M&A Hot Topics

Quarterly Update (July 8, 2020)

1. M&A COVID-19 Considerations

- **Pending M&A Transactions**: As discussed in S&C's previously released M&A Hot Topics Quarterly Update (Apr. 9, 2020), in the midst of the ongoing COVID-19 pandemic, recent market moves and a prolonged period of economic uncertainty, parties to pending M&A transactions have been considering and continue to consider their contractual rights, obligations and options. Many parties have moved forward with their planned transactions on their original terms (and we expect that many will continue to do so), but a number of parties are responding to the impact of the pandemic in other ways, examples of which are described below:

  - **Disputes**: Buyers may attempt to walk away from pending transactions by alleging that the target company has suffered an MAE, has breached certain covenants and/or failed to satisfy certain conditions under the transaction agreement, oftentimes the interim operating restrictions or obligation to operate in the ordinary course of business, with sellers disputing the buyers' allegations and/or purported terminations of such transactions.

  - **Amicable Terminations**: Parties may mutually agree to terminate merger agreements.

  - **Renegotiations**: Buyers may take the opportunity to renegotiate or otherwise restructure planned transactions, including by revising the amount of the merger consideration and other terms of the transaction.

  - **Adverse Board Recommendations**: Boards may change their recommendations. For example, the board of Far Point Acquisition Corporation, a SPAC, withdrew its previous recommendation in favor of Far Point's proposed combination with Global Blue and recommended against the combination over liquidity concerns at Global Blue. Silver Lake has complicated Far Point's position by gaining a significant stake in Far Point and making a number of proposals to facilitate a revised transaction with Global Blue, in which Silver Lake also has an investment.

  - **Stockholder Actions**: Stockholders may bring actions against companies for not reevaluating planned transactions in light of the pandemic, in an attempt to agitate companies to reconsider planned transactions or their terms, or to object to other decisions made by companies in connection with planned transactions. For example: (i) stockholders of Xperi Corporation filed a class action suit against the Xperi board, alleging that Xperi's directors breached their fiduciary duties by not reassessing the company's planned stock-for-stock merger with TiVo Corporation (particularly in light of the fact that the Xperi board rejected a competing all-cash proposal made after the transaction with TiVo was announced); and (ii) Altisource Portfolio Solutions, a greater than 5% stockholder of Front Yard Residential, sent a request to Front Yard to inspect its books and records pursuant to the Maryland General Corporation Law after it expressed concerns over the amount of the termination fee in the settlement agreement between Front Yard and Amherst Residential, in which Amherst agreed to pay $25 million of the $48 million termination fee due under the merger agreement, buy $55 million worth of Front Yard Residential stock and provide Front Yard Residential with a $20 million, two-year unsecured loan facility (Altisource also launched a "vote no" campaign targeting two Front Yard directors for their decisions regarding the transaction with Amherst).

- **Stockholder Rights Plans**: In April 2020, proxy advisory firms ISS and Glass Lewis each issued guidance to clarify their existing policies with respect to stockholder rights plans. ISS stated that its existing approach was "already appropriately flexible to take account for the adoption of poison pills in the face of genuine, short-term potential threat situations," and Glass Lewis similarly reiterated its support of limited stockholders rights plans aimed at particular objectives, such as "managing a clear and present hostile takeover threat, or other contextual factors like a severe drop in stock price due to a widespread industry or market downturn." Both firms consider the pandemic's economic crisis as reasonable context for adopting a stockholder rights plan with a duration of one year or less, subject to the company's rationale for adopting the plan and other relevant factors. From April 1 through June 30, 2020, 63 companies adopted rights plans, and an additional 12 companies extended their existing rights plans by amendment. Despite these figures, companies that are considering adopting limited stockholder rights plans should keep in mind that a low trigger threshold will likely result in negative reactions from, among others, proxy advisory firms and stockholders. For example, following the adoption of a stockholder rights plan with a 5% threshold by the board of The Williams Companies, Inc., approximately 34% of the company's stockholders opposed the reelection of the chairman of the board at the company's annual stockholder meeting on April 28, 2020, in line with ISS's recommendation. Further, on June 4, 2020, a stockholder of The Williams Companies filed suit in the Delaware Court of Chancery for access to the company's documents related to the adoption of the stockholder rights plan under DGCL Section 220, alleging that the terms of the stockholder rights plan were "highly restrictive" and that the board breached its fiduciary duties in adopting the plan.

- **Stringent Requirements for Antitrust "Failing Firm" Defense Remain**: On May 27, 2020, Ian Conner, Director of the Bureau of Competition at the Federal Trade Commission, published a warning regarding the use of the failing firm defense, in which one or both parties to a proposed anticompetitive merger argue that their firm is failing and that the proposed merger is needed in order for the struggling firm to stay in business. Conner stressed that the FTC rarely finds that the facts will support a failing firm argument, as failing is "equated with reducing the acquired firm to nothing—not only does the business no longer exist, but the productive assets are also dismantled or redeployed for use outside the relevant market." He clarified that despite the pandemic, the Bureau will not be relaxing the stringent requirements that must be met under the failing firm defense and cautioned that "[c]ounsel who make too many failing firm arguments on behalf of businesses that go on to make miraculous recoveries may find that [the Bureau] apply particularly close scrutiny to similar claims in their future cases." As set forth in the Horizontal Merger Guidelines, to establish a failing firm defense, a struggling merging party must demonstrate that: (i) it would not be able to meet its financial obligations in the near future; (ii) it would not be able to reorganize successfully under Chapter 11 of the U.S. Bankruptcy Code; and (iii) it has made unsuccessful, good faith efforts to elicit reasonable alternative offers that would keep its assets in the relevant market and pose a less severe danger to competition than the proposed merger does.

- **PIPE Transactions**: In light of the impact of the pandemic, the temporary waivers of the Nasdaq stockholder approval requirements for certain stock issuances (which expired on June 30, 2020) and the NYSE stockholder approval requirements for certain stock issuances (which has been extended through September 30, 2020) have facilitated "PIPE" (private investments in public equity) transactions, particularly as public companies look to access sources of additional liquidity when more traditional forms of financing are not practical. Read more about PIPE transactions in S&C's previously released publications and discussions here.

- **Annual Meetings**: Many companies embraced virtual-only or hybrid stockholder meetings for their 2020 annual stockholder meetings in response to the public health concerns associated with the pandemic. According to a May 2020 report from Intelligize, for the 2020 proxy season, only 12% of annual meetings held on or before March 31, 2020 were virtual-only, compared to 77% of annual meetings held on or after April 1, 2020 (with only 19% of annual meetings held in person without any virtual component). Some companies have also adopted virtual-only or hybrid stockholder meetings for their special meetings. As part of the planning process for virtual stockholder meetings, it is important for companies to consult with their legal advisors and other service providers on the mechanics and process for such meetings—several recent virtual stockholder meetings experienced technical difficulties (although many were executed without any issues). Read more about virtual and hybrid stockholder meetings in S&C's previously released M&A Hot Topics Quarterly Update (Apr. 9, 2020).

- **Court Re-Openings**: On May 25, 2020, the New York courts started to accept filings statewide for non-essential matters through the New York State Electronic Filing System. On June 5, 2020, the Delaware Supreme Court ordered a phased reopening of Delaware courts, which began on June 8, 2020. Phase two of the reopening began on June 15, 2020, which, among other things, allowed the public to return to Delaware courts with capacity restrictions (although jury trials remain on hold until phase three). On July 6, 2020, Chief Justice Seitz of the Delaware Supreme Court extended phase two of the reopening by 30 days to August 6, 2020 in light of the continued health risk and spread of COVID-19.

- **Proposed Legislation to Prohibit Certain Benefits Under the CARES Act for "Inverted Domestic Corporations"**: On June 24, 2020, new proposed legislation called the "American Assistance for American Companies Act" was introduced in the House of Representatives by Representative Lloyd Doggett (D-TX-35) and in the Senate by Senator Dick Durbin (D-IL) (co-sponsored by Senators Tammy Duckworth (D-IL) and Chris Van Hollen (D-MD)) to prevent "inverted domestic corporations" from receiving certain benefits provided by the CARES Act. The definition of "inverted domestic corporations" provided by the proposed legislation is broader than the existing legislation relating to corporation inversions, lowering the inversion threshold effectively from 60% to 50%, and creating an independent test for inversion if management and control is "primarily within the United States" and has significant domestic business activities after an inversion transaction. This would apply retroactively to corporations that meet such tests as a result of "inversion" transactions occurring after March 4, 2003. If a corporation (or a member of its expanded affiliated group) is treated as an "inverted domestic corporation" under the proposed legislation, then such a corporation would not be permitted to receive the following benefits provided by the CARES Act: (i) five-year carryback of NOLs arising in 2018, 2019 and 2020; (ii) increase in business interest deductions from 30% to 50% of adjusted taxable income for 2019 and 2020; and (iii) emergency lending facilities established by the Federal Reserve with funding authorized under Section 4003 of the CARES Act, including the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility.

2. Regulatory Developments

- **SEC Amends Financial Disclosure Requirements for Acquisitions and Dispositions**: On May 21, 2020, the SEC issued a release adopting amendments to the financial disclosure requirements for financial statements of businesses acquired or to be acquired and for business dispositions. The amendments also include new and amended rules for financial reporting of acquisitions by registered investment companies and business development companies. The amendments adopted by the release were initially proposed in May 2019 and will apply for fiscal years beginning after December 31, 2020, although voluntary early adoption is permitted. Among other things, the amendments:

  - modify the significance tests under the applicable rules by revising the investment test to compare the registrant's investment in and advances to the acquired or disposed business to the registrant's aggregate worldwide market value, if available; revising the income test by adding a new revenue component; expanding the use of pro forma financial information in measuring significance; and conforming the significance threshold and tests for disposed businesses to those used for acquired businesses;

  - require certain industry-specific disclosures on an unaudited basis for each full year of operations presented for acquired businesses that include significant oil- and gas-producing activities;

  - modify and enhance the required disclosure for the aggregate effect of acquisitions for which financial statements are not required (or are not yet required);

  - require the financial statements of the acquired business to cover no more than the two (rather than three) most recent fiscal years;

  - permit in certain circumstances the use of, or reconciliation to, International Financial Reporting Standards as issued by the International Accounting Standards Board;

  - no longer require separate acquired business financial statements once the business has been included in the registrant's audited annual post-acquisition financial statements for nine months or a complete fiscal year, depending on the significance of the acquired business; and

  - amend the pro forma financial information requirements.

  Read more about the SEC's amendment to such disclosure rules in S&C's previously released client memo here.

- **Proxy Reform Update**: On June 25, 2020, SEC Chairman Jay Clayton said he expects the SEC to complete draft rules seeking to give companies more input into reports issued by proxy advisors by the end of September 2020. In the SEC's November 2019 proposed amendments to its proxy solicitation guidance, the SEC had specifically proposed that a proxy voting advice business "provide registrants and certain other soliciting persons covered by its proxy voting advice a limited amount of time to review and provide feedback on the advice before it is disseminated to the business's clients." Read more about the SEC's interpretation and related guidance and proposed amendments in S&C's previously released client memos here and here. Relatedly, on April 2, 2020, Glass Lewis announced that it will now deliver unedited company feedback with proxy research papers to investor clients, provide companies a seven-day period to submit any feedback and republish reports reflecting such feedback from companies.

- **DOJ Guidance on Evaluation of Corporate Compliance Programs**: On June 1, 2020, the Criminal Division of the DOJ released updated guidance (updating the version it issued in April 2019) to its prosecutors on how to evaluate the design, implementation and effective operation of corporate compliance programs in determining whether, and to what extent, the DOJ considers a company's compliance program to have been effective at the time of the offense and to be effective at the time of a charging decision or resolution. With respect to mergers and acquisitions, like the April 2019 guidance, the updated guidance maintains the view that "[a] well-designed compliance program should include comprehensive due diligence of any acquisition targets," but now also expects the compliance program to look forward, evaluating whether there is "a process for timely and orderly integration of the acquired entity into existing compliance program structures and internal controls." The updated guidance acknowledges that, under certain circumstances, pre-acquisition diligence may be difficult or impossible, but in such cases, the DOJ will require an explanation as to why it was difficult or impossible. The updated guidance stresses that companies should continuously endeavor to improve their compliance programs using a data-driven approach and that in this regard, companies should review and modify their compliance programs based not only on their own past mistakes and misconduct, but also on those of other companies that face similar risks. Read more about the DOJ's guidance in S&C's previously released client memo here.

- **Proposed Revisions to CFIUS Mandatory Filings**:

  - On May 20, 2020, the Department of the Treasury issued a proposed rule that would amend the current CFIUS regulations with respect to mandatory filings. Currently, mandatory filings are required for any transaction that: (i) results in the acquisition of a substantial interest in a technology, infrastructure or data (TID) U.S. business by a foreign person in which the national or subnational government of a foreign state (other than an excepted foreign state) has a substantial interest; or (ii) is an investment in, or that could result in foreign control of, a TID U.S. business that produces, designs, tests, manufactures, fabricates or develops one or more critical technologies for use in one or more of 27 specified industries identified by North American Industry Classification Systems (NAICS) code.

  - The proposed rule would change these requirements in two significant respects.

    - First, for mandatory filings that are required because a foreign state would have a "substantial interest," the proposed rule would clarify the definition of "substantial interest" and eliminate a potential loophole. Under the current rule, a "substantial interest" is defined to mean a voting interest, direct or indirect, of 25% or more by a foreign person in a U.S. business, and a voting interest, direct or indirect, of 49% or more by a single foreign government (which includes both national and subnational governments, including their respective departments, agencies and instrumentalities) in a foreign person. For entities with a general partner, managing member or equivalent, the current rule provides that "the national or subnational governments of a single foreign state will be considered to have a substantial interest in [the entity] only if they hold 49 percent or more of the interest in the general partner, managing member, or equivalent of the entity." The proposed rule clarifies that for this special rule to apply, it is not enough for an entity to simply have a general partner, managing member or equivalent — the entity's activities must be primarily directed, controlled or coordinated by or on behalf of a general partner, managing member or equivalent. This change appears to be directed at closing a potential loophole where a general partner, managing member or equivalent does not have the authority typically afforded to their position. The proposed rule would also clarify an attribution rule in the current regulations. That rule is currently stated as: "For purposes of determining the percentage of voting interest held indirectly by one entity in another entity, any voting interest of a parent will be deemed to be a 100 percent voting interest in any entity of which it is a parent." The proposed rule would eliminate the reference to "voting" so that the provision would read: "For purposes of determining the percentage of interest held indirectly by one entity in another entity, any interest of a parent will be deemed to be a 100 percent interest in any entity of which it is a parent."

    - Second, the proposed rule would change the mandatory filing requirement for critical technology transactions by eliminating the requirement that the critical technologies have a nexus to a specific NAICS industry code. Instead, the critical technology at issue must be related to one of the four main U.S. export control regimes (*i.e.*, those administered by the Departments of Commerce, Energy and State, and the Nuclear Regulatory Commission). A critical technology transaction would trigger a mandatory filing if the TID U.S. business would be required to obtain a U.S. government authorization, license or other approval to export, re-export, transfer (in-country) or retransfer the critical technology to the foreign investor or certain controlling foreign persons. With a few exceptions, notification to CFIUS would be mandatory even if a license exemption may be available under the International Traffic in Arms Regulations or the Export Administration Regulations.

  - The new requirements would be applicable to transactions entered into or completed on or after the effective date of any final rule. The existing mandatory filing requirement for critical technology transactions based on the industry-specific NAICS classification codes would continue to apply to transactions entered into or completed between February 13, 2020 (the effective date of the current CFIUS regulations) and the effective date of any final rule.

- **CFIUS Filing Fees**: On April 28, 2020, the U.S. Department of the Treasury issued an interim final rule establishing filing fees for parties filing a written notice with CFIUS on or after May 1, 2020 with respect to transactions entered into on or after February 13, 2020. The rule establishes a tiered fee structure based on the value of the transaction and provides guidance as to how the value of a transaction is to be determined. There is no fee for the submission of a declaration (whether mandatory or voluntary) regarding a real estate transaction under the Regulations or for any unilateral review of a transaction based on an agency notice filed by any member of the Committee. Parties are not required to pay an additional fee where CFIUS allows the parties to withdraw and re-file a written notice, unless the CFIUS Staff Chairperson determines that a material change to the transaction has occurred—or a material inaccuracy or omission was made by the parties in information provided to CFIUS—that requires CFIUS to consider new information. As a general matter, Treasury will provide refunds of filing fees only if CFIUS determines that a notified transaction is not a covered transaction or a covered real estate transaction. However, the rule does permit parties to petition the CFIUS Staff Chairperson to seek a partial refund of fees if the parties can demonstrate that the parties paid a filing fee greater than the amount required at the time of filing. Read more about CFIUS filing fees in S&C's previously released client memo here.

- **Bulk-Power System Executive Order**: On May 1, 2020, President Trump issued an executive order generally prohibiting certain transactions initiated after May 1, 2020 involving bulk-power system electric equipment developed, manufactured or supplied by "foreign adversaries" (an undefined term) that the Secretary of Energy (in consultation with other agency heads) determines raises significant national security concerns. The Executive Order is intended to protect the critical electric infrastructure of the United States (and in turn, the nation's energy security, national defense, emergency service and economy) against foreign threats and exploitation. The Executive Order defines "Bulk-power system" to mean: (i) facilities and control systems that are necessary for operating an interconnected electricity transmission network; and (ii) electricity from generation facilities needed to maintain transmission reliability. The definition excludes facilities used in the local distribution of electricity and the Executive Order does not provide guidance as to how to determine whether specific facilities or equipment fall within its scope. The Executive Order requires the Department of Energy to issue regulations by September 28, 2020 to implement the prohibition of the acquisition, importation, transfer or installation by any person of any bulk-power system electric equipment that is designed, developed, manufactured or supplied by persons owned by, controlled by or subject to the jurisdiction or direction of a "foreign adversary" if the Secretary of Energy determines that the transaction poses undue or unacceptable risks. The Department of Energy is authorized to design or negotiate measures to reduce any such identified risks and condition the approval of transactions on such mitigation measures, and the Secretary of Energy is authorized to establish criteria for pre-qualifying equipment and vendors that operate in the bulk-power system electric equipment market.

- **Team Telecom Executive Order**: On April 4, 2020, President Trump issued an executive order formalizing the review processes of an interagency working group known as "Team Telecom," formally naming it the "Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector." Historically, Team Telecom included representatives of the Departments of Justice, Homeland Security and Defense, and under the Executive Order, the Secretaries of those three agencies would stay on as committee members, with representatives of other government entities serving as advisors and the Attorney General serving as the chair of the Committee. The Executive Order tasks the Committee, upon referral by the FCC, with reviewing and assessing license applications to determine whether granting a license or a license transfer poses a risk to national security or law enforcement interests of the United States, and it authorizes the Committee to review existing licenses to identify any such additional or new risks (with no FCC referral required for such review). The Committee's initial review must be completed within a 120-day period, during which the Committee may determine that: (i) granting the application raises no current risk to national security or law enforcement; (ii) any identified risk to national security or law enforcement raised may be addressed through standard mitigation measures recommended by the Committee; or (iii) a secondary assessment of an application is warranted because the risk to national security or law enforcement cannot be mitigated by standard mitigation measures. Any secondary assessment of an application must be completed within 90 days after the Committee's determination that a secondary assessment is warranted. Once the Committee has made a determination with respect to a license application, the Committee may then: (i) advise the FCC that the Committee has no objection to the FCC granting the license or license transfer; (ii) recommend that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States; or (iii) recommend that the FCC only grant the license or license transfer contingent upon the applicant's compliance with mitigation measures. The Committee is responsible for monitoring compliance with any mitigation measures that are imposed as a condition to the license being granted.

3. Delaware Developments

- **Undisclosed Seller CEO Compensation Discussions Rebut Business Judgment Rule Application**: In *Fort Myers Gen. Emp. Pension Fund* v. *Haley* (Jun. 30, 2020), the Delaware Supreme Court, in reversing the Delaware Chancery Court's decision, held that a seller CEO's failure to disclose discussions with the buyer relating to his post-closing compensation at a critical juncture in the deal sufficiently rebutted the presumption of the business judgment rule and that entire fairness review therefore applied. Plaintiffs alleged that the seller CEO was presented with the compensation proposal (which would have earned him five times his current compensation) during a time when stockholder approval for the deal was uncertain and before he was authorized by the seller board to renegotiate the merger consideration. The undisclosed compensation proposal, plaintiffs argued, incentivized the seller CEO to seek an increase in the special cash dividend per share of seller stock as part of the merger consideration, but only up to the minimum amount necessary to secure the approval of the seller's stockholders for the merger. In its decision, the Delaware Supreme Court noted that the plaintiffs had sufficiently alleged that: (i) the director was "materially self-interested" in the transaction; (ii) the director failed to disclose his "interest in the transaction to the board"; and (iii) "a reasonable board member would have regarded the existence of [the director's] material interest as a significant fact in the evaluation of the proposed transaction." The court noted that "material" in this context means information relevant and of a magnitude to be important to directors in carrying out their fiduciary duty of care. The case, which concerns breach of fiduciary duty claims relating to the $18 billion merger of Towers Watson & Co. and Willis Group into Willis Towers Watson, which closed in early 2016, will be remanded to the Delaware Chancery Court.

- **Coercion of Special Committee Leads to Entire Fairness Review**: In *In re Dell Technologies Inc. Class V Stockholders Litigation* (June 11, 2020), the Delaware Court of Chancery held that Dell Technologies Inc. failed to comply with the requirements of *MFW* in connection with the consolidation of its ownership of VMware, Inc. (of which Dell owned 81.9% as a result of its prior acquisition of EMC Corporation) through a negotiated redemption of the stock held by the minority stockholders, and that entire fairness therefore was the appropriate standard of review. The Court found that Dell had failed to adequately condition the consolidation on the approval of both the special committee and a majority of the minority stockholders. According to the Court, Dell first bypassed the special committee by negotiating directly with certain stockholders. While the negotiations resulted in improvements to the transaction terms for the minority stockholders, in order to comply with the requirements of *MFW*, any such improvements must result from negotiations with the special committee, as the minority stockholders' bargaining agent, rather than through direct negotiations with the minority stockholders. Second, Dell effectively coerced the approval of a majority of the minority stockholders. The minority stockholders' Class V shares in EMC were subject to Dell's mandatory conversion right, meaning that if Dell listed its Class C shares in EMC on a national exchange, then Dell could force the conversion of the minority stockholders' Class V shares into Class C shares, which it repeatedly threatened to do. Dell had sole discretion with respect to the conversion right, which was not subject to the review or approval of the special committee or the minority stockholders. The special committee was aware that Dell had only three options for consolidating its ownership of VMWare: (i) a transaction directly with VMWare; (ii) a negotiated redemption; and (iii) the forced conversion of the minority stockholders' Class V shares. Dell made it clear to the special committee that the forced conversion would result in a less favorable deal for the minority stockholders than the negotiated redemption, which left the minority stockholders with a choice between the "unappealing status quo" of the forced conversion and the marginally better but "unfair" alternative of the negotiated redemption.

- **Asset Purchases and Attorney-Client Privilege**: In *DLO Enterprises, Inc.* v. *Innovative Chemical Products Group, LLC* (June 1, 2020), the Delaware Court of Chancery addressed privilege issues in connection with an asset purchase agreement. Particularly, the Court addressed: (i) documents regarding the sellers' negotiation of the asset purchase agreement that sellers retained and did not provide to the buyer; and (ii) documents reflecting communications between the sellers and legal counsel in the buyer's possession because the documents were included in email accounts the buyer acquired under the asset purchase agreement.

  - In connection with the first category of documents, the Court held that privilege regarding the sellers' negotiation of the asset purchase agreement and the right to waive such privilege do not pass to the buyer by operation of law, but rather remain with the seller unless the parties contract otherwise. The buyer raised the argument that, absent a contractual arrangement to the contrary, in the context of mergers, all privileges pass to the surviving corporation by operation of DGCL Section 259 (as noted in *Great Hill Equity Partners IV, LP* v. *SIG Growth Equity Fund, LLLP* and *Shareholder Representative LLC* v. *RSI Holdco*). However, the Court rejected application of this approach in the context of an asset purchase, reasoning that those decisions were driven by the statutory language of DGCL Section 259 and, in the context of an asset purchase, the selling entity in an asset purchase continues to exist and hold any assets not purchased in the transaction, together with related privileges.

  - As to the second category of documents, the Court distinguished between pre-closing and post-closing documents. To determine whether the sellers had waived privilege with respect to the pre-closing communications, the Court stated that the proper test may be one that addresses whether the sellers "deliberately and voluntarily relinquished the right to assert their claim of privilege when they transferred the email accounts" to the buyer, with the terms of the asset purchase agreement being informative. To determine whether the sellers had waived privilege with respect to the post-closing communications, the Court applied the *Asia Global* four-factor balancing test, which informs as to whether an employee had a reasonable expectation of privacy and confidentiality for work-related emails, but noted that a statute regarding the confidentiality of work-related emails in a controlling jurisdiction may change the common law results of the *Asia Global* test. The Court requested supplemental briefing on these matters in order to resolve the issues regarding the second category of documents.

- **Stockholder Representative Structure Limits Stockholders' Discovery Obligations**: In *Fortis Advisors LLC* v. *Allergan W.C. Holding, Inc.* (May 14, 2020), the Delaware Court of Chancery denied defendant Allergan W.C. Holding Inc.'s Motion to Treat Real-Party-in-Interest Sellers as Parties for Purposes of Discovery and Trial and to Compel Discovery, in which the defendant had requested the Court to require former stockholders of Oculeve, Inc. (party to a merger agreement with Allergan) to participate in discovery and be subject to trial subpoenas or to compel their representative, plaintiff Fortis Advisors LLC, to produce the stockholders' documents and testimony. The Court identified Fortis, which had been appointed as the stockholder representative for the former Oculeve stockholders under the terms of the merger agreement, as the real party-in-interest in the action and denied Fortis control over the stockholders' discoverable material, focusing on the express terms of the merger agreement and noting that the agreement "does not empower Fortis to compel [s]tockholder participation in litigation" but rather "appoints Fortis to litigate in the [s]tockholders' stead."

- **DGCL Section 220 Landscape**:
  - In *Hollywood Police Officers' Retirement System* v. *Gilead Sciences, Inc.* (May 8, 2020), the Delaware Court of Chancery permitted stockholders bringing a DGCL Section 220 demand to engage in certain discovery in the form of interrogatories pertaining to the existence and location of the documents at issue, deeming such discovery both relevant and helpful. In coming to its determination, the Court looked to the decision in *Lebanon County Employees' Retirement Fund* v. *AmerisourceBergen Corporation* (Jan. 13, 2020), which was viewed as another victory for stockholders seeking to broaden the scope of DGCL Section 220 (discussed in S&C's previously released Corporate Governance Hot Topics Quarterly Update (Jan. 21, 2020) and in S&C's previously released client memo here). The Court noted that a stockholder demanding access to a corporation's books and records under DGCL Section 220 does not have to prove its entire case prior to discovery in order to gain discovery, as imposing such a requirement would restrict access to information through discovery that is necessary for the plaintiff to show a "proper purpose." The Court also rejected any categorical rule that a stockholder bears the burden to establish a "proper purpose" or to show that the documents it requests are "essential" to that purpose and found that there was "no principled basis for categorically precluding . . . discovery in Section 220 actions, even with the limiting principles applicable to these actions in mind."
  - The Delaware Court of Chancery has also recently addressed the implications that not producing documents in response to DGCL Section 220 demands may have on the Court's assessment of a defendant's corporate recordkeeping. In *Hughes* v. *Hu et al.* (Apr. 27, 2020), in the context of a *Caremark* claim, the Delaware Court of Chancery observed that the defendant, Kandi Technologies Group, Inc., had declined to respond to the plaintiff's DGCL Section 220 demand, which would have rebutted the plaintiff's inference, noting that the "absence of those documents is telling because '[i]t is more reasonable to infer that exculpatory documents would be provided than to believe the opposite: that such documents existed and yet were inexplicably withheld.'"
  - Similarly, stockholders seeking to use DGCL Section 220 to bolster a *Caremark* claim may look to *AmerisourceBergen*, whereby the Delaware Court of Chancery ordered AmerisourceBergen Corp. to provide its stockholders with records under DGCL Section 220 relating to its procedures for complying with opioid distribution laws and explained how the company's opioid problems could lead to a claim that its directors inadequately supervised the company's handling of the opioid issues, a decision which was upheld by the Delaware Supreme Court on April 29, 2020.
  - DGCL Section 220 demands have also recently arisen in the context of stockholder rights plans, such as the pending stockholder suit in the Delaware Court of Chancery seeking access to The Williams Companies Inc.'s documents with respect to the adoption of its stockholder rights plan. See "*M&A COVID-19 Considerations—Stockholder Rights Plans*" above for additional details regarding The Williams Companies' stockholder rights plan.

- **Boards' Consideration of Competing Interests of Preferred and Common Stockholders**: In *Frederick Hsu Living Trust* v. *ODN Holding Corp.* (May 4, 2020), the Delaware Court of Chancery held that the defendants, Oak Hill Capital Partners, a controlling and preferred stockholder in ODN Holding Corporation, along with its designees to the ODN board, had established that their actions, including selling company assets to accumulate cash to create funds that ODN would be required to use to redeem Oak Hill's preferred stock of ODN, were entirely fair. In reaching its decision, the Court found that ODN's decline in business resulted from industry changes and competition from companies, including notably from Google, and not from the defendants' cash-accumulation strategy, noting that even if ODN had instead reinvested its net income, "it could not have generated a return sufficient to create value for the holders of common stock." In April 2017, the Court had denied the defendants' motion to dismiss certain counts of the plaintiff's complaint, including allegations of breach of fiduciary duty (by focusing on accumulating cash for stock redemption for Oak Hill's personal benefit rather than promoting long-term growth) as well as unjust enrichment. Although the Court found that the defendants' actions were entirely fair, in its April 2017 decision, the Court had suggested that a board of directors may need to consider whether it should breach obligations owed to a preferred stockholder, such as Oak Hill's redemption rights, in order to satisfy fiduciary duties owed to common stockholders.

- **Demonstrating a Control Group with Minority Stockholders**: In *Gilbert et al.* v. *Perlman et al.* (Apr. 29, 2020), the Delaware Court of Chancery dismissed the plaintiffs' claim that the defendants, two minority stockholders of Connecture, Inc. (together owning approximately 11.02% of the company), were part of a control group with the company's majority stockholder (which owned 56% of the company) by virtue of the fact that the defendants agreed to roll over their shares as part of Connecture's going-private transaction and one defendant had entered into a voting agreement in favor of the transaction. In reaching its decision, the Court noted that to successfully argue that several minority stockholders of a Delaware corporation form a "control group" that owes fiduciary duties to minority stockholders, two conditions must be met: (i) the stockholders must be "connected in some legally significant way"—*e.g.*, by contract, common ownership, agreement, or other arrangement—to work together toward a shared goal; and (ii) the existing controller "must perceive a need to include the minority holders to accomplish the goal so that it has ceded some material attribute of its control to achieve their assistance." Mere dilution of the controller's self-interest is insufficient to satisfy the second prong of the test - the controller must "agree to limit . . . its ability to act in its own self-interest *as a controller in some material way*." After applying the two-part test, the Court held that while a reasonable inference could be made that the defendants and the controlling stockholder "had more than mere parallel investing interests," the controlling stockholder did not require the minority stockholders' participation to effect the transaction and had not given up "some material part of its control attributes" in exchange.

- **Continued Focus on *Caremark***:

  - In *Shabbouei* v. *Potdevin* (Apr. 2, 2020), which is discussed in S&C's previously released client memo here, the Delaware Court of Chancery granted a motion to dismiss a stockholder derivative action against the board of directors of lululemon athletica inc., alleging that the directors "breached their fiduciary duties by rushing to pay an excessive severance fee" in connection with the former CEO's separation "as a means to cover up their slow response to his well-documented malfeasance." Although the plaintiff did not affirmatively assert a *Caremark* claim, in reaching its holding that the plaintiff's allegations did not support a reasonable inference that the board failed to exercise proper business judgment, the Court nevertheless analyzed implied allegations that the board failed to exercise appropriate oversight and determined that the board's actions in investigating and settling the claim did not implicate a "conscious indifference" to "red flags" underlying such a claim.

  - Similarly, in *In re GoPro, Inc. Stockholder Derivative Litigation* (Apr. 28, 2020), while the Delaware Court of Chancery granted a motion to dismiss a stockholder derivative action against the board of directors of GoPro, Inc. for failure to adequately plead demand futility, although the plaintiffs did not expressly assert a *Caremark* claim, the Court addressed the *Caremark*-like allegations contained in the plaintiffs' complaint, noting that plaintiffs' allegations were unable to support "a reasonable inference the Board *knew* the Company would miss its [revenue] guidance or consciously disregarded risk."

- Despite the high standard, a *Caremark* claim can be adequately pled in light of "blind deference to and complete dependence on management" and "chronic deficiencies," as was found by the Delaware Court of Chancery in *Hughes* v. *Hu et al.* (Apr. 27, 2020), which denied the defendants' motion to dismiss the plaintiff's claim that the defendants, members of the audit committee of Kandi Technologies Group, Inc., its CEO and three of its successive CFOs, consciously failed to establish a board-level system of oversight for Kandi's financial statements and related-party transactions.

- Similarly, as discussed in S&C's previously released M&A Hot Topics Quarterly Update (Jan. 14, 2020), in *Marchand* v. *Barnhill* (June 19, 2019), the Delaware Supreme Court found that the plaintiff had adequately pled the so-called "duty to monitor" claim against the board of directors of Blue Bell Creameries USA Inc. On April 24, 2020, the *Marchand* parties entered into a settlement agreement with Blue Bell for $60 million.

- **Statutory Amendments to the DGCL**: On June 23, 2020, House Bill 341, an act to amend certain provisions of the DGCL, passed in the Delaware Senate (having passed in the Delaware House of Representatives a few days prior) and is now awaiting action by the Governor. Among other things, the 2020 amendments revise DGCL Section 110 (with respect to the adoption of emergency bylaws and other emergency board powers) and DGCL Section 145 (with respect to indemnification of a corporation's officers). In response to the pandemic, for purposes of DGCL Section 110, "an epidemic or pandemic, and a declaration of a national emergency by the United States government" are now all considered among the catastrophes that may trigger emergency bylaws and allow for the exercise of the emergency powers contemplated by DGCL Section 110, including the power to postpone a stockholders' meeting or change the format of a stockholders' meeting to a virtual meeting. The amendments to DGCL Section 110 also remove the requirement that the specific catastrophe or emergency be one that prevents a quorum of the board of directors from convening a meeting and provide that emergency bylaws may be adopted by the board of directors or by a majority of the directors present if a quorum cannot be readily convened. In addition, the 2020 amendments clarify the application of DGCL Section 145 with respect to the indemnification of a corporation's officers. Previously, DGCL Section 145(c) did not define the "officers" to whom mandatory rights to indemnification must be afforded. The 2020 amendments clarify that references to an "officer" mean: (i) the corporation's president, CEO, CFO, COO, CLO, controller, treasurer or chief accounting officer; (ii) an individual identified in the corporation's public filings as one of its most highly compensated officers; or (iii) an individual who, by written agreement with the corporation, has consented to be identified as an officer for purposes of service of process.

4. Other Developments

- **Illinois Judge Upholds Delaware Corporation's Forum Selection Clause**: In *Seafarers Pension Plan* v. *Bradway et al.* (June 8, 2020), Judge Leinenweber of the Northern District Court of Illinois dismissed a stockholder derivative suit brought under Section 14(a) of the Exchange Act against The Boeing Co., alleging the dissemination of materially false and misleading proxy statements. The Court granted Boeing's motion to dismiss for *forum non conveniens* based on Boeing's bylaws, which provide that the Delaware state courts are the sole and exclusive forum for any derivative action or proceeding brought on behalf of the Corporation, and acknowledged the various reasons a Delaware corporation might adopt a forum selection clause. Although Boeing is a Delaware company, the suit involved federal securities law issues. While Judge Leinenweber was sympathetic to the plaintiff's arguments, including that enforcing the bylaw provision would preclude the plaintiff from proceeding in federal court under a federal law claim and would violate the provision contained in the Exchange Act that voids any provision requiring waiver of a person's compliance with the Exchange Act, he noted that the "weight of authority backs Boeing's position." The wider implications of Judge Leinenweber's decision are uncertain but may be that plaintiffs in similar fact patterns may be practically shut out from bringing derivative claims because of the requirement under the Private Securities Litigation Reform Act that multiple federal class actions be consolidated into a single case before a single court. In *Seafarers*, both direct and derivative claims had already been filed against Boeing in separate courts when the plaintiff brought its case before a federal district court in Illinois, and direct claims remain pending against Boeing in the Northern District Court of Illinois before a different judge.

- **Directors' and Officers' Insurance Premiums Rise**: In the first quarter of 2020, U.S. premium rates for directors' and officers' insurance increased from 44% to 104% compared to the same period in 2019. The increase is attributed to the rise in stockholder litigation (both in terms of the number of cases and the size of jury awards and settlements) and the growth in popularity of litigation-finance firms that invest in corporate legal disputes.

5. U.S. Antitrust

- **U.S. Antitrust Regulators Publish Final Vertical Merger Guidelines**: On June 30, 2020, the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission jointly issued final Vertical Merger Guidelines outlining considerations relevant to the application of the antitrust laws to transactions combining assets at different levels of a supply chain. The agencies previously issued draft Vertical Merger Guidelines in January 2020. Among other things, the final guidelines: (i) abandon the concept of a "20% screen" to identify mergers which are unlikely to be anticompetitive and decline to create any explicit safe harbor based on market structure; (ii) clarify how the agencies will assess the potential benefits related to the elimination of double marginalization; and (iii) expand the scope of the guidance to capture "diagonal" mergers (combinations of firms or assets at different stages of competing supply chains) in addition to traditional vertical mergers. Read more about the Vertical Merger Guidelines in S&C's previously released client memo here.

- **AbbVie's Acquisition of Allergan Approved Subject to Divestitures**: On May 5, 2020, in a 3-2 split decision, the FTC announced entry into a consent decree agreement with pharmaceutical companies AbbVie Inc. and Allergan plc, whereby the companies agreed to divest certain assets in order to settle the FTC's charges against AbbVie's proposed acquisition of Allergan. Allergan agreed to transfer its rights and assets to brazikumab, a drug in development to treat autoimmune diseases, to AstraZeneca plc and its assets related to Zenpep and Viokace, treatments for exocrine pancreatic insufficiency, to Nestlé S.A. The two dissenting commissioners questioned whether AstraZeneca and Nestlé would be credible replacements for Allergan in bringing the divested drugs to market, as AstraZeneca had previously abandoned development of brazikumab, and Nestlé's core business is in food and beverages. They also raised concerns with the FTC's approach to pharmaceutical mergers specifically, noting the particular scrutiny required to assess the innovation consequences of pharmaceutical transactions and the need to "conduct due diligence that specifically explores how divested assets will fit into a buyer's broader business and long-term financial strategy."

- **New Proposed Acquisition of Farelogix and Termination of Sabre Deal**: On June 16, 2020, Accelya, a Spain-based provider of technology solutions to the global airline and travel industry, announced its plans to acquire Farelogix Inc., with the parties expecting the proposed deal to close during the summer of 2020. The terms of the deal were not disclosed by Accelya, which is owned by Vista Equity Partners, a private equity group. The announcement by Accelya follows Sabre Corporation and Farelogix's announcement on May 1, 2020 of the termination of their proposed $360 million transaction, citing the expiration of the merger agreement on April 30, 2020 and the UK CMA's decision to block the acquisition on April 9, 2020 (despite the dismissal by the U.S. District Court for the District of Delaware of the lawsuit brought by the DOJ to block the transaction), which exemplified the CMA's increased attention to the preservation of nascent competition. Sabre has indicated that it intends to lodge an appeal against the CMA's decision with the UK Competition Appeal Tribunal, and the DOJ, which appealed its case on April 8, 2020 in the U.S. Court of Appeals for the Third Circuit, filed a motion on May 12, 2020 to vacate the District Court's decision in favor of the merger. On June 17, 2020, in light of the new proposed deal between Accelya and Farelogix, the DOJ filed a letter with the United States Court of Appeals for the Third Circuit arguing that Sabre and Farelogix's abandonment of their merger mooted the Delaware District Court's decision. Read more about the CMA's decision to prohibit the proposed acquisition in S&C's previously released client memo here.

6. Non-U.S. Regulatory

- **EU General Court Criticizes European Commission's "Four-To-Three" Approach for Telecommunications Mergers**: On May 28, 2020, the General Court of the European Union annulled the decision of the European Commission in *CK Telecoms UK Investments Ltd* v. *European Commission* which prohibited the merger of mobile network operators O2 UK and Hutchison 3G UK. In its decision, the General Court noted that merely counting the number of players in the telecommunications sector and assuming rather than showing negative effects from such consolidation resulted in "several errors of law" by the Commission. The General Court's opinion is a significant blow to the Commission's historic practice of challenging consolidation in the telecommunications sector from four parties to three parties and opens the door for an appeal by Hutchison against the Commission's prohibition of its acquisition of O2 UK. The Commission has said it is analyzing the judgment but is expected to appeal the decision to the European Court of Justice, the EU's highest court. Read more about the General Court's judgment in S&C's previously released client memo here.

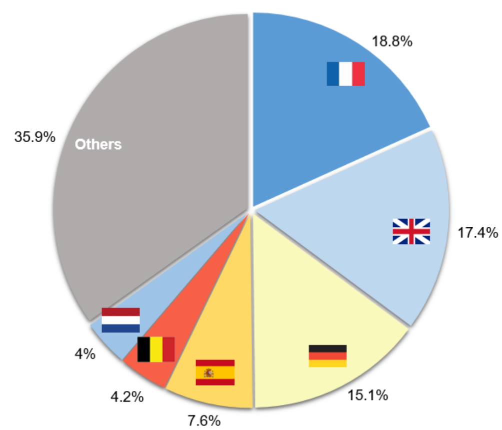
- **Enhanced Focus on National Security in Light of Pandemic**: In light of the pandemic, regulators across jurisdictions are increasing their scrutiny of foreign investments. For example, on April 18, 2020, the Investment Review Division of Innovation, Science and Economic Development Canada announced that the Government of Canada would be subjecting certain foreign investments into Canada to heightened scrutiny under the Investment Canada Act until the economy recovers from the effects of the pandemic, in order to ensure that such investments do not introduce new risks to the economy or national security during and after the pandemic. In addition, on June 23, 2020, the UK government augmented its national security intervention powers by adding public health emergencies to the factors it may consider in reviewing a merger, as discussed in S&C's recently released client memo here.

- **Increased Scrutiny of Foreign Investments in Europe**: Although the EU has indicated that it wishes to remain an open market that is attractive to foreign investments, there has been an accelerated policy shift towards increased scrutiny of foreign investments to prevent a sell-off of

Europe's strategic assets, including by protecting companies with market valuations well below their "true value" in the COVID-19 environment.

On March 25, 2020, the European Commission issued a guidance paper urging Member States to use existing foreign investment screening mechanisms or any other tools they may have to ensure the "continued critical capacity of EU industry" in and beyond the healthcare sector. Read more about the European Commission guidelines in S&C's previously released client memo here.

Foreign Direct Investments in Europe - Share of project numbers in 2019



Source: S&C, based on EY Attractiveness Survey Europe, May 2020

In this context, France, Germany, Italy, Spain and the UK have strengthened their foreign investment regimes, which may serve as effective shields against opportunistic unsolicited bidders and activist investors:

- **France**: The French government implemented successive reforms to extend the level of control over foreign investments (noting that such controls increased significantly by 15.7% in 2019). Following the entry into force of a new set of screening rules on April 1, 2020, the government adopted specific measures in view of the continuing impact of the COVID-19 outbreak on financial markets and issuers' business activities. As of April 30, 2020, the biotech industry has been added to the list of the strategic sectors covered by the foreign investment screening mechanism. The Minister for Economic Affairs also announced it would temporarily lower from 25% to 10% in voting rights the threshold requiring its approval for investments made by non-EU investors in French-listed entities. The underlying decree should be published within the coming weeks and remain in force until the end of 2020. Read more about the 2019 reform entered into force on April 1, 2020 in S&C's previously released client memo here.

- **Germany**: On June 18, 2020, the German parliament approved a bill from the Federal Ministry of Economics and Energy to amend the Foreign Trade and Payments Act, which will likely result in a higher intervention risk due to a lower standard of review, from an "actual and sufficiently severe threat that affects a fundamental interest of society" to "likely to affect" national public order or security. The legislative proposal had already been initiated in January 2020, before the COVID-19 pandemic. Meanwhile, and in response to the COVID-19 pandemic, the Foreign Trade and Payments Ordinance was also amended effective June 3, 2020 to extend the intensified review to specific companies from the healthcare sector (including vaccine and antibiotics manufacturers, manufacturers of medical protective equipment and manufacturers of medical goods for the treatment of highly infectious diseases). As a result, mandatory notifications from non-EU investors are required when they sign an agreement to acquire 10% of the voting rights or substantial parts of the assets of German entities operating in these areas. In addition, new gun-jumping prohibitions apply. Protectionist tendencies have reframed public discussions in Germany regarding inbound transactions since the acquisition of industrial robot manufacturer KUKA AG by Chinese household appliances manufacturer Midea Group in 2016 and, more recently, the alleged U.S. attempt to acquire CureVac AG, a German biotech company developing a vaccine against COVID-19, has captured headlines. Read more about the bill previously approved on April 8, 2020 by the German government in S&C's previously released client memo here.

- **Italy**: On April 8, 2020, the Italian government approved a Law Decree widening the scope of the Italian foreign investment regulation. In line with European Regulation no. 452/2019, the scope of the regime has been extended to cover additional critical sectors, such as the entire banking and insurance sector, as well as the health and food industry. The Law Decree also introduced new temporary thresholds triggering the screening mechanism for investments made in Italian entities holding strategic assets: (i) the acquisition by *non-EU* investors of 10% of the entity's share capital or voting rights (where the overall investment value is equal to or higher than EUR 1 million) and any subsequent investment therein resulting in crossing upwards the 15%, 20%, 25% and 50% thresholds in share capital or voting rights of such entity; and (ii) the acquisition by *EU* investors of a "controlling interest" thereof. However, these new thresholds are only applicable until December 31, 2020.

- **Spain**: The Spanish government approved two Royal Decrees on March 17 and March 31, 2020, to temporarily strengthen the Spanish foreign investment screening mechanism. Before the March 2020 amendments, the existing regulation only required prior approval for foreign investments related directly to the national defense. However, the amendments significantly strengthen Spain's regime, which now covers investments from non-EU entities in Spanish targets operating in certain sensitive sectors where the investor would (i) acquire a stake of at least 10% in the share capital of the Spanish entity or (ii) effectively participate in the management or control thereof. In line with European Regulation no. 452/2019, the meaning of critical sectors has also been broadened to include, *inter alia*, critical infrastructures, technologies and sectors with access to sensitive information (such as personal data). In addition, the Spanish government would now have a say in any investments made by a foreign state-owned investor in Spain.

- **UK**: The UK continues to broaden its merger review powers on national security and public interest grounds. On June 23, 2020, the UK government added "public health emergencies" to the definition of "public interest" for the purposes of the Enterprise Act 2002. This amendment is now in force and permits the Secretary of State to intervene on public interest grounds in any transaction which meets the UK merger control regime's thresholds (*i.e.*, £70 million target turnover (or £1 million in certain sectors) or an increase in a combined share of supply of at least 25% of products/services of a certain description in the UK (or even where there is no increase in certain sectors), and is connected with the UK's "capability to combat, and to mitigate the effects of, public health emergencies." This is more open-ended than it would first appear and could render a broad array of transactions susceptible to political review, as well as review on competition grounds.

  The UK government will also lower its merger control thresholds for mergers involving UK targets active in artificial intelligence, cryptographic authentication technology and "advanced materials"

(materials and alloys with specific physical properties), meaning more transactions involving such targets can be the subject of a public interest intervention by the UK government. These changes will come into force in the near future following review by the UK Parliament.

Major changes to the UK's national security regime are also on the horizon. The UK government has repeated its intention to introduce a National Security and Investment Bill to strengthen the government's powers to review takeovers on national security grounds on the basis of proposals first made in 2018, as mentioned in S&C's previously released European M&A and Corporate Governance Hot Topics Quarterly Update (Feb. 13, 2020). A draft bill is expected to be published soon and will be subject to the approval of the UK Parliament.

Conversely, 13 of the 27 EU Member States still do not have any foreign investment screening mechanism, including Belgium and Luxembourg.

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers listed below, or to any other Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an email to SCPublications@sullcrom.com.

CONTACTS

New York

Werner F. Ahlers	+1-212-558-1623	ahlersw@sullcrom.com
Francis J. Aquila	+1-212-558-4048	aquilaf@sullcrom.com
Audra D. Cohen	+1-212-558-3275	cohena@sullcrom.com
H. Rodgin Cohen	+1-212-558-3534	cohenhr@sullcrom.com
Scott B. Crofton	+1-212-558-4682	croftons@sullcrom.com
Mitchell S. Eitel	+1-212-558-4960	eitelm@sullcrom.com
John Evangelakos	+1-212-558-4260	evangelakosj@sullcrom.com
Jared M. Fishman	+1-212-558-1689	fishmanj@sullcrom.com
Sergio J. Galvis	+1-212-558-4740	galviss@sullcrom.com
C. Andrew Gerlach	+1-212-558-4789	gerlacha@sullcrom.com
Matthew B. Goodman	+1-212-558-4995	goodmanm@sullcrom.com
Dustin F. Guzior	+1 212 558 4482	guziord@sullcrom.com
Brian E. Hamilton	+1-212-558-4801	hamiltonb@sullcrom.com
Steven L. Holley	+1-212-558-4737	holleys@sullcrom.com
Matthew G. Hurd	+1-212-558-3122	hurdm@sullcrom.com
Stephen M. Kotran	+1-212-558-4963	kotrans@sullcrom.com
Mark J. Menting	+1-212-558-4859	mentingm@sullcrom.com
Scott D. Miller	+1-212-558-3109	millersc@sullcrom.com
Keith A. Pagnani	+1-212-558-4397	pagnanik@sullcrom.com
Richard A. Pollack	+1-212-558-3497	pollackr@sullcrom.com
George J. Sampas	+1-212-558-4945	sampasg@sullcrom.com
Melissa Sawyer	+1-212-558-4243	sawyerm@sullcrom.com

	Alan J. Sinsheimer	+1-212-558-3738	sinsheimera@sullcrom.com
	Krishna Veeraraghavan	+1-212-558-7931	veeraraghavank@sullcrom.com
Washington, D.C.			
	Renata B. Hesse	+1-202-956-7575	hesser@sullcrom.com
	Eric J. Kadel Jr.	+1-202-956-7640	kadelej@sullcrom.com
	Joseph J. Matelis	+1-202-956-7610	matelisj@sullcrom.com
	Robert S. Risoleo	+1-202-956-7510	risoleor@sullcrom.com
Los Angeles			
	Patrick S. Brown	+1-310-712-6603	brownp@sullcrom.com
	Eric M. Krautheimer	+1-310-712-6678	krautheimere@sullcrom.com
	Rita-Anne O'Neill	+1-310-712-6698	oneillr@sullcrom.com
	Adam S. Paris	+1 310 712 6663	parisa@sullcrom.com
	Alison S. Ressler	+1-310-712-6630	resslera@sullcrom.com
Palo Alto			
	Scott D. Miller	+1-650-461-5620	millersc@sullcrom.com
	Sarah P. Payne	+1-650-461-5669	paynesa@sullcrom.com
London			
	John Horsfield-Bradbury	+44-20-7959-8491	horsfieldbradburyj@sullcrom.com
	Jeremy B. Kutner	+44-20-7959-8484	kutnerj@sullcrom.com
	Ben Perry	+44-20-7959-8477	perryb@sullcrom.com
	Richard A. Pollack	+44-20-7959-8404	pollackr@sullcrom.com
	Juan Rodriguez	+44-20-7959-8499	rodriguezja@sullcrom.com
	Evan S. Simpson	+44-20-7959-8426	simpsone@sullcrom.com
Paris			
	Olivier de Vilmorin	+33-1-7304-5895	devilmorino@sullcrom.com
Frankfurt			
	Carsten Berrar	+49-69-4272-5506	berrarc@sullcrom.com
	York Schnorbus	+49-69-4272-5517	schnorbusy@sullcrom.com
Brussels			
	Michael Rosenthal	+32-2896-8001	rosenthalm@sullcrom.com
Melbourne			
	Waldo D. Jones Jr.	+61-3-9635-1508	jonesw@sullcrom.com
Sydney			
	Waldo D. Jones Jr.	+61-2-8227-6702	jonesw@sullcrom.com
Tokyo			
	Keiji Hatano	+81-3-3213-6171	hatanok@sullcrom.com

Hong Kong		
Garth W. Bray	+852-2826-8691	brayg@sullcrom.com
Kay Ian Ng	+852-2826-8601	ngki@sullcrom.com
Beijing		
Gwen Wong	+86-10-5923-5967	wonggw@sullcrom.com