

#SCFlash

January Developments 2017

A summary of legal developments over the last month that have impacted our clients' practices and industries.

CYBERSECURITY
BANK REGULATORY**DFS Issues Updated Proposed Cybersecurity Regulations:**
Responding to Industry Concerns, DFS Proposes More Flexible, Risk-Based Approach to Cybersecurity and Delays Implementation of Proposed Regulations

On December 28, 2016, following a 45-day notice and public comment period, the New York Department of Financial Services issued updated proposed cybersecurity regulations applicable to banks, insurance companies, and other financial services institutions regulated by the DFS.

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EXECUTIVE COMPENSATION & BENEFITS**New York State Regulations Increase Salary Required for Employees Exempt from Overtime:**

Based on Statutory Increases to the Minimum Wage, NYS Department of Labor Increases Salary Thresholds for Executive and Administrative Exemptions to Levels Close to Those in Currently Enjoined Federal Rule

On December 28, 2016, the New York State Department of Labor issued notices of adoption of new rules, effective December 31, 2016, substantially increasing the minimum required weekly salary thresholds for qualification for the executive and administrative overtime exemptions.

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INSURANCE

U.S. and European Regulators Conclude Covered Agreement Negotiations:

U.S. and European Regulators Conclude Negotiations for a Covered Agreement between the United States and the European Union on Insurance and Reinsurance Prudential Measures

On January 13, 2017, U.S. and European regulators concluded negotiations for a "covered agreement" between the United States and the European Union on insurance and reinsurance prudential measures.

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TAX**State Aid and Tax:****The European Commission's Application of the State Aid Rules to Tax – Where Are We Now?**

The European Commission established a task force in 2013 to look at the "tax planning practices" of multinationals. 2016 brought its work into the open. The Commission has published:

- decisions that tax rulings granted by Belgium, Luxembourg, the Netherlands and Ireland to a number of high-profile multinational taxpayers, constituted unlawful state aid; and
- two policy documents that aim to shed light on the Commission's approach to state aid in the context of transfer pricing and tax rulings.

Investigations into other multinationals are ongoing.

>> [read more](#)LITIGATION
RESTRUCTURING**Second Circuit Overturns *Marblegate*, Rejecting Expansive Interpretation of Section 316(b) of the Trust Indenture Act: In Split Decision, Appeals Court Rules That Section 316(b) of the Trust Indenture Act of 1939 Prohibits Only Formal Non-Consensual Amendments to a Qualified Indenture's Core Payment Terms**

On January 17, 2017, a split panel of the U.S. Court of Appeals for the Second Circuit held that the series of transactions to restructure the debt of Education Management Corporation did not violate Section 316(b) of the Trust Indenture Act of 1939. The Court concluded that Section 316(b) prohibits "only non-consensual amendments to an indenture's core payment terms", overturning a widely publicized and controversial decision from the district court for the Southern District of New York that expansively interpreted Section 316(b) to protect bondholders' "practical ability" to receive payments.

>> [read more](#)BANK REGULATORY
BROKER-DEALER**Hart-Scott-Rodino Act:****HSR Act Revised Jurisdictional Thresholds**

The thresholds set forth in the HSR Act have been revised — as they are annually — based on the change in gross national product. The minimum size of the transaction has been raised from \$78.2 million to \$80.8 million effective thirty days after the notice is published in the Federal Register. The notice is expected to be published shortly.

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TAX **MERGERS & ACQUISITIONS**



Corporate Inversion Transactions:

IRS and Treasury Issue Final and Temporary Regulations Modifying Disqualified Stock Rules Under Section 7874

On January 13, 2017, the Internal Revenue Service and the Treasury Department published new final and temporary regulations that address inversion transactions. The New Regulations generally finalize the previous temporary and proposed regulations while making a few technical changes.

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LITIGATION **CRIMINAL DEFENSE & INVESTIGATIONS**



Court Orders Production in ISDAfix Civil Litigation of Materials Presented to Regulators:

White Papers, Presentations, Letters, and Briefs Provided to Regulators or Prosecutors During Government Investigations Held Subject to Discovery in Civil Litigation

On January 20, 2017, Judge Jesse Furman in the Southern District of

New York ordered defendants in the ISDAfix class-action litigation to produce white papers, presentations, letters, and briefs they had provided to government authorities in connection with investigations of potential manipulation of ISDAfix.

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TAX

Taxation of Contributions to Partnerships With Related Foreign Partners:

IRS Issues Temporary Regulations That Accelerate Gain Recognition on Certain Contributions of "Built-In Gain" Property to Partnerships With Related Foreign Partners

The IRS and Treasury Department recently issued temporary regulations that can affect partnership contributions if: (i) a partnership receives a contribution of "built-in gain" property from a U.S. person and (ii) the partnership has one or more foreign partners that are related to the U.S. transferor.

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