

# #SCFlash

July Developments 2017

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

## EQUITY & DEBT CAPITAL MARKETS



### Confidential Submission of Draft Registration Statements Expanded: SEC Expands JOBS Act Benefit to All IPO Issuers and Follow-On Offerings within One Year of Initial Registration, including Related Relief for Required Financial Statements

On June 29, 2017, the SEC announced that the Division of Corporation Finance will permit all companies to confidentially submit draft registration statements for review in connection with initial public offerings, similar to the accommodation available to "emerging growth companies" under the Jumpstart Our Business Startups Act. The expanded confidential submission process, which took effect on July 10, 2017, also applies to follow-on offerings made within one year of the effective date of an initial registration statement.

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## LITIGATION



### How The Recent Supreme Court Term Will Affect Business

During its recent Term, the Supreme Court decided a number of cases important to businesses. This Supreme Court Business Review provides concise summaries of key cases in the commercial sphere, highlighting the one or two points to take away from each decision.

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## EU COMPETITION

### German Merger Control: New "Size-of-Transaction" Test for Merger Control in Germany

On June 9, 2017, the Ninth Amendment to the German Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*) entered into force. Among other changes to German competition law, it supplements (and partially replaces) the current filing thresholds with a new EUR 400 million size-of-transaction test.

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## CORPORATE GOVERNANCE



### 2017 Proxy Season Review

This publication summarizes significant developments relating to the 2017 U.S. annual meeting proxy season.

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## COMMODITIES, FUTURES & DERIVATIVES



### CFTC Staff Announces Review of Swaps Reporting Requirements and Requests Public Comment: CFTC Staff Has Initiated a 40-Day Public Comment Period on Proposed Roadmap to Achieve High Quality Swaps Data

The Division of Market Oversight of the Commodity Futures Trading Commission ("CFTC") announced plans to review the swap data reporting regulations that the CFTC issued under the Dodd-Frank Act. The CFTC has also requested public comment on the reporting regime, which provides an opportunity for industry participants to raise issues and recommend proposed changes.

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## FINANCIAL SERVICES CAPITAL MARKETS



### FSB Resolution Planning Principles: FSB Finalizes Guiding Principles on the Internal Total Loss-Absorbing Capacity of G-SIBs and Guidance on Achieving Continuity of Access to Financial Market Infrastructures

The Financial Stability Board ("FSB") recently released final guidance on two important aspects of international regulators' approach to more robust resolution planning for Global Systemically Important Banks ("G-SIBs").

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## ARBITRATION

### Arbitration: *Exxon Mobil v. Venezuela* Decision U.S. Court of Appeals for the Second Circuit Decides that Actions To Enforce ICSID Arbitration Awards Must Comply with the U.S. Foreign Sovereign Immunities Act

In a line of cases extending back more than 30 years, United States district courts located in New York have allowed parties to turn arbitration awards rendered under the rules of the World Bank's International Center for the Settlement of Investment Disputes into enforceable court judgments pursuant to summary, often *ex parte*, proceedings under New York state law.

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## LITIGATION CRIMINAL DEFENSE & INVESTIGATIONS



### **Second Circuit Overturns Convictions of Two Former Rabobank Employees Prosecuted for LIBOR Manipulation: In the First Appellate Decision Nationwide Arising Out of the LIBOR Criminal Investigation, the Second Circuit Holds the Fifth Amendment Prohibits the Use in U.S. Criminal Proceedings of Testimony Compelled by Non-U.S. Governments**

On July 19, 2017, in *United States v. Allen*, the U.S. Court of Appeals for the Second Circuit reversed the fraud convictions of two defendants relating to their attempts to manipulate the London Interbank Offered Rate (LIBOR). Investigating authorities in the United Kingdom previously had compelled the defendants—Anthony Allen and Anthony Conti—to testify about their role in manipulating LIBOR and disclosed their compelled testimony to a third person under investigation—Paul Robson—who later testified against Allen and Conti at their trial. On appeal, the Second Circuit held that, in U.S. criminal proceedings, the Fifth Amendment prohibits prosecutors from using, even derivatively, testimony compelled by non-U.S. governments.

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## BANK REGULATORY



### **Volcker Rule: Federal Banking Agencies Release New Guidance on the Treatment of “Foreign Excluded Funds” Under the Volcker Rule**

On July 21, 2017, the staffs of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation issued a joint statement relating to the implementation of section 13 of the Bank Holding Company Act of 1956, as amended, commonly known as the “Volcker Rule,” with respect to foreign banking entities’ investment in and sponsorship of certain foreign funds.

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## BANK REGULATORY



### **Volcker Rule: Federal Reserve Releases Guidance Regarding Requests for Conformance Period Extensions for Seed Investments in Covered Funds and Authorizes Reserve Banks to Approve Extensions**

On July 24, 2017, the Board of Governors of the Federal Reserve System issued a supervisory letter setting forth guidelines relating to banking entities’ applications to obtain an extension of the permitted seeding period for investments in hedge funds or private equity funds under the Volcker Rule and issued an order delegating the authority to approve such applications to the Federal Reserve Banks. The Supervisory Letter and Order created a streamlined process for banking entities to seek approval to hold seed investments in covered funds for up to three years, subject to the procedural guidelines set forth in the Supervisory Letter and the other requirements of the Supervisory Letter and Order.

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## INSURANCE



### **New Insurance Accounting Standard IFRS 17: FSB Endorses New Accounting Standard for Insurance Contracts – IFRS 17**

On July 17, 2017, the Financial Stability Board issued a statement endorsing the final publication of International Financial Reporting Standard 17 (IFRS 17). Previously, on May 18, 2017, the International Accounting Standards Board (IASB) issued the final version of IFRS 17, finalizing a long-standing project of the IASB to develop a single, consistent approach to the accounting for insurance contracts in jurisdictions that apply IFRS. IFRS 17 will replace IFRS 4, which currently allows entities to use a wide variety of accounting practices for insurance contracts, reflecting different national accounting requirements. IFRS 17 will become effective for annual periods beginning on or after January 1, 2021.

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## TAX



### **Tax Court Overrides Revenue Ruling to Hold That Gain on Sale or Redemption of Partnership Interest is Not Effectively Connected Income**

In *Grecian Magnesite Mining, Industrial & Shipping Co., SA v. Commissioner of Internal Revenue*, 149 T.C. No. 3 (July 13, 2017), the Tax Court held that a non-U.S. taxpayer’s gain from redemption of a partnership interest in a United States partnership that was engaged in a U.S. trade or business was the disposition of an indivisible capital asset, and therefore no part of the gain was effectively connected income.

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