

INNOVATE

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HASTINGS

ANNUAL REVIEW 2012



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For additional insights and experience, visit our dynamic, interactive Annual Review at [www.paulhastings.com/annualreview](http://www.paulhastings.com/annualreview).

## CHAIRMAN'S LETTER

### Dear Clients and Friends of the Firm:

During 2012 Paul Hastings' focus was to deliver the differentiating innovation our clients require to seize and strengthen their competitive primacy. At the same time, we remained steadfast in our commitment to providing outstanding client service, wise counsel, ever-greater efficiency, and deep industry knowledge to guide our clients through the challenges of uncertain times. We are grateful for the extraordinary trust clients placed in us last year to help them succeed and grow.

New ideas and challenges are arising in every industry with the potential to either disrupt our clients' business models or accelerate their leadership. During 2012 we deepened our commitment to providing swift, creative, and *innovative* legal advice to help our clients succeed.

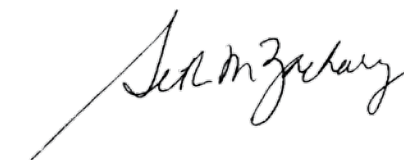
Partnering with our clients on every continent helps us understand the turbulent dynamics of modern business from their perspective. In today's hyper-connected world, a staggering volume of information is constantly being analyzed into actionable, real-time business knowledge – and made available to everyone, instantaneously, on a global basis. This is the 24-hour-a-day world of change our clients live in, and Paul Hastings is honored to help them plan and thrive in this challenging environment.

As is true every year, our success in 2012 was rooted in the success of our clients. To cite just a few highlights, we:

- Ranked in the Top 2 on *The American Lawyer's* A-List, its annual ranking of the most successful U.S.-based firms
- Placed in the Top 3 in the *Financial Times'* U.S. Innovative Lawyers report and ranked No. 1 in Litigation, Intellectual Property, and Business of Law
- Ranked 1st among legal advisers to Hong Kong Stock Exchange equity IPO managers in *Bloomberg's* league tables
- Participated in the largest commercial mortgage-backed securities ever issued in Europe
- Ranked 3rd in U.S. Lender Law Firm M&A in *Thomson Reuters'* league tables
- Ranked in the Top 10 litigation practices in *The American Lawyer's* Litigation Power Rankings
- Opened offices in Houston and Seoul to better serve our clients in the global energy industry and the burgeoning Korean market
- Received *LatinFinance's* Deal of the Year: Equity Follow-on Offering in recognition of our leading work in Latin America

In the pages that follow you will find summaries of some of our clients' key successes, as well as our partners' insights and perspectives on important market trends shaping our clients' industries and geographies. We are also pleased to introduce our newest partners, representing leading talent from a cross section of industries.

In a world of challenge and uncertainty, we remain steadfast to our fundamental client promise: to be *there* – to help clients identify and unlock opportunities, surmount obstacles, harness the power of market change, and to accelerate their progress.



Seth M. Zachary, Chairman



Scan for  
a message from  
our Chairman

## INSIGHTS AND EXPERIENCE



Asia provided a mix of reassurance and challenge for the larger global marketplace in 2012. The threatened “hard landing” of China was averted. Political change in China, Japan, and Korea put in place a new set of actors in North Asia whose longer term policies were heavily focused on supporting economic growth. The key countries in the region continued to adjust their fiscal, monetary, and trade policies in an attempt to re-ignite growth. And, at the same time, regional cooperation on all fronts became more complicated in the face of escalating political tensions among many of the key players in North Asia.

Set against the uncertain financial and geopolitical backdrop, Asian corporate, sovereign, and institutional investors demonstrated a continued appetite for overseas acquisitions. Several factors drove major Asian companies into a growing variety of global markets: companies needed to expand beyond their mature or more limited home markets; the region’s governments were keen to support this; management needed to protect and grow profits by building market share; governments and corporations needed to secure resources, both energy and mineral; and, as always, there was a drive to move ever further up the value chain. The growth in M&A volume has been marked by Asian corporates’ increased confidence. With so much in play, the Asian market has stayed at the nexus of inbound and outbound investment. Companies across so many of its sectors are now setting the tenor of global growth.



ASIA



## HIGHLIGHTS OF OUR CLIENT SUCCESSES

### CIMC leads the way in conversion of B- to H-share listings

Paul Hastings represented China International Marine Containers (CIMC) on the conversion of its B-shares, listed on the Shenzhen Stock Exchange, to H-shares listed on the Hong Kong Stock Exchange by way of introduction. In this first-of-its-kind transaction, CIMC, the largest container manufacturer in the world, converted its 1.43 billion B-shares with a total market value of approximately US\$1.79B. This groundbreaking transaction led the way for more B-share companies to convert to Hong Kong's H-share market. We are currently involved in the two other announced B- to H-share listings – for China Vanke, the largest PRC housing developer, and for PRC-based Livzon Pharmaceutical Group. We are the only legal counsel advising on all B- to H-share projects launched in the market.

### Lotte Chemical secures trade secrets victory

We secured a significant victory for Lotte Chemical Corporation in the U.S. District Court for the Middle District of Alabama (Northern Division). In response to a suit brought against Lotte and others in a complex multi-party international dispute concerning alleged violation of trade secrets, Paul Hastings filed a successful motion to compel arbitration and stay the litigation pending arbitration of the dispute under the auspices of the International Chamber of Commerce in Korea. Paul Hastings opened its 20th office in Seoul in 2012 and has a number of leading practitioners on the ground, including IP and complex litigation specialists.

### China Media Capital moves ahead with DreamWorks joint venture and Dream Center development

The firm is representing China Media Capital in the official launch of its joint venture with DreamWorks Animation. The joint venture, Oriental DreamWorks, is one of the largest international investment projects in China and is positioned to be the leading China-focused family entertainment company. In addition, China Media Capital, DreamWorks Animation, and the Xuhui district government in Shanghai signed a memorandum of understanding to develop "Dream Center" – a US\$3.14B metropolitan cultural landmark in the Xuhui district that integrates media, performing arts, entertainment, leisure living, and tourism. *China Business Law Journal* awarded the firm Joint Venture Deal of the Year.

Ranked 1st among HKSE Equity IPO Manager Advisers in Bloomberg's 2012 global league tables, based on both deal volume and count

## MARKET PERSPECTIVES FROM OUR PARTNERS

### OUTBOUND MERGERS AND ACQUISITIONS

*Where is outbound M&A headed in 2013? What are the challenges facing these outbound investors?*

**Jia Yan**  
Shanghai

The "Going Out" policy, which was first unveiled in 1999, has become a key policy for the Chinese government to advance domestic economic development and global business development. Promoting outbound investments is now part of China's 12th Five Year Plan and Chinese companies are becoming more active in global M&A. Looking ahead, 2013 deal prospects look strong, especially in resource-rich regions. The big-ticket outbound acquisitions will continue to be made by state-owned enterprises (SOEs), with the support of state banks. We also expect private companies to be active acquirers of technologies, skills, and brands.

Regulatory factors will continue to be the main obstacle for Chinese strategic investors when acquiring a foreign business. With regard to post-deal acquisitions, cultural and management differences will be the primary challenges.

**Daniel Kim**  
Seoul

Early signs are that 2013 will be a historical year for Korean outbound M&A. It started with several outbound deals by LG Household & Healthcare, LG Electronics, and Samsung Electronics; several others are reported to be in the bid or negotiation stage. Prior to 2007, Korean corporations and conglomerates (known as *chaebols*) established special M&A taskforces of experts with banking, consulting, accounting, and legal expertise. The global financial crisis delayed deal flows, but Korean strategic investors began preparing for global expansion via M&A.

This has been a natural progression after decades of relying on organic growth and greenfield developments when expanding overseas. Korean companies are now looking to expand through acquisitions and joint ventures – long favored as efficient and time-saving growth tools by their U.S. and EU counterparts. *Chaebols* are no longer Korean enterprises with some overseas operations – rather, like Hyundai Motors, POSCO, and Samsung Electronics, they have become truly global companies with a much higher percentage of their revenues derived from foreign customers and consumers. *Chaebols* and even mid-size companies are now confident acquirers and investors internationally, buying companies and assets and efficiently integrating them post-acquisition. This year will see outbound acquisitions completed in various jurisdictions, including the Americas, the EU, Japan, and ex-Japan Asia, as well as in a variety of industries, including technology, energy, consumer/retail, and auto/auto parts.

**Toshiyuki Arai**  
Tokyo

Outbound M&A from Japan this year may be affected to some degree by a lowering in the value of the yen compared to the last few years. That said, we don't expect that the deal flow will slow down very much, particularly for strategic investments. Japan outbound M&A started in the early 21st century, long before currency considerations were a factor. Meanwhile, Japan's population continues to decline and Japan's multinationals must expand their markets elsewhere. In order to achieve this, M&A is the most conventional solution and is now focused on BRIC and ASEAN economies. By the same token, acquisition of American and European companies will likely continue to capture market growth outside of Japan. Japan's outbound acquisition was never private-equity driven and so the flow of acquisitions will likely be unaffected by uncertainties in that sector.



Scan to hear more about developments in outbound M&A



## MANAGING RISK FOR KOREAN COMPANIES

*What are the best practices for Korean companies to manage their exposure to U.S. regulatory risk and associated litigation, whether in relation to IP, trade secrets, antitrust, white collar crime, or product liability?*

**Jong Han Kim**  
Seoul

As Korea's multinational companies continue their international expansion, particularly into the U.S. market, they face legal challenges from their competitors and from U.S. and other international regulators to an unprecedented degree. Such challenges result not only from the competition's desire to check the Korean companies' successes, but also from the regulatory agencies' intent to vigorously enforce against Korean companies' improper conduct and behavior in the global market. To lower the risks associated with such enforcement proceedings and lawsuits, it is imperative that Korean companies institute more robust compliance programs that are in line with the global standards. Such compliance programs should not only exist on paper, but also be fully and truly incorporated into their business practices. To achieve optimal results given these challenges, Korean companies need expert advice on the best practices to ensure compliance to the highest global standards, along with strong and sustained training of their staff.

## HONG KONG CAPITAL MARKETS

*What is the outlook for Hong Kong IPOs in the next 12 months? How will this affect the dim sum market?*

**Vivian Lam**  
Hong Kong

Market sentiment in Hong Kong has improved with continued capital inflows and a better outlook for the Chinese economy. We expect several areas of growth for the Hong Kong IPO market this year: the trend for B-share companies to delist from the illiquid Shenzhen exchange and re-list in Hong Kong, more small- and medium-sized Chinese enterprises being encouraged by the China Securities Regulating Commission to list in Hong Kong as H-shares, and more foreign issuers listing in Hong Kong by way of secondary listing or depository receipts as a result of the Hong Kong exchange's effort to streamline the listing process. Strong liquidity and bullish views on the renminbi have also helped the dim sum market, and we had an extremely busy start to the year. With recent relaxation of regulations allowing Chinese companies to issue offshore bonds, we expect to see more dim sum issuances, not just in Hong Kong but also in other markets such as London and Singapore.



Scan to hear more  
about trends impacting  
Korean companies



Scan to hear more  
about the Hong Kong  
capital markets

One of the first international law firms to open an office in Korea



The growing importance of shale oil technology, and in particular its dramatic impact on U.S. energy self-sufficiency, coincided with the ongoing development, investment, and growing effectiveness of alternatives and renewables. While public subsidies and incentives have been critical to start-up phases, the next-stage developments in the energy sector will bring focus on the pricing matrix between renewables, alternatives, and mainstream energy resources. The strong U.S. environmental commitment around controlling greenhouse gas emissions that was expressed during the second inauguration of President Obama may ignite further advancement in renewables. Growth of renewables provides the economic rationale for a major expansion of energy infrastructure, including vital interconnection and transmission facilities. Growth in shale provides advancement in technology and creates a wealth of new employment opportunities.

China has become a major investor in the alternatives sector; energy resources in Southeast Asia need development, and Europe's energy network remains strongly committed to renewables with the most ambitious targets for transitioning to a low-carbon economy. These developments reflect the reality that ongoing energy needs are robust and growing. They will need to be met from a range of sources and with respect to larger environmental considerations. Large and diverse investment opportunities remain in a sector that continues to command interest from the developed and developing worlds alike.



## ENERGY



## HIGHLIGHTS OF OUR CLIENT SUCCESSES

### Exelon Generation Company obtains complete dismissal of claims

We secured a complete dismissal of claims against Exelon Generation Co. LLC, one of the world's largest power producers, in a negligence action brought against the company in which the plaintiff blamed her cancer on nuclear radiation from one of Exelon's power plants. In addition, the plaintiff claimed this incident was part of a larger "cancer cluster" near Exelon's nuclear power stations. Our firm's substantial experience came into play as the team gathered extensive information relating to the scientific disciplines in the case and pursued a series of strategic filings to demonstrate that no community members had been exposed to radioactive materials and no such cluster existed. After Exelon's last motion was granted and right before expert discovery, the plaintiff decided to abandon the case and file dismissals.

### Firm advises Korean export credit agency on award-winning power project in Turkey

The firm represented Korea Trade Insurance Corporation (K-sure), an export credit agency, in connection with the financing of EnerjiSA's 450MW power project and associated lignite mine project in Tufanbeyli, the Republic of Turkey. The total project cost is approximately €1.1B, €750M of which EnerjiSA obtained in debt financing. K-sure is providing political and commercial risk insurance cover for the export credit financiers, who have become a lender group in the portfolio financing implemented by EnerjiSA. Our work was honored as the Turkish Power Deal of Year at the Annual PFI Awards and continues the firm's record of high-profile project finance transactions in Asia, following our roles on the award-winning Mong Duong 2 project in Vietnam and on the cross-border acquisition of BG Group's power assets in the Philippines by First Gen Corporation.

### EIG Global Energy Partners keeps moving forward

During 2012 we deepened our longstanding relationship with EIG Global Energy Partners and helped our client secure several notable successes. We represented EIG in implementing the terms of a strategic settlement following an arbitration the company filed challenging the proposed acquisition of The TCW Group by investment funds operated by The Carlyle Group. In addition, our lawyers advised EIG on the formation and operation of certain investment vehicles, represented our client in the opening of its Hong Kong office, and continued to serve EIG as regulatory counsel in connection with its status as an SEC-registered investment advisor. We also represent EIG in various transactional, corporate, employee benefit, tax, and litigation matters.

Awarded Asia-Pacific Power Deal of the Year by *Project Finance* for our work on the Mong Duong 2 coal-fired power project in Vietnam

## MARKET PERSPECTIVES FROM OUR PARTNERS

### RENEWABLES

*Thinking about what has happened in the U.S. renewables market over the past 12 months, what do you see as the most significant trends shaping the market in the future?*

**Timothy Callahan**  
Chicago

With the recent extension of the Production Tax Credit through the end of 2013, the renewable energy market appears to be somewhat reinvigorated (particularly as to the wind energy market). That said, the drivers of this sector for the future will be threefold: (i) federal legislation that continues to lift this market, whether through tax credits or a national renewable portfolio standard; (ii) increased natural gas prices; and (iii) improved technology. While federal incentives have clearly boosted the industry over the years and will likely be necessary for the immediate future, renewable energy clients have indicated that (even with the federal incentives) it currently remains difficult to find utilities willing to offer pricing for power purchases that make such projects economically viable. Such low power prices have resulted primarily from low natural gas prices – i.e., utilities can generate cheap power from natural gas-fired power plants and therefore have little incentive to offer higher power prices for renewable energy. Finally, as renewable energy technologies improve, this sector will not only be less dependent on governmental incentives, but may actually be able to compete against more conventional technologies (such as gas-fired plants) on an "installed cost basis."

**William DeGrandis**  
Washington, DC

Interconnection and transmission issues continue to be important drivers for renewable energy resources. The Federal Energy Regulatory Commission (FERC) has new initiatives and rules designed in part to facilitate interconnection of renewables and other resources to the grid, to have sufficient capacity to transmit these to market, and to integrate renewables' intermittent nature with other resources already connected to the grid. Interconnection and related costs can significantly affect renewable energy development. Many good sites for wind and solar resources are located far from the existing grid and need expensive new transmission lines and interconnection and transmission facilities.

FERC has sought to encourage development of renewable resources, in part by implementing a "beneficiary pays" cost allocation to help share the costs of such expensive new lines and facilities. Most of the interconnection- and transmission-related disputes now before FERC involve the costs of interconnection and transmission facilities that utilities seek to allocate to renewable energy developers.

While a number of states require retail utilities to have a certain percentage of renewable energy in their overall power resources, several utilities have stated that they will seek more renewable generation even when they satisfy required target levels, as a hedge against natural gas prices.

New Houston location reflects the firm's commitment to the global energy industry



## SOUTHEAST ASIA

*What changes do you see for Southeast Asia's energy sector over the year ahead? Will there be shifts in energy finance?*

**Patricia Tan Openshaw**  
Hong Kong

As Southeast Asian economies continue to grow, their governments continue to prioritize developing energy resources. Existing installed capacity doesn't meet current power requirements, let alone forecasted demand. We expect increased activity involving greenfield projects as well as rehabilitation/expansion of existing power plants. We expect more project development, particularly in Thailand, Malaysia, Indonesia, the Philippines, and Vietnam. While some of these countries are also promoting renewable energy initiatives, most power is still generated through fossil fuel plants.

Asian corporates will continue to be active as project sponsors in both domestic and cross-border transactions – especially in Malaysia, the Philippines, and Thailand, where local sponsors tend to dominate, financed by highly liquid local banks. In other countries such as Indonesia, Laos, and Vietnam, international sponsors usually have the controlling stake, and financing is more typically provided by multilateral agencies, export credit agencies, and international commercial banks.

Armed with bigger war chests and the availability of inexpensive financing, Asian corporates are targeting power assets across the region. Coincidentally, several current owners have announced the streamlining of their businesses by shedding non-core power generation assets. We therefore expect increased M&A activity across the region in the year ahead.

## ENVIRONMENTAL

*What environmental developments are on the horizon for the energy sector?*

**Kevin Poloncarz**  
San Francisco

Some of the most significant environmental developments in the energy sector involve climate change and our efforts to reduce greenhouse gas (GHG) emissions. President Obama made clear in his inaugural and State of the Union addresses that his administration will utilize all available tools to achieve measurable reductions in the absence of comprehensive Congressional legislation. For now, this means the EPA will continue regulating GHGs from the power, transportation, and oil and gas sectors under the Clean Air Act. At the same time, states are proceeding with market-based GHG trading programs, most significantly California's ambitious Cap-and-Trade Program and the Regional Greenhouse Gas Initiative of several northeastern states. By design, these programs are intended to lay the foundation for broader carbon markets. The second Obama administration will struggle with whether and how, given the continued Congressional stalemate, such market-based solutions may be integrated with federal efforts to combat global warming.

**Peter Weiner**  
San Francisco

Environmental developments on the horizon for energy companies depend on the technology or source of energy involved. First, the burgeoning natural gas exploration and production sector may face both EPA and state regulation of hydraulic fracturing ("fracking"), including disclosure of chemicals used in fracking, regulation of the chemicals or their wastes as hazardous substances, and requiring proof that groundwater quality is not impacted. Natural gas power plants on the coast will continue to face repowering requirements because of "once-through-cooling" concerns about the effect of warm water on oceanic species. Second, EPA regulation of coal power plants could include more stringent air, water, and waste (such as coal ash) regulation. Third, large solar and wind plants face increasing paralysis from species concerns, especially golden eagle for wind and desert tortoise and San Joaquin kit fox for solar in the West. Oil and gas exploration also faces continuing challenges in the Interior West because of sage grouse concerns.



Europe dominated economic and political headlines for much of last year as the troubles of countries like Greece, Spain, Portugal, and Ireland challenged the Eurozone consensus on monetary policy and fiscal strategy. This year, those concerns are extended to Cyprus, with the recent Italian elections further unsettling the markets. This has affected the level of economic activity in countries within and beyond those directly hit by economic turmoil, as European economic growth struggled in an environment of exceptional austerity. The Governor of the European Central Bank made a notable market intervention to calm nerves last year, but those nerves remain.

Nevertheless the region continues to draw investment. The need to restructure bank and corporate balance sheets put a number of European assets into play, and both Asian and American investors have seen the opportunity to add to their portfolios of international holdings. This will continue as potential investors look at real estate and manufacturing assets, services, and utilities.

While acknowledging the need to restart growth, the European Union is also undertaking major structural changes to regulation that will impact both the financial services sector and investments. Companies doing major transactions in the region will have to navigate these changes. The upcoming German elections are seen as especially significant to the longer-term shape of European Union financing, but the shorter-term political challenges elsewhere – not limited to Italy and Greece – could prove highly unsettling.

## EUROPE



## HIGHLIGHTS OF OUR CLIENT SUCCESSES

### Capita services largest CMBS ever issued in Europe

Paul Hastings represented Capita Asset Services as servicer of the €4.3B CMBS transaction issued by German Residential Asset Note Distributor plc (GRAND). In a first for a CMBS restructuring, the GRAND CMBS has been implemented by a solvent scheme of arrangement. Collectively, the GRAND CMBS debt is serviced by approximately 180,000 properties across Germany.

### Telecom Italia wins for damages in data protection and corruption

The firm represented Telecom Italia in an internal investigation and enforcement actions relating to violations of anti-bribery, IT, and data protection statutes committed by rogue employees of the client's security department and consultants. The 5,000 victims of the illegal actions included competitors and public authorities. We assisted our client in its multiple roles as defendant, aggrieved party, and the entity liable for the damages caused by its employees and consultants. Telecom Italia successfully minimized its exposure and obtained a €10M award for the damages it suffered as an aggrieved party.

### Weichai Power takes advantage of acquisition opportunities in Europe

The firm is advising Weichai Power, a leading Chinese automotive manufacturer, on its purchase of a stake in German industrial equipment maker KION Group. In addition, Weichai will also acquire a majority stake in KION's hydraulics business. Once closed, the deal – comprising a total investment of €738M – will reportedly be the largest-ever direct investment by a Chinese business in Germany.

Received Structured Finance and Securitisation Deal of the Year at the 2012 *IFLR* European Awards for our advisement of Deutsche Bank on the first CMBS placed into the market in Europe since 2007

To read about additional client successes, go to [www.paulhastings.com/annualreview](http://www.paulhastings.com/annualreview).



## MARKET PERSPECTIVES FROM OUR PARTNERS

### REAL ESTATE FINANCE

*Where is Europe's CMBS market heading in the year ahead? What will drive this?*

**Conor Downey and Charles Roberts**  
London

In 2011, Paul Hastings represented Deutsche Bank in its £302M Chiswick Park CMBS, which was widely expected to be the re-emergence of European CMBS. During 2011, issuance in the U.S. reached US\$32.7B. Unfortunately for Europe, the Euro crisis emerged at the end of the first half of 2011 and created significant instability in the capital markets. That instability has been a significant factor in the slow revival of CMBS in Europe.

In 2012, while CMBS issuance increased to US\$48.4B in the U.S., Europe was much slower in its revival. Four deals issued in Europe during 2012 with total issuance barely above €2B, and Paul Hastings was involved in all but one of those deals.

Two of the deals that issued in late 2012 – Deutsche Bank's €887M Florentia CMBS and RBS's £463M Isobel Finance – were well received by the markets and created renewed enthusiasm for issuance. Since that time, there have been announcements of several new CMBS issues that are expected to occur during 2013 and industry participants have predicted issuance to be in the range of €5-10B.

Named Law Firm of the Year  
2012 by *Private Equity Magazine*  
in recognition of our leading  
Paris-based private equity team



## RESTRUCTURING

*What changes will the year ahead bring to the way that restructuring is handled in your market?*

**Karl Clowry**  
London

For many over-leveraged European companies unable to refinance maturing debt, or that undertook limited restructuring in the last five years, cross-border restructuring tools will increasingly provide comprehensive solutions. Many domestic corporate law and insolvency regimes in Europe still do not enable the “cram-down” of dissentient creditors or shareholders. So it is likely the U.K. will see even more schemes of arrangement being used to restructure the balance sheets of non-U.K. borrowers. Where non-English law debt is involved (and such schemes may not be applicable), European corporate debtors will continue to seek out alternative insolvency regimes in other jurisdictions (including in the U.K.) that may lead to a more favorable outcome for the debtor and its “in-the-money” stakeholders.

Tentative first signs exist that a number of European financial institutions are increasing the rate of non-core asset disposals. When undertaken at realistic prices, these will create opportunities for distressed investors to drive creative restructuring proposals to realize future value. There will inevitably be strategies involving more aggressive loan-to-own, pre-packaged insolvencies and financial collateral appropriations (particularly of shares in jurisdictions such as the U.K. and Luxembourg) by credit opportunity funds that have yet to deploy their true investment weight in Europe.

**Christopher Wolff**  
Frankfurt

The new German insolvency code took effect in March 2012 and has already had a big impact on German company restructuring. Debtor-in-possession combined with insolvency plan proceedings (comparable to U.S. Chapter 11) are now used more frequently. It is unlikely this trend will reverse, as it gives both parties much greater flexibility than before. The amendment of the code gives more favorable treatment to existing shareholders in protection phase proceedings (*Schutzschirmverfahren*) than to junior or mezzanine debt holders, unless the latter bring new money to the table. Also, in out-of-court insolvencies, mezzanine investors’ nuisance value has been reduced. In insolvency plan proceedings they can be wiped out more easily, especially in real estate proceedings where properties’ underlying value (as a consequence of the insolvency of the landlord) is not adversely affected. Focus is now shifting from private equity restructurings due to over-leveraging to the more pressing need for major CMBS vehicles’ restructuring due to debt maturing over the next 12-24 months. This will require refinancing or a debt holders’ agreement to extend maturities and restructure.

## MERGERS AND ACQUISITIONS

*Where are the greatest investment opportunities for inbound M&A in your market?*

**Ronan O’Sullivan**  
London

Maintaining its position as the leading European market for M&A, in 2012 the U.K. recorded its highest level of inbound M&A activity since 2008 and attracted more foreign direct investment than any other European jurisdiction. Foreign investment accounted for over 70% of all M&A transactions in the U.K. in 2012 as overseas buyers sought to avail themselves of businesses and assets trading at deflated values, caused principally by the macroeconomic conditions.

Sectors that remain hot include technology, energy, pharmaceuticals, and financial services, which together accounted for half of the deal activity in 2012. We expect opportunities to remain strong in 2013 for cash-rich U.S. and Asian corporates and private equity funds, notwithstanding the sluggish domestic economy.

**Dr. Regina Engelstädter**  
Frankfurt

The German economy survived the European Union crisis largely without effect and recorded steady growth in the last few years. Germany offers excellent investment opportunities, in particular for strategic investors from the U.S. and Asia with a focus on mid-cap transactions in the range from €25M to €500M. The so-called German *Mittelstand* has demonstrated excellence and market leadership in many areas. In particular, our clients from Asia recognize the potential and know-how of German companies and show high interest in making strategic investments in Germany. Since the German market is underestimated at the moment, we see strong opportunities for investments into German companies, which usually involve cross-border aspects, and a moderate upswing of the inbound M&A market in the second half of 2013.



## FRENCH PRIVATE EQUITY

*What is the outlook for the French private equity market in 2013? How will the new tax regime affect this?*

**Olivier Deren, Pascal de Moidrey, and Alexis Terray**  
Paris

2012 saw a significant drop in private equity transactions (95 transactions for an aggregate value of €6.2B, compared to €15B in 2011) and 2013 is again looking uncertain for the private equity industry in France.

There are several reasons for this: the effect of Basel III on the availability of bank financing, problems encountered by private equity houses in raising new money in the current economic climate in Europe, sellers' high price expectations, and heavier taxes because of France's need to curb its deficits.

Faced with this difficult environment, there are several reasons to remain optimistic:

- During the next five years, many French, family-owned companies will face succession issues, and private equity funds may propose adequate solutions.
- Statistics show that companies experiencing an LBO create more jobs and invest more, which is key in the context of the need to boost employment in the ongoing economic crisis that we are experiencing.
- Alternative solutions to bank financing are developing, in particular unirate mezzanine loans and debt funds.
- Private equity fund portfolio companies are trying to create value through leveraged bolt-on transactions (which grew by approximately 11% in 2012), which is breathing life into the market.



Scan to hear more about the French private equity market

## INTERNAL INVESTIGATIONS

*Recent legislation and regulation impose new obligations on companies to police themselves. What do you find are the main areas of management concern in these probes?*

**Bruno Cova and Francesca Petronio**  
Milan

Compliance failure and legal issues are the main short-term risks for corporations. The main areas of concern are violations of securities, bribery, environmental, and antitrust laws, liabilities deriving from M&A transactions and joint ventures, and any failure to implement adequate internal controls systems that prevent wrongdoing by directors and employees. A major concern, as a consequence of globalization, is also the fragmented legal framework. The problems of multijurisdiction enforcement actions are compounded by the extra-territoriality of certain laws (particularly anti-bribery and antitrust laws). In several countries there are no provisions of law recognizing the *ne bis in idem* principle as a general rule in an international context. Following several recent cases, corporations currently seem to be more willing to invest in prevention to minimize the risks of heavy sanctions, blacklisting, and reputational damages.

Expanded our European practice with the addition of six industry-leading lawyers to better serve our clients' capital markets, finance, and M&A needs



The financial services recovery was buoyed by record low interest rates and a dynamic reshaping of the industry. Despite market swings, the steadily increasing appetite for risk took off in transactions all along the risk spectrum on the back of stronger corporate balance sheets and a strengthening equity market that has continued into 2013.

The sector also faced increasingly complex national and international regulation focused on strengthening bank balance sheets against future market upsets. The consequence is tighter capital availability and profit pressures for many institutions. Other controls, such as bonuses and a financial transactions tax, were recently introduced in Europe and may well carry over into other markets, as has the imposition of increasingly substantial penalties for regulatory violations.

Banking has not stood still in this world of change. It has witnessed the arrival of new players moving into market spaces created as established institutions move back toward more traditional, low-risk ends of the financing spectrum. With pressure on overhead and headcount, the year was marked by constant streamlining. This freed up banking talent to support the growth of newer players. Meanwhile the relatively stronger capital position of some Asian banks helped them become more active in international lending markets and support expanding Asian businesses.



## FINANCIAL SERVICES



## HIGHLIGHTS OF OUR CLIENT SUCCESSES

### Haitong Securities completes US\$1.68B Hong Kong IPO

The firm advised the underwriters in Haitong Securities Co. Ltd.'s Hong Kong initial public offering and listing of its H-shares on the Hong Kong Stock Exchange. The transaction comprised a Hong Kong public offering and a Reg S/Rule 144A international offering. The total deal size was US\$1.68B after the partial exercise of an over-allotment option. Haitong is the second largest securities firm in China by total assets and is already listed on the Shanghai Stock Exchange. It is the second Chinese securities firm to list on the Hong Kong Stock Exchange. We received Equity Deal of the Year at the *China Law & Practice Awards* for our work on this transaction.

### Precedent-setting victory in CDO securities litigation

We obtained the unanimous dismissal by New York's First Department of all fraud, negligent misrepresentation, and punitive damages claims that had been brought by German commercial bank HSH Nordbank against firm client UBS. The case involved HSH's US\$500M purchase of notes in a synthetic CDO transaction. HSH argued that UBS made fraudulent misrepresentations that fraudulently induced HSH to enter into the transaction. In an opinion with far-reaching implications for sophisticated parties engaging in complex commercial transactions, the First Department rejected these arguments and found that HSH, a sophisticated bank, could not have justifiably relied on any alleged "advice" from UBS given the extensive disclaimers and disclosures contained in the contracts governing the transaction, and that HSH could have uncovered any alleged misrepresentation through the exercise of reasonable due diligence. The Court also affirmed the dismissal of HSH's negligent misrepresentation claim, because the parties expressly had agreed that they were dealing with each other at arm's length, as well as the dismissal of any claim for punitive damages.

### Advent secures financing for acquisition of AOT Bedding

The firm advised the lead arrangers and agents in connection with the debt financing for Advent International's acquisition of U.S.-based AOT Bedding Super Holdings, maker of the Serta and Simmons mattress brands. We represented Morgan Stanley Senior Funding, Inc. as administrative agent in connection with a US\$1.31B term loan and UBS AG, Stamford Branch, as administrative agent in connection with a US\$225M asset-based revolving credit facility. Our work also included advising Morgan Stanley Senior Funding, Inc., Deutsche Bank Securities Inc., Goldman Sachs Bank USA, UBS Securities LLC, Barclays Bank PLC, Jefferies Finance LLC, and Royal Bank of Canada as arrangers in connection with these credit facilities. The deal positions the market-leading brands for further growth.

Ranked 3rd for U.S. Lender Law Firm M&A and 7th for U.S. Lender Law Firm Leveraged in *Thomson Reuters' LPC 2012 League Tables*

## MARKET PERSPECTIVES FROM OUR PARTNERS

### REGULATION

*With U.S. bank regulation becoming so complex, do you see new players emerging? What will happen to existing financial institutions?*

**Gerard Comizio**  
Washington, DC

We are entering an exciting new period in the history of banking where we need to understand – and anticipate – the legal needs of an evolving financial services industry. Moving from a paradigm of traditional banking composed primarily of deposit and lending services, banking organizations now seek to meet highly competitive and profitability challenges by deriving an increasing portion of their income from a broad menu of financial products and services. In today's regulatory climate, as banks grapple with significant new regulatory challenges posed by the landmark Dodd-Frank Act, these activities raise unique and complex regulatory and consumer compliance issues. At the same time, banks face formidable new competition from major commercial and retail companies. These companies – many household name brands – are seeking ways to build on existing customer relationships by entering the financial services market. Backed by a highly competitive pricing structure and strong customer loyalty, these companies increasingly offer bank-type products and services ranging from credit, debit, mortgage, and consumer lending to mobile and "tap" payment technologies. In this new context, these products present cutting-edge regulatory and consumer compliance issues that call for innovative legal solutions.

**Kevin Petrasic**  
Washington, DC

The complexity of U.S. bank regulation has done little to dissuade new players. We continue to see a spate of emerging players and technologies shaping the financial sector on a daily basis. It is no longer the norm that first-adopters are start-ups trying to establish credibility in the market; we are seeing well-established companies going far out on the risk curve to implement new and innovative financial products and services. Some innovators are institutions that have been in place for decades and others are companies that have been operating for a few years or months. The result is that new players are competing virtually head-to-head with long-established financial firms. This creates unique challenges and opportunities for financial services lawyers to adopt, adapt, and innovate. Like the firms we advise, we have to compete continually to expand how we think about the law and how it applies to new products and services.



## FINANCE

*Where is the U.S. finance market heading in 2013? How will deals get done?*

**Richard Farley**  
New York

The U.S. leveraged finance markets started strong in 2013, sustained by historically low interest rates driving refinancings and repricings. We are also seeing an uptick in acquisition financings, including very large leveraged buyouts such as Dell and Heinz. As macro-economic conditions continue to improve, and with companies and private equity holding large amounts of investable cash, 2013 should see increasingly robust M&A financing. Conditions remain equally strong in both the syndicated loan and high-yield bond markets, with borrowers and issuers continuing to hold leverage over terms with lenders. The yields on non-investment grade debt have made it an attractive asset class when compared to other debt products. Strong equity market performance has also had a positive effect on this market, particularly for M&A.

Areas of concern remain, of course – an increase in interest rates, if significant, would adversely affect deal activity, as could ongoing budget crises at the U.S. federal, state, and municipal levels, a worsening of Europe's woes, or a significant China/Asia slowdown. Nevertheless, we enter 2013 with as positive an outlook for the leveraged finance markets as we've seen since the 2008 financial crisis and with a better mix of transactions.

**Jennifer Yount**  
Los Angeles

Asset-based lenders began 2012 concerned about limited M&A and financing prospects. Yet while total 2012 ABL issuance was down year over year, at US\$80B, it was the second highest on record. Market issuers and private equity sponsors successfully negotiated deal structures that included smaller lender groups, thinner spreads, elimination of flex, and covenant-lite revolvers. Lenders struggled to secure new loans and retain usage levels, especially in bank/bond deals.

2013 will see continued or modest growth with similar terms. With the economy slowly improving, historic low interest rates, a strong debt market, and more reasonable valuations, the current climate is ripe for increased M&A. Many businesses have been reserving cash and private equity firms have unutilized commitments. As the start of 2013 showed, M&A deals are getting larger and we will continue to see the benefit of an ABL product coupled with bond debt in the leveraged finance market. We also have the pressure of domestic lenders looking outside the United States for new deals, new markets, new geographies, brand building, and higher profits. Asset-based lenders are sure to benefit from both this increase in M&A and the global expansion of ABL during 2013.

## SECURITIES LITIGATION

*From CMBS to auction rate securities to CDOs, what impact does previous litigation have on the direction of future securities litigation? What issues are clients likely to face next?*

**Barry Sher**  
New York

Government agencies and private litigants have brought a steady stream of fraud and contract cases against an array of financial institutions since the onset of the global credit crisis. Those cases largely have focused on derivatives such as auction rate securities (ARS), mortgage-backed securities (MBS), and collateralized debt obligations (CDOs). We have had significant success explaining to courts, on behalf of our financial institution clients, that sophisticated investors to whom the material facts were disclosed are not entitled to shift responsibility for market losses to their counterparties. Cases that have survived dismissal, however, are reporting large settlements or heading towards trial. As evidenced by the recent wave of LIBOR lawsuits, there is no foreseeable letup in the cases being brought by prosecutors, regulators, and investors, and if there is a measurable increase in adverse judgments, the numbers will almost certainly multiply.

## WHITE-COLLAR CRIME

*How has the economic climate affected white-collar crime? Are you seeing new areas of concern?*

**Kenneth Breen**  
New York

**Thomas Zaccaro**  
Los Angeles

The global financial crisis of 2007-2008 ushered in an unprecedented wave of white-collar criminal and regulatory enforcement investigations. In reaction to the public's demand that those responsible for the crisis be punished, and spurred on by new enforcement tools created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, prosecutors and regulators cast a wide investigative net, which included industry-wide investigations into banks, investment advisors, credit rating agencies, mortgage originators and brokers, and real estate investment companies. While these initiatives have led to some notable cases, many companies and individuals with no responsibility for the crisis, and which engaged in no culpable conduct, have been forced to endure costly and distracting investigations. In many such situations, news of the investigations leaked to the media prior to resolution, causing unnecessary reputational damage that is difficult to repair. It is concerning that, six years after the start of the crisis, prosecutors and regulators have still not reverted to the more measured and focused pre-crisis approach to investigations, which may or may not happen in the near term. Meanwhile, companies and individuals have no choice but to defend themselves.



Scan to hear  
more about trends  
in U.S. finance



Scan to hear  
more about  
white collar enforcement



## INVESTMENT MANAGEMENT

*How will investment management evolve over the next 12 months? What role will regulation play in this?*

**Michael Rosella**  
New York

Like all sectors of the economy, the investment management industry continues to search for economic certainty and stability. While there are some indicators that progress is being made, the industry is proceeding cautiously and business plans are reflective of that mood. Firms are beginning to broaden their product lines with strategic fund offerings and investment management products. Simultaneously, however, they continue to rationalize existing products and focus on market share. Changing leadership at the SEC may create new regulatory challenges. It appears certain that this year will bring significant money market fund reform and an increased scrutiny on the cost of fund distribution. We are working actively with our clients on the various legal and business issues pertaining to these challenges. These include development of new products and funds, as well as global fund offerings and product rationalization and reorganization. We are also supporting our clients in creating strategic alliances domestically and internationally, providing advice on acquisitions and sales of funds and business lines, and providing regulatory and litigation support as needed.

## THE JOBS ACT

*How effective is the JOBS Act in meeting the objectives set for it? What are the next steps in its development?*

**Michael Zuppone**  
New York

The JOBS Act was enacted to support the efforts of startup and emerging growth companies to raise investment capital to fuel their growth and, as a byproduct, create jobs. The Title I IPO on-ramp reforms were immediately embraced as they reduced disclosure and provided other regulatory relief for eligible companies. Investment banks are still wrestling with whether to permit “test-the-waters” communications and “pre-deal” security analyst research. Title II requires the SEC to eliminate the prohibition on general solicitation in Regulation D private offerings sold to accredited investors, something long advocated by market participants. The Title III crowdfunding reforms garnered the most attention. They enable innovators to enter the capital market and radically change how small, community-scale, or early stage companies raise capital. Crowdfunding and the Regulation D reforms will permit public online offerings through social networking technologies, potentially creating a whole new asset class for venture investment and democratizing an area from which ordinary investors were often excluded. Observers anticipate that Congress will raise the US\$1M limit once the market evolves and policymakers gain comfort with the process. Based on SEC statements, implementation of Title II and Title III is expected in 2013 and 2014, respectively.



Scan to hear  
more about  
the JOBS Act

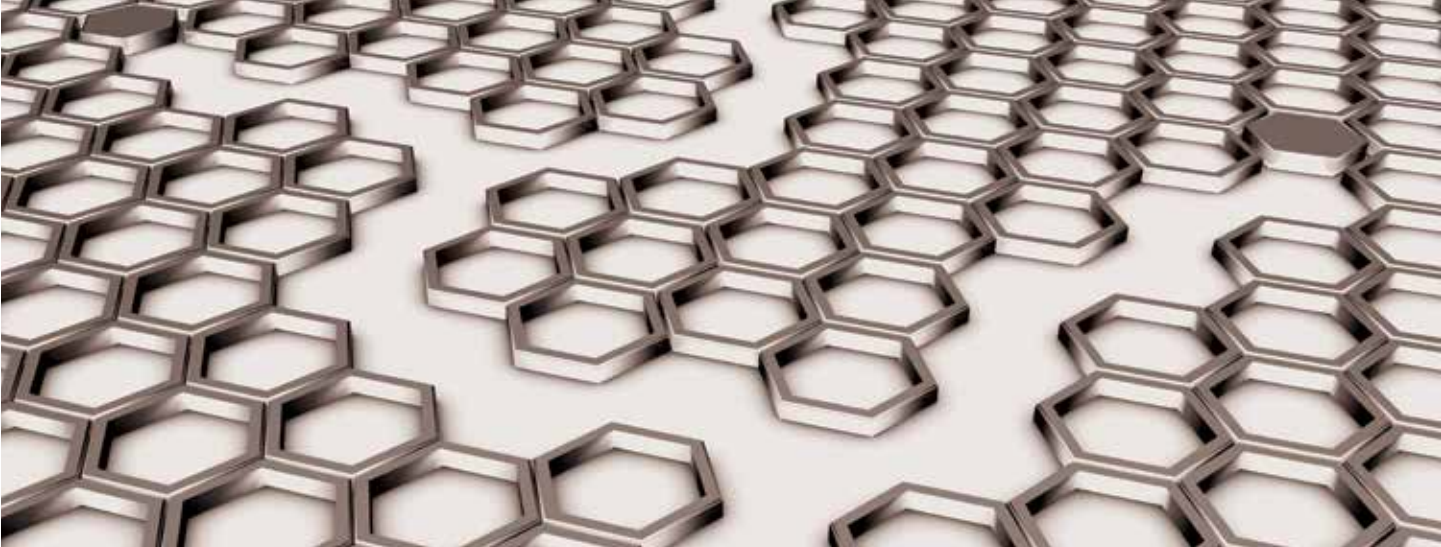


The globalization of healthcare and the shifting, aging population are major secular trends affecting economies everywhere. This offers the sector enormous potential growth, but it also presents inevitable challenges in terms of the structuring, pricing, and delivery of services, and the development and protection of drugs and devices. The pharmaceutical sector has become a globalized as well as localized industry. Major companies in the sector enjoy international market outreach, but also face considerable local exposures to labor and product regulation. Regulation of these areas directly shapes the way the industry operates and manages its business in the U.S. and internationally.

When it comes to healthcare, irrespective of region, public sector involvement is growing as governments become more active in intervening to secure healthcare that is broadly affordable. Last year the U.S. established that the Patient Protection and Affordable Care Act is here to stay. Now that uncertainty about the law's lasting power has been removed, U.S. companies will need to address both its employment and tax implications. China too has boosted its commitment and investment in healthcare, especially outside key cities. At both ends of the spectrum, however, whether fully privatized or completely state-provided, cost reduction has become a core part of business strategy for healthcare providers, patent holders, and generic producers. Pressure on profits and budgets has led many companies to focus on divestment and acquisitions to exit non-critical businesses, strengthen unique capabilities, build product pipeline, and exploit market share.



**HEALTHCARE /  
LIFE SCIENCES**



Our national and New York IP practices, as well as several of our partners, were recognized in *Intellectual Asset Management's* 2012 IAM Patent 1000

## HIGHLIGHTS OF OUR CLIENT SUCCESSSES

### GlaxoSmithKline secures Supreme Court victory in FLSA case

Paul Hastings represented GlaxoSmithKline (GSK) in securing a definitive win before the U.S. Supreme Court, which issued a 5-4 opinion finding that GSK's pharmaceutical sales representatives are exempt under the Fair Labor Standards Act's outside sales exemption. The case brought a successful end to years of litigation against the pharmaceutical industry over the question of whether pharmaceutical sales representatives are entitled to overtime pay. This groundbreaking employment decision also narrowed the range of instances in which administrative agencies are entitled to deference from the courts in litigation, with significant implications for a wide range of regulated industries. Our client's success was the result of tremendous teamwork by lawyers from across our U.S. offices.

### Galderma Laboratories wins infringement victory against generic drug company

We represented Galderma Laboratories, the Research Foundation of State University of New York, and New York University in a suit against Mylan Pharmaceuticals for infringement of patents covering Galderma's proprietary rosacea drug Oracea®. Mylan filed an abbreviated new drug application with the FDA seeking approval to market a generic version of the drug. Following a four-day bench trial, the court held that the longest-running patent covering Oracea was valid and infringed by Mylan. This is an important victory for the industry, as it strengthens patentees' ability to fend off ever-increasing attempts by generic pharmaceutical companies to have Hatch-Waxman cases decided on procedural, rather than substantive, grounds.

### Ardea Biosciences acquired by AstraZeneca

The firm advised Ardea Biosciences on its US\$1.26B all-cash acquisition by AstraZeneca, a biopharmaceutical company based in the United Kingdom. Ardea focuses on the development of small-molecule therapeutics for the treatment of serious diseases. The deal reflects our lawyers' expertise in representing life sciences companies in their most important strategic transactions.

## MARKET PERSPECTIVES FROM OUR PARTNERS

### INTELLECTUAL PROPERTY

*What has been the impact of patent litigation on the way that companies manage their IP? What is the next line of defense?*

#### **Melanie Rupert** New York

In the decade that I have been practicing in the life sciences space, I have seen a definite trend toward our clients evaluating their patent portfolios long before they expect any patent challenges. Our pharmaceuticals clients, in particular, are able to predict the earliest date that they could receive a patent challenge on their marketed products with relative certainty, due to the relevant statutory and regulatory framework for branded versus generic drug cases. One of the most strategic parts of my practice is collaborating with our clients on this "due diligence" process, which allows us to identify, and hopefully resolve, possible weaknesses in their patents in a very proactive manner – and long before a potential adversary could be describing them to a judge.

#### **Preston Ratliff** New York

Senior management has never been more focused on leveraging and maximizing the value of intellectual property critical to protecting their companies' revenue streams. For example, in the field of life sciences, patents protecting new drugs and novel treatments for disease are must-have assets for innovative companies threatened by a growing marketplace of generic drug makers. As a result, in-house counsels have increasingly placed importance on partnering with outside counsel to help educate senior management on the nature of patent litigation as well as aligning it to meet company goals and objectives. Moreover, while litigation budgets have tightened in most areas, the acute appreciation of the value of patent litigation has led to sustained and/or increased budgets.



Scan to hear more about intellectual property concerns

## ANTICORRUPTION

*What are the main challenges that the Foreign Corrupt Practices Act poses for the life sciences sector?*

**Tara Giunta**  
Washington, DC

The life sciences sector faces significant challenges in complying with anticorruption laws globally. Our work with health care, pharmaceutical, and medical device companies has helped them to identify, manage, and mitigate compliance risks, particularly in high-risk markets. In this environment companies need to develop and enhance processes that address compliance risks but tailor them to both corporate structure and risk profile and ensure they are manageable from an implementation perspective. We have found the compliance risks presented by the high number and differing types of third-party intermediaries involved in their businesses require carefully tailored due diligence procedures and oversight mechanisms, including internal audit. Global anticorruption compliance is, and will remain, a rapidly expanding risk area for life sciences companies. It is also an area where we have been very much at the forefront.

**Morgan Miller**  
Washington, DC

Pharmaceutical and other life sciences companies continue to face rigorous enforcement by the Securities and Exchange Commission and Department of Justice under the Foreign Corrupt Practices Act, as well as by other international regulators that have stepped up pressure under their own anticorruption laws. Perhaps no other industry faces greater challenges, given the vast number of their employees engaged in daily interactions with foreign officials, including the wide array of doctors associated with public healthcare institutions spanning the globe. While U.S. authorities press forward and expand the breadth of their industry-wide inquiry, it is critical for the life sciences sector to remain vigilant in responding to concerns of potential improper payments. A proactive, risk-based approach is crucial, grounded on regular review and enhancement of internal controls, consistent monitoring and oversight, and adequate resources devoted to anticorruption compliance and internal review.

## PRIVATE EQUITY

*What is driving deal activity in the healthcare industry?*

**Brian Richards and Christopher Sheaffer**  
Chicago

In the U.S., healthcare reform and uncertainty regarding its implementation are creating risk and opportunity that are driving deal activity. The Affordable Care Act is expected to significantly increase consumption of healthcare goods and services, while changing reimbursement regimes will reallocate revenue and new costs will be imposed on certain providers. Investors are seeking to move away from businesses whose growth is at risk from these trends and into opportunities that address macro themes of reform – achieving better healthcare outcomes and lowering system costs. Helping our clients navigate this shifting landscape was the hallmark of our practice in 2012 and will continue to be this year and beyond.

## MERGERS AND ACQUISITIONS

*What impact is regulation having on M&A in the U.S. healthcare sector?*

**James Owens**  
Los Angeles

**Phillip Street**  
Atlanta

Merger and acquisition activity in the U.S. healthcare sector should continue at an intense pace for the foreseeable future as a result of the passage and Supreme Court validation of the Affordable Care Act, among other things. The increase in the number of individuals with healthcare insurance mandated by the Affordable Care Act, along with an aging U.S. population, will lead to increased demand for healthcare services. This increase in demand, along with regulatory developments pertaining to payment reform, will continue to create opportunities for strategic transactions among healthcare providers, payors, suppliers, lenders, and investors. Well-advised and sophisticated players will have the best advantage to successfully pursue these strategic initiatives and to successfully navigate the compliance challenges of an already highly regulated healthcare business environment.

## EMPLOYMENT

*What are the biggest challenges facing pharmaceutical companies in managing their workforce?*

**Barbara Johnson and Neal Mollen**  
Washington, DC

Pharmaceutical companies face many of the same employment law issues as other industries, but often with a unique twist. Retaliation claims are being filed at ever-increasing rates, and pharmaceutical companies are especially vulnerable. Whistleblower programs implemented as part of compliance procedures often leave whistleblowers feeling immune from criticism. They often bring whistleblower claims when complaints are followed by adverse employment actions.

Pharmaceutical companies also struggle with employees who file *qui tam* actions and receive huge settlements, yet remain in the workplace. It has sometimes proved easier to pay these employees to leave.

Contract employees who supplement sales efforts significantly increase risks. Significant control, including training and/or monitoring, is needed to ensure contractors comply with increasingly demanding regulation. However, this also increases the risk that regulators will deem the contractor's employees to be employees of the pharmaceutical company. State and federal agencies are closely scrutinizing these arrangements.

While *Christopher v. SmithKline Beecham Corp.* squelched the onslaught of federal wage and hour misclassification pharmaceutical sales representative cases, numerous wage and hour issues remain and pharmaceutical companies must stay alert to more stringent state requirements. Finally, pharmaceutical companies, like other large employers, should expect increased gender and race discrimination class actions, especially over pay equity.



Scan to hear more about anticorruption concerns



Scan to hear more about employment law trends



Latin America has drawn increasing international investment, fueled by the region's rich natural resources and a growing population that provides a potentially buoyant market. While development across the region is uneven, key countries are becoming important destinations for foreign direct investment.

The next stage in supporting this renaissance will be the developments taking place in Latin America's capital markets. They have to grow to support a diverse array of significant national companies and they are responding to the challenge. Brazil has the third largest securities exchange in the world. Mexico saw the world's third largest IPO last year and the region's largest IPO to date this year. And a pan-Latin American exchange grouping, MILA, which Mexico is in discussions to join, is moving to bring some cross-border harmonization that would help package investment opportunities.

While the capital markets have expanded and the range of local investors, especially national pension funds, has grown, the market is still evolving in other areas such as corporate bonds. Our lawyers were involved with the first REIT in Latin America, which was also the first Mexican REIT established under new legislation. Foreign issuers are helping to fuel the progress, raising capital for their home operations by launching IPOs of local subsidiaries. All of this should increase and improve the liquidity of local equity markets and foster the development of the region's financial markets.



## LATIN AMERICA



## HIGHLIGHTS OF OUR CLIENT SUCCESSES

### Largest petrochemical company in Mexico completes US\$650M inaugural notes offering

We represented Alpek, S.A.B. de C.V., the largest petrochemical company in Mexico and one of the largest in the world, in its inaugural international issuance of high-yield debt securities. The oversubscribed offering involved the issuance of US\$650M of 4.500% senior notes due 2022 pursuant to Rule 144A and Regulation S. This was Alpek's first international offering since its IPO in early 2012, which our lawyers also handled.

### Latin America's first successful REIT completes US\$1.75B equity offering

We represented Santander, Credit Suisse, and Evercore as initial purchasers in Mexican REIT Fibra Uno's US\$1.75B follow-on equity offering. This oversubscribed offering was Fibra Uno's third; the REIT has now issued nearly US\$3B in equity in less than two years. Our lawyers previously represented the initial purchasers in Fibra Uno's historic IPO in 2011, the first REIT-like security ever sold in Latin America, as well as its initial follow-on offering in 2012.

### Leading Brazilian transmission company completes US\$876M equity offering

Paul Hastings advised Transmissora Aliança de Energia Elétrica S.A. (TAESA) in a US\$876M public equity offering. The securities were sold as units in a public offering in Brazil with a Rule 144A/Reg S tranche outside of Brazil. The offering represented a re-IPO for TAESA, as it marked the first time the company had accessed the public equity markets since its 2006 IPO. Reported to be the country's second largest equity offering in 2012, the deal was significantly oversubscribed, driven by investors attracted to the energy sector in Brazil. The firm received *LatinFinance's* Deal of the Year – Equity Follow-on Offering for our work.

Highly regarded team joins the firm, greatly strengthening our capabilities in the fast-growing region of Latin America

## MARKET PERSPECTIVES FROM OUR PARTNERS

### CAPITAL MARKETS

*What developments are ahead for the capital markets in Mexico and Brazil, and more broadly in Latin America?*

#### **Arturo Carrillo**

New York

Mexico is currently experiencing extraordinary and unprecedented international capital markets activity in both equity and debt offerings. Two equity issuances in February 2013 of US\$3B underline this trend. Grupo Sanborns, the flagship company of the Carlos Slim empire and one of the most iconic Mexican brands, raised approximately US\$950M in the largest Latin American IPO so far this year. The Sanborns IPO followed by two weeks Fibra Uno's US\$1.8B offering, the largest equity offering in Latin America this year. Fibra Uno is the very first Latin American REIT. It was established after a comprehensive legal overhaul in Mexico created the "FIBRA" investment structure, which bears many similarities to the U.S. REIT. We worked on all of these offerings and helped create the REIT structure in Mexico.

Debt capital markets are equally active. For instance another client, Tenedora Nemark, one of the world's largest manufacturers of powertrain components for the automotive industry, launched one of the most favorably priced high-yield securities offerings to date in Latin America. The pipeline for 2013 for debt and equity international securities offerings by Mexican companies also looks stellar, including numerous IPOs and offerings by new and existing FIBRAs.

#### **Taisa Markus**

New York

Brazil is experiencing a market correction in 2013 after years of historically high levels of M&A and capital markets activity. The medium- to long-term outlook for Brazil's capital markets and economy remains positive, however, with an expected boost from hosting the upcoming World Cup in 2014 and Summer Olympics in 2016. The economy's size and vibrancy, and the country's importance and influence, make it a key market for investors. This past year, we closed the largest corporate equity offering in Brazil, the re-IPO of the electricity transmission company TAESA.

Overall, Latin America provides very interesting market opportunities for our clients. Peru's economy continues its favorable trajectory. Capital markets have moved beyond debt issuance for well-known names to debt, including high-yield, issues as well as equity issues for a broader range of companies. Issuers from what were previously known as "frontier" emerging markets also accessed international markets. In Paraguay this year, we closed an acquisition finance and subsequent high-yield take out for Telefonica Celular del Paraguay, a subsidiary of Millicom International, and Banco Continental del Paraguay's inaugural bond issue. We continue to see opportunities in Chile, Colombia, and throughout Central America.



Scan to hear more about the outlook for Latin America



The U.S. had a volatile 2012 before moving toward a gentle rebound in early 2013. Last year, the search for substantive growth proved elusive as the markets played a game of risk-on, risk-off. It was a real test of dealmakers' nerves. In addition to complicating corporate strategy setting, in an environment of wider global concern it slowed forward momentum. Both the presidential election and the drawn out struggle over the fiscal cliff dampened activity in the fourth quarter, hitting output. At the same time, the prospect of standing on that cliff spurred a sizeable burst of transactional activity. Corporations decided to get deals done while the ground rules were still clear – just in time for 2013 and the emergence of a more grounded recovery. Areas of strength, such as energy and housing, are only now beginning to make inroads into structural employment concerns.

The renewed demand for U.S. exports, as well as ongoing strengths in the technology and energy sectors and continued low interest rates, provide some optimism. To be sure, increases in taxation and the impact of the Affordable Care Act on corporate payrolls provide challenges for the future, but there is a general consensus that 2013 should see the recovery gradually gain momentum, assuming there are no additional macroeconomic upsets in Asia or Europe. The environment has put a premium on companies that can innovate through this uncertainty, and those who can deliver consistently.



**NORTH  
AMERICA**



Ranked 2nd on *The American Lawyer's* A-List of the most successful law firms in America

## HIGHLIGHTS OF OUR CLIENT SUCCESSES

### American Airlines navigates labor negotiations, antitrust litigation, and the industry's largest merger

Paul Hastings continues to serve as a strategic legal advisor to American Airlines. We represented the airline as special labor counsel during its Chapter 11 proceeding as it worked to reduce labor costs by more than US\$1B annually. Through litigation and negotiations, we helped American secure bankruptcy court approval of nine new collective bargaining agreements with its unionized employees, enabling the company to realize the cost reductions it needed to remain viable. As part of this process, American was given bankruptcy court approval to reject its pilot agreement – a first in a major airline bankruptcy and a critical turning point in American's reorganization. Once labor costs were under control, we helped the carrier position itself for a possible merger with US Airways by negotiating an unprecedented "pre-nuptial" agreement with US Airways and the unions representing employees at both carriers to establish the terms and conditions of employment that would apply in a post-merger environment. We also served as antitrust counsel to American, handling major state and federal antitrust litigation against Sabre and Travelport, the two global distribution systems companies that connect travel suppliers to travel agencies. We recently reached favorable settlements in both cases. Our lawyers are also advising on antitrust issues raised by the proposed merger, which would create the world's largest airline and enable American to exit bankruptcy.

### Japanese companies pursue U.S. acquisition opportunities

We leveraged our strong global platform to guide several Japanese clients in expanding their overseas businesses through strategic acquisitions in the United States. We advised MISUMI Group Inc. on its US\$200M acquisition of the largest die components maker in the U.S., Dayton Progress Corporation, as well as the components business of Canada's Anchor Danyl Company. In another significant deal, our lawyers represented ABC-Mart, Inc., a leading shoe retailer in Japan, in its US\$138M offer for all of the outstanding equity of LaCrosse Footwear, Inc. And we advised Sansei Yusoki Co., Ltd., an Osaka-based amusement ride company, on its acquisition of a stake in S&S Worldwide, one of the world's leading rollercoaster manufacturers.

### Unsecured creditors achieve significant recoveries in NewPage Chapter 11 cases

The firm represented the Official Committee of Unsecured Creditors in the Chapter 11 cases of NewPage Corporation and its affiliated debtors, which involved the restructuring of approximately US\$4.5B in debt. NewPage is the largest coated paper manufacturer in North America based on production capacity. The bankruptcy court approved NewPage's reorganization plan, which is based on a settlement reached between the committee, the debtors, and the debtors' major stakeholders. We negotiated a deal resulting in significant recoveries for unsecured creditors who otherwise would have been "out of the money." NewPage emerged from bankruptcy under the control of its first-lien noteholders.

## MARKET PERSPECTIVES FROM OUR PARTNERS

### EMPLOYMENT

*What does recent litigation tell us about the best way for employers to navigate labor relations in today's market?*

**Stephen Berry**  
Orange County

Annual enactment of new workplace laws and regulations by national and local governments has become common. Employers must stay current on these developments to avoid disastrous consequences. The failure to comply with these new laws, which frequently include hyper-technical provisions, can subject an employer to class action litigation with potential eight figure or higher exposure. In sports it is said that the best offense is a good defense. We share this view with respect to avoiding potential class action litigation. We counsel and assist employers to be proactive: to stay abreast of current developments and conduct regular audits of wage and hour, compensation, performance evaluation, job advancement, and other employment practices to ensure compliance with the ever-changing rules. But whether through compliance assistance or in successfully defending our clients facing litigation, the results are what matter and we are proud of what we have achieved for our clients.

**Todd Duffield**  
New York

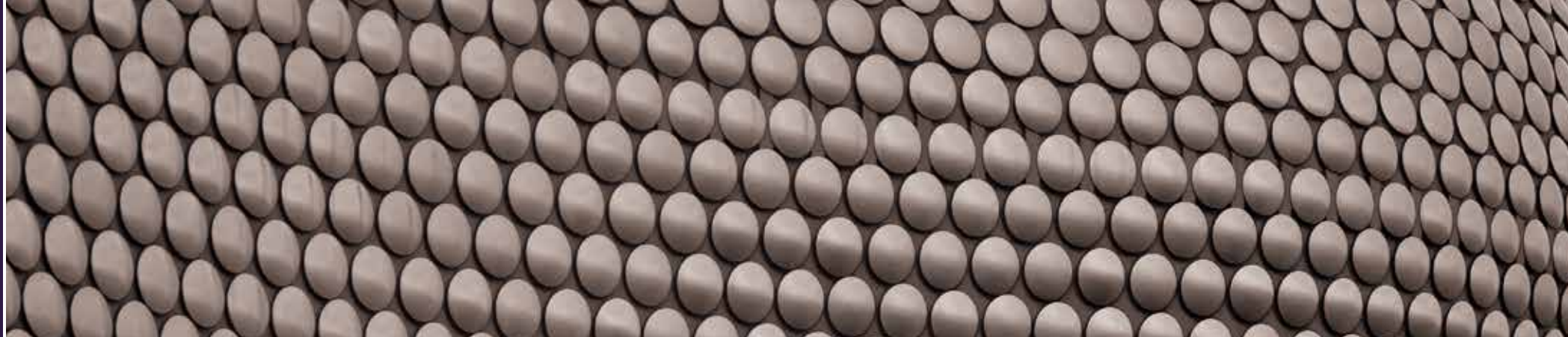
The most significant change on the labor front in the last year is that the National Labor Relations Board (NLRB) has shifted its focus from unionized workforces to labor violations in the non-union workplace. Employers who are not unionized now need to be cognizant of NLRB rulings to avoid unwittingly violating the National Labor Relations Act (NLRA). For example, the NLRB struck down employee handbook provisions about confidentiality in the workplace, at-will employment disclaimers, and class action waivers in mandatory arbitration provisions, claiming that such policies unlawfully inhibit protected, concerted activities by non-union employees. The NLRB also has taken a keen interest in adverse employment actions taken against employees who post derogatory comments about their employers on social media websites. These rulings are a new trend that can be expected to continue, and requires employers, many of whom thought the NLRA did not apply to them, to review and revise their employment policies to comply with the changing landscape.



Scan to hear more about trends in labor law

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Ranked among the Top 3 in the *Financial Times*' US Innovative Lawyers report; garnered top spot in Litigation, Intellectual Property, and Business of Law



## TAX

*How will the U.S. tax regime affect domestic and cross-border transactional activity?*

### **Alexander Lee**

Los Angeles

Historically, the value of direct access to the robust U.S. marketplace has clearly outweighed the adverse tax consequences produced by the U.S. system. However, slower U.S. domestic growth, coupled with the rise of foreign economies, has muted the attractions of U.S. investment.

The United States, unlike some other jurisdictions, taxes income from foreign sources, which has two major effects. First, it encourages multinationals to organize their worldwide headquarters in lower tax jurisdictions, and second, it encourages U.S.-based multinationals to locate assets and leave profits in offshore subsidiaries to avoid high U.S. taxes.

The recent hike in tax rates – most notably, the rise in capital gains rates – coupled with the imposition of the Obamacare tax, will have a significant effect on domestic taxpayers and domestic transactional activity. Increased payroll, state, and local taxes, as well as the limitation on various deductions, will have additional impact on domestic companies and their shareholders. Competition is now growing in some key global financial and business centers to lower the rate of corporation tax; this will highlight the position of the U.S. as an outlier in its higher corporation tax rates.

### **Kristen Chang Winckler**

New York

Arguably the most significant focus of recent U.S. federal income tax policy has been to combat tax evasion. Recent measures to achieve transparency in the assets and activities of U.S. taxpayers began with the threat of severe civil and criminal penalties for failure to disclose foreign holdings on the ominous form, “the FBAR.” Further legislative and regulatory developments gave birth to a complex regime of information reporting imposed upon foreign financial institutions. Commonly referred to as the Foreign Account Tax Compliance Act, it is enforced by a substantial 30% gross withholding tax. Yet, despite widespread criticism for its overambitious, extraterritorial reach, both the public and private sectors have come to accept the framework. In fact, the U.S. Treasury is reportedly in discussion with over 50 countries regarding FATCA compliance and coordination. In the private sector, compliance efforts by domestic parties and global financial institutions are well under way. Risk allocation around FATCA can be seen everywhere, from domestic financings to foreign-to-foreign derivatives transactions, despite the lack of apparent U.S. nexus. Whether the expanded web of enforcement will eliminate circumvention of the U.S. tax rules remains to be seen.

## MERGERS AND ACQUISITIONS

*Do you share the view that we will see a resurgence in M&A in the United States? What sector(s) do you see as potentially the most active?*

### **Thaddeus Malik**

Chicago

All indications are that 2013 will be a strong year for M&A. Although many private equity shops depleted their pipelines at the end of 2012, we expect momentum to build as the year progresses. Strategics appear poised to fully re-engage, with the slowly improving economy making it difficult to meet growth targets organically. Low interest rates mean continued access to funding for deals, but also focus attention on balance sheets that have grown flush with cash. With limited alternatives to generate suitable returns, buying growth becomes even more palatable.

In terms of specific sectors, rising global demand, combined with the omnipresent quest for secure sources of energy, suggests significant activity in energy – both upstream and midstream. The healthcare sector should benefit from resolution of some of the regulatory uncertainty that had accompanied the Affordable Care Act, as well as an increasing focus on penetrating developing markets. Finally, in a bit of a contrarian play, it wouldn't be surprising if the deal volume in the government services space ticks up as well. Despite (or perhaps due to) falling budgets, we expect more deals as the prime players shed non-core assets that present increased risks of organizational conflicts of interest and focus on supported adjacencies.

### **Carl Sanchez**

San Diego

2013 started with a bang, with total deal value at its highest level since the same period in 2005. Notable deals include Michael Dell's US\$24B offer for Dell Computers and Berkshire Hathaway's US\$23B bid for Heinz. Both buyers teamed up with private equity to tap the relatively inexpensive debt markets. U.S. Airways' US\$11B offer for AMR and Comcast's bid for GE's remaining interest in NBC Universal for a reported US\$16.7B also garnered attention. Particularly notable is that activity has thus far been sector-agnostic, fueled by the doubling of corporate earnings since 2009, the large stockpiles of cash sitting idle on many corporate balance sheets, and the increases in most major stock indices since the start of the year. In addition, consumer confidence has risen dramatically over the last several months, helped by positive economic indicators, including the interest-rate spread, decreases in jobless claims, and increases in building permits and consumer goods and materials orders. While the potential adverse effects of cuts in federal spending need to be addressed, we believe the mega-deals announced so far this year will pave the way for record levels of M&A across all sectors and industries in 2013.



## ANTITRUST

*What are the biggest antitrust challenges facing companies trying to grow their business in the global marketplace?*

**Kirby Behre**  
Washington, DC

Global corporations are more likely to become ensnared in government cartel investigations than ever before. An increasing number of countries are investigating anticompetitive conduct among competitors, and the U.S. Department of Justice takes a very expansive view of its jurisdiction to prosecute such conduct criminally. These investigations tend to be multi-year and involve multiple jurisdictions. They are expensive and time-consuming to defend.

Global companies that acquire businesses in other countries to expand their global reach may unwittingly acquire a cartel problem. Smaller and regional companies in certain jurisdictions may be involved in anticompetitive conduct with their competitors, and typical deal due diligence is often insufficient to detect such an issue. Trade and industry associations, events sponsored by customers, and similar meetings are very common breeding grounds for competitor contacts. Deal due diligence should thoroughly target this area in order to mitigate risk.

**MJ Moltenbrey**  
Washington, DC

The proliferation of antitrust enforcement authorities and merger review regimes presents a challenge to any company that wants to expand through a merger or acquisition. Today over 90 countries have mandatory merger notification requirements, including the major economies in Asia and Latin America, Central and Eastern Europe, India, and, most recently, the COMESA countries in Africa. Many of these regulatory regimes reach transactions that have only a limited nexus to the country. Although efforts to promote convergence and coordination in merger reviews have had some success, companies engaged in cross-border M&A transactions are increasingly likely to face review by multiple competition authorities, with differing procedural rules, waiting periods, and substantive standards, all of which raise the costs, complexity, and uncertainty of the deal. Early planning and preparation for multijurisdictional merger filings is essential to managing these challenges.



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more about  
antitrust trends



The low-gear real estate recovery that became notable in 2012 should advance further in 2013. While Asia did not fall off a property cliff last year and European prime continued to draw investors, they are both less liquid than the U.S. markets, which registered gains that show signs of extending across even previously impaired markets. The growing set of positive economic fundamentals, a reasonably stable market environment, continued low interest rates, and recovering employment have all helped the progress.

Rebounding interest in CMBS brought projects back to life and helped to launch landmark deals. The hospitality sector was also filled with investors. New regulatory restrictions on traditional lenders, including Basel III and Dodd-Frank, mean that funding is coming from a broader range of providers of real estate finance. These include not only private equity and hedge funds, but also CMBS, mortgage REITs, and debt funds, as well as start-up lenders (and in the case of China, shadow banks). The hunt for yield produced occasional distortions, favoring some markets and penalizing others. Environmental factors remain important as well. The sector has a key role in supporting the range of environmental controls that affect property construction, development, and maintenance.

In general, the REIT sector has really taken root across the globe. The internationalization of interest in these structures echoes investment in the sector as a whole. The world's investors are increasingly neutral as to geography, but acutely conscious of value.



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## HIGHLIGHTS OF OUR CLIENT SUCCESSSES

### Government of Singapore Investment Corporation completes US\$1.5B luxury hotel credit acquisition

The firm represented GIC Real Estate, Inc., the real estate arm of the Government of Singapore Investment Corporation (GIC), as special hotel counsel in connection with GIC Real Estate's US\$1.5B credit bid acquisition of four U.S. luxury hotels: La Quinta Resort & Club in Palm Springs, California; the Grand Wailea Resort Hotel & Spa in Maui, Hawaii; the Arizona Biltmore in Phoenix, Arizona; and the Claremont Resort and Spa in Berkley, California. In 2011, the owner, who purchased the assets for US\$4B in 2007, placed the hotels into Chapter 11 to prevent foreclosure. GIC Real Estate's credit bid was approved earlier this year by the U.S. Bankruptcy Court. Paul Hastings was lead counsel in negotiating a separate management agreement for each of the hotels and in representing GIC Real Estate and its affiliates in the negotiation and drafting of a multi-property asset management agreement with KSL Resorts for the asset management of the properties.

### Oaktree completes one of the first securitizations of non-performing loans

Paul Hastings advised Oaktree Capital Management and its real estate opportunities funds and distressed debt funds on Oaktree's securitization of non-performing loans and other real estate. The single class, US\$195M offering was backed by approximately 700 loans and 78 properties. This marks Oaktree's first NPL securitization and only the third to have been completed in the market to date.

### Prudential Real Estate Investors closes US\$805M real estate debt fund

The firm represented Prudential Real Estate Investors in securing US\$805M of discretionary capital for its Prudential U.S. Real Estate Debt Fund. Our client significantly exceeded its initial target of US\$500M by attracting a group of prominent global institutional investors. The fund will focus on debt investments in both new originations and secondary acquisitions secured by institutional quality, income-producing properties throughout the United States.

## MARKET PERSPECTIVES FROM OUR PARTNERS

### GLOBAL TRENDS

*How steady is the global real estate recovery? What are the stay-awake issues for investors?*

**Philip Feder**  
Los Angeles

For 2013, the global real estate recovery is a tale of two vast contrasting markets: the Americas versus Eurasia.

Real estate markets in the Americas – particularly the U.S. – are now enjoying the fruits of interventionist central bank and government-led economic recovery policies. Europe and Asia, by contrast, continue to suffer from austerity measures that exacerbated the real estate downturn, making near-term economic recovery less likely. U.S. debt markets have awakened; there is abundant liquidity available for real estate in nearly all asset types. Demand for commercial mortgage-backed securities is so fierce that yields are lower than they have ever been. As values increase and interest rates remain low, once-troubled real estate projects are attracting interest from equity investors.

At the same time, liquidity in Europe and Asia remains low; investors worry about high inflation that never arrives and a Euro crisis that never seems to ebb. Eventually, investors will return in a renewed race for yield – provided that European and Asian banks are willing to take some write-offs. Our clients remain optimistic about 2013, but vivid memories remain of Greek bond defaults, Middle East catastrophes, and interest rate spikes that can paralyze the real estate markets.

### HOSPITALITY

*Do you share the view that there will be major growth in investment in the hospitality sector? What will drive this?*

**Rick Kirkbride**  
Los Angeles

At the beginning of 2012, the global hospitality industry faced significant uncertainty through U.S. government gridlock, economic and political instability in Europe and the Middle East, and slower growth in Asia. However, investors found their footing in the U.S. and abroad. Our and other private equity clients took over from REITs as the most active buyers. We expect this to continue in 2013, with predictions of investment reaching US\$15B.

Both better fundamentals and, perhaps more importantly, the availability of cheap financing are fueling this. Debt is expected to reach its highest level since 2007, provided by a variety of sources, including commercial banks, CMBS, mortgage REITs, and debt funds.

It is not just single asset transactions in major gateway cities that are driving investment. We have seen a dramatic uptick in portfolios, many comprised of mid-market hotels in secondary markets. Even new development is on the rise after a five-year drought, as investors and lenders seek higher returns with less risk than existed immediately before the Great Recession.

Unless political or economic events trigger a meltdown, investment in hospitality will continue to grow worldwide throughout 2013 and quite likely for at least another year or two.



Scan to hear more about the global outlook for real estate



Scan to hear more about developments in the hospitality sector



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## ENVIRONMENTAL

*How are environmental demands and expectations changing in the real estate sector?*

**Thomas Munteer**  
Washington, DC

Nearly all clients – including those who historically operated in sectors in which environmental liability risk was a lesser concern (like shopping centers or office buildings) – are now very aware of the value of assessing environmental liability risk before closing a deal. Perhaps as a result, clarity of communications and quantification of risk have never been more valued. There are a few contributing factors to the premium that clients put on these skills. Industrial and real estate portfolios more and more frequently include properties in multiple countries, or the buyer of U.S. properties might be based overseas. Providing comfort with respect to the U.S. environmental liability regime is a must. Developers and lenders are increasingly comfortable acquiring property that has some environmental legacy. They need help, however, interpreting activity and use limitations imposed on property as part of risk-based clean-ups.

**Deborah Schmall and Gordon Hart**  
San Francisco

Over the past several years, we have witnessed the increasing role of climate change and energy regulatory developments on the real estate sector. Land use development permits, not only in California but elsewhere, must increasingly consider the air pollution and greenhouse gas impacts of the project. A growing number of operating businesses must not only report direct and indirect greenhouse gas emissions to regulatory agencies, but they are, as a group, at the beginning of the mandatory greenhouse gas control curve. Climate change regulation and associated government programs to encourage renewable energy have also created business opportunities. As the market for new large-scale residential and commercial developments has decreased over the last several years, many of the largest land development deals in the United States have been for utility-scale solar and wind power plants. These projects are often several thousand acres in size, and raise complicated legal issues involving federal land management laws, federal and state endangered species laws, and other environmental impact review laws, local planning and zoning ordinances, and federal and state energy and utility regulations.

## FUND FORMATION

*What changes do you expect to see in cross-border real estate fund formation?*

**Joshua Sterhoff**  
New York

There has been continued acceleration of the globalization of institutional investment in real estate funds and other ventures over the past several years.

The vast majority of the private equity real estate funds that our team has closed over the past three years involved cross-border transactions – significant capital has flowed into U.S. real estate from offshore. Whereas the pre-Great Recession years saw a lot of outflows of U.S. and European capital into Asia's emerging markets, the last two years have seen a greater appreciation of the risk-adjusted return potential in the United States. U.S. and non-U.S. investors alike (including Middle Eastern, Asian, and European sovereigns and other institutional investors) have invested significant amounts in funds pursuing a variety of strategies (including debt/equity, core/value add/opportunistic) to participate in ownership of U.S. real estate. We expect that this will continue in the near future, though we also expect to see increased interest in Latin America and Europe.

The greater diversity of investor types and investment jurisdictions dramatically increases the complexity of these funds from a tax and partnership perspective. We see that complexity continuing.

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The technology sector last year unfolded a new bag of tricks to delight users and the market. It remains the sector to watch for developments that offer transformational change. While the Tech Patent Wars of 2012 are hardly over, and likely to be a hangover into this year, they reflect a sector whose IP is a complex quilt of holdings that technology companies acquired either on their own or as part of a larger corporate acquisition. Patent litigation joins data privacy and protection issues as the cost of being a part of this fast-moving sector.

2012 saw a major convergence in the tech/telecoms sector as mobile devices increasingly play a larger role. Mobiles do not only provide 24/7 connectivity; they have migrated to being the laptop in your pocket and a new payment system on the go. The question is whether telcos will become payment processors, credit providers, or where in the finance spectrum they might play. Social networking has gone mainstream and is now a fundamental part of any institution or company that wants to interact with the billions of users of these networking sites. There is a corollary to the era of Big Data that has truly dawned – with the promise of converting the process of data gathering into the magic of useable, commercial information.

**TECHNOLOGY,  
MEDIA, AND  
TELECOMMUNICATIONS**



Recognized by *mergemarket* for our work on one of 2012's Top 10 deals, serving as antitrust counsel to MetroPCS on its merger with T-Mobile USA

## HIGHLIGHTS OF OUR CLIENT SUCCESSES

### LG Display secures summary judgment narrowing plaintiffs' claims in multidistrict litigation

The firm is representing LG Display in its multidistrict price-fixing cartel litigation concerning purchases of thin-film transistor LCD flat panels or products containing these panels. While the direct and indirect purchaser class actions have been concluded, dozens of individual lawsuits by companies that opted out of the class actions and actions by various states' attorneys general remain. Recently, the MDL court granted Paul Hastings significant and unprecedented victories on motions for summary judgment. One motion sought recognition across all of the plaintiffs' state indirect purchaser claims of the availability of the pass-on defense to reduce indirect purchase damages by the overcharges these middlemen plaintiffs passed on to their customers. Another motion challenged the plaintiffs' claim that umbrella liability – where damages include purchases from non-conspirators on the notion that all prices are inflated when some in the market price-fix – was viable under state law. Based on our compelling reading of existing authority and policy arguments, the court agreed, thus reducing the defendants' collective liability by billions of dollars. Application of these rulings to opt-out cases in later waves of the litigation likely will yield similar damages reductions – and the rulings are expected to have significant ramifications in follow-on cartel damages actions for years to come.

### Cequel Communications completes US\$6.6B sale to investors and management group

Paul Hastings represented Cequel Communications Holdings LLC in its sale to private equity firm BC Partners, investment manager CPP Investment Board, and members of the company's management team. Cequel, which does business as Suddenlink Communications, is one of the largest and fastest growing cable operators in the United States. The transaction was one of the largest U.S. private equity deals in 2012 and positions the company for continued growth.

### InComm wins stored-value card patent infringement case

The firm represented Interactive Communications International, Inc. (InComm) and its affiliate e2Interactive, Inc. as plaintiffs in a patent infringement case against stored-value card rival Blackhawk Network, Inc. InComm sought enforcement of its patent concerning the processing of prepaid card transactions. Following the jury trial we obtained a complete victory, including a finding that Blackhawk infringed InComm's patent, an award of royalties for past infringement, and a permanent injunction.

## MARKET PERSPECTIVES FROM OUR PARTNERS

### ELECTRONIC PAYMENTS

*What is the next big thing in electronic payments? How will regulators keep up?*

**Thomas Brown**  
San Francisco

The next big thing in payments is really the continuation and acceleration of a trend that began decades ago. Technology is creating opportunities for commerce that did not exist even five years ago (e.g., oh, I'll use an "app" to find a town car in a city that I've never visited when I land at the airport, and I'll "pay" the town car driver without passing coins, cash, or cards to the driver when I get out of the car) and enabling electronic payment methods to displace more traditional means of payment (e.g., my 100-plus-year-old bay swimming and rowing club now uses Intuit to generate electronic invoices and collect electronic payments for its annual dues instead of sending paper invoices and collecting paper checks). Regulators cannot keep up if we understand "keep up" to mean precisely how commerce will evolve as new technologies come on line. Rather, they will keep up by monitoring advances in technology and thinking, hopefully in a clear-headed way, about how law and regulation needs to adjust (or not) to these advances.

**Chris Daniel**  
Atlanta

The latest thing in e-payments is a convergence of trends leading to significant change in the payments sector. Notably, the rapid adoption of broadband, the increasing ubiquity of smartphones, the rise of the BRIC economies, and the willingness of large technology companies to become providers of payment services are materially modifying the payments landscape.

Moreover, payments are not just changing for those of us who already live fairly wired lives. The trends above will create tremendous market opportunities in those countries where there is limited financial infrastructure.

Lastly, regulators, by their own thoughtful admission, will always struggle to stay abreast of changes, particularly those occurring as quickly as what we are now witnessing. That being said, it should always be remembered that consumer financial services is highly regulated in almost every jurisdiction and one should assume that the regulators will interpret the statutes in their jurisdiction to apply to most any innovation in payments.



Scan to hear more about trends in electronic payment systems

Awarded Joint Venture Deal of the Year 2012 by *China Business Law Journal* for our work on China Media Capital's joint venture with DreamWorks Animation

## DATA CENTERS

*What impact will the infrastructure demands of Big Data have on the commercial property sector?*

### **Steve Berkman**

San Francisco

Big Data is already having an impact on commercial real estate; this impact will continue to grow over the next several years. As greater numbers of companies look to utilize Big Data within their business, the infrastructure needed to collect and analyze this data must continue to grow. This will result in continued growth in the number of data centers being built both in the U.S. and internationally. These extremely costly industrial-type facilities jammed with power and fiber capacity will be needed by businesses of all types, so that servers which allow the collection and analysis of Big Data can continuously operate without interruption and with maximum efficiency. Some large enterprises will choose to build their own data centers, but the vast majority will need to contract with a provider to secure a facility. As the data center asset class becomes more prevalent and better understood by institutional investors, continued investment will come from private equity and pension sponsors. As a corollary, due to increased demands and complexity, corporate users will be less likely to host their own data centers within their commercial office space, further reducing the office footprint and thus overall office property demand.

## IP TRANSACTIONS

*What are the best practices for companies that are bringing existing intellectual property into joint ventures and M&A transactions?*

### **Jane Song**

San Diego

Intellectual property (IP) can provide substantial competitive advantage to a business, and many high-profile M&A transactions that have occurred recently have been driven by IP. Companies that are planning on selling IP should be proactive and anticipate questions or issues that may be raised by a potential purchaser. It would be prudent for a seller to engage in some level of diligence of its own prior to offering the IP for sale, to ensure that it has clear title to the IP to be sold and establish whether there are any encumbrances on the IP. In many cases, issues with legal title to IP created on behalf of a seller can be resolved relatively easily. If there are any encumbrances on the IP, such as prior licenses or covenants not to sue that were granted to third parties, a seller should identify in advance who has received such rights, what rights have been granted, and whether any of those encumbrances may be alarming to a potential purchaser. Anticipating these IP issues in advance will make the process go a lot smoother and faster for the parties.

## PRIVACY AND DATA SECURITY

*What are the most important things for companies to consider in managing data privacy and data security?*

### **Behnam Dayanim**

Washington, DC

There are many, but I will focus on two. First up is cyber-intrusion and protection of corporate assets – both intellectual property and even control of physical assets. More and more of these are managed remotely and susceptible to cyber-hijacking. With concerted attempts at cyber-espionage increasing, the pressure for legislative and regulatory mandates continues to mount. Corporate citizens – especially those with high-profile or sensitive intellectual property profiles – must consider their role in that policy debate, what steps they can take to collaborate with their peers and government, and what steps they can take themselves to bolster their protections. Sharing, in particular, carries with it a range of potential legal consequences that require thoughtful advice and deliberation.

Second, and on a dramatically different note, companies have largely not done an amazing job of managing the privacy and security challenges of social media. Social media provides substantial opportunities for engaging with the public, but also presents major legal and practical challenges in protecting corporate assets. Social media also raises interesting privacy concerns, for example when companies attempt to require access to employees' or job applicants' personal social media. We have advised companies attempting to navigate their way through those concerns.



Scan to hear more about social media and data privacy considerations



## INTELLECTUAL PROPERTY

*What has been the impact of recent litigation on the way tech companies manage their intellectual property?*

### **Robert Masters**

Washington, DC

Recent litigation has reinforced the value of IP, and the importance of owning a robust IP portfolio to compete in the market. Typically, the better portfolios are organically grown together with product development. However, if that is not possible or sufficient, then a company may seek to acquire a portfolio that covers the relevant product line. In the telecommunications industry, as one example, there have been recent portfolio acquisitions by companies to enter the market, and in some cases also to keep portfolios out of the hands of others. Thus, recent litigation has forced tech companies to manage their IP better and more actively, by building a portfolio that broadly covers the technology in their products through in-house procurement together with product development, or more quickly by acquisition. Such active management better positions tech companies to compete in the market, to maintain or gain market share, and to defend themselves against competitors.

### **Robin McGrath**

Atlanta

The last few years have proven to be an exciting yet turbulent time for technology companies trying to keep pace with the myriad of changes within patent jurisprudence. With the rise in the number of patent trolls asserting their portfolios against wholesale industries, and high-stakes patent wars between competitive high-tech companies, companies are becoming more proactive and vigilant than ever in (i) building their own war chests of patents, both for offensive and defensive reasons, and (ii) engaging in extensive patent searching and investigation before acquiring new businesses or investing in new areas of technology.

Tech companies will also struggle to implement changes to their patent policies in light of the America Invents Act (AIA). While certain AIA provisions took effect in March 2012, the U.S. will switch from a “first to invent” to a “first to file” system. This change will undoubtedly lead technology companies to be much more diligent in getting their patent applications on file sooner, conducting invention workshops more frequently, reducing the time to review invention disclosures for patentable ideas, and authorizing the preparation of applications more quickly – all while trying to maintain the quality of their patent disclosures.

## ANTICORRUPTION

*Given how aggressively governments are pursuing anticorruption, what should technology companies be alert to?*

### **Palmina Fava**

New York

A significant risk area for tech companies is the use of third parties, particularly as sales intermediaries, in high corruption risk countries. In many such countries, tech companies cannot sell directly to end-user customers, thereby requiring them to utilize third-party sales intermediaries whose personnel, internal controls, and books and records are not under the companies’ control. Third parties – which may be beyond the reach of the FCPA and may be located in a country where anticorruption laws are not rigorously enforced – do not have the same incentives to abide by anticorruption restrictions as the tech companies that retain them. While many companies incorporate audit clauses in their contracts with third parties, those clauses are often difficult to enforce, creating further challenges in overseeing third parties and ensuring their compliance with anticorruption laws. These challenges make pre-contract due diligence, regular training, and immediate termination rights critical when working with third parties. These types of internal controls, coupled with other compliance protocols, may mitigate a tech company’s liability in anticorruption matters.



## ANTITRUST

*What is the best way for companies in the technology, media, and telecommunications sector to manage potential exposures to antitrust?*

### **C. Scott Hataway**

Washington, DC

The U.S. patent system is one of the great drivers of economic growth in the modern era. It has created an unrivaled environment of innovation, yielding benefits for consumers and producers alike. And though the patent right is meant to exclude, voluntary cooperation among patent holders has proven to be a critical step in combining individual inventions into the complex technological “standards” that lie at the heart of all modern gadgetry.

Despite the obvious benefits of innovation and cooperation, antitrust regulators continue to apply traditional competitive effects analysis in an effort to prevent harm to competition. In this environment, technology companies must carefully scrutinize all disclosures made during the standards setting process, the impact of F/RAND licensing commitments, and the effect of portfolio M&A activity on the creation and exercise of market power. Patent aggregation isn’t a new concept, but the increased sensitivity of litigants and enforcement agencies to aggregation issues should lead to increased pressure based on the application of antitrust theory.

### **Holly House**

San Francisco

Many price-fixing cartel actions arise when technology companies face commoditization of their products and prices plunge. Concerned sales personnel grouse with their competition about how cutthroat competition is making matters worse. Meetings occur and documents are created where these rivals then discuss price ranges, capacity reductions, or other means to shore up margins or shares. These are the eventual evidence used by prosecutors and plaintiffs’ attorneys to show improper collusion – at enormous future cost to these companies (usually far in excess of any short-term financial benefits). Compliance programs that teach companies’ sales forces what communications are and aren’t legal or prudent and a robust document control protocol are essential to help avoid being ensnared in price-fixing litigation. For companies with large shares of any product or geographic market, learning – and then teaching company personnel – what sales promotions and techniques are off-limits to lock-in customers is also essential to prevent intrusive and expensive agency investigations and fines and the competitor suits that invariably accompany them.



Scan to hear more about intellectual property concerns



**NEW  
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INTRODUCING OUR NEW TALENT



Over the past year we significantly expanded both our global reach and the depth of our practice, welcoming numerous leading lawyers from across regions, industries, and disciplines. As our firm continuously evolves to meet the changing needs of our clients, attracting and retaining top talent is an essential element of our strategy. The following additions to our team, including our class of newly elected partners, enable us to better serve our clients, providing innovative counsel and outstanding service in markets around the world.

## ANTITRUST

**MJ Moltenbrey** (Washington, DC) – Represents clients before the Department of Justice and Federal Trade Commission, state attorneys general, and in federal courts on a wide array of antitrust issues, including mergers, civil and criminal conduct cases, and administrative proceedings.

## CAPITAL MARKETS, M&A, AND PRIVATE EQUITY

**Arturo Carrillo** (New York) – Advises on cross-border capital markets and liability management transactions, structured financings, joint ventures, and M&A, with a particular emphasis on Latin American matters.

**James Cole** (London) – Focuses on capital raisings in Europe and the Middle East, acting for issuers and underwriters, as well as advising hedge funds in relation to distressed and illiquid asset purchases, sales, and restructuring.

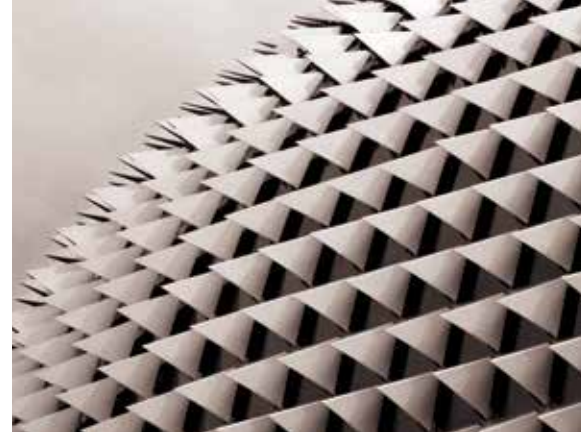
**Dr. Regina Engelstädter** (Frankfurt) – Focuses her practice on mergers and acquisitions, corporate matters, complex restructurings, and joint ventures, with extensive experience in cross-border transactions and representing international corporations and private equity clients.

**Michael Fitzgerald** (New York) – Represents a wide range of international and domestic underwriter and issuer clients in debt and equity financing transactions and M&A activities, with a special focus on the Latin American financial markets.

**Taisa Markus** (New York) – Handles cross-border securities offerings, bank finance, and M&A, as well as restructurings, with a focus on representing financial institutions and issuers in the Latin American and European capital markets.

## EMPLOYMENT

**Zach Hutton** (San Francisco) – Concentrates his practice on wage and hour litigation and advice, class action defense, and general employment law.



**Lorenzo Parola** (Milan) – Represents domestic and international corporations and private equity funds in M&A transactions and projects, particularly in the oil and gas, power, and renewables sectors.

**Jason Rednour** (Orange County) – Advises clients on a wide range of corporate and M&A transactions, with a focus on representing private equity firms.

**David Revcolevschi** (Paris) – Focuses his practice on mergers and acquisitions, securities offerings, and the wide range of legal issues faced by public companies.

**Claudia Simon** (Los Angeles) – Handles an array of U.S. and cross-border M&A transactions, as well as counseling clients on defensive strategies.

**Phillip Street** (Atlanta) – Focuses on healthcare and life sciences transactions, including business formations, clinical integration and alignment, strategic alliances, venture financings, M&A and joint ventures, and the commercialization of life science research.

**Steve Tredennick** (Houston) – Handles a wide range of leveraged acquisitions and dispositions, private equity-backed investments, minority growth equity investments, M&A transactions, and corporate governance matters.

**Carson Sullivan** (Washington, DC) – Represents employers in all aspects of employment law, with an emphasis on defending class and collective action suits, as well as litigation involving trade secrets and restrictive covenants.

## FINANCE

**Katherine Bell** (Orange County) – Represents lenders and borrowers in a wide range of commercial and corporate finance transactions, including asset-based, cash flow, and subordinated debt financings.

**Joy Gallup** (New York) – Focuses on cross-border capital markets and complex debt restructurings in Latin America, including high-yield debt, liability management transactions, secured lending transactions, and SEC reporting requirements for foreign private issuers.

**Ugo Giordano** (London) – Represents investment banks in capital markets, fund-linked and equity-linked transactions, as well as hedge funds and investment banks in structured finance and securitization transactions.

**Neil Hamilton** (London) – Focuses his practice on structured finance and structured products, particularly CLOs and structured funds.

**Randal Palach** (New York) – Represents U.S. and international financial institutions and corporations in leveraged finance transactions, including domestic and cross-border financings and restructurings.

**Paris Theofanidis** (Houston) – Focuses his practice on finance, derivatives, and structured products, representing commercial banks, underwriters, institutional investors, insurance companies, private equity and hedge funds, and corporate borrowers and issuers.

## REAL ESTATE

**Eric Allendorf** (New York) – Concentrates his practice on real estate lending and complex debt finance, with a focus on representing institutional lenders in all aspects of real estate finance and restructurings.

**David Viklund** (New York) – Represents institutional borrowers and lenders in all aspects of real estate finance and restructurings and investors in the acquisition, development, and operation of commercial properties.

## LITIGATION AND GLOBAL DISPUTES

**Sam Cooper** (Houston) – Focuses his practice on commercial litigation, international arbitration, FCPA and anti-corruption matters, and white collar criminal defense work.

**Behnam Dayanim** (Washington, DC) – Handles regulatory compliance, internal and regulatory investigations, and litigation, focusing on privacy and data security, gaming, advertising, trade controls, and electronic payments, as well as transactional work in the areas of IT licensing and outsourcing.

**Nathaniel Edmonds** (Washington, DC) – Advises on regulatory compliance matters, including FCPA and anti-corruption investigations, risk assessments, and due diligence, and conducts internal investigations and litigates white collar and complex economic criminal matters.

**Corinne Lammers** (Washington, DC) – Advises clients on compliance with the Foreign Corrupt Practices Act and other anti-corruption laws, including matters related to international business transactions, internal investigations, and the development of compliance programs.

## SECURITIES LITIGATION AND WHITE COLLAR

**Maria Douvas** (New York) – Represents entities and individuals in regulatory, white-collar criminal, and securities litigation matters.

**John Durrant** (Los Angeles) – Litigates securities and complex commercial matters, including lawsuits involving alleged securities fraud and commercial cases involving unfair competition, business torts, and complex contractual arrangements.

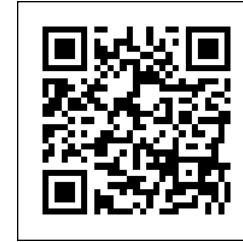
**Edward Han** (Palo Alto) – Focuses his practice on securities enforcement matters, internal investigations, and securities and complex business litigation in both federal and state courts.

## TAX

**Greg Nelson** (Houston) – Concentrates his practice on federal income taxation, with particular emphasis on the tax issues that relate to corporations and partnerships in the energy and real estate sectors.

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## CHAIRMAN'S LETTER



## ASIA



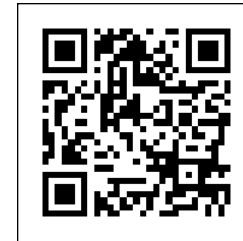
Managing Risk for  
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## EUROPE



French Private Equity  
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## FINANCIAL SERVICES



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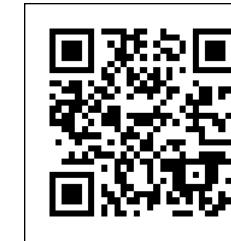
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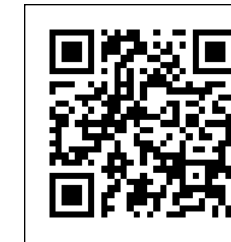
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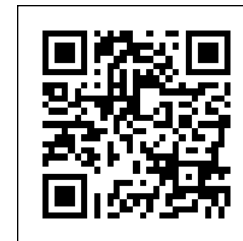
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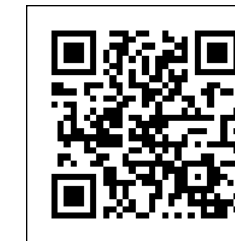
The JOBS Act



Employment Law

To watch our videos about market trends impacting our clients, use your smartphone to scan the quick response (QR) codes found throughout the Review and collected here. If you do not have a QR reader installed, you will first need to download the software to your phone.

We also invite you to experience our dynamic, interactive version of the Annual Review. To view, go to [www.paulhastings.com/annualreview](http://www.paulhastings.com/annualreview).



Intellectual Property



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# THE WAY WE WORK

The following are our firm's Client Service Excellence Principles that form the foundation of our client service culture.

COLLABORATE

COMMUNICATE

EMBRACE DIVERSITY

PRACTICE EXCELLENCE

INNOVATE

ACT WITH INTEGRITY

VALUE KNOWLEDGE

CHALLENGE NORMS

RESPOND WITH IMMEDIACY

DELIVER RESULTS

To learn about our firm's pro bono, sustainability, diversity, and women's initiatives, please read our 2012 Corporate Social Responsibility Annual Review.



