnaire to ensure the investor acknowledges the risks of the investment.

**Communication Channels.** An intermediary must provide on its platform means through which investors are able to communicate with other investors and the issuer’s representatives. These communications must be publically available on its platform; however, only those who have accounts with the intermediary can post comments. Moreover, any person who posts a comment must disclose whether such person is a founder or employee engaging in promotional activities on behalf of the issuer, or
otherwise is compensated for such promotion. Funding portals cannot participate in these communications except to establish guidelines and remove abusive or potentially fraudulent communications.

**Notice of Investment Commitment.** Upon receipt of an investment commitment from an investor, the intermediary must provide such investor with a notice that includes the investment terms and a reminder of the investor’s right to cancel.

**Maintenance and Transmission of Funds.** Rule 301(e)(1) implements Section 4A(a)(7), which requires an intermediary to ensure that all offering proceeds are only provided to the issuer when the target offering amount is met or exceeded. Rule 301(e)(1) also requires that a registered broker comply with the established requirements of Rule 15c2-4 of the Exchange Act for the maintenance and transmission of investor funds. Because funding portals cannot manage, possess or handle funds or securities, a funding portal is required to use a qualified third party (a registered broker-dealer, bank, or credit union) to handle investor funds and must direct investors to transmit the funds directly to a qualified third party.

**Confirmation of Transaction.** At or before the completion of a crowdfunding transaction, an intermediary is required to provide to each investor a notification disclosing: the transaction date; the type, identity, price and number of securities purchased and the overall number and price of securities sold by the issuer in the transaction; certain specified terms of the security (such as debt or callable security); and the source and total amount of any remuneration that the intermediary will receive in connection with the transaction, whether from the issuer or other persons.

**Notice of Cancellation & Reconfirmation**

In the event an offering closes early, the offering terminates, or a material change to the terms occur, the intermediary must provide investors with notice regarding the right to cancel or the need to reconfirm commitments, each of which must be done by the investor within five business days of the investor’s receipt of the notice. Upon the termination of an offering, the intermediary must provide to investors, within five business days of termination, notice of the cancellation and the refund amount.

**Third Party Payments**

An intermediary can compensate a third party for directing potential investors or issuers to the intermediary’s platform via general business advertising. However, in no instance may an intermediary compensate a third party for providing the intermediary with any investor’s personally identifiable information.

**Obligations Specific to Funding Portals**

**Exemption from Broker-Dealer Registration.** Without an exemption or exception from registration, a funding portal would fall within the definition of a broker under Section 3(a)(4) of the Exchange Act and be subject to the rules and regulations governing brokers. Rule 401 provides registered funding portals with an exemption from broker registration requirements under Exchange Act Section 15(a)(1). Funding portals are required to register with the SEC via Form Funding Portal, which requires information similar to, albeit less burdensome than, Form BD. The tradeoff for less regulation is the limitation of a funding portal’s activities.
A funding portal is prohibited from performing any of the following activities: offering investment advice or recommendations; soliciting purchases, sales or offers to buy securities offered or displayed on its platform; compensating promoters or other persons for solicitations based on the sale of securities displayed or referenced on its platform; or holding, managing, possessing, or handling investor funds or securities.

Conditional Safe Harbor. However, Regulation Crowdfunding identifies certain limited activities that a funding portal may engage in without violating the statutory prohibitions described above. Due to the evolving nature of crowdfunding, the SEC intended the below activities, which compose the safe harbor, to be non-exclusive. A funding portal may engage in the following:

- Limit the issuers and offerings allowed on a funding portal’s platform
- Highlight issuers and the offerings of certain issuers on a funding portal’s platform
- Provide search functions on and communication channels through its platform
- Advise issuers as to the structure or content of the issuer’s offering
- Compensate third parties for referrals, provided it does not receive personally identifiable information and such compensation is not transaction-based
- Enter into written compensation arrangements with brokers whereby funding portals may compensate or receive compensation from brokers, including transaction-based compensation
- Advertise its services and certain issuers or offerings available through its platform
- Accept investor commitments on behalf of issuers using its platform (although it may not handle investor funds, as discussed above)

Compliance Requirements. The recordkeeping requirement, which is similar to broker recordkeeping requirements, imposed on a funding portal requires, among others things, the maintenance of certain records for five years and that such records are easily accessible for at least the first two years, and the creation and maintenance of daily, monthly and quarterly summaries of the transactions on its platform. A funding portal is required to comply with the same privacy rules as brokers, and implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and regulations. Moreover, a funding portal is subject to the examination and inspection authority of the SEC.

MISCELLANEOUS PROVISIONS

Insignificant Deviations

Regulation Crowdfunding affords issuers a safe harbor, Rule 502(a), for insignificant deviations from the requirements of Regulation Crowdfunding.

Exemption from Section 12(g)

Regulation Crowdfunding exempts holders of securities issued pursuant to a crowdfunding offering from inclusion in the record holder threshold of Section 12(g) of the Exchange Act, provided that the issuer is in compliance with the annual report requirement under Regulation Crowdfunding, has less than $25 million in total assets as of the end of its last fiscal year and engages the services of a registered transfer agent.
Statutory Liability

While the statutory liability provision of Section 4A(c) of the Securities Act applies only to an “issuer,” the definition of an “issuer” is such that an intermediary would likely fall within the definition of an “issuer” with regard to the statutory liability provision of Section 4A(c). The SEC expressly declined to exempt intermediaries from the definition of an issuer under Section 4A(c), which results in the likely application of Section 4A(c) to intermediaries.

Disqualification

The “bad actor” disqualification rules provided in Rule 503 are similar to the Rule 506 disqualification rules as they relate to the issuer and certain associated persons.

CONCLUSION

Regulation Crowdfunding affords another opportunity for investors to participate in crowdfunding transactions. While Regulation A+ and Rule 506(c) enable individuals who qualify as accredited investors to participate in crowdfunding transactions, Regulation Crowdfunding expands the availability to participate in crowdfunding transactions across individuals regardless of net worth or annual income, as there is no investor qualification requirement. Despite the broad application, the monetary ceiling of $1 million may prove to be disproportionate in light of the costs and potential liability associated with pursuing a crowdfunding offering under Regulation Crowdfunding. Whether startups and small companies will employ Regulation Crowdfunding as opposed to other exemptions such as Regulation A+ is up for debate.
A. Recap of Annual Meeting in Chicago, September 2015

1. Thursday, September 17, 2015

(a) **Program**: *EEOC, ADA, FMLA and Other Acronyms - Straining the Alphabet Soup of Employment Law* (Corporate Counsel Triage Series)

   **Chair**: Erik L. Kantz

   **Panelists**: Cara Bradley, Luis Pinedo, and E. Jason Tremblay

   **Description**: Corporate counsel—both in-house and outside general counsel—wrestle with a myriad of federal and state laws, oftentimes overlapping in their scope and effect. A panel of in-house and outside general counsel tackled a series of common issues and hot topics they face in an increasingly regulated, and often duplicated, employment law environment.

   **Co-sponsors**: Corporate Counsel Committee

   **Program Materials**: [http://www.americanbar.org/content/dam/aba/events/business_law/2015/09/annual/materials/ada-fmla-201509.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/business_law/2015/09/annual/materials/ada-fmla-201509.authcheckdam.pdf)

(b) **Program**: *Advising Your Not Big Client On A Right Size Approach To Cybersecurity* (Corporate Counsel Triage Series)

   **Chair**: George M. Flint III

   **Panelists**: Ajay Mago, Tammy B. Georgelas, JB Bambaud, Adam Rice, and Daniel J. Struck

   **Description**: “Small” isn’t a free pass on Cybersecurity issues. Cyber Criminals can cause problems big enough to give your middle-market client its 15 minutes of fame/shame or put it out of business. This panel presented the Cybersecurity playbook for a hypothetical middle-market business and offer right size response and preventive strategies.

   **Co-sponsors**: Corporate Counsel Committee and Corporate Compliance Committee.

   **Program Materials**: [http://www.americanbar.org/content/dam/aba/events/business_law/2015/09/annual/materials/not-big-201509.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/business_law/2015/09/annual/materials/not-big-201509.authcheckdam.pdf)

(c) **Tribute Lunch**: *Amy Goodman and Peggy Foran, Governance Pioneers*

   **Co-Chairs**: Holly J. Gregory, Catherine T. Dixon, Thomas J. Walsh, Jr, and Mac R. McCoy

   **Co-sponsors**: Corporate Governance Committee, Federal Regulation of Securities Committee
Meeting: International Expansion and Cross Border Transactions Subcommittee

Co-Chairs: Michel Gélinas, David Jaffe, Hermann J. Knott, and Jeffrey Van Winkle

Summary: This Subcommittee’s meeting was led by Co-Chairs Michel Gélinas and Hermann Knott, and was attended by 31 participants with several countries being represented. As this was the first meeting under the leadership of the new Co-Chairs, the meeting focused on how to better serve the membership’s needs and identify topics that would be of interest for discussion at future meetings. The following topics were identified at the September meeting as being of interest for future Subcommittee meetings and/or CLE programs:

1. Have one or more general counsels discuss their experience in expanding internationally.
2. Know-Your-Customer requirements in various jurisdictions.
3. Issues in hiring employees and consultants abroad.
4. Discussing the pros and cons of expanding abroad through a greenfield investment, an acquisition, a joint venture, a distributorship, a license or other similar arrangement.
5. Differences in labor laws, work permits and visa requirements.
6. Tax and structuring issues in establishing foreign operations.
7. The top 10 issues that may surprise a U.S. company when expanding abroad.
8. Privacy and data protection/sharing issues.
9. Enforcing legal rights in a foreign jurisdiction; considerations associated with the choice of governing law and the inclusion of an arbitration provision.
10. The impact of common law versus civil law when doing a transaction abroad.

All volunteers are welcome. The International Expansion and Cross-Border Transactions Subcommittee is always looking for new members to:

1. Join a subcommittee; or
2. Do a short presentation on a topic of your choice that would be of interest to our membership (10-20 minutes) at our next subcommittee meeting during the Business Law Section’s Spring meeting to be held in Montreal on April 7-9 2016; or
3. Write a short article for the newsletter of the Middle Market and Small Business Committee; or
4. Organize or participate in a CLE program for the Business Law Section’s Annual Meeting to be held in Boston in September 2016.

If anyone has any additional topics that that she or he would like to suggest one or more topics for discussion at an upcoming meeting for, or is interested in getting involved with, this Subcommittee, please contact one of the Co-Chairs of the International Expansion and Cross-Border Transactions Subcommittee.

Meeting: Business Entities Governance

Chair: Allen Sparkman
Summary: Chair Allen Sparkman led this meeting and explained the current projects and goals of the Business Entities Governance Subcommittee. The Subcommittee is currently working on drafting a model form of operating agreement for a multi-member limited liability company (LLC) and a model form of operating agreement for series LLCs. The goal is that the forms will be useful to lawyers who work with LLCs. Volunteers are desired and anyone interested in volunteering should contact Allen Sparkman.

2. Friday, September 18, 2015

(a) **Meeting:** Private Placement Broker Task Force

**Chair:** Linda Lerner

**Summary:** Task Force Chair Linda Lerner led the September 2015 meeting of the Private Placement Broker Task Force, which addressed how an M&A Broker could substantiate compliance with the M&A Broker No-Action Letter issued by the SEC Staff in 2014. It was suggested, for example, that the M&A Broker should obtain representation letters from the buyer and seller to help form the basis for a determination that the transaction falls within the parameters of the M&A no-action letter. The current status of efforts to codify the principles embodied in the M&A Broker No-Action Letter on a federal and state level, in the NASAA Model Rule for M&A Brokers and pending congressional legislation were also discussed.

An unresolved issue is the extent of the supervision and books and records requirements for member firms in a situation where a registered person engages in M&A Broker business, potentially selling away from the firm.

Ms. Lerner stated that the lawyers who requested the M&A Brokers No-Action Letter as well as Greg Yadley had submitted to the staff of the SEC’s Trading a Markets Division, for their consideration, 12 scenarios regarding broker-dealer registration requirements and in particular with respect to capital formation. The SEC has not yet responded to this submission.

The attendees at the meeting also discussed the inconsistency between what various states require under their securities regulation requirements. For example, it was noted that in Texas real estate brokers do not need to register their transactions with the Texas State Securities Board, even though such real estate transactions involve securities and typically may not trigger any change in the title to the underlying real estate. In New York, all securitized properties must be registered (for example, condominiums and shopping centers) if any securities transactions are involved. One attendee at the meeting noted that “they are not selling real estate, but they are selling securitized real estate.”

The attendees discussed the difficulty of clearing certificated and low priced securities, noting that most clearing firms have stopped clearing these securities, particularly when traded on a DVP/RVP basis. The difficulty arises because, due to the lack of revenues, many emerging companies utilize stock to compensate both employees and third party vendors, who then have difficulty monetizing the securities.

If anyone is interested in becoming a member of the Task Force, please contact Task Force Chair Linda Lerner or Task Force Vice-Chair Eden L. Rohrer.
Meeting: Emerging Companies

Co-Chairs: Elizabeth A. Bleakley and Sara K. Stock

Summary: Co-Chairs Elizabeth A. Bleakley and Sara K. Stock led this meeting, which focused on what lawyers need to know about advising start-up companies. The key issues for business founders include (1) how to finance their business and (2) how to compensate their employees. Thus, Ms. Bleakley and Ms. Stock suggested developing a program to educate business owners.

In real-life business situations, founders who compensate their employees with shares of their business face a situation that their employees could eventually try to push them out. Another problem is that founders often do not know what they actually give to their employees. Some lawyers try to get away from start-ups because founders do not pay much attention to advice from lawyers. Also, start-ups are often cash-poor, so lawyers are concerned about how to get paid. Co-Chair Elizabeth Bleakley advised that if she does not have confidence in a company, she will not represent them.

Founders like to negotiate on their own without their lawyers, but lack knowledge regarding tax issues. In addition, they are willing to incorporate their business as a C or S-Corporation and refuse to form an LLC. Many founders try to raise big money from venture capital and they believe that raising money from venture capital is a badge of success. However, many founders do not need such big money, so lawyers may ask clients about whether there are other ways of raising money such as from family and friends.

Meeting: Short Form M&A Documents Task Force

Chair: Eric Graben

Summary: Chair Eric Graben led the September 2015 meeting of the Short-Form M&A Documents Task Force. The meeting focused on drafting a short contract form for small deals. The key is to keep the form short without sacrificing key portions of a longer contact form. This Subcommittee’s long-term goal is to publish a short-form document, like the long-form documents published by the ABA. The members agreed that getting the ABA’s recognition is very important to get other subcommittees to adopt the unfamiliar short-form document.

One political topic addressed at the meeting was how other subcommittees or committees such as the M&A committee may react to any short-form document prepared by this new Subcommittee. Additionally, it was discussed that some clients may still want a longer, more substantive form. The members agreed with the idea of setting a deadline to finish drafting the document. The draft would be posted on the Internet, such as Google Docs, so the members can check and be involved in the process of drafting the document.

Members discussed specifically which portions of a short form could be simplified. Because small deals do not involve a big amount of money, the details of a contract form can be adjusted based on the target for a transaction. For example, the indemnification section can be simple, especially with respect to representations and warranties. Finally, it was determined that a short due diligence checklist could also be useful for small deals.

Meeting: Family-Owned Businesses
Attendees at the meeting had an interesting and lively discussion regarding three recent cases involving sibling disputes in family-owned companies. These cases raised numerous important and often challenging issues, including corporate and trustee fiduciary duties, conflicts of interest, family-business shareholder relations and communications, and estate planning and probate issues involving family business interests.

The first matter involved the Podmajersky family of Chicago, which owns over 100 rental housing buildings in the city’s East Pilsen neighborhood. The father, John, Jr., built the real estate business by acquiring properties over several decades since the 1950s. His son, John III, worked in the business all his life and managed the company’s assets until his termination in 2012. John III’s sister, Lisa, never worked in the business, and lived in Colorado most of her adult life. Lisa moved back to Chicago when their mother’s health was failing. John III filed a lawsuit claiming that, upon her return, Lisa took steps to isolate John from their parents, caused them to terminate him from the company, and convinced them to change their estate documents so that, upon the parents’ death, Lisa would receive a controlling 75% ownership of the company. The parents filed their own lawsuit against John III (John III claims at Lisa’s urging) alleging that John III breached his fiduciary duties in managing the company and paid himself an unauthorized and excessive salary. An article describing this dispute further can be found here:  

The second matter involved the Middleton family of Philadelphia. John Middleton is a part-owner of the Philadelphia Phillies. Middleton’s family owned a cigar manufacturing company—John Middleton, Inc.—since the 1920’s. In 2003, John bought the ownership interests of his mother and two sisters, Lucia and Anna, for around $200 million. At the time of the share purchase, the cigar company was the subject of numerous tobacco-related lawsuits and the company’s future was uncertain. John maintains that the purchase price paid to his sisters and mother was a premium over the appraised value at the time. In addition to being president of the company, John was also a trustee of a trust that held some company shares for Anna’s benefit. The company purchased the trust’s shares as well. In 2007, Philip Morris’ parent company, Altria Group, purchased the cigar company, then wholly-owned by John, for $2.9 billion. In connection with probate court proceedings involving the mother’s estate, Anna has stated that she may bring claims against John and the company for potential self-dealing concerning the sale of her shares, based in part on the fact that John was on both sides of the transaction as trustee for her shares and as the company’s president. For his part, John states that, in the purchase agreement, Anna acknowledged that there was no self-dealing or conflict of interest. An article describing this matter further can be found here:  http://articles.philly.com/2015-04-26/news/61522180_1_cigar-company-sister-legal-team

The third matter, Durham v. Grapetree, LLC, involved a lawsuit that resulted in a letter opinion from the Delaware Court of Chancery (a copy of the opinion is attached). A father gave his five children two Caribbean resort rental properties. The siblings formed a Delaware LLC to manage the properties. Only
four of the five siblings were named managers of the LLC. The fifth sibling, plaintiff Andrew Durham, was not. Andrew nonetheless frequently visited the properties, and sought reimbursement from the LLC of $28,000 in expenses he claimed he incurred on behalf of the LLC for the benefit of the properties (items such as artwork, books, travel expenses, and medical benefits provided to the staff who worked at the properties). The LLC rejected his reimbursement claims and Andrew sued, acting pro se. The Chancery Court noted at the outset that the management of the properties “has not been easy, largely as a result of the deep animus running between certain members of the Durham family.” The Court then recounted the two years of litigation, culminating in a trial and the filing of numerous post-trial motions and requests for re-hearing. At the end of the proceedings, the Court awarded Andrew $1,504.90 in expense reimbursement from the LLC and ordered that no further motions be filed and denied any further requests for re-argument. The Court concluded: “It is quite apparent that this pyrrhic and picayune litigation is not about legal or equitable issues but rather inter-family relationships far beyond the power of a court of equity to redress. Further motion practice is pointless and would be destructive of the limited resources of the LLC in which all siblings hold an interest.”

In all, these three matters highlight many of the complexities – whether cast as legal problems or interpersonal problems (or both) – that arise in the context of advising family-owned businesses.

If anyone has an idea for a case discussion or other suitable roundtable topic at an upcoming meeting and would like an opportunity to present it, please contact Chair Michael P. Connolly.

3. **Saturday, September 19, 2015**

(a) **Meeting:** Securities Regulation Joint Meeting

**Chair:** Bonnie J. Roe

**Summary:** Chair Bonnie J. Roe led this meeting and introduced Sebastian Gomez, the Chief of the SEC’s Office of Small Business Policy, who joined the meeting by telephone conference call. Sebastian Gomez discussed the status of work at the SEC on crowd-funding regulation. [the crowd-funding rules were enacted subsequent to this meeting]

One concern that was expressed in the meeting was the inconsistency in financial statement requirements across exemptions, with the proposed crowd-funding rules requiring financial statements for raising relatively small amounts. Concern was also expressed about the complexity of the crowd-funding rules.

The members discussed alternatives to crowd-funding. One is Rule 504, which allows people to companies to sell securities in offerings of no greater than $1,000,000 in amount if the offering is registered under the applicable state Blue Sky laws.

The members noted that a lot of platforms for so-called crowd-funding transactions (possibly under Rule 506(c)) currently operate without registering as broker-dealers. Requiring these platforms to register as crowd-funding portals would impose some regulation that could prove to be beneficial.
A. Recap of Fall Meeting in Washington, D.C., November 2015

1. Thursday, November 19, 2015

(a) **SEC Forum on Small Business Capital Formation.**

The SEC hosted its thirty-fourth annual Government-Business Forum on Small Business Capital Formation on Thursday, November 19, 2015, as mandated by the Small Business Investment Incentive Act of 1980. This Forum provides small business executives, venture capitalists, government officials, trade association representatives, lawyers, accountants, academics and small business advocates with an opportunity to share their views and recommendations for government and private action to improve the environment for small business capital formation, consistent with other public policy goals, including investor protection.

The morning session for the 2015 Forum was webcast and featured panel discussions on exempt and registered offerings occurring after the passage of the JOBS Act. The afternoon breakout groups, in which participants worked in groups to formulate specific policy recommendations, were not webcast but were accessible by telephone conference call to pre-registered members of the public not in attendance. Afternoon breakout groups developed recommendations on exempt securities offerings, smaller reporting companies, and the SEC's proposed amendments to Rule 147 and Rule 504.


2. Friday, November 20, 2015

(a) **Program:** Good Things Sometimes Do Come in Small Packages: Small Business Considerations for Corporate Counsel – Representing Government Contractors (Corporate Counsel Triage Series)

Chair: Eric Vendt

Panelists: Major Clark and Antonio Franco

Description: The panel was moderated by Eric Vendt, a partner from Whiteford, Taylor & Preston LLP in Falls Church, Virginia. Mr. Vendt was joined by speakers Major Clark and Antonio Franco. Mr. Clark is the Assistant Chief Counsel for the Office of Advocacy of the Small Business Association in Washington D.C. and Mr. Franco is a partner with PilieroMazza PLLC in Washington D.C.

Major Clark presented an overview of the Small Business Association's Office of Advocacy. Mr. Clark also discussed several initiatives used to help small businesses. These initiatives included the 8(a) Business Development Program used to help socially and economically disadvantaged entrepreneurs gain access to sole source contracts for goods, services and manufacturing; the Women-Owned Small Business Program (WOSB) used to provide greater accessibility to federal contracting for women entrepreneurs, the Service-Disabled Veteran-Owned Program that sets aside prime contract and subcontract work for small businesses owned and controlled by service-disabled veterans; and Historically Underutilized Business Zones Program (HUBZone) established to help rural and urban small businesses gain access to federal procurement opportunities.
Antonio Franco discussed affiliation rules associated with small businesses. Specifically, the Newly Organized Concern Rule and the Ostensible Subcontractor Rule were both discussed. The Newly Organized Concern Rule poses issues by creating an affiliation between new small businesses that are organized and run by individuals who previously worked for other companies with which the new business works in conjunction. The Ostensible Subcontractor Rule states that a small business that “is unusually reliant” on a subcontractor may be deemed affiliated for size determination purposes. Additionally, Mr. Franco discussed the issues associated with negative control; gave a summary of the “three in two” rule; and discussed the recertification rules associated with the SBA

Program
Materials:

(b) **Meeting:** Private Placement Broker Task Force Meeting

**Chair:** Linda Lerner

**Summary:** The Private Placement Broker Task Force meeting included a review of a number of regulatory developments affecting brokers and finders. It was noted that the proposed NASAA Model Rule on M&A Broker exemption from registration was still being reviewed by the states and had not been finalized or adopted in any jurisdiction; however, Texas has adopted a rule closer to the M&A Brokers No-Action Letter than to the Model Rule. It is expected that states will begin to adopt the Model Rule or variants.

The Task Force discussed the FINRA proposed Limited Corporate Financing Broker rule. A main point of contention was the limit on its applicability to transactions sold only to institutional investors. FINRA intends to propose a revised version of the rule to the SEC which would permit “qualified purchasers”, as such term is defined in Section 2(a)(51) of the Investment Company Act of 1940 to invest in transactions brokered by “Capital Acquisition Brokers”, which would be subject to a lighter regulatory regime than fully registered brokers.

The chair noted that a letter directed by the authors of the M&A Brokers No-Action Letter, together with Greg Yadley, that requested advice on whether various scenarios would constitute “being in the business of effecting transactions in securities” has not been responded to by the Staff of the SEC’s Division of Trading and Markets. The authors are considering next steps.

(c) **Meeting:** Securities Regulation Subcommittee Meeting

**Chair:** Bonnie Roe

**Summary:** Tom Walsh gave a brief overview of the SEC Government-Business Forum on Small Business Capital Formation that occurred Thursday, November 19th. Others who had attended the Forum, including John Murphy and Greg Yadley, described the sessions that they had attended at the Forum. The discussion included remarks about the JOBS Act implementation and proposed amendments to Rule 147, the “intra-state” crowdfunding exemption. There was also discussion about a proposal to amend Rule 504 to increase the aggregate amount to be offered and sold from $1 million to
$5 million, which might be combined with prospectus-based offerings qualified under the Blue Sky laws of various states. Bad actor disqualifications would apply to this proposal. Finally, Linda Lerner and Faith Colish discussed the status of proposals relating to a private placement broker exemption.

(d) **Meeting:** Short Form M&A Documents Task Force Meeting  
**Chair:** Eric Graben  
**Summary:** The current focus of this task force is to create a model short form stock purchase agreement for deals ranging in the $300,000-$2,000,000 range. This short form agreement is for the benefit of small business owners who may not fully understand the language typically included in longer agreement. Once completed, the document may appear either on the Committee’s website, or in future ABA publications for purchase.

Eric Graben is actively looking for individuals to draft provisions for the model short form stock purchase agreement. A cumulative redline of the agreement, proposed working capital provisions, and proposed dispute resolution provisions were circulated to the members present at the meeting. Mr. Graben also asked each person present to volunteer to look at a specific representation and warranty provision in the agreement and provide comments thereon. Anyone who is interested in helping with the form should contact Eric Graben.

3. **Saturday, November 21, 2015**  
**Meeting:** Family-Owned Businesses  
**Chair:** Michael P. Connolly  
**Summary:** This subcommittee had an interesting and lively discussion regarding a case involving the failed settlement of a dispute between two brothers who co-owned a family business started by their father. The company began as a drilling rig supply company in Texas in the 1950s. By the mid-2000s, it had grown into a diversified publicly traded company valued in the hundreds of millions of dollars. The two brothers, Rueben and Scott, jointly managed the business until 2006 when their relationship began to deteriorate, due in part to their disagreements regarding the future direction of the company. They each took steps to advance their positions through their board membership and shareholder voting rights. Each brother then claimed that the other was improperly attempting to take control of the company or freeze the other brother out. As the brothers were preparing to litigate their various claims, their mother attempted to broker a settlement of the brothers’ disputes and presented a proposed settlement agreement. Instead of signing the mother’s agreement, Scott sent the agreement to his lawyer, who drafted a new proposed settlement agreement. The new agreement called for a series of conditions to be met in order to fully resolve the parties’ disputes. The brothers negotiated and ultimately signed a version of Scott’s settlement agreement, which required the parties first to negotiate a shareholder agreement by a certain later date. After the parties finalized the shareholder agreement, there was to be a series of other actions or agreements regarding the company’s future share ownership and governance. The brothers negotiated but ultimately did not reach agreement on a shareholder agreement. Scott then sued Rueben to enforce the settlement agreement. In 2011, after several years of litigation, a Texas appeals court overturned a trial court judgment in Scott’s favor and ruled that the settlement agreement was an unenforceable “agreement to agree.” The court ruled that Scott therefore was not entitled to any of the changes to the company’s ownership or governance he
claimed under the settlement agreement. Throughout the time Scott was suing Reuben under the settlement agreement, the brothers and other family members were involved in nearly a dozen other lawsuits, most of which resulted in adverse rulings and millions of dollars in judgments against Scott. To resolve all of the lawsuits and judgments, Scott ultimately agreed to sell his shares in the company for less than fair value. Scott was also terminated as an employee of the company. In 2013 Scott sued his lawyer, claiming negligence in failing to prepare an enforceable settlement agreement. In late 2015, after a two-week trial, a jury returned a verdict of $167 million in Scott’s favor and against the lawyer and his firm in connection with the lost value of Scott’s interest in the company when he sold his shares. The jury awarded Scott an additional $29 million in fees and expenses. There will likely be post-verdict motions or appeals that attack this verdict. Nonetheless, this matter serves as a cautionary tale regarding many of the possible problems for boards, shareholders, family members, and their lawyers, that arise in connection with disputes involving family owned businesses.
A. Overview of Spring Meeting to be held in Montreal, April 2016

1. Thursday, April 7, 2016
   (a) Business Entities Governance Meeting, 9:00 a.m. – 10:00 a.m.
   (b) Program: ADR in Action: How Arbitration and Mediation Clauses Work on Paper and in Practice, 10:30 a.m. – 12:30 p.m.
   (c) Middle Market & Small Business Luncheon, 12:30 p.m. – 2:00 p.m.
   (d) International Expansion and Cross-Border Transactions Meeting, 2:00 p.m. – 3:00 p.m.
   (e) Emerging Companies Meeting, 3:00 p.m. – 4:00 p.m.
   (f) Private Placement Broker Task Force Meeting, 4:30 p.m. – 5:30 p.m.

2. Friday, April 8, 2016
   (a) Short Form M&A Documents Task Force Meeting, 10:00 a.m. – 11:00 a.m.
   (b) Program: Corporate Structures, Instruments and Other Things to Know When Representing Entrepreneurs, 10:30 a.m. – 12:30 p.m.
   (c) Program: Expanding Abroad From the United States: What You Don’t Know May Hurt Your Business, 10:30 a.m. – 12:30 p.m.
   (d) Family-Owned Businesses Meeting, 11:00 a.m. – 12:00 p.m.
   (e) Securities Regulation Joint Meeting, 2:00 p.m. – 3:00 p.m.
   (f) Meeting of the Subcommittee Chairs, Task Force Chairs, Vice Chairs and Advisory Committee Chairs, 3:30 p.m. – 4:30 p.m.
   (g) Contractual Governance of Business Entities Joint Task Force Meeting, 4:30 p.m. – 5:30 p.m.
   (h) Middle Market and Small Business Committee Meeting, 4:30 p.m. – 6:00 p.m.
VII. LEADERSHIP LIST OF MMSB COMMITTEE

The following is a list of the MMSB Committee leadership. Please contact the Chairs or Vice Chairs of our MMSB Committee, the Chairs or Vice Chairs of any Subcommittee or Task Forces, or any of our Liaisons, to get involved in the particular MMSB Committee activities that interest you and which can benefit you, your practice and your clients. All levels are welcome, and we hope to see you in Montreal!

Chair and Vice-Chairs

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Liaisons

Corporate Counsel Committee
George M. Flint, III

Federal Regulation of Securities Committee
Bonnie J. Roe

Mergers & Acquisitions Committee
Tarik J. Haskins

Private Equity & Venture Capital Committee
Dee R. Harris

State Regulation of Securities Committee
Mike Liles, Jr.

Editorial Board

Thomas J. Walsh, Jr.
Lawrence Goldman
Mark D. Hobson
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Membership Committee: Berna Rhodes-Ford
Pro Bono Committee: Sarita Nair
Programs Committee: Jared Kaplan
Publications Board: Elizabeth A. Bleakley
Technology Committee: Evangelos “Andy” Kostoulas and Sahmra Stevenson

Task Forces

Private Placement Broker: Linda Lerner, TFC
Eden L. Rohrer, TFVC

Short Form M&A Documents: Eric Graben, TFC

Subcommittees

Business Entities Governance: Allen Sparkman, SC
Corporate Counsel Triage Project: George M. Flint, III, SC
Madelyn Shulman, SVC
Committee Newsletter: Mark D. Hobson, SCC
Emerging Companies: Elizabeth A. Bleakley, SC
Sara K. Stock, SC
Family-Owned Businesses: Michael P. Connolly, SC
International Expansion & Cross-Border Transactions: Michel Gelinas, SC
Hermann J. Knott, SC
Jeffrey Van Winkle, SC
Membership: Berna Rhodes-Ford, SC
Programs & Planning: Erik Kantz, SC
Eric A. Vendt, SC
Publications: Elizabeth A. Bleakley, SC
Securities Regulation: Bonnie J. Roe, SC
Technology: Evangelos “Andy” Kostoulas, SCC
Sahmra Stevenson, SCC

(SC = Subcommittee Chair; SCC = Subcommittee Co-Chair; SVC = Subcommittee Vice-Chair; TFC = Task Force Chair; TFVC = Task Force Vice-Chair).